

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

RANDOLPH LYLE MOORE,

Appellant,

vs.

RENEE BAKER, WARDEN, and
ADAM PAUL LAXALT,
ATTORNEY GENERAL FOR
THE STATE OF NEVADA,

Respondents.

No. 66652

VOLUME 1 OF 41

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APPELLANT'S APPENDIX

Appeal from Order Denying Petition
for Writ of Habeas Corpus (Post-Conviction)

Second Judicial District Court, Washoe County

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INDEX

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
41	Case Appeal Statement October 6, 2014.	AA10164-AA10167
41	Court Minutes August 26, 2014.	AA10114
3	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Cross-Examination of Rusty Deon Havens September 30, 1985.	AA619-AA623
6	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Direct Examination of Johnny Ray Lockett October 4, 1985.	AA1325-AA1388
4	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Direct Examination of Thomas L. Akers October 1, 1985.	AA751-AA851
15	Exhibits in Support of Petition for A Writ of Habeas Corpus (list) September 20, 2013.	AA3574-AA3598

EXHIBIT

15	1. <u>The State of Nevada v. Randolph Moore, et al.,</u> Justice Court Case No. 4783 Criminal Complaint December 20, 1984.	AA3599-AA3603
----	---	---------------

<u>VOLUME</u>		<u>DOCUMENT</u>	<u>PAGE</u>
15	2.	<u>The State of Nevada v. Randolph Moore, et al.,</u> Justice Court Case Nos. 4687; 4783 Amended Criminal Complaint February 11, 1985.	AA3604-AA3610
15	3.	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. 69269 Information February 25, 1985.	AA3611-AA3618
15	4.	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C69269 Notice of Aggravating Circumstances September 17, 1985.	AA3619-AA3621
15	5.	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C69269 Verdict (Counts I-VII) October 11, 1985.....	AA3622-AA3629
15	6.	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C69269 Verdict (Sentence of Death) October 17, 1985.....	AA3630-AA3631
15	7.	Declaration of Darla Newell-Mathews July 2013.	AA3632-AA3636
15	8.	<u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 Judgment of Conviction November 27, 1985.....	AA3637-AA3639

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
15	9. <u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C69269 Notice of Appeal November 20, 1985..	AA3640-AA3641
15	10. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 17900 Appellant's Opening Brief June 9, 1987..	AA3642-AA3689
15-16	11. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 17900 Respondent's Answering Brief August 10, 1987..	AA3690-AA3721
16	12. <u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C69269 Verdict (Sentence of Death) July 14, 1989.	AA3722-AA3723
16	13. <u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 Judgment of Conviction July 31, 1989.	AA3724-AA3727
16	14. <u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 Notice of Appeal August 4, 1989..	AA3728-AA3730
16	15. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 20483 Appellant's Opening Brief January 18, 1990.	AA3731-AA3774

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
16	16. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 20483 Respondent's Answering Brief February 17, 1990.	AA3775-AA3802
16	17. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 20483 Appellant's Reply Brief March 19, 1990.....	AA3803-AA3831
16	18. <u>Randolph Moore v. Ron Angelone, et al.,</u> Eighth Judicial District Court Case No. C69269 Petition for Post-Conviction Relief and Stay of Execution (NRS 177.315 ET SEQ.) July 3, 1991.	AA3832-AA3839
16	19. Declaration of Wendy Mazaros July 30, 2013.	AA3840-AA3843
16	20. <u>Randolph Moore v. The State of Nevada,</u> United States Supreme Court Case No. 91-432 Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of the State of Nevada October 11, 1991.....	AA3844-AA3871
16	21. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 20483 Appellant's Opening Brief June 3, 1992.....	AA3872-AA3907
16	22. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case Nos. 20483, 20383 Respondent's Answering Brief June 20, 1992.....	AA3908-AA3940

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
16	23. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 20483 Appellant's Reply Brief July 20, 1992.	AA3941-AA3958
16	24. <u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 Petition for Writ of Habeas Corpus May 19, 1995.	AA3959-AA3963
16	25. <u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 Motion to Strike Death Penalty May 22, 1995.	AA3964-AA3970
17	26. <u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 Joinder in Motions of Co-Defendant Flanagan June 6, 1995.	AA3971-AA3972
17	27. <u>Randolph Moore v. Eighth Judicial District Court, et</u> <u>al,</u> Nevada Supreme Court Case No. 27104 Petition for Writ of Mandamus June 7, 1995.	AA3973-AA3992
17	28. <u>Randolph Moore v. Eighth Judicial District Court, et</u> <u>al,</u> Nevada Supreme Court Case No. 27104 Order Denying Petition for Writ of Mandamus June 8, 1995.	AA1993-AA3995
17	29. <u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 Verdicts (Death) June 23, 1995.	AA3996-AA3998

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
17	30. <u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 Judgment of Conviction July 11, 1995.	AA3999-AA4003
17	31. <u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 Notice of Appeal June 9, 1995.	AA4004-AA4006
17	32. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 27320 Appellant Randolph Moore's Opening Brief December 8, 1995.	AA4007-AA4069
17	33. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 27320 Respondent's Answering Brief February 6, 1996.	AA4070-AA4096
17	34. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 27320 Appellant Randolph Moore's Reply Brief March 25, 1996.	AA4097-AA4127
17	35. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 27320 Remittitur May 22, 1998.	AA4128-AA4129
17	36. <u>Randolph Moore v. Warden of Ely State Prison, et al.,</u> Eighth Judicial District Court Case No. C69269 Petition for Writ of Habeas Corpus (Post-Conviction) and Appointment of Counsel June 2, 1998.	AA4160-AA4140

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
17	37. <u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 Points and Authorities in Support of Petition for Writ of Habeas Corpus May 19, 1995.	AA4141-AA4189
17-18	38. <u>Randolph Moore v. State of Nevada, et al.,</u> Eighth Judicial District Court Case No. C69269 First Supplemental Petition for Writ of Habeas Corpus May 2, 2003.	AA4190-AA4400
18	39. <u>Randolph Moore v. E.K. McDaniel, et al.,</u> Eighth Judicial District Court Case No. C69269 Reply to State’s Brief Concerning Timeliness of Post Conviction Petition for Writ of Habeas Corpus January 12, 2004.	AA4401-AA4431
18	40. <u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 Findings of Fact, Conclusions of Law and Order March 21, 2006.. . . .	AA4432-AA4440
18-19	41. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 46801 Appellant’s Opening Brief August 31, 2006.	AA4441-AA4538
19	42. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 46801 Respondent’s Answering Brief and Cross-Appellant’s Opening Brief October 4, 2006.. . . .	AA4539-AA4597

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
19	43. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 46801 Appellant's Reply Brief and Cross-Respondent's Answering Brief October 19, 2006..	AA4598-AA4637
19	44. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 46801 Notice of Supplemental Authority November 21, 2006..	AA4638-AA4640
19	45. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 46801 Notice of Supplemental Authority January 11, 2007.	AA4641-AA4653
19	46. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 46801 Appellant's Supplemental Opening Brief on Issue of Aiding and Abetting Instructions February 8, 2007.	AA4654-AA4663
19	47. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 46801 Respondent's Answering Brief March 5, 2007..	AA4664-AA4676
19	48. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 46801 Appellant's Supplemental Reply Brief on Issue of Aiding and Abetting Instructions March 14, 2007..	AA4677-AA4693

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
19	49. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 46801 Appellant's Supplemental Reply Brief on Issue of First Degree Murder Instructions and <u>Polk v. Sandoval</u> November 28, 2007..	AA4694-AA4714
19-20	50. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 46801 Order Affirming in Part, Reversing in Part, and Remanding April 23, 2008..	AA4715-AA4737
20	51. <u>Randolph Moore v. E.K. McDaniel,</u> Nevada Supreme Court Case No. 08-5384 Petition for Writ of Certiorari July 17, 2008.	AA4738-AA4757
20	52. <u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 State's Brief on Harmless Error November 4, 2008..	AA4758-AA4787
20-21	53. <u>Randolph Moore v. E.K. McDaniel, et al.,</u> Eighth Judicial District Court Case No. C69269 Brief Concerning Prejudice of Two Invalid Aggravating Circumstances November 4, 2008..	AA4788-AA5045
21	54. <u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 Findings of Fact, Conclusions of Law and Order January 15, 2010.	AA5046-AA5060

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
21	55. <u>The State of Nevada v. Randolph Moore,</u> Eighth Judicial District Court Case No. C69269 Notice of Appeal December 14, 2009.....	AA5061-AA5063
21	56. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 55091 Appellant's Opening Brief July 27, 2010.	AA5064-AA5146
21	57. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 55091 Order of Affirmance August 1, 2012.	AA5147-AA5167
21	58. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 55091 Petition for Rehearing August 16, 2012.	AA5168-AA5180
21	59. <u>Randolph Moore v. The State of Nevada,</u> Nevada Supreme Court Case No. 55091 Order Denying Rehearing and Motion for Limited Remand September 19, 2012.	AA5181-AA5184
21	60. <u>People v. Robert Gino Peoples,</u> Los Angeles Superior Court No. 232298 Probation Report.	AA5185-AA5193
21	61. <u>People v. Robert Gino Peoples,</u> Los Angeles Superior Court No. 232298 Reporter's Transcript (Testimony of Robert G. Peoples, Defendant) December 12, 1960.....	AA5194-AA5210

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
21	62. <u>People v. Robert Gino Peoples,</u> Los Angeles Superior Court No. 232298 Examination of Robert People by Marcus Crahan, M.D. December 1, 1960.....	AA5211-AA5220
22	63. <u>People v. Sacks, Sanders, Peoples and McCoy,</u> Los Angeles Superior Court No. 304102 Letter from Associate Superintendent R.P. Feigen to Judge R. R. Roberts and Judge A.P. Peracca, and Diagnostic Study of Evaluation of Ira Sacks October 10, 1967.....	AA5221-AA5234
22	64. “Convict May Leave Prison Thanks to Judge’s Interest,” Nevada State Journal January 31, 1969.	AA5235-AA5237
22	65. “Murder Trial Begins,” Nevada State Journal May 12, 1966.	AA5238-AA5239
22	66. <u>Dillard R. Morton v. State of Nevada,</u> Nevada Supreme Court Case No. 5091 Opinion June 2, 1966.	AA5240-AA5242
22	67. <u>Peoples v. Hocker, et al.,</u> Eighth Judicial District Court Case No. 2025-R Order August 8, 1968.	AA5243-AA5246
22	68. “Pardon Board Withholds Action on Robert Peoples”.....	AA5247-AA5248

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
22	69. “Robert Peoples Stays in Prison”	AA5249-AA5250
22	70. <u>State of Nevada v. Peoples, Morton,</u> Fifth Judicial District Court Case No. 654 Order Releasing Evidence November 25, 1968.. . . .	AA5251-AA5252
22	71. Nevada Board of Pardons Order Commuting Sentence and/or Remitting Fine (Robert Peoples) April 23, 1974.. . . .	AA5253-AA5254
22	72. “Hanley Defense Attacks Agent Use” Las Vegas Sun January 7, 1978.	AA5255-AA5256
22	73. “Hanleys Informant Testifies,” Las Vegas Sun, January 6, 1978.	AA5257-AA5259
22	74. “Hanley Ruling Due Next Week,” Las Vegas Sun June 14, 1977.	AA5260-AA5262
22	75. “Hanley ‘Agent’ Testifies” Las Vegas Review-Journal.. . . .	AA5263-AA5264
22	76. “Peoples Divorced (Finally),” Las Vegas Sun July 27, 1978.	AA5265-AA5267
22	77. Clark County Office of the Coroner-Medical Examiner, Autopsy Report of Colleen Gordon November 7, 1984.. . . .	AA5268-AA5277

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
22	78. Clark County Office of the Coroner-Medical Examiner, Autopsy Report of Carl Richard Gordon November 7, 1984.....	AA5278-AA5291
22	79. Las Vegas Metropolitan Police Department Officer's Report November 8, 1984.....	AA5292-AA5301
22	80. Las Vegas Metropolitan Police Department Property Report November 6, 1984.....	AA5302-AA5306
22	81. Las Vegas Metropolitan Police Department Voluntary Statement of Dale Edward Flanagan November 6, 1984.....	AA5307-AA5311
22	82. Las Vegas Metropolitan Police Department Voluntary Statement of Lisa Licata November 6, 1984.....	AA5312-AA5320
22	83. Las Vegas Metropolitan Police Department Property Report November 7, 1984.....	AA5321-AA5323
22	84. Las Vegas Metropolitan Police Department Criminalistics Laboratory Request for Laboratory Examination November 13, 1984.....	AA5324-AA5325
22	85. Las Vegas Metropolitan Police Department Criminalistics Laboratory Request for Fingerprint Comparison November 15, 1984.....	AA5326-AA5327

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
22	86. Las Vegas Metropolitan Police Department Criminalistics Bureau Report of Laboratory Examination November 15, 1984.....	AA5328-AA5330
22	87. Las Vegas Metropolitan Police Department Voluntary Statement of Ronald Anthony Davis November 24, 1984.....	AA5331-AA5344
22	88. Las Vegas Metropolitan Police Department Voluntary Statement of Wayne Eric Alan Wittig December 7, 1984.....	AA5345-AA5352
22	89. Las Vegas Metropolitan Police Department Voluntary Statement of Angela Maria Saldana November 6, 1984.....	AA5353-AA5363
22	90. Las Vegas Metropolitan Police Department Voluntary Statement of Thomas Lewis Akers December 7, 1984.....	AA5364-AA5373
22	91. Las Vegas Metropolitan Police Department Voluntary Statement of John Michael Lucas III December 10, 1984.....	AA5374-AA5384
22	92. Las Vegas Metropolitan Police Department Officer's Report, Recovered Evidence January 3, 1985.....	AA5385-AA5386
22	93. Las Vegas Metropolitan Police Department Property Report January 2, 1985.....	AA5387-AA5389

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
22	94. Las Vegas Metropolitan Police Department Criminalistics Bureau Report of Laboratory Examination January 7, 1985.	AA5390-AA5391
22	95. Declaration of Amy Hanley-Peoples February, 2011.....	AA5392-AA5395
22	96. Declaration of Wendy C. Mazaros February, 2011.....	AA5396-AA5402
22	97. Declaration of John Frappier February 10, 2011.	AA5403-AA5404
22	98. <u>State v. Moore</u> , Eighth Judicial District Court Case No. C69269 Findings of Fact, Conclusions of Law and Interim Order February 17, 2005.	AA5405-AA5412
22	99. <u>State v. Lockett</u> , Eighth Judicial District Court Case No. C69269 Answer in Opposition to Motion for Discovery, and Examination of Evidence and Production of all Evidence Favorable to Defendant July 17, 1985.	AA5413-AA5416
22	100. <u>State v. Lockett</u> , Eighth Judicial District Court Case No. C69269 Additional Motion for Specific Discovery July 22, 1985.	AA5417-AA5419

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
22	101. <u>State v. McDowell</u> , Eighth Judicial District Court Case No. C69269 Answer in Opposition to Motion for Severance of Trial from Co-Defendants August 7, 1985.	AA5420-AA5423
22-23	102. <u>The State of Nevada v. Randolph Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Instructions to the Jury (Guilt) October 11, 1985.. . . .	AA5424-AA5472
23	103. <u>State v. Walsh, et al.</u> , Eighth Judicial District Court Case No. C69269 Motion in Limine (Regarding Co-Defendants' Statements) April 29, 1985.. . . .	AA5473-AA5477
23	104. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 List of Co-Conspirator Declarations September 25, 1985.	AA5478-AA5484
23	105. <u>State v. Walsh, et al.</u> , Eighth Judicial District Court Case No. C69269 Motion for Discovery, Examination of All Evidence and Production of All Evidence Favorable to Defendant April 29, 1985.. . . .	AA5485-AA5490
23	106. <u>State v. Walsh, et al.</u> , Eighth Judicial District Court Case No. C69269 Motion for Severance April 29, 1985.. . . .	AA5491-AA5495

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
23	107. <u>State v. Walsh, et al.</u> , Eighth Judicial District Court Case No. C69269 Opening Brief of Defendant Michael Walsh July 10, 1985.	AA5496-AA5505
23	108. <u>State v. Lockett, et al.</u> , Eighth Judicial District Court Case No. C69269 Motion for Immediate Disclosure of Turncoat Witness June 19, 1985.	AA5506-AA5509
23	109. <u>State v. Lockett, et al.</u> , Eighth Judicial District Court Case No. C69269 Motion for Discovery, Examination of Evidence and Production of All Evidence Favorable to Defendant June 19, 1985.	AA5510-AA5514
23	110. <u>State v. Lockett, et al.</u> , Eighth Judicial District Court Case No. C69269 Motion in Limine Regarding Co-Defendant Statements; Request for Evidentiary Hearing June 19, 1985.	AA5515-AA5518
23	111. <u>State v. Lockett, et al.</u> , Eighth Judicial District Court Case No. C69269 Preliminary Motion for Severance June 19, 1985.	AA5519-AA5522
23	112. <u>State v. Lockett, et al.</u> , Eighth Judicial District Court Case No. C69269 Motion Requesting Leave of Court to File Additional Motions Upon Receipt of Discovery June 19, 1985.	AA5523-AA5524

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
23	113. <u>State v. Lockett, et al.</u> , Eighth Judicial District Court Case No. C69269 First Supplement to: “Motion in Limine Regarding Co-Defendant’s Statements; Request for Evidentiary Hearing” and “Preliminary Motion for Severance” July 9, 1985.	AA5525-AA5533
23	114. <u>State v. Lockett, et al.</u> , Eighth Judicial District Court Case No. C69269 Response to Answer to Motions in Limine and for Severance of Trials July 22, 1985.	AA5534-AA5545
23	115. <u>State v. McDowell, et al.</u> , Eighth Judicial District Court Case No. C69269 Motion for Severance of Trial from Co-Defendants August 1, 1985.	AA5546-AA5558
23	116. <u>State v. Flanagan</u> , Eighth Judicial District Court Case No. C69269 Motion to Retain and Produce Rough Notes September 9, 1985.	AA5559-AA5565
23	117. <u>State v. Flanagan</u> , Eighth Judicial District Court Case No. C69269 Motion for Severance of Dale Flanagan September 9, 1985.	AA5566-AA5576
23	118. <u>State v. Flanagan</u> , Eighth Judicial District Court Case No. C69269 Motion for Production of Statements Under Jencks Act September 9, 1985.	AA5577-AA5581

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
23	119. <u>State v. Flanagan</u> , Eighth Judicial District Court Case No. C69269 Specific Request for Exculpatory Evidence September 9, 1985.	AA5582-AA5586
23	120. <u>State v. Flanagan</u> , Eighth Judicial District Court Case No. C69269 Motion for Disclosure of Other Bad Acts and Motion in Limine for Exclusion of Said Evidence September 9, 1985.	AA5587-AA5589
23	121. <u>State v. Flanagan</u> , Eighth Judicial District Court Case No. C69269 Motion for Severance and Change of Venue September 9, 1985.	AA5590-AA5594
23	122. Declaration of Rusty Havens May 8, 2000.	AA5595-AA5598
23	123. Declaration of John Lucas May 11, 2000.	AA5599-AA5606
23	124. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Motion for Appointment of Psychiatrist for Examination of Defendant April 24, 1985.	AA5507-AA5612
23	125. Declaration of Robert Peoples May 9, 2000.	AA5613-AA5616
23	126. Declaration of Debora L. Samples Smith April 22, 2000.	AA5617-AA5619

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
23	127. Declaration of Angela Saldana Ficklin April 26, 2000.....	AA5620-AA5623
23	128. Various News Articles including coverage about Witchcraft and Satanic Ritual.....	AA5624-AA5663
23	129. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Media Request for Cameras in the Courtroom -KTNV-TV February 20, 1985.	AA5664-AA5665
23	130. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Media Request, KUBC-TV February 20, 1985.	AA5666-AA5667
23	131. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Media Request, KLAS-TV February 20, 1985.	AA5668-AA5669
23	132. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Order Granting Entry of Media Permission KLAS-TV February 20, 1985.	AA5670-AA5671
23	133. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Media Request, KLAS-TV March 1, 1985.....	AA5672-AA5673

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
23	134. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Order Granting Entry of Media Permission KLAS-TV March 1, 1985.....	AA5674-AA5675
23	135. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Media Request, KYNV-TV April 24, 1985.....	AA5676-AA5677
23	136. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Order Granting Entry of Media Permission KVBC-TV, May 31, 1985.	AA5678-AA5679
23	137. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Media Request for Cameras in the Courtroom, KUBC-TV May 31, 1985.	AA5680-AA5681
23	138. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Order Granting Entry of Media Permission, KTNV-TV July 2, 1985.	AA5682-AA5683
23	139. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Media Request, KTNV-TV July 2, 1985.	AA5684-AA5685

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
23	140. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Order Granting Entry of Media Permission, KTNV-TV July 2, 1985.	AA5686-AA5687
23	141. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Media Request, KTNV-TV July 2, 1985.	AA5688-AA5689
23	142. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Media Request, Las Vegas Sun September 25, 1985.	AA5690-AA5691
23	143. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Order Granting Entry of Media Permission Las Vegas Sun September 25, 1985.	AA5692-AA5693
23	144. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Media Request, KTNV-TV October 24, 1985.	AA5694-AA5695
23	145. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Order Granting Media Permission, KTNV-TV October 24, 1985.	AA5696-AA5697

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
23	146. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Order May 6, 1985.	AA5698-AA5701
23	147. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Minutes May 6, 1985.	AA5702-AA5703
23	148. <u>State v. Flanagan, et al.</u> , Eighth Judicial District Court Case No. C69269 Answer in Opposition to Motion to Retain and Produce Rough Notes September 18, 1985.	AA5704-AA5706
23	149. <u>State v. Flanagan, et al.</u> , Eighth Judicial District Court Case No. C69269 Answer to Specific Request for Exculpatory Evidence September 18, 1985.	AA5707-AA5709
23	150. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Minutes August 30, 1985.	AA5710-AA5711
23	151. <u>State v. Moore</u> , Eighth Judicial District Court Case No. C69269 Motion to Dismiss Counsel and Appoint Different Counsel September 9, 1985.	AA5712-AA5714

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
23	152. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Motion to Withdraw as Counsel of Record October 15, 1985.....	AA5715-AA5720
24	153. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Minutes various dates.	AA5721-AA5722
24	154. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 Instructions to the Jury July 14, 1989.	AA5723-AA5741
24	155. Declaration of Wayne Eric Alan Wittig April 18, 2000.	AA5742-AA5756
24	156. Declaration of Roy George McDowell May 6, 2000.	AA5757-AA5763
24	157. Declaration of Robert Ramirez May 11, 2000.	AA5764-AA5769
24	158. Affidavit of Randall H. Pike November 12, 1999.....	AA5770-AA5777
24	159. Declaration of Michelle Gray Thayer April 24, 2000.....	AA5778-AA5781
24	160. Declaration of Janalee Hoffman-Di Gian July 10, 2013.	AA5782-AA5784
24	161. Declaration of John Lucas III June 26, 2013.....	AA5785-AA5789

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
24	162. Declaration of Jon Wall July 9, 2013.	AA5790-AA5792
24	163. Declaration of Kenneth L. Smith June 4, 2013.	AA5793-AA5800
24	164. Declaration of Lisa Luckett-McDonough July 12, 2013.	AA5801-AA5804
24	165. Declaration of Thomas Akers July 11, 2013.	AA5805-AA5809
24	166. Report of Neuropharmacological Opinion by Jonathan J. Lipman, Ph.D., July 15, 2013; Curriculum Vita of Jonathan J. Lipman, Ph.D.	AA5810-AA5840
24	167. Certificate of Live Birth Randolph Lyle Smith.	AA5841-AA5842
24	168. Certificate of Death Mehlia Lyn Martin.	AA5843-AA5844
24	169. Certificate of Live Birth Mehlia Lyn Smith.	AA5845-AA5846
24	170. Chelsea Naval Hospital Information..	AA5847-AA5851
24	171. Certificate of Registry of Marriage Kenneth Lyle Smith to Lyn Shelley December 18, 1963.	AA5852-AA5853
24	172. Declaration of Sheri Lyn McKenzie July 17, 2013.	AA5854-AA5865

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
24	173. Declaration of Lori Hauxwell July 17, 2013.	AA5866-AA5872
24	174. Declaration of Angela Saldana-Ficklin July 17, 2013.	AA5873-AA5876
24	175. Declaration of Cheryl Bigelow July 22, 2013.	AA5877-AA5882
24	176. Declaration of Felicia Burke July 18, 2013.	AA5883-AA5885
24	177. Declaration of Kathryn Creasy July 18, 2013.	AA5886-AA5889
24	178. Certificate of Death, Helene Emily Shelley	AA5890-AA5891
24	179. Declaration of Kevin Troy Darling July 21, 2013.	AA5892-AA5895
24	180. Declaration of Roy McDowell July 22, 2013.	AA5896-AA5901
24	181. Declaration of Tracy Saal-Moore July 19, 2013.	AA5902-AA5904
24	182. Declaration of Joseph Nesbitt-Eisnach July 23, 2013.	AA5905-AA5909
24	183. Declaration of Bertha Fisher July 22, 2013.	AA5910-AA5913
24	184. Declaration of Randy Huston July 24, 2013.	AA5914-AA5916

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
24	185. Declaration of Tony Parsons July 25, 2013.	AA5917-AA5920
24	186. Declaration of Alfonso R. Cota July 16, 2013.	AA5921-AA5926
24	187. <u>Rick C. Shelley v. Helene E. Shelley</u> Superior Court of California Various Divorce Proceedings.	AA5927-AA5954
24	188. East Prussia Wikipedia definition....	AA5955-AA5964
24	189. Declaration of Connie Russell July, 2013.	AA5965-AA5969
24-25	190. Declaration of Connie Russell re: Intoxication July, 2013.	AA5970
25	191. Declaration of Sherri Wilson July 26, 2013.	AA5973-AA5976
25	192. Declaration of David Schieck July 26, 2013.	AA5977-AA5988
25	193. Declaration of JoNell Thomas July 25, 2013.	AA5989-AA5994
25	194. <u>In Re the Marriage of Lyn Smith and Kenneth Lyle Smith</u> , Superior Court of California Case No. D 75108 Various Divorce Proceedings.	AA5995-6017

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
25	195. <u>In Re the Marriage of Lyn Smith and Kenneth Lyle Smith</u> , Superior Court of California Case No. D 75108 Order to Show Cause (Marriage) Modification.	AA6018-AA6079
25	196. <u>State v. Jiminez</u> , Case No. C77955 Eighth Judicial District Court Recorder's Transcript re: Evidentiary Hearing (excerpt) April 15, 1993.	AA6080-AA6130
25	197. California, Marriage Index, 1960-1985 for Lyn Shelley.	AA6131-AA6132
25	198. Declaration of Michelle Gray-Thayer July 26, 2013.	AA6133-AA6137
25	199. Declaration of Debora Samples-Nadeau July 26, 2013.	AA6138-AA6141
25	200. <u>State of Nevada v. John Michael Lucas, III</u> , Eighth Judicial District Court Case No. C76372 Court Case File.	AA6142-AA6197
25-26	201. <u>State of Nevada v. John Michael Lucas</u> , Eighth Judicial District Court Case No. C75769 Court Case File.	AA6198-AA6253
26	202. <u>State of Nevada v. Irving Mark Hoffing and Angela Saldana</u> , Eighth Judicial District Court Case No. C88661 Court Case File.	AA6254-AA6344

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
26	203. <u>In re the Marriage of Bertha Smith v. Kenneth Smith</u> , San Diego Superior Court Case No. D205310 Divorce Records.	AA6345-AA6357
26	204. Clark County School District Records for Randolph Moore.	AA6358-AA6364
26	205. <u>Sheri Smith v. Randy Smith</u> , Eighth Judicial District Court Case No. D56335 Divorce Records.	AA6365-AA6387
26	206. <u>In the Matter of the Petition of Lindy Moore and Arthur Bonczyk</u> , Eighth Judicial District Court Case No. D166033 Divorce Records.	AA6388-AA6403
26	207. <u>Lynn Gerlinde Moore v. John Edward Moore</u> , Eighth Judicial District Court Case No. D39975 Divorce Records.	AA6404-AA6417
26	208. Affidavit of Application for Marriage John E. Moore & Lynn Smith Application No. A507365 March 18, 1974.	AA6418-AA6419
26	209. Affidavit of Application for Marriage John E. Moore & Lynn Shelley Application No. A476085 August 1, 1973.	AA6420-AA6421
26	210. Marriage License, Robert Daniel Martin, Jr. & Mehliia Lyn Smith License No. C281170 May 25, 1991.	AA6422-AA6423

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
26	211. Marriage License, Randolph Lyle Smith & Sheri Lyn Shea, License No. B434491 April 4, 1983.	AA6424-AA6425
26	212. Marriage License, Arthur J. Bonczyk & Lynn G. Shelley, License No. B485628 February 8, 1984.	AA6426-AA6427
26	213. Certificate of Death, John Edward Moore July 30, 1993.	AA6428-AA6429
26	214. Tecate Christian School Records for Randolph Lyle Smith.	AA6430-AA6439
26	215. Certificate of Registry of Marriage, Kenneth Lyle Smith & Bertha Fisher Ryder March 15, 1974.....	AA6440-AA6441
26	216. <u>In the Matter of the Disability of Murray Posin, Esq.,</u> Nevada Supreme Court Case No. 46724 Order of Transfer to Disability Inactive Status March 10, 2006.....	AA6442-AA6444
26	217. <u>Gannett Outdoor Co. Ariz v. Lundy Moore, Lindy and Associates, et al,</u> Eighth Judicial District Court Case No. A282424 Civil Case Documents.	AA6445-AA6449
26	218. <u>General Electric Credit Auto Lease v. Lynn Lindy Moore,</u> Eighth Judicial District Court Case No. A254349 Civil Case Documents.	AA6450-AA6465

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
26-27	219. <u>Lindy Moore v. Tom Terry Enterprises, Inc., a Nevada Corporation d/b/a Tom Terry Homes, Eighth Judicial District Court Case No. A329339 Civil Case Documents.</u>	AA6466-A6482
27	220. Certificate of Registry of Marriage James Edward Hungerford & Lyn Shelley January 3, 1961.	AA6483-AA6484
27	221. <u>Sherman v Baker, et al., United States District Court Case No. 2:02-cv-1349-LRH-LRL, Opposition to Renewed Motion for Leave to Conduct Discovery, January 26, 2012.</u>	AA6485-AA6506
27	222. <u>In the Matter of Randolph Lyle Moore aka Shelley, Eighth Judicial District Court Juvenile Division Case No. J27289 Petition March 1, 1983.</u>	AA6507-AA6509
27	223. <u>United States v. Lynn Lindy Moore, Eastern District of Virginia Case No. 2:97CR92 Criminal Information.</u>	AA6510-AA6511
27	224. <u>United States v. Lynn Lindy Moore, United States District of Virginia Case No. 2:97CR00092-001 Judgment in a Criminal Case October 15, 1997.</u>	AA6512-AA6518
27	225. Omitted.	AA6519
27	226. Declaration of Lindy Moore July 31, 2013.	AA6520-AAA6531

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
27	227. Harrison Herman Sheld M.D. Records for Mehliia Lyn Moore.....	AA6532-AA6572
27	228. Declaration of Randy Pike July 31, 2013.	AA6573-AA6577
27	229. Declaration of Michele Blackwill re: David Fletcher, August 1, 2013.	AA6578-AA6583
27	230. Declaration of Tammy Huskey-Smith re: John Middleton August 1, 2013.	AA6584-AA6588
27	231. Declaration of Tammy Huskey-Smith re: Robert Martin August 1, 2013.	AA6589-AA6592
27	232. Declaration of Gladys Guerra August 2, 2013.	AA6593-AA6595
27	233. Declaration of Janice Faust August 2, 2013.	AA6596-AA6599
27	234. Photograph of Beecher Avants Homicide Detective.	AA6600-AA6601
27	235. Photograph of Robert Peoples.	AA6602-AA6603
27	236. Family Tree.	AA6604-AA6605
27	237. Declaration of Amy Hanley-Peoples August 2, 2013.	AA6606-AA6609
27	238. Declaration of Arthur "Art" Bonczyk August 1, 2013.	AA6610-AA6613

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
27	239. Declaration of Johnny Ray Lockett July 26, 2013.	AA6614-AA6617
27	240. Declaration of Herbert Duzant re: Rusty Havens July 30, 2013.	AA6618-AA6620
27	241. Declaration of Tena Francis re: Evelyn Maguire August 2, 2013.	AA6621-AA6623
27	242. Declaration of Tena Francis re: Juror Interviews August 2, 2013.	AA6624-AA6626
27	243. Declaration of Tena Francis re: Thea Wittig August 2, 2013.	AA6627-AA6629
27	244. Declaration of Tena Francis re: Greg Hilliard August 2, 2013.	AA6630-AA6632
27	245. Declaration of Keith Lobaugh August 4, 2013.	AA6633-AA6635
27	246. Declaration of Tammy Huskey-Smith re: Epiphany “Eppy” Lopez August 5, 2013.	AA6636-AA6639
27	247. Report of Jerry Chisum, Forensic Scientist August 2, 2013; Supplementary Report 1 August 6, 2013; Curriculum Vitae of William Jerry Chisum.	AA6640-AA6667
27	248. Dungeons & Dragons Wikipedia definition.	AA6668-AA6684
27	249. Declaration of Herbert Duzant re: Robert Handfuss, August 3, 2013.	AA6685-AA6689

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
27-28	250. News Articles.	AA6690-AA6757
28	251. Declaration of Tammy Huskey-Smith re: Amanda Ryder, August 5, 2013.	AA6758-AA6762
28	252. Photograph of Dale Flanagan and Randolph Moore on the couch.	AA6763-AA6764
28	253. Photograph of Dale Flanagan and Randolph Moore on bed of truck.	AA6765-AA6766
28	254. Photograph of Randolph Moore on a horse.	AA6767-AA6768
28	255. Photograph of Randolph Moore and wheelbarrow.	AA6769-AA6770
28	256. School photograph of Randolph Moore as a young child.	AA6771-AA6772
28	257. <u>State of Nevada v. Richard Joseph Morelli</u> , Eighth Judicial District Court Case Nos. C64603, 64604, Reporter's Transcript of Calendar Call January 12, 1984.	AA6773-AA6786
28	258. <u>State of Nevada v. John Oliver Snow</u> , Eighth Judicial District Court Case No. C61676 Reporter's Transcript of Proceedings (Excerpt) April 17, 1984.	AA6787-AA6811
28	259. <u>State v. Lisle</u> , Eighth Judicial District Court Case No. C124090, Transcription of VCR tape of the Adam Evans hearing before Judge Hardcastle Juvenile Court, Case No. J52293 August 18, 1999.	AA6812-AA6815

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
28	260. Letter to Sandy Shaw from Thomas Varela (downloaded from webpage: https://www.facebook.com/pages/Pardon-Sandy-Shaw ,)	AA6816-AA6817
28	261. <u>Las Vegas Review-Journal</u> “HIGH-PROFILE CASE: Murder convict to receive a new trial,” July 8, 2003.	AA6818-AA6820
28	262. <u>Review-Journal</u> , “Clark County attorney may be disciplined” January 12, 1988.	AA6821-AA6822
28	263. <u>Review-Journal</u> , “Chief Justice favors new penalty hearing for inmate,” 1985.	AA6823-AA6824
28	264. <u>Las Vegas Sun</u> , “Justices defend death penalty for Flanagan” May 12, 1985.	AA6825-AA6826
28	265. <u>Flanagan v. State</u> , Nevada Supreme Court Case No. 17130, Appellant’s Opening Brief July 29, 1986.	AA6827-AA6884
28	266. Photograph of Lindy Moore, Arthur Bonczyk Mehlia Moore.	AA6885-AA6886
28	267. Photograph of Lindy Moore, Ken Smith and Randolph Moore	AA6887-AA6888
28	268. Photograph of Lindy Moore, Mehlia Moore Sheri Shea-McKenzie.....	AA6889-AA6890
28	269. Photograph of Lindy Moore, Randolph Moore Dale Flanagan.	AA6891-AA6892

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
28	270. <u>State of Nevada v. Moore</u> , Eighth Judicial District Court Case No. C69269, Juror Questionnaire of Carlos R. Guerra.	AA6893-AA6903
28	271. <u>State of Nevada v. Michael Damon Rippo</u> , Eighth Judicial District Court Case No. C106784 Jury Trial March 14, 1996.	AA6904-AA6914
28	272. <u>State of Nevada v. Michael D. Rippo</u> , Eighth Judicial District Court Case No. C106784 Reporter's Transcript of Proceedings August 20, 2004.	AA6915-AA6920
28	273. Report of Jonathan H. Mack, Psy.D. August 5, 2013; Curriculum Vitae of Jonathan H. Mack, Psy.D.	AA6921-AA6967
28-29	274. Confidential Execution Manual, Procedures for Executing the Death Penalty Nevada State Prison.	AA6968-AA7010
29	274A. Section IV, Execution Procedure of Confidential Execution Manual, Procedures for Executing the Death Penalty, Nevada State Prison, revised October 2007.	AA7011-AA7013
29	275. Declaration of Mark J. S. Heath, M.D., dated May 16, 2006 including attachments A-F.	AA7014-AA7140
29	276. <u>State of Nevada v. Vernell Ray Evans</u> , Eighth Judicial District Court Case No. C116071 Sentencing Agreement filed February 4, 2004.	AA7141-AA7146

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
29	277. <u>State of Nevada v. Richard Edward Powell</u> , Eighth Judicial District Court Case No. C148936 Verdicts and Special Verdicts filed November 15, 2000.	AA7147-AA7167
29	278. <u>State of Nevada v. Jeremy Strohmeyer</u> , Eighth Judicial District Court Case No. C144577 Court Minutes filed September 8, 1998.	AA7168-AA7170
29	279. <u>State of Nevada v. Fernando Padron Rodriguez</u> , Eighth Judicial District Court Case No. C130763 Verdicts, filed May 7, 1996.	AA7171-AA7173
29	280. <u>State of Nevada v. Jonathan Cornelius Daniels</u> , Eighth Judicial District Court Case No. C126201 Verdicts and Special Verdicts filed November 1, 1995.	AA7174-AA7184
29	281. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269, State's Proposed Exhibit 50 (Withdrawn).	AA7185-AA7187
29	282. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269, State's Proposed Exhibit 57 (Withdrawn).	AA7188-AA7190
29	283. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269, State's Proposed Exhibit 105 (Withdrawn).	AA7191-AA7193
29	284. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 44.	AA7194-AA7196

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
29	285. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 47.....	AA7197-AA7199
29	286. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 49.....	AA7200-AA7202
29	287. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 100.....	AA7203-AA7205
29	288. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 101.....	AA7206-AA7208
29	289. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 102.....	AA7209-AA7211
29	290. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 103.....	AA7212-AA7214
29	291. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 104.....	AA7215-AA7217
29	292. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 106.....	AA7218-AA7220

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
30	293. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 107.....	AA7221-AA7223
30	294. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 108.....	AA7224-AA7226
30	295. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 109.....	AA7227-AA7229
30	296. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 110.....	AA7230-AA7232
30	297. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 111.....	AA7233-AA7235
30	298. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269 State's Exhibit 112.....	AA7236-AA7238
30	299. Correspondence from Daniel Wong to Gary Taylor June 13, 2008.....	AA7239-AA7240
30	300. American Board of Anesthesiology, Commentary - Anesthesiologists and Capital Punishment (April 2, 2010).....	AA7241-AA7243

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
30	301. Leonidas G. Koniaris, Teresa A. Zimmers, David A. Lubarsky, and Jonathan P. Sheldon, <u>Inadequate Anaesthesia in Lethal Injection for Execution</u> , Vol. 365, April 16, 2005 at http://www.thelancet.com	AA7244-AA7247
30	302. American Medical Association, AMA Policy E-2.06 Capital Punishment, adopted December 1992 (JAMA. 1993; 270: 365-368).	AA7248-AA7250
30	303. <u>State v. Jiminez</u> , Case No. C77955, Eighth Judicial District Court, Recorder's Transcript re: Evidentiary Hearing (excerpt) April 19, 1993.	AA7251-AA7307
30	304. <u>State v. Bennett</u> , Case No. C083143, Eighth Judicial District Court, Reporter's Transcript of Evidentiary Hearing (Murder) (excerpt) November 18, 1999.. . . .	AA7308-AA7317
30	305. <u>Bennett v. McDaniel, et al.</u> , Case No. C83143, Eighth Judicial District Court, Decision November 16, 2001.. . . .	AA7318-AA7327
30	306. <u>Bennett v. McDaniel, et al.</u> Case No. CV-N-96-429-DWH (D. Nev.), Declaration of Michael Pescetta regarding locating exhibits in Parker file January 28, 2003.	AA7328-AA7330
30	307. <u>State v. Lopez</u> , Clark County Case No. C068946 LVMPD records relating to Arturo Montes November 21, 1984.. . . .	AA7331-AA7334

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
30	308. <u>State v. Lopez</u> , Clark County Case No. C068946 Declaration of Arturo Montes undated.....	AA7335-AA7338
30	309. <u>State v. Lopez</u> , Clark County Case No. C068946 Affidavit of Arturo Montez February 27, 1986.	AA7339-AA7340
30	310. <u>State v. Lopez</u> , Clark County Case No. C068946 Affidavit of Dan M. Seaton February 27, 1986.	AA7341-AA7343
30	311. <u>State v. Lopez</u> , Clark County Case No. C068946 Reporter's Transcript of Proceedings, Defendant's Motion for New Trial (excerpt) March 4, 1986.....	AA7344-AA7350
30	312. <u>State v. McKenna</u> , Clark County Case No. C044366 Reporter's Transcript of Jury Trial, (excerpt) March 4, 1980.....	AA7351-AA7358
30	313. <u>State v. McKenna</u> , Clark County Case No. C044366 Declaration of James Gillespie June 23, 2011.....	AA7359-AA7410
30	314. <u>State v. McKenna</u> , Clark County Case No. C044366 Reporter's Transcript of Penalty Hearing (excerpt) September 11, 1996.	AA7411-AA7415
30	315. <u>State v. Rippo</u> , Clark County Case No. C106784 Declaration of David Levine November 20, 2007.....	AA7416-AA7418

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
30	316. <u>State v. Rippo</u> , Clark County Case No. C106784 Declaration of James Ison November 30, 2007.	AA7419-AA7421
30	317. <u>State v. Rippo</u> , Clark County Case No. C106784 Reporter's Transcript of Proceedings February 8, 1995.	AA7422-AA7427
30	318. Letter from Melvyn T. Harmon, Chief Deputy, Office of the District Attorney, To Whom It May Concern re Richard Joseph Morelli July 20, 1984 (Snow).	AA7428-AA7429
30	319. <u>Snow v. McDaniel</u> , Case No. CV-S-03-0292-PMP-LRL (D. Nev.), Deposition of Dan Seaton August 16, 2007.	AA7430-AA7446
30-31	320. <u>Snow v. Angelone</u> , Case No. 6-12-89 WPHC, Seventh Judicial Disstrict Court, Deposition of Melvyn T. Harmon September 25, 1992.	AA7447-AA7479
31	321. Letter "To Whom It May Concern," re: Morelli Richard Joseph, from Det. G.G. Miller, LVMPD Intelligence Section August 28, 1984.	AA7480-AA7481
31	322. <u>State v. Bennett</u> , Case No. C083143, Eighth Judicial District Court, Reporter's Transcript of Proceedings Jury Trial (excerpt) September 14, 1988.	AA7482-AA7488
31	323. <u>Bennett v. McDaniel, et al.</u> , Case No. CV-N-96-429- DWH (D. Nev.), Answers to Interrogatories (excerpt) February 9, 1998.	AA7489-AA7499

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
31	324. <u>State v. Snow</u> , Case No. C61676, Eighth Judicial District Court, Reporter's Transcript of Proceedings (excerpt) April 11, 1984	AA7500-AA7506
31	325. Las Vegas Metropolitan Police Department Memorandum to DDA C. Laurent, Case file, re: John Butler ID#1060268, LVMPD Evt#980704-0730 Information withheld from file December 30, 1999.	AA7507-AA7509
31	326. Declaration of Tim Gabrielsen and partial FBI production from <u>Echavarria v. McDaniel</u> , et al., CV-N-98-0202 (D. Nev.) (filed as Exhibit 5.23 in support of Motion for Leave to Conduct Discovery, <u>Beets v. McDaniel</u> , Case No. 2:04-cv-00085-KJD-CWH ((D. Nev.), May 16, 2006)	AA7510-AA7516
31	327. <u>Las Vegas Sun</u> , "Police Say Binion witness not credible," May 3, 2004.	AA7517-AA7519
31	328. <u>State v. Bailey</u> , Case No. C129217, Eighth Judicial District Court, Reporter's Transcript of Proceedings July 30, 1996.	AA7520-AA7555
31	329. <u>State v. Sherman</u> , Clark County Case No. C126969 Minutes of the Court March 24, 1995.	AA7556-AA7558
31	330. <u>State v. Sherman</u> , Clark County Case No. C126969 Letter from Chief Deputy District Attorney David J.J. Roger to defense counsel David M. Schieck, Esq. December 31, 1996.	AA7559-AA7561

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
31	331. <u>State v. Sherman</u> , Clark County Case No. C126969 NCJIS Warrant Disposition Records re: Michael Placencia October 21, 1995..	AA7562-AA7571
31	332. <u>State v. Sherman</u> , Clark County Case No. C126969 Handwritten Note from Annette Sheffield Secretary to Judge Deborah J. Lippis re: telephone call from Sargent Hammack (Metro Intelligence) undated..	AA7572-AA7573
31	333. <u>State v. Sherman</u> , Clark County Case No. C126969 Reporter's Transcript of Penalty Hearing (excerpt) February 7, 1997.	AA7574-AA7576
31	334. <u>State v. Sherman</u> , Clark County Case No. C126969 Grand Jury Transcript (excerpt)	AA7577-AA7580
31	335. <u>State v. Kalter</u> , Justice Court Case No. 95F9229X Reporter's Transcript of Preliminary Hearing (excerpt) November 22, 1995..	AA7581-AA7594
31	336. <u>Witter v. McDaniel</u> , CV-S-01-1034-RLH-(LRL) (D. Nev.), Declaration of Carol R. Camp August 20, 2002 (filed as Exhibit 29 in support of Motion for Leave to Conduct Discovery filed on August 21, 2002).	AA7595-AA7596

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
31	337. Letter from Kent R. Robison of Robison, Belaustegui, Robb and Sharp, to E. Leslie Combs, Jr., Esq. Re: <u>Kathryn Cox v. Circus Circus, et al.</u> October 16, 1995 (obtained from the civil court file, <u>Cox v. Circus Circus, et al.</u> , Eighth Judicial District Court Case No. A34700).....	AA7597-AA7601
31	338. <u>Las Vegas Review-Journal</u> , “Man serving life sentence in slaying fights conviction,” September 1, 2008; “Conviction in 1996 slaying overturned” September 4, 2008 (Torres).	AA7602-AA7608
31	339. <u>State v. Torres</u> , Case No. C157632, Eighth Judicial District Court, Opposition to Motion to Accept Redactions of Former Testimony December 8, 2008.....	AA7609-AA7620
31	340. <u>State v. Torres</u> , Case No. C157632, Eighth Judicial District Court, Notice of Entry of Order April 27, 2009.....	AA7621-AA7625
31	341. <u>State v. Steese</u> , Clark County Case No. C108694 Order Regarding Actual Innocence.	AA7626-AA7644
31	342. <u>Homick v. E.K. McDaniel, et al.</u> , Case No. CV-N-99-299-DWH-RAM (D. Nev.), Petitioner’s Motion for Leave to Conduct Discovery; Memorandum of Points and Authorities October 3, 2010.. . . .	AA7645-AA7693

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
31	343. Letter from Eric Johnson/Walt Ayers, Assistant United States Attorneys to Mark Kaiserman denying FBI joint investigation with LVMPD <u>Homick v. McDaniel</u> January 28, 1993.	AA7694-AA7696
31	344. Declaration of Joseph K. Wright regarding charts he prepared in support of <u>Homick v. E.K. McDaniel, et al.</u> , Case No. CV-N-99-299-DWH-RAM (D. Nev.), Petitioner's Motion for Leave to Conduct Discovery October 9, 2003.. . . .	AA7697-AA7698
31	345. Chart detailing evidence of joint investigation joint activity between LVMPD and FBI <u>Homick v. McDaniel</u> October 9, 2003.. . . .	AA7699-AA7706
31	346. Eight (8) Letters from FBI Director Webster letter to redacted LVMPD officer thanking him/her for work in connection with joint investigation, <u>Homick v. McDaniel</u> June 10, 1986.. . . .	AA7707-AA7715
31-32	347. Chart detailing evidence of joint investigation admissions, <u>Homick v. McDaniel</u> October 9, 2003.. . . .	AA7716-AA7724
32	348. <u>State v. Homick</u> , Clark County Case No. C74385 Reporter's Transcript of Jury Trial, Volume 7 (excerpt) April 26, 1989.. . . .	AA7725-AA7732
32	349. FBI 302 interview of Norma K. Thompson, <u>Homick v. McDaniel</u> , March 18, 1986.. . . .	AA7733-AA7735

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
32	350. <u>Homick v. E.K. McDaniel, et al.</u> , Case No. CV-N-99-299-DWH-RAM (D. Nev.), [List of] Exhibits in Support of Motion for Leave to Conduct Discovery October 3, 2010.. . . .	AA7736-AA7751
32	351. FBI notes, <u>Homick v. McDaniel</u> (Pennsylvania) January 4, 1986.	AA7752-AA7753
32	352. FBI redacted notes, <u>Homick v. McDaniel</u> (New Jersey) January 7, 1986.	AA7754-AA7755
32	353. FBI redacted notes, <u>Homick v. McDaniel</u> (Homick) January 9, 1986.	AA7756-AA7757
32	354. FBI redacted notes, <u>Homick v. McDaniel</u> (Pennsylvania) January 13, 1986.	AA7758-AA7759
32	355. FBI redacted notes, <u>Homick v. McDaniel</u> (Las Vegas) January 14, 1986.	AA7760-AA7761
32	356. FBI 302 memorandum of interview of Tim Catt <u>Homick v. McDaniel</u> (Homick 164) August 18, 1988.	AA7762-AA7764
32	357. FBI notes re Homick receiving money from LVMPD employee, <u>Homick v. McDaniel</u> December 11, 1985.	AA7765-AA7769
32	358. FBI notes, <u>Homick v. McDaniel</u> , December 1985 and January 1986.	AA7770-AA7773
32	359. Letter from AUSA Warrington Parker to Judge Cooper, <u>Homick v. McDaniel</u> May 7, 1993.	AA7774-AA7775

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
32	360. Letter from AUSA Warrington Parker to Judge Cooper, <u>Homick v. McDaniel</u> May 11, 1993.	AA7776-AA7777
32	361. <u>People v. Homick</u> , Case No. A973541, California Superior Court, County of Los Angeles, Reporter's Daily Transcript, Volume 83 (excerpt) November 10, 1992..	AA7778-AA7782
32	362. FBI memorandum to SA Newark, <u>Homick v. McDaniel</u> , (Homick 167) August 31, 1977.	AA7783-AA7784
32	363. FBI memorandum, New York to Newark <u>Homick v. McDaniel</u> , (Homick 168)J January 31, 1978.	AA7785-AA7787
32	364. FBI Teletype, FM Director to Las Vegas (Homick 166) September, 1985..	AA7788-AA7790
32	365. FBI Teletype San Diego to Las Vegas (Homick 165) October, 1985.	AA7791-AA7796
32	366. <u>State v. Homick</u> , Clark County Case No. C74385 Reporter's Transcript of Penalty Hearing Volume I (excerpt) May 17, 1989.	AA7797-AA7800
32	367. <u>State v. Homick</u> , Clark County Case No. C74385 Reporter's Transcript of Motions (excerpt) April 10, 1989..	AA7801-AA7803
32	368. <u>State v. Homick</u> , Clark County Case No. C74385 Reporter's Transcript of Jury Trial, Volume 11 (excerpt), May 2, 1989.	AA7804-AA7807

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
32	369. <u>State v. Homick</u> , Clark County Case No. C74385 Reporter's Transcript of Evidentiary Hearing Discovery (excerpt) March 7, 1989.....	AA7808-AA7819
32	370. <u>State v. Homick</u> , Clark County Case No. C74385 Reporter's Transcript of Jury Trial, Volume 6 (excerpt) April 25, 1989.....	AA7820-AA7831
32	371. <u>Haberstroh v. McDaniel</u> , Case No. C076013, Eighth Judicial District Court, Deposition of Sharon Dean October 15, 1998.....	AA7832-AA7882
32	372. <u>Haberstroh v. McDaniel</u> , Case No. C076013, Eighth Judicial District, Deposition of Arlene Ralbovsky December 7, 1998 and January 28, 1999.	AA7883-AA7928
32	373. <u>Haberstroh v. McDaniel</u> , Case No. C076013, Eighth Judicial District, Deposition of Patricia Schmitt December 7, 1998 and January 28, 1999.	AA7929-AA7970
33	374. <u>United States v. Catania</u> , Case No. CR-S-01-383- LRH(RJJ) (D. Nev.), Reporter's Transcript of Jury Trial (excerpt) June 11, 2002.....	AA7971-AA7980
33	375. <u>United States v. Catania</u> , Case No. CR-S-01-383- LRH(RJJ) (D. Nev.), Reporter's Partial Transcript of Jury Trial (Direct Examination of Dominic Riccardella) (excerpt), June 13, 2002.....	AA7981-AA7987

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
33	376. <u>State v. Haberstroh</u> , Case No. C076013, Eighth Judicial District Court, Recorder's Transcript Re: Evidentiary Hearing (partial) January 28, 2000.	AA7988-AA7996
33	377. Various reports of the Las Vegas Metropolitan Police Department, Detention Services Division, produced in <u>State v. Haberstroh</u> , Case No. C076013, regarding investigation into the identity of Clark County Detention Center inmate who manufactured a shank, 1987.	AA7997-AA8015
33	378. <u>State v. LaPen</u> a, Case No. C59791, Eighth Judicial District Court, Reporter's Transcript of Proceedings October 26, 1988..	AA80146-AA8028
33	379. <u>State v. Rippo</u> , Case No. C106784, Eighth Judicial District Court, Reporter's Transcript of Proceedings (excerpt) February 8, 1996.	AA8029-AA8055
33	380. <u>Homick v. McDaniel</u> , U.S. District Court Case No. CV-N-99-0299, Order Regarding Remaining Discovery Issues.	AA8056-AA8101
33	381. <u>State v. Lisle & Lopez</u> , Case No. C129540, Eighth Judicial District Court, Transcript of All Pretrial Motions (excerpt) March 12, 1996..	AA8102-AA8106
33	382. Letter from David J.J. Roger to Nevada State Parole Board Chairman regarding Robert Bezak December 3, 1990 (Jones).	AA8107-AA8108

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
33	383. Declaration of David J.J. Roger, Chief Deputy District Attorney, Clark County June 30, 1999 (Jones).....	AA8109-AA8111
33	384. <u>State v. Bezak</u> , Case No. CR89-1765, Second Judicial District Court, Transcript of Proceedings Sentence November 27, 1989 (Jones).	AA8112-AA8121
33	385. <u>State v. Butler</u> , Case No. C155791, Eighth Judicial District Court, Transcript of Defendant's Motion for Status Check on Production of Discovery April 18, 2000.....	AA8122-AA8140
33	386. Letter from Office of the District Attorney to Joseph S. Sciscento, Esq., re: Your Requests on <u>State v. Butler</u> , November 16, 2000.....	AA8141-AA8144
33	387. Letter from Law Offices of Sam Stone, Esq. to Hon. Michael Douglas, District Court Judge, re: Client and potential State Witness Robert W. LeGasse, <u>State v. Butler</u> , Case No. 99C-155791-C December 7, 2000.....	AA8145-AA8149
33	388. <u>State v. Butler</u> , Case No. C155791, Eighth Judicial District Court, Motion for New Trial January 17, 2001.	AA8150-AA8164
33	389. <u>State v. Butler</u> , Case No. C155791, Eighth Judicial District Court, Affidavit of Carolyn Trotti January 19, 2001.	AA8165-AA8169
33	390. <u>State v. Butler</u> , Case No. C155791, Eighth Judicial District Court, Opposition to Motion for New Trial Based on Allegations of Newly Discovered Evidence February 16, 2001.	AA8170-AA8192

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
33	391. <u>State v. Butler</u> , Case No. C155791, Eighth Judicial District Court, Reply to State's Opposition to Defendant's Motion for New Trial February 27, 2001.	AA8193-AA8198
33	392. <u>State v. Butler</u> , Case No. C155791, Eighth Judicial District Court, Order March 8, 2001.....	AA8199-AA8201
33	393. <u>State v. Butler</u> , Case No. 37591, Nevada Supreme Court, Order Affirming in Part, Reversing in Part and Remanding May 14, 2002.	AA8202-AA8208
33-34	394. <u>State v. Steese</u> , Clark County Case No. C108694 Colleen McCarty, <u>Man Found Innocent After 20 Years in Prison</u> , 8 News Now March 21, 2013.....	AA8209-AA8221
34	395. Chronological record, <u>Homick v. McDaniel</u> (Homick 10), November 1985.....	AA8222-AA8223
34	396. Chart detailing evidence of joint investigation - information sharing between LVMPD and FBI <u>Homick v. McDaniel</u> October 9, 2003.....	AA8224-AA8226
34	397. Comments regarding Request No. 19 and Request No. 20 (filed as Exhibit 45 in support of Supplemental Motion for Leave to Conduct Discovery <u>Witter v. McDaniel</u> , CV-S-01-1034-RLH-(LRL) (D. Nev.) filed on December 1, 2003).....	AA8227-AA8228

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
34	398. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269, Notice of Entry of Order Granting Motion to Disqualify February 2, 1994.	AA8229-AA8234
34	399. <u>State v. Moore, et al.</u> , Eighth Judicial District Court Case No. C69269, Reporter's Transcript Re: Defendant's Motion to Disqualify Judge January 24, 1994.	AA8235-AA8249
34-36	400. <u>Leonard v. McDaniel</u> , United States District Court Case No. CV-S-03-1293-LRH(RJJ), Amended Petition for Writ of Habeas Corpus (Excerpt), and Exhibits (158, 160, 32-33, 35-40, 48-52, 266, 165, 20, 23-25), July 27, 2007.	AA8250-AA8732
36	Exhibits in Support of Opposition To Motion to Dismiss (list) March 12, 2014.	AA8839-AA8842
EXHIBIT		
36	401. <u>The State of Nevada v. Randolph Moore</u> , Eighth Judicial District Court Case No. C069269 Findings of Fact, Conclusions of Law and Order January 23, 2006.	AA8843-AA8853
36	402. <u>The State of Nevada v. Randolph Moore</u> , Eighth Judicial District Court Case No. C069269 Court Minutes December 23, 1999.	AA8854-AA8855

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
36	403. <u>The State of Nevada v. Randolph Moore</u> , Eighth Judicial District Court Case No. C069269 Court Minutes March 5, 2009.....	AA8856-AA8857
36	404. <u>Randolph Moore v. The State of Nevada</u> , Nevada Supreme Court Case No. 55091, Remittitur October 15, 2012.....	AA8858-AA8861
36	405. <u>Williams v. Warden</u> , Nevada Supreme Court Case No. 29084, Order Dismissing Appeal August 29, 1997.....	AA8862-AA8871
36	406. Pre-Sentence Report, Department of Parole and Probation November 7, 1985.....	AA8872-AA8886
36-37	407. <u>Randolph Moore v. The State of Nevada</u> , Nevada Supreme Court Case No. 55091 Appellant's Opening Brief September 13, 2010.....	AA8887-AAA8981
37-38	408. <u>Dale Edward Flanagan v. McDaniel, et al.</u> USDC Case No. 2:09-cv-00085-KJD-GWF Amended Petition for Writ of Habeas Corpus February 11, 2011.....	AA8982-AA9290
38	409. <u>Randolph Moore v. The State of Nevada</u> , Nevada Supreme Court Case No. 55091 Opposition to Appellant's Motion for Limited Remand August 21, 2012.....	AA9291-AA9295

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
38	410. <u>Doneale L. Feazell v. The State of Nevada</u> , Nevada Supreme Court Case No. 37789 Order Affirming in Part and Vacating in Part November 4, 2002.....	AA9296-AA9305
38	411. <u>Thomas Nevius v. Warden (Nevius II)</u> , Nevada Supreme Court Case Nos. 29027, 29028 Order Dismissing Appeal and Denying Petition for Writ of Habeas Corpus October 9, 1996.....	AA9306-AA9319
38	412. <u>Thomas Nevius v. Warden (Nevius II)</u> , Nevada Supreme Court Case Nos. 29027, 29028 Order Denying Rehearing July 17, 1998.	AA9320-AA9324
38	413. <u>Michael Rippo v. The State of Nevada</u> , <u>John Bejarano v. The State of Nevada</u> , Nevada Supreme Court Case Nos. 44094, 44297 Order Directing Oral Argument March 16, 2006.....	AA9325-AA9328
38	414. <u>The State of Nevada v. Michael Damon Rippo</u> , District Court Case No. C106784, Supplemental Brief in Support of Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) February 10, 2004.	AA9329-AA9374

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
38	415. <u>Edward Gordon Bennett v. The State of Nevada</u> , Nevada Supreme Court Case No. 38934 Respondent's Answering Brief December 16, 2002.....	AA9375-AA9402
38	416. <u>Thomas Nevius v. E.K. McDaniel, et al.</u> , United States District Court Case No. CV-N-96-785-HDM(RAM), Response to Nevius' Supplemental Memorandum of Points and Authorities in Support of Amended Second Successive Petition for Writ of Habeas Corpus October 18, 1999.....	AA9403-AA9410
38	417. <u>Leonard v. McDaniel</u> , Nevada Supreme Court Case No. 50581, Order of Affirmance November 17, 2009.....	AA9411-AA9420
38	418. <u>Lopez v. McDaniel</u> , District Court Case No. C068946 State's Post-Hearing Memorandum April 22, 2010.....	AA9421-AA9462
38-39	419. <u>Lopez v. McDaniel</u> , District Court Case No. C068946 Notice of Motion and Motion to Dismiss Defendant's Third State Petition for Writ of Habeas Corpus February 15, 2008.	AA9463-AA9567
39	420. <u>Floyd v. McDaniel</u> , District Court Case No. C159897 State's Opposition to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and Motion to Dismiss September 18, 2007.	AA9568-AA9603

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
39	421. <u>Sherman v. McDaniel</u> , District Court Case No. C126969, State's Reply to Defendant's Opposition to Motion to Dismiss Petition of Habeas Corpus June 25, 2007.	AA9604-AA9615
39	422. <u>Witter v. McDaniel</u> , District Case No. C117513 Reply to Opposition to Motion to Dismiss July 5, 2007.	AA9616-AA9625
39	423. <u>Leonard v. McDaniel</u> , District Court Case No. C126285 Reply to Opposition to Motion to Dismiss March 11, 2008.	AA9626-AA9640
39	424. <u>Leonard v. McDaniel</u> , District Court Case No. C126285 Transcript of Proceedings March 23, 2008.	AA9641-AA9663
39-40	425. <u>Echavarria v. McDaniel</u> , District Court Case No. C95399, State's Opposition to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) July 23, 2007.	AA9664-AA9737
40	426. <u>Farmer v. State</u> , Nevada Supreme Court Case. No. 29120 Order Dismissing Appeal November 20, 1997.	AA9738-AA9743
40	427. <u>Jones v. McDaniel</u> , Nevada Supreme Court Case No. 39091 Order of Affirmance December 19, 2002.	AA9744-AA9759

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
40	428. <u>Milligan v. Warden</u> , Nevada Supreme Court Case No. 37845, Order of Affirmance July 24, 2004.	AA9760-AA9779
40	429. <u>O'Neill v. State</u> , Nevada Supreme Court Case No. 39143, Order of Reversal and Remand December 18, 2002.....	AA9780-AA9786
40	430. <u>Riley v. State</u> , Nevada Supreme Court Case No. 33750, Order Dismissing Appeal November 19, 1999.....	AA9787-AA9791
40	431. <u>Sechrest v. State</u> , Nevada Supreme Court Case No. 29170, Order Dismissing Appeal November 20, 1997.....	AA9792-AA9796
40-41	432. Reweighing Opinions	AA9797-AA10044
41	Findings of Fact, Conclusions of Law and Order August 27, 2014.....	AA10111-AA10135
13	<u>The State of Nevada v. Randolph Moore, et al.</u> , Eighth Judicial District Court Case No. C069269 Instructions to the Jury June 23, 1995.	AA3114-AA3134
	OMIT.....	AA2478-AA2491
11	<u>The State of Nevada v. Randolph Moore, et al.</u> , Eighth Judicial District Court Case No. C069269 Jury Trial-Penalty Phase (Day 5, Volume V) June 19, 1995.	AA2492-AA2663
11-12	<u>The State of Nevada v. Randolph Moore, et al.</u> , Eighth Judicial District Court Case No. C069269	

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
	Jury Trial-Penalty Phase (Day 6, Volume IV) June 20, 1995.	AA2664-AA2833
12-13	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Jury Trial-Penalty Phase (Day 7, Volume VII) June 21, 1995.	AA2834-AA3008
13	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Jury Trial-Penalty Phase (Day 8, Volume VIII) June 22, 1995.	AA3009-AA3113
13	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Jury Trial-Penalty Phase (Day 9, Volume IX) June 23, 1995.	AA3135-AA3160
41	Notice of Appeal October 6, 2014.	AA10162-AA10163
36	Notice of Authorization of Petition for Writ of Habeas Corpus October 1, 2013.	AA8733-AA8737
41	Notice of Entry of Order September 2, 2014.....	AA10136-AA10161
41	Objections to Proposed Findings of Fact, Conclusions of Law and Order July 23, 2014.	AA10065-AA10110

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
36	Opposition to Motion to Dismiss March 7, 2014.	AA8789-AA8838
13-15	Petition for Writ of Habeas Corpus (Post-Conviction) September 19, 2013.....	AA3185-AA3573
41	Recorder's Transcript of Proceedings Re: Petition for Writ of Habeas Corpus June 5, 2014.	AA10045-AA10064
41	Recorder's Transcript re: at Request of the Court August 26, 2014.....	AA10111-AA10113
1	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial September 26, 1985.....	AA1-AA233
1-2	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial September 27, 1985.....	AA234-AA425
2	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Opening Statements September 30, 1985.....	AA426-AA473
2-3	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial September 30, 1985.....	AA474-AA618

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
3	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial October 1, 1985.	AA624-AA750
4-5	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial October 2, 1985.	AA852-AA1070
5-6	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial October 3, 1985.	AA1071-AA1256
6	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial October 4, 1985.	AA1257-AA1324
6-7	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial October 7, 1985.	AA1389-AA1575
7	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial October 8, 1985.	AA1627-AA1731
7-8	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial October 9, 1985.	AA1732-AA1751

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
8	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial October 10, 1985.	AA1752-AA1969
8	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial October 11, 1985.	AA1970-AA1979
8-9	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial July 12, 1989.	AA1980-AA2231
9-10	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial July 13, 1989.	AA2232-AA2350
10	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Jury Trial July 14, 1989.	AA2351-AA2456
10	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Reporter's Transcript of Proceedings Sentencing July 31, 1989.	AA2457-AA2477
36	Response to Petition for Writ of Habeas Corpus (Post-Conviction) January 7, 2014.	AA8738-AA8788

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
13	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Sentencing July 11, 1995.....	AA3161-AA3184
7	<u>The State of Nevada v. Randolph Moore, et al.,</u> Eighth Judicial District Court Case No. C069269 Testimony of Scott Alan Sloane October 7 & 8, 1985.....	AA1576-AA1626

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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 4th day of June, 2015. Electronic Service of the foregoing Appellant's Appendix (Volumes 1-41) shall be made in accordance with the Master Service List as follows:

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Chief Deputy District Attorney

Felicia Darensbourg
An employee of the Federal Public Defender's Office

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CASE NO. C069269
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LORETTA BOWMAN, CLERK
BY *[Signature]* DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

PLAINTIFF,

vs.

DALE EDWARD FLANAGAN, RANDOLPH
MOORE AKA SMITH, JOHNNY RAY
LUCKETT AND ROY MCDOWELL,

DEFENDANTS.

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE DONALD M. MOSLEY, DISTRICT JUDGE
THURSDAY, SEPTEMBER 26, 1985

APPEARANCES:

FOR THE STATE:

MELVYN T. HARMON, ESQUIRE
&
DANIEL M. SEATON, ESQUIRE
DEPUTIES DISTRICT ATTORNEY

FOR DEFENDANT FLANAGAN: RANDALL PIKE, ESQUIRE

FOR DEFENDANT MOORE: MURRAY POSIN, ESQUIRE

FOR DEFENDANT LUCKETT: WILLIAM H. SMITH, ESQUIRE

FOR DEFENDANT MCDOWELL: ROBERT J. HANDFUSS, ESQUIRE

Reported by: Sharon J. Thielman, Official Court Reporter

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INDEX OF WITNESSES

STATE'S WITNESSES:

PAGE NO.

RUSTY DEON HAVENS:

DIRECT EXAMINATION BY MR. HARMON	429
CROSS-EXAMINATION BY MR. SMITH	444
CROSS-EXAMINATION BY MR. HANDFUSS	448
CROSS-EXAMINATION BY MR. PIKE	451
CROSS-EXAMINATION BY MR. POSIN	456
REDIRECT EXAMINATION BY MR. HARMON	461
RECROSS-EXAMINATION BY MR. POSIN	462
RECROSS-EXAMINATION BY MR. HANDFUSS	463

LISA LICATA:

DIRECT EXAMINATION BY MR. SEATON	464
CROSS-EXAMINATION BY MR. PIKE	484
CROSS-EXAMINATION BY MR. POSIN	486

STEVE WINNE:

DIRECT EXAMINATION BY MR. SEATON	487
CROSS-EXAMINATION BY MR. PIKE	492
CROSS-EXAMINATION BY MR. POSIN	493

DANIEL M. CONNELL:

DIRECT EXAMINATION BY MR. HARMON	495
CROSS-EXAMINATION BY MR. POSIN	520
CROSS-EXAMINATION BY MR. SMITH	520
CROSS-EXAMINATION BY MR. PIKE	522
REDIRECT EXAMINATION BY MR. HARMON	523

ROBERT RODREICK:

DIRECT EXAMINATION BY MR. SEATON	525
CROSS-EXAMINATION BY MR. PIKE	555

GENEAL MCGREGOR:

DIRECT EXAMINATION BY MR. HARMON	559
CROSS-EXAMINATION BY MR. PIKE	566

MICHELLE GRAY:

DIRECT EXAMINATION BY MR. SEATON	568
CROSS-EXAMINATION BY MR. HANDFUSS	575
CROSS-EXAMINATION BY MR. PIKE	575
CROSS-EXAMINATION BY MR. POSIN	579
REDIRECT EXAMINATION BY MR. SEATON	580
RECROSS-EXAMINATION BY MR. PIKE	581

RON FLUD:

DIRECT EXAMINATION BY MR. HARMON	582
CROSS-EXAMINATION BY MR. POSIN	590

1	STATE'S WITNESSES (CONTINUED):	PAGE NO.
2	THOMAS L. AKERS:	
	DIRECT EXAMINATION (REFERENCED)	591
3	CROSS-EXAMINATION BY MR. SMITH	610
	CROSS-EXAMINATION BY MR. PIKE	628
4	CROSS-EXAMINATION BY MR. POSIN	641
	CROSS-EXAMINATION BY MR. HANDFUSS	655
5	JOHN LUCAS:	
6	DIRECT EXAMINATION BY MR. HARMON	686
	CROSS-EXAMINATION BY MR. SMITH	725
7	CROSS-EXAMINATION BY MR. HANDFUSS	745
	CROSS-EXAMINATION BY MR. PIKE	756
8	REDIRECT EXAMINATION BY MR. HARMON	769
	RECROSS-EXAMINATION BY MR. SMITH	784
9	RECROSS-EXAMINATION BY MR. HANDFUSS	790
	RECROSS-EXAMINATION BY MR. PIKE	794
10	RECROSS-EXAMINATION BY MR. POSIN	796
	RECROSS-EXAMINATION (REOPENED) BY MR. SMITH	805
11	YVONNE KACZMAREK:	
12	DIRECT EXAMINATION BY MR. HARMON	810
	CROSS-EXAMINATION BY MR. PIKE	819
13	BOB MANRING:	
14	DIRECT EXAMINATION BY MR. SEATON	821
	CROSS-EXAMINATION BY MR. PIKE	826
15	CYNTHIA ANN EVANS:	
16	DIRECT EXAMINATION BY MR. SEATON	828
	CROSS-EXAMINATION BY MR. PIKE	832
17	REDIRECT EXAMINATION BY MR. SEATON	833
18	ANGELA SALDANA:	
	DIRECT EXAMINATION BY MR. SEATON	836
19	CROSS-EXAMINATION BY MR. SMITH	870
	CROSS-EXAMINATION BY MR. HANDFUSS	880
20	CROSS-EXAMINATION BY MR. PIKE	903
	CROSS-EXAMINATION BY MR. POSIN	923
21	REDIRECT EXAMINATION BY MR. SEATON	927
	RECROSS-EXAMINATION BY MR. HANDFUSS	939
22	RECROSS-EXAMINATION BY MR. SMITH	939
	RECROSS-EXAMINATION BY MR. PIKE	944
23	RECROSS-EXAMINATION BY MR. POSIN	947
24	MARK MORLOCK:	
	DIRECT EXAMINATION BY MR. HARMON	950
25	CROSS-EXAMINATION BY MR. SMITH	955

1	STATE'S WITNESSES (CONTINUED):	PAGE NO.
2	SAL NAVARRO:	
	DIRECT EXAMINATION BY MR. SEATON	958
3	CROSS-EXAMINATION BY MR. POSIN	963
	CROSS-EXAMINATION BY MR. SMITH	965
4	MICHAEL R. GEARY:	
5	DIRECT EXAMINATION BY MR. SEATON	966
	CROSS-EXAMINATION BY MR. SMITH	994
6	CROSS-EXAMINATION BY MR. HANDFUSS	998
	CROSS-EXAMINATION BY MR. PIKE	1000
7	CROSS-EXAMINATION BY MR. POSIN	1005
	REDIRECT EXAMINATION BY MR. SEATON	1009
8	MUNSON EDWIN MOSER:	
9	DIRECT EXAMINATION BY MR. HARMON	1014
	CROSS-EXAMINATION BY MR. HANDFUSS	1021
10	CROSS-EXAMINATION BY MR. PIKE	1022
11	KIMBERLY GROOVER:	
	DIRECT EXAMINATION BY MR. HARMON	1025
12	ALSEN INMAN:	
13	DIRECT EXAMINATION BY MR. HARMON	1033
	CROSS-EXAMINATION BY MR. POSIN	1039
14	ALAN CABRALES:	
15	DIRECT EXAMINATION BY MR. SEATON	1040
16	RICHARD GEORGE GOOD, SR.:	
	DIRECT EXAMINATION BY MR. HARMON	1044
17	CROSS-EXAMINATION BY MR. POSIN	1064
18	DEFENDANT LUCKETT'S WITNESSES:	
19	KEITH EARL MCINTYRE:	
	DIRECT EXAMINATION BY MR. SMITH	1069
20	CROSS-EXAMINATION BY MR. SEATON	1078
	CROSS-EXAMINATION BY MR. HANDFUSS	1084
21	WAYNE ERIC ALAN WITTIG:	
22	DIRECT EXAMINATION BY MR. SMITH	1088
	CROSS-EXAMINATION BY MR. HANDFUSS	1101
23	CROSS-EXAMINATION BY MR. PIKE	1102
	CROSS-EXAMINATION BY MR. POSIN	1115
24	CROSS-EXAMINATION BY MR. HARMON	1122
	REDIRECT EXAMINATION BY MR. SMITH	1129
25	RECROSS-EXAMINATION BY MR. PIKE	1129
	RECROSS-EXAMINATION BY MR. POSIN	1131

1	DEFENDANT LUCKETT'S WITNESSES (CONTINUED):	PAGE NO.
2	MATHEW PAUL MCDONOUGH:	
3	DIRECT EXAMINATION BY MR. SMITH	1132
	CROSS-EXAMINATION BY MR. POSIN	1137
4	JOHNNY RAY LUCKETT:	
	DIRECT EXAMINATION (REFERENCED)	1153
5	CROSS-EXAMINATION BY MR. HANDFUSS	1155
	CROSS-EXAMINATION BY MR. PIKE	1181
6	CROSS-EXAMINATION BY MR. POSIN	1190
	CROSS-EXAMINATION BY MR. HARMON	1220
7	REDIRECT EXAMINATION BY MR. SMITH	1252
	RE CROSS-EXAMINATION BY MR. HANDFUSS	1259
8	RE CROSS-EXAMINATION BY MR. PIKE	1269
	RE CROSS-EXAMINATION BY MR. POSIN	1274
9	FURTHER REDIRECT EXAMINATION BY MR. SMITH	1278
	FURTHER RE CROSS-EXAMINATION BY MR. POSIN	1278
10	DEFENDANT MCDOWELL'S WITNESSES:	
11	MARILYN JO LUCAS:	
12	DIRECT EXAMINATION BY MR. HANDFUSS	1279
	CROSS-EXAMINATION BY MR. PIKE	1283
13	CROSS-EXAMINATION BY MR. SMITH	1283
	CROSS-EXAMINATION BY MR. POSIN	1285
14	DENISE STEWART:	
15	DIRECT EXAMINATION BY MR. HANDFUSS	1288
	CROSS-EXAMINATION BY MR. SMITH	1292
16	CROSS-EXAMINATION BY MR. SEATON	1294
	REDIRECT EXAMINATION BY MR. HANDFUSS	1298
17	RE CROSS-EXAMINATION BY MR. SMITH	1301
	RE CROSS-EXAMINATION BY MR. POSIN	1302
18	SCOTT ALAN SLOANE:	
19	(EXAMINATION REFERENCED)	1303
20	DEFENDANT FLANAGAN'S WITNESSES:	
21	COLLEEANN FLANAGAN:	
	DIRECT EXAMINATION BY MR. PIKE	1313
22	CROSS-EXAMINATION BY MR. HARMON	1317
	REDIRECT EXAMINATION BY MR. PIKE	1321
23	CYNTHIA LYNN STEBRITZ:	
24	DIRECT EXAMINATION BY MR. PIKE	1323
	CROSS-EXAMINATION BY MR. SEATON	1325
25	REDIRECT EXAMINATION BY MR. PIKE	1326

1	DEFENDANT FLANAGAN'S WITNESSES (CONTINUED):	PAGE NO.
2	SHELLY BALLENGER:	
	DIRECT EXAMINATION BY MR. PIKE	1327
3	CROSS-EXAMINATION BY MR. POSIN	1331
	CROSS-EXAMINATION BY MR. HARMON	1334
4	REDIRECT EXAMINATION BY MR. PIKE	1335
5	DEFENDANT MOORE'S WITNESSES:	
6	RICHARD E. SCHROEDER:	
	DIRECT EXAMINATION BY MR. POSIN	1336
7	SHELLY BALLENGER:	
8	DIRECT EXAMINATION BY MR. POSIN	1359
9	LINDY G. MOORE:	
	DIRECT EXAMINATION BY MR. POSIN	1365
10	CROSS-EXAMINATION BY MR. SMITH	1367
	REDIRECT EXAMINATION BY MR. POSIN	1369
11	DEFENDANT LUCKETT'S WITNESSES (REOPENED):	
12	LYNN STUBRICH:	
13	DIRECT EXAMINATION BY MR. SMITH	1370
	CROSS-EXAMINATION BY MR. HANDFUSS	1376
14	CROSS-EXAMINATION BY MR. PIKE	1386
	CROSS-EXAMINATION BY MR. POSIN	1389
15	WILLIAM LEAVER:	
16	DIRECT EXAMINATION BY MR. SMITH	1391
	CROSS-EXAMINATION BY MR. HANDFUSS	1398
17	CROSS-EXAMINATION BY MR. PIKE	1399
	CROSS-EXAMINATION BY MR. POSIN	1400
18	REDIRECT EXAMINATION BY MR. SMITH	1401
	RECROSS-EXAMINATION BY MR. HANDFUSS	1401
19	JOHNNY RAY LUCKETT:	
20	DIRECT EXAMINATION BY MR. SMITH	1424
	CROSS-EXAMINATION BY MR. HANDFUSS	1433
21	CROSS-EXAMINATION BY MR. POSIN	1437
	CROSS-EXAMINATION BY MR. HARMON	1441
22		
23		
24		
25		

INDEX OF EXHIBITS

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE'S EXHIBITS:

IDENTIFIED

ADMITTED

1 - PHOTO, GORDON HOUSE

467

538

2 - PHOTO

500

538

3 - PHOTO

500

538

4 - PHOTO

500

538

5 - PHOTO

500

538

6 - PHOTO

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538

7 - PHOTO

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538

8 - PHOTO

500

538

9 - PHOTO

500

538

10 - PHOTO

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538

11 - PHOTO

500

538

12 - PHOTO, FLANAGAN TRAILER

468

538

13 - PHOTO

500

538

14 - PHOTO

500

538

15 - PHOTO

500

538

16 - PHOTO

500

538

17 - PHOTO

500

538

18 - PHOTO

500

538

19 - PHOTO

500

538

20 - PHOTO

500

538

21 - PHOTO

500

538

22 - PHOTO, WINDOW

474

538

23 - PHOTO

500

538

24 - PHOTO

500

538

25 - PHOTO

500

538

26 - PHOTO

538

538

27 - PHOTO

500

538

28 - PHOTO

500

538

29 - PHOTO

500

538

30 - PHOTO

500

538

31 - PHOTO, STAIRCASE & BEDROOM

471

538

32 - PHOTO

500

538

33 - PHOTO

500

538

34 - PHOTO

500

538

35 - PHOTO

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538

36 - PHOTO

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538

37 - PHOTO

500

538

38 - PHOTO

500

538

39 - PHOTO

500

538

40 - PHOTO

500

538

41 - PHOTO

500

538

42 - PHOTO

500

538

43 - PHOTO

500

538

44 - PHOTO

500

599

	STATE'S EXHIBITS (CONTINUED):	IDENTIFIED	ADMITTED
1			
2	45 - PHOTO	500	538
	46 - PHOTO	500	538
3	47 - PHOTO, CARL GORDON	472	599
	48 - PHOTO	500	538
4	49 - PHOTO, COLLEEN GORDON	500	599
	50 - PHOTO	500	WITHDRAWN
5	51 - PHOTO, COLLEEN GORDON	472	538
	52 - PHOTO	500	538
6	53 - PHOTO	500	538
	54 - PHOTO	500	538
7	55 - PHOTO	500	538
	56 - PHOTO	500	WITHDRAWN
8	57 - PHOTO	500	538
	58 - PHOTO	500	538
9	59 - PHOTO	500	538
	60 - PHOTO	500	538
10	61 - AERIAL PHOTO, WASHBURN ROAD	503	538
	62 - AERIAL PHOTO, WASHBURN ROAD	503	538
11	63 - AERIAL PHOTO, WASHBURN ROAD	503	538
	64 - AERIAL PHOTO, WASHBURN ROAD	503	538
12	65 - AERIAL PHOTO, WASHBURN ROAD	503	538
	66 - AERIAL PHOTO, WASHBURN ROAD	503	538
13	67 - AERIAL PHOTO, WASHBURN ROAD	503	538
	68 - AERIAL PHOTO, WASHBURN ROAD	503	538
14	69 - AERIAL PHOTO, WASHBURN ROAD	503	538
	70 - AERIAL PHOTO, WASHBURN ROAD	503	538
15	71 - AERIAL PHOTO, WASHBURN ROAD	503	538
	72 - AERIAL PHOTO, WASHBURN ROAD	503	538
16	73 - AERIAL PHOTO, WASHBURN ROAD	503	538
	74 - AERIAL PHOTO, WASHBURN ROAD	503	538
17	75 - AERIAL PHOTO, WASHBURN ROAD	503	538
	76 - PHOTO, CLIFFS	1010	1036
18	77 - PHOTO, CLIFFS	1010	1036
	78 - PHOTO, CLOSET	490	538
19	79 - PHOTO, CLOSET	490	538
	80 - PHOTO, CLOSET	490	538
20	81 - MUG SHOT, THOMAS AKERS	431	973
	82 - MUG SHOT, DALE FLANAGAN		
21	83 - MUG SHOT, ROY MCDOWELL		
	84 - MUG SHOT, JOHNNY RAY LUCKETT		
22	85 - MUG SHOT, MICHAEL WALSH	431	953
	86 - MUG SHOT, RANDOLPH MOORE		
23	87 - DIAGRAM, CRIME SCENE	505	507
	88 - EVIDENCE ENVELOPE	529	1063
24	88-A - CARTRIDGE CASE	531	1063
	88-B - CARTRIDGE CASE	531	1063
25	88-C - CARTRIDGE CASE	531	1063
	88-D - CARTRIDGE CASE	531	1063

	STATE'S EXHIBITS (CONTINUED):	IDENTIFIED	ADMITTED
1			
2	88-E - CARTRIDGE CASE	531	1063
	89 - EVIDENCE ENVELOPE	534	1063
3	89-A - CARTRIDGE CASE	536	1063
	90 - EVIDENCE ENVELOPE	540	1068
4	90-A - BULLET	544	1068
	90-B - BULLET	544	1068
5	91 - EVIDENCE ENVELOPE	482	1068
	91-A - KNIFE	482	1068
6	92 - EVIDENCE ENVELOPE (BUTCHER PAPER)	548	1068
	92-A - WINDOW SCREEN	549	1068
7	93 -	550	
	93-A - PURSE AND CONTENTS	552	1068
8	94 - EVIDENCE ENVELOPE	1028	1032
9	94-A		
	94-B		
	95 - EVIDENCE ENVELOPE	1030	1032
10	95-A		
	95-B		
11	96 - POLE	917	1068
	97 - SAWED-OFF .22 RIFLE	702	1063
12	98 - .22 RIFLE	702	1063
	99 - POEM AND DRAWING	518	
13	100 - PHOTO	988	1028
	101 - PHOTO	988	1028
14	102 - PHOTO, COLLEEN GORDON	565	1028
	103 - PHOTO	988	1028
15	104 - PHOTO, CARL GORDON	565	1028
	105 - PHOTO, BACK	988	
16	106 - PHOTO	988	1028
	107 - PHOTO	988	1028
17	108 - PHOTO	988	1028
	109 - PHOTO	988	1028
18	110 - PHOTO	988	1028
	111 - PHOTO	988	1028
19	112 - PHOTO	988	1028
	113 - DEATH CERTIFICATE, COLLEEN GORDON	588	589
20	114 - DEATH CERTIFICATE, CARL GORDON	588	589
	115 - AUTOPSY REPORT, COLLEEN GORDON	588	993
21	116 - AUTOPSY REPORT, CARL GORDON	588	993
	117 - CATALOG PAGE OF KNIVES	817	818
22	DEFENDANTS' EXHIBITS:		
23	A - POEM FROM LUCKETT	1195	1220
24	B - POEM FROM LUCKETT	1197	1220
	C - TWO PAGE LETTER & ENVELOPE FROM SLOANE	1304	1427
25			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEFENDANTS' EXHIBITS (CONTINUED):

- D - FOUR PAGE LETTER FROM SLOANE
- D-1 - LETTER
- E - ENVELOPE
- F - EXEMPLAR OF SLOANE

IDENTIFIED	ADMITTED
1304	1428
1428	
1304	1428
1395	

PENALTY PHASE

INDEX OF WITNESSES

	PAGE NO.
DEFENDANT FLANAGAN'S WITNESSES:	
RONALD JOHNS: DIRECT EXAMINATION BY MR. PIKE	1694
COREEN FLANAGAN: DIRECT EXAMINATION BY MR. PIKE	1697
DALE EDWARD FLANAGAN: DIRECT EXAMINATION BY MR. PIKE	1702
DEFENDANT LUCKETT'S WITNESSES:	
DORIS RAY: DIRECT EXAMINATION BY MR. SMITH	1707
ELIZABETH SPEGAL: DIRECT EXAMINATION BY MR. SMITH	1710
LINDA MCINTYRE: DIRECT EXAMINATION BY MR. SMITH	1712
HAROLD W. BUCK: DIRECT EXAMINATION BY MR. SMITH	1715
LISA LUCKETT: DIRECT EXAMINATION BY MR. SMITH	1718
MRS. LUCKETT: DIRECT EXAMINATION BY MR. SMITH	1722
JOHNNY RAY LUCKETT: DIRECT EXAMINATION BY MR. SMITH	1730
DEFENDANT MCDOWELL'S WITNESS:	
MARY LUCAS: DIRECT EXAMINATION BY MR. HANDFUSS	1735
DEFENDANT MOORE'S WITNESSES:	
MAHLON FAUST: DIRECT EXAMINATION BY MR. POSIN	1742

1	DEFENDANT MOORE'S WITNESSES (CONTINUED):	PAGE NO.
2	SHELLY BALLENGER:	
3	DIRECT EXAMINATION BY MR. POSIN	1746
4	LINDY G. MOORE:	
5	DIRECT EXAMINATION BY MR. POSIN	1749
6	WILLIAM J. SPRANGER:	
7	DIRECT EXAMINATION BY MR. POSIN	1762
8	CONNIE LEAVITT:	
9	DIRECT EXAMINATION BY MR. POSIN	1766
10	RANDOLPH MOORE:	
11	DIRECT EXAMINATION BY MR. POSIN	1770
12	STATE'S REBUTTAL WITNESS:	
13	THOMAS L. AKERS:	
14	DIRECT EXAMINATION BY MR. HARMON	1775
15	CROSS-EXAMINATION BY MR. PIKE	1782
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

PENALTY PHASE
INDEX OF EXHIBITS

STATE'S EXHIBITS:	IDENTIFIED	ADMITTED
118 - LETTER AND ENVELOPE	1777	1779
DEFENDANT MOORE'S EXHIBITS:		
G - SCHOOL AWARD	1752	1785
H - SCHOOL AWARD	1752	1785
I - APPRECIATION AWARD	1754	1785
J - APPRECIATION AWARD	1754	1785
K - REWARD CHECK	1755	1785

1 LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 26, 1985

2
3 THE COURT: C69269, STATE OF NEVADA VERSUS DALE
4 FLANAGAN, RANDOLPH MOORE, JOHN LUCKETT AND ROY MCDOWELL. THE
5 RECORD WILL REFLECT THE PRESENCE OF EACH OF THE DEFENDANTS,
6 MR. FLANAGAN REPRESENTED BY MR. PIKE, MR. MOORE BY MR. POSIN,
7 MR. LUCKETT BY MR. SMITH AND MR. MCDOWELL BY MR. HANDFUSS.

8 THE RECORD WILL ALSO REFLECT THE PRESENCE OF MR.
9 HARMON AND MR. SEATON REPRESENTING THE STATE AND THE ABSENCE
10 OF THE JURY.

11 WE ARE CONVENING THIS MORNING FOR THE PURPOSE OF
12 EXAMINING, CHARACTERIZING AND DETERMINING ADMISSIBILITY OF
13 VARIOUS ALLEGED CO-CONSPIRATOR STATEMENTS OR DECLARATIONS AND
14 FOR THE DETERMINATION OF VARIOUS MOTIONS.

15 GENTLEMEN, I TRUST THE ACCOMMODATIONS ARE
16 SATISFACTORY; SATISFACTORY IF NOT NOTHING MORE?

17 MR. PIKE: YES, YOUR HONOR.

18 THE COURT: WE ARE RATHER JAMMED IN THIS MORNING.
19 MY PREFERENCE, ALTHOUGH I WOULD HEAR REASON TO ALTER FROM
20 THIS PROCEDURE, WOULD BE TO EXAMINE THE LIST OF THE ALLEGED
21 DECLARATIONS FIRST AND DETERMINE THEIR CHARACTER AND
22 ADMISSIBILITY IF THAT IS AGREEABLE TO COUNSEL.

23 MR. HARMON: YES, YOUR HONOR.

24 MR. PIKE: YES, YOUR HONOR.

25 THE COURT: MR. HARMON, DOES EACH ATTORNEY HAVE A

1 LIST OF THE DECLARATIONS THAT THE STATE HAS PROPOUNDED?

2 MR. PIKE: I HAVE ONE ON BEHALF OF DALE FLANAGAN.

3 MR. POSIN: YES, I DO, YOUR HONOR.

4 THE COURT: MR. HANDFUSS AND MR. SMITH?

5 MR. HANDFUSS: YES, SIR.

6 MR. SMITH: YES, SIR.

7 THE COURT: WE WILL WORK ON THAT LIST. MR.

8 HARMON, WOULD YOU LIKE TO PROCEED?

9 MR. HARMON: YOUR HONOR, THANK YOU. PERHAPS IT
10 WOULD BE APPROPRIATE TO BEGIN BY REFERRING TO THE CASE THAT
11 WE CONSIDER TO BE THE WATERSHED CASE IN THIS JURISDICTION ON
12 THE SUBJECT OF CO-CONSPIRATOR DECLARATIONS, THAT BEING
13 GOLDSMITH VERSUS SHERIFF, WHICH IS REPORTED AT 85 NEVADA, PAGE
14 295. DECISION WAS RENDERED IN 1969.

15 I WANT TO POINT OUT, AS GOLDSMITH MENTIONS IN THE
16 OPINION, THAT SINCE CONSPIRACY CASES ARE MANY TIMES DIFFICULT
17 TO PROVE AND RARELY IS THERE A SITUATION WHERE THE
18 PROSECUTION IS IN A POSITION TO OFFER DIRECT EVIDENCE TO
19 SUPPORT ITS CHARGES, THAT GREAT LATITUDE SHOULD BE SHOWN IN
20 THE INTRODUCTION OF TESTIMONY.

21 THE OPINION STATES, "IT IS ENOUGH THAT THE
22 EVIDENCE OFFERED TENDS TO ELUCIDATE THE INQUIRY OR TO
23 ASSIST IN DETERMINING THE TRUTH."

24 THE COURT SAYS, "THE COURTS AS A GENERAL RULE DO
25 NOT REVERSE JUDGMENTS BECAUSE OF THE ORDER IN WHICH THE

1 TESTIMONY WAS RECEIVED."

2 THE DECISION GOES ON TO READ, "WHEN THE
3 CONSPIRACY IS ONCE SUFFICIENTLY ESTABLISHED, ACTS AND
4 STATEMENTS OF THE CONSPIRATOR MAY BE USED AGAINST ALL ENGAGED
5 IN THE CONSPIRACY. IN THE ADMISSION OF THIS TYPE OF
6 EVIDENCE, THE TRIAL COURT HAS A WIDE DISCRETION."

7 NOW, WITH THAT IN MIND, YOUR HONOR, AND ALSO
8 CITING AS OUR PRIMARY AUTHORITY THE STATUTE SECTION 51.035,
9 SUBHEADING 3(E), IT IS OUR CONTENTION THAT MOST OF THE
10 DECLARATIONS, WHICH WE HAVE SET OUT ON THE LIST WE FILED
11 YESTERDAY, ARE ADMISSIBLE IN THIS CASE.

12 THERE ARE TWO AREAS WHERE WE ARE WILLING TO
13 CONCEDE THAT THE COURT, AT LEAST DURING THE CASE IN CHIEF,
14 SHOULD NOT PERMIT INTRODUCTION.

15 AND, IN FACT, WILL ADVISE THE COURT AND COUNSEL
16 THAT REGARDING THE CONVERSATIONS WAYNE WITTIG HAD WITH THE
17 DEFENDANT FLANAGAN, WHICH APPARENTLY COMMENCED THE DAY AFTER
18 THE CRIMES AND CONTINUED IN BITS AND PIECES FOR SEVERAL WEEKS
19 AFTER THAT, IT SEEMED TO BE STRICTLY A NARRATIVE. I DON'T
20 THINK IN VIEW OF THE CASE LAW THAT WE ARE IN A POSITION TO
21 ARGUE.

22 THE COURT: YOU ARE ALLUDING TO NUMBER 17?

23 MR. HARMON: NUMBER 17, YOUR HONOR. IT'S NOT OUR
24 CONTENTION AT THIS POINT THAT THOSE CONVERSATIONS WERE IN THE
25 COURSE OF AND FURTHERED THE CONSPIRACY.

1 ALSO, PARAGRAPH 24, WHICH DEALS WITH MEHLIA MOORE,
2 THE TELEPHONE CONVERSATION OCCURRING, ACCORDING TO HER,
3 BETWEEN HERSELF AND HER BROTHER RANDY MOORE, WHICH EVIDENTLY
4 WAS A FEW DAYS AFTER DECEMBER THE 9TH, 1984.

5 AT THIS POINT, JUDGE, WE ARE NOT PURSUING THE
6 CLAIM THAT THOSE ARE CO-CONSPIRATOR DECLARATIONS.

7 THE COURT: SO THAT I UNDERSTAND, ARE YOU SEEKING
8 TO UTILIZE EITHER OF THOSE IN ANY FASHION AS AN ADMISSION
9 AGAINST INTEREST?

10 MR. HARMON: NOT AT THIS POINT, YOUR HONOR. IF
11 CERTAIN DEFENDANTS TAKE THE WITNESS STAND AND TESTIFY AND ARE
12 THEN SUBJECTED TO CROSS-EXAMINATION, THEN THAT PRESENTS AN
13 ENTIRELY DIFFERENT SITUATION.

14 BUT, IN TERMS OF ADMISSIONS AGAINST INTEREST OR
15 THE CO-CONSPIRATOR DECLARATION, WE WON'T BE OFFERING THE
16 WITTIG OR THE MEHLIA MOORE DECLARATIONS.

17 WITH THOSE EXCEPTIONS, YOUR HONOR, I WOULD STATE
18 THAT IN ALL OTHER PARAGRAPHS, IT'S THE POSITION OF THE STATE
19 THAT THE STATEMENTS ARE ADMISSIBLE UNDER 51.035, SUBHEADING
20 3(E).

21 THE COURT: VERY GOOD, THANK YOU.

22 MR. HARMON: I WOULD POINT OUT, AS THE COURT IS
23 AWARE, FROM THE CASE OF FISH VERSUS STATE, WHICH WE CITE IN
24 OUR BRIEF, THE PERSON THROUGH WHOM THE DECLARATIONS ARE
25 PRESENTED TO THE COURT NEED NOT BE A CONSPIRATOR.

1 IN THE FISH CASE, CONSTANCE MILLER, WHO WAS THE
2 WIFE OF DAVID MILLER, ONE OF THE CONSPIRATORS IN THAT CASE,
3 WAS A WITNESS WHO DESCRIBED MANY DECLARATIONS MADE TO HER.

4 AND THE SUPREME COURT IN FISH MADE IT VERY CLEAR
5 THAT IT DIDN'T AFFECT ADMISSIBILITY BECAUSE CONSTANCE MILLER,
6 LIKE ANGELA SALDANA AND JOHN LUCAS AND MICHELLE GRAY AND
7 OTHERS IN THE CASE BEFORE THE COURT, ALSO ARE NOT
8 CO-CONSPIRATORS BUT THAT DOES NOT AFFECT ADMISSIBILITY.

9 WE UNDERSTAND THAT THERE MUST BE INDEPENDENT
10 EVIDENCE OF A CONSPIRACY BEFORE THE COURT MAY GO TO THE
11 SECOND STAGE AND CONSIDER WHETHER THE STATEMENTS WERE IN
12 FURTHERANCE OF THE CONSPIRACY.

13 THE CASES OF FISH AND CRANFORD AND PETERSON AND
14 GOLDSMITH, ALL OF WHICH WE CITE IN OUR BRIEF, POINT OUT THAT
15 INDEPENDENT EVIDENCE OF A CONSPIRACY NEED ONLY BE SLIGHT
16 EVIDENCE.

17 AND NOT TO BELABOR THE POINT, IT SEEMS VERY
18 CLEAR TO US, YOUR HONOR, THAT AFTER THE COURT HAS CONSIDERED
19 THE TESTIMONY OF JOHN LUCAS, WHO PLACES BY HIS TESTIMONY FIVE
20 OF THE SIX CONSPIRATORS AT 337 NORTH 13TH STREET THE NIGHT OF
21 NOVEMBER THE 5TH, 1984 AND THEN TESTIFIES THAT ALL SIX
22 RETURNED TOGETHER THE FOLLOWING MORNING, PERHAPS BETWEEN ONE
23 O'CLOCK AND 1:30 A.M.

24 AND ALSO THE TESTIMONY OF TOM AKERS, WHO
25 TESTIFIES THAT HE AND THE OTHER FIVE CONSPIRATORS LEFT THE

1 MOORE RESIDENCE IN HIS EL CAMINO.

2 HE DESCRIBES HEARING A WINDOW BREAK AND SHOTS AND
3 SCREAMS. HE DESCRIBES THE LOCATION OF MR. LUCKETT, WHO HAD A
4 SAWED-OFF RIFLE IN HIS HAND. HE DESCRIBES THE OTHER FOUR
5 RUNNING FROM THE AREA OF THE FRONT DOOR OF THE GORDON
6 RESIDENCE.

7 IT SEEMS VERY CLEAR FROM THE EVIDENCE OFFERED BY
8 LUCAS AND AKERS THAT THERE IS EVIDENCE OF A CONSPIRACY. THAT
9 REALLY, I THINK, BRINGS US, SINCE I SUBMIT THE COURT IS
10 JUSTIFIED IN CONSIDERING NRS 51.035, SUBHEADING 3(E) IN VIEW
11 OF THAT, AS TO WHETHER THE CONSPIRACY WAS STILL PENDING AND
12 WHETHER THE STATEMENTS MADE FURTHERED THE CONSPIRACY.

13 IN GOLDSMITH AND THE CREW CASE AND THE FOSS CASE,
14 ALL OF WHICH WE HAVE CITED IN OUR BRIEF, IT IS POINTED OUT
15 THAT A CONSPIRACY DOESN'T NECESSARILY END WITH THE
16 PERPETRATION OF THE CRIMES. IT CONTINUES UNTIL ITS CENTRAL
17 AIM HAS BEEN ACHIEVED.

18 IN GOLDSMITH, THE CENTRAL AIM WAS OBTAINING
19 INSURANCE PROCEEDS. AND THAT CASE IS DIRECTLY ANALOGOUS TO
20 THIS ONE BECAUSE WE ARE CONTENDING, AND I THINK OUR
21 CONTENTION IS SUPPORTED BY THE RECORD, THAT THE PRIMARY
22 MOTIVATION IN THE KILLING OF THE GORDONS WAS INHERITANCE AND
23 INSURANCE.

24 AND SO OBVIOUSLY THE CONSPIRACY WAS STILL PENDING
25 EVEN AFTER THE GORDONS WERE KILLED, BECAUSE THE PARTIES HOPED

1 TO COLLECT ON EITHER INHERITANCE OR INSURANCE.

2 AND AS HAS BEEN POINTED OUT, THE REASON FOR THE
3 INVOLVEMENT OF OTHERS BESIDES MR. FLANAGAN WAS THAT THEY
4 HOPED TO RECEIVE PAYMENTS FROM HIM AFTER HE HAD COLLECTED.

5 GOLDSMITH IS ALSO VERY HELPFUL IN THE FINAL LEGAL
6 AREA AND THAT IS WHAT IS MEANT BY FURTHERING THE CONSPIRACY.
7 I DIRECT THE COURT'S ATTENTION TO PAGE 93 OF THAT OPINION.

8 AND ALSO CERTAINLY ENCOURAGE THE COURT, BEFORE
9 RULING ON THE MATTERS BEFORE IT, TO CONSIDER WHAT TYPES OF
10 DECLARATIONS WERE CONSIDERED BY THE COURT IN GOLDSMITH TO
11 FURTHER THE CONSPIRACY IN THAT CASE.

12 AT PAGE 93, THE COURT POINTS OUT, "THAT
13 CONSTRUING THE EXPRESSION IN FURTHERANCE OF THE CONSPIRACY
14 REFERENCES NOT TO THE ADMISSIONS AS SUCH, BUT RATHER TO THE
15 ACT CONCERNING WHICH THE ADMISSION IS MADE."

16 "THAT IS TO SAY, IF THE ACT OR DECLARATION
17 CONCERNING WHICH THE ADMISSION OR DECLARATION IS MADE BE IN
18 FURTHERANCE OF THE CONSPIRACY, THEN IT MAY BE SAID THAT THE
19 ADMISSION IS IN FURTHERANCE OF THE CONSPIRACY."

20 THERE ARE SOME GOOD EXAMPLES OF THAT IN THE
21 GOLDSMITH CASE. WHEN GERNOT MATTHEIS TESTIFIED THAT HE HAD A
22 CONVERSATION WITH CONSPIRATOR TED LINN ON AUGUST THE 27TH,
23 1967, THE CONVERSATION WAS AS FOLLOWS:

24 LINN SAID, "WELL, WE HAD TO KILL A COUPLE OF GUYS
25 AND BULLETS WERE FLYING AROUND THE CAR AND ONE CREASED GLENN

1 LUCAS IN THE BACK OF THE HEAD. AND ANOTHER ONE ALMOST HIT ME
2 AND WENT IN THE DASHBOARD OF THE CAR RIGHT NEXT TO THE
3 RADIO."

4 YOU KNOW, IT SEEMS TO ME ANYBODY WHO READ THAT
5 OPINION THINKS HOW COULD THAT FURTHER THE CONSPIRACY. IT
6 SEEMS TO BE SIMPLY LINN TELLING MATTHEIS, "WE HAD TO KILL A
7 COUPLE OF PEOPLE AND BULLETS WERE FLYING AROUND AND I ALMOST
8 GOT HIT."

9 WELL, IT MAKES SENSE IF WE REALIZE AS GOLDSMITH
10 ARTICULATES LATER THAT TO FURTHER, THAT DOESN'T MEAN THAT THE
11 STATEMENT ITSELF FURTHERS, BUT IT MEANS THAT THE STATEMENT
12 REFERS BACK TO ACTS OR STATEMENTS WHICH DID FURTHER THE
13 CONSPIRACY.

14 THAT'S FURTHER REITERATED BY THE VERY NEXT
15 DECLARATION THAT THE COURT RULED FURTHERED THE CONSPIRACY.
16 IT IS LINN AGAIN TO MATTHEIS. AND HE SAYS THAT THE TWO MEN
17 THEY HAD KILLED WERE LARRY OLINGER AND ROBERT STUCKER.

18 HE SAID, "WELL, DAVE GOLDSMITH ASKED ME TO FIND
19 SOMEBODY TO HAVE THEM KILLED. AND I FOUND LINN AND LUCAS TO
20 DO IT BUT THE WHOLE DEAL WAS A FAILURE FROM THE BEGINNING."

21 IN FACT, AS THE COURT GOES THROUGH THESE VARIOUS
22 STATEMENTS IN GOLDSMITH, IT SEEMS TO ME THAT THE LEAST THAT
23 CAN BE SAID WITH THE ALREADY STATED PARALLELS BETWEEN THE
24 CASES, ARE THAT IF THOSE STATEMENTS AND DECLARATIONS WERE
25 ADMISSIBLE, IF THE COURT COULD FIND USING THE PREMISE THAT

1 GREAT LATITUDE SHOULD BE SHOWN IN THE ADMISSION, THAT THEY
2 WERE ADMISSIBLE IN THAT CONSPIRACY CASE, THEN THE STATEMENTS
3 WE PROPOUND ARE CERTAINLY ADMISSIBLE IN THIS CASE.

4 AND VERY QUICKLY JUST TO RUN DOWN THE LIST.
5 RUSTY HAVENS HAS TESTIFIED TO TWO SEPARATE INCIDENTS WHERE
6 THERE WERE CONVERSATIONS. HE DESCRIBES AN OCTOBER MEETING.

7 IT'S APPARENT TO THE PROSECUTION THAT THE
8 CONVERSATION, WHICH HE SAID INVOLVED HIMSELF, AKERS, WALSH,
9 MOORE AND FLANAGAN, INVOLVED PLANNING AND DISCUSSION OF THE
10 MODUS OPERANDI OF THE GORDON KILLINGS.

11 THE COURT: MR. HARMON, IF I MAY, ARE YOU
12 CONTEMPLATING TO GO THROUGH YOUR LIST NOW IN SUBSTANCE?

13 MR. HARMON: ONLY IF THE COURT THINKS THAT WOULD
14 BE HELPFUL.

15 THE COURT: I THINK WE WILL HAVE TO DO THAT
16 ULTIMATELY. BUT WHAT I WAS GOING TO SUGGEST, PERHAPS WE
17 ALLOW COUNSEL TO RESPOND TO SOME OF THE LEGAL ARGUMENTS AND
18 WE WILL GO THROUGH THEM ONE AT A TIME.

19 COUNSEL, IS THERE ANY COMMENT YOU CARE TO MAKE IN
20 RESPONSE TO THOSE THINGS MR. HARMON SAID THUS FAR? AND I
21 THINK WE MIGHT ESTABLISH SOME SORT OF PROCEDURE AS TO WHO
22 WOULD LEAD OFF IN THESE MATTERS AT LEAST AT TRIAL.

23 IN BETWEEN NOW AND THE TIME WE ACTUALLY BEGIN OUR
24 TRIAL, YOU MIGHT WANT TO CONFER. I AM ADDRESSING DEFENSE
25 COUNSEL TO SEE WHAT ORDER YOU WOULD LIKE TO BE ADDRESSED WHEN

1 IT COMES TIME TO RESPOND.

2 AT THIS TIME, IT DOESN'T MATTER PARTICULARLY. I
3 SEE MR. SMITH START TO RISE. IF YOU CARE TO, MR. SMITH.

4 MR. SMITH: YOUR HONOR, AS THE COURT AND COUNSEL
5 ARE AWARE, I SUBMITTED RATHER EXHAUSTIVE POINTS AND
6 AUTHORITIES ON THE ISSUE OF THE CO-CONSPIRATOR EXCEPTION TO
7 THE HEARSAY RULE.

8 I HAVE INTERPRETED GOLDSMITH ANOTHER WAY. I
9 THINK IT IS SUBJECT TO A REASONABLE INTERPRETATION ANOTHER
10 WAY. BUT, IN ANY EVENT, I THINK WE ALL HAVE TO CONCEDE IN
11 LIGHT OF THE PLETHORA OF CASES WHICH HAVE BEEN HANDED DOWN
12 AFTER GOLDSMITH, THAT GOLDSMITH IS A LOUSY CASE AS FAR AS ITS
13 REASONING IS CONCERNED.

14 IT LEAPS QUANTUMLY TO CERTAIN CONCLUSIONS WITHOUT
15 ANY REAL HISTORIC BASIS IN THE LAW.

16 CERTAINLY, THE CRUCIAL BASIS FOR THE
17 CO-CONSPIRATOR EXCEPTION TO THE HEARSAY RULE IS STATEMENTS
18 MADE IN FURTHERANCE OF THE CONSPIRACY HAVE INHERENT
19 TRUSTWORTHINESS.

20 AND WITHOUT ACTUALLY FURTHERING A MAIN OBJECTIVE
21 OF THE CONSPIRACY BY THE STATEMENT ITSELF, THERE IS
22 ABSOLUTELY NO GUARANTEE THAT THE STATEMENT IS TRUSTWORTHY
23 AND, HENCE, NO BASIS FOR AN EXCEPTION TO THE HEARSAY RULE.

24 THERE CAN BE NO MORE DAMAGING TESTIMONY, I
25 SUBMIT, THAN TO HAVE ONE CO-CONSPIRATOR MAKE A STATEMENT TO A

1 THIRD PARTY AFTER THE FACT OF A CRIME IMPLICATING ANOTHER
2 DEFENDANT AND THAT DEFENDANT HAVE ABSOLUTELY NO BASIS TO
3 CONFRONT THAT STATEMENT WHICH IS MADE AGAINST HIM.

4 THE STATE APPARENTLY HAS CONCEDED THAT STATEMENTS
5 MADE BY RANDY MOORE ON THE TELEPHONE TO HIS SISTER ARE NOT IN
6 FURTHERANCE OF THE CONSPIRACY.

7 IF THAT IS CONCEDED, I CANNOT UNDERSTAND HOW IN
8 THE WORLD THE STATE CAN CONTINUE TO ASSERT THAT STATEMENTS
9 MADE AFTER THE CRIME BY CODEFENDANTS TO THIRD PARTIES ARE IN
10 FURTHERANCE OF THE CONSPIRACY.

11 IT SEEMS THAT IT'S IMPORTANT TO FOCUS ON WHAT IN
12 FURTHERANCE MEANS. I HAVE CITED TO THE COURT THE CASE OF
13 GRUNWALD WHICH WAS NOT INCLUDED IN MY ORIGINAL MOTIONS. IT
14 IS A SUPREME COURT DECISION AT 353 U.S. 391, 77 SUPREME COURT
15 963.

16 AND AT PAGE 971 OF THE SUPREME COURT REPORTER
17 OPINION, AND THE PAGES WHICH FOLLOW, THE COURT POINTS OUT
18 THAT THERE IS A REAL DIFFERENCE BETWEEN FURTHERING A MAIN
19 OBJECTIVE OF THE CONSPIRACY AND MERELY SAYING SOMETHING TO
20 KEEP THE CONSPIRACY A SECRET.

21 THE COURT RECOGNIZES THAT IN ANY CONSPIRACY, AS A
22 MATTER OF COMMON SENSE, THE CO-CONSPIRATORS ARE NOT GOING TO
23 WANT TO BROADCAST IT TO THE WORLD, THAT THERE WILL BE SOME
24 EFFORT MADE TO KEEP THE MATTERS QUIET.

25 IN THIS CASE, THERE MAY BE CERTAIN STATEMENTS

1 WHICH THE STATE WOULD LIKE TO INTRODUCE WHICH WERE MADE TO
2 THIRD PARTIES THAT ONE COULD INFER WERE INTENDED TO HAVE A
3 PERSON KEEP THEIR MOUTH SHUT.

4 BUT THAT IS A WHOLE DIFFERENT BALL GAME THAN
5 FURTHERING THE MAIN OBJECTIVE OF THE CONSPIRACY WHICH, NUMBER
6 ONE, IS TO KILL PEOPLE AND, NUMBER TWO, IS TO COLLECT
7 INSURANCE MONEY.

8 IT IS EASY TO UNDERSTAND THE DISTINCTION. IF ONE
9 OF THE CODEFENDANTS HAD GONE TO THE INSURANCE COMPANY AND
10 FILLED OUT FORMS AND SAID -- OR GONE TO A THIRD PARTY AND
11 SAID, "GO TO THE INSURANCE COMPANY AND SEE IF WE CAN GET THE
12 PROCEEDS DIVVIED UP," THAT IS OBVIOUSLY FURTHERING OBJECTIVE
13 OF THE CONSPIRACY.

14 BUT IT IS ANOTHER THING ALTOGETHER FOR SOMEBODY
15 TO GO AND SAY, "IF YOU KNOW SOMETHING ABOUT THIS, PLEASE KEEP
16 YOUR MOUTH SHUT."

17 BECAUSE IT IS INHERENT IN ANY CONSPIRACY THERE IS
18 GOING TO BE SOME EFFORTS MADE TO KEEP THINGS QUIET. I THINK
19 THAT IS THE CASE IN A NUTSHELL.

20 AND THE STATE RELIES SOLELY ON GOLDSMITH WITHOUT
21 ANY EFFORT WHATSOEVER IN THE PLEADINGS OR OTHERWISE TO
22 DISTINGUISH A HOST OF CASES, RECENT CASES CITED PARTICULARLY
23 IN THE NINTH CIRCUIT WHICH HAVE DEALT WITH THIS QUESTION. AS
24 WELL AS COMMENTARIES BY SCHOLARS LIKE WEINSTEIN WHO HAVE
25 RECOGNIZED THIS PROBLEM.

1 AND I THINK FOR THE COURT TO ADMIT SOME OF THESE
2 STATEMENTS IN, WHICH TO ME APPEAR TO BE NOTHING EXCEPT
3 GRATUITOUS COMMENTS TO THIRD PARTIES, IS A CLEAR INDICATION
4 FOR ERROR IN THIS CASE.

5 ABOVE AND BEYOND THAT, WE HAVE A SEPARATE
6 CONCERN. THAT IS THE CONCERN OF THE SIXTH AMENDMENT
7 CONFRONTATION CLAUSE, WHICH AS I HAVE POINTED OUT,
8 PARTICULARLY WITH REFERENCE TO THE ORDONEZ CASE, IS MUCH
9 BROADER THAN MERELY THE CO-CONSPIRATOR EXCEPTION TO THE
10 HEARSAY RULE.

11 ORDONEZ RECOGNIZES THAT YOU CAN HAVE A STATEMENT
12 WHICH FALLS WITHIN THE FOUR CORNERS OF THE CO-CONSPIRATOR
13 EXCEPTION TO THE HEARSAY RULE BUT IT MIGHT NOT NECESSARILY
14 SATISFY SIXTH AMENDMENT CONCERNS.

15 I THINK THAT IS PARTICULARLY IMPORTANT IN THIS
16 CASE. DUTTON VERSUS EVANS, SUPREME COURT CASE AND ITS
17 PROGENY SET FORTH A TWO PRONG TEST FOR SIXTH AMENDMENT
18 ISSUES.

19 NUMBER ONE IS THE NECESSITY WHICH IS CLEARLY
20 ESTABLISHED IF CO-CONSPIRACY CODEFENDANTS DON'T TAKE THE
21 STAND. THE OTHER PRONG IS RELIABILITY. THERE ARE SEVERAL
22 SUBPARTS TO THAT PRONG.

23 WE HAVE PROBLEMS IN THIS CASE WITH CODEFENDANTS
24 MAKING STATEMENTS TO THIRD PARTIES WHICH ARE NOT BASED ON
25 THEIR CODEFENDANTS' PERSONAL KNOWLEDGE.

1 THAT IS PARTICULARLY TRUE WITH DALE FLANAGAN
2 BECAUSE HE HAS APPARENTLY MADE STATEMENTS TO OTHER PEOPLE
3 STATING WHAT OTHER PEOPLE HAVE DONE. THE TESTIMONY REVEALS
4 THAT HE WAS IN THE BEDROOM AND APPARENTLY HAD NO WAY TO KNOW
5 WHAT OTHER PEOPLE DID.

6 A SECOND CONCERN IS THERE A POTENTIAL FOR
7 FABRICATION OF TESTIMONY OR UNRELIABILITY. AND I THINK THE
8 EVIDENCE IS CLEAR IN THIS CASE THAT THERE IS A GANG
9 RELATIONSHIP, THAT THREATS HAVE BEEN MADE AND THERE IS A
10 STRONG POTENTIAL FOR PEOPLE TO FABRICATE EVIDENCE TO SHIFT
11 THE BLAME IN THIS CASE.

12 AS THE COURT KNOWS, I AM PARTICULARLY CONCERNED
13 ABOUT THAT. AND I DON'T THINK WE CAN SIMPLY TRY TO SHOVE
14 SOMETHING IN UNDER THE DOOR IN RELIANCE OF GOLDSMITH AND
15 FORGET ABOUT THE RIGHTS OF THESE DEFENDANTS TO CONFRONT THE
16 WITNESSES AGAINST THEM AND HAVE THE OPPORTUNITY TO
17 CROSS-EXAMINE THEM. I THINK THE COURT HAS TO LOOK AT THOSE
18 CONCERNS AS WELL.

19 THE COURT: MR. SMITH, THANK YOU. MR. HANDFUSS.

20 MR. HANDFUSS: YOUR HONOR, I JOIN IN EVERYTHING
21 MR. SMITH SAYS. I THINK HE INSIGHTFULLY CITED IN HIS BRIEF
22 AND CITED TO THE COURT THE EXACT PROBLEM IN THIS CASE.

23 THE STATE IS RELYING MAINLY UPON THE GOLDSMITH
24 CASE. THAT IS THE CASE THAT THE STATE CITES AGAIN AND AGAIN,
25 HAS CITED TO THE COURT ORALLY IN ARGUMENT AND WHICH THE STATE

1 WOULD LIKE THIS COURT TO DEPEND UPON.

2 HOWEVER, THERE ARE SEVERAL PROBLEMS WITH THE
3 GOLDSMITH CASE AND I WOULD SUBMIT THAT THE GOLDSMITH CASE IS
4 REALLY AN ABERRATION AND SHOULD NOT BE APPLIED TO THIS CASE.

5 THE STATE SAID THAT ALL STATEMENTS UNTIL THE END
6 OF THE CONSPIRACY -- THAT THE AIM OF THE CONSPIRACY IS NOT
7 OVER UNTIL THE GOAL, THE COLLECTION OF THE INSURANCE PROCEEDS
8 OR INHERITANCE UNDER A WILL.

9 IF YOU TAKE THAT TO THIS CASE OR TO ANY CASE
10 SIMILAR, TO CARRY IT TO ITS LOGICAL END, WHAT TURNS UP IS A
11 LUDICROUS CONCLUSION BECAUSE ASSUMING THERE ARE NO INSURANCE
12 PROCEEDS, ASSUMING THERE IS NO WILL AND NO INHERITANCE, THAT
13 ANY STATEMENT MADE 100 YEARS FROM NOW COULD ALSO BE IN
14 FURTHERANCE OF THE CONSPIRACY AND NOT EXCLUDABLE UNDER THE
15 CO-CONSPIRATOR RULE, THE EVIDENCE RULE.

16 WHAT THAT MEANS IS THAT IF 40 YEARS FROM NOW, ONE
17 OF THESE DEFENDANTS MAKES ANOTHER STATEMENT HAVING ABSOLUTELY --
18 AFTER ALL THESE PROCEEDINGS ARE OVER WITH, NOTHING TO DO
19 ANYMORE, EVERYTHING IS FINISHED, THE CASE IS CLOSED, THAT IS
20 ALSO IN FURTHERANCE OF THE CONSPIRACY.

21 IT NEVER ENDS UNDER THE GOLDSMITH CASE WHICH IS
22 REALLY NOT A LOGICAL CONCLUSION. I WOULD HOPE THIS COURT
23 WOULD AGREE.

24 THE SECOND THING IS THAT THE STATE ALSO SUBMITS
25 THAT ALL STATEMENTS MADE IN FURTHERANCE OF THE CONSPIRACY ARE

1 NOT NECESSARILY THOSE STATEMENTS MADE TO A PERSON BUT WHAT
2 THEY DO IS RELATE BACK TO THE ACTUAL CONSPIRACY.

3 SO IF ONE DEFENDANT MAKES A STATEMENT THAT THIS
4 IS WHAT HAPPENED, EVEN THOUGH GRATUITOUS, THAT AS LONG AS IT
5 REFERS BACK TO SOMETHING THAT OCCURRED IN ORDER TO FULFILL
6 THIS CONSPIRACY, THAT THOSE ARE ALSO ALWAYS NOT EXCLUDABLE
7 UNDER THE CO-CONSPIRATOR RULE.

8 THE PROBLEM WITH THAT IS, IS THAT NO DEFENDANT
9 COULD EVER MAKE A STATEMENT REGARDING THE ACTS OF THE
10 CONSPIRACY. NO DEFENDANT CAN EVER MAKE A STATEMENT REGARDING
11 THE ACTS OF THE CONSPIRACY WITHOUT IT FALLING UNDER THE
12 GOLDSMITH CASE AND WITHOUT IT BEING ADMISSIBLE.

13 BUT THAT IS LUDICROUS. IF THAT IS THE CASE, YOU
14 COULD NEVER HAVE ANY STATEMENT BY A DEFENDANT AS TO THE -- OR
15 ANY STATEMENT BY A DEFENDANT OR ANYBODY ELSE WHO SAYS THAT
16 THERE WAS AN ADMISSION BY A DEFENDANT THAT WOULD EVER BE
17 EXCLUDABLE UNDER NRS 51 OF THE STATUTE BEFORE THE COURT HERE.

18 UNDER THE GOLDSMITH CASE IS NOT APPLICABLE AND
19 ITS LOGICAL OBJECTIVES DO NOT FALL IN LINE WITH WHAT THE
20 LEGISLATURE INTENDED. AND I WOULD SUBMIT TO THE COURT THAT
21 THE COURT SHOULD NOT FOLLOW THE GOLDSMITH CASE.

22 AND, AGAIN, I WOULD JOIN IN MR. SMITH'S ARGUMENT
23 AND RULE IN THE DEFENSE FAVOR ON THIS ISSUE.

24 THE COURT: THANK YOU VERY MUCH. COUNSEL.

25 MR. PIKE: THANK YOU, YOUR HONOR. I WAS UP AT

1 THE SUPREME COURT WORKING AND ONE OF THE JUSTICES TOLD ME
2 ONCE THAT HEARING AN ARGUMENT THE THIRD TIME BY THE THIRD
3 ATTORNEY IS LIKE EATING ICE CREAM. YOU ENJOY THE FIRST TWO
4 TIMES. THE THIRD TIME IT STARTS TO GET OLD.

5 SO I WILL ADOPT THE STATEMENTS OF THE PREVIOUS
6 COUNSEL AS THEY HAVE DIRECTED THEIR ARGUMENTS TOWARDS THE
7 CO-CONSPIRATOR DECLARATIONS AND WHAT IS BEING OFFERED BY THE
8 STATE.

9 THE ONLY THING I WOULD OFFER THAT THEY DID NOT
10 TOUCH ON IS THAT I THINK THAT BECAUSE THERE IS SO MUCH
11 INTERTWINING OF THE STATEMENTS WHERE ONE OR TWO MAY HAVE BEEN
12 PRESENT BUT NOT ALL OF THEM, OR JUST ONE MAY HAVE BEEN
13 AVAILABLE AFTERWARDS, I THINK THAT THE ONLY REMEDY TO ANY OF
14 THE PROBLEMS INVOLVED IN THIS IS TO GIVE THE DEFENDANTS A
15 SEPARATE TRIAL.

16 AND TO EITHER REDACT THE STATEMENTS AS IT APPLIES
17 TO THEM, WHICH IS ALLOWED FOR, OR TO EXCLUDE THEM AND THAT
18 WAY THE COURT WOULD HAVE MUCH FIRMER CONTROL OVER THE
19 ADMISSION OF THE EVIDENCE OVER EACH DEFENDANT.

20 ALSO, DURING THE PENDENCY OF THE TRIAL, I WOULD
21 REQUEST THAT I, WITHOUT HAVING TO MAKE THE OBJECTION, BE
22 DEEMED TO HAVE JOINED IN OBJECTIONS MADE BY CO-COUNSEL UNTIL
23 I SPECIFICALLY MAKE A STATEMENT THAT I DO NOT JOIN IN THAT
24 OBJECTION.

25 THE COURT: WE WILL SET THE FOUNDATION FOR THAT

1 AT A PROPER TIME. I UNDERSTAND YOUR THINKING. MR. POSIN,
2 ANYTHING?

3 MR. POSIN: ARGUMENTS EVERYBODY MADE SO WE WILL
4 JOIN WITH THE ARGUMENTS OF CO-COUNSEL AT THIS POINT.

5 THE COURT: I WILL KEEP IN CONSIDERATION THOSE
6 THINGS THAT HAVE BEEN BROUGHT UP AT THIS JUNCTURE. I WOULD
7 ASK THAT WE PROCEED THROUGH THE MATERIAL THAT WAS SUBMITTED
8 BY THE STATE ONE AT A TIME AND WE WILL HEAR THE STATEMENTS,
9 ARGUMENT AS TO WHY IT IS ADMISSIBLE AND WE WOULD HEAR ANY
10 ARGUMENT AGAINST IT.

11 I WOULD SUGGEST THAT PERHAPS AFTER THE FIRST TWO
12 OR THREE PARAGRAPHS THAT WE PROBABLY TOUCHED ON THE LAW
13 PRETTY MUCH THAT APPLIES AND WE CAN THEN APPLY IT PRETTY
14 SUMMARILY. THE FIRST WILL BE MR. HARMON. YOU ALREADY BEGUN.

15 MR. HARMON: YES, YOUR HONOR. IN FACT, FIRST
16 FOUR PARAGRAPHS, I THINK, PERHAPS WE COULD DEAL WITH TOGETHER
17 BECAUSE WE ARE CERTAINLY NOT TALKING ABOUT EVENTS WHICH
18 OCCURRED AFTERWARDS WITH THE FIRST FOUR PARAGRAPHS. WE ARE
19 TALKING ABOUT PLANNING AND DISCUSSION OF THE MODUS OPERANDI
20 BEFORE THE CRIMES OCCUR.

21 THE DEFENSE, I DON'T REALLY THINK, WANTS TO
22 ACCEPT WHAT INDEED IS A RULE OF LONG STANDING IN THIS STATE
23 WHICH IS ONCE A CONSPIRACY HAS BEEN ESTABLISHED, THE
24 STATEMENTS AND ACTS OF ONE BECOME THE ACTS OF ALL.

25 IT IS CERTAINLY OUR ARGUMENT THAT THE CONSPIRACY

1 HAS BEEN SHOWN WHEN RUSTY HAVENS TALKS ABOUT A DISCUSSION AT
2 337 NORTH 13TH STREET IN THE LIVING ROOM INVOLVING HIMSELF,
3 AKERS, WALSH, MOORE AND FLANAGAN.

4 HE SAYS THAT THE PARTIES DID DISCUSS THE KILLING
5 OF THE GORDONS.

6 IN FACT, ORIGINALLY HE WAS ASKED TO BE THE VERY
7 PERSON WHO KILLED MRS. GORDON. HE SAYS AFTER THE
8 CONVERSATION, IT WAS DEFENDANT MOORE WHO SAID TO HIM AND
9 EVERYBODY ELSE PRESENT THAT NO INFORMATION IS TO GO ANYWHERE
10 AND IF IT DID, THEY WOULD BE KILLED.

11 I THINK IT'S APPARENT, YOUR HONOR, THAT THAT IS
12 IN FURTHERANCE BY ANY DEFINITION OF THE CONSPIRACY. AND I
13 REALLY ARGUE THE SAME THING WITH RESPECT TO THE ENSUING THREE
14 PARAGRAPHS.

15 HAVENS TALKS ABOUT A PARTY WHICH OCCURRED A
16 LITTLE OVER A WEEK -- I AM SORRY. PARAGRAPH 2, I SEE, DOES
17 REFER TO AFTER THE OFFENSES. BUT IN ANY EVENT, PARAGRAPHS 3
18 AND 4 INVOLVING AKERS, ALSO DISCUSS MEETINGS WHICH OCCURRED
19 BEFOREHAND.

20 HE TALKS ABOUT THREATS. HE TALKS ABOUT
21 DISCUSSION BETWEEN THE PERSONS THERE AND ALL SIX WERE PRESENT
22 ACCORDING TO AKERS AS TO WHO WOULD DO WHAT. HE IS DESCRIBING
23 THE PRESENCE OF GUNS AND THERE IS A DISCUSSION AS TO WHO IS
24 GOING TO SHOOT WHOM, HOW THEY WILL GET INTO THE HOUSE.

25 ALL THIS OBVIOUSLY FURTHERED THE CONSPIRACY.

1 THE COURT: MR. HARMON, CONCERNING THE SECOND
2 PARAGRAPH WHERE MR. MOORE IS QUOTED AS SAYING HE WAS OVER HIS
3 HEAD AND THERE WAS NOTHING HE COULD DO, PARAPHRASING, I
4 THINK, HOW IS THAT IN FURTHERANCE OF THE CONSPIRACY? I MAY
5 BE MISQUOTING.

6 MR. HARMON: NO. I THINK THAT THE COURT IS
7 CERTAINLY ACCURATELY QUOTING THE LANGUAGE. YOUR HONOR, IN
8 THE FIRST PLACE, IT IS DESCRIBED THAT FOUR OF THE
9 CONSPIRATORS WERE PRESENT. IT'S APPROXIMATE TO THE TIME OF
10 THE OFFENSES.

11 SEE, I THINK WE HAVE TO MAKE A FEW INFERENCES AS
12 TO HOW CERTAIN THINGS FURTHERED. IN THE GOLDSMITH CASE, THEY
13 SAID, "WELL, PERHAPS THE PARTIES WANTED TO SEND A MESSAGE TO
14 MR. GOLDSMITH BECAUSE HE HADN'T PAID OFF LIKE THEY WERE
15 EXPECTING."

16 THE DEFENSE IN THEIR ARGUMENTS, IT SEEMS TO ME,
17 ENTIRELY OVERLOOKED THE LANGUAGE IN FOSS AND CREW WHICH TALK
18 ABOUT A CONCEALMENT PHASE.

19 NOW, WHETHER CERTAIN COURTS AT THE FEDERAL LEVEL
20 WANT TO ACCEPT THAT OR NOT, THE FACT REMAINS THAT IN BOTH
21 FOSS AND CREW THEY SAID IF THE STATEMENTS OR ACTS FURTHERED
22 THE CONCEALMENT OF THE CRIMES, IN FACT, IN BOTH OF THOSE
23 CASES IT INVOLVED MOVING BODIES, THEN IT WAS IN FURTHERANCE.

24 NOW, HERE THE INFERENCE, I THINK, THAT IS MOST
25 REASONABLE IS THAT MR. MCDOWELL WAS HAVING SOME SECOND

1 THOUGHTS. JUDGE, I DON'T KNOW WHETHER HE INTENDED TO GO TO
2 THE POLICE OR WHETHER HE WAS SAYING HE WAS GOING TO CONFIDE
3 IN SOMEONE ELSE AND TALK ABOUT WHAT HE HAD DONE AND HIS
4 PRESENCE AT 5851 WASHBURN.

5 THE FACT IS THAT HAVENS SAID THEY WERE HAVING AN
6 ARGUMENT, MOORE AND MCDOWELL. AND, JUDGE, THE MOST REASONABLE
7 INFERENCE IS THAT MOORE WANTED TO PUT THE LID ON MR.
8 MCDOWELL. HE DIDN'T WANT HIM EITHER GOING TO THE POLICE OR
9 TALKING TO HIS MOTHER OR A FRIEND OR A GIRLFRIEND AND SO HE
10 WAS SIMPLY POINTING OUT TO HIM THAT HE HAD BEEN THERE, HE WAS
11 IN OVER HIS HEAD AND THERE WAS NOTHING MORE HE COULD DO.

12 AND, JUDGE, I CERTAINLY THINK THAT THIS FALLS
13 INTO THE CONCEALMENT PHASE OF THE CONSPIRACY.

14 THE COURT: ONE OTHER THING. AS WE ARE GOING
15 THROUGH THESE PARAGRAPH BY PARAGRAPH, I THINK WE OUGHT TO
16 ADDRESS PRETTY MUCH ALL THE ISSUES AS IT PERTAINS TO EACH
17 PARAGRAPH.

18 1 THROUGH 4. PARAGRAPH 2, THE CONVERSATION
19 INVOLVED BETWEEN MR. MOORE AND MR. MCDOWELL, I BELIEVE IT WAS
20 PRETTY MUCH CONCEDED MR. LUCKETT WAS PRESENT.

21 PARAGRAPHS 1, 3 AND 4, THERE MAY BE SUBSTANTIAL
22 QUESTION. AND I'D ASK -- AND YOU WILL HAVE AN OPPORTUNITY IN
23 A MOMENT, MR. SMITH -- MR. HARMON, IF YOU RECALL TESTIMONY
24 WHICH WOULD PLACE MR. LUCKETT AT THE EVENTS ALLUDED TO IN
25 PARAGRAPHS 1, 3 AND 4?

1 MR. HARMON: JUDGE, WHEN HAVENS TESTIFIED, HE
2 DIDN'T HAVE ANY RECOLLECTION THAT MR. LUCKETT WAS THERE AT
3 THE OCTOBER MEETING. THAT IS MY RECOLLECTION. WHEN HE
4 DESCRIBED PARAGRAPH 2, HE SAID THAT ALL SIX WERE THERE.

5 WHEN MR. SMITH TOOK HIM ON CROSS-EXAMINATION, HE
6 COULDN'T SAY POSITIVELY THEY WERE ALL IN THE SAME ROOM BUT HE
7 SAID AT THE PARTY WHICH WAS ABOUT A WEEK AFTER, HE DEFINITELY
8 SAID THAT MR. LUCKETT WAS PRESENT.

9 THE COURT: THE PARTY?

10 MR. HARMON: WELL, HE DESCRIBED IT AS BEING A
11 PARTY WHICH OCCURRED A LITTLE OVER A WEEK AFTER THE OFFENSES
12 AT 337 NORTH 13TH STREET.

13 THE COURT: WE ARE NOT TALKING ABOUT THE OCTOBER
14 MEETING?

15 MR. HARMON: NO. IN THE OCTOBER MEETING, I THINK
16 HAVENS MADE IT CLEAR THAT HIS RECOLLECTION THAT HE DIDN'T
17 REMEMBER LUCKETT BEING THERE.

18 JUDGE, I AM NOT SURE THAT IS CRITICAL, THOUGH.
19 OUR POINT IS IF WE HAVE SHOWN EVIDENCE OF A CONSPIRACY AND
20 THAT LUCKETT IS A PART OF THE CONSPIRACY AND WE HAVE HAD
21 AKERS TESTIFY HE WENT ALONG, HE HAD A GUN.

22 THE COURT: I THINK THE POINT IN WHICH MR.
23 LUCKETT BECAME A CO-CONSPIRATOR IS RELEVANT AND THAT IS WHY I
24 AM ADDRESSING THE ISSUE. BEFORE YOU BEGIN, MR. SMITH, NOW WE
25 ARE TALKING ABOUT PARAGRAPHS 1 AND 3 WHICH ALLUDE TO THE

1 OCTOBER MEETING.

2 4 ALLUDES TO THE NOVEMBER 5TH MEETING. IF MY
3 RECOLLECTION SERVES ME, MR. LUCKETT WAS SAID TO BE IN THE
4 SHOWER AND THEN IN THE BEDROOM AND THEREABOUTS. AND YOU
5 MIGHT WANT TO ENLIGHTEN ME FURTHER AS YOUR RECOLLECTION
6 ALLOWS YOU.

7 MR. HARMON: THAT IS MY RECOLLECTION. THAT IS
8 EXACTLY WHAT THOMAS AKERS SAID. AKERS, WHEN HE FIRST
9 TESTIFIED, SAID ALL SIX WERE THERE AND ON CROSS-EXAMINATION
10 HE SAID, WELL, LUCKETT LIVED THERE BUT HE COULDN'T SAY
11 WHETHER HE WAS IN THE SHOWER, IN THE SAME ROOM OR WHAT.

12 THE COURT: ALL RIGHT. LET'S ALLOW MR. SMITH TO
13 ADDRESS THIS ISSUE AT THIS TIME.

14 MR. SMITH: JUDGE, I AGREE WITH YOUR ANALYSIS. I
15 THINK MR. HARMON CORRECTLY STATES THE FACTS. THERE IS NO
16 EVIDENCE IN THE RECORD TO INDICATE THAT MR. LUCKETT EVER
17 HEARD ANY OF THE COMMENTS WHICH ARE MENTIONED IN PARAGRAPHS 1
18 THROUGH 4.

19 THE COURT: I BELIEVE 2 THERE MAY BE. HE WAS
20 PRESENT.

21 MR. SMITH: IN 2, THEY WERE AT A PARTY. AGAIN,
22 IT IS LIKE AT THE RESIDENCE WHEN DISCUSSIONS WERE HELD. NO
23 ONE CAN PUT HIM AS PARTICIPANT IN THE CONVERSATION. THE
24 EXTENT OF THE TESTIMONY PHYSICALLY PRESENT IN THE HOUSE.

25 I THINK THAT IS A PERVASIVE PROBLEM. I HAVE TO

1 AGREE WITH MR. HARMON IT IS NOT NECESSARY WITH RESPECT TO
2 PARAGRAPH 1, HE NEEDED TO BE PRESENT. IF HE LATER JOINED THE
3 CONSPIRACY, THEN HE IS ACCOUNTABLE FOR STATEMENTS MADE BY
4 CO-CONSPIRATORS PRIOR TO THE TIME HE JOINED. BUT I DO AGREE
5 WITH THAT POINT.

6 I DON'T THINK THAT PARAGRAPH 2 CONSTITUTES AN
7 EXCEPTION TO THE HEARSAY RULE FOR THE REASONS THAT I HAVE
8 STATED. JUST GRATUITOUS COMMENT THAT ROY IS OVER HIS HEAD
9 AND THERE IS NOTHING HE CAN DO. HOWEVER, IF I HAVE TO GO TO
10 TRIAL WITH EVERYONE ELSE, I INTEND TO BRING THAT OUT AGAINST
11 MR. MOORE.

12 I DON'T KNOW WHETHER IT IS ADMISSIBLE AGAINST
13 OTHER PEOPLE. IF I WERE MR. MCDOWELL, I WOULD HAVE PROBLEMS
14 WITH THAT STATEMENT. BUT AS FAR AS MY DEFENSE IS CONCERNED,
15 WHICH THE COURT IS AWARE OF, I WOULD FEEL THAT IT WOULD BE
16 IMPORTANT IN MY DEFENSE TO BRING THAT STATEMENT UP. I CAN
17 SEE HOW IT IS PREJUDICIAL TO MR. MCDOWELL, THOUGH.

18 THE COURT: ALL RIGHT. COUNSEL.

19 MR. HANDFUSS: I WAS GOING TO ADDRESS THAT AS TO
20 PARAGRAPH 2. IF ANYTHING, IT IS ADMISSIBLE OR POSSIBLY
21 ADMISSIBLE AT THE MOST TO MR. MOORE ON THE STATE'S SIDE. I
22 DON'T BELIEVE IT IS ADMISSIBLE TO MR. MCDOWELL.

23 IN ADDITION, NRS 47.110, LIMITED ADMISSIBILITY,
24 EVEN IF THE COURT IS GOING TO ADMIT THIS STATEMENT, IF THEY
25 BELIEVE IT IS IN FURTHERANCE OR FOR SOME OTHER REASON BELIEVE

1 IT IS ADMISSIBLE, THAT THE COURT SOMEHOW UNDER 47.110 SHOULD
2 LIMIT THE ADMISSIBILITY AND NOT BRING IN MR. MCDOWELL'S NAME.

3 I BELIEVE THE COURT HAS THE POWER TO EXCISE HIS
4 NAME WHEN MR. HAVENS TESTIFIES, TO ADMONISH MR. HAVEN NOT TO
5 MENTION MR. MCDOWELL'S NAME AT THE MOST.

6 IN ADDITION, MR. MCDOWELL STANDS IN THE SAME SPOT
7 AS MR. LUCKETT AS THE COURT STATED ITS CONCERN WITH REGARDS
8 TO PARAGRAPH 1. EVEN THE STATE, WHEN IT WAS FIRST ARGUING
9 THE LAW EARLIER THIS MORNING, STATED THAT SEVERAL INDIVIDUALS
10 WERE AT THIS MEETING BUT MR. MCDOWELL -- STATE DIDN'T MENTION
11 NAMES.

12 MR. MCDOWELL WAS NOT PRESENT AT THE MEETING.
13 PARAGRAPH 1 ALSO SHOWS THAT MR. MCDOWELL WAS NOT PRESENT AT
14 THAT OCTOBER MEETING, JUST AS MR. LUCKETT WAS NOT PRESENT AT
15 THAT MEETING.

16 SO AS FAR AS WHEN THE CONSPIRACY STARTS, MR.
17 MCDOWELL AND MR. LUCKETT ARE IN THE SAME BOAT THERE. THE
18 STATEMENT IN PARAGRAPH 2, ROY WAS IN OVER HIS HEAD, THERE IS
19 NOTHING HE CAN DO, THERE IS NO EVIDENCE OF SPECIFIC
20 CONCEALMENT, NOTHING ON MR. MCDOWELL'S PART HE INTENDED TO
21 EITHER CONCEAL OR INTENDED NOT TO CONCEAL THE THING.

22 IF THAT IS ADMISSIBLE, THAT IS GOING TO BE VERY
23 PREJUDICIAL AGAINST MR. MCDOWELL AND BASED UPON THAT
24 PREJUDICE WITHOUT ANY FURTHER PREDICATE LAID BY THE STATE,
25 MR. HAVENS HAS SHOWN NOTHING ELSE AS TO THE BASIS FOR THAT

1 STATEMENT.

2 HE SAID ON THE STAND HE COULDN'T HEAR ANYTHING
3 ELSE. THAT IS ALL HE HEARD, COULDN'T UNDERSTAND ANYTHING
4 ELSE. BUT DIDN'T UNDERSTAND THE CONTENTS, HEARD VOICES.

5 IT IS PREJUDICIAL AS TO MR. MCDOWELL. I DON'T
6 BELIEVE IT IS ADMISSIBLE UNDER THE STATUTE I CITED OR BECAUSE
7 IT DOES NOT TEND TO SHOW ANY FURTHERANCE OF ANY CONSPIRACY
8 ESSENTIALLY SINCE MR. MCDOWELL IS NOT NAMED IN PARAGRAPH 1.

9 THE COURT: COUNSEL, ANYTHING FURTHER?

10 MR. PIKE: NO, YOUR HONOR. IT'S BEEN ADEQUATELY
11 COVERED AS AND FOR MR. FLANAGAN. I JOIN IN COMMENTS OF BOTH
12 COUNSEL.

13 THE COURT: MR. POSIN?

14 MR. POSIN: I JOIN ON BEHALF OF MR. MOORE.

15 THE COURT: YOUR RESPONSE?

16 MR. HARMON: YES, YOUR HONOR, VERY BRIEFLY. I
17 WOULD POINT OUT THAT THERE IS A GOOD REASON, I THINK, TO
18 CONCLUDE THAT WHEN AKERS DESCRIBES A MEETING WHICH HE SAYS
19 WAS ABOUT A MONTH BEFORE THE CRIMES IN PARAGRAPH 3 AND HAVENS
20 TALKS ABOUT A MEETING -- I HAVE CALLED IT THE OCTOBER MEETING
21 HERE. I THINK HE SAID IT WAS SEVERAL WEEKS, A WEEK AND A
22 HALF OR TWO WEEKS BEFORE -- JUDGE, I THINK THAT HAVENS AND
23 AKERS ARE TALKING ABOUT THE SAME MEETING.

24 AKERS RECALLED THAT CERTAIN PERSONS WERE THERE
25 AND I THINK WE HAVE ACCURATELY SET THAT OUT IN PARAGRAPH 1.

1 HOWEVER, IT IS AKERS' RECOLLECTION THAT ALL SIX WERE THERE.
2 HE SAYS HAVENS WAS ALSO PRESENT.

3 THAT IS WHAT CAUSES ME TO THINK THAT AKERS AND
4 HAVENS IN PARAGRAPHS 1 AND 3 ARE TALKING ABOUT THE SAME
5 MEETING. THE SUBJECT MATTER ALSO IS SIMILAR.

6 AS I ARGUED BEFORE, I DON'T THINK WITH RESPECT TO
7 THE COURT THAT MATTERS A GREAT DEAL IF WE SHOW THAT LUCKETT
8 OR MCDOWELL JOINED IN THE CONSPIRACY. BUT IN CASE THE COURT
9 IS STILL TROUBLED BY THAT, I THINK THERE IS EVIDENCE IN THE
10 RECORD FROM WHICH WE MAY INFER. NOW, WHETHER THEY OVERHEARD
11 AND HOW ACTIVE THEIR PARTICIPATION WAS IN THE CONVERSATION,
12 OF COURSE, IS ANOTHER MATTER.

13 AS WE BEGAN BY SAYING IT IS DIFFICULT IN THESE
14 TYPES OF CASES TO SHOW THERE IS A CONSPIRACY, THAT IS THE
15 REASON ONLY SLIGHT EVIDENCE OF THE CONSPIRACY IS NECESSARY
16 AND THAT IS THE REASON GREAT LATITUDE SHOULD BE SHOWN.

17 BUT IF PARAGRAPHS 1 AND 3 RELATE TO THE SAME
18 MEETING, THEN IT MAY BE ARGUED THAT ALL SIX OF THE DEFENDANTS
19 PLUS HAVENS WERE PRESENT.

20 FURTHERMORE, YOUR HONOR, WITH RESPECT TO
21 PARAGRAPH 2, WE ARE ARGUING THE CONSPIRACY RULE BUT I AM NOT
22 WILLING TO CONCEDE EVEN THE ABSENCE OF THAT RULE THAT THAT
23 CONVERSATION IS HEARSAY AS TO MR. MCDOWELL.

24 IF HE IS PRESENT AND IF HE IS ENGAGING IN A
25 CONSPIRACY CONVERSATION, IN FACT, IT WAS APPARENTLY AN

1 ARGUMENT WITH MR. MOORE, THEN UNDER BEASLEY VERSUS STATE, AND
2 UNDER THE AUTHORITY OF A NUMBER OF OTHER CASES, IT WOULD NOT
3 BE HEARSAY AS TO MCDOWELL.

4 THE COURT: AS TO MCDOWELL?

5 MR. HARMON: YES.

6 THE COURT: WE NEED TO ADDRESS THE THRESHOLD
7 ISSUE OF WHETHER OR NOT THERE WAS A CONSPIRACY BEFORE WE CAN
8 PROCEED MUCH FURTHER. I THINK THE EVIDENCE IS OVERWHELMING
9 THAT THERE WAS A CONSPIRACY INVOLVED HERE INVOLVING EACH OF
10 THE NAMED DEFENDANTS AND OTHERS UNNAMED.

11 I THINK THERE IS INDEPENDENT EVIDENCE WHICH HAS
12 BEEN SET FORTH BY MR. HARMON, AND MR. LUCAS AND MR. AKERS
13 SUPPLIED MUCH OF THAT, AND OTHERS, SO I THINK THERE HAS BEEN
14 A PRIMA FACIE SHOWING OF A CONSPIRACY.

15 NOW, AS TO THE PARAGRAPHS 1 THROUGH 4, I AM GOING
16 TO ADOPT THE POSTURE CONTRARY TO WHAT MR. HARMON MAY DESIRE,
17 THAT THERE MUST BE A SHOWING OF SOME DIRECT EFFECT BETWEEN
18 THE STATEMENT AND A FURTHERANCE OF THE CONSPIRACY.

19 I THINK THIS RELATING BACK ARGUMENT, ALTHOUGH MAY
20 BE FOUNDED IN REASON, IS A LITTLE THIN. AND I HAVE YET TO BE
21 SHOWN CASE AUTHORITY WHICH I BELIEVE GIVES ME THAT PARAMETER.

22 BASED ON THAT POSTURE, IT IS APPARENT THAT
23 PARAGRAPHS 1, 3 AND 4, WHEREIN THE MODUS OPERANDI, AS HAS BEEN
24 SET OUT HERE AND DESCRIBED, IS DESCRIBED AND DISCUSSED AMONG
25 THE CONSPIRATORS, IS OBVIOUSLY IN FURTHERANCE OF THE

1 CONSPIRACY. IN ESSENCE, THIS IS WHERE THE PLAN IS DEVISED.

2 PARAGRAPH 2, WHERE MOORE SAID HERE THAT ROY WAS
3 IN OVER HIS HEAD AND THERE IS NOTHING TO BE DONE, THAT WHEN
4 APPLIED TO THE STANDARD I HAVE JUST ESPOUSED, IS NOT IN
5 FURTHERANCE OF THE CONSPIRACY PER SE.

6 NOW, I THINK MR. HARMON'S POINT IS WELL TAKEN
7 WHEN HE INDICATES UNDER BEASLEY THIS CONVERSATION COULD BE
8 UTILIZED AGAINST MR. MCDOWELL AND MR. MOORE AND THAT THEY
9 WERE PARTIES TO THE CONVERSATION.

10 AND THAT I THINK BEASLEY, WHICH EMANATED IN THE
11 LATE SIXTIES, IS A CASE THAT HAS BEEN FOLLOWED BY THIS COURT
12 AND MANY OTHERS THROUGHOUT AND SO I AM GOING TO NOT EXCLUDE
13 THAT STATEMENT PER SE UNDER BEASLEY.

14 BUT I AM GOING TO INDICATE THAT IT IS NOT IN
15 FURTHERANCE OF THE CONSPIRACY AND NOT AN EXCEPTION TO THE
16 HEARSAY RULE UNDER THAT EXCEPTION.

17 LET'S PROCEED TO 5, MR. HARMON.

18 MR. HARMON: YOUR HONOR, IN PARAGRAPH 5, WE
19 REALLY DISCUSSED CONDUCT AND STATEMENTS WHICH OCCURRED WHILE
20 THE PARTIES WERE DRIVING FROM THE SCENE OF THE CRIME AND ALSO
21 WHAT HAPPENED WHEN THEY GOT BACK TO THE APARTMENT.

22 JUST AS AN EXAMPLE, AKERS EXPLAINS SINCE HE WAS
23 DRIVING, HE WAS TOLD HOW TO DRIVE, FIRST WITH THE LIGHTS OUT.
24 IT SEEMS TO US THAT THIS IS SO APPROXIMATE IN TIME AND PLACE
25 TO THE OFFENSES THAT REGARDLESS OF WHO GAVE HIM THAT

1 INSTRUCTION, THAT THAT WOULD FURTHER THE CONSPIRACY.

2 WHEN HE WAS TOLD TO STOP AND APPARENTLY CERTAIN
3 OF THE PARTIES GOT OUT OF THE VEHICLE AT SOME LOCATION, THERE
4 WAS A HOLE DUG. THEY WERE EVIDENTLY GOING TO LEAVE THE GUNS
5 AT THAT LOCATION AND ALSO ANY CARTRIDGES WHICH THEY POSSESSED
6 AT THAT TIME WERE THROWN AWAY.

7 ALL THAT FURTHERS THE CONSPIRACY. THEN WHEN THEY
8 GOT BACK TO THE APARTMENT, AKERS SAYS THAT ALL OF THE
9 PARTIES, HE IDENTIFIES FLANAGAN, MOORE, MCDOWELL, WALSH AND
10 LUCKETT, WERE TALKING AT A GREAT PACE, EXCITED, A LOT OF
11 ADRENALIN PUMPING.

12 AND WHEN THEY HAD DESCRIBED WHAT THEY HAD DONE AT
13 THE SCENE OF THE CRIME, AND IN THE PROCESS ARE PRODUCING A
14 PURSE OR A WALLET, WHICHEVER IT WAS, WHICH INCLUDED A
15 PHOTOGRAPH AND IDENTIFICATION AND ALSO A SMALL AMOUNT OF
16 MONEY;

17 AND, IN FACT, THE PHOTOGRAPHS AND THE
18 IDENTIFICATION WERE BURNED, YOUR HONOR, ALL THIS IS SO
19 APPROXIMATE IN TIME AND PLACE, SO INEXTRICABLY INTERWOVEN
20 WITH WHAT THE PARTIES HAD JUST DONE, WE MAINTAIN FOR THOSE
21 REASONS THAT IT CERTAINLY FURTHERED THE CONSPIRACY.

22 THE COURT: THANK YOU. COUNSEL.

23 MR. SMITH: I DON'T HAVE ANY PROBLEM WITH
24 PARAGRAPH 6 OTHER THAN IF IT COMES OUT THAT DURING THE COURSE
25 OF THESE EVENTS THERE IS MERELY A DESCRIPTION BY ONE

1 CODEFENDANT TO ANOTHER PARTY OF WHAT HAPPENED. ONCE AGAIN,
2 GRATUITOUS COMMENTS THAT WOULD BE EXCLUDED, BUT THE
3 PARAMETERS DESCRIBED BY MR. HARMON ARE ADMISSIBLE.

4 THE COURT: YOU MEANT PARAGRAPH 5?

5 MR. SMITH: YES.

6 THE COURT: COUNSEL, ANYTHING FURTHER?

7 MR. HANDFUSS: I JOIN IN MR. SMITH'S.

8 MR. PIKE: SAME OBJECTION, YOUR HONOR.

9 MR. POSIN: SAME OBJECTION.

10 THE COURT: I SUBSCRIBE TO MR. HARMON'S RATIONALE
11 IN HIS ARGUMENT THERE. I THINK THAT IT IS OBVIOUSLY A METHOD
12 OF, WELL, IT IS SO CLOSE IN TIME IT IS ALMOST ONE ACT BUT IN
13 ADDITION TO THAT IT COULD BE SAID CLEARLY TO BE A METHOD TO
14 GET AWAY WITH THE ACT.

15 IF THEY DID NOT GET AWAY WITH IT THEY CERTAINLY
16 WERE NOT GOING TO OBTAIN THEIR OBJECTIVE AND THAT IS TO
17 COLLECT THE INHERITANCE OR INSURANCE PROCEEDS.

18 IT WILL BE ALLOWED AS FURTHERANCE OF THE
19 CONSPIRACY. PARAGRAPH 6, COUNSEL.

20 MR. HARMON: YOUR HONOR, PARAGRAPH 6 INVOLVES
21 JOHN LUCAS WHO TESTIFIED THAT ABOUT ONE, PERHAPS TWO
22 MONTHS BEFORE THE CRIMES AT THE DOME HOUSE, WHICH HE
23 CHARACTERIZES AS BEING THE FORMER RESIDENCE OF RANDY MOORE,
24 THAT THERE WAS A CONVERSATION INVOLVING HIMSELF, MOORE, AND
25 FLANAGAN.

1 AND BASICALLY, IT WAS MR. MOORE AND MR. FLANAGAN
2 SAYING HOW EASY IT WOULD BE TO GET INTO THE HOUSE. THEIR
3 STATEMENT THAT THE GRANDPARENTS WERE GOING TO BE KILLED AND
4 THE REASON GIVEN IS THAT THEY WERE WORTH A LOT OF MONEY.

5 YOUR HONOR, WE SUBMIT WE ARE DISCUSSING AGAIN THE
6 PLANNING STAGES OF THE CONSPIRACY. AND, IN FACT, THE
7 DECLARANCE AS DESCRIBED BY MR. MOORE OR TO THE PEOPLE THAT WE
8 HAVE SHOWN TO BE PART OF THE CONSPIRACY, MR. MOORE AND MR.
9 FLANAGAN.

10 THE COURT: COUNSEL?

11 MR. SMITH: NO OBJECTION.

12 MR. HANDFUSS: YOUR HONOR, MY ONLY OBJECTION, OF
13 COURSE, WOULD BE, AS I SAID, UNDER 47.110, I WOULD ASK THAT IF
14 THIS COMES IN AT THE TIME OF TRIAL, WHICH IT APPEARS IT MAY,
15 THAT UNDER THE LIMITED ADMISSIBILITY RULE I WOULD ASK AT THAT
16 TIME FOR THE COURT TO GIVE INSTRUCTION TO THE JURY IT IS NOT
17 ADMISSIBLE AGAINST MR. MCDOWELL AT ALL SINCE HE WASN'T
18 PRESENT AS FAR AS MR. LUCAS'S TESTIMONY.

19 THE COURT: WE WILL TAKE THAT UP AT THE
20 PROPER TIME DURING THE FORMAL MOTION IN LIMINE.

21 I UNDERSTAND YOUR POSITION. IT WILL BE YOUR
22 POSITION THROUGHOUT, I ASSUME?

23 MR. HANDFUSS: YES, YOUR HONOR.

24 THE COURT: WITH THAT UNDERSTANDING, WE WILL
25 PROCEED. MR. PIKE.

1 MR. PIKE: YOUR HONOR, THERE IS A NUMBER OF
2 THEORIES THAT THE STATE COULD USE TO BRING THIS IN AS AGAINST
3 MR. FLANAGAN. SO I AM NOT GOING TO OFFER ANY ARGUMENTS AT
4 THIS TIME.

5 MR. POSIN: SAME RATIONALE APPLIES TO MR. MOORE.

6 THE COURT: FINE, MR. POSIN, THANK YOU. WELL,
7 CLEARLY AMONG OTHER THINGS IT IS FORMULATION OF THE PLAN IN
8 ITS EARLY STAGES AND IT WILL BE RECEIVED IN FURTHERANCE OF
9 THE CONSPIRACY.

10 7, MR. HARMON.

11 MR. HARMON: YOUR HONOR, IF I MAY, IT IS OUR
12 POSITION THAT WHEN LUCAS TALKS ABOUT STATEMENTS MADE THE
13 NIGHT OF NOVEMBER THE 5TH AT 337 NORTH 13TH STREET, IN OUR
14 VIEW, HE IS TALKING ABOUT THE SAME MEETING WHICH AKERS
15 DESCRIBED IN PARAGRAPH 4.

16 AND WHEN MR. LUCAS IN 8 DESCRIBES WHAT HAPPENED
17 BETWEEN 1:00 AND 1:30 A.M. WHEN THE PARTIES CAME BACK TO THE
18 APARTMENT, HE IS TALKING ABOUT THE SAME INCIDENTS BASICALLY
19 WHICH AKERS DESCRIBED IN PARAGRAPH 5.

20 SO THE ARGUMENTS WE MADE AS TO PARAGRAPHS 4 AND 5
21 ALSO ARE APPLICABLE TO PARAGRAPHS 7 AND 8.

22 THE COURT: ALL RIGHT. COUNSEL.

23 MR. SMITH: YOUR HONOR, I HAVE NO OBJECTION TO 7.
24 WITH RESPECT TO 8, MY ONLY OBJECTION WOULD BE, ONCE AGAIN, IF
25 THERE IS A MERE RECITATION BY ONE PARTY AS TO WHAT THEY

1 OBSERVED TO HAVE OCCURRED, THEN THAT DOES NOT HAVE A DIRECT
2 EFFECT ON FURTHERING AN OBJECTIVE OF THE CONSPIRACY BUT
3 MERELY IT'S A SUMMARIZATION OF THE EVENTS.

4 ONLY TO THAT I WOULD OBJECT, BUT OTHERWISE I
5 THINK IT IS ADMISSIBLE.

6 THE COURT: MR. HANDFUSS.

7 MR. HANDFUSS: I WOULD JOIN WITH MR. SMITH AND
8 WITHOUT HAVING TO RAISE THE LIMITED ADMISSIBILITY ISSUE, CAN
9 I TELL THE COURT -- CAN THE COURT ASSUME I WOULD MAKE THAT
10 ARGUMENT TO EVERY STATEMENT?

11 THE COURT: YES. MR. PIKE.

12 MR. PIKE: YOUR HONOR, I THINK THAT MR. LUCAS CAN
13 TESTIFY AS TO THE ACTS THAT HE OBSERVES BUT I JOIN WITH MR.
14 SMITH WITH ANY LONG RECITATIONS BY ANY INDIVIDUAL CONCERNING
15 WHAT OCCURRED.

16 IF ONE OR ANOTHER INDIVIDUAL IS COUNSELING,
17 ENCOURAGING OR DIRECTING SOMEBODY TO DO SOMETHING, BURN THIS
18 OR DISPOSE OF THIS OR DO THAT, THAT CLEARLY WOULD BE IN
19 FURTHERANCE OF THE CONSPIRACY.

20 BUT THE MERE RECITATION OF ANY FACTS BY ANY
21 INDIVIDUAL AT THAT POINT WOULD FALL OUTSIDE OF THE
22 CONSPIRACY.

23 MR. POSIN: YES, I WOULD CONCUR IN THAT.

24 MR. HARMON: YOUR HONOR, COULD I SAY ONE THING
25 ELSE, PLEASE. COUNSEL ARE BEGINNING TO TALK NOW ABOUT THE

1 LIMITED ADMISSIBILITY. IT WAS MY UNDERSTANDING THAT WE WERE
2 HERE TO DECIDE, BECAUSE THERE ARE ALREADY MOTIONS IN LIMINE,
3 IF THERE WAS, ONE, A CONSPIRACY AND, TWO, IF THESE
4 DECLARATIONS FURTHERED IT.

5 IF THE COURT FINDS THE ANSWER IS YES TO BOTH OF
6 THOSE QUESTIONS, THEN OUR POSITION IS THAT THE EVIDENCE COMES
7 IN AGAINST EVERYONE. THE ACTS AND STATEMENTS OF ONE BECOME
8 THE ACTS AND STATEMENTS OF ALL.

9 AND NOW, IT SEEMS THAT COUNSEL WANT THE COURT TO
10 DEFER ITS RULING AND THAT IS GOING TO PUT US IN SOMEWHAT OF
11 AN AWKWARD POSITION.

12 THE COURT: AS I INDICATED TO MR. HANDFUSS, THAT
13 ISSUE IS NOT BEING ADDRESSED AT THIS TIME. IF AT A LATER
14 TIME THERE IS A SHOWING IT SHOULD NOT BE APPLIED TO ALL
15 DEFENDANTS, I WOULD ENTERTAIN IT.

16 INCIDENTALLY, AS I INDICATED SEVERAL DAYS AGO, I
17 WOULD LIKE TO RESOLVE THESE MOTIONS TODAY AND I THINK I
18 ADMONISHED COUNSEL TO TRY TO FORESEE SUCH ARGUMENTS AS EARLY
19 AS POSSIBLE. IN ANY CASE, AS OF THIS TIME IF THESE
20 STATEMENTS ARE DETERMINED TO BE IN FURTHERANCE OF THE
21 CONSPIRACY AND, THEREFORE, ADMISSIBLE, THEY ARE ADMISSIBLE AS
22 TO ALL DEFENDANTS AND THEN OF COURSE THERE MAY BE SOME
23 ALTERATION FROM IT AT A LATER TIME.

24 MR. HANDFUSS: THE REASON I DIDN'T BRING IT UP
25 BEFORE I DID NOT THINK THIS 47.110 WAS PROPER FOR MOTION IN

1 LIMINE. THAT WHAT ACTUALLY HAPPENS AT THE TIME THE EVIDENCE
2 IS OFFERED, I MUST MAKE AN OFFER OF PROOF TO YOU AND AT THAT
3 TIME IF YOU AGREE WITH MY OFFER OF PROOF, YOU MUST INSTRUCT
4 THE JURY.

5 I WON'T ANSWER MR. HARMON'S STATEMENTS AT THIS
6 TIME AND WE WILL TAKE IT UP LATER.

7 THE COURT: THE DIFFICULTY IN OBJECTING EACH TIME
8 A STATEMENT IS PRODUCED WHEN YOU HAVE SIX COUNSEL AND LENGTHY
9 TESTIMONY SUCH AS WE HAVE, WE NEVER WOULD GET THROUGH THE
10 TRIAL AS YOU CAN SEE THE PROBLEM THERE.

11 MR. HANDFUSS: I UNDERSTAND. SEE THE PROBLEM
12 HERE, WHEN YOUR HONOR TALKED ABOUT OVERWHELMING EVIDENCE OF
13 THE CONSPIRACY, THE ONLY TIME ANYBODY PUT MR. MCDOWELL AT THE
14 CONSPIRACY IS WHEN MR. AKERS GOT ON THE STAND.

15 MR. HAVENS NEVER PUT HIM AT THE MEETING, MR.
16 LUCAS NEVER PUT HIM AT ANY MEETING BEFORE THEY CAME BACK 1:30
17 NOVEMBER 5TH OR ACTUALLY NOVEMBER 6TH

18 SO AS TO WHERE MEETINGS, WHERE OTHER INDIVIDUALS
19 WERE PRESENT BESIDES MR. MCDOWELL, IN PARAGRAPH 1 OTHER
20 INDIVIDUALS WERE PRESENT, NOT MR. MCDOWELL OR MR. LUCKETT.
21 WHAT WENT ON THERE, MR. MCDOWELL -- THERE IS NO SHOWING MR.
22 MCDOWELL HAS ANY KNOWLEDGE OF THAT MEETING WHATSOEVER.

23 AND THERE IS EVEN NO SHOWING THAT MR. AKERS'
24 TESTIMONY OF OCTOBER MEETING IS THE SAME MEETING THAT MR.
25 HAVENS WAS TALKING ABOUT.

1 I THINK IT IS EXTREMELY PREJUDICIAL AND ITS
2 PREJUDICIAL EFFECT OUTWEIGHS ITS PROBATIVE VALUE TO ASSUME
3 THAT OCTOBER MEETING WHERE OTHER INDIVIDUALS WERE PRESENT,
4 NOT MR. MCDOWELL, ARE DISCUSSING POSSIBLE MURDER PLANS SHOULD
5 NOT BE ADMITTED AGAINST MR. MCDOWELL UNDER THE LIMITED
6 ADMISSIBILITY RULE.

7 THE COURT: I THINK YOUR ARGUMENT'S A BIT
8 PREMATURE. I UNDERSTAND YOUR POSITION.

9 MORE DIRECTLY TO THE ISSUE AT THIS TIME, MR.
10 HARMON, I THINK COUNSEL HAS BROUGHT UP AN ISSUE AND THAT IS --
11 AND I THINK MR. PIKE, SPECIFICALLY, STATES THAT WHEN THE
12 INDIVIDUALS ARE BACK AT THE APARTMENT, AND I THINK WE ARE
13 TALKING ABOUT PARAGRAPH 8, AND THEY ARE DISCUSSING AND
14 RECOUNTING THE EVENTS, THAT BEYOND ANY DIRECTION TO BURN I.D.
15 OR TO HIDE A PURSE OR WHATEVER IT MIGHT HAVE BEEN WHICH WOULD
16 BE OBVIOUSLY IN FURTHERANCE OF THE CONSPIRACY TO CONCEAL AND
17 TO PROCEED, BUT JUST THE RECOUNTING OF WHAT OCCURRED, MR. PIKE
18 TAKES EXCEPTION THAT ON THAT BASIS THAT IS NOT IN
19 FURTHERANCE. NOW, COULD YOU ADDRESS THAT ISSUE?

20 MR. HARMON: WELL, JUDGE, IN THE GOLDSMITH CASE,
21 LINN AND LUCAS WERE TALKING TO NONCONSPIRATORS WEEKS AND
22 MONTHS AFTERWARDS AND THEY WERE EXPLAINING WHAT HAPPENED.

23 WE ARE TALKING ABOUT STATEMENTS THAT WOULD
24 PROBABLY QUALIFY AS EXCITED UTTERANCES EVEN. THE WITNESS HAS
25 TOLD US THAT THEIR ADRENALIN WAS PUMPING, THEY WERE ALL

1 TALKING AT ONCE. THEY WERE EXCITED. THE PROXIMITY OF TIME
2 AND PLACE. THE FACT THAT ALL OF THE CONSPIRATORS ARE
3 TOGETHER.

4 WE DON'T KNOW AT WHAT POINT EXACTLY, BECAUSE WE
5 WEREN'T THERE TO SEE, THE PURSE WAS PRODUCED, THE
6 IDENTIFICATION, THE PHOTOGRAPHS ARE PULLED OUT AND BURNED. WE
7 JUST KNOW THERE IS A DESCRIPTION OF THE CONSPIRATORS BEING
8 PRESENT AND A DESCRIPTION OF WHAT HAPPENED.

9 JUDGE, IN OUR VIEW, IT ALL FALLS INTO THE SAME
10 CATEGORY. IT IS DIFFICULT TO SEE HOW THESE STATEMENTS WITHIN
11 MINUTES OF THE COMMISSION OF THESE CRIMES ARE NOT IN
12 FURTHERANCE OF THE CONSPIRACY.

13 UNDERSTANDABLY, COUNSEL WANT TO TALK ABOUT THE
14 NINTH CIRCUIT, THEY WANT TO TALK ABOUT SISTER JURISDICTIONS.
15 THE FACT REMAINS THAT GOLDSMITH HAS NEVER BEEN OVERRULED.

16 THE FACT REMAINS THAT GOLDSMITH MADE IT VERY
17 CLEAR THAT INFERENCES HAVE TO BE DRAWN SOMETIMES TO DETERMINE
18 WHY CERTAIN STATEMENTS FURTHER THE CONSPIRACY.

19 AS I ENCOURAGED THE COURT ORIGINALLY, IT'S
20 IMPORTANT TO LOOK AT THE VARIOUS STATEMENTS WHICH WERE
21 APPROVED IN THE GOLDSMITH DECISION.

22 IT REMAINS THE WATERSHED DECISION ON THIS ISSUE.
23 IN THIS JURISDICTION, IT HAS NOT BEEN OVERRULED. IT
24 SHOULDN'T BE OVERRULED BY THIS COURT.

25 IT REMAINS THAT THE COURT IN GOLDSMITH SAID IF

1 THE STATEMENTS RELATE BACK TO CONDUCT WHICH FURTHERED THE
2 CONSPIRACY. AND WHEN FLANAGAN IS SAYING, "WALSH USED A STICK
3 TO BREAK IN," THAT IS RELATING BACK TO ACTS WHICH FURTHERED
4 THE CONSPIRACY.

5 AND HE IS SAYING IT WITHIN 30 MINUTES OR AN HOUR
6 OF WHEN IT HAPPENED. AND WHEN FLANAGAN SAYS, "I KILLED HER"
7 AND WHEN MOORE SAYS, "I KILLED HIM," ALL THIS RELATES TO
8 CONDUCT WHICH FURTHERED THE CONSPIRACY.

9 IN UNEQUIVOCAL LANGUAGE, GOLDSMITH SAID IN ITS
10 DISCUSSION OF FURTHERANCE THAT FURTHERS --

11 THE COURT: ALL RIGHT. I WILL RESERVE RULING ON
12 8 AS TO THAT PORTION FOR THE TIME BEING. LET'S GO TO 9.

13 MR. HARMON: YOUR HONOR, 9 IS LUCAS WHO DESCRIBES
14 THAT HE HAD A MEETING. IT WAS A COUPLE OF WEEKS AFTER THE
15 CRIMES ACCORDING TO HIS RECOLLECTION. DEFENDANT MOORE,
16 DEFENDANT LUCKETT AND THE GIRLFRIEND OF MR. MOORE CAME BY HIS
17 RESIDENCE. HE TALKED WITH MR. MOORE IN THE YARD.

18 HE SAID, TO MY RECOLLECTION, THAT LUCKETT AND
19 CONNIE LEAVITT, THE GIRLFRIEND, WERE IN THE VEHICLE AND MOORE
20 SAID THEY WERE GOING TO THE CLIFFS AND THAT THEY WERE GOING
21 TO THROW THE THREE GUNS OVER THE CLIFFS. AND, IN FACT, IF WE
22 WERE TO EXAMINE THE TRANSCRIPT OF HIS TESTIMONY, IT WAS EVEN
23 MORE EMPHATIC THAT IT WAS THE THREE GUNS USED.

24 WE ARE TALKING ABOUT THE CONCEALMENT PHASE.
25 THESE ARE PEOPLE WHO DON'T WANT TO BE CAUGHT. THEY ARE

1 DISCUSSING DISPOSAL OF MURDER WEAPONS. THAT IS CERTAINLY
2 ANALOGOUS TO THE DISPOSAL OF BODIES WHICH ARE DESCRIBED IN
3 BOTH THE CREW AND FOSS CASES.

4 THE COURT: COUNSEL.

5 MR. SMITH: I THINK FOR THAT STATEMENT TO BE
6 ADMITTED AGAINST MR. LUCKETT WOULD BE IMPROPER BECAUSE IT
7 WOULD BE ANALOGOUS FOR MR. MOORE SAYING, "WE ARE GOING TO GO
8 OUT AND KILL SOMEBODY TONIGHT."

9 AGAIN, IT IS SIMPLY A GRATUITOUS COMMENT. THERE
10 IS NO EFFORT TO SOLICIT LUCAS'S HELP AND ASSISTANCE IN
11 DISPOSING OF THESE WEAPONS.

12 IF THE COURT CONCLUDES THAT THE CONCEALMENT PHASE
13 IS AN INTEGRAL PART OF THE CONSPIRACY, I.E., ONE OF ITS
14 OBJECTIVES, THIS GRATUITOUS STATEMENT DOES NOTHING TO FURTHER
15 THE CONSPIRACY. IT IS SIMPLY A GRATUITOUS COMMENT.

16 MR. HANDFUSS: I WOULD ALSO JOIN IN MERELY
17 POINTING OUT MR. MCDOWELL WAS NOT PRESENT AT THAT MEETING.

18 MR. PIKE: SAME OBJECTION FOR MR. FLANAGAN.

19 MR. POSIN: AND FOR MR. MOORE, IF YOUR HONOR
20 PLEASE.

21 MR. HARMON: YOUR HONOR, IN THE FOSS CASE, GUNTER
22 WAS IN EL PASO, TEXAS. HE WAS SHOWN TO BE THE ACTUAL KILLER
23 OF GORDON BRADY IN THE CASE.

24 HE WAS MAKING, IF WE WANT TO USE COUNSEL'S WORDS,
25 A GRATUITOUS COMMENT TO HIS WIFE. I AM SURE SHE WANTED TO

1 KNOW WHY HE WAS HEADED BACK TO NEVADA AGAIN.

2 BUT THAT DOESN'T NECESSARILY COME OUT IN THE
3 OPINION. WHAT GUNTER SAID TO HIS COMMON-LAW WIFE IS THAT, "I
4 AM GOING UP THERE TO MOVE THE BODY AND BURY IT."

5 NOW, IF IT WAS ADMISSIBLE IN FOSS AND THEY TALK
6 ABOUT A CONCEALMENT PHASE, THEN CERTAINLY THE DESCRIPTION BY
7 MOORE TO LUCAS WHO ACTUALLY WAS THERE -- LUCAS THEY HAD
8 APPARENTLY TRIED TO BRING IN THE WEB OF THE CONSPIRACY. HE
9 WAS PRESENT WHEN THEY HAD THE DISCUSSION AFTER IT HAPPENED.

10 FOR WHATEVER THE REASON AND, YOU KNOW, WE CAN
11 DRAW LOTS OF INFERENCES. PERHAPS MOORE WANTS TO DRAW HIM
12 FURTHER INTO IT. HE FIGURES IF HE KNOWS WHERE THE GUNS ARE,
13 HE IS AN ACCESSORY AFTER. THERE ARE LOTS OF REASONS WE COULD
14 ARTICULATE.

15 BUT THE FACT REMAINS GOLDSMITH SAYS IF THE
16 STATEMENT REFERS TO ACTS WHICH FURTHER IT, THEN IT IS IN
17 FURTHERANCE. AND HERE WE HAVE MOORE SAYING, "WE ARE GOING TO
18 GO THROW THE GUNS AWAY."

19 AND THAT CERTAINLY REFERS TO ACTS WHICH FURTHERED
20 THE CONSPIRACY.

21 THE COURT: THAT WAS SAID TO JOHN LUCAS; IS THAT
22 CORRECT?

23 MR. HARMON: EXACTLY, SAID TO JOHN LUCAS. DWAYNE
24 GUNTER IS SAYING HE IS GOING TO HIDE A BODY TO HIS WIFE. SHE
25 WASN'T PART OF THE BRADY KILLING. THAT BRINGS US BACK TO ONE

1 OF THE ORIGINAL PREMISES WHICH IS THE DECLARANT NOT BE A
2 CONSPIRATOR.

3 THE COURT: I UNDERSTAND THAT. SO THAT THERE IS
4 NO MISTAKE, I SUBSCRIBE TO THE THEORY OR THE INTERPRETATION
5 OF THE LAW AND HAVE FOR SOME TIME THAT THE CONCEALMENT OF A
6 CONSPIRACY IN A CRIME IS PART OF THE CONSPIRACY WITHIN
7 REASONABLE NEXUS.

8 NOW, AGAIN, WHEN YOU ARE TALKING YEARS LATER,
9 MAYBE EVEN MONTHS LATER, I THINK YOU WOULD HAVE TO HAVE A
10 MORE PROMINANT SHOWING AS TO HOW IT RELATES TO THE
11 CONCEALMENT AS TIME PROGRESSES.

12 BUT I THINK THERE IS NO QUESTION THE LAW OF
13 NEVADA IS THAT THE COVERING UP OR GETTING AWAY WITH A CRIME
14 COULD BE CONSIDERED PART OF THE ONGOING CONSPIRACY.

15 PARTICULARLY, WHEN YOU HAVE THE SITUATION SUCH AS
16 THIS WHERE THERE IS THE GOAL ULTIMATELY TO BE ACHIEVED, THAT
17 IS, TO ACQUIRE MONIES.

18 AND OBVIOUSLY, AS I SAID EARLIER, IF THERE IS A
19 DISCOVERING OF THE CRIME, THERE WOULD BE NO MONIES RECEIVED
20 AND THAT WOULD BE FRUITS OF THE CRIME. AS WE KNOW, IT CANNOT
21 BE -- NO MONIES COULD BE RECEIVED UNDER THAT CIRCUMSTANCE.

22 AS TO PARAGRAPH 9, I THINK THERE IS A NEXUS
23 BETWEEN THE STATEMENT MADE AND THE GOAL TO AVOID DISCOVERY.
24 GRANTED, IT IS SLIM. BUT MR. HARMON HAS CORRECTLY STATED THE
25 LAW IN THAT IT NEED NOT BE SUBSTANTIAL IN A CASE OF THIS

1 NATURE.

2 I AM GOING TO RULE THAT THE STATEMENT CONCERNING
3 PARAGRAPH 9 WOULD BE ADMITTED IN FURTHERANCE OF THE
4 CONSPIRACY.

5 LET'S GO ON TO 10.

6 MR. HARMON: YOUR HONOR, PARAGRAPH 10, I THINK
7 OUR BASIS FOR ARGUING ITS ADMISSIBILITY IS PRETTY MUCH SET
8 OUT IN THE PARAGRAPH.

9 IT WAS A SHORT CONVERSATION. ACCORDING TO LISA
10 LICATA, DEFENDANT FLANAGAN TOLD HER PERHAPS TWO WEEKS BEFORE
11 THE COMMISSION OF THE CRIMES, AND IF WE USE THIS IN OUR FRAME
12 OF REFERENCE ALREADY, THIS IS APPARENTLY AFTER HE HAS HAD
13 CONVERSATIONS WITH OTHER OF THE CO-CONSPIRATORS, HE TELLS
14 HER THAT HE HAS A PLAN TO GET RID OF HIS GRANDPARENTS SO HE
15 CAN INHERIT MONEY.

16 WE THINK THAT, JUDGE, AGAIN I WOULD ANTICIPATE
17 THE OBJECTION THAT THIS IS MERELY GRATUITOUS COMMENT. BUT
18 THE FACT REMAINS THAT IT IS A COMMENT WHICH BEARS DIRECTLY
19 UPON THE CONSPIRACY IN THIS CASE.

20 IT'S DIFFICULT FOR ANY PROSECUTOR TO BE ABLE TO
21 CLIMB INTO THE HEAD OF MR. FLANAGAN AND FIGURE OUT WHAT
22 MOTIVATED HIM EXACTLY TO MAKE THE STATEMENT.

23 IT RELATED TO THE CONSPIRACY. IT ALSO EMBODIES
24 IN IT HIS MOTIVE. HE SAYS SO HE CAN INHERIT MONEY. WHETHER
25 HE IS SEEKING EITHER MORAL JUSTIFICATION FROM HER, OR WHETHER

1 HE IS SEEKING TO DRAW HER INTO THE WEB OF THE CONSPIRACY.

2 SHE IS A GIRLFRIEND. HE MAY BE AFRAID SHE HAS
3 ALREADY OVERHEARD THINGS, THAT SHE WILL GO TO THE POLICE.

4 IT IS VERY DIFFICULT TO DETERMINE EXACTLY WHAT
5 THE MOTIVATION WAS. THIS IS THE REASON THE COURTS SAY THAT A
6 TRIAL COURT MUST GIVE GREAT LATITUDE IN THIS AREA.

7 BUT IT IS A STATEMENT CLEARLY OF A CONSPIRATOR
8 AND IT CLEARLY RELATES TO THE PLAN AND MOTIVE INVOLVING THE
9 GORDON KILLINGS.

10 THE COURT: COUNSEL.

11 MR. SMITH: YOUR HONOR, I AM NOT GOING TO GO
12 THROUGH THE OBJECTIONS AGAIN. I THINK IT IS CLEARLY
13 ADMISSIBLE AGAINST MR. FLANAGAN AS ADMISSION. IF HE WANTS TO
14 BE TRIED ALONE, THAT IS FINE.

15 I CAN'T UNDERSTAND HOW IT FURTHERS ANY OBJECTIVE
16 OF THIS CONSPIRACY. IT IS GRATUITOUS COMMENT AND SHOULD NOT
17 BE ADMITTED AGAINST MR. LUCKETT.

18 MR. HANDFUSS: I JOIN, YOUR HONOR.

19 MR. PIKE: I ALSO JOIN.

20 MR. POSIN: NOT ONLY DOES IT -- IS IT GRATUITOUS
21 STATEMENT AND NOT ADMISSIBLE TO THE OTHER DEFENDANTS OR MR.
22 MOORE, BUT IT DOESN'T DIRECTLY SPELL OUT THE PLAN AS I
23 RECALL THE TESTIMONY AS BEING RELATED TO THE GRAVAMEN OF THE
24 CHARGES BEFORE THE COURT. AS I RECALL THERE IS NO
25 DEVELOPMENT OF THE SUBSTANCE OF WHAT THAT PLAN IS AND NO

1 INDICATION AS TO WHO ELSE MIGHT BE INVOLVED OR THAT THERE HAD
2 BEEN ANY FURTHERANCE OR FURTHER DISCUSSION OR ACTIVITY WITH
3 REGARD TO WHATEVER THE VAGUE STATEMENT OF THE PLAN MIGHT HAVE
4 BEEN. WE FEEL THIS SHOULD NOT BE PERMITTED.

5 THE COURT: ALL RIGHT. PARAGRAPH 10, THE
6 COMMENTS ALLUDED TO, I THINK UNDER THE TEST THAT I INDICATED
7 I HAVE UTILIZED AND THE APPLICATION OF THE RELEVANT LAW, I
8 THINK IT COULD NOT CONCEIVABLY BE SAID TO FURTHER THE
9 CONSPIRACY.

10 I DON'T KNOW HOW TELLING THIS LITTLE GIRL HIS
11 PLAN IN ANY WAY FURTHERS THE CONSPIRACY. IN FACT, THE
12 CONTRARY COULD BE SAID. IT COULD PUT SOME PERSON IN JEOPARDY
13 BEFORE THE EVENT AND WHICH COULD CAUSE A THWARTING OF THE
14 PLAN IF SHE HAD GONE TO THE POLICE OR ANYONE ELSE.

15 SO I AM GOING TO DISALLOW THAT WHICH IS SET IN
16 10.

17 MR. HARMON: I DON'T MEAN TO QUARREL WITH THE
18 COURT. IT SEEMS TO ME WE HAVE TO FACE HEAD-ON OUR PRECEDENT.
19 NOW, MY RESPONSE AS THE PROSECUTOR TO THE COURT IS IF WE ARE
20 GOING TO LIMIT IN FURTHERANCE TO A DEFINITION WHICH IS THAT
21 NARROW, IS HOW THE SUPREME COURT COULD DECIDE IN GOLDSMITH
22 THAT A STATEMENT MADE BY LINN TO A NONCONSPIRATOR WEEKS AFTER
23 THE COMMISSION OF THE CRIME THAT "WE HAD TO KILL A COUPLE OF
24 GUYS AND BULLETS WERE FLYING AROUND THE CAR AND ONE CREASED
25 GLENN LUCAS IN THE BACK OF HIS HEAD AND ANOTHER ONE ALMOST

1 HIT ME AND WENT IN THE DASHBOARD OF THE CAR RIGHT NEXT TO THE
2 RADIO," HOW DOES THAT FURTHER THE CONSPIRACY?

3 THE COURT: IN GOLDSMITH, CAN YOU CITE ANY
4 STATEMENT OF THE PROPOSITION OF LAW?

5 MR. HARMON: OF COURSE. I ALREADY CITED IT TO
6 THE COURT. IT IS THE DEFINITION OF WHAT FURTHERANCE MEANS.

7 THE COURT: WHERE IS THAT COMMENT?

8 MR. HARMON: THE COURT AT PAGE 93 OF THE OPINION.
9 THIS IS THE PACIFIC CITATION, 454 P.2D.

10 THE COURT: I DON'T HAVE THAT CITE.

11 MR. HARMON: WELL, I READ FROM PAGE 93. "IN
12 CONSTRUING THE EXPRESSION IN FURTHERANCE OF THE CONSPIRACY,
13 REFERENCE IS NOT TO THE ADMISSIONS AS SUCH BUT RATHER TO THE
14 ACT CONCERNING WHICH THE ADMISSION IS MADE.

15 "THAT IS TO SAY, IF THE ACT OR DECLARATION
16 CONCERNING WHICH THE ADMISSION OR DECLARATION IS MADE BE IN
17 FURTHERANCE OF THE CONSPIRACY, THEN IT MAY BE SAID THAT THE
18 ADMISSION IS IN FURTHERANCE OF THE CONSPIRACY."

19 YOUR HONOR, THAT IS THE ONLY WAY THAT, IT SEEMS
20 TO US AS A PRACTICAL MATTER, YOU CAN DEAL WITH THESE TYPES OF
21 CASES. BECAUSE OTHERWISE IT IS IMPOSSIBLE TO FIGURE OUT WHAT
22 MOTIVATES A FLANAGAN OR A MOORE OR A LUCKETT ON VARIOUS
23 OCCASIONS TO MAKE THEIR COMMENTS.

24 THAT IS THE REASON THE COURTS SAY GREAT LATITUDE
25 SHOULD BE SHOWN WHERE YOU HAVE A CONSPIRACY CHARGE IN

1 INTRODUCING THE EVIDENCE, ONCE, AND THIS IS THE SAFETY VALVE,
2 ONCE PROOF OF THE CONSPIRACY IS SHOWN.

3 IN FACT, WE CAN RELATE PARAGRAPH 10 TO 11.
4 BECAUSE WHAT HAPPENED THE NEXT DAY AFTER THE CRIMES,
5 ACCORDING TO LICATA, IS THAT FLANAGAN APPROACHED HER AND
6 SAID, "I HAVE GOT INFORMATION THAT YOU WENT TO THE POLICE AND
7 YOU HAVE TOLD THEM THAT I KILLED MY GRANDPARENTS. AND IF
8 THAT HAPPENED, YOU BETTER GET IT STRAIGHTENED OUT WITH THEM."

9 THE COURT: THAT IS CLEARLY IN FURTHERANCE.

10 MR. HARMON: THAT CLEARLY IS IN FURTHERANCE BUT
11 IT VERY WELL MAY RELATE AND IF WE ARE NOT TO BE PERMITTED TO
12 GET EVIDENCE OF PARAGRAPH 10 BEFORE THE JURY, THEN IT COMES
13 IN A VACUUM, BECAUSE ALREADY WE CAN SEE THAT FLANAGAN KNOWS
14 THAT SHE KNOWS THAT HE PERHAPS COULD BE INVOLVED.

15 IN PARAGRAPH 10, JUST AS GOLDSMITH DESCRIBED, IT
16 MAY BE THAT THE STATEMENT TO HER IN AND OF ITSELF DOESN'T
17 FURTHER, BUT THE QUESTION IS DOES FLANAGAN REFER TO A PLAN.

18 DOES HE REFER TO A MOTIVE AND DO THOSE THINGS IN
19 AND OF THEMSELVES FURTHER WHAT THESE PEOPLE WERE INTENDING TO
20 DO. AND IT IS APPARENT THAT THEY DO.

21 THE COURT: YOU KNOW, IF THAT TEST WOULD BE
22 FOLLOWED, ANYTHING THAT IS RELEVANT TO THIS TRIAL WOULD BE
23 ADMISSIBLE, ANYTHING THAT REFERRED TO ANY OF THE EVENTS THAT
24 TOOK PLACE. AND WE WOULDN'T EVEN BE HERE EVALUATING THESE
25 PARAGRAPHS BECAUSE THEY WOULD ALL BE ADMISSIBLE BECAUSE THEY

1 REFER IN SOME WAY TO THE EVENTS.

2 MR. HARMON: I THINK WE HAVE TO LIMIT GOLDSMITH
3 TO THE TYPES OF CONVERSATIONS IT WAS CONSIDERING. NOBODY IN
4 GOLDSMITH CONTENDED TO THE SUPREME COURT THAT WHEN THE
5 CONSPIRATORS TALKED TO THE POLICE THAT THOSE THINGS WERE
6 ADMISSIBLE BECAUSE WE GET INTO A WHOLE DIFFERENT AREA THEN.

7 WE ARE TALKING ABOUT BRUTON, THE SIXTH AMENDMENT
8 AND WE ARE NOT CONTENDING IN THIS CASE THAT STATEMENTS MADE
9 BY MCDOWELL AND AKERS AND OTHERS TO THE POLICE ARE IN
10 FURTHERANCE OF THE CONSPIRACY.

11 WE ARE SAYING WHEN THESE PEOPLE ARE TALKING TO
12 THEIR CLOSE FRIENDS, PEOPLE TO WHOM THEY CONFIDED,
13 GIRLFRIENDS, FRIENDS WHO WERE RIGHT THERE AT THE APARTMENTS
14 BEFORE AND AFTER, THAT THESE TYPES OF THINGS DO FURTHER AND
15 THEY ARE TOTALLY CONSISTENT WITH THE LANGUAGE IN GOLDSMITH.

16 WHAT WE HAVE YET TO HEAR IS FOR THE DEFENSE TO
17 COME UP WITH ANY NEVADA AUTHORITY TO WHERE THE DEFINITION IN
18 GOLDSMITH OF WHAT FURTHERANCE MEANS HAS BEEN REPUDIATED
19 BECAUSE IT HAS NOT.

20 AND FOSS AND PETERSON AND CREW AND FISH ALL DID.
21 THE OTHER CASES ARE TOTALLY CONSISTENT WITH THE LANGUAGE
22 ANNOUNCED IN GOLDSMITH.

23 MR. SMITH: YOUR HONOR, I HATE TO KEEP STANDING
24 UP BUT IF YOU READ GOLDSMITH, AND I AM AT PAGE 306 OF THE
25 OPINION, THAT YOU HAVE THE NEXT TO THE LAST PARAGRAPH. THE

1 LANGUAGE CITED BY MR. HARMON AS TO WHAT IN FURTHERANCE MEANS
2 IS TAKEN FROM A 1928 CASE OUT OF THE SECOND CIRCUIT AND,
3 STRICTLY SPEAKING, IN LIGHT OF THE FACTS OF THIS CASE, THAT
4 LANGUAGE IS DICTA.

5 IT IS TOTALLY UNNECESSARY TO THE DECISION IN THIS
6 CASE AND THAT IS PARTICULARLY SO IF YOU READ THE PARAGRAPH
7 WHICH IMMEDIATELY PROCEEDS IT.

8 IT SAYS THIS, "THE DECLARATIONS COULD HAVE BEEN
9 INFERRED BY THE MAGISTRATE TO HAVE A TWOFOLD PURPOSE. FIRST,
10 THE WITNESSES WERE BOTH ACQUAINTANCES OF GOLDSMITH AND MIGHT
11 TAKE A MESSAGE TO HIM.

12 "AND, SECONDLY, THE CONSPIRATORS WERE SCHEMING
13 AMONG THEMSELVES TO PROCURE THE INSURANCE PROCEEDS. WHICH
14 HAD BEEN PAID, ET CETERA AND MATTHEIS AND LAMIR WERE
15 BYSTANDERS AND HAPPENED TO HEAR THE CONVERSATION. BOTH OF
16 THOSE SITUATIONS ARE CLASSIC IN FURTHERANCE OF STATEMENTS."

17 I WOULD SUBMIT THIS LANGUAGE QUOTED FROM LEMAN,
18 WHICH HAS VIRTUALLY BEEN ABANDONED BY EVERY JURISDICTION IN
19 THE COUNTRY, IT IS UNNECESSARY. IT IS UNFORTUNATE IT IS
20 INCLUDED IN THERE BECAUSE IT CERTAINLY DIDN'T HAVE TO BE.

21 I CAN'T FOCUS THE COURT'S ATTENTION ON ANY RECENT
22 CASE WHICH WISHES TO STATE AS A MATTER OF LAW THAT IN
23 FURTHERANCE OF IS AS BROAD AS THE STATE WISHES IT TO BE. SO
24 YOU CAN CONFINE GOLDSMITH ON ITS FACTS AND CONCLUDE THAT THAT
25 REFERENCE TO THE LEMAN CASE IS DICTA BECAUSE INDEED IT IS NOT

1 NECESSARY.

2 THE COURT: ALL RIGHT. I AM NOT GOING TO STRAY
3 FROM MY PREVIOUSLY STATED POSITION. IT MUST BE SOME SHOWING
4 THAT THERE WAS SOME FURTHERANCE AND I THINK THE RULE OF
5 REASON HAS TO BE APPLIED HERE. I CAN'T BELIEVE THAT
6 GOLDSMITH CONTEMPLATED THE BROAD PARAMETERS THAT ARE ALLUDED
7 TO BY THE STATE'S ATTORNEY.

8 IT JUST IS TOO ENCOMPASSING. NOW, I THINK ON
9 THAT BASIS, AGAIN, THAT 10 WOULD BE DISALLOWED. WE GO ON TO
10 11. I THINK WE KNOW THE LEGAL POSITIONS OF EVERYONE
11 CONCERNED.

12 HERE, WE HAVE AN OBVIOUS ATTEMPT TO KEEP SOMEONE,
13 THIS LITTLE LISA LICATA, FROM GOING TO THE AUTHORITIES OR
14 OTHERWISE DIVULGE WHAT SHE KNEW. AGAIN, THAT WOULD SEEM IN
15 FURTHERANCE.

16 IF THERE IS ANYTHING ELSE TO BE SAID ABOUT IT
17 THAT HASN'T BEEN SAID, THAT IS MY POSITION. 11 WOULD BE IN
18 FURTHERANCE. LET'S GO ON TO 12.

19 MR. HARMON: YOUR HONOR, 12 INVOLVES TESTIMONY OF
20 ANGELA SALDANA. SHE SAID THE CONVERSATION WAS IN FLANAGAN'S
21 TRAILER ABOUT A WEEK AFTER THE CRIMES.

22 AS I REMEMBER IT, SHE SAID THIS WAS THE VERY DAY
23 DETECTIVE LEVOS OF THE POLICE DEPARTMENT HAD PAID A VISIT TO
24 THE SCENE.

25 FLANAGAN CAME TO HER AFTER A MEETING WITH

1 DETECTIVE LEVOS, AND I HAVE TO PARAPHRASE THE WORDS, BUT THE
2 GIST OF IT WAS THAT SOMETHING HAD BEEN FOUND AT THE SCENE
3 THAT SHOULDN'T HAVE BEEN THERE. AND SHE WANTED TO KNOW WHAT
4 IT WAS AND HE SAID IT WAS THE KNIFE.

5 JUDGE, LIKE 10 AND 11, WE REALLY THINK THAT THE
6 COURT HAS TO CONSIDER 12 AND 13 TOGETHER. BECAUSE HAVING
7 SAID THAT MUCH, IT IS APPARENT IN 13 THAT THE DEFENDANT DOES
8 SOLICIT AT LEAST BY INFERENCE THE ASSISTANCE OF ANGELA
9 SALDANA. BECAUSE HE COMES TO HER ABOUT TWO WEEKS AFTER THE
10 CRIMES -- APPARENTLY, ABOUT A WEEK LATER AND HE DISPLAYS A
11 KNIFE AND TELLS HER HE FOUND HIS KNIFE.

12 AND SHE TELLS HIM, "WELL, THIS ONE LOOKS NEW."
13 AND, OF COURSE, HIS COMMENT IS A MATTER OF RECORD, "YES, BUT
14 NO ONE KNOWS THAT AND NOW THE COPS DON'T HAVE ANYTHING ON
15 ME."

16 JUDGE, IT'S APPARENT TO US THAT SHE WAS HIS
17 GIRLFRIEND, HE LIVED WITH HER, HE HAD TO BE CONCERNED THAT
18 SHE HAD PERCEIVED THINGS ABOUT HIM AND OVERHEARD THINGS, HAD
19 PUT TWO AND TWO TOGETHER.

20 THIS IS A GUY WHO DOESN'T WANT HER GOING TO THE
21 POLICE TO TELL WHAT SHE KNOWS. THE ONLY WAY REALLY TO AVOID
22 THAT IS PROBABLY THE ONLY REASON THAT A LINN WOULD TELL A
23 MATTHEIS, "WE GOT INVOLVED IN A SHOOTING OR WE WERE INVOLVED
24 IN A CONSPIRACY TO KILL TWO BUSINESSMEN TO GET INSURANCE."

25 THAT IS BECAUSE THEY WANT TO DRAG THESE OTHER

1 PEOPLE INTO IT SO THAT THEY WON'T TELL WHAT THEY KNOW AND WE
2 CERTAINLY THINK THAT BOTH PARAGRAPHS 12 AND 13 FURTHERED THE
3 CONSPIRACY.

4 THE COURT: OKAY. COUNSEL.

5 MR. SMITH: I HAVE THE SAME OBJECTIONS TO BOTH
6 THOSE PARAGRAPHS, YOUR HONOR.

7 THE COURT: VERY GOOD, COUNSEL.

8 MR. HANDFUSS: ALSO JOIN.

9 MR. PIKE: TRUE.

10 MR. POSIN: TRUE, ALSO.

11 THE COURT: I THINK IT IS APPARENT THAT MR.
12 FLANAGAN IN REFERRING TO THE KNIFE IN PARAGRAPH 12 AND 13,
13 REALIZED THAT THE INVESTIGATION WAS GETTING SOMEWHAT CLOSE
14 AND HE ALLUDED TO THE KNIFE TO HIS GIRLFRIEND IN ORDER TO
15 PLACATE HER, TO PUT HER ON NOTICE THAT THERE WAS AN
16 INVESTIGATION ONGOING AND THAT THERE WAS SOMETHING TO BE
17 AWARE OF.

18 AND I THINK, IN ESSENCE, WAS SETTING THE STAGE TO
19 KEEP HER QUIET, TO KEEP HER FROM SAYING SOMETHING MAYBE
20 INADVERTENTLY THAT MIGHT INVOLVE HIM.

21 HE HAD TO SAY SOMETHING, I THINK, AT THAT
22 JUNCTURE BECAUSE THE INVESTIGATION WAS ALREADY UNCOVERING
23 THINGS AND COULD EASILY HAVE BEEN CONCEIVED BY HIM THAT THE
24 NEXT TIME THE OFFICER WOULD COME OUT, IT WOULD BE MORE
25 INVOLVED AND HE WANTED TO PUT HIS LITTLE GIRLFRIEND ON NOTICE

1 THAT "I THINK WE HAVE TO BE CAUTIOUS."

2 AND THAT I THINK IS REASONABLE INTERPRETATION OF
3 WHAT HIS MOTIVE WAS. I AM GOING TO ALLOW 12 AND 13 ON THAT
4 BASIS, IN FURTHERANCE OF THE CONSPIRACY AND COVER-UP.

5 14 AND 15.

6 MR. HARMON: WELL, YOUR HONOR, WE PROBABLY SHOULD
7 DEAL WITH THEM SEPARATELY BECAUSE 14 DEALS WITH DECLARATIONS
8 MADE BY MR. FLANAGAN. ANGELA SALDANA SAID IT OCCURRED
9 DECEMBER THE 5TH, 1984.

10 THE CONTEXT IS INTERESTING. AND, IN FACT, IT'S
11 PRIMARILY BECAUSE OF THE CONTEXT THAT WE MAINTAIN THAT THIS
12 FURTHERED THE CONCEALMENT PHASE. IT'S APPARENT THEY WERE
13 HAVING AN ARGUMENT.

14 THEY HAD BEEN CLOSE. SHE HAD BEEN LIVING THERE
15 WITH HIM. THEY HAD BEEN ARGUING OVER A FORMER BOYFRIEND. IF
16 WE MAY BE GRANTED THE LIBERTY WE HAVE TO DRAW IN CERTAIN
17 INFERENCES. THE LANGUAGE POINTED OUT IN GOLDSMITH BY MR.
18 SMITH WAS, WELL, THE CONSPIRATORS MIGHT HAVE INTENDED TO SEND
19 A MESSAGE TO MR. GOLDSMITH. THEY COULD HAVE INTENDED THIS.

20 I THINK WE HAVE TO SAY THAT MR. FLANAGAN MAY HAVE --
21 HE COULD HAVE BEEN CONCERNED THAT SHE IS GOING TO LEAVE AND
22 WHERE SHE IS GOING IS DIRECTLY TO THE POLICE.

23 WHAT HE ATTEMPTED THEN TO DO, JUDGE, IN OUR VIEW,
24 MAYBE PART OF IT WAS PLACATE, BUT WE THINK MORE THAN THAT, HE
25 WANTED TO MAKE SURE THAT SHE WAS BROUGHT MORE INTO THE WEB OF

1 THE CONSPIRACY AND, IN FACT, INTIMIDATED.

2 IT REALLY COMES BACK TO THE SAME TYPE OF APPROACH
3 THAT THE COURT HELD IN PARAGRAPH 2 SHOULDN'T COME IN. BUT WE
4 HAD MOORE ATTEMPTING TO INTIMIDATE MCDOWELL AND IT IS STILL
5 VERY CLEAR TO ME THAT MCDOWELL IN SO MANY WORDS IS BEING TOLD
6 "DON'T GO TO THE POLICE. YOU ARE IN THIS UP TO YOUR NECK."

7 AND MISS SALDANA HAS TO BE A SOURCE OF CONCERN TO
8 MR. FLANAGAN ON DECEMBER THE 5TH.

9 HE HAS TO BE THINKING "IF SHE LEAVES, SHE IS
10 PROBABLY GOING TO BLOW THE WHISTLE ON ME. IN FACT, SHE MIGHT
11 EVEN INADVERTENTLY BLURT SOMETHING OUT. IF I TELL HER I
12 ACTUALLY DID IT" -- AND THAT IS THE WAY IT CAME OUT. HE SAID,
13 "HOW DO YOU LIKE THIS, I DID IT. I ACTUALLY KILLED MY
14 GRANDPARENTS."

15 IF HE IS TELLING HER I DID THAT, THEN SHE HAS TO
16 GET THE MESSAGE FROM HIM, "IF I AM CAPABLE OF KILLING THEM, I
17 AM CAPABLE OF DOING THE SAME THING TO YOU IF YOU DON'T STAY
18 IN LINE, IF YOU DON'T STAY WITH ME."

19 SO, NUMBER ONE, HE WANTS TO KEEP A GIRLFRIEND
20 AND, NUMBER TWO, HE WANTS TO MAKE SURE SHE STAYS IN LINE.
21 SHE IS GOING TO BE INTIMIDATED AND NOT GOING TO THE POLICE BY
22 UNDERSTANDING JUST HOW VIOLENT, JUST HOW CAPABLE HE IS OF
23 DEALING WITH PEOPLE WHO GET OUT OF LINE.

24 THE COURT: COUNSEL.

25 MR. SMITH: THIS NOTION OF INTIMIDATION WAS NEVER

1 EXPLORED ON CROSS-EXAMINATION NOR WAS IT EVER ATTEMPTED TO BE
2 EXPLORED. THE WITNESS TESTIFIED IT WAS SIMPLY A BOYFRIEND-
3 GIRLFRIEND RELATIONSHIP. IF ANYTHING, HE MIGHT BE TRYING TO
4 HOLD THE RELATIONSHIP TOGETHER.

5 IT IS JUST A QUANTUM LEAP OF FATE FOR US TO
6 ASSUME THERE WAS AN EVIL PURPOSE INTENDED OR TO FURTHER
7 ANY OBJECTIVE OF THE CONSPIRACY. I DON'T THINK IT IS
8 ADMISSIBLE ON THOSE GROUNDS. IT MAY BE ADMISSIBLE ON OTHER
9 GROUNDS FOR THE DEFENDANTS BUT I DON'T THINK IT IS ADMISSIBLE
10 UNDER THE THEORY OF CO-CONSPIRATOR EXCEPTION.

11 THE COURT: MR. SMITH, HOW DO YOU CONCLUDE
12 TELLING HIS GIRLFRIEND OF KILLING HIS GRANDPARENTS WOULD
13 PRESERVE THE RELATIONSHIP?

14 MR. SMITH: I DON'T CONCLUDE THAT. I THINK THAT
15 IS A POSSIBLE EXPLANATION. IT IS ALSO A MATTER HE IS JUST
16 SAYING, "I AM TIRED OF IT. I AM SICK OF RUNNING. HERE IT
17 IS." HE IS JUST BARING HIS SOUL.

18 COULD BE JUST WANTED TO GET SOME THINGS OFF HIS
19 CHEST, HAD SOMEBODY, A FRIEND TO TALK TO. I THINK THAT IS
20 REALLY THE INFERENCE THAT I GOT AT HER TESTIMONY HERE IN
21 COURT AND ALSO THE PRELIMINARY HEARING. HE NEEDED SOMEONE TO
22 TALK TO.

23 THE COURT: THANK YOU. COUNSEL.

24 MR. HANDFUSS: YOUR HONOR, I WOULD ALSO AGREE.
25 IF THE COURT RECALLS MISS SALDANA'S TESTIMONY, AT NO TIME DID

1 SHE EVER MAKE ANY INFERENCE THAT THE STATE IS ATTEMPTING TO
2 MAKE HERE THAT "I KILLED MY GRANDPARENTS. YOU BETTER KEEP IN
3 LINE OR I WILL KILL YOU."

4 SHE NEVER SAID THAT. HER TESTIMONY WAS THEY WERE
5 HAVING PROBLEMS, HAVING A CONVERSATION WHICH STARTED OUT
6 BOYFRIEND-GIRLFRIEND DISPUTE. SHE SAID THAT THE CONVERSATION
7 WAS REGARDING WHERE THEY WERE GOING AS BOYFRIEND AND
8 GIRLFRIEND, THE RELATIONSHIP.

9 AND SHE EVEN STATED, I BELIEVE -- I DON'T HAVE
10 THE EXACT PAGE. SHE EVEN STATED THAT, ON PAGE 74, "HE STATED
11 THAT HE DIDN'T CARE AND THEN HE STATED HE DIDN'T CARE WHAT I
12 DID ANYMORE. HE WAS TIRED OF RUNNING FROM THE PROBLEM."
13 THAT IS VERY INDICATIVE OF THE BASIS FOR THAT STATEMENT BY
14 MR. FLANAGAN.

15 IT WAS NO THREAT WHATSOEVER. WHAT THAT WAS WAS
16 JUST SOMEBODY, AS MR. SMITH INDICATED, SOMEBODY THROWING UP
17 HIS HANDS SAYING, "I AM TIRED OF THIS THING." ALL HE DID WAS
18 BASICALLY, AS MR. SMITH SAID, BARE HIS SOUL. THERE WAS NO
19 INTIMIDATION. THAT IS FROM MISS SALDANA. THAT WAS HER
20 TESTIMONY.

21 THE COURT: ANYTHING FURTHER?

22 MR. PIKE: ONE THING, YOUR HONOR. BY THIS TIME
23 SHE WOULD BE A POLICE AGENT AND I THINK WHAT SHE WAS DOING
24 WAS PUMPING HIM TRYING TO GET INFORMATION FOR OFFICER BERNI
25 THAT SHE COULD TURN OVER TO HIM OR THE DISTRICT ATTORNEY'S

1 OFFICE.

2 I THINK ANYTHING BEYOND THE POINT THAT SHE FIRST
3 CONTACTED OFFICER BERNI AND WAS TURNED OVER AT WHICH POINT
4 SHE BECAME A POLICE AGENT AND IT WAS ACTING AS AN ARM OF THE
5 STATE SHOULD BE EXCLUDED IN CONSIDERATION AGAINST MR.
6 FLANAGAN.

7 MR. POSIN: YOUR HONOR, JUST ONE OTHER
8 OBSERVATION. TREATING THIS, WHAT SHE SAID, AS INTIMIDATION
9 AND SEEKING TO KEEP HER IN LINE SEEMS TO BE A GROSS EXTENSION
10 OF THE TESTIMONY THAT WE HEARD FROM THE WITNESS STAND.

11 THERE WAS NOTHING IN THE SENSE OF HER TESTIMONY,
12 LET ALONE THE WORDS OF HER TESTIMONY, THAT WOULD SO INDICATE
13 TO THE COURT.

14 THE COURT: OKAY.

15 MR. HARMON: MAY I SAY SOMETHING BRIEFLY?

16 THE COURT: YES.

17 MR. HARMON: NATURALLY, WE WEREN'T GOING TO HEAR
18 FROM ANGELA SALDANA EXACTLY WHAT WAS IN THE DEFENDANT'S HEAD.
19 IF HE HAD GIVEN UP, IF HE WAS TIRED OF RUNNING, WHY DIDN'T HE
20 TURN HIMSELF INTO THE POLICE.

21 THAT DIDN'T HAPPEN. SO WHAT WE HAVE TO DO IS TO
22 INFER THAT HE HAD OTHER MOTIVES.

23 NOW, IF HE WAS TRYING TO PLACATE HER, IN GIVING
24 HER INFORMATION ABOUT THE KNIFE, THE FACT IS HE HAD GIVEN HER
25 THAT INFORMATION. SHE KNEW THAT, HE KNEW THAT SHE KNEW IT.

1 THEN OBVIOUSLY HE HAS TO SAY SOMETHING TO HER IF SHE IS ON
2 THE VERGE OF LEAVING. FOR ALL HE KNOWS, SHE GOES DIRECTLY TO
3 THE POLICE.

4 IT IS JUST THE TYPE OF AREA WHERE IT SEEMS TO US
5 CERTAIN REASONABLE INFERENCES HAVE TO BE DRAWN.

6 I SAY THERE IS INHERENT INTIMIDATION. WHEN I AM
7 TALKING TO SOMEBODY AND THAT PERSON SAYS, "HOW DO YOU LIKE
8 THIS? I KILLED TWO INDIVIDUALS." ISN'T THAT GOING TO MAKE ME
9 HAVE SECOND THOUGHTS ABOUT WHERE I STAND IN THE RELATIONSHIP
10 AND IF I CROSS THIS INDIVIDUAL WHAT IS LIABLE TO HAPPEN TO
11 ME.

12 THE INTIMIDATION IS INHERENT. NOW, MISS SALDANA
13 DOESN'T HAVE TO ARTICULATE IT.

14 THE COURT: ALL RIGHT. I THINK IN THIS LITTLE
15 EXCHANGE BETWEEN MR. FLANAGAN AND HIS GIRLFRIEND, I THINK
16 IT SPOKE TO TWO ISSUES ESSENTIALLY OR TWO MATTERS OF CONCERN.

17 ONE IS THEIR RELATIONSHIP AS BOYFRIEND-GIRLFRIEND
18 AND THE OTHER IS MR. FLANAGAN'S CONSCIOUSNESS OF THE CRIME
19 THAT OCCURRED, AT LEAST, WHATEVER HIS INVOLVEMENT MIGHT HAVE
20 BEEN AND THE FACT THAT SHE WAS IN CLOSE PROXIMITY AND WOULD
21 HAVE PROBABLY KNOWN SOME FACTS ABOUT IT AS WELL.

22 THE STATEMENT, "I DON'T CARE WHAT YOU DO"
23 ALLEGEDLY MADE BY MR. FLANAGAN TO HIS GIRLFRIEND COULD
24 ADDRESS EITHER ONE OF THOSE ISSUES, BUT MORE LIKELY ADDRESS
25 THE ISSUE OF THE BOYFRIEND-GIRLFRIEND, "GO BACK TO YOUR

1 BOYFRIEND, DO WHATEVER RATHER THAN GO TO THE POLICE."

2 I THINK THERE MIGHT BE TWO REASONABLE
3 INTERPRETATIONS OF THE EFFECT AND THE MOTIVE BEHIND THE
4 STATEMENT. ONE, AS MR. HARMON SAID, TO INTIMIDATE. NO DOUBT
5 ABOUT IT, IT IS AN INTIMIDATING STATEMENT.

6 SECONDLY, TO PUT MISS SALDANA ON NOTICE OF THE
7 SERIOUSNESS OF HIS INVOLVEMENT IF, IN FACT, HE WAS INVOLVED.
8 HE IS SAYING HE WAS INVOLVED AND TO THE MAXIMUM EXTENT.

9 AND I THINK THAT APPLIES TO HER UNDERSTANDING THE
10 CONSEQUENCES. "IF YOU GO TO THE POLICE OR IN SOME WAY YOU
11 DIVULGE INFORMATION." I THINK IT IS IN FURTHERANCE OF THE
12 CONSPIRACY IN THAT IT TENDS TO COVER-UP HIS INVOLVEMENT.

13 15, MR. HARMON.

14 MR. HARMON: YOUR HONOR, 15 ALSO DEALS WITH
15 TESTIMONY OF ANGELA SALDANA. SHE IS INVOLVED IN DISCUSSION
16 AT THE FLANAGAN TRAILER ABOUT TWO WEEKS AFTER THE MURDERS
17 WITH THOMAS AKERS. AND EVIDENTLY SHE WAS CONCERNED ABOUT THE
18 INVOLVEMENT OF THE MAN SHE LIVED WITH.

19 AND THE CONVERSATION IS PRETTY MUCH SET FORTH IN
20 PARAGRAPH 15. SHE EVIDENTLY ASKED AKERS AND HE EQUIVOCATED.
21 HE TOLD HER THAT HE WOULD NOT TELL HER WHETHER FLANAGAN WAS
22 INVOLVED OR NOT. BUT HE WOULD SAY THIS MUCH, IT WASN'T SAFE
23 FOR HER TO REMAIN AT THE TRAILER AND SHE SHOULD LEAVE.

24 YOUR HONOR, THE EVIDENCE HAS ESTABLISHED AKERS
25 WAS PART OF THE CONSPIRACY. THERE IS AN EFFORT IN THIS

1 INSTANCE BY AVOIDING A DIRECT ANSWER TO THE QUESTION OF
2 CONCEALING HIS ROLE AND THAT OF MR. FLANAGAN.

3 AND YET BY ENCOURAGING HER TO LEAVE, IT SEEMS TO
4 US SHE IS BEING GIVEN JUST ENOUGH TO PLACATE HER AND WE
5 MAINTAIN THIS ALSO IS ADMISSIBLE.

6 THE COURT: COUNSEL.

7 MR. SMITH: I THINK THAT WOULD JUST BE LIKE
8 SAYING IF SOMEONE ASKED A CO-CONSPIRATOR, "WHAT DID YOU HAVE
9 TO DO WITH THIS?" AND HE SAYS, "I AM NOT GOING TO TELL YOU."
10 IT IS THE SAME THING. IT DOESN'T FURTHER ANY OBJECTIVE,
11 JUDGE.

12 MR. HANDFUSS: YOUR HONOR, I ALSO JOIN MR. SMITH.
13 IN ADDITION, TO REITERATE WHAT MR. PIKE SAID LAST TIME. IF
14 THE COURT WILL RECALL MY CROSS-EXAMINATION OF MISS SALDANA,
15 SHE STATED THAT SHE CALLED THE POLICE, THAT SHE SPOKE TO
16 OFFICER BERNI, FORMER BOYFRIEND OF HERS. SHE SPOKE TO
17 BEECHER AVANTS.

18 THAT IT WAS HER STATEMENT AS RELATED WITH HER
19 CONVERSATION WITH THE POLICE AUTHORITIES THAT SHE WOULD GO
20 AHEAD AND SHE WOULD TRY TO LEARN WHATEVER ELSE SHE COULD.
21 SHE WAS GOING TO TURN OVER WHATEVER OTHER INFORMATION SHE
22 COULD TO THE POLICE AUTHORITIES, THE DISTRICT ATTORNEY,
23 POLICE DEPARTMENT, THE INVESTIGATION DIVISION.

24 AND SHE SAID THAT SHE SPECIFICALLY LIED ON THE
25 PHONE TO MR. AKERS IN THAT CONVERSATION FROM JAIL JUST TO GET

1 HIM TO TRUST HER AND JUST SO SHE CAN GET MORE INFORMATION SO
2 THAT SHE COULD TURN AROUND AND GIVE IT TO THE POLICE.

3 I AGREE WITH MR. PIKE, THAT ANYTHING THAT THIS
4 SPECIFIC PARAGRAPH AND ALL CONVERSATIONS FROM THERE ON ARE
5 BASICALLY POLICE AGENT CONVERSATIONS. AND SINCE THERE IS NO
6 BASIC DISCOVERY, SINCE THEY ARE POLICE AGENT STATEMENTS, I
7 WOULD ASK THE COURT TO NOT ADMIT THEM.

8 THE COURT: MR. PIKE.

9 MR. PIKE: JOIN IN BOTH OF THE ARGUMENTS OF
10 COUNSEL.

11 THE COURT: MR. POSIN.

12 MR. POSIN: ME, TOO, YOUR HONOR.

13 THE COURT: CONCERNING THE THEORY OF AGENCY, I
14 FIND THE TESTIMONY DOES NOT SUBSTANTIATE THAT. MISS SALDANA
15 INDICATED SHE WAS ACTING ON HER OWN VOLITION. THE OFFICER
16 TOLD HER TO PUT THE KNIFE BACK AND STAY OUT OF HARM'S WAY,
17 IN ESSENCE.

18 THE OFFICER DIDN'T DIRECT HER AND SHE, FOR
19 WHATEVER REASON, DECIDED TO FOLLOW THE MATTER UP.

20 NOW, CONCERNING THE QUESTION OF THE STATEMENT.
21 AGAIN, I SEE NO WAY HOW SUCH A STATEMENT COULD FURTHER THE
22 CONSPIRACY. NOW, IT WOULD BE DISALLOWED ON THAT BASIS.

23 GENTLEMEN, WE ARE GOING TO CALL A RECESS AT THIS
24 POINT. I HAVE A PLACE I HAVE TO BE ALTHOUGH WE WILL RESUME
25 AS EARLY AS POSSIBLE AND GET THIS CONCLUDED.

1 LET US TRY TO BE BACK HERE AT QUARTER AFTER ONE.
2 IS THAT AGREED? NOW, DOES ANYONE HAVE ANYTHING IN JUSTICE
3 COURT OR ANY PROBLEMS?

4 MR. PIKE: I HAVE ONE BUT I HAVE -- I GOT IT
5 CONTINUED THIS MORNING.

6 THE COURT: WE WILL TRY TO BE HERE QUARTER AFTER
7 ONE.

8 (RECESS TAKEN.)

9 THE COURT: THE CONTINUATION OF CASE C69269,
10 STATE OF NEVADA VERSUS DALE FLANAGAN, RANDOLPH MOORE, JOHN
11 LUCKETT AND ROY MCDOWELL. THE RECORD WILL REFLECT THE
12 PRESENCE OF EACH OF THE DEFENDANTS, THEIR RESPECTIVE COUNSEL,
13 MR. HARMON AND MR. SEATON REPRESENTING THE STATE. COUNSEL.

14 MR. HARMON: THANK YOU, YOUR HONOR. I THINK WE
15 WERE DOWN TO PARAGRAPH 16. YOUR HONOR, WITHOUT BELABORING
16 THE POINT, THIS ACCORDING TO SALDANA WAS INFORMATION SHE
17 SOUGHT.

18 EVIDENTLY, HER UNCLE AND AUNT HAD BEEN CURIOUS
19 ABOUT THE DISPOSAL OF THE GUNS AND SO AT THEIR REQUEST SHE
20 MADE SURE SHE ASKED THIS QUESTION OF AKERS. AND HIS RESPONSE
21 WAS THAT THE GUNS HAD BEEN PUT IN A POND OR LAKE.

22 IT'S OUR POSITION THAT THEY ARE IN FURTHERANCE
23 BECAUSE, AS WE ARGUED THIS MORNING, WE BELIEVE THAT
24 GOLDSMITH, AT LEAST WITHIN FACTUAL CIRCUMSTANCES ANALOGOUS TO
25 THAT CASE, STANDS FOR THE PROPOSITION THAT WHILE THE

1 STATEMENT ITSELF MAY NOT FURTHER, IF THE STATEMENT REFERS TO
2 ACTIONS WHICH DID FURTHER THE CONSPIRACY, THEN IT IS
3 ADMISSIBLE.

4 THE COURT: THANK YOU. COUNSEL.

5 MR. SMITH: YOUR HONOR, I WILL SUBMIT THE MATTER
6 ON THE ARGUMENTS PREVIOUSLY MADE.

7 MR. HANDFUSS: ALSO JOIN, YOUR HONOR.

8 MR. PIKE: THE ONLY ADDITION I MAKE IS NOW THAT
9 THOMAS AKERS HAS BECOME A WITNESS OF THE STATE, I THINK THE
10 BEST EVIDENCE WOULD JUST HAVE MR. AKERS TESTIFY ABOUT WHAT HE
11 DID WITH IT AND NOT ABOUT WHAT WAS SAID.

12 THAT IS JUST ATTEMPTING TO CORROBORATE WHAT MR.
13 AKERS IS GOING TO TESTIFY TO, WHAT HIS ACTIONS WERE, NOT HIS
14 KNOWLEDGE.

15 MR. POSIN: I WILL JOIN IN THE ARGUMENT.

16 THE COURT: OVER THE LUNCH HOUR, I HAVE HAD
17 OCCASION TO LOOK INTO THE GOLDSMITH CASE ONCE AGAIN AND IT
18 HAS MERELY REAFFIRMED MY INITIAL INTERPRETATION AND THE LAW
19 THAT IT ESPOUSES.

20 I DO NOT SEE THAT THOSE REPRESENTATIONS SET OUT
21 IN PARAGRAPH 16 FURTHER IN ANY WAY THE CONSPIRACY AND BASED
22 ON THE PARAMETERS THAT I CHOOSE TO UTILIZE, THEY WOULD BE
23 DISALLOWED ON THAT BASIS.

24 I BELIEVE 17, COUNSEL, YOU CONCEDED.

25 MR. HARMON: YES, YOUR HONOR.

1 THE COURT: 18, PLEASE.

2 MR. HARMON: YOUR HONOR, IF THE COURT PLEASE, I
3 THINK WE CAN PROBABLY CONSIDER PARAGRAPHS 18, 19 AND 20
4 TOGETHER. THEY RELATE TO DIFFERENT CONVERSATIONS BUT IN EACH
5 INSTANCE IT WAS MICHELLE GRAY WHO WAS REFERRING TO
6 CONVERSATIONS SHE HAD WITH THE DEFENDANT.

7 AND HE IS COMPLAINING THAT HE IS NOT GETTING
8 ALONG WITH HIS GRANDPARENTS. HE SAID ON ONE OCCASION IF IT
9 WASN'T FOR HER, HE COULD KILL HIS GRANDFATHER.

10 HE SAYS ON ANOTHER OCCASION THAT THEY DON'T CARE
11 FOR HIS FRIENDS. IN SO MANY WORDS, HE IS DESCRIBING HIS
12 MOTIVE. IN PARAGRAPH 20, HE IS SAYING THAT HE WOULD KILL
13 THEM IF IT CAME DOWN TO IT.

14 APPARENTLY, AFTER HE HAD SAID HE WOULDN'T
15 HESITATE TO DO IT, SHE SAID THAT WOULDN'T ACCOMPLISH ANYTHING
16 AND THEN HE CHANGED THE SUBJECT.

17 YOUR HONOR, IT'S OUR POSITION THAT EVIDENTLY
18 MICHELLE GRAY WAS A RATHER CLOSE FRIEND OF THE DEFENDANT. I
19 WOULD SAY THAT THIS FURTHERS THE CONSPIRACY BECAUSE FROM ALL
20 INTERPRETATIONS OF THE EVIDENCE BEFORE US, I THINK MR.
21 FLANAGAN, AGAIN BECAUSE HE WAS THE BLOOD RELATIVE, HAS TO BE
22 DESCRIBED AS THE PERSON WHO CONCEIVED OF THE PLAN.

23 HE, IN FACT, AS THE INSTIGATOR, IS THE PERSON WHO
24 CAN CERTAINLY DERAIL IT IF HE IS CONVINCED IT IS NOT
25 PRACTICABLE. AND I SUGGEST TO THE COURT THROUGH HIS CLOSE

1 FRIEND IN COMPLAINING ABOUT THE GRIEVANCES HE HAD TOWARDS HIS
2 GRANDPARENTS, HE WAS SEEKING FOR MORAL JUSTIFICATION FROM
3 HER.

4 HE IS LOOKING FOR AN ALLY. HE IS LOOKING FOR
5 SOMEONE WHO WILL SUPPORT HIM IN WHAT HE PERCEIVES TO BE A
6 RIGHTEOUS CAUSE. IN THAT SENSE, YOUR HONOR, WE CERTAINLY
7 ARGUE THAT IT DID FURTHER THE CONSPIRACY.

8 THE COURT: THANK YOU. COUNSEL.

9 MR. SMITH: YOUR HONOR, I HAVE TO THINK THAT IT
10 IS REALLY PURE SPECULATION AS TO WHAT HIS MOTIVATION IN
11 TALKING ABOUT HIS FEELINGS WERE. I DON'T SEE HOW IT FURTHERS
12 ANY OBJECTIVE OR HOW THIS STATEMENT IS INTENDED TO ELICIT ANY
13 SUPPORT FOR THE OBJECTIVES.

14 ONCE AGAIN, I THINK IT IS JUST GRATUITOUS
15 COMMENTS AND I DON'T SEE ANY GUARANTEE OF TRUSTWORTHINESS IN
16 IT OR HOW THOSE STATEMENTS SHOULD BE HELD ACCOUNTABLE AGAINST
17 MY CLIENT.

18 AT LEAST, MR. LUCKETT THERE IS NO EVIDENCE HE WAS
19 AWARE OF THIS PLAN OR FLANAGAN'S FEELINGS UNTIL THE NIGHT IN
20 QUESTION. ONCE AGAIN, ASSERT THE SAME ARGUMENTS THAT I HAVE
21 MADE.

22 THE COURT: VERY WELL.

23 MR. HANDFUSS: I JOIN WITH MR. SMITH. IN
24 ADDITION, PARAGRAPH 18 IS REALLY NO DIFFERENT THAN PARAGRAPH
25 NUMBER 10 THAT YOUR HONOR DISALLOWED AS TO LISA LICATA'S

1 STATEMENT.

2 PARAGRAPH 18 IS EVEN LESS RELIABLE THAN PARAGRAPH
3 10 BECAUSE HERE FLANAGAN SUPPOSEDLY SAYS IF HE COULD, HE
4 WOULD KILL HIS STEP-GRANDFATHER. PARAGRAPH 10, HE SUPPOSEDLY
5 SAYS HE HAS A PLAN IN THE SAME AMOUNT OF TIME.

6 JUST A COUPLE OF DAYS, PARAGRAPH 10 AND PARAGRAPH
7 18 OCCUR WITHIN EACH OTHER. AND I WOULD ASK THE COURT TO
8 FOLLOW THE SAME REASONING IT USED IN EXCLUDING PARAGRAPH 10
9 AND, THEREFORE, ALSO EXCLUDE PARAGRAPH 18 FOR THOSE SAME
10 REASONS.

11 THE COURT: 18, 19 AND 20 ARE AT ISSUE?

12 MR. HANDFUSS: YES, YOUR HONOR, ALL OF THEM.

13 THE COURT: COUNSEL.

14 MR. PIKE: JOIN WITH THE PREVIOUS COMMENTS.

15 MR. POSIN: WE WILL ALSO JOIN.

16 THE COURT: CONCERNING PARAGRAPHS 18, 19 AND 20,
17 I AM AT A LOSS TO DETERMINE HOW THE RELATING TO MICHELLE GRAY
18 FLANAGAN'S PLANS IS IN FURTHERANCE OF THE CONSPIRACY IN ANY
19 WAY.

20 SEEKING MORAL JUSTIFICATION DOES NOT IN MY
21 JUDGMENT FURTHER THE CONSPIRACY. THEY WILL NOT BE ALLOWED AS
22 AN EXCEPTION TO HEARSAY UNDER CONSPIRACY REPRESENTATIONS.

23 AND WE ARE AT 21, COUNSEL.

24 MR. HARMON: YOUR HONOR, WITHOUT ARGUMENT, IT
25 APPEARS THAT THE COURT HAVING RULED ON PARAGRAPH 15 AND I

1 THINK DISALLOWING IT, THAT PROBABLY ALTHOUGH OUR POSITION
2 REMAINS THE SAME THAT IT SHOULD BE ADMITTED, I SUSPECT THAT
3 21 FALLS INTO THE SAME CATEGORY AS 15.

4 THE COURT: THANK YOU. YES, THE ISSUE IS VERY
5 SIMILAR HERE. ANY COMMENTS, COUNSEL?

6 MR. PIKE: NONE, YOUR HONOR.

7 MR. POSIN: NONE, YOUR HONOR.

8 THE COURT: FOR THE REASONS THAT WERE ESPOUSED IN
9 MY DISALLOWING 15, 21 WILL BE DISALLOWED SIMILARLY. 22.

10 MR. HARMON: 22, YOUR HONOR, DEALS AGAIN WITH THE
11 KNIFE. I THINK IT AGAIN REFLECTS THE MENTALITY OF MR.
12 FLANAGAN. HE WAS SEEKING TO COVER UP WHAT HAD OCCURRED.

13 AS THE SYNOPSIS INDICATES, HE APPROACHED MICHELLE
14 GRAY. THIS WAS ABOUT FOUR DAYS AFTER THE CRIMES HAD BEEN
15 COMMITTED AT HER RESIDENCE.

16 HE INDICATES THAT HIS KNIFE HAD SOMEHOW BEEN LEFT
17 AT THE SCENE OF THE CRIME AND IF ANYONE ASKED TO SAY HE HAD
18 BEEN CARRYING IT WITH HIM ALL THE TIME.

19 CLEARLY, HE HAS SOLICITED HER SUPPORT IN COVERING
20 UP A PIECE OF EVIDENCE WHICH TIED HIM TO THE CRIME SCENE AND
21 FOR THAT REASON, IT'S OBVIOUSLY IN FURTHERANCE OF THE
22 CONSPIRACY.

23 THE COURT: COUNSEL.

24 MR. SMITH: I DON'T THINK THE SITUATION IS ANY
25 DIFFERENT THAN THE SITUATION WE PREVIOUSLY DISCUSSED WITH

1 REFERENCE TO THE KNIFE AND I HAVE THE SAME OBJECTION, YOUR
2 HONOR.

3 THE COURT: VERY GOOD.

4 MR. HANDFUSS: I JOIN.

5 MR. PIKE: I JOIN.

6 MR. POSIN: YES.

7 THE COURT: AS I INDICATED, IN MY OPINION THINGS
8 THAT ARE DONE IN AN EFFORT TO AVOID BEING FOUND OUT OR BEING
9 CAUGHT AND PROSECUTED, PARTICULARLY IN THE FACTS OF THIS CASE
10 AND HOW THEY APPLY, IT IS IN FURTHERANCE AND THIS IS CLEARLY
11 IN FURTHERANCE WITH THAT RATIONALE BEING APPLIED SO 22 --

12 MR. HARMON: 23.

13 THE COURT: 22 WOULD BE AN EXCEPTION TO THE
14 HEARSAY RULE. 23.

15 MR. HARMON: YOUR HONOR, 23 INVOLVES TESTIMONY OF
16 MEHLIA MOORE. SHE ESTIMATED THAT THE CONVERSATION WAS ON
17 NOVEMBER THE 12TH, '84. DEFENDANTS MOORE AND LUCKETT WERE
18 PRESENT ALONG WITH MR. MOORE'S GIRLFRIEND.

19 RANDY MOORE SAID THAT THEY HAD TO GO TO THE LAKE
20 TO TAKE CARE OF SOME BUSINESS. FROM THAT STATEMENT ALONE, WE
21 ARE NOT SURE WHAT BUSINESS IT WAS, BUT FROM THE TOTALITY OF
22 THE EVIDENCE, WE MAY REASONABLE INFER IT WAS TO DISPOSE OF
23 THE GUNS.

24 THIS, LIKE SOME OF THE OTHER STATEMENTS, IN AND
25 OF ITSELF A STATEMENT GIVEN TO MEHLIA MOORE MAY NOT FURTHER

1 THE CONSPIRACY. BUT THE FACT IS BY THE GOLDSMITH STANDARD,
2 IT RELATES TO CONDUCT WHICH THEY CONTEMPLATE DOING WHICH DOES
3 FURTHER THE CONSPIRACY.

4 THE COURT: OKAY. COUNSEL.

5 MR. SMITH: YOUR HONOR, I WOULD AGREE WITH MR.
6 HARMON. I THINK THAT THE STATEMENT IS INHERENTLY AMBIGUOUS
7 WITH RESPECT AS TO SOME BUSINESS. THERE ARE SOME OTHER
8 RELATED PROBLEMS. I GUESS WE CAN ADDRESS IT.

9 WE MENTIONED THE INHERENT UNRELIABILITY OF MISS
10 MOORE'S TESTIMONY. I THINK IN LIGHT OF THAT FACT AND ALSO
11 THE FACT THIS IS APPARENTLY THE SAME INCIDENT THAT LUCAS WILL
12 TESTIFY TO, THAT IT COULD BE CONSTRUED AS CUMULATIVE.

13 AND I WILL SUBMIT IT ON THAT BASIS. I THINK WE
14 ARE GETTING INTO A REAL CAN OF WORMS WITH MISS MOORE AND I
15 THINK THE COURT PERHAPS SHOULD, IF THAT IS ALL THEY ARE
16 OFFERING HER FOR IS THIS ONE INCIDENT, CONCEDE 24 WILL NOT BE
17 ADMISSIBLE. I REALLY DON'T SEE ANY NEED FOR IT.

18 MR. HANDFUSS: I WOULD JOIN, YOUR HONOR. AND AS
19 THE COURT WILL REMEMBER, HER TESTIMONY APPEARS TO BE
20 INHERENTLY UNRELIABLE. IN ADDITION, TO HOLD A VAGUE AND
21 AMBIGUOUS STATEMENT, WITHOUT FURTHER FOUNDATION AS TO WHAT
22 SOME BUSINESS MEANS, ADMISSIBLE WHEN MR. MCDOWELL WASN'T
23 THERE, I WOULD ASK THE COURT NOT TO ADMIT THIS STATEMENT.

24 MR. PIKE: SAME OBJECTIONS, YOUR HONOR.

25 THE COURT: THANK YOU.

1 MR. POSIN: I WOULD BELIEVE, IF YOUR HONOR
2 PLEASE, TO SUBMIT TO THE COURT, THAT THIS WILL BE THE LEAST
3 PROBLEMATIC DETERMINATION FOR THE COURT TO MAKE IN TERMS
4 OF EXCLUDING EVIDENCE. THIS CLEARLY SHOULD BE EXCLUDED.

5 THE COURT: I DON'T THINK IT PARTICULARLY TAXES
6 ONE'S IMAGINATION TO UNDERSTAND WHAT BUSINESS IS BEING
7 ALLUDED TO HERE. I DON'T HAVE A PROBLEM WITH THAT
8 PARTICULARLY.

9 HOWEVER, MR. HARMON INDICATES THAT THE STATEMENT
10 REFERS TO CONDUCT WHICH IS IN FURTHERANCE TO THE CONSPIRACY
11 AND AS I HAVE INDICATED, THAT DOESN'T RISE TO THE TEST
12 IMPLYING IT MUST IN ITSELF FURTHER THE CONSPIRACY.

13 AND TO MY WAY OF THINKING MERELY RELATING TO
14 SOMEONE THEY ARE GOING TO THE LAKE TO TAKE CARE OF BUSINESS
15 DOES NOT FURTHER THE CONSPIRACY PER SE. IT WILL BE
16 DISALLOWED ON THE BASIS OF THE EXCEPTION OF THE HEARSAY RULE.

17 COUNSEL, I BELIEVE YOU CONCEDED TO 24 AS WELL.

18 MR. HARMON: YES, YOUR HONOR.

19 THE COURT: GOING BACK TO ONE OF THE PARAGRAPHS
20 THAT I INDICATED I WOULD NOT RULE ON AT THE TIME, 8. IF
21 THERE IS ANYTHING ELSE TO BE SAID THERE, I WOULD ENTERTAIN
22 ARGUMENT.

23 I THINK THAT INITIALLY, AT LEAST, MY FEELING IS
24 AS FOLLOWS. IF THERE WERE DIRECTIONS TO BURN OR TO DISPOSE
25 OF PROPERTY, IDENTIFICATION, PHOTOS, PURSE, WHATEVER IT MIGHT

1 BE, OR ANY INSTRUCTIONS IN REGARD TO ANYTHING AFTER THEY
2 RETURNED ALLEGEDLY TO THE APARTMENT IN ORDER TO AVOID BEING
3 DETECTED AND AVOID PROSECUTION AND ULTIMATELY BEING BROUGHT
4 TO TRIAL, CERTAINLY IT IS IN FURTHERANCE.

5 THE MERE SITTING ABOUT IN THE APARTMENT RECOUNTING
6 WHAT THEY HAD DONE AND GLOATING OVER IT OR DISCUSSING IT OR
7 WHATEVER YOU MIGHT WANT TO DETERMINE IT AS, IS NOT IN
8 FURTHERANCE PER SE TO THE CONSPIRACY.

9 NOT TO SAY THIS MIGHT NOT BE ALLOWED UNDER SOME
10 OTHER EXCEPTION TO THE HEARSAY RULE BUT MY INITIAL OPINION IS
11 THAT IT IS NOT IN FURTHERANCE.

12 I WOULD ENTERTAIN ANY ARGUMENT CONTRARY TO THAT,
13 COUNSEL.

14 MR. HARMON: YOUR HONOR, I AM NOT SURE THAT IT
15 WOULD BE FURTHER ARGUMENT ON THE ISSUE OF FURTHERANCE. I DO
16 WANT TO POINT OUT THAT LUCAS AND AKERS ARE IN THE POSITION OF
17 DESCRIBING THE SAME CONDUCT AND THE SAME CONVERSATIONS
18 AFTERWARDS.

19 AND WHILE LUCAS WAS NOT AS EXPLICIT ON THE
20 SUBJECT OF WHERE THE VARIOUS PARTIES WERE, AKERS IS VERY
21 SPECIFIC.

22 HE SAYS ALL SIX PERSONS WERE SEATED IN THE
23 KITCHEN. THEY WERE TALKING TOGETHER. HE SAID THE ADRENALIN
24 WAS FLOWING, THEY WERE EXCITED AND THEY WERE CHIMING IN WITH
25 WHAT THEY DID.

1 YOUR HONOR, IT IS HARD TO SEPARATE THE STATEMENTS
2 FROM THINGS THAT WERE HAPPENING, THE PRODUCTION OF THE
3 WALLET, THE IDENTIFICATION, THE PHOTOGRAPHS WHICH WERE
4 BURNED.

5 IT SEEMS TO ME THAT THIS IS SO APPROXIMATE TO THE
6 TIME OF THE CRIME. WE ARE TALKING ABOUT THE CONSPIRATORS
7 THEMSELVES WITH THE EXCEPTION OF LUCAS AND HE KNEW WHAT WAS
8 HAPPENING FROM WHAT OCCURRED BEFORE.

9 IT IS DIFFICULT FOR ME TO CONCEIVE UNDER ANY OF
10 THE CASES CITED BY EITHER THE DEFENSE OR THE PROSECUTION HOW
11 ALL OF THIS IS NOT ADMISSIBLE AS FURTHERING THE CONSPIRACY.

12 AND THEN WE HAVE OTHER EXCEPTIONS, ADOPTIVE
13 ADMISSIONS, EXCITED UTTERANCES, I THINK BEASLEY. THERE ARE
14 ANY NUMBER OF EXCEPTIONS THAT UNDOUBTEDLY WILL MAKE THIS
15 ADMISSIBLE.

16 IT WAS FURTHERMORE OUR UNDERSTANDING THAT THE
17 COURT HAD INDICATED IN THE ANALOGOUS PARAGRAPH WHICH RELATES
18 TO AKERS THAT ALL OF THAT WOULD BE ADMISSIBLE AS FURTHERING
19 THE CONSPIRACY.

20 THE COURT: WHICH PARAGRAPH?

21 MR. HARMON: YOUR HONOR, THAT WOULD BE PARAGRAPH
22 5. IF THE ARGUMENT IS MADE IT IS CUMULATIVE, WELL, OF
23 COURSE, MANY TIMES IF YOU HAVE THREE EYEWITNESSES TO A CRIME
24 AND YOU CALL THEM ALL, YOU COULD ARGUE IT IS CUMULATIVE.

25 BUT THE RESPONSE TO THAT IS THAT THE TESTIMONY OF

1 ONE, THAT OF AKERS, WILL CORROBORATE LUCAS AND THE TESTIMONY
2 OF LUCAS WILL GO A LONG WAYS TOWARD CORROBORATING THAT OF
3 AKERS.

4 THE COURT: ALL RIGHT. THANK YOU FOR BRINGING
5 PARAGRAPH 5 TO MY ATTENTION. MY THINKING THERE WAS THAT THE
6 PORTION OF THE TESTIMONY CONCERNING THE DRIVING, WHATEVER
7 TRANSPIRED AFTER THE ALLEGED INCIDENT IN AN EFFORT TO GET
8 AWAY FROM THE AREA -- I BELIEVE THERE WAS SOME MENTION OF A
9 DIGGING A HOLE OR PERHAPS --

10 MR. HARMON: THERE WAS. IN FACT, THEY DUG A
11 HOLE.

12 THE COURT: ALL OF THAT SORT OF THING IN MY
13 ESTIMATION IS PART OF TRYING TO ESCAPE DETECTION AND
14 PROSECUTION. NOW, TO WHATEVER EXTENT IN PARAGRAPH 5 MR.
15 AKERS MIGHT TESTIFY TO, THAT THEY SAT AROUND THEREAFTER OR
16 DURING THE PERIOD AND ALLUDED TO WHAT THEY HAD DONE FOR THE
17 PURPOSE OF AGAIN BRAGGING OR JUST RELIVING IT, I DON'T KNOW
18 THAT IS IN FURTHERANCE.

19 MR. HARMON: MR. LUCAS IS THERE. HE HEARD WHAT
20 WAS GOING TO HAPPEN BEFOREHAND. HE DIDN'T GO TO THE SCENE.
21 HERE IS A GUY AWAKENED. THEY HAD TO GO SOMEWHERE.

22 SO THEY HAVE COME IN AND IN HIS PRESENCE THEY ARE
23 BURNING PHOTOGRAPHS AND IDENTIFICATION AND THEY ARE LOOKING,
24 EVEN THOUGH IT IS A SMALL AMOUNT, AT MONEY THAT THEY HAVE
25 TAKEN FROM THE SCENE.

1 CERTAINLY, THERE IS AN INTIMIDATION FACTOR HERE,
2 TOO. CERTAINLY, THESE PEOPLE DON'T WANT MR. LUCAS RUNNING
3 OUT TO EXPLAIN WHAT HE KNOWS TO THE POLICE.

4 SO IT IS A REASONABLE ARGUMENT THAT THEY TELL IN
5 HIS PRESENCE WHAT HAS OCCURRED SO HE APPRECIATES THE
6 SERIOUSNESS OF WHAT HAS OCCURRED, SO HE IS PART OF THE GROUP.
7 AND, IN A SENSE, IS UP TO HIS NECK IN THIS AND THERE IS
8 NOTHING NOW THAT HE CAN DO ABOUT IT.

9 THE COURT: THAT IS ARGUMENT THAT HADN'T BEEN
10 MADE PREVIOUSLY. MR. SMITH.

11 MR. SMITH: YOUR HONOR, I AGREE WITH YOUR INITIAL
12 INCLINATION WITH RESPECT TO THESE STATEMENTS. IF THEY ARE
13 SIMPLY REMARKING WHAT HAS HAPPENED, IT DOESN'T FURTHER AN
14 OBJECTIVE OF THE CONSPIRACY.

15 IF MR. LUCAS COULD COME IN AND SAY THAT HE WAS
16 SPECIFICALLY TOLD DON'T GO TO THE POLICE, THAT'S ONE THING.

17 BUT FOR US TO SIMPLY INFER THAT THE COMMENTS MADE
18 BY VARIOUS CODEFENDANTS CAN BE ADMISSIBLE AGAINST OTHER
19 PEOPLE, THERE HAS TO BE SOME GUARANTEE OF TRUSTWORTHINESS AND
20 TRUTHFULNESS.

21 AND, ONCE AGAIN, I HAVE TO REITERATE MY STRONG
22 CONCERNS THAT THERE WAS A LEGITIMATE ATTEMPT TO SHIFT THE
23 BLAME IN THIS CASE. AND PARTICULARLY IN THIS AREA I THINK
24 THE COURT SHOULD FOCUS ON NOT ONLY THE CO-CONSPIRATOR
25 EXCEPTION BUT ALSO SIXTH AMENDMENT CONCERNS.

1 AND I THINK WHEN VARIOUS CODEFENDANTS, NOT
2 NECESSARILY IN EARSHOT OF OTHER CODEFENDANTS, ARE MAKING
3 STATEMENTS ABOUT WHAT OTHER PEOPLE DID, THEN THE SIXTH
4 AMENDMENT CONCERNS ARE OF PARAMOUNT IMPORTANCE.

5 NO ONE HAS YET TESTIFIED THAT THEY COULD SAY FOR
6 SURE AT LEAST THAT MY CLIENT OVERHEARD ANY OF THESE
7 CONVERSATIONS THAT WERE MADE IN LUCAS'S PRESENCE, THAT HE
8 OVERHEARD. AND I THINK FOR THOSE STATEMENTS TO BE USED
9 AGAINST HIM COULD BE PREJUDICE OF THE HIGHEST ORDER. I THINK
10 THEY SHOULD BE EXCLUDED.

11 THE COURT: THANK YOU. MR. HANDFUSS, ANYTHING?

12 MR. HANDFUSS: I WOULD JOIN WITH MR. SMITH. ONE
13 OTHER THING. THE STATE HAS ALLUDED SEVERAL TIMES TO THIS
14 INTIMIDATION FACTOR. I THINK THIS IS MERELY AN ATTEMPT TO
15 TRY BOOTSTRAPPING THIS OTHERWISE INADMISSIBLE EVIDENCE IN
16 ON THIS TYPE OF ARGUMENT, POSSIBLE INTIMIDATION.

17 MR. LUCAS TESTIFIED AT THE PRELIMINARY HEARING,
18 HE'S TESTIFIED HERE. HE'S TESTIFIED IN HIS STATEMENTS. AT
19 NO TIME DID HE EVER SAY THAT ANYBODY, AT LEAST NONE OF THESE
20 DEFENDANTS OR SPEAKING FOR MR. MCDOWELL, HAD EVER TRIED TO
21 INTIMIDATE HIM OR THREATEN HIM NOT TO SAY ANYTHING.

22 I WOULD ASK THE COURT TO FOLLOW ITS INITIAL
23 REACTION TO THIS EVIDENCE AND SPECIFICALLY NOT PAY ATTENTION
24 TO ANY INTIMIDATION ARGUMENT THAT THE STATE MAY BRING FORTH.

25 THE COURT: COUNSEL.

1 MR. PIKE: THE TWO STATEMENTS DIFFER
2 SIGNIFICANTLY. THE CRUX OF THE WHOLE THING IS WHAT WAS GOING
3 ON DURING THE TIME FROM SOMEONE THAT WAS SUPPOSEDLY THERE AS
4 OPPOSED TO JUST MR. LUCAS WHO WAITED THERE AT THE PLACE WHERE
5 THEY WENT AND WERE SAFE.

6 AS FAR AS ANY ARGUMENT FOR EXCITED UTTERANCE, AN
7 EXCITED UTTERANCE, NRS 51.095, IS ONLY ADMISSIBLE WHEN THE
8 STATEMENT RELATING TO STARTLING EVENTS OR UNDER THE STRESS OF
9 EXCITEMENT CAUSED BY THE EVENT, THAT WOULD BE SOMETHING THAT
10 OCCURRED WHILE HE WAS THERE.

11 IF ONE SHOUTED AND THE THIRD PERSON OVERHEARD IT
12 LIKE, "TOMMY, GET THE GUN" OR SOMETHING LIKE THAT, THAT WOULD
13 BE EXCITED UTTERANCE. NOT COMING BACK, BEING AT A PLACE OF
14 SAFETY AND SITTING TOGETHER AND TALKING.

15 MR. POSIN: WE WILL ENDORSE THE ARGUMENT OF
16 COUNSEL.

17 MR. HARMON: MAY I SAY ONE THING FURTHER?

18 THE COURT: YOU MAY.

19 MR. HARMON: MR. SMITH SAYS IT IS REHASH. THERE
20 AREN'T ANY EYEWITNESSES. THIS ISN'T A REHASH AT ALL AS TO
21 EXACTLY WHAT HAPPENED AT THE TIME OF THE SHOOTING. AKERS IS
22 NOT A WITNESS OF THAT AND NEITHER IS LUCAS.

23 THESE ARE PEOPLE WHO ARE DESCRIBING CONVERSATION
24 WHICH IS OCCURRING AT THE VERY TIME EVIDENCE IS BEING
25 DESTROYED. HOW CAN YOU REASONABLY DISTINGUISH ONE FROM THE

1 OTHER. MR. SMITH AND MR. HANDFUSS SAY WE HAVE A SIXTH
2 AMENDMENT CONFRONTATION PROBLEM.

3 THE FACT REMAINS AKERS AND LUCAS ARE OBVIOUSLY
4 DESCRIBING THE SAME THING AND AKERS HAS SAID ALL SIX WERE
5 SEATED TOGETHER, THAT THEY ARE IN THE KITCHEN. THEY ARE
6 OBVIOUSLY WITHIN HEARING DISTANCE. THEY ARE OBVIOUSLY
7 ADOPTING THE STATEMENTS OF ONE ANOTHER.

8 THERE IS NO TESTIMONY THAT WHEN LUCKETT SAYS, "I
9 DID THIS AND THAT," AND MCDOWELL SAYS, "THIS IS WHAT I DID,"
10 THAT SOMEBODY ELSE SAYS, "NO, THAT'S WRONG."

11 SO THERE ISN'T AN CONFRONTATION PROBLEM, YOUR
12 HONOR. IT IS EVIDENT THAT THESE ARE CONSPIRATORS WHO ARE
13 CONCEALING WHAT THEY HAVE DONE. THEY ARE DESTROYING EVIDENCE
14 AND THEY ALSO HAD THE FACTOR OF ANOTHER WITNESS THAT THEY
15 WANT TO DRAW FURTHER INTO THE CONSPIRACY. I SPEAK OF LUCAS.

16 THE COURT: MR. HARMON, CONCERNING THIS ARGUMENT
17 OF EXCITED UTTERANCE. I REALIZE YOU DIDN'T MAKE THAT
18 ARGUMENT PER SE BUT IT WAS RESPONDED TO AS IF YOU HAD. I
19 KNOW YOU DID ALLUDE TO SOME EXTENT. HOW MUCH TIME HAD
20 EVOLVED THERE BETWEEN THE ALLEGED EVENTS AND THE
21 CONVERSATION, DO YOU RECALL?

22 MR. HARMON: YOUR HONOR, I AM NOT SURE THAT THE
23 RECORD CLEARLY INDICATES. WHAT WE HAVE INTO THE RECORD IS
24 LUCAS SAYING THAT HE THINKS THE CONVERSATIONS OCCURRED
25 BETWEEN 10:30 AND 11:00. AND THEN HE FELL ASLEEP AND THE

1 NEXT THING HE KNOWS IS THE KNOCK ON THE DOOR AND HE ESTIMATES
2 IT WAS BETWEEN 1:00 AND 1:30 IN THE MORNING.

3 WE HAVE AKERS DESCRIBING WHAT THEY DROVE. IT IS
4 TRUE THAT THEY STOPPED FOR A PERIOD OF TIME AND CARTRIDGES
5 WERE DISPOSED OF AND A HOLE WAS DUG, BUT I THINK WE MAY INFER
6 AFTER THAT THE PARTIES WENT DIRECTLY BACK TO THE APARTMENT.

7 I THINK THE TIMING DEPENDS UPON WHAT WE ARE
8 TALKING ABOUT. THESE AREN'T PEOPLE WHO JUST SAW A ROBBERY.
9 THEY AREN'T PEOPLE WHO JUST HAD SOMEBODY TAKE A SHOT AT THEM.
10 THESE ARE PEOPLE WHO ALLEGEDLY HAVE JUST COMMITTED A DOUBLE
11 MURDER.

12 AND THE UNREBUTTED TESTIMONY AT THIS POINT IS
13 THAT THEY WERE ALL SEATED THERE, THEY WERE TALKING AT A QUICK
14 PACE, THEY WERE EXCITED. A LOT OF ADRENALIN PUMPING. THAT
15 IS AN EXACT QUOTE FROM THE RECORD.

16 SO IN RESPONSE TO THE DEFENSE ARGUMENT, I SAY
17 THAT THESE VERY CERTAINLY DO QUALIFY AS EXCITED UTTERANCES.

18 THE COURT: THANK YOU. CONCERNING THE QUESTION
19 OF EXCITED UTTERANCE, THERE ARE VARIOUS CIRCUMSTANCES THAT
20 HAVE TO BE TAKEN INTO CONSIDERATION.

21 IT IS NOT, AS COUNSEL UNDERSTANDS, SOMETHING THAT
22 HAS TO OCCUR SIMULTANEOUSLY WITH THE STATEMENT. AS LONG AS
23 THE NATURE OF THE EVENTS IS SUCH THAT WOULD CONTINUE
24 REASONABLY AND EXCITED AND PROMPT SOMEONE TO SPEAK WITHOUT
25 THINKING, THAT IS THE TEST.

1 THE REASON BEING, SOMEONE WHO MAKES THE
2 STATEMENT OUT OF EXCITEMENT, DOESN'T CONTEMPLATE THE EFFECT
3 OF HIS STATEMENT, HOW IT MIGHT BE USED AGAINST HIM.

4 I THINK VIEWING THE NATURE OF THE CONVERSATION
5 AND THE TOTALITY OF THE FACTS IN THIS CASE, AS TO PARAGRAPHS
6 5 AND 8, I AM GOING TO DEEM THAT IT IS ADMISSIBLE IN ITS
7 ENTIRETY BY THE THREE ARGUMENTS ESPOUSED, ADOPTIVE ADMISSION,
8 EXCITED UTTERANCE AND INTENDING TO INTIMIDATE.

9 I THINK IN ITS TOTALITY THAT IS A PROPER RULING
10 IN THIS PARTICULAR INSTANCE.

11 GENTLEMEN, THAT CONCLUDES THE STATEMENTS THAT WE
12 HAVE LISTED HERE. ALL THE STATEMENTS THAT -- MY
13 UNDERSTANDING, AT LEAST, ALL THE STATEMENTS THAT THE STATE
14 WOULD TEND TO UTILIZE ARE PRESENT ON THIS LIST SO WE WON'T
15 HAVE ANYTHING SURPRISING US.

16 LET'S DIRECT OUR ATTENTION TO THE MOTIONS
17 THAT ARE SET OUT ON THE CALENDAR. FIRST, IT APPEARS, MR.
18 FLANAGAN'S MOTION TO SEVER. COUNSEL.

19 MR. PIKE: YOUR HONOR, THAT HAS BEEN RATHER FULLY
20 BRIEFED BY ME IN MY POINTS AND AUTHORITIES. I ACTUALLY HAD
21 FILED ONE OF THOSE IN CONJUNCTION WITH ALSO MOTION FOR CHANGE
22 OF VENUE IN THIS CASE.

23 I WILL JUST DIRECT MYSELF AS TO THE SEVERANCE
24 MOTION AND SUBMIT IT ON THE POINTS AND AUTHORITIES THAT I
25 HAVE HERETOFORE SUBMITTED BEFORE THE COURT.

1 THE COURT: VERY GOOD. WELL, THE STATE, I AM
2 SURE, WILL HAVE A RESPONSE. I CAN SAY AS FAR AS CHANGE OF
3 VENUE IS CONCERNED, IF WE BECOME SO EMBROILED WITH THE
4 ATTEMPT TO IMPANEL THE JURY, IT MAY BE THAT IT WOULD BE
5 NECESSARY.

6 MR. PIKE: THAT IS ALL THAT I ASK ON THAT. I
7 WASN'T GOING TO ARGUE FOR IT AS A MATTER OF LAW. JUST
8 BROUGHT IT BEFORE THE COURT SO THAT ONCE THE QUESTIONING OF
9 THE JURY IS CONDUCTED, IN THE EVENT THAT IT APPEARS WE CANNOT
10 OBTAIN A JURY HERE THAT CAN GIVE A FAIR AND IMPARTIAL
11 TRIAL TO MR. FLANAGAN, THEN IT WOULD TRIGGER THAT MOTION.
12 UNTIL THEN, IT CAN JUST BE HELD IN ABEYANCE.

13 THE COURT: ALL RIGHT. THE STATE CARE TO ADDRESS
14 MR. PIKE'S MOTION FOR SEVERANCE?

15 MR. SEATON: DO YOU WANT ME TO SPEAK, YOUR HONOR,
16 TO EACH OF THE DEFENDANTS IN ORDER OR DO YOU WANT TO HEAR
17 FROM ALL OF THE DEFENDANTS FIRST? IT MAY BE EASIER BECAUSE
18 MANY OF THE ARGUMENTS WILL BE INCORPORATED INTO ONE.

19 THE COURT: I THINK PERHAPS MANY OF THE SAME
20 ARGUMENTS WOULD BE MADE. WHY DON'T WE HEAR FROM EACH OF THE
21 DEFENSE COUNSEL. IN THE MATTER OF MR. LUCKETT'S MOTION.

22 MR. SMITH: YOUR HONOR, I THINK YOU WILL HAVE TO,
23 UNLESS YOU DEEM SEVERANCE PROPER AT THIS TIME, HAVE TO
24 WITHHOLD AN ULTIMATE RULING UNTIL WE HEAR THE VOIR DIRE
25 QUESTIONS AND THE RESPONSES CONCERNING WHAT THE VARIOUS

1 POTENTIAL JURORS THINK THEY KNOW ABOUT THIS CASE.

2 LUCKETT'S INVOLVEMENT, NOT ONLY IN THE FACTS OF
3 THIS CASE BUT ALSO WITH CULT INVOLVEMENT. THERE IS REFERENCE
4 IN THE PAPER WHICH CAME UP YESTERDAY TO A STATEMENT
5 ATTRIBUTABLE TO SALDANA THAT ALL THE DEFENDANTS EXCEPT WALSH
6 WERE INVOLVED IN SATANIC ACTIVITIES.

7 SHE INDICATED SHE HAD NO PERSONAL KNOWLEDGE OF
8 THAT ON THE WITNESS STAND. THAT WHETHER THAT TAINTED THE
9 ATTITUDE OF THE JURY, I DON'T KNOW.

10 THE REAL CRUX OF OUR ARGUMENT, IT IS REALLY NOT
11 ARGUMENT SO MUCH THAT WE SAY THAT WE ARE PREJUDICED BY
12 JOINDER. BUT WE HAVE TO ADVISE THE COURT, I DO AS AN
13 OFFICER, THAT THE OTHER DEFENDANTS ARE GOING TO BE PREJUDICED
14 IF LUCKETT IS BROUGHT TO TRIAL WITH THEM.

15 I THINK THE PROSECUTOR, THEY HAVE US IN TRIAL
16 BECAUSE THEY REALIZE THAT WE ARE GOING TO DO AS MUCH
17 PROSECUTING OF THE OTHER DEFENDANTS AS THEY ARE.

18 THE COURT SHOULD BE AWARE THAT UNDER NO VERY
19 CERTAIN CIRCUMSTANCES THAT WE WILL PRESENT A DEFENSE OF
20 COERCION IN THIS CASE, OF INTIMIDATION, OF THREATS AND OF A
21 VERY STRONG REASON FOR MR. LUCKETT TO BE AFRAID.

22 IN SOME INITIAL MOVING PAPERS THAT I SUBMITTED TO
23 THE COURT, I INDICATED I WAS CONCERNED ABOUT THIS TRIAL BEING
24 TAINTED WITH MENTION OF ANY SATANIC OR CULT INVOLVEMENT ON
25 THE PART OF THE OTHER DEFENDANTS.

1 I HAVE ESSENTIALLY CHANGED HORSES AND FEEL NOW IN
2 LIGHT OF EVERYTHING THAT HAS COME FORWARD, PARTICULARLY THE
3 TESTIMONY OF MR. AKERS BROUGHT FORWARD LAST WEEK, THAT IT IS
4 GOING TO BE ABSOLUTELY ESSENTIAL FOR US IN PRESENTING A
5 DEFENSE TO PORTRAY OTHER DEFENDANTS AS, QUITE FRANKLY, VERY
6 SAVAGE, AMORAL INDIVIDUALS.

7 I AM CONFIDENT UNDER DUE PROCESS RATIONALE, I
8 WILL BE ENTITLED TO BRING THAT OUT. I CAN'T SEE THAT
9 EVIDENCE WOULD, IN FACT, BE ADMISSIBLE AGAINST THESE OTHER
10 DEFENDANTS WERE THEY TO BE TRIED SEPARATE FROM MR. LUCKETT.

11 I BRING THAT UP BECAUSE I CAN SEE GETTING INTO
12 THE MIDDLE OF THIS TRIAL WITH ME ATTEMPTING TO BRING ALL THIS
13 EVIDENCE UP AND THE OTHER DEFENDANTS AT THAT POINT MOVING FOR
14 SEVERANCE.

15 MY PERSONAL BELIEF IS THEY WOULD BE ENTITLED TO
16 SEVERANCE. SO IF THE COURT IS GOING TO HAVE TO CROSS THAT
17 BRIDGE ANYWAY, THIS WOULD BE THE APPROPRIATE TIME TO
18 STRUCTURE THE TRIALS TO WHERE THEY COULD PROCEED EFFICIENTLY
19 AND FAIRLY. I DON'T SEE HOW MY CASE SHOULD BE HEARD ALONG
20 WITH THE OTHERS.

21 THE COURT: THANK YOU, MR. SMITH. COUNSEL.

22 MR. HANDFUSS: YOUR HONOR, A LOT OF WHAT MR.
23 SMITH SAID ALSO APPLIES TO MR. MCDOWELL. THERE IS A GREAT
24 PROBLEM HERE ESPECIALLY WITH THE MEDIA COVERAGE, ANY ARTICLES
25 IN THE PAPER AND ON T.V. ABOUT COVENS AND BLACK MAGIC AND

1 WHITE MAGIC AND THINGS LIKE THAT.

2 THERE HAS BEEN PLENTY OF COVERAGE AND COPIES OF
3 THOSE THAT I HAVE, AND I BELIEVE MR. SMITH HAVE, HAVE BEEN
4 SUPPLIED TO THE COURT AS EXHIBITS ATTACHED TO THE MOTIONS.
5 THE PROBLEM IS HERE MR. SMITH IS OBVIOUSLY GOING TO GO AHEAD
6 AND, AS HE SAID, PROSECUTE AT LEAST TWO IF NOT ALSO MR.
7 MCDOWELL IN THIS TRIAL IN ORDER TO SEPARATE HIS CLIENT FROM
8 THE REST OF OUR CLIENTS.

9 THE PROBLEM WITH THAT IS, IS THAT THERE IS NO
10 CONFRONTATION RIGHT. AND, IN ADDITION, THE DEFENSES ARE SO
11 INCONSISTENT THAT ONE DEFENDANT MAY ACTUALLY BE RUNNING OVER
12 ANOTHER DEFENDANT AND WE MAY BE FORCED TO PREJUDICE EACH
13 OTHER WITHOUT ANY HELP FROM THE GOVERNMENT, WITHOUT ANY HELP
14 FROM THE STATE SIMPLY BECAUSE WE ARE BEING TRIED TOGETHER.

15 SHOULD THE SEVERANCE BE GRANTED, WE HAVE
16 ALLEVIATED THAT PROBLEM OF ACTUALLY HAVING TO BE PROSECUTING
17 EACH OTHER AND WHICH WE ARE ORDINARILY NOT CALLED UPON TO DO.

18 THE STATE IN THAT MATTER COULD PROBABLY JUST SIT
19 BACK AND WAIT TO SEE WHAT HAPPENS AND WHO IS LEFT AND PUT ON
20 THEIR EVIDENCE AS TO THAT ONE PERSON OR TWO PEOPLE, WHATEVER.

21 I BELIEVE ON THOSE GROUNDS, THE VERY, VERY
22 INCONSISTENT DEFENSES, ABOUT THE COVEN, THE BLACK MAGIC AS
23 WAS SHOWN ON THE STAND. EVEN IN THE PRELIMINARY HEARING
24 TRANSCRIPT AS IN THIS HEARING, THE OTHER HEARING THE OTHER
25 DAY, IT WAS BROUGHT UP ABOUT GANGS, ACES GANGS.

1 AT THE PRELIMINARY HEARING, I HAD OBJECTED TO
2 SUCH TESTIMONY AS TO MR. MCDOWELL BECAUSE THERE WAS NO
3 EVIDENCE THAT MR. MCDOWELL WAS EVER INVOLVED IN ANY ACES GANG
4 OR ANY GANG HAVING TO DO WITH ANY EVIDENCE IN THIS CASE.

5 THE PRELIMINARY HEARING JUDGE, JUDGE SLADE,
6 GRANTED THAT MOTION STRIKING ALL TESTIMONY AS IT PERTAINED TO
7 MR. MCDOWELL. IF THAT TESTIMONY COMES IN, IF YOU AGREE WITH
8 THAT RULING FROM JUDGE SLADE, WHAT HAPPENS IS THE JURY'S
9 GOING TO BE SITTING THERE LOOKING AT MR. MCDOWELL ALONG WITH
10 MR. LUCKETT, MR. FLANAGAN AND MR. MOORE AND SAYING, "WELL, WE
11 UNDERSTAND THAT WE MIGHT HAVE BEEN TOLD THAT THE EVIDENCE WAS
12 STRICKEN AS TO MR. MCDOWELL," BUT HOW A JURY NOT -- HOW COULD
13 THAT NOT TAINT MR. MCDOWELL AND HIS DEFENSE.

14 IF A SEVERANCE WERE GRANTED, THAT PROBLEM WOULD
15 NEVER COME UP.

16 THE COURT: THANK YOU. I BELIEVE, MR. POSIN, YOU
17 HAVE A SIMILAR MOTION.

18 MR. POSIN: IF YOUR HONOR PLEASE, I SUPPORT THE
19 MOTIONS OF BOTH COUNSEL.

20 THE COURT: RESPONSE, MR. SEATON.

21 MR. SEATON: FIRST OF ALL, LET'S GET SOME BASICS
22 OUT OF THE WAY. IT HASN'T BEEN BROUGHT UP. I WANT EVERYONE
23 TO UNDERSTAND THERE ARE NO BRUTON PROBLEMS IN THIS CASE.

24 THE STATE HAS NO INTENTION OF EVER PUTTING ANY
25 CONFESSIONS TO POLICE OFFICERS INTO EVIDENCE IN THIS CASE.

1 UNLESS, OF COURSE, AFTER THE STATE HAS RESTED, CERTAIN
2 DEFENDANTS TAKE THE STAND.

3 AND UNDER THE AUSPICES OF THE SUPREME COURT CASE
4 OF NELSON VERSUS O'NEAL AND THE NEVADA SUPREME COURT CASE OF
5 SMITH VERSUS STATE, WE ARE ALLOWED TO BRING IN THOSE THINGS
6 ONCE THOSE PARTICULAR DEFENDANTS HAVE HAD THE OPPORTUNITY TO
7 DO SOME CROSS-EXAMINING. SO THAT REALLY ISN'T A PROBLEM.

8 WE NEED ALSO TO RECOGNIZE AS A BASIC PREMISE THAT
9 COURTS THROUGHOUT THE UNITED STATES AND PARTICULARLY IN THE
10 NINTH CIRCUIT, AS WELL AS IN THIS STATE AS MR. SMITH, I THINK
11 IT WAS, WANTED TO POINT OUT, THE COURTS HAVE SAID THAT JOINT
12 TRIALS ARE BEST SUITED TO CONSPIRACY CASES.

13 IN FACT, I WANT TO READ SOMETHING TO THE COURT
14 FROM THE CASE CALLED UNITED STATES VERSUS POLIZZI, FOUND AT
15 500 F.2D, 856, 1974 NINTH CIRCUIT CASE.

16 IN THAT CASE, THE COURT HELD THAT "WHERE A
17 CONSPIRACY IS CHARGED, JOINT TRIAL IS PARTICULARLY
18 APPROPRIATE."

19 THE COURT WENT ON TO SAY, AND I QUOTE, "ONE
20 PURPOSE OF A JOINT TRIAL OF DEFENDANTS ALLEGEDLY INVOLVED IN
21 A SINGLE SCHEME IS TO FACILITATE EVALUATION BY THE JURY OF
22 THE EVIDENCE AGAINST EACH DEFENDANT IN LIGHT OF THE ENTIRE
23 COURSE OF CONDUCT.

24 "SUCH PROCEDURE NOT ONLY INCREASES THE SPEED AND
25 EFFICIENCY OF THE ADMINISTRATION OF JUSTICE BUT ALSO SERVES

1 TO GIVE THE JURY A COMPLETE OVERALL VIEW OF THE WHOLE SCHEME
2 AND HELPS THEM TO SEE HOW EACH PIECE FITS INTO THE 'PATTERN.'

3 AND POSSIBLY ONE OF THE MOST SUCCINCT STATEMENTS
4 MADE BY COURTS FAVORING JOINT TRIALS IN CASES LIKE THIS ONE
5 WAS FOUND IN UNITED STATES VERSUS BRADY, ANOTHER NINTH
6 CIRCUIT CASE, 1978 FOUND AT 579 F.2D, 1121.

7 AND THE COURT THERE IN A NUTSHELL SAID, "WE MUST
8 BE GUIDED BY OUR GENERAL RULE THAT JOINT TRIALS OF PERSONS
9 CHARGED WITH COMMITTING THE SAME OFFENSE EXPEDITES THE
10 ADMINISTRATION OF JUSTICE, REDUCES THE CONGESTION OF TRIAL
11 DOCKETS, CONSERVES JUDICIAL TIME, LESSENS THE BURDENS UPON
12 CITIZENS TO SACRIFICE TIME AND MONEY TO SERVE ON JURIES AND
13 AVOIDS THE NECESSITY OF RECALLING WITNESSES WHO WOULD
14 OTHERWISE BE CALLED UPON TO TESTIFY ONLY ONCE."

15 OBVIOUSLY, IF THE DEFENDANTS CAN SHOW ENOUGH
16 PREJUDICE, IT IS ONLY IN THOSE SITUATIONS THAT COURTS SHOULD
17 SEVER THE DEFENDANTS ONE FROM THE OTHER.

18 ONE THING THIS COURT HAS GOT TO RECOGNIZE, THERE
19 HAS ALWAYS BEEN THIS UNDERCURRENT, PARTICULARLY BY MR. SMITH
20 ON BEHALF OF MR. LUCKETT, THAT HIS CASE IS SOMEHOW BETTER
21 THAN THE OTHER DEFENDANTS. THAT FROM A STATE'S POINT OF VIEW,
22 IT IS WEAKER THAN.

23 I HAVE HEARD THAT COUNTLESS TIMES. THAT HAS
24 NOTHING TO DO WITH THE THOUGHT OF SEVERANCE. ABSOLUTELY
25 NOTHING. IT HAPPENS IN EVERY CASE. THERE IS ALWAYS MORE

1 EVIDENCE AGAINST ONE DEFENDANT THAN THERE IS ANOTHER.

2 THE QUESTION IS ONLY ONE OF PREJUDICE. BOTH MR.
3 LUCKETT AND MR. MCDOWELL THROUGH THEIR COUNSEL ARE INDICATING
4 THAT ONE OF THE PROBLEMS OF THIS CASE IS THAT THERE IS TALK
5 ABOUT CULT INVOLVEMENT AND GANG INVOLVEMENT AND NEITHER OF
6 THEM HAVE ANYTHING TO DO WITH IT AND THE MENTION OF THOSE AS
7 AGAINST DEFENDANTS FLANAGAN AND MOORE WILL PREJUDICE LUCKETT
8 AND MCDOWELL.

9 FIRST OF ALL, LET ME -- THE FIRST THING I SHOULD
10 SAY IS THE STATE HAS NO INTENTION OF BRINGING OUT ANYTHING
11 HAVING TO DO WITH CULT INVOLVEMENT, ANYTHING TO DO WITH GANG
12 INVOLVEMENT.

13 AND WE HAVE A CASE IN NEVADA CALLED SMITH VERSUS
14 LEWIS, 50 NEVADA, 212, AND IT INDICATES THAT THE FACT THAT
15 SOME EVIDENCE IS INADMISSIBLE AGAINST ONE DEFENDANT AND IS
16 ADMISSIBLE AGAINST ANOTHER IS NOT ADEQUATE GROUNDS FOR
17 SEVERANCE.

18 AND TO GO ALONG WITH THAT, WE HAVE CASES FROM NEW
19 MEXICO AND ARIZONA. STATE VERSUS AULL, 435 P.2D, 437, 1937
20 NEW MEXICO CASE. STATE VERSUS ROBERTS, 336 P.2D, 151, 1959
21 ARIZONA CASE.

22 THOSE CASES HOLD THAT THERE IS NO SEVERANCE
23 ALLOWED BECAUSE ONE DEFENDANT IS WORSE THAN THE OTHER, HE HAS
24 A BAD REPUTATION, HE HAS BAD CHARACTER, HE HAS BEEN CONVICTED
25 OF A PRIOR FELONY WHERE THE OTHER DEFENDANTS HAVE NONE OF

1 THOSE DETRIMENTS.

2 THOSE ARE NOT GROUNDS FOR SEVERANCE. SO THIS
3 BUSINESS ABOUT CULT INVOLVEMENT AND GANGS IS SOMETHING TO BE
4 WORKED OUT AMONGST THE DEFENDANTS.

5 THE STATE'S NOT GOING TO SAY ANYTHING ABOUT IT.
6 IF THEY CHOOSE TO, THAT IS THEIR BUSINESS. BUT THE CASE LAW
7 IS CLEAR THAT THOSE GROUNDS ARE NOT ADEQUATE GROUNDS FOR
8 SEVERANCE.

9 MR. SMITH HAS RIGHTFULLY ACKNOWLEDGED THAT HIS
10 DEFENDANT IS NOT GOING TO BE PREJUDICED AT ALL SO IT IS NOT
11 MR. SMITH WE ARE CONCERNED ABOUT.

12 IT IS PROBABLY MR. MOORE WHO WE ARE CONCERNED
13 ABOUT. AND HE HASN'T TOLD US, BUT AS I AM GUESSING FROM
14 HEARING THE TESTIMONY, IT IS PROBABLY THE CONVERSATION IN THE
15 BEDROOM HELD BY MR. MOORE AND MR. LUCKETT THAT MR. AKERS WAS
16 A WITNESS TO, THAT IS GOING TO FORM THE FOUNDATION FOR HIS
17 SAYING THAT HE WAS INTIMIDATED INTO GOING ALONG. AND HE HAS
18 THE RIGHT TO TRY TO ATTAIN THE DEFENSE OF DURESS OR COERCION.

19 WHAT HE FAILS TO FACE OR WHAT ANY OF THE COUNSEL
20 FAIL TO FACE IN THIS SITUATION IS THAT THE REAL QUESTION IN
21 THESE KIND OF CASES AS TO WHETHER OR NOT A SEVERANCE IS
22 GIVEN, IS WHETHER OR NOT THE DEFENDANTS ARE TRYING TO PROVE
23 THE GUILT OF THE OTHER DEFENDANTS.

24 AND WE HAVE A CASE THAT WE HAVE CITED, STATE
25 VERSUS MCLAIN AND THE DEFENSE HAVE CITED IT, TOO.

1 MCLAIN INDICATES THAT IT WAS A CASE WHERE EACH
2 DEFENDANT ACCUSED THE OTHER OF MURDER. WE DON'T HAVE THAT
3 HERE. BUT EACH DEFENDANT HAD GIVEN CROSS CONFESSIONS, ONE
4 SAYING "A" DID THE MURDER AND "A" SAYING THAT "B" DID THE
5 MURDER.

6 THE COURT HAD SAID THAT IF IT HAD BEEN POSED TO
7 THE COURT PROPERLY, IT SHOULD HAVE BEEN GROUNDS FOR SEVERANCE
8 BECAUSE EACH OF THEM WAS TRYING TO PROVE THE OTHER ONE
9 GUILTY.

10 BUT LET'S LOOK AT WHAT MR. LUCKETT AND MR.
11 MCDOWELL ARE SAYING. THEY ARE NOT GOING TO TRY TO PROVE THE
12 GUILT OF THESE OTHER DEFENDANTS. THAT ISN'T THEIR AIM. WE
13 ARE GOING TO BE ABLE TO DO THAT QUITE ADEQUATELY BY
14 OURSELVES.

15 THEY ARE GOING TO TRY TO PROVE THE BAD CHARACTER
16 OF THESE DEFENDANTS. THEY ARE GOING TO TRY TO SAY THAT THESE
17 DEFENDANTS ARE CULT MEMBERS, THEY ARE GANG MEMBERS AND MORE
18 THAN THAT, AND MOST IMPORTANTLY, THEY TRIED TO FORCE THEM
19 UNDER DURESS TO PARTICIPATE.

20 THAT IS A DEFENSE THAT GOES TO MR. LUCKETT AND TO
21 MR. MCDOWELL ALONE. IT DOESN'T HAVE ANYTHING TO DO WITH THE
22 GUILT OR THE INNOCENCE OF MR. MOORE OR MR. FLANAGAN IN THIS
23 CASE.

24 YOU KNOW, WE HAVE GOT TO RECOGNIZE THAT THERE IS
25 AN ACCESSORY-PRINCIPAL ARGUMENT HERE. MR. LUCKETT'S GUILT IS

1 GOING TO BE BASED IN PART UPON THE FACT THAT HE WAS AN
2 ACCESSORY TO THE CRIME OF FIRST DEGREE MURDER.

3 AND AS SUCH UNDER 195.020, HE IS A PRINCIPAL AND
4 MUST BE PROCEEDED AGAINST AS SUCH WHICH IS PRECISELY WHAT WE
5 ARE DOING HERE.

6 SO WE FIND MR. MOORE AND MR. FLANAGAN GUILTY BY
7 PRESENTING THE EVIDENCE THAT WE WILL. AND AS TO MR. LUCKETT,
8 THE FACT THAT HE WAS AN ACCESSORY MAKES HIM A PRINCIPAL AND
9 EQUALLY GUILTY.

10 HE IS GOING TO TRY TO SAY NOT THAT HE WASN'T
11 THERE BUT THAT HE WAS THERE, HE WAS AN ACCESSORY, BUT IT WAS
12 UNDER DURESS. AND THAT BEING THE CASE IS NOT TRYING TO PROVE
13 THE GUILT UNDER MCLAIN IN NEVADA WHICH THEY WANT TO RELY ON.

14 HE IS NOT TRYING TO PROFFER THE GUILT OF MR.
15 MOORE, MR. FLANAGAN. HE IS TRYING TO PROVE THEIR BAD
16 CHARACTER AND THE FACT THEY DURESSSED HIM INTO IT.

17 IT GOES TO ANTAGONISTIC DEFENSES WHICH THEY HAVE
18 ALLUDED TO. THEY DIDN'T MENTION STRAIGHT OUT BUT I THINK
19 THAT IS PROBABLY WHAT THEY ARE GETTING AT.

20 LET ME READ, IF I CAN, THE STANDARD FOR
21 DETERMINING WHEN ANTAGONISTIC DEFENSES WILL BE SO PREJUDICIAL
22 AS TO REQUIRE SEVERANCE. UNITED STATES VERSUS HALDEMAN, 559
23 F.2D, 31, DISTRICT COURT CIRCUIT 1976.

24 AND I QUOTE, "WHILE THERE ARE MANY SITUATIONS IN
25 WHICH INCONSISTENT DEFENSES MAY SUPPORT A MOTION FOR

1 SEVERANCE, THE DOCTRINE IS A LIMITED ONE.

2 "AS SET FORTH IN STIRONE VERSUS UNITED STATES, I
3 WILL OMIT THE CITES, THE GOVERNING STANDARDS REQUIRES THE
4 MOVING DEFENDANT TO SHOW THAT THE DEFENDANTS PRESENT
5 CONFLICTING AND IRRECONCIABLE DEFENSES AND THERE IS A DANGER
6 THAT THE JURY WILL UNJUSTIFIABLY INFER THAT THIS CONFLICT
7 ALONE DEMONSTRATES THAT BOTH ARE GUILTY.

8 "APPLICATION OF THE STANDARDS REQUIRES THAT THE
9 COUNTS OF CODEFENDANTS BE NOT MERELY DIVERGENT FROM ONE
10 ANOTHER BUT SO CONTRADICTORY AS TO RAISE AN APPRECIABLE
11 DANGER THAT THE JURY WOULD CONVICT SOLELY ON THE BASIS OF THE
12 INCONSISTENCY."

13 THE INCONSISTENCY HERE ON MR. LUCKETT AND MR.
14 MCDOWELL'S BEHALF, THEY ARE SAYING MR. MOORE AND MAYBE MR.
15 FLANAGAN PUSHED US INTO DOING THIS.

16 THAT INCONSISTENCY, WHEN PRESENTED TO THE JURY,
17 IS NOT GOING TO AUTOMATICALLY, AS THIS COURT ASKS IT TO, TO
18 GIVE A SEVERANCE, IS NOT GOING TO AUTOMATICALLY CAUSE THEM TO
19 CONCLUDE THAT BOTH ARE GUILTY.

20 IT IS GOING TO MAKE THEM WONDER ONLY ABOUT THE
21 CHARACTER OF MR. MOORE AND MR. FLANAGAN AND WHETHER OR NOT
22 THEY DID, IN FACT, FORCE MR. LUCKETT OR MR. MCDOWELL INTO
23 PARTICIPATING.

24 AND I THINK THAT IS ALL THAT I HAVE TO ADD IN
25 THAT PARTICULAR AREA. THE ONLY OTHER THING I WANT TO CALL TO

1 THE ATTENTION OF THE COURT IS THAT CERTAINLY WHEREVER THERE
2 ARE DIFFICULTIES WITH CODEFENDANTS, WHEREVER THERE IS
3 EVIDENCE THAT SHOULD BE RECEIVED AS TO ONE AND NOT AS TO
4 ANOTHER, INSTRUCTIONS CAN CERTAINLY BE GIVEN SO THAT THE JURY
5 CAN SORT ALL OF THAT OUT.

6 AND POLIZZI, WHICH I CITED BEFORE, TALKED IN
7 TERMS OF THAT AND WHAT THEY SAID IN ESSENCE WAS THAT OUR
8 COURT ASSUMES THAT JURIES LISTEN TO AND FOLLOW THE DICTATES
9 OF THE COURT'S INSTRUCTIONS AND CERTAINLY THAT COULD BE THE
10 CASE HERE.

11 SO ON THAT GROUND, YOUR HONOR, AND BASED ON THE
12 RULINGS THAT THE COURT HAS GIVEN THUS FAR, AND BASED ON THE
13 FACT THAT THE STRENGTHS OR WEAKNESSES OF THE VARIOUS
14 DEFENDANT'S POSITIONS ARE CONCERNED, THERE SHOULD BE NO
15 SEVERANCE.

16 AND THEY CERTAINLY HAVE NOT BROUGHT BEFORE THIS
17 COURT ANYTHING THAT WOULD CONCLUSIVELY SHOW THIS COURT, AS
18 THE CASES SAY THAT THEY MUST, CONCLUSIVELY SHOW THIS COURT
19 THAT BY PUTTING THESE FOUR DEFENDANTS TOGETHER IN THE SAME
20 TRIAL, THAT A JURY WOULD AUTOMATICALLY BECAUSE OF ANY
21 DIFFERENCES BETWEEN THEIR TESTIMONY, OR THEIR GOALS, WOULD
22 AUTOMATICALLY COME TO THE CONCLUSION THAT ALL FOUR ARE
23 GUILTY.

24 THE COURT: THANK YOU, MR. SEATON.

25 MR. HANDFUSS: YOUR HONOR.

1 THE COURT: MR. HANDFUSS, BRIEFLY, PLEASE.

2 MR. HANDFUSS: WHAT WE ARE TALKING ABOUT HERE IS
3 NOT MERELY THE DEFENSE THAT ONE INDIVIDUAL IS WORSE THAN
4 ANOTHER INDIVIDUAL. THAT IS NOT WHAT I THINK PROBABLY MR.
5 SMITH AND ESSENTIALLY I MYSELF DID NOT MEAN TO SAY.

6 WE ARE TALKING ABOUT INADMISSIBLE EVIDENCE COMING
7 IN AS TO SPECIFIC DEFENDANTS THAT WOULD HAVE TO COME IN IF
8 SEVERANCE WAS NOT GRANTED.

9 IN ADDITION, IF MR. SMITH LAYS HIS DEFENSE
10 AGAINST MR. FLANAGAN AND MR. MOORE AS HE STATED HE WOULD,
11 THERE IS A SPILLOVER EFFECT THAT CANNOT BE IGNORED BY THIS
12 COURT ON MR. MCDOWELL AS TO THIS CULT ISSUE.

13 IN ADDITION, IF THAT COMES UP AND MR. MCDOWELL IS
14 SITTING HERE IN THIS TRIAL NOT SEVERED, WHAT MR. MCDOWELL MAY
15 HAVE --

16 AS THE COURT KNOWS, MR. MCDOWELL HAS THE RIGHT
17 NOT TO TAKE THE STAND IN ADDITION TO HIS RIGHT TO TAKE THE
18 STAND. IF THAT EVIDENCE COMES IN, MR. MCDOWELL MAY BE FORCED
19 INTO GIVING UP HIS RIGHT NOT TO TAKE THE STAND IN ORDER TO
20 REBUT EVIDENCE THAT MAY COME IN REGARDING SOMETHING THAT HAS
21 NOTHING TO DO WITH HIM. THAT'S ALL I HAVE TO SAY.

22 THE COURT: ALL RIGHT, THANK YOU. IS THERE
23 ANYTHING FURTHER?

24 MR. SMITH: JUST I FEEL I SHOULD ALSO LET THE
25 COURT KNOW WITH RESPECT TO THIS GANG INVOLVEMENT, THERE WILL

1 BE DIRECT TESTIMONY THAT MR. MCDOWELL WAS ALSO A GANG MEMBER.
2 THERE SHOULD BE NO QUESTION ABOUT THAT AND THAT WILL BE PART
3 OF OUR DEFENSE WHETHER OR NOT HE IS IN THE COURTROOM.

4 AND I DON'T MEAN TO LIMIT MY DEFENSE OF DURESS TO
5 ONLY MCDOWELL OR, RATHER, TO ONLY FLANAGAN AND MOORE. IT
6 WILL ALSO SPILLOVER INTO MR. MCDOWELL SO --

7 THE COURT: ALL RIGHT. IT COMES TO MIND THAT I
8 SHOULD ADMONISH YOU, MR. SMITH, THAT EVIDENCE, OF WHATEVER
9 NATURE, HAS TO BE SHOWN TO BE RELEVANT AND I THINK WE OUGHT TO
10 KEEP THAT IN MIND AND WE CAN PROCEED. WE ARE NOT GOING TO
11 USE A SHOTGUN HERE TO PAINT EVERYBODY RESPONSIBLE EXCEPT OUR
12 CLIENT NOTWITHSTANDING THE RELEVANCY.

13 SO WITH THAT UNDERSTANDING, GENTLEMEN, DUE TO THE
14 NATURE OF THE CHARGES IN THIS CASE AND THE FACT THAT THE SAME
15 OPERATIVE FACTS ARE TO BE PROVEN, IF THEY CAN BE, AND THE
16 FACT OF LACK OF SHOWING, I THINK, OF A LIKELY PREJUDICE WHICH
17 WOULD RISE TO JUSTIFY SEVERANCE, I AM GOING TO DECLINE TO
18 SEVER THIS CASE.

19 I WOULD POINT OUT THAT IF THE COURT WERE TO
20 SUBSCRIBE TO THE ARGUMENTS OF COUNSEL IN FAVOR OF SEVERANCE,
21 I WOULD ALMOST BE COMPELLED TO DO SO IN EVERY CASE WHERE YOU
22 HAVE MULTIPLE DEFENDANTS BECAUSE IN PRACTICALLY EVERY
23 INSTANCE YOU WOULD HAVE ELEMENTS THAT WERE INCONSISTENT. AND
24 THAT WOULD LEAVE US WITH A SITUATION WHERE WE WOULD NEVER,
25 PRACTICALLY NEVER HAVE MULTIPLE DEFENDANTS TRIED AT THE SAME

1 TIME.

2 AND I DON'T THINK I HAVE TO TELL YOU WHAT THE
3 RESULT OF THAT WOULD BE. AND THIS CASE, PARTICULARLY DUE TO
4 THE ALLEGATION OF CONSPIRACY, IT WOULD BE DEEMED APPROPRIATE
5 THIS MATTER BE TRIED AS ONE TRIAL.

6 ARE THERE ADDITIONAL MOTIONS TO RESOLVE?

7 MR. PIKE: YOUR HONOR, AS TO MY REMAINING
8 MOTIONS. I HAD A REQUEST, MOTION FOR EXCULPATORY EVIDENCE
9 AND NUMBER OF OTHER MOTIONS.

10 MR. SEATON AND I CAME IN LAST WEDNESDAY ON THE
11 DATE ORIGINALLY SCHEDULED FOR CALENDAR CALL AND I WILL REPORT
12 TO THE COURT THAT MR. SEATON GAVE ME ACCESS TO THE COMPLETE
13 FILE.

14 I REVIEWED THAT. ALL MY DISCOVERY MOTIONS WERE
15 FULFILLED SO THOSE MOTIONS ARE NOW MOOT AT THIS TIME.

16 THE COURT: ALL RIGHT. MR. HANDFUSS.

17 MR. HANDFUSS: THERE IS MOTION TO DISMISS THE
18 WITH USE COUNTS AGAINST MR. MCDOWELL. I FILED THAT MONTHS
19 AGO AND HEARING DATE WAS NOT SET. MR. SEATON ASKED ME FOR
20 TIME TO RESPOND AS THE CASE KEPT PROGRESSING. THAT MOTION IS
21 STILL STANDING AROUND.

22 IT WAS A SIMILAR MOTION TO THE ONE MR. WATERMAN
23 BROUGHT FOR MR. AKERS THAT THE COURT GRANTED. THE FACT THAT
24 MR. MCDOWELL HAD NO CONTROL UNDER THE ANDERSON CASE OVER ANY
25 OF THE WEAPONS AT THE TIME OF THE COMMISSION, THAT MR.

1 WATERMAN ARGUED HIS WRIT AND THIS COURT DID GRANT.

2 THERE WAS SIMILAR PRELIMINARY HEARING TESTIMONY
3 ALSO AS TO MR. MCDOWELL AND UNDER THE ANDERSON CASE HE HAD NO
4 CONTROL WHATSOEVER OF THE WEAPONS AT THE TIME THE OFFENSE
5 OCCURRED JUST LIKE MR. AKERS ACCORDING TO THE PRELIMINARY
6 HEARING TRANSCRIPT AND THAT MOTION IS STILL SITTING. I DON'T
7 KNOW WHAT MR. SEATON'S POSITION IS.

8 THE COURT: ALL RIGHT. I HAVE NOT HAD AN
9 OPPORTUNITY TO REVIEW ANY DOCUMENTS FILED IN THAT REGARD BUT
10 ARE YOU FAMILIAR, MR. SEATON?

11 MR. SEATON: I WASN'T AWARE MR. HANDFUSS HAD
12 FILED ANYTHING ALONG THE SAME LINES THAT MR. WATERMAN HAD. I
13 WAS UNDER THE UNDERSTANDING THAT NOTHING HAD BEEN AND THAT
14 THE 21 DAYS FOR FILING WRITS WERE LONG PAST AND THIS ISSUE
15 CANNOT BE BROUGHT BEFORE THE COURT.

16 MR. HANDFUSS: OKAY.

17 MR. SEATON: I AM NOT SURE.

18 MR. HANDFUSS: YOUR HONOR EXTENDED THE TIME FOR
19 WRIT. I FILED IT WITHIN A FEW DAYS OF MY MOTION FOR
20 SEVERANCE. WHAT HAPPENED WAS THE TIME FOR THE SEVERANCE WAS
21 PUT DOWN, WAS CONTINUED, OF COURSE, UNTIL TODAY.

22 HEARING DATE FOR THE MOTION TO DISMISS THE COUNTS
23 OF WITH USE OF DEADLY WEAPON WAS NOT GIVEN A DATE.

24 AND I DON'T KNOW IF MR. SEATON RECALLS. WE HAD A
25 PHONE CALL. HE ASKED ME IF HE CAN HAVE OPEN EXTENSION TO

1 ANSWER THAT, TO DISMISS THE WITH USE COUNTS OF THAT.

2 AND THERE WAS NO PROBLEM BECAUSE IT LOOKED LIKE
3 SOMETHING MAY HAVE BEEN TAKEN CARE OF THE CASE. THAT WAS
4 SITTING AROUND FOR A WHILE. I DON'T HAVE THE MOTION IN FRONT
5 OF ME. I AM SURE IT IS IN THE COURT'S FILE.

6 MR. SEATON: I APOLOGIZE. I CAN NEITHER CONFIRM
7 OR DENY. I JUST DON'T HAVE ANY RECOLLECTION.

8 MR. HARMON: COULD I SAY SOMETHING ADDITIONAL,
9 YOUR HONOR?

10 THE COURT: YES.

11 MR. HARMON: THERE IS ABUNDANT CASE AUTHORITY TO
12 INDICATE YOU DON'T HAVE TO BE THE PERSON WHO PHYSICALLY
13 HANDLED THE WEAPON. IN FACT, IN A SENSE, WE CAN SLIDE BACK
14 INTO THE CONSPIRACY RULE BECAUSE ONCE A CONSPIRACY IS
15 ESTABLISHED, IF IT IS SHOWN MCDOWELL WAS PART OF THE
16 CONSPIRACY AND HE KNOWS THAT GUNS ARE GOING TO BE USED, THEN
17 THE ACTS OF ONE BECOME THE ACTS OF ALL.

18 CASE AFTER CASE INVOLVES DEFENDANTS WHERE ONE OR
19 TWO HAVE WEAPONS, SOMEBODY ELSE DOESN'T. BUT IF HE IS A
20 PARTICIPANT IN THE JOINT VENTURE, THEN THE USE OF A GUN IS
21 IMPUTED TO THE DEFENDANT WHO DOESN'T HAVE THE DEADLY WEAPON.

22 THE COURT: THAT IS CERTAINLY MY UNDERSTANDING OF
23 THE LAW. I DON'T KNOW, THOUGH, WHAT MR. HANDFUSS IS ALLEGING
24 IN HIS MOTION HAVING NOT REVIEWED IT. LET'S SET THIS ASIDE.
25 I WILL TRY TO FIND THE FILE DURING THE RECESS.

1 MR. HANDFUSS: IT IS THE ANDERSON CASE WHICH IS
2 THE SAME AUTHORITY -- I WAS HERE WHEN MR. WATERMAN'S WRIT WAS
3 ARGUED AND YOU GRANTED HIS WRIT ON THAT PARTICULAR POINT. ON
4 ANDERSON VERSUS STATE.

5 THE COURT: AS I RECALL, MR. HANDFUSS -- I DON'T
6 MEAN TO INTERRUPT YOU. AS I RECALL, MR. WATERMAN'S SITUATION
7 IS THAT MR. AKERS DROVE THE VEHICLE AND IT WAS ALLEGED THAT
8 THE WEAPONS WERE IN THE VEHICLE SOMEWHERE BUT HE PERHAPS
9 DIDN'T HAVE KNOWLEDGE OF THEIR EXISTENCE.

10 HE TRANSPORTED THE INDIVIDUALS AND THE WEAPONS TO
11 THE AREA OF THE ALLEGED KILLINGS AND THEN HE LEFT AND WENT
12 OVER TO THE TRAILER OR SOMEWHERE AWAY.

13 MY POINT IS THAT AS I RECALL THE FACTUAL
14 SITUATION, IT MAY BE SIGNIFICANT HERE. BUT IN ANY CASE, I
15 BRING THAT UP ONLY FOR YOU TO CONSIDER AND FOR MYSELF TO
16 CONSIDER. WE WILL LOOK AT IT DURING THE RECESS AND SEE WHERE
17 WE ARE.

18 ADDITIONALLY, MR. PIKE, YOUR CHANGE OF VENUE IS
19 GOING TO BE CONSIDERED AS WE HAVE DISCUSSED. MR. SMITH.

20 MR. SMITH: PRELIMINARILY, THERE IS A MOTION BY
21 THE STATE TO USE THE PRELIMINARY HEARING TRANSCRIPT OF DR.
22 GREEN.

23 MR. HARMON: WE WOULD LIKE THE COURT TO DEFER
24 RULING ON THAT. I WILL EXPLAIN TO THE COURT AND COUNSEL OUR
25 APPROACH IS PROBABLY GOING TO BE THAT WE WILL MAINTAIN

1 THAT CERTIFIED COPIES OF THE AUTOPSY REPORTS ARE ADMISSIBLE.
2 AND WE WILL CITE SEVERAL SECTIONS UNDER NRS 51.

3 I THINK OUR REQUIREMENT, OF COURSE, IS, FIRST OF
4 ALL, GOING TO SHOW THAT DR. GREEN IS UNAVAILABLE AND WE ARE
5 PREPARED TO DO THAT. HE IS, IN FACT, AS WE HAVE REPRESENTED,
6 AT A MEDICAL EXAMINERS CONFERENCE.

7 CHAPTER 171 -- I CAN JUST SAY IT IS IN CHAPTER
8 171 THAT INDICATES THAT PRELIMINARY HEARING TRANSCRIPTS ARE
9 ADMISSIBLE IF UNAVAILABILITY IS SHOWN AND ONE IS THAT THE
10 WITNESS IS OUT OF STATE.

11 CERTAINLY, DR. GREEN IS OUT OF STATE BUT WE
12 PREFER THAT THE COURT DEFER RULING ON THAT BECAUSE WE ARE
13 PROBABLY GOING TO OFFER THE AUTOPSY REPORTS IN LIEU OF THE
14 REPORTED TESTIMONY.

15 THE COURT: DO WE KNOW WITH ANY DEGREE OF
16 CERTAINLY THAT HE WILL BE UNAVAILABLE KNOWING THE SCHEDULING
17 OF THIS TRIAL HAS BEEN CHANGED FROM TIME TO TIME?

18 MR. HARMON: YOUR HONOR, WE KNOW WITH A GOOD DEAL
19 OF CERTAINTY THAT HE WILL NOT BE AVAILABLE UNTIL OCTOBER THE
20 7TH. HE WILL BE AVAILABLE ON THAT DATE AND THEREAFTER.
21 THERE IS ONE OTHER THING THAT WE PERHAPS SHOULD MENTION.

22 WE DON'T KNOW WHETHER THE COUNSEL ARE AWARE OF
23 THIS OR UNAWARE BUT ARGUABLY IT FALLS WITHIN THE PARAMETERS
24 OF BRADY VERSUS MARYLAND SINCE MR. PIKE RAISED THE MOTION
25 ABOUT EXCULPATORY EVIDENCE.

1 WITH RESPECT TO WITNESSES SALDANA AND LUCAS, WE
2 WANT TO MAKE IT A MATTER OF RECORD THAT THEY HAVE WORKED WITH
3 THE POLICE DEPARTMENT SECRET WITNESS PROGRAM.

4 THEY HAVE RECEIVED PAYMENTS AS A RESULT OF
5 COOPERATION AND TESTIMONY OFFERED UP TO THIS POINT. AND IT
6 MAY BE THAT THEY WILL RECEIVE FURTHER PAYMENTS. SO WE WANT
7 TO MAKE SURE THAT COUNSEL UNDERSTAND THAT BEFORE THESE
8 WITNESSES ARE CALLED TO THE STAND SO THEY MAY EXPLORE THIS
9 AREA.

10 THE COURT: MR. HARMON, DIDN'T WE HAVE TESTIMONY
11 FROM AT LEAST ONE OF THE YOUNG LADIES THEY WERE NOT INVOLVED
12 IN SUCH A PROGRAM?

13 MR. PIKE: YES, WE DID, YOUR HONOR.

14 THE COURT: NO BEARING ON WHAT YOU ARE
15 INDICATING?

16 MR. HARMON: WITH RESPECT AS TO ANGELA SALDANA.

17 THE COURT: I THINK ONE OF THEM INDICATED THEY
18 DID NOT.

19 MR. HANDFUSS: MR. LUCAS DID ALSO, YOUR HONOR.

20 THE COURT: WELL, MR. LUCAS. WE ARE TALKING
21 ABOUT THE TWO YOUNG LADIES.

22 MR. HARMON: JUDGE, I CAN ONLY SAY THAT WE HAVE
23 SPOKEN WITH DETECTIVE GEARY OF THE POLICE DEPARTMENT. THE
24 INFORMATION HE PASSES ON TO US IS THAT THOSE TWO WITNESSES
25 HAVE WORKED WITH THE SECRET WITNESS PROGRAM.

1 THE COURT: ALL RIGHT. MY QUESTION DIDN'T BEAR
2 ON ANYTHING OF ANY PARTICULAR SIGNIFICANCE. IT SEEMED LIKE
3 AN INCONSISTENCY. I WANTED TO CLARIFY.

4 GENTLEMEN, WE WILL TAKE UP THE MATTER OF DR.
5 GREEN AT THE APPROPRIATE TIME. I WILL LOOK INTO YOUR MATTER,
6 MR. HANDFUSS, DURING A QUICK RECESS HERE. WE ARE GOING TO
7 BRING IN OUR PROSPECTIVE JURORS HERE SHORTLY. WE WILL HAVE
8 JUST A SHORT RECESS.

9 THOSE INDIVIDUALS WHO HAVE CHOSEN TO BE
10 SPECTATORS, WE ARE GOING TO HAVE A VERY LARGE PROSPECTIVE
11 JURY PANEL. THERE WILL BE VERY LITTLE, IF ANY, SEATING
12 AVAILABLE. AS YOU CAN WELL IMAGINE, THEY WOULD TAKE
13 PRECEDENCE.

14 LET ME EXPLAIN SOMETHING. THE VOIR DIRE PROCESS
15 IS NOTHING OF PARTICULAR INTEREST, I WOULD THINK, TO THE
16 AVERAGE OR CASUAL OBSERVER.

17 TODAY AND PROBABLY FULLY TOMORROW IT WILL BE A
18 QUESTIONING PROCESS BETWEEN MYSELF, COUNSEL AND THE
19 PROSPECTIVE JURORS. THEY WOULD BE CALLED UPON ONE AT A TIME.
20 IT IS A VERY LABORIOUS PROCESS.

21 YOU WOULD NOT MISS ANYTHING OF ANY SUBSTANCE IF
22 YOU ARE FOLLOWING THIS TRIAL JUST OUT OF CURIOSITY OR FOR ANY
23 OTHER REASON, FOR THAT MATTER.

24 WE ARE OUT OF NECESSITY GOING TO HAVE TO ASK THAT
25 YOU VACATE THE COURTROOM, ALLOW THE PROSPECTIVE JURORS TO BE

1 SEATED AND WE WILL WORK WHATEVER OTHER ROOM WE HAVE AS FIRST
2 COME, FIRST SERVE, BUT I ASK YOU TO BEAR WITH ME IN THAT
3 REGARD.

4 I WOULD LIKE TO SEE COUNSEL IN CHAMBERS. COURT
5 IS IN RECESS.

6 (RECESS TAKEN.)

7 THE COURT: CASE C69269, STATE OF NEVADA VERSUS
8 DALE FLANAGAN, RANDOLPH MOORE, JOHN LUCKETT AND ROY MCDOWELL.

9 THE RECORD WILL REFLECT THE PRESENCE OF EACH OF
10 THE DEFENDANTS, THEIR COUNSEL, MR. PIKE REPRESENTING MR.
11 FLANAGAN, MR. POSIN REPRESENTING MR. MOORE, MR. SMITH
12 REPRESENTING MR. LUCKETT, MR. HANDFUSS REPRESENTING MR.
13 MCDOWELL.

14 THE RECORD WILL ALSO REFLECT THE PRESENCE OF MR.
15 HARMON AND MR. SEATON REPRESENTING THE STATE. MISS CLERK,
16 WILL YOU CALL THE ROLL OF OUR PROSPECTIVE JURORS.

17 THE CLERK: YES, YOUR HONOR.

18 (ROLL CALL TAKEN.)

19 THE CLERK: ALL PRESENT, YOUR HONOR.

20 THE COURT: THE RECORD WILL SO REFLECT. WILL THE
21 STATE'S ATTORNEYS PLEASE INTRODUCE THEMSELVES, INDICATE THE
22 NATURE OF THE CHARGES IN THIS CASE AND LIST OF WITNESSES THEY
23 PROPOSE TO CALL.

24 MR. SEATON: CERTAINLY, YOUR HONOR. THANK YOU.
25 LADIES AND GENTLEMEN, FIRST, LET ME INTRODUCE MYSELF AND MY

1 CO-COUNSEL. MY NAME IS DAN SEATON. THE GENTLEMAN SEATED,
2 AND WHO IS STANDING NOW, IS MEL HARMON. WE ARE BOTH CHIEF
3 DEPUTY DISTRICT ATTORNEYS WORKING FOR THE DISTRICT ATTORNEY'S
4 OFFICE IN CLARK COUNTY.

5 AND IT IS OUR JOB TO PROSECUTE THE DEFENDANTS IN
6 THIS PARTICULAR CASE. AND AS YOU WILL LEARN, THERE ARE FOUR
7 DEFENDANTS WHO ARE PRESENTLY BEING PROSECUTED IN THIS CASE.

8 HOWEVER, AT ONE TIME, AND AS THE INFORMATION
9 READS, THERE WERE SIX. LET ME BRIEFLY ALLUDE TO WHO THOSE
10 PEOPLE ARE AND THE CHARGES THAT HAVE BEEN ALLEGED AGAINST
11 EACH OF THEM.

12 WE HAVE IN COURT BEFORE YOU DEFENDANT JOHNNY RAY
13 LUCKETT, I AM GOING TO GO FROM RIGHT TO LEFT, DEFENDANT ROY
14 MCDOWELL, DEFENDANT DALE FLANAGAN, AND DEFENDANT RANDOLPH
15 MOORE.

16 ALSO NAMED AS CO-CONSPIRATORS IN THE CRIMES THAT
17 I AM ABOUT TO ALLUDE TO ARE CO-CONSPIRATORS THOMAS AKERS, AND
18 MICHAEL WALSH.

19 THERE ARE SEVERAL CRIMES THAT THESE PEOPLE HAVE
20 BEEN CHARGED WITH AND YOU NEED TO BE AWARE, FIRST OF ALL,
21 THAT NOT ALL OF THEM HAVE BEEN CHARGED WITH ALL THE CRIMES.

22 AND VERY BRIEFLY LET ME TRY TO EXPLAIN TO YOU THE
23 CRIMES THAT HAVE BEEN CHARGED AND WHO THEY HAVE BEEN CHARGED
24 AGAINST.

25 COUNT I IS CONSPIRACY TO COMMIT BURGLARY CHARGED

1 AGAINST -- AND I AM ONLY GOING TO ALLUDE TO THOSE FOUR
2 DEFENDANTS WHO ARE PRESENT HERE IN COURT TODAY.

3 THE CONSPIRACY TO COMMIT BURGLARY IS ALLEGED
4 AGAINST DALE FLANAGAN, RANDOLPH MOORE AND ROY MCDOWELL.

5 COUNT II, CONSPIRACY TO COMMIT ROBBERY, HAS BEEN
6 CHARGED AGAINST DEFENDANTS DALE FLANAGAN, RANDOLPH MOORE AND
7 ROY MCDOWELL.

8 THE COUNT III, CONSPIRACY TO COMMIT MURDER, IS
9 CHARGED AGAINST DEFENDANTS DALE FLANAGAN, RANDOLPH MOORE,
10 JOHNNY RAY LUCKETT AND ROY MCDOWELL.

11 COUNT IV, BURGLARY, HAS BEEN CHARGED AGAINST
12 DEFENDANTS DALE FLANAGAN, RANDOLPH MOORE, JOHNNY RAY LUCKETT
13 AND ROY MCDOWELL.

14 COUNT V, ROBBERY WITH THE USE OF A DEADLY WEAPON,
15 HAS BEEN CHARGED AGAINST DEFENDANTS DALE FLANAGAN, RANDOLPH
16 MOORE AND ROY MCDOWELL.

17 COUNT VI, MURDER WITH THE USE OF A DEADLY WEAPON,
18 HAS BEEN CHARGED AGAINST ALL FOUR DEFENDANTS, FLANAGAN,
19 MOORE, LUCKETT AND MCDOWELL.

20 AND COUNT VII, MURDER WITH THE USE OF A DEADLY
21 WEAPON, HAS ALSO BEEN CHARGED AGAINST ALL FOUR DEFENDANTS.

22 I AM GOING TO DO TWO THINGS NOW. ONE IS TO
23 BRIEFLY FAMILIARIZE ALL OF YOU WITH SOME OF THE FACTS OF THIS
24 PARTICULAR CASE SO AS TO GIVE YOU AN IDEA OF WHAT IT IS WE
25 ARE HERE IN COURT FOR.

1 AND THERE IS A PURPOSE BEHIND THIS AND I WOULD
2 LIKE EACH OF YOU TO THINK OF THIS AS WE ARE GOING THROUGH
3 THESE PROCEEDINGS.

4 AND I SAY THAT ALSO ABOUT THE SECOND THING WHICH
5 I AM GOING TO DO WHICH IS TO READ ALL OF THE LIST OF
6 WITNESSES. AND THERE ARE MANY THAT THE STATE OF NEVADA KNOWS
7 ABOUT AND FROM WHICH LIST WE WILL CALL SOME OF OUR WITNESSES
8 TO PROVE THE CASE.

9 THE REASON THAT YOU ARE GOING TO HEAR THESE
10 PARTICULAR FACTS IS SO THAT YOU CAN SEARCH YOUR OWN MIND AND
11 MEMORIES TO DETERMINE WHETHER OR NOT YOU REMEMBER SOMETHING
12 ABOUT THIS CASE. DID YOU READ IT IN THE NEWSPAPER, HAVE YOU
13 SEEN IT ON T.V., HAVE YOU HEARD PEOPLE TALKING ABOUT IT.

14 WHATEVER THINGS COME TO YOUR RECOLLECTION, IT'S
15 IMPORTANT THAT WE KNOW, THE DEFENSE ATTORNEYS, MR. HARMON AND
16 MYSELF AND PARTICULARLY THE JUDGE WHEN WE ARE ASKING YOU
17 QUESTIONS EITHER COLLECTIVELY OR INDIVIDUALLY ABOUT THE CASE.

18 OBVIOUSLY, IT WOULD NOT BE A GOOD THING TO
19 SOMEWHERE IN THE MIDDLE OF THE CASE HAVE ONE OF THE JURORS
20 WHO WAS CHOSEN SAY, "OH, NOW I REMEMBER ABOUT THAT CASE," AND
21 THEY MAY HAVE SOME INDEPENDENT KNOWLEDGE THAT WOULD NOT BE
22 APPROPRIATE WITHIN THE CASE.

23 THE COURT: MR. SEATON, BEFORE YOU BEGIN, WOULD
24 IT BE FAIR TO SAY THAT SOME OF THE ITEMS THAT YOU ARE GOING
25 TO ALLUDE TO HAVE NOT YET BEEN PROVEN FACTS BUT ARE

1 ALLEGATIONS?

2 MR. SEATON: EVERYTHING THAT I SAY AT THIS POINT
3 IN TIME, LADIES AND GENTLEMEN, ARE SIMPLY THINGS THAT COME
4 OUT OF THE INFORMATION THAT I HAVE BEEN READING FROM AND THEY
5 ARE ALLEGATIONS.

6 YOU ARE NOT TO CONSIDER WHAT I AM SAYING AS PROOF
7 OF ANY OF THOSE THINGS. ANY OF THAT WILL COME FROM THE
8 WITNESS STAND IN THE MOUTHS OF THE WITNESSES.

9 SO LET ME BEGIN BY TELLING YOU THAT THIS HAPPENED
10 LAST NOVEMBER THE 5TH, NOVEMBER THE 5TH, 1984 AT 5851
11 WASHBURN AVENUE IN CLARK COUNTY, NEVADA. WASHBURN ROAD, I
12 BELIEVE IT IS.

13 THAT, JUST SO IT MIGHT HELP SOME OF YOU REMEMBER,
14 IS IN THE FAR REACHES OF THE NORTHWEST SECTION OF LAS VEGAS.

15 AND IT'S ALLEGED THAT THESE FOUR DEFENDANTS, AND
16 THE OTHER TWO DEFENDANTS WHO I NAMED BEFORE, HAD MET AT THE
17 APARTMENT OF ONE OF THEM, DECIDED TO DO ALL OF THE THINGS
18 THAT I AM GOING TO ALLUDE TO IN A MOMENT, WENT TO THE HOUSE
19 AT 5851 WASHBURN AND DID THOSE THINGS.

20 THE TWO INDIVIDUALS WHO WERE MURDERED WERE CARL
21 AND COLLEEN GORDON. AND IT IS ALLEGED THAT THE GRANDSON OF
22 CARL AND COLLEEN GORDON IS ONE OF THE DEFENDANTS HERE, DALE
23 FLANAGAN.

24 AND I MENTION THAT RELATIONSHIP BECAUSE IT MAY BE
25 THAT FACT THAT YOU HEARD SOMETHING ABOUT A GRANDSON HAVING TO

1 DO WITH THE DEATHS OF HIS GRANDPARENTS THAT MIGHT TRIGGER
2 YOUR MEMORIES.

3 HE AND THE OTHERS WENT TO THAT HOUSE, IT IS
4 ALLEGED, AND BROKE A WINDOW AND WENT IN AND SHOT BOTH THE
5 GRANDMOTHER AND THE GRANDFATHER TO DEATH AND THEN LEFT.

6 AND SEVERAL THINGS OCCURRED OVER A PERIOD OF TIME
7 AND ULTIMATELY EACH OF THESE FOUR DEFENDANTS, AND THE OTHER
8 TWO WHO I HAVE MENTIONED, WERE ULTIMATELY ARRESTED.

9 THAT, IN ESSENCE, IS THE OVERALL NATURE OF THE
10 CASE AND HOPEFULLY IT WILL BE ENOUGH AND PERHAPS THERE WILL
11 BE QUESTIONS FROM THE COURT OR COUNSEL WHICH WILL FURTHER
12 TRIGGER YOUR MEMORIES.

13 NOW, WHAT I WOULD LIKE TO DO IS READ TO YOU FROM
14 A LIST OF WITNESSES THAT HAS BEEN COMPILED WHO ARE ALL OF THE
15 WITNESSES WHO KNOW ANYTHING AT ALL ABOUT THIS PARTICULAR CASE
16 AT THE PRESENT TIME.

17 AND I NEED TO LET YOU ALL KNOW THAT NOT ALL OF
18 THESE WITNESSES WILL BE CALLED, OBVIOUSLY. THERE WILL BE
19 SOME OF THEM CALLED WHICH WILL PROVE HOPEFULLY THE
20 ALLEGATIONS THAT ARE CONTAINED IN THIS INFORMATION.

21 SO I WILL MENTION EACH OF THE NAMES AND IN SOME
22 CASES WHERE THEY WORK AND LISTEN CAREFULLY IF YOU WOULD. AND
23 IF YOU KNOW ANY OF THESE PEOPLE OR THINK THAT YOU DO, JOT IT
24 DOWN ON A PIECE OF PAPER OR REMEMBER IT AND WHEN WE ASK YOU
25 THEN ABOUT WHETHER OR NOT YOU KNOW ANY OF THESE PEOPLE, YOU

1 CAN LET US KNOW.

2 THIS WILL BE A RATHER LENGTHY LIST SO PLEASE BEAR
3 WITH ME. R. BERNI WITH -- I AM GOING TO SAY METRO AND I MEAN
4 THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT. IT WILL SAVE A
5 LOT OF WORDS. R. BERNI IS WITH METRO.

6 ALLAN BROWN WORKS AT THE OMELET HOUSE. M.
7 BUNKER, A DETECTIVE WITH METRO; J. CARLSON, A PATROLMAN WITH
8 METRO; ELLEN CARTER WHO LIVES ON WASHBURN; R. CHILDERS,
9 DETECTIVE WITH METRO.

10 R. CONBOY, PATROLMAN FOR METRO; DAN CONNELL, A
11 LAB TECHNICIAN FOR METRO; R. COX, A PATROLMAN FOR METRO; RON
12 DAVIS, A CIVILIAN; JOHN DELEON; JIMMY DONNELLY.

13 LYNN DUNLOP, A STENOGRAPHER FOR METRO; LINDA
14 ERRICHETTO, LAB TECHNICIAN FOR METRO; COLLEEANN FLANAGAN; RON
15 FLUD OF THE CORONER'S OFFICE; SIDRO GARCIA WHO LIVES OUT ON
16 WASHBURN.

17 MIKE GEARY, A DETECTIVE FOR METRO; G. GILLINS,
18 PATROLMAN; RICHARD GOOD, A LAB TECHNICIAN; DOUG GORDON; CARL
19 ROBIN GORDON; J. GORSKI, PATROLMAN; MICHELLE GRAY.

20 SHELDON GREEN OF THE CORONER'S OFFICE; KIM
21 GRIGGS; KIM GROOVER, A LAB TECHNICIAN; DEBBIE HANEY; DAVE
22 HATCH, A DETECTIVE; MIKE HERGETT; GWENDOLYN HINTON.

23 VONZELL HINTON; IRENE HOTHAM, STENOGRAPHER FOR
24 METRO; THERESA HUDSON; LARRY IRVINE, DETECTIVE WITH METRO;
25 FRANK JERGOVIC, ALSO A DETECTIVE; W. JOHNSON, PATROLMAN.

1 YVONNE KACZMAREK WORKS AT CUTLERY WORLD IN THE
2 MEADOWS; A. KNUDSEN, A DETECTIVE WITH METRO; BLAKE LAWSON
3 WORKS AT MCDONALD'S AT THE MEADOWS MALL; WAYNE LEE.

4 BURT LEVOS, A DETECTIVE WITH METRO; LISA LICATA;
5 NANCY LICATA; JOHN LUCAS, THAT IS, JOHN LUCAS THE THIRD.
6 ALSO, JOHN LUCAS WITHOUT ANY NUMBERS AFTER HIS NAME.

7 MARY LUCAS; DEWANA MANNING; BOB MANRING; PEGGY
8 MCGINNIS, STENOGRAPHER WITH METRO; CHARLES MCGREGOR; GENEAL
9 MCGREGOR; JOE MCGUCKIN, DETECTIVE; MEHLIA MOORE; ROBIN
10 MORRISON.

11 MUNSON MOSER FROM THE LAB; LOREN OGLE FROM THE
12 CORONER'S OFFICE; DON PITE FROM MCCARRAN AIRPORT; A MR.
13 POWELL FROM SPAULDING MORTUARY; C. REDIGER, A PATROLMAN WITH
14 METRO.

15 GLENN SALAZAR; ANGELA SALDANA; DEBBIE SAMPLES;
16 BARBARA THOMAS; MR. THOMAS FROM SPAULDING MORTUARY; HANK
17 TRUSZKOWSKI FROM THE LAB; WARD WALLACE; ROBERT WILKINS; S.
18 WINNE; A PATROLMAN.

19 WAYNE WITTIG; NORM ZIOLA; CONSTANCE LEAVITT;
20 THOMAS AKERS; LISA DUPREE; RUSTY HAVENS; CANDACE MCKINNON;
21 MIKE MORLOCK; AL CABRALES FROM THE LAB.

22 BUD INMAN, HE IS FROM THE NATIONAL PARK SERVICE;
23 SALUSTIO NAVARRO FROM SAN DIEGO SHERIFF'S DEPARTMENT AND CINDY
24 EVANS FROM THE MCDONALD'S RESTAURANT AT THE MEADOWS MALL.
25 THANK YOU VERY MUCH.

1 THE COURT: THANK YOU, MR. SEATON. YOU MIGHT
2 HAVE OMITTED MENTIONING R. RODREICK.

3 MR. SEATON: IF I DID, THAT IS A NAME WHICH
4 SHOULD BE INCLUDED. HE IS A LAB TECHNICIAN. THANK YOU.

5 THE COURT: WILL DEFENSE COUNSEL INTRODUCE
6 THEMSELVES, PLEASE, AND THEIR CLIENT.

7 MR. SMITH: GOOD AFTERNOON, LADIES AND GENTLEMEN.
8 MY NAME IS BILL SMITH AND DURING THESE PROCEEDINGS I WILL BE
9 REPRESENTING JOHN LUCKETT. THANK YOU.

10 THE COURT: THANK YOU.

11 MR. HANDFUSS: MY NAME IS ROBERT HANDFUSS, LOCAL
12 ATTORNEY IN TOWN. THIS IS ROY MCDOWELL AND I WILL BE
13 REPRESENTING HIM. THANK YOU VERY MUCH.

14 MR. PIKE: MY NAME IS RANDOLPH PIKE, RANDY PIKE.
15 I AM AN ATTORNEY IN TOWN HERE WITH MY PARTNER TOM
16 CHRISTENSEN. I REPRESENT DALE FLANAGAN. THANK YOU.

17 MR. POSIN: MY NAME IS MURRAY POSIN. I AM AN
18 ATTORNEY IN TOWN, HAVE BEEN FOR MANY YEARS. I REPRESENT THE
19 DEFENDANT NEXT TO ME, RANDOLPH MOORE.

20 THE COURT: THANK YOU, COUNSEL. GOOD AFTERNOON,
21 LADIES AND GENTLEMEN. I AM JUDGE DONALD MOSLEY.

22 I WOULD LIKE TO BEGIN BY EXPRESSING MY
23 APPRECIATION, AND I THINK COUNSELS', FOR YOUR INDULGENCE THUS
24 FAR. I KNOW THAT YOU HAVE BEEN BANDIED ABOUT SOMEWHAT
25 ALREADY IN THESE PROCEEDINGS AND WE APPRECIATE AND KNOW WHAT

1 YOU GO THROUGH.

2 YOU HAVE BEEN SUMMONED TO DEPARTMENT 14 OF THE
3 EIGHTH JUDICIAL DISTRICT COURT TO HEAR THE MATTER OF THE
4 STATE VERSUS THE DEFENDANTS THAT YOU HAVE HEARD NAMED.

5 COUNSEL AND I AND ALL PERSONNEL IN THE COURT ARE
6 CONCERNED AT THIS JUNCTURE IN ACQUIRING 12 INDIVIDUALS WHO
7 CAN SERVE AS JURORS WHO ARE OBJECTIVE AND UNBIASED IN THEIR
8 THINKING. TO THIS END, A SERIES OF QUESTIONS WILL BE ASKED
9 OF YOU.

10 SOME OF THESE QUESTIONS MAY SEEM SOMEWHAT
11 PERSONAL. PLEASE UNDERSTAND THAT IT IS NOT OUT OF IDLE
12 CURIOSITY THAT THESE QUESTIONS ARE ASKED.

13 IT IS IMPERATIVE THAT I AND, MORE PARTICULARLY,
14 COUNSEL KNOW AS MUCH ABOUT YOU IN A VERY SHORT TIME AS IS
15 POSSIBLE SO THAT THEY CAN MAKE AN INTELLIGENT DECISION AS TO
16 WHETHER OR NOT YOU SHOULD SERVE AS A JUROR IN THIS CASE.

17 THIS QUESTIONING PROCESS IS KNOWN AS VOIR DIRE.
18 AND THAT TRANSLATED MEANS TO TELL THE TRUTH. I ASK THE CLERK
19 TO SWEAR OUR PROSPECTIVE JURORS.

20 THE CLERK: YES, YOUR HONOR.

21 (PROSPECTIVE JURORS DULY SWORN.)

22 THE COURT: I AM GOING TO ADDRESS YOU INITIALLY
23 AS A GROUP. AT THIS POINT IN THE PROCEEDINGS, WE WILL ENGAGE
24 IN SOMEWHAT OF AN INFORMAL DIALOGUE. WE WILL NOT HAVE THIS
25 LUXURY SOMEWHAT LATER.

1 THE QUESTIONS I AM ABOUT TO ASK YOU, IF THEY ARE
2 NOT FULLY UNDERSTOOD OR IF YOU HAVE QUESTIONS ABOUT THEM, YOU
3 MAY RAISE YOUR HAND AND WE WILL EXPLORE THEM SOMEWHAT.

4 AS I INDICATED, LATER WE WILL NOT BE ABLE TO DO
5 THIS. I MUCH PREFER THAT WE RESOLVE ANY QUESTION IN YOUR
6 MIND EARLY ON THAN TO HAVE US GET HALFWAY THROUGH THE TRIAL
7 AND HAVE IT DAWN UPON YOU PERHAPS YOU SHOULD HAVE RESPONDED
8 OR YOU DO KNOW A WITNESS WHOSE NAME WAS READ OR SOMETHING OF
9 THIS NATURE.

10 SO WE WILL PROCEED SOMEWHAT INFORMALLY AT THIS
11 JUNCTURE. IF YOU WISH TO ANSWER YES, IN THE AFFIRMATIVE, TO
12 ANY QUESTION I ASK, IF YOU RAISE YOUR HAND, INDICATE THE
13 NUMBER ON YOUR BADGE THEY GAVE YOU AND YOUR NAME, WE WILL
14 PROCEED FROM THERE.

15 AGAIN, ADDRESSING YOU AS A GROUP. ARE THERE ANY
16 OF YOU WHO ARE ACQUAINTED WITH ANY OF THE FOUR DEFENDANTS IN
17 THIS CASE, MR. FLANAGAN, MR. MOORE, MR. MCDOWELL OR MR.
18 LUCKETT OR THEIR FAMILIES?

19 ARE THERE ANY OF YOU WHO ARE ACQUAINTED WITH ANY
20 OF THE DEFENSE ATTORNEYS, MR. PIKE, MR. POSIN, MR. HANDFUSS
21 OR MR. SMITH?

22
23 DAVID EDWARD SINGER

24 Q (BY THE COURT) YOUR NAME AND NUMBER ON YOUR
25 BADGE?

1 A DAVID SINGER, 448.
2 Q MR. SINGER, WHO DO YOU KNOW?
3 A MR. POSIN.
4 Q HOW DO YOU KNOW HIM?
5 A USED TO PLAY CARDS WITH HIM A LOT.
6 Q SO SOCIAL RELATIONSHIP?
7 A SOCIAL POKER GAME.
8 Q HOW LONG AGO HAS IT BEEN SINCE YOU HAVE SEEN MR.
9 POSIN?
10 A A FEW YEARS.
11 Q HOW WELL WOULD YOU SAY YOU KNEW HIM?
12 A OH, CASUALLY.
13 Q DID YOU EVER SEE HIM OUTSIDE OF THE POKER GAME?
14 A I GUESS, OCCASIONALLY.
15 Q I AM SORRY?
16 A OCCASIONALLY.
17 Q YOU EVER BEEN TO HIS HOME?
18 A NO, I HAVEN'T.
19 Q HAS BE BEEN IN YOUR HOME AT ALL?
20 A NO.
21 Q DO YOU KNOW HIS FAMILY AT ALL?
22 A NO, I DON'T.
23 Q DO YOU HAVE ANY BUSINESS RELATIONSHIP WITH HIM OR
24 CLIENT-ATTORNEY?
25 A NO.

1 Q LET ME ASK YOU, MR. SINGER. KNOWING THAT HE
2 REPRESENTS ONE OF THE DEFENDANTS IN THIS CASE, DO YOU FEEL
3 THAT YOU CAN MAINTAIN AN OBJECTIVE VIEWPOINT IN THIS CASE
4 TOWARD HIS CLIENT AND THE STATE, EVALUATING THE CASE EQUALLY
5 IN AN UNBIASED MANNER NOTWITHSTANDING YOUR RELATIONSHIP TO
6 HIM?

7 OR DO YOU THINK THAT WOULD HAVE AN EFFECT? AND
8 PLEASE BE CANDID IN YOUR RESPONSE. DO YOU THINK YOU WOULD BE
9 AFFECTED BY IT?

10 A I DON'T REALLY KNOW AND I DOUBT IT.

11 Q WELL, WHEN I ASK QUESTIONS SUCH AS THIS, YOU SEE,
12 I HAVE NO WAY OF KNOWING SO I HAVE TO ASK YOUR OPINION. AND
13 SO YOU WOULD HAVE TO DETERMINE IT AS BEST YOU CAN WHETHER YOU
14 THINK YOU COULD BE AN OBJECTIVE, UNBIASED JUROR
15 NOTWITHSTANDING THE FACT THAT MR. POSIN IS COUNSEL OR THE
16 FACT THAT YOU CANNOT.

17 I MIGHT INDICATE TO YOU, AS I WOULD ALL JURORS,
18 THERE ARE NO WRONG ANSWERS TO ANY OF THE QUESTIONS I ASK, SO
19 PLEASE BE HONEST AND CANDID IN YOUR RESPONSES.

20 WHAT IS YOUR FEELING, SIR?

21 A OBJECTIVE.

22 Q YOU THINK YOU CAN BE OBJECTIVE. ALL RIGHT, SIR,
23 IF YOU WOULD HAVE A SEAT.

24 THE COURT: ANYONE ELSE?

25 //

1 ARTHUR RAYMOND HINTON

2 Q (BY THE COURT) SIR, YOUR NAME AND NUMBER?

3 A MY NAME IS HINTON. MY BADGE NUMBER IS 464.

4 Q MR. HINTON.

5 A I AM FAMILIAR WITH MR. PIKE AND MR. HARMON AND
6 DAN SEATON.

7 Q ALL RIGHT. HOW DO YOU KNOW THESE GENTLEMEN?

8 A THROUGH WORK, PRIOR JOB I USED TO HOLD WITH THE
9 STATE OF NEVADA AS A PAROLE OFFICER.

10 Q AND DID YOU KNOW EITHER OF THE THREE GENTLEMEN
11 WELL OR JUST ACQUAINTANCES?

12 A JUST THROUGH WORK.

13 Q YOU NEVER SAW THEM SOCIALLY OR OUTSIDE OF WORK?

14 A NO.

15 Q HOW LONG WOULD YOU SAY YOU WORKED WITHIN THE
16 VICINITIES OF THESE GENTLEMEN OR WITH THEM TO AN EXTENT?

17 A A LITTLE BIT FOR ABOUT FIVE YEARS JUST ON AND
18 OFF. NO MORE THAN A FEW MINUTES IN COURT.

19 Q DID YOU KNOW ANY OF THEIR FAMILY OR FRIENDS
20 PARTICULARLY?

21 A NO.

22 Q I WOULD ASK YOU THE SAME QUESTION I ASKED MR.
23 SINGER. DO YOU FEEL, NOTWITHSTANDING THE FACT YOU KNOW THESE
24 GENTLEMEN, YOU COULD SERVE AS AN UNBIASED FAIR JUROR IN THIS
25 CASE OR DO YOU FEEL --

1 A I FEEL I CAN SERVE AS UNBIASED JUROR.

2 Q THANK YOU, MR. HINTON.

3 THE COURT: ANYONE ELSE THAT KNOWS ANY OF THE
4 ATTORNEYS?

5
6 EUGENE W. CHRISTENSEN

7 Q (BY THE COURT) YES, SIR, YOUR NAME?

8 A EUGENE CHRISTENSEN, NUMBER 462. I DON'T KNOW ANY
9 OF THE ATTORNEYS BUT MR. POSIN MENTIONED THAT HIS PARTNER WAS
10 TOM CHRISTENSEN WHO IS, I BELIEVE, MY COUSIN IF IT IS THE
11 SAME ONE.

12 MR. POSIN: MR. PIKE MADE THAT OBSERVATION.

13 MR. PIKE: IF I COULD GO THROUGH THE GENEALOGY.
14 THAT IS JUDGE CHRISTENSEN'S SON.

15 THE JUROR: YES.

16 Q (BY THE COURT) ALL RIGHT. HE IS YOUR NEPHEW,
17 DID YOU SAY?

18 A MY COUSIN.

19 Q DO YOU SEE HIM OFTEN?

20 A NO.

21 Q HOW LONG HAVE YOU LIVED IN THE SAME TOWN?

22 A I WAS BORN HERE. I BELIEVE HE WAS.

23 Q WHEN WAS THE LAST TIME, WOULD YOU SAY, YOU HAVE
24 SEEN HIM?

25 A IT WOULD BE LAST DECEMBER, FAMILY REUNION.

1 Q DO YOU THINK THAT BY VIRTUE OF THAT RELATIONSHIP,
2 KNOWING THAT HE IS MR. PIKE'S ASSOCIATE, THAT THAT WOULD
3 COLOR OR AFFECT YOUR OBJECTIVITY IN ANY WAY?

4 A I DON'T THINK SO.

5 Q DO YOU THINK YOU COULD MAINTAIN AN OBJECTIVE
6 VIEWPOINT?

7 A YES.

8 Q AND PLEASE UNDERSTAND IF THE INFLECTION OF MY
9 VOICE SUGGESTS AN ANSWER, PLEASE DISREGARD THAT.

10 A OKAY.

11 Q BECAUSE I AM TRYING TO FOLLOW ALONG THE TRAIN OF
12 THOUGHT THAT YOU ARE GIVING ME, BUT I MAY MISCONSTRUE IT
13 ENTIRELY.

14 THE CLERK: FOR THE RECORD, WHAT IS MR.
15 CHRISTENSEN'S BADGE NUMBER?

16 JUROR CHRISTENSEN: 462.

17 THE COURT: THANK YOU. ANYONE ELSE THINK THEY
18 MAY BE ACQUAINTED IN ANY WAY WITH THE ATTORNEYS? AND I HAVE
19 ASKED SPECIFICALLY OF THE DEFENSE COUNSEL SO WE WILL EXPAND
20 THAT TO INCLUDE THE PROSECUTORS, MR. HARMON AND MR. SEATON.
21 ANYONE FEEL THAT THEY KNOW THE PROSECUTORS?

22 ARE THERE ANY OF YOU WHO ARE ACQUAINTED WITH ANY
23 OF THE WITNESSES WHOSE NAMES WERE READ?

24 //

25 //

1 DAVID RAYMOND WEIR

2 Q (BY THE COURT) ALL RIGHT. THE GENTLEMAN IN THE
3 BACK. YOUR NAME AND NUMBER, SIR.

4 A DAVE WEIR, 406. I AM WELL ACQUAINTED WITH MIKE
5 GEARY AND DAVE HATCH, DETECTIVES.

6 Q HOW DO YOU KNOW THEM?

7 A SOCIALLY AND BEING A NEIGHBOR. DAVE HATCH FOR
8 SEVERAL YEARS AND MIKE GEARY I WORKED WITH HIS WIFE.

9 Q HOW DO YOU WORK WITH HIS WIFE, HOW CLOSE?

10 A WELL, SHE WAS MY SECRETARY.

11 Q FOR HOW LONG?

12 A ABOUT FIVE YEARS.

13 Q SHE IS NO LONGER YOUR SECRETARY?

14 A NO, SHE TRANSFERRED.

15 Q AND MR. HATCH WAS YOUR NEIGHBOR?

16 A YES.

17 Q FOR HOW LONG?

18 A EVER SINCE I LIVED IN WINTERWOOD WHICH IS ABOUT
19 12 YEARS.

20 Q BUT NO LONGER?

21 A I THINK DAVE MOVED.

22 Q HAD YOU EVER BEEN TO HIS HOUSE?

23 A HE'S BEEN TO MINE, SOCIALLY.

24 Q DO YOU FEEL, MR. WEIR, THAT BY VIRTUE OF YOUR
25 RELATIONSHIP WITH MR. GEARY'S WIFE AND MR. HATCH AND PERHAPS

1 MR. GEARY HIMSELF, I ASSUME, TO SOME EXTENT, DO YOU FEEL THAT
2 IF THEY WERE TO TESTIFY THAT YOU WOULD HAVE A TENDENCY NOT TO
3 EVALUATE THEIR TESTIMONY AS YOU WOULD OTHER INDIVIDUALS OF
4 THEIR CAPACITY, BUT BY VIRTUE OF THIS RELATIONSHIP YOU WOULD
5 ALTER YOUR VIEW OF THEIR TESTIMONY?

6 A KNOWING THOSE MEN, I AM AFRAID I WOULD.

7 Q DO YOU THINK THAT BY VIRTUE OF YOUR KNOWING THESE
8 GENTLEMEN YOU COULD NOT MAINTAIN STRICTLY SPEAKING AN
9 OBJECTIVE VIEWPOINT?

10 A NO, I DON'T.

11 THE COURT: COUNSEL, I HAVE A TENDENCY TO ALLOW
12 MR. WEIR TO BE EXCUSED.

13 MR. SEATON: WE HAVE NO OBJECTION.

14 MR. PIKE: STIPULATING.

15 MR. HANDFUSS: YES.

16 THE COURT: WE THANK YOU FOR YOUR CANDOR, SIR.
17 MR. BAILIFF, WHAT ARE YOUR INSTRUCTIONS?

18 THE BAILIFF: FREE TO GO TO WORK OR GO HOME.

19 THE COURT: THANK YOU, MR. WEIR. ANYONE ELSE
20 OVER HERE THAT MAY RECOGNIZE --

21
22 JOHN PATRICK BRUNTY

23 Q (BY THE COURT) YES, SIR.

24 A JOHN BRUNTY AND MY BADGE NUMBER IS 422. AND MAY
25 I ASK THE COURT TO PLEASE READ THE -- REREAD THE NAMES OF THE

1 WITNESSES FROM SPAULDING MORTUARY, PLEASE.

2 THE COURT: DO WE HAVE THAT AVAILABLE?

3 MR. SEATON: ONE OF THEM IS MR. THOMAS,
4 T-H-O-M-A-S. THE OTHER IS MR. POWELL, P-O-W-E-L-L.

5 Q (BY THE COURT) MR. BRUNTY, DO YOU KNOW EITHER OF
6 THOSE GENTLEMEN?

7 A I MAY HAVE MET MR. THOMAS OR THOMPSON ON A VERY
8 BRIEF OCCASION. I DID KNOW AT ONE TIME SOMEBODY WHO WORKED
9 THERE AT SPAULDING MORTUARY.

10 I HAD THEM IN PHOTOGRAPHY CLASS AND I MAY HAVE
11 MET THE OWNER OR THE PEOPLE WHO ARE IN CHARGE OF THAT AT ONE
12 TIME. I AM NOT QUITE SURE.

13 Q WELL, DO YOU FEEL THAT ONE OF THESE WITNESSES
14 MIGHT HAVE BEEN IN YOUR PHOTOGRAPHY CLASS?

15 A MR. POWELL, IF HIS FIRST INITIAL IS D., THEN
16 PERHAPS.

17 THE COURT: YOU DON'T HAVE IT?

18 MR. SEATON: NO.

19 Q (BY THE COURT) WE DON'T KNOW AT THIS POINT. HOW
20 LONG AGO HAS IT BEEN?

21 A TWO YEARS AGO.

22 Q AND DO YOU TEACH A CLASS AT THE UNIVERSITY OR
23 SOMETHING?

24 A NO. I HAD TAKEN A PHOTOGRAPHY CLASS AT THE
25 COMMUNITY COLLEGE AND THERE WAS SOMEBODY THERE WHO HAD WORKED

1 AT SPAULDING MORTUARY IN THAT CLASS.

2 Q HE WAS A CLASSMATE THEN?

3 A YES.

4 Q DID YOU KNOW HIM OUTSIDE OF CLASS?

5 A ON A COUPLE OF OCCASIONS WE DID PHOTOGRAPHY WORK
6 TOGETHER OUTSIDE OF CLASS.

7 Q DO YOU FEEL THAT YOUR KNOWLEDGE OF HIM AND YOUR
8 RELATIONSHIP IS SUCH THAT IF HE WERE TO TESTIFY, YOU COULD
9 NOT EVALUATE HIS TESTIMONY OBJECTIVELY?

10 A I COULD EVALUATE OBJECTIVELY.

11 Q YOU SEE ANY PROBLEM?

12 A NO. I DO NOT SEE ANY PROBLEM AT ALL.

13 Q THANK YOU, SIR. HAVE A SEAT.

14 THE COURT: ANYONE ELSE OVER HERE?

15

16 LOYE BROWN DIMITT

17 Q (BY THE COURT) YES, MA'AM.

18 A I AM LOYE DIMITT, NUMBER 427.

19 Q THE LAST NAME IS?

20 A DIMITT.

21 Q MISS DIMITT.

22 A I AM NOT POSITIVE BUT I THINK I KNOW MICHELLE
23 GRAY AND LISA DUPREE.

24 Q HOW WOULD YOU KNOW THEM?

25 A THROUGH THE CHURCH THAT I BELONG TO.

1 Q DESCRIBE THEM FOR ME?

2 A MICHELLE GRAY -- I HAVE A DAUGHTER, I THINK,
3 MICHELLE GRAY'S AGE AND LISA DUPREE IS A LITTLE OLDER.

4 Q AND HOW WELL DO YOU KNOW THEM?

5 A JUST THROUGH VISITING THEM IN A CAPACITY OF
6 HELPING RELIEF SOCIETY.

7 Q WELL, THROUGH THE CHURCH?

8 A YES.

9 Q HAD YOU SEEN THEM OUTSIDE OF CHURCH?

10 A UNLESS MICHELLE IS THE ONE I AM THINKING ABOUT,
11 THAT IS MY DAUGHTER'S AGE, SHE USE TO RUN WITH HER.

12 Q SO SHE HAD BEEN TO YOUR HOME AND THAT SORT OF
13 THING?

14 A UH-HUH.

15 THE COURT: MR. SEATON, MICHELLE GRAY WOULD BE
16 HOW OLD?

17 MR. SEATON: I THINK MICHELLE GRAY IS PROBABLY
18 WITHIN A YEAR OR TWO OF 20.

19 JUROR DIMITT: MY DAUGHTER IS 23.

20 MR. PIKE: MICHELLE GRAY IS 18. SHE WOULD BE 19
21 NOW.

22 Q (BY THE COURT) MICHELLE PAULETTE GRAY, DOES THAT
23 SOUND RIGHT?

24 A UH-HUH.

25 MR. PIKE: LIVING ON SOUTH DECATUR BOULEVARD.

1 Q (BY THE COURT) WHEN WAS THE LAST TIME YOU SAW
2 HER, MISS DIMITT?

3 A OH, IT'S BEEN QUITE A WHILE. PROBABLY FOUR
4 YEARS.

5 Q AND THE OTHER YOUNG LADY, HOW LONG?

6 A ABOUT THREE.

7 Q DO YOU THINK THAT BY VIRTUE OF YOUR RELATIONSHIP
8 WITH THESE TWO INDIVIDUALS THAT YOU WOULD BE LESS THAN
9 TOTALLY OBJECTIVE IN EVALUATING THEIR TESTIMONY IN THE CASE?

10 A NO. I THINK THAT I COULD BE OBJECTIVE.

11 Q DO YOU THINK THERE WOULD BE ANY PROBLEM IN THAT
12 REGARD?

13 A THE ONLY PROBLEM THAT I FEEL RIGHT AT THIS TIME
14 IS THAT I HAVE A BOY AND A GIRL THIS AGE BRACKET.

15 Q WELL, THAT GOES TO A SLIGHTLY DIFFERENT QUESTION.
16 BUT AS LONG AS YOU BROUGHT IT UP, THE FACT THAT YOU HAVE
17 CHILDREN, DO YOU THINK THAT WOULD PRODUCE IN YOUR MIND SUCH A
18 CONDITION THAT YOU COULD NOT OBJECTIVELY EVALUATE THE FACTS
19 IN THIS CASE?

20 A I AM AFRAID THAT IT MIGHT.

21 Q WELL, AGAIN, I HAVE TO ASK YOU. I AM SURE MANY
22 OF THE PROSPECTIVE JURORS HAVE CHILDREN OF WHATEVER AGE.
23 THAT IS SOMETHING WE HAVE TO RECOGNIZE.

24 BUT IF YOU FEEL IN YOUR MIND THAT BY VIRTUE OF
25 THE FACT THAT YOU HAVE CHILDREN OF ABOUT THE AGE OF THE

1 DEFENDANTS, THAT YOU CANNOT BE OBJECTIVE IN EVALUATING THE
2 CASE, THAT WOULD BE REASON TO BE EXCUSED. I WOULD RECOGNIZE
3 THAT.

4 IF YOU THINK IT IS SOMETHING THAT YOU CAN TAKE
5 INTO CONSIDERATION AND OVERCOME, THEN WE COULD PROCEED. WHAT
6 IS YOUR HONEST FEELING IN THE MATTER?

7 A I REALLY DON'T THINK THAT I CAN.

8 Q YOU DON'T THINK YOU CAN WHAT?

9 A OVERCOME.

10 Q THEN YOUR ANSWER TO MY QUESTION CONCERNING YOUR
11 OBJECTIVITY IS THAT YOU FEEL YOU CANNOT BE TOTALLY OBJECTIVE?

12 A RIGHT.

13 THE COURT: COUNSEL?

14 MR. SEATON: WE'D STIPULATE.

15 THE COURT: I WOULD BE INCLINED TO EXCUSE MISS
16 DIMITT. ANY PROBLEM WITH THAT?

17 MR. PIKE: NO. I STIPULATE, ALSO.

18 MR. POSIN: WE WOULD STIPULATE, ALSO.

19 THE COURT: THANK YOU, MISS DIMITT, YOU ARE
20 EXCUSED.

21
22 MARK ALAN TROUT

23 Q (BY THE COURT) THE GENTLEMAN IN THE BACK, YES,
24 SIR.

25 A MARK TROUT, 440.

1 Q SIR, WHICH OF THE WITNESSES DO YOU KNOW?

2 A AL CABRALES.

3 Q HOW DO YOU KNOW HIM?

4 A CHURCH AND FRIEND.

5 Q I AM SORRY?

6 A HE IS A FRIEND.

7 Q HOW WELL DO YOU KNOW HIM?

8 A PRETTY WELL.

9 Q DO YOU SEE HIM OUTSIDE OF CHURCH?

10 A I HAVEN'T SEEN HIM IN ABOUT TWO AND A HALF YEARS.

11 Q HOW LONG HAVE YOU KNOWN HIM?

12 A A LONG TIME, ABOUT --

13 THE COURT: MR. CABRALES IS WHAT?

14 MR. HARMON: LAB.

15 MR. SEATON: HE WILL BE CALLED.

16 Q (BY THE COURT) MR. TROUT, IF HE WERE TO BE
17 CALLED, DO YOU THINK THAT YOUR RELATIONSHIP AND YOUR
18 KNOWLEDGE OF HIM WOULD AFFECT YOUR OBJECTIVITY?

19 A I BELIEVE SO.

20 Q DO YOU FEEL BY VIRTUE OF THAT, YOU COULD NOT
21 OBJECTIVELY HEAR AND EVALUATE THE CASE?

22 A I BELIEVE -- I DON'T BELIEVE I COULD.

23 THE COURT: COUNSEL, IT APPEARS TO BE --

24 MR. SEATON: WE'D STIPULATE.

25 MR. PIKE: STIPULATE, YOUR HONOR.

1 MR. HANDFUSS: YES, YOUR HONOR.

2 THE COURT: MR. TROUT, WE THANK YOU, SIR, YOU ARE
3 EXCUSED.

4
5 SUSAN PATRICIA NEYMAN

6 Q (BY THE COURT) YOUNG LADY, YES.

7 A NEYMAN, 459. I DIDN'T HEAR DAVE HATCH'S NAME ON
8 THE LIST OF WITNESSES UNTIL THE OTHER GENTLEMAN MADE MENTION
9 OF HIM. IS HE ON THERE?

10 Q YES.

11 A I KNOW HIM.

12 Q I AM SORRY.

13 A I DO KNOW DAVE HATCH.

14 Q HOW WELL DO YOU KNOW HIM?

15 A SOCIALLY.

16 Q WHEN WAS THE LAST TIME YOU SAW HIM?

17 A A MONTH AGO.

18 Q AND HOW LONG HAVE YOU KNOWN HIM?

19 A SEVERAL YEARS THROUGH MY HUSBAND. HE AND MY
20 HUSBAND USED TO WORK TOGETHER.

21 Q HAS HE BEEN TO YOUR HOME?

22 A NO. SOCIAL FUNCTION AT OTHER PEOPLE'S HOMES,
23 OTHER OFFICERS.

24 Q YOU YOURSELF HAVE ACTUALLY SEEN OR BEEN IN THE
25 COMPANY OF MR. HATCH, HOW MANY TIMES WOULD YOU SAY?

1 A THREE OR FOUR IN THE LAST TWO YEARS, DIFFERENT
2 SOCIAL FUNCTIONS.

3 Q DO YOU THINK THAT BECAUSE OF THAT, YOU COULD NOT
4 OBJECTIVELY EVALUATE THIS CASE?

5 A BECAUSE OF THE CIRCLE OF FRIENDS THAT MY HUSBAND
6 AND I HAVE, I FEEL I COULDN'T OBJECTIVELY HEAR THE CASE.

7 Q WELL, ARE THERE OTHER INDIVIDUALS IN ADDITION TO
8 MR. HATCH?

9 A NOT IN THIS CASE. MOST OF OUR FRIENDS ARE POLICE
10 OFFICERS FROM METRO.

11 Q DO YOU FEEL THAT BY VIRTUE OF THAT OR THE
12 ASSOCIATION OF MR. HATCH THAT YOU CANNOT EVALUATE THE CASE IN
13 A FAIR MANNER?

14 A I FEEL MY OPINION MIGHT BE BIASED.

15 Q YOU SAY MIGHT BE BIASED. HOW CERTAIN IS THAT? I
16 CAN'T WORK WITH VARIABLES VERY EASY. I HAVE TO DETERMINE
17 YOUR MIND, YOU SEE?

18 A I WOULD PROBABLY.

19 Q YOU THINK YOU WOULD PROBABLY BE BIASED IN THE
20 MATTER?

21 A UH-HUH, I WOULD BE.

22 THE COURT: COUNSEL, IT SEEMS TO BE CAUSE.

23 MR. SEATON: STIPULATE.

24 MR. PIKE: SO STIPULATED, YOUR HONOR.

25 THE COURT: MRS. NEYMAN, WE THANK YOU VERY MUCH.

1 ANYONE ELSE THAT FEELS THEY MAY KNOW THE WITNESSES? THIS
2 SIDE OF THE ROOM.

3
4 JOSEPH FRANCIS KINKENON

5 Q (BY THE COURT) OKAY, SIR, YOUR NAME AND NUMBER.

6 A JOE KINKENON, NUMBER 417. JOHN LUCAS, FATHER AND
7 A SON. I DON'T KNOW IF THEY ARE THE JOHN LUCASES THAT MAY
8 BECOME WITNESSES OR NOT.

9 Q ALL RIGHT. DESCRIBE THEM FOR US.

10 A THE ELDER JOHN LUCAS IS ABOUT 6'3", ABOUT 220
11 POUNDS, GRAY HAIR. THE SON'S PROBABLY ABOUT 6' TALL, 180,
12 ABOUT 25 YEARS OLD.

13 Q WHAT ARE THEIR OCCUPATIONS?

14 A I AM NOT SURE WHAT EITHER ONE OF THEM ARE DOING
15 NOW. IT'S BEEN SIX YEARS SINCE I HAVE SEEN EITHER ONE OF
16 THEM.

17 Q HOW OLD WOULD YOU SAY THE YOUNGER LUCAS IS?

18 A 25 YEARS OLD. THE ELDER IS PROBABLY AROUND 50.

19 THE COURT: WHAT ELSE DO YOU KNOW ABOUT THE
20 LUCASES, COUNSEL? I AM REFERRING TO THE STATE, DO YOU HAVE
21 INFORMATION?

22 MR. SEATON: I AM TRYING TO THINK.

23 MR. PIKE: WIFE'S NAME IS MARY LUCAS. THEY MAY
24 BE RESIDING IN NORTH LAS VEGAS.

25 JUROR KINKENON: IT IS A DIFFERENT LUCAS THEN.

1 Q (BY THE COURT) HE MAY HAVE BEEN MARRIED IN THE
2 LAST SIX YEARS.

3 A AS FAR AS I KNOW, HE IS NOT DIVORCED.
4 HE HAD A WIFE.

5 Q HE HAD A WIFE. IT WASN'T MARY EARLIER.

6 THE COURT: ANYONE ELSE FEELS THEY KNOW THE
7 WITNESSES? IF YOU WANT THE NAME REPEATED OR WANT FURTHER
8 CLARIFICATION, THAT CAN BE ARRANGED.

9 ARE THERE ANY OF YOU WHO BELIEVE THAT YOU MAY
10 HAVE HEARD ABOUT OR READ ABOUT IN SOME FASHION THIS CASE
11 PRIOR TO COMING TO COURT TODAY? RAISE YOUR HAND IF YOU HAVE.
12 WE WILL GO INTO THAT MORE FULLY AT A LATER TIME.

13 ARE THERE ANY OF YOU WHO BELIEVE THAT FOR
14 WHATEVER REASON YOU WOULD BE UNABLE TO SERVE AS A FAIR JUROR
15 IN THIS PARTICULAR CASE?

16
17 HERB A. HILL

18 Q (BY THE COURT) YES, SIR.

19 A I SEEM TO HAVE A PROBLEM WITH COUGHING,
20 NONPOLLUTED AIR. I DON'T KNOW IF THAT WILL BE VERY
21 DISRUPTIVE OR NOT.

22 Q I WOULDN'T SAY OUR AIR IS NONPOLLUTED. ARE YOU
23 HAVING TROUBLE HERE?

24 A I WAS A FEW MINUTES AGO. I ADJOURNED TO THE
25 SMOKING ROOM IN THE JURY ROOM AND THE COUGH WENT AWAY SO.

1 Q WHAT IS YOUR NAME, SIR?

2 A HERB HILL.

3 Q MR. HILL, ALL RIGHT. IF IT BECOMES A PROBLEM, WE
4 WILL CERTAINLY LOOK INTO THAT.

5 THE COURT: ANYBODY ELSE HAVE A PROBLEM WITH
6 SERVING IN THIS PARTICULAR TRIAL?

7 MR. POSIN: MAY WE HAVE MR. HILL'S NUMBER?

8 Q (BY THE COURT) WHAT IS YOUR NUMBER?

9 A 470.

10 THE COURT: VERY WELL.

11

12 ROBERT ALBERT DUTE

13 Q (BY THE COURT) YES, SIR.

14 A SIR.

15 Q YES, SIR, YOUR NAME?

16 A MY NAME IS BOB DUTE. I AM BADGE NUMBER 415. MY
17 SON WORKS AT A MCDONALD'S AND I UNDERSTAND THAT SOME OF THE
18 WITNESSES ARE FROM ANOTHER MCDONALD'S. IT IS NOT WHERE MY
19 SON WORKS, BUT HE WORKS ON THE ONE ON CHARLESTON, NOT THE
20 MEADOWS ONE.

21 BUT HE HAS A LOT OF FRIENDS THAT WORK AT
22 MCDONALD'S AND THEY HAVE HAD A FEW SWIMMING PARTIES AT MY
23 HOUSE. I DON'T KNOW IF THIS WILL HAVE AN AFFECT ON IT. I
24 DON'T RECOGNIZE ANY OF THE PEOPLE IN THE ROOM. BUT AT THIS
25 TIME I DON'T KNOW OF ANYTHING THAT --

1 Q DO YOU THINK, MR. DUTE, THAT IF YOU WERE TO
2 RECOGNIZE ONE OF THE WITNESSES THAT WOULD COME FORWARD AS ONE
3 OF THE GENTLEMEN OR LADIES THAT HAD BEEN OVER TO YOUR HOME
4 SWIMMING, DO YOU THINK THAT WOULD HAVE A MATERIAL EFFECT OR
5 ANY EFFECT FOR THAT MATTER ON YOUR EVALUATION OF THE CASE?

6 A I DON'T REALLY BELIEVE SO. I WANTED TO BRING IT
7 UP TO THE COURT SO HE IS AWARE OF WHAT THE SITUATION IS.

8 Q THANK YOU. THANK YOU VERY MUCH, SIR.

9 THE COURT: LADIES AND GENTLEMEN, I ALWAYS
10 PREFACE THE ASKING OF THIS NEXT QUESTION BY INDICATING TO YOU
11 SINCERELY THAT THE ATTORNEYS AND I UNDERSTAND FULL WELL THAT
12 YOU HAVE YOUR OWN LIVES TO LIVE. YOU HAVE OTHER THINGS THAT
13 YOU COULD BE DOING BESIDES SITTING HERE IN THIS COURTROOM AND
14 THAT IS AN ABSOLUTE AND WE ARE VERY MUCH AWARE OF IT.

15 WITH THAT UNDERSTANDING, THIS CASE IN ALL
16 FAIRNESS COULD LAST AS MUCH AS THREE WEEKS. WOULD IT BE AN
17 UNDUE BURDEN, AND EMPHASIZE UNDUE BURDEN, UNDERSTANDING IT IS
18 ALWAYS A BURDEN, AN UNDUE BURDEN FOR ANY ONE OF YOU TO SPEND
19 THE NEXT TWO TO THREE WEEKS SITTING AS A JUROR IN THIS CASE?

20
21 ROBERT HENRY DUNNING

22 Q (BY THE COURT) STARTING OVER HERE, THE MAN IN THE
23 WHITE, YOUR NAME AND NUMBER?

24 A BOB DUNNING, MY NUMBER IS 412.

25 Q MR. DUNNING?

1 A MY WIFE IS FLIGHT ATTENDANT FOR CONTINENTAL
2 AIRLINES. SHE IS OUT OF TOWN FOUR OR FIVE DAYS AT A TIME,
3 FOUR OR FIVE DAYS. I HAVE TWO CHILDREN.

4 Q HOW OLD ARE YOUR CHILDREN?

5 A DAUGHTER, THREE, MY SON'S 14.

6 Q AND THEY ARE AT HOME WITH YOU?

7 A WELL, MY SON IN SCHOOL AND THE BABY'S NURSERY
8 SCHOOL.

9 Q BUT, I MEAN, THEY ARE IN YOUR CHARGE?

10 A THAT'S CORRECT.

11 Q DO YOU WORK?

12 A ASSISTANT CARD ROOM MANAGER AT UNION PLAZA.

13 Q WHAT IS YOUR SHIFT?

14 A MY WORK SCHEDULE IS NO PROBLEM BECAUSE I AM IN
15 CHARGE. I DON'T PUNCH A CLOCK. THE PROBLEM IS CARING FOR MY
16 DAUGHTER.

17 Q THE REASON I BRING UP THE WORK SCHEDULE IS THIS.
18 YOU WILL NOT BE SEQUESTERED. AT LEAST AT THIS JUNCTURE NO
19 DETERMINATION OF THAT BEING A NECESSITY.

20 IN OTHER WORDS, YOU WOULD LEAVE HERE AT FIVE
21 O'CLOCK, REPORT BACK AT TEN IN THE MORNING LIKE A JOB, LIKE
22 A TYPICAL JOB.

23 YOUR JOB MAY NOT COMPORT WITH THOSE HOURS. SO IT
24 WOULDN'T BE ADDITIONAL HARDSHIP OVER MOST EMPLOYMENT. NOW
25 YOU MAY BE AN EXCEPTION.

1 A NO SCHEDULE ON MY JOB.

2 Q YOU UNDERSTAND WHAT I AM SAYING. IF YOU WERE TO
3 WORK TEN TO FIVE AS MOST PEOPLE, I SUPPOSE, DO, OR SOME
4 HOURS SIMILAR TO THAT, YOU WOULD BE AWAY FROM THE HOME, AWAY
5 FROM YOUR CHILD IN ANY CASE.

6 THIS IS SOMETHING THAT WOULD TAKE THE PLACE OF
7 YOUR EMPLOYMENT.

8 A BUT THE PROBLEM HEREIN LIES. IF I WAS AT WORK,
9 IF SOMETHING HAPPENS TO THE BABY AT THE NURSERY SCHOOL, I
10 WOULD HAVE TO GO THERE. ONCE I GOT IN THE COURTROOM, I
11 DIDN'T SEE HOW I COULD LEAVE. AND WITH MY WIFE OUT OF TOWN,
12 THERE IS ONLY ONE OF US THAT CAN GO GET HER.

13 Q YOU SAY YOUR CHILD IS THREE MONTHS?

14 A THREE YEARS.

15 Q YOU FEEL THIS IS A SUBSTANTIAL PROBLEM?

16 A YES, SIR, BECAUSE IF SOMETHING SHOULD HAPPEN, I
17 COULDN'T COME TO COURT OR I WOULD HAVE TO LEAVE. MY WIFE'S
18 GONE FOUR DAYS OUT OF THE WEEK, ONLY HOME THREE DAYS A WEEK.

19 Q IF YOU FEEL THAT YOUR MIND WOULD BE SOMEWHERE
20 ELSE?

21 A IT WOULDN'T BE ANYWHERE ELSE BUT THE EMERGENCY
22 MAY ARISE, I WOULD HAVE TO LEAVE. LIKE THIS MORNING, SHE HAD
23 JUST A BRUISE LIKE ALL KIDS HAVE AND IT WAS OBVIOUSLY EVEN
24 INFECTED. I PUT SALVE ON IT, SENT HER TO THE BABYSITTER.

25 BUT SHOULD IT NOT BE CLEARED UP TOMORROW, I WOULD

1 TAKE HER TO THE CHILDREN'S CLINIC. I COULDN'T TAKE HER TO
2 THE CHILDREN'S CLINIC AND BE IN THE COURTROOM BOTH.

3 Q I AM HARD PUT TO EXCUSE YOU ON THAT BASIS IN THAT
4 WE ARE TALKING ABOUT PROBABILITIES, WHAT MIGHT OCCUR. AND I
5 SAY THIS TO YOU AND ALL OTHER INDIVIDUALS. WE HAVE A CASE OF
6 THE NATURE THAT WE ARE GOING TO HAVE TO UTILIZE A NUMBER OF
7 JURORS. THAT IS MY THINKING. AND THAT IS WHY WE HAVE SUCH A
8 GROUP HERE. IT IS NOT TYPICAL WE HAVE THIS LARGE OF A GROUP.

9 A IT WON'T AFFECT MY THINKING OR JUDGMENT IN ANY
10 MANNER. I THINK IT MIGHT BE EMERGENCY SITUATION.

11 Q I APPRECIATE YOUR MAKING KNOWN THIS FACT TO ME.
12 IF SUCH A THING WOULD ARISE, WE COULD MAKE PROVISIONS FOR IT.
13 I AM GOING TO DECLINE TO EXCUSE AT THIS TIME.

14 A THANK YOU.

15 THE COURT: SOMEONE ELSE HAS SUBSTANTIAL PROBLEM
16 WITH THE TWO TO THREE WEEKS?

17
18 DAVID RAYMOND BEEMAN

19 Q (BY THE COURT) YOUR NAME AND NUMBER?

20 A DAVID BEEMAN, BADGE NUMBER 403.

21 Q MR. BEEMAN.

22 A I OWN MY OWN BUSINESS. I ONLY HAVE ONE EMPLOYEE,
23 ONLY BEEN WITH ME A WEEK.

24 Q WHAT SORT OF BUSINESS ARE YOU IN?

25 A VOLKSWAGEN REPAIRS.

1 Q YOU HAVE ONE EMPLOYEE THAT HAS A SHOP OPEN NOW?

2 A YEAH. HE IS WORKING THERE BY HIMSELF. LIKE I
3 SAID, HE IS -- HE HAS ONLY BEEN WITH ME ABOUT A WEEK. HE
4 DOESN'T KNOW PRICING OR ANYTHING ELSE. FOR A COUPLE OF DAYS,
5 WE CAN PLAY WITH IT. BUT FOR TWO TO THREE WEEKS, THAT WOULD
6 REALLY PUT A HARDSHIP ON MY BUSINESS.

7 Q THERE IS NO ONE THAT COULD ASSIST?

8 A NO.

9 Q ARE YOU MARRIED?

10 A YES.

11 Q YOUR WIFE WORK?

12 A PART TIME.

13 Q IF YOU FEEL THERE IS A SUBSTANTIAL ECONOMIC
14 IMPACT HERE --

15 A I DO. YES, I DO.

16 THE COURT: I WOULD BE INCLINED TO EXCUSE MR.
17 BEEMAN.

18 MR. SEATON: STIPULATE.

19 MR. PIKE: NO OBJECTION.

20 THE COURT: MR. BEEMAN, WE THANK YOU, SIR.
21 ANYONE ELSE IN THIS AREA?

22

23 THOMAS N. TRINAYSTICH

24 Q (BY THE COURT) YES, SIR.

25 A TOM TRINAYSTICH, NUMBER 407. THE ONLY QUESTION I

1 HAVE IF THIS TRIAL DOES GO THREE TO FOUR WEEKS AS YOU SAID.

2 Q TWO OR THREE IS WHAT I SAID.

3 A TWO OR THREE, WILL THE JURY BE SEQUESTERED IF IT
4 IS THAT? I COULDN'T HANDLE IT.

5 Q THERE HAS BEEN NO -- I WILL SAY TO YOU NO.

6 A I TELL YOU. SEE, I TAKE CARE OF MY PARENTS. MY
7 FATHER'S 88 AND TOTAL INVALID SO I CANNOT BE SEQUESTERED AT
8 NIGHT.

9 Q I UNDERSTAND. I DON'T THINK THERE IS A PROBLEM.

10 A THAT IS ALL. I WANTED YOU TO KNOW ABOUT IT.

11 Q THANK YOU, SIR.

12

13 DAVID EDWARD SINGER

14 Q (BY THE COURT) YES, SIR, MR. SINGER.

15 A YES, 448. I HAVE A TRANSPORTATION PROBLEM. I
16 ONLY HAVE LIKE ONE CAR NOW AND I HAVE A WIFE. SHE GOES TO
17 SCHOOL. AND MY LITTLE GIRL, LITTLE BOY HAS TO GO TO
18 PRESCHOOL. AND ALL THIS TIME LIKE THREE WEEKS I HAVE TO TAKE
19 CABS. I LIVE WAY OUT ON THE WEST SIDE OF TOWN BETWEEN JONES
20 AND RAINBOW.

21 Q WHERE DO YOU WORK?

22 A I AM SELF-EMPLOYED. I AM A CARD PLAYER. I
23 USUALLY PLAY NIGHTS. SHE HAS THE CAR DURING THE DAYTIME.

24 Q THERE IS NO WAY SHE CAN BRING YOU AT TEN O'CLOCK?

25 A THE TIME THING.

1 Q WHEN DOES SHE GO TO SCHOOL?

2 A COMMUNITY COLLEGE.

3 Q WHEN DOES SHE GO TO SCHOOL?

4 A IN THE MORNINGS, NINE O'CLOCK.

5 Q YOU SUPPOSE SHE COULD DROP YOU OFF ON THE WAY TO
6 SCHOOL?

7 A WELL, SHE HAS TO GO BY THE PRESCHOOL. SHE HAS TO
8 DROP HIM OFF.

9 Q TYPICALLY, MR. SINGER, WE DON'T EXCUSE
10 INDIVIDUALS FOR SUCH A REASON. I CAN'T HELP BUT THINK THERE
11 IS SOME WAY IF YOU HAD A VEHICLE. IT MIGHT BE AN ADDED
12 INCONVENIENCE IN THAT YOU MIGHT HAVE TO COME A LITTLE EARLIER
13 THAN TEN O'CLOCK. IS SHE OFF BY FIVE? I TAKE IT SHE IS FREE
14 BY FIVE?

15 A OH, YES.

16 Q I AM GOING TO ASK YOU TO REMAIN, SIR, THANK YOU.

17

18 JANICE BEATTY LOWDER

19 Q (BY THE COURT) YES, MA'AM.

20 A MY NAME IS JANICE LOWDER, 432. I DO HAVE A
21 MEDICAL APPOINTMENT IN SALT LAKE ON THE 11TH OF OCTOBER. I
22 DON'T KNOW IF THAT'S THREE WEEKS FROM NOW.

23 Q PRETTY CLOSE. IT IS PROBABLY GOING TO COVER IT.
24 IS THERE ANY WAY THAT COULD BE CHANGED, POSTPONED?

25 A IT IS FOR SURGERY. I HAVE BEEN SCHEDULED. I

1 DON'T KNOW. I COULD MAYBE GET IT CHANGED.

2 Q IS IT A SITUATION THAT IS LIFE THREATENING OR
3 SERIOUS?

4 A NO.

5 Q WHY DON'T YOU INQUIRE, MISS LOWDER, ABOUT IT IN
6 THE MORNING. WITH THE HOUR BEING AS IT IS, WE WON'T GET TOO
7 FAR TODAY. WE WILL UTILIZE TOMORROW AND TO ITS FULLEST
8 EXTENT.

9 IF YOU HAVE A SUBSTANTIAL PROBLEM, YOU CAN NOT
10 GET IT RESCHEDULED, FIND THAT OUT TOMORROW. IF YOU BRING
11 THAT UP TO US, WE WILL BRING THAT UP ONCE AGAIN.

12 A OKAY.

13 Q THANK YOU.

14

15 GENEVIEVE CORBITT BUCHANAN

16 Q (BY THE COURT) OVER HERE, YES, MA'AM.

17 A BUCHANAN, 402. I AM A WAITRESS AND I DEPEND ON
18 TIPS AND I WOULDN'T BE -- IT WOULD BE A FINANCIAL BURDEN.

19 Q WHERE DO YOU WORK?

20 A THE DUNES.

21 Q COCKTAIL OR FOOD SERVICE?

22 A FOOD.

23 Q ARE YOU MARRIED?

24 A YES.

25 Q DOES YOUR HUSBAND WORK?

1 A YES.

2 Q DO YOU FEEL THAT MISSING WORK FOR THAT EXTENT OF
3 TIME WOULD BE A SUBSTANTIAL ECONOMIC HARDSHIP?

4 A WE COULD GET BY BUT, YOU KNOW, IT WOULD BE KIND
5 OF A --

6 Q THIS IS ALWAYS A MATTER OF DEGREE. I THINK WE
7 HAVE TO KIND OF EVALUATE. WHAT IS IT? I DON'T KNOW WHAT
8 THEY GET PAID, 10, \$15, INSIGNIFICANT. BASICALLY, IT IS NOT
9 A GREAT DEAL OF MONEY FOR SERVING AS A JUROR AND IT IS ALWAYS
10 AN ECONOMIC EFFECT. THERE IS ALWAYS SUCH ON SOMEONE.
11 WHETHER THEY ARE ABLE TO WITHSTAND THAT, IS THE QUESTION.

12 WHEN AN INDIVIDUAL'S SPOUSE CONTRIBUTES TO THE
13 HOUSEHOLD, THEN CERTAINLY IT HAS AN EFFECT. BUT, AGAIN, I
14 HAVE TO RELY ON YOUR REPRESENTATIONS. DO YOU FEEL THAT YOU
15 COULD SERVE AND NOT REPRESENT A MAJOR ECONOMIC PROBLEM FOR
16 YOU?

17 A IT WOULDN'T BE MAJOR.

18 Q I WILL ASK YOU TO STAY THEN, MISS BUCHANAN, AND
19 THANK YOU VERY MUCH.

20 THE COURT: ANYONE ELSE?

21
22 JOSEPH FRANCIS KINKENON

23 Q (BY THE COURT) YES, SIR.

24 A KINKENON, 417. THE NATURE OF MY JOB SOMEONE CAN
25 FILL IN FOR ME ABOUT A WEEK BUT THREE WEEK PERIOD.

1 Q WHAT SORT OF JOB?

2 A WORK FOR BORG WAGNER ACCEPTANCE, CHECK INVENTORIES
3 FOR THEM. THERE IS ONLY FOUR PEOPLE IN THE OFFICE. I CHECK
4 INVENTORIES AND THERE IS NO ONE ELSE THAT CAN DO THE JOB
5 EXTENDED PERIOD OF TIME. I AM REQUIRED TO GO OUT OF TOWN.

6 Q I GUESS I AM NOT UNDERSTANDING THEN. IF SOMEONE
7 CAN WORK A WEEK, WHY --

8 A BECAUSE HE HAS HIS OWN JOB. HE CAN FILL IN PART
9 TIME FOR ME BUT HIS JOB REQUIRES MOST OF HIS TIME. MY BOSS
10 REQUIRES HIM TO BE IN THE OFFICE MOST OF THE TIME. HE CAN GO
11 OUT AND COVER FOR ME A FEW DAYS BUT NOT EXTENDED PERIOD OF
12 TIME.

13 Q THERE IS NO OTHER PROVISION THAT CAN BE MADE?

14 A SUCH A SMALL OFFICE, THERE IS REALLY NOBODY ELSE
15 TO COVER FOR ME BUT ONE PERSON.

16 Q IS THIS RECEIVING ITEMS ON A REGULAR BASIS ALL
17 DAY LONG OR JUST WHEN THE MAIL COMES IN?

18 A I ACTUALLY GO OUT ALL DAY LONG AND CHECK
19 DIFFERENT DEALERS IN TOWN TO MAKE SURE THEIR INVENTORY IS
20 THERE.

21 Q I SEE WHAT YOU ARE SAYING. YOU FEEL THAT IT
22 WOULD HAVE A SUBSTANTIAL EFFECT ON THE BUSINESS?

23 A I AM NOT REALLY POSITIVE. I HAVE ONLY WORKED
24 THERE ABOUT SIX MONTHS BUT I KNOW HE CANNOT FILL IN FOR ME
25 FOR AN EXTENDED PERIOD OF TIME.

1 Q I GUESS WHAT I AM ASKING IS IF THE JOB WERE NOT
2 DONE FOR, SAY, TWO WEEKS AFTER THIS MAN'S FILLING IN COULD NO
3 LONGER DO SO, WOULD THAT HAVE SUBSTANTIAL EFFECT?

4 A IT PROBABLY COULD BE COVERED BY PUTTING IN LOT OF
5 TIME AT THE END OF THE MONTH, I WOULD ASSUME.

6 Q I AM GOING TO ASK YOU TO STAY, MR. KINKENON. I
7 WOULD LIKE TO ACCOMMODATE YOUR REQUEST, BUT WE MAY RUN OUT OF
8 JURORS, TO TELL YOU THE TRUTH. THAT COULD BE A SUBSTANTIAL
9 PROBLEM.

10 THE COURT: ANYONE ELSE?

11
12 EDMOND GARY CORTEZ

13 Q (BY THE COURT) YES, SIR.

14 A EDMOND CORTEZ, 452. TWO TO THREE WEEKS WOULD
15 NECESSITATE MY CHANGING SHIFT TO SWING SHIFT. I WORK AT A
16 TELEVISION STATION WHICH IS THE NEWS BLOCK AND I WOULD BE
17 SUBJECT TO SEEING THIS ON THE NEWS PROBABLY QUITE A BIT AND
18 THAT WOULD BE A PROBLEM. I WOULD LIKE TO MAINTAIN
19 OBJECTIVITY.

20 Q WHAT SHIFT DO YOU WORK NOW?

21 A I WORK A DAY SHIFT WHICH ENDS AT FIVE.

22 Q IF YOU WERE TO SERVE AS A JUROR --

23 A I WOULD PROBABLY --

24 Q WORK IN THE EVENINGS?

25 A YES, I WOULD BE. I WOULD GO IN AT 6:00, 5:30 OR

1 6:00, SPECIFICALLY FOR TWO NEWSCASTS.

2 Q IT IS A RATHER UNIQUE SITUATION. HOWEVER, THE
3 POINT IS WELL TAKEN. WHAT CHANNEL IS IT?

4 A 13.

5 Q WHAT IS YOUR FUNCTION?

6 A I AM A CAMERA OPERATOR.

7 Q AND SO YOU TAKE SHOTS OF THE NEWSCASTS?

8 A DURING THE NEWSCAST, THEY WOULD SHOOT THE ACTORS
9 WHO ARE DELIVERING THE NEWS AND THEY WOULD DO THEIR INTROS TO
10 THE PACKAGES AND THE STORIES WHICH THIS MOST ASSUREDLY WOULD
11 BE A STORY.

12 THE COURT: I AM INCLINED TO SUGGEST THAT MR.
13 CORTEZ HAS A LEGITIMATE PROBLEM HERE. ANYONE TAKE EXCEPTION
14 TO THAT?

15 SIR, WE ARE GOING TO EXCUSE YOU. THANK YOU VERY
16 MUCH.

17 ANYONE ELSE THAT HAS A SUBSTANTIAL PROBLEM?

18

19 PETER SAMPSON, JR.

20 Q (BY THE COURT) YES, SIR.

21 A PETER SAMPSON, JUNIOR, 469.

22 Q SAMPSON?

23 A YES. I HAVE BEEN OFF WORK SEVEN WEEKS. I HAD
24 VACATION FIRST THREE WEEKS AND I WAS GOING TO GET AN
25 OPERATION DONE WHILE I WAS ON MY VACATION, BUT THE DOCTOR HAD

1 STACK OF PAPER THIS TALL. HE COULDN'T GET TO ME UNTIL LAST
2 WEEK OF THE VACATION. SO I HAD THE SURGERY.

3 I TRIED IT OUT LAST NIGHT AT WORK. I WAS DUE
4 BACK AT WORK TWO NIGHTS AGO. THE KIND OF PAIN MOST WHEN I AM
5 SITTING DOWN. THAT IS MY ONLY PROBLEM. I HAD TO GO FROM
6 SIDE TO SIDE. STILL SORE AND TENDER.

7 Q SOMETHING LIKE APPENDICITIS?

8 A HERNIA.

9 Q I NOTICE YOU WERE POINTING TO YOUR SIDE. WELL,
10 ARE YOU IN PAIN THEN OR DISCOMFORT?

11 A LIKE PINCHING. WHEN I AM STANDING, IT IS OKAY.

12 Q WHEN WAS THE OPERATION?

13 A IT WAS A MONTH AGO. TAKES FROM FOUR TO SIX WEEKS
14 TO HEAL, BUT THE TYPE OF JOB I HAVE OF DEALING SO HE LET ME
15 OFF, YOU KNOW, FOR FOUR WEEKS.

16 Q MR. SAMPSON, I GUESS I CAN'T TELL YOU HOW YOU
17 FEEL. YOU HAVE TO TELL ME. IF YOU ARE IN DISCOMFORT TO THE
18 EXTENT THAT YOU DON'T THINK --

19 A SITTING.

20 Q JUST A MOMENT, SIR. IF YOU ARE IN DISCOMFORT TO
21 THE EXTENT YOU DON'T THINK YOU CAN SIT A DAY. YOU KNOW, OF
22 COURSE, WE HAVE BREAKS. BUT A DAY LONG LIKE THIS AND YOU
23 THINK YOUR MIND MIGHT BE ELSEWHERE BECAUSE OF THIS OR YOU ARE
24 DISTRACTED OR IN SUBSTANTIAL PAIN, I THINK WE OUGHT TO TAKE
25 THAT INTO CONSIDERATION.

1 IF YOU THINK THAT IT IS NOT TO THE EXTENT IT
2 WOULD BE A PROBLEM, WE WOULD ASK YOU TO STAY. WHAT IS YOUR
3 FEELING?

4 A I THINK I WOULD BE ABLE TO STAY BECAUSE STILL
5 PINCHING JUST SITTING. IF WE WERE STANDING, IT WOULD BE
6 OKAY. I COULD TAKE IT.

7 Q SO YOU ARE SAYING WHAT, SO I UNDERSTAND YOU?

8 A THAT I WOULDN'T BE ABLE TO STAY.

9 THE COURT: OKAY. COUNSEL?

10 MR. POSIN: WE WILL STIPULATE.

11 THE COURT: MR. SAMPSON, THANK YOU, SIR. YOU CAN
12 BE EXCUSED.

13 VERY WELL. MISS CLERK, I WOULD ASK YOU TO CALL
14 12 NAMES. I WOULD ASK THOSE INDIVIDUALS, UNLESS YOUR NAME IS
15 CALLED, TO STAND AND COME OUT INTO THE MAIN PART OF THE
16 COURTROOM BECAUSE WE HAVE TO PUT PEOPLE IN THOSE SEATS AND
17 YOU HAVE TO RESUME THEIR SEATS IF YOU WOULD.

18 THE CLERK: GENEVIEVE CORBITT BUCHANAN,
19 B-U-C-H-A-N-A-N, NUMBER 402.

20 THE COURT: MISS BUCHANAN, IF YOU HAVE THE SEAT
21 RIGHT WHERE THE LADY IN THE WHITE PRINT BLOUSE IS AND IF YOU
22 JUST MOVE OVER TO HER SEAT TEMPORARILY AT LEAST OR JUST
23 STAND.

24 JUROR HOLFORD: COULD I ASK YOU A QUESTION WHILE
25 I AM STANDING, COULD I GO TO THE RESTROOM?

1 THE COURT: YES, YOU MAY. AND I THINK --- SOMEONE
2 SEEN THE BAILIFF?

3 MR. BAILIFF, WOULD YOU ESCORT THIS YOUNG LADY TO
4 THE RESTROOM, SHOW HER WHERE IT IS?

5 THE CLERK: SYLVIA PLESKOVICH FURLAN,
6 F-U-R-L-A-N, NUMBER 426.

7 THE COURT: THANK YOU.

8 THE CLERK: RUTH HOLFORD, H-O-L-F-O-R-D, NUMBER
9 467. SHE MAY BE THE LADY IN THE LADIES' ROOM.

10 THE COURT: WE WILL SAVE A SPOT FOR HER THEN.

11 THE CLERK: GEORGE CARL SCHRAMEK,
12 S-C-H-R-A-M-E-K, NUMBER 454.

13 THE COURT: ARE YOU MISS HOLFORD?

14 JUROR HOLFORD: YEAH.

15 THE COURT: WILL YOU HAVE A SEAT THERE, PLEASE.

16 JUROR HOLFORD: WHERE DO YOU WANT ME TO SIT?

17 THE COURT: AT THE VACANT SEAT.

18 THE CLERK: DAVID EDWARD SINGER, S-I-N-G-E-R,
19 NUMBER 448; JOHN MICHAEL BLACK, B-L-A-C-K, NUMBER 425; GWEN
20 BRISTER PHILLIPS, P-H-I-L-L-I-P-S, NUMBER 416; CARL W.
21 WHITTINGTON, JR., W-H-I-T-T-I-N-G-T-O-N, NUMBER 471.

22 THOMAS N. TRINAYSTICH, T-R-I-N-A-Y-S-T-K-C-H,
23 NUMBER 407; FREDERICK LOLLIS, L-O-L-L-I-S, NUMBER 423 AND
24 CORA MELISSA BALL, B-A-L-L, NUMBER 409.

25 THE COURT: I BELIEVE WE NEED ONE MORE AND WE

1 NEED TO SHIFT EVERYONE DOWN ONE SEAT.

2 I THINK THE GENTLEMAN IN THE BLUE SHIRT, MR.
3 WHITTINGTON, YOU SHOULD BE THERE.

4 WE NEED ONE MORE NAME CALLED.

5 THE CLERK: THE LAST ONE WAS -- OH, YOU ARE
6 RIGHT.

7 THE COURT: YES, SIR. YOU CAN FIND A SEAT
8 ELSEWHERE. THANK YOU VERY MUCH.

9 THE CLERK: ROBERT LEE ANDERSON, A-N-D-E-R-S-O-N,
10 NUMBER 444.

11 THE COURT: VERY WELL. IF THOSE WHO HAVE BEEN
12 DISPLACED COULD FIND A SEAT, I WOULD APPRECIATE IT.

13 ALL RIGHT. LADIES AND GENTLEMEN, AGAIN, I AM
14 GOING TO ADDRESS YOU AS A GROUP, THE 12 WHO HAVE BEEN CALLED
15 AT THIS JUNCTURE.

16 I WOULD ASK THOSE INDIVIDUALS WHOSE NAMES HAVE
17 NOT BEEN CALLED AS OF YET TO FOLLOW ALONG THE QUESTIONING
18 PROCEDURES AS I ASK THE QUESTIONS OF THESE INDIVIDUALS
19 BECAUSE THESE SAME QUESTIONS WILL IN ALL LIKELIHOOD BE ASKED
20 YOU. AND SO IF YOU WOULD, YOU MIGHT CONSIDER HOW YOU WOULD
21 RESPOND AND KIND OF FOLLOW ALONG. I THINK IT WOULD BE
22 BENEFICIAL.

23 I WOULD ASK EACH OF YOU COLLECTIVELY. HAVE YOU
24 EVER SERVED AS A JUROR BEFORE?

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GENEVIEVE CORBITT BUCHANAN

Q (BY THE COURT) WE WILL START IN THE BACK ROW.
IS IT MISS OR MRS. BUCHANAN?

A MRS.

Q YOU HAVE SERVED AS A JUROR BEFORE?

A I SERVED THE FEDERAL GRAND JURY FOR 18 MONTHS.

Q WHERE WAS THAT?

A HERE AT THE FEDERAL BUILDING.

Q FOR 18 MONTHS?

A YEAH, ON THE FEDERAL GRAND JURY.

Q HOW LONG AGO WAS THAT?

A ABOUT FOUR YEARS AGO.

Q WERE YOU THE FOREMAN BY ANY CHANCE?

A NO.

Q OR ADMINISTRATIVE FUNCTION THERE WITH THEM?

A NO.

THE COURT: WHO ELSE?

DAVID EDWARD SINGER

Q (BY THE COURT) MR. SINGER.

A FEDERAL GRAND JURY.

Q HERE IN CLARK COUNTY?

A QUITE A WHILE AGO.

Q HOW LONG AGO WOULD YOU SAY?

A ABOUT 12 YEARS.

1 Q HOW LONG DID YOU SERVE?
2 A I THINK 12 MONTHS.
3 Q WERE YOU THE FOREMAN?
4 A NO.
5 THE COURT: ANYONE ELSE IN THE BACK ROW?
6 GWEN BRISTER PHILLIPS
7 Q (BY THE COURT) MISS OR MRS. PHILLIPS?
8 A MRS.
9 Q HAVE YOU SERVED AS A JUROR BEFORE?
10 A YES, SIR.
11 Q HOW SO?
12 A IT WAS A ONE DAY SERVICE ABOUT THREE YEARS AGO.
13 Q WAS IT HERE IN CLARK COUNTY?
14 A YES.
15 Q WAS IT A CIVIL OR CRIMINAL CASE?
16 A CRIMINAL.
17 Q IT LASTED ONLY ONE DAY?
18 A YES.
19 Q WERE YOU THE FOREMAN BY ANY CHANCE?
20 A NO.
21 Q WITHOUT INDICATING WHAT THE VERDICT WAS, DID, IN
22 FACT, THE JURY REACH A VERDICT?
23 A YES.
24 THE COURT: ANYONE ELSE IN THE FRONT ROW HERE?
25 CORA MELISSA BALL

1 Q (BY THE COURT) IS IT MISS OR MRS. BALL?
2 A MRS. BALL.
3 Q MRS. BALL, HOW DID YOU SERVE?
4 A IN A MALPRACTICE SUIT ABOUT TWO YEARS AGO.
5 Q HERE IN CLARK COUNTY?
6 A YES, SIR.
7 Q IT WAS A CIVIL MATTER?
8 A YES, SIR.
9 Q WERE YOU THE FOREMAN?
10 A NO, SIR.
11 Q DID THEY REACH A VERDICT IN THAT MATTER?
12 A YES, THEY DID.
13 THE COURT: I WOULD ASK EACH OF THOSE WHO
14 RESPONDED, MRS. BUCHANAN, MR. SINGLE, MRS. PHILLIPS, MRS.
15 BALL, DO YOU FEEL YOUR PRIOR JURY SERVICE WOULD IN ANY WAY
16 INHIBIT YOUR ABILITY TO SERVE OBJECTIVELY IN THIS JURY?
17 JUROR BUCHANAN: NO.
18 THE COURT: MR. SINGER?
19 JUROR SINGER: NO.
20 THE COURT: MRS. PHILLIPS?
21 JUROR PHILLIPS: NO.
22 THE COURT: MISS BALL?
23 JUROR BALL: NO.
24 THE COURT: OKAY. ARE YOU OR ANY OF YOUR CLOSE
25 FRIENDS OR RELATIVES INVOLVED IN LAW ENFORCEMENT OR HAVE YOU

1 BEEN IN THE PAST? ANYONE?

2
3 THOMAS N. TRINAYSTICH

4 Q (BY THE COURT) HOW DO YOU PRONOUNCE YOUR NAME?

5 A TRINAYSTICH.

6 Q HOW HAVE YOU BEEN INVOLVED IN LAW ENFORCEMENT?

7 A NOT ME PERSONALLY BUT I DO HAVE A COUSIN THAT
8 WORKS FOR METRO.

9 Q HOW OFTEN DO YOU SEE YOUR COUSIN?

10 A PROBABLY HAVEN'T SEEN HIM IN ABOUT FIVE YEARS,
11 FIVE OR SIX YEARS, AT LEAST.

12 Q PRIOR TO THE LAST TIME YOU SAW YOUR COUSIN, HOW
13 OFTEN WOULD YOU SAY YOU HAVE SEEN HIM? WERE YOU CLOSE BACK
14 BEFORE THAT?

15 A NOT REALLY CLOSE. FAMILY FUNCTION IS ABOUT THE
16 ONLY TIME WE SEE EACH OTHER, WEDDINGS AND BAPTISMS.

17 Q DO YOU KNOW HIS JOB AT THIS TIME SPECIFICALLY?

18 A NO. AS I SAID, IT'S BEEN ABOUT FIVE YEARS. I AM
19 NOT SURE WHAT HE DOES. I AM SURE HE IS STILL WITH METRO BUT
20 I HAVE LOST TRACK WITH HIM.

21 Q DO YOU FEEL, MR. TRINAYSTICH, THAT YOU WOULD HAVE
22 ANY FEELING OF NECESSITY TO EXPLAIN OR JUSTIFY IN ANY WAY
23 YOUR VERDICT AS A JUROR IN THIS MATTER TO HIM IF YOU WOULD
24 LATER SEE HIM?

25 A NO, SIR, NO.

1 Q THE FACT THAT HE IS EMPLOYED BY METRO WOULD YOU
2 THINK AFFECT YOU IN ANY WAY?

3 A NOT THAT I COULD THINK OF, NO.

4 THE COURT: ANYONE ELSE?

5
6 JOHN MICHAEL BLACK

7 Q (BY THE COURT) MR. BLACK.

8 A I HAVE FRIENDS WHO ARE POLICE OFFICERS.

9 Q HOW MANY?

10 A TWO THAT COME TO MIND. PROBABLY MORE IF I
11 THOUGHT ABOUT IT.

12 Q HOW WELL DO YOU KNOW THE TWO?

13 A ONE OF THEM -- I OPERATE A SERVICE STATION -- I
14 SEE HIM EVERY COUPLE OF DAYS. HE STOPS IN THE AREA AND WE
15 VISIT.

16 Q DO YOU SEE HIM OUTSIDE OF THE STOPPING IN AT THE
17 SERVICE STATION?

18 A AS A VOLUNTEER SCOUTER, I SEE HIM ON OCCASION
19 DURING TRAINING FUNCTIONS.

20 Q HE TRAINS SCOUTS?

21 A RIGHT.

22 Q DO YOU SEE HIM SOCIALLY?

23 A ONLY AS INVOLVED WITH SCOUTING.

24 Q HAS HE BEEN TO YOUR HOME OR YOU HIS?

25 A NO.

1 Q AND THE OTHER GENTLEMAN?

2 A THE OTHER GENTLEMAN THROUGH CHURCH. AGAIN, I SEE
3 HIM AT WORK OCCASIONALLY AND I HAVE BEEN IN HIS HOME, HE HAS
4 BEEN IN MINE BUT NOT FOR SEVERAL YEARS.

5 Q WHEN WAS THE LAST TIME YOU SAW THE LATTER
6 GENTLEMAN?

7 A A COUPLE OF MONTHS AGO.

8 Q DO YOU THINK THAT YOUR RELATIONSHIP WITH THESE
9 INDIVIDUALS IN ANY WAY WOULD AFFECT YOUR ABILITY TO BE
10 OBJECTIVE IN EVALUATING THIS CASE?

11 A NO, SIR.

12 Q WOULD YOU FEEL ANY COMPUNCTION TO EXPLAIN OR
13 JUSTIFY YOUR VERDICT TO EITHER OF THEM?

14 A NO.

15 THE COURT: ANYONE ELSE?

16

17 ROBERT LEE ANDERSON

18 Q (BY THE COURT) MR. ANDERSON?

19 A YES. ONE OF MY FORMER BOY SCOUTS IS METRO
20 OFFICER.

21 Q WHEN WAS THE LAST TIME YOU SAW HIM?

22 A ABOUT A YEAR AGO.

23 Q HOW WELL DID YOU KNOW HIM?

24 A OTHER THAN SCOUTING, THAT WAS THE ONLY TIME I
25 REALLY KNEW HIM.

1 Q WAS HE JUST ONE OF THE BOY SCOUTS?

2 A YES.

3 Q DID YOU HAVE A PARTICULAR RELATIONSHIP OR
4 INTEREST?

5 A NO. HE WAS JUST ONE OF THE BOY SCOUTS. I KNEW
6 HIS PARENTS.

7 Q DO YOU THINK THAT THAT RELATIONSHIP WOULD IN ANY
8 WAY AFFECT YOUR ABILITY TO EVALUATE THIS CASE FAIRLY?

9 A NO, SIR.

10 Q DO YOU THINK YOU WOULD HAVE ANY COMPUNCTION TO
11 JUSTIFY OR EXPLAIN YOUR VERDICT TO HIM?

12 A NO.

13 THE COURT: I WOULD ASK AGAIN ALL THE PROSPECTIVE
14 JURORS, 12 OF THEM CALLED, WOULD YOU HAVE A TENDENCY TO GIVE
15 MORE WEIGHT OR CREDENCE TO THE TESTIMONY OF A LAW ENFORCEMENT
16 OFFICER SIMPLY BECAUSE THE PERSON WAS AN OFFICER?

17 DOES ANYONE FEEL THEY WOULD, PLEASE RESPOND.

18 HAVE YOU OR CLOSE FRIEND OR FAMILY MEMBER EVER
19 BEEN A VICTIM OF CRIME? THIS INCLUDES SUCH THINGS AS
20 HOUSEHOLD BURGLARIES AND SUCH THINGS AS PHYSICAL ASSAULTS OR
21 BATTERY UPON YOURSELF OR A FRIEND.

22

23 GEORGE CARL SCHRAMEK

24 Q (BY THE COURT) ALL RIGHT. WE WILL START IN THE
25 BACK. MR. SCHRAMEK.

1 A YES.

2 Q YES, SIR.

3 A I HAVE A NIECE THAT HAS BEEN -- WAS SEXUALLY
4 ASSAULTED.

5 Q HOW LONG AGO?

6 A WELL, I WOULD SAY PROBABLY YEAR AND A HALF AGO.

7 Q HOW CLOSE WERE YOU TO HER OR ARE YOU TO HER?

8 A SHE IS LIVING WITH MY PARENTS IN THE SAME HOUSE
9 THAT I LIVE IN PRESENTLY.

10 Q AT THIS TIME, HOW OLD IS SHE?

11 A SHE IS ABOUT, COMING UP ON FIVE YEARS OLD.

12 Q AND SO YOU SEE HER DAILY?

13 A YES.

14 Q DID YOU SEE HER AS OFTEN BEFORE THE INCIDENT?

15 A I WOULD SAY PROBABLY TWICE A WEEK. SHE WAS IN
16 HER FATHER'S CUSTODY AT THE TIME.

17 Q WAS ANYONE CHARGED WITH THE OFFENSE?

18 A THEY COULD NOT FIND OUT ANYBODY, ANY GUILTY
19 PARTY.

20 Q I ASSUME IT WAS REPORTED?

21 A RIGHT. THE CUSTODY JUST CHANGED HANDS. THAT IS
22 ALL THAT REALLY HAPPENED.

23 Q DO YOU FEEL UNDER THE CIRCUMSTANCES THE
24 AUTHORITIES REACTED APPROPRIATELY?

25 A NOT REALLY.

1 Q DO YOU THINK THAT THAT INCIDENT AND THE FEELING
2 THAT YOU HAVE DERIVED THEREFROM WOULD IN ANY WAY COLOR THE
3 WAY THAT YOU WOULD EVALUATE THE STATE'S CASE OR THE
4 DEFENDANTS' CASE IN THIS MATTER?

5 A I DON'T THINK IT REALLY HAS ANY RELATION, THE TWO
6 CASES.

7
8 JOHN MICHAEL BLACK

9 Q (BY THE COURT) ON DOWN, I BELIEVE, MR. BLACK,
10 YES.

11 A YES. AN EMPLOYEE THAT I CHARGED WITH
12 EMBEZZLEMENT STOLE SOME TIRES FROM MY SERVICE STATION.

13 Q YOU REPORTED IT, I TAKE IT?

14 A YES, REPORTED. HE WAS ARRESTED. CASE HAS NOT
15 COME TO TRIAL YET.

16 Q THUS FAR, DO YOU FEEL THE AUTHORITIES HAVE
17 REACTED APPROPRIATELY?

18 A YES.

19 Q DO YOU THINK THERE IS ANYTHING ABOUT THAT THAT
20 WOULD INFLUENCE YOU IN THIS CASE AT ALL?

21 A NO.

22
23 DAVID EDWARD SINGER

24 Q (BY THE COURT) MR. SINGER?

25 A THE LAST FIVE YEARS I HAD ONE HOUSE BURGLARIZED,

1 THREE CARS STOLEN.

2 Q THESE ARE SEPARATE INCIDENTENCES?

3 A YES.

4 Q WERE THEY REPORTED?

5 A YES.

6 Q WAS ANYONE CAUGHT?

7 A YES.

8 Q HAVE THEY BEEN PROSECUTED?

9 A I THINK THEY HAD A PLEA BARGAIN.

10 Q YOU WERE NOT IN COURT AT A TRIAL THEN, I TAKE IT?

11 A NO.

12 Q DO YOU THINK UNDER THE CIRCUMSTANCES THAT THE
13 INCIDENTENCES WERE TREATED APPROPRIATELY BY THE AUTHORITIES?

14 A YES.

15 Q I AM SORRY?

16 A YES.

17 Q ANYTHING ABOUT THESE INSTANCES THAT YOU THINK
18 WOULD AFFECT YOUR OBJECTIVITY IN THIS CASE?

19 A NO.

20
21 THOMAS N. TRINAYSTICH

22 Q (BY THE COURT) THE FRONT ROW HERE, MR.
23 TRINAYSTICH.

24 A MY SISTER'S HOUSE WAS BURGLARIZED ABOUT TWO YEARS
25 AGO. EARLIER IN THE YEAR, I HAVE A BROTHER-IN-LAW ASSAULTED

1 ON THE GOLF COURSE.

2 Q EARLIER THIS YEAR?

3 A PARDON ME. EARLY IN 1984 SO IT IS ABOUT A YEAR
4 AND A HALF AGO.

5 Q HOW WAS THE ASSAULT ACCOMPLISHED?

6 A HE WAS ATTACKED BY A GUY WITH A GOLF CLUB, WITH
7 THE PUTTER.

8 Q WERE THEY PLAYING GOLF AT THE TIME?

9 A NO. THERE WAS A HOUSE ON THE GOLF COURSE AND
10 SOMEHOW THEY GOT INTO AN ALTERCATION. I DON'T KNOW HOW. BUT
11 AS MY BROTHER-IN-LAW WALKED OFF, THE MAN CAME OUT AND HIT HIM
12 IN THE BACK OF THE HEAD WITH A PUTTER.

13 Q WAS HE INJURED SUBSTANTIALY?

14 A YES, HE WAS.

15 Q AND YOU SAY THERE WAS A BURGLARY INVOLVED IN ONE
16 OF YOUR RELATIVES?

17 A MY SISTER'S HOUSE WAS BURGLARIZED.

18 Q WAS THAT REPORTED?

19 A YES.

20 Q WAS THE ASSAULT REPORTED?

21 A YES, BOTH OF THEM.

22 Q WAS ANYONE CHARGED OR CONVICTED?

23 A IN BOTH INSTANCES, NO ONE WAS CONVICTED OF THEM.

24 Q DO YOU THINK THAT THE INSTANCES WERE TREATED
25 APPROPRIATELY BY THE AUTHORITIES?

1 A IN ONE WAY, YES. AND THE ASSAULT CASE, I AM
2 STILL NOT TOO SURE ABOUT THAT.

3 Q IS THERE ANYTHING ABOUT EITHER OF THESE INSTANCES
4 THAT WOULD AFFECT YOUR OBJECTIVITY IN HEARING THIS CASE?

5 A I DON'T REALLY THINK SO, NO.
6

7 CORA MELISSA BALL

8 Q (BY THE COURT) MISS BALL?

9 A I WAS PHYSICALLY ASSAULTED IN MY CARPORT ABOUT
10 THREE YEARS AGO AND THE CASE WAS HANDLED VERY WELL THROUGH
11 THE COURTS, THE POLICE AND ALL.

12 Q WAS SOMEONE CONVICTED OF IT?

13 A YES.

14 Q WERE YOU INJURED SUBSTANTIALLY?

15 A NO. I WAS MORE OR LESS FRIGHTENED TO DEATH. I
16 HAD JUST HAD AN OPERATION ON MY THROAT AND MY THROAT WAS
17 GRABBED AND I LOST MY WIND, WENT TO THE GROUND. AND HE
18 PROCEEDED TO BEAT MY DAUGHTER. BUT HE WAS APPREHENDED AND IT
19 WAS TAKEN CARE OF VERY WELL.

20 Q ALTHOUGH THERE WAS A FRIGHT INVOLVED, WAS THERE
21 ANY SUBSTANTIAL PHYSICAL HARM TO EITHER YOU OR YOUR DAUGHTER?

22 A YES. MY NERVES WERE UPSET OVER IT QUITE A WHILE
23 BECAUSE IT WAS A NEIGHBOR AND SHE WAS -- SHE HAD BACK
24 TREATMENTS FOR QUITE A WHILE.

25 THE COURT: ANYONE ELSE? ALL RIGHT. HAVE YOU

1 READ OR HEARD ANYTHING ABOUT THIS CASE PRIOR TO COMING TO
2 COURT TODAY? SHOW OF HANDS. ALL RIGHT.

3
4 GENEVIEVE CORBITT BUCHANAN

5 Q (BY THE COURT) WE WILL START HERE WITH MISS
6 BUCHANAN. WHAT HAD YOU HEARD? WHAT MEDIUM HAD YOU HEARD
7 THIS THROUGH?

8 A SUNDAY NEWSPAPER.

9 Q ANY OTHER MEDIUM?

10 A WELL, IT WAS SOME IN THE R.J. I READ BOTH
11 PAPERS.

12 Q SO WOULD YOU SAY NEWSPAPERS, NOT TELEVISION OR
13 RADIO?

14 A NOT, NO.

15 Q DO YOU REMEMBER READING THE ARTICLES?

16 A YEAH.

17 Q HAD ANYONE DISCUSSED IT WITH YOU?

18 A NO.

19 Q DO YOU RECALL YOUR FEELING -- HAD YOU FORMULATED
20 AN OPINION BY VIRTUE OF WHAT YOU READ AS TO THE GUILT OR
21 INNOCENCE OF THE DEFENDANTS?

22 A NO, I DON'T THINK SO.

23 Q DO YOU RECALL WHAT YOUR FEELINGS WERE?

24 A WELL, AT FIRST I DIDN'T KNOW WHO DID IT AND I
25 THOUGHT IT WAS A TERRIBLE CRIME.

1 Q AND LATER DID THEY INDICATE WHO THEY THOUGHT HAD
2 DONE IT?

3 A YES.

4 Q DO YOU THINK THAT BY VIRTUE OF THAT EXPOSE, DID
5 YOU KNOW WHO DID IT?

6 A NO.

7 Q DO YOU HONESTLY BELIEVE THAT, NOTWITHSTANDING WHAT
8 YOU MAY HAVE READ ABOUT THIS CASE, THAT YOU CAN FAIRLY AND
9 OBJECTIVELY WEIGH THE EVIDENCE IN THE CASE AND DETERMINE
10 BASED SOLELY UPON THAT EVIDENCE THE GUILT OR INNOCENCE OF THE
11 DEFENDANTS?

12 BEFORE YOU ANSWER, I AM GOING TO ASK EVERYONE
13 THIS QUESTION, ESSENTIALLY, THAT SAYS THAT THEY HAVE HEARD
14 ABOUT THE CASE. PLEASE CONSIDER YOUR ANSWER, CONSIDER WHAT
15 YOUR HONEST RESPONSE IS AND GIVE IT TO ME. AS I SAID, THERE
16 ARE NO WRONG ANSWERS.

17 SO LET ME REPEAT THE QUESTION. DO YOU HONESTLY
18 BELIEVE THAT NOTWITHSTANDING WHAT YOU MAY HAVE READ ABOUT THE
19 CASE THAT YOU CAN FAIRLY AND OBJECTIVELY WEIGH THE EVIDENCE
20 IN THE CASE AND DETERMINE BASED SOLELY UPON THAT EVIDENCE,
21 THAT WHICH COMES FROM THE COURT HERE INSIDE THE COURTROOM,
22 THE GUILT OR INNOCENCE OF THE DEFENDANTS?

23 A I DON'T THINK IT WOULD MAKE ANY DIFFERENCE. I
24 THINK I COULD GO WITH THE EVIDENCE. I DON'T THINK WHAT I
25 READ WILL MAKE ANY DIFFERENCE.

1 Q DO YOU UNDERSTAND THAT YOU ARE TO BASE YOUR
2 DECISION AS A JUROR TO THE DEFENDANTS' GUILT OR INNOCENCE
3 EXCLUSIVELY ON THE EVIDENCE PRESENTED IN THIS COURTROOM AND
4 DISREGARD ANYTHING THAT YOU MAY HAVE HEARD ABOUT THIS CASE
5 PRIOR TO THIS TIME? DO YOU UNDERSTAND THAT?

6 A UH-HUH.

7 Q DO YOU THINK YOU CAN DO THAT?

8 A YEAH.

9
10 SYLVIA PLESKOVICH FURLAN

11 Q (BY THE COURT) AND DID YOU INDICATE YOUR HEARD
12 SOMETHING ABOUT THE CASE?

13 A TELEVISION.

14 Q IS IT MRS. FURLAN?

15 A MRS.

16 Q TELEVISION THE ONLY MEDIA THAT YOU HEARD FROM?

17 A I DIDN'T READ IT IN THE PAPERS. I GET THE PAPERS
18 BUT I DON'T READ ARTICLES LIKE THAT.

19 Q DO YOU RECALL SEEING A NEWS REPORT OF THE CASE?

20 A JUST WHEN IT HAPPENED. I BELIEVE IT WAS AROUND
21 ELECTION TIME.

22 Q DO YOU RECALL FORMING AN OPINION ONE WAY OR THE
23 OTHER AS TO THE GUILT OR INNOCENCE OF THE DEFENDANTS?

24 A NO.

25 Q DO YOU REMEMBER SPECIFICALLY WHAT YOU HEARD?

1 A JUST THAT HUSBAND AND WIFE WERE MURDERED.

2 Q WAS ANYONE NAMED AS SUSPECT AT THAT TIME OR DO
3 YOU RECALL?

4 A NO.

5 Q DID YOU EVER HEAR A LATER ACCOUNT THAT SOMEONE
6 WAS SUSPECTED OR ANYTHING OF THAT NATURE?

7 A I HEARD SOMEONE HAD BEEN ACCUSED OF IT.

8 Q YOU OBSERVED MORE THAN ONE NEWSCAST?

9 A A COUPLE TIMES, YEAH.

10 Q DID YOU HAVE OCCASION TO DISCUSS WHAT YOU WERE
11 VIEWING WITH ANY OTHER PERSON?

12 A NO.

13 Q DO YOU THINK THAT AT THE TIME OR SINCE YOU HAVE
14 FORMED AN OPINION AS TO THE GUILT OR INNOCENCE OF THE
15 DEFENDANTS BASED ON WHAT YOU HEARD ON THE NEWS?

16 A NO.

17 Q DO YOU THEN HONESTLY BELIEVE THAT NOTWITHSTANDING
18 WHAT YOU MAY HAVE HEARD ABOUT THE CASE THAT YOU CAN FAIRLY
19 AND OBJECTIVELY WEIGH THE EVIDENCE IN THE CASE AND DETERMINE
20 BASED SOLELY UPON THAT EVIDENCE THE GUILT OR INNOCENCE OF THE
21 DEFENDANTS?

22 A I REALLY DON'T KNOW, YOUR HONOR.

23 Q WELL, I DON'T EITHER.

24 A I MEAN, I NEVER BEEN IN A SITUATION LIKE THAT. I
25 NEVER HAD IT APPROACHED. I REALLY DON'T KNOW. I ALWAYS

1 LISTEN TO BOTH SIDES OF ARGUMENTS IN THE FAMILY AND WHATEVER
2 BUT --

3 Q PERHAPS ASKING THIS NEXT QUESTION WILL PROMPT YOU
4 TO INVESTIGATE YOUR FEELINGS A BIT MORE. DO YOU UNDERSTAND
5 THAT YOU ARE TO BASE YOUR DECISION AS TO THE DEFENDANTS'
6 GUILT OR INNOCENCE EXCLUSIVELY UPON THE EVIDENCE PRESENTED IN
7 THIS COURTROOM AND DISREGARD ANYTHING THAT YOU MAY HAVE HEARD
8 ABOUT THIS CASE PRIOR TO THIS TIME?

9 A I UNDERSTAND THAT.

10 Q DO YOU THINK YOU CAN DO THAT?

11 A YES, I DO.

12 Q ARE THERE ANY FEELINGS HARBORED WITHIN YOU BASED
13 ON WHAT YOU HEARD VIA THE NEWS AND THE TELEVISION, THAT YOU
14 THINK WOULD COME TO BEAR HERE AND INFLUENCE YOU IN ANY WAY?

15 A I DON'T BELIEVE SO.

16 Q SO THAT I UNDERSTAND, ARE YOU TELLING ME THAT YOU
17 CAN TAKE THE EVIDENCE AS IT IS PRESENTED HERE IN COURT AND
18 BASED ONLY ON THAT EVIDENCE DETERMINE THE GUILT OR INNOCENCE
19 OF THE DEFENDANTS?

20 A I BELIEVE I COULD, SIR.

21
22 RUTH HOLFORD

23 Q (BY THE COURT) IS IT MISS OR MRS. HOLFORD?

24 A MISS. BUT I DON'T READ THE PAPERS OR WATCH THE
25 NEWS.

1 Q HAD YOU HEARD ANYTHING ABOUT THIS CASE BEFORE
2 TODAY?

3 A NO.
4

5 GEORGE CARL SCHRAMEK

6 Q (BY THE COURT) AND, MR. SCHRAMEK, HAD YOU HEARD
7 ABOUT THE CASE?

8 A YES. PROBABLY WITHIN THE PAST WEEK, I SEEN THE
9 ARTICLE IN THE NEWSPAPER.

10 Q HOW ABOUT PRIOR TO THAT?

11 A PRIOR TO THAT, NO, NOT REALLY. I MAY HAVE SEEN
12 IT BUT I DON'T REMEMBER ANYTHING ABOUT IT.

13 Q A WEEK AGO OR SO, YOU SAID YOU READ SOMETHING IN
14 THE NEWSPAPER?

15 A YES.

16 Q ANY OTHER INFORMATION IN THE NEWSPAPER?

17 A BASICALLY THE DEFENDANTS WERE AWAITING TRIAL AND
18 THEY WERE ACCUSED OF --

19 Q WERE THE DEFENDANTS NAMED, DO YOU RECALL?

20 A THEY HAD THEIR NAMES IN THE PAPER, YES.

21 Q IF I ASKED YOU BEFORE COMING INTO THIS COURT
22 TODAY WHAT ANY OF THE NAMES WERE, WOULD YOU KNOW THEM?

23 A NO. I KNOW NONE OF THEM.

24 Q HAD YOU RECEIVED INFORMATION THROUGH ANY OTHER
25 SOURCE A WEEK AGO OR JUST THE NEWSPAPER?

1 A JUST THE NEWSPAPER.

2 Q DO YOU RECALL FORMULATING AN OPINION EITHER THEN
3 OR SINCE AS TO THE GUILT OR INNOCENCE OF THE DEFENDANTS BY
4 VIRTUE OF WHAT YOU HEARD OR READ?

5 A WELL, THE STORY I READ IN THE NEWSPAPER WAS MORE
6 OF SHOCK THAN ANYTHING ELSE AS FAR AS --

7 Q SHOCK TO WHOM?

8 A SHOCK THAT IT HAPPENED.

9 Q TO YOU, YOU MEAN?

10 A NO, JUST READING IT. I DON'T KNOW IF IT IS TRUE
11 BECAUSE THE STORIES I READ, THE NEWSPAPERS ARE NOT TOTALLY
12 TRUTHFUL.

13 Q WELL, I GUESS I AM NOT UNDERSTANDING WHO WAS
14 SHOCKED. WERE YOU?

15 A I WAS SHOCKED, YES, TO HEAR OF IT.

16 Q DO YOU REMEMBER SPECIFICALLY WHAT YOU READ?

17 A LIKE I SAID, THEY WERE JUST AWAITING TRIAL FOR
18 WHATEVER THEY WERE CHARGED FOR.

19 Q I DON'T RECALL YOUR RESPONSE TO THIS QUESTION.
20 DID YOU FORM AN OPINION AS TO THEIR GUILT OR INNOCENCE EITHER
21 AT THAT TIME OR SINCE?

22 A NO, SIR.

23 Q DO YOU HONESTLY BELIEVE, NOTWITHSTANDING WHAT YOU
24 MAY HAVE READ ABOUT THE CASE, THAT YOU CAN FAIRLY AND
25 OBJECTIVELY WEIGH THE EVIDENCE IN THE CASE AND DETERMINE

1 BASED SOLELY ON THAT EVIDENCE THE GUILT OR INNOCENCE OF THE
2 DEFENDANTS?

3 A I BELIEVE I COULD BE OBJECTIVE, SIR.

4 Q IS THERE ANY DOUBT IN YOUR MIND?

5 A NO DOUBTS.

6 Q DO YOU UNDERSTAND THAT YOU ARE TO BASE YOUR
7 DECISION AS TO THE DEFENDANTS' GUILT OR INNOCENCE EXCLUSIVELY
8 UPON THE EVIDENCE PRESENTED IN THIS COURTROOM AND DISREGARD
9 ANYTHING THAT YOU MAY HAVE HEARD ABOUT THE CASE PRIOR TO THIS
10 TIME? DO YOU UNDERSTAND THAT?

11 A YES, SIR.

12 Q DO YOU THINK YOU CAN DO THAT?

13 A YES, SIR.

14
15 DAVID EDWARD SINGER

16 Q (BY THE COURT) MR. SINGER, HAD YOU HEARD ABOUT
17 THE CASE?

18 A YES, I HAVE.

19 Q HOW SO?

20 A WHEN IT HAPPENED, TELEVISION AND BOTH NEWSPAPERS.
21 AND WITHIN THE LAST COUPLE OF DAYS, I DID READ AN ARTICLE IN
22 THE PAPER.

23 Q DRAWING YOUR ATTENTION TO THE FIRST THAT YOU WERE
24 MADE AWARE OF THE CASE, YOU SAY THE TELEVISION AND
25 NEWSPAPERS?

1 A YES.

2 Q DO YOU RECALL ANY SPECIFICS THAT YOU HEARD OR
3 READ ABOUT?

4 A I REMEMBER QUITE WELL.

5 Q DO YOU REMEMBER AT THE TIME WHETHER OR NOT YOU
6 FORMED AN OPINION AS TO THE GUILT OR INNOCENCE OF THE
7 DEFENDANTS OR THE TRUTH OF THE STORY?

8 A IT FIRST CAME OUT, JUST LIKE GENERAL LEANING BUT
9 NOTHING STRONG. YOU KNOW, WHEN YOU READ SOMETHING LIKE THAT
10 ON TELEVISION.

11 Q WHAT WAS YOUR FEELING AT THE TIME, DO YOU RECALL?

12 A WELL, THEY HAD SOME EVIDENCE AGAINST THEM.

13 Q DO YOU REMEMBER WHAT IT WAS WITHOUT INDICATING
14 WHAT IT WAS?

15 A AFTER READING THE ARTICLE THE LAST COUPLE OF DAYS
16 I KNOW WHAT I READ, WHAT THEY HAD, WHAT THAT EVIDENCE IS.

17 Q AT THAT TIME IT WAS NOTHING IN PARTICULAR SET
18 OUT?

19 A WELL, THEY HAD -- FIRST, THEY SUSPECTED THE
20 NEPHEW. THEN FINALLY THEY ARRESTED HIM AND THEY HAD A -- YOU
21 WANT ME TO -- I WILL TELL YOU WHAT I REMEMBER.

22 Q NOT AT THIS TIME, NO SPECIFICS. BUT WHAT I WANT
23 TO KNOW, I GUESS, IS AT THE TIME THAT YOU INITIALLY HEARD OF
24 THE INCIDENT THAT WAS ALLEGED, DID YOU FORMULATE AN OPINION
25 AS TO WHETHER OR NOT, IN FACT, THOSE WHO WERE SUSPECTED WERE

1 GUILTY OR NOT GUILTY?

2 A WHEN I FIRST HEARD ABOUT IT, NO, I HAD NO
3 OPINION.

4 Q SINCE THAT TIME, HAVE YOU DETERMINED IN YOUR OWN
5 MIND WHETHER THEY ARE GUILTY OR INNOCENT?

6 A WELL, AFTER READING THAT ARTICLE A COUPLE OF DAYS
7 AGO, I HAD A STRONG OPINION THAT THEY WERE GUILTY.

8 Q BASED ON WHAT YOU READ?

9 A RIGHT.

10 Q DO YOU FEEL THAT IN LIGHT OF THAT, THAT YOU COULD
11 EVALUATE THIS CASE FAIRLY AND OBJECTIVELY AND WEIGH THE
12 EVIDENCE AND DETERMINE THE GUILT OR INNOCENCE BASED SOLELY ON
13 THE EVIDENCE THAT IS BROUGHT BEFORE YOU HERE IN COURT?

14 A WELL, GET RID OF THAT, MY STRONG OPINION. ONE
15 THING HAD SOME VERY STRONG EVIDENCE, CONTRADICTION TO WHAT I
16 READ.

17 Q WELL, WHAT YOU MIGHT BE SUGGESTING, IF I
18 INTERPRET IT CORRECTLY, THAT THEY MIGHT HAVE TO PROVE THEY
19 DIDN'T DO IT TO YOU?

20 A RIGHT.

21 Q DO YOU THINK THAT IN ANY WAY YOU COULD DISREGARD
22 WHAT YOU HEARD PREVIOUSLY, TO SET ASIDE IN YOUR MIND AND
23 EVALUATE THEIR GUILT OR INNOCENCE SOLELY ON WHAT EVIDENCE
24 COMES ACROSS THE STAND HERE?

25 A BASICALLY, I JUST READ IT TWO DAYS AGO SO WHAT I

1 READ, NOT WHAT I HEARD.

2 Q NOW, MY QUESTION, CAN YOU ANSWER IT?

3 A NO, I DON'T.

4 Q YOU THINK THAT WOULD STILL HAVE AN EFFECT ON YOU?

5 A YES, IT WOULD.

6 Q FOLLOWING UP WHAT I INDICATED PREVIOUSLY, MY
7 INTERPRETATION OF SOME OF YOUR STATEMENTS IS, DO YOU FEEL
8 THAT THE DEFENDANTS BY VIRTUE OF WHAT YOU KNOW OF THE CASE OR
9 THINK YOU KNOW WOULD HAVE TO PROVE THEIR INNOCENCE RATHER
10 THAN THE STATE HAVE TO PROVE THEIR GUILT?

11 A THEY WOULD HAVE TO PROVE THEIR INNOCENCE.

12 Q YOU THINK THEN THAT BASED ON THAT, THAT YOU COULD
13 NOT BE TOTALLY OBJECTIVE IN DISREGARDING THAT WHICH YOU HEARD
14 PREVIOUSLY?

15 A I COULD NOT BE TOTALLY NEUTRAL.

16 THE COURT: COUNSEL.

17 MR. PIKE: I MOVE TO HAVE MR. SINGER EXCUSED FOR
18 CAUSE.

19 THE COURT: COUNSEL, I AM INCLINED TO AGREE.

20 MR. SEATON: WE WILL STIPULATE.

21 THE COURT: MR. SINGER, WE THANK YOU VERY MUCH,
22 SIR. YOU ARE FREE TO GO.

23 THE CLERK: HAROLD EUGENE TIBBS, T-I-B-B-S,
24 NUMBER 468.

25 //

1 HAROLD EUGENE TIBBS

2 Q (BY THE COURT) MR. TIBBS, HAVE YOU SERVED AS A
3 JUROR BEFORE?

4 A YES.

5 Q HOW LONG AGO?

6 A TWO YEARS.

7 Q TWO YEARS. WAS THAT HERE IN CLARK COUNTY?

8 A YES.

9 Q WAS IT A CIVIL OR CRIMINAL CASE?

10 A CIVIL.

11 Q WERE YOU THE FOREMAN?

12 A NO.

13 Q DID YOU REACH A VERDICT?

14 A YES.

15 Q DO YOU THINK YOUR PRIOR JURY SERVICE WOULD IN ANY
16 WAY INHIBIT YOUR ABILITY TO FAIRLY SERVE ON THIS JURY?

17 A NO.

18 Q ARE YOU OR ANY OF YOUR CLOSE FRIENDS OR RELATIVES
19 INVOLVED IN LAW ENFORCEMENT OR HAVE YOU BEEN IN THE PAST?

20 A NO.

21 Q WOULD YOU HAVE A TENDENCY TO GIVE MORE WEIGHT OR
22 CREDENCE TO THE TESTIMONY OF A LAW ENFORCEMENT OFFICER SIMPLY
23 BECAUSE THE PERSON WAS AN OFFICER?

24 A NO.

25 Q HAVE YOU OR A CLOSE FRIEND OR FAMILY MEMBER EVER

1 BEEN THE VICTIM OF CRIME?
2 A YES.
3 Q HOW SO?
4 A HOUSE BURGLARY.
5 Q HOW LONG AGO?
6 A A YEAR AGO.
7 Q AGAIN, HERE IN CLARK COUNTY?
8 A YES.
9 Q WAS IT REPORTED?
10 A YES.
11 Q WAS ANYONE CAUGHT?
12 A NOT TO MY KNOWLEDGE.
13 Q YOU THINK THE AUTHORITIES REACTED APPROPRIATELY?
14 A YES.
15 Q IS THERE ANYTHING ABOUT THAT INCIDENT THAT YOU
16 THINK MIGHT INFLUENCE YOUR SERVICE AS A JUROR HERE IN THIS
17 CASE?
18 A NO.
19 Q HAVE YOU READ OR HEARD ABOUT THIS CASE PRIOR TO
20 COMING TO COURT TODAY?
21 A I READ ABOUT IT A YEAR OR SO AGO, YES.
22 Q HAVE YOU READ ABOUT IT OR HEARD ABOUT IT SINCE?
23 A I DON'T RECALL RECENTLY, NO.
24 Q DO YOU REMEMBER ACTUALLY HOW YOU HEARD ABOUT IT A
25 YEAR AGO OR SO?

1 A READ IT IN THE NEWSPAPER.

2 Q DO YOU RECALL WHAT YOU READ?

3 A WELL, VAGUELY, YES.

4 Q DO YOU RECALL THINKING BACK IF WHETHER OR NOT YOU
5 FORMED AN OPINION AT THAT TIME AS TO THE GUILT OR INNOCENCE
6 OF THOSE WHICH WERE SUSPECTED?

7 A NO, I DIDN'T FORM AN OPINION.

8 Q HAVE YOU SINCE?

9 A NO. I HAVEN'T THOUGHT ABOUT IT SINCE EITHER.

10 Q I AM SORRY?

11 A I HAVEN'T THOUGHT ABOUT IT SINCE.

12 Q DO YOU HONESTLY BELIEVE, NOTWITHSTANDING WHAT YOU
13 MAY HAVE READ ABOUT THE CASE, THAT YOU CAN FAIRLY AND
14 OBJECTIVELY WEIGH THE EVIDENCE IN THE CASE AND DETERMINE
15 BASED SOLELY UPON THAT EVIDENCE THE GUILT OR INNOCENCE OF THE
16 DEFENDANTS?

17 A I THINK I COULD.

18 Q DO YOU UNDERSTAND THAT YOU ARE TO BASE YOUR
19 DECISION AS A JUROR AS TO THE DEFENDANTS' GUILT OR INNOCENCE
20 EXCLUSIVELY UPON THE EVIDENCE PRESENTED IN THIS COURTROOM AND
21 DISREGARD ANYTHING THAT YOU MAY HAVE HEARD ABOUT THIS CASE
22 PRIOR TO THIS TIME?

23 A YES, SIR.

24 Q DO YOU THINK YOU CAN DO THAT?

25 A YES.

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JOHN MICHAEL BLACK

Q (BY THE COURT) MR. BLACK, HAD YOU HEARD ABOUT
THE CASE?

A TELEVISION WHEN IT HAPPENED.

Q HOW LONG AGO WOULD YOU SAY?

A I CAN TELL YOU FROM WHAT I HEARD HERE IN THE
COURT TODAY BUT MY OWN RECOLLECTION I COULDN'T GIVE YOU A
TIME FRAME.

Q HAS BEEN SOME TIME?

A YES.

Q THIS IS NEWS ACCOUNT ON TELEVISION?

A YES.

Q DID YOU GET ANY OTHER INFORMATION ABOUT THE CASE?

A THE ONLY THING THAT BRINGS IT TO ME AT ALL IS THE
FACT THERE IS A GRANDSON INVOLVED.

Q YOU DID SEE A TELEVISION REPORT OF IT. ANY
NEWSPAPER, RADIO ACCOUNTS?

A NO.

Q ANYTHING SINCE THAT TIME?

A NO.

Q YOU SAY YOU RECALL THAT THERE WAS A GRANDSON
INVOLVED?

A YES. THAT'S THE ONLY THING THAT BRINGS IT TO
MIND AT THIS POINT. OTHER THAN THAT, I REMEMBER NO DETAILS
ABOUT IT AT ALL.

1 Q DO YOU RECALL WHETHER OR NOT YOU FORMED AN
2 OPINION AT THE TIME WHETHER OR NOT THE SUSPECTS WERE GUILTY
3 OR NOT GUILTY?

4 A NO.

5 Q HAVE YOU SINCE AT ALL?

6 A NO.

7 Q DO YOU HONESTLY BELIEVE THAT NOTWITHSTANDING WHAT
8 YOU MAY HAVE HEARD ABOUT THE CASE THAT YOU CAN FAIRLY AND
9 OBJECTIVELY WEIGH THE EVIDENCE IN THE CASE AND DETERMINE
10 BASED SOLELY UPON THAT EVIDENCE THE GUILT OR INNOCENCE OF THE
11 DEFENDANTS?

12 A YES, I CAN.

13 Q DO YOU UNDERSTAND THAT YOU ARE TO BASE YOUR
14 DECISION AS A JUROR AS TO THE DEFENDANTS' GUILT OR INNOCENCE
15 EXCLUSIVELY UPON THE EVIDENCE PRESENTED IN THIS COURTROOM AND
16 DISREGARD ANYTHING THAT YOU MAY HAVE HEARD ABOUT THE CASE
17 PRIOR TO THIS TIME?

18 A YES.

19 Q DO YOU THINK YOU CAN DO THAT?

20 A YES.

21
22 GWEN BRISTER PHILLIPS

23 Q (BY THE COURT) HAD YOU HEARD ABOUT THE CASE, MISS
24 PHILLIPS?

25 A I AM SURE THAT I READ ABOUT IT, BUT I DO NOT

1 REMEMBER WHEN OR ANYTHING ABOUT THE CASE. WE TAKE BOTH
2 PAPERS AND I READ THEM THOROUGHLY BACK TO FRONT BUT OBVIOUSLY
3 I DIDN'T CATEGORIZE IT AND KEEP IT.

4 Q HAVE YOU HEARD ANYTHING SINCE?

5 A NO, SIR. I HAVE BEEN OUT OF TOWN FOR ALMOST A
6 MONTH ON VACATION.

7 Q SO ALL YOU CAN SAY IS YOU MUST HAVE READ ABOUT IT
8 AS YOU READ EVERYTHING PRETTY MUCH BUT YOU DON'T RECALL
9 ANYTHING ABOUT IT?

10 A NO, SIR.

11
12 CARL W. WHITTINGTON, JR.

13 Q (BY THE COURT) THE FRONT ROW, MR. WHITTINGTON.

14 A YES.

15 Q HAVE YOU HEARD ABOUT THE CASE?

16 A YES, BOTH ON T.V. AND NEWSPAPERS.

17 Q AND WHEN?

18 A I THINK WHEN IT INITIALLY HAPPENED AND THEN MORE
19 RECENTLY THE LAST TWO OR THREE WEEKS.

20 Q YOU SAY TELEVISION AND NEWSPAPERS; IS THAT RIGHT?

21 A YES.

22 Q DO YOU RECALL ANY OF THE SPECIFICS THAT YOU HEARD
23 AT THE TIME OR READ ABOUT?

24 A YES.

25 Q DO YOU RECALL WHETHER OR NOT AT THE TIME THAT YOU

1 FIRST HEARD OF THE CASE THAT YOU HAD FORMED AN OPINION AS TO
2 THE GUILT OR INNOCENCE OF THOSE WHICH WERE SUSPECTED?

3 A NO.

4 Q DO YOU RECALL YOUR FEELINGS AT THE TIME OF FIRST
5 HEARING ABOUT THE CASE?

6 A ONE OF SHOCK PERHAPS.

7 Q ARE YOU SAYING IT MUST HAVE BEEN A FEELING OF
8 SHOCK OR DO YOU ACTUALLY RECALL WHAT YOU FELT?

9 A WHEN READING ABOUT THE MURDERS, IT WAS A SHOCK,
10 AN ELDERLY COUPLE, SO FORTH.

11 Q WHAT ABOUT SINCE, IN THE LAST FEW WEEKS? YOU
12 BELIEVE YOU HEARD ABOUT IT IN THE LAST FEW WEEKS?

13 A LAST COUPLE OF WEEKS.

14 Q WHAT MEDIUM?

15 A NEWSPAPER.

16 Q NOT TELEVISION?

17 A DON'T RECALL.

18 Q AND SO YOU READ IN THE NEWSPAPER SOMETHING ABOUT
19 IT?

20 A YES.

21 Q HAD YOU HAD OCCASION TO DISCUSS IT WITH ANYONE?

22 A MY WIFE.

23 Q BACK WHEN YOU FIRST HEARD ABOUT IT AND AGAIN
24 LATELY, HAVE YOU FORMED AN OPINION AS TO THE GUILT OR
25 INNOCENCE OF THOSE THAT ARE SUSPECTED?

1 A NO.

2 Q DO YOU HONESTLY BELIEVE, NOTWITHSTANDING WHAT YOU
3 MAY HAVE READ OR HEARD ABOUT THE CASE, THAT YOU CAN FAIRLY AND
4 OBJECTIVELY WEIGH THE EVIDENCE IN THIS CASE AND DETERMINE
5 BASED SOLELY UPON THAT EVIDENCE THAT WHICH IS BROUGHT OUT IN
6 THIS COURTROOM THE GUILT OR INNOCENCE OF THE DEFENDANTS?

7 A YES.

8 Q DO YOU HAVE ANY PROBLEMS WITH THAT AT ALL?

9 A I DON'T THINK SO.

10 Q DO YOU UNDERSTAND THAT YOU ARE TO BASE YOUR
11 DECISION AS A JUROR AS TO THE DEFENDANTS' GUILT OR INNOCENCE
12 EXCLUSIVELY UPON THE EVIDENCE PRESENTED IN THIS COURTROOM AND
13 DISREGARD ANYTHING THAT YOU MAY HAVE HEARD ABOUT THE CASE
14 PRIOR TO THIS TIME? DO YOU UNDERSTAND THAT?

15 A YES.

16 Q DO YOU THINK YOU CAN DO THAT?

17 A YES.

18

19 THOMAS N. TRINAYSTICH

20 Q (BY THE COURT) HAD YOU HEARD ABOUT THE CASE AS
21 WELL?

22 A YES. WHEN IT FIRST HAPPENED A YEAR OR SO AGO,
23 READ ABOUT IT IN THE NEWSPAPER.

24 Q ANY OTHER SOURCE OF INFORMATION?

25 A NOT THAT I REMEMBER, NO.

1 Q DO YOU RECALL WHAT YOU READ?
2 A JUST IN GENERAL TERMS. NOTHING SPECIFIC.
3 Q DO YOU RECALL YOUR FEELINGS AT THE TIME?
4 A NO, SIR, NOT AT ALL.
5 Q HAD YOU HEARD ABOUT IT SINCE?
6 A SOMETHING ABOUT IT, YES, IN THE LAST FEW WEEKS.
7 I AM NOT SURE WHERE I HEARD IT. IT WAS EITHER ON T.V., NEWS
8 OR IN THE PAPER AGAIN. JUST SOMETHING, SOME VAGUE REFERENCE
9 TO IT. I DON'T REMEMBER.
10 Q HAVE YOU HAD OCCASION TO DISCUSS IT WITH ANYONE?
11 A NO.
12 Q DO YOU RECALL WHETHER AT THE TIME YOU FIRST HEARD
13 THE CASE OR SINCE YOU HAVE FORMULATED AN OPINION AS TO THE
14 GUILT OR INNOCENCE OF THOSE THAT ARE SUSPECTED?
15 A NO, I DON'T THINK I HAVE.
16 Q DO YOU THINK HONESTLY THAT YOU CAN,
17 NOTWITHSTANDING WHAT YOU MAY HAVE READ OR HEARD ABOUT THE
18 CASE, FAIRLY AND OBJECTIVELY WEIGH THE EVIDENCE IN THIS CASE
19 AND DETERMINE BASED SOLELY UPON THIS EVIDENCE THE GUILT OR
20 INNOCENCE OF THE DEFENDANTS?
21 A I THINK I CAN, YES.
22 Q DO YOU UNDERSTAND THAT YOU ARE TO BASE YOUR
23 DECISION AS TO THE DEFENDANTS' GUILT OR INNOCENCE EXCLUSIVELY
24 UPON THE EVIDENCE PRESENTED IN THIS COURTROOM AND DISREGARD
25 ANYTHING THAT YOU MAY HAVE HEARD ABOUT THE CASE PRIOR TO THIS

1 TIME?

2 A YES.

3 Q DO YOU THINK YOU CAN DO THAT?

4 A I THINK I CAN, YES.

5

6 FREDERICK LOLLIS

7 Q (BY THE COURT) MR. LOLLIS, HAVE YOU HEARD ABOUT
8 THE CASE?

9 A YES, TELEVISION.

10 Q WHEN?

11 A OH, ABOUT A YEAR AGO.

12 Q ANYTHING SINCE?

13 A NO.

14 Q ANY OTHER MEDIA?

15 A NO.

16 Q DO YOU RECALL WHAT YOU HEARD?

17 A JUST BASICALLY HEADLINES IS WHEN IT HAPPENED AS
18 TO THE PEOPLE WERE KILLED. THAT'S ALL I KNOW.

19 Q WAS IT ONE NEWSCAST OR SERIES?

20 A ONE, THAT I RECALL. I TRAVEL A LOT SO I DIDN'T
21 GET A LOT OF IT.

22 Q DID YOU HAVE OCCASION TO DISCUSS IT WITH ANYONE
23 AT THE TIME?

24 A NO.

25 Q DO YOU RECALL YOUR FEELINGS IN HEARING ABOUT THE

1 CASE?

2 A NOT REALLY, NO.

3 Q DO YOU KNOW WHETHER OR NOT YOU FORMED AN OPINION
4 AT THAT TIME OR HAVE YOU SINCE ABOUT THE GUILT OR INNOCENCE
5 OF THE INDIVIDUALS?

6 A NO.

7 Q DO YOU HONESTLY BELIEVE THAT NOTWITHSTANDING WHAT
8 YOU MAY HAVE HEARD ABOUT THE CASE, THAT YOU CAN FAIRLY AND
9 OBJECTIVELY WEIGH THE EVIDENCE IN THIS CASE AND DETERMINE
10 BASED SOLELY UPON THAT EVIDENCE THE GUILT AND INNOCENCE OF
11 THE DEFENDANTS?

12 A YES.

13 Q DO YOU UNDERSTAND THAT YOU ARE TO BASE YOUR
14 DECISION AS A JUROR AS TO THE DEFENDANTS' GUILT OR INNOCENCE
15 EXCLUSIVELY UPON THE EVIDENCE PRESENTED IN THIS COURTROOM AND
16 DISREGARD ANYTHING THAT YOU MAY HAVE HEARD ABOUT THIS CASE
17 PRIOR TO THIS TIME? DO YOU UNDERSTAND?

18 A YES.

19 Q DO YOU THINK YOU CAN DO THAT?

20 A YES, I CAN.

21

22 CORA MELISSA BALL

23 Q (BY THE COURT) MISS BALL, HAD YOU HEARD ABOUT
24 THE CASE?

25 A I DON'T RECALL WHEN, BUT I REMEMBER BY TELEVISION

1 WHENEVER IT HAPPENED, BUT I DON'T RECALL WHEN IT HAPPENED.

2 Q HAD YOU HEARD ABOUT IT SINCE?

3 A NO, I HAVEN'T.

4 Q SOMETIME BACK YOU SAY YOU HAVE HEARD ABOUT IT?

5 A I RECALL WHEN IT CAME THROUGH ON THE ELEVEN
6 O'CLOCK NEWS ON TELEVISION.

7 Q ANY OTHER EXPOSURE TO THE STORY?

8 A NO, SIR.

9 Q NEWSPAPER, RADIO?

10 A NO, SIR.

11 Q DID YOU HAVE OCCASION TO DISCUSS WHAT YOU HEARD
12 ON THE NEWS WITH ANYONE?

13 A WHEN I WENT HOME AT TEN O'CLOCK FROM THE
14 COURTROOM TODAY, I MEAN, FROM THE JUROR ROOM, MY DAUGHTER --
15 I TOLD MY DAUGHTER I HAD TO GO BACK AT ONE O'CLOCK.

16 SHE SAID, "IS THAT THE JURY TRIAL FOR THOSE BOYS
17 BACK QUITE A LONG TIME AGO? IT WAS IN THE PAPER THAT THEIR
18 TRIAL WAS DUE TO COME UP. "

19 AND I SAID, "I DIDN'T KNOW. THEY DIDN'T TELL ME
20 ANYTHING." THAT IS ALL THAT WAS DISCUSSED.

21 Q DID SHE SAY ANYTHING BEYOND THAT?

22 A NO.

23 Q BACK TO THE POINT WHERE YOU FIRST HEARD ABOUT THE
24 CASE ON TELEVISION. DO YOU RECALL YOUR FEELINGS AT THE TIME?

25 A I DON'T RECALL. ONLY HOW TERRIBLE IT WAS.

1 Q HAD YOU AT THAT TIME OR HAVE YOU SINCE DETERMINED
2 IN YOUR MIND WHO MIGHT BE GUILTY OR NOT?

3 A NO, SIR.

4 Q DO YOU HONESTLY BELIEVE NOTWITHSTANDING WHAT YOU
5 MAY HAVE READ THAT YOU CAN WEIGH THE EVIDENCE IN THIS CASE
6 AND DETERMINE BASED SOLELY UPON THAT EVIDENCE THE GUILT OR
7 INNOCENCE OF THE DEFENDANTS?

8 A I BELIEVE I CAN DO THAT.

9 Q DO YOU UNDERSTAND THAT YOU ARE TO BASE YOUR
10 DECISION AS TO THE DEFENDANTS' GUILT OR INNOCENCE EXCLUSIVELY
11 UPON THE EVIDENCE PRESENTED IN THIS COURTROOM AND DISREGARD
12 ANYTHING THAT YOU MAY HAVE HEARD PRIOR TO THIS TIME?

13 A YES.

14 Q DO YOU THINK YOU CAN DO THAT?

15 A YES.

16

17 ROBERT LEE ANDERSON

18 Q (BY THE COURT) MR. ANDERSON?

19 A YES, SIR.

20 Q HAD YOU HEARD ABOUT THE CASE?

21 A YES, SIR. JUST BRIEFLY SOMETIME AROUND WHERE IT
22 HAPPENED. SOMEONE AT WORK TOLD ME ABOUT IT. THAT WAS ABOUT
23 IT.

24 Q HOW LONG AGO WOULD YOU SAY THAT WOULD BE?

25 A TIME THAT IT HAPPENED, PROBABLY ABOUT A YEAR OR

1 WHATEVER IT WAS.

2 Q YOU DISCUSSED IT WITH OTHER INDIVIDUALS?

3 A NO, NOT REALLY. JUST REMEMBER A COUPLE WAS
4 KILLED DURING A BURGLARY. THAT'S ALL.

5 Q HOW DID YOU DERIVE THAT INFORMATION?

6 A THAT IS WHAT THE PEOPLE WERE TALKING ABOUT.

7 Q SO YOU JUST WALKED UP TO A CONVERSATION AND HEARD
8 THAT?

9 A THEY WERE TALKING ABOUT IT AS I WALKED BY.

10 Q HAD YOU RECEIVED ANY INFORMATION CONCERNING THIS
11 CASE THROUGH ANY OTHER SOURCE?

12 A NO.

13 Q TELEVISION, NEWSPAPER, RADIO, NOTHING OF THAT
14 SORT?

15 A NO.

16 Q NOTHING SINCE?

17 A NOTHING SINCE.

18 Q DO YOU RECALL SPECIFICALLY WHAT WAS BEING SAID IN
19 THIS CONVERSATION ABOUT THE CASE?

20 A THERE IS A COUPLE WAS MURDERED DURING A BURGLARY.

21 Q DO YOU RECALL IF ANYONE WAS MENTIONED AS A
22 SUSPECT?

23 A NO. I DON'T EVEN REMEMBER THE NAMES OR IF THEY
24 WERE GIVEN EVEN.

25 Q WERE YOU INVOLVED IN THE CONVERSATION AT ALL AT

1 ANY POINT?

2 A NO. THEY SAID THAT AS I WALKED BY.

3 Q DO YOU THINK THAT IN ALL HONESTY NOTWITHSTANDING
4 WHAT YOU MAY HAVE HEARD DISCUSSED ABOUT THE CASE THAT YOU CAN
5 FAIRLY AND OBJECTIVELY WEIGH THE EVIDENCE IN THE CASE AND
6 DETERMINE BASED SOLELY UPON THAT EVIDENCE, THE EVIDENCE THAT
7 OCCURS HERE IN COURT, THE GUILT OR INNOCENCE OF THE
8 DEFENDANTS?

9 A YES, SIR.

10 Q DO YOU HAVE ANY PRECONCEIVED NOTION OR IDEA AS TO
11 THE GUILT OR INNOCENCE OF THE DEFENDANTS?

12 A NO, SIR.

13 Q DO YOU UNDERSTAND THAT YOU ARE TO BASE YOUR
14 DECISION AS A JUROR AS TO THE DEFENDANTS' GUILT OR INNOCENCE
15 EXCLUSIVELY UPON THE EVIDENCE PRESENTED IN THIS COURTROOM AND
16 DISREGARD ANYTHING THAT YOU HEARD PREVIOUS TO THIS?

17 A YES, SIR.

18 Q DO YOU THINK YOU CAN DO THAT?

19 A YES, SIR.

20 THE COURT: ADDRESSING AGAIN THE 12 JURORS NAMED
21 THUS FAR AS A GROUP. DO YOU UNDERSTAND THAT YOU ARE TO
22 EVALUATE THE STATE'S CASE AGAINST EACH OF THE DEFENDANTS
23 INDIVIDUALLY AND RENDER A VERDICT AS TO THE CRIMINAL
24 INVOLVEMENT OR LACK THEREOF OF EACH DEFENDANT AS AN
25 INDIVIDUAL?

1 DO YOU THINK THAT YOU CAN DO THAT? IS THERE
2 ANYONE WHO FEELS THAT HE CANNOT? AND I PERHAPS OUGHT TO
3 EXPLAIN THAT. WE ARE TALKING ABOUT FOUR INDIVIDUALS.

4 YOU WOULD BE ASKED TO RENDER A VERDICT AS TO EACH
5 INDIVIDUAL. YOU HAVE TO WEIGH THE CASE AS TO EACH ONE
6 INDIVIDUALLY. IS THERE ANYONE WHO FEELS THEY CANNOT DO THAT?

7 JUROR TIBBS: DO THEY GO --

8 THE COURT: THE EVIDENCE IS GOING TO BE PRESENTED
9 AND YOU WILL HAVE TO WEIGH IT AS TO EACH OF THE DEFENDANTS.

10 THE COURT REPORTER: WHAT IS YOUR NAME?

11 JUROR TIBBS: HAROLD TIBBS, 468.

12 THE COURT: THANK YOU. DO YOU FEEL THAT YOU CAN
13 WAIT IN FORMING YOUR OPINION AS TO THE GUILT OR INNOCENCE OF
14 THE DEFENDANTS UNTIL ALL THE EVIDENCE HAS BEEN HEARD?

15 IS THERE ANYONE WHO FEELS THEY CANNOT DO THAT?
16 THAT WOULD BE MY INSTRUCTION TO YOU, WAIT UNTIL ALL THE
17 EVIDENCE IS HEARD BEFORE YOU FORMULATE AN OPINION. IS THERE
18 ANYONE ELSE WHO FEELS THEY CANNOT DO THAT?

19 WILL YOU FOLLOW ALL THE INSTRUCTIONS OF THE COURT
20 ON THE LAW EVEN THOUGH THEY MAY DIFFER FROM YOUR PERSONAL
21 CONCEPTIONS OF WHAT THE LAW OUGHT TO BE? IS THERE ANYONE --

22 I WILL TELL YOU, AT SOME POINT I WILL GIVE YOU
23 WRITTEN INSTRUCTIONS AS TO WHAT LAW TO APPLY TO THIS CASE. I
24 WILL READ THEM TO YOU. THE QUESTION SUGGESTS THAT YOU ARE TO
25 FOLLOW THE INSTRUCTIONS OF THE COURT ON THE LAW EVEN THOUGH

1 THEY MAY DIFFER FROM YOUR PERSONAL CONCEPTIONS OF WHAT THE
2 LAW OUGHT TO BE. IS THERE ANYONE FEELS THEY CANNOT APPLY THE
3 LAW I HAVE GIVEN?

4 A PERSON WHO IS ACCUSED OF COMMITTING A CRIME IS
5 PRESUMED TO BE INNOCENT IN A CRIMINAL TRIAL. DO YOU
6 UNDERSTAND AND AGREE WITH THAT STATEMENT? IS THERE ANYONE
7 WHO DOES NOT?

8 ARE YOU AWARE THAT THE DEFENDANTS DO NOT HAVE TO
9 TAKE THE STAND AND TESTIFY OR PRESENT ANY EVIDENCE IF THEY
10 CHOOSE NOT TO AND YOU COULD STILL FIND THE DEFENDANTS NOT
11 GUILTY. THAT BEING BECAUSE THE BURDEN IS UPON THE STATE TO
12 PROVE THEIR GUILT BEYOND A REASONABLE DOUBT.

13 DOES ANYONE NOT UNDERSTAND THAT?

14 JUROR TRINAYSTICH: WOULD YOU REPEAT THAT,
15 PLEASE?

16 THE COURT: I WILL. ARE YOU AWARE THE DEFENDANTS
17 DO NOT HAVE TO TAKE THE STAND AND TESTIFY OR OFFER ANY
18 EVIDENCE IF THEY CHOOSE NOT TO AND YOU COULD STILL FIND THEM
19 NOT GUILTY. THAT BEING BECAUSE THE BURDEN IS UPON THE STATE
20 TO PROVE THEIR GUILT BEYOND A REASONABLE DOUBT.

21 THE BURDEN IS NOT UPON THE DEFENDANTS TO PROVE
22 THEIR INNOCENCE. DOES ANYONE NOT UNDERSTAND?

23 HAVE YOU OR CLOSE FRIEND OR FAMILY MEMBER EVER
24 BEEN INVOLVED IN THE CRIMINAL JUSTICE PROCESS, EITHER IN
25 PROSECUTING A CASE OR AS A WITNESS OR AS A DEFENDANT?

1 AT THIS POINT IS THERE ANY ONE OF YOU WHO
2 BELIEVES THEY COULD NOT SERVE AS A FAIR JUROR IN THIS
3 PARTICULAR CASE?
4

5 GENEVIEVE CORBITT BUCHANAN

6 Q (BY THE COURT) BEGINNING WITH MRS. BUCHANAN,
7 WILL YOU TELL US PLEASE OF YOUR EMPLOYMENT, NUMBER OF
8 CHILDREN YOU MAY HAVE AND HOW LONG YOU HAVE LIVED IN CLARK
9 COUNTY?

10 A I AM EMPLOYED AT THE DUNES.

11 Q YOU HAVE TO SPEAK UP JUST A LITTLE BIT.

12 A I AM EMPLOYED AT THE DUNES AS A WAITRESS. I AM
13 MARRIED. I HAVE TWO CHILDREN THAT ARE GROWN AND I HAVE BEEN
14 HERE SINCE 1966.

15 Q AND WHERE DID YOU MOVE FROM IN COMING HERE?

16 A CALIFORNIA.

17 Q WHAT CITY?

18 A NORWALK.

19 Q HOW LONG HAVE YOU WORKED AS A WAITRESS AT THE
20 DUNES?

21 A TEN YEARS ALMOST.

22 Q PRIOR TO THAT?

23 A I WAS TEN YEARS, ALMOST TEN YEARS AT THE ALADDIN.

24 Q YOU SAY YOUR CHILDREN ARE GROWN?

25 A YES.

1 Q WHAT ARE THEIR OCCUPATIONS?
2 A MY SON IS A ROOFER. MY DAUGHTER IS A DEALER, 21
3 DEALER.
4 Q AND YOUR HUSBAND'S OCCUPATION?
5 A HE IS MAINTENANCE FOREMAN FOR GEMSTOCK OUT AT
6 BLUE DIAMOND.
7 Q HOW LONG HAS HE BEEN INVOLVED IN THAT OCCUPATION?
8 A HE HAS BEEN THERE A LONG TIME.
9 Q TEN YEARS?
10 A LONGER.
11 Q 12 YEARS, WHAT?
12 A WELL, IN THAT OCCUPATION, 25.
13 Q HAVE YOU OR YOUR HUSBAND BEEN IN THE MILITARY?
14 A MY HUSBAND'S BEEN IN THE MILITARY.
15 Q WHAT BRANCH?
16 A NAVY.
17 Q DID HE SEE COMBAT?
18 A YES.
19 Q HAVE YOU HAD OCCASION TO TALK TO HIM ABOUT HIS
20 EXPERIENCES IN THAT REGARD?
21 A YES.
22 Q SOME YEARS BACK OR RECENTLY?
23 A NOT RECENTLY, YEARS BACK.
24 Q DO YOU HAVE ANY PREJUDICE AS TO THE NATURE OF THE
25 CHARGES IN THIS CASE? AND THIS IS ALWAYS A DIFFICULT

1 QUESTION TO EXPLAIN AND TO GET AN ANSWER. LET ME ATTEMPT BY
2 SAYING THIS. I WILL DRAW AN ANALOGY.

3 THERE ARE THOSE IN OUR SOCIETY WHO WOULD SAY THE
4 PENALTY OR THE LAW AGAINST POSSESSION AND USE OF MARIJUANA IS
5 NOT FAIR. IF THEY WERE ON A JURY IN SUCH A CASE, THEY MIGHT
6 FEEL, "I AM REALLY NOT OPPOSED TO MARIJUANA SO I WON'T FIND A
7 PERSON GUILTY REGARDLESS OF THE FACTS."

8 THE OTHER EXTREME MIGHT BE A CASE OF SOME HEINOUS
9 TORTURE OR SOMEONE WAS KEPT KIDNAPPED FOR SIX MONTHS AND
10 TORTURED OVER A LONG PERIOD OF TIME AND SOMETHING -- THE MOST
11 HEINOUS THING YOU COULD IMAGINE WHERE A PERSON MIGHT BE SO
12 INCENSED THAT THEY FEEL IN THEIR OWN MIND THAT "I AM GOING TO
13 CONVICT THIS PERSON REGARDLESS BECAUSE IT IS JUST SUCH A
14 TERRIBLE THING THAT WE ARE JUST GOING TO HAVE -- I AM SO
15 EMOTIONAL OVER IT, I WILL SEE THAT JUSTICE IS DONE" OR
16 WHATEVER YOU MIGHT WANT TO SAY.

17 MY QUESTION IS DO YOU HAVE ANY PREJUDICE AS TO
18 THE NATURE OF THE CHARGE IN THIS CASE OR CHARGES, WITH THE
19 EXPLANATION, ONE WAY OR THE OTHER? DOES THE FACT THAT THE
20 NATURE OF THE CHARGES EXIST AS SUCH INFLUENCE YOU AS TO HOW
21 YOU SHOULD DECIDE THE CASE?

22 A NO, I DON'T THINK SO.

23 Q AGAIN, IT IS A HARD QUESTION TO EXPLAIN. WE TRY
24 OUR BEST.

25 DO YOU HAVE ANY LEGAL TRAINING, EITHER FORMAL OR

1 INFORMAL?

2 A NO.

3 Q DID YOU KNOW THE ALLEGED VICTIMS IN THIS CASE,
4 EITHER CARL OR COLLEEN GORDON?

5 A NO.

6 Q DO YOU KNOW ANY OF THE OTHER PROSPECTIVE JURORS?

7 A NO.

8 Q DO YOU HAVE ANY RACIAL PREJUDICE?

9 A NO.

10 Q DO YOU UNDERSTAND THAT AN INFORMATION IS A MERE
11 ACCUSATION AND NOT EVIDENCE? AND I WOULD EXPLAIN THAT AN
12 INFORMATION IS JUST WHAT I AM HOLDING HERE. IT IS THE PAPER,
13 THE DOCUMENT THAT THE CHARGES ARE WRITTEN ON. DO YOU
14 UNDERSTAND THAT THAT IS A MERE ACCUSATION AND NOT EVIDENCE OF
15 WHAT IT CONTAINS?

16 A YEAH.

17 Q DO YOU UNDERSTAND THAT THE DEFENDANTS ARE
18 PRESUMED INNOCENT UNTIL PROVEN GUILTY?

19 A YEAH.

20 Q AND THAT THE STATE HAS THE BURDEN OF PROVING THE
21 DEFENDANTS' GUILT BEYOND A REASONABLE DOUBT?

22 A YEAH.

23 Q MISS BUCHANAN, IF YOU WERE CHARGED WITH OFFENSES
24 SIMILAR TO THOSE THAT ARE ALLEGED IN THIS CASE, WOULD YOU
25 WANT 12 INDIVIDUALS ON YOUR JURY THAT ARE ESSENTIALLY AS YOU

1 ARE?

2 A I THINK SO.

3 Q DO YOU KNOW OF ANY REASON AT ALL WHY YOU CANNOT
4 BE COMPLETELY FAIR AND COMPLETELY IMPARTIAL IN HEARING THIS
5 CASE?

6 A I CAN'T THINK OF ANY.

7 Q MISS BUCHANAN, THESE PROCEEDINGS WILL BE
8 CONDUCTED IN TWO SEGMENTS. FIRST, THE JURY WILL BE ASKED TO
9 DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANTS.
10 PUNISHMENT WILL NOT BE A MATTER OF CONCERN AT THAT TIME.

11 SECONDLY, IF THE JURY FINDS THE DEFENDANTS, ONE
12 OR ALL, GUILTY OF THE FIRST DEGREE MURDER THEN THE LAW
13 REQUIRES THAT THE JURY SET THE PUNISHMENT TO THOSE WHO HAVE
14 BEEN FOUND OR THAT PERSON WHO HAS BEEN FOUND GUILTY OF FIRST
15 DEGREE MURDER.

16 AT THAT TIME, THE COURT WOULD SET A DATE FOR A
17 HEARING OF EVIDENCE CONCERNING PUNISHMENT. DO YOU UNDERSTAND
18 THAT?

19 A UH-HUH.

20 Q IS THAT YES?

21 A YES.

22 Q IN THE STATE OF NEVADA, THERE ARE THREE POSSIBLE
23 FORMS OF PUNISHMENT THAT THE JURY MAY CONSIDER. THE
24 IMPOSITION OF THE DEATH PENALTY, LIFE IMPRISONMENT WITHOUT
25 THE POSSIBILITY OF PAROLE AND LIFE IMPRISONMENT WITH THE

1 POSSIBILITY OF PAROLE. DO YOU UNDERSTAND THAT?

2 A YEAH.

3 Q IN YOUR PRESENT STATE OF MIND, CAN YOU CONSIDER
4 EQUALLY ALL THREE POSSIBLE FORMS OF PUNISHMENT AND SELECT THE
5 ONE THAT YOU FEEL IS MOST APPROPRIATE?

6 A I FEEL I COULD.

7 Q DO YOU HAVE ANY CONSCIENTIOUS, MORAL OR RELIGIOUS
8 OBJECTIONS TO THE IMPOSITION OF THE DEATH PENALTY?

9 A NO.

10 THE COURT: COUNSEL, ARE THERE ADDITIONAL
11 QUESTIONS YOU WOULD HAVE ME ASK?

12 MR. PIKE: NONE ON BEHALF OF DALE FLANAGAN, YOUR
13 HONOR.

14 THE COURT: MR. POSIN?

15 MR. POSIN: ONE QUESTION.

16 THE COURT: WILL YOU APPROACH THE BENCH, IF YOU
17 HAVE.

18 MR. POSIN: I AM SORRY.

19 I AM ASKING FOR CLARIFICATION OF A PRIOR QUESTION.

20 THE COURT: WHAT IS IT?

21 MR. POSIN: I BELIEVE SHE TESTIFIED THAT SHE HAD
22 SERVED ON THE GRAND JURY FOR ABOUT 12, 18 MONTHS.

23 THE COURT: 18 MONTHS, YES.

24 MR. POSIN: HOW LONG AGO. I DIDN'T --

25 JUROR BUCHANAN: FOUR OR FIVE YEARS AGO.

1 MR. POSIN: THANK YOU, YOUR HONOR.

2 THE COURT: ARE THERE ADDITIONAL QUESTIONS,
3 COUNSEL?

4 MR. HARMON: COULD WE FIND OUT THE AGES OF ANY
5 CHILDREN, PLEASE?

6 THE COURT: WHAT ARE THE AGES OF YOUR CHILDREN?

7 JUROR BUCHANAN: 25 AND 29, 28 AND 34.

8 THE COURT: ADDITIONAL QUESTIONS, COUNSEL?

9 MR. HANDFUSS: NO, YOUR HONOR.

10 MR. SMITH: IS THAT OF THIS INDIVIDUAL JUROR,
11 YOUR HONOR, OR ALL THE PANEL?

12 THE COURT: THIS JUROR. PASS FOR CAUSE?

13 MR. HARMON: YES.

14 MR. POSIN: YES.

15 MR. PIKE: PASS FOR CAUSE.

16 MR. HANDFUSS: PASS FOR CAUSE.

17 MR. SMITH: PASS FOR CAUSE.

18

19 SYLVIA PLESKOVICH FURLAN

20 Q (BY THE COURT) MRS. FURLAN, WILL YOU TELL US OF
21 YOUR EMPLOYMENT, NUMBER OF CHILDREN YOU MAY HAVE AND HOW LONG
22 YOU HAVE LIVED IN CLARK COUNTY?

23 A I HAVE BEEN IN CLARK COUNTY 18 YEARS AND I AM A
24 SHOWROOM WAITRESS AT THE RIVIERA ON LAYOFF. TWO CHILDREN;
25 GIRL, 19 1/2, BOY, 18, BOTH STUDENTS AT THE UNIVERSITY.

1 Q HOW LONG HAVE YOU BEEN OFF WORK?
2 A ON AND OFF ABOUT A YEAR.
3 Q HOW LONG HAVE YOU BEEN ENGAGED IN THAT
4 PROFESSION?
5 A 16 YEARS.
6 Q BEFORE THAT?
7 A I DIDN'T WORK BEFORE THAT.
8 Q YOU INDICATED HOW OLD YOUR CHILDREN ARE. WHAT
9 ARE THEIR OCCUPATIONS?
10 A BOTH FULL TIME STUDENTS.
11 Q STUDYING WHAT?
12 A AT THIS STAGE THEY ARE BOTH FRESHMAN. I THINK
13 SHE WILL GO FOR EDUCATION. THEY HAVEN'T DECLARED THEMSELVES.
14 Q AND YOUR HUSBAND'S OCCUPATION?
15 A I AM SEPARATED.
16 Q HOW LONG HAVE YOU BEEN SEPARATED?
17 A 16 YEARS.
18 Q HAVE YOU OR YOUR HUSBAND BEEN IN THE MILITARY?
19 A NO. HE WAS DURING WORLD WAR II, YES, I AM SORRY.
20 Q HAVE YOU SEEN HIM IN THE LAST 16 YEARS?
21 A NO.
22 Q DO YOU HAVE ANY PREJUDICE AS TO THE NATURE OF THE
23 CHARGES IN THIS CASE?
24 A NO.
25 Q DO YOU HAVE ANY LEGAL TRAINING, EITHER FORMAL OR

1 INFORMAL?

2 A NO.

3 Q DID YOU KNOW THE ALLEGED VICTIMS IN THIS CASE,
4 EITHER CARL OR COLLEEN GORDON?

5 A NO, SIR.

6 Q DO YOU KNOW ANY OF THE OTHER PROSPECTIVE JURORS?

7 A NO, SIR.

8 Q DO YOU HAVE ANY RACIAL PREJUDICE?

9 A NO.

10 Q DO YOU UNDERSTAND THAT AN INFORMATION IS A MERE
11 ACCUSATION AND NOT EVIDENCE?

12 A YES, SIR.

13 Q THAT THE DEFENDANTS ARE PRESUMED TO BE INNOCENT
14 UNTIL PROVEN GUILTY?

15 A YES.

16 Q AND THAT THE STATE HAS THE BURDEN OF PROVING THE
17 DEFENDANTS' GUILT BEYOND A REASONABLE DOUBT?

18 A YES, SIR.

19 Q IF YOU WERE CHARGED WITH OFFENSES SIMILAR TO THE
20 ONES THAT ARE ALLEGED IN THIS CASE, MISS FURLAN, WOULD YOU
21 WANT 12 INDIVIDUALS ON YOUR JURY THAT ARE ESSENTIALLY AS YOU
22 ARE?

23 A YES, SIR.

24 Q DO YOU KNOW OF ANY REASON AT ALL WHY YOU CANNOT
25 BE COMPLETELY FAIR AND COMPLETELY IMPARTIAL IN HEARING THIS

1 CASE?

2 A NO, SIR.

3 Q MISS FURLAN, THESE PROCEEDINGS WILL BE CONDUCTED
4 IN TWO SEGMENTS. FIRST, THE JURY WILL BE ASKED TO DETERMINE
5 IF THE DEFENDANTS ARE GUILTY. PUNISHMENT WILL NOT BE
6 CONSIDERED AT THAT TIME.

7 SECOND, IF THE JURY FINDS THE DEFENDANTS GUILTY
8 OF FIRST DEGREE MURDER, THEN THE LAW OF THIS STATE REQUIRES
9 THE JURY TO SET THE PUNISHMENT. AT THAT TIME, I WOULD SET A
10 DATE FOR A HEARING. WE WOULD RECEIVE EVIDENCE CONCERNING THE
11 QUESTION OF PUNISHMENT. DO YOU UNDERSTAND THAT?

12 A YES.

13 Q IN THE STATE OF NEVADA, THERE ARE THREE POSSIBLE
14 FORMS OF PUNISHMENT THAT THE JURY MAY CONSIDER. THE
15 IMPOSITION OF THE DEATH PENALTY, LIFE IMPRISONMENT WITHOUT
16 THE POSSIBILITY OF PAROLE AND LIFE IMPRISONMENT WITH THE
17 POSSIBILITY OF PAROLE. DO YOU UNDERSTAND THAT?

18 A YES, SIR.

19 Q IN YOUR PRESENT STATE OF MIND, CAN YOU CONSIDER
20 EQUALLY ALL THREE POSSIBLE FORMS OF PUNISHMENT AND SELECT THE
21 ONE THAT YOU FEEL IS MOST APPROPRIATE?

22 A YES, SIR.

23 Q DO YOU HAVE ANY CONSCIENTIOUS, MORAL OR RELIGIOUS
24 OBJECTIONS TO THE IMPOSITION OF THE DEATH PENALTY?

25 A NO, SIR.

1 THE COURT: ADDITIONAL QUESTIONS YOU HAVE ME ASK,
2 COUNSEL?

3 MR. POSIN: PASS THIS JUROR FOR CAUSE.

4 MR. PIKE: PASS THE JUROR FOR CAUSE.

5 MR. HANDFUSS: PASS FOR CAUSE, YOUR HONOR.

6 MR. SMITH: PASS FOR CAUSE.

7 MR. SEATON: PASS FOR CAUSE.

8 THE COURT: VERY GOOD.

9
10 RUTH HOLFORD

11 Q (BY THE COURT) MISS HOLFORD?

12 A YES.

13 Q WILL YOU TELL US PLEASE OF YOUR EMPLOYMENT,
14 NUMBER OF CHILDREN YOU MAY HAVE HAD FROM A PREVIOUS MARRIAGE
15 AND HOW LONG YOU HAVE LIVED IN CLARK COUNTY?

16 A WORK AT THE TROPICANA HOTEL, CASINO CAGE CASHIER
17 THERE. I DON'T HAVE ANY CHILDREN AND I HAVE LIVED IN LAS
18 VEGAS FOR 23 YEARS.

19 Q HOW LONG HAVE YOU WORKED AT THE TROPICANA?

20 A A LITTLE OVER TWO YEARS.

21 Q BEFORE THAT?

22 A AT THE SAHARA AT THE FRONT DESK.

23 Q HAVE YOU EVER WORKED IN ANY JOB OUTSIDE OF
24 GAMING?

25 A YEAH.

1 Q WHAT WAS IT?

2 A WORKED IN AN OFFICE AT A BUS COMPANY HERE IN
3 TOWN.

4 Q YOU HAVE NOT BEEN MARRIED IN THE PAST?

5 A YES.

6 Q YOU HAVE BEEN?

7 A TWICE.

8 Q YOU HAVE NO CHILDREN?

9 A NO.

10 Q WHAT WERE THE OCCUPATIONS OF YOUR HUSBANDS?

11 A MY FIRST HUSBAND WAS A TRUCK DRIVER AND MY SECOND
12 HUSBAND WORKS AT THE HORSESHOE CASINO CAGE.

13 Q HAVE EITHER YOU OR YOUR PRIOR HUSBANDS BEEN IN
14 THE MILITARY?

15 A NO.

16 Q DO YOU HAVE ANY PREJUDICE AS TO THE NATURE OF THE
17 CHARGES IN THIS CASE?

18 A NO.

19 Q DO YOU HAVE ANY LEGAL TRAINING, EITHER FORMAL OR
20 INFORMAL?

21 A NO.

22 Q DID YOU KNOW THE ALLEGED VICTIMS IN THIS CASE,
23 EITHER CARL OR COLLEEN GORDON?

24 A NO.

25 Q DO YOU KNOW ANY OF THE OTHER MEMBERS OF THE

1 PROSPECTIVE JURY PANEL?

2 A NO.

3 Q DO YOU HAVE ANY RACIAL PREJUDICE?

4 A NO.

5 Q DO YOU UNDERSTAND THAT AN INFORMATION IS A MERE
6 ACCUSATION AND NOT EVIDENCE?

7 A YES.

8 Q THAT THE DEFENDANTS ARE PRESUMED TO BE INNOCENT
9 UNTIL PROVEN GUILTY?

10 A YES.

11 Q AND THAT THE STATE HAS THE BURDEN OF PROVING THE
12 DEFENDANTS' GUILT BEYOND A REASONABLE DOUBT?

13 A YES.

14 Q IF YOU WERE CHARGED WITH OFFENSES SIMILAR TO THE
15 ONES THAT ARE ALLEGED IN THIS CASE, WOULD YOU WANT 12
16 INDIVIDUALS ON YOUR JURY THAT ARE ESSENTIALLY AS YOU ARE?

17 A MOST DEFINITELY.

18 Q DO YOU KNOW OF ANY REASON AT ALL WHY YOU COULD
19 NOT BE COMPLETELY FAIR AND COMPLETELY IMPARTIAL IN HEARING
20 THIS CASE?

21 A NO.

22 Q WE WILL PROCEED IN TWO SEGMENTS. FIRST, THE JURY
23 WILL BE ASKED TO DETERMINE IF THE DEFENDANTS ARE GUILTY.
24 PUNISHMENT WILL NOT BE CONSIDERED AT THAT TIME.

25 SECOND, IF THE JURY FINDS THE DEFENDANTS GUILTY --

1 AND I USE THE WORDS DEFENDANTS, ONE OR MORE, IS WHAT I MEAN
2 FOR CLARIFICATION.

3 SECOND, IF THE JURY FINDS THE DEFENDANTS GUILTY
4 OF FIRST DEGREE MURDER, THEN THE LAW OF THIS STATE REQUIRES
5 THE JURY TO THEN SET THE PUNISHMENT. AT THAT TIME, I WOULD
6 SET A DATE FOR A HEARING AT WHICH TIME WE WOULD HEAR EVIDENCE
7 CONCERNING THE QUESTION OF PUNISHMENT. DO YOU UNDERSTAND
8 THAT?

9 A YES.

10 Q IN THE STATE OF NEVADA, THERE ARE THREE POSSIBLE
11 FORMS OF PUNISHMENT THAT THE JURY MAY CONSIDER. THE
12 IMPOSITION OF THE DEATH PENALTY, LIFE IMPRISONMENT WITHOUT
13 THE POSSIBILITY OF PAROLE AND LIFE IMPRISONMENT WITH THE
14 POSSIBILITY OF PAROLE. DO YOU UNDERSTAND THAT?

15 A YES.

16 Q IN YOUR PRESENT STATE OF MIND, CAN YOU CONSIDER
17 EQUALLY ALL THREE POSSIBLE FORMS OF PUNISHMENT AND SELECT THE
18 ONE THAT YOU FEEL IS MOST APPROPRIATE?

19 A YES.

20 Q DO YOU HAVE ANY CONSCIENTIOUS, MORAL OR RELIGIOUS
21 OBJECTIONS TO THE IMPOSITION OF THE DEATH PENALTY?

22 A NO.

23 THE COURT: ADDITIONAL QUESTIONS COUNSEL WOULD
24 HAVE ME ASK?

25 MR. SEATON: PASS FOR CAUSE.

1 MR. POSIN: PASS FOR CAUSE.
2 MR. PIKE: PASS FOR CAUSE.
3 MR. HANDFUSS: PASS FOR CAUSE.
4 MR. SMITH: PASS FOR CAUSE.
5 THE COURT: THANK YOU VERY MUCH.
6

7 GEORGE CARL SCHRAMEK

8 Q (BY THE COURT) MR. SCHRAMEK, WILL YOU TELL US OF
9 YOUR EMPLOYMENT, YOUR MARITAL STATUS, NUMBER OF CHILDREN YOU
10 MAY HAVE AND HOW LONG YOU HAVE LIVED IN CLARK COUNTY?

11 A PRESENTLY I AM WORKING LESS THAN PART TIME AS A
12 UNITED STATES AIR FORCE RESERVIST AT NELLIS AIR FORCE BASE AS
13 A CHAPEL MANAGEMENT SPECIALIST.

14 OTHER THAN THAT I AM UNEMPLOYED. I AM SINGLE,
15 HAVE NO CHILDREN, AND I HAVE BEEN IN LAS VEGAS ON A PERMANENT
16 BASIS FOR CLOSE TO SIX YEARS.

17 Q BEFORE THAT, WHERE DID YOU LIVE?

18 A STATIONED IN THE AIR FORCE, LUKE AIR FORCE BASE,
19 ARIZONA FOR THREE AND A HALF YEARS.

20 Q AND I DON'T KNOW IF I UNDERSTAND YOU CORRECTLY.
21 ARE YOU IN THE AIR FORCE PRESENTLY?

22 A WELL, IT IS MORE LIKE COUPLE DAYS A MONTH.

23 Q ARE YOU A CIVILIAN EMPLOYEE OR ARE YOU IN THE
24 SERVICE?

25 A WELL, IT IS MORE OR LESS A CIVILIAN BUT I AM IN

1 UNIFORM.

2 Q AND YOU WORK IN THE CHAPEL MANAGEMENT?

3 A YES.

4 Q IS THAT --

5 A IT IS ADMINISTRATIVE MAINLY, BOOKKEEPING, SETTING
6 UP FOR MASS, THAT TYPE.

7 Q DO YOU HAVE A RELIGIOUS BACKGROUND?

8 A WELL, I REALLY HAVE NO PREFERENCE AS FAR AS
9 RELIGION.

10 Q I GUESS THE QUESTION I AM ASKING --

11 A I HAVE NEVER BEEN IN THAT DEPARTMENT BEFORE.

12 Q SO IF I CORRECTLY UNDERSTAND YOU, YOUR FUNCTION
13 IS MORE ADMINISTRATIVE RATHER THAN THEOLOGICAL?

14 A RIGHT.

15 Q WHAT WAS YOUR FUNCTION IN THE AIR FORCE WHEN YOU
16 WERE ACTUALLY FULL TIME EMPLOYED IN THE AIR FORCE?

17 A I WAS ADMINISTRATIVE SPECIALIST CLERK.

18 Q YOU HAVE NOT BEEN MARRIED IN THE PAST?

19 A NO.

20 Q HAVE YOU SEEN COMBAT?

21 A NO, I HAVE NOT.

22 Q DO YOU HAVE ANY PREJUDICE AS TO THE NATURE OF THE
23 CHARGES IN THIS CASE?

24 A NO.

25 Q DO YOU HAVE ANY LEGAL TRAINING, EITHER FORMAL OR

1 INFORMAL?

2 A NONE.

3 Q DID YOU KNOW THE ALLEGED VICTIMS IN THIS CASE,
4 EITHER CARL OR COLLEEN GORDON?

5 A NO.

6 Q DO YOU KNOW ANY OF THE OTHER PROSPECTIVE JURORS?

7 A NO.

8 Q DO YOU HAVE ANY RACIAL PREJUDICE?

9 A NO.

10 Q DO YOU UNDERSTAND THAT AN INFORMATION IS A MERE
11 ACCUSATION AND NOT EVIDENCE?

12 A YES.

13 Q THAT THE DEFENDANTS ARE PRESUMED TO BE INNOCENT
14 UNTIL PROVEN GUILTY?

15 A YES.

16 Q AND THAT THE STATE HAS THE BURDEN OF PROVING THE
17 DEFENDANTS' GUILT BEYOND A REASONABLE DOUBT?

18 A YES.

19 Q IF YOU WERE CHARGED WITH OFFENSES SIMILAR TO THE
20 ONES THAT ARE ALLEGED IN THIS CASE, WOULD YOU WANT 12
21 INDIVIDUALS SUCH AS YOURSELF TO BE ON YOUR JURY?

22 A YES.

23 Q DO YOU KNOW OF ANY REASON AT ALL WHY YOU CANNOT
24 BE COMPLETELY FAIR AND COMPLETELY IMPARTIAL IN HEARING THIS
25 CASE?

1 A NO.

2 Q MR. SCHRAMEK, WE WILL BE PROCEEDING IN TWO
3 SEGMENTS. FIRST, THE JURY WILL BE ASKED TO DETERMINE THE
4 GUILT OR INNOCENCE OF THE DEFENDANTS. PUNISHMENT WOULD NOT
5 BE A MATTER OF CONCERN.

6 SECOND, IF THE JURY FINDS THE DEFENDANTS GUILTY
7 OF FIRST DEGREE MURDER, THEN THE LAW OF THIS STATE REQUIRES
8 THE JURY TO SET THE PUNISHMENT. AT THAT TIME, I WOULD SET A
9 DATE FOR A HEARING AT WHICH POINT WE WOULD HEAR EVIDENCE
10 GERMANE TO THE QUESTION OF PUNISHMENT. DO YOU UNDERSTAND
11 THAT?

12 A YES.

13 Q IN THE STATE OF NEVADA, THERE ARE THREE POSSIBLE
14 FORMS OF PUNISHMENT THAT THE JURY MAY CONSIDER. THE DEATH
15 PENALTY, LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE
16 AND LIFE IMPRISONMENT WITH THE POSSIBILITY OF PAROLE. DO YOU
17 UNDERSTAND THAT?

18 A YES.

19 Q IN YOUR PRESENT STATE OF MIND, CAN YOU CONSIDER
20 EQUALLY ALL THREE POSSIBLE FORMS OF PUNISHMENT AND SELECT THE
21 ONE THAT YOU FEEL IS MOST APPROPRIATE?

22 A YES.

23 Q DO YOU HAVE ANY CONSCIENTIOUS, MORAL OR RELIGIOUS
24 OBJECTIONS TO THE IMPOSITION OF THE DEATH PENALTY?

25 A NO.

1 THE COURT: ADDITIONAL QUESTIONS COUNSEL WOULD
2 HAVE ME ASK?

3 MR. POSIN: PASS THE JUROR FOR CAUSE.

4 MR. PIKE: PASS FOR CAUSE.

5 MR. HANDFUSS: PASS FOR CAUSE.

6 MR. SMITH: PASS FOR CAUSE.

7 MR. HARMON: PASS FOR CAUSE, YOUR HONOR.

8
9 HAROLD EUGENE TIBBS

10 Q (BY THE COURT) MR. TIBBS, WILL YOU TELL US PLEASE
11 OF YOUR EMPLOYMENT, MARITAL STATUS, NUMBER OF CHILDREN YOU
12 MAY HAVE AND HOW LONG YOU HAVE LIVED IN CLARK COUNTY?

13 A I WORKED IN MINING INDUSTRY AT THE NEVADA TEST
14 SITE. MARRIED. HAVE SIX CHILDREN RANGING IN AGE FROM 37 TO
15 21.

16 Q HOW LONG HAVE YOU LIVED IN CLARK COUNTY?

17 A 21 YEARS.

18 Q AND YOU HAVE TO DO WITH MINING?

19 A YES.

20 Q HOW LONG HAVE YOU BEEN ENGAGED IN THAT SORT OF
21 WORK?

22 A SINCE I GRADUATED FROM COLLEGE IN 1950.

23 Q WHAT ARE YOUR CHILDREN'S OCCUPATIONS, JUST BRIEF
24 AS POSSIBLE?

25 A MY OLDEST SON WORKS IN A CASHIER'S CAGE, CASINO.

1 MY OLDEST DAUGHTER OPERATES A WALNUT RANCH IN NORTHERN
2 CALIFORNIA. MY SECOND DAUGHTER IS A HAIRDRESSER. MY SECOND
3 SON IS AN AUTO MECHANIC. MY THIRD DAUGHTER IS A PHARMACIST
4 HELPER IN A HOSPITAL. MY YOUNGEST SON IS ATTENDING UNLV,
5 MASTERS IN MUSIC.

6 Q IS YOUR WIFE EMPLOYED?

7 A YES, SHE IS AS A CLERK AT SEARS.

8 Q HOW LONG HAS SHE BEEN INVOLVED IN THAT SORT OF
9 WORK?

10 A 16 OR 17 YEARS.

11 Q HAVE YOU OR SHE BEEN IN THE MILITARY?

12 A I HAVE BEEN IN THE MILITARY, YES.

13 Q SHE HAS NOT?

14 A SHE HAS NOT BEEN.

15 Q WITH BRANCH WERE YOU IN?

16 A ARMY AIR FORCE WORLD WAR I.

17 Q YOU SEE COMBAT?

18 A YES.

19 Q YOU HAVE ANY PREJUDICE AS TO THE NATURE OF THE
20 CHARGES IN THIS CASE?

21 A NO.

22 Q DO YOU HAVE ANY LEGAL TRAINING, EITHER FORMAL OR
23 INFORMAL?

24 A NONE.

25 Q DID YOU KNOW THE ALLEGED VICTIMS IN THIS CASE,

1 EITHER CARL OR COLLEEN GORDON?

2 A NO.

3 Q DO YOU KNOW ANY OF THE OTHER PROSPECTIVE JURORS?

4 A NO.

5 Q DO YOU HAVE ANY RACIAL PREJUDICE?

6 A NO.

7 Q DO YOU UNDERSTAND THAT AN INFORMATION IS A MERE
8 ACCUSATION AND NOT EVIDENCE?

9 A BEG YOUR PARDON.

10 Q DO YOU UNDERSTAND THAT AN INFORMATION IS MERELY
11 AN ACCUSATION AND NOT EVIDENCE?

12 A YES, I DO.

13 Q DO YOU ALSO UNDERSTAND THAT THE DEFENDANTS ARE
14 PRESUMED TO BE INNOCENT UNTIL PROVEN GUILTY?

15 A YES.

16 Q AND THAT THE STATE HAS THE BURDEN OF PROVING THE
17 DEFENDANTS' GUILT BEYOND A REASONABLE DOUBT?

18 A THAT'S RIGHT.

19 Q MR. TIBBS, IF YOU WERE CHARGED WITH OFFENSES
20 SIMILAR TO THE ONES THAT ARE ALLEGED IN THIS CASE, WOULD YOU
21 WANT 12 INDIVIDUALS SUCH AS YOURSELF TO BE ON YOUR JURY?

22 A I WOULD.

23 Q DO YOU KNOW OF ANY REASON AT ALL WHY YOU CANNOT
24 BE COMPLETELY FAIR AND COMPLETELY IMPARTIAL IN HEARING THIS
25 CASE?

1 A NO.

2 Q WE WILL PROCEED IN TWO SEGMENTS IN THIS MATTER.
3 FIRST, THE JURY WILL BE ASKED TO DETERMINE IF THE DEFENDANTS
4 ARE GUILTY. PUNISHMENT WILL NOT BE A MATTER OF CONCERN.

5 SECONDLY, IF THE JURY FINDS THE DEFENDANTS GUILTY
6 OF FIRST DEGREE MURDER, THEN THE LAW OF THIS STATE REQUIRES
7 THE JURY TO SET THE PUNISHMENT.

8 AT THAT TIME, I WOULD SET A DATE FOR A HEARING AT
9 WHICH TIME WE WOULD HEAR EVIDENCE CONCERNING THE MATTER OF
10 PUNISHMENT. DO YOU UNDERSTAND THAT?

11 A YES.

12 Q IN THE STATE OF NEVADA, THERE ARE THREE POSSIBLE
13 FORMS OF PUNISHMENT THAT THE JURY MAY CONSIDER. THE
14 IMPOSITION OF THE DEATH PENALTY, LIFE IMPRISONMENT WITHOUT
15 THE POSSIBILITY OF PAROLE AND LIFE IMPRISONMENT WITH THE
16 POSSIBILITY OF PAROLE. DO YOU UNDERSTAND THAT?

17 A YES.

18 Q IN YOUR PRESENT STATE OF MIND, CAN YOU CONSIDER
19 EQUALLY ALL THREE POSSIBLE FORMS OF PUNISHMENT AND SELECT THE
20 ONE THAT YOU FEEL IS MOST APPROPRIATE?

21 A I THINK I COULD, YES.

22 Q DO YOU HAVE ANY CONSCIENTIOUS, MORAL OR RELIGIOUS
23 OBJECTIONS TO THE IMPOSITION OF THE DEATH PENALTY?

24 A I WOULDN'T BE HAPPY ABOUT IT BUT IF I FELT THE
25 INDIVIDUAL WAS GUILTY AND THAT WAS THE LAW, I WOULD BE

1 WILLING TO GO ALONG WITH IT, YES.

2 Q LET ME GO BACK THEN TO THE QUESTION I ASKED
3 PREVIOUSLY AND LET YOU CONSIDER IT A MOMENT. IN YOUR PRESENT
4 STATE OF MIND, DO YOU FEEL THAT YOU CAN CONSIDER EQUALLY ALL
5 THREE POSSIBLE FORMS OF PUNISHMENT AND SELECT THE ONE THAT
6 YOU FEEL IS MOST APPROPRIATE?

7 A I THINK I COULD, YES.

8 THE COURT: ADDITIONAL QUESTIONS, COUNSEL?

9 MR. POSIN: WE WILL PASS THE JUROR FOR CAUSE.

10 MR. PIKE: PASS FOR CAUSE, YOUR HONOR.

11 MR. HANDFUSS: PASS FOR CAUSE.

12 MR. SMITH: PASS FOR CAUSE.

13 MR. SEATON: PASS FOR CAUSE.

14
15 JOHN MICHAEL BLACK

16 Q (BY THE COURT) MR. BLACK, WILL YOU TELL US
17 PLEASE OF YOUR EMPLOYMENT, YOUR MARITAL STATUS, NUMBER OF
18 CHILDREN YOU MAY HAVE AND HOW LONG YOU HAVE LIVED IN CLARK
19 COUNTY?

20 A SERVICE STATION OPERATOR, MARRIED, SEVEN
21 CHILDREN, LIVED IN CLARK COUNTY 35 YEARS.

22 Q HOW LONG HAVE YOU BEEN INVOLVED IN THE SERVICE
23 STATION BUSINESS?

24 A AS AN OWNER OPERATOR, THREE YEARS. TOTAL, TEN
25 YEARS.

1 Q BEFORE THAT?

2 A JANITORIAL SERVICE.

3 Q HOW OLD ARE YOUR CHILDREN?

4 A OLDEST IS 16, YOUNGEST, TWINS, TWO YEARS OLD.

5 Q ARE YOUR OLDER CHILDREN EMPLOYED AT ALL?

6 A DAUGHTER WORKS FOR MCDONALD'S IN HENDERSON.

7 Q AND IS YOUR WIFE EMPLOYED OUTSIDE THE HOME?

8 A SHE HAS A MAINTENANCE BUSINESS.

9 Q HAVE YOU OR SHE EVER BEEN IN THE MILITARY?

10 A I WAS IN THE NATIONAL GUARD AND THE ARMY RESERVE.

11 Q DID YOU EVER SEE ANY ACTION?

12 A NO.

13 Q DO YOU HAVE ANY PREJUDICE AS TO THE NATURE OF THE

14 CHARGES IN THIS CASE?

15 A NO.

16 Q DO YOU HAVE ANY LEGAL TRAINING, EITHER FORMAL OR

17 INFORMAL?

18 A NO.

19 Q DO YOU KNOW OR DID YOU KNOW THE ALLEGED VICTIMS

20 IN THIS CASE, EITHER CARL OR COLLEEN GORDON?

21 A NO.

22 Q DO YOU KNOW ANY OF THE OTHER PROSPECTIVE JURORS?

23 A I HAVE NODDING ACQUAINTANCE WITH MR. ANDERSON AND

24 MR. CHRISTENSEN.

25 Q VERY WELL. YOU SAY YOU JUST KNOW THEM?

1 A I KNOW THEM THROUGH THE BOY SCOUT PROGRAM.

2 Q LET ME ASK YOU THIS, MR. BLACK. CONSIDER YOUR
3 ANSWER. IF YOU WERE TO SERVE ON THE JURY WITH MR.
4 CHRISTENSEN OR MR. ANDERSON OR BOTH, DO YOU THINK THAT IN
5 DELIBERATING, DISCUSSING THE CASE WITH YOUR FELLOW JURORS, AS
6 YOU WILL BE CALLED UPON TO DO IF YOU ARE SELECTED, THAT YOU
7 WOULD FEEL ANY COMPUNCTION TO EITHER AGREE OR DISAGREE WITH
8 EITHER ONE OF THE INDIVIDUALS BY VIRTUE OF YOUR KNOWLEDGE OF
9 YOUR RELATIONSHIP TO THEM?

10 A NO.

11 Q YOU THINK THAT RELATIONSHIP COULD BE PUT ASIDE
12 AND YOU COULD EVALUATE THE CASE ON ITS MERITS SOLELY?

13 A YES, SIR.

14 Q I DON'T MEAN TO PUT WORDS IN YOUR MOUTH BUT IS
15 THAT CORRECT?

16 A YES. I WOULD HAVE NO PROBLEM WITH THAT.

17 Q DO YOU HAVE ANY RACIAL PREJUDICE?

18 A NO.

19 Q ARE YOU AWARE THAT THE INFORMATION IS A MERE
20 ACCUSATION AND NOT EVIDENCE?

21 A YES.

22 Q THAT THE DEFENDANTS ARE PRESUMED TO BE INNOCENT
23 UNTIL PROVEN GUILTY?

24 A YES.

25 Q AND THAT THE STATE HAS THE BURDEN OF PROVING THE

1 DEFENDANTS' GUILT BEYOND A REASONABLE DOUBT?

2 A YES.

3 Q IF YOU WERE CHARGED WITH OFFENSES SIMILAR TO THE
4 ONES THAT ARE ALLEGED IN THIS CASE, MR. BLACK, WOULD YOU WANT
5 12 INDIVIDUALS ON YOUR JURY THAT ARE ESSENTIALLY AS YOU ARE?

6 A YES.

7 Q DO YOU KNOW OF ANY REASON AT ALL WHY YOU COULD
8 NOT BE COMPLETELY FAIR AND COMPLETELY IMPARTIAL IN HEARING
9 THIS CASE?

10 A NO.

11 Q WE WILL PROCEED IN TWO SEGMENTS. FIRST, THE JURY
12 WILL BE ASKED TO DETERMINE IF THE DEFENDANTS ARE GUILTY.
13 PUNISHMENT WOULD NOT BE CONSIDERED AT THAT TIME.

14 SECOND, IF THE JURY FINDS THE DEFENDANTS GUILTY
15 OF FIRST DEGREE MURDER, THE LAW OF THIS STATE REQUIRES THE
16 JURY TO SET THE PUNISHMENT. AT THAT TIME, THE COURT WOULD
17 SET A TIME FOR A HEARING AT WHICH TIME WE WOULD HEAR EVIDENCE
18 CONCERNING THE MATTER OF PUNISHMENT. DO YOU UNDERSTAND THAT?

19 A YES.

20 Q IN THE STATE OF NEVADA, THERE ARE THREE POSSIBLE
21 FORMS OF PUNISHMENT THAT THE JURY MAY CONSIDER. IMPOSITION
22 OF THE DEATH PENALTY, LIFE IMPRISONMENT WITHOUT THE
23 POSSIBILITY OF PAROLE AND LIFE IMPRISONMENT WITH THE
24 POSSIBILITY OF PAROLE. DO YOU UNDERSTAND THAT?

25 A YES.

1 Q IN YOUR PRESENT STATE OF MIND, CAN YOU CONSIDER
2 EQUALLY ALL THREE POSSIBLE FORMS OF PUNISHMENT AND SELECT THE
3 ONE THAT YOU FEEL IS MOST APPROPRIATE?

4 A YES.

5 Q DO YOU HAVE ANY CONSCIENTIOUS, MORAL OR RELIGIOUS
6 OBJECTIONS TO THE IMPOSITION OF THE DEATH PENALTY?

7 A NO.

8 THE COURT: ARE THERE ADDITIONAL QUESTIONS,
9 COUNSEL?

10 MR. POSIN: PASS FOR CAUSE.

11 MR. PIKE: PASS FOR CAUSE.

12 MR. HANDFUSS: PASS FOR CAUSE.

13 MR. SMITH: PASS FOR CAUSE.

14 MR. HARMON: PASS FOR CAUSE.

15
16 GWEN BRISTER PHILLIPS

17 Q (BY THE COURT) MRS. BLACK, WILL YOU TELL US OF
18 YOUR EMPLOYMENT, NUMBER OF CHILDREN YOU MAY HAVE AND HOW LONG
19 YOU HAVE LIVED IN CLARK COUNTY?

20 A PHILLIPS IS THE NAME.

21 Q WHAT DID I CALL YOU, PHILLIPS.

22 A MY FAMILY LIVED IN CLARK COUNTY FOR 14 YEARS. I
23 AM MARRIED, HOUSEWIFE. MY HUSBAND IS A MUSICIAN. I HAVE
24 FOUR CHILDREN; BOY, 30, GIRL, 28, BOY, 24 AND A GIRL, 20.

25 Q AGAIN, HOW LONG HAVE YOU LIVED HERE?

1 A WE HAVE LIVED IN CLARK COUNTY 14 YEARS.

2 Q PRIOR TO THAT?

3 A WE CAME FROM DALLAS, TEXAS.

4 Q WHAT ARE YOUR CHILDREN'S OCCUPATIONS?

5 A MY OLDEST BOY IS SELF-EMPLOYED APPLIANCE
6 REPAIRMAN. MY DAUGHTER IS A DESK CLERK AT THE MGM. MY NEXT
7 SON IS COMPUTER TECHNICIAN, AND MY YOUNGEST DAUGHTER IS A
8 SECRETARY AT THE BANK.

9 Q AT A BANK?

10 A YES.

11 Q AND YOUR HUSBAND'S OCCUPATION?

12 A HE IS A MUSICIAN.

13 Q AND --

14 A EMPLOYED AT THE SAHARA HOTEL.

15 Q HOW LONG HAS HE BEEN INVOLVED IN THAT SORT OF
16 WORK?

17 A HIS WHOLE LIFE.

18 Q AND, AGAIN, WHAT IS YOUR OCCUPATION?

19 A DURING THE TAX SEASON, I AM A RECEPTIONIST FOR H
20 AND R BLOCK. THE REST OF THE YEAR I DO VOLUNTEER WORK FOR
21 THE AMERICAN CANCER SOCIETY.

22 Q HAVE YOU BEEN EMPLOYED IN OTHER CAPACITIES IN THE
23 PAST?

24 A THE FIRST TWO YEARS WE LIVED IN LAS VEGAS, I WAS A
25 DESK CLERK AND PBX OPERATOR AT ONE OF THE SMALL HOTELS.

1 PREVIOUS TO THAT, I DID CLERICAL WORK FOR -- CLERICAL
2 WORK IN DALLAS FOR A DEPARTMENT STORE.

3 Q HAVE YOU OR YOUR HUSBAND BEEN IN THE MILITARY?

4 A HUSBAND IN THE ARMY DURING THE KOREAN WAR BUT DID
5 NOT SEE ANY FRONT LINE SERVICE.

6 Q DO YOU HAVE ANY PREJUDICE AS TO THE NATURE OF THE
7 CHARGES IN THIS CASE?

8 A NO, SIR.

9 Q DO YOU HAVE ANY LEGAL TRAINING, EITHER FORMAL OR
10 INFORMAL?

11 A NONE.

12 Q DID YOU KNOW THE ALLEGED VICTIMS IN THIS CASE,
13 EITHER CARL OR COLLEEN GORDON?

14 A NO.

15 Q DO YOU KNOW ANY OF THE OTHER PROSPECTIVE JURORS?

16 A NO.

17 Q DO YOU HAVE ANY RACIAL PREJUDICE?

18 A NONE.

19 Q DO YOU UNDERSTAND THAT AN INFORMATION IS A MERE
20 ACCUSATION AND NOT EVIDENCE?

21 A YES.

22 Q THAT THE DEFENDANTS ARE PRESUMED TO BE INNOCENT
23 UNTIL PROVEN GUILTY?

24 A YES.

25 Q AND THAT THE STATE HAS THE BURDEN OF PROVING THE

1 DEFENDANTS' GUILT BEYOND A REASONABLE DOUBT?

2 A YES.

3 Q IF YOU WERE CHARGED WITH OFFENSES SIMILAR TO THE
4 ONES THAT ARE ALLEGED IN THIS CASE, WOULD YOU WANT 12
5 INDIVIDUALS ON YOUR JURY THAT ARE ESSENTIALLY AS YOU ARE?

6 A YES, SIR.

7 Q DO YOU KNOW OF ANY REASON AT ALL WHY YOU CANNOT
8 BE COMPLETELY FAIR AND COMPLETELY IMPARTIAL IN HEARING THIS
9 CASE?

10 A NO.

11 Q MRS. PHILLIPS, WE WILL PROCEED IN TWO SEGMENTS.
12 FIRST, THE JURY WILL BE ASKED TO DETERMINE IF THE DEFENDANTS
13 ARE GUILTY. PUNISHMENT WILL NOT BE A MATTER OF CONCERN AT
14 THAT TIME.

15 SECOND, IF THE JURY FINDS THE DEFENDANTS GUILTY
16 OF FIRST DEGREE MURDER, THEN THE LAW OF THIS STATE REQUIRES
17 THAT THE JURY SET THE PUNISHMENT.

18 AT THAT TIME, I WOULD SET A DATE FOR A HEARING
19 AND YOU WOULD HEAR EVIDENCE CONCERNING THE MATTER OF
20 PUNISHMENT. DO YOU UNDERSTAND THAT?

21 A YES.

22 Q IN THE STATE OF NEVADA, THERE ARE THREE POSSIBLE
23 FORMS OF PUNISHMENT THAT THE JURY MAY CONSIDER. THE
24 IMPOSITION OF THE DEATH PENALTY, LIFE IMPRISONMENT WITHOUT
25 THE POSSIBILITY OF PAROLE AND LIFE IMPRISONMENT WITH THE

1 POSSIBILITY OF PAROLE. DO YOU UNDERSTAND THAT?

2 A YES.

3 Q IN YOUR PRESENT STATE OF MIND, CAN YOU CONSIDER
4 EQUALLY ALL THREE POSSIBLE FORMS OF PUNISHMENT AND SELECT THE
5 ONE THAT YOU FEEL IS MOST APPROPRIATE?

6 A YES.

7 Q DO YOU HAVE ANY CONSCIENTIOUS, MORAL OR RELIGIOUS
8 OBJECTIONS TO THE IMPOSITION OF THE DEATH PENALTY?

9 A NO.

10 THE COURT: ARE THERE ADDITIONAL QUESTIONS
11 COUNSEL WOULD HAVE ME ASK?

12 MR. POSIN: PASS THE JUROR FOR CAUSE.

13 MR. PIKE: PASS FOR CAUSE.

14 MR. HANDFUSS: PASS FOR CAUSE.

15 MR. SMITH: PASS FOR CAUSE.

16 MR. SEATON: PASS FOR CAUSE.

17 THE COURT: VERY GOOD. ALL RIGHT, LADIES AND
18 GENTLEMEN, WE WILL ADJOURN AT THIS POINT. BEFORE WE DO,
19 THERE IS AN ITEM OF PARAMOUNT IMPORTANCE I WANT TO DISCUSS
20 WITH YOU.

21 THE LAW, AND I AM ADDRESSING ALL THE PROSPECTIVE
22 JURORS, THE LAW DEEMS IT OF SUCH IMPORTANCE THAT I AM
23 MANDATED TO READ TO YOU VERBATIM EACH TIME WE RECESS THE
24 FOLLOWING ADMONITION AND I WILL READ IT THIS TIME AND I WILL
25 EXPLAIN IT AT LENGTH.

1 IT IS YOUR DUTY NOT TO DISCUSS AMONG YOURSELVES
2 OR WITH ANYONE ELSE ANY SUBJECT CONNECTED WITH THIS TRIAL, OR
3 READ, WATCH OR LISTEN TO ANY REPORT OF OR COMMENTARY ON THE
4 TRIAL OR ANY PERSON CONNECTED WITH THE TRIAL BY ANY MEDIUM OF
5 INFORMATION, INCLUDING WITHOUT LIMITATION NEWSPAPERS,
6 TELEVISION AND RADIO OR FORM OR EXPRESS ANY OPINION ON ANY
7 SUBJECT CONNECTED WITH THE TRIAL UNTIL THE MATTER IS FINALLY
8 SUBMITTED TO YOU.

9 NOW, WHAT THIS MEANS IN ESSENCE, IS THAT YOU ARE
10 NOT TO DISCUSS WITH ANY PERSON, BE IT EACH OTHER, OR SOMEONE
11 OUT IN THE HALLWAY, THE ATTORNEYS, THE BAILIFF, ANYONE,
12 ANYTHING THAT TRANSPIRES IN THIS COURTROOM UNTIL THE
13 APPROPRIATE TIME AND YOU WOULD BE NOTIFIED AS TO WHAT THAT
14 TIME IS.

15 AND THIS GOES CERTAINLY TO YOUR SPOUSE AT HOME,
16 YOUR FRIENDS, YOUR CHILDREN. WHEN YOU GO HOME TONIGHT AND
17 YOU ARE HAVING DINNER, NATURALLY THEY ARE GOING TO BE
18 INQUISITIVE. PLEASE REFRAIN FROM DISCUSSING THIS MATTER.

19 DON'T DO IT BECAUSE I AM ASKING YOU OR BECAUSE I
20 AM ORDERING YOU, WHICH I AM, BUT DO IT BECAUSE IT IS JUST
21 BASIC FAIRNESS. THE LAW MANDATES THAT THESE ARE THE RULES.
22 AND I WOULD ASK YOU TO ADHERE TO THEM.

23 IF THERE WOULD BE A VIOLATION OF THIS ADMONITION,
24 IT WOULD AMOUNT TO A MISTRIAL AND EVERYTHING THAT WE HAVE
25 DONE UP TO THAT POINT WOULD BE A WASTE. SO, PLEASE, IT IS A

1 SMALL MATTER. SOON YOU WILL BE ABLE TO DISCUSS THIS WITH
2 ANYONE YOU WOULD CARE TO.

3 THE TENOR OF THIS ADMONITION IS SUCH THAT
4 TOMORROW MORNING WHEN YOU COME BACK HERE, YOU MIGHT SEE
5 COUNSEL IN THE HALLWAY. YOU MIGHT SAY GOOD MORNING, NOD YOUR
6 HEAD TO THEM. THEY MAY WELL IGNORE YOU. IT IS NOT BECAUSE
7 THEY ARE DISCOURTEOUS OR IMPOLITE.

8 IT IS BECAUSE THAT THE SAME THINKING THAT IS
9 BEHIND THIS ADMONITION APPLIES TO THEM AND THAT THEY ARE NOT
10 TO HAVE ANY RELATIONSHIP WITH YOU OUT OF THIS COURTROOM, ANY
11 COMMUNICATION WITH YOU.

12 SO PLEASE UNDERSTAND THE IMPORTANCE OF THIS. IT
13 IS ABSOLUTELY VITAL. AND TONIGHT, NO DOUBT THIS MATTER WILL
14 BE ON THE NEWS, NEWSPAPERS, TELEVISION, RADIO, WHATEVER IT
15 MAY BE. YOU ARE ADMONISHED THAT YOU ARE NOT TO WATCH ANY
16 REPORT OF THIS CASE IN ANY WAY.

17 PLEASE UNDERSTAND THAT YOUR DECISION IS TO BE
18 MADE FROM WHAT WE HEAR FROM THIS WITNESS STAND IN THE NEXT
19 FEW WEEKS, NOT WHAT SOME NEWSCASTER DETERMINES THE FACTS OF
20 THIS CASE ARE. AND IN FAIRNESS TO THE DEFENDANTS, LET'S DO
21 THAT.

22 I WOULD ASK THAT EACH ONE OF YOU BE PRESENT TEN
23 O'CLOCK TOMORROW MORNING WHEN WE WILL RESUME WHERE WE LEFT
24 OFF HERE. AND I DO UNDERSTAND THAT IT IS A TEDIOUS PROCESS
25 BUT I ASK YOUR INDULGENCE.

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25

COUNSEL, IS THERE ANYTHING FURTHER?

MR. PIKE: NOTHING ON BEHALF OF DEFENDANT
FLANAGAN.

THE COURT: VERY GOOD. THIS COURT IS ADJOURNED
UNTIL TEN O'CLOCK TOMORROW MORNING.

(EVENING RECESS TAKEN.)

179.
ORIGINAL

FILED

1 CASE NO. C069269

2 DEPARTMENT FOURTEEN

FEB 14 1986

LORETTA B. BROWN, CLERK
BY *[Signature]* DEPUTY

3
4 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF CLARK

6
7 THE STATE OF NEVADA,)

8 PLAINTIFF,)

9 vs.)

10 DALE EDWARD FLANAGAN, RANDOLPH)
11 MOORE AKA SMITH, JOHNNY RAY)
LUCKETT AND ROY MCDOWELL,)

12 DEFENDANTS.)

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

13
14 BEFORE THE HONORABLE DONALD M. MOSLEY, DISTRICT JUDGE

15
16
17 APPEARANCES:

18 FOR THE STATE:

MELVYN T. HARMON, ESQUIRE

&

19 DANIEL M. SEATON, ESQUIRE
20 DEPUTIES DISTRICT ATTORNEY

21 FOR DEFENDANT FLANAGAN: RANDALL PIKE, ESQUIRE

22 FOR DEFENDANT MOORE: MURRAY POSIN, ESQUIRE

23 FOR DEFENDANT LUCKETT: WILLIAM H. SMITH, ESQUIRE

24 FOR DEFENDANT MCDOWELL: ROBERT J. HANDFUSS, ESQUIRE

25 Reported by: Sharon J. Thielman, Official Court Reporter

AA234

1 LAS VEGAS, NEVADA, FRIDAY, SEPTEMBER 27, 1985

2
3 THE COURT: THE CONTINUATION OF CASE C69269, THE
4 STATE OF NEVADA VERSUS DALE FLANAGAN, RANDOLPH MOORE, JOHN
5 LUCKETT AND ROY MCDOWELL.

6 THE RECORD WILL REFLECT THE PRESENCE OF EACH OF
7 THE DEFENDANTS, MR. FLANAGAN REPRESENTED BY MR. PIKE, MR.
8 MOORE REPRESENTED BY MR. POSIN, MR. LUCKETT REPRESENTED BY
9 MR. SMITH AND MR. MCDOWELL REPRESENTED BY MR. HANDFUSS.

10 THE RECORD WILL ALSO REFLECT THE PRESENCE OF MR.
11 HARMON AND MR. SEATON REPRESENTING THE STATE. MISS CLERK,
12 WILL YOU CALL THE ROLL OF OUR PROSPECTIVE JURORS.

13 THE CLERK: YES, YOUR HONOR.

14 (ROLL CALL TAKEN.)

15 THE CLERK: ALL PRESENT, YOUR HONOR.

16 THE COURT: THE RECORD WILL SO REFLECT. GOOD
17 MORNING, LADIES AND GENTLEMEN. BEFORE WE RESUME OUR VOIR
18 DIRE PROCESS, I AM INFORMED WE MAY HAVE A MEDICAL PROBLEM
19 WITH TWO OF OUR PROSPECTIVE JURORS, 465 AND 453. THOSE TWO
20 LADIES RAISE THEIR HANDS. COULD I HEAR WHAT THE COMPLAINT
21 IS.

22
23 RHONDA F. THOMPSON

24 Q (BY THE COURT) WHAT IS YOUR NAME, PLEASE?

25 A RHONDA THOMPSON, 453.

1 Q MISS THOMPSON?

2 A THREATENED MISCARRIAGE.

3 Q I SEE. SO YOU FEEL THIS IS SUBSTANTIAL
4 DIFFICULTY THERE?

5 A YES, ITS.

6 MR. SEATON: WE COULD STIPULATE, YOUR HONOR.

7 MR. POSIN: SO STIPULATED.

8 MR. PIKE: SO STIPULATED.

9 MR. HANDFUSS: STIPULATE, YOUR HONOR.

10 MR. SMITH: SO STIPULATED.

11 THE COURT: MISS THOMPSON, YOU ARE EXCUSED.

12

13 MARC LESLIE GRISWOLD

14 Q (BY THE COURT) YES, MA'AM.

15 A LESLIE GRISWOLD.

16 Q MISS GRISWOLD?

17 A I HAVE A BACK PROBLEM AND IT WENT INTO A MUSCLE
18 SPASM. I HAVE HAD THE PROBLEM BEFORE BUT I HAVE TO SEE THE
19 DOCTOR AND GET A REFILL ON MY PRESCRIPTION.

20 Q MY BAILIFF INFORMED ME YOU ARE TAKING PAIN PILLS.

21 A YES. I HAD TO TAKE THE PAIN PILLS BECAUSE I
22 CALLED.

23 Q DO YOU THINK THAT SITTING A PROLONGED TIME WILL
24 BE A PROBLEM?

25 A YESTERDAY I REGRET THAT I DIDN'T SPEAK UP BUT I

1 HAD HOPED THAT IT WOULD GET BETTER. IT WOULD BE IMPOSSIBLE
2 FOR ME TO SIT UNTIL THE SPASM IS RELEASED.

3 THE COURT: COUNSEL.

4 MR. SEATON: WE WOULD STIPULATE.

5 MR. POSIN: WE WOULD STIPULATE.

6 THE COURT: THANK YOU VERY MUCH, MISS GRISWOLD.
7 YOU ARE EXCUSED. THANK YOU.

8
9 CARL W. WHITTINGTON, JR.

10 Q (BY THE COURT) MR. WHITTINGTON, SIR, WILL YOU
11 TELL US SOMETHING OF YOUR EMPLOYMENT, YOUR MARITAL STATUS,
12 NUMBER OF CHILDREN YOU MAY HAVE AND HOW LONG YOU HAVE LIVED
13 IN CLARK COUNTY?

14 A I AM EMPLOYED BY CLARK COUNTY BUILDING DEPARTMENT
15 AS BUSINESS MANAGER. I HAVE BEEN THERE FOR SIX YEARS,
16 MARRIED, FOUR CHILDREN, OLDEST OF WHICH IS A CHEMICAL
17 ENGINEER.

18 SECOND SON IS A GENERAL BUILDING CONTRACTOR,
19 DAUGHTER IS A MEDICAL OFFICE RECEPTIONIST AND YOUNGEST SON IS
20 19, IS A RUNNER FOR AN ENGINEERING FIRM.

21 BEEN IN TOWN FOR 22 YEARS AND PARDON THE
22 LARYNGITIS, PLEASE.

23 Q HOW LONG HAVE YOU BEEN AN EMPLOYEE IN YOUR PRESENT
24 EMPLOYMENT?

25 A SIX YEARS.

1 Q BEFORE THAT?

2 A GENERAL CONTRACTOR FOR FOUR AND BEFORE THAT 15
3 YEARS WITH EG&G.

4 Q WAS WHAT YOUR FUNCTION AT EG&G?

5 A MATERIAL MANAGER.

6 Q IS YOUR WIFE EMPLOYED OUTSIDE THE HOME?

7 A RETIRED TEACHER.

8 Q ELEMENTARY?

9 A YES.

10 Q HAVE YOU OR SHE BEEN IN THE MILITARY?

11 A I WAS IN THE MILITARY, AIR FORCE.

12 Q DID YOU SEE ANY COMBAT?

13 A NO.

14 Q DO YOU HAVE ANY PREJUDICE AS TO THE NATURE OF THE
15 CHARGES IN THIS CASE?

16 A NO.

17 Q DO YOU HAVE ANY LEGAL TRAINING, EITHER FORMAL OR
18 INFORMAL?

19 A NONE.

20 Q DID YOU KNOW THE ALLEGED VICTIMS, EITHER CARL OR
21 COLLEEN GORDON?

22 A NO.

23 Q DO YOU KNOW ANY OF THE OTHER PROSPECTIVE JURORS?

24 A NO.

25 Q DO YOU HAVE ANY RACIAL PREJUDICE?

1 A NO.

2 Q DO YOU UNDERSTAND THAT AN INFORMATION IS A MERE
3 ACCUSATION AND NOT EVIDENCE?

4 A I DO.

5 Q THAT THE DEFENDANTS ARE PRESUMED TO BE INNOCENT
6 UNTIL PROVEN GUILTY?

7 A YES.

8 Q AND THAT THE STATE HAS THE BURDEN OF PROVING THE
9 DEFENDANTS' GUILT BEYOND A REASONABLE DOUBT?

10 A YES.

11 Q IF YOU WERE CHARGED WITH OFFENSES SIMILAR TO THE
12 ONES THAT ARE ALLEGED IN THIS CASE, WOULD YOU WANT 12
13 INDIVIDUALS ON YOUR JURY THAT ARE ESSENTIALLY AS YOU ARE?

14 A YES.

15 Q DO YOU HAVE ANY REASON AT ALL WHY YOU CANNOT BE
16 COMPLETELY FAIR AND COMPLETELY IMPARTIAL IN HEARING THIS
17 CASE?

18 A NO. I SHOULD MENTION ONE THING FROM YESTERDAY
19 THOUGH. IT SEEMS STRANGE THAT I DIDN'T THINK ABOUT IT
20 EARLIER THIS MORNING. ONE OF THE QUESTIONS ASKED YESTERDAY
21 IS HAS THERE BEEN A CRIME OR INCIDENT IN YOUR OR YOUR
22 FAMILY'S LIFE AND THERE WAS.

23 MY WIFE'S SON WAS MURDERED. I THINK THAT WAS
24 EIGHT OR NINE YEARS AGO. I DIDN'T KNOW THE LAD AND, WELL,
25 I REALLY DON'T KNOW MUCH ABOUT THE CASE.

1 Q THIS IS BEFORE YOU WERE MARRIED?
2 A YES.
3 Q HOW LONG AGO WAS IT WHEN YOU WERE MARRIED?
4 A SIX YEARS.
5 Q SO THIS HAPPENED TWO OR THREE YEARS PRIOR TO YOUR
6 MARRYING YOUR PRESENT WIFE?
7 A YES. I THOUGHT THE COURT SHOULD KNOW THAT.
8 Q WAS THAT OFFENSE COMMITTED HERE IN CLARK COUNTY?
9 A YES.
10 Q DID YOU LIVE HERE AT THE TIME?
11 A YES.
12 Q DO YOU RECALL ANYTHING INDEPENDENT OF WHAT YOUR
13 WIFE HAS TOLD YOU ABOUT THE OFFENSE?
14 A NOTHING, NONE. IT WAS REMOTE FROM MY MEMORY AND
15 I DIDN'T THINK ABOUT IT YESTERDAY.
16 Q WAS ANYONE PROSECUTED IN THAT CASE?
17 A YES.
18 Q DO YOU THINK THAT THAT SITUATION WOULD IN ANY WAY
19 AFFECT YOUR ABILITY TO OBJECTIVELY EVALUATE THIS CASE?
20 A NO.
21 Q DO YOU UNDERSTAND THAT THE ADMONISHMENT I
22 INDICATED, YOU ARE NOT TO DISCUSS THIS CASE WITH YOUR WIFE?
23 A YES.
24 Q THAT WOULD GO TO, OF COURSE, THIS INCIDENT AS
25 WELL?

1 A YES.

2 Q I WOULD ASK YOU TO KEEP THAT IN MIND. VERY GOOD
3 THEN.

4 MR. WHITTINGTON, WE WILL PROCEED IN THIS MATTER
5 IN TWO SEGMENTS. FIRST, THE JURY WILL BE ASKED TO DETERMINE
6 IF THE DEFENDANTS ARE GUILTY. PUNISHMENT WILL NOT BE A
7 MATTER OF CONCERN.

8 SECOND, IF THE JURY FINDS THE DEFENDANTS GUILTY
9 OF FIRST DEGREE MURDER, THE LAW OF THE STATE REQUIRES THE
10 JURY TO SET THE PUNISHMENT.

11 AT THAT TIME, I WILL SET A DATE FOR A HEARING AT
12 WHICH TIME WE WILL HEAR EVIDENCE CONCERNING THE PUNISHMENT.
13 DO YOU UNDERSTAND THAT?

14 A YES.

15 Q IN THE STATE OF NEVADA, THE LAW ALLOWS THE JURY
16 TO CONSIDER THREE POSSIBLE FORMS OF PUNISHMENT. ONE IS
17 IMPOSITION OF THE DEATH PENALTY, ANOTHER IS LIFE IMPRISONMENT
18 WITHOUT THE POSSIBILITY OF PAROLE AND THE THIRD IS LIFE
19 IMPRISONMENT WITH THE POSSIBILITY OF PAROLE. DO YOU
20 UNDERSTAND THAT?

21 A YES.

22 Q IN YOUR PRESENT STATE OF MIND, CAN YOU CONSIDER
23 EQUALLY ALL THREE POSSIBLE FORMS OF PUNISHMENT AND SELECT THE
24 ONE THAT YOU FEEL IS MOST APPROPRIATE?

25 A YES.

1 Q DO YOU HAVE ANY CONSCIENTIOUS, MORAL OR RELIGIOUS
2 OBJECTIONS TO THE IMPOSITION OF THE DEATH PENALTY?

3 A NO.

4 THE COURT: ADDITIONAL QUESTIONS COUNSEL WOULD
5 HAVE ME POSE?

6 MR. POSIN: PASS THE JUROR FOR CAUSE.

7 MR. PIKE: PASS FOR CAUSE

8 MR. HANDFUSS: PASS FOR CAUSE.

9 MR. SMITH: PASS FOR CAUSE.

10 MR. HARMON: PASS FOR CAUSE.

11
12 THOMAS N. TRINAYSTICH

13 Q (BY THE COURT) MR. TRINAYSTICH, WILL YOU TELL US
14 OF YOUR EMPLOYMENT, MARITAL STATUS, NUMBER OF CHILDREN YOU
15 MAY HAVE AND HOW LONG YOU HAVE LIVED IN CLARK COUNTY?

16 A PRESENTLY SELF-EMPLOYED AS A CAR REPAIRMAN. I
17 HAVE LIVED IN CLARK COUNTY 38 YEARS AND I AM SINGLE. I HAVE
18 NO CHILDREN.

19 Q HOW LONG HAVE YOU WORKED AS A CAR MECHANIC?

20 A APPROXIMATELY TEN YEARS.

21 Q PRIOR TO THAT?

22 A I WORKED FOR CENTRAL TELEPHONE AS A SWITCHMAN.

23 Q YOU HAVE NOT BEEN MARRIED IN THE PAST?

24 A NO, NEVER.

25 Q HAVE YOU BEEN IN THE MILITARY?

1 A NO.

2 Q DO YOU HAVE ANY PREJUDICE AS TO THE NATURE OF THE
3 CHARGES IN THIS CASE?

4 A NONE.

5 Q DO YOU HAVE ANY LEGAL TRAINING, EITHER FORMAL OR
6 INFORMAL?

7 A TWO YEARS OF BUSINESS LAW WHEN I WENT TO COLLEGE.

8 Q WAS THIS PURSUANT TO A BUSINESS DEGREE?

9 A YES.

10 Q IT WASN'T PRE-LAW IN THE SENSE YOU WERE GOING?

11 A NO.

12 Q YOU SAY TWO YEARS. IS THAT FOUR SEMESTERS OF
13 BUSINESS LAW?

14 A YES. TWO OF BUSINESS LAW, ONE OF INSURANCE LAW
15 AND ONE OF REAL ESTATE LAW.

16 Q DID YOU TOUCH ON CRIMINAL LAW?

17 A JUST IN PASSING.

18 Q DO YOU UNDERSTAND THAT ALTHOUGH YOU MAY HAVE SOME
19 KNOWLEDGE OF THE LAW BY VIRTUE OF YOUR TRAINING, THAT THE LAW
20 THAT YOU WOULD APPLY IN EVALUATING THIS CASE IS THAT WHICH I
21 GIVE YOU IN THE JURY INSTRUCTIONS?

22 A YES.

23 Q DO YOU THINK YOU CAN DO THAT?

24 A YES.

25 Q DID YOU KNOW THE ALLEGED VICTIMS IN THIS CASE,

1 EITHER CARL OR COLLEEN GORDON?

2 A NO.

3 Q DO YOU KNOW ANY OF THE OTHER PROSPECTIVE JURORS?

4 A NO.

5 A DO YOU HAVE ANY RACIAL PREJUDICE?

6 A NONE THAT I AM AWARE OF.

7 Q DO YOU UNDERSTAND THAT AN INFORMATION IS A MERE
8 ACQUISITION AND NOT EVIDENCE?

9 A YES, I KNOW THAT.

10 Q THAT THE DEFENDANT IS PRESUMED TO BE -- OR
11 DEFENDANTS ARE PRESUMED TO BE INNOCENT UNTIL PROVEN GUILTY?

12 A YES.

13 Q AND THAT THE STATE HAS THE BURDEN OF PROVING THE
14 DEFENDANTS' GUILT BEYOND A REASONABLE DOUBT?

15 A YES.

16 Q IF YOU WERE CHARGED WITH OFFENSES SIMILAR TO THE
17 ONES ALLEGED IN THIS CASE, WOULD YOU WANT 12 INDIVIDUALS SUCH
18 AS YOURSELF TO BE ON YOUR JURY?

19 A IN THIS CASE, YES.

20 Q WELL, I AM NOT SURE I UNDERSTAND THE
21 EQUIVOCATION.

22 A IF YOU ASKED -- YOUR NEXT QUESTION IS ON THE
23 DEATH PENALTY SO, AS I SAID, IN THIS CASE, YES, I WOULD WANT
24 12 PEOPLE SUCH AS MYSELF ON THE JURY.

25 Q WE WILL PROCEED THEN. DO YOU KNOW OF ANY REASON

1 AT ALL WHY YOU CANNOT BE COMPLETELY FAIR OR COMPLETELY
2 IMPARTIAL IN THIS CASE?

3 A I AM OPPOSED TO THE DEATH PENALTY.

4 Q ALL RIGHT. DO YOU FEEL THAT YOU CANNOT EQUALLY
5 CONSIDER THE THREE POSSIBLE FORMS OF PUNISHMENT THAT ARE
6 PROVIDED BY LAW IN THIS MATTER?

7 A I COULD NOT CONSIDER THE DEATH PENALTY.

8 Q IS THIS A CONSCIENTIOUS, MORAL OR RELIGIOUS
9 OBJECTION?

10 A IT'S A RELIGIOUS OBJECTION.

11 Q IN AN APPROPRIATE CASE AND IF THE STATE PROVES TO
12 YOU BEYOND A REASONABLE DOUBT THAT THIS IS AN APPROPRIATE
13 CASE, COULD YOU BRING BACK THE DEATH PENALTY?

14 A NO, SIR. I DON'T THINK I COULD.

15 THE COURT: I WILL ALLOW COUNSEL TO QUESTION MR.
16 TRINAYSTICH.

17 MR. SMITH: I DON'T HAVE ANY QUESTIONS OF THIS
18 JUROR, YOUR HONOR.

19 THE COURT: ANY QUESTIONS, MR. HANDFUSS?

20 MR. HANDFUSS: NO, YOUR HONOR.

21 MR. SEATON: I WOULD CHALLENGE FOR CAUSE AT THIS
22 JUNCTURE, YOUR HONOR.

23 THE COURT: VERY WELL.

24 Q (BY THE COURT) I WOULD ASK ONE ADDITIONAL
25 QUESTION OF THE PROPOSED PROSPECTIVE JUROR. IN THE MOST

1 HEINOUS OF CIRCUMSTANCES, THE MOST BIZARRE AND SERIOUS SET OF
2 CIRCUMSTANCES, WHICH WOULD AMOUNT TO A MURDER, DO YOU THINK
3 YOU COULD BRING BACK THE DEATH PENALTY?

4 A WITH MY RELIGIOUS BACKGROUND, NO, BECAUSE I WOULD
5 FEEL I WOULD BE AS GUILTY OF MURDER AS THE PERSON I HAD
6 ACCUSED OF MURDER.

7 Q YOU ARE EXCUSED FOR CAUSE, SIR, THANK YOU VERY
8 MUCH.

9 A SORRY TO HAVE TAKEN UP YOUR TIME.

10 Q THAT'S QUITE ALL RIGHT.

11 THE CLERK: JON T. DULANEY, D-U-L-A-N-E-Y, NUMBER
12 414.

13
14 JON T. DULANEY

15 Q (BY THE COURT) MR. DULANEY, HAVE YOU SERVED ON A
16 JURY BEFORE?

17 A NO, SIR.

18 Q ARE YOU OR ANY OF YOUR CLOSE FRIENDS OR RELATIVES
19 INVOLVED IN LAW ENFORCEMENT OR HAVE YOU BEEN IN THE PAST?

20 A NO, SIR.

21 Q WOULD YOU HAVE A TENDENCY TO GIVE MORE WEIGHT OR
22 CREDENCE TO THE TESTIMONY OF A LAW ENFORCEMENT OFFICER SIMPLY
23 BECAUSE THE PERSON WAS AN OFFICER?

24 A NO, SIR.

25 Q HAVE YOU OR A CLOSE FRIEND OR FAMILY MEMBER EVER

1 BEEN THE VICTIM OF CRIME?

2 A NO, SIR.

3 Q HAVE YOU READ OR HEARD ABOUT THIS CASE PRIOR TO
4 COMING TO COURT TODAY?

5 A JUST A SMALL THING WHEN IT FIRST HAPPENED.

6 Q HOW LONG AGO, WOULD YOU SAY?

7 A IT WAS ABOUT NOVEMBER, LAST NOVEMBER.

8 Q HOW DID YOU HEAR ABOUT IT, DO YOU RECALL?

9 A JUST THROUGH THE NEWSPAPER.

10 Q NO OTHER MEDIA?

11 A NO.

12 Q DO YOU REMEMBER WHAT YOU HEARD ABOUT IT?

13 A JUST THAT TWO PEOPLE WERE MURDERED AND THEY HAD
14 NO SUSPECTS AT THE TIME.

15 Q AND YOU ONLY HEARD THE ONE ACCOUNT?

16 A YEAH.

17 Q DID YOU HAVE OCCASION TO DISCUSS THE MATTER WITH
18 ANYONE?

19 A NO, SIR.

20 Q DID YOU FORM AN OPINION AT THE TIME AS TO GUILT
21 OR INNOCENCE OF ANY INDIVIDUAL?

22 A NO, SIR.

23 Q HAVE YOU SINCE?

24 A NO, SIR.

25 Q DO YOU HONESTLY BELIEVE THAT NOTWITHSTANDING WHAT

1 YOU MAY HAVE HEARD ABOUT THE CASE THAT YOU COULD FAIRLY AND
2 OBJECTIVELY WEIGH THE EVIDENCE IN THE CASE AND DETERMINE
3 BASED SOLELY UPON THAT EVIDENCE THE GUILT OR INNOCENCE OF THE
4 DEFENDANTS?

5 A YES, SIR.

6 Q DO YOU UNDERSTAND THAT YOU ARE TO BASE YOUR
7 DECISION TO THE DEFENDANTS' GUILT OR INNOCENCE EXCLUSIVELY
8 UPON THE EVIDENCE PRESENTED IN THIS COURTROOM AND DISREGARD
9 ANYTHING THAT YOU MAY HAVE HEARD OUTSIDE THE COURTROOM? DO
10 YOU THINK YOU CAN DO THAT?

11 A YES, SIR.

12 Q DO YOU UNDERSTAND THAT YOU ARE TO EVALUATE THE
13 STATE'S CASE AGAINST EACH OF THE DEFENDANTS INDIVIDUALLY AND
14 RENDER A VERDICT AS TO THE CRIMINAL INVOLVEMENT OR LACK
15 THEREOF OF EACH DEFENDANT AS AN INDIVIDUAL? DO YOU
16 UNDERSTAND THAT?

17 A YES, SIR.

18 Q DO YOU THINK YOU CAN DO THAT?

19 A YES, SIR.

20 Q CAN YOU WAIT IN FORMING YOUR OPINION AS TO THE
21 GUILT OR INNOCENCE OF THE DEFENDANTS UNTIL ALL THE EVIDENCE
22 HAS BEEN HEARD?

23 A YES.

24 Q WILL YOU FOLLOW ALL OF THE INSTRUCTIONS OF THE
25 COURT ON THE LAW EVEN THOUGH THEY MAY DIFFER FROM YOUR

1 PERSONAL CONCEPTIONS OF WHAT THE LAW OUGHT TO BE?

2 A YES.

3 Q A PERSON WHO IS ACCUSED OF COMMITTING A CRIME IS
4 PRESUMED TO BE INNOCENT IN A CRIMINAL TRIAL. DO YOU
5 UNDERSTAND THAT STATEMENT?

6 A YES.

7 Q DO YOU AGREE WITH THAT CONCEPT?

8 A YES.

9 Q ARE YOU AWARE THE DEFENDANTS DO NOT HAVE TO TAKE
10 THE STAND AND TESTIFY OR OFFER ANY EVIDENCE IF THEY CHOOSE
11 NOT TO AND YOU COULD STILL FIND THEM NOT GUILTY. THAT BEING
12 BECAUSE THE BURDEN IS UPON THE STATE TO PROVE THEIR GUILT
13 BEYOND A REASONABLE DOUBT?

14 A YES.

15 Q HAVE YOU OR CLOSE FRIEND OR FAMILY MEMBER EVER
16 BEEN INVOLVED IN THE CRIMINAL JUSTICE PROCESS, EITHER IN
17 PROSECUTING A CASE OR AS A WITNESS OR AS A DEFENDANT?

18 A NO, SIR.

19 Q DO YOU KNOW OF ANY REASON AT THIS POINT YOU COULD
20 NOT SERVE AS A FAIR JUROR IN THIS PARTICULAR CASE?

21 A NO.

22 Q WILL YOU TELL US SOMETHING OF YOUR EMPLOYMENT,
23 YOUR MARITAL STATUS, NUMBER OF CHILDREN YOU MAY HAVE AND HOW
24 LONG YOU HAVE LIVED IN CLARK COUNTY?

25 A I LIVED IN CLARK COUNTY 17 YEARS, WORKED AT THE

1 EL CORTEZ FOR 12 YEARS AS CASINO EXECUTIVE, HAVE FOUR KIDS,
2 AGES 27, 25, 24 AND 14.

3 Q WHAT ARE THE OCCUPATIONS OF YOUR CHILDREN?

4 A THE OLDEST GIRL IS SERGEANT IN THE AIR FORCE IN
5 OKINAWA. THE BOY IS MECHANICS HELPER. MY DAUGHTER IS
6 NEXT-DOOR IS A HOMEMAKER AND MY 14 YEAR OLD IS IN GIBSON
7 JUNIOR HIGH.

8 Q AND ARE YOU PRESENTLY WORKING AT THE EL CORTEZ?

9 A YES.

10 Q AND YOU ARE EXECUTIVE AT THAT HOTEL?

11 A CASINO EXECUTIVE.

12 Q AND I THINK YOU SAID 12 YEARS THERE?

13 A YES.

14 Q PRIOR TO THAT, WHAT WAS YOUR OCCUPATION?

15 A LETTER CARRIER, UNITED STATES POST OFFICE.

16 Q IS YOUR WIFE EMPLOYED OUTSIDE THE HOME?

17 A NO.

18 Q HAS SHE BEEN IN THE PAST?

19 A NO, SIR.

20 Q HAVE YOU OR SHE EVER BEEN IN THE MILITARY?

21 A I WAS IN THE MILITARY.

22 Q WHAT BRANCH?

23 A ARMY.

24 Q DID YOU EVER SEE COMBAT?

25 A NO, SIR.