

8JD04434

1 THE COURT: I'll sustain your objection. Rephrase your
2 question, Counsel.

3 MR. SEATON: Well, we know the facts about this case,
4 to a limited degree, right?

5 PROSPECTIVE JUROR NO. 7: Correct.

6 MR. SEATON: Okay. There is going to come before you
7 certain evidence of mitigation--good things about the Defendants
8 --and there will come before you evidence of aggravation, and for
9 lack of a better word, bad things about the Defendants. You
10 understand how that procedure works?

11 PROSPECTIVE JUROR NO. 7: Yes.

12 MR. SEATON: Can you envision hearing any information
13 at all out of those two things, or any of the other evidence that
14 we might present, that would allow you to consider the death
15 penalty in this case?

16 PROSPECTIVE JUROR NO. 7: Any...

17 MR. SEATON: When I say "consider it," I mean really
18 legitimately consider, not just to say, "Well, I know the Judge
19 told me that it's one of the three, but I'm not going to look at
20 it anyway." That's not considering it.

21 Considering it is saying, "Should I give the death penalty,"
22 and having that battle within yourself.

23 Now just to rephrase that question: Do you think there is
24 any information that can come before you in this case that would
25 allow you to truly consider giving the death penalty to either or

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1 both of these gentlemen?

2 PROSPECTIVE JUROR NO. 7: It's hard to say. I mean, I
3 don't know what happened; I don't know the circumstances. I
4 couldn't tell you an honest answer, because I don't know anything
5 of the case.

6 MR. SEATON: All right. Judge, I'll pass for cause.

7 THE COURT: I have a judges meeting in about three
8 minutes, so we'll stop about now.

9 In the meantime, it is your duty not to talk among
10 yourselves or with anyone else on any matter pertaining to this
11 trial; read, watch or listen to any report of or commentary on
12 the trial by any person or by any medium of information,
13 including without limitations newspapers, radio, televisions,
14 husbands, wives, friends, relatives; form or express any opinion
15 on any matter pertaining to this trial until it is finally
16 submitted to you.

17 See you back in your seats at 1:45. Those of you in the
18 jury box, recall your seats, because they are yours until further
19 notice.

20 We'll be in recess.

21 (Recess taken and jury out at 11:46 a.m.)
22
23
24
25

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8JD04435

1 WEDNESDAY, JUNE 14, 1995, 2:00 P.M.

2 (Prospective jurors present)

3 THE BAILIFF: Court is again in session, the Honorable
4 Addelmar D. Guy presiding.

5 THE COURT: Please be seated.

6 Continuation of case No. C69269, State v. Flanagan & Moore.

7 Let the record reflect the presence of the Defendants with
8 counsel and other officers of the Court.

9 Will the Clerk please call roll call of the jury panel?

10 (Clerk calls roll of prospective jurors)

11 THE COURT: Dunbar? She's been excused. She's been
12 sent home by the nurse. Will Counsel ratify my sending her home?

13 MR. WALL: Yes, your Honor.

14 MR. SEATON: Yes, Judge.

15 MR. SCHIECK: Yes, your Honor. I understand she was
16 quite sick.

17 THE COURT: Yes. The nurse sent her home.

18 Please continue.

19 (Clerk continues roll call of prospective jurors)

20 THE COURT: Will counsel stipulate to the presence of
21 the jury panel?

22 MR. SEATON: Yes, Judge.

23 MR. WALL: Yes, your Honor.

24 MR. SCHIECK: Yes, your Honor.

25 THE COURT: Mr. Boone?

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8JD04436

1 PROSPECTIVE JUROR NO. 8: Yes, your Honor.

2 THE COURT: I believe you're next.

3 How long have you lived in Clark County, Nevada?

4 PROSPECTIVE JUROR NO. 8: A total of 14 years, three
5 different times.

6 THE COURT: Where were you born and raised?

7 PROSPECTIVE JUROR NO. 8: St. Charles, Missouri.

8 THE COURT: All right. What is your educational
9 background?

10 PROSPECTIVE JUROR NO. 8: Master's degree in business
11 administration.

12 THE COURT: What college did you attend?

13 PROSPECTIVE JUROR NO. 8: University of Missouri,
14 Westminster College, and Golden Gate University.

15 THE COURT: University of Missouri I presume is in
16 Missouri. Where is Westminster and the other two colleges?

17 PROSPECTIVE JUROR NO. 8: Also in Missouri.

18 THE COURT: Also?

19 PROSPECTIVE JUROR NO. 8: Yes. Missouri: Fulton,
20 Missouri.

21 THE COURT: Did you take any law courses in college?

22 PROSPECTIVE JUROR NO. 8: Only from a business risk and
23 management course one time.

24 THE COURT: What has been your employment for the last
25 ten years?

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8JD04437

8JD04438

1 PROSPECTIVE JUROR NO. 8: Last year and a half has been
2 as a facilities administration manager for the Rio Suite Hotel,
3 and then prior to that United States Air Force.

4 THE COURT: What is your religious preference?

5 PROSPECTIVE JUROR NO. 8: Canyon Ridge Christian
6 Church.

7 THE COURT: Do you attend church regularly?

8 PROSPECTIVE JUROR NO. 8: Yes, sir.

9 THE COURT: How old are you, sir?

10 PROSPECTIVE JUROR NO. 8: Fifty-two.

11 THE COURT: Are you married?

12 PROSPECTIVE JUROR NO. 8: Yes, sir.

13 THE COURT: Is your wife employed?

14 PROSPECTIVE JUROR NO. 8: Part time for an optometrist.

15 THE COURT: And what does she do there?

16 PROSPECTIVE JUROR NO. 8: Primarily filing,
17 administrative work.

18 THE COURT: Do you have any children?

19 PROSPECTIVE JUROR NO. 8: Yes, sir.

20 THE COURT: May we have their ages and sex, please?

21 PROSPECTIVE JUROR NO. 8: Son, 20 years old; daughter,
22 17.

23 THE COURT: Are you acquainted with either the
24 Defendants or their attorneys?

25 PROSPECTIVE JUROR NO. 8: No, sir.

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1 THE COURT: Do you know anyone in the District
2 Attorney's Office?

3 PROSPECTIVE JUROR NO. 8: Possibly.

4 THE COURT: Please who, sir?

5 PROSPECTIVE JUROR NO. 8: Tom Leen and I were second
6 lieutenants together back in '67/'68 here in Nevada.

7 THE COURT: Tom Leen is retired.

8 PROSPECTIVE JUROR NO. 8: Then I know no one in there.

9 THE COURT: And he was in the Public Defender's Office.

10 PROSPECTIVE JUROR NO. 8: Then no.

11 THE COURT: But he -- does he do part-time work ever,
12 do you know?

13 MR. WALL: He's up there occasionally, Judge, but for
14 the most part he's off doing other things.

15 THE COURT: Is there anything about that acquaintance
16 that would cause you to have any biases for or against either
17 side?

18 PROSPECTIVE JUROR NO. 8: No, sir. I haven't seen Tom
19 other than on TV in the last 20 years.

20 THE COURT: Did you recognize any of the persons whose
21 names were given to you as possible prosecution witnesses?

22 PROSPECTIVE JUROR NO. 8: No.

23 THE COURT: Sometimes when I hear your answers, and I
24 want to go farther into them, but I can't.

25 PROSPECTIVE JUROR NO. 8: I must have changed a lot.

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8JD04439

8JD04440

1 THE COURT: In the State of Nevada, there are three
2 possible forms of punishment that the jury may consider and then
3 select the one that you believe is the most appropriate under the
4 law and facts of this case. Those three possible forms of
5 punishment are: (a) the imposition of the death penalty;
6 (b) life imprisonment without the possibility of parole; and
7 (c) life imprisonment with the possibility of parole. Do you
8 understand, sir?

9 PROSPECTIVE JUROR NO. 8: Yes, sir.

10 THE COURT: In your present state of mind, can you, if
11 you are selected as a juror, consider equally all three possible
12 forms of punishment...

13 PROSPECTIVE JUROR NO. 8: Yes, sir.

14 THE COURT: ...and then select the one that you feel is
15 most appropriate?

16 PROSPECTIVE JUROR NO. 8: Yes, sir.

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

19 PROSPECTIVE JUROR NO. 8: No, sir.

20 THE COURT: Are you now or have you ever been involved
21 in any law enforcement work?

22 PROSPECTIVE JUROR NO. 8: Not other than militarily.

23 THE COURT: Tell me about your involvement in the Air
24 Force with police work.

25 PROSPECTIVE JUROR NO. 8: I have been commander over

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8JD04440

1 the security police squadron. I have sat on as a general court-
2 martial board, president. And I have been the acting special
3 courts-martial officer presiding.

4 THE COURT: Has anything about those duties that would
5 cause you to have any biases for or against either side in this
6 case?

7 PROSPECTIVE JUROR NO. 8: No, sir.

8 THE COURT: Would you tend to give a police officer's
9 testimony any greater or any lesser weight than any other person
10 who testifies merely because they are police officers?

11 PROSPECTIVE JUROR NO. 8: If they're under oath, the
12 answer I guess would be no.

13 THE COURT: Do you have any close friends or immediate
14 relatives who are involved in any police agency?

15 PROSPECTIVE JUROR NO. 8: No.

16 THE COURT: Have you ever appeared as a witness in a
17 criminal trial?

18 PROSPECTIVE JUROR NO. 8: No, sir.

19 THE COURT: With the exception of serving on court
20 martials, have you ever served on any other type of jury?

21 PROSPECTIVE JUROR NO. 9: No, sir.

22 THE COURT: Have you ever been or anyone close to you
23 ever been a victim of a crime?

24 PROSPECTIVE JUROR NO. 8: In-laws have been robbed a
25 couple of different times.

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8JD04441

1 THE COURT: And when was this, sir?

2 PROSPECTIVE JUROR NO. 8: Probably eight years ago and
3 then maybe as recently as a year and a half ago.

4 THE COURT: When you say "robbed," were they physically
5 robbed or was it house broken into?

6 PROSPECTIVE JUROR NO. 8: Excuse me. Burglary from
7 their home while they were not at home.

8 THE COURT: Is there anything about those cases that
9 would cause you folks to have any... (pause)

10 Thank you.

11 MS. MOUNTS: I'm sorry, your Honor.

12 THE COURT: ...biases for or against either side in
13 this case?

14 PROSPECTIVE JUROR NO. 8: No, sir.

15 THE COURT: If you were either of the Defendants, would
16 you want twelve people in your present state of mind to sit and
17 judge your case?

18 PROSPECTIVE JUROR NO. 8: Yes, sir.

19 THE COURT: Do you know of any reason whatsoever,
20 whether I've asked you or not, why you cannot sit as a fair and
21 impartial juror in this case?

22 PROSPECTIVE JUROR NO. 8: No, sir.

23 THE COURT: Mr. Wall?

24 MS. MOUNTS: Your Honor, it's me this time.

25 THE COURT: Good.

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8JD04442

1 MS. MOUNTS: Is it Colonel Boone?

2 PROSPECTIVE JUROR NO. 8: Yes, ma'am.

3 MS. MOUNTS: Colonel, do you recall hearing or reading
4 anything about this case prior to this week?

5 PROSPECTIVE JUROR NO. 8: No, ma'am.

6 MS. MOUNTS: So the only knowledge you would have is
7 what you've been informed by the Court and what's in the jury
8 questionnaire. Is that correct?

9 PROSPECTIVE JUROR NO. 8: Correct.

10 MS. MOUNTS: You indicated that your children were 20
11 and 17?

12 PROSPECTIVE JUROR NO. 8: Correct.

13 MS. MOUNTS: I assume you have no grandchildren. Is
14 that correct?

15 PROSPECTIVE JUROR NO. 8: That's also true.

16 MS. MOUNTS: Can you tell us, sir, a little bit about
17 your role as I believe you said president of a general courts-
18 martial?

19 PROSPECTIVE JUROR NO. 8: Basically it was one of the
20 times I was assigned to Nellis Air Force Base. I was a
21 lieutenant colonel at that time, and there was a court-martial
22 proceedings against an airmen--a couple of them--who had stolen
23 somewhere around \$5,000 from another airman.

24 MS. MOUNTS: Would this have been one proceeding then?

25 PROSPECTIVE JUROR NO. 8: Yes, ma'am.

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8JD04444

1 MS. MOUNTS: And did you actually preside over that
2 proceeding?

3 PROSPECTIVE JUROR NO. 8: Only from the five members
4 that sat on the board, similar to a jury-type thing. I was not
5 the lawyer or the attorneys or any of that. I was just I would
6 say a jury panel chairman.

7 MS. MOUNTS: Were the five members comprised of the
8 officer corps, or would they have been from different ranks?

9 PROSPECTIVE JUROR NO. 8: In this case it was a mix of
10 enlisted and officers.

11 MS. MOUNTS: So would your role have been akin to
12 perhaps a jury foreman?

13 PROSPECTIVE JUROR NO. 8: Yes, ma'am.

14 MS. MOUNTS: Is that fair to say?

15 PROSPECTIVE JUROR NO. 8: Yes, ma'am.

16 MS. MOUNTS: Okay. I understand that you served in
17 that capacity only once?

18 PROSPECTIVE JUROR NO. 8: Yes, ma'am.

19 MS. MOUNTS: And I believe that you defined one other
20 role that you had with a courts-martial, but I didn't catch what
21 you called it.

22 THE COURT: Number?

23 MS. MOUNTS: Your Honor, it is No. 27 in the
24 questionnaire.

25 THE COURT: Thank you.

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8JD04444

1 PROSPECTIVE JUROR NO. 8: It may have been that I was
2 referring to the fact that in my capacity and last assignment I
3 was a special courts-martial officer. In other words, only I
4 would make the decision yes or no based on what the attorneys/
5 lawyers had provided towards the case. So I was the deciding
6 factor whether the penalty would be imposed or not imposed
7 against the person brought to charge.

8 MS. MOUNTS: So that would be something like we have in
9 the lay system with perhaps a bench trial where there's only a
10 judge who decides...

11 PROSPECTIVE JUROR NO. 8: Yes, ma'am.

12 MS. MOUNTS: ...the issues that need to be resolved.

13 PROSPECTIVE JUROR NO. 8: Correct.

14 MS. MOUNTS: Is that right?

15 PROSPECTIVE JUROR NO. 8: Correct.

16 MS. MOUNTS: Now, how many times did you act in that
17 special capacity?

18 PROSPECTIVE JUROR NO. 8: I don't know if I can give
19 you a number, because in my capacity as the commander, I had to
20 on several occasions rule on packages that were presented to me
21 as to yea or nay on the fate of the individual.

22 MS. MOUNTS: So this would have been something that
23 came up fairly frequently. Is that right?

24 PROSPECTIVE JUROR NO. 8: Yes, ma'am.

25 MS. MOUNTS: Sir, you indicated on No. 34 of the

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8JD04445

8JD04446
1 questionnaire that you may perhaps have some work concerns that
2 might come to play if you were selected as a juror. Can you tell
3 us a little bit about that?

4 PROSPECTIVE JUROR NO. 8: No more than anybody else
5 most likely is that the work will continue to pile up, and most
6 of the time they will save it for you until you get back.

7 THE COURT: I thought that only happened to judges.

8 PROSPECTIVE JUROR NO. 8: There's nothing critical; the
9 work will survive. It's just a matter that I know there'll be a
10 stack of paper work to do whenever I get back.

11 MS. MOUNTS: So there's nothing special about that
12 situation that would cause you to perhaps want to hurry through
13 the proceedings or anything like that?

14 PROSPECTIVE JUROR NO. 8: No, ma'am.

15 MS. MOUNTS: Okay. You indicated I believe in response
16 to the Court's question that you probably wouldn't give more
17 weight to a police officer if all the witnesses were equally
18 sworn. Is that fair to say?

19 PROSPECTIVE JUROR NO. 8: The way it was stated, if I'm
20 under oath, I said then I would give no extra weight.

21 MS. MOUNTS: So if all the witnesses come into court
22 and were to take the same oath, then you probably wouldn't have a
23 tendency to favor the testimony of a police officer? Or do you
24 think you might?

25 PROSPECTIVE JUROR NO. 8: To keep consistent, the

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8JD04446

1 answer would have to be no, I wouldn't, even though on that
2 questionnaire in my mind when I answered it, if I was to be given
3 something from a police officer, I give them credit from the fact
4 that I think there's a loyalty oath and it swears they must take
5 that most people do not have to take. I put some credibility
6 with that perhaps maybe just from the standpoint that I've had
7 military experience and I've also put some credibility with a
8 person that wears a uniform.

9 THE COURT: Just for the record, my question
10 dealt with whether he would give any greater or lesser weight,
11 so I believe it's designed to cover both aspects, but you may go
12 on.

13 MS. MOUNTS: Thank you for the clarification.

14 I also have a note here, sir, that you indicated at Question
15 63 that the legal system may unduly favor the accused. Could you
16 explain that a little bit?

17 PROSPECTIVE JUROR NO. 8: Is that specifically how I
18 worded that? Could you read that?

19 MS. MOUNTS: You indicated as follows: "Yes, only
20 because a person is presumed innocent until proven guilty in a
21 court of law."

22 PROSPECTIVE JUROR NO. 8: Okay. As far as favoring the
23 accused?

24 MS. MOUNTS: That was...

25 PROSPECTIVE JUROR NO. 8: I think our basic system is

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8JD04447

1 built or designed supposedly you are innocent until proven
2 otherwise. So based on that, yes, I guess it would favor the
3 individual, rightfully or wrongfully. But that's the way I
4 believe it's handled is that you are innocent until somebody has
5 proven you otherwise.

6 MS. MOUNTS: Okay. So you don't have any quarrel with
7 that particular tenet or our justice system?

8 PROSPECTIVE JUROR NO. 8: No, ma'am.

9 MS. MOUNTS: Okay. How do you feel about serving as a
10 juror in this case?

11 PROSPECTIVE JUROR NO. 8: I find it very interesting,
12 but I also find it a very large responsibility that makes you do
13 a little inwardly searching on just how do you feel about certain
14 things.

15 MS. MOUNTS: So you understand the gravity of the
16 situation that you're faced with?

17 PROSPECTIVE JUROR NO. 8: Yes, ma'am.

18 MS. MOUNTS: And the decisions that may have to be made
19 by you in this case?

20 PROSPECTIVE JUROR NO. 8: Yes, ma'am.

21 MS. MOUNTS: I'd pass for cause, your Honor.

22 THE COURT: Mr. Seaton?

23 MR. SEATON: Has Mr. Schieck gone yet, Judge?

24 THE COURT: Oh, he hasn't.

25 MR. SEATON: Or Mr. Wolfbrandt?

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8JD04448

1 THE COURT: Mr. Schieck, sir, it's on you. She
2 started.

3 MR. WOLFBRANDT: I just thought we'd change the order
4 for the afternoon.

5 THE COURT: I've tried it a couple of times, and you
6 folks always catch me.

7 MR. WOLFBRANDT: Good afternoon, Colonel Boone.

8 PROSPECTIVE JUROR NO. 8: Good afternoon.

9 MR. WOLFBRANDT: Last night you were sitting in that
10 chair when we broke. Were you not?

11 PROSPECTIVE JUROR NO. 8: Yes, sir.

12 MR. WOLFBRANDT: Did you lose any sleep last night
13 worrying about today?

14 PROSPECTIVE JUROR NO. 8: No, sir.

15 MR. WOLFBRANDT: Have you had any conversations
16 socially about the death penalty, just the topic of the death
17 penalty?

18 PROSPECTIVE JUROR NO. 8: Yes, sir.

19 MR. WOLFBRANDT: What are your views with regards to
20 the death penalty?

21 PROSPECTIVE JUROR NO. 8: I think it will depend on
22 each and every situation; and, yes, there are occasions that I
23 support the death penalty.

24 MR. WOLFBRANDT: Do...

25 PROSPECTIVE JUROR NO. 8: In our casual discussions

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8JD04449

8JD04450

1 throughout my life.

2 MR. WOLFBRANDT: Okay. Do you feel the death penalty
3 as it's been reinstated has acted as a deterrent?

4 PROSPECTIVE JUROR NO. 8: No.

5 MR. WOLFBRANDT: Do you feel that the continued use of
6 the death penalty as a form of punishment would act a deterrent?

7 PROSPECTIVE JUROR NO. 8: It may.

8 MR. WOLFBRANDT: In what way?

9 PROSPECTIVE JUROR NO. 8: The advertisement, that if
10 there is certain forms of crimes committed and people are
11 convicted, that perhaps if a society goes along with imposing
12 more death penalties, perhaps people will see that, and it will
13 in fact act as a deterrent to initiating any further crimes.

14 MR. WOLFBRANDT: Do you think the death penalty has
15 been used enough in the United States?

16 PROSPECTIVE JUROR NO. 8: No, sir.

17 MR. WOLFBRANDT: Okay. So would it be fair to say you
18 don't think it has been -- it could be used more?

19 PROSPECTIVE JUROR NO. 8: Yes, sir.

20 MR. WOLFBRANDT: What types of cases do you think are
21 appropriate for a death penalty as a punishment? I guess maybe I
22 should preface that with: Have you given thought as to what
23 types of cases you feel that the death penalty was appropriate?

24 PROSPECTIVE JUROR NO. 8: It appears I'm about to.

25 MR. WOLFBRANDT: I'm not trying to put you on off the

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8JD04450

1 cuff here. I just wondered if you've given that thought over the
2 years?

3 PROSPECTIVE JUROR NO. 8: Not anything that I would say
4 to a large degree, but it'd be like -- I'm very cautious about
5 what I read in the paper, because I don't believe a heck of a lot
6 that I see in the paper. Whatever you say comes out in many
7 different forms. So whatever you get primarily is based on a
8 media news release.

9 But let me just say that I really have trouble with
10 sometimes what I would call violent repeat offenders, or I would
11 have trouble with people who mutilate other persons, and acts of
12 violent crime would bother me significantly. And you have to
13 hear each and every case and, again, soul search to see in your
14 mind what kind of penalty is appropriate.

15 Death is very final, and that would be a very tough decision
16 to make. I have never had to make that before.

17 MR. WOLFBRANDT: If I understand you correctly then, a
18 violent crime does not necessarily have to result in the death of
19 a victim before you feel that a death penalty might be
20 appropriate?

21 PROSPECTIVE JUROR NO. 8: I'm not sure I agree with
22 that.

23 MR. WOLFBRANDT: Okay. Well, I don't...

24 PROSPECTIVE JUROR NO. 8: Yeah.

25 MR. WOLFBRANDT: I don't want you to...

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8JD04451

1 PROSPECTIVE JUROR NO. 8: No, I don't know what the
2 degree of severity is. In my mind when I mentioned that, I felt
3 that that led to the death of somebody through violent means.

4 MR. WOLFBRANDT: Okay.

5 PROSPECTIVE JUROR NO. 8: Then it would be more
6 appropriate for me to say a death penalty would be warranted.
7 Whether a person is maimed and not killed in the process I think
8 has got to be relooked at.

9 MR. WOLFBRANDT: In the state of Nevada the only time
10 that the death penalty even becomes an option for a jury in when
11 there has been a finding of guilt of first-degree murder and that
12 the State has proven--in this case it would be proven to this
13 jury--that at least one aggravating circumstance exists beyond a
14 reasonable doubt; and further that the jury would find that that
15 aggravating circumstance outweighs any possible mitigating
16 evidence. And only then can you even consider the death penalty
17 as a possible option. Do you have any quarrel or problem with
18 that concept?

19 PROSPECTIVE JUROR NO. 8: No.

20 MR. WOLFBRANDT: In the questionnaire, specifically
21 Question No. 53, parts C and D--I'm going to lump them together,
22 federal and state prosecutors--you answered that they're sworn to
23 bring criminals to justice and require them to repay society for
24 wrongdoings.

25 How do you feel a criminal would have to repay society?

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8JD04452

81004453

1 Let's give it in the context of the factual situation that was
2 presented to you in this questionnaire that you've heard here
3 what this case is about.

4 PROSPECTIVE JUROR NO. 8: It would have been easier
5 before, but I would basically in my mind I think state that as
6 far as the repayment or debt to society, it would be in either in
7 the serving of time, in the reparations or remunerations to the
8 victim (whatever that might have been), and to I guess somehow be
9 rehabilitated and become useful to society again as a person.

10 MR. WOLFBRANDT: All right. So taking that in
11 conjunction with your answer to Question 62 that yes, you believe
12 in an eye for an eye, I trust you're not saying that simply
13 because there were two deaths involved in this case that the
14 Defendants should also die?

15 PROSPECTIVE JUROR NO. 8: No, I did not look at those
16 as related. I basically study -- or thought about an eye for an
17 eye a long time. I hate to answer that without any other
18 information on it. But given just that point blank question, yes
19 or no, and I said yes because I do believe there are times that
20 the death penalty is warranted. And again, it will depend on the
21 circumstances.

22 MR. WOLFBRANDT: In Question No. 54 which was a
23 true/false statement, "I never disagree with the law," and you
24 said false. Can you expand on that for me?

25 PROSPECTIVE JUROR NO. 8: No, I don't think I have

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1 anything specific. It probably related more than anything as to
2 the opinion that I may have formed by views that were in the
3 media or listening to the media, and perhaps judgements had come
4 down that for whatever reason in my own mind I thought maybe it
5 was different than what I thought of.

6 I don't have a specific case in point there that says -- if
7 I misread that, I apologize; because if it's a law, no, I'm not
8 going to disagree with it, I'm going to go along with it. If it
9 has to do with judgements, then maybe I have a different opinion.

10 MR. WOLFBRANDT: You've got your own personal opinion
11 as to what you think a law might be, and then the Judge gives you
12 the instructions as to what the law is. And that's different
13 than what your opinion was as to what the law as you thought it
14 was. Could you follow the instructions as opposed to what your
15 opinion is?

16 PROSPECTIVE JUROR NO. 8: Absolutely.

17 MR. WOLFBRANDT: I believe you said you did 14 years
18 here in Las Vegas three different times? And that was all
19 through Nellis?

20 PROSPECTIVE JUROR NO. 8: That's correct. I was here
21 '67 to '70, '76 to '79, and then I've been back since '87.

22 MR. WOLFBRANDT: And then you discharged or retired out
23 of Nellis?

24 PROSPECTIVE JUROR NO. 8: Correct, August of '93.

25 MR. WOLFBRANDT: In your capacity as president of the

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8JD04454

1 board for the court-martial?

2 PROSPECTIVE JUROR NO. 8: Yes.

3 MR. WOLFBRANDT: That proceeding still required proof
4 of the allegations beyond a reasonable doubt before the board
5 could make a finding. Is that accurate?

6 PROSPECTIVE JUROR NO. 8: That's correct.

7 MR. WOLFBRANDT: And how many of those different
8 occasions did you get to sit...

9 PROSPECTIVE JUROR NO. 8: Once.

10 MR. WOLFBRANDT: ...first off as a board?

11 PROSPECTIVE JUROR NO. 8: Once.

12 MR. WOLFBRANDT: Okay. In the other situations where
13 you were the -- I'm sorry, I didn't write the title down.

14 PROSPECTIVE JUROR NO. 8: That's all right. Basically
15 the reviewing special courts-martial, one person to review a
16 case.

17 MR. WOLFBRANDT: Okay. Now, that was just where
18 reports or whatnot were submitted to you...

19 PROSPECTIVE JUROR NO. 8: That is correct.

20 MR. WOLFBRANDT: ...with no live testimony or anything
21 like that?

22 PROSPECTIVE JUROR NO. 8: Correct.

23 MR. WOLFBRANDT: Was that kind of a screening process
24 to determine whether or not a full court-martial should take
25 place, or was your decision final?

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8JD04455

1 PROSPECTIVE JUROR NO. 8: My decision was final.

2 MR. WOLFBRANDT: Okay. Was it the same standard of
3 proof beyond a reasonable doubt?

4 PROSPECTIVE JUROR NO. 8: I'm not sure that we use
5 those terminologies. I basically took the paperwork presented by
6 the judge advocate staff; and basically if anything was more
7 prone (most likely) to support the judge advocate recommendation,
8 because there was always a recommendation on that. So in that it
9 would differ from your system here I think.

10 THE COURT: For your information that's always --
11 criminal charges are always proof beyond a reasonable doubt.

12 MR. WOLFBRANDT: Criminal trials are. I wanted to make
13 sure I understand what these various court-martial proceedings
14 may favor the same.

15 You understand the concept though in this scenario where
16 what beyond a reasonable doubt might mean?

17 PROSPECTIVE JUROR NO. 8: Yes, sir.

18 MR. WOLFBRANDT: Okay.

19 Your Honor, thank you. I'd pass for cause.

20 THE COURT: Now, Mr. Seaton.

21 MR. SEATON: Very briefly, Judge.

22 You had indicated earlier that in your opinion the death
23 penalty was not a deterrent yet in its usage. Is that correct?

24 PROSPECTIVE JUROR NO. 8: That is correct.

25 MR. SEATON: From the time it's been reinstituted up

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1 until today it really hasn't done its job from deterring people
2 from committing other murders?

3 PROSPECTIVE JUROR NO. 8: I'm not sure that that's its
4 purpose; but no, I don't think it has.

5 MR. SEATON: Well, what do you think -- in your mind
6 what is its purpose?

7 PROSPECTIVE JUROR NO. 8: Basically to punish those who
8 have performed a heinous crime against society. And that is one
9 of the options that the court system has given us as a way of
10 punishment.

11 MR. SEATON: When you were talking earlier then about
12 one's repaying their debts to society for their crimes, you
13 listed serving some time or paying reparations or things of that
14 nature. You would add to the repayment of a debt to society in
15 terms of the death penalty? That also is a method of repaying a
16 debt?

17 PROSPECTIVE JUROR NO. 8: That's a very difficult
18 question. I don't know if that repays society. It may in some
19 cases repay the victims of that crime in their own emotional
20 state.

21 MR. SEATON: Do you think that's an appropriate
22 function of the criminal justice system?

23 PROSPECTIVE JUROR NO. 8: To do what?

24 MR. SEATON: To allow the victims to be repaid?

25 PROSPECTIVE JUROR NO. 8: Yes, sir.

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8JD04457

1 MR. SEATON: Or the victims' family in a case like
2 this?

3 PROSPECTIVE JUROR NO. 8: Yes, sir.

4 MR. SEATON: All right. In terms of going back to
5 whether or not the death penalty is a deterrent, would you agree
6 with the proposition that those who are given the death penalty
7 will not kill again? And that would be a deterrent?

8 PROSPECTIVE JUROR NO. 8: I think the answer to that is
9 yes.

10 MR. SEATON: Okay.

11 PROSPECTIVE JUROR NO. 8: They definitely won't be.

12 MR. SEATON: Right. Well, you had sort of given a
13 broad statement that it had not yet been a deterrent.

14 PROSPECTIVE JUROR NO. 8: Oh, by that if I may then?

15 MR. SEATON: Yes.

16 PROSPECTIVE JUROR NO. 8: In my own mind when I think
17 of something that is a deterrent, there are sometimes societies
18 other than ours which will in fact do very immediate and drastic
19 penalties. Right or wrong, it's just things that you read about.
20 And if you steal something, you cut off your hand, in front of
21 people perhaps at a public gathering, olden days, barbaric type
22 things maybe in our society.

23 I tend to think that in some of those countries their crime
24 is much less than ours because people see there is immediate
25 quick reaction and violent repercussions against somebody who

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8JD04458

1 does something wrong. That is a deterrent.

2 MR. SEATON: You're right about that.

3 The only other question I have for you--and it's a very
4 general one and I just ask you to search your mind because
5 everybody's been starting to hear the same questions over and
6 over again: You've been in a position out here to listen to all
7 of the questions that I've asked of the various jurors?

8 PROSPECTIVE JUROR NO. 8: Correct.

9 MR. SEATON: Is there anything that you heard me asking
10 that we have not yet spoken to you about that you think needs to
11 be addressed?

12 PROSPECTIVE JUROR NO. 8: Well, I think all of you for
13 whatever reason have failed to ask me whether I could--well, the
14 Judge has already asked it, though--whether I could consider all
15 three options equally. The answer is yes, and no one seems to be
16 pinging me one way or the other on death, death, death penalty,
17 which I've heard repeatedly over the last two days.

18 MR. SEATON: Do you want me to do that?

19 PROSPECTIVE JUROR NO. 8: No, sir. But you had asked
20 if there was a question you failed to ask, and the answer is yes
21 --that one.

22 MR. SEATON: You do believe in the death penalty?

23 PROSPECTIVE JUROR NO. 8: Yes, sir.

24 MR. SEATON: All right.

25 Pass for cause, Judge.

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8JD04459

8JD04460

1 THE COURT: For all concerned, I've instructed all
2 attorneys not to ask the same questions I ask unless they have a
3 reason for it.

4 Major, we've been outranked.

5 UNIDENTIFIED MALE VOICE: Yes, sir. My wife keeps
6 telling me that, too.

7 THE COURT: Mr. Livingston, sir, how long have you
8 lived in Clark County, Nevada?

9 PROSPECTIVE JUROR NO. 9: I've lived here 19 years.

10 THE COURT: Where were you born and raised?

11 PROSPECTIVE JUROR NO. 9: I was born in New Jersey; I
12 was raised in Florida.

13 THE COURT: Whereabout in New Jersey and whereabout in
14 Florida?

15 PROSPECTIVE JUROR NO. 9: I was born in Long Branch,
16 New Jersey, and Ft. Lauderdale, Florida.

17 THE COURT: What is your educational background?

18 PROSPECTIVE JUROR NO. 9: High school graduate.

19 THE COURT: What has been your employment for the last
20 ten years?

21 PROSPECTIVE JUROR NO. 9: I've worked at Vegas Security
22 Lock and Safe.

23 THE COURT: And what have you done there?

24 PROSPECTIVE JUROR NO. 9: I was a locksmith, and now
25 I'm the service manager.

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8JD04460

1 THE COURT: What is your religious preference?
2 PROSPECTIVE JUROR NO. 9: Baptist.
3 THE COURT: Do you attend church regularly?
4 PROSPECTIVE JUROR NO. 9: Yes.
5 THE COURT: How old are you, sir?
6 PROSPECTIVE JUROR NO. 9: I'm 37.
7 THE COURT: Are you married?
8 PROSPECTIVE JUROR NO. 9: Yes.
9 THE COURT: Is your wife employed?
10 PROSPECTIVE JUROR NO. 9: No, she's not.
11 THE COURT: Do you have any children?
12 PROSPECTIVE JUROR NO. 9: I have two girls.
13 THE COURT: May we have their ages, please?
14 PROSPECTIVE JUROR NO. 9: Five and ten.
15 THE COURT: Are you acquainted with either the
16 Defendants or their attorneys?
17 PROSPECTIVE JUROR NO. 9: No, sir.
18 THE COURT: Do you know anyone in the District
19 Attorney's Office?
20 PROSPECTIVE JUROR NO. 9: No, sir.
21 THE COURT: Did you recognize any of the persons whose
22 names were given to you as possible prosecution witnesses?
23 PROSPECTIVE JUROR NO. 9: No, sir.
24 THE COURT: In the State of Nevada, there are three
25 possible forms of punishment that the jury may consider and then

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8JD04461

1 select the one that they believe is the most appropriate under
2 the law and facts of this case. Those three possible forms of
3 punishment are: (a) the imposition of the death penalty;
4 (b) life imprisonment without the possibility of parole; and
5 (c) life imprisonment with the possibility of parole. Do you
6 understand, sir?

7 PROSPECTIVE JUROR NO. 9: Yes, sir.

8 THE COURT: In your present state of mind, can you, if
9 you are selected as a juror in this case, consider equally all
10 three possible forms of punishment and then select the one that
11 you believe is the most appropriate?

12 PROSPECTIVE JUROR NO. 9: Yes.

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

15 PROSPECTIVE JUROR NO. 9: No, I do not.

16 THE COURT: Are you now involved in or have you ever
17 been involved in any law enforcement work?

18 PROSPECTIVE JUROR NO. 9: No, sir.

19 THE COURT: Do you have any close friends or relatives
20 who are members of any law enforcement agency?

21 PROSPECTIVE JUROR NO. 9: Not at this time.

22 THE COURT: And have you had some in the past?

23 PROSPECTIVE JUROR NO. 9: Yes, sir. My brother was a
24 police officer in Florida.

25 THE COURT: Is there anything about that relationship

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8JD04462

1 that would cause you to have any biases for or against either
2 side in this case?

3 PROSPECTIVE JUROR NO. 9: No.

4 THE COURT: Would you tend to give a police officer's
5 testimony any greater or any lesser weight than anyone else who
6 testifies merely because they happen to be police officers?

7 PROSPECTIVE JUROR NO. 9: No.

8 THE COURT: Have you ever appeared as a witness in any
9 criminal trial?

10 PROSPECTIVE JUROR NO. 9: Yes, I was a expert witness.

11 THE COURT: Have you ever served on a jury before?

12 PROSPECTIVE JUROR NO. 9: Yes.

13 THE COURT: When was this, sir?

14 PROSPECTIVE JUROR NO. 9: I don't remember the years.
15 Probably one or two years ago.

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

17 PROSPECTIVE JUROR NO. 9: It was criminal.

18 THE COURT: Without disclosing your verdict, was your
19 jury able to arrive at a verdict?

20 PROSPECTIVE JUROR NO. 9: Yes.

21 THE COURT: And what kind of a case was it?

22 PROSPECTIVE JUROR NO. 9: It was a purse snatch.

23 THE COURT: Were you the foreperson?

24 PROSPECTIVE JUROR NO. 9: No.

25 THE COURT: Have you ever been in military service?

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8JD04463

1 PROSPECTIVE JUROR NO. 9: No.

2 THE COURT: Have you ever been or anyone close to you
3 ever been a victim of a crime?

4 PROSPECTIVE JUROR NO. 9: No, sir.

5 THE COURT: Can you and will you follow the Court's
6 instructions on the law even though you may differ with them?

7 PROSPECTIVE JUROR NO. 9: Yes.

8 THE COURT: If you were either of the Defendants, would
9 you want twelve people in your present state of mind to sit and
10 judge your case?

11 PROSPECTIVE JUROR NO. 9: Yes.

12 THE COURT: Do you know of any reason whatsoever,
13 whether I've asked you or not, why you cannot sit as a fair and
14 impartial juror in this case?

15 PROSPECTIVE JUROR NO. 9: No, I do not.

16 THE COURT: Mr. Wall?

17 MR. WALL: Thank you, your Honor.

18 Mr. Livingston, let me ask you first about your experience
19 as an expert witness. What kind of a case was it?

20 PROSPECTIVE JUROR NO. 9: It was a slot cheating case.

21 MR. WALL: And what was your area of testimony?

22 PROSPECTIVE JUROR NO. 9: As a locksmith.

23 MR. WALL: Had someone broken into a machine?

24 PROSPECTIVE JUROR NO. 9: That was one of the ways they
25 were cheating the machines, by bypassing the locks.

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8JD04464

1 MR. WALL: That was obviously here in Clark County?

2 PROSPECTIVE JUROR NO. 9: It was in Nevada, yes.

3 MR. WALL: Did you work with the police or the
4 prosecutors on that case?

5 PROSPECTIVE JUROR NO. 9: The prosecutors.

6 MR. WALL: How long ago was that?

7 PROSPECTIVE JUROR NO. 9: It was in 1978, '77.

8 MR. WALL: So it's been some time.

9 PROSPECTIVE JUROR NO. 9: Yes.

10 MR. WALL: Do you remember who the prosecutor was that
11 you worked with?

12 PROSPECTIVE JUROR NO. 9: I do not remember.

13 MR. WALL: What was your impression of having to sit on
14 the witness stand and give testimony, albeit as an expert witness
15 as opposed to an eye witness. What did you take from the
16 experience?

17 PROSPECTIVE JUROR NO. 9: It was kind of what I'm
18 getting here today too. It was real slow, drug out.

19 MR. WALL: Were you cross-examined by an attorney?

20 PROSPECTIVE JUROR NO. 9: Yes, yes, I was.

21 MR. WALL: Was that uncomfortable for you?

22 PROSPECTIVE JUROR NO. 9: A little bit.

23 MR. WALL: How about your experience as a juror--what
24 did you take from that?

25 PROSPECTIVE JUROR NO. 9: Last time that the case

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8JD04465

1 seemed to move much quicker.

2 MR. WALL: It was a less serious charge than the one
3 involved here?

4 PROSPECTIVE JUROR NO. 9: Exactly, and I understand
5 that.

6 MR. WALL: Did you get a chance to talk to the
7 attorneys after the case was over, or the judge?

8 PROSPECTIVE JUROR NO. 9: Yes, we did.

9 MR. WALL: Who did you talk to?

10 PROSPECTIVE JUROR NO. 9: The judge, the prosecutor,
11 and one of the attorneys.

12 MR. WALL: Did they ask you your impressions of the
13 system or how you've -- as being an integral part of the system
14 as opposed to watching it from home on television or something
15 like that?

16 PROSPECTIVE JUROR NO. 9: Uh-huh. A little...

17 MR. WALL: Or what your thoughts were of the system?

18 PROSPECTIVE JUROR NO. 9: A little bit, not really.
19 They went a different direction.

20 MR. WALL: Having sat on a jury, what's your impression
21 of the legal process?

22 PROSPECTIVE JUROR NO. 9: It's fair.

23 MR. WALL: Okay. Do you think it bends over backwards
24 for someone accused of a crime?

25 PROSPECTIVE JUROR NO. 9: No, I wouldn't say that.

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8JD04466

8JD04467

1 MR. WALL: In that trial you were just as a juror there
2 to determine guilt and not to determine a sentence. Is that
3 right?

4 PROSPECTIVE JUROR NO. 9: That's correct.

5 MR. WALL: Okay. In answer to one of the Judge's
6 questions, I think you said your brother was a police officer.
7 Is he still a police officer?

8 PROSPECTIVE JUROR NO. 9: No, he's not.

9 MR. WALL: What caused him to leave the force?

10 PROSPECTIVE JUROR NO. 9: I think he had some legal
11 matters.

12 MR. WALL: Okay. Did you ever talk to him about his
13 work as a police officer?

14 PROSPECTIVE JUROR NO. 9: A little bit. He lives in a
15 different state, and we don't get to talk that much.

16 MR. WALL: Okay. Nothing about that would affect you
17 at all in being a juror on this case?

18 PROSPECTIVE JUROR NO. 9: I don't think so.

19 MR. WALL: In answer to one of the questions in the
20 questionnaire, and it's Question No. 56 for the record, you
21 indicated that you thought the crime problem here is handled
22 inadequately and said that you didn't think that people served
23 enough time in prison. Can you tell me why you feel that way or
24 what makes you feel that way?

25 PROSPECTIVE JUROR NO. 9: Well, that was based on -- I

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8JD04467

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1 don't think that it was the actual amount of sentence that
2 they're given. I don't feel that they serve that full sentence.

3 MR. WALL: Okay. Is that something that maybe has been
4 brought about by some recent events in the newspaper and...

5 PROSPECTIVE JUROR NO. 9: No, I don't think so. I've
6 had that opinion for some time.

7 MR. WALL: Okay. I know you've heard us say that
8 everybody brings into this process their own thoughts and views
9 that they have developed over time. And that's a view that you
10 bring to this process. If you are selected to be a juror in this
11 case and had to decide between possible sentences, would that
12 enter your mind, that feeling that people just get released too
13 soon-- "Even if they're given a particular sentence, they get
14 released too soon; they don't end up serving that sentence, so
15 maybe I should give them more than I ordinarily would so that I
16 could make sure that they serve enough time"?

17 PROSPECTIVE JUROR NO. 9: No. I've expressed that I
18 will do as the Court asked me to do. I will put those things
19 aside and try to take the Judge's instructions back into the jury
20 room and make that decision based on what he tells me.

21 MR. WALL: Okay. You also indicated, I think it's
22 Question No. 38, that you thought the system had a little too
23 much red tape in it. Can you tell me what your impressions are
24 that led you to answering that question?

25 PROSPECTIVE JUROR NO. 9: I've been caught up in some

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8JD04468

1 personal trials, like lawsuits, and it just seems like for me to
2 get the money that's due to me, I have to go through a lot of
3 different things that I feel is unfair. And like I said, it's
4 red tape. It's stand in line. It's wait for your turn. Just
5 seems to be a lot of red tape.

6 MR. WALL: Those are civil jury or civil lawsuits as
7 opposed to the criminal system?

8 PROSPECTIVE JUROR NO. 9: Small claims, small claims.

9 MR. WALL: Okay. Let me ask you how you feel about the
10 death penalty. Now, the Judge asked you whether or not you could
11 consider all three, and you indicated that you could and that you
12 would if selected. But are you in favor of the death penalty?

13 PROSPECTIVE JUROR NO. 9: I don't really consider
14 myself in favor of it.

15 MR. WALL: Okay. Are you absolutely opposed to the
16 death penalty?

17 PROSPECTIVE JUROR NO. 9: No, I'm not opposed to it.

18 MR. WALL: Okay. Do you feel that life in prison with
19 the possibility of parole someday is an acceptable sentence for
20 first-degree murder?

21 PROSPECTIVE JUROR NO. 9: If that's set into the law,
22 it's like going 55: I may not agree with it, but I do it.

23 MR. WALL: Well...

24 PROSPECTIVE JUROR NO. 9: So, yes, if the question is
25 if that's what the law says pertains to that crime, then I would

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1 agree with it.

2 MR. WALL: Well, it's a little different than the law
3 is 55, because you may be in a position to decide whether a
4 certain person can drive 55, 75 or 95.

5 PROSPECTIVE JUROR NO. 9: And if given the facts of
6 which this case will be presented to me, then I'll make that
7 decision, which speed limit I would set and/or which sentence
8 should be imposed based upon the facts.

9 MR. WALL: But is it acceptable to you that that is one
10 of the possible sentences for a first-degree premeditated murder?

11 PROSPECTIVE JUROR NO. 9: Yes.

12 MR. WALL: Okay. That's something that makes sense to
13 you or something you disagree with, but if it's there I'll look
14 at it?

15 PROSPECTIVE JUROR NO. 9: Well, I mean, I didn't make
16 the rule, but I mean, yeah. It's acceptable. If someone said
17 what would be the rules, I mean, that would be one of them.

18 MR. WALL: Okay. And we've asked these king-for-a-day
19 questions. I think we've already established that if you were
20 king for a day, the state of Livingston would have the death
21 penalty?

22 PROSPECTIVE JUROR NO. 9: Probably.

23 MR. WALL: Would life in prison with the possibility of
24 parole be one of the sentences for a first-degree murder?

25 PROSPECTIVE JUROR NO. 9: Yes.

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8JD04470

1 MR. WALL: Okay. Thank you.

2 I'll pass for cause. Thank you.

3 THE COURT: Mr. Wolfbrandt or Mr. Schieck?

4 MR. SCHIECK: Mr. Schieck, your Honor.

5 Mr. Livingston, why would you want to have the death penalty
6 in your state?

7 PROSPECTIVE JUROR NO. 9: I would think that the death
8 penalty would remove a person from society.

9 MR. SCHIECK: As opposed to life in prison without
10 parole?

11 PROSPECTIVE JUROR NO. 9: That would be there, too.

12 MR. SCHIECK: Okay. Any other reason other than just
13 to remove the person from society?

14 PROSPECTIVE JUROR NO. 9: As pertaining to the death
15 penalty?

16 MR. SCHIECK: Yes.

17 PROSPECTIVE JUROR NO. 9: I would know of no other
18 reason to remove someone from this.

19 MR. SCHIECK: Now, the Judge asked you a question
20 concerning if you were on trial, would you want twelve persons in
21 your state of mind on your jury, and you said yes. Tell us a
22 little bit about your state of mind that would cause you to want
23 yourself as a juror.

24 PROSPECTIVE JUROR NO. 9: Well, I feel that I'm a fair
25 person; and like I said, I'm going to take the evidence that's

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8JD04471

1 presented to me, and I'll make a choice based upon that evidence.
2 So if I was sitting in those seats, whatever I'd accumulated to
3 make that evidence come forth is what I felt like I would
4 deserve.

5 MR. SCHIECK: You've known this is a death penalty case
6 since last week when you filled out the questionnaire. Have you
7 had occasion to think about the death penalty since then?

8 PROSPECTIVE JUROR NO. 9: Of course.

9 MR. SCHIECK: Have you made any prejudgements or
10 predispositions concerning what may be the appropriate punishment
11 in this case?

12 PROSPECTIVE JUROR NO. 9: No. I've tried to bounce all
13 that back out and remain objective.

14 MR. SCHIECK: While you've been waiting, and we realize
15 that you have been waiting a long time as we go through this
16 rather slow process, have you had any conversations with any of
17 the other jurors concerning this case or the delay in the case or
18 anything of that nature?

19 PROSPECTIVE JUROR NO. 9: Oh, I'm sure we've all made a
20 little bit light of it, but nothing pertaining to the actual case
21 itself.

22 MR. SCHIECK: And you don't recall anything from back
23 ten years ago about this case being in the news?

24 PROSPECTIVE JUROR NO. 9: Not that I can recall.

25 MR. SCHIECK: And the explanation given by Mr. Seaton

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8JD04472

1 or any of the discussions we've had, nothing has jogged in your
2 memory concerning this case?

3 PROSPECTIVE JUROR NO. 9: Not really, no.

4 MR. SCHIECK: Have you always been in favor of the
5 death penalty?

6 PROSPECTIVE JUROR NO. 9: Not always. I don't know
7 when -- when I was four or five years old, I don't remember that.

8 MR. SCHIECK: I mean in your adult life, was there ever
9 a period of time when perhaps you didn't think the death penalty
10 was an appropriate punishment in the United States and then later
11 you changed your mind?

12 PROSPECTIVE JUROR NO. 9: I would probably say that
13 through my adult life I've changed back and forth and said there
14 would be no reason to have someone killed. I mean, that would be
15 my views.

16 MR. SCHIECK: You say there have been times then that
17 you did not believe in the death penalty?

18 PROSPECTIVE JUROR NO. 9: I mean, even today. I mean,
19 you know, you toss it back and forth. I feel I don't believe in
20 killing someone; but then if someone got close to me and maybe
21 harmed one of my kids, then I would say no, maybe I should kill
22 that person. I mean, I don't really think or mean that way.

23 MR. SCHIECK: Thank you very much, Mr. Livingston.
24 We'd pass for cause, your Honor.

25 THE COURT: Mr. Seaton?

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8JD04473

8JD04474

1 MR. SEATON: I'm about to do what we lawyers are always
2 accused of doing, and there's some truth to it. I'm going to
3 quibble with words.

4 PROSPECTIVE JUROR NO. 9: Okay.

5 MR. SEATON: It's just for a second though.

6 When Mr. Wall here asked you about the kingdom of Livingston
7 and would you have the death penalty be a part of it, and the
8 other question was would you have life with the possibility of
9 parole be a part of it, you gave two different answers.

10 To the life with possibility, you said, "Yes, I would have
11 that a part of it." To the having the imposition of the death
12 penalty included, you said probably. Am I quibbling with words,
13 or is there a distinction that you would make?

14 PROSPECTIVE JUROR NO. 9: Well, I mean, it's not a
15 factual thing. There is no state of Livingston, so I probably --
16 it's just like probably there's a state of Livingston. I mean,
17 if there was a state of Livingston, then yes, I would do it. But
18 there's not, so there's not.

19 MR. SEATON: Okay. There is a state of mind of
20 Livingston though. That's what we're trying to get inside to the
21 best of our limited abilities. And the thing that I just want to
22 make sure of is that you would -- do you feel equally strong
23 about the appropriateness of the death penalty in our system as
24 you do the appropriateness of, say, life with the possibility of
25 parole in our system.

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8JD04474

1 PROSPECTIVE JUROR NO. 9: Yes. Like you said, I
2 personally feel that if any one of these three things can be
3 brought out by me; and again, I feel that factually that it will
4 be your job to bring one of those things to light.

5 MR. SEATON: Okay.

6 PROSPECTIVE JUROR NO. 9: And whatever it is you bring
7 to light, I will be able to render.

8 MR. SEATON: The last thing I want to ask you about is
9 one of the last things you stated in talking to Mr. Schieck, and
10 that was that you made the comment that if it were my family,
11 maybe my wife or my kids--I can't remember your exact words...

12 PROSPECTIVE JUROR NO. 9: Okay.

13 MR. SEATON: ...someone close to you--it sounded to me
14 like you would feel very strongly about the death penalty,
15 whether you imposed it personally or the system did. Is that a
16 fair characterization?

17 PROSPECTIVE JUROR NO. 9: Pretty much so.

18 MR. SEATON: If you go past that and it's not your
19 family, your immediate family, do you then start to turn away
20 from the death penalty, or was that just an example you were
21 using to...

22 PROSPECTIVE JUROR NO. 9: Well, I would...

23 MR. SEATON: ...tell us your feelings?

24 PROSPECTIVE JUROR NO. 9: I would draw myself farther
25 and farther. I mean, if someone was killed in a war, then I

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8JD04475

1 wouldn't think that they should get the death penalty for killing
2 someone else in a war. So you can draw yourself farther and
3 farther away.

4 MR. SEATON: Right, right. In the typical criminal
5 case, the typical criminal murder case, you would find several
6 different situations, I take it, that would make the death
7 penalty applicable?

8 PROSPECTIVE JUROR NO. 9: Oh, yes.

9 MR. SEATON: Not just the killing of your own family?

10 PROSPECTIVE JUROR NO. 9: Right.

11 MR. SEATON: All right. Thank you very much.

12 Pass for cause, Judge.

13 THE COURT: Ms. Sweet, how long have you lived in Clark
14 County, Nevada?

15 PROSPECTIVE JUROR NO. 10: Forty-four years.

16 THE COURT: Where were you born and raised?

17 PROSPECTIVE JUROR NO. 10: San Francisco, California.

18 THE COURT: What is your educational background?

19 PROSPECTIVE JUROR NO. 10: Tenth grade.

20 THE COURT: What has been your employment for the last
21 ten years?

22 PROSPECTIVE JUROR NO. 10: Supervisor at a hospital.

23 THE COURT: Which one?

24 PROSPECTIVE JUROR NO. 10: Boulder City.

25 THE COURT: What is your religious preference?

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1 PROSPECTIVE JUROR NO. 10: Catholic.
2 THE COURT: Do you attend mass regularly?
3 PROSPECTIVE JUROR NO. 10: No, sir.
4 THE COURT: How old are you?
5 PROSPECTIVE JUROR NO. 10: Forty-eight.
6 THE COURT: Are you married?
7 PROSPECTIVE JUROR NO. 10: Yes, sir.
8 THE COURT: Is your husband employed?
9 PROSPECTIVE JUROR NO. 10: Excuse me, I'm 58.
10 THE COURT: You don't look it.
11 (laughter)
12 THE COURT: Is your husband employed?
13 PROSPECTIVE JUROR NO. 10: No, he's retired.
14 THE COURT: From what did he retire?
15 PROSPECTIVE JUROR NO. 10: Landscaping work.
16 THE COURT: And do you have any children?
17 PROSPECTIVE JUROR NO. 10: Three.
18 THE COURT: May we have their ages and sex, please?
19 PROSPECTIVE JUROR NO. 10: 39-year-old female, 37-year-
20 old female, and a 35-year-old male.
21 THE COURT: Are you acquainted with either of the
22 Defendants or their attorneys?
23 PROSPECTIVE JUROR NO. 10: No, sir.
24 THE COURT: Excuse me. And do you know anyone in the
25 District Attorney's Office?

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8JD04477

1 PROSPECTIVE JUROR NO. 10: No, sir.

2 THE COURT: Did you recognize any of the persons whose
3 names were given to you as possible prosecution witnesses?

4 PROSPECTIVE JUROR NO. 10: No, sir.

5 THE COURT: In the State of Nevada, there are three
6 possible forms of punishment that the jury may consider then
7 select the one that they believe is the most appropriate under
8 the law and facts of this case. Those three possible forms of
9 punishment are: (a) the imposition of the death penalty;
10 (b) life imprisonment without the possibility of parole; and
11 (c) life imprisonment with the possibility of parole. Do you
12 understand, ma'am?

13 PROSPECTIVE JUROR NO. 10: Yes, sir.

14 THE COURT: In your present state of mind, can you, if
15 you are selected as a juror in this case, consider equally all
16 three possible forms of punishment and then select the one that
17 you feel is the most appropriate?

18 PROSPECTIVE JUROR NO. 10: Yes, sir.

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

21 PROSPECTIVE JUROR NO. 10: No, sir.

22 THE COURT: Are you now involved in or have you ever
23 been involved in any law enforcement work?

24 PROSPECTIVE JUROR NO. 10: No, sir.

25 THE COURT: Do you have any close friends or relatives

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8JD04478

1 who are members of any law enforcement agency?

2 PROSPECTIVE JUROR NO. 10: No, sir.

3 THE COURT: Have you ever appeared as a witness before
4 a grand jury?

5 PROSPECTIVE JUROR NO. 10: No, sir.

6 THE COURT: Have you ever appeared as a witness before
7 in any criminal case?

8 PROSPECTIVE JUROR NO. 10: No, sir.

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

10 PROSPECTIVE JUROR NO. 10: No, sir.

11 THE COURT: Have you ever been in military service?

12 PROSPECTIVE JUROR NO. 10: No, sir.

13 THE COURT: Have you ever been or anyone close to you
14 ever been a victim of a crime?

15 PROSPECTIVE JUROR NO. 10: No, sir.

16 THE COURT: Can you and will you follow the Court's
17 instructions on the law even though you may differ with them?

18 PROSPECTIVE JUROR NO. 10: Yes, sir.

19 THE COURT: If you were either of the Defendants, would
20 you want twelve people in your present state of mind to sit and
21 judge your case?

22 PROSPECTIVE JUROR NO. 10: Yes, sir.

23 THE COURT: Do you know of any reason whatsoever,
24 whether I've asked you or not, why you cannot sit as a fair and
25 impartial juror in this case?

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8JD04479

1 PROSPECTIVE JUROR NO. 10: No, sir.

2 THE COURT: Mr. Wall?

3 MS. MOUNTS: Me, your Honor.

4 THE COURT: Ms. Mounts?

5 MS. MOUNTS: Ma'am, you have twelve grandchildren. Is
6 that correct?

7 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

8 MS. MOUNTS: Now, I'm sure you understand that the
9 facts of this case involve the killing of Mr. Flanagan's
10 grandparents. Is there anything in particular about those facts
11 that would give you pause as to whether or not you could serve as
12 a fair juror?

13 PROSPECTIVE JUROR NO. 10: I consider myself a very
14 fair person. I don't think that I would have any problems
15 serving as a juror.

16 MS. MOUNTS: I notice, however, that you indicated on
17 your questionnaire--your Honor, 58C--that you may not be able to
18 be impartial because of the fact that you have twelve
19 grandchildren. Could you explain for us the difference in those
20 two answers?

21 PROSPECTIVE JUROR NO. 10: Well, I thought about my
22 grandchildren, and I couldn't feature any of them doing something
23 like that. But then everybody's different.

24 MS. MOUNTS: But the question I guess I'm asking is:
25 Can you tell me what has changed since last week when you filled

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8JD04480

1 out the questionnaire indicating that you did not think you could
2 be fair and impartial because of the fact that you have twelve
3 grandchildren?

4 PROSPECTIVE JUROR NO. 10: I thought I had to put all
5 of that aside and be honest with my feelings from inside.

6 MS. MOUNTS: Oh. Well, you understand that's still the
7 case then.

8 PROSPECTIVE JUROR NO. 10: Yes.

9 MS. MOUNTS: That's the reason we're asking the
10 questions that we're asking. And we're not trying to change your
11 views or persuade you one way or the other, ma'am. We just want
12 to know what your views are.

13 PROSPECTIVE JUROR NO. 10: I think I could serve
14 without having any problem.

15 MS. MOUNTS: Then again, I guess my question is, what
16 has changed since last week when you indicated that you did not
17 think you could be fair?

18 PROSPECTIVE JUROR NO. 10: I really don't know how to
19 answer that.

20 MS. MOUNTS: Okay. Let me try a different way. Do you
21 remember writing in the questionnaire that you did not feel you
22 could be impartial because you were the grandmother of twelve
23 grandchildren?

24 PROSPECTIVE JUROR NO. 10: Yes.

25 MS. MOUNTS: Okay. Do you remember what is was you

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8JD04481

1 were thinking when you put that down?

2 PROSPECTIVE JUROR NO. 10: I think it was just a state
3 of shock.

4 MS. MOUNTS: Well, you stated that at the time you put
5 down your answer you knew it was important to be complete and as
6 honest as you could.

7 PROSPECTIVE JUROR NO. 10: Right.

8 MS. MOUNTS: And you understand that that's still that
9 case?

10 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

11 MS. MOUNTS: Okay. And as you sit here now you're
12 indicating that you believe you could put all that aside?

13 PROSPECTIVE JUROR NO. 10: I think I could.

14 MS. MOUNTS: Okay. You understand how vitally
15 important it is to us to have a jury comprised of individuals who
16 can be completely open-minded and fair in all respects?

17 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

18 MS. MOUNTS: And you believe that you could serve in
19 that capacity?

20 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

21 MS. MOUNTS: Is there anything about the fact that you
22 have twelve grandchildren that would make the facts of this case
23 a little more personal to you than to another individual?

24 PROSPECTIVE JUROR NO. 10: No.

25 MS. MOUNTS: You stated that you do feel that you may

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8JD04482

1 have some job pressures?

2 PROSPECTIVE JUROR NO. 10: The pressures were relieved
3 last night. My boss hired two more people.

4 MS. MOUNTS: Okay. So whatever your concerns were at
5 the time you filled out the questionnaire have been alleviated?

6 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

7 MS. MOUNTS: Let me ask you a couple of yes or no
8 questions. You did indicate that you remembered seeing a story
9 about this case in the newspaper. Is that right?

10 PROSPECTIVE JUROR NO. 10: Yes ma'am, but that was a
11 long time ago.

12 MS. MOUNTS: Let me ask you this, again calling for a
13 yes, or no: Is there anything else that you remember about this
14 case that has not been brought out yesterday or today in court?

15 PROSPECTIVE JUROR NO. 10: No, ma'am.

16 MS. MOUNTS: Okay. So you don't recall anything
17 else...

18 PROSPECTIVE JUROR NO. 10: No.

19 MS. MOUNTS: ...that you would want to bring to our
20 attention? How do you feel about serving as a juror in this
21 case?

22 PROSPECTIVE JUROR NO. 10: I think it's a very grave
23 responsibility.

24 MS. MOUNTS: Is it one that you would willingly take
25 on?

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8JD04483

1 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

2 MS. MOUNTS: How do you feel about the imposition of
3 the death penalty?

4 PROSPECTIVE JUROR NO. 10: It's a necessary evil, I
5 think.

6 MS. MOUNTS: What do you mean when you say it's a
7 necessary evil?

8 PROSPECTIVE JUROR NO. 10: Some cases require that we
9 should have a death penalty. Sometimes it's not imposed. Other
10 times it is. I can't judge things that happen before. I need to
11 know more about the evidence before I could make a decision one
12 way or the other.

13 MS. MOUNTS: You understand that at the conclusion of
14 the evidence in this case you may be called upon to be part of
15 that decision?

16 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

17 MS. MOUNTS: Is that something that you are comfortable
18 with as you sit here?

19 PROSPECTIVE JUROR NO. 10: I wouldn't say anybody in
20 here is comfortable.

21 MS. MOUNTS: Do you feel that -- that that is a rule
22 that you could willingly fulfill?

23 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

24 MS. MOUNTS: But, as I asked Colonel Boone, that's a --
25 you understand the enormity and the gravity of the decision...

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8JD04484

1 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

2 MS. MOUNTS: ...that you'd have to make? Is that
3 correct?

4 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

5 MS. MOUNTS: Do you feel that the death penalty is
6 imposed frequently enough, not frequently enough, just about
7 right? What are your thoughts?

8 PROSPECTIVE JUROR NO. 10: I don't think it's imposed
9 enough.

10 MS. MOUNTS: Do you have in your mind an idea of the
11 kind of cases where the death penalty might be appropriate?

12 PROSPECTIVE JUROR NO. 10: Mass destruction of human
13 life, like the Tate case in California.

14 MS. MOUNTS: You're referring to the Charles Manson
15 case?

16 PROSPECTIVE JUROR NO. 10: Yes, ma'am. I think
17 something like that would be a reason to impose the death penalty
18 and carry it out.

19 MS. MOUNTS: You understand that the death penalty is
20 never required under any set of circumstances?

21 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

22 MS. MOUNTS: Is that correct?

23 PROSPECTIVE JUROR NO. 10: I understand that.

24 MS. MOUNTS: And do you understand that it is a
25 decision that you may not ever have to reach in this case?

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8JD04485

8JD04486
1 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

2 MS. MOUNTS: We have outlined some for you the process
3 that the jury would have to go through.

4 PROSPECTIVE JUROR NO. 10: Right.

5 MS. MOUNTS: And you would first have to find an
6 aggravating circumstance or circumstances to be established
7 beyond a reasonable doubt.

8 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

9 MS. MOUNTS: And further find that that circumstance,
10 or those circumstances outweigh the mitigating evidence that we
11 would be presenting?

12 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

13 MS. MOUNTS: You understand that then and only then
14 would it be an option to consider the death penalty?

15 PROSPECTIVE JUROR NO. 10: Yes, ma'am.

16 MS. MOUNTS: Do you have any quarrel with that
17 procedure at all?

18 PROSPECTIVE JUROR NO. 10: No, ma'am.

19 MS. MOUNTS: And I'd ask you the question that Mr.
20 Seaton just posed a moment ago. You've heard all of the
21 questions that we've asked. Is there anything that we haven't
22 asked you that you feel you should elaborate on?

23 PROSPECTIVE JUROR NO. 10: No, ma'am.

24 MS. MOUNTS: Do you have any concerns or anything of
25 that nature that you'd like to bring to our attention?

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8JD04486

1 PROSPECTIVE JUROR NO. 10: No, ma'am.

2 MS. MOUNTS: Pass for cause, your Honor. Thank you.

3 THE COURT: Which one? Mr. Wolfbrandt.

4 MR. WOLFBRANDT: Thank you, your Honor. Excuse me.

5 Good afternoon, ma'am.

6 PROSPECTIVE JUROR NO. 10: Good afternoon.

7 MR. WOLFBRANDT: I'll be brief cause I certainly don't
8 want to duplicate what Ms. Mounts has already asked you, but I
9 did want to touch on a couple of areas. If I heard you
10 correctly, I believe you said that there were some cases where
11 you thought the death penalty was required but it wasn't given?

12 PROSPECTIVE JUROR NO. 10: Yes, sir.

13 MR. WOLFBRANDT: That's your personal opinion, isn't
14 it?

15 PROSPECTIVE JUROR NO. 10: Yes, sir.

16 MR. WOLFBRANDT: Is that from cases that you've read in
17 the newspaper and seen on TV?

18 PROSPECTIVE JUROR NO. 10: Just like on that one case,
19 the Manson case. The destruction was so horrendous, and I didn't
20 see where they were given punishment. I mean they were put into
21 jail, but they didn't take and give them the death sentence, some
22 of them, that caused such destruction. They put them in jail and
23 then they kept appealing, and I never understood why something
24 like that would happen that way. I don't know whether the rules
25 are different in different states, but I couldn't understand

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8JD04487

1 had heard the original case and came back with a verdict, you
2 wouldn't be sitting in the same emotional position that you are
3 now. Would you not?

4 PROSPECTIVE JUROR NO. 6: I expect so.

5 MR. SEATON: The other point I want to make is that the
6 State -- I mentioned this with one of the other former jurors
7 that the way the procedure of a death penalty hearing goes is
8 that the State must come forward and prove to the jury beyond a
9 reasonable doubt that certain aggravating circumstances exist,
10 one or more of them. You don't know what they are yet. They've
11 already been listed, and we'll be telling you what they are.
12 Whatever you're told they are, the evidence that the State puts
13 forth on the stand must prove them beyond a reasonable doubt. Do
14 you follow that?

15 PROSPECTIVE JUROR NO. 6: I follow that.

16 MR. SEATON: Okay. That's step number one. And it can
17 be one or more aggravating circumstances that needs to be proven
18 to you beyond a reasonable doubt. If that isn't done, if at the
19 conclusion of the State's case you are not convinced beyond a
20 reasonable doubt that any aggravating circumstances have been
21 proven to you, there is no question about the death penalty.
22 From that moment on the jury would never be allowed to consider
23 the issue of the death penalty. Do you understand that?

24 PROSPECTIVE JUROR NO. 6: Yes.

25 MR. SEATON: Okay. That's test one.

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8JD04374
1 Test two, it has to do with the ability of the Defense
2 attorneys to present whatever case they wish on behalf of their
3 clients and show you what we call "mitigating circumstances."
4 And they aren't quite so finely delineated as the aggravating
5 circumstances are; they can be anything. I think I mentioned
6 some of those things before.

7 And I think that's part of what I think Mr. Wall was talking
8 to you about in terms of potential rehabilitation in the last ten
9 years. You would be looking at things like that and judging
10 those. Do you understand that part of the proceeding?

11 PROSPECTIVE JUROR NO. 6: Yeah, I understand that.

12 MR. SEATON: Do you have a question about it?

13 PROSPECTIVE JUROR NO. 6: Just a little confusion. If
14 we sat here through the regular criminal trial and found them
15 guilty, then there wouldn't be that after light after that to
16 consider, correct?

17 MR. SEATON: There would be a penalty hearing after
18 that. Had you been the first juror, you would have returned a
19 verdict of guilty of murder of the first degree...

20 PROSPECTIVE JUROR NO. 6: Right.

21 MR. SEATON: ...as has been done. The Judge would then
22 schedule--a day later, a week later, whatever scheduling allowed
23 --all of us to come back into the courtroom for this that we're
24 doing right now.

25 PROSPECTIVE JUROR NO. 6: Exactly.

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8JD04374

1 MR. SEATON: That would happen.

2 PROSPECTIVE JUROR NO. 6: Exactly.

3 MR. SEATON: And that that would happen in that
4 instance--we're hypothetically talking about--would be precisely
5 as it's happening here, except we're having conversations about
6 some other jury having done it.

7 PROSPECTIVE JUROR NO. 6: Okay. So my understanding
8 then you're going to talk -- they're going to talk about what
9 they did in their life up to that point?

10 MR. SEATON: At any time in their life.

11 PROSPECTIVE JUROR NO. 6: Including everything...

12 MR. SEATON: From the moment they were born...

13 PROSPECTIVE JUROR NO. 6: ...after that point.
14 Everything. The last ten years...

15 MR. SEATON: From the moment...

16 PROSPECTIVE JUROR NO. 6: ...that they've been
17 incarcerated.

18 MR. SEATON: Yes. From the moment they were born...

19 PROSPECTIVE JUROR NO. 6: I see.

20 MR. SEATON: ...until today, or whenever it is that
21 they start their case...

22 PROSPECTIVE JUROR NO. 6: Okay.

23 MR. SEATON: ...they are entitled to tell you
24 mitigating things about the Defendants, things that could cause
25 you to decide not to give them the death penalty and to choose

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1 life with the possibility of parole or life without the
2 possibility of parole, and those are then balanced against the
3 aggravating circumstances.

4 And I want to make sure you're clear on the step number two,
5 which is their presentation to you of mitigation in the form of
6 whatever testimony they choose to put on through various
7 witnesses. Do you understand their...

8 PROSPECTIVE JUROR NO. 6: I understand it.

9 MR. SEATON: Okay. Step number three is the weighing
10 of the aggravating circumstances which the State has proven to
11 you in your mind beyond a reasonable doubt. Because remember if
12 you had not been shown those beyond a reasonable doubt, we
13 wouldn't even be talking death penalty anymore. But assuming
14 that you have agreed that certain aggravating circumstances have
15 been shown to you beyond a reasonable doubt, you would take
16 those, whatever they are, and you would weigh them--compare and
17 contract them, if you will--to the mitigating circumstances which
18 you have agreed that the Defense attorneys have shown you. And I
19 remind you that does not need to be done beyond a reasonable
20 doubt; you just simply need to agree with them that those factors
21 of mitigation exist.

22 In that weighing process you decide which are the most
23 important. Does the aggravation outweigh the mitigation, or does
24 the mitigation outweigh the aggravation? Do you follow me so
25 far?

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8JD04376

1 PROSPECTIVE JUROR NO. 6: Uh-huh. Yes.

2 MR. SEATON: You'll make one of two conclusions. If
3 you decide that the mitigation outweighs the aggravation, we're
4 back to where we were if you hadn't found any aggravation in the
5 first place. You may not consider the death penalty, if
6 mitigation outweighs aggravation.

7 If on the other hand you decide in your mind that the
8 aggravation is more important than the mitigation, then the law
9 says you are allowed to consider the death penalty--not that you
10 must. You still could come back with a verdict of something less
11 than death. Do you understand all of this up to that point?

12 PROSPECTIVE JUROR NO. 6: Up to this point.

13 MR. SEATON: Okay. The reason I went through all of
14 that again is to find out where you stand on it, and also to
15 remind the other jurors of what we were talking about yesterday.
16 It goes back to -- the questions have been asked of you about
17 burden. And I want you to know beyond any shadow of a doubt that
18 the State has the burden of proving to you beyond a reasonable
19 doubt aggravating circumstances. They only have the burden of
20 bringing mitigation before you if they want to show you some.
21 But it isn't to the same level that affects that State; they can
22 do it to a far less severe level; they just have to show you the
23 mitigation.

24 That would be the only burden that they would have. Because
25 if they didn't bring it forward, you wouldn't know about it. Do

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8JD04377

1 you understand that?

2 PROSPECTIVE JUROR NO. 6: Yes.

3 MR. SEATON: Can you live with all of that?

4 PROSPECTIVE JUROR NO. 6: I think I can.

5 MR. SEATON: Okay. And understanding that you as a
6 potential juror, having heard the things that you've heard--and
7 you've eluded to the actual conviction and the fact that it was
8 of grandparents--you don't expect to be particularly a happy
9 camper toward these two young men as you sit there, do you?

10 PROSPECTIVE JUROR NO. 6: No, I don't.

11 MR. SEATON: Given that, what with that question about
12 would you want to be sitting in their shoes with jurors like you
13 in the box, what that really means is that given the facts that
14 we know about, can you give them a fair shake?

15 PROSPECTIVE JUROR NO. 6: I can give them a fair shake.

16 MR. SEATON: Okay. That's what it's all about, not --
17 well, not anything else. Just knowing what you know, would you
18 be able to consider all three penalties when you go back into the
19 jury deliberation room and choose any one of them?

20 PROSPECTIVE JUROR NO. 6: I can consider all three
21 penalties.

22 MR. SEATON: Okay. I'd pass for cause.

23 THE COURT: Mr. Reinken?

24 PROSPECTIVE JUROR NO. 7: Yes, sir.

25 THE COURT: Sir, how long have you lived in Clark

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8JD04378

81004379
1 County, Nevada?

2 PROSPECTIVE JUROR NO. 7: Since '62.

3 THE COURT: Where were you born and raised?

4 PROSPECTIVE JUROR NO. 7: Luverne, Minnesota.

5 THE COURT: Where about in Minnesota, sir?

6 PROSPECTIVE JUROR NO. 7: Luverne, Minnesota.

7 THE COURT: Luverne. I thought you said I was born in
8 it. What is your educational background?

9 PROSPECTIVE JUROR NO. 7: Eleventh grade.

10 THE COURT: What has been your employment for the last
11 ten years?

12 PROSPECTIVE JUROR NO. 7: SSI, I was in a motorcycle
13 accident.

14 THE COURT: The last time you worked, sir, what did you
15 do, and for whom did you work?

16 PROSPECTIVE JUROR NO. 7: It's been so long I can't
17 remember. Probably working at a car wash probably.

18 THE COURT: All right. What is your religious
19 preference?

20 PROSPECTIVE JUROR NO. 7: Oh, I'm a Lutheran.

21 THE COURT: Do you attend church regularly?

22 PROSPECTIVE JUROR NO. 7: No, sir.

23 THE COURT: How old are you, sir?

24 PROSPECTIVE JUROR NO. 7: Thirty-eight.

25 THE COURT: Are you married?

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8JD04379

1 PROSPECTIVE JUROR NO. 7: No.

2 THE COURT: Do you have any children?

3 PROSPECTIVE JUROR NO. 7: No.

4 THE COURT: Are you acquainted with either the
5 Defendants or their attorneys?

6 PROSPECTIVE JUROR NO. 7: No.

7 THE COURT: Do you know anyone in the District
8 Attorney's Office?

9 PROSPECTIVE JUROR NO. 7: No.

10 THE COURT: Did you recognize any of the persons whose
11 names were given to you as possible witnesses in this case?

12 PROSPECTIVE JUROR NO. 7: No.

13 THE COURT: In the State of Nevada, there are three
14 possible forms of punishment that the jury may consider and then
15 select the one that they believe is most appropriate under the
16 law and facts of this case. Those three possible forms of
17 punishment are: (a) the imposition of the death penalty;
18 (b) life imprisonment without the possibility of parole; and
19 (c) life with the possibility of parole. Do you understand, sir?

20 PROSPECTIVE JUROR NO. 7: Yes.

21 THE COURT: In your present state of mind, can you, if
22 selected as a juror, consider equally all three possible forms of
23 punishment and then select the one that you feel is most
24 appropriate?

25 PROSPECTIVE JUROR NO. 7: Yes.

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8JD04380

8JD04381

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

3 PROSPECTIVE JUROR NO. 7: No.

4 THE COURT: Are you now involved in or have you ever
5 been involved in any law enforcement work?

6 PROSPECTIVE JUROR NO. 7: No.

7 THE COURT: Do you have any close friends or relatives
8 who are members of any law enforcement agency?

9 PROSPECTIVE JUROR NO. 7: No.

10 THE COURT: Have you ever been a witness in any
11 criminal prosecution?

12 PROSPECTIVE JUROR NO. 7: No.

13 THE COURT: Have you ever served on a jury before?

14 PROSPECTIVE JUROR NO. 7: No.

15 THE COURT: Have you ever served in the military
16 service?

17 PROSPECTIVE JUROR NO. 7: No.

18 THE COURT: Can you and will you follow the Court's
19 instructions on the law even though you may differ with them?

20 PROSPECTIVE JUROR NO. 7: Yes.

21 THE COURT: If you were either of the Defendants, would
22 you want twelve people in your present state of mind to sit and
23 judge your case?

24 PROSPECTIVE JUROR NO. 7: Yes.

25 THE COURT: Do you know of any reason whatsoever,

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SA394

8JD04381

8JD04382
1 whether I've asked or not, why you cannot sit as a fair and
2 impartial juror in this case?

3 PROSPECTIVE JUROR NO. 7: No.

4 THE COURT: Mr. Wall?

5 MR. WALL: Thank you, your Honor.

6 Is it Reinken, is that how you pronounce it?

7 PROSPECTIVE JUROR NO. 7: Reinken, right.

8 MR. WALL: Reinken?

9 PROSPECTIVE JUROR NO. 7: Reinken, right.

10 MR. WALL: Mr. Reinken, you told Judge Guy a moment ago
11 that you could consider equally all three possible punishments.
12 Yet, in your questionnaire--I'm referring to Question 58C, your
13 Honor--you were quite adamant that you wanted to see these two
14 individuals executed. Can you explain why to me that answer and
15 the one you gave Judge Guy are inconsistent?

16 PROSPECTIVE JUROR NO. 7: Well, when you kill, I think
17 you should die; I don't think you should sit in prison the rest
18 of your life.

19 MR. WALL: You understand in this case that Mr.
20 Flanagan and Mr. Moore have been convicted of a premeditated
21 first-degree murder?

22 PROSPECTIVE JUROR NO. 7: Yes.

23 MR. WALL: In your mind they should be executed?

24 PROSPECTIVE JUROR NO. 7: I think so.

25 MR. WALL: Okay. So when you're coming into this

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8JD04382

8JD04383
1 proceeding, if you were selected to be a juror, you're starting
2 from a position of already thinking "they ought to be executed
3 unless somebody convinces me otherwise, or that life is
4 appropriate"? Are you just stuck on thinking for this offense,
5 these people should be executed?

6 PROSPECTIVE JUROR NO. 7: This offense I think these
7 people should be executed.

8 MR. WALL: Okay. Would there be any kind of
9 information that might be able to change your minds--say,
10 information about their character that might be able to change
11 your mind? Or are you pretty much set on they should be
12 executed?

13 PROSPECTIVE JUROR NO. 7: No. I don't think so, no.

14 MR. WALL: No what?

15 PROSPECTIVE JUROR NO. 7: No, I don't think so.

16 MR. WALL: You probably wouldn't give that information
17 much of any weight? You think they ought to be executed?

18 PROSPECTIVE JUROR NO. 7: No.

19 MR. WALL: No?

20 PROSPECTIVE JUROR NO. 7: No, I don't -- yes.

21 MR. WALL: It was sort of a compound question.

22 THE COURT: Rephrase your question.

23 MR. WALL: Thank you.

24 Would you consider evidence of their character before you
25 made a decision?

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SA396

8JD04383

1 PROSPECTIVE JUROR NO. 7: Not from what I've already
2 heard, no, I don't think so.

3 MR. WALL: Okay. For the crime that they've committed,
4 you feel they ought to be executed, and it'd be almost impossible
5 to change your mind on that?

6 PROSPECTIVE JUROR NO. 7: Yes, sir.

7 MR. WALL: Okay. Thank you.

8 Your Honor, at this time I'd challenge for cause.

9 THE COURT: Proceed, joint the challenge?

10 MR. SCHIECK: I take no position on it until I've had
11 the opportunity to question, your Honor.

12 MR. SEATON: Judge, I have no traverse, for whatever
13 that's worth at this time.

14 THE COURT: I may grant the motion. Anything you want
15 to ask him?

16 MR. SEATON: No, your Honor.

17 THE COURT: Sir, you are excused. Thank you for coming
18 down. Please report back to the jury commissioner for further
19 instructions.

20 The Clerk will draw another name.

21 THE CLERK: Charles Neagle, Badge No. 502, N-E-A-G-L-E.

22 THE COURT: Mr. Neagle, how long have you lived in
23 Clark County, Nevada?

24 PROSPECTIVE JUROR NO. 7: Fifty-nine years.

25 THE COURT: Where were you born and raised?

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8JD04384

1 PROSPECTIVE JUROR NO. 7: I was raised here; I was born
2 in Ventura, California.

3 THE COURT: And what is your educational background?

4 PROSPECTIVE JUROR NO. 7: Twelve years vo-technical.

5 THE COURT: What colleges did you to attend, sir?

6 PROSPECTIVE JUROR NO. 7: I attended a health physics
7 course for four years, Los Alamos Scientific Laboratory.

8 THE COURT: And your major field of endeavor?

9 PROSPECTIVE JUROR NO. 7: Probably retirement right
10 now.

11 THE COURT: When you were in college, what was your
12 major field of endeavor?

13 PROSPECTIVE JUROR NO. 7: I wasn't in college, sir. I
14 went to a technical school through Los Alamos Scientific
15 Laboratory out of the AEC.

16 THE COURT: All right. What has been your employment
17 for the past ten years?

18 PROSPECTIVE JUROR NO. 7: Nevada Test Site.

19 THE COURT: What did you do there, sir?

20 PROSPECTIVE JUROR NO. 7: I'm now an environmental
21 manager.

22 THE COURT: What is your -- you are now an environment
23 -- when you worked for the Test Site, what was your
24 classification duties?

25 PROSPECTIVE JUROR NO. 7: You mean for the full 30

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SA398

8JD04385

8JD04386
1 years, sir?

2 THE COURT: Well, I said within the last ten years.

3 PROSPECTIVE JUROR NO. 7: The last ten years I've been
4 an environmental manager.

5 THE COURT: All right. And what is your religious
6 preference?

7 PROSPECTIVE JUROR NO. 7: Mormon.

8 THE COURT: Do you attend church regularly?

9 PROSPECTIVE JUROR NO. 7: No.

10 THE COURT: How old are you, sir?

11 PROSPECTIVE JUROR NO. 7: Fifty-nine.

12 THE COURT: And are you married?

13 PROSPECTIVE JUROR NO. 7: Yes, sir.

14 THE COURT: Is your wife employed?

15 PROSPECTIVE JUROR NO. 7: No.

16 THE COURT: Do you have any children?

17 PROSPECTIVE JUROR NO. 7: Yes, sir.

18 THE COURT: May we have their ages and sex, sir?

19 PROSPECTIVE JUROR NO. 7: A 38-year-old female and 34-
20 year-old male.

21 THE COURT: Are you acquainted with either of the
22 Defendants or their attorneys?

23 PROSPECTIVE JUROR NO. 7: No, sir.

24 THE COURT: Gentlemen?

25 MR. WALL: I'm sorry, your Honor.

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SA399

8JD04386

1 THE COURT: Do you know anyone in the District
2 Attorney's Office?

3 PROSPECTIVE JUROR NO. 7: No, sir.

4 THE COURT: Did you recognize any of the persons whose
5 names were given to you as possible prosecution witnesses?

6 PROSPECTIVE JUROR NO. 7: No.

7 THE COURT: In the State of Nevada, there are three
8 possible forms of punishment that the jury may consider and then
9 select the one that they believe is most appropriate under the
10 law and facts of this case. Those three possible forms of
11 punishment are: (a) the imposition of the death penalty;
12 (b) life imprisonment without the possibility of parole; and
13 (c) life imprisonment with the possibility of parole. Do you
14 understand, sir?

15 PROSPECTIVE JUROR NO. 7: Yes.

16 THE COURT: In your present state of mind, can you, if
17 you are selected as a juror in this case, consider equally all
18 three possible forms of punishment and then select the one that
19 you feel is most appropriate?

20 PROSPECTIVE JUROR NO. 7: Possibly.

21 THE COURT: Please explain, sir.

22 PROSPECTIVE JUROR NO. 7: I'm aware of the case,
23 because I'm an avid reader. There's been some instances in my
24 neighborhood, which is a very quiet neighborhood in the northwest
25 side of town, and I'm a little biased on certain things--such as

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8JD04387

1 a case that was in the Las Vegas Review Journal this morning.

2 THE COURT: Do you understand, sir? One: we are not
3 trying that case or anybody involved in that case, and we're only
4 considering with what these folks in this case.

5 PROSPECTIVE JUROR NO. 7: I understand that, sir.

6 THE COURT: I can understand how these things may
7 interfere and have some application to your thoughts. But can
8 you set those aside and try these gentlemen for what they've done
9 based upon the evidence you hear in this court?

10 PROSPECTIVE JUROR NO. 7: Probably.

11 MR. SEATON: Your Honor, can we approach the bench for
12 a minute?

13 THE COURT: Yes, you may.

14 (Bench conference)

15 THE COURT: It is almost 10:20. It's time for our
16 morning break. Please be back in your seats at 25 minutes of
17 11:00 by the clock above your heads--or by the clock on the wall,
18 put it that way, because they are sitting there close.

19 MR. SCHIECK: Your Honor, did we want all jurors back
20 at that time?

21 THE COURT: Yes. I want them all back in the hall
22 anyway.

23 MR. SCHIECK: Okay.

24 THE COURT: In the meantime, it is your duty not to
25 talk among yourselves or with anyone else on any matter

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8JD04388

8JD04389

1 pertaining to this trial; read, watch or listen to any report of
2 or commentary on the trial by any person or by any medium of
3 information, including without limitation newspapers, radio or
4 television; form or express any opinion on any matter pertaining
5 to this trial until it is finally submitted to you.

6 See you back here, at least in the hall, at 25 minutes of
7 the hour.

8 (Jury out 10:21 a.m.)

9 THE COURT: Will counsel stipulate to the absence of
10 the jury?

11 MR. SEATON: Yes, Judge.

12 MR. WALL: Yes, your Honor.

13 MR. SCHIECK: Yes, Your Honor.

14 THE COURT: Any counsel have anything outside the
15 presence of the jury?

16 MR. SCHIECK: Not at this time, your Honor.

17 MR. WALL: I don't believe so.

18 MR. SEATON: Not by the State.

19 THE COURT: How are we coming along with the jury
20 instructions?

21 MR. SCHIECK: You said tomorrow morning.

22 THE COURT: That wasn't my question.

23 MR. SCHIECK: Coming along fine, your Honor.

24 THE COURT: Okay.

25

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SA402

8JD04389

1 (Proceedings reconvened)

2 THE COURT: Please be seated. Bring in Mr. Neagle,
3 please.

4 Continuation of State vs. Flanagan & Moore. Let the record
5 reflect the presence of Defendants with counsel, District
6 Attorney, other officers of the Court. Will counsel stipulate as
7 to the absence of the jury?

8 MR. SEATON: Yes, Judge.

9 MR. WALL: Yes, your Honor.

10 MR. SCHIECK: Yes, your Honor.

11 THE COURT: Mr. Neagle?

12 (Colloquy, not on the record)

13 THE COURT: Mr. Schieck, you asked to ask questions
14 from Mr. Neagle. You may start -- oh, you may start on this one.

15 MR. SCHIECK: Thank you, your Honor.

16 Mr. Neagle, you indicated both here in court and on your
17 questionnaire that in fact you had read the newspapers about this
18 case in the questionnaire, and in the questionnaire question 58B
19 indicated that you remember everything about the case.

20 PROSPECTIVE JUROR NO. 7: Yeah, I had a neighbor that
21 lived on that street -- or not a neighbor, a fellow worker lived
22 on that street.

23 MR. SCHIECK: On Washburn?

24 PROSPECTIVE JUROR NO. 7: Yes, sir.

25 MR. SCHIECK: Did you talk to that neighbor about the case?

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8JD04390

1 PROSPECTIVE JUROR NO. 7: I worked with him.

2 MR. SCHIECK: Okay. So you did talk to him about the
3 case?

4 PROSPECTIVE JUROR NO. 7: Yes.

5 MR. SCHIECK: What is it that you remember about the
6 case?

7 PROSPECTIVE JUROR NO. 7: Not very much. The
8 grandparents, followed it in the paper. I had a lot of time to
9 read the paper. I read the paper two hours a day, one or two,
10 and that's about all.

11 MR. SCHIECK: Just that it was the grandparents that...

12 PROSPECTIVE JUROR NO. 7: Yes.

13 MR. WALL: Your Honor, can I ask him to use the
14 microphone?

15 PROSPECTIVE JUROR NO. 7: Yes. Yes, you can.

16 I'll be quite frank with you, gentlemen, this is the reason
17 that I moved my grandsons out of the city of Las Vegas. This is
18 one of the starting factors.

19 MR. SCHIECK: Anything particular about this case?

20 PROSPECTIVE JUROR NO. 7: Oh, just every circumstance
21 the world being as I've been here for ever. I was here when
22 there was no tracts; I was here when there was only two schools.
23 I've seen the city evolve into something that I don't like at my
24 age. I've already built a home in Utah, ready to move there at
25 the end of the year. I didn't want my grandsons to grow up here.

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1 MR. SCHIECK: Do you think that your previous knowledge
2 of the case and the fact that you worked with a neighbor of the
3 Gordons would affect your ability to hear this case and be
4 impartial?

5 PROSPECTIVE JUROR NO. 7: Yes.

6 MR. SCHIECK: Do you think you're predisposed to what
7 your decision would be on this case?

8 PROSPECTIVE JUROR NO. 7: Not necessarily this case,
9 gentlemen, but the circumstances. Like it said in the paper this
10 morning, if you want me to go ahead and speak freely.

11 MR. SCHIECK: Yeah, what...

12 PROSPECTIVE JUROR NO. 7: I had an exceptionally hard
13 time when a good friend of mine was murdered here less than a
14 year ago, and the judgement for one of the defendants was life in
15 prison with the possibility of parole and potentially out in ten
16 years. And in my mind-set the first thing I thought of, these
17 gentlemen here could possibility walk out of here in a week
18 because they've already been interred ten years.

19 THE COURT: I'm sorry, sir. Please speak into the
20 microphone.

21 PROSPECTIVE JUROR NO. 7: I'm sorry, sir.

22 THE COURT: I heard "there's a possibility these
23 gentlemen may walk out." Then your voice trailed.

24 PROSPECTIVE JUROR NO. 7: I'm sorry, Judge. The
25 Kezerian [phonetic] case is an example I read about in the paper

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8JD04392

1 this morning, which was my neighbor and a friend of mine.

2 MR. SCHIECK: And so you wouldn't even consider life
3 with parole in this case?

4 PROSPECTIVE JUROR NO. 7: I don't know what these
5 gentlemens' goals are. Maybe they don't want that. Maybe they
6 want the other. I was thinking that in the jury box a little
7 while ago.

8 MR. SCHIECK: What's that?

9 PROSPECTIVE JUROR NO. 7: Maybe they don't want life
10 with the possibility of parole. That's never been stated. Is
11 this a goal to get out of prison out of being there ten years? I
12 don't know that.

13 MR. SCHIECK: But bottom line you feel that you
14 couldn't be fair in this case?

15 PROSPECTIVE JUROR NO. 7: Yes, sir.

16 MR. SCHIECK: Your Honor, we'd challenge for cause.

17 THE COURT: Do you join in the challenge?

18 MR. WALL: We'd join in the challenge, reserving the
19 right to ask some other questions though if the Court...

20 THE COURT: Do so now.

21 MR. WALL: Well, on some other areas.

22 THE COURT: You may. (pause) Oh. Do so only on the
23 challenge area. If I do not grant the motions, you may inquire.

24 Mr. Seaton?

25 MR. SEATON: Thank you, Judge.

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8JD04393

1 PROSPECTIVE JUROR NO. 7: Let me say something. I'm
2 willing to stay gentlemen. As I was finishing the Judge's
3 questioning here, just like do I have a relative that is on the
4 police department, my nephew is the undersheriff, if that means
5 anything at all. But go ahead.

6 THE COURT: Let me come back to that one.

7 PROSPECTIVE JUROR NO. 7: All right.

8 MR. SEATON: That's something we can come back to
9 later, Mr. Neagle.

10 PROSPECTIVE JUROR NO. 7: Yes, sir.

11 MR. SEATON: It's funny. You're reflecting a
12 conversation that I was part of just a few minutes ago outside
13 the courtroom.

14 I understand that you are disturbed with what the city has
15 become...

16 PROSPECTIVE JUROR NO. 7: Yes, sir.

17 MR. SEATON: ...over the last couple of decades?

18 PROSPECTIVE JUROR NO. 7: Yes, sir.

19 MR. SEATON: Other than the fact that you know about
20 this case, what's happened to the city really has nothing to do
21 with these two gentlemen.

22 PROSPECTIVE JUROR NO. 7: This is a true statement,
23 yes.

24 MR. SEATON: You agree with that.

25 PROSPECTIVE JUROR NO. 7: Yes.

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1 MR. SEATON: You, I would take it, find yourself in
2 somewhat the same position as the gentleman back here that I last
3 spoke with who really didn't like the idea of two people who had
4 been convicted of killing one of their grandparents?

5 PROSPECTIVE JUROR NO. 7: Yes, sir.

6 MR. SEATON: You have some anger about that?

7 PROSPECTIVE JUROR NO. 7: I'm probably a little more
8 blunt about it.

9 MR. SEATON: That's fine. We want you to be blunt.

10 PROSPECTIVE JUROR NO. 7: Yes, sir.

11 MR. SEATON: And you heard my long discussion with him
12 about we don't expect people to come in here completely neutral
13 and lovey-dovey toward these two fellows.

14 PROSPECTIVE JUROR NO. 7: We understand that people
15 aren't going to be happy with the position that they're in.

16 PROSPECTIVE JUROR NO. 7: Yes.

17 MR. SCHIECK: Your Honor, I'm going to object.
18 Actually we do expect jurors to come in here neutral.

19 MR. SEATON: No. My question was...

20 THE COURT: Please, I'm going to overrule your
21 objection for this reason: Again, this is not the guilt phase,
22 and most people in these United States don't like people who kill
23 folks. It's just as simple as that. One really must listen to
24 the news and discussions you hear on CNN and CSPAN to understand
25 that. And the question here is not whether they like them or

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1 dislike them or whether or not they can set aside their
2 convictions.

3 And this is much different from the guilt phase where you
4 have to determine if they're guilty, where these questions may be
5 most important. But they have been convicted, and they are
6 convicted, and they will remain convicted. And so you don't have
7 to like people who have been convicted.

8 Sit down, Counsel.

9 That's why I'm overruling your objection. The question that
10 concerns us: Can you set aside the fact that they have been
11 convicted and determine what three possible forms of punishment
12 that they're going to get? You're not asking the jury to let
13 them go. But only should they get life without the possibility
14 of parole, life with the possibility of parole or the death
15 penalty? And if they're pre --

16 Well, I won't go past that, because you can still voir dire
17 on that. But I will let you go on later on to make your record
18 on what I've said. And that's the primary difference between the
19 penalty hearing and the guilt phase. And, Counsel, I'll let you
20 make your record in a few minutes too.

21 MR. WALL: In a few minutes?

22 THE COURT: Yes.

23 MR. SEATON: You heard what...

24 THE COURT: But, Mr. Seaton, please be careful on where
25 you phrase that.

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81004397
1 MR. SEATON: I will. And I understand the difficulty.
2 And let me say it a little differently and see if you agree with
3 this.

4 While on one hand we don't expect you to come in here happy
5 with these Defendants because they in truth and in fact are
6 murderers, convicted murderers, of their own family, of one of
7 their own family...

8 PROSPECTIVE JUROR NO. 7: Yes, sir.

9 MR. SEATON: ...what we do expect--not expect of
10 everybody, but what we hope of out of the final jury--is that
11 whatever their anger, whatever your anger about what you know
12 about these two young men, whatever your feelings are about the
13 community in general and where it has gone and where it's
14 heading, that you could set aside those feelings--not
15 disassociate yourself from them, because you'll always have them.
16 But in terms of determining the penalty for these individuals,
17 take those feelings and put them aside and be able to say to us
18 "I will listen to all of the evidence. I will listen to what the
19 State has to say. I'll listen to what the Defense has to say, and
20 I will be as objective and decent and honest a juror as I can
21 possible be. And I will render as fair a decision as I'm able
22 to."

23 That may be the death penalty; it may be the worst of all
24 decisions. But the point that we want to make is that we want
25 people who are capable of considering everything. Even if it's

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1 just to consider it and then reject it and choose something else,
2 but at least to consider it.

3 And my question to you is: Are you that kind of a juror, or
4 would you be that kind of a juror? Could you put aside whatever
5 ill-will feelings that you have toward anything that might impact
6 this case and judge these guys on whatever the evidence is that's
7 put before you as a juror?

8 PROSPECTIVE JUROR NO. 7: I could do that.

9 MR. SEATON: All right. Then I would suggest to the
10 Court that the challenge for cause is not appropriate at this
11 time.

12 THE COURT: Mr. Wall, do you want to ask your questions
13 now?

14 MR. WALL: On all areas, Judge?

15 THE COURT: Just on the challenge.

16 MR. WALL: Well, Mr. Neagle, based on the fact that a
17 friend of yours was the victim of a murder a year ago, I think?

18 PROSPECTIVE JUROR NO. 7: Yes, approximately a year.

19 MR. WALL: Based on the fact that you have knowledge
20 about this case from a friend or acquaintance who lived near the
21 victims, based on the fact that you followed this case in the
22 newspaper and it was one of the reasons that you wanted to get
23 your own grandchildren out of this city, do you think you can be
24 fair to these two men?

25 PROSPECTIVE JUROR NO. 7: Yes, I do.

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8JD04398

1 MR. WALL: If you were sitting in their position...

2 PROSPECTIVE JUROR NO. 7: With the evidence presented
3 to me.

4 MR. WALL: Well, knowing what you know about the
5 offense already?

6 PROSPECTIVE JUROR NO. 7: Uh-huh.

7 THE COURT: Yes or no?

8 PROSPECTIVE JUROR NO. 7: Yes.

9 MR. WALL: If you were sitting where they are, would
10 you want twelve jurors in the frame of mind that Charles Neagle
11 is in right now to hear their case?

12 PROSPECTIVE JUROR NO. 7: Yes.

13 MR. WALL: When you told us before that you didn't
14 think you could really be fair to them, can you tell me how your
15 feelings have changed in the last...

16 PROSPECTIVE JUROR NO. 7: Like I said, sir, I don't
17 know what these gentlemen's goals are.

18 MR. WALL: What their what?

19 PROSPECTIVE JUROR NO. 7: Is their goal to get out of
20 prison? That's never been stated. I know I'm being a little
21 emphatic on one side, but let me talk about the rehabilitation of
22 these gentlemen. Certainly they've been rehabilitated for the
23 last ten years; they've had no choice. Am I getting off the
24 course here?

25 MR. WALL: No.

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8JD04399

1 PROSPECTIVE JUROR NO. 7: Okay.

2 MR. WALL: If you were to learn that one or both
3 Defendants would be arguing to you for a sentence of life in
4 prison with the possibility of parole, could you consider that
5 sentence equally with the sentence of death?

6 PROSPECTIVE JUROR NO. 7: Probably not. I'd like to
7 change that. Probably not, sir.

8 MR. WALL: Okay.

9 PROSPECTIVE JUROR NO. 7: When you come right down to
10 it, they've been convicted.

11 MR. WALL: And that's what we want.

12 PROSPECTIVE JUROR NO. 7: Yes, sir.

13 MR. WALL: In light of that, do you feel like you could
14 be fair to them?

15 PROSPECTIVE JUROR NO. 7: I could still be fair to
16 them. And that could be a two-edged sword there, the way your
17 question was put to me. And I'm going back to considering all
18 the evidence.

19 MR. WALL: Okay. What I understood you...

20 PROSPECTIVE JUROR NO. 7: And that's all I can do.

21 MR. WALL: What I understood you to say a few minutes
22 ago is that you wouldn't be able to consider all three penalties
23 equally?

24 PROSPECTIVE JUROR NO. 7: That's true.

25 MR. WALL: Okay. If you couldn't consider all three

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8JD04400

8JD04401
1 penalties -- well, if you couldn't really consider life in prison
2 with the possibility of parole for these two men, and that is one
3 of the possible sentences, don't you think that's a little bit
4 unfair to them to have somebody who won't consider one of the
5 sentences sitting on their jury?

6 MR. SEATON: Judge, before he answers on that, I'd like
7 to make an objection and just maybe have Mr. Wall ask him some
8 different questions as being preliminary. He had first asked him
9 if he could consider all three penalties equally; he said no. He
10 has not asked him if he could consider all three penalties to
11 some degree.

12 THE COURT: He said he couldn't consider them all
13 equally.

14 MR. SEATON: But then he leapfrogged that into the --
15 he assumed that he could not.

16 THE COURT: The question again, sir, is do you want him
17 to ask certain questions. I'm not at liberty to tell the
18 Counselor what questions he should ask him. There's a difference
19 to sit down and to sustain your objection or overrule your
20 objection. I think at this time I'm going to overrule it.

21 MR. WALL: Mr. Neagle, let me ask you this. Maybe this
22 is simpler. Hypothetically speaking, one of these two
23 Defendants, through their attorneys, are going to be asking you
24 for a sentence of life in prison with the possibility of parole.
25 My understanding of your earlier answers is that you wouldn't

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8JD04401

8JD04402

1 really consider that equally with one of the more harsh
2 sentences?

3 PROSPECTIVE JUROR NO. 7: That's true.

4 MR. WALL: Okay. I light of that, and the fact that
5 life in prison with the possibility of parole is one of the
6 available sentences for this offense, do you think it would be
7 fair to have a juror who wouldn't really consider one of those
8 sentences sitting on the case?

9 PROSPECTIVE JUROR NO. 7: No, I don't think that would
10 be fair. What I said there, sir, is I am willing to be
11 convinced. That's all I'm saying.

12 MR. WALL: Okay. But as you sit here now, life in
13 prison with the possibility of parole is not something that you
14 would consider appropriate, is it?

15 PROSPECTIVE JUROR NO. 7: As I sit here now, that is
16 true, sir.

17 MR. WALL: Okay. Thank you.

18 THE COURT: I'm going to sustain the challenge. I
19 think Mr. Neagle has been quite candid with us as to his
20 thoughts, although we are not permitted to instruct a juror or to
21 argue that he is conscious of his community. Mr. Neagle has
22 indicated that he feels that way, to such an extent that he's
23 ready to move. He's also instructed us that he wants to know
24 what the Defendants want, and he's indicated that if they want to
25 come out because they've been in jail ten years, he perhaps could

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8JD04402

8J004403
1 not render such a sentence and that he has enough social -- some
2 bit of advice, and I'm going to excuse him.

3 Thank you, sir, for coming down...

4 PROSPECTIVE JUROR NO. 7: Thank you, sir.

5 THE COURT: ...and for your candor.

6 MR. SCHIECK: Your Honor, before he goes can we inquire
7 whether or not he's discussed any of his other knowledge...

8 THE COURT: I thought you did, but I'll ask him.

9 Have you discussed your feelings with any of the other
10 jurors?

11 PROSPECTIVE JUROR NO. 7: No, sir, I haven't.

12 THE COURT: And I'm going to order you at this time to
13 not do so with any other juror or anybody else until this case is
14 over with finally.

15 PROSPECTIVE JUROR NO. 7: Absolutely.

16 THE COURT: All right. Thank you.

17 PROSPECTIVE JUROR NO. 7: Thank you, sir.

18 THE COURT: Report back to the jury commissioner and
19 tell him I have excused you.

20 Bring me in juror 527, please. I've been informed that
21 Juror 527 -- sir, please have a seat up here by the microphone.

22 You are Juror Badge 527. And what is your name, sir?

23 BADGE NO. 527: Shawn Patrick Gardner.

24 THE COURT: I've been informed by my Clerk that you
25 have some knowledge of this case?

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8JD04403

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1 BADGE NO. 527: The only knowledge I have is that I
2 found out last night my father sat on this jury ten years ago.

3 THE COURT: And how did you find out?

4 BADGE NO. 527: I was talking to my dad about it last
5 night.

6 THE COURT: Didn't I admonish you not to talk with
7 anyone...

8 BADGE NO. 527: True story. Yeah.

9 THE COURT: ...concerning this case?

10 BADGE NO. 527: Yes, sir.

11 THE COURT: Every time you've left this place, I've
12 admonished you not talk to anyone. What did your dad tell you?

13 BADGE NO. 527: Nothing. He just said that was the
14 same one that he sat on. I don't really talk to my dad a lot. I
15 just started talking to him again.

16 THE COURT: Mr. Wall, any questions you want to ask
17 him?

18 MR. WALL: Judge, I think the information we've
19 received so far would be sufficient. I would state the challenge
20 for cause.

21 THE COURT: Mr. Schieck?

22 MR. SCHIECK: Join in the challenge, your Honor.

23 MR. SEATON: No challenge -- no traverse. I'm sorry.

24 THE COURT: You are challenging for cause or you're not
25 challenging for cause?

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8JD04404

1 MR. SEATON: I am not challenging...

2 THE COURT: No, Mr. Wall.

3 MR. WALL: Yes, I am challenging for cause, your Honor.

4 MR. SCHIECK: That's what I'm joining in, your Honor.

5 THE COURT: Do you have any questions you want to ask,
6 Mr. Schieck?

7 MR. SCHIECK: No, your Honor.

8 THE COURT: Challenge will be denied.

9 In fact, let me ask you a question. Is there anything you
10 may have seen or read or heard or talked to your dad about that
11 would cause you to have any impression as to what sentence should
12 be given to these two men?

13 BADGE NO. 527: Could you repeat the question?

14 THE COURT: I believe what Mr. Wall said wasn't quite
15 so obvious, so I expect I can't do a better job on it.

16 Have you formed any impressions as to what sentence should
17 be given to Mr. Moore and Mr. Flanagan by virtue of your
18 discussions with your dad?

19 BADGE NO. 527: Not really.

20 THE COURT: And your dad did not discuss any facts
21 about this case?

22 BADGE NO. 527: No, sir.

23 THE COURT: If I let you stay on the jury, are you
24 going to talk to him again or anybody else?

25 BADGE NO. 527: No, sir.

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8JD04405

1 THE COURT: Challenge will be denied.

2 MR. WALL: Your Honor, with the denial of the
3 challenge, may I ask him some questions? Because if we get to
4 him, any of these questions couldn't be asked in front of the
5 other members.

6 THE COURT: Go ahead.

7 MR. WALL: When was it -- do you know when it was that
8 your father sat on the jury--what year?

9 BADGE NO. 527: Not really. He just said that --
10 because I do remember him going to jury duty when I was a kid,
11 back in '85. And the only thing that I really asked him was were
12 they guilty or not guilty. He said, "They were guilty," and that
13 was it.

14 MR. WALL: Did he talk to you -- did he talk to you
15 about any penalties?

16 BADGE NO. 527: No.

17 MR. WALL: Did you follow the case in the paper while
18 he was sitting on the jury?

19 BADGE NO. 527: No. I don't read the paper.

20 MR. WALL: How old were you in '85?

21 BADGE NO. 527: '85? Ten. Wait.

22 MR. WALL: How old are you now?

23 BADGE NO. 527: I'm going to be 25 this year.

24 MR. WALL: Okay. After the trial was over, did he talk
25 to you about the case or any of the facts in the case?

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8JD04406

1 BADGE NO. 527: No.

2 MR. WALL: Okay. Were you living with him at the time?

3 BADGE NO. 527: Yes.

4 MR. WALL: Do you remember reading about this case in
5 the paper anytime since that trial?

6 BADGE NO. 527: No, I don't read the paper.

7 MR. WALL: Have you talked to any of the other jurors
8 about what you came in to tell us this morning?

9 BADGE NO. 527: No.

10 MR. WALL: Thank your Honor.

11 THE COURT: Challenge for cause denied.

12 MR. SEATON: Judge, I have one in the same area, if I
13 might inquire of him?

14 THE COURT: Please, gentlemen, so we can get this case
15 moving on. We may not even get to him, so let's be brief.

16 MR. SEATON: I know. But if we do, we'd have to do
17 this all over again.

18 Do you know whether or not the Defendants were ever
19 sentenced before today?

20 BADGE NO. 527: No.

21 MR. SEATON: Okay.

22 That's the only one I have.

23 THE COURT: I again admonish you, sir, not to discuss
24 this case with anybody else. And if you should happen to see it
25 on TV or the newspaper, close it up and turn it off or something.

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8JD04407

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1 Do you understand, sir?

2 BADGE NO. 527: Gotcha.

3 THE COURT: Okay. You may go back out, sir. Take your
4 seat back over there. Bring in -- no. I have a couple of
5 comments. Wait outside a second.

6 (Colloquy, not on the record)

7 THE COURT: Mr. Seaton, I think we've told this jury
8 that that portion, the sentencing portion, was overturned and
9 brought back by a Supreme Court. That's why we're here.

10 MR. SEATON: I couldn't remember if we had or not. And
11 if he had answered yes, I wanted to ask him did he know what that
12 sentence was. That was the -- the latter part of the question
13 would have been the important part.

14 THE COURT: All right.

15 MR. SEATON: I apologize though, Judge.

16 MR. WALL: Would the Court prefer that we make a record
17 on any of these now or at some other time?

18 THE COURT: I don't know what your record might be on
19 this now, seeing as your motion was granted and he's no longer
20 here.

21 MR. WALL: I thought it was denied.

22 MR. SCHIECK: The last motion was denied, your Honor.

23 THE COURT: Oh.

24 MR. WALL: Challenge for cause on this...

25 THE COURT: Yes, you may.

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8JD04408

8JD04409

1 MR. WALL: It would be our position that in light of
2 the fact that his father sat on a jury where the evidence of
3 devil worship, the evidence of -- well, of prosecutorial
4 misconduct at a proceeding that was tainted to the point that it
5 was reversed by the Nevada Supreme Court, and the fact that they
6 received the death penalty--although he indicates he wasn't aware
7 of that--he has already spoken with family members despite the
8 Court's admonition, just in light of the highly charged issues
9 that came before the jury in 1985, and I'm sure the rest of his
10 relatives were aware that his father sat on the jury, and I don't
11 know what information was passed between them. But in an
12 abundance of caution I think it would be our position that it
13 would be prudent to not allow him to be available to sit on a
14 jury in this case in the retrial.

15 THE COURT: Mr. Schieck?

16 MR. SCHIECK: Your Honor, I would join in everything
17 that Mr. Wall says and add one additional observation so that the
18 record is clear.

19 Number one, this juror has already violated the admonition
20 of this Court and discussed the case with someone with personal
21 knowledge.

22 Number two, the discussion was, to his father, "Were they
23 really guilty"--indicating again that he's not even accepting the
24 instruction that he's received that the jury can't even consider
25 that.

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8JD04409

8JD04410
1 And number 3 was his facial expression and body language and
2 demeanor when he said what his father's response was. And the
3 response as he played out in the words of his father was, "Yes,
4 they were!" It was a very emphatic response that he got from his
5 father.

6 So we have in this case a potential juror that has discussed
7 the previous proceedings with a prior juror, and I do not think
8 that he should be allowed to sit in this case.

9 THE COURT: Mr. Seaton?

10 MR. SEATON: I want to straighten out what I think Mr.
11 Schleck's interpretations were. When he went to his father and
12 asked him, "Were they really guilty," my understanding was he was
13 referring to back in 1985. My understanding of what happened
14 last night, or whenever it did happen, was that his father came
15 to him and said, "That is the jury that I sat on," and there was
16 no more conversation.

17 So I don't know that this gentleman had violated the Court's
18 order that badly. Clearly he should have cut things off maybe a
19 little faster, but I don't know that he went out seeking new
20 information, and he has disavowed any knowledge or any
21 willingness to do anything wrong in the future.

22 I don't totally disagree with what Mr. Wall says in terms of
23 an abundance of caution. I'm not going to be troubled if the
24 Court let's him off, but I don't think there is any true cause,
25 as we know it today, to do that.

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8JD04410

8JD04411

1 THE COURT: Gentlemen, you've had your chances on this
2 back and forth thing. My function here is to try and determine
3 whether or not a juror may render a fair and impartial decision.
4 And today's means of communications, and today's marital or
5 nonmarital associations, people ask questions, people say things.
6 People turn on their radios; they turn on their TV's and they
7 watch.

8 In the absence of sequestering them where you can control
9 that matter, they will see and they'll hear. Some will come in
10 and report, and some won't. If it happens to be a page 1 case,
11 or sitting on page 1, and you happen to be walking by the
12 newsstand coming into the courthouse, you would see it. The
13 question is again, counsel, is whether or not you can hear it.

14 I'm not quite adept, Mr. Schieck, in interpreting body
15 language or facial expressions to any degree of accuracy. And
16 you may see something either I didn't see -- of course it's
17 possible.

18 No fact was gained that has not been already given to this
19 jury--that is that the Defendants have been convicted. He was
20 ten years old. I doubt if his father -- most parents don't sit
21 down and have deep thought discussions with ten year old boys and
22 girls.

23 MR. SCHIECK: Your Honor, if I might, he was 15, was
24 the record.

25 THE COURT: All right. He's 25 now. 1985 to 1995 I

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8JD04411

1 think is ten years.

2 MR. SCHIECK: That would make him 15.

3 THE COURT: All right. 15 then. And even so, most of
4 us don't do that without...present; however, if children ask
5 those kind of questions, they get involved. But he says he
6 didn't, didn't know anything about it. So that will be my order
7 at this time.

8 Bring in my jury. Let's get started here.

9 MR. SEATON: Judge, before you do, excuse me. I just
10 want to call something to the Court's attention.

11 The next juror, as I understand it, to be called to the
12 empty seat is Kathy Sticker, Badge No. 503. My notes show that
13 Mr. Flanagan was a student at her high school, and I just have a
14 sense that she may know things that we're not going to be able to
15 get into in the presence of the other jurors. I think Question
16 58 my notes show say that.

17 THE COURT: Bring in Juror 503, please, and put her in
18 seat No. 7, just up front here.

19 Please take the first seat. On Question No. 57, I believe
20 it was, you indicated that Mr. Flanagan was a student?

21 BADGE NO. 503: My recollection at that time, I thought
22 that he might have been. But after I've given it some thought, I
23 don't believe he was at that time. I was on a long-term sub
24 position at that time, and students were concerned over something
25 that had happened which brought the situation to my attention.

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8JD04412

8JD04413

1 And I told them that if they felt the need to talk about it that
2 we could talk either after class or after school.

3 I really do not recall if he was on the roll book at that
4 time, Judge. I didn't really give too much thought to the
5 occurrences as they were happening. I tried to counsel the
6 people they claimed were friends of Dale's; I don't even recall
7 their names. And we talked, and I said, "well, if this is of a
8 very serious nature to you, then you might need to see the school
9 counselor. So I referred them on.

10 THE COURT: What do you recall the students talking to
11 you about or telling you about this case?

12 BADGE NO. 503: One young lady in...

13 THE COURT: Excuse me! Please close that door! I'm
14 sorry.

15 BADGE NO. 503: It was one young lady in particular; I
16 believe she claimed she was a very close friend or an old
17 girlfriend and that one of the Defendants--I believe it was Dale
18 -- and I don't know if my recollection is correct on this. But
19 it seems to me from what I can recall that she did have privy to
20 some of the graphic information of the situation that occurred.
21 And she relayed those situations to me, and it pretty much
22 devastated me. I was relatively still new to the school district
23 and to the area and wasn't quite used to this situation in a big
24 city school, and it made an impression upon me. I had no reason
25 to think that she was lying.

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8JD04413

81004414

1 And it was at that point that I thought that if this is what
2 was upsetting the young girl that she needed to go see, you know,
3 proper counseling.

4 THE COURT: Is there anything about the comments that
5 you may have heard or had with your students that would cause you
6 to be in any way unfair to either the State or the Defendant?
7 Can you sit on -- if you are selected as a juror in this case,
8 can you sit here and determine their fate fairly from the
9 evidence that you hear from the stand?

10 BADGE NO. 503: I really don't think I could.

11 MR. SCHIECK: Your Honor, also if you could look at her
12 answer to Question 58C...

13 THE COURT: Are you making a challenge, sir?

14 MR. SCHIECK: Yes, sir.

15 THE COURT: Do you join in the challenge?

16 MR. WALL: We'll join, your Honor.

17 THE COURT: Any traverse?

18 MR. SEATON: No traverse.

19 THE COURT: Thank you very much. We're going to excuse
20 you.

21 MR. SEATON: Judge, you might ask if any conversations
22 were had.

23 THE COURT: Oh, please. Have you discussed this case
24 with anybody? Any of your fellow jurors?

25 BADGE NO. 503: Wednesday when we did the

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8JD04414

8JD04415
1 questionnaire, just if we remembered it or not. That's about it.

2 THE COURT: Do you recall which ones you discussed it
3 with?

4 BADGE NO. 503: No, sir.

5 THE COURT: Do you recall what facts you discussed
6 about it?

7 BADGE NO. 503: Basically just if we were here at that
8 time and happened to remember anything about the case.

9 THE COURT: All right. Okay. I'm going to order you
10 now not to discuss this matter with anybody until this case is
11 finally concluded. Then you can talk about it all you want to
12 after that. All right?

13 BADGE NO. 503: Yes, sir. Thank you.

14 THE COURT: Thank you very much. Bring in my jury.
15 (Prospective jurors in at 11:16 a.m.)

16 THE COURT: Continuation of C69-269, State of Nevada
17 vs. Flanagan and Moore. Let the record reflect the presence of
18 the Defendants with counsel, District Attorney, other officers of
19 the Court.

20 Will the Clerk please call roll call of the jury?

21 (Clerk calls roll call of the prospective jurors)

22 THE COURT: I understand that Juror 520 has gone to the
23 nurse.

24 THE CLERK: It's Karen M. Dunbar.

25 THE COURT: Please continue.

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8JD04415

1 (Clerk continues to call roll call of prospective jurors)

2 THE COURT: With the exception of Juror 520, will
3 counsel stipulate to the presence of the jury panel?

4 MR. SEATON: Yes, Judge.

5 MR. WALL: Yes, your Honor.

6 MR. SCHIECK: Yes, your Honor.

7 THE COURT: And may we proceed in the absence of Juror
8 520 at this time?

9 MR. SEATON: Yes.

10 MR. WALL: Yes, your Honor.

11 MR. SCHIECK: Yes, your Honor.

12 THE COURT: Will the Clerk draw another name, please?

13 THE CLERK: Brandi Michalle Stahl, Badge No. 504,
14 S-T-A-H-L.

15 THE COURT: Ladies and gentlemen of the jury, each time
16 you leave here I caution you not to discuss this case with
17 anybody; it is most important that you do not discuss it with
18 anybody. So please follow our admonitions. We appreciate it
19 very much, and it will save us all a lot of time. Thank you very
20 much.

21 Ms. Stahl, how long have you lived in Clark County, Nevada?

22 PROSPECTIVE JUROR NO. 2: 18 years.

23 THE COURT: Where were you born and raised?

24 PROSPECTIVE JUROR NO. 2: I was born in Niagara Falls,
25 New York; raised here.

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8JD04416

1 THE COURT: What is your educational background?

2 PROSPECTIVE JUROR NO. 7: Twelve years, sir.

3 THE COURT: What has been your employment for the past
4 ten years?

5 PROSPECTIVE JUROR NO. 7: I work at the Flamingo
6 Hilton. I've worked at the Las Vegas Hilton, front desk, and
7 professional marketing as a secretary.

8 THE COURT: And what is your religious preference?

9 PROSPECTIVE JUROR NO. 7: Presbyterian.

10 THE COURT: Do you attend church regularly?

11 PROSPECTIVE JUROR NO. 7: No, I do not.

12 THE COURT: How old are you?

13 PROSPECTIVE JUROR NO. 7: Twenty.

14 THE COURT: Are you married or single?

15 PROSPECTIVE JUROR NO. 7: Married.

16 THE COURT: And is your husband employed?

17 PROSPECTIVE JUROR NO. 7: Yes, he is.

18 THE COURT: Where does he work and what are his duties?

19 PROSPECTIVE JUROR NO. 7: American General Finance;
20 bachelor in financing.

21 THE COURT: And do you have any children?

22 PROSPECTIVE JUROR NO. 7: No, I don't.

23 THE COURT: Are you acquainted with either of the
24 Defendants or their attorneys?

25 PROSPECTIVE JUROR NO. 7: No.

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8JD04417

1 THE COURT: Do you know anyone in the District
2 Attorney's Office?

3 PROSPECTIVE JUROR NO. 7: No, I don't.

4 THE COURT: Did you recognize any of the persons whose
5 names were given to you as possible prosecution witnesses?

6 PROSPECTIVE JUROR NO. 7: No, sir.

7 THE COURT: In the State of Nevada there are three
8 possible forms of punishment that the jury may consider and then
9 select the one that they believe is the most appropriate under
10 the law and facts of this case. Those three possible forms of
11 punishment are: the imposition of the death penalty; life
12 imprisonment without the possibility of parole; and life in
13 imprisonment with the possibility of parole. Do you understand,
14 ma'am?

15 PROSPECTIVE JUROR NO. 7: Yes, sir.

16 THE COURT: In your present state of mind, can you, if
17 selected as a juror, consider equally all three possible forms of
18 punishment and then select the one that you feel is most
19 appropriate?

20 PROSPECTIVE JUROR NO. 7: Yes, sir.

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

23 PROSPECTIVE JUROR NO. 7: No.

24 THE COURT: Are you now involved in or have you ever
25 been involved in any law enforcement work?

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8JD04418

1 PROSPECTIVE JUROR NO. 7: No, sir.

2 THE COURT: Do you have any close friends or relatives
3 who are members of any law enforcement agency?

4 PROSPECTIVE JUROR NO. 7: No.

5 THE COURT: Have you ever appeared as a witness in any
6 criminal prosecution?

7 PROSPECTIVE JUROR NO. 7: No.

8 THE COURT: Have you ever served on any kind of a jury
9 before?

10 PROSPECTIVE JUROR NO. 7: No, sir.

11 THE COURT: Have you ever been in the military service?

12 PROSPECTIVE JUROR NO. 7: No.

13 THE COURT: Can you and will you follow the Court's
14 instructions on the law even though you may differ with them?

15 PROSPECTIVE JUROR NO. 7: Yes.

16 THE COURT: And if you were either of the Defendants,
17 would you want twelve people in your present state of mind sit
18 and judge your case?

19 PROSPECTIVE JUROR NO. 7: Yeah.

20 THE COURT: Do you know of any reason whatsoever,
21 whether I've asked you or not, why you could not sit as a fair
22 and impartial juror in this case?

23 PROSPECTIVE JUROR NO. 7: No, I don't.

24 THE COURT: Mr. Wall?

25 MR. WALL: Thank you, your Honor.

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8JD04419

8JD04420
1 Ms. Stahl, you grew up here, although you were born in
2 Niagara Falls. You moved here when you were very young?

3 PROSPECTIVE JUROR NO. 7: Yes.

4 MR. WALL: Do you remember ever hearing about this case
5 in the newspaper or on television any time in the past ten years?

6 PROSPECTIVE JUROR NO. 7: No, I don't.

7 MR. WALL: On the questionnaire there was a question--
8 it's No. 59C, your Honor--about whether or not your views or
9 state of mind would prevent or impair your performance in
10 accordance with the Court's instructions. And that question
11 basically dealt with being able to render a verdict on each of
12 the three different penalties, and you checked yes, your views
13 would impair you or prevent you from acting as a juror in this
14 case.

15 Was that because of -- I mean, was that your true answer, or
16 was the question just so badly drawn?

17 PROSPECTIVE JUROR NO. 7: Yeah, I didn't really
18 understand the question that well. But that's not the case.

19 MR. WALL: You wrote some comments on the back...

20 PROSPECTIVE JUROR NO. 7: Uh-huh.

21 MR. WALL: ...about how you feel about the death
22 penalty. Can you share with us how you feel about the
23 responsibility that you would have if you were selected to be a
24 juror on this case?

25 PROSPECTIVE JUROR NO. 7: Well, I don't really know if

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8JD04420

8JD04421

1 I could ever convict somebody of the death penalty. I mean, I'd
2 feel guilty. I don't know. I just have a really hard time
3 making decisions. Even if it's to eat somewhere I can't decide.
4 Yeah, but I'd feel bad. I'd have to live with it.

5 MR. WALL: Well, recognizing that everybody comes in
6 here with their own life experiences, and I've sort of asked
7 questions in a vacuum in this process. You know some facts about
8 the case from what was in the questionnaire and what you've heard
9 over the last several days. And the Court asked you --

10 Well, before we get to that, you've been told that for the
11 offense for which these individuals have been convicted there are
12 three possible punishments. There's life in prison with the
13 possibility of parole some day, life in prison without; and if
14 certain things are proven to the jury beyond a reasonable doubt,
15 there's a possibility of the death penalty.

16 If the Judge were to instruct you that you need to consider
17 all three of those, would you do that?

18 PROSPECTIVE JUROR NO. 7: Yes, I would.

19 MR. WALL: And if after considering all the evidence
20 you thought that a sentence of life in prison was appropriate,
21 and the jury was unanimous, would you come into the courtroom and
22 have that verdict announced?

23 PROSPECTIVE JUROR NO. 7: If it was life imprisonment?

24 MR. WALL: Yes.

25 PROSPECTIVE JUROR NO. 7: Yes.

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8JD04421

81004422

1 MR. WALL: If in considering all the facts and going
2 back into the jury room and there was a unanimous decision that
3 the -- I mean, if in considering everything you thought that
4 maybe even the death penalty was appropriate, would you be able
5 to come back into the courtroom and as a jury announce that that
6 was your verdict?

7 PROSPECTIVE JUROR NO. 7: Yeah, I would have to.

8 MR. WALL: Okay. The question before you is not
9 whether you think it would be easy, because obviously if you're
10 selected as a juror you're going to bear an awesome
11 responsibility.

12 PROSPECTIVE JUROR NO. 7: Uh-huh.

13 MR. WALL: But what we want to know is whether or not
14 you could and would consider all possible sentences based on the
15 evidence that you hear in the courtroom?

16 PROSPECTIVE JUROR NO. 7: Right.

17 MR. WALL: Could you do that?

18 PROSPECTIVE JUROR NO. 7: Yes.

19 MR. WALL: Now, those questions that I asked you were
20 assuming that everyone came to a complete agreement. If you were
21 in a situation where you were one of the twelve jurors and eleven
22 of them felt pretty strongly one way and you felt pretty strongly
23 the other way, how would you try to deal with the pressure that
24 you might feel?

25 PROSPECTIVE JUROR NO. 7: First I would try to get my

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8JD04422

81004423
1 point across of what I thought. Sometimes I can be easily
2 convinced if I'm outnumbered, so it would just depend on -- I
3 don't know.

4 MR. WALL: If you felt pretty strongly about whichever
5 sentence you thought was appropriate, not everyone else agreed
6 with you, would you stand your ground if you thought it was
7 right, or would you just feel like, "Well, we better be
8 unanimous, so I'll go along with the others"?

9 PROSPECTIVE JUROR NO. 7: It's kind of hard to say; it
10 just depends on what they thought should be done and what I
11 think. I don't know; it just depends.

12 MR. WALL: Well, if you were in that situation, you
13 certainly should consider the points of view and talk about it.
14 But even if after doing that you still felt that the verdict that
15 you selected was appropriate, would you stick by that?

16 PROSPECTIVE JUROR NO. 7: If I felt so, yeah. I would
17 stick by it.

18 MR. WALL: Okay. Knowing that Mr. Flanagan and Mr.
19 Moore, back at the time of this offense were about the same age
20 that you are now, maybe a little younger, would that affect your
21 ability at all to be a fair and impartial juror in this case?

22 PROSPECTIVE JUROR NO. 7: No.

23 MR. WALL: Thank you. I'll pass for cause, your Honor.

24 THE COURT: Mr. Schieck?

25 MR. SCHIECK: Thank you, your Honor.

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8JD04423

1 Ms. Stahl, you indicated in your answer to Question 37 that
2 you can't see far away, and I notice you're not wearing glasses
3 today either.

4 PROSPECTIVE JUROR NO. 7: No, they're in my car.

5 MR. SCHIECK: How bad is your vision?

6 PROSPECTIVE JUROR NO. 7: It's restricted on my license
7 if that's...

8 THE COURT: Can you see Mr. Schieck from where you
9 are...

10 PROSPECTIVE JUROR NO. 7: Oh, yes.

11 THE COURT: ...in detail?

12 PROSPECTIVE JUROR NO. 7: Yeah, I can see him.

13 MR. SCHIECK: Am I blurry?

14 PROSPECTIVE JUROR NO. 7: You're not -- you're a little
15 blurry from there.

16 MR. SCHIECK: Are you going to -- if you're selected
17 for the jury, are you going to bring your glasses to Court so you
18 can see the exhibits and evidence?

19 PROSPECTIVE JUROR NO. 7: Yeah.

20 MR. SCHIECK: Okay? With your glasses on you won't
21 have any problem?

22 PROSPECTIVE JUROR NO. 7: No, no problem.

23 MR. SCHIECK: Okay. I see on your questionnaire you
24 like to read lawyer...

25 THE COURT: Number?

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8JD04424

1 MR. SCHIECK: 48, your Honor.

2 THE COURT: Thank you, sir.

3 MR. SCHIECK: ...that you like to read lawyer/client
4 books?

5 PROSPECTIVE JUROR NO. 7: Uh-huh.

6 MR. SCHIECK: Do you recall...

7 THE COURT: Yes or no?

8 PROSPECTIVE JUROR NO. 7: Oh, yes. I'm sorry.

9 MR. SCHIECK: Do you recall what lawyer/client books
10 you've read recently?

11 PROSPECTIVE JUROR NO. 7: John Grisham.

12 MR. SCHIECK: Have you read The Chamber?

13 PROSPECTIVE JUROR NO. 7: I started reading it, but I
14 never finished yet.

15 MR. SCHIECK: Is there a particular reason you didn't
16 finish it, or you just haven't had time?

17 PROSPECTIVE JUROR NO. 7: Well, in the middle of the
18 book, it didn't get any more interesting, so I haven't had the
19 chance to pick it up again.

20 MR. SCHIECK: Have you ever had the occasion to engage
21 in discussions or conversations concerning the death penalty?

22 PROSPECTIVE JUROR NO. 7: No, not really. Not at all.

23 MR. SCHIECK: What about since last week when you
24 filled out your questionnaire and found out this was a potential
25 death penalty case? Did you talk to anybody about it?

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8JD04425

1 PROSPECTIVE JUROR NO. 7: Probably just my husband.

2 MR. SCHIECK: Did you talk about any specific facts in
3 this case or about the death penalty in general?

4 PROSPECTIVE JUROR NO. 7: No, I just told him what the
5 case was and that the death penalty could be one of the
6 possibilities.

7 MR. SCHIECK: Did you voice to him your concerns
8 concerning the death penalty?

9 PROSPECTIVE JUROR NO. 7: No, not really.

10 MR. SCHIECK: Because in reading the part of your
11 explanation sheet that Mr. Wall referred to, it sounds like
12 you're opinion or philosophy on the death penalty has changed a
13 little bit since you filled out the questionnaire.

14 PROSPECTIVE JUROR NO. 7: How's that?

15 MR. SCHIECK: Because you indicate on the questionnaire
16 that you don't think you could actually impose the death penalty.

17 PROSPECTIVE JUROR NO. 7: Right.

18 MR. SCHIECK: And now today you said that you can
19 consider all three equally and would be able to do it.

20 PROSPECTIVE JUROR NO. 7: Well, if you have to do it
21 fair, you have to consider all three. Is that correct?

22 MR. SCHIECK: That's correct.

23 PROSPECTIVE JUROR NO. 7: Okay. So I'd have to do
24 that?

25 MR. SCHIECK: Yes. Not only do you have to consider

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8JD04426

8JD04427
1 all three, you have to be willing to impose anyone of the three
2 if that's the unanimous verdict of the jury. The question is:
3 Can you do that?

4 PROSPECTIVE JUROR NO. 7: I hope so.

5 MR. SCHIECK: Because I want you to understand that
6 both sides want jurors that can be fair. You understand it would
7 be unfair to the State if you got back into the jury room after
8 being selected on this jury and said, "You know, I've thought
9 about it, and I just am not even going to consider the death
10 penalty, because it would weigh too heavily on mind?"

11 PROSPECTIVE JUROR NO. 7: Uh-huh.

12 MR. SCHIECK: That will be unfair to Mr. Seaton. Just
13 like with other jurors or with yourself, if someone got back
14 there and said, "Look, I'm not even going to consider the other
15 two," that would be unfair to the Defendants. Do you think that
16 that might happen with you?

17 PROSPECTIVE JUROR NO. 7: It could, but I hope it
18 doesn't.

19 MR. SCHIECK: Okay. Thank you very much, ma'am. We'd
20 pass for cause, your Honor.

21 THE COURT: Mr. Seaton?

22 MR. SEATON: Thank you, Judge.

23 Mrs. Stahl, we hope it doesn't too--your mind change back in
24 the jury deliberation room, for either side.

25 PROSPECTIVE JUROR NO. 7: Right.

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8JD04427

8JD04428

1 MR. SEATON: Do you understand how unfair that would be
2 to either side?

3 PROSPECTIVE JUROR NO. 7: I do.

4 THE COURT: Is that a yes or no?

5 PROSPECTIVE JUROR NO. 7: Yes.

6 MR. SEATON: In your statement -- and I want to remind
7 you of your words, if I can, because that's really what this
8 revolves around. You said on the explanation sheet, "I don't
9 think I could..."

10 THE COURT: Number, sir?

11 MR. SEATON: On the explanation sheet. The very last
12 sheet, Judge.

13 "I don't think I could actually send someone to a death
14 penalty, even though I do believe an eye for an eye to
15 some point. I guess I would feel guilty sending
16 somebody to death. Really, does anybody deserve to
17 die?"

18 Do you remember those words?

19 PROSPECTIVE JUROR NO. 7: I do.

20 MR. SEATON: Okay. And does that -- did that pretty
21 accurately reflect your attitudes on, I think it was Thursday or
22 Friday last week, when you filled that out?

23 PROSPECTIVE JUROR NO. 7: Yeah.

24 MR. SEATON: Does that reflect your ideas and your
25 thoughts?

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8JD04428

1 PROSPECTIVE JUROR NO. 7: That does.

2 MR. SEATON: Have you changed at all now that you've
3 had a little chance to think about it?

4 PROSPECTIVE JUROR NO. 7: Not too much. I mean, that's
5 the way I feel.

6 MR. SEATON: Feel what you feel?

7 PROSPECTIVE JUROR NO. 7: Yeah.

8 MR. SEATON: What has there been in your life to help
9 you formulate your attitude about the death penalty?

10 PROSPECTIVE JUROR NO. 7: Nothing. I mean, that's just
11 the way I feel about it. There's nothing that's been on in my
12 life that would make me feel -- there's not been much in my life
13 so far, but nothing towards the death penalty that I don't like
14 or that I do like. I mean, it's just there, and it's one of the
15 choices. But I'm not against it, and I'm not for it.

16 MR. SEATON: Did you remember with one of the earlier
17 jurors I said (I think it was woman), "If you could be queen for
18 a day and select the law enforcement system that we were to have
19 in place, would you add the death penalty to it?" Do you think
20 that is something that our society can beneficially use in its
21 effort to deter crime?

22 Now you get to be the boss. Nobody can say you're wrong.

23 PROSPECTIVE JUROR NO. 7: Okay. I don't think so.

24 MR. SEATON: You wouldn't include it?

25 PROSPECTIVE JUROR NO. 7: No.

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8JD04429

8JD04430

1 MR. SEATON: That being the case then, can we assume
2 that you probably are very unlikely to give the death penalty in
3 this or any other case?

4 PROSPECTIVE JUROR NO. 7: You could. I mean, if you
5 wanted to assume.

6 MR. SEATON: Well, I want you to tell us. I get to
7 make all sorts of decisions, and a lot of them are wrong.

8 I need you tell me if that is probably a correct assessment
9 of who you are?

10 PROSPECTIVE JUROR NO. 7: I think so.

11 MR. SEATON: Let's change the question around. I'm not
12 going to put you in their chair; I'm going to put you in this
13 chair right over here. If you're sitting there, and you are the
14 State of Nevada and you are going to be asking a jury to return a
15 verdict of death, would you want twelve people of your like mind
16 sitting on the jury?

17 PROSPECTIVE JUROR NO. 7: I don't know. Maybe.

18 MR. SEATON: Maybe?

19 PROSPECTIVE JUROR NO. 7: Maybe.

20 MR. SEATON: Do you think with twelve people like you,
21 you could probably extend a good likelihood of getting the death
22 penalty?

23 PROSPECTIVE JUROR NO. 7: I don't think so.

24 MR. SEATON: Then would you really want twelve people
25 like you on the jury?

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8JD04430

1 PROSPECTIVE JUROR NO. 7: No.

2 MR. SEATON: Your answers aren't wrong. Believe me.
3 Everybody is entitled to their opinion. And this is a very
4 serious matter. Would you agree with that?

5 PROSPECTIVE JUROR NO. 7: I agree.

6 MR. SEATON: Okay. You just got married three weeks
7 ago.

8 PROSPECTIVE JUROR NO. 7: Correct.

9 MR. SEATON: That was a very important decision in your
10 life.

11 PROSPECTIVE JUROR NO. 7: Yeah, it was.

12 MR. SEATON: The most important you've ever made?

13 PROSPECTIVE JUROR NO. 7: I would say so.

14 MR. SEATON: How would you rank the decision to kill
15 somebody along with that decision? Is it a harder decision, more
16 important decision?

17 PROSPECTIVE JUROR NO. 7: Yeah, I think so.

18 MR. SEATON: Okay. So you have yet to come to that
19 crossroad. This would be the most important decision you've ever
20 made in your life?

21 PROSPECTIVE JUROR NO. 7: Okay.

22 MR. SEATON: Would the importance of it cause you to be
23 even less likely to impose the death penalty?

24 PROSPECTIVE JUROR NO. 7: Would it be less likely?

25 MR. SEATON: Less likely that you would impose the

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8JD04431

1 death penalty. You mentioned earlier that it was a decision, and
2 you were right on the money, it's a decision that you would have
3 to live with for the rest of your life.

4 PROSPECTIVE JUROR NO. 7: Right.

5 MR. SEATON: When you were talking to yourself about
6 the decision, would you probably say, "Self, I don't really want
7 to live with the decision that I contributed to somebody's
8 death?"

9 PROSPECTIVE JUROR NO. 7: I think so.

10 MR. SEATON: Now that we've had this discussion, do you
11 think probably the answer is that you would not consider the
12 death penalty in this case?

13 PROSPECTIVE JUROR NO. 7: It's kind of hard to say; I
14 don't know much of the facts, let alone I really wouldn't -- I
15 couldn't tell you.

16 MR. SEATON: Can you imagine a set of facts that would
17 allow you to return a verdict of death--a decision that you'd
18 have to live with for the rest of your life?

19 PROSPECTIVE JUROR NO. 7: I don't know.

20 MR. SEATON: I know it's hard. I apologize for putting
21 you on the spot. The decision is equally important to all of
22 this in this room as it is to you, so we need to make some
23 inquiries.

24 PROSPECTIVE JUROR NO. 7: Right. Can you repeat that
25 question?

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8JD04432

81004433

1 MR. SEATON: Probably not. I don't think I can
2 remember it.

3 The thing that I'm after, the answer that I'd like to get
4 from you--it's not a particular answer, but the question that we
5 need answered--is: Do you really believe, in your deepest heart
6 of hearts, that there would ever be a case that you could come
7 back with the death penalty?

8 PROSPECTIVE JUROR NO. 7: Any case? Even if I made one
9 up?

10 MR. SEATON: Yeah, you can do anything you want.

11 PROSPECTIVE JUROR NO. 7: I think so. I mean, I'm sure
12 if it was like my mom or something and something happened to her,
13 then that would be a different story.

14 MR. SEATON: Okay. Now, you have a little advantage in
15 this case. All of you do. It isn't your mom. It's Dale
16 Flanagan and Randy Moore, and they killed Dale Flanagan's
17 grandparents along with some other kids who were involved in it.
18 Is there any possibility in the world that we can add anything to
19 those facts that would cause you to come back with the death
20 penalty?

21 MR. SCHIECK: I'm going to object, your Honor. I think
22 that without knowing all of the facts, all of the aggravation and
23 all of mitigation. that that can't be answered. The proper
24 question is: Would she be able to consider all of the facts and
25 then consider that as a choice?

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8JD04433

8JD04307

1 names were given to you as possible prosecution witnesses?

2 PROSPECTIVE JUROR NO. 4: No, sir.

3 THE COURT: In the State of Nevada, there are three
4 possible forms of punishment that the jury may consider and then
5 select the one that they believe is the most appropriate under
6 the law and facts of this case. Those three possible forms of
7 punishment are: (a) the imposition of the death penalty; (b)
8 life imprisonment without the possibility of parole; and (c) life
9 imprisonment with the possibility of parole. Do you understand,
10 sir?

11 PROSPECTIVE JUROR NO. 4: Yes, sir.

12 THE COURT: In your present state of mind, can you, if
13 selected as a juror, consider equally all three possible forms of
14 punishment and then select the one that you feel is most
15 appropriate?

16 PROSPECTIVE JUROR NO. 4: Yes, sir.

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

19 PROSPECTIVE JUROR NO. 4: No, sir.

20 THE COURT: Are you now involved with or have you ever
21 been involved with any police work?

22 PROSPECTIVE JUROR NO. 4: No, sir.

23 THE COURT: And do you have any close friends or
24 relatives who are members of any police agency?

25 PROSPECTIVE JUROR NO. 4: No, sir.

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1 THE COURT: Have you ever appeared as a witness before
2 in any criminal prosecution?

3 PROSPECTIVE JUROR NO. 4: No, sir.

4 THE COURT: Have you ever served on any jury before?

5 PROSPECTIVE JUROR NO. 4: No, sir.

6 THE COURT: Have you ever been in military service?

7 PROSPECTIVE JUROR NO. 4: No, sir.

8 THE COURT: Have you ever been or anyone close to you
9 ever been a victim of a crime?

10 PROSPECTIVE JUROR NO. 4: No, sir.

11 THE COURT: Can you and will you follow the Court's
12 instructions on the law even though you may differ with them?

13 PROSPECTIVE JUROR NO. 4: Yes, sir.

14 THE COURT: If you were either of the Defendants, would
15 you want twelve people in your present state of mind to sit and
16 judge your case?

17 PROSPECTIVE JUROR NO. 4: Yes, sir.

18 THE COURT: Do you know of any reason whatsoever,
19 whether I've asked you or not, why you cannot sit as a fair and
20 impartial juror in this case?

21 PROSPECTIVE JUROR NO. 4: No, sir.

22 THE COURT: Mr. Schieck?

23 MR. SCHIECK: Thank you, your Honor.

24 MR. SCHIECK: Mr. Guerra, what do you think about the
25 death penalty?

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8JD04308

1 PROSPECTIVE JUROR NO. 4: I never think it about.

2 MR. SCHIECK: You never had the occasion to talk about
3 it with any of your friends?

4 PROSPECTIVE JUROR NO. 4: Not really.

5 MR. SCHIECK: Do they have the death penalty in Cuba?

6 PROSPECTIVE JUROR NO. 4: I don't think so.

7 MR. SCHIECK: Since you came down here to be on this
8 jury yesterday and learned that this was a death penalty case,
9 have you thought about it since then?

10 PROSPECTIVE JUROR NO. 4: Not really.

11 MR. SCHIECK: Not really?

12 PROSPECTIVE JUROR NO. 4: No.

13 MR. SCHIECK: Now, you indicated to the Judge that
14 you'd be able to consider all three possible punishments equally.
15 Have you at least thought about the death penalty enough that you
16 believe that it's appropriate?

17 PROSPECTIVE JUROR NO. 4: In some cases it should be.

18 MR. SCHIECK: Have you followed any cases on TV or in
19 the newspaper where you thought the death penalty was
20 appropriate?

21 PROSPECTIVE JUROR NO. 4: No.

22 MR. SCHIECK: Have you seen any news coverage where
23 someone had been perhaps executed and you thought to yourself,
24 "Well, that was an appropriate punishment," or, "It wasn't an
25 appropriate punishment"?

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8JD04309

1 PROSPECTIVE JUROR NO. 4: No. I don't be involved in
2 that case.

3 MR. SCHIECK: And you don't have any grandkids yet?

4 PROSPECTIVE JUROR NO. 4: Not yet, huh-uh.

5 MR. SCHIECK: Are your children married?

6 PROSPECTIVE JUROR NO. 4: No.

7 MR. SCHIECK: Okay. They live at home with you?

8 PROSPECTIVE JUROR NO. 4: No.

9 MR. SCHIECK: Do they live here in Las Vegas?

10 PROSPECTIVE JUROR NO. 4: Yes, sir.

11 MR. SCHIECK: And you've lived here in Las Vegas for 26
12 years?

13 PROSPECTIVE JUROR NO. 4: Yes, sir.

14 MR. SCHIECK: Okay. How old were you when you came
15 from Cuba?

16 PROSPECTIVE JUROR NO. 4: Twenty years old.

17 MR. SCHIECK: And when was it that you came? What year
18 was it when you came to the United States?

19 PROSPECTIVE JUROR NO. 4: 1968.

20 MR. SCHIECK: Your wife does not work?

21 PROSPECTIVE JUROR NO. 4: No, sir.

22 MR. SCHIECK: Okay. Has she ever worked here in Las
23 Vegas?

24 PROSPECTIVE JUROR NO. 4: No, sir.

25 MR. SCHIECK: Having heard the discussion that we've

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8JD04310

1 had with the other jurors concerning the facts of this case, are
2 you at this point leaning toward any of the three possible
3 punishments as the appropriate punishment?

4 PROSPECTIVE JUROR NO. 4: No, sir.

5 MR. SCHIECK: We would pass for cause, your Honor.

6 THE COURT: Mr. Wall?

7 MR. WALL: Thank you, your Honor.

8 Mr. Guerra, do your parents still live in Cuba?

9 PROSPECTIVE JUROR NO. 4: Yeah, I got a cousin and
10 uncles over there.

11 MR. WALL: Okay. Are your parents here in the United
12 States?

13 PROSPECTIVE JUROR NO. 4: My mother and father, they
14 pass away already here in the United States.

15 MR. WALL: Okay. Do you understand what we've talked
16 about a little bit so far, that the Defendants in this case have
17 already been convicted of the crime and that this jury will just
18 be setting a punishment?

19 PROSPECTIVE JUROR NO. 4: Yes, sir.

20 MR. WALL: And that any one of those three punishments
21 our legislature, our lawmakers, have said may be appropriate for
22 first-degree murder?

23 PROSPECTIVE JUROR NO. 4: Yes, sir.

24 MR. WALL: Is that something that you agree with, that
25 a sentence of life in prison with the possibility of being

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SA325

8JD04311

1 released on parole someday, after a certain number of years, is
2 appropriate for someone -- could be appropriate for someone who
3 has committed a murder?

4 PROSPECTIVE JUROR NO. 4: I guess so, because that is
5 the way the system work. That's the way -- they just same to
6 those three penalties.

7 MR. WALL: Do you agree with that? I mean, if it was
8 up to you to decide, is that -- would you go about it maybe the
9 same way our lawmakers did?

10 PROSPECTIVE JUROR NO. 4: I don't know. I would have
11 to be in the case, involved in the case. I don't know about
12 that.

13 MR. WALL: Because that's the law, you'll be able to
14 consider all three equally after you've heard the evidence?

15 PROSPECTIVE JUROR NO. 4: Yes, sir.

16 MR. WALL: Okay. Which school do you work at right
17 now?

18 PROSPECTIVE JUROR NO. 4: Wengert Elementary School.

19 MR. WALL: Okay. Have you ever worked at one of the
20 -- any of the high schools in town?

21 PROSPECTIVE JUROR NO. 4: No.

22 MR. WALL: Okay. Do you remember ever hearing anything
23 about this case now that you've been in the courtroom yesterday
24 and today?

25 PROSPECTIVE JUROR NO. 4: No, sir.

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SA326

8JD04312

1 MR. WALL: Okay. Thank you. We'll pass for cause,
2 your Honor.

3 PROSPECTIVE JUROR NO. 4: You're welcome.

4 THE COURT: Counsel?

5 MR. SEATON: Thank you, Judge.

6 I just want to chat with you a little bit about the death
7 penalty. Surprise. You've not indicated to us that you have an
8 inclination whether you're for it or against it.

9 PROSPECTIVE JUROR NO. 4: I don't.

10 MR. SEATON: You heard my questions to Ms. Harris just
11 a few minutes ago?

12 PROSPECTIVE JUROR NO. 4: Yes, sir.

13 MR. SEATON: And how did you -- how were you thinking
14 about yourself at that time when I was asking her the questions?

15 PROSPECTIVE JUROR NO. 4: I just stay neutral at that
16 time.

17 MR. SEATON: If you were sitting on the jury and all
18 the evidence were presented to you, and you went back and you
19 started to deliberate and people were talking about the death
20 penalty, just knowing yourself like you know yourself, and we
21 don't obviously, do you think the death penalty would be
22 something that you would just as soon not return to this
23 courtroom with?

24 PROSPECTIVE JUROR NO. 4: No, I don't. I just say --
25 whatever I hear I just get my own opinion. I try to go with

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SA327

8JD04313

1 that, because I have to live with that for the rest of my life.

2 MR. SEATON: That's right. And you realize the
3 importance of the decision...

4 PROSPECTIVE JUROR NO. 4: Yes, sir.

5 MR. SEATON: ...that we'll be -- all of us will be
6 contributing to?

7 PROSPECTIVE JUROR NO. 4: Yes, sir.

8 MR. SEATON: Knowing yourself like you do, you don't
9 believe then I gather that it would be particularly troublesome
10 for you, if the facts were serious enough, to return a verdict of
11 death?

12 PROSPECTIVE JUROR NO. 4: No, sir.

13 MR. SEATON: You say you've not thought about it too
14 much during your lifetime?

15 PROSPECTIVE JUROR NO. 4: No, till today.

16 MR. SEATON: You thought about it a little bit today
17 probably?

18 PROSPECTIVE JUROR NO. 4: Yes, sir.

19 MR. SEATON: Do you think three or four days down the
20 road when it comes time to make this decision that there's any
21 possibility that you might change your mind?

22 PROSPECTIVE JUROR NO. 4: No, sir.

23 MR. SEATON: If we were to ask you these same questions
24 then, you would still tell us that you would be willing to look
25 at all three penalties?

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1 PROSPECTIVE JUROR NO. 4: You would get the same
2 answers.

3 MR. SEATON: Okay. Thank you very much. I pass for
4 cause, Judge.

5 PROSPECTIVE JUROR NO. 4: You're welcome, sir.

6 THE COURT: Mr. Blazi, is that correct, sir?

7 PROSPECTIVE JUROR NO. 5: Yes. Good afternoon, your
8 Honor.

9 THE COURT: How long have you lived in Clark County,
10 Nevada?

11 PROSPECTIVE JUROR NO. 5: About 13 years, I believe,
12 sir.

13 THE COURT: Where were you born and raised?

14 PROSPECTIVE JUROR NO. 5: I was born in Texas, sir,
15 raised there.

16 THE COURT: What is your educational background?

17 PROSPECTIVE JUROR NO. 5: I've got a Bachelor's in
18 English, and I did some postgraduate work in creative writing.

19 THE COURT: And where?

20 PROSPECTIVE JUROR NO. 5: San Diego State.

21 THE COURT: Go for both?

22 PROSPECTIVE JUROR NO. 5: Yes, sir.

23 THE COURT: What has been your employment for the last
24 ten years?

25 PROSPECTIVE JUROR NO. 5: The last six years I've been

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8JD04315

1 an assistant supervisor at the airport, and before that I was
2 four years at the American Academy for Medical Assistants
3 teaching medical assisting.

4 THE COURT: Where did you gain that experience?

5 PROSPECTIVE JUROR NO. 5: Mostly from the military,
6 sir. I was 20 years a medic in the Navy, and then when I got out
7 I got a teaching credential from California, a Life Credential in
8 health sciences and related technologies.

9 THE COURT: How long were you in the Navy?

10 PROSPECTIVE JUROR NO. 5: Twenty years, sir.

11 THE COURT: And during that 20 years, did you sit on
12 any courts martial or any boards?

13 PROSPECTIVE JUROR NO. 5: Yes, sir. I was a witness at
14 several.

15 THE COURT: But did you sit on any as a...

16 PROSPECTIVE JUROR NO. 5: No, sir.

17 THE COURT: ...board member?

18 PROSPECTIVE JUROR NO. 5: No, sir.

19 THE COURT: What is your religious preference?

20 PROSPECTIVE JUROR NO. 5: I'm a deist, your Honor.

21 THE COURT: That's a new one. A what?

22 PROSPECTIVE JUROR NO. 5: Well, it means -- a deist,
23 there's probably a creator because there's creation.

24 THE COURT: All right.

25 PROSPECTIVE JUROR NO. 5: And I don't know her, but if

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SA330

8JD04316

1 she exists, she's been pretty good to me lately.

2 THE COURT: Do you attend any church regularly?

3 PROSPECTIVE JUROR NO. 5: Not at all, sir.

4 THE COURT: How old are you, sir?

5 PROSPECTIVE JUROR NO. 5: I'm 59, your Honor.

6 THE COURT: Are you married or single?

7 PROSPECTIVE JUROR NO. 5: I'm married, sir.

8 THE COURT: Is your wife employed?

9 PROSPECTIVE JUROR NO. 5: Yes, sir.

10 THE COURT: Where does she work and what are her
11 duties?

12 PROSPECTIVE JUROR NO. 5: She works right upstairs,
13 sir. She's a transcriber/recorder for Clark County.

14 THE COURT: And do you have any children?

15 PROSPECTIVE JUROR NO. 5: Yes, sir, four.

16 THE COURT: May we have their ages and sex, please?

17 PROSPECTIVE JUROR NO. 5: Late 30's, late 20's.
18 There's two females and then twins, and they're middle 20's.

19 THE COURT: Are you acquainted with either the
20 Defendants or their attorneys?

21 PROSPECTIVE JUROR NO. 5: No, your Honor.

22 THE COURT: Do you know anyone in the District
23 Attorney's Office?

24 PROSPECTIVE JUROR NO. 5: No, your Honor.

25 THE COURT: Did you recognize any of the persons whose

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SA331

8JD04317

1 name were given to you as possible witnesses?

2 PROSPECTIVE JUROR NO. 5: No, sir.

3 THE COURT: In the State of Nevada, there are three
4 possible forms of punishment that the jury may consider and then
5 select the one that they believe is the most appropriate under
6 the law and facts of this case. Those three possible forms of
7 punishment are: (a) the imposition of the death penalty; (b)
8 life imprisonment without the possibility of parole; and (c) life
9 imprisonment with the possibility of parole. Do you understand,
10 sir?

11 PROSPECTIVE JUROR NO. 5: Yes, sir.

12 THE COURT: In your present state of mind, can you, if
13 you are selected as a juror, consider equally all three possible
14 forms of punishment and then select the one that you feel is most
15 appropriate?

16 PROSPECTIVE JUROR NO. 5: Yes, your Honor.

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

19 PROSPECTIVE JUROR NO. 5: No, sir.

20 THE COURT: Are you now involved in or have you ever
21 been involved in any law enforcement work?

22 PROSPECTIVE JUROR NO. 5: No, sir. Other than being a
23 witness as a medic in the Navy.

24 THE COURT: Do you have any close friends or relatives
25 who are members of any law enforcement agency?

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8JD04318

1 PROSPECTIVE JUROR NO. 5: No, sir.

2 THE COURT: With the exception of your appearance as a
3 witness in the service, have you ever appeared as a witness
4 before any other jury?

5 PROSPECTIVE JUROR NO. 5: Yes, sir. The aforementioned
6 medical testimony during my Naval career.

7 THE COURT: Outside of that?

8 PROSPECTIVE JUROR NO. 5: No, sir.

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

10 PROSPECTIVE JUROR NO. 5: No, sir.

11 THE COURT: Have you ever been or anyone close to you
12 ever been a victim of a crime?

13 PROSPECTIVE JUROR NO. 5: No, sir.

14 THE COURT: Can you and will you follow the Court's
15 instructions on the law even though you may disagree with them?

16 PROSPECTIVE JUROR NO. 5: Yes, your Honor.

17 THE COURT: If you were either the Defendants, would
18 you want twelve people in your present state of mind to sit and
19 judge your case?

20 PROSPECTIVE JUROR NO. 5: Yes, your Honor. And I'll
21 just do my best along with everyone else.

22 THE COURT: Do you know of any reason, whether I've
23 asked you or not, why you cannot sit as a fair and impartial
24 juror in this case?

25 PROSPECTIVE JUROR NO. 5: No, sir.

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SA333

8JD04319

1 THE COURT: Mr. Schieck?
2 MR. WOLFBRANDT: Judge, I'll do this one.
3 THE COURT: Mr. Wolfbrandt. All right.
4 MR. WOLFBRANDT: Good afternoon, sir.
5 PROSPECTIVE JUROR NO. 5: Good afternoon, sir.
6 MR. WOLFBRANDT: Your wife works here in this building?
7 PROSPECTIVE JUROR NO. 5: Yes, sir, that's correct.
8 MR. SCHIECK: Does she work for one of -- in one of the
9 courtrooms or in another facility?
10 PROSPECTIVE JUROR NO. 5: She works in District --
11 Departments 1, 2, 5, 10 and 11 occasionally. She's a
12 transcriber, but she's also a substitute to record -- doing what
13 this lady over here is doing.
14 MR. SCHIECK: And she's done that since 1987?
15 PROSPECTIVE JUROR NO. 5: Yes, sir.
16 MR. SCHIECK: Did you ever talk to her about any of the
17 cases that she's been involved with?
18 PROSPECTIVE JUROR NO. 5: Oh, yes, sir. But not while
19 they were currently going on, because as a transcriber the case
20 is already over.
21 MR. SCHIECK: Okay. So after the case was concluded,
22 then maybe you've had discussions with her about whatever the
23 case...
24 PROSPECTIVE JUROR NO. 5: Yes, sir. She won't let me
25 otherwise.

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8JD04320

1 MR. SCHIECK: Okay. Prior to that, she worked for a
2 couple of years at Parole & Probation. Is that the State Parole
3 & Probation?

4 PROSPECTIVE JUROR NO. 5: Yes, sir, that's correct.

5 MR. SCHIECK: Was she involved as a secretary in the
6 preparation of presentence reports, to your knowledge, or do you
7 know?

8 PROSPECTIVE JUROR NO. 5: I don't know, sir.

9 MR. SCHIECK: Okay. Did you ever talk to her about
10 what she did while working for Parole & Probation?

11 PROSPECTIVE JUROR NO. 5: I'm sure I did, sir, but I
12 don't recall specifics.

13 MR. SCHIECK: And that was a number of years ago?

14 PROSPECTIVE JUROR NO. 5: That's correct, sir.

15 MR. SCHIECK: Have there been any cases in the news or
16 in the newspaper that you've been aware of that you have a
17 particular interest, or you follow?

18 PROSPECTIVE JUROR NO. 5: Avidly, the O.J. trial, yes.

19 MR. SCHIECK: Whenever you get the chance you try and
20 watch that?

21 PROSPECTIVE JUROR NO. 5: All the time.

22 MR. SCHIECK: Okay. You've heard and you read the
23 description of the facts, or at least the general description of
24 what this case was about. Does the general nature of the facts
25 of this case cause you any concern or any leaning or tendency

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8JD04321

1 towards any of the three possible penalties?

2 PROSPECTIVE JUROR NO. 5: I'm glad that Judge Guy has
3 stated that I could put my own feelings aside and consider the
4 three fairly. I feel that I would have to put some of my own
5 feelings aside in that when we speak of -- you speak of
6 aggravating circumstances, and from what I've already known, and
7 they say how much more aggravating can it be if you plead guilty
8 to two killings. I mean, one killing, I mean, how much more
9 aggravating. But I'm sure with those instructions I can assist
10 the jury in reaching some kind of verdict.

11 MR. SCHIECK: Your wife's been involved with
12 transcribing and possibly recording other murder trials, has she
13 not?

14 PROSPECTIVE JUROR NO. 5: I'm sure she has, sir. I
15 don't recall any right off the top of my head though.

16 MR. SCHIECK: Well, that was going to get to be the
17 next series of questions, is do you recall having any
18 conversations or discussing any particular trials that occurred
19 here in the building that were murder cases?

20 PROSPECTIVE JUROR NO. 5: No, sir.

21 MR. SCHIECK: Your personal feeling, if I get you, if I
22 gathered you right--and correct me if I'm wrong--is that because
23 Dale and Randy are already convicted of two homicides, you've got
24 a strong personal feeling that they should get a maximum penalty,
25 being the death penalty. But you're willing to -- you think you

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8JD04322

1 can set that aside and listen to all the evidence and then make a
2 decision in accordance with the Court's instructions?

3 PROSPECTIVE JUROR NO. 5: Well said, sir. Exactly.

4 MR. SCHIECK: Question No. 63 on page 9 of your
5 questionnaire was to the question of, "Do you feel that the legal
6 system unduly favors persons," and you indicated that you would
7 be in favor of majority verdicts as opposed to unanimous
8 verdicts. Do you feel compelled to -- or would you feel
9 compelled to change your opinion should you be -- well, let me
10 strike that. I got going in a bad direction there.

11 If you're actually empaneled as a juror, and in the
12 deliberation room you find that ten people feel one penalty is
13 appropriate and you feel a different penalty is appropriate, are
14 you going to feel constrained to change your vote or your opinion
15 to match the others in an effort to reach unanimity, or will you
16 stand by your own convictions?

17 PROSPECTIVE JUROR NO. 5: I'd really like to be
18 convinced in my mind beyond a shadow of a doubt that I'm wrong or
19 that I should choose the same outcome that everyone else does.
20 I'm not saying that I can't be convinced, but I'd sure like to
21 weigh what everyone else says and why they think differently than
22 myself.

23 MR. SCHIECK: And you understand that currently the
24 state of law is in Nevada that you need to reach a unanimous
25 verdict as to the form of punishment in this situation?

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8JD04323

1 PROSPECTIVE JUROR NO. 5: No, but I do now, sir.

2 MR. SCHIECK: Well, in other words -- and I'm not
3 trying to step on the Court's toes here, he'll give you
4 instructions at the end of the case, but we've had some general
5 discussions that the three possible punishments in this case are
6 life with the possibility of parole, life without, and the death
7 penalty. Before the jury could return a verdict as to any of
8 those three, it has to be a unanimous agreement among all twelve
9 people that this will be, in fact, the punishment in this case.
10 Do you understand that?

11 PROSPECTIVE JUROR NO. 5: Yes, sir.

12 MR. SCHIECK: Okay. Now, then let me go back to the
13 question of: if you're selected and in the deliberation room you
14 have one vote and ten people have a different opinion, and maybe
15 a third -- another person has a different opinion still, are you
16 going to feel pressured to roll over to the side of the majority
17 in an effort to reach unanimity, or are you going to stand by
18 your personal beliefs and then discuss the matter?

19 PROSPECTIVE JUROR NO. 5: I don't envision feeling
20 pressured at all, sir, no.

21 MR. SCHIECK: Have you ever had general discussions
22 with friends about the topic³ of the death penalty?

23 PROSPECTIVE JUROR NO. 5: Oh, yes, sir.

24 MR. SCHIECK: Generally, what are your views? Do you
25 feel that the death penalty is used too much? Do you feel that

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8JD04324

1 it's used not enough?

2 PROSPECTIVE JUROR NO. 5: Probably not enough.

3 MR. SCHIECK: Along those lines, do you feel that it's
4 been imposed sufficiently but just has not been carried out?

5 PROSPECTIVE JUROR NO. 5: I agree with that too, yes,
6 sir.

7 MR. SCHIECK: Do you feel that it hasn't even been
8 imposed enough by juries or the sentencing body, whoever that
9 might be in any given case?

10 PROSPECTIVE JUROR NO. 5: I don't know, sir. I really
11 don't know.

12 MR. SCHIECK: Has your views about the death penalty
13 changed over the years?

14 PROSPECTIVE JUROR NO. 5: I don't believe it has, no,
15 sir.

16 MR. SCHIECK: Yesterday and today, have you had
17 conversations with any of the other prospective jurors as to the
18 nature of this case, maybe some of the facts or some -- maybe
19 somebody else's knowledge of this case?

20 PROSPECTIVE JUROR NO. 5: No, sir, I haven't.

21 MR. SCHIECK: Thank you. We would pass for
22 cause.

23 THE COURT: Mr. Wall?

24 MR. WALL: Your Honor, may we approach the bench
25 briefly?

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8JD04325

1 THE COURT: Yes, you may.

2 (Bench conference)

3 MR. WALL: I wanted to approach... his wife does some
4 transcribing for this department ... if she's going to be doing
5 the transcripts...

6 THE COURT: (Indiscernible)

7 MR. WALL: She's not?

8 THE COURT: No.

9 MR. WALL: Okay.

10 THE COURT: We have a private firm ...

11 (Indiscernible bench conference colloquy)

12 (Bench conference concluded)

13 MR. WALL: Mr. -- how do you pronounce it, Blazi?

14 PROSPECTIVE JUROR NO. 5: Yes, sir, that's correct.

15 MR. WALL: Okay. Let me ask you a couple of questions.
16 You indicated that you had very closely followed the O.J. Simpson
17 case. Let me ask you if that case -- watching that case has
18 changed your perceptions in any way of the criminal justice
19 system and how it works?

20 PROSPECTIVE JUROR NO. 5: Well, I've always heard that
21 the wheels of justice grind exceedingly slow, and apparently that
22 is the case, yes, sir.

23 THE COURT: I can assure you that we will not go that
24 long in this one.

25 MR. WALL: In watching the lawyers in that case, has

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8JD04326

8JD04327

1 that changed your opinion about lawyers and their duties and
2 obligations?

3 PROSPECTIVE JUROR NO. 5: No, sir, not opinion-wise. I
4 mean, I still -- you know, I think -- as I put in the
5 questionnaire, I think everybody is trying to do a job and make a
6 living.

7 MR. WALL: When watching the O.J. case, did you
8 yourself, early on in the case or at any time -- I don't even
9 know if it's still early on in the O.J. case -- make a judgement,
10 "I think he's guilty, I think he isn't?"

11 PROSPECTIVE JUROR NO. 5: Oh, yes, sir. I formed a lot
12 of opinions very quickly and some of them changed, some of them
13 have not. Most of them are pretty much -- I don't feel it's
14 wrong to form an opinion as long as you're just a lay person.
15 It's when you're in a jury, within a jury, that you can't form
16 opinions. Mr. Bibliosi [phonetic] does beautiful pronouncements
17 on the O.J. trial, so I think it's perfectly fine to do that, to
18 form opinions.

19 MR. WALL: But as a juror, what's your outlook?

20 PROSPECTIVE JUROR NO. 5: A juror must withhold that
21 until all the evidence is in and not form an opinion.

22 MR. WALL: Okay. With regard to this case, it's
23 different in many respects from the O.J. case, but this
24 proceeding is different because guilt has already been
25 established. So to say, "I think Dale Flanagan is guilty," is

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1 not a predisposition because that decision has already been made.
2 With that in mind, and knowing that he has been convicted of a
3 premeditated first-degree murder upon his grandparents, can you,
4 knowing that, consider, in light of the evidence you may hear,
5 all three punishments which our legislature has said may be
6 appropriate in such a case?

7 PROSPECTIVE JUROR NO. 5: Yes, I believe I could.

8 MR. WALL: Okay. Would the particular character or
9 conduct outside of that offense of Mr. Flanagan be something that
10 you might consider if it was presented to you as to which
11 sentence might be appropriate?

12 PROSPECTIVE JUROR NO. 5: Yes, sir, I'd certainly
13 consider it.

14 MR. WALL: I'm getting the feeling that you wouldn't
15 give it very much consideration?

16 PROSPECTIVE JUROR NO. 5: It would have to -- you know,
17 I would think it would have to be something that was a lot of
18 mitigating circumstances in a situation such as what I've heard
19 about this trial so far. But certainly to consider it equally
20 with everything else. And to cut to the chase, you know, as far
21 as would I, could I, find someone with a verdict of life
22 imprisonment without parole, certainly. You know, for instance
23 in the news recently there has been a four-year-old that was
24 turned over after four years with one family to another one. I
25 think the Judge ought to have their child maybe taken also and

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8JD04328

1 maybe sentence him to life without the sentence of parole.

2 MR. WALL: The Judge?

3 PROSPECTIVE JUROR NO. 5: The Judge.

4 THE COURT: If you don't mind, I won't open that up.

5 MR. WALL: Do you object to that, your Honor?

6 THE COURT: Most specifically.

7 MR. WALL: Do you think there's a situation, Mr. Blazi,
8 where a sentence of life in prison without any possibility of
9 parole, of ever being released, might actually be more severe for
10 an individual than the death penalty?

11 PROSPECTIVE JUROR NO. 5: There might be a case like
12 that, sir. I think these two young gentlemen have been ten years
13 already not knowing apparently their fate or something, which I
14 don't know, and we may never know why it's been ten years, but
15 justice should be, again, swifter than that one way or the other.

16 MR. WALL: Well, I think you were going a little bit
17 different direction than I was. What did you mean by that? The
18 fact that they had been in prison or that this case has taken ten
19 years? I forget what your exact words were.

20 PROSPECTIVE JUROR NO. 5: Well, just that the penalty
21 phase is ten years after the -- after the trial phase. That that
22 -- you mentioned that sometimes it may bear more punishment or
23 pain on an individual defendant, and my answer is, yes, to be
24 short.

25 MR. WALL: Oh, so you're saying that since the

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8JD04329

8JD04330
1 convictions may have been obtained ten years ago, that the --
2 what the Defendants may have gone through over the last ten years
3 waiting for this proceeding would be very difficult on them. Am
4 I reading you right?

5 PROSPECTIVE JUROR NO. 5: Yes. I just used that as an
6 example; however, I don't know, again, going by the Judge's
7 instructions on that, should even be concerned.

8 MR. WALL: Right. But say if we were in a situation
9 dealing with your opinions strictly from this day forward as to
10 whether -- would you ever consider a sentence of life in prison
11 without the possibility of parole more severe than actually a
12 sentence of death?

13 PROSPECTIVE JUROR NO. 5: Would I consider it more
14 severe? No, sir, I don't think I'd consider that more severe.

15 MR. WALL: Okay. Thank you. I'll pass for cause.

16 THE COURT: Mr. Seaton?

17 MR. SEATON: I will pass for cause as well, Judge.

18 THE COURT: I think it's time to quit for the day.
19 Tomorrow morning at 9:00. Why don't you gather down in the jury
20 room. We'll pick you up in the jury room at 9:00.

21 In the meantime, it is your duty not to talk among
22 yourselves or with anyone else on any matter pertaining to this
23 trial; read, watch or listen to any report of or commentary on
24 the trial by any person or by any medium of information,
25 including without limitation newspapers, radio or television;

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1 form or express any opinion on any matter pertaining to this
2 trial until it is finally submitted to you.

3 Mr. Wilson, the reason why they -- there was a lawyer for
4 the Defense is you could not give a dishonorable discharge --
5 major. You cannot give a dishonorable discharge to anybody who
6 did not have a lawyer present. If the trial counsel was a
7 lawyer, the Defendant had to have one. That's the reason why.
8 It gave all the advantage to him.

9 Good night.

10 (Pause; jury out; colloquy not on record)

11 THE COURT: Will counsel stipulate to the absence of
12 the jury?

13 MS. MOUNTS: Yes.

14 MR. WALL: Yes, sir.

15 MR. SEATON: Yes.

16 THE COURT: Does either party have anything to come
17 before the Court?

18 MR. SEATON: Not by the State.

19 (Colloquy re another case)

20 THE COURT: Anything else, folks? (pause) Good night.
21 Have a good night. See you tomorrow morning bright and early.

22 MR. SEATON: Thank you.

23 THE COURT: We'll be in recess.

24 (Proceedings concluded at 4:21 p.m.)

25

* * * * *

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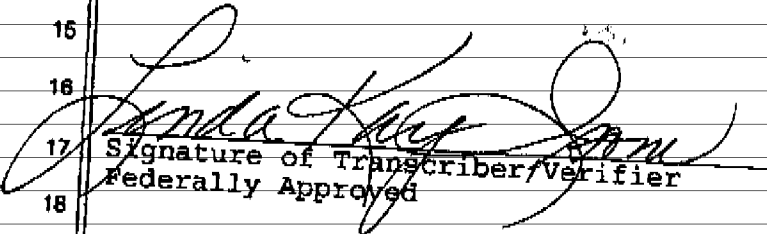
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.


Signature of Transcriber/Verifier
Federally Approved


Date

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8JD04332

ORIGINAL

FILED IN OPEN COURT

JUN 15 1995 19

DISTRICT COURT

LORETTA BOWMAN, CLERK
CLARK COUNTY, NEVADA

By *Lia Hard* Deputy

THE STATE OF NEVADA,

Plaintiff,

vs.

DALE EDWARD FLANAGAN &
RANDOLPH MOORE,

Defendants.

Case No. C069269

Dept. No. XI

Docket "S"

BEFORE THE HONORABLE ABDELIAR D. GUY, III, DISTRICT JUDGE

JURY TRIAL -- PENALTY PHASE
(DAY 2, VOLUME II)

WEDNESDAY; JUNE 14, 1995

APPEARANCES:

For the Plaintiffs:

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For Defendant Flanagan:

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8JD04334

8JD04335

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3 Proceedings recorded by electronic sound recording;
4 transcript by electronic sound transcriber.
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SA348

8JD04335

8JD04336

1 WEDNESDAY: JUNE 14, 1995: 9:12 A.M.

2

3 (Prospective jurors absent)

4 THE BAILIFF: Department XI is now in session. The
5 Honorable Addeliar D. Guy presiding.

6 THE COURT: Good morning. Please be seated.

7 Continuation of case No. C69269, The State of Nevada vs.
8 Dale Flanagan & Randolph Moore. Let the record reflect the
9 presence of Defendants with Counsel, District Attorney, other
10 officers of the court.

11 Will counsel stipulate as to the absence of the jury?

12 MR. WALL: Yes, your Honor.

13 MR. SEATON: Yes, Judge.

14 MR. WOLFBRANDT: Yes, your Honor.

15 MR. SCHIECK: Yes.

16 THE COURT: I have two young men in the jury box. Are
17 both of them before me today or what?

18 MR. WALL: Your Honor, one is the witness, Rusty
19 Havens, that we discussed yesterday; and the other, I believe, is
20 the District Attorney investigator, who brought him over from the
21 jail.

22 THE COURT: Oh. All right. Would you mind grabbing a
23 seat outside there. Only prisoners and juries sit in my jury
24 box.

25 Mr. Seaton, this is your show, I believe.

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8JD04336

81004337

1 MR. WALL: Well, actually, your Honor, maybe I can
2 start out.

3 THE COURT: All right. Mr. Wall then.

4 MR. WALL: Chronologically, just for the record, we
5 were aware obviously that Mr. Havens was going to be a witness in
6 this proceeding, because he's testified in the past. We were
7 aware that he had a warrant out for him, and in fact I think
8 there were discussions as late as maybe last Thursday that his
9 prior testimony would be used in lieu of live appearance.

10 I think we had a meeting on Friday afternoon wherein we were
11 told that he had in fact been found and he was...

12 THE COURT: May we have a name instead of "he"--Rusty?

13 MR. WALL: Yes. Rusty Havens, H-A-V-E-N-S.

14 We were told that Mr. Havens had in fact been located, was
15 in the Detention Center on the warrant. We were aware that he
16 had some charges pending; that was the obvious reason for the
17 warrant. What we were not really aware of until probably over
18 the weekend or Monday when we talked to Mr. Seaton was that the
19 Public Defender's Office in fact had represented Mr. Havens, and
20 the warrant was done, an arrest warrant, or rather a bench
21 warrant out of District Court No. 9 issued by Judge Huffacker.

22 Apparently Mr. Havens with the assistance of a Deputy Public
23 Defender, and I think it was Danny Hastings, had gone through the
24 Justice Court process, had negotiated his two felony charges to
25 something less, maybe a lower felony charge, and was scheduled to

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8JD04337

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1 plead guilty in District Court when he failed to appear, and the
2 bench warrant was issued.

3 When we brought this up, when I found out about it I left a
4 message, I believe, yesterday early morning (perhaps Monday) for
5 Mr. Seaton indicating that I had realized that Mr. Havens was
6 going to be on calendar in Department IX for the return on the
7 bench warrant, and that I was instructing the deputy from our
8 office who was going to be handling that calendar to withdraw
9 from the Public Defender's representation of Mr. Havens.

10 I think that Mr. Seaton contacted his calendar deputy in
11 Department IX, and I do believe that we withdrew yesterday, and I
12 believe that Attorney Mike Davidson was appointed to represent
13 Mr. Havens.

14 I bring this up because there may be an appearance of a
15 conflict of interest, which in a case like this, which obviously
16 involves the possibility of the death penalty and in which our
17 performance will be reviewed by a number of courts and attorneys,
18 because there may be an appearance of a conflict of interest.

19 One of the areas of cross-examination of Mr. Havens would be
20 any benefit he expects to receive as a result of his testimony.
21 I don't have any idea whether this case was discussed with him
22 when his deal was made either with his lawyer or with the
23 prosecutor, or whether or not there were any internal
24 communications within the DAA's office about a deal that he might
25 receive.

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8JD04338

81004339

1 I don't know about the underlying facts of his case. I know
2 what the charges were originally, and I think they've been
3 reinstated so they still are there.

4 THE COURT: Let me ask you a question. Is there
5 anything about the case that we have before us or me that has
6 anything to do with what he has been arrested for and charged
7 with on the case before Judge Huffacker?

8 MR. WALL: Not to my knowledge. I think the new
9 charges are burglary and forgery, and I think they're relatively
10 recent. So I don't think they are connected to the factual
11 situation of this case.

12 THE COURT: I don't offhand see any conflict; however,
13 I'm going to continue this matter until tomorrow morning and have
14 Mr. Davidson present, who is his present attorney, so that he may
15 make his record on it. And when we get to that case in point --

16 I would like to have the record reflect that Mr. Havens is
17 here personally in court, but he's sitting here without a counsel
18 and so I'm not going to ask him any questions other than your
19 name.

20 May I have your name?

21 MR. HAVENS: Rusty Havens.

22 THE COURT: And will you spell your last name for the
23 record?

24 MR. HAVENS: H-A-V-E-N-S.

25 THE COURT: And I think I'll continue this matter until

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8JD04339

1 8:45 a.m. tomorrow morning, and we'll have Mr. Davidson present,
2 so he can -- and Mr. Havens may also be present.

3 MR. WALL: That's fine. We'll take up any conflict
4 issue at that time.

5 THE COURT: Yes.

6 MR. WALL: Okay.

7 THE COURT: And then that way he'll be here represented
8 by a counsel, who may advise him otherwise, and who may know more
9 facts about this than I do, and that way we'll all be protected.

10 Okay. You can take him back. Thank you very much.

11 MR. SEATON: Judge?

12 THE COURT: Yes.

13 MR. SEATON: Before you do, may I add to the record a
14 little bit?

15 THE COURT: Yes.

16 MR. SEATON: There was a motion brought before the
17 Court by the Defense asking the State to divulge any favorable
18 treatment that any potential witnesses have received, and Mr.
19 Wall indicated that he wasn't sure whether or not this gentleman
20 had. I want to make the record right now with him here, so that
21 we understand exactly what my knowledge of his case is at least.

22 Everything that Mr. Wall said was exactly correctly. I know
23 of no changes I would make in his recitation of the facts. I
24 learned about Mr. Havens arrest, I think, late last week--
25 Thursday or Friday. Prior to that time I had never spoken to

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8JD04340

8JD04341
1 him, I had never spoken to any deputy, I had never had any
2 communication with any deputy in our office regarding Mr. Havens'
3 case.

4 I understand that a deal had been struck down in Justice
5 Court, that being that he plead guilty to attempt burglary or
6 forgery, that the other charges would be dismissed. I think the
7 State, if I'm not mistaken, was going to stand silent in
8 sentencing.

9 I had nothing to do with that. No deputy was at all aware
10 of his preparedness to testify in this matter. He wasn't
11 prepared to testify in the matter, because he hadn't been yet
12 subpoenaed; we couldn't locate him.

13 Since that time I have spoken to our deputies, I have told
14 them what the problems are in this case and that the Public
15 Defender needed to get off. And I have instructed them in terms
16 of whatever deal they make, whether they hold to the old deal or
17 make a new deal, they are not to take this case into
18 consideration.

19 I've talked to Mr. Havens this morning, some by myself and
20 some with Mr. Wall present, and I have instructed him that there
21 are no favors coming out of his testifying here. There never
22 have been for any of his prior testimony; there's not going to be
23 at this time.

24 Frankly, just so that the Court knows my thinking, it
25 doesn't really matter to me. If he makes himself unavailable,

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1 we'd put his transcript in, and that would be fine with me too.
2 So in either event it doesn't matter to the State, but I want the
3 record to be unequivocally clear that I have not done anything to
4 enhance his case that he's got presently pending before Judge
5 Huffacker.

6 Thank you.

7 THE COURT: Has he ever been charged with any criminal
8 action involved in this case?

9 MR. SEATON: No.

10 THE COURT: I don't know what kind of a deal you could
11 make with him other than he tells the truth, but I'd like to have
12 his attorney present anyway.

13 MR. SEATON: That would be fine. Do you want Mr. --
14 you want Mr. Havens back at...

15 THE COURT: Yes.

16 MR. SEATON: ...8:45 a.m. as well?

17 THE COURT: And Mike Davidson too.

18 MR. SEATON: All right.

19 THE COURT: Okay? Thank you very much.

20 Would you take it upon yourself, sir, to contact Mr. Mike
21 Davidson?

22 MR. WALL: Pardon me, your Honor?

23 THE COURT: Would you take it upon yourself to contact
24 Mr. Davidson and ask him to be here? Ask him if he has any
25 problem; contact my secretary immediately today.

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8JD04342

1 MR. WALL: Thank you, sir.

2 THE BAILIFF: Judge, do you want No. 496 alone?

3 THE COURT: No. 4' -- yes, please. Mr. Pearlstein,
4 would you come down here where the microphone is, please, and
5 sit?

6 Your name is Richard Pearlstein?

7 BADGE NO. 496: Pearlstein.

8 THE COURT: Pearlstein. You're Badge No. 496. Is that
9 correct?

10 BADGE NO. 496: Yes, sir.

11 THE COURT: You're sitting in six, seven, eight, nine,
12 you're sitting in juror seat No. 10. Why don't you go over
13 there.

14 I received a note -- folks, just a minute, please. Once
15 more, when I try to talk everybody stops.

16 MS. MOUNTS: Sorry, your Honor.

17 THE COURT: I received a note before from you, it reads
18 as follows:

19 "Judge Guy, my name is Richard Pearlsteen [phonetic
20 pronunciation]..."

21 Some say "steen" and some say "stine [phonetic
22 pronunciation]." I always get confused.

23 "...Badge No. 496. If it is possible I would like to
24 speak to you about information that I know about this
25 sentencing trial that may contaminate other prospective

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1 jurors. Information that I do not know if you want
2 brought out in the courtroom. Thank you, Richard
3 Pearlstein."

4 Any information that would contaminate anybody/anyplace I do
5 want to know about. What can you tell me the reason for what you
6 think has happened?

7 BADGE NO. 496: Your Honor, I work at the Detention
8 Center, and I'm privy to hearing things about a lot of cases that
9 go on. And I understand that in this case that, you know, they
10 have been convicted and sentenced to the death penalty, and this
11 is a appeal to overturn the death penalty conviction. And I
12 haven't heard it mentioned in here while I was sitting in here,
13 and I didn't know if you want -- if it was going to be brought
14 out, and I know that it was, it's overturn -- the appeal is based
15 on some things that were said in here, and I believe pertaining
16 to religious beliefs.

17 So this is the information I have, and I don't know if, you
18 know...

19 THE COURT: Earlier yesterday I asked for anybody who
20 had any knowledge about this case to please stand.

21 BADGE NO. 496: I mis -- I didn't hear you correctly,
22 and I misunderstood what you said.

23 THE COURT: And...

24 BADGE NO. 496: I thought it had to do with, you know,
25 when the trial was going on. I didn't realize that it was, you

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8JD04344

1 know -- I misinterpreted you.

2 THE COURT: And I had three persons who stood to be
3 excused. Is there a motion by anyone on this?

4 MR. SCHIECK: Motion to challenge, your Honor.

5 THE COURT: Any traverse?

6 MR. SEATON: I'd like to, Judge, yes, very
7 briefly.

8 THE COURT: Do you join in the motion?

9 MR. WALL: Yes, I do, your Honor.

10 MR. SEATON: It's Mr. Pearlstein?

11 BADGE NO. 496: Yes, sir.

12 MR. SEATON: You know that these individuals were
13 sentenced to death once before?

14 BADGE NO. 496: Yes, sir.

15 MR. SEATON: And you know that that has been overturned
16 by the Supreme Court based on some sort of religious beliefs. Do
17 you know anything more than that?

18 BADGE NO. 496: No, I just know it was done twice.

19 MR. SEATON: Do you know what the religious beliefs
20 consisted of?

21 BADGE NO. 496: Yes, Mr. Seaton, I do.

22 MR. SEATON: Tell us, please?

23 BADGE NO. 496: Devil worship.

24 MR. SEATON: Okay. Do you know any particulars about
25 that that came out in trial? Have you heard any people talking

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8JD04345

8JD04346
1 about it?

2 BADGE NO. 496: No, I don't.

3 MR. SEATON: Okay. Other than what you and I have just
4 spoken about now, do you know of anything else about the case?

5 BADGE NO. 496: Basically, no, other than what was on
6 the questionnaire about the inheritance.

7 MR. SEATON: All right. Did you know anything more
8 about these two individuals--how they behaved in jail?

9 BADGE NO. 496: Yes, your Honor. Yes, I do.

10 MR. SEATON: Okay.

11 BADGE NO. 496: I...

12 MR. SEATON: That's your Honor (indicating to the
13 Court).

14 BADGE NO. 496: Yeah. I don't like...

15 MR. SEATON: Nobody would ever confuse me.

16 BADGE NO. 496: I don't like being in this position I'm
17 in here. I work in the Detention Center, I have the ability to
18 go in the cell areas where they are housed, and I work in those
19 areas.

20 MR. SEATON: All right. Well, let's get down to the
21 real bottom line question. Can you be a fair and impartial
22 juror?

23 BADGE NO. 496: I don't believe I can.

24 MR. SEATON: All right. Then I don't have any further
25 traverse, Judge.

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8JD04346

1 MR. SCHIECK: Your Honor, may...

2 THE COURT: Consider this witness...

3 MR. SCHIECK: I have a question of him before we excuse
4 him though, your Honor.

5 MR. SEATON: Oh!

6 MR. SCHIECK: It's simply I want to know whether or not
7 he's discussed that with any of the other jurors?

8 THE COURT: Well, that was going to be my question, but
9 as long as you've asked it go ahead.

10 BADGE NO. 496: Generally, no. A lot of things have
11 been said out there, and I don't really remember saying anything.
12 I had mentioned, I thought, that this was a retrial, and somebody
13 had said to me that, "No, how could they put us into a trial
14 without hearing all the evidence," and I just let it drop at
15 that.

16 MR. SCHIECK: Did anyone mention that the previous
17 sentence had been the death penalty?

18 BADGE NO. 496: Not that I remember.

19 MR. SCHIECK: Did you hear anyone mention devil worship
20 or the basis for reversal?

21 BADGE NO. 496: No, not that I remember.

22 MR. SCHIECK: And you didn't tell that to anyone?

23 BADGE NO. 496: No, I don't believe I did.

24 MR. SCHIECK: That's all the questions I had, your
25 Honor. Thank you.

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1 THE COURT: Thank you, sir, you are excused. Report
2 back to the jury commissioner for further instructions.

3 BADGE NO. 496: Thank you.

4 THE COURT: And thank you for your candor. Madam
5 Clerk, file this for the record.

6 THE CLERK: Yes, sir.

7 THE COURT: Anything else? Bring them in. "Two days."
8 It's a day-and-a-half. You're being as bad as these doggone
9 civil lawyers. "Two days, sir." Ten days later on.

10 (Prospective jurors in at 9:22 a.m.)

11 THE COURT: This is a continuation of jury case No.
12 C69269, The State of Nevada vs. Dale Flanagan & Randolph Moore.
13 Please be quiet. Let the record reflect the presence of
14 Defendants with Counsel, District Attorney, other officers of the
15 Court.

16 Will the Clerk please call roll call of the jury panel?

17 (Clerk begins roll call roll of prospective jurors)

18 THE CLERK: Peter Franklin Blazi? (pause) Peter
19 Franklin Blazi?

20 THE COURT: Mr. Bailiff, go down to the area there and
21 see if you can find Mr. Blazi.

22 (Mr. Blazi enters courtroom)

23 THE COURT: That's okay, sir. Will you call his name
24 again, please?

25 (Clerk calls roll of jury; all present)

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1 THE COURT: Will counsel stipulate as to the presence
2 of the jury panel?

3 MR. SEATON: Yes, Judge.

4 MR. WALL: Yes, your Honor.

5 MR. SCHIECK: Yes, your Honor.

6 THE COURT: Good morning, jury panel.

7 ALL PROSPECTIVE JURORS: Good morning, your Honor.

8 THE COURT: Mr. Pearlstein has been excused. Will the
9 Clerk please draw another name?

10 THE CLERK: Dauphine Heaney Sweet, Badge No. 501,
11 S-W-E-E-T.

12 THE COURT: Mr. Pangburn, is that correct, sir?

13 PROSPECTIVE JUROR NO. 6: That's correct.

14 THE COURT: How long have you lived in Clark County,
15 Nevada?

16 PROSPECTIVE JUROR NO. 6: About ten years.

17 THE COURT: Where were you born and raised?

18 PROSPECTIVE JUROR NO. 6: New Jersey.

19 THE COURT: Whereabout in New Jersey?

20 PROSPECTIVE JUROR NO. 6: Haddenville near
21 Philadelphia.

22 THE COURT: And what is your educational background?

23 PROSPECTIVE JUROR NO. 6: Twelve years.

24 THE COURT: What has been your employment for the past
25 ten years?

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8JD04349

1 PROSPECTIVE JUROR NO. 6: Retail sales.

2 THE COURT: And for whom do you work?

3 PROSPECTIVE JUROR NO. 6: J.C. Penney.

4 THE COURT: What is your religious preference?

5 PROSPECTIVE JUROR NO. 6: I was raised Lutheran, but
6 I've studied some other religions, and I believe in the Supreme,
7 but I don't go to a formal religion.

8 THE COURT: Do you attend church, any church regularly?

9 PROSPECTIVE JUROR NO. 6: No.

10 THE COURT: How old are you, sir?

11 PROSPECTIVE JUROR NO. 6: Fifty-seven.

12 THE COURT: Are you married or single?

13 PROSPECTIVE JUROR NO. 6: Married.

14 THE COURT: Is your wife employed?

15 PROSPECTIVE JUROR NO. 6: Yes.

16 THE COURT: Where does she work, and what are her
17 duties?

18 PROSPECTIVE JUROR NO. 6: She's an executive assistant
19 to a vice-president for a medical company.

20 THE COURT: Which one, sir?

21 PROSPECTIVE JUROR NO. 6: THC, Transitional Health
22 Care.

23 THE COURT: And do you have any children?

24 PROSPECTIVE JUROR NO. 6: Two.

25 THE COURT: May we have their ages and sex, please?

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1 PROSPECTIVE JUROR NO. 6: Son, 30, and a daughter, 28.
2 THE COURT: By the way, when I ask the question do you
3 have any children, that does include stepchildren, too?
4 PROSPECTIVE JUROR NO. 6: No stepchildren.
5 THE COURT: Are you acquainted with either the
6 Defendants or their attorneys?
7 PROSPECTIVE JUROR NO. 6: No.
8 THE COURT: Do you know anyone in the District
9 Attorney's Office?
10 PROSPECTIVE JUROR NO. 6: No.
11 THE COURT: Did you recognize any of the persons whose
12 names were given to you as possible prosecution witnesses?
13 PROSPECTIVE JUROR NO. 6: No.
14 THE COURT: In the State of...
15 PROSPECTIVE JUROR NO. 6: Beg your pardon?
16 THE COURT: I thought you said something else.
17 PROSPECTIVE JUROR NO. 6: No.
18 THE COURT: In the State of Nevada, there are three
19 possible forms of punishment that the jury may consider and then
20 select the one that they believe is the most appropriate under
21 the law and facts of this case. Those three possible forms of
22 punishment are: (a) life imprisonment without the possibility of
23 parole; (b) life imprisonment with the possibility of parole; and
24 (c) the imposition of the death penalty. Do you understand, sir?
25 PROSPECTIVE JUROR NO. 6: I understand this.

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1 THE COURT: In your present state of mind, can you, if
2 you selected as a juror in this case, consider equally all three
3 possible forms of punishment and then select the one that you
4 feel is most appropriate?

5 PROSPECTIVE JUROR NO. 6: I have a little trouble with
6 life imprisonment.

7 THE COURT: Please explain, sir?

8 PROSPECTIVE JUROR NO. 6: If a person is -- if a
9 person's redeemable to society, then naturally you'd want to --
10 once he's redeemed or once he's become to where he can come back
11 into society then he should be allowed to. If he's not, then he
12 should be executed. Why the in between? Why have a person --
13 that's like torture to have a person locked up for life until he
14 dies with no hope to rejoin society. I can't -- I don't know why
15 there should be an in between.

16 THE COURT: My question, sir, is: Can you consider all
17 three possible forms of punishment...

18 PROSPECTIVE JUROR NO. 6: I can consider.

19 THE COURT: ...equally and then select the one that you
20 feel is most appropriate?

21 Or I'll put it another way: Can you set aside your
22 conviction that you may have and then proceed under the law that
23 I give you and equally consider the three possible forms of
24 punishment?

25 PROSPECTIVE JUROR NO. 6: I can sure try.

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8JD04352

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1 THE COURT: Is there a challenge?

2 MR. WOLFBRANDT: No, your Honor.

3 MR. SCHIECK: No, your Honor.

4 THE COURT: All right. Are you now involved in or have
5 you ever been involved in any law enforcement work?

6 PROSPECTIVE JUROR NO. 6: No, I haven't.

7 THE COURT: Do you have any close friends or relatives
8 who are members of any law enforcement agency?

9 PROSPECTIVE JUROR NO. 6: Not at present.

10 THE COURT: And in the past?

11 PROSPECTIVE JUROR NO. 6: My wife worked for the Mesa,
12 Arizona Police Department. She was a police service officer for
13 about five years.

14 THE COURT: And when was this?

15 PROSPECTIVE JUROR NO. 6: Ten years ago.

16 THE COURT: Did she discuss her work with you?

17 PROSPECTIVE JUROR NO. 6: Yes.

18 THE COURT: Can you set aside anything she may have
19 told you during that period of her life and decide this case on
20 the laws of this state and from the evidence you hear from the
21 stand?

22 PROSPECTIVE JUROR NO. 6: Yes.

23 THE COURT: Would you tend to give a police officer's
24 testimony any greater or any lesser weight than any other witness
25 merely because they happen to be police officers?

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8JD04353

1 PROSPECTIVE JUROR NO. 6: Yes, I would.

2 THE COURT: Please explain, sir?

3 PROSPECTIVE JUROR NO. 6: Well, they're trained
4 individuals. They're trained to notice certain things and
5 certain reactions. They're suppose to be impartial. We have
6 them as police officers, because they're upstanding members of
7 our society. So, yes, I would lend a little more credence to
8 their testimony than to someone else.

9 THE COURT: Counsel may inquire at the proper time.
10 Have you ever appeared as a witness before in any criminal
11 trial?

12 PROSPECTIVE JUROR NO. 6: No.

13 THE COURT: Have you ever served on any jury before?

14 PROSPECTIVE JUROR NO. 6: No.

15 THE COURT: Have you ever been in military service?

16 PROSPECTIVE JUROR NO. 6: Yes.

17 THE COURT: Which service, sir?

18 PROSPECTIVE JUROR NO. 6: United States Navy.

19 THE COURT: What was your rank?

20 PROSPECTIVE JUROR NO. 6: Seaman Third Class.

21 THE COURT: Did you ever serve or appear before any
22 court-martial or boards?

23 PROSPECTIVE JUROR NO. 6: No.

24 THE COURT: Have you ever been or anyone close to you
25 ever been a victim of any crime?

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1 PROSPECTIVE JUROR NO. 6: Well, other than having a
2 house robbed or attempted mugging or something like that?

3 THE COURT: Tell me about having your house
4 burglarized?

5 PROSPECTIVE JUROR NO. 6: I lived in Arizona, it was
6 the Christmas holidays, and the house was...

7 THE COURT: What year approximately?

8 PROSPECTIVE JUROR NO. 6: Approximately 1980. And I
9 came home, and the house had been broken into. All the Christmas
10 presents which were wrapped under the trees were taken. We
11 kiddingly, after we got over our initial anger, blamed the
12 Grinch. Televisions and things like that taken. It was a quick
13 in and out.

14 THE COURT: Is there anything about that experience
15 that would cause you to have any biases for or against either
16 side in this case?

17 PROSPECTIVE JUROR NO. 6: No.

18 THE COURT: And tell me about the attempted mugging.

19 PROSPECTIVE JUROR NO. 6: Oh, that was a lot of years
20 ago. I was in the military.

21 THE COURT: Where and when?

22 PROSPECTIVE JUROR NO. 6: New York City on the way back
23 to base, 12:00 at night on a subway, two individuals got off the
24 train, which I noticed were looking at me suspiciously or I felt
25 suspiciously; and as they got closer I looked for something to

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1 defend myself with, found it in the form of a club. When I
2 turned, they had knives out, and I pretty much was able to get
3 them to decide not to rob me.

4 THE COURT: And when was this?

5 PROSPECTIVE JUROR NO. 6: Oh, about 1959.

6 THE COURT: Is there anything about that experience
7 that would cause you to have any biases for or against either
8 side in this case?

9 PROSPECTIVE JUROR NO. 6: No.

10 THE COURT: Can you and will you follow the Court's
11 instructions on the law even though you may differ with those
12 instructions?

13 PROSPECTIVE JUROR NO. 6: I'm sorry. Could you say
14 that again?

15 THE COURT: Can you and will you follow the Court's
16 instructions on the law even though you may differ with them?

17 PROSPECTIVE JUROR NO. 6: Yes.

18 THE COURT: If you were either one of the Defendants,
19 would you want twelve people in your present state of mind to sit
20 and judge your case?

21 PROSPECTIVE JUROR NO. 6: These Defendants here?

22 THE COURT: Yes, just change places. And would you
23 want somebody in your present state of mind to sit and judge your
24 case?

25 PROSPECTIVE JUROR NO. 6: Probably not.

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1 THE COURT: And why not, sir?

2 PROSPECTIVE JUROR NO. 6: I'm fairly conservative.

3 THE COURT: That doesn't say very much to me.

4 PROSPECTIVE JUROR NO. 6: No, it doesn't. Just hearing
5 what I heard to begin with--that they were tried and convicted of
6 first degree murder, premeditated--to think about it, do the
7 crime, and another jury decided all this is true, and apparently,
8 then you're already sitting here with the idea that, you know,
9 why are they still here. I mean, you know, what happened?

10 THE COURT: It happened because there were
11 irregularities in the procedure, and so the Supreme Court had
12 pushed them back.

13 PROSPECTIVE JUROR NO. 6: Yeah. Well, I don't know. I
14 just -- I just -- I don't understand. I just don't understand
15 why that they weren't tried and convicted already, I mean, and
16 then to sentence and...

17 THE COURT: They were tried; they were convicted. And
18 when you have a finding of guilty in a first-degree murder, it is
19 the jury who does the sentencing, who does the decision upon
20 whether they will be put in jail for the rest of their life in
21 the penitentiary, or with or without the possibility of parole,
22 or issue the death sentence.

23 A time is given separate from the guilt phase until the
24 sentence, the penalty phase. And it was in the penalty phase
25 that our Supreme Court said we had some irregularities with the

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1 Judge who tried their case down there, which I cannot go into,
2 and I've got it back here for a rehearing on the penalty phase;
3 that's why it's back here.

4 PROSPECTIVE JUROR NO. 6: Okay.

5 THE COURT: Now, my question again goes to you
6 indicated that you would not someone in your present state of
7 mind to sit and judge your case. I've gotten so far that you're
8 conservative. I would hope that we would have a jury composed of
9 a good cross-section of the community. And that you didn't
10 understand why they're back here. I think I've answered that
11 question.

12 PROSPECTIVE JUROR NO. 6: Yes.

13 THE COURT: Do you have any other reasons?

14 PROSPECTIVE JUROR NO. 6: No.

15 THE COURT: Do you know of any other reasons, whether
16 I've asked you or not, why you cannot sit as a fair and impartial
17 juror in this case?

18 PROSPECTIVE JUROR NO. 6: I don't think so.

19 THE COURT: Let's start with Mr. Wall this time.

20 MR. WALL: Thank you, your Honor.

21 Mr. Pangburn, let me ask you first a couple of questions
22 about some of the things in the questionnaire. And I'm not
23 trying to pick on the answers or anything; there's a couple that
24 I want to understand a little better.

25 First of all, you answered this question No. 34 regarding

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8JD04358

1 whether or not you'd feel rushed or hurried to bring this case to
2 a conclusion, and you had some concerns about your work. Are
3 those still concerns?

4 PROSPECTIVE JUROR NO. 6: I tried to answer that
5 honestly. If I remember correctly, I said that perhaps I would.
6 You certainly build up a certain amount of anxiety if you're
7 trying to reach a deadline. And with the company I have, you
8 know, in commission sales, that if you don't stay on top of
9 sales, it takes you awhile to build up your prospects again. And
10 well, certainly that would be in the back of my mind, so that's
11 why I said perhaps, yes. I mean, I can -- I mean, why should I
12 lie and say, "Nah, it doesn't bother me," when it would, you
13 know?

14 MR. WALL: I understand your concerns. I was just
15 asking whether or not that would make it difficult at all for you
16 to serve as a juror if this case went to the end of this week,
17 maybe even the beginning of next? I mean, would you feel
18 pressure? Would you feel uneasy about being a juror with the
19 concerns about your work on your mind?

20 PROSPECTIVE JUROR NO. 6: Until the end of this week or
21 maybe the beginning of next?

22 MR. WALL: Right.

23 PROSPECTIVE JUROR NO. 6: That wouldn't be a problem.

24 MR. WALL: Okay. You answered question No. 38
25 indicating that you thought that the O.J. Simpson trial might

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8JD04359

8JD04360

1 have an effect on how you view the legal system. Can you tell us
2 how your views might have changed as a result of that case?

3 PROSPECTIVE JUROR NO. 6: I'm pretty proud of our
4 system in this country, and that brought to light some of its
5 warts, I think. It seemed like--to me, my opinion--that some of
6 the things that worked in that trial or didn't work in that
7 trial, they were trying more to disguise the truth than come out
8 with the truth. And I think that's what our system's all about
9 is to come here, come to the truth, and make a decision on. And
10 hiding so much evidence and trying to assassinate characters of
11 people, that's not the law to me; that's not the law. It's not
12 coming out with the truth. And so I think it's been put in
13 error; it should be looked at again.

14 MR. WALL: Was that one of the concerns that you had
15 when you answered question 63, talking about whether you think
16 sometimes the system maybe unduly favors the person accused of a
17 crime?

18 PROSPECTIVE JUROR NO. 6: Yeah. Correct.

19 MR. WALL: Those same kind of concerns?

20 PROSPECTIVE JUROR NO. 6: Same kind of concerns.

21 MR. WALL: Do you think that would have an effect on
22 your ability to be fair to both sides in this case, especially in
23 light of the concerns you raised about why this has taken so
24 long?

25 PROSPECTIVE JUROR NO. 6: Probably not.

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8JD04360

1 MR. WALL: Okay. When the Judge asked you about
2 whether if you were sitting at the table where Mr. Flanagan and
3 Mr. Moore are, would you want twelve jurors in your state of mind
4 to hear your case, other than the questions that you had about
5 how long this has taken, otherwise, would you want someone in
6 your frame of mind to hear your case?

7 PROSPECTIVE JUROR NO. 6: What do you mean by "your
8 frame of mind"?

9 MR. WALL: Well, when you first answered the question
10 that the Judge asked you, you had some concerns about being
11 conservative.

12 PROSPECTIVE JUROR NO. 6: Correct.

13 MR. WALL: And then the Judge talked to you about the
14 concerns you had about why this case has taken so long. I guess
15 I'm interested in when you say you're conservative, does that
16 mean that you don't feel that you might be a good juror in this
17 case, that that might somehow impair you from considering all
18 three possible options?

19 PROSPECTIVE JUROR NO. 6: I would consider all three
20 options.

21 MR. WALL: Okay. Do you have a predisposition to
22 consider, say, the death penalty as something you're more likely
23 to find based on what you know, or do you have any concerns about
24 your ability to fairly consider all three?

25 PROSPECTIVE JUROR NO. 6: You mean if I had to render a

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8JD04361

1 judgment right now based on what little information we've been
2 given?

3 MR. WALL: Well, it's not so much that, because you are
4 going to be given some more. But the facts that you have now
5 about the conviction and the offense and the facts that were
6 within the questionnaire, as you sit here now, knowing those
7 facts, can you still consider that someone convicted of that
8 offense might, depending on what evidence you hear, deserve a
9 sentence of life in prison, say, with the possibility of parole?

10 PROSPECTIVE JUROR NO. 6: Might.

11 MR. WALL: Okay. You indicated to the Judge that under
12 certain conditions at least you might consider the word of a
13 police officer over that of an ordinary citizen. Certainly
14 within those areas of expertise that a policeman might have, he
15 would know more about those things than a layperson. But as to
16 something maybe not generally associated with the technical part
17 of his job, would you have a tendency to believe a police
18 officer's word more than an ordinary citizen's?

19 PROSPECTIVE JUROR NO. 6: It's difficult to say without
20 hearing the exact...

21 MR. WALL: Do you think that a police officer, for
22 instance, could tell a lie?

23 PROSPECTIVE JUROR NO. 6: Anyone can tell a lie.

24 MR. WALL: Okay. Any person no matter what occupation
25 they had. There are good and bad police officers; there are good

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8JD04362

1 and bad barbers; there are good and bad lawyers. So I guess what
2 I'm saying is just because it's a police officer, that wouldn't
3 say to you, "He must be telling me the truth." You would at
4 least consider all the facts that you heard to support whatever
5 opinion he gave?

6 PROSPECTIVE JUROR NO. 6: When they raise their hand in
7 the courtroom, they're sworn to tell the truth. Is that not
8 correct?

9 MR. WALL: That's correct.

10 PROSPECTIVE JUROR NO. 6: They're impartial. Is that
11 not correct?

12 MR. WALL: Well, that's not a question for me to
13 answer.

14 PROSPECTIVE JUROR NO. 6: Okay.

15 MR. WALL: Do you feel that they're generally
16 impartial?

17 PROSPECTIVE JUROR NO. 6: Generally impartial, yes.

18 MR. WALL: Okay. You indicated that your wife at one
19 point several years ago was a police service officer. Is that
20 different from a police officer?

21 PROSPECTIVE JUROR NO. 6: Yes, they do everything
22 but respond to calls. They don't carry a weapon; they
23 wore a -- she wore a uniform; she had a squad car; she had the
24 ability to do a lot of things except respond to a weapons-type
25 situation.

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1 MR. WALL: Now, the two of you were married at that
2 time?

3 PROSPECTIVE JUROR NO. 6: Oh, sure.

4 MR. WALL: Did she have the power to make arrests?

5 PROSPECTIVE JUROR NO. 6: Recommend arrests.

6 MR. WALL: Okay. Did she testify in court on criminal
7 cases?

8 PROSPECTIVE JUROR NO. 6: A couple of times, yes.

9 MR. WALL: Did she talk about how it felt to be a
10 witness and maybe be cross-examined by an attorney?

11 PROSPECTIVE JUROR NO. 6: Yes, after the fact.

12 MR. WALL: Okay. That was about ten years ago did you
13 say?

14 PROSPECTIVE JUROR NO. 6: Correct.

15 MR. WALL: How long was she in the capacity as a police
16 service officer?

17 PROSPECTIVE JUROR NO. 6: Five years.

18 MR. WALL: Five years? What kind of training did she
19 have to have?

20 PROSPECTIVE JUROR NO. 6: They have like a mini academy
21 for them. Instead of the long police academy, they have a...

22 MR. WALL: Right.

23 PROSPECTIVE JUROR NO. 6: ...couple of three weeks.
24 Then they ride with officers. It's just a step-by-step
25 process.

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1 MR. WALL: You've been here for ten or eleven years.
2 Is that right?

3 PROSPECTIVE JUROR NO. 6: Ten years.

4 MR. WALL: Having been in here for day and a half now,
5 or maybe two days, do you...

6 PROSPECTIVE JUROR NO. 6: Fourth day coming.

7 MR. WALL: Do you have -- has any of the actions over
8 those four days triggered any memories that you have about this
9 case, hearing in the newspaper or on the news over the last ten
10 years?

11 PROSPECTIVE JUROR NO. 6: Just vaguely. But no
12 recollection of incidents or particular things, but just vaguely.

13 MR. WALL: Without -- and this is a yes or no question.
14 So without telling us what they were, do you remember facts about
15 the case that haven't been brought so far?

16 PROSPECTIVE JUROR NO. 6: No.

17 MR. WALL: Do you remember anything about the trial
18 and, you know, the nuts-and-bolts parts of the trial that took
19 place that might have been in the paper before?

20 PROSPECTIVE JUROR NO. 6: Uh-huh.

21 MR. WALL: No?

22 PROSPECTIVE JUROR NO. 6: No.

23 MR. WALL: Okay. When you answered a question of the
24 Judge just by indicating that life in prison without the
25 possibility of parole to you seemed a little bit (if I can

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8JD04365

1 paraphrase) "futile"--that if someone was able to be
2 rehabilitated, they should be released back into society, and if
3 not then they should be executed if it's that kind of case.

4 If you were chosen to be a juror in this case would you take
5 into consideration a person's character both, I guess, since the
6 time of the offense in determining what you think the proper
7 punishment ought to be?

8 PROSPECTIVE JUROR NO. 6: Since the offense?

9 MR. WALL: Yes.

10 PROSPECTIVE JUROR NO. 6: Possibly.

11 MR. WALL: Would you consider then -- I guess you
12 would, because -- well, let's go on.

13 Would you consider evidence of, say, Dale Flanagan's
14 character or evidence about the ability to be rehabilitated (for
15 lack of a better word) in determining if you were a juror what
16 the proper sentence ought to be?

17 PROSPECTIVE JUROR NO. 6: I'm a little confused with
18 that question. Could you...

19 MR. WALL: It wasn't the most artfully drawn.

20 PROSPECTIVE JUROR NO. 6: Yeah.

21 MR. WALL: You're aware because you had concerns that
22 the actual offense took place quite some time ago?

23 PROSPECTIVE JUROR NO. 6: Yes, I am.

24 MR. WALL: You indicated that if you saw -- you
25 indicated that you would consider evidence of someone's character

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8JD04367
1 and their behavior since the time of the offense. You would take
2 that into consideration if you were a juror before returning any
3 particular sentence. Is that right?

4 PROSPECTIVE JUROR NO. 6: Yes.

5 MR. WALL: I think that's the question I was trying to
6 ask.

7 PROSPECTIVE JUROR NO. 6: Okay.

8 MR. WALL: And I may have already asked it.

9 Would the fact that the victims in this case were
10 grandparents affect you at all, because you have grandchildren of
11 your own?

12 PROSPECTIVE JUROR NO. 6: Yes.

13 MR. WALL: It would affect you?

14 PROSPECTIVE JUROR NO. 6: Well, it angers me. It
15 angers me.

16 MR. WALL: Okay. There is no question but that the
17 whole case has some emotionally charged issues in it. I guess
18 the concern of everyone in here would be, given the fact that you
19 have that anger, could you set it aside and consider all three
20 penalties equally based on the evidence?

21 PROSPECTIVE JUROR NO. 6: I believe so.

22 MR. WALL: Okay. Thank you. We'll pause for cause,
23 your Honor.

24 THE COURT: Mr. Seaton?

25 MR. SEATON: Mr. Wolfbrandt, your Honor.

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1 THE COURT: All right.

2 MR. WOLFBRANDT: Good morning.

3 PROSPECTIVE JUROR NO. 6: Good morning.

4 MR. WOLFBRANDT: The facts that you are aware of
5 already about this case you understand is not evidence?

6 PROSPECTIVE JUROR NO. 6: Correct.

7 MR. WOLFBRANDT: Okay? We anticipate that the evidence
8 is going to show substantially the facts that we've given you,
9 but what any of us have said so far is not evidence. Do you
10 understand that?

11 PROSPECTIVE JUROR NO. 6: Yes, I understand that.

12 MR. WOLFBRANDT: Okay. We anticipate that you're going
13 to hear substantially more evidence. The State is going to
14 introduce evidence that they feel will aggravate the crime
15 itself. And the Defense, in all likelihood, is going to be
16 presenting to you evidence on behalf of both Defendants in
17 mitigation to show that they are able to be rehabilitated. Now,
18 can you take all of -- if you're selected as a juror, would you
19 take and consider all of that evidence, both from the State and
20 the Defense, and apply that to each of the three possible
21 penalties before reaching your decision?

22 PROSPECTIVE JUROR NO. 6: That would be my job, yes.

23 MR. WOLFBRANDT: Okay. And you can do that?

24 PROSPECTIVE JUROR NO. 6: I believe so.

25 MR. WOLFBRANDT: Okay. As you sit here right now -- of

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8JD04369
1 course what everybody is interested in is: Do you have a
2 predisposition, without hearing all the other evidence, as to
3 perhaps which of those three penalties, if any of them, that you
4 feel is the most appropriate at this juncture?

5 PROSPECTIVE JUROR NO. 6: I have leanings; I don't have
6 anything set.

7 MR. WOLFBRANDT: Okay. Could you share with us the
8 leanings?

9 PROSPECTIVE JUROR NO. 6: The death penalty.

10 MR. WOLFBRANDT: Okay. Do you feel that it is the
11 burden of the Defense to convince you that the penalty in this
12 case should not be the death penalty?

13 PROSPECTIVE JUROR NO. 6: Yes.

14 MR. WOLFBRANDT: Okay. Do you feel that it would be
15 the burden of the State to convince you that in fact a penalty
16 should be the death penalty as opposed to either of the other
17 two? It's a little different from the last question I asked.

18 PROSPECTIVE JUROR NO. 6: I understand.

19 MR. WOLFBRANDT: So I want to make sure that we
20 understand where your mind-set is.

21 PROSPECTIVE JUROR NO. 6: They have an equal job to do
22 too, to convince me, right. They have to state their case too.
23 I said I wasn't locked into it.

24 MR. WOLFBRANDT: No, I understand that. I guess what
25 I'm looking for is everybody here is looking for jurors that

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8JD04369

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1 start on an even playing field. And what we want to know is from
2 that field -- I mean, are you starting at the maximum penalty,
3 and is it the obligation of the Defense to convince you
4 otherwise? Or are you starting at the even playing field, and
5 the State has to prove to you that you need to go up or down?

6 PROSPECTIVE JUROR NO. 6: I would like to say that I'm
7 real even. I mean, you know, I'd like to say, "Oh, yeah, I can
8 come in here completely washed of any of opinions," but the two
9 young men there have been tried and convicted of first-degree
10 murder of their grandparents. And to be honest, I'm not for the
11 death penalty at this point, but I'm tilted that way, if you
12 understand what I'm saying. I'm not locked into and say, "Yeah,
13 that's it," but just based on that alone...

14 MR. WOLFBRANDT: Okay. Based on that alone and what
15 you've heard so far?

16 PROSPECTIVE JUROR NO. 6: I'm leaning that way, yes.

17 MR. WOLFBRANDT: And correct me if I'm wrong; I
18 certainly don't want to misstate your opinions here. Are you
19 saying that it would be the burden upon the Defense to convince
20 you to lean the other direction?

21 PROSPECTIVE JUROR NO. 6: More so, yes.

22 MR. WOLFBRANDT: Now, we talked about your wife having
23 been a reserve police officer. Is she still?

24 PROSPECTIVE JUROR NO. 6: No.

25 MR. WOLFBRANDT: Okay. When you had conversations with

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8JD04370

8JD04371
1 her and discussed her experiences as being a witness and being
2 cross-examined, did she find that experience to be distasteful?

3 PROSPECTIVE JUROR NO. 6: She never used that word.

4 MR. WOLFBRANDT: Okay. Did she find it to be -- I'm
5 sure she probably didn't find it to be pleasant, did she?

6 PROSPECTIVE JUROR NO. 6: No, it wasn't -- it's -- she
7 never...

8 MR. WOLFBRANDT: It wasn't that word either?

9 PROSPECTIVE JUROR NO. 6: ...said it was pleasant.

10 MR. WOLFBRANDT: Okay.

11 PROSPECTIVE JUROR NO. 6: Part of the job.

12 MR. WOLFBRANDT: Okay. Did those convers -- well,
13 never mind.

14 And I apologize if this has been asked earlier. Does the
15 concerns that you've had or that you've expressed over the amount
16 of time between the crime and the original conviction and the
17 proceedings that are going on right now, does that tend to make
18 you lean towards one of the three possible punishments as opposed
19 to any of the other two?

20 PROSPECTIVE JUROR NO. 6: No, the time doesn't.

21 MR. WOLFBRANDT: Will you be concerned about why
22 there's been a time delay that would affect your ability to
23 listen to and base your decision solely upon the evidence that
24 you would hear in this case?

25 PROSPECTIVE JUROR NO. 6: No. Judge Guy explained that

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8JD04371

1 pretty well to me.

2 MR. WOLFBRANDT: Thank you. I would pass.

3 THE COURT: Mr. Seaton?

4 MR. SEATON: Very briefly, Judge.

5 I'd like to try to clear up a misconception that I think may
6 be coming into the courtroom here. You were asked and you
7 answered sort of in the affirmative, "Do you think it's the
8 burden of the Defense to convince you that these two young men
9 should not get the death penalty?" Is that a fair recapitulation
10 of your stance? You do believe that?

11 PROSPECTIVE JUROR NO. 6: I didn't say it that exact
12 way. I'm leaning -- I said it more so for them than it would be
13 for you to prove whether they'd have to or show where they'd have
14 to go to have the death penalty.

15 MR. SEATON: Two things to bring out here. I don't
16 think anyone in this courtroom expects any juror sitting up there
17 to say, when asked would they want twelve people of their frame
18 of mind judging them if they were sitting in this chair, that
19 they think these guys are great and that they shouldn't have
20 anything to worry about. No one sitting up there is going to be
21 particularly happy with them having been convicted of killing one
22 of their grandparents. Would you agree with that?

23 PROSPECTIVE JUROR NO. 6: I would hope so.

24 MR. SEATON: I hear people almost apologizing for
25 taking that stance. And, of course, if you had been the jury who

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8JD04372

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 2 OF 5

Electronically Filed
Jun 11 2015 12:30 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S SUPPLEMENTAL APPENDIX

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

Second Judicial District Court, Washoe County

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Attorneys for Appellant

1 TUESDAY; JUNE 13, 1995; 1:49 P.M.

2
3 (Prospective jurors present)

4 THE BAILIFF: Department XI is again in session, the
5 Honorable Addeliar Guy presiding.

6 THE COURT: Please be seated. This is a continuation
7 of C69269, State of Nevada vs. Flanagan & Moore. Let the record
8 reflect the presence of Defendant with counsel, District
9 Attorney, other officers of the Court.

10 Will the Clerk please call roll call of the jury?

11 Please answer when your name is called.

12 (Clerk commences roll call of prospective jurors)

13 THE COURT: Remember, folks, this is being recorded,
14 and won't take hand raises or nods.

15 (Clerk continues roll call of prospective jurors; all
16 present)

17 THE COURT: Will counsel stipulate to the presence of
18 the jury panel?

19 MR. SEATON: Yes, Judge.

20 MR. WALL: Yes, your Honor.

21 THE COURT: Mr. Jacintho?

22 PROSPECTIVE JUROR NO. 2: Yes, sir.

23 THE COURT: Sir, how long have you lived in Clark
24 County, Nevada?

25 PROSPECTIVE JUROR NO. 2: Six years.

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8JD04214

1 THE COURT: Where did you come from?
2 PROSPECTIVE JUROR NO. 2: Indianapolis, Indiana.
3 THE COURT: How long did you live in Indianapolis?
4 PROSPECTIVE JUROR NO. 2: Ten years.
5 THE COURT: Where were you born and raised?
6 PROSPECTIVE JUROR NO. 2: I was reared in Plymouth,
7 Massachusetts.
8 THE COURT: Where were you born?
9 PROSPECTIVE JUROR NO. 2: 1941.
10 THE COURT: Where? I'll get that next.
11 PROSPECTIVE JUROR NO. 2: I was born in Plymouth,
12 Massachusetts.
13 THE COURT: What is your educational background?
14 PROSPECTIVE JUROR NO. 2: I got my bachelors degree,
15 and I worked and I did some postgraduate work.
16 THE COURT: What were your fields of endeavor?
17 PROSPECTIVE JUROR NO. 2: Business.
18 THE COURT: And what colleges did you attend?
19 PROSPECTIVE JUROR NO. 2: I'm sorry I didn't under...
20 THE COURT: What colleges did you attend?
21 PROSPECTIVE JUROR NO. 2: University of Nebraska.
22 THE COURT: What has been your employment for the last
23 ten years?
24 PROSPECTIVE JUROR NO. 2: Retired.
25 THE COURT: From what did you retire?

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8JD04215

8JD04216

1 PROSPECTIVE JUROR NO. 2: United States Military, in
2 the United States Army.

3 THE COURT: Are you employed at this time?

4 PROSPECTIVE JUROR NO. 2: Just managing my own
5 portfolio.

6 THE COURT: To manage a portfolio you indicate you're
7 doing something. What are you doing besides being retired?

8 PROSPECTIVE JUROR NO. 2: I play the stock market with
9 my money. Losing, but I'm playing with it.

10 THE COURT: I just wish I could. What is your
11 religious preference?

12 PROSPECTIVE JUROR NO. 2: I'm sorry?

13 THE COURT: What is your religious preference?

14 PROSPECTIVE JUROR NO. 2: I'm a bad Catholic.

15 THE COURT: I presume you don't attend mass regularly?

16 PROSPECTIVE JUROR NO. 2: No, sir.

17 THE COURT: How old are you, sir?

18 PROSPECTIVE JUROR NO. 2: Fifty-four.

19 THE COURT: Are you married?

20 PROSPECTIVE JUROR NO. 2: Yes, sir.

21 THE COURT: What branch of the Army were you in?

22 PROSPECTIVE JUROR NO. 2: Army. I was in a signal
23 corp.

24 THE COURT: Is your spouse employed?

25 PROSPECTIVE JUROR NO. 2: Sir? My spouse? Yes, sir,

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8JD04216

1 she is.

2 THE COURT: Where does she work, and what are her
3 duties?

4 PROSPECTIVE JUROR NO. 2: She's in retail at Wal-Mart.

5 THE COURT: Do you have any children?

6 PROSPECTIVE JUROR NO. 2: No, sir.

7 THE COURT: In the State of Nevada, there are three
8 possible forms of punishment that the jury may consider and then
9 select the one that they believe is the most appropriate under
10 the law and facts of this case. Those three possible forms of
11 punishment are: (a) the imposition of the death penalty;
12 (b) life imprisonment without the possibility of parole; and
13 (c) life imprisonment with the possibility of parole. Do you
14 understand, sir?

15 PROSPECTIVE JUROR NO. 2: Yes, sir.

16 THE COURT: In your present state of mind, can you, if
17 selected as a juror, consider equally all three possible forms of
18 punishment and then select the one that you feel is most
19 appropriate?

20 PROSPECTIVE JUROR NO. 2: I believe so, sir.

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

23 PROSPECTIVE JUROR NO. 2: No, sir.

24 THE COURT: Are you acquainted with either of the
25 Defendants or their attorneys?

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1 PROSPECTIVE JUROR NO. 2: No, sir.

2 THE COURT: Do you know anyone in the District
3 Attorney's Office?

4 PROSPECTIVE JUROR NO. 2: No, sir.

5 THE COURT: Are you now involved in or have you ever
6 been involved in any law enforcement work?

7 PROSPECTIVE JUROR NO. 2: No, sir.

8 THE COURT: Do you have any close friends or relatives
9 who are involved with any law enforcement agency?

10 PROSPECTIVE JUROR NO. 2: Yes, sir. I forgot to put on
11 my application I have a nephew who became a police officer in
12 Massachusetts one year ago.

13 THE COURT: When was this, sir?

14 PROSPECTIVE JUROR NO. 2: One year ago in Plymouth,
15 Mass.

16 THE COURT: And does he correspond with you?

17 PROSPECTIVE JUROR NO. 2: No, sir. I talk to his
18 mother but not him.

19 THE COURT: Do you have any conversations with him
20 about his job?

21 PROSPECTIVE JUROR NO. 2: No. Just prior to him
22 selecting that as his field, I suggested he look to some other
23 field for a career.

24 THE COURT: Would you tend to give a police officer's
25 testimony any greater or any lesser weight merely because they

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1 happen to be police officers?

2 PROSPECTIVE JUROR NO. 2: No, sir.

3 THE COURT: Have you or any close friend or relative
4 ever been convicted of a crime?

5 PROSPECTIVE JUROR NO. 2: No, sir.

6 THE COURT: Have you ever served on any kind of a jury
7 before?

8 PROSPECTIVE JUROR NO. 2: Not on a jury. No, sir.

9 THE COURT: Have you or any close friend or relative
10 ever been a victim of a crime?

11 PROSPECTIVE JUROR NO. 2: Can you and will you follow
12 the Court's instructions on the law even though you may disagree
13 with them?

14 PROSPECTIVE JUROR NO. 2: Yes, sir.

15 THE COURT: If you were either of the Defendants, would
16 you want twelve people in your present state of mind sit and
17 judge your case?

18 PROSPECTIVE JUROR NO. 2: Probably, and due to the fact
19 knowing the circumstances, I have a good idea what to expect for
20 verdict.

21 THE COURT: Would you mind explaining that answer?

22 PROSPECTIVE JUROR NO. 2: If I was in a position of a
23 defendant, I would know where I stood as far as evidence against
24 me and what the laws were and what I could expect for a verdict
25 or punishment.

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8JD04219

1 THE COURT: And if you were either Mr. Moore or Mr.
2 Flanagan, would you want twelve open-minded and fair jurors to
3 hear your case?

4 PROSPECTIVE JUROR NO. 2: Open-minded and fair?

5 THE COURT: Yes.

6 PROSPECTIVE JUROR NO. 2: Yes, sir.

7 THE COURT: In your present state mind, and you were
8 sitting in their spots, because there are three possible forms of
9 verdicts that you may come out with--they being again life
10 imprisonment without the possibility of parole, life imprisonment
11 with the possibility of parole, and the death penalty--would you
12 want someone in your present state of mind to sit and judge your
13 case?

14 PROSPECTIVE JUROR NO. 2: Based on the evidence, yes,
15 sir.

16 THE COURT: Do you know of any reason whatsoever,
17 whether I've asked you or not, why you cannot sit as a fair and
18 impartial juror in this case?

19 PROSPECTIVE JUROR NO. 2: No, sir.

20 THE COURT: Mr. Schieck?

21 MR. SCHIECK: Thank you, your Honor.

22 Sir, have you formed any opinions about what the appropriate
23 punishment should be in this case?

24 PROSPECTIVE JUROR NO. 2: Not till I've heard all the
25 -- I'm not familiar with this case at all. I mean, I just got

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8JD04220

1 sketchy information. So without hearing all of it, no.

2 MR. SCHIECK: Well, you've heard some of the facts
3 concerning the crime and the conviction, correct?

4 PROSPECTIVE JUROR NO. 2: All I know is very sketchy;
5 it's a murder case, and they have been convicted.

6 MR. SCHIECK: There's nothing about the fact that they
7 stand convicted of first-degree murder that would cause you to
8 prejudge in any way what the verdict or sentence should be in
9 this case?

10 PROSPECTIVE JUROR NO. 2: Prejudge in any way? Based
11 on the verdict that has come out in the trial, which I know
12 absolutely nothing about, knowing absolutely nothing about this
13 case, I do not think I'd want to be sitting in their position.

14 MR. SCHIECK: We can understand that. I'm sure you can
15 understand that if you were sitting in their position, you would
16 want twelve people on the jury that had not preformed an opinion
17 until they had heard all the evidence.

18 PROSPECTIVE JUROR NO. 2: Understand.

19 MR. SCHIECK: And what we're trying to find out is:
20 Are you that type of person that has not made any prejudgments in
21 this case?

22 PROSPECTIVE JUROR NO. 2: I do not have a prejudgment
23 solid one way or the other.

24 MR. SCHIECK: For example, sometimes jurors come in and
25 they just take a look at the defendants and they say, "Hey, those

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1 guys look guilty." You're not a person that makes a prejudgment
2 like that?

3 PROSPECTIVE JUROR NO. 2: No.

4 MR. SCHIECK: Now, you've had some experience in a
5 trial-type setting. Is that true?

6 PROSPECTIVE JUROR NO. 2: Yes, sir.

7 MR. SCHIECK: You indicated in your questionnaire,
8 Question 27, I believe...

9 PROSPECTIVE JUROR NO. 2: Trial counselor.

10 MR. SCHIECK: ...Question 27 that you were a trial
11 counselor. Can you tell us what that means?

12 PROSPECTIVE JUROR NO. 2: I don't think the military
13 does it anymore, but as an officer--in at least the United States
14 Army--is sometimes you were assigned special duties, extra
15 duties, whatever you want to call it. Sometimes you'd be an
16 inventory officer for the money in the commissary or whatever.
17 And unfortunately in my case I was selected twice as a trial
18 counselor. What the trial counselor is, in a nutshell, is the
19 prosecutor. Which I never understood it, because I do not have
20 any law degree. I've got some law classes--business law and
21 constitutional law--but I don't have any criminal law.

22 And basically what you do as a trial counselor, you have a
23 three-panel member or five-panel judge member, and you go through
24 a booklet. But on the defense you have a lawyer with a law
25 degree. So to me it seemed like a little inequity in the system,

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8JD04222

1 but basically that's what it was. So I was exposed, if you will,
2 to a very narrow view of the trial procedure.

3 MR. SCHIECK: Did you actually call witnesses and...

4 THE COURT: Mr. Schieck, let me ask a couple of
5 questions, please.

6 When did you retire?

7 PROSPECTIVE JUROR NO. 2: I retired in 1959, sir.
8 November.

9 THE COURT: After how many years?

10 PROSPECTIVE JUROR NO. 2: Twenty years.

11 THE COURT: What was your rank?

12 PROSPECTIVE JUROR NO. 2: Major. I came through the
13 ranks.

14 THE COURT: Sir?

15 PROSPECTIVE JUROR NO. 2: Come from the unlisted up.
16 Yes, sir.

17 THE COURT: Me too.

18 PROSPECTIVE JUROR NO. 2: Yes, sir. I never do
19 anything the easy way!

20 THE COURT: Lieutenant colonel, major.

21 PROSPECTIVE JUROR NO. 2: I'm sorry. Yes, sir.

22 THE COURT: Just for your edification, the system has
23 changed tremendously.

24 PROSPECTIVE JUROR NO. 2: Thank God. I felt a little
25 inept in the situation, but I won the case, and that ain't saying

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8JD04223

1 much for the lawyer.

2 THE COURT: Conversely, because I was a trial judge and
3 a defense counselor, I became a lawyer.

4 Please continue. I just wanted to get an idea of what he
5 was talking about on that scale, because they have changed
6 tremendously since that time.

7 MR. SCHIECK: Did you serve once or twice as trial
8 counselor?

9 PROSPECTIVE JUROR NO. 2: If memory serves me, I
10 believe it was twice, because the officers would tease me and
11 call me F. Lee Bailey.

12 MR. SCHIECK: Did you win both of the time?

13 PROSPECTIVE JUROR NO. 2: I don't know if you'd call it
14 won--I think the lawyer lost--because I didn't know what I was
15 doing. I was just following the scripts, you know? The colonel
16 would know what I'm talking about.

17 MR. SCHIECK: Anything about that process that brings
18 any biases into this possibility of serving as a juror? For
19 instances, as a prosecutor, are you going to align yourself with
20 the prosecutor saying, "Well, he's doing a great job," and "I
21 wish I could have prosecuted that well"?

22 PROSPECTIVE JUROR NO. 2: Again to clarify, I don't
23 consider myself being the prosecutor, absolutely not, because I
24 didn't know what I was doing then, and I'm not too sure I know
25 what I'm doing now.

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8JD04224

1 MR. SCHIECK: You also told us in the questionnaire
2 that you had served as a character witness, in Question 52, that
3 you had testified as a character witness for one of your men?

4 PROSPECTIVE JUROR NO. 2: Yeah, right here in Nevada.
5 Matter of fact, in this courtroom.

6 MR. SCHIECK: In this very courtroom?

7 PROSPECTIVE JUROR NO. 2: Well, no not this particular
8 -- I don't remember which courtroom. One of the rooms around
9 here.

10 MR. SCHIECK: Okay.

11 PROSPECTIVE JUROR NO. 2: It was in this building.

12

13 MR. SCHIECK: This is after you were out of the
14 military?

15 PROSPECTIVE JUROR NO. 2: No, I was in the military.

16 MR. SCHIECK: Okay. What is...

17 PROSPECTIVE JUROR NO. 2: I was at the nuclear test
18 site.

19 MR. SCHIECK: And what was this individual charged
20 with?

21 PROSPECTIVE JUROR NO. 2: What it was, I received a
22 call approximately 2:00 in the morning, and the police up in
23 Beatty had arrested three of the people that have worked for me,
24 and they had called the post commander, which was an air force
25 colonel, and for some reason he elected to have them call me

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8JD04225

1 because they were my people. And I went out there, and it turned
2 out that they were arrested for attempt of stealing government
3 property; it was some photographic equipment.

4 MR. SCHIECK: So you came to court on their behalf?

5 PROSPECTIVE JUROR NO. 2: After they have an
6 investigation to determine whether it should be brought to court,
7 they decided to bring to court the three individuals. And two of
8 them had been problem children earlier, which I had advised the
9 senior officer about, and the third one I felt that he was -- he
10 was more or less pulled into a situation beyond his control.
11 Because at that time, at the nuclear test site, unmarried
12 personnel, they live in -- anyone been a career or familiar with
13 little kids, they lived out at the nuclear test site, so they
14 really had a limited amount of recreation freedom. And one of
15 the individuals had an automobile, so he was with them and they
16 ended up taking some government equipment and got caught. And I
17 testified for the third one saying I just felt he was a victim of
18 circumstances.

19 MR. SCHIECK: Have you ever had the occasion to
20 engage in conversations or discussions concerning the death
21 penalty?

22 PROSPECTIVE JUROR NO. 2: Oh, yes.

23 MR. SCHIECK: In those discussions have you ever taken
24 one side or the other?

25 PROSPECTIVE JUROR NO. 2: Oh, yes.

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8JD04226

1 MR. SCHIECK: And which side have you taken?
2 PROSPECTIVE JUROR NO. 2: I'm for it.
3 MR. SCHIECK: Have you always been for it?
4 PROSPECTIVE JUROR NO. 2: Oh, yes.
5 MR. SCHIECK: And there was never a time that you can
6 recall that you didn't think the death penalty was an appropriate
7 punishment?
8 PROSPECTIVE JUROR NO. 2: That's a different question.
9 Oh, yes.
10 MR. SCHIECK: Not in a particular case. I mean
11 philosophically?
12 PROSPECTIVE JUROR NO. 2: Yes, there could be
13 circumstances where the death penalty, in my opinion, as I
14 perceive it, not to be a fair verdict.
15 MR. SCHIECK: Well, how do you perceive the death
16 penalty?
17 PROSPECTIVE JUROR NO. 2: Well, I guess putting it in a
18 nutshell, without having all the basic information, you're just
19 asking for general, I would say anyone that committed a violent
20 -- this is going to sound ridiculous with the O.J. trial going
21 on. Committing a violent murder, premeditated, I guess that's in
22 a nutshell, that is, in my opinion--I don't care if it was an
23 altar boy or what--does not justify any leniency, because the
24 victims weren't shown any leniency. And that's putting it in
25 general terms.

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8JD04227

1 MR. SCHIECK: Well, let's get a little more specific.
2 Do you feel that if someone is convicted of a premeditated
3 preplanned murder then they should automatically get the death
4 penalty?

5 PROSPECTIVE JUROR NO. 2: I guess the bottom line is,
6 yes, I do--no questions asked. If they their day in court and
7 they were found guilty, then they should get the max.

8 MR. SCHIECK: And all you're concerned with is whether
9 or not they were found guilty of a premeditated violent murder?

10 PROSPECTIVE JUROR NO. 2: What I am concerned with is
11 the fact that a jury of their peers had found through the
12 evidence presented to them that that person or persons was in
13 fact guilty of premeditated murder and violent murder. Then in
14 my opinion that is why you have the death penalty, and that is
15 what the death penalty was instituted for--for that type of
16 individual. It's not a matter of what I feel. I mean, that's
17 the law, and I think that's why it was put on the books.

18 MR. SCHIECK: So under those facts, with your
19 philosophical beliefs, there's only one possible punishment and
20 that's the death penalty?

21 PROSPECTIVE JUROR NO. 2: Unless, I'll equalize as the
22 lawyers do, unless there was some overwhelming mitigating
23 circumstances, which to be perfectly honest to you is beyond my
24 comprehension. But I'm sure there may be a case somewhere along
25 the line overwhelming evidences, whatever that may be,

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8JD04228

1 overwhelming. And I'm trying to be as honest...

2 MR. SCHIECK: But you can't even conceive of any
3 possible scenario in your mind of such overwhelming mitigating
4 evidence as you put it?

5 PROSPECTIVE JUROR NO. 2: For a premeditated violent
6 murder for me to -- no, I cannot, to be honest with you. I'm not
7 saying there isn't one or I couldn't be convinced. But as it
8 stands now, it's beyond my comprehension.

9 MR. SCHIECK: We challenge for cause, your Honor.

10 THE COURT: Any traverse?

11 MR. SEATON: I just wanted to make...

12 THE COURT: Excuse me. Do you folks join in a
13 challenge?

14 MR. WALL: We would join, your Honor.

15 THE COURT: Any traverse?

16 MR. SEATON: I just want to make sure of the
17 gentleman's thinking.

18 Is it your feeling then that once people are convicted--
19 found guilty of committing the murder as these two individuals
20 have been--if it's a violent premeditated killing, then
21 mitigation really doesn't matter too much, and you're going
22 almost automatically vote for the death penalty? Is that what we
23 hear your saying?

24 PROSPECTIVE JUROR NO. 2: Very close to it. I don't
25 want to say it's almost automatic. But I mean you're talking

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1 now, as was questioned to one of the prospective jurors earlier,
2 is it's on the prosecutor to show overwhelming evidence that --
3 I'm looking at a jury has deliberated and came down with a
4 verdict based on information presented to them and it was found
5 guilty. Okay. Evidently it hasn't been overthrown -- well, it
6 may be. I don't know. I'm not aware of this case at all.

7 Okay. So I'm not saying this may be challenged in upper
8 courts. I don't know. But it has not been thrown out for
9 whatever, it has been challenged, so what I'm saying, twelve of
10 their peers have already listened--for how long, I do not know--
11 of evidence and weighed the evidence, and a verdict was rendered.

12 Now, I'm not aware that it was a premeditated violent
13 murder. I don't know this case. You know, back in '84 I did not
14 live here. I am just saying if that's the case, then I disagree
15 -- and I know I'm in trouble right now. I disagree with the
16 defense attorneys. You can smile, because I know I'm in trouble.
17 I don't think the burden is now put on the prosecutor to show
18 overwhelming evidence that the accused should be given the death
19 penalty. You know, I think somehow things got turned around; I
20 think I should be going the other way, showing overwhelming
21 evidence why a more lesser sentence should be given. And maybe
22 I'm reading it wrong, but I'm just telling you how I believe it.

23 MR. SEATON: Well, when we were talking to the two
24 jurors who proceeded you, we talked a little bit about the
25 system. Let me say it a little differently and maybe with a

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8JD04230

1 little more clarity. My question is going to be: That in light
2 of your feelings that you've expressed, do you disagree with the
3 system that we have here in place in Nevada?

4 What I want to say to you is this: In our state when
5 someone is charged with first-degree murder, as these two
6 gentlemen were at one time, there is a two-stage process we go
7 through. Almost you might call it a two-trial process. There is
8 first a guilt phase. And the list of witnesses that I read to
9 you earlier, those people are presented to that last jury back in
10 1985, and they hear all of that evidence, and then it is their
11 job to decide. Essentially, it boils down to one question: Are
12 these two individuals guilty of the crime of first-degree murder?
13 No thought about punishment at that moment. In fact, they are
14 instructed that they may not consider the issue of punishment at
15 that moment.

16 And all of that happened. We presented all of those
17 witnesses; there was cross-examination; the Judge instructed on
18 the law; we all got up and argued; and then the jury took its
19 deliberations, and they returned verdicts, among others, of
20 guilty of first-degree murder for these two individuals.

21 The system, as it is in place, is that following that
22 procedure there is another trial, and that's where we are today.
23 And at that trial we're going to do the same thing. We will make
24 opening statements; we can present evidence; there will be
25 instructions by the Judge; we'll argue to the jury; and the jury

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1 will ultimately go away and deliberate and come back with a
2 verdict.

3 It's a two-tier system as you can see, and it's designed so
4 that the people who, in the normal course of events without the
5 procedural irregularities that we had in this case, the people
6 who heard the first trial would then hear the second trial and
7 decide punishment. You're just doing that latter stage now. And
8 it's assumed that those people doing those two jobs aren't going
9 to have an preconceptions as to what the penalties should be, of
10 course, while they're deliberating guilt or innocence.

11 The idea behind all of this is that we're now going to
12 present evidence to you that's going to tell you two things--
13 reasons to give the death penalty and reasons not to give the
14 death penalty. The State will be giving one side, and the
15 Defense will be giving the other. And there's going to be a lot
16 of evidence that comes to you in that regard that you don't have
17 any idea of at this particular time. Are you with me so far?

18 PROSPECTIVE JUROR NO. 2: Sir, I follow you 100
19 percent. I know exactly what you're saying.

20 MR. SEATON: Okay.

21 PROSPECTIVE JUROR NO. 2: I already knew it before you
22 said that, yes.

23 MR. SEATON: Okay. Then I apologize for wasting...

24 PROSPECTIVE JUROR NO. 2: No problem.

25 MR. SEATON: ...yours and everyone else's time. My

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8JD04232

1 question to you then is: Do you disagree with that system? Do
2 you some how think that once we get past the guilt that it should
3 be the burden of the Defense to prove that they shouldn't be
4 executed?

5 PROSPECTIVE JUROR NO. 2: Maybe I overstated when I
6 said the burden is on the Defense. What I'm saying is is one
7 that has been found guilty by their peers, okay, of a particular
8 crime, what I am saying, unless there is, as far as I am
9 concerned, some overwhelming evidence to show me that on a
10 premeditated violent crime there is some way of determining that
11 there is some mitigating circumstances or something which would
12 justify a lesser sentence. I mean, I won't have to be...

13 Obviously I don't know the case, as I've stated several
14 times. I don't know what was given to the jurors; I don't know
15 what evidence was presented against them or for them on their
16 behalf. I am just saying that without knowing all, and just
17 based on the very sketchy information that I have, how I am
18 looking at it, do I think I could render a fair and open-minded
19 decision after listening to, if you call another mini trial, in
20 my perception is I would perceive fairness? Yes.

21 MR. SEATON: All right. You said you don't know very
22 much about this trial. We are going to present, I can't remember
23 how many, eight or nine witness to you that will give you a
24 pretty good overview of what that trial was all about, and you'll
25 find out what that crime was all about, and you'll be able to

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1 render your own judgements as to how violent it was, how
2 horrendous it was or how everyday it was in terms of murder
3 cases. You can make your own judgements. And you're also going
4 to hear other information about the character of these
5 individuals--both good and bad.

6 And do you think that as you sit here today, not knowing
7 what that information might be, that whatever that information
8 might be could be fairly utilized by you to render a fair and
9 just verdict on behalf of either side--defense or prosecution?

10 PROSPECTIVE JUROR NO. 2: Again, as I stated, I believe
11 I can be fair and give a fair verdict based on my perception and
12 what I feel or what I perceive as fair, based on the evidence
13 given to me. I mean, I can't make any decision without being
14 given the case. I know nothing about the case; I have not heard
15 any of the evidence; I have heard none of the witnesses. But
16 based on it, listening to it, the evidence, like you just got
17 through stating, I believe I could render a fair and just
18 termination of the case. But again, as I perceive it. Again,
19 that's all I can say. I mean, I don't know what else I could say
20 on it.

21 MR. SEATON: All right. Thank you. Judge, I would
22 resist their challenge at this time.

23 THE COURT: Mr. Jacintho, on your questionnaire,
24 Question 59, you were asked,

25 "Are you of such a state of mind that you could not

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1 consider the full range of punishment in this case,
2 which includes the death penalty, if you determine that
3 the State has proved beyond a reasonable doubt the
4 existence of aggravating circumstances?"

5 Your answer was "No." In B portion,
6 "In your present state of mind, can you, if selected as
7 a juror, consider equally all three possible forms of
8 punishment and then select the one that is most
9 appropriate under the facts and laws of this case?"

10 Your answer was "Yes." All we're trying to do is break it
11 down as much as we possible can:

12 If you are selected as a juror, we expect you to go back in
13 the back with your fellow jurors and discuss this case, and
14 you'll give your point of view, they give their point of view;
15 and they all may be alike, and they all may not be alike. And
16 then you will consider the three possible forms of punishment
17 whatever way the jury wants to consider them, but you will
18 consider all three of them and reject two, leaving one. Can you
19 do that?

20 PROSPECTIVE JUROR NO. 2: As I said earlier, your
21 Honor, I believe I can based on having all that information.
22 Again, I do not have the information; I know nothing about this
23 case. But I was just giving my views that was asked me and being
24 honest about it. But I believe I could give a fair verdict as I
25 perceive fairness based on the evidence.

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1 THE COURT: Your motion is denied.

2 MR. SCHIECK: Pass for cause, your Honor.

3 THE COURT: Mr. Wall?

4 MR. WALL: Thank you, your Honor. How do you pronounce
5 your last name?

6 PROSPECTIVE JUROR NO. 2: Jacintho.

7 MR. WALL: Jacintho. I take it, of course, that if you
8 were king of the State of Nevada for a day, the State of Nevada
9 would have the death penalty. In what kinds of cases -- are
10 there kinds of cases other than the ones that have been talked
11 about so far where you think it might be appropriate?

12 PROSPECTIVE JUROR NO. 2: Well, you're talking --
13 you're giving a general question which one would have to sit down
14 and go over a list of things as, you know, the juror took to my
15 left. He has very strong feelings about, you know, murdering a
16 child. You got a couple cases that happened in Nevada; that one
17 cab driver that was murdered by a felon who just let out of
18 California for the same crime and only spent three years in jail
19 for murdering someone else with a knife, and he comes here and
20 murders someone with a knife.

21 Yes, those type of crimes, there should be a death penalty.
22 Why prolong or procrastinate on something which is inevitable? I
23 mean, how far -- I guess what you're asking is: How far does one
24 bend over or turn the other cheek, or whatever you want to use,
25 to determine when a death penalty should not be enforced?

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1 There was a lot of crime -- again, I will preference the
2 majority and general view is if it's a premeditated, and I can't
3 overemphasize that, a premeditated violent crime, which means
4 someone had to take the time to think about it, knowing what they
5 were going to do. And I do understand premeditated doesn't have
6 to mean two months in advance; it could be five minutes. I am
7 just saying on a premeditated murder you're now taking the life
8 where no one has a chance of getting other verdicts, whether they
9 should be to just spend six months in the hospital or they die.
10 It's over.

11 So I am just saying -- you're talking a general question;
12 I'm giving you a general answer. When you murder someone
13 premeditated and violent, you've got a death penalty, unless
14 there's overwhelming.

15 Now, whatever your definition of overwhelming and mine may
16 be different, mitigating circumstances--which I'll let you figure
17 out what that may be--then I think the death penalty is
18 appropriate. I don't know how any clearer I can make it. I mean
19 I've said it several different ways, and you can ask the question
20 several different ways, and I'll still give you the same answer.

21 MR. WALL: Okay. The last question was a little more
22 general. Let's get specific.

23 Dale Flanagan has been convicted of a premeditated murder.
24 Are you saying to all of us that you could consider life in
25 prison with the possibility of parole just as you could consider

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8JD04237

1 the death penalty? Or would you -- I mean it sounds to me as
2 though what you're saying is, "If you show me that it's
3 premeditated and it's violent, I'm leaning toward the death
4 penalty unless you show me overwhelming evidence that I
5 shouldn't." Is that about right?

6 PROSPECTIVE JUROR NO. 2: No. What is about right is
7 you show me overwhelming why they should...

8 MR. WALL: I mean, assume that -- when you say
9 "overwhelming evidence..."

10 THE COURT: Sir, let him finish his answer out.

11 MR. WALL: I'm sorry.

12 PROSPECTIVE JUROR NO. 2: Well, I'll let him go on,
13 your Honor. Go ahead.

14 MR. WALL: When you say "mitigation," you're talking
15 about things like -- are you talking -- let me ask you: Are you
16 talking about things like the crime was committed in self-defense
17 or the person was not in their right mind, or they didn't
18 premeditate? Are those the kind of things you're talking about
19 as far as mitigation? Or are you talking about things about
20 someone's character outside of the crime that might convince you
21 that death is not appropriate?

22 PROSPECTIVE JUROR NO. 2: When I say "overwhelming
23 evidence," I'm not talking about anything in particular. I mean,
24 these are the things that you, as a defense attorney, better tell
25 me. I mean I don't feel it's my position to sit here and tell

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8JD04238

1 you what I consider mitigating -- as I told the Judge and I told
2 you people, I have an open mind. But then again, you've got to
3 present to me what it is. I can't have an open mind to something
4 I don't even know what it is.

5 You're asking me to come up with an answer of a general
6 question, which I'm just saying I feel I could render a fair
7 verdict and a fair punishment as I perceive it to be in the
8 particular evidence that was presented. I mean, that's all I can
9 say. I mean, you're the one that's going to present the
10 information and the prosecutor.

11 MR. WALL: All right. But if you're giving...

12 THE COURT: Counselor, can we proceed on? We've had
13 these questions asked different ways several times now. Please,
14 sir.

15 MR. WALL: Well, I was going to renew the challenge for
16 cause since the juror appears to have a predisposition...

17 THE COURT: Counsel, hold it. Now wait, wait, wait,
18 wait. Mr. Wall, understand: When I start to talk, everybody
19 stops.

20 We've had enough of this. Three times now you've had
21 challenge for cause. If I recall, you chose not to answer any
22 questions on that. We've gone through it again, and we're still
23 getting the same answers. I've already answered the challenge
24 for cause. Let's move on to something else.

25 MR. WALL: When you were answering one of my questions,

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8JD04262

1 correct me if I'm wrong, you said, and I'm paraphrasing,
2 something to the effect that a sentence of life in prison -- a
3 sentence of something other than death for a violent premeditated
4 murder might be, and I think your exact words were "turning the
5 other cheek."

6 PROSPECTIVE JUROR NO. 2: No, I think you confused two
7 separate answers I've given...

8 MR. WALL: Okay.

9 PROSPECTIVE JUROR NO. 2: ...and consolidated them into
10 what you believe or perceive what I said.

11 MR. WALL: Maybe you can...

12 THE COURT: Mr. Wall, you're getting real close to that
13 line. You're still on the same process.

14 MR. WALL: Is it...

15 THE COURT: Counsel, approach the bench.

16 (Bench conference)

17 THE COURT: Gentlemen and lady, we can sit here from
18 now until doomsday and rephrase questions about interfering at
19 all with your intent of subject matter. Now, you've had a chance
20 on the challenge; you chose not to ask any questions. They went
21 through a whole big long process. Mr. Seaton went through a big
22 long process. I'm not going any further on this context. You've
23 had your questions, and that's that. Move on to something else.
24 I don't care how you want to rephrase it.

25 MR. WALL: For clarification, are you saying I can't

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1 ask him any more questions about how he feels about the sentences
2 of life with and without the possibility of parole?

3 THE COURT: Counsel, you asked that question. You've
4 asked it three or four different ways. I'm saying that's enough
5 on it. Your record has been made.

6 (Bench conference concluded)

7 MR. WALL: Mr. Jacintho, did you say that you tried to
8 talk your nephew out of becoming a police officer?

9 PROSPECTIVE JUROR NO. 432: Yes, I did.

10 MR. WALL: Why was that?

11 PROSPECTIVE JUROR NO. 432: I just felt the way things
12 are going today especially, he's back in Plymouth outside the
13 Boston area, and people may think New York has a high crime rate;
14 Boston is a lot higher than New York. And there was a lot of
15 police officers being killed in routine, I'm not even talking,
16 they're just routine, stop someone for traffic violations; stop
17 someone for a light put out. And there's just so much drugs
18 around today and so many people that are just violent reaction to
19 whatever, and I just, you know, I think he could come up with a
20 much better career.

21 But it's something he always wanted to do, and he went to
22 school and took criminology, and that's -- well, he's a police
23 officer, and he's happy with it. And then he wasn't on the force
24 three months and a friend of his was shot and killed. And his
25 nephew went through a very traumatic experience, afraid that it

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8JD04264

1 was going to happen to his uncle. So, you know, it's a violent
2 world out there, and that's not a position to be in.

3 MR. WALL: Have you had the opportunity to speak with
4 your nephew or his nephew...

5 PROSPECTIVE JUROR NO. 432: No.

6 MR. WALL: ...since that shooting?

7 PROSPECTIVE JUROR NO. 432: This was through his
8 mother.

9 MR. WALL: You told us that you testified as a
10 character witness on behalf of one of your employees that was, in
11 your opinion, a victim of circumstance...

12 PROSPECTIVE JUROR NO. 432: As I perceived it.

13 MR. WALL: ...as you perceived it, regarding an arrest.
14 Did you feel it was important to come and tell that jury your
15 opinion of that person's character, so that they could evaluate
16 him?

17 PROSPECTIVE JUROR NO. 432: Yes, I did. And give the
18 background, which I had personal knowledge of, of the three
19 individuals. And I felt that it would be fairly unjust for that
20 particular individual to receive the same punishment as the other
21 two. I thought there was a distinct separation between...

22 MR. WALL: Did you testify about his character other
23 than the incident that took place and the background that you
24 knew? Did you talk/testify generally about his good character?

25 PROSPECTIVE JUROR NO. 432: Obviously I could only talk

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8JD04265

8JD04266

1 about the character as I knew him from working with me; I didn't
2 know him outside the work force. What he could be relied on to
3 do in a job, which reflects the person's character if, you know,
4 he has assignments; what he was given; what he was able to do;
5 what his quality of work was; what his frame of mind was the
6 majority of the time compared to the other two that he was with.
7 And based on that is why I felt it was my obligation to testify
8 on his behalf. And, you know, I don't mind standing up for what
9 I believe in, whether you, one agrees or not.

10 MR. WALL: Okay. Thank you.

11 MR. SEATON: I would pass for cause, Judge.

12 THE COURT: Mr. Mitchell? Sir, how long have you lived
13 in Clark County, Nevada?

14 PROSPECTIVE JUROR NO. 433: For over 40 years.

15 THE COURT: Where were you born and raised?

16 PROSPECTIVE JUROR NO. 433: I was born in Lumaton,
17 Mississippi, but I was raised here, right here in Las Vegas,
18 Nevada.

19 THE COURT: What is your educational background?

20 PROSPECTIVE JUROR NO. 433: I've got one year of
21 college.

22 THE COURT: And what college is that, sir?

23 PROSPECTIVE JUROR NO. 433: UNLV.

24 THE COURT: What was your field of endeavor?

25 PROSPECTIVE JUROR NO. 433: Drama.

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1 THE COURT: What has been your employment for the last
2 ten years?

3 PROSPECTIVE JUROR NO. 433: I'm a sales rep for
4 Northern Wire and Cable. I've been there for, well, it was ten
5 years in March of this year.

6 THE COURT: What is your religious preference?

7 PROSPECTIVE JUROR NO. 433: Pentecostal.

8 THE COURT: Do you attend church regularly?

9 PROSPECTIVE JUROR NO. 433: Yes, sir.

10 THE COURT: How old are you, sir?

11 PROSPECTIVE JUROR NO. 433: I'm 46.

12 THE COURT: Are you married?

13 PROSPECTIVE JUROR NO. 433: Yes, sir.

14 THE COURT: Is your wife employed?

15 PROSPECTIVE JUROR NO. 433: Yes, she is.

16 THE COURT: Where does she work and what are her
17 duties?

18 PROSPECTIVE JUROR NO. 433: She's an REN at Sunrise
19 Hospital.

20 THE COURT: And do you have any children?

21 PROSPECTIVE JUROR NO. 433: Yes, I do.

22 THE COURT: May we have their ages and sex?

23 PROSPECTIVE JUROR NO. 433: Yes, I have, one daughter
24 is 16, and I've got a daughter six.

25 THE COURT: Are you acquainted with either the

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8JD04267

1 Defendant or any of his attorneys...

2 PROSPECTIVE JUROR NO. 433: No, sir.

3 THE COURT: ...or any of their attorneys?

4 PROSPECTIVE JUROR NO. 433: No, sir.

5 THE COURT: Are you acquainted with any member of the
6 District Attorney's Office?

7 PROSPECTIVE JUROR NO. 433: No, sir.

8 THE COURT: Did you recognize any of the persons whose
9 names were given to you as a possible prosecution witness?

10 PROSPECTIVE JUROR NO. 433: No, sir.

11 THE COURT: Are you now involved in or have you ever
12 been involved in any law enforcement work?

13 PROSPECTIVE JUROR NO. 433: No, sir.

14 THE COURT: Do you have any close friends or relatives
15 who are members of any law enforcement agency?

16 PROSPECTIVE JUROR NO. 433: No, sir.

17 THE COURT: In the State of Nevada, there are three
18 possible forms of punishment that the jury may consider and then
19 select the one that they believe is the most appropriate under
20 the law and facts of this case. Those three possible forms of
21 punishment are: (a) the imposition of the death penalty;
22 (b) life imprisonment without the possibility of parole; and
23 (c) life imprisonment with the possibility of parole. Do you
24 understand, sir?

25 PROSPECTIVE JUROR NO. 433: Yes, sir.

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1 THE COURT: In your present state of mind, can you, if
2 selected as a juror, consider equally all three possible forms of
3 punishment and then select the one that you feel is most
4 appropriate?

5 PROSPECTIVE JUROR NO. 433: I believe so.

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

8 PROSPECTIVE JUROR NO. 433: No, sir.

9 THE COURT: Have you ever appeared as a witness in any
10 criminal case?

11 PROSPECTIVE JUROR NO. 433: No, sir.

12 THE COURT: Have you ever served on a jury before?

13 PROSPECTIVE JUROR NO. 433: No, sir.

14 THE COURT: Have you ever been in military service
15 before?

16 PROSPECTIVE JUROR NO. 433: Yes, sir.

17 THE COURT: Which one, sir? Which branch?

18 PROSPECTIVE JUROR NO. 433: The U.S. Army.

19 THE COURT: What branch of the Army?

20 PROSPECTIVE JUROR NO. 433: I was a cook in the Army.

21 THE COURT: A Quarter Master, Engineers, Artillery?

22 PROSPECTIVE JUROR NO. 433: No, I was, as a matter of
23 fact, for the MP's--Military Police.

24 THE COURT: Did you ever have any occasion to do any
25 investigations?

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1 PROSPECTIVE JUROR NO. 433: No, sir.

2 THE COURT: Ever appear to serve on any military court-
3 martials or boards?

4 PROSPECTIVE JUROR NO. 433: I'm sorry?

5 THE COURT: Did you ever serve on any court-martials or
6 boards?

7 PROSPECTIVE JUROR NO. 433: No, sir.

8 THE COURT: Have you ever been a victim of a crime?

9 PROSPECTIVE JUROR NO. 433: No, sir.

10 THE COURT: Do you have any close friends or relatives
11 who may have been victims of a crime?

12 PROSPECTIVE JUROR NO. 433: No, sir.

13 THE COURT: Have you or anyone close to you ever been
14 convicted of a crime?

15 PROSPECTIVE JUROR NO. 433: No, sir.

16 THE COURT: Can you and will you follow the Court's
17 instructions on the law even though you may differ with them?

18 PROSPECTIVE JUROR NO. 433: Yes, sir.

19 THE COURT: If you were either of the Defendants, would
20 you want twelve people in your present state of mind to sit and
21 judge your case?

22 PROSPECTIVE JUROR NO. 433: Yes.

23 THE COURT: Do you know of any reason, whether I've
24 asked you or not, why you cannot sit as a fair and impartial
25 juror in this case?

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1 PROSPECTIVE JUROR NO. 433: No, sir.

2 THE COURT: Mr. Schieck?

3 MR. WOLFBRANDT: Judge, I'll take this one.

4 THE COURT: Mr. Wolfbrandt?

5 MR. WOLFBRANDT: Mr. Mitchell, when the Court asked you
6 if you were a Defendant would you want someone of your frame of
7 mind, with my limited vision here it appeared to me like you
8 hesitated a bit before you answered that?

9 PROSPECTIVE JUROR NO. 433: Yes, sir. I do believe in
10 the death penalty; and as a matter of fact, I'm somewhat of a
11 strong advocate of the death penalty.

12 MR. WOLFBRANDT: Okay. Let's explore that some. Are
13 there certain types of cases that you feel in your own personal
14 opinion that the death penalty is mandatory?

15 PROSPECTIVE JUROR NO. 433: As the gentleman to my left
16 was saying, you know, premeditated to where you eventually sit
17 down and plan out a murder or -- you know, again it would depend
18 on the case, but I know of a lot of cases that I've heard about
19 in the news and read in the paper to where I felt that they
20 should have got the death penalty.

21 MR. WOLFBRANDT: From what you had read about a
22 particular case...

23 PROSPECTIVE JUROR NO. 433: Yes.

24 MR. WOLFBRANDT: ...in the paper?

25 PROSPECTIVE JUROR NO. 433: Yeah. You know, I mean,

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1 after reading what, the information that was, you know, afforded
2 to me and, you know, or hearing the information, and at that
3 point forming my opinion on what I would have done if I had been
4 a juror.

5 MR. WOLFBRANDT: And solely based on what you read in
6 the newspaper though?

7 PROSPECTIVE JUROR NO. 433: Yes. Yes. I mean, it's
8 not on any evidence other than that.

9 MR. WOLFBRANDT: All right. Have you taken any special
10 interest in any cases and followed them through the newspaper?

11 PROSPECTIVE JUROR NO. 433: No, sir.

12 MR. WOLFBRANDT: If the evidence were presented to you
13 that in this case, for instance, there had been some planning
14 involved, and that the murder involved the use of weapons -- they
15 have been convicted of two murders with use of weapons. In your
16 -- with that as a starting point, do you -- is your personal
17 opinion such that a death penalty is mandatory in this situation?

18 PROSPECTIVE JUROR NO. 433: It would be tough for me to
19 render a decision other than that.

20 MR. WOLFBRANDT: Okay. Now, you've heard the
21 discussion earlier today that Nevada does not have a mandatory
22 death penalty?

23 PROSPECTIVE JUROR NO. 433: Yes. Yes, sir.

24 MR. WOLFBRANDT: But what we're looking at is your
25 personal opinion, which is what counts here; that's the reason

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8JD04272

1 for the jury selection, and the jury is to bring collective
2 differing viewpoints and opinions. So we're interested, of
3 course, in what is your personal opinion.

4 PROSPECTIVE JUROR NO. 433: Right.

5 MR. WOLFBRANDT: So if I understand you, at least at
6 this point, I mean with the fact scenario that was presented to
7 you in the written questionnaire, you're leaning -- we have to
8 convince you other than the death penalty in this case. Is that
9 a fair statement?

10 PROSPECTIVE JUROR NO. 433: That would be a fair
11 statement in the fact that it's just hard for me to conceive
12 someone killing family.

13 MR. WOLFBRANDT: I was going to get into that. Do the
14 facts of this particular case, in that it is a family member...

15 PROSPECTIVE JUROR NO. 433: Uh-huh.

16 MR. WOLFBRANDT: ...that was the victim, does that
17 influence your opinion as you sit here right now?

18 PROSPECTIVE JUROR NO. 433: It certainly does.

19 MR. WOLFBRANDT: Can you imagine any type of mitigation
20 that would talk or convince you other than imposing the death
21 penalty?

22 PROSPECTIVE JUROR NO. 433: I...

23 MR. WOLFBRANDT: You're shaking your head side to side,
24 but I don't want to...

25 PROSPECTIVE JUROR NO. 433: I don't know. I'm just

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8JD04273

1 being honest.

2 MR. WOLFBRANDT: Your Honor, I think at this point I
3 would have to challenge for cause.

4 THE COURT: Mr. Wall?

5 MR. WALL: I would join in the challenge, your Honor.

6 THE COURT: (Indiscernible)

7 MR. WALL: Not at this time.

8 THE COURT: Mr. Seaton?

9 MR. SEATON: Thank you, Judge. Like the gentleman
10 before you, it depends on who's asking questions what the answers
11 are like. But we want to make this as evenhanded as we can.

12 The question that was just presented to you sort of took on
13 the aura of "Well, you've heard certain things about the case, so
14 far, and so are your leanings toward the death penalty?" I want
15 my question to be a little wider scope than that.

16 PROSPECTIVE JUROR NO. 433: Okay.

17 MR. SEATON: You're going to hear a lot of evidence
18 about what that crime is really all about.

19 PROSPECTIVE JUROR NO. 433: Okay.

20 MR. SEATON: Yes, it was the grandson and his friend
21 killing the grandson's grandparents. Other than that you don't
22 know much about it, do you?

23 PROSPECTIVE JUROR NO. 433: No.

24 MR. SEATON: You don't know what the reasons behind
25 that were, what the motivations were, what everybody did within

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1 the scenario?

2 PROSPECTIVE JUROR NO. 433: No. I do vaguely remember
3 the case. As a matter of fact when I, when...

4 MR. SEATON: If you're...

5 PROSPECTIVE JUROR NO. 433: Okay. I'm sorry.

6 MR. SEATON: Just let me caution you what -- you're
7 welcome to say anything you want.

8 PROSPECTIVE JUROR NO. 433: Okay.

9 MR. SEATON: But try not to talk about the facts...

10 PROSPECTIVE JUROR NO. 433: Okay. No. No. Okay.

11 MR. SEATON: ...as you remember them.

12 PROSPECTIVE JUROR NO. 433: No, no, no, it's just that
13 I just...

14 MR. SEATON: Then tell us other things if you will.

15 PROSPECTIVE JUROR NO. 433: I just -- I vaguely
16 remember the case, and I knew that -- because I'm an avid reader
17 of the newspaper and the news, and so I remember them, you know,
18 being found guilty.

19 MR. SEATON: All right.

20 PROSPECTIVE JUROR NO. 433: And...

21 MR. SEATON: Well, we've told you that already.

22 PROSPECTIVE JUROR NO. 433: Right. Right.

23 MR. SEATON: That's a given.

24 PROSPECTIVE JUROR NO. 433: And so as a matter of fact
25 -- and when I -- I thought -- I was under the impression as these

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8JD04275

1 gentlemen, I thought it was being retried again. You know, I did
2 not know that this was the penalty phase of the trial.

3 But, you know, I don't have an opinion as far as whether or
4 not they deserve the death penalty at this point in other words.
5 I mean, I can sit and I can hear the evidence from both sides,
6 but I just want you to know that I do believe in the death
7 penalty.

8 MR. SEATON: And I guess we want you to know that it's
9 okay to believe in the death penalty. As I said to someone
10 earlier, probably the entire panel of jurors, once they are
11 seated will believe in the death penalty, but they'll also
12 believe in life with and life without the possibilities of
13 parole. That they will believe in that wide spectrum of
14 punishments.

15 What the key is is a juror willing to put aside any
16 philosophy that they hold about "I think that a certain kind of
17 case ought to get a certain punishment," and be willing to listen
18 to all the evidence as it's presented by anyone in this court and
19 then listen to the Judge's instructions here.

20 The Judge will instruct you on the law and tell you how that
21 law applies to the evidence that's been given to you. And using
22 that, be as objective and neutral and as fair to them and to the
23 State as you can possibly be, and come back with a fair
24 decision.

25 All right. Are you that juror?

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1 PROSPECTIVE JUROR NO. 433: Yes, I believe I could do
2 that.

3 MR. SEATON: Okay. You do believe in the death penalty
4 though?

5 PROSPECTIVE JUROR NO. 433: Most definitely.

6 MR. SEATON: But you don't know what the evidence is
7 that's coming to you?

8 PROSPECTIVE JUROR NO. 433: No, I don't.

9 MR. SEATON: That's all I have, Judge.

10 THE COURT: Knowing that the Defendants have been
11 convicted of first-degree murder, are you now predisposed to
12 impose in the death penalty?

13 PROSPECTIVE JUROR NO. 433: Your Honor, I would need to
14 hear, you know, the evidence on both sides. And obvious...

15 THE COURT: Are you presently willing to hear all of
16 the evidence that will be given to you from one side or the other
17 in an effort to determine which of the three penalties may be
18 imposed or should be imposed in this case?

19 PROSPECTIVE JUROR NO. 433: Yes, I'm willing.

20 THE COURT: And could you wait and consider all three
21 penalties equally before arriving at a decision and discuss the
22 matter with your fellow jurors?

23 PROSPECTIVE JUROR NO. 433: Yes, I could do that.

24 THE COURT: Motion will be denied.

25 MR. WOLFBRANDT: If I can continue on then, your Honor?

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1 THE COURT: You sure can, sir.

2 MR. WOLFBRANDT: Mr. Mitchell, do you want to be on
3 this jury?

4 PROSPECTIVE JUROR NO. 433: No, not really.

5 MR. WOLFBRANDT: It's a quite open question. Why do
6 you feel that way?

7 PROSPECTIVE JUROR NO. 433: It's just, you know,
8 family; it's just dear to my heart. And, you know, I just -- and
9 I just -- I just can't conceive in my mind, you know, someone,
10 you know, killing their family. I just -- I've got a problem
11 with that.

12 MR. WOLFBRANDT: And if you could elaborate then on
13 that problem?

14 PROSPECTIVE JUROR NO. 433: Yeah, it's just I -- you
15 know, I mean -- you know, I -- there's no amount of money or
16 things that I can perceive, you know, that anyone would want to,
17 you know, see the demise of their relatives for capital gain,
18 whether it money, you know, cars, or whatever the case may be.

19 MR. WOLFBRANDT: Does the factual pattern that was
20 given to you in that questionnaire -- first off let me ask you:
21 Do you recall reading that?

22 PROSPECTIVE JUROR NO. 433: Yes, I do.

23 MR. WOLFBRANDT: Do you have a pretty good recollection
24 as to what that said?

25 PROSPECTIVE JUROR NO. 433: Yeah, about the case?

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1 MR. WOLFBRANDT: Yes.

2 PROSPECTIVE JUROR NO. 433: Yes.

3 MR. WOLFBRANDT: All right. And in that you were told
4 that the Defendants here were both...

5 THE COURT: Number?

6 MR. WOLFBRANDT: I'm sorry. That's page 7 just
7 above...

8 THE COURT: Number?

9 MR. WOLFBRANDT: Number 58. In that you were told that
10 both Defendants have been convicted of killing Mr. Flanagan's
11 grandparents, and that the motive, the alleged motive, for that
12 was to receive proceeds from the inheritance.

13 PROSPECTIVE JUROR NO. 433: Yes, sir.

14 MR. WOLFBRANDT: All right. Does the nature of the
15 facts as presented that way to you, and with the given that they
16 have both been convicted of premeditated deliberate murder, does
17 that cause you a bias towards the death penalty or against it?

18 PROSPECTIVE JUROR NO. 433: At this point in time I
19 would be leaning more toward the death penalty.

20 MR. WOLFBRANDT: With that nature of facts...

21 PROSPECTIVE JUROR NO. 433: Uh-huh. I mean, and with
22 just what I read down there, okay?

23 MR. WOLFBRANDT: Right.

24 PROSPECTIVE JUROR NO. 433: Yeah.

25 MR. WOLFBRANDT: That's all I'm asking.

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8JD04279

1 PROSPECTIVE JUROR NO. 433: Okay. Right.

2 MR. WOLFBRANDT: Just with that limited knowledge right
3 now.

4 PROSPECTIVE JUROR NO. 433: Right.

5 MR. WOLFBRANDT: Can you even consider the other two or
6 forms of punishment--life without the possibility of parole or
7 life with the possibility of parole?

8 MR. SEATON: Judge -- excuse me, Counsel. I've got to
9 object on two grounds. One is we've been over this already.
10 Secondly, it's such an unfair question, because that is not what
11 the person's going to consider this case on.

12 (Bench conference)

13 MR. WOLFBRANDT: Our own Judge Ito.

14 THE COURT: No, I won't go that far. Speak into this
15 mike.

16 MR. WOLFBRANDT: Well, I've already voiced my
17 objection.

18 THE COURT: Well, you're about (indiscernible)

19 MR. SEATON: No, I was pretty...I just, I wanted to say
20 that the question is unfair; it assumes on such a limited amount
21 of facts. And they're going to hear mitigation and aggravation
22 and the full circumstances of the killing.

23 THE COURT: (Indiscernible)

24 MR. WOLFBRANDT: And in fact I pursued it further,
25 because he brought up the fact of them being family members, and

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1 that caused him a problem.

2 THE COURT: (Indiscernible)

3 MR. SEATON: But that's...

4 THE COURT: (Indiscernible)

5 MR. SEATON: Okay.

6 THE COURT: He said, "family's so important to me."

7 (Indiscernible bench conference colloquy)

8 (Bench conference concluded)

9 THE COURT: Anything else? Any other questions or
10 challenges?

11 MR. WOLFBRANDT: Well, Judge, I would renew the
12 challenge for cause at this point.

13 THE COURT: Do you join in the challenge?

14 MR. WALL: Well, I would join in the challenge, your
15 Honor, but reserving a right to ask questions about the three
16 different penalties when it becomes my turn.

17 THE COURT: Because you're limited to only three
18 different penalties. When it comes your turn, I'll let you have
19 that reserve. But if you start to go all over again, I'll stop
20 you. Mr. Seaton?

21 MR. SEATON: I wouldn't join in the challenge, Judge.

22 THE COURT: You really wouldn't?

23 MR. SEATON: I wouldn't.

24 THE COURT: I must sustain the challenge at this time
25 for the following reasons: Mr. Mitchell's sense of family values

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8JD04281

1 are extreme; he's mentioned it two or three times. And this last
2 time he even volunteered the information that he just couldn't
3 see any amount of money that could bestow the death of family
4 members.

5 Those of you who believe in the death penalty are fine, and
6 those of you -- I cannot assure you everybody that sits on this
7 jury will believe in the death penalty, but again you must be
8 able to consider equally all three possible forms of punishment
9 that is going to be given to you, which the Defense will hope
10 with mitigation such facts as raised by Mr. Mitchell.

11 And one has to listen to those, and they may or may not be
12 persuaded by them, I don't know; that's up to the jury. But that
13 -- you must be able to hear them, then consider all three of them
14 along with the evidence and facts. That would be important, Mr.
15 -- if the statement seems unfair, because you don't know what
16 they are, but you must be willing to listen to them and consider
17 them.

18 And the motion is sustained. Mr. Mitchell, thank you for
19 coming down. Thank you for your candor, but you are excused.
20 Report back to the jury commission for further instructions.

21 PROSPECTIVE JUROR NO. 433: Thank you.

22 THE COURT: Thank you, sir.

23 It is time for our afternoon recess. And we're going to
24 take about 15 minutes. It is now roughly ten minutes of 3:00 by
25 the clock on the wall, give or take a minute or two. Be back in

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8JD04282

1 your seats at ten minutes after the hour. Don't go. Not yet.
2 You're going to hear this admonishment each and every time you
3 leave.

4 I again remind you not to talk among yourselves or with
5 anyone else on any matter pertaining to this trial; read, watch
6 or listen to any report of or commentary on the trial by any
7 person or by any medium of information, including without
8 limitation newspapers, radio or television; form or express any
9 opinion on any matter pertaining to this trial until it is
10 finally submitted to you.

11 See you at ten minutes after in your seats. We'll be in
12 recess.

13 (Jury out at 2:55 p.m.)

14 THE COURT: Mr. Wall, I think I owe you an apology.
15 It's not...witness, the juror whether or not he's ever been
16 convicted of a crime or anybody close. The question I asked him
17 was whether or not he had ever been a victim of a crime. ...
18 questionnaire ... that is not the question I asked ... However
19 my answer would have been the same and that's ... And again, had
20 it been the guilt phase, and I think the proper question of the
21 guilt phase.

22 I will request you folks not to ascertain questions like
23 that; however, ... hears something in her voice that I don't
24 hear, and that's your purpose I ... question again, I don't have
25 a problem with that. I'll give one answer and you give another

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1 answer ... right down the list again. But if you ... ask the
2 question. I've asked ... there's a reason for ... I have no
3 problem.

4 Okay. So ... Oh! Jury instructions. When am I going to
5 get my jury instructions?

6 MR. SCHIECK: When we get a jury.

7 THE COURT: No, no, no, no, no. You don't have to go
8 ... But I'll tell you what, Mr. Schieck, you convinced me
9 yesterday, this trial will take a day-and-a-half, and I locked.

10 MR. SCHIECK: I said two days. One day for the State's
11 case, one day for the Defense case, and we argue the third day.

12 THE COURT: When I asked that question you said to me,
13 "We've been through this twice before; we know."

14 MR. SCHIECK: Well, that's before we got this jury,
15 Judge.

16 THE COURT: Jury instructions Thursday morning ready
17 for me. I require the State -- let's all get together. Make
18 sure the jury instructions are in one pile for me. If you have
19 any objections, put paperclips on it. When I look at them...

20 Okay.

21 (Jury in at 3:18 p.m.)

22 THE COURT: Please be seated. This is continuation of
23 State vs. Flanagan and Moore. Let the record reflect the
24 presence of Defendants with Counsel, District Attorney, other
25 officers of the Court.

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8JD04284

1 Will the Clerk please call roll call of the jury panel?

2 (Clerk calls roll of prospective jurors; all present)

3 THE COURT: Will counsel stipulate to the presence of
4 the jury panel?

5 MR. SEATON: Yes, Judge.

6 MR. WALL: Yes, your Honor.

7 MR. SCHIECK: Yes, your Honor.

8 THE COURT: Will the Clerk draw one additional name?

9 THE CLERK: Alma Dean Harris, Badge No.500,
10 H-A-R-R-I-S.

11 THE COURT: Ms. Harris, please come forward and take
12 the seat that's just been vacated.

13 Ladies and gentlemen of the jury panel, I'm going to have to
14 request at this time, please do not talk during these
15 proceedings. I can hear you up here, and it disturbs me. I
16 haven't said anything about it, but it seems to be getting louder
17 and back and forth. One, this is a small courtroom. Sometimes
18 if the temperatures right, you can stand in that corner there and
19 whisper to the wall, and I can hear you up here. So that's the
20 first thing; everything's magnified.

21 I'll tell you, if it disturbs me, I can only imagine how it
22 does to these counsel down here, who have a tremendous burden.
23 They may look cool and calm and collected, but I can assure you
24 that each one of their stomachs, from Mr. Seaton to Mr. Schieck,
25 is going up and down. I've been in that position.

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8JD04285

1 They have awesome responsibility, and sometimes the noises
2 behind them will distract one of the questions they want to ask,
3 and then it's too late. This is a serious business here.

4 We're asking for the death penalty, the State's asking for
5 the death penalty, life with or life without the possibility, and
6 that's an awesome burden for anybody. I may give a little bit of
7 leniency to you every now and then, because everybody's getting
8 tense; but in between that, folks, please do not talk; it does
9 magnify up here.

10 And remember, as you can see, you may be sitting over there
11 wondering what has gone on before.

12 So much for that. We will probably close today about 4:00
13 p.m. or 4:15 p.m.

14 Ms. Harris, how long have you lived in Clark County, Nevada?

15 PROSPECTIVE JUROR NO. 500: Thirty-three years.

16 THE COURT: Where were you born and raised?

17 PROSPECTIVE JUROR NO. 500: I was born in Tulula,
18 Louisiana, and I moved out here when I was six years old.

19 THE COURT: To here?

20 PROSPECTIVE JUROR NO. 500: I've been here since then.

21 THE COURT: What is your educational background?

22 PROSPECTIVE JUROR NO. 500: I went half a year at UNLV.

23 THE COURT: What was your field of endeavor there?

24 PROSPECTIVE JUROR NO. 500: Physical education.

25 THE COURT: Did you take up any law courses there?

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SA300

8JD04286

1 PROSPECTIVE JUROR NO. 500: No.

2 THE COURT: What has been your employment for the last
3 ten years?

4 PROSPECTIVE JUROR NO. 500: I've been employed by the
5 Clark County School District for six years as a bus driver, and
6 before that I was ten years at Caesars Palace; eight years maid,
7 and two years as a supervisor.

8 THE COURT: What is your religious preference?

9 PROSPECTIVE JUROR NO. 500: Baptist.

10 THE COURT: Do you attend church regularly?

11 PROSPECTIVE JUROR NO. 500: Yes.

12 THE COURT: How old are you?

13 PROSPECTIVE JUROR NO. 500: Thirty-nine.

14 THE COURT: Are you married or single?

15 PROSPECTIVE JUROR NO. 500: Divorced.

16 THE COURT: Do you have any children?

17 PROSPECTIVE JUROR NO. 500: Two.

18 THE COURT: May we have their ages and sex, please?

19 PROSPECTIVE JUROR NO. 500: I have a son who's 15 and a
20 half, and a daughter who's twelve.

21 THE COURT: Are you acquainted with any of the
22 Defendants or their attorneys?

23 PROSPECTIVE JUROR NO. 500: No.

24 THE COURT: Do you know anyone in the District
25 Attorney's Office?

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8JD04287

1 PROSPECTIVE JUROR NO. 500: No.

2 THE COURT: Did you recognize any of the persons whose
3 names were given to you as prosecution witnesses?

4 PROSPECTIVE JUROR NO. 500: No, I did not.

5 THE COURT: In the State of Nevada, there are three
6 possible forms of punishment that the jury may consider and then
7 select the one that they believe is the most appropriate under
8 the law and facts of this case. Those three possible forms of
9 punishment are: (a) the imposition of the death penalty;
10 (b) life imprisonment without the possibility of parole; and
11 (c) life imprisonment with the possibility of parole. Do you
12 understand, ma'am?

13 PROSPECTIVE JUROR NO. 500: Yes, I do.

14 THE COURT: In your present state of mind, can you, if
15 you are selected as a juror in this case, consider equally all
16 three possible forms of punishment and then select the one that
17 you feel is the most appropriate?

18 PROSPECTIVE JUROR NO. 500: Yes, I can.

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

21 PROSPECTIVE JUROR NO. 500: No.

22 THE COURT: Are you now involved in or have you ever
23 been involved in any law enforcement work?

24 PROSPECTIVE JUROR NO. 500: No.

25 THE COURT: Do you have any close friends or relatives

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SA302

8JD04288

1 who are members of any law enforcement agency?

2 PROSPECTIVE JUROR NO. 500: No, sir.

3 THE COURT: Have you ever appeared as a witness in any
4 criminal case?

5 PROSPECTIVE JUROR NO. 500: No.

6 THE COURT: Have you ever served on any kind of a jury?

7 PROSPECTIVE JUROR NO. 500: No, I have not.

8 THE COURT: Have you ever served in the military?

9 PROSPECTIVE JUROR NO. 500: No.

10 THE COURT: Have you ever been or anyone close to you
11 ever been a victim of a crime?

12 PROSPECTIVE JUROR NO. 500: Well, I was robbed.

13 THE COURT: And when was this?

14 PROSPECTIVE JUROR NO. 500: It's been about ten years
15 ago.

16 THE COURT: Please tell the circumstances?

17 PROSPECTIVE JUROR NO. 500: The circumstances is I was
18 at the 7-Eleven store -- not a 7-Eleven store, a gas station. My
19 two children were in the car; I went in to get some cigarettes,
20 and an individual reached inside of my car and stole my wallet
21 out of my purse.

22 THE COURT: Is there anything about that experience
23 that would cause you to have any biases for or against either
24 side in this case?

25 PROSPECTIVE JUROR NO. 500: No. Judge, and also I had

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SA303

8JD04289

1 -- an apartment I was living in, someone broke in there and stole
2 two VCR's out of there also.

3 THE COURT: And when was this?

4 PROSPECTIVE JUROR NO. 500: Oh! It had to be about two
5 years before that.

6 THE COURT: Is there anything about that experience
7 that would cause you to have any biases...

8 PROSPECTIVE JUROR NO. 500: No.

9 THE COURT: ...for or against either side in this case?

10 PROSPECTIVE JUROR NO. 500: No, sir.

11 THE COURT: Have you ever been or anyone close to you
12 ever been a victim of a crime?

13 PROSPECTIVE JUROR NO. 500: Just myself.

14 THE COURT: Okay. I just asked that question, didn't
15 I? It's late in the day. Can you and will you follow the
16 Court's instructions on the law even though you may disagree with
17 it?

18 PROSPECTIVE JUROR NO. 500: Yes, I can.

19 THE COURT: If you were either of the Defendants, would
20 you want someone in your present mental state to sit and judge
21 your case?

22 PROSPECTIVE JUROR NO. 500: Yes.

23 THE COURT: Do you know of any reason whatsoever,
24 whether I've asked you or not, why you cannot sit as a fair and
25 impartial juror in this case?

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SA304

8JD04290

1 PROSPECTIVE JUROR NO. 500: No, I do not.

2 THE COURT: Mr. Schieck?

3 MR. SCHIECK: Thank you, your Honor.

4 THE COURT: You're welcome, sir.

5 MR. SCHIECK: Ms. Harris, you indicated at question 50
6 of your questionnaire that you read the newspaper just about
7 every day?

8 PROSPECTIVE JUROR NO. 500: Every day. It's seven days
9 a week, and I might miss it about twice a week.

10 MR. SCHIECK: And since you've been sitting here for
11 the last almost two full days now, have you recalled anything
12 about this case that perhaps you didn't recall when you...

13 PROSPECTIVE JUROR NO. 500: No, I didn't.

14 MR. SCHIECK: ...filled out your questionnaire?

15 PROSPECTIVE JUROR NO. 500: No, sir, I haven't.

16 MR. SCHIECK: Okay. So as you sit here right now, you
17 have no recollection of anything having to do with this case?

18 PROSPECTIVE JUROR NO. 500: No, sir.

19 MR. SCHIECK: Where did you go to high school?

20 PROSPECTIVE JUROR NO. 500: Rancho High School.

21 MR. SCHIECK: And when you were in high school, did you
22 have any classes that entered into discussions about the death
23 penalty?

24 PROSPECTIVE JUROR NO. 500: No.

25 MR. SCHIECK: You know, political science type classes?

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8JD04291

1 PROSPECTIVE JUROR NO. 500: No.

2 MR. SCHIECK: Have you had the occasion at all in your
3 adult life to engage in conversations or discussions concerning
4 the death penalty?

5 PROSPECTIVE JUROR NO. 500: Well, it -- I think of
6 some; it's been brought up. Someone always talks about the death
7 penalty, but I have never had a set judgment call on it.

8 MR. SCHIECK: So you've never had a firm position,
9 whether you advocated for or against the death penalty?

10 PROSPECTIVE JUROR NO. 500: No.

11 MR. SCHIECK: Okay. As you sit here right now knowing
12 what you do about this case, and having listened to the questions
13 we've asked a number of jurors, are you leaning toward any one
14 particular penalty in the case?

15 PROSPECTIVE JUROR NO. 500: No, I am not.

16 MR. SCHIECK: Okay. You can consider all three of them
17 equally?

18 PROSPECTIVE JUROR NO. 500: Yes, I can.

19 MR. SCHIECK: And obviously it wouldn't be fair to the
20 Defendants if you were to change your mind and say, "I'm just
21 automatically going to vote for the death penalty sometime during
22 this case." And it wouldn't be fair to the State if sometime
23 during the proceedings you made up your mind that, "You know, I
24 really don't like the death penalty; I'm not going to give it."

25 PROSPECTIVE JUROR NO. 500: Uh-huh.

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SA306

8JD04292

1 THE COURT: I'm sorry, yes or no?

2 MR. SCHIECK: Okay. Do you think that might happen?

3 THE COURT: The last "uh-huh," is that a yes or a no?

4 PROSPECTIVE JUROR NO. 500: Oh, no, I was just...

5 THE COURT: I know,

6 PROSPECTIVE JUROR NO. 500: ...saying I'm hearing what
7 he's saying.

8 THE COURT: I have to have a yes or no. When you read
9 a transcript...

10 PROSPECTIVE JUROR NO. 500: I didn't think he was
11 finished saying his question.

12 THE COURT: When you're finished reading a transcript
13 "x" number of months or "x" number of years from now, that "uh-
14 huh" or "huh-uh," and you wonder was that a yes or was that a no.

15 PROSPECTIVE JUROR NO. 500: I understand.

16 THE COURT: I know. I can assure you I would
17 understand. So to say yes or no instead of uh-huh or huh-uh...

18 PROSPECTIVE JUROR NO. 500: All right.

19 THE COURT: ...would help. I do it too, so don't feel
20 bad.

21 MR. SCHIECK: Do you think there's a possibility that
22 you're going to change your mind and be against the death penalty
23 at sometime during these proceedings--I mean, just
24 philosophically, not based on the facts?

25 PROSPECTIVE JUROR NO. 500: Possible.

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8JD04293

1 MR. SCHIECK: Okay. Is it...

2 PROSPECTIVE JUROR NO. 500: I...

3 MR. SCHIECK: Go ahead.

4 PROSPECTIVE JUROR NO. 500: I never said I was for the
5 death penalty; I said I was open minded to hear all three--the
6 death penalty, the possible parole. I never said I was death
7 penalty.

8 MR. SCHIECK: Okay. You would consider all three of
9 them though...

10 PROSPECTIVE JUROR NO. 500: Correct.

11 MR. SCHIECK: ...after you heard all the evidence in
12 this case?

13 PROSPECTIVE JUROR NO. 500: Yes.

14 MR. SCHIECK: Thank you. We'd pass for cause, your
15 Honor.

16 THE COURT: Mr. Wolfbrandt?

17 MR. WALL: Thank you, your Honor.

18 THE COURT: You're welcome, sir.

19 MR. WALL: Ms. Harris, your questionnaire indicates
20 that you employed right now by the Clark County School
21 District?

22 PROSPECTIVE JUROR NO. 500: Correct.

23 MR. WALL: Do you tend to come in -- well, let me make
24 this whole lot easier. What age group children do you generally
25 come in contact with?

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1 PROSPECTIVE JUROR NO. 500: From high school down to
2 elementary.

3 MR. WALL: All the way, the whole range?

4 PROSPECTIVE JUROR NO. 500: Twelfth grade to
5 kindergarten.

6 MR. WALL: Have you ever been in a position where
7 you've had to report some teenager or student for some misconduct
8 or mischief while you were working?

9 PROSPECTIVE JUROR NO. 500: Yes.

10 MR. WALL: Is that a relatively common occurrence?

11 PROSPECTIVE JUROR NO. 500: Yes, it is.

12 MR. WALL: Are there particular schools that you
13 basically deal with?

14 PROSPECTIVE JUROR NO. 500: No, in the six years that
15 I've drove, I haven't drove for the same school. Every year we
16 bid on new routes, so we bid on which one has the best hours.

17 MR. WALL: Okay. Let me ask you this. If you were
18 selected as a juror, and as the twelve of you were deliberating
19 it appeared that eleven members of the jury all felt pretty
20 strongly one way, and as you know and maybe have seen so far,
21 some people have some pretty strong feelings about this kind of
22 topic one way or another, if there were eleven aligned on one
23 side and you disagreed how would you handle that situation?

24 PROSPECTIVE JUROR NO. 500: Well, you have to weigh all
25 the evidence; so even though eleven are saying one thing and I

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1 might be saying another, that does not make mine wrong; they
2 could be wrong.

3 MR. WALL: There may be some pressure on you to change
4 your mind so that there'd be a unanimous decision, so there'd be
5 finality. How would you deal with that pressure?

6 PROSPECTIVE JUROR NO. 500: I'm used to dealing with
7 pressure with kids, so I don't think it would be any different
8 with adults. I'd just put down -- put forth how I feel about the
9 conviction, you know, about it and go from there. But I cannot
10 be persuaded to go one way just because the eleven others are
11 going that way.

12 MR. WALL: In your questionnaire there was a question
13 about whether or not you believe in the adage, "an eye for an
14 eye," and you...

15 THE COURT: Counsel, I'm sorry, would you refer to the
16 number, please?

17 MR. WALL: I'm sorry. It's question No. 62, your
18 Honor.

19 THE COURT: Thank you.

20 MR. WALL: And you indicated no, you didn't. Can you
21 explain a little bit the thought process that went into that?

22 PROSPECTIVE JUROR NO. 500: Because see I am a Baptist,
23 I am -- I believe in God, and I feel that God is the -- he is the
24 supreme being. And I -- if something happens to me, like someone
25 came, like I got my wallet stolen, I know that that person will

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1 be taken care of by God; it's not an eye for an eye. If I saw
2 him, I would not want to steal his wallet because he stole mine.

3 MR. WALL: Right.

4 PROSPECTIVE JUROR NO. 500: Because I feel that he will
5 be, on judgment day, taken care of. That's what I meant by I
6 don't believe in an eye for an eye.

7 MR. WALL: Okay. Thank you very much. We'll pass for
8 cause, your Honor.

9 THE COURT: Mr. Seaton?

10 MR. SEATON: Thank you, Judge.

11 THE COURT: You're welcome, sir.

12 MR. SEATON: Good afternoon, Ms. Harris?

13 PROSPECTIVE JUROR NO. 500: Good afternoon.

14 MR. SEATON: In your discussion with Mr. Wall he was
15 talking about the death penalty, and you made the comment to him,
16 "I didn't say that I was for the death penalty," or you didn't
17 say if you were for the death penalty. Am I about right?

18 PROSPECTIVE JUROR NO. 500: You're about right.

19 MR. SEATON: Okay. Are you for the death penalty?

20 PROSPECTIVE JUROR NO. 500: I am -- I don't have any --
21 actually I don't have any feelings toward. When you hear about
22 the death penalty and they get it, I don't say, "Well, I don't
23 think he should have got it," or "I don't think he should have
24 got it," because that's what the jury is for. When they make the
25 decision you have -- you're suppose to go by it.

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1 I don't have any -- I just can't -- when I hear about
2 somebody getting the death penalty, I just say, "They must have
3 deserved it."

4 MR. SEATON: Okay. When we have a criminal justice
5 system, you commit a crime, you get arrested, you go to jail, you
6 come to a place by this and get tried by a jury of your peers.
7 And then either a jury in certain cases or a judge sentences
8 people. Do you think -- you think all that's pretty good, don't
9 you?

10 PROSPECTIVE JUROR NO. 500: Yes.

11 MR. SEATON: That if people are bad they have to be
12 punished somehow?

13 PROSPECTIVE JUROR NO. 500: Right.

14 MR. SEATON: And ordinary human beings can do that
15 punishment?

16 PROSPECTIVE JUROR NO. 500: Ordinary?

17 MR. SEATON: Just ordinary human beings. People who
18 are on the jury. It's okay for them...

19 PROSPECTIVE JUROR NO. 500: They're judging their
20 peers, correct?

21 MR. SEATON: That's right.

22 PROSPECTIVE JUROR NO. 500: Uh-huh.

23 MR. SEATON: Do you believe in that system?

24 PROSPECTIVE JUROR NO. 500: Yes.

25 MR. SEATON: Okay. And you also believe in a God and a

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8JD04298

1 God that will kind of balance things out on judgment day?

2 PROSPECTIVE JUROR NO. 500: Right.

3 MR. SEATON: And we don't need to do everything to
4 balance things out; he'll take care of...

5 PROSPECTIVE JUROR NO. 500: Well, we have to pretty
6 much take care of what's down here, because...

7 MR. SEATON: Okay.

8 PROSPECTIVE JUROR NO. 500: ...judgment day is not here
9 yet.

10 MR. SEATON: Okay.

11 PROSPECTIVE JUROR NO. 500: So we have to take care of
12 what's down here first.

13 MR. SEATON: Okay. When it comes to imposing the death
14 penalty -- and I'm just -- I'm talking philosophically now,
15 conceptually, do you think the death penalty plays a valid role
16 in our criminal justice system?

17 PROSPECTIVE JUROR NO. 500: I guess, when it's in --
18 being used, I guess.

19 MR. SEATON: You're not king for a day as was
20 suggested; you're queen for a day now. You get to make up the
21 system. You get to say how criminals are treated. And you're
22 going to have a full range of things that you're able to do. Are
23 you personally going to include the death penalty in the
24 punishments that human beings should dole out to other human
25 beings?

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8JD04299

1 PROSPECTIVE JUROR NO. 500: Could I say maybe,
2 because...

3 MR. SEATON: Well, I wish you wouldn't; but yeah, you
4 can.

5 PROSPECTIVE JUROR NO. 500: ...it's different sentences
6 for different crimes.

7 MR. SEATON: Okay.

8 PROSPECTIVE JUROR NO. 500: All crimes are not the
9 same.

10 MR. SEATON: Okay. Here we're talking...

11 PROSPECTIVE JUROR NO. 500: So you have to use the
12 death penalty in some cases, and you don't use the death penalty
13 in some cases; possible parole, not possible parole. So each act
14 is different. You're here, you know, to be a jury, be on the
15 jury, talk about it and see which one is the best in that
16 situation.

17 MR. SEATON: If you were on a jury and the case came
18 before you and you were in the midst of considering the three
19 penalties.

20 PROSPECTIVE JUROR NO. 500: Uh-huh.

21 MR. SEATON: You're back in the jury room, you're
22 talking to your fellow jurors, and you're deliberating. Is it
23 going to be hard for you to contemplate the death penalty as one
24 of the positions that you might want to take?

25 PROSPECTIVE JUROR NO. 500: No.

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8JD04300

1 MR. SEATON: Would you just as soon not? Would you
2 like to find a reason not...

3 PROSPECTIVE JUROR NO. 500: Since the death penalty is
4 in it, it has to be used also.

5 MR. SEATON: That's what I'm getting at. And you don't
6 mind that?

7 PROSPECTIVE JUROR NO. 500: No. The reason I've said.
8 I go and get nervous now. But no, like I said, I consider myself
9 a fair-minded person. And we are here to, in this case, pass
10 judgment if you want to say, and the death penalty is one of
11 them. So you have to use all three options. And so if that's
12 part of it, and if I am a juror I am supposed to use that in my
13 object thinking.

14 MR. SEATON: You bring me to a very good point. You
15 say "That's what we are here for." We've been talking so far
16 philosophically; let's get down to brass tacks for a moment.
17 There's two young men sitting over here, and please feel free to
18 look at them.

19 PROSPECTIVE JUROR NO. 500: Uh-huh.

20 MR. SEATON: I think it's important to recognize what
21 we're doing. There's going to be evidence presented in the case,
22 and during all of that and up until now these have been living,
23 breathing human beings. They live maybe slightly differently,
24 but the same kinds of lives that everybody else does. Do you
25 follow what I'm saying?

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8JD04301

1 PROSPECTIVE JUROR NO. 500: Yes.

2 MR. SEATON: And they've got people who love them;
3 people who they love, good and bad things they've done just like
4 all of us, just to different extents probably. There's going to
5 come a time in this case when I will stand before the jury and
6 suggest that the evidence shows that these two should be given
7 the death penalty. What I want you to do is understand what that
8 really means. It means that a group of people is deciding, aside
9 from any legal mechanics that go on, that these two people should
10 die. They shouldn't breath our air anymore; they shouldn't be
11 around those that they love and who love them. Do you follow
12 where I'm going?

13 PROSPECTIVE JUROR NO. 500: Yes, I follow.

14 MR. SEATON: A quite different question than the
15 philosophical conceptual question we were looking at before,
16 would you agree?

17 PROSPECTIVE JUROR NO. 500: Would I agree with what?

18 MR. SEATON: That it's a different kind of a question.
19 It's pretty easy to talk about the appropriateness of the death
20 penalty, But I want to know if in your mind it's a different, a
21 tougher thing to actually...

22 PROSPECTIVE JUROR NO. 3: Yeah, of course it's tougher.

23 MR. SEATON: Okay.

24 PROSPECTIVE JUROR NO. 3: It's tougher.

25 MR. SEATON: We don't know, Ms. Harris, at all. We've

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8JD04302

1 just met her for the first time here. And we don't mean to put
2 you on the spot, but we've got to find out what your thinking is
3 like. And with that in mind, my question is: Do you think
4 you're the kind of person who, if a case appears appropriate to
5 you, could come back in here and look at these two gentlemen and
6 with your vote say, "I think your lives should end because of
7 what you did?"

8 PROSPECTIVE JUROR NO. 3: I think I can go back in the
9 jury and give out a verdict like that if I so see it's best.

10 MR. SEATON: The part that you talked about God and
11 Judgement Day brings me to something else that one of the other
12 lawyers talked about a little while ago, and that is a change of
13 mind. And you've heard us all talk about -- and we don't want
14 exactly the same jury obviously, and we have different
15 philosophies we're coming from, but what we do want are people
16 who are capable of considering all things and being pretty much
17 fair and neutral at this particular point in time as we start the
18 proceedings.

19 And one of the lawyers suggested that it would be unfair for
20 a juror to change their mind and perhaps say during the trial,
21 "You know, I've been thinking about it and this crime is so
22 horribly atrocious, I'm not even going to give life without -- or
23 life with any consideration. It's just too tough for that, I'm
24 not going to listen to their evidence." That would be unfair to
25 the Defense, would it not?

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8JD04303

1 PROSPECTIVE JUROR NO. 3: Yes, it would.

2 MR. SEATON: And by the same token, and I want to use
3 your analogy, if someone were in the jury box and were -- you
4 know, they've been thinking about this for a few days now, and
5 you don't think about the death penalty very often in your own
6 normal everyday life, and you said -- or any juror said, "You
7 know, this is really a harsh decision we're having to make, and I
8 don't believe that it's my function to do that. This is
9 something that should be left to God, and God should only judge
10 the life and death of another human being," that would be unfair
11 to the State...

12 PROSPECTIVE JUROR NO. 3: Uh-huh.

13 MR. SEATON: ...because we anticipate that someone's
14 going to go back into the deliberation room and honestly consider
15 all of the penalties.

16 PROSPECTIVE JUROR NO. 3: Right. You supposed to --
17 like the three possibilities...

18 MR. SEATON: Yes.

19 PROSPECTIVE JUROR NO. 3: ...that when you're going
20 back there in that room, those are your three possibilities, and
21 those are the ones you're supposed to stick by. You don't
22 supposed to change it -- change your reasoning during the trial.
23 You suppose -- like I said, I do believe that I could do fair
24 judgement on all -- using those three rules. And when I said by
25 God and Judgement Day, that's for the Ten Commandments. When you

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8JD04304

1 go before God, Judgement Day, that's what I meant.

2 MR. SEATON: I'm satisfied that you're correct. And I
3 would pass for cause, Judge. Thank you, Ms. Harris.

4 PROSPECTIVE JUROR NO. 3: Thank you.

5 THE COURT: Mr. Guerra, is that correct?

6 PROSPECTIVE JUROR NO. 4: Yes, sir. Yes, sir.

7 THE COURT: Sir, how long have you lived in Clark
8 County, Nevada?

9 PROSPECTIVE JUROR NO. 4: Twenty-six years.

10 THE COURT: How many?

11 PROSPECTIVE JUROR NO. 4: Twenty-six years.

12 THE COURT: Where were you born and raised?

13 PROSPECTIVE JUROR NO. 4: Havana, Cuba.

14 THE COURT: What is your educational background?

15 PROSPECTIVE JUROR NO. 4: Sixth grade.

16 THE COURT: What has been your employment for the last
17 ten years?

18 PROSPECTIVE JUROR NO. 4: Clark County School District.

19 THE COURT: What do you do there, sir?

20 PROSPECTIVE JUROR NO. 4: Custodian.

21 THE COURT: What is your religious preference?

22 PROSPECTIVE JUROR NO. 4: Catholic.

23 THE COURT: Do you attend mass regularly?

24 PROSPECTIVE JUROR NO. 4: No, sir.

25 THE COURT: How old are you, sir?

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1 PROSPECTIVE JUROR NO. 4: Forty-eight years.
2 THE COURT: Are you married or single?
3 PROSPECTIVE JUROR NO. 4: Married.
4 THE COURT: Is your wife employed?
5 PROSPECTIVE JUROR NO. 4: No, sir.
6 THE COURT: Do you have any children?
7 PROSPECTIVE JUROR NO. 4: Two children.
8 THE COURT: May we have their ages and sex?
9 PROSPECTIVE JUROR NO. 4: The boy is 24 years old and
10 the girl is 21.
11 THE COURT: Are you acquainted with either the
12 Defendants or their attorneys?
13 PROSPECTIVE JUROR NO. 4: I don't understand that
14 question.
15 THE COURT: Do you know either the Defendant or his
16 attorneys?
17 PROSPECTIVE JUROR NO. 4: No, I don't.
18 THE COURT: The Defendants...
19 PROSPECTIVE JUROR NO. 4: No, I don't.
20 THE COURT: ...or their attorneys?
21 PROSPECTIVE JUROR NO. 4: I don't.
22 THE COURT: Do you know anyone in the District
23 Attorney's Office?
24 PROSPECTIVE JUROR NO. 4: No, sir.
25 THE COURT: Did you recognize any of the persons whose

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