

8JD04679

1 question being, "Would your prior knowledge affect your ability  
2 to sit as an impartial juror?" And your answer was, "They are  
3 guilty and should get the maximum penalty of death." Is that  
4 what you -- that's your belief?

5 PROSPECTIVE JUROR NO. 6: I feel that the law should be  
6 carried out to the maximum, whatever that maximum is--not  
7 necessarily death, depending in on what that is.

8 This questionnaire seemed to be in somewhat of a broad  
9 sense, and that's the way I took it. And some of those answers  
10 were candid answers. I figured it was a...

11 MR. WOLFBRANDT: Okay. We understand where for a broad  
12 question you give pretty much a specific handwritten answer that  
13 says that if they're guilty, they should get the maximum penalty  
14 of death; but yet this afternoon you're saying that as you sit  
15 here you could consider life with the possibility of parole.

16 PROSPECTIVE JUROR NO. 6: What I...

17 MR. WOLFBRANDT: That seems to be rather inconsistent.

18 PROSPECTIVE JUROR NO. 6: What I basically meant was  
19 they should get the maximum penalty of whatever that penalty  
20 should be.

21 MR. WOLFBRANDT: Okay.

22 PROSPECTIVE JUROR NO. 6: And if it...

23 MR. WOLFBRANDT: So in this situation the maximum  
24 possible penalty, as you've heard for the last couple of days, is  
25 the death penalty. So as you sit here is that what you're saying

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1 is that that is in fact what they should receive?

2 PROSPECTIVE JUROR NO. 6: That was my first inclination  
3 when I read this.

4 MR. WOLFBRANDT: Okay. So what has changed from when  
5 you first read this questionnaire last week until you're here now  
6 today?

7 PROSPECTIVE JUROR NO. 6: Oh, maybe it's just sitting  
8 back there listening to everything that's going on, I suppose.

9 MR. WOLFBRANDT: So as you sit here right now, can you  
10 give real consideration to the option of the life with the  
11 possibility of parole?

12 PROSPECTIVE JUROR NO. 6: Yes, I think I could.

13 MR. WOLFBRANDT: Okay. Can you give real serious  
14 consideration to the possibility of a life sentence without the  
15 possibility of parole?

16 PROSPECTIVE JUROR NO. 6: Yes, I could.

17 MR. WOLFBRANDT: You also indicated in question 30 that  
18 you've known Lamond Mills for a period of time?

19 PROSPECTIVE JUROR NO. 6: A family friend, yes. The  
20 family grew up in the valley where I grew up. I went to school  
21 with his brothers and sisters. He's handled some matters for...

22 MR. WOLFBRANDT: He's been a pretty good personal  
23 friend for a lot of years?

24 PROSPECTIVE JUROR NO. 6: I've known him and the family  
25 forever, yes.

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1 MR. WOLFBRANDT: Okay. Did you know him also while  
2 you've been out in Overton for the last 20 years?

3 PROSPECTIVE JUROR NO. 6: Yes, he lived there until  
4 just recently.

5 MR. WOLFBRANDT: Right. Well, that was the reason why  
6 I asked; I knew that. Were you ever a part of any -- I believe  
7 there -- Logandale or some water board out there where he was a  
8 member?

9 PROSPECTIVE JUROR NO. 6: No.

10 MR. WOLFBRANDT: Okay. Were you ever involved with any  
11 kind of organizations or activities with him?

12 PROSPECTIVE JUROR NO. 6: No.

13 MR. WOLFBRANDT: Did you know him pretty well when he  
14 was the U.S. Attorney?

15 PROSPECTIVE JUROR NO. 6: Only as a family friend.

16 MR. WOLFBRANDT: Okay. But did you ever discuss his  
17 duties as the U.S. Attorney for Nevada?

18 PROSPECTIVE JUROR NO. 6: No.

19 MR. WOLFBRANDT: I don't want to dive into something  
20 that's personally painful to you, but we've got to know how was  
21 it that your son became deceased?

22 PROSPECTIVE JUROR NO. 6: He died of a drug overdose.

23 MR. WOLFBRANDT: Was it one that was self-induced or  
24 was it...

25 PROSPECTIVE JUROR NO. 6: Self-induced as far as anyone

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1 knows. We may never know.

2 MR. WOLFBRANDT: Has that caused you a lot of -- other  
3 than the natural grief, does that cause you any anger towards the  
4 drugs in society?

5 PROSPECTIVE JUROR NO. 6: Well, if it was self-induced,  
6 he did it himself, I suppose.

7 MR. WOLFBRANDT: I understand, but the fact that there  
8 are drugs available out in society, and...

9 PROSPECTIVE JUROR NO. 6: I'm not...

10 MR. WOLFBRANDT: ...to some extent its pervasive in  
11 some neighborhoods and not so much in others?

12 PROSPECTIVE JUROR NO. 6: Well, yeah, even in our own  
13 small area in Moapa Valley it's really available wherever. He  
14 didn't live there, however; he lived here in Vegas.

15 MR. WOLFBRANDT: How long ago did this happen?

16 PROSPECTIVE JUROR NO. 6: Earlier this year. January,  
17 I believe, this year. His family lived out there, but they were  
18 estranged, and he lived here in Vegas.

19 MR. WOLFBRANDT: So he had a wife and kids?

20 PROSPECTIVE JUROR NO. 6: Four children, yes.

21 MR. WOLFBRANDT: Okay. Prior to his death in January,  
22 had he ever been arrested for drug-related offenses?

23 PROSPECTIVE JUROR NO. 6: I don't think he had ever  
24 really spent any time or anything. I'm sure he was in and out of  
25 problems. His mother usually bailed him out. I couldn't tell

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1 you for sure some of the details that went on in his life.

2 MR. WOLFBRANDT: Did you pretty much lose contact with  
3 him once he got involved with the drug culture?

4 PROSPECTIVE JUROR NO. 6: Yeah, to a point. He was 35  
5 years old, so he's -- you know, he was my kid, but he shouldn't  
6 have been a kid at 35.

7 MR. WOLFBRANDT: Do you know whether or not he was ever  
8 actually charged with a crime?

9 PROSPECTIVE JUROR NO. 6: I don't think so.

10 MR. WOLFBRANDT: Thank you, your Honor. I'd pass for  
11 cause.

12 THE COURT: Mr. Wall?

13 MR. WALL: Thank you, your Honor.

14 THE COURT: You're welcome, sir.

15 MR. WALL: Mr. Seckinger, as important as this whole  
16 system and this whole process is there are portions of it which  
17 are uncomfortable, and I say that because I need to ask you a  
18 couple of other questions about that same area that Mr.  
19 Wolfbrandt was asking you questions about.

20 I think it is probably natural to want to blame someone for  
21 what happened to your son, whether it's the person whoever it was  
22 who sold him the substance or first got him involved when he was  
23 younger. Who do you hold responsible?

24 PROSPECTIVE JUROR NO. 6: I don't know. I may never  
25 know.

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1 MR. WALL: I don't mean, you know, by name. I mean,  
2 but generally, is there someone, or whether you know exactly who  
3 it is or not, that you blame or that you would like to see held  
4 responsible for what happened?

5 PROSPECTIVE JUROR NO. 6: I really don't have any idea.

6 MR. WALL: Okay. And I know this is probably a  
7 difficult question to answer: Would that experience that you've  
8 gone through within the last six months make it difficult at all  
9 for you to sit on this case where you are in judgment essentially  
10 of life and death?

11 PROSPECTIVE JUROR NO. 6: No, I don't think so.

12 MR. WALL: Okay. Would the fact that you have 13  
13 grandchildren or stepgrandchildren, knowing what you know about  
14 the facts of this case, make it difficult at all for you?

15 PROSPECTIVE JUROR NO. 6: No, I don't think so. It's a  
16 difficult situation no matter what.

17 MR. WALL: Okay. In question 58C that Mr. Wolfbrandt  
18 asked you about, the question talked about the -- well, 58B  
19 talked about what you knew about this particular case. And 58C  
20 asked, "How would your prior knowledge of the case affect your  
21 ability to sit as an impartial juror," and that's where you  
22 answered that, "They are guilty and should get the max--penalty  
23 of death."

24 And I know that by now you understand that we're not here to  
25 change your opinions or to take issue with them, but rather just

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1 to be on notice of what they are. And what I want to know is:  
2 If last Thursday that was your opinion, how has it changed if it  
3 has changed?

4 PROSPECTIVE JUROR NO. 6: That was just an immediate  
5 response. By maximum, that's what I meant, the maximum of  
6 whatever the situation came up, that's just the way I felt at  
7 that time.

8 There's extenuating circumstances I'm sure, and the Court's  
9 instructions on the, what is to be considered and so on and so  
10 forth will be the determining factor on what the decision will be  
11 made.

12 MR. WALL: You have told us that you would equally, you  
13 would consider all three possible sentences equally. It might be  
14 fair to say that last Thursday that, based on your answer, that  
15 wasn't true. Knowing what you know now, can you consider them  
16 all equally?

17 PROSPECTIVE JUROR NO. 6: Yes, I can.

18 MR. WALL: Do you think that life in prison with the  
19 possibility of someday receiving parole is an appropriate  
20 sentence for someone convicted of a premeditated first-degree  
21 murder upon a grandparent?

22 PROSPECTIVE JUROR NO. 6: If that's what comes out of  
23 the situation, yes, I do.

24 MR. WALL: What do you mean "if that's what come out"?

25 PROSPECTIVE JUROR NO. 6: Well, if that's -- I can't

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1 accurately answer a question that is based on facts of  
2 information that hasn't been presented yet.

3 MR. WALL: Well, the factual information I gave you is  
4 what you've been told already. Are there circumstances, other  
5 circumstances, that you would take into consideration before you  
6 rendered a decision?

7 PROSPECTIVE JUROR NO. 6: Oh, I'm sure there will be,  
8 yes.

9 MR. WALL: In question No. 32 you indicated that your  
10 experience as a prior juror was a positive one. Can you tell me  
11 why?

12 PROSPECTIVE JUROR NO. 6: I felt that the system  
13 worked, and things were taken care of, yes.

14 MR. WALL: And according to the questionnaire, it  
15 looked like in one of the three instances that you served as a  
16 juror, the jury didn't reach a verdict. In the civil case?

17 PROSPECTIVE JUROR NO. 6: Yeah, I think the civil case,  
18 that after we were in for two or three days, it was settled out  
19 of court.

20 MR. WALL: Okay. So it wasn't a situation where the  
21 jury couldn't come to a decision?

22 PROSPECTIVE JUROR NO. 6: Yeah, I think there was one  
23 of those that we didn't come to a decision. It actually wasn't  
24 given to the jury.

25 MR. WALL: On the other two cases where you were part

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1 of a jury that actually deliberated and reached a verdict, if you  
2 recall, how long were those juries deliberating?

3 PROSPECTIVE JUROR NO. 6: It didn't go over a day.

4 MR. WALL: Okay.

5 PROSPECTIVE JUROR NO. 6: It was relatively cut and  
6 dried by the evidence.

7 MR. WALL: Okay. You answered question 63 indicating  
8 that you thought our legal system unduly favors the person  
9 accused of the crime, indicating that a good example was the  
10 amount of time a criminal spends on death row.

11 Tell me what your thinking was when you answered that  
12 question?

13 PROSPECTIVE JUROR NO. 6: Well, I guess you could refer  
14 to the situation that we're at this time, and it's not a  
15 derogatory statement. I think that through the legal system the  
16 required appeals and so forth that's provided, it takes a long  
17 time. And I don't mean that in a sense that it's wrong; as a  
18 matter of fact it's probably just the opposite, because those  
19 situations also protect the innocent.

20 There's people on death row that may be innocent, so the  
21 appeal system and so forth needs to be carried out to protect  
22 everyone involved in the system. That's why it works. It's just  
23 too bad it takes such a lengthy period of time. That's basically  
24 what I meant.

25 MR. WALL: Okay. So you didn't think that someone

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8JD04688  
1 accused of a crime gets too many breaks?

2 PROSPECTIVE JUROR NO. 6: No. No, absolutely not.

3 MR. WALL: Or is treated to leniently, is treated in  
4 too lenient a manner by our system, which allows for appeals or  
5 which requires that guilt be proven beyond a reasonable doubt?

6 PROSPECTIVE JUROR NO. 6: Not at all, no. Absolutely  
7 not, just the opposite. It just -- what I meant was there should  
8 be some way in the system to cut down the amount of time it takes  
9 to serve out the proper justice system. It's unfortunate that --  
10 I guess it's such a backlog and various things that create that  
11 problem.

12 MR. WALL: When you were part of the Las Vegas Police  
13 Reserve, did you have an opportunity to go out into the field  
14 with police officers?

15 PROSPECTIVE JUROR NO. 6: Yes.

16 MR. WALL: And accompany them as they made arrests?

17 PROSPECTIVE JUROR NO. 6: Yes.

18 MR. WALL: And accompany them as they questioned  
19 suspects?

20 PROSPECTIVE JUROR NO. 6: Well, yeah. Personally I  
21 didn't get involved in too much heavy stuff. What they did was  
22 paired us off with regular officers to make a larger force, if  
23 you will. And sometimes we got some of the more menial duties;  
24 traffic and so forth. But there were instances where we were  
25 involved in chases and one thing or another.

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1 MR. WALL: Did you carry a weapon?  
2 PROSPECTIVE JUROR NO. 6: Yes, sir.  
3 MR. WALL: You did?  
4 PROSPECTIVE JUROR NO. 6: Yes.  
5 MR. WALL: Did you ever have to draw that weapon?  
6 PROSPECTIVE JUROR NO. 6: No.  
7 MR. WALL: How long were you in that capacity?  
8 PROSPECTIVE JUROR NO. 6: It wasn't very long, maybe  
9 less than a year.  
10 MR. WALL: Were you ever with an officer who had to  
11 draw his weapon?  
12 PROSPECTIVE JUROR NO. 6: I don't remember if a weapon  
13 was drawn. We apprehended a couple of burglary suspects in a  
14 service station and held them for the patty wagon, they called it  
15 at that time. Other than that it was just mainly routine traffic  
16 stuff.  
17 MR. WALL: Let me just ask one final question, Mr.  
18 Seckinger. Based on your life experiences, is there any doubt in  
19 your mind as to whether you could be fair to both sides in this  
20 case?  
21 PROSPECTIVE JUROR NO. 6: I could be fair, yes.  
22 MR. WALL: Okay. Your Honor, we'll pass for cause.  
23 THE COURT: Mr. Seaton?  
24 MR. SEATON: I'll pass for cause.  
25 THE COURT: The State may exercise it's fourth

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8JD04689

1 peremptory challenge.

2 MR. SEATON: I'll waive it, Judge.

3 THE COURT: Defense may exercise it's fourth peremptory  
4 challenge?

5 MR. SCHIECK: Thank you, Judge. Could we have the  
6 Court's indulgence?

7 THE COURT: Surely.

8 (Pause)

9 MR. SCHIECK: We would thank and excuse Ms. Sweet in  
10 seat 10, Badge 501.

11 THE COURT: Ms. Sweet, you are excused. Thank you for  
12 coming down. Advise the jury commissioner that you have been  
13 excused.

14 THE CLERK: Phyllis Z. Nebron, Badge No. 518,  
15 N-E-B-R-O-N.

16 THE COURT: Ms. Nebron, how long have you lived in  
17 Clark County, Nevada?

18 PROSPECTIVE JUROR NO. 10: 60 years.

19 THE COURT: Where were you born and raised?

20 PROSPECTIVE JUROR NO. 10: Las Vegas.

21 THE COURT: And what is your educational background?

22 PROSPECTIVE JUROR NO. 10: High school.

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

25 PROSPECTIVE JUROR NO. 10: Riviera Hotel.

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1 THE COURT: And what do you do there?  
2 PROSPECTIVE JUROR NO. 10: I'm a front desk cashier.  
3 THE COURT: You have a soft voice, and I have a soft  
4 voice, and my sinks also. We slip a lot.  
5 PROSPECTIVE JUROR NO. 10: And I'm nervous.  
6 THE COURT: What is your religious preference?  
7 PROSPECTIVE JUROR NO. 10: Methodist.  
8 THE COURT: Do you attend church regularly?  
9 PROSPECTIVE JUROR NO. 10: No, I don't.  
10 THE COURT: How old are you?  
11 PROSPECTIVE JUROR NO. 10: Sixty.  
12 THE COURT: And are you married or single?  
13 PROSPECTIVE JUROR NO. 10: I'm married.  
14 THE COURT: Is your husband employed?  
15 PROSPECTIVE JUROR NO. 10: Yes, he is.  
16 THE COURT: Where does he work and what are his duties?  
17 PROSPECTIVE JUROR NO. 10: He owns a collection agency  
18 here.  
19 THE COURT: And do you have any children?  
20 PROSPECTIVE JUROR NO. 10: Yes, I put down my child,  
21 but he has two, so I did amend that.  
22 THE COURT: May we have their ages and sex, please?  
23 PROSPECTIVE JUROR NO. 10: My daughter is 41, and 35  
24 and 33.  
25 THE COURT: Boys or girls or a mixture?

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1 PROSPECTIVE JUROR NO. 10: I'm sorry?

2 THE COURT: Were they boys or girls or a mixture?

3 PROSPECTIVE JUROR NO. 10: All girls.

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

6 PROSPECTIVE JUROR NO. 10: No, I'm not.

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

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

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

12 PROSPECTIVE JUROR NO. 10: No.

13 THE COURT: If you are selected as juror in this case,  
14 the State of Nevada requires -- in the State of Nevada, there are  
15 three possible forms of punishment that the jury may consider and  
16 then select the one they feel is most appropriate under the law  
17 and facts of this case. Those three possible forms of punishment  
18 are: (a) the imposition of the death penalty; (b) life  
19 imprisonment without the possibility of parole; and (c) life  
20 imprisonment with the possibility of parole. Do you understand,  
21 ma'am?

22 PROSPECTIVE JUROR NO. 10: Yes, I do.

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

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1 appropriate?

2 PROSPECTIVE JUROR NO. 10: Yes.

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

5 PROSPECTIVE JUROR NO. 10: No, I do not.

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

8 PROSPECTIVE JUROR NO. 10: No, I have not.

9 THE COURT: Do you have any close friends or relatives  
10 that are members of any law enforcement agency?

11 PROSPECTIVE JUROR NO. 10: No.

12 THE COURT: Have you ever appeared as a witness in any  
13 criminal prosecution?

14 PROSPECTIVE JUROR NO. 10: No, I haven't.

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

16 PROSPECTIVE JUROR NO. 10: Yes, I have.

17 THE COURT: When was this?

18 PROSPECTIVE JUROR NO. 10: Approximately 1980.

19 THE COURT: And without disclosing your verdict, was  
20 your jury able to arrive at a verdict?

21 PROSPECTIVE JUROR NO. 10: Was it what?

22 THE COURT: Were you able to arrive at a verdict? Was  
23 your jury...

24 PROSPECTIVE JUROR NO. 10: Yes, we were.

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

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1 PROSPECTIVE JUROR NO. 10: Criminal.  
2 THE COURT: What kind of a case was it?  
3 PROSPECTIVE JUROR NO. 10: It was drugs.  
4 THE COURT: Were you the foreperson on it?  
5 PROSPECTIVE JUROR NO. 10: No.  
6 THE COURT: Have you ever been in military service?  
7 PROSPECTIVE JUROR NO. 10: No, I have not.  
8 THE COURT: Have you ever been or anyone close to you  
9 ever been a victim of a crime?  
10 PROSPECTIVE JUROR NO. 10: No.  
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. 10: Yes.  
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. 10: Yes, I would.  
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. 10: No.  
22 THE COURT: Mr. Schieck?  
23 MR. SCHIECK: Thank you.  
24 THE COURT: You're welcome, sir.  
25 MR. SCHIECK: Ms. Nebron, why would you want twelve

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1 persons such as yourself to sit on your jury?

2 PROSPECTIVE JUROR NO. 10: Because I think I'm fair  
3 minded.

4 MR. SCHIECK: You've heard some of the facts of this  
5 case.

6 PROSPECTIVE JUROR NO. 10: Uh-huh.

7 MR. SCHIECK: Is there anything about those facts that  
8 you think might cause you to be less than fair minded?

9 PROSPECTIVE JUROR NO. 10: I don't think so.

10 MR. SCHIECK: Have you made any prejudgments about  
11 sentencing in this case?

12 PROSPECTIVE JUROR NO. 10: No, I have not.

13 MR. SCHIECK: You've had a week to think about the  
14 death penalty. Have you been thinking about it?

15 PROSPECTIVE JUROR NO. 10: No, I have not. I have not  
16 mentioned it at home. I've not talked anything about it.

17 MR. SCHIECK: Okay. But you haven't thought about it  
18 yourself even?

19 PROSPECTIVE JUROR NO. 10: No, I'd rather not think of  
20 it now.

21 MR. SCHIECK: Before you came in to serve on this jury  
22 and filled out the questionnaire, had you previous to that time  
23 thought about the death penalty?

24 PROSPECTIVE JUROR NO. 10: Yes.

25 MR. SCHIECK: Okay. On what types of occasions had it

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1 come to your mind?

2 PROSPECTIVE JUROR NO. 10: Probably in discussions with  
3 friends or at work.

4 MR. SCHIECK: Were those discussions with reference to  
5 a specific case or just sort of philosophical?

6 PROSPECTIVE JUROR NO. 10: Probably philosophical.

7 MR. SCHIECK: Did you advocate a certain position  
8 during those discussions?

9 PROSPECTIVE JUROR NO. 10: Well, I guess I would have  
10 said that I'm in favor of it.

11 MR. SCHIECK: Being in favor of it philosophically is a  
12 little bit different than having to sit on a jury where you  
13 actually have to make up that decision.

14 PROSPECTIVE JUROR NO. 10: Yes, I know that.

15 MR. SCHIECK: And it would be unfair to either side in  
16 this case if you were to say, "Well, yes, I do believe in the  
17 death penalty now."

18 PROSPECTIVE JUROR NO. 10: I don't think...

19 MR. SCHIECK: And then when you really start thinking  
20 about it--because I can assure you if you're on this jury and you  
21 deliberate you're going to be thinking about it even though you  
22 haven't been for the last week--for you to come to a conclusion,  
23 "Now, that it's really put to me; I guess I really don't believe  
24 in it," do you see how that would be unfair to...

25 PROSPECTIVE JUROR NO. 10: No, I can't say that. I

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SA709

8JD04696

1 think I would just go with what I feel, I mean, from the evidence  
2 that I would hear.

3 MR. SCHIECK: Let's take the scenario that you're on  
4 the jury, and eleven of the other jurors feel that one certain  
5 punishment is correct, and you feel that in your mind you're  
6 convinced that a different punishment is correct. Would you  
7 stick to your guns, so to speak? Or would you just simply say,  
8 "Well, eleven people think that way; I must be wrong"?

9 PROSPECTIVE JUROR NO. 10: No, I think that you'd have  
10 to discuss it. The last jury that I was on we had to do a lot of  
11 discussing. And I think that you have to get other people's way  
12 of thinking. I don't think you can absolutely make a decision  
13 completely on your own. I think it helps to have others, to get  
14 their point of view, too.

15 MR. SCHIECK: Now, your son-in-law has attended law  
16 school?

17 PROSPECTIVE JUROR NO. 10: Yes, he just graduated.

18 MR. SCHIECK: And where did he go?

19 PROSPECTIVE JUROR NO. 10: He went to Spokane.

20 MR. SCHIECK: He's going to take the bar here in  
21 Nevada?

22 PROSPECTIVE JUROR NO. 10: In Reno.

23 MR. SCHIECK: Okay. Has he discussed with you what  
24 type of law he would like to practice?

25 PROSPECTIVE JUROR NO. 10: He's just going to -- he's

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1 not going to be in criminal.

2 MR. SCHIECK: Why is that?

3 PROSPECTIVE JUROR NO. 10: Well, I guess he's just  
4 going -- what other -- what is the other law?

5 MR. SCHIECK: Civil.

6 PROSPECTIVE JUROR NO. 10: Civil. That's what he's  
7 going -- he's going to be handling, I think--contracts and things  
8 like that.

9 MR. SCHIECK: How would you feel if he was a criminal  
10 attorney?

11 PROSPECTIVE JUROR NO. 10: It wouldn't make any  
12 difference to me. It would be what he wants.

13 MR. SCHIECK: In fact one of the questions that you're  
14 asked in the questionnaire, No. 53, you pretty much indicate that  
15 you feel the same about prosecutors and defense attorneys?

16 PROSPECTIVE JUROR NO. 10: Yes.

17 MR. SCHIECK: In the last case that you sat on as a  
18 juror, was that your impression then also?

19 PROSPECTIVE JUROR NO. 10: Yes. I think you have to  
20 listen to everything, which we did.

21 MR. SCHIECK: Do you think that in a case of a  
22 premeditated first-degree murder that life in prison with the  
23 possibility of parole could be a proper punishment?

24 PROSPECTIVE JUROR NO. 10: It could be, depending on  
25 the facts that are presented.

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SA711

8JD04698

8JD04699

1 MR. SCHIECK: As you sit here now, are you leaning  
2 toward any of the...

3 PROSPECTIVE JUROR NO. 10: I'm not leaning towards  
4 anything.

5 MR. SCHIECK: You can consider all three of them  
6 equally?

7 PROSPECTIVE JUROR NO. 10: Yes, I could.

8 MR. SCHIECK: And again, we've heard a couple of the  
9 jurors talk about that they wouldn't consider life without the  
10 possibility of parole for a variety of reasons. Have you given  
11 any thought to their reasoning?

12 PROSPECTIVE JUROR NO. 10: No. I think that it's  
13 whatever the case should be. I think that all of them have their  
14 merit.

15 MR. SCHIECK: And there's a reason, a justification,  
16 for each of the three possible punishments?

17 PROSPECTIVE JUROR NO. 10: Exactly.

18 MR. SCHIECK: Your husband operates a collection  
19 agency?

20 PROSPECTIVE JUROR NO. 10: Yes, he does.

21 MR. SCHIECK: What type of collections does he do?

22 PROSPECTIVE JUROR NO. 10: Mostly doctors.

23 MR. SCHIECK: Thank you very much, Ms. Nebron. We  
24 would pass for cause, Your Honor.

25 THE COURT: Ms. Mounts?

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SA712

8JD04699

1 MS. MOUNTS: Thank you, your Honor.

2 THE COURT: You're welcome.

3 MS. MOUNTS: Good afternoon, ma'am. Is it pronounced  
4 Nebron?

5 PROSPECTIVE JUROR NO. 10: Nebron.

6 MS. MOUNTS: Nebron. Thank you. Are you still  
7 employed at the Riviera Hotel?

8 PROSPECTIVE JUROR NO. 10: Yes, I am.

9 MS. MOUNTS: Do you work full time there?

10 PROSPECTIVE JUROR NO. 10: Yes, I do.

11 MS. MOUNTS: What are the shifts that you normally  
12 work?

13 PROSPECTIVE JUROR NO. 10: I work 6:00 in the morning  
14 until 2:00 in the afternoon.

15 MS. MOUNTS: Have there been sufficient arrangements  
16 for your employment...

17 PROSPECTIVE JUROR NO. 10: Yes.

18 MS. MOUNTS: ...so that you could serve as a juror in  
19 this case?

20 PROSPECTIVE JUROR NO. 10: We have enough help.

21 MS. MOUNTS: Okay. So none of your work would  
22 interfere with your ability to...

23 PROSPECTIVE JUROR NO. 10: No. I'm a cashier; I check  
24 people out, so it's not something that work is piling up.

25 MS. MOUNTS: You indicated at Question 38 that you

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SA713

8JD04700

8JD04701  
1 believe the criminal justice system works great, in your words.

2 PROSPECTIVE JUROR NO. 10: I do.

3 MS. MOUNTS: Can you explain to us a little bit about  
4 what you mean about that?

5 PROSPECTIVE JUROR NO. 10: I guess growing up in Las  
6 Vegas, it was such a small town and everybody knew one another.  
7 And as it's gotten bigger; I think that they still try to do as  
8 much as they can for as big as we've grown, as fast as we've  
9 grown, and I think they do a good job.

10 MS. MOUNTS: So in general, you're pleased with how  
11 problems are handled in our community?

12 PROSPECTIVE JUROR NO. 10: Yes.

13 MS. MOUNTS: Now, on the prior jury that you served on,  
14 which I believe you stated was in 1980, you stated that the jury  
15 was able to reach a verdict in that case?

16 PROSPECTIVE JUROR NO. 10: Yes, we were.

17 MS. MOUNTS: And you stated, I believe, that it was a  
18 drug case?

19 PROSPECTIVE JUROR NO. 10: Yes, it was.

20 MS. MOUNTS: So that would have been the type of  
21 situation where the Court would have imposed punishment on that  
22 person? Is that correct?

23 PROSPECTIVE JUROR NO. 10: Yes.

24 MS. MOUNTS: How do you feel about potentially imposing  
25 punishment in this case?

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8JD04701

1 PROSPECTIVE JUROR NO. 10: For drugs or...

2 MS. MOUNTS: In this particular case, where you might  
3 be called upon to make a choice between the three punishments  
4 that we've outlined?

5 PROSPECTIVE JUROR NO. 10: I would have to listen to  
6 everything that was presented to me and then try to make a  
7 decision -- make a decision, not try.

8 MS. MOUNTS: Do you think that you could listen to all  
9 of the evidence with an open mind?

10 PROSPECTIVE JUROR NO. 10: Yes, I do.

11 MS. MOUNTS: You did state that you thought you might  
12 have a tendency to give more credence to a police officer's  
13 testimony. Can you tell us a little bit about that?

14 PROSPECTIVE JUROR NO. 10: Probably in the same as --  
15 I feel that -- I think I still think in my past days as grown up  
16 when policemen were -- I mean, they were friends and you knew  
17 everyone. And I guess I've just always thought that they are --  
18 it's somebody I think you look up to. And I think that if they  
19 were on the stand or something, I would have to say, yes, I would  
20 believe everything they said.

21 MS. MOUNTS: You think you would believe everything  
22 that they said?

23 PROSPECTIVE JUROR NO. 10: Well, I think I'd almost  
24 have to. I guess...

25 MS. MOUNTS: Why do you say...

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SA715

8JD04702



1 PROSPECTIVE JUROR NO. 10: I guess I just have a lot of  
2 respect for policemen.

3 MS. MOUNTS: So if a witness were to take the stand and  
4 to take a position or describe a situation contrary to that which  
5 the officer had described, you think you would have a tendency to  
6 favor the police officer?

7 PROSPECTIVE JUROR NO. 10: That would be hard, because  
8 I think that if you have two different situations, two different  
9 people saying something; it would be hard for me to define who's  
10 lying, and especially under oath.

11 MS. MOUNTS: Do you think you're a pretty good judge of  
12 character?

13 PROSPECTIVE JUROR NO. 10: Yes, I do.

14 MS. MOUNTS: Do you acknowledge that there are probably  
15 good and bad police officers, just as there are in any field?

16 PROSPECTIVE JUROR NO. 10: Yes.

17 MS. MOUNTS: You stated at Question 62 that you did not  
18 believe in the adage "an eye for an eye." Can you tell us a  
19 little bit about that answer?

20 PROSPECTIVE JUROR NO. 10: Well, it's just -- it's like  
21 somebody said (one of the jurors said), "Somebody stole my  
22 wallet." Would that give me the right, if I saw him, to steal  
23 his wallet? I mean, everything has to have its own place. If  
24 somebody did something, somebody robbed my house, it wouldn't  
25 mean that I would have to go rob their house. I think that

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SA716

8JD04703

1 there's a circumstance for everything.

2 MS. MOUNTS: So would you agree that it would be  
3 possible to adequately punish someone without necessarily  
4 inflicting on them the same act that they've committed?

5 PROSPECTIVE JUROR NO. 10: Exactly.

6 MS. MOUNTS: You stated in response to Mr. Schieck's  
7 question that you pretty much are an advocate of the death  
8 penalty or you pretty much think that it has its place. Is that  
9 correct?

10 PROSPECTIVE JUROR NO. 10: Yes, I do.

11 MS. MOUNTS: Have your views on the death penalty  
12 changed at all over your adult life?

13 PROSPECTIVE JUROR NO. 10: I don't think I've really  
14 given it that much thought, but there's a lot of times that I  
15 think that it should have been applied and hasn't, and sometimes  
16 then it's been applied. And, well, I can't say -- I can't say  
17 any general -- any consensus of a time that I've seen a trial or  
18 something like that. But I think the death penalty is very  
19 important.

20 MS. MOUNTS: In what ways do you think it's important?

21 PROSPECTIVE JUROR NO. 10: Well, in cases where -- like  
22 Dahmer, I think that was his name, where he killed the people and  
23 everything. I think that something like that, why should  
24 somebody be in our society that is so bad. And to eat -- he must  
25 have been so bad, because even the inmates didn't want him. So I

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SA717

8JD04704

1 mean, I think there's a place for it.

2 MS. MOUNTS: Would you be willing to consider that  
3 there may be some individuals convicted of murder who might  
4 someday have a place in our society?

5 PROSPECTIVE JUROR NO. 10: Yes, I do.

6 MS. MOUNTS: So you believe that people can  
7 rehabilitate themselves?

8 PROSPECTIVE JUROR NO. 10: Yes, I do. After years of  
9 -- but I think that they have to have somebody. I think you  
10 would have to have somebody that would know them to know that  
11 they're not really just pretending.

12 MS. MOUNTS: Thank you very much. We would pass for  
13 cause, your Honor.

14 THE COURT: Mr. Seaton?

15 MR. SEATON: Pass for cause, Judge.

16 THE COURT: Defense wishes to exercise their -- strike  
17 that.

18 MR. WALL: May we have the Court's indulgence for one  
19 moment, please?

20 THE COURT: I'm sorry. The State may exercise its  
21 fifth peremptory challenge. Mr. Seaton?

22 MR. SEATON: I would waive it, Judge. Judge, just for  
23 the record, was that the State's fifth?

24 THE COURT: That's correct.

25 MS. MOUNTS: Your Honor, I show that that's the State's

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SA718

8JD04705

8JD04706  
1 fourth. Is that incorrect?

2 THE COURT: No. The State waived its fourth and has  
3 now waived its fifth.

4 MR. WALL: Thank you, your Honor. On behalf of Mr.  
5 Flanagan, we would thank and excuse Juror No. 517 in No. 6  
6 position, Mr. Seckinger.

7 THE COURT: Mr. Seckinger, sir, you are excused, sir.  
8 Please report back to the jury commission and inform them that  
9 I've excused you from any further jury duty.

10 THE CLERK: Patrician Ann Perez, Badge No. 521,  
11 P-E-R-E-Z.

12 THE COURT: 520. 520.

13 THE CLERK: 521.

14 (Pause)

15 THE COURT: Ms. Perez, how long have you lived in Clark  
16 County, Nevada?

17 PROSPECTIVE JUROR NO. 6: A little over 20 years.

18 THE COURT: Where were you born and raised?

19 PROSPECTIVE JUROR NO. 6: I was born in Eureka,  
20 California; I lived 16 years in Roseburg, Oregon; and I've been  
21 here for 20.

22 THE COURT: And what is your educational background?

23 PROSPECTIVE JUROR NO. 6: Twelve years.

24 THE COURT: And what has been your employment for the  
25 past ten years?

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SA719

8JD04706

1 PROSPECTIVE JUROR NO. 6: I work at the Barbary Coast  
2 Hotel as a change person.  
3 THE COURT: What is your religious preference?  
4 PROSPECTIVE JUROR NO. 6: Methodist.  
5 THE COURT: Do you attend church regularly?  
6 PROSPECTIVE JUROR NO. 6: No, sir.  
7 THE COURT: How old are you?  
8 PROSPECTIVE JUROR NO. 6: Forty-one.  
9 THE COURT: Are you married?  
10 PROSPECTIVE JUROR NO. 6: Yes.  
11 THE COURT: Is your husband employed?  
12 PROSPECTIVE JUROR NO. 6: Yes.  
13 THE COURT: Where does he work and what are his duties?  
14 PROSPECTIVE JUROR NO. 6: He works for the Las Vegas  
15 Hilton as a baggage handler for 20 years.  
16 THE COURT: And do you have any children?  
17 PROSPECTIVE JUROR NO. 6: Yes, I do. On my  
18 questionnaire I didn't include my stepson, but I do have a  
19 stepson that is 20, will be 21 the 1st of July. I have a  
20 daughter nineteen-and-a-half, a son 13, and a daughter four.  
21 THE COURT: Are you acquainted with either the  
22 Defendants or their attorneys?  
23 PROSPECTIVE JUROR NO. 6: No, sir.  
24 THE COURT: Do you know anyone in the District  
25 Attorney's Office?

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SA720

8JD04707

1 PROSPECTIVE JUROR NO. 6: 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. 6: No, sir.

5 THE COURT: If you are selected as a juror -- strike  
6 that.

7 In the State of Nevada, there are three possible forms of  
8 punishment that a jury may consider and then select the one that  
9 they believe is the most appropriate under the law and facts of  
10 this case. Those three possible forms of punishment are:

11 (a) life imprisonment without the possibility of parole; (b) the  
12 imposition of the death penalty; and (c) life imprisonment with  
13 the possibility of parole. Do you understand, ma'am?

14 PROSPECTIVE JUROR NO. 6: Yes, sir.

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

19 PROSPECTIVE JUROR NO. 6: Yes, sir.

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

22 PROSPECTIVE JUROR NO. 6: No, sir.

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

25 PROSPECTIVE JUROR NO. 6: No, sir.

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SA721

8JD04708

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

3 PROSPECTIVE JUROR NO. 6: No, sir.

4 THE COURT: Have you ever appeared as a witness in any  
5 criminal prosecution?

6 PROSPECTIVE JUROR NO. 6: No, sir.

7 THE COURT: Have you ever served on any kind of a jury  
8 before?

9 PROSPECTIVE JUROR NO. 6: I've been only questioned,  
10 but we were dismissed, because the Defendant pled guilty.

11 THE COURT: All right. Have you ever been in the  
12 military service?

13 PROSPECTIVE JUROR NO. 6: No, sir.

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

16 PROSPECTIVE JUROR NO. 6: Yes, sir.

17 THE COURT: Please tell us?

18 PROSPECTIVE JUROR NO. 6: My nephew was shot  
19 approximately two months ago and killed here in Las Vegas.

20 THE COURT: Is there anything about that experience  
21 that would cause you to have any biases for or against either  
22 side in this case?

23 PROSPECTIVE JUROR NO. 6: I don't believe so.

24 THE COURT: If you were either of the Defendants, would  
25 you want twelve people in your present state of mind to sit and

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SA722

8JD04709

1 judge your case?

2 PROSPECTIVE JUROR NO. 6: I'm not sure.

3 THE COURT: Please explain? (pause) Please explain?

4 PROSPECTIVE JUROR NO. 6: I believe everybody deserves  
5 a fair chance, you know, to -- you know, no matter what they've  
6 done to better themselves [sic]. I don't really think I could -- I  
7 can be fair, but I'd just rather not be responsible.

8 THE COURT: Does that mean that you could not sit with  
9 your fellow jurors and deliberate and then vote on one of the  
10 three possible forms of punishment that's been given to you?

11 PROSPECTIVE JUROR NO. 6: Probably because of my own  
12 personal experience, losing my nephew.

13 THE COURT: I'll let counsel inquire further if they so  
14 desire.

15 Do you know of any other reason why you could not sit as a  
16 fair and impartial juror in this case?

17 PROSPECTIVE JUROR NO. 6: No.

18 THE COURT: Mr. Schieck?

19 MR. SCHIECK: Ms. Perez, I don't want to trouble you  
20 any further than necessary, but you realize that we're going to  
21 have to dive into this a little bit further.

22 PROSPECTIVE JUROR NO. 6: Yes.

23 MR. SCHIECK: I take it you were quite close to this  
24 nephew?

25 PROSPECTIVE JUROR NO. 6: Yes.

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SA723

8JD04710



1 MR. SCHIECK: How old was he?  
2 PROSPECTIVE JUROR NO. 6: Twenty.  
3 MR. SCHIECK: Was anybody caught?  
4 PROSPECTIVE JUROR NO. 6: Yes.  
5 THE COURT: May I see counsel, please?  
6 (Bench conference)  
7 THE COURT: Ms. Perez, counsel understands your  
8 problem, and they've all stipulated that you may be excused.  
9 PROSPECTIVE JUROR NO. 6: Thank you.  
10 THE COURT: Okay. Ms. Perez, tell the jury commission  
11 that you've been excused of any further jury duty.  
12 PROSPECTIVE JUROR NO. 6: Thanks.  
13 THE CLERK: Bambi Lynn Nietsch, Badge No. 522,  
14 N-I-E-T-S-C-H.  
15 THE COURT: Ms. Nietsch?  
16 PROSPECTIVE JUROR NO. 6: Nietsch.  
17 THE COURT: How long have you lived in Clark County,  
18 Nevada?  
19 PROSPECTIVE JUROR NO. 6: Twenty-six years.  
20 THE COURT: Where were you born and raised?  
21 PROSPECTIVE JUROR NO. 6: Tacoma, Washington.  
22 THE COURT: What is your educational background?  
23 PROSPECTIVE JUROR NO. 6: Bachelor of Science.  
24 THE COURT: Any particular science?  
25 PROSPECTIVE JUROR NO. 6: My major is MIS, management

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SA724

8JD04711

1 information systems.

2 THE COURT: And what colleges did you attend?

3 PROSPECTIVE JUROR NO. 6: UNLV and Clark County  
4 Community College.

5 THE COURT: What has been your employment over the last  
6 ten years?

7 PROSPECTIVE JUROR NO. 6: I've worked for Reynolds  
8 Electrical and Engineering. Currently, I'm a network manager,  
9 prior to that I was in the records management field.

10 THE COURT: What is your religious preference?

11 PROSPECTIVE JUROR NO. 6: Lutheran.

12 THE COURT: Do you attend church regularly?

13 PROSPECTIVE JUROR NO. 6: No.

14 THE COURT: How old are you?

15 PROSPECTIVE JUROR NO. 6: Thirty-one.

16 THE COURT: Are you married or single?

17 PROSPECTIVE JUROR NO. 6: Single.

18 THE COURT: Do you have any children?

19 PROSPECTIVE JUROR NO. 6: No.

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

22 PROSPECTIVE JUROR NO. 6: No.

23 THE COURT: Do you know anyone in the District  
24 Attorney's Office?

25 PROSPECTIVE JUROR NO. 6: No.

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SA725

8JD04712

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

3 PROSPECTIVE JUROR NO. 6: No.

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

12 PROSPECTIVE JUROR NO. 6: Yes.

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

17 PROSPECTIVE JUROR NO. 6: Yes.

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

20 PROSPECTIVE JUROR NO. 6: No.

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

23 PROSPECTIVE JUROR NO. 6: No.

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

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SA726

8JD04713

1 PROSPECTIVE JUROR NO. 6: No.

2 THE COURT: Have you ever appeared as a witness before  
3 in any criminal prosecution?

4 PROSPECTIVE JUROR NO. 6: No, I haven't.

5 THE COURT: Have you ever served on any type of jury  
6 before?

7 PROSPECTIVE JUROR NO. 6: No.

8 THE COURT: Have you ever served in the military  
9 service?

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

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

13 PROSPECTIVE JUROR NO. 6: Yes.

14 THE COURT: Please tell us about it?

15 PROSPECTIVE JUROR NO. 6: I had my car stolen when I  
16 was 16 years old, and I had my car broken into.

17 THE COURT: Is there anything about those experiences  
18 that would cause you to have any biases for or against either  
19 side in this case?

20 PROSPECTIVE JUROR NO. 6: No.

21 THE COURT: If you were either 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. 6: Yes, I would.

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

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SA727

8JD04714

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

3 PROSPECTIVE JUROR NO. 6: No.

4 THE COURT: Mr. Schieck?

5 MR. SCHIECK: Thank you, your Honor.

6 THE COURT: You're welcome, sir.

7 MR. SCHIECK: How do you feel about the death penalty?

8 PROSPECTIVE JUROR NO. 6: I believe in it.

9 MR. SCHIECK: Have you always felt that way?

10 PROSPECTIVE JUROR NO. 6: Yes, I have.

11 MR. SCHIECK: Why is it that you believe in the death  
12 penalty?

13 PROSPECTIVE JUROR NO. 6: I think that it's something  
14 that our society needs as a deterrent.

15 MR. SCHIECK: Do you feel that it acts as a deterrent?

16 PROSPECTIVE JUROR NO. 6: In some cases.

17 MR. SCHIECK: Do you have any specific cases in mind?

18 PROSPECTIVE JUROR NO. 6: No. I don't follow it to see  
19 how it's implemented and carried through.

20 MR. SCHIECK: Do you feel that it serves any other  
21 purpose?

22 PROSPECTIVE JUROR NO. 6: I don't know that there's  
23 another purpose behind the death penalty. Maybe I'm not  
24 following your question.

25 MR. SCHIECK: Everyone has their own philosophy,

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8JD04715

1 obviously. And as far as you're concerned, the only real reason  
2 to have the death penalty is a deterrent? I'm asking for your  
3 personal views, not...

4 PROSPECTIVE JUROR NO. 6: No. I don't think that it's  
5 only a deterrent. I think that it is a form of punishment.

6 MR. SCHIECK: You've heard some of the facts in this  
7 case. Do you think that the death penalty is an appropriate  
8 punishment in this case?

9 PROSPECTIVE JUROR NO. 6: I think it's an option.

10 MR. SCHIECK: Is life with the possibility of parole an  
11 option?

12 PROSPECTIVE JUROR NO. 6: Yes.

13 MR. SCHIECK: Is it an option that you're going to  
14 consider?

15 PROSPECTIVE JUROR NO. 6: No.

16 MR. SCHIECK: Why would you want twelve persons in the  
17 same frame of mind that you're in to sit on your jury?

18 PROSPECTIVE JUROR NO. 6: I'm a very fair person.  
19 Before I make decisions, I consider all the issues or facts; and  
20 based on those I make a decision, and I would want people to do  
21 the same thing if I was sitting in their seats.

22 MR. SCHIECK: You have a job that requires you to make  
23 decisions on a regular basis?

24 PROSPECTIVE JUROR NO. 6: Yes.

25 MR. SCHIECK: Are they decisions that affect other

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8JD04716

1 people and other people's lives?

2 PROSPECTIVE JUROR NO. 6: Not directly. I'm in the  
3 computer field.

4 MR. SCHIECK: Do you make decisions concerning hiring  
5 or firing of employees?

6 PROSPECTIVE JUROR NO. 6: Not in my current position.

7 MR. SCHIECK: Did you in a previous position?

8 PROSPECTIVE JUROR NO. 6: Yes.

9 MR. SCHIECK: When you had to make a decision whether  
10 or not, for example, to fire someone, did it bother you or weigh  
11 on your mind as to what effect the loss of employment would have  
12 on that person and perhaps that person's family?

13 PROSPECTIVE JUROR NO. 6: Yes, it was a factor.

14 MR. SCHIECK: Did a factor such as that ever prevent  
15 you from firing someone?

16 PROSPECTIVE JUROR NO. 6: I only had the occasion, an  
17 incident, one time, and it was a factor; but there was a number  
18 of other factors that outweighed that.

19 MR. SCHIECK: So you considered everything before you  
20 make your decision?

21 PROSPECTIVE JUROR NO. 6: Yes.

22 MR. SCHIECK: Was it sort of a balancing decision you  
23 had to make?

24 PROSPECTIVE JUROR NO. 6: It wasn't really balancing,  
25 because there was so many other factors that outweighed it. And

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SA730

8JD04717

1 working for the government, you have be very fair.

2 MR. SCHIECK: Would you be able to use that same  
3 process in looking at this case and weigh all the factors...

4 PROSPECTIVE JUROR NO. 6: Yes.

5 MR. SCHIECK: ...that are going to be presented to you?

6 PROSPECTIVE JUROR NO. 6: Yes.

7 MR. SCHIECK: Do you have any objection or aversion to  
8 life without the possibility of parole as a punishment?

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

10 MR. SCHIECK: You indicated that you had--in Question  
11 34--business obligations that might cause you to feel rushed or  
12 hurried to bring this case to a conclusion.

13 PROSPECTIVE JUROR NO. 6: The contract I'm working for  
14 is ending in September, and I'm fortunate that REECO is paying  
15 for me to go through a quite expensive program right now. I have  
16 two classes remaining, and those are beginning in July.

17 MR. SCHIECK: Okay. When in July do they begin?

18 PROSPECTIVE JUROR NO. 6: The first week.

19 MR. SCHIECK: Okay. If we could assure you that we're  
20 going to be long done by the first week in July, would that  
21 relieve your concern?

22 PROSPECTIVE JUROR NO. 6: Yes, it would.

23 MR. SCHIECK: Any other thing associated with the  
24 ending of the REECO contract that is going to be bothering you in  
25 this case?

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8JD04718



1 PROSPECTIVE JUROR NO. 6: No.

2 MR. SCHIECK: You agree that a decision, such as the  
3 one that has to be made in this case, shouldn't be made in a  
4 hurried or rushed fashion?

5 PROSPECTIVE JUROR NO. 6: Yes, I do.

6 MR. SCHIECK: Question 38, as you indicated that  
7 generally you feel the criminal justice system is a fair one "but  
8 there have been some cases I felt a stronger sentence should have  
9 been issued." What cases were you talking about?

10 PROSPECTIVE JUROR NO. 6: What came into my mind was  
11 alcohol-related incidences, nothing specific.

12 MR. SCHIECK: DUI, like DUI's?

13 PROSPECTIVE JUROR NO. 6: Yeah. DUI's, repeat  
14 offenders that continue to get -- you know, go out on the street  
15 and end up killing somebody.

16 MR. SCHIECK: Is there any particular incident or case  
17 in your past that causes you to pay attention to these DUI cases  
18 and their sentences?

19 PROSPECTIVE JUROR NO. 6: No.

20 MR. SCHIECK: You do read the newspaper on a regular  
21 basis?

22 PROSPECTIVE JUROR NO. 6: Now, it's only once a week.

23 MR. SCHIECK: But when you do read the newspaper, you  
24 have observed cases where someone was charged with perhaps a  
25 felony DUI and got a sentence you felt was too lenient?

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8JD04719

1 PROSPECTIVE JUROR NO. 6: There's nothing specific.  
2 You know, that just came into my mind, that in the past maybe I  
3 heard of an incident where, you know, a repeat offender got off  
4 and ended up, you know, hurting somebody.

5 MR. SCHIECK: You've heard us ask questions of a lot of  
6 people, and we don't ask the same questions of every juror. It  
7 would be very boring if we did--not that this isn't probably very  
8 boring for a lot of you. Are there any questions that we asked  
9 of any of the other jurors that you thought when we asked it, "I  
10 hope they ask me that," or "They better ask me that, because I've  
11 got something I've got to tell them"?

12 PROSPECTIVE JUROR NO. 6: No, there aren't.

13 MR. SCHIECK: Nothing that we should be asking you  
14 about?

15 PROSPECTIVE JUROR NO. 6: No.

16 MR. SCHIECK: Thank you. We would pass for cause, your  
17 Honor.

18 THE COURT: Ms. Mounts?

19 MS. MOUNTS: Thank you, your Honor.

20 THE COURT: You're welcome.

21 MS. MOUNTS: Ms. Nietsch, good afternoon.

22 PROSPECTIVE JUROR NO. 6: Good afternoon.

23 MS. MOUNTS: It certainly sounds like you appreciate  
24 the enormity of the decision that you may have to make in this  
25 case?

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8JD04720

1 PROSPECTIVE JUROR NO. 6: Yes.

2 MS. MOUNTS: Is that something that you're -- I don't  
3 know if "comfortable" is the right word. Let me ask you: How do  
4 you feel about making that decision?

5 PROSPECTIVE JUROR NO. 6: Well, when the Judge asked if  
6 I would want somebody in my state of mind sitting here, because  
7 of the enormity of the case and what's at stake is these two  
8 gentlemen's life, I think that everything needs to be considered.  
9 The panel needs to be very open-minded and come to a decision.

10 MS. MOUNTS: So you would be willing to listen to all  
11 of the testimony and then determine which punishment may be  
12 appropriate?

13 PROSPECTIVE JUROR NO. 6: Yes, I would.

14 MS. MOUNTS: Do you recall reading or hearing anything  
15 about this case...

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

17 MS. MOUNTS: ...prior to last week?

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

19 MS. MOUNTS: I had a question, at No. 63 you were  
20 asked, "Do you believe our legal system unduly favors the person  
21 accused," and you checked "no" but underlined the word "favors."  
22 I wonder if you can explain to me what you might have meant by  
23 that?

24 PROSPECTIVE JUROR NO. 6: I'm repeating the question in  
25 my mind. I guess because the key word in there was "favors," and

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SA734

8JD04721

1 that's why I underlined it, because I didn't understand the  
2 question, you know, that it was clear to me. No, I don't think  
3 they favor them.

4 MS. MOUNTS: Okay. Let me state it another way: Do  
5 you think that a person accused of a crime gets too many breaks?

6 PROSPECTIVE JUROR NO. 6: No.

7 MS. MOUNTS: You're comfortable pretty much with how  
8 the justice system works?

9 PROSPECTIVE JUROR NO. 6: Yes, I am.

10 MS. MOUNTS: Is there anything at all about your  
11 experiences, being a victim of a crime yourself, that would  
12 impact your judgement in this case?

13 PROSPECTIVE JUROR NO. 6: No.

14 MS. MOUNTS: Do you feel that you could be completely  
15 fair to both sides?

16 PROSPECTIVE JUROR NO. 6: Yes, I do.

17 MS. MOUNTS: Thank you very much. Your Honor, I'd pass  
18 for cause.

19 THE COURT: Mr. Seaton?

20 MR. SEATON: Pass for cause, Judge.

21 THE COURT: The State may exercise its sixth peremptory  
22 challenge.

23 MR. SEATON: We'll waive it.

24 THE COURT: The Defense may exercise its sixth  
25 peremptory challenge?

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8JD04722

1 MR. SCHIECK: May we approach the bench, your Honor?

2 THE COURT: Yes, you may.

3 (Bench conference)

4 THE COURT: It is 3:10 by the clock above you on the  
5 wall, please be back in your seats at 3:25.

6 In the meantime, it is your duty not to talk among  
7 yourselves or with anyone else on any matter pertaining to this  
8 trial; read, watch or listen to any report of or commentary on  
9 the trial by any person or by any medium of information,  
10 including without limitation newspapers, radio or television;  
11 form or express any opinion on any matter pertaining to this  
12 trial until it is finally submitted to you.

13 See you in 15 minutes. We're in recess.

14 THE BAILIFF: All rise.

15 (Recess taken and prospective jurors out at 3:10 p.m.)

16 (Proceedings reconvened and prospective jurors in)

17 THE BAILIFF: Department XI is again in session.

18 THE COURT: Please be seated. This is continuation of  
19 State vs. Flanagan and Moore. Let the record reflect the  
20 presence of Defendants with counsel, District Attorney and  
21 officers of the Court.

22 Will the Clerk please call roll call of the jury?

23 (Clerk calls roll call of prospective jurors; all present)

24 THE COURT: Will counsel stipulate to the presence of  
25 the jury?

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8JD04723

1 MR. SEATON: Yes, Judge.

2 MR. WALL: Yes, your Honor.

3 MR. SCHIECK: Yes, your Honor.

4 THE COURT: Defense may exercise its sixth peremptory  
5 challenge.

6 MR. SCHIECK: Your Honor, on behalf of Mr. Moore, we  
7 would thank and excuse Colonel Boone in chair 8, Badge No. 493.

8 THE COURT: Colonel Boone, you're excused, sir. Thank  
9 you for coming down.

10 THE CLERK: James Andrew Hooks, Badge No. 524,  
11 H-O-O-K-S.

12 THE COURT: Mr. Hooks, sir, how long have you lived in  
13 Clark County, Nevada?

14 PROSPECTIVE JUROR NO. 8: Ten years.

15 THE COURT: Where were you born and raised?

16 PROSPECTIVE JUROR NO. 8: Adaville, Oklahoma  
17 [phonetic].

18 THE COURT: And what is your educational background?

19 PROSPECTIVE JUROR NO. 8: Two years junior college.

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

22 PROSPECTIVE JUROR NO. 8: Seven years for the U.S.  
23 Postal Service and three years for American Office Equipment  
24 Company.

25 THE COURT: What did you do in each place?

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8JD04724

1 PROSPECTIVE JUROR NO. 8: I'm a letter carrier and  
2 supervisor at the Post Office. And photocopy repair technician  
3 for the American Office Equipment Company.

4 THE COURT: What is your religious preference?

5 PROSPECTIVE JUROR NO. 8: Baptist.

6 THE COURT: Do you attend church regularly?

7 PROSPECTIVE JUROR NO. 8: No.

8 THE COURT: How old are you, sir?

9 PROSPECTIVE JUROR NO. 8: Fifty-three.

10 THE COURT: Are you married or single?

11 PROSPECTIVE JUROR NO. 8: Married.

12 THE COURT: Is your wife employed?

13 PROSPECTIVE JUROR NO. 8: Yes, she is.

14 THE COURT: Where does she work and what are her  
15 duties?

16 PROSPECTIVE JUROR NO. 8: She works at the Excalibur  
17 Hotel. She's a PBX operator.

18 THE COURT: And do you have any children?

19 PROSPECTIVE JUROR NO. 8: Yes, I have.

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

22 PROSPECTIVE JUROR NO. 8: I have three boys, 25, 24,  
23 23. Four girls, 21, 17, 14 and 7.

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

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8JD04725

1 PROSPECTIVE JUROR NO. 8: I think I was on the jury  
2 where the prosecuting attorney was the prosecutor at one time.

3 THE COURT: That was my next question, but I asked  
4 about the defense.

5 PROSPECTIVE JUROR NO. 8: Oh, no. No.

6 THE COURT: Do you know anybody in the District  
7 Attorney's Office?

8 PROSPECTIVE JUROR NO. 8: I think I was on the jury,  
9 where the prosecutor there was the prosecutor at one time.

10 THE COURT: Is there anything about that relationship  
11 that would cause you to have any bias for or against either side?

12 PROSPECTIVE JUROR NO. 8: No.

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

15 PROSPECTIVE JUROR NO. 8: No.

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

24 PROSPECTIVE JUROR NO. 8: Yes.

25 THE COURT: In your present state of mind, can you, if

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8JD04726



1 selected as a juror, consider equally all three possible forms of  
2 punishment and then select the one that you feel is most  
3 appropriate?

4 PROSPECTIVE JUROR NO. 8: I think so.

5 THE COURT: Would you mind explaining, sir?

6 PROSPECTIVE JUROR NO. 8: Well, due to a couple of  
7 circumstances, experiences in my life, right, I might consider  
8 them; yes, I might consider them. But to actually say yes to the  
9 death penalty, I might have some problem with that.

10 THE COURT: And do you have any conscientious, moral or  
11 religious objections to the death penalty?

12 PROSPECTIVE JUROR NO. 8: No, I don't.

13 THE COURT: You say if we say yes concerning the death  
14 penalty, you might have some problem, what would be your problem,  
15 sir?

16 PROSPECTIVE JUROR NO. 8: Well, it's due to an  
17 experience that I've had in the past that I might not want to be  
18 a part of that decision.

19 THE COURT: Can you explain what it was, sir?

20 PROSPECTIVE JUROR NO. 8: Yes. I think in my young  
21 age, a young lady and I, she was pregnant and we decided to have  
22 an abortion. And I was part of that decision. And ever since  
23 that decision, I've thought about it ever since that day.

24 THE COURT: Do you feel that that experience would  
25 cause you not to consider equally the form of death as a

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8JD04727

1 punishment?

2 PROSPECTIVE JUROR NO. 8: It might.

3 THE COURT: Could you give a death penalty in a proper  
4 case?

5 PROSPECTIVE JUROR NO. 8: Yes, I think so.

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

8 PROSPECTIVE JUROR NO. 8: No.

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

11 PROSPECTIVE JUROR NO. 8: No.

12 THE COURT: Have you ever been a witness in a criminal  
13 prosecution?

14 PROSPECTIVE JUROR NO. 8: No.

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

16 PROSPECTIVE JUROR NO. 8: Yes.

17 THE COURT: When was that, sir?

18 PROSPECTIVE JUROR NO. 8: About four or five years ago.

19 THE COURT: And was it a criminal jury or a civil jury?

20 PROSPECTIVE JUROR NO. 8: A criminal.

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

23 PROSPECTIVE JUROR NO. 8: Yes.

24 THE COURT: Were you the foreman?

25 PROSPECTIVE JUROR NO. 8: No.

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8JD04728

1 THE COURT: Have you ever been in military service?  
2 PROSPECTIVE JUROR NO. 8: Yes.  
3 THE COURT: When was this, sir?  
4 PROSPECTIVE JUROR NO. 8: From '58 to '59 -- '69.  
5 THE COURT: Which branch of service?  
6 PROSPECTIVE JUROR NO. 8: Army.  
7 THE COURT: Which branch of the Army?  
8 PROSPECTIVE JUROR NO. 8: I was in the Tank Corps and a  
9 drill instructor for half of the time, four and five each.  
10 THE COURT: All right. Have you ever been or anyone  
11 close to you ever been a victim of a crime?  
12 PROSPECTIVE JUROR NO. 8: Yes.  
13 THE COURT: Please explain, sir.  
14 PROSPECTIVE JUROR NO. 8: A first cousin of mine that I  
15 was raised with was murdered here in Las Vegas twelve years ago.  
16 THE COURT: Is there anything about that experience and  
17 relationship that would cause you to have any biases for or  
18 against either side in this case?  
19 PROSPECTIVE JUROR NO. 8: No.  
20 THE COURT: Can you and will you follow the Court's  
21 instructions on the law even though you may differ with them?  
22 PROSPECTIVE JUROR NO. 8: Yes.  
23 THE COURT: If you were either of the Defendants, would  
24 you want twelve people in your present state of mind to sit and  
25 judge your case?

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8JD04729

1 PROSPECTIVE JUROR NO. 8: Probably not.

2 THE COURT: Except for the reason that you've already  
3 stated, do you have any other reasons?

4 PROSPECTIVE JUROR NO. 8: No.

5 THE COURT: Mr. Schieck?

6 MR. SCHIECK: Thank you, your Honor.

7 THE COURT: You're welcome, sir.

8 MR. SCHIECK: Mr. Hooks, you stated that you had a  
9 first cousin that you were raised with that had been murdered?

10 PROSPECTIVE JUROR NO. 8: Yes.

11 MR. SCHIECK: Was that here in Clark County?

12 PROSPECTIVE JUROR NO. 8: Yes, it was.

13 MR. SCHIECK: Were you raised here in Clark County or  
14 in Oklahoma?

15 PROSPECTIVE JUROR NO. 8: In Oklahoma.

16 MR. SCHIECK: So you were raised with him in Oklahoma?

17 PROSPECTIVE JUROR NO. 8: Yes.

18 MR. SCHIECK: And then both of you came out here to  
19 Clark County?

20 PROSPECTIVE JUROR NO. 8: Yes.

21 MR. SCHIECK: And how long ago was it that this  
22 happened?

23 PROSPECTIVE JUROR NO. 8: About twelve years ago I  
24 think it was. Maybe it was '77, '78.

25 MR. SCHIECK: Was anyone caught?

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8JD04730

1 PROSPECTIVE JUROR NO. 8: Yes.  
2 MR. SCHIECK: Was that person prosecuted?  
3 PROSPECTIVE JUROR NO. 8: You might say so, yes.  
4 MR. SCHIECK: Was that person either found guilty or  
5 plead guilty to the case?  
6 PROSPECTIVE JUROR NO. 8: They pled guilty.  
7 MR. SCHIECK: And did you go to any of the court  
8 proceedings?  
9 PROSPECTIVE JUROR NO. 8: Well, actually there wasn't  
10 any per se. There was a hearing, but that was all.  
11 MR. SCHIECK: Do you know what he was sentenced to?  
12 PROSPECTIVE JUROR NO. 8: Yes, probation.  
13 MR. SCHIECK: Now, did he receive a life sentence with  
14 the possibility of probation, or did he plead to a lesser offense  
15 and get probation to that offense?  
16 PROSPECTIVE JUROR NO. 8: He pleaded to a lesser  
17 offense and got probation for that offense.  
18 MR. SCHIECK: So he probably pled to one of the  
19 manslaughters, either voluntary or involuntary?  
20 PROSPECTIVE JUROR NO. 8: Yes.  
21 MR. SCHIECK: And how did that make you feel?  
22 PROSPECTIVE JUROR NO. 8: Well, I felt kind of bad  
23 about it, because I didn't feel that it should have been able to  
24 plea bargain him down to manslaughter.  
25 MR. SCHIECK: Do you know any of the facts of the case?

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SA744

8JD04731

1 PROSPECTIVE JUROR NO. 8: Pretty well all of them, yes.

2 MR. SCHIECK: Could you just tell us in a nutshell? I  
3 mean, what happened?

4 PROSPECTIVE JUROR NO. 8: Well, the person bought a gun  
5 a couple of weeks prior to shooting him, and he shot him in the  
6 back.

7 MR. SCHIECK: Without any provocation?

8 PROSPECTIVE JUROR NO. 8: I would say not at the time.  
9 You know, at the time it was an act. It wasn't -- the person  
10 said that it was drawn out being something that had been  
11 occurring over a period of time.

12 MR. SCHIECK: So this was a feud between the two that  
13 had been going on for a period of time?

14 PROSPECTIVE JUROR NO. 8: Yes.

15 MR. SCHIECK: Now, as that happened in Clark County,  
16 you understand it would have been the Clark County District  
17 Attorney's Office that handled that case and that entered into  
18 the plea negotiations. You understand that?

19 PROSPECTIVE JUROR NO. 8: Yes.

20 MR. SCHIECK: You're not going to hold your  
21 dissatisfaction with the plea bargain in that case against the  
22 State, are you?

23 PROSPECTIVE JUROR NO. 8: I don't think so.

24 MR. SCHIECK: You could put that aside for purposes of  
25 this case?

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8JD04732

1 PROSPECTIVE JUROR NO. 8: Yes.

2 MR. SCHIECK: This is most likely a different  
3 prosecutor, it's different defendants, it's not the same facts.

4 PROSPECTIVE JUROR NO. 8: Right.

5 MR. SCHIECK: Likewise, you're not going to hold it  
6 against Mr. Flanagan or Mr. Moore because you feel that the  
7 individual that shot your cousin got off too lightly?

8 PROSPECTIVE JUROR NO. 8: Well, that's the area that  
9 I'm having problems with. I'm not sure, you know. It's just  
10 like -- I'm not sure. I'm saying to myself as I sit here and I  
11 hear the questions and answers from the other participants, and  
12 it's becoming more frustrating in my mind the case itself. And  
13 I'm asking myself at some point in time am I going to hear  
14 something that's going to drive me one way or the other. And  
15 that this point in time I'd say I'm not sure.

16 MR. SCHIECK: All we're concerned is right now as  
17 you're going into the case that you're coming in with an open  
18 mind and no biases against either side.

19 PROSPECTIVE JUROR NO. 8: Right.

20 MR. SCHIECK: We recognize that -- and you should  
21 understand that as the case proceeds, you're going to hear  
22 evidence from both sides. And obviously both sides hope that the  
23 evidence you hear sways you one way or the other. That's the  
24 reason for presenting the evidence. What we want to know is: As  
25 you're sitting there right now, you're not thinking, "Well, I'm

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8JD04733

1 going to finally get even with somebody for my cousin being shot,  
2 and I'm going to really put it to these two guys"?

3 PROSPECTIVE JUROR NO. 8: No. No.

4 MR. SCHIECK: Do you know what happened to the guy that  
6 shot your cousin after he got probation?

6 PROSPECTIVE JUROR NO. 8: They went home and lived  
7 happily ever after.

8 MR. SCHIECK: And you never heard that he got into  
9 trouble again or had shot someone else or anything like that?

10 PROSPECTIVE JUROR NO. 8: No, I don't know what they  
11 did.

12 MR. SCHIECK: Okay. Did you know the person?

13 PROSPECTIVE JUROR NO. 8: Beg pardon?

14 MR. SCHIECK: Did you know the person that shot your...

15 PROSPECTIVE JUROR NO. 8: Yes, I did.

16 MR. SCHIECK: So he was an acquaintance of yours also?

17 PROSPECTIVE JUROR NO. 8: Yes.

18 MR. SCHIECK: Okay. You indicated that you believe in  
19 the adage "an eye for an eye"?

20 PROSPECTIVE JUROR NO. 8: Yes.

21 MR. SCHIECK: Do you believe that in every case of  
22 murder the death penalty is the appropriate punishment?

23 PROSPECTIVE JUROR NO. 8: I think there are  
24 circumstances that would dictate.

25 MR. SCHIECK: Do you think that there are circumstances

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8JD04734



1 that would dictate that life in prison with the possibility of  
2 parole is the correct sentence?

3 PROSPECTIVE JUROR NO. 8: Yes.

4 MR. SCHIECK: And you could consider all three of the  
5 punishments according to the instructions that the Judge is going  
6 to give you in this case?

7 PROSPECTIVE JUROR NO. 8: Yes.

8 MR. SCHIECK: You indicated in Question 38 that, "The  
9 criminal justice system is a necessary part of our society, and  
10 like everything, it's not perfect." When referring to it not  
11 being perfect, are you talking about the case involving your  
12 first cousin?

13 PROSPECTIVE JUROR NO. 8: Yes. Probably that and other  
14 cases that I've heard of or read in the paper.

15 MR. SCHIECK: Now, in the prior jury that you sat on,  
16 you found that to be a positive experience?

17 PROSPECTIVE JUROR NO. 8: Yes, I did.

18 MR. SCHIECK: Okay. In what sense?

19 PROSPECTIVE JUROR NO. 8: Well, I learned a lot about  
20 the justice system that I wasn't aware of. And I also obtained  
21 from that case that in most cases the justice system tries to be  
22 fair, and that basically that it's what we have to keep us civil.

23 MR. SCHIECK: Now, to your recollection, it was Mr.  
24 Seaton that was the prosecutor in that case?

25 PROSPECTIVE JUROR NO. 8: Well, as the day has drawn on

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1 and as I've been here, I became more sure that he was the one.  
2 I'm not 100 percent sure, but I'm pretty sure.

3 MR. SCHIECK: You indicated it was a drug case?

4 PROSPECTIVE JUROR NO. 8: Yes.

5 MR. SCHIECK: I mean, was it a large amount of drugs  
6 where someone was trafficking or a small possession type case?

7 PROSPECTIVE JUROR NO. 8: It was trafficking.

8 MR. SCHIECK: Do you remember which department it was  
9 that you were in in that case?

10 PROSPECTIVE JUROR NO. 8: No, I don't.

11 MR. SCHIECK: It wasn't here in front of Judge Guy?

12 PROSPECTIVE JUROR NO. 8: No, it wasn't.

13 MR. SCHIECK: And did I hear you correctly--you were a  
14 drill instructor in the Army?

15 PROSPECTIVE JUROR NO. 8: Yes.

16 MR. SCHIECK: So I can assume from your experience as a  
17 drill instructor, if there were eleven jurors on one side and you  
18 on the other, you wouldn't cave in to their side without being  
19 convinced that you were wrong?

20 PROSPECTIVE JUROR NO. 8: Right.

21 MR. SCHIECK: Thank you very much, sir. We'd pass for  
22 cause, your Honor.

23 THE COURT: Mr. Wall?

24 MR. WALL: Thank you, your Honor. Mr. Hooks, what area  
25 of town do you carry the mail?

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8JD04736

1 PROSPECTIVE JUROR NO. 8: Presently I'm carrying out in  
2 the Summerlin area. And prior to that was in the West Las Vegas  
3 area.

4 MR. WALL: Okay. Are you familiar with where Washburn  
5 Road is?

6 PROSPECTIVE JUROR NO. 8: No, I'm not.

7 MR. WALL: Okay. You wouldn't have ever carried in  
8 that area?

9 PROSPECTIVE JUROR NO. 8: No.

10 MR. WALL: With regard to your experience before as a  
11 juror, do you remember approximately how long it was that your  
12 jury deliberated?

13 PROSPECTIVE JUROR NO. 8: About seven or eight hours, I  
14 think.

15 MR. WALL: Was there some give and take and some people  
16 who didn't -- I mean, I take it that not all twelve agreed at the  
17 very beginning?

18 PROSPECTIVE JUROR NO. 8: Right.

19 MR. WALL: And so you've been involved in that process  
20 where people listen to each other's opinions and eventually come  
21 to a decision that they're all comfortable with.

22 PROSPECTIVE JUROR NO. 8: Right, yes.

23 MR. WALL: And what did you learn from that experience?

24 PROSPECTIVE JUROR NO. 8: Well, that each individual  
25 looks at a case different--looks at the information that's been

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8JD04737

81004614

1 somebody have the -- supposed to punish, but the law open for the  
2 criminal--parole, or try, or in the short term after that wrong  
3 on the street.

4 MR. SCHIECK: Do you think that the law is sometimes  
5 too lenient or too easy on criminals?

6 PROSPECTIVE JUROR NO. 11: Sometimes too easy.

7 MR. SCHIECK: One of the questions, No, 38, you didn't  
8 answer. And it said, "In general, what are your opinions and  
9 feelings about how the criminal justice system works?" Do you  
10 have any opinions about how the system works?

11 PROSPECTIVE JUROR NO. 11: I think I agree with your...

12 MR. SCHIECK: All right. Thank you very much, ma'am.  
13 We'd pass for cause, your Honor.

14 THE COURT: Mr. Wall?

15 MR. WALL: Thank you, your Honor.

16 Ms. Shields, did you say that your work takes you to Los  
17 Angeles?

18 PROSPECTIVE JUROR NO. 11: Pardon me?

19 MR. WALL: Did you say that your work takes you to Los  
20 Angeles?

21 PROSPECTIVE JUROR NO. 11: I worked in Los Angeles  
22 before I moved to Las Vegas.

23 MR. WALL: Oh, before you moved here. Okay.

24 PROSPECTIVE JUROR NO. 11: Yes, yes.

25 MR. WALL: How old were you when you left Thailand?

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1 PROSPECTIVE JUROR NO. 11: Oh, at that time I'm about  
2 37 or 36 years old.

3 MR. WALL: Okay. I believe you indicated in the  
4 questionnaire that you have five grandchildren of your own?

5 PROSPECTIVE JUROR NO. 11: Yes.

6 MR. WALL: Okay. And the oldest is a teenager?

7 PROSPECTIVE JUROR NO. 11: Yes, 15, 14, 13, 12, 11--  
8 five boys my grandchildren.

9 MR. WALL: Okay. Knowing that this case involves a  
10 grandson who has been convicted of murdering his grandparents,...

11 PROSPECTIVE JUROR NO. 11: Yes.

12 MR. WALL: ...would that make it tougher to sit as a  
13 juror in this case?

14 PROSPECTIVE JUROR NO. 11: I don't think so.

15 MR. WALL: Okay. Do you think it would have any effect  
16 on you?

17 PROSPECTIVE JUROR NO. 11: No.

18 MR. WALL: Do you know whether or not they have the  
19 death penalty in Thailand?

20 PROSPECTIVE JUROR NO. 11: Oh, yes, definitely in  
21 Thailand.

22 MR. WALL: Okay. Were you ever -- do they have a jury  
23 system like this in Thailand?

24 PROSPECTIVE JUROR NO. 11: Yes, sir.

25 MR. WALL: Were you ever a part of that system when you

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8JD04615

8JD04616  
1 lived there?

2 PROSPECTIVE JUROR NO. 11: Never been there.

3 MR. WALL: Okay. Let me ask you: One of the answers  
4 you gave to Mr. Seaton when he was asking you questions, and I  
5 wrote down what you said, was that "nobody wants to be bad." Do  
6 you think that the experiences that someone has in their life--  
7 even when they're very young--contribute to the kind of person  
8 they become later?

9 PROSPECTIVE JUROR NO. 11: Maybe.

10 MR. WALL: Okay. That the things we go through as  
11 children have a lot to do with what kind of adults we later  
12 become?

13 PROSPECTIVE JUROR NO. 11: Yeah.

14 MR. WALL: Okay. I'm going to ask you one other  
15 question. When Mr. Seaton was talking to you, he said something  
16 about some criminals shouldn't be punished so hard or maybe a  
17 soft punishment. You've heard probably several hundred times  
18 already...

19 PROSPECTIVE JUROR NO. 11: Yes.

20 MR. WALL: ...that there's only three options in this  
21 case.

22 PROSPECTIVE JUROR NO. 11: Yes.

23 MR. WALL: There's life in prison with the possibility  
24 someday of being released on parole; there's a sentence of life  
25 in prison without any possibility of ever being released; and of

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8JD04616

1 course there's the death penalty. Do you think that for the  
2 crime of murder a sentence of life in prison is being soft on  
3 someone?

4 PROSPECTIVE JUROR NO. 11: No, I don't think so.

5 MR. WALL: Do you think that's a serious and harsh  
6 punishment?

7 PROSPECTIVE JUROR NO. 11: That's serious. Because  
8 when the people, like life in prison, and prison is like a die,  
9 you know, like a death penalty but take time, long time.

10 MR. WALL: Okay. Thank you very much.

11 PROSPECTIVE JUROR NO. 11: Okay.

12 MR. WALL: Pass for cause, your Honor.

13 THE COURT: Mr. Seaton, you can further examine.

14 MR. SEATON: I'll pass for cause, Judge.

15 THE COURT: All right. Defense may exercise their  
16 second peremptory challenge.

17 MR. SCHIECK: Your Honor, we would thank and excuse the  
18 juror seated in chair 1, Mr. Rehman, Badge 499.

19 THE COURT: Mr. Rehman, you are excused, sir. Thank  
20 you for coming down. Report back to the jury commissioner that  
21 you have been excused.

22 THE CLERK: Karen Krista Bartlett, Badge No. 514,  
23 B-A-R-T-L-E-T-T.

24 THE COURT: Ms. Bartlett, how long have you lived in  
25 Clark County, Nevada?

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8JD04617

8JD04618

1 PROSPECTIVE JUROR NO. 1: Since 1982.

2 THE COURT: Where were you born and raised?

3 PROSPECTIVE JUROR NO. 1: North Miami, Florida.

4 THE COURT: What is your educational background?

5 PROSPECTIVE JUROR NO. 1: I got my Bachelor of Arts at  
6 Arizona State, and I'm working on my MBA at UNLV right now.

7 THE COURT: In what fields are your bachelor's degree  
8 and what field are you working in now?

9 PROSPECTIVE JUROR NO. 1: Humanities at ASU, and right  
10 now I'm working on my MBA, but I want to switch it back to  
11 liberal arts.

12 THE COURT: All right. Did you take up any law courses  
13 in college?

14 PROSPECTIVE JUROR NO. 1: Just the beginning business  
15 course.

16 THE COURT: What has been your employment for the last  
17 ten years?

18 PROSPECTIVE JUROR NO. 1: After college I work in  
19 retail management...

20 THE COURT: What is...

21 PROSPECTIVE JUROR NO. 1: ...for three years.

22 THE COURT: I'm sorry.

23 PROSPECTIVE JUROR NO. 1: For three years.

24 THE COURT: And where?

25 PROSPECTIVE JUROR NO. 1: At Target.

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8JD04618



1 THE COURT: What is your religious preference?

2 PROSPECTIVE JUROR NO. 1: Baptized Lutheran, but I  
3 don't practice.

4 THE COURT: Do you attend church regularly?

5 PROSPECTIVE JUROR NO. 1: No, sir.

6 THE COURT: All right. How old are you?

7 PROSPECTIVE JUROR NO. 1: Twenty-six.

8 THE COURT: Are you married or single?

9 PROSPECTIVE JUROR NO. 1: Single.

10 THE COURT: Do you have any children?

11 PROSPECTIVE JUROR NO. 1: No.

12 THE COURT: Are you acquainted with either of the  
13 Defendants or their attorneys?

14 PROSPECTIVE JUROR NO. 1: No.

15 THE COURT: Do you know anyone in the District  
16 Attorney's Office?

17 PROSPECTIVE JUROR NO. 1: I might; I want to mention  
18 the name Donna Sconniers [phonetic]. I don't know if she ever --  
19 she used to work there.

20 THE COURT: Mr. Seaton?

21 MR. SEATON: No, that's not a witness in the case.

22 PROSPECTIVE JUROR NO. 1: No. Okay.

23 MR. SEATON: Oh, was that -- I'm sorry. I was reading  
24 it. That was not a witness. That was a person working in the  
25 DA's Office?

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8JD04619

1 THE COURT: Yes.

2 MR. SEATON: I know a couple of Donnas up there, and I  
3 don't know their last name.

4 THE COURT: In either case...

5 MR. SEATON: Nobody I'm in contact with.

6 THE COURT: Is there anything about that relationship  
7 that would cause you to have any biases for or against either  
8 side in this case?

9 PROSPECTIVE JUROR NO. 1: No.

10 THE COURT: Did you recognize any of the person's whose  
11 names were given to you as possible prosecution witnesses?

12 PROSPECTIVE JUROR NO. 1: 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 the most appropriate under  
16 the 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 imprisonment with the possibility of parole. Do you  
20 understand, ma'am?

21 PROSPECTIVE JUROR NO. 1: Yes.

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

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8JD04620

8JD04621

1 PROSPECTIVE JUROR NO. 1: Yes.

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

4 PROSPECTIVE JUROR NO. 1: No.

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

7 PROSPECTIVE JUROR NO. 1: No.

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

10 PROSPECTIVE JUROR NO. 1: No.

11 THE COURT: Have you ever appeared as a witness in any  
12 criminal prosecution?

13 PROSPECTIVE JUROR NO. 1: No.

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

15 PROSPECTIVE JUROR NO. 1: No.

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

17 PROSPECTIVE JUROR NO. 1: No.

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

20 PROSPECTIVE JUROR NO. 1: Yes.

21 THE COURT: Please tell us about when and where.

22 PROSPECTIVE JUROR NO. 1: When I used to live in  
23 Florida, our house got robbed. Also my parents have had three  
24 vehicles stolen in Florida. And this past Sunday my boyfriend  
25 got his car stolen in front of Target.

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8JD04621

1 THE COURT: Is there anything about those relationships  
2 -- strike that.

3 Is there anything about those experiences that would cause  
4 you to have any biases for or against either side?

5 PROSPECTIVE JUROR NO. 1: No.

6 THE COURT: Can you and will you follow the Court's  
7 instructions on the law even though you may disagree with those  
8 instructions?

9 PROSPECTIVE JUROR NO. 1: Yes.

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

13 PROSPECTIVE JUROR NO. 1: No.

14 THE COURT: Mr. Schieck?

15 MR. SCHIECK: Thank you, your Honor.

16 THE COURT: You're welcome, sir.

17 MR. SCHIECK: Ms. Bartlett, in your questionnaire, your  
18 answer to Question 38 indicates that you don't like it when  
19 people get off on technicalities. Did you have any particular  
20 situations in mind when you answered that question?

21 PROSPECTIVE JUROR NO. 1: No, I think just in general,  
22 hearing things on TV. I don't think it's right if someone did  
23 something really bad and got off just because of a paperwork-type  
24 error.

25 MR. SCHIECK: I mean, can you recall any situations

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8JD04622

8JD04623  
1 that you saw on TV in that respect?

2 PROSPECTIVE JUROR NO. 1: Nothing specific; just I  
3 think in general.

4 MR. SCHIECK: I note that in Question 47 that you watch  
5 Cops and Americas Most Wanted. I mean, anything on those shows  
6 that you saw that comes to mind?

7 PROSPECTIVE JUROR NO. 1: Nothing specific, no.

8 MR. SCHIECK: Is there anything about that opinion of  
9 yours concerning technicalities in the law that you think could  
10 cause you to be less than fair in this case?

11 PROSPECTIVE JUROR NO. 1: I don't think, so because  
12 these people have already been convicted; it's not my job to do  
13 that.

14 MR. SCHIECK: Do you have any problem with what the job  
15 is that this jury has now.

16 PROSPECTIVE JUROR NO. 1: No, sir.

17 MR. SCHIECK: Have you formed any opinions or have any  
18 predispositions in this case?

19 PROSPECTIVE JUROR NO. 1: No.

20 MR. SCHIECK: What do you think about the death  
21 penalty?

22 PROSPECTIVE JUROR NO. 1: What do I think about the  
23 death penalty? I believe in it; it can be used at times.

24 MR. SCHIECK: Why do you believe in it?

25 PROSPECTIVE JUROR NO. 1: Why do I believe in it?

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8JD04623

8JD04624

1 Because sometimes if people do something -- if people were to do  
2 something to another person so horrible that that could be an  
3 option, then maybe their life shouldn't -- they shouldn't exist,  
4 say if they hurt somebody else.

5 MR. SCHIECK: Do you think that the death penalty  
6 serves a useful purpose in the criminal justice system?

7 PROSPECTIVE JUROR NO. 1: Yes.

8 MR. SCHIECK: Do you think it acts as a deterrent?

9 PROSPECTIVE JUROR NO. 1: I don't think so, because we  
10 probably wouldn't be sitting here today if it was.

11 MR. SCHIECK: Meaning that the death penalty's been  
12 around for a long time and we still have murders occurring?

13 PROSPECTIVE JUROR NO. 1: Yes.

14 MR. SCHIECK: Question 53 you were asked your opinion  
15 of various attorneys, and with respect to prosecutors you  
16 indicated that "I don't think that some issues need to be the  
17 concern of state or federal." What type of issues were you  
18 thinking of?

19 PROSPECTIVE JUROR NO. 1: I just was thinking in  
20 general of cases where maybe the issue has been resolved and then  
21 it's sort of -- I don't know too much about the legal system, but  
22 it seems that they're required to bring up the case. And I can't  
23 actually think of a specific case.

24 MR. SCHIECK: Question 54, when asked whether you never  
25 disagree with the law, you said "False," indicating that you do

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8JD04624

8JD04625  
1 disagree with the law sometimes?

2 PROSPECTIVE JUROR NO. 1: Uh-huh.

3 MR. SCHIECK: When do you disagree with the law?

4 PROSPECTIVE JUROR NO. 1: One of the other jurors had  
5 mentioned the case about the four-year-old boy that was taken  
6 from his adoptive parents and given to his natural born parents.  
7 I didn't agree with that decision.

8 MR. SCHIECK: Have you talked to any of the jurors  
9 about the facts of this case or anything with respect to this  
10 case?

11 PROSPECTIVE JUROR NO. 1: No.

12 MR. SCHIECK: Is that the only situation you can think  
13 of where you disagreed with the law?

14 PROSPECTIVE JUROR NO. 1: Yes.

15 MR. SCHIECK: You indicated that if you were on trial,  
16 you'd want twelve people on the same frame of mind you're in sit  
17 on your jury. What frame of mind are you in that makes you say  
18 that?

19 PROSPECTIVE JUROR NO. 1: I'm a very open person, and I  
20 will listen to all sides.

21 MR. SCHIECK: Thank you very much, ma'am. We'd pass  
22 for cause, your Honor.

23 THE COURT: Mr. Wall.

24 MR. WALL: Thank you, your Honor.

25 Ms. Bartlett, did I hear you say that you're working on your

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8JD04625

81004626  
1 MBA, but you're going to switch it to liberal arts?

2 PROSPECTIVE JUROR NO. 1: Yes.

3 MR. WALL: Okay. What do you want to do with what  
4 would be a master's in liberal arts or what?

5 PROSPECTIVE JUROR NO. 1: I don't know. Right now I'm  
6 not happy with retail. And on my undergraduate degree I started  
7 out in computer science; went over to liberal arts because I  
8 really enjoyed the classes, they were very interesting; and after  
9 college, coming back to Las Vegas, got a job, happened to be  
10 retail. So they said they would pay for business classes, and I  
11 started taking them.

12 But now, the same point kind of like back in undergrad--I'm  
13 not enjoying them, the business classes. They don't interest me  
14 as much as -- I just yesterday started looking into the liberal  
15 arts program and talked to the sociology professor there.

16 MR. WALL: At UNLV?

17 PROSPECTIVE JUROR NO. 1: Yes.

18 MR. WALL: Any idea what you might want to do with the  
19 liberal arts master's degree?

20 PROSPECTIVE JUROR NO. 1: No.

21 MR. WALL: Okay. You also said that you'd taken some  
22 -- maybe it was in the questionnaire, that you'd taken some  
23 courses in psychology. Were those just those beginning required  
24 courses?

25 PROSPECTIVE JUROR NO. 1: Beginning summer class at a

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1 community college in Arizona.

2 MR. WALL: Okay. Let me mention this: If the friend  
3 of yours, Donna Sconniers, is in fact an employee of the District  
4 Attorney's Office, if you're selected as a juror, would you avoid  
5 any contact with here until the trial is over?

6 PROSPECTIVE JUROR NO. 1: Yeah. She's not actually a  
7 friend; one of my bosses is her father, and I just had heard that  
8 she had worked there. I don't know if she still does, but I just  
9 wanted to say that, and, you know, so...

10 MR. WALL: Okay. That wouldn't affect you in this case  
11 then? If ordered to, you wouldn't have any contact?

12 PROSPECTIVE JUROR NO. 1: Correct.

13 MR. WALL: Okay. On Question 62, the question was how  
14 you felt about the adage "an eye for an eye."

15 PROSPECTIVE JUROR NO. 1: Yes.

16 MR. WALL: And you said, "It depends on the  
17 circumstances."

18 PROSPECTIVE JUROR NO. 1: Yes.

19 MR. WALL: Can you tell me what you meant?

20 PROSPECTIVE JUROR NO. 1: That it depends. In thinking  
21 about this case and in thinking about the answer to that  
22 question, the case involved convicted of murder. I can't  
23 automatically say that these people should be killed also. It  
24 depends, and you have to look at everything.

25 MR. WALL: Do you come into this proceeding thinking

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1 that that one of those three punishments is most appropriate for  
2 -- now, I asked you this question, and I don't know if there's a  
3 better way to ask it.

4 Okay. Let's say that there's a line drawn across a map of  
5 the United States, and life in prison with the possibility of  
6 parole is over here on this line at San Francisco. And life in  
7 prison without the possibility of parole is, say, Chicago. And  
8 the death penalty is New York City. Okay? Do you come into this  
9 case, you know, somewhere around New Jersey when you're thinking  
10 about what the appropriate penalty ought to be for someone  
11 convicted of killing their grandparents? Or do you start  
12 somewhere around Chicago or California? Or have you not even  
13 gotten into your car yet to decide where you want to go?

14 PROSPECTIVE JUROR NO. 1: Uh-huh. Yeah, I haven't even  
15 gotten into my truck.

16 MR. WALL: Oh, your truck, okay. You indicated that  
17 your boyfriend's car was stolen last Sunday?

18 PROSPECTIVE JUROR NO. 1: Yes.

19 MR. WALL: I'm going to go out on a limb and say that  
20 he was none too happy about it.

21 PROSPECTIVE JUROR NO. 1: He was in shock. He kind of  
22 just called me up and said, "I need a ride home today."

23 MR. WALL: Okay. Did he talk about, or did the two of  
24 you talk about, things like "If they catch this guy, they ought  
25 to lock him away and not let him out," or things like that?

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1 PROSPECTIVE JUROR NO. 1: No, there's been no talk  
2 about the actual people who've done it. He just wants his car  
3 back.

4 MR. WALL: Okay. Did he make a report to Metro?

5 PROSPECTIVE JUROR NO. 1: Yes.

6 MR. WALL: Were you involved in that in any way?

7 PROSPECTIVE JUROR NO. 1: No.

8 MR. WALL: Thank you. We'll pass for cause, your  
9 Honor.

10 MR. SEATON: Once you get into your truck is it  
11 possible you could end up in Bangor, Maine? (laughter) I'm just  
12 fooling.

13 I'm going to do something that Mom always said don't do,  
14 that's to talk about a woman's age. Fortunately the Judge always  
15 asks the question so we learn. You are among one of the younger  
16 of the people within this room right now. Would you agree with  
17 that?

18 PROSPECTIVE JUROR NO. 1: I believe so.

19 MR. SEATON: Remember there was a -- I think there was  
20 a juror up here, a young fellow, who talked about he didn't have  
21 a whole lot of life's experiences. I can't remember exactly how  
22 he put it. Do you remember that individual?

23 PROSPECTIVE JUROR NO. 1: I thought it was a girl.

24 MR. SEATON: Well, it might have been. But you  
25 remember that conversation about that? That's what I want to get

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1 into. Would you put yourself in that classification?

2 PROSPECTIVE JUROR NO. 1: Not, not that -- not that  
3 same classification.

4 MR. SEATON: Okay. But you have spent a majority of  
5 your time in school, high school and now college. On the other  
6 side of the coin I guess you've been working out in the working  
7 world and dealing with customers and bosses and co-employees and  
8 all of that stuff?

9 PROSPECTIVE JUROR NO. 1: Yes.

10 MR. SEATON: What I'm asking you about is what you're  
11 bringing with you to this trial. Do you feel that for a trial of  
12 this import that you have enough life's experiences that you can  
13 adequately judge the lives of these two individuals?

14 PROSPECTIVE JUROR NO. 1: I think so. I can understand  
15 the concerns with thinking that I just, you know, got out of  
16 college in '91. Since then though, in the retail I've been  
17 promoted about three times, and I'm an assistant manager now, so  
18 I open and close the store.

19 MR. SEATON: You supervise a lot of people?

20 PROSPECTIVE JUROR NO. 1: Yeah, the entire store and  
21 all the guests that are in there. And you have to make decisions  
22 24 hours a day. You know, I'm left alone. I'm the one in charge  
23 of the building.

24 MR. SEATON: If there's a major problem, they come to  
25 you?

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1 PROSPECTIVE JUROR NO. 1: Yes, uh-huh.

2 MR. SEATON: Okay. So that isn't a concern to you at  
3 all?

4 PROSPECTIVE JUROR NO. 1: No.

5 MR. SEATON: To what extent in your life have you had  
6 the opportunity to think about the death penalty?

7 PROSPECTIVE JUROR NO. 1: I think college allows you a  
8 lot of time to think about a lot of different issues, and I've  
9 definitely thought about it.

10 MR. SEATON: What we generally find that as we're  
11 growing up and we get in the collegiate atmosphere, we are more--  
12 and I'm going to use a very broad term here--liberal than we  
13 ultimately become as we grow older. Would you agree with that  
14 very gross generality?

15 PROSPECTIVE JUROR NO. 1: Yeah, I think so, because you  
16 have more time to think. You have more time to explore options  
17 and then you get into the real world, and you can get into a rut.

18 MR. SEATON: Is it also perhaps because you mind have  
19 the option to be a little more idealistic when you're in school,  
20 and as you get out into the working world, real things start  
21 hitting you?

22 PROSPECTIVE JUROR NO. 1: That's probably the case that  
23 most people think about, and right now I'm trying to get out of  
24 that rut and go back and do so some more thinking--you know,  
25 liberal arts and...

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1 MR. SEATON: You want to get more idealistic again?

2 PROSPECTIVE JUROR NO. 1: Sure, I mean, always just  
3 stay open.

4 MR. SEATON: Yes. How do you think wherever you are  
5 within those feelings will impact you in terms of being a juror  
6 in this case?

7 PROSPECTIVE JUROR NO. 1: I think it'll be really good  
8 the fact that where I'm at right now, because I am looking at all  
9 my options, looking at everything that's out there. I don't  
10 close anything off.

11 MR. SEATON: All right. Do you feel rather firmly or  
12 are you still questioning your believe in the death penalty?

13 PROSPECTIVE JUROR NO. 1: I believe in it. I believe  
14 that it -- I definitely believe in it.

15 MR. SEATON: Have you had opportunities to make that  
16 expression to other people?

17 PROSPECTIVE JUROR NO. 1: Yes.

18 MR. SEATON: All right. It's always been the same?

19 PROSPECTIVE JUROR NO. 1: Uh-huh.

20 MR. SEATON: You heard me discuss with several other  
21 people I...

22 THE COURT: Just a minute please. On major questions,  
23 I have to have a yes or no.

24 PROSPECTIVE JUROR NO. 1: Yeah, okay.

25 THE COURT: So that last answer was, yes?

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8JD04632

8JD04633

1 PROSPECTIVE JUROR NO. 1: I believe -- I think so. I  
2 forgot the question.

3 MR. SEATON: So did I.

4 THE COURT: Please, I don't mind the "uh-huh" when  
5 asking a little question on the way he pauses, "uh-huh." But  
6 when it comes to the question itself, it should be a yes and no.

7 PROSPECTIVE JUROR NO. 1: Okay. Yes.

8 THE COURT: Please proceed, sir.

9 MR. SEATON: An area that I'm concerned about is an  
10 area that I've discussed with some of the other jurors, that  
11 being now that we really are starting to come to grips with the  
12 reality of how serious it is of what we're doing here, whether or  
13 not there's any sort of a possibility that you might start to  
14 have second thoughts and get what I would think would be very  
15 legitimate and justified cold feet somewhere along the line, and  
16 just decide that you didn't want any part of having to deal with  
17 the decision about whether or not some other fellow human beings  
18 lived or died.

19 Convoluted question. Do you know where I was going? And  
20 can you give me an answer on that?

21 PROSPECTIVE JUROR NO. 1: I think so, that it's  
22 definitely a very important decision that's being made. And it  
23 would definitely take a lot of thought by everyone on the jury.  
24 I don't think that the being in part of the jury would make me  
25 think differently as far as saying, "No, I don't think I could do

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8JD04633

1 the death penalty," because I believe it's necessary.

2 MR. SEATON: So are you saying then that if facts were  
3 presented to you of such a nature that it made the crime  
4 particularly heinous, or the character of these individuals was  
5 so bad, you wouldn't have a difficulty in returning the death  
6 penalty if you believe in your heart that you thought it was  
7 appropriate?

8 PROSPECTIVE JUROR NO. 1: I think after listening to  
9 everything and after talking to everyone, if that's what -- when  
10 given all the instructions in how to look at it, I wouldn't have  
11 a problem if that's what I felt and that's what this decision  
12 was.

13 MR. SEATON: Okay. Can you foresee any possibility of  
14 your having any empathy for these individuals outside of the  
15 proceedings just simply because I think you're probably three or  
16 four years younger than they are? You're close in age.

17 PROSPECTIVE JUROR NO. 1: Uh-huh. No, I will be  
18 objective.

19 MR. SEATON: Thank you. I'd pass for cause, Judge.

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

22 MR. SEATON: Judge, the State would thank and excuse  
23 Juror No. 11, Ms. Shields.

24 THE COURT: Ms. Shields, you are excused. Thank you  
25 for coming down. Walk by the jury commissioner and tell him I

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8JD04634



8JD04635  
1 have excused you.

2 THE CLERK: Sheryl Linn Koepke, Badge No. 515,  
3 K-O-E-P-K-E.

4 THE COURT: Ms. Koepke, is that correct?

5 PROSPECTIVE JUROR NO. 11: Koepke.

6 THE COURT: How long have you live in Clark County,  
7 Nevada?

8 PROSPECTIVE JUROR NO. 11: Since 1989.

9 THE COURT: Where were you born and raised?

10 PROSPECTIVE JUROR NO. 11: Born in Oakland, California,  
11 raised in Anaheim.

12 THE COURT: And what is your educational background?

13 PROSPECTIVE JUROR NO. 11: Completed through the  
14 twelfth grade.

15 THE COURT: I'm sorry?

16 PROSPECTIVE JUROR NO. 11: Completed up through the  
17 twelfth grade, graduated from high school.

18 THE COURT: What has been your employment for the past  
19 ten years?

20 PROSPECTIVE JUROR NO. 11: Currently I work as a  
21 purchasing agent. Prior to that I was administrative assistant  
22 and a collections agent.

23 THE COURT: And for whom did you work?

24 PROSPECTIVE JUROR NO. 11: Presently I work at  
25 Hospitality Network in Henderson. Prior to that it was Colonial

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8JD04635

1 Thrift and Loan in Garden Grove, California.  
2 THE COURT: What is your religious preference?  
3 PROSPECTIVE JUROR NO. 11: Nondenominational.  
4 THE COURT: Do you attend church regularly?  
5 PROSPECTIVE JUROR NO. 11: No.  
6 THE COURT: How old are you?  
7 PROSPECTIVE JUROR NO. 11: Thirty-seven.  
8 THE COURT: And are you married or single?  
9 PROSPECTIVE JUROR NO. 11: Married.  
10 THE COURT: Is your husband employed?  
11 PROSPECTIVE JUROR NO. 11: Yes.  
12 THE COURT: Where does he work and what are his duties?  
13 PROSPECTIVE JUROR NO. 11: Frehner Truck Lines; he's a  
14 truck driver.  
15 THE COURT: And do you have any children?  
16 PROSPECTIVE JUROR NO. 11: Yes.  
17 THE COURT: May we have the ages and the sex, please?  
18 PROSPECTIVE JUROR NO. 11: Two females, age nine and  
19 seven.  
20 THE COURT: Are you acquainted with either the  
21 Defendants or their attorneys?  
22 PROSPECTIVE JUROR NO. 11: No.  
23 THE COURT: Do you know anyone at the District  
24 Attorney's Office?  
25 PROSPECTIVE JUROR NO. 11: No.

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8JD04636

8JD04637

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

3 PROSPECTIVE JUROR NO. 11: No.

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

12 PROSPECTIVE JUROR NO. 11: Yes.

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

17 PROSPECTIVE JUROR NO. 11: I think I have trouble with  
18 life in prison.

19 THE COURT: Please, explain. Please, explain.

20 PROSPECTIVE JUROR NO. 11: I feel it's pointless. I  
21 feel that if an individual has been convicted of a crime, there  
22 may be the possibility that they could be rehabilitated and  
23 return to society; otherwise the death penalty is decided upon,  
24 and that should be carried out. But I don't think that somebody  
25 should just spend the rest of their days in prison.

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8JD04637

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

3 PROSPECTIVE JUROR NO. 11: 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. 11: 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. 11: No.

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

12 PROSPECTIVE JUROR NO. 11: No.

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

14 PROSPECTIVE JUROR NO. 11: No.

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

16 PROSPECTIVE JUROR NO. 11: No.

17 THE COURT: Have you ever been or anyone close to you  
18 ever been, the victim of a crime?

19 PROSPECTIVE JUROR NO. 11: Yes.

20 THE COURT: Please tell us about it.

21 PROSPECTIVE JUROR NO. 11: Other than my in-laws or  
22 other assorted friends and relatives having their homes  
23 burglarized, I was involved in a bank armed robbery holdup. I  
24 was one of the customers.

25 THE COURT: Is there anything about those experiences

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8JD04638

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

3 PROSPECTIVE JUROR NO. 11: No.

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

6 PROSPECTIVE JUROR NO. 11: Yes.

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

10 PROSPECTIVE JUROR NO. 11: Yes.

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

14 PROSPECTIVE JUROR NO. 11: No.

15 THE COURT: Mr. Schieck, Mr. Wolfbrandt?

16 MR. WOLFBRANDT: Good morning, Ms. Koepke. When you  
17 made the comments about the three possible punishments, I mean,  
18 as you're sitting here today have you just discarded life without  
19 the possibility of parole as a possible punishment?

20 PROSPECTIVE JUROR NO. 11: To tell you the truth I'd  
21 never thought about it before these proceedings. I think I look  
22 at it from a taxpayer's point of view. I've heard a lot lately  
23 about people being released from prison too soon perhaps, maybe  
24 because there isn't room, and maybe if people weren't sitting or  
25 being what they may be termed "lifers," maybe there would be more

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8JD04639

1 room. That's what I base my decision on.

2 MR. WALL: So do you think that if you were selected as  
3 a juror in this case, that you might make your decision based on  
4 what you'd perceive to be a taxpayer's impact?

5 PROSPECTIVE JUROR NO. 11: No.

6 MR. WOLFBRANDT: Do you feel that on the individual who  
7 is on the receiving end of the sentence that life without the  
8 possibility of parole is maybe a more severe punishment than a  
9 death penalty?

10 PROSPECTIVE JUROR NO. 11: It's hard to say. I  
11 personally think it's pointless, and I think it should be carried  
12 out one way or the other. I just don't agree with life in  
13 prison.

14 MR. WOLFBRANDT: Okay. What do you mean "carried out  
15 carried out one way or another"?

16 PROSPECTIVE JUROR NO. 11: Either somebody's going to  
17 be given life with the possibility of parole (meaning that it's  
18 possible that they can rejoin society), or it would be determined  
19 that, no, they can't rejoin society.

20 MR. WOLFBRANDT: Okay. In this particular instance, I  
21 mean as you're sitting here right now, have you ruled out life  
22 with the possibility of parole as a possible punishment?

23 PROSPECTIVE JUROR NO. 11: No.

24 MR. WOLFBRANDT: You would listen to the evidence and  
25 make a determination in your mind as to whether or not there is

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8JD04640

1 an ability for rehabilitation?

2 PROSPECTIVE JUROR NO. 11: Yes.

3 MR. WOLFBRANDT: And then consider life with the  
4 possibility of parole as a possible punishment?

5 PROSPECTIVE JUROR NO. 11: Yes.

6 MR. WOLFBRANDT: In Question No. 34 as to whether or  
7 not you might feel rushed or hurried. You indicated, yes, you  
8 might have some business concerns. Can you describe that? And  
9 are they still...

10 PROSPECTIVE JUROR NO. 11: No, I spoke with my boss  
11 last night, as a matter of fact, and she assured me not to worry  
12 --that things are being handled and not to worry about the length  
13 of time that I'm absent.

14 MR. WOLFBRANDT: Okay. That everything's going to be  
15 waiting for you when you get back?

16 PROSPECTIVE JUROR NO. 11: Some of it will be.

17 MR. WOLFBRANDT: I mean your job is going to be?

18 PROSPECTIVE JUROR NO. 11: Yes, my job will still be  
19 there.

20 MR. WOLFBRANDT: You're not going to be worried that  
21 they'll find out that they can get along without you for a short  
22 period of time?

23 PROSPECTIVE JUROR NO. 11: No, I think I found out that  
24 I've been missed. And that's a nice feeling.

25 MR. WOLFBRANDT: Question 53, with regards to your

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8JD04642

1 opinions as to defense attorneys and prosecutors, you answered  
2 that you think better of prosecutors than defenders. Is that the  
3 case with this proceeding?

4 PROSPECTIVE JUROR NO. 11: No.

5 MR. WOLFBRANDT: Okay. Do you have any opinion one way  
6 or the other with regards to Mr. Seaton representing the State or  
7 any of the defense attorneys?

8 PROSPECTIVE JUROR NO. 11: No.

9 MR. WOLFBRANDT: The next Question 54, is "I never  
10 disagree with the law." I'm not real sure which one of the two  
11 you meant, because you check both of them true and false.

12 PROSPECTIVE JUROR NO. 11: I abide by the law. I think  
13 I'm a good citizen. Sometimes I go a little faster than 55,  
14 because maybe I'm in a hurry or simply trying to keep up with the  
15 other flow of traffic. I believe in a 55 limit, but I don't  
16 always follow it.

17 MR. WOLFBRANDT: Okay. Are there any other examples  
18 other than the speed limit?

19 PROSPECTIVE JUROR NO. 11: None that come to mind right  
20 now.

21 MR. WOLFBRANDT: And likewise, on Question No. 55, you  
22 don't have any specific reasons as to why you might believe a  
23 police officer or give more credibility/weight to a police  
24 officer's testimony than you would any other witness, but you  
25 feel that perhaps you would?

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8JD04642



1 PROSPECTIVE JUROR NO. 11: No, and I've thought about  
2 that answer since then. And I think it was kind of a gut  
3 reaction answer. Just I respect a law enforcement officer and...

4 MR. WOLFBRANDT: You'd like to believe them more so  
5 than others.

6 PROSPECTIVE JUROR NO. 11: Exactly.

7 MR. WOLFBRANDT: But you'd wait and listen and weigh  
8 everything?

9 PROSPECTIVE JUROR NO. 11: Yes.

10 MR. WOLFBRANDT: Okay. Is there anything about the  
11 appearance of either of the Defendants here, Dale or Randy, that  
12 causes any opinions or has made you form any opinions as you sit  
13 here right now?

14 PROSPECTIVE JUROR NO. 11: No.

15 MR. WOLFBRANDT: Anything about the nature of the facts  
16 of the case that you've heard so far?

17 PROSPECTIVE JUROR NO. 11: No.

18 MR. WOLFBRANDT: So as you sit here right now you have  
19 no opinions one way or the other?

20 PROSPECTIVE JUROR NO. 11: No.

21 MR. WOLFBRANDT: Actually I don't want to limit it two  
22 opinions. You don't have any opinions of any kind?

23 PROSPECTIVE JUROR NO. 11: No opinions.

24 MR. WOLFBRANDT: Okay. Have you ever had the occasion  
25 to discuss the concept of the death penalty or

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1 | punishments for murder cases?

2 | PROSPECTIVE JUROR NO. 11: Yes.

3 | MR. WOLFBRANDT: In what kind of context have you had  
4 | these discussions?

5 | PROSPECTIVE JUROR NO. 11: I think among friends,  
6 | family.

7 | MR. WOLFBRANDT: Okay. It was in social gatherings?

8 | PROSPECTIVE JUROR NO. 11: Yes.

9 | MR. WOLFBRANDT: Basically what was your view on it, on  
10 | the topic?

11 | PROSPECTIVE JUROR NO. 11: I can't ever remember not  
12 | thinking that it shouldn't be something that we have as an  
13 | option.

14 | MR. WOLFBRANDT: Okay. You believe it should be an  
15 | option, but just that--an option?

16 | PROSPECTIVE JUROR NO. 11: Yes.

17 | MR. WOLFBRANDT: Okay. Do you feel that it should be  
18 | mandatory in certain cases?

19 | PROSPECTIVE JUROR NO. 11: It depends. I'm not sure I  
20 | understand your question, "mandatory"?

21 | MR. WOLFBRANDT: Well, do you feel that there are  
22 | certain types of crimes where a death penalty should be a  
23 | mandatory sentence and nothing else?

24 | PROSPECTIVE JUROR NO. 11: Yes.

25 | MR. WOLFBRANDT: What kind of crimes do you think that

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8JD04645  
1 would be the case?

2 PROSPECTIVE JUROR NO. 11: Those that have mentioned  
3 either, I think--Charles Manson, Jeffery Dahmer, certain repeat  
4 offenders.

5 MR. WOLFBRANDT: How about one like this--Susan Smith,  
6 if you will, the girl back East that drove the children into the  
7 lake?

8 PROSPECTIVE JUROR NO. 11: It's hard for me to decide.  
9 I had heard recently that she wanted the death penalty imposed.

10 MR. WOLFBRANDT: Okay. But you don't know enough about  
11 that particular case to make an opinion one way or the other?

12 PROSPECTIVE JUROR NO. 11: No.

13 MR. WOLFBRANDT: Is that the -- Well, I'm not going to  
14 belabor that.

15 All right. Thank you. I'd pass for cause.

16 THE COURT: Ms. Mounts?

17 MS. MOUNTS: Thank you, your Honor. Ms. Koepke, good  
18 morning.

19 It sounds like in your own mind that you've pretty much  
20 decided that life without parole isn't really an option in our  
21 system. Is that fair to say?

22 PROSPECTIVE JUROR NO. 11: I don't believe it should  
23 be.

24 MS. MOUNTS: Okay. And I believe you stated a couple  
25 of times that you found it pointless as a punishment?

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8JD04645

1 PROSPECTIVE JUROR NO. 11: Yes.

2 MS. MOUNTS: And you stated your reason for that.  
3 Isn't that correct?

4 PROSPECTIVE JUROR NO. 11: Yes.

5 MS. MOUNTS: Have you expressed that view to your  
6 friends and maybe co-workers in the discussions that you've had?

7 PROSPECTIVE JUROR NO. 11: Life without the possibility  
8 of parole?

9 MS. MOUNTS: Right. Actually what I'm asking is: Have  
10 you ever expressed to anyone else that that was your viewpoint?

11 PROSPECTIVE JUROR NO. 11: No, not towards life without  
12 the possibility of parole. I don't think that's ever come up.

13 MS. MOUNTS: You've never told anybody, "I just think  
14 that's pointless. It should be one or the other"?

15 PROSPECTIVE JUROR NO. 11: No.

16 MS. MOUNTS: Okay. But it sounds like you're pretty  
17 well firm in your belief that it doesn't serve a useful purpose?

18 PROSPECTIVE JUROR NO. 11: That's true.

19 MS. MOUNTS: And no one is criticizing you for that,  
20 ma'am. I just want to ask you then: Isn't it pretty fair to say  
21 that you couldn't consider all three options in this case  
22 equally?

23 PROSPECTIVE JUROR NO. 11: Yes.

24 MS. MOUNTS: Your honor, I would challenge for cause.

25 MR. SEATON: I do have a few questions, Judge.

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1 THE COURT: Mr. Seaton?

2 MR. SEATON: Thank you.

3 Good Morning, Ms. Koepke. Would you agree that there might  
4 be other people --

5 Well, before I get into that, let me really make sure I  
6 understand you. I tried to write down what you just said. It  
7 was, "I don't believe life without the possibility of parole  
8 should be an option."

9 PROSPECTIVE JUROR NO. 11: That's correct.

10 MR. SEATON: Is that a fair statement?

11 PROSPECTIVE JUROR NO. 11: Yes.

12 MR. SEATON: In your view it would be preferable if it  
13 were just the two choices--life with the possibility of parole or  
14 the death penalty?

15 PROSPECTIVE JUROR NO. 11: Yes.

16 MR. SEATON: Are you taking that position primarily  
17 because of economic factors? It just isn't worth the taxpayers'  
18 money to keep someone locked up in a cage for the rest of their  
19 lives?

20 PROSPECTIVE JUROR NO. 11: No.

21 MR. SEATON: Okay. What are the reasons?

22 PROSPECTIVE JUROR NO. 11: I think if somebody can be  
23 rehabilitated and can be returned to society, they should be  
24 given the chance. I think if it's proved or determined that they  
25 cannot be, I just don't feel that they should spend the rest of

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1 their life in prison. I think that they should be executed.

2 MR. SEATON: Do you think that there will be other  
3 people on the jury who might have contrary opinions, who might  
4 see good reasons for having someone spend the rest of their life  
5 in prison as opposed to having the possibility of parole or being  
6 executed?

7 PROSPECTIVE JUROR NO. 11: That's possible.

8 MR. SEATON: If you were picked as a juror and heard  
9 the case, heard all the facts, heard everything about these two  
10 young gentlemen that is going to be said, just in general terms  
11 would you be the kind of juror who would be willing to go back to  
12 the jury deliberation room and discuss things with the jurors and  
13 listen to their points of view?

14 PROSPECTIVE JUROR NO. 11: Yes, I'd like to hear  
15 everybody's point of view.

16 MR. SEATON: Are you the kind of person who can be  
17 convinced to do something that you otherwise or beforehand had  
18 thought you would not do?

19 PROSPECTIVE JUROR NO. 11: It depends on the  
20 circumstances.

21 MR. SEATON: Your opinions aren't so set in stone, are  
22 they, that you can't listen to other reasoning and change them if  
23 you believe finally and what that reasoning is all about?

24 PROSPECTIVE JUROR NO. 11: No, not all opinions, no.

25 MR. SEATON: With regard -- well, let me back up.

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8JD04648

8JD04649

1        Yeah, I will touch on that area. With regard to the  
2 particular punishment of life without the possibility of parole,  
3 are you telling us here that you at this point in time absolutely  
4 foreclose any possibility of considering it at? Or is it  
5 possible that you would go back into the jury deliberation room  
6 and listen to the other jurors' arguments, be willing to consider  
7 the things that they're saying and perhaps choose that as an  
8 option?

9                PROSPECTIVE JUROR NO. 11: I can honestly say "never  
10 say never." I would take other people's opinions into  
11 consideration.

12              MR. SEATON: So, given all of that hypothetical  
13 background that may take place, is there potentially the  
14 opportunity for you to vote--no, not to vote for it--to consider  
15 the possibility of life imprisonment without the possibility of  
16 parole?

17              PROSPECTIVE JUROR NO. 11: The potential could be  
18 there, yes.

19              MR. SEATON: And just one last repetitive question:  
20 You wouldn't foreclose it completely at this point in time?

21              PROSPECTIVE JUROR NO. 11: I think it should be  
22 considered.

23              MR. SEATON: Okay. Thank you. That ends my traverse,  
24 Judge.

25              THE COURT: When you say "consider it," do you mean

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SA662

8JD04649

1 equally with all the other two options, the other two options, or  
2 just one of those things you would consider more strongly to be  
3 convinced than the other two?

4 PROSPECTIVE JUROR NO. 11: I wouldn't weigh it as  
5 equally, no.

6 THE COURT: Motion's granted. Thank you. I'm going to  
7 excuse you. Report back to the jury commissioner and tell him  
8 I've excused you from further jury duty.

9 THE CLERK: Sandra Oliver Taylor, Badge No. 516,  
10 T-A-Y-L-O-R.

11 THE COURT: We're going to adjourn for lunch now. Be  
12 back here at 1:30. That's a different time, 1:30. We're  
13 quitting a few minutes early.

14 In the meantime, it is your duty not to talk among  
15 yourselves or with anyone else on any matter pertaining to this  
16 trial; read, watch or listen to any report of or commentary on  
17 the trial by any person or by any medium of information,  
18 including without limitations newspapers, radio or television;  
19 form or express any opinion on any matter pertaining to this  
20 trial until it is finally submitted to you.

21 Have a lunch. See you back at 1:30.

22 (Prospective jurors out at 11:39)

23 THE COURT: Please close the door.

24 Will counsel stipulate as to the absence of the jury?

25 MR. WOLFBRANDT: Yes, your Honor.

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8JD04650



1 MR. SEATON: Yes, your Honor.

2 THE COURT: We have one other matter.

3 Mr. Davidson, where is your client?

4 MR. DAVIDSON: Judge, he's inclined to go ahead and  
5 testify.

6 THE COURT: Do you know whether or not there's been any  
7 deals made concerning his testimony here?

8 MR. DAVIDSON: I am not aware of any.

9 THE COURT: Well, then we'll be in recess.

10 MR. WALL: Actually, Judge, there's one other matter.

11 First of all, on this matter, just for clarification  
12 purposes, I don't want to get into a situation where I've -- I  
13 mean, it's just for my own clarification because it's an issue as  
14 a public defender that I have in this case.

15 Is it the Court's ruling that there is not a significant or  
16 sufficient conflict of interest for us in representing Mr.  
17 Flanagan and cross-examining what was at least a former client?

18 THE COURT: Based on everything I have before me at  
19 this time, that there has been no offers of any matters made to  
20 Mr. Rusty Havens to testify to get any leniency on his case that  
21 you have down in justice court, yes, that is my ruling. And this  
22 case down in justice court happened before. If I had any kind of  
23 fear at all, I would declare him not to be available and proceed  
24 with the transcript.

25 MR. WALL: Okay. And then there's one other matter,

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8JD04651

1 Judge.

2 It came to my attention that Juror No. 434, Mr. Guerra, who  
3 is seated in the No. 4 position -- we didn't really get into any  
4 questions with him about whether he's ever been accused of a  
5 crime, but I would note that he has a -- that I've learned that  
6 he has an outstanding bench warrant right now for contempt of  
7 court. I have no idea what the subject of it is, but I think it  
8 was something that ought to come to the Court's attention.

9 I don't know if he was prosecuted. I don't know if he  
10 didn't show up for jury service sometime. I really don't even  
11 know if there was ever an appearance that he made and then  
12 another one later. I just know that that fact stands.

13 THE COURT: Will the District Attorney check it out,  
14 please, during the lunch hour?

15 MR. SEATON: I will, Judge.

16 MR. DAVIDSON: Judge, the only other matter that I  
17 think we probably should put on the record with regard to my  
18 client, is that I've spoken to Mr. Seaton. Obviously I was  
19 concerned about the possibility that anything that my client  
20 might testify to in this hearing could be used against him for  
21 purposes of prosecuting him based upon these things that happened  
22 quite some time ago.

23 Mr. Seaton has assured me that it is not the State's  
24 intention to prosecute him for anything that he may testify to  
25 with regard to the incidents that give rise to this case.

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8JD04652

8JD04653

1 He believes--Mr. Seaton does--that he may have already made  
2 that clear for the record in previous proceedings. I, of course,  
3 have no way of knowing that, and so he assured me that he would  
4 be willing to state for the record that that is still the case.  
5 That obviously short of committing some kind of perjury, that my  
6 client would not be leaving himself open for prosecution in this  
7 case based upon what he testifies to at this hearing.

8 MR. SEATON: That's a correct statement.

9 THE COURT: Anything else?

10 MR. DAVIDSON: That's it, Judge.

11 THE COURT: And would you like to be present when he  
12 testifies? I would prefer to have you present?

13 MR. DAVIDSON: I can try to accommodate the Court  
14 however you want me to. Is he scheduled to testify this  
15 afternoon?

16 THE COURT: I haven't a jury picked yet.

17 MR. DAVIDSON: Are we getting close?

18 THE COURT: Close to a day and a half.

19 MR. DAVIDSON: Perhaps, Judge, if you can have your...

20 THE COURT: I doubt we'll get to him any time before  
21 tomorrow afternoon or morning at the -- today's Thursday, isn't  
22 it?

23 THE CLERK: Yes, your Honor.

24 THE COURT: I doubt we could do before tomorrow  
25 afternoon or Monday at the earliest.

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8JD04653

1 MR. DAVIDSON: Judge, if you could just have your Clerk  
2 contact me, let me know what the proposed schedule's going to be.

3 THE COURT: I'll have the D.A. do that, because I don't  
4 know who all he's going to call.

5 MR. DAVIDSON: Okay.

6 THE COURT: All right. Thank you very much.

7 There's one matter I want to get squared away...

8 MR. DAVIDSON: Just give me call when you have somebody  
9 there.

10 THE COURT: There's one matter I want to get squared  
11 away as it concerns the Thompson case. When I asked Mr. Mounts  
12 about the use of the word "adamantly" which had been changed.  
13 And she referred me to a passage on page 3 of the Advance  
14 Opinion. I would like to read the whole two paragraphs. This  
15 will be the second and third.

16 "Prospective Juror No. 89 agreed that Thompson  
17 looks guilty, and they specifically say that although  
18 he could not articulate the reason why, Thompson was  
19 guilty. This belief demonstrates that Prospective  
20 Juror No. 89 should have been excused for cause,  
21 because he formed or expressed an unqualified opinion  
22 as to the merits of the actions." CNRS 16.010(1)(f)

23 "In addition, the Prospective Juror No. 89 agreed  
24 that Thompson started out with a strike against him  
25 because of his appearance. Finally and most

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8JD04654

1 disturbing, the Prospective Juror No. 89 agreed that he  
2 would not want to be seated in the Defendant's chair  
3 with a person like himself on the jury. These beliefs  
4 demonstrate that Prospective Juror No. 89 should have  
5 been excused for cause, because his state of mind  
6 evinced enmity against Thompson."

7 And the Court just believes that when you take all of those  
8 things into consideration, I think that sometimes we read these  
9 matters and we go too far out in them. Had it just been the one  
10 statement, I doubt the Court would have done anything. I think  
11 in the same opinion, this is much more close with the law. On  
12 Page 5,

13 "The quote in the majority opinion in which Prospective  
14 Juror said 'he is guilty' is taken out of context.  
15 When read in context it's clear that the statements are  
16 not meant to be an expression of his opinion regarding  
17 the guilt of the defendant. The dialogue on voir dire  
18 procedures is as follows:"

19 I particularly am gracious with this comment,

20 "When viewed in context, none of the Prospective  
21 Juror's statements demonstrates that he would be  
22 anything but fair and impartial. Thus, it is easy for  
23 me to see why the district court believed that  
24 Prospective Juror was obviously open-minded and could  
25 be a fair and impartial juror. This Court should defer

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1 to the findings of the district court judge who has the  
2 opportunity to both observe the prospective juror's  
3 demeanor and to listen to the way the juror answered  
4 the questions." Key vs. State [phonetic], 760 Pac2d at  
5 1031, page 1033, Wyoming, 1989.

6 "Stating that because trial court can more clearly  
7 observe the demeanor and response of the jury panel  
8 during voir dire, the Appellate Court defers in its  
9 judgement."

10 This is not for comment; it is my comment on the record,  
11 because sometimes I think our appellate courts think they're  
12 trial courts, and they read a cold record, and there is no chance  
13 to see what happens on it.

14 For example, if I asked, "What is your belief on X," and  
15 they wait three or four minutes before giving a response (as you  
16 folks have done), when the judge asks the question, you kind of  
17 pause, it doesn't appear that way in the cold record.

18 And maybe if we had television or videotape that was  
19 requested, sometimes the Court could see those things instead of  
20 becoming trial courts. And I think when you have those matters  
21 which perhaps should be brought up, as Mr. Schleck did with Juror  
22 No. 2, when you look at that cold record, it looked differently.  
23 Then I considered his attitude on the stand. Last night I almost  
24 decided then to grant the motion; I didn't need the Johnson case  
25 to do it for me.

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8JD04656

8JD04657

1 But I think those things should be done. And I say that  
2 only for guidance--I hope for the Supreme Court.

3 We'll be in recess.

4 THE BAILIFF: All rise.

5 (Recess taken at 11:40)  
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8JD04657

THURSDAY, JUNE 15, 1995, 2:07 P.M.

(Prospective jurors absent)

THE BAILIFF: Department XI is again in session.

THE COURT: Please be seated. Let me see, where are we? This is a continuation of jury case No. C69269, The State vs. Flanagan & Moore. Let the record reflect the presence of Defendants with counsel, District Attorney, other officers of the Court.

Will counsel stipulate as to the absence of the jury?

MR. SEATON: Yes, Judge.

MR. WALL: Yes, your Honor.

MR. SCHIECK: Yes, your Honor.

THE COURT: When we ceased this morning we had information about one of our jurors, No. 434 seated in juror seat No. 4, had a bench warrant out for him. Have you checked it out, sir?

MR. SEATON: I have checked it out, Judge. I have got a SCOPE printout of Carlos Rafael Guerra, and it is the same individual--same spelling, born Cuba, same local address. He had a 1982 Failure to Appear bench warrant that is no longer in the system. I have no idea what happened to it. We checked SEJS; we checked NCIC; that bears nothing on him at the present time.

THE COURT: Does it indicate what it was for?

MR. SEATON: Pardon?

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8JD04658



1 THE COURT: Does it indicate what it was for?

2 MR. SEATON: A misdemeanor, but other than that, no.

3 No, it's -- well, it's a contempt of court, so it says that after  
4 it; it may have been for that, but other than that I can't tell  
5 you anything.

6 THE COURT: But in either case it's no longer valid.  
7 Is that correct?

8 MR. SEATON: The warrant is no longer in the system at  
9 the present time, so I can only guess that it is not outstanding.  
10 It's been quashed.

11 THE COURT: Mr. Schleck, comments, sir?

12 MR. SCHIECK: I have no comments, your Honor.

13 THE COURT: Ms. Mounts? Mr. Wall?

14 MR. WALL: Judge, I'd submit that when I found out  
15 about it, I just thought it would be prudent to bring it to the  
16 Court's attention.

17 THE COURT: Well, based on what Mr. Seaton tells me,  
18 it's a moot question now. I have no jaundice, so leave him where  
19 he is. If there were a warrant out for him -- and you might  
20 further check, Mr. Seaton, to see -- I don't know where you'd  
21 check though.

22 MR. SEATON: Had our investigator check the computers.

23 THE COURT: Nothing else being said and there being no  
24 active warrant out that we know of, it's no longer in the system.  
25 I get requests even on people who are on parole and probation who

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8JD04659

1 disappear all of a sudden, and you don't hear from them for four  
2 or five years, and even if they had been brought back, their  
3 probation would have been expired. I get a request to withdraw  
4 the warrant, so it happens quite often--the presumption being  
5 that they hadn't gotten in trouble; we wouldn't know about it.

6 So let's pursue under that theory, unless there's a request  
7 to go further. I'll bring him in if you think so; if not, I'll  
8 leave him alone. Without seeing or hearing anything, I'll assume  
9 that's it.

10 Bring them in. Let's get started.

11 (Prospective jurors in at 1:50 a.m.)

12 (Court's comments to prospective jurors re air conditioning,  
13 off the record)

14 THE COURT: Continuation of jury case No. C69269, The  
15 State of Nevada vs. Dale Flanagan & Randolph Moore. Let the  
16 record reflect the presence of Defendants with counsel, District  
17 Attorney, other officers of the court.

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

19 (Clerk begins roll call of prospective jurors)

20 THE COURT: Ms. Brush has been excused.

21 (Clerk continues roll call of prospective jurors; all  
22 present)

23 THE COURT: Will counsel stipulate to the presence of  
24 the jury?

25 MR. SEATON: Yes, Judge.

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8JD04660

1 MR. WALL: Yes, your Honor.  
2 MR. SCHIECK: Yes, your Honor.  
3 THE COURT: Ms. Taylor, how long have you lived in  
4 Clark County, Nevada?  
5 PROSPECTIVE JUROR NO. 11: Forty-four years.  
6 THE COURT: Where were you born and raised?  
7 PROSPECTIVE JUROR NO. 11: I was born in Montana; I was  
8 raised here.  
9 THE COURT: What is your educational background?  
10 PROSPECTIVE JUROR NO. 11: I have a high school  
11 education.  
12 THE COURT: What has been your employment for the last  
13 ten years?  
14 PROSPECTIVE JUROR NO. 11: I'm the meat wrapper for  
15 Vons, and I do their training for that department.  
16 THE COURT: What is your religious preference?  
17 PROSPECTIVE JUROR NO. 11: Methodist.  
18 THE COURT: Do you attend church regularly?  
19 PROSPECTIVE JUROR NO. 11: Only occasionally.  
20 THE COURT: And could you speak up just a little bit  
21 louder?  
22 PROSPECTIVE JUROR NO. 11: Okay.  
23 THE COURT: In addition to the coldness, I have an air  
24 conditioner over my head; and sometimes when it goes on it's  
25 difficult to hear.

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8JD04661

8JD04662

1 How old are you?

2 PROSPECTIVE JUROR NO. 11: Forty-four.

3 THE COURT: Are you married or single?

4 PROSPECTIVE JUROR NO. 11: Married.

5 THE COURT: Is your husband employed?

6 PROSPECTIVE JUROR NO. 11: Yes, he is.

7 THE COURT: Where does he work and what are his duties?

8 PROSPECTIVE JUROR NO. 11: He's a meat manager for  
9 Vons.

10 THE COURT: And do you have any children?

11 PROSPECTIVE JUROR NO. 11: Yes, I do.

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

13 PROSPECTIVE JUROR NO. 11: I have a 27 year old son,  
14 and a 23 year old daughter.

15 THE COURT: Are you acquainted with either the  
16 Defendants or their attorneys?

17 PROSPECTIVE JUROR NO. 11: No, sir.

18 THE COURT: Do you know anyone in the District  
19 Attorney's Office?

20 PROSPECTIVE JUROR NO. 11: No, sir.

21 THE COURT: Did you recognize any of the names given to  
22 you as possible prosecution witnesses?

23 PROSPECTIVE JUROR NO. 11: No, sir.

24 THE COURT: In the State of Nevada, there are three  
25 possible forms of punishment that the jury must consider and then

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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) life imprisonment with the possibility of  
4 parole; (b) the imposition of the death penalty; and (c) life  
5 imprisonment without the possibility of parole. Do you  
6 understand, ma'am?

7 PROSPECTIVE JUROR NO. 11: Yes, sir.

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

12 PROSPECTIVE JUROR NO. 11: I believe so, yes.

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

15 PROSPECTIVE JUROR NO. 11: No.

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

18 PROSPECTIVE JUROR NO. 11: No.

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

21 PROSPECTIVE JUROR NO. 11: No, I don't.

22 THE COURT: Have you ever been a witness in any  
23 criminal prosecution?

24 PROSPECTIVE JUROR NO. 11: No.

25 THE COURT: Have you ever served on any type of a jury?

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8JD04663

1 PROSPECTIVE JUROR NO. 11: No.

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

3 PROSPECTIVE JUROR NO. 11: No.

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

6 PROSPECTIVE JUROR NO. 11: Yes. I said no on the  
7 questionnaire, but our house was burglarized. I guess I thought  
8 it was more personal than that, but it was burglarized in 1975.

9 THE COURT: Is there anything about that experience  
10 that would cause you to have any biases for or against either  
11 side?

12 PROSPECTIVE JUROR NO. 11: No.

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

16 PROSPECTIVE JUROR NO. 11: I believe so, yes.

17 THE COURT: Do you know of any reason whatsoever,  
18 whether the Court has asked you or not, why you cannot sit as a  
19 fair and impartial juror in this case?

20 PROSPECTIVE JUROR NO. 11: No, I don't.

21 THE COURT: Mr. Schleck?

22 MR. SCHLECK: Thank you, your Honor.

23 THE COURT: You're welcome, sir.

24 MR. SCHLECK: Let me ask you a few questions about how  
25 you feel on the death penalty. Have you always believed in the

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8JD04664

1 death penalty?

2 PROSPECTIVE JUROR NO. 11: I believe that a person  
3 should answer for -- should have a consequence for their doings,  
4 yes.

5 MR. SCHIECK: And you've always considered one of the  
6 consequences for someone who commits murder to be the death  
7 penalty?

8 PROSPECTIVE JUROR NO. 11: I don't know that I've  
9 considered it quite so much until these last few days, so I can't  
10 really say always, no.

11 MR. SCHIECK: These last few days you've been thinking  
12 about it?

13 PROSPECTIVE JUROR NO. 11: I believe so, yes.

14 MR. SCHIECK: Have you been thinking about it with  
15 regard to the specific facts, unlimited specific facts, that you  
16 know about the case?

17 PROSPECTIVE JUROR NO. 11: Not necessarily, no--just  
18 the idea.

19 MR. SCHIECK: Just the general philosophy of the death  
20 penalty?

21 PROSPECTIVE JUROR NO. 11: Yes.

22 MR. SCHIECK: Do you think the death penalty serves a  
23 function in our criminal justice system?

24 PROSPECTIVE JUROR NO. 11: Most probably, yes.

25 MR. SCHIECK: What function do you feel it serves?

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8JD04665

1 PROSPECTIVE JUROR NO. 11: I think it probably should  
2 give some people a conscience.

3 MR. SCHIECK: Do you think it acts as a deterrent?

4 PROSPECTIVE JUROR NO. 11: I kind of tend to agree with  
5 the other young woman, obviously not.

6 MR. SCHIECK: It doesn't seem to be working as a  
7 deterrent?

8 PROSPECTIVE JUROR NO. 11: No, not really.

9 MR. SCHIECK: Do you read the newspaper very often?

10 PROSPECTIVE JUROR NO. 11: Probably three to four days  
11 out of seven.

12 MR. SCHIECK: You don't recall hearing or seeing  
13 anything about this case?

14 PROSPECTIVE JUROR NO. 11: No, not that long ago.

15 MR. SCHIECK: What area of town were you living in back  
16 ten years ago?

17 PROSPECTIVE JUROR NO. 11: I lived at the west end of  
18 town at Rainbow and Oakey, in that area.

19 MR. SCHIECK: Did you go to high school here in town?

20 PROSPECTIVE JUROR NO. 11: Yes, I did.

21 MR. SCHIECK: And where did you go?

22 PROSPECTIVE JUROR NO. 11: To Western.

23 MR. SCHIECK: Now, you've heard, obviously as we've  
24 questioned many jurors already, a lot of the questions we ask are  
25 the same questions you heard, and this is going to be one of

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8JD04666



1 them. Can you consider all three possible punishments equally?

2 PROSPECTIVE JUROR NO. 11: I believe so.

3 MR. SCHIECK: You've heard some of the jurors talk  
4 about that they wouldn't consider life in prison without parole  
5 as a possibility for their own reasons. Have you given any  
6 thought to their thinking on that subject?

7 PROSPECTIVE JUROR NO. 11: No, not really. I think  
8 it's like anything else you do; you should consider all  
9 possibilities.

10 MR. SCHIECK: Do you have any predisposition at all  
11 given the facts that you know about this case?

12 PROSPECTIVE JUROR NO. 11: No, I don't think so.

13 MR. SCHIECK: And there's nothing about either Randy or  
14 Dale as they sit here that you think would cause you to be unfair  
15 to either side of the case?

16 PROSPECTIVE JUROR NO. 11: I don't think so.

17 MR. SCHIECK: Would you have any problem accepting the  
18 conviction in the case? In other words, you're going to be told  
19 that you can't consider the conviction. Is that going to cause  
20 you any concern?

21 PROSPECTIVE JUROR NO. 11: No, I don't think so.

22 MR. SCHIECK: Do you want to hear more facts before you  
23 make up your mind as to what...

24 PROSPECTIVE JUROR NO. 11: I think you would have to.

25 MR. SCHIECK: Thank you very much. We'd pass for

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1 cause, your Honor.

2 THE COURT: Mr. Wall?

3 MR. WALL: Thank you, your Honor.

4 THE COURT: You're welcome, sir.

5 MR. WALL: Ms. Taylor, other than -- well, let me back  
6 up.

7 Before you got in here, did you know anything about this  
8 case?

9 PROSPECTIVE JUROR NO. 11: No.

10 MR. WALL: I know on the questionnaire when we ask that  
11 question, I think it's No. 58, you checked yes and then crossed  
12 it out and checked no.

13 PROSPECTIVE JUROR NO. 11: Just my hand got in front of  
14 my mind.

15 MR. WALL: So even though you were living here back  
16 then, you don't really recall this case?

17 PROSPECTIVE JUROR NO. 11: No, not really. No.

18 MR. WALL: Okay. Let me ask you how you feel about  
19 jury service. You've never done it before?

20 PROSPECTIVE JUROR NO. 11: I've been called once  
21 before, but never served, yes.

22 MR. WALL: Have you ever...

23 PROSPECTIVE JUROR NO. 11: Do I have a problem with it?  
24 No.

25 MR. WALL: Okay. Because your hand got ahead of your

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8JD04668

1 mind on that one. When you were called before were you actually  
2 asked questions like you are now?...

3 PROSPECTIVE JUROR NO. 11: No. No. I just reported.  
4 And in fact I think I was here 30 minutes and was dismissed.

5 MR. WALL: Okay. How do you feel about the prospect of  
6 serving on a jury, not necessarily one on an issue as great as  
7 this, but just the idea of serving on a jury?

8 PROSPECTIVE JUROR NO. 11: Well, I kind of feel like  
9 it's a citizens duty to do that. I don't have a problem with it.  
10 It doesn't propose a problem with my earnings or anything.

11 MR. WALL: Okay. You've heard me ask questions of some  
12 other prospective jurors about being isolated in your opinions in  
13 the jury room if you were selected, and eleven of the twelve  
14 jurors felt very strongly one way, and you felt the opposite way.  
15 Can you tell me how you'd handle that pressure that would be  
16 placed on you by some others?

17 PROSPECTIVE JUROR NO. 11: My husband says I'm pretty  
18 stubborn, so I don't think I'd have a problem standing by what I  
19 decided.

20 MR. WALL: Okay. Is he right?

21 PROSPECTIVE JUROR NO. 11: I don't think I have to  
22 admit that.

23 MR. WALL: I think you answered my question.

24 PROSPECTIVE JUROR NO. 11: That's his opinion.

25 MR. WALL: In question 62 you indicated that you

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8JD04669

1 believed in the adage "an eye for an eye"?

2 PROSPECTIVE JUROR NO. 11: To an extent, yes.

3 MR. WALL: Okay.

4 PROSPECTIVE JUROR NO. 11: But...

5 MR. WALL: What do you mean "to an extent"?

6 PROSPECTIVE JUROR NO. 11: A person has to answer for  
7 the consequences of an act or a deed, I believe. But no matter  
8 what the act is or the consequence is, be it large or small.

9 MR. WALL: Okay. But specifically then it wouldn't be  
10 your belief that because there's been a conviction for a life  
11 being taken that therefore...

12 PROSPECTIVE JUROR NO. 11: Not necessarily, no.

13 MR. WALL: ...his life should be forfeited? Do you  
14 feel -- do you agree with the law that says that a sentence of  
15 life in prison with the possibility of parole, just the  
16 possibility some day is an appropriate sentence for someone  
17 convicted of first-degree murder?

18 PROSPECTIVE JUROR NO. 11: I'm sure in some  
19 circumstances it could be.

20 MR. WALL: Okay. In what kind of circumstances do you  
21 think it would be appropriate?

22 PROSPECTIVE JUROR NO. 11: I think everybody has the  
23 right, especially with a lot of time on their hands, to change  
24 their ways of thinking or to be rehabilitated, so to speak. And  
25 after a long period of time, it may be that they should deserve

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8JD04670

1 to do something to make their life more useful. If that included  
2 being paroled, then maybe that would be part of it.

3 MR. WALL: Okay. You will undoubtedly hear evidence of  
4 the nature of the crime itself. If you know enough about it now  
5 to generally know what it's about, would you also be interested  
6 then in hearing evidence of Mr. Flanagan's and Mr. Moore's  
7 actions or behavior since that the murders took place in 1984?

8 PROSPECTIVE JUROR NO. 11: I would think whatever  
9 decision we come to that that would be part of the information we  
10 had to consider.

11 MR. WALL: Okay. Would it be difficult at all for you  
12 to serve on the jury? Your son is pretty close to the same age  
13 as these two individuals.

14 PROSPECTIVE JUROR NO. 11: My son is my son; I don't  
15 connect the two.

16 MR. WALL: Okay. Thank you very much.

17 PROSPECTIVE JUROR NO. 11: Uh-huh.

18 MR. WALL: I have no further questions.

19 I'm going to pass for cause, your Honor.

20 THE COURT: Mr. Seaton?

21 MR. SEATON: You've heard all the questions that have  
22 been asked over the last few days?

23 PROSPECTIVE JUROR NO. 11: Uh-huh. Yes, I have.

24 MR. SEATON: Have you been thinking of the answers of  
25 your own, in your own mind, as we've been asking other people?

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81004672

1 PROSPECTIVE JUROR NO. 11: I think you think of your  
2 own answers, but nobody knows what they're going to say until  
3 they sit up here.

4 MR. SEATON: Now, do you know what you're going to say?

5 PROSPECTIVE JUROR NO. 11: Probably not.

6 MR. SEATON: Well, what I want to do is shorten the  
7 process a little bit. I want you to think in your mind if there  
8 are any of those questions that you heard, and you know where  
9 we're all coming from by now; there are no secrets here. Is  
10 there anything you need to call to any of our attention?

11 PROSPECTIVE JUROR NO. 11: I don't believe so.

12 MR. SEATON: Pass for cause, Judge.

13 THE COURT: Defense may exercise their third peremptory  
14 challenge.

15 MR. WALL: Your Honor, the Defense would thank and  
16 excuse Juror No. 491 in the No. 6 seat, Mr. Pangburn.

17 THE COURT: Mr. Pangburn, sir, you are excused. Thank  
18 you for coming down. Report back to the jury commissioner that  
19 I've excused you of any further jury duty.

20 THE CLERK: Leroy J. Seckinger, Badge No. 517,  
21 S-E-C-K-I-N-G-E-R.

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

24 PROSPECTIVE JUROR NO. 6: A little over 50 years.

25 THE COURT: Where were you born and raised?

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1 PROSPECTIVE JUROR NO. 6: Las Vegas.  
2 THE COURT: And what is your educational background?  
3 PROSPECTIVE JUROR NO. 6: High school graduate; four  
4 years of technical.  
5 THE COURT: And where...  
6 PROSPECTIVE JUROR NO. 6: And some...  
7 THE COURT: Where did you do that, sir?  
8 PROSPECTIVE JUROR NO. 6: The technical part?  
9 THE COURT: Yes, sir.  
10 PROSPECTIVE JUROR NO. 6: Mostly company sponsored  
11 within the last 15 years.  
12 THE COURT: What has been your residence in the last  
13 ten years? Strike that.  
14 What has been your employment during the last ten years?  
15 PROSPECTIVE JUROR NO. 6: Nevada Power Company.  
16 THE COURT: And what do you do there?  
17 PROSPECTIVE JUROR NO. 6: I'm doing some parts and  
18 equipment computerizing right now. Before that was  
19 instrumentation and control work to do with power generation.  
20 THE COURT: What is your religious preference?  
21 PROSPECTIVE JUROR NO. 6: Mormon.  
22 THE COURT: Do you attend church regularly?  
23 PROSPECTIVE JUROR NO. 6: No, sir.  
24 THE COURT: How old are you, sir?  
25 PROSPECTIVE JUROR NO. 6: Fifty-six.

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1 THE COURT: Are you married or single?

2 PROSPECTIVE JUROR NO. 6: Married.

3 THE COURT: Is your wife employed?

4 PROSPECTIVE JUROR NO. 6: Yes, she works for the Clark  
5 County School District.

6 THE COURT: And what does she do there?

7 PROSPECTIVE JUROR NO. 6: She works in food services--  
8 kitchen.

9 THE COURT: And do you have any children?

10 PROSPECTIVE JUROR NO. 6: Yes, I have three children.  
11 In the questionnaire I didn't realize that your stepchildren were  
12 included in that.

13 THE COURT: Yes, sir.

14 PROSPECTIVE JUROR NO. 6: So if you want to include  
15 that...

16 THE COURT: Yes, I want them to. May I have their ages  
17 and sex? I thought you included them.

18 PROSPECTIVE JUROR NO. 6: I don't think so.

19 THE COURT: But please, may I have their ages and sex,  
20 sir?

21 PROSPECTIVE JUROR NO. 6: My children, a son that's  
22 deceased. I have two daughters; one 31 and one 27. My wife has  
23 two daughters; one 36, one 32, and a son that's 28 or 29, I  
24 believe. Also the grandchildren there is somewhat not correct.  
25 Between the two of us we have 13, starting in ages from 14

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8JD04674



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1 through 7, I believe.

2 THE COURT: Okay. Thank you. Are you acquainted with  
3 either of the Defendants or their attorneys?

4 PROSPECTIVE JUROR NO. 6: No.

5 THE COURT: And do you know anyone in the District  
6 Attorney's Office?

7 PROSPECTIVE JUROR NO. 6: No.

8 THE COURT: And did you recognize any of the persons  
9 whose names were given to you as possible prosecution witnesses?

10 PROSPECTIVE JUROR NO. 6: No.

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

18 PROSPECTIVE JUROR NO. 6: Yes.

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

23 PROSPECTIVE JUROR NO. 6: Yes.

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

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8JD04675

8JD04676

1 PROSPECTIVE JUROR NO. 6: No.

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

4 PROSPECTIVE JUROR NO. 6: Not at the present time.  
5 Many, many years ago...

6 THE COURT: Tell us why, sir?

7 PROSPECTIVE JUROR NO. 6: I'm sorry?

8 THE COURT: Tell us about it?

9 PROSPECTIVE JUROR NO. 6: Back in the '60s before  
10 Metro, sometime back, there was a program with the Las Vegas  
11 Police Department Reserve Program. I was a member of that for a  
12 time. That's the extent of it.

13 THE COURT: Is there anything about that experience  
14 that would cause you to have biases for or against either side in  
15 this case?

16 PROSPECTIVE JUROR NO. 6: No.

17 THE COURT: Would you tend to give a police officer's  
18 testimony any greater or any lesser weight than any witness who  
19 testifies merely because they happen to be police officers?

20 PROSPECTIVE JUROR NO. 6: I wouldn't give any greater,  
21 no.

22 THE COURT: Fine. Have you ever appeared as a witness  
23 in any criminal prosecution?

24 PROSPECTIVE JUROR NO. 6: No.

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

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8JD04676

8JD04677

1 PROSPECTIVE JUROR NO. 6: Yes.

2 THE COURT: When was this, sir?

3 PROSPECTIVE JUROR NO. 6: There's been two or three,  
4 and don't hold me to the dates, because I don't remember exactly.

5 THE COURT: All right.

6 PROSPECTIVE JUROR NO. 6: But a couple of years ago I  
7 was on a jury. I believe it was to do with drugs, back in '85 or  
8 somewhere in there a civil matter--fifteen years or so, it seems  
9 to me like. It was a criminal matter to do with a burglary, I  
10 believe. Somewhere in that general vicinity.

11 THE COURT: Without disclosing your verdicts, were your  
12 jurors able to arrive at verdicts?

13 PROSPECTIVE JUROR NO. 6: Yes.

14 THE COURT: And were you the foreman on any of them?

15 PROSPECTIVE JUROR NO. 6: No.

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

17 PROSPECTIVE JUROR NO. 6: No.

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

20 PROSPECTIVE JUROR NO. 6: No.

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

24 PROSPECTIVE JUROR NO. 6: Yes.

25 THE COURT: Can you and will you follow the Court's

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8JD04677

1 instructions on the law even though you may differ with them?

2 PROSPECTIVE JUROR NO. 6: Yes.

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

6 PROSPECTIVE JUROR NO. 6: No.

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

8 MR. WOLFBRANDT: Good afternoon, Mr. Seckinger?

9 PROSPECTIVE JUROR NO. 6: Yes.

10 MR. WOLFBRANDT: Okay. Obviously we've had the benefit  
11 of the answers in your questionnaire, and a couple of the answers  
12 that you gave to questions at least appear to be somewhat  
13 inconsistent with the conversation you've had with the Judge this  
14 afternoon.

15 You have heard -- without going into detail on it, you have  
16 heard or read about this case in the newspapers, haven't you?

17 PROSPECTIVE JUROR NO. 6: Yes, I remember when it came  
18 out many years ago, ten years ago or so. I don't recall  
19 following it to its conclusion. I remember it being in the news,  
20 on the newspapers and so forth. It was quite a case; there was a  
21 lot of coverage.

22 MR. WOLFBRANDT: Okay. And...

23 PROSPECTIVE JUROR NO. 6: But I don't remember  
24 anything, anymore than that.

25 MR. WOLFBRANDT: In your answer to No. 58C, the

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8JD04678

8JD04551

1 don't expect it to go into next month.

2 Are you going to be distracted about wanting to do other  
3 things that you may wander and not pay attention while you're  
4 here?

5 PROSPECTIVE JUROR NO. 2: I don't know. I don't think  
6 so.

7 MR. WOLFBRANDT: In response to answer No. 38 of the  
8 questionnaire, you said that your opinions about the criminal  
9 justice system is that "it seems sometimes to be slowed and  
10 bogged down."

11 PROSPECTIVE JUROR NO. 2: Yes.

12 MR. WOLFBRANDT: Is your experience last week and so  
13 far this week consistent with that opinion?

14 PROSPECTIVE JUROR NO. 2: Yes.

15 MR. WOLFBRANDT: Is that part of the reason why you  
16 don't want to be here?

17 PROSPECTIVE JUROR NO. 2: Yes.

18 MR. WOLFBRANDT: Do you feel that this is a waste of  
19 your time?

20 PROSPECTIVE JUROR NO. 2: No.

21 MR. WOLFBRANDT: Now, your brother is a corrections  
22 officer in North Carolina you said?

23 PROSPECTIVE JUROR NO. 2: Yes.

24 MR. WOLFBRANDT: Does he work at a prison or at a jail?

25 PROSPECTIVE JUROR NO. 2: I don't even really know what

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1 they call it. I think it's a medium security; it's not  
2 one of the major prisons in the state. It's a medium security  
3 facility.

4 MR. WOLFBRANDT: Well, I guess the distinction I'm  
5 looking for is that, is he at a facility where people have  
6 already been to trial and...

7 PROSPECTIVE JUROR NO. 2: Yes.

8 MR. WOLFBRANDT: ...convicted and sentenced?

9 PROSPECTIVE JUROR NO. 2: Yes.

10 MR. WOLFBRANDT: All right. So they're at a -- it's a  
11 prison where they're at just doing their time?

12 PROSPECTIVE JUROR NO. 2: Yes.

13 MR. WOLFBRANDT: How long has he been a corrections  
14 officer there?

15 PROSPECTIVE JUROR NO. 2: About four, four-and-a-half  
16 years.

17 MR. WOLFBRANDT: And how long has he been a corrections  
18 officer?

19 PROSPECTIVE JUROR NO. 2: That long.

20 MR. WOLFBRANDT: Do you know what his occupation was  
21 before that?

22 PROSPECTIVE JUROR NO. 2: He spent 30 years in the Air  
23 Force in communications.

24 MR. WOLFBRANDT: Now, you've had conversations with him  
25 about what he does at that prison?

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1 PROSPECTIVE JUROR NO. 2: A few times about his duties,  
2 yes.

3 MR. WOLFBRANDT: Okay. Can you expand on that as to  
4 the nature and substance of some of those conversations?

5 PROSPECTIVE JUROR NO. 2: Basically I just asked him  
6 what he did, maybe especially the day we were talking, and  
7 sometimes he's taken prisoners to the dentist or something. A  
8 couple of times he's sat on the guard tower.

9 MR. WOLFBRANDT: Has he ever talked to you about any --  
10 well, let's say disturbances at a prison, that have involved the  
11 inmates that he had to get in the middle of?

12 PROSPECTIVE JUROR NO. 2: No.

13 MR. WOLFBRANDT: Has he ever discussed any problems  
14 that he's had with specific inmates?

15 PROSPECTIVE JUROR NO. 2: No.

16 MR. WOLFBRANDT: Now, the answer to No. 27, I take it  
17 then while you were in the service, you said you served as an  
18 officer on a court-martial board?

19 PROSPECTIVE JUROR NO. 2: Yes.

20 MR. WOLFBRANDT: As opposed with Mr. Boone here, who  
21 was the president of the board, you were one of the members of  
22 the board?

23 PROSPECTIVE JUROR NO. 2: Yes.

24 MR. WOLFBRANDT: Okay. How many times did that happen?

25 PROSPECTIVE JUROR NO. 2: One time.

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8JD04553

1 MR. WOLFBRANDT: Were you able to reach a decision in  
2 that case?

3 PROSPECTIVE JUROR NO. 2: I don't believe we had to. I  
4 believe the defendant changed his plea, and the board was  
5 dissolved.

6 MR. WOLFBRANDT: Okay. So the matter was resolved  
7 before...

8 PROSPECTIVE JUROR NO. 2: Yes.

9 MR. WOLFBRANDT: ...it was submitted to you for a  
10 decision?

11 PROSPECTIVE JUROR NO. 2: Yes.

12 MR. WOLFBRANDT: Did that cause any feelings in you--  
13 disappointment that you didn't get an opportunity to make a  
14 decision?

15 PROSPECTIVE JUROR NO. 2: No.

16 MR. WOLFBRANDT: Now, when the Court asked you if the  
17 instructions that he would give towards the end of this case  
18 would differ from your views, would you be able to set aside your  
19 views and follow the instructions, there was quite a pause before  
20 you answered. It appeared that you were thinking quite hard  
21 about it. I mean, would there be a problem with that?

22 PROSPECTIVE JUROR NO. 2: Well, I was thinking about  
23 the question on the questionnaire. I think I might have  
24 misunderstood that. I think I could follow the instructions that  
25 were given to me, but I'm not sure that's how I answered it on

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8JD04554



1 the questionnaire.

2 MR. WOLFBRANDT: Okay. Are you referring to question  
3 59C, "Would your views or state of mind prevent or substantially  
4 impair the performance of your duty as a juror in accordance with  
5 the Court's instructions?" And you wrote on the side, "Not sure.  
6 It would probably depend on..."

7 PROSPECTIVE JUROR NO. 2: What the instructions are.

8 MR. WOLFBRANDT: ...what the instructions were."

9 PROSPECTIVE JUROR NO. 2: Yeah. No, if the  
10 instructions were about the law, I think I could follow that.

11 MR. WOLFBRANDT: I guess really what I read into that  
12 is I'm sure everybody has come in here with their own opinions as  
13 to what types of cases are first-degree murder, what type of  
14 cases you should consider the penalty of life with the  
15 possibility of parole, life without the possibility of parole;  
16 and the death penalty. I mean, everybody's got those opinions.

17 Now, if the Court gives you instructions that are different  
18 than those opinions, can you set your own personal opinions aside  
19 and follow the instructions?

20 PROSPECTIVE JUROR NO. 2: Yes, I think I could.

21 MR. WOLFBRANDT: Do you feel personally, as you sit  
22 here right now, that because Mr. Moore and Mr. Flanagan have been  
23 convicted of first-degree murder, that life with the possibility  
24 of parole is a possible punishment?

25 PROSPECTIVE JUROR NO. 2: Yes, it could be.

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8JD04555

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1 MR. WOLFBRANDT: Okay. And you can consider that as  
2 one of the three possible punishments?

3 PROSPECTIVE JUROR NO. 2: Yes.

4 MR. WOLFBRANDT: In response to question 59B, which was  
5 just before the one about following the instructions, it talked  
6 about, "In your present state of mind can you consider equally  
7 all three forms of punishment?" And what I took note of was you  
8 circled the word "present." Was there a significance to that?

9 PROSPECTIVE JUROR NO. 2: I think I was just trying to  
10 understand the question. Some of those questions weren't clear  
11 to me.

12 MR. WOLFBRANDT: Okay. I guess the focus of it is as  
13 you're sitting here today, with the limited knowledge of the  
14 facts as have been presented to you in the questionnaire and from  
15 what you've heard in court the last few days, but you have not  
16 heard any evidence, you can consider equally all three forms of  
17 punishment?

18 PROSPECTIVE JUROR NO. 2: Yes, I think I could.

19 MR. WOLFBRANDT: Thank you. I'd pass for cause.

20 THE COURT: Mr. Wall, Ms. Mounts?

21 MS. MOUNTS: Thank you, your Honor. Ms. Rogers, good  
22 morning.

23 PROSPECTIVE JUROR NO. 2: Good morning.

24 MS. MOUNTS: I guess it's fair to say you've never been  
25 part of any court proceeding before. Is that correct?

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8JD04556

1 PROSPECTIVE JUROR NO. 2: That's correct.

2 MS. MOUNTS: When you came in for the actual jury  
3 service presentation, did they show you a little film?

4 PROSPECTIVE JUROR NO. 2: Yes.

5 MS. MOUNTS: Did they talk to you about what was to be  
6 expected at all?

7 PROSPECTIVE JUROR NO. 2: A little bit, yes.

8 MS. MOUNTS: Did anybody warn you that the jury  
9 selection process could be very lengthy?

10 PROSPECTIVE JUROR NO. 2: I don't believe they did.

11 MS. MOUNTS: So you kind of didn't know what to expect  
12 when you came in. Is that correct?

13 PROSPECTIVE JUROR NO. 2: Right. That's correct.

14 MS. MOUNTS: I don't want to cover a lot of the things  
15 that Mr. Wolfbrandt has covered, but I do want to ask you: You  
16 had indicated that if you were seated where Mr. Flanagan or Mr.  
17 Moore are seated, you would not want a jury comprised of twelve  
18 people in your present state of mind. Wasn't that your earlier  
19 statement?

20 PROSPECTIVE JUROR NO. 2: Yes.

21 THE COURT: I'm sorry. I can't take a nod.

22 PROSPECTIVE JUROR NO. 2: Yes.

23 MS. MOUNTS: So if you were seated in their position, I  
24 believe you indicated you'd rather have people who were a little  
25 more interested in the actual proceedings?

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8JD04557

1 PROSPECTIVE JUROR NO. 2: That's correct.

2 MS. MOUNTS: I don't believe the Judge asked you--and  
3 again, this isn't designed to embarrass you at all, but we want  
4 to flush out some of the earlier points--is it fair to say you've  
5 never had a friend or a relative be seated in the Defendant's  
6 chair?

7 PROSPECTIVE JUROR NO. 2: I've had a cousin once that  
8 was accused of shooting someone. I'm not very close to him. We  
9 never discussed, you know, his situation.

10 MS. MOUNTS: Was that very long ago?

11 PROSPECTIVE JUROR NO. 2: Probably 15 or 20 years ago.

12 MS. MOUNTS: So quite some time ago?

13 PROSPECTIVE JUROR NO. 2: Yes.

14 MS. MOUNTS: Would that have been here in Nevada or in  
15 another jurisdiction?

16 PROSPECTIVE JUROR NO. 2: In another state.

17 MS. MOUNTS: Has that experience in anyway contributed  
18 to your views on how the justice system works?

19 PROSPECTIVE JUROR NO. 2: No, I don't believe so. I  
20 wasn't living there, so I was not involved in the situation at  
21 all.

22 MS. MOUNTS: So you don't think that has very much to  
23 do with what your present feelings are. Is that correct?

24 PROSPECTIVE JUROR NO. 2: That's correct.

25 MS. MOUNTS: Now, you stated that you really didn't

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8JD04558

8JD04559  
1 want to be here and that you would rather be virtually anywhere  
2 else. Could you explain that to us just a little bit, what  
3 exactly you meant by that?

4 PROSPECTIVE JUROR NO. 2: I don't believe any more than  
5 what I already said. I really don't think that I enjoy this  
6 process. I know it's something that -- I mean, there are other  
7 things in life I don't enjoy too that I have to do. I think it's  
8 probably a process that our judicial system requires that we go  
9 through. But I believe someone yesterday said that it was an  
10 honor to them, and I don't need that honor.

11 MS. MOUNTS: You don't share that view?

12 PROSPECTIVE JUROR NO. 2: No.

13 MS. MOUNTS: And again, no one's trying to change your  
14 mind; we're just trying to understand what your views are.

15 PROSPECTIVE JUROR NO. 2: Yeah.

16 MS. MOUNTS: Do you feel that back in the jury  
17 deliberation room you might be somehow compelled or feel the need  
18 to rush through the deliberation process because you really don't  
19 want to be part of it?

20 PROSPECTIVE JUROR NO. 2: No.

21 MS. MOUNTS: Based on these feelings that you have, Ms.  
22 Rogers, could you tell us: Is there any doubt in your mind that  
23 you could be fair to Dale and Randy?

24 PROSPECTIVE JUROR NO. 2: If I'm selected, no, there's  
25 no doubt.

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8JD04559

1 MS. MOUNTS: Okay. There's no doubt that you could be  
2 fair or that you couldn't?

3 PROSPECTIVE JUROR NO. 2: That I could be fair. I'm  
4 sorry. I thought that was your question.

5 MS. MOUNTS: Okay. Thank you. Maybe I didn't state it  
6 very clearly. Nonetheless, you seem pretty adamant that if you  
7 were they, you wouldn't want you on the jury.

8 THE COURT: Counsel, that, Counsel, that isn't what  
9 you...

10 PROSPECTIVE JUROR NO. 2: No, I think I would -- as I  
11 said, I'd rather have someone that wanted to be here, enjoyed the  
12 proceedings.

13 THE COURT: Would counsel approach the bench, please?

14 MS. MOUNTS: Thank you.

15 (Bench conference)

16 THE COURT: Any other questions, Ms. Mounts?

17 MS. MOUNTS: Just a few, your Honor.

18 Ms. Rogers, if you were back in the jury deliberation room  
19 --and that has been posed here yesterday--you were one individual  
20 who had a particular view, and the other eleven jurors or so had  
21 a different view from your own, how would you feel?

22 PROSPECTIVE JUROR NO. 2: How would I feel?

23 MS. MOUNTS: How would you feel about that?

24 PROSPECTIVE JUROR NO. 2: Probably a little bit  
25 frustrated, since the aim is to try to get a consensus. But it

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8JD04560

8JD04561  
1 doesn't really matter to me what other people think, if they  
2 don't agree with me or not.

3 MS. MOUNTS: Could you kind of give us some idea of  
4 what process you might go through if you were that one person who  
5 felt a particular way and the others disagreed with you and  
6 perhaps were putting some pressure on you, as was discussed  
7 yesterday?

8 PROSPECTIVE JUROR NO. 2: You mean in arriving at the  
9 decision, or in dealing with the other people?

10 MS. MOUNTS: Yes. Well, if you could kind of describe  
11 to us. If you could put yourself in that position, how would you  
12 deal with it?

13 PROSPECTIVE JUROR NO. 2: Deal with the other jurors?

14 MS. MOUNTS: That's correct.

15 PROSPECTIVE JUROR NO. 2: I would probably explain the  
16 reasons that I came to the conclusion I did.

17 MS. MOUNTS: Do you feel pretty strongly that you would  
18 stick to your position if you felt that it was correct?

19 PROSPECTIVE JUROR NO. 2: Oh, yes.

20 MS. MOUNTS: Okay. I note on your questionnaire that  
21 you have an attorney -- a cousin who's an attorney in another  
22 jurisdiction...

23 THE COURT: Number, ma'am?

24 MS. MOUNTS: Sorry, your Honor. That is No. 29.

25 PROSPECTIVE JUROR NO. 2: That's correct.

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8JD04561

1 MS. MOUNTS: Is that a male cousin or a female cousin?

2 PROSPECTIVE JUROR NO. 2: A male.

3 MS. MOUNTS: Do you have occasion to talk about your  
4 cousin's work with him?

5 PROSPECTIVE JUROR NO. 2: Very seldom. I think the  
6 last time I talked with him was probably five or six years ago.

7 MS. MOUNTS: Okay. Does he do criminal work or civil  
8 work, or do you know?

9 PROSPECTIVE JUROR NO. 2: Sort of a combination,  
10 criminal and civil.

11 MS. MOUNTS: Okay. Anything at all about that  
12 experience that would affect your perceptions or your ability to  
13 serve as a juror?

14 PROSPECTIVE JUROR NO. 2: No.

15 MS. MOUNTS: Okay. You indicated that you had been  
16 burglarized in 1975, and also that you had been part of a  
17 drugstore that was robbed.

18 PROSPECTIVE JUROR NO. 2: Yes.

19 MS. MOUNTS: Is that correct?

20 PROSPECTIVE JUROR NO. 2: Yes.

21 MS. MOUNTS: You also indicated that you've never been  
22 a witness in a criminal proceeding.

23 PROSPECTIVE JUROR NO. 2: No.

24 MS. MOUNTS: Does that mean that neither of those cases  
25 called for your involvement in any capacity?

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8JD04563

1 PROSPECTIVE JUROR NO. 2: Correct. As far as I know,  
2 nobody was every charged with those.

3 MS. MOUNTS: Okay. Is there anything at all about  
4 either of those two experiences that would affect your  
5 perceptions or your ability to be fair to these two men?

6 PROSPECTIVE JUROR NO. 2: No. No.

7 MS. MOUNTS: Ms. Rogers, how do you feel about the  
8 death penalty?

9 PROSPECTIVE JUROR NO. 2: In what respect?

10 MS. MOUNTS: Well, do you feel that it is imposed with  
11 enough frequency or perhaps too much frequency?

12 PROSPECTIVE JUROR NO. 2: I don't really know if I  
13 pay that much attention to the frequency that's imposed to  
14 answer that. I suppose -- I think it's a fair and proper  
15 punishment...

16 MS. MOUNTS: Okay.

17 PROSPECTIVE JUROR NO. 2: ...in some cases that I've  
18 read about or heard about.

19 MS. MOUNTS: Maybe I should back up a second and ask  
20 you if you've ever really had occasion to give it that much  
21 thought.

22 PROSPECTIVE JUROR NO. 2: Not an awful lot, no.

23 MS. MOUNTS: Okay. Have you ever had occasion to  
24 engage in conversations or perhaps debate it with your friends or  
25 co-workers or anything like that?

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8JD04563

8JD04564

1 PROSPECTIVE JUROR NO. 2: I'm sure I have in the past,  
2 yes.

3 MS. MOUNTS: Okay. So what I take from your answer is  
4 that you feel that it's a fitting and proper punishment in  
5 certain circumstances. Is that right?

6 PROSPECTIVE JUROR NO. 2: Yes.

7 MS. MOUNTS: And you understand, I'm sure, the Judge  
8 has informed you that if you get to the point where you are able  
9 to consider the death penalty, you will also have the options of  
10 life with the possibility of parole and life without the  
11 possibility of parole?

12 PROSPECTIVE JUROR NO. 2: Yes, I understand that.

13 MS. MOUNTS: Do you also believe that those two options  
14 are fitting and proper punishment for first-degree murder?

15 PROSPECTIVE JUROR NO. 2: Yes, I do.

16 MS. MOUNTS: Do you feel that you could give those  
17 three options equal weight in your mind?

18 PROSPECTIVE JUROR NO. 2: Yes.

19 MS. MOUNTS: Do you feel, as you sit here, that you  
20 could, after listening to all the evidence, impose any one of the  
21 three?

22 PROSPECTIVE JUROR NO. 2: Yes.

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

24 THE COURT: Mr. Seaton?

25 MR. SEATON: Thank you, Judge.

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8JD04564

8JD04565

1 Good morning, Ms. Rogers.

2 PROSPECTIVE JUROR NO. 2: Good morning.

3 MR. SEATON: You've been a nurse for how long?

4 PROSPECTIVE JUROR NO. 2: Probably 27/28 years.

5 MR. SEATON: During that period of time, most of it was  
6 spent in the Army?

7 PROSPECTIVE JUROR NO. 2: A large part of it, yes.

8 MR. SEATON: During that period of time, did you serve  
9 overseas?

10 PROSPECTIVE JUROR NO. 2: Yes. I served in Europe, and  
11 I served in Vietnam.

12 MR. SEATON: So you've served under combat conditions?

13 PROSPECTIVE JUROR NO. 2: Yes.

14 MR. SEATON: You've seen some pretty horrendous things,  
15 I would imagine?

16 PROSPECTIVE JUROR NO. 2: Yes.

17 MR. SEATON: You've done some work, I take it that,  
18 even though it's part of your job, you've not particularly liked  
19 what you were doing at that moment?

20 PROSPECTIVE JUROR NO. 2: Yes, many times.

21 MR. SEATON: Many times. Did you do a competent job?

22 PROSPECTIVE JUROR NO. 2: I believe I did.

23 MR. SEATON: Did you care about what you were doing?

24 PROSPECTIVE JUROR NO. 2: Yes.

25 MR. SEATON: What no one's asked you about in this case

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1 is, we all recognize you and probably many other people don't  
2 want to be here. There are a lot of other places you would  
3 rather be. Assuming you're selected, will you do a similarly  
4 competent job judging this particular case?

5 PROSPECTIVE JUROR NO. 2: Yes.

6 MR. SEATON: From that point of view, should the  
7 Defendants mind that you're one of their jurors?

8 PROSPECTIVE JUROR NO. 2: I guess not from that point  
9 of view, no.

10 MR. SEATON: Thank you. I'd pass for cause, Judge.

11 THE COURT: If you will hand the microphone to Mr.  
12 Isrow, please. Thank you very much.

13 Mr. Isrow, how long have you lived in Clark County, Nevada?

14 PROSPECTIVE JUROR NO. 7: About 20 years, your Honor.

15 THE COURT: Where were you born and raised?

16 PROSPECTIVE JUROR NO. 7: Detroit, Michigan.

17 THE COURT: What is your educational background?

18 PROSPECTIVE JUROR NO. 7: Twelve years.

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

21 PROSPECTIVE JUROR NO. 7: The last year and a half I've  
22 been an engineer at Treasure Island, and before that I owned my  
23 own business for eleven years, commercial restaurant repair.

24 THE COURT: Where?

25 PROSPECTIVE JUROR NO. 7: In Clark County.

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1 THE COURT: Treasure Island. All right.

2 PROSPECTIVE JUROR NO. 7: Yeah.

3 THE COURT: I was thinking about Sam's Town for some  
4 reason.

5 PROSPECTIVE JUROR NO. 7: Yeah. Strange--an island in  
6 Vegas?

7 THE COURT: Yes. I was going to ask you about it.  
8 What is your religious preference?

9 PROSPECTIVE JUROR NO. 7: Baptist.

10 THE COURT: Do you attend church regularly?

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

12 THE COURT: How old are you, sir?

13 PROSPECTIVE JUROR NO. 7: I'm 47.

14 THE COURT: Are you married?

15 PROSPECTIVE JUROR NO. 7: Yes, I am.

16 THE COURT: Is your wife employed?

17 PROSPECTIVE JUROR NO. 7: Yes, she is.

18 THE COURT: Where does she work and what are her  
19 duties?

20 PROSPECTIVE JUROR NO. 7: She works at the Clark County  
21 School District; she's a senior food server.

22 THE COURT: And do you have any children?

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

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

25 PROSPECTIVE JUROR NO. 7: I have a male that's 30, a

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1 female that's 29, and a male that's 24.

2 THE COURT: Are you acquainted with either the  
3 Defendants or their attorneys?

4 PROSPECTIVE JUROR NO. 7: No, I'm not.

5 THE COURT: Do you know anyone in the District  
6 Attorney's Office?

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

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

10 PROSPECTIVE JUROR NO. 7: No, I didn't.

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

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

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

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

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

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8JD04568

1 PROSPECTIVE JUROR NO. 7: No, I don't.

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

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

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

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

8 THE COURT: Have you ever served as a witness on a  
9 grand jury?

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

11 THE COURT: Have you ever served as a witness in any  
12 criminal prosecution?

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

14 THE COURT: Have you ever served on any jury?

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

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

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

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

20 PROSPECTIVE JUROR NO. 7: I had a vehicle stolen in  
21 1990.

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. 7: No, there isn't.

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8JD04569

8JD04570

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

3 PROSPECTIVE JUROR NO. 7: Well, that's part of the  
4 problem right now. I don't think I could, no.

5 THE COURT: Please explain, sir.

6 PROSPECTIVE JUROR NO. 7: Well, the Defense has been  
7 saying through the question and answer period that they should be  
8 taking into consideration what's happened in the ten years since  
9 the crime was committed. I feel that's wrong; I couldn't do  
10 that.

11 THE COURT: Even though the Court would instruct you  
12 that you may -- that you are to consider all the evidence that's  
13 offered?

14 PROSPECTIVE JUROR NO. 7: Exactly. And that's what I  
15 mean, I disagree with that. I couldn't do that; I feel that's  
16 wrong.

17 THE COURT: Mr. Schieck?

18 MR. SCHIECK: We would challenge for cause, your  
19 Honor.

20 THE COURT: Join in the challenge?

21 MR. WALL: Yes, we would, your Honor.

22 MR. SEATON: No traverse.

23 THE COURT: Thank you, Mr. Isrow, very much for coming  
24 down. Report back to your commissioner and tell him you've been  
25 excused.

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8JD04570



8JD04571  
1 THE CLERK: Patty J. Credille, Badge No. 510,  
2 C-R-E-D-I-L-L-E.

3 THE COURT: Ms. Credille, is that correct?

4 PROSPECTIVE JUROR NO. 7: Yes.

5 THE COURT: How long have you lived in Clark County,  
6 Nevada?

7 PROSPECTIVE JUROR NO. 7: Off and on for the past ten  
8 years.

9 THE COURT: Where did you come from this last  
10 time?

11 PROSPECTIVE JUROR NO. 7: Utah. Ogden, Utah  
12 originally.

13 THE COURT: Where were you born and raised?

14 PROSPECTIVE JUROR NO. 7: I was born in Melville, Utah;  
15 I was raised in Ogden, Utah.

16 THE COURT: What is your educational background?

17 PROSPECTIVE JUROR NO. 7: High school diploma, and I  
18 attended business college.

19 THE COURT: Which college did you attend?

20 PROSPECTIVE JUROR NO. 7: Ogden Business College.

21 THE COURT: And did you take up any law courses?

22 PROSPECTIVE JUROR NO. 7: No.

23 THE COURT: What has been your employment during the  
24 last ten years?

25 PROSPECTIVE JUROR NO. 7: I've been retired for four

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8JD04571

8JD04572  
1 years; previous to that I worked for the Internal Revenue  
2 Service.

3 THE COURT: And what was your duties in the IRS?

4 PROSPECTIVE JUROR NO. 7: I was classified as an  
5 accounting technician working in the accounting department.

6 THE COURT: What is your religious preference?

7 PROSPECTIVE JUROR NO. 7: I belong to the Church of  
8 Jesus Christ of Latter-day Saints.

9 THE COURT: And do you attend church regularly?

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

11 THE COURT: Are you married?

12 PROSPECTIVE JUROR NO. 7: Yes.

13 THE COURT: And is your husband employed?

14 PROSPECTIVE JUROR NO. 7: No, he is retired.

15 THE COURT: From what did he retire?

16 PROSPECTIVE JUROR NO. 7: He was an electronics  
17 engineer for the U.S. Air Force.

18 THE COURT: And do you have any children?

19 PROSPECTIVE JUROR NO. 7: Yes.

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

21 PROSPECTIVE JUROR NO. 7: I have a son 37, a daughter  
22 38, and a son 40.

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

25 PROSPECTIVE JUROR NO. 7: No.

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8JD04572

81004573

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

3 PROSPECTIVE JUROR NO. 7: No.

4 THE COURT: And did you recognize any of the persons  
5 whose 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 a jury may consider and then  
9 select the one that they believe is the most appropriate under  
10 the laws and facts of this case. Those three possible forms of  
11 punishment are: (a) life imprisonment with the possibility of  
12 parole, (b) life imprisonment without the possibility of parole;  
13 and (c) the imposition of the death penalty. Do you understand,  
14 ma'am?

15 PROSPECTIVE JUROR NO. 7: Yes.

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.

21 THE COURT: And 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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8JD04573

8JD04574

1 PROSPECTIVE JUROR NO. 7: No.

2 THE COURT: Do you have any close friends or relatives  
3 who are members of any law enforcement agencies?

4 PROSPECTIVE JUROR NO. 7: No.

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

7 PROSPECTIVE JUROR NO. 7: No.

8 THE COURT: Have you ever served on any jury before?

9 PROSPECTIVE JUROR NO. 7: No.

10 THE COURT: Have you ever been in the military service?

11 PROSPECTIVE JUROR NO. 7: No.

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

14 PROSPECTIVE JUROR NO. 7: No.

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

18 PROSPECTIVE JUROR NO. 7: Yes.

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. 7: Yes.

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

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8JD04574

81004575  
1 PROSPECTIVE JUROR NO. 7: No.

2 THE COURT: Mr. Schieck?

3 MR. SCHIECK: Thank you, your Honor.

4 THE COURT: You're welcome, sir.

5 MR. SCHIECK: How do you pronounce your name?

6 PROSPECTIVE JUROR NO. 7: Credille.

7 MR. SCHIECK: Credille. Ms. Credille, you reside in  
8 Overton?

9 PROSPECTIVE JUROR NO. 7: Yes.

10 MR. SCHIECK: So you're going to be commuting every day  
11 back and forth for the trial?

12 PROSPECTIVE JUROR NO. 7: Yes.

13 MR. SCHIECK: Okay. Does that create any hardship on  
14 you?

15 PROSPECTIVE JUROR NO. 7: No.

16 MR. SCHIECK: One of your son's is an attorney?

17 PROSPECTIVE JUROR NO. 7: Yes.

18 MR. SCHIECK: Okay. Where does he practice?

19 PROSPECTIVE JUROR NO. 7: In Salt Lake City, Utah.

20 MR. SCHIECK: What type of law does he practice.

21 PROSPECTIVE JUROR NO. 7: Civil cases. He works for  
22 the Attorney General's Office.

23 MR. SCHIECK: Okay. On the civil side?

24 PROSPECTIVE JUROR NO. 7: Yes.

25 MR. SCHIECK: He doesn't prosecute any crimes at all?

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8JD04575

8JD04576  
1 PROSPECTIVE JUROR NO. 7: No, just defense for the  
2 State.

3 MR. SCHIECK: Okay. So if someone sues the State of  
4 Utah, he would act and defend the State of Utah?

5 PROSPECTIVE JUROR NO. 7: Yes.

6 MR. SCHIECK: Has he ever practiced criminal law?

7 PROSPECTIVE JUROR NO. 7: He worked for a private  
8 concern for a few years before he went to work for the Attorney  
9 General's Office.

10 MR. SCHIECK: Did he do criminal law while he was  
11 working for that private firm?

12 PROSPECTIVE JUROR NO. 7: No.

13 MR. SCHIECK: How would you feel if he did criminal law  
14 and was a defense attorney?

15 PROSPECTIVE JUROR NO. 7: I would support him in it.

16 MR. SCHIECK: You indicated that you would want twelve  
17 people in your same frame of mind to sit on a jury if you were on  
18 trial. Why is that?

19 PROSPECTIVE JUROR NO. 7: I feel I can be fair.

20 MR. SCHIECK: Do you feel you can be impartial?

21 PROSPECTIVE JUROR NO. 7: Yeah, I can be impartial.

22 MR. SCHIECK: Have you made any prejudgments or  
23 predispositions in this case?

24 PROSPECTIVE JUROR NO. 7: No.

25 MR. SCHIECK: Now, I note on your questionnaire that

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8JD04576

1 you have a number of grandchildren.

2 PROSPECTIVE JUROR NO. 7: I have four.

3 MR. SCHIECK: Is there anything about the nature of  
4 this case, which as you've been told involves the death of Dale  
5 Flanagan's grandparents, and you being a grandparent, that would  
6 cause you to prejudge the case in any way or be biased in any  
7 way?

8 PROSPECTIVE JUROR NO. 7: No. I wouldn't let my  
9 relationship with my family interfere with what I learn in the  
10 court system.

11 PROSPECTIVE JUROR NO. 7: You've never served on a jury  
12 before?

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

14 MR. SCHIECK: What do you think about the death penalty  
15 in general?

16 PROSPECTIVE JUROR NO. 7: I think it needs to be and  
17 still is part of our judicial system as an option for sentencing.

18 MR. SCHIECK: Now, you've been here in Clark County for  
19 about ten years now?

20 PROSPECTIVE JUROR NO. 7: Off and on. We lived -- we  
21 still had a home in Utah, we would spend part of the time --  
22 lived part of the time in Utah and part of the time here. We  
23 moved here permanently about four years ago.

24 MR. SCHIECK: You didn't see anything in the news at  
25 all about this case?

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8JD04577

81004578  
1 PROSPECTIVE JUROR NO. 7: No. I have heard nothing  
2 about it.

3 MR. SCHIECK: Have you followed any cases at all here  
4 in Clark County that involved the death penalty?

5 PROSPECTIVE JUROR NO. 7: No.

6 MR. SCHIECK: Okay. Where is Melville?

7 PROSPECTIVE JUROR NO. 7: It's in the northern part of  
8 Utah; it's close to Logan, if you know where Logan is.

9 MR. SCHIECK: Okay. Do you think the death penalty is  
10 used enough or too much in our system?

11 PROSPECTIVE JUROR NO. 7: I really hadn't thought too  
12 much about it.

13 MR. SCHIECK: You've never followed any cases where the  
14 death penalty was actually carried out?

15 PROSPECTIVE JUROR NO. 7: I've not really to the point  
16 where I was involved in it or concerned about it.

17 MR. SCHIECK: Okay. Have you ever discussed the death  
18 penalty with any friends or acquaintances?

19 PROSPECTIVE JUROR NO. 7: I have been in, you know,  
20 where it has been discussed, but I have never voiced my opinion.

21 MR. SCHIECK: Is this really -- now that you've been  
22 sitting here for -- or knew this was a death case for over a week  
23 now, had the chance to sit and think about it?

24 PROSPECTIVE JUROR NO. 7: Yes.

25 MR. SCHIECK: Is this really the first time that you've

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8JD04578



8JD04579  
1 been confronted with your own...

2 PROSPECTIVE JUROR NO. 7: Right.

3 MR. SCHIECK: ...philosophy on the death penalty?

4 PROSPECTIVE JUROR NO. 7: Right.

5 MR. SCHIECK: Did you ever waiver as to whether or not  
6 you believed it was appropriate?

7 PROSPECTIVE JUROR NO. 7: Yes. I think there are  
8 occasions where it is appropriate.

9 MR. SCHIECK: Do you agree that there are occasions  
10 where, even though a person's convicted of first-degree murder,  
11 that it's not appropriate?

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

13 MR. SCHIECK: And you could consider all three possible  
14 punishments equally?

15 PROSPECTIVE JUROR NO. 7: Yes.

16 MR. SCHIECK: Okay. Thank you very much, ma'am. We  
17 would pass for cause, your Honor.

18 THE COURT: Mr. Wall?

19 MR. WALL: Thank you, your Honor.

20 THE COURT: You're welcome, sir.

21 MR. WALL: Now, Ms. Credille, let me follow up on one  
22 question that Mr. Schieck asked you. I know that you have a  
23 grandson who is 16?

24 PROSPECTIVE JUROR NO. 7: Yes.

25 MR. WALL: And you've heard already, and if selected as

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8JD04579

81004580  
1 a juror you will hear more, about the fact that Dale Flanagan and  
2 Randolph Moore have been convicted of the murders of Dale's  
3 grandparents, and that occurred when Dale was 18 or 19 years old.  
4 Do you think that as you heard that testimony, you would relate  
5 it to the fact that you have grandchildren about that same age?

6 PROSPECTIVE JUROR NO. 7: No.

7 MR. WALL: Okay. There's been some prospective jurors  
8 that you've heard who have served one, two, three, maybe even  
9 four times on juries. I guess that -- well, the randomness of  
10 the selection process is some people serve more than others.  
11 Have you ever thought about the fact of whether you wanted to  
12 serve on a jury and be part of the system?

13 PROSPECTIVE JUROR NO. 7: I have been called, not as a  
14 juror, before but never selected.

15 MR. WALL: Have you gone through this questioning  
16 process before?

17 PROSPECTIVE JUROR NO. 7: Yes.

18 MR. WALL: Okay. Is jury service something that you  
19 would want to be a part of, or that those times when you weren't  
20 able to be selected you wish you had been so that you could be a  
21 part of it?

22 PROSPECTIVE JUROR NO. 7: Yes. I would like to be a  
23 part of it.

24 MR. WALL: Why do you think it's important?

25 PROSPECTIVE JUROR NO. 7: It's part of our system, and

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8JD04580

1 I just think, you know, someone has to do it, and I don't mind  
2 serving my time doing it.

3 MR. WALL: In Question No. 15 you indicated you had  
4 taken some courses, or at least one course, in a subject called  
5 "Behavioral Genetics."

6 PROSPECTIVE JUROR NO. 7: Yes.

7 MR. WALL: Can you tell me what that is?

8 PROSPECTIVE JUROR NO. 7: It's a study of the -- it's  
9 more or less the science of behavioral genetics--the study of the  
10 mind and body and how it relates to our emotional state and our  
11 relationship with others.

12 MR. WALL: When did you take that kind of class? Was  
13 there more than one?

14 PROSPECTIVE JUROR NO. 7: It was one class; it lasted  
15 about six weeks, and it has probably been maybe 15 years ago.

16 MR. WALL: Was a part of the class -- did you learn  
17 about how someone's behavior can be affected either just -- that  
18 their behavior later in life was affected either because of their  
19 genetics or because of experiences they have when they're very  
20 young?

21 PROSPECTIVE JUROR NO. 7: It was basically our genetic  
22 makeup, how it related to our emotional state and how we could  
23 control that if we would put forth the effort if we wanted to.

24 MR. WALL: Was it taught by a psychiatrist or a  
25 psychologist or someone with that kind of background?

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8JD04581

1 PROSPECTIVE JUROR NO. 7: Yes.

2 MR. WALL: Where did you take the class?

3 PROSPECTIVE JUROR NO. 7: It was offered by a clinic  
4 there in Ogden that actually assisted people with emotional-type  
5 problems, and it was run by people that, you know, had been  
6 trained in this field. And it was just offered as a course, and  
7 I thought it was very interesting, and so I took it.

8 MR. WALL: Okay. Was there any discussion in the  
9 course about criminal cases or how behavioral genetics might be  
10 important in the criminal justice system?

11 PROSPECTIVE JUROR NO. 7: I don't remember any criminal  
12 element entering into it.

13 MR. WALL: Okay. Let me ask you about one other area,  
14 and you've heard it asked of other prospective jurors. That  
15 situation where if selected, you were the lone holdout. There  
16 were eleven others putting pressure to come back with a unanimous  
17 verdict, and whatever you thought, you were the only one who  
18 thought that way. Tell me how you would handle that and whether  
19 or not you would be able to stick up for what you believed?

20 PROSPECTIVE JUROR NO. 7: If I was the only one that  
21 did not think the way everyone else did, I would want to hear  
22 their views and as to why they had arrived at that decision.  
23 And, yes, possibly they could convince me that they were right  
24 and I was wrong.

25 MR. WALL: But if after listening to their views you

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8JD04582

81004583

1 still thought that you were right, would you feel pressure to  
2 come back with a unanimous verdict? And how would you deal with  
3 the pressure?

4 PROSPECTIVE JUROR NO. 7: Not if I thought I was right,  
5 I wouldn't change my mind.

6 MR. WALL: Okay. Thank you very much. I will pass for  
7 cause, your Honor.

8 THE COURT: Mr. Seaton?

9 MR. SEATON: Good morning, Ms. Credille?

10 PROSPECTIVE JUROR NO. 7: Good morning.

11 THE COURT: Members of the panel, particularly those  
12 two gentlemen in the back, please be quiet. It's important that  
13 we hear, it's important that we understand, and your "p-s-s-t-s"  
14 are coming up here. I find that annoying to me; I'm quite it's  
15 annoying to the counsel. Please be quiet.

16 Please continue.

17 MR. SEATON: The course that you took in Ogden had to  
18 do with genetics and its effect on people's behavior.

19 PROSPECTIVE JUROR NO. 7: Right.

20 MR. SEATON: Is that correct?

21 PROSPECTIVE JUROR NO. 7: Yes.

22 MR. SEATON: Did the course teach that genetics can  
23 have some effect on people's behavior?

24 PROSPECTIVE JUROR NO. 7: Yes.

25 MR. SEATON: Did it also teach that people inherently

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8JD04583

1 have the ability to overcome any negative parts?

2 PROSPECTIVE JUROR NO. 7: Yes, very definitely, right.

3 MR. SEATON: All right. Did you believe that?

4 PROSPECTIVE JUROR NO. 7: Yes.

5 MR. SEATON: Do you believe in--oh, shall we call it --  
6 self-determination?

7 PROSPECTIVE JUROR NO. 7: Yes.

8 MR. SEATON: We have control over ourselves?

9 PROSPECTIVE JUROR NO. 7: Yes.

10 MR. SEATON: We make our own choices and live by those  
11 choices?

12 PROSPECTIVE JUROR NO. 7: Yes. Through our behavioral  
13 background, plus our genetics. You know, some problems might be  
14 more difficult to overcome, but if we really want to work at it,  
15 we can overcome them.

16 MR. SEATON: Okay. I take it from listening to the  
17 conversation thus far that you believe in the death penalty?

18 PROSPECTIVE JUROR NO. 7: Yes.

19 MR. SEATON: You think that the government has the  
20 right to pass laws to subject criminals to potential death  
21 penalty consequences?

22 PROSPECTIVE JUROR NO. 7: Right.

23 MR. SEATON: And do you similarly believe that we as  
24 citizens have the duty to sit on juries and impose the laws that  
25 the government has put before us?

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8JD04584

1 PROSPECTIVE JUROR NO. 7: Oh, very definitely.

2 MR. SEATON: The only other question I have has to do  
3 with you personally and individually. I understand your belief  
4 in these things. Did you hear my questions of at least one or  
5 two jurors before having to do with the capacity to actually do  
6 such a thing?

7 PROSPECTIVE JUROR NO. 7: Yes.

8 MR. SEATON: Okay. Do you believe that you have that  
9 capacity?

10 PROSPECTIVE JUROR NO. 7: I don't think it would be an  
11 easy decision to make; but if I felt that it was justified, I  
12 could make it.

13 MR. SEATON: I heard your answers about you're not  
14 going to interrelate your family with this case, but just like  
15 we're governed by some genetic things, we're governed by our  
16 environment, and I want to ask you this question with a little  
17 different slant on it. You've got grandchildren.

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

19 MR. SEATON: These two young men at the time they did  
20 the killing were about the age of a couple of your grandchildren.  
21 Do you think that in any way will cause you feelings of empathy  
22 for them that wouldn't be justified by the proceedings?

23 PROSPECTIVE JUROR NO. 7: I don't think so.

24 MR. SEATON: All right. So you feel like you're coming  
25 into this neutral on both sides?

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8JD04585

1 PROSPECTIVE JUROR NO. 7: Yes.

2 MR. SEATON: All right. Thank you very much. I pass  
3 for cause.

4 THE COURT: The Defense exercises its first peremptory  
5 challenge?

6 MR. WALL: Your Honor, can we approach the bench for a  
7 moment, please?

8 THE COURT: Yes, you may.

9 (Bench conference)

10 THE COURT: We're going to take a ten-minute  
11 break. It's 10:00; please be back in ten minutes after  
12 the hour.

13 In the meantime, it is your duty not to talk among  
14 yourselves or with anyone else on any matter pertaining to this  
15 trial; read, watch or listen to any report of or commentary on  
16 the trial by any person or by any medium of information,  
17 including without limitation newspapers, radio or television;  
18 form or express any opinion on any matter pertaining to this  
19 trial until it is finally submitted to you.

20 When you come back, please leave that first row vacant.  
21 Thank you.

22 THE BAILIFF: All rise.

23 (Recess taken and prospective jurors out at 10:04 a.m.)

24 .....

25 .....

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8JD04586



1 (Proceedings reconvened and prospective jurors in at 10:17  
2 a.m.)

3 THE BAILIFF: All rise. Department XI is again in  
4 session.

5 THE COURT: Please be seated.

6 Continuation of State vs. Flanagan and Moore. Let the  
7 record reflect the presence of the Defendants with counsel,  
8 District Attorney, other officers of the Court.

9 The Clerk will please call roll call of the jury -- jury  
10 panel rather.

11 (Clerk calls roll call of jury, all present)

12 THE COURT: Will counsel stipulate to the presence of  
13 the jury panel?

14 MR. SEATON: Yes, Judge.

15 MR. WALL: Yes, your Honor.

16 MR. SCHIECK: Yes, your Honor.

17 THE COURT: Defense may exercise their first peremptory  
18 challenge.

19 MR. WALL: Your Honor, with the Court's permission,  
20 we'll go first. And between defense counsel, we'll alternate--if  
21 that's all right. We would thank and excuse Juror No. 435, Mr.  
22 Blazi.

23 THE COURT: Mr. Blazi, sir, you are excused. Thank you  
24 for coming down. Report back to the commissioner and tell him  
25 that you have been excused.

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8JD04587

1 THE CLERK: Kevin M. Funk, Badge No. 511, F-U-N-K.  
2 THE COURT: Mr. Funk?  
3 PROSPECTIVE JUROR NO. 5: Yes, sir.  
4 THE COURT: How long have you lived in Clark County,  
5 Nevada?  
6 PROSPECTIVE JUROR NO. 5: Twenty-eight years.  
7 THE COURT: And where were you born and raised?  
8 PROSPECTIVE JUROR NO. 5: Las Vegas.  
9 THE COURT: And what is your educational background?  
10 PROSPECTIVE JUROR NO. 5: Associate's Degree in  
11 business management and about two more years at UNLV.  
12 THE COURT: And did you take any courses in law?  
13 PROSPECTIVE JUROR NO. 5: I had a criminal law and  
14 business law, freshmen course.  
15 THE COURT: What has been your employment for the last  
16 ten years?  
17 PROSPECTIVE JUROR NO. 5: Wiltar [phonetic]  
18 Communications as a telecommunications technician and at Imperial  
19 Palace as a laborer.  
20 THE COURT: And what is your religious preference?  
21 PROSPECTIVE JUROR NO. 5: Episcopalian.  
22 THE COURT: Do you attend church regularly?  
23 PROSPECTIVE JUROR NO. 5: No.  
24 THE COURT: How old are you?  
25 PROSPECTIVE JUROR NO. 5: Twenty-eight.

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8JD04588

1 THE COURT: Are you married or single?

2 PROSPECTIVE JUROR NO. 5: Single.

3 THE COURT: Do you have any children?

4 PROSPECTIVE JUROR NO. 5: No.

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

7 PROSPECTIVE JUROR NO. 5: No, sir.

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

10 PROSPECTIVE JUROR NO. 5: No, sir.

11 THE COURT: Did you recognize the names of any  
12 of the persons given to you as possible prosecution  
13 witnesses?

14 PROSPECTIVE JUROR NO. 5: No, sir.

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

23 PROSPECTIVE JUROR NO. 5: Yes, sir.

24 THE COURT: In your present state of mind, can you, if  
25 selected as a juror, consider equally all three possible forms of

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8JD04589

1 punishment and then select the one that you feel is most  
2 appropriate?

3 PROSPECTIVE JUROR NO. 5: Yes, sir.

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

6 PROSPECTIVE JUROR NO. 5: No, sir.

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

9 PROSPECTIVE JUROR NO. 5: No, sir.

10 THE COURT: Do you have any close friends or relatives  
11 who are members of a law enforcement agency?

12 PROSPECTIVE JUROR NO. 5: No, sir.

13 THE COURT: Have you ever appeared as a witness in any  
14 criminal prosecution?

15 PROSPECTIVE JUROR NO. 5: No, sir.

16 THE COURT: Have you ever appeared on a jury before?

17 PROSPECTIVE JUROR NO. 5: No, sir.

18 THE COURT: Have you ever been in the military service?

19 PROSPECTIVE JUROR NO. 5: No, sir.

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

22 PROSPECTIVE JUROR NO. 5: Yes, sir.

23 THE COURT: Please tell us when and where.

24 PROSPECTIVE JUROR NO. 5: In 1993 I had my car stolen,  
25 and the brother of my girlfriend's ex-boyfriend was murdered.

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8JD04590

8JD04591

1 THE COURT: Is there anything about those experiences  
2 that would cause you to have any biases for or against either  
3 side in this case?

4 PROSPECTIVE JUROR NO. 5: 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. 5: Yes, sir.

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. 5: Yes, sir.

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

15 PROSPECTIVE JUROR NO. 5: No, sir.

16 THE COURT: Mr. Wolfbrandt?

17 MR. WOLFBRANDT: Good morning, Mr. Funk.

18 PROSPECTIVE JUROR NO. 5: Good morning.

19 MR. WOLFBRANDT: See if I got this right. Your  
20 sister's ex-boyfriend's brother was murdered.

21 PROSPECTIVE JUROR NO. 5: My girlfriend's ex-  
22 boyfriend's brother.

23 MR. WOLFBRANDT: I did get that backwards. Was that  
24 here in Las Vegas?

25 PROSPECTIVE JUROR NO. 5: Yes, it was.

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8JD04591

1 MR. WOLFBRANDT: How long ago was that?  
2 PROSPECTIVE JUROR NO. 5: I believe it was six, seven  
3 years ago.  
4 MR. WOLFBRANDT: Was anybody caught and go to trial?  
5 PROSPECTIVE JUROR NO. 5: I don't know. Never asked  
6 her, and she didn't want to volunteer the information.  
7 MR. WOLFBRANDT: All right. Did you follow the case at  
8 all?  
9 PROSPECTIVE JUROR NO. 5: No, sir.  
10 MR. WOLFBRANDT: All right. Now, where you presently  
11 reside you've only been there one month?  
12 PROSPECTIVE JUROR NO. 5: That's correct.  
13 MR. WOLFBRANDT: What general part of the valley did  
14 you live in before that?  
15 PROSPECTIVE JUROR NO. 5: The west, Spring Valley.  
16 MR. WOLFBRANDT: Is that where you grew up?  
17 PROSPECTIVE JUROR NO. 5: Yes.  
18 MR. WOLFBRANDT: Did you go to high school here?  
19 PROSPECTIVE JUROR NO. 5: Yes, I did.  
20 MR. WOLFBRANDT: Which one?  
21 PROSPECTIVE JUROR NO. 5: Clark.  
22 MR. WOLFBRANDT: Tell me a little bit about what you  
23 were taught in the criminal justice class you took at UNLV.  
24 Actually, don't answer that. Did you take that class because it  
25 was required for your course of studies?

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8JD04592

1 PROSPECTIVE JUROR NO. 5: It was a requirement.

2 MR. WOLFBRANDT: Okay. And then what was it that you  
3 learned in that class?

4 PROSPECTIVE JUROR NO. 5: It's been so long, I really  
5 don't remember. It was in entry level.

6 MR. WOLFBRANDT: Okay. It wasn't one that you had  
7 taken as an interest?

8 PROSPECTIVE JUROR NO. 5: No.

9 MR. WOLFBRANDT: It's like statistics--you had to get  
10 through it?

11 PROSPECTIVE JUROR NO. 5: Yeah.

12 MR. WOLFBRANDT: In question, I believe it was, 59C you  
13 were asked--and I believe your answer was a little bit  
14 inconsistent with what the Judge asked you--"If your personal  
15 opinions differed from what the Court's instructions were to you,  
16 could you follow the Court's instructions?"

17 Well, actually the question was, "Would your views or state  
18 of mind prevent you or substantially impair your performance in  
19 following the instructions of the Court?" And you answered,  
20 "Yes," that you would be impaired. And I wonder if maybe you  
21 just maybe misunderstood the question?

22 PROSPECTIVE JUROR NO. 5: I must have misunderstood it  
23 then, yeah.

24 MR. WOLFBRANDT: Okay. Do you have your own opinion as  
25 to the appropriateness of the death penalty?

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8JD04593

8JD04594  
1 PROSPECTIVE JUROR NO. 5: Some. That it's a valid  
2 penalty, depending on each case.

3 MR. WOLFBRANDT: Okay. Have you had some discussions  
4 with friends or family members about cases where the death  
5 penalty was involved?

6 PROSPECTIVE JUROR NO. 5: No. Just in general.

7 MR. WOLFBRANDT: Okay. In the general discussions,  
8 have you advocated the death penalty?

9 PROSPECTIVE JUROR NO. 5: Yes, I have.

10 MR. WOLFBRANDT: What types of cases do you feel that's  
11 appropriate?

12 PROSPECTIVE JUROR NO. 5: A heinous case, you have a  
13 Jeffrey Dahmer incident. Certain cases like that.

14 MR. WOLFBRANDT: Do you feel that it's an appropriate  
15 penalty in all first-degree murder cases?

16 PROSPECTIVE JUROR NO. 5: Not in all, no.

17 MR. WOLFBRANDT: Is there anything about the factual  
18 pattern of this case that causes you to maybe lean towards one of  
19 the three possible punishments versus another?

20 PROSPECTIVE JUROR NO. 5: No.

21 MR. WOLFBRANDT: Have you had -- in the last week have  
22 you had conversations with some of the other prospective jurors  
23 about anything to do with this case before you came in and got an  
24 admonition from the Court?

25 PROSPECTIVE JUROR NO. 5: No.

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8JD04594



81004595

1 MR. WOLFBRANDT: Is there anything about the physical  
2 appearance of either Dale Flanagan or Randy Moore that instills  
3 any kind of opinion in you as you sit here right now?

4 PROSPECTIVE JUROR NO. 5: No.

5 MR. WOLFBRANDT: Have you ever had any close friends  
6 that have been accused of a crime?

7 PROSPECTIVE JUROR NO. 5: Not to my knowledge.

8 MR. WOLFBRANDT: I think I'd pass for cause.

9 THE COURT: Ms. Mounts?

10 MS. MOUNTS: Thank you, your Honor.

11 Mr. Funk, good morning.

12 PROSPECTIVE JUROR NO. 5: Good morning.

13 MS. MOUNTS: The gentleman who was murdered, sir, was  
14 he a friend of yours or just your girlfriend's?

15 PROSPECTIVE JUROR NO. 5: My girlfriend's.

16 MS. MOUNTS: So you didn't know the gentleman?

17 PROSPECTIVE JUROR NO. 5: Didn't know him; don't know  
18 anything about the case.

19 MS. MOUNTS: And you've indicated that she doesn't talk  
20 about him or anything?

21 PROSPECTIVE JUROR NO. 5: She mentioned that he was  
22 murdered, and that was about it. She didn't want to go into  
23 details, and I didn't ask her.

24 MS. MOUNTS: Is there anything at all about the effect  
25 that case may have had on your girlfriend, as you could perceive

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8JD04595

8JD04596  
1 it, that would affect your judgement in this case at all?

2 PROSPECTIVE JUROR NO. 5: No.

3 MS. MOUNTS: The course you took at UNLV, you stated  
4 that was an entry level criminal justice course that you had to  
5 take?

6 PROSPECTIVE JUROR NO. 5: That's correct.

7 MS. MOUNTS: Is that right?

8 PROSPECTIVE JUROR NO. 5: Yeah.

9 MS. MOUNTS: Do you recall, was there any discussion  
10 about the death penalty in that course?

11 PROSPECTIVE JUROR NO. 5: I don't recall. I don't  
12 think so.

13 MS. MOUNTS: And you stated in response to one of Mr.  
14 Wolfbrandt's questions that you believe the death penalty to be  
15 appropriate in certain kinds of cases?

16 PROSPECTIVE JUROR NO. 5: That's correct.

17 MS. MOUNTS: And I believe he asked you: "Do you  
18 believe it to be appropriate in all first-degree murder cases?"

19 PROSPECTIVE JUROR NO. 5: No.

20 MS. MOUNTS: Do you have in your mind a certain type of  
21 first-degree murder case in which it might be appropriate? You  
22 mentioned an especially heinous crime, and I'm just trying to go  
23 into a little more detail.

24 PROSPECTIVE JUROR NO. 5: A heinous type of crime,  
25 correct. A very violent, graphic, noncaring.

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8JD04596

1 MS. MOUNTS: You understand in this case that these two  
2 gentlemen were convicted of the murders of two individuals?

3 PROSPECTIVE JUROR NO. 5: That's correct.

4 MS. MOUNTS: Is there anything about the fact that two  
5 people were killed...

6 PROSPECTIVE JUROR NO. 5: No.

7 MS. MOUNTS: ...that would affect your judgement one  
8 way or the other?

9 PROSPECTIVE JUROR NO. 5: No.

10 MS. MOUNTS: Do you remember reading or hearing  
11 anything about this case prior to coming into the jury  
12 commissioner's office last week?

13 PROSPECTIVE JUROR NO. 5: No.

14 MS. MOUNTS: Okay. So you don't know anything about  
15 the case other than what we've told you and what's in the  
16 questionnaire?

17 PROSPECTIVE JUROR NO. 5: That's correct.

18 MS. MOUNTS: You stated in response to 59C that you  
19 believe in the adage "an eye for an eye"?

20 PROSPECTIVE JUROR NO. 5: that's correct.

21 MS. MOUNTS: Have you always believed in it?

22 PROSPECTIVE JUROR NO. 5: Yes, I have.

23 MS. MOUNTS: Let me get you to explain a little bit  
24 about what that phrase or saying means to you.

25 PROSPECTIVE JUROR NO. 5: Well, it's pretty basic: an

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8JD04597

1 eye for an eye. You take somebody's life, and you deserve to  
2 have yours taken. And like I said earlier, each case is  
3 different, and it depends on what I considered a violent type of  
4 case for an eye to an eye be effective otherwise.

5 MS. MOUNTS: Would you say then that you might be  
6 inclined to start from the position that since these gentlemen  
7 have been convicted of taking the lives of two people that their  
8 lives should be taken and that we would then have to convince you  
9 otherwise? Would that be fair to say?

10 PROSPECTIVE JUROR NO. 5: No.

11 MS. MOUNTS: Okay. Can you explain to me a little bit  
12 about how you would view that?

13 PROSPECTIVE JUROR NO. 5: Right now I have no opinion  
14 on whether they should be sentenced to death or life in prison  
15 with or without parole; it'll be up to you and the District  
16 Attorney to prove to me one way or another.

17 MS. MOUNTS: I guess what I'm getting at is I want to  
18 make sure that we're not starting off in the hole.

19 PROSPECTIVE JUROR NO. 5: No, we're not.

20 MS. MOUNTS: Okay. You had had occasion you said to  
21 talk about the death penalty with your friends?

22 PROSPECTIVE JUROR NO. 5: That's correct.

23 MS. MOUNTS: And that you had had occasion to advocate  
24 the death penalty in those discussions?

25 PROSPECTIVE JUROR NO. 5: Correct.

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8JD04598

1 MS. MOUNTS: Have you ever had the occasion to take the  
2 other position--to advocate that a particular person or maybe  
3 group of people deserve life imprisonment perhaps with the  
4 possibility of parole?

5 PROSPECTIVE JUROR NO. 5: No. No, that's never come  
6 up.

7 MS. MOUNTS: Have you heard or read about or maybe  
8 followed cases in the newspaper where you thought that might be  
9 an appropriate punishment?

10 PROSPECTIVE JUROR NO. 5: Well, like I said earlier,  
11 like the Jeffrey Dahmer incident. But other than that, no.

12 MS. MOUNTS: I was referring -- perhaps I didn't state  
13 it very clearly. Referring to cases in which you might have felt  
14 that life imprisonment with parole might be appropriate?

15 PROSPECTIVE JUROR NO. 5: No, no.

16 MS. MOUNTS: And we've gone over this a number of  
17 times. You understand that that would be one of the three  
18 options that you may have...

19 PROSPECTIVE JUROR NO. 5: That's correct.

20 MS. MOUNTS: ...if you get to the point where you are  
21 able to consider the death penalty. Do you understand that?

22 PROSPECTIVE JUROR NO. 5: Yes, I do.

23 MS. MOUNTS: And would you be able, sir, to give equal  
24 weight to all three of those options,...

25 PROSPECTIVE JUROR NO. 5: Yes, I would.

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8JD04599

1 MS. MOUNTS: ...being life with parole, life without  
2 parole or the death penalty?

3 PROSPECTIVE JUROR NO. 5: Yes, I would.

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

5 THE COURT: Mr. Seaton?

6 MR. SEATON: Mr. Funk, would you have any difficulty in  
7 following through on your philosophy? You've heard us talk about  
8 the actual job that a jury has to do in a situation like this in  
9 imposing the death penalty. If you thought it was warranted,  
10 would you have any trouble coming back here and looking at these  
11 gentlemen and telling them that you thought the death penalty was  
12 appropriate?

13 PROSPECTIVE JUROR NO. 5: No, I wouldn't.

14 MR. SEATON: Even though they are approximately  
15 now the same years as you are? Any feelings of empathy  
16 that way at all?

17 PROSPECTIVE JUROR NO. 5: None.

18 MR. SEATON: All right. Thank you. I'd pass for  
19 cause, Judge.

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

22 MR. SEATON: Judge, the State would thank and excuse  
23 the juror sitting in the No. 11 position, Ms. Brush.

24 THE COURT: Ms. Brush, you are excused, ma'am. Thank  
25 you for coming down.

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8JD04600

8JD04601  
1 THE CLERK: Laddawan Ladei Shields, Badge No. 512,  
2 S-H-I-E-L-D-S.

3 THE COURT: Ms. Shields, how long have you lived in  
4 Clark County, Nevada?

5 PROSPECTIVE JUROR NO. 11: Four years, sir.

6 THE COURT: Four?

7 PROSPECTIVE JUROR NO. 11: Four years, sir.

8 THE COURT: And where were you born and raised?

9 PROSPECTIVE JUROR NO. 11: Thailand.

10 THE COURT: And when did you come to the United States?

11 PROSPECTIVE JUROR NO. 11: About 22 years ago, sir.

12 THE COURT: What is your educational background?

13 PROSPECTIVE JUROR NO. 11: Education in Thailand and  
14 professional design in UCLA, sir.

15 THE COURT: And what was your field of endeavor at  
16 UCLA?

17 PROSPECTIVE JUROR NO. 11: Fashion design, sir.

18 THE COURT: All right. What has been your employment  
19 for the last ten years?

20 PROSPECTIVE JUROR NO. 11: In wholesale garment  
21 district in downtown LA, sir.

22 THE COURT: All right. And what is your religious  
23 preference? (pause) What is your religious preference?

24 PROSPECTIVE JUROR NO. 11: Buddha.

25 THE COURT: I have to ask the question, I don't know:

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8JD04601

1 Do buddhists attend church or what?

2 PROSPECTIVE JUROR NO. 11: Repeat question again, sir.

3 THE COURT: Do Buddhists attend church or a temple?

4 PROSPECTIVE JUROR NO. 11: High temple, sir.

5 THE COURT: And do you attend regularly?

6 PROSPECTIVE JUROR NO. 11: Yes, sir.

7 THE COURT: All right. How old are you?

8 PROSPECTIVE JUROR NO. 11: Fifty-four years old.

9 THE COURT: Are you married?

10 PROSPECTIVE JUROR NO. 11: Yes, sir.

11 THE COURT: Is your husband employed?

12 PROSPECTIVE JUROR NO. 11: He retired from the Lockheed  
13 Company, sir.

14 THE COURT: Do you know what he did there?

15 PROSPECTIVE JUROR NO. 11: Engineer.

16 THE COURT: And do you have any children?

17 PROSPECTIVE JUROR NO. 11: I have two boys and one  
18 girl, sir.

19 THE COURT: I have their ages, please?

20 PROSPECTIVE JUROR NO. 11: Thirty-nine years old, male;  
21 38 years old, male; 26 years old, female, sir.

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

24 PROSPECTIVE JUROR NO. 11: No, sir.

25 THE COURT: Do you know anyone in the District

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8JD04602



81004603  
1 Attorneys Office?

2 PROSPECTIVE JUROR NO. 11: No, sir.

3 THE COURT: Did you recognize any of the persons whose  
4 names were given to you as possible witness in this case?

5 PROSPECTIVE JUROR NO. 11: No, sir.

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

14 PROSPECTIVE JUROR NO. 11: I understand, sir.

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

19 PROSPECTIVE JUROR NO. 11: No, sir.

20 THE COURT: Please explain.

21 PROSPECTIVE JUROR NO. 11: Because of the different  
22 situation, sir.

23 THE COURT: Please explain.

24 PROSPECTIVE JUROR NO. 11: Some natural killer or some  
25 defend themselves, some depressed, something happen to the

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8JD04603

1 children or the person or people.

2 THE COURT: Mr. Seaton?

3 MR. SEATON: Do you wish me to ask some questions,  
4 Judge?

5 THE COURT: If you wish.

6 MR. SEATON: I would. Thank you.  
7 Do you believe in the death penalty?

8 PROSPECTIVE JUROR NO. 11: I believe, but depend on  
9 situation.

10 MR. SEATON: All right.

11 PROSPECTIVE JUROR NO. 11: In the case, it would end.  
12 I can't put all criminal to the death penalty.

13 MR. SEATON: You could not?

14 PROSPECTIVE JUROR NO. 11: I could not. I have to look  
15 at the background or situation what happened to them.

16 MR. SEATON: That's what we're here for today; we're  
17 going to look at the backgrounds.

18 PROSPECTIVE JUROR NO. 11: Yes.

19 MR. SEATON: We're going to look at the nature of the  
20 killing itself--the killings, there were two.

21 PROSPECTIVE JUROR NO. 11: Yes.

22 MR. SEATON: We're going to look at the character of  
23 these two young men.

24 PROSPECTIVE JUROR NO. 11: Yes.

25 MR. SEATON: Find out who they were and who they are.

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SA617

8JD04604

1 PROSPECTIVE JUROR NO. 11: Yes, sir.  
2 MR. SEATON: With all of that information, would you be  
3 able to sit as a juror?  
4 PROSPECTIVE JUROR NO. 11: Yes, sir.  
5 MR. SEATON: Would it be difficult for you?  
6 PROSPECTIVE JUROR NO. 11: I don't think so.  
7 MR. SEATON: Could you impose the death penalty?  
8 PROSPECTIVE JUROR NO. 11: Yes. Maybe. I'm sorry.  
9 Maybe. I'm sorry.  
10 MR. SEATON: Your answer was perfect until that last  
11 word!  
12 (Laughter)  
13 PROSPECTIVE JUROR NO. 11: Because I didn't know about  
14 the story; I didn't know about what happened.  
15 MR. SEATON: Let's discuss it just a little bit.  
16 What's going to happen in the Court after we finish picking the  
17 jury is the State will call witnesses, and they'll take the  
18 witness stand up there, and they will testify. They will say  
19 what happened to cause the killings, and they will explain most  
20 of the case to you. Do you understand that?  
21 PROSPECTIVE JUROR NO. 11: Yes.  
22 MR. SEATON: Okay. They're not going to tell you all  
23 about the case. There was a trial back in 1985. Do you remember  
24 the long list of witnesses I read at the very beginning the first  
25 day we were here?

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8JD04605

1 PROSPECTIVE JUROR NO. 11: Yes.

2 MR. SEATON: All of those witnesses testified in front  
3 of that particular jury; they heard all sorts of little details  
4 about this case, and they decided that these two gentlemen were  
5 guilty of first-degree murder, killing the two grandparents of  
6 Dale Flanagan. Do you understand that?

7 PROSPECTIVE JUROR NO. 11: Yes.

8 MR. SEATON: Are you willing to accept that guilty  
9 verdict and believe in your mind and your heart that these two  
10 gentlemen really are guilty of first-degree murder?

11 PROSPECTIVE JUROR NO. 11: I don't think so; I have to  
12 think about first.

13 MR. SEATON: That's a good point that we're talking  
14 about.

15 PROSPECTIVE JUROR NO. 11: Yes.

16 MR. SEATON: So what we're going to ask this jury to do  
17 --actually, what we're going to require this jury to do--is to  
18 accept the fact that these two men are guilty. They're not going  
19 to be allowed to question that at all; it's something that  
20 another jury, just like people like yourselves, decided. And  
21 that decision is final, and it can't be changed. You understand?

22 PROSPECTIVE JUROR NO. 11: I understand.

23 MR. SEATON: Okay. Whoever sits in judgement of these  
24 gentlemen and who decides what their penalty is going to be has  
25 got to be willing to accept the fact that they did in fact kill

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8JD04606

81004607  
1 these two grandparents. They actually did the killing  
2 themselves, and it can't be questioned. And my question to you  
3 again I'll ask you: Understanding all of that, can you do that?  
4 Can you accept as true the fact that they are the killers?

5 PROSPECTIVE JUROR NO. 11: Yes, I do.

6 MR. SEATON: Now, before when I asked you that question  
7 you said you'd have a hard time doing that. Can you explain to  
8 me any difficulty that you might have?

9 PROSPECTIVE JUROR NO. 11: Well, the story I didn't  
10 know before, and I don't believe the kids growing up to be the  
11 killer. So maybe something wrong, or depressed, or something  
12 happened to the children, or the boys, or the young man,  
13 whatever.

14 MR. SEATON: Are you telling us that in your own mind  
15 and in your past experiences it's hard for you to believe that a  
16 grandson would kill his own grandmother?

17 PROSPECTIVE JUROR NO. 11: It's difficult to believe.

18 MR. SEATON: It is. Can you accept that that happened?

19 PROSPECTIVE JUROR NO. 11: Yes.

20 MR. SEATON: All right. The last thing that you said  
21 to me: Do you mean that you would then be looking for some sort  
22 of an excuse, a reason that he did that...

23 PROSPECTIVE JUROR NO. 11: Yes.

24 MR. SEATON: ...or that both of them did the acts they  
25 did?

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8JD04607

1 PROSPECTIVE JUROR NO. 11: Yes, yes.

2 MR. SEATON: And you think it might be because they  
3 were depressed?

4 PROSPECTIVE JUROR NO. 11: Yes.

5 MR. SEATON: They've had bad childhoods?

6 PROSPECTIVE JUROR NO. 11: Yes.

7 MR. SEATON: Do you remember the lady over here who had  
8 the class in genetics?

9 PROSPECTIVE JUROR NO. 11: Yes.

10 MR. SEATON: And do you know that that means that  
11 whatever your genes are causes you to be a certain way?

12 PROSPECTIVE JUROR NO. 11: Yes.

13 MR. SEATON: And do you think maybe that could be the  
14 fact, that they just have something in them that made them do it?

15 PROSPECTIVE JUROR NO. 11: So many things happened to  
16 this world; so many things happen in the present times for the  
17 children. I heard so many stories, or I don't know. Maybe  
18 something happened or something by this.

19 MR. SEATON: All right. Would you be looking for  
20 reasons that they killed the grandparents?

21 PROSPECTIVE JUROR NO. 11: Yes, sir.

22 MR. SEATON: Would you be thinking of those reasons as  
23 excuses?

24 PROSPECTIVE JUROR NO. 11: Yes.

25 MR. SEATON: In other words, maybe they shouldn't be

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SA621

8JD04608

8JD04609  
1 punished quite so hard because something made them do it?

2 PROSPECTIVE JUROR NO. 11: Maybe.

3 MR. SEATON: Do you think also perhaps they might have  
4 just been bad?

5 PROSPECTIVE JUROR NO. 11: Yes.

6 MR. SEATON: And they did it because they were bad or  
7 mean and they had no excuse except their own bad motives?

8 PROSPECTIVE JUROR NO. 11: Yes.

9 MR. SEATON: All right. Do you think it's likely that  
10 it's one or the other--either they had an excuse or that they  
11 were just bad?

12 PROSPECTIVE JUROR NO. 11: Yes.

13 MR. SEATON: Which do you think?

14 PROSPECTIVE JUROR NO. 11: Well, I think in my...

15 MR. SCHIECK: Your Honor, I'm going to object to him  
16 asking her to make conclusions now without hearing all the  
17 evidence in the case. He's asking...

18 PROSPECTIVE JUROR NO. 11: Yes, I can.

19 MR. SEATON: Let me reword the question.

20 THE COURT: I'm going to sustain the objection, but I  
21 think you can rephrase your question now too, Counsel.

22 MR. SEATON: Yeah, let me reword the question. Without  
23 reference to this particular case...

24 PROSPECTIVE JUROR NO. 11: Yes.

25 MR. SEATON: ...just all murder cases let's say...

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8JD04609

1 PROSPECTIVE JUROR NO. 11: Yes.

2 MR. SEATON: ...do you think it's more likely that a  
3 murderer, just in your own way of thinking,...

4 PROSPECTIVE JUROR NO. 11: Yes.

5 MR. SEATON: ...that a murderer has an excuse that they  
6 did it or that they were bad and they did it?

7 PROSPECTIVE JUROR NO. 11: I don't think they bad.  
8 Everybody got their own idea. I have my opinion, but...

9 MR. SEATON: You have your what? I'm sorry.

10 PROSPECTIVE JUROR NO. 11: I have my opinion thinking.

11 MR. SEATON: Opinion. Okay.

12 PROSPECTIVE JUROR NO. 11: And I thinking everybody in  
13 the world, nobody want to be the bad, nobody want to be the  
14 killer, nobody want to be anything; the people whole world say it  
15 bad or worse, whatever. Everybody I think in my opinion. But  
16 maybe something happened. Friend or some kind of -- get idea  
17 from the movie or something like this. That's what make the  
18 children going very badly, mean. That's my thinking.

19 MR. SEATON: All right. Do you think because of those  
20 things that happen to children, as you put it, that they should  
21 be punished hard or that they should be punished soft?

22 PROSPECTIVE JUROR NO. 11: Depend on situation, like I  
23 told you.

24 MR. SEATON: All right.

25 PROSPECTIVE JUROR NO. 11: They very worse, or they

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8JD04610



1 very bad, or they a little bit problem, something like this  
2 depend. I can't judge everybody when they go commit crime, have  
3 to be punished like a bad penalty. I can't object criminals like  
4 that.

5 MR. SEATON: Not all people?

6 THE COURT: Mr. Seaton?

7 PROSPECTIVE JUROR NO. 11: Not all. Not all.

8 MR. SEATON: Yes, Judge.

9 THE COURT: Are you going to issue a challenge? If  
10 not, I'll continue.

11 MR. SEATON: I am not going to going to issue a  
12 challenge, no.

13 THE COURT: Okay. Fine. I'll get back to you then.

14 MR. SEATON: All right. May I continue?

15 THE COURT: No. Have a seat. I'll get back to you  
16 later.

17 MR. SEATON: Okay.

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

20 PROSPECTIVE JUROR NO. 11: No, sir.

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

23 PROSPECTIVE JUROR NO. 11: No, sir.

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

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8JD04611

1 PROSPECTIVE JUROR NO. 11: No, sir.

2 THE COURT: Have you ever appeared as a witness before  
3 a grand jury? (pause) Have you ever been a witness in any kind  
4 of a court proceeding?

5 PROSPECTIVE JUROR NO. 11: No, sir.

6 THE COURT: Have you ever been in the military service?

7 PROSPECTIVE JUROR NO. 11: No, sir.

8 THE COURT: Have you ever been a victim of a crime?

9 PROSPECTIVE JUROR NO. 11: No, sir.

10 THE COURT: Has any close friend or relative of yours  
11 ever been a victim of a crime?

12 PROSPECTIVE JUROR NO. 11: No, sir.

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

16 PROSPECTIVE JUROR NO. 11: Yes, sir.

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

20 PROSPECTIVE JUROR NO. 11: Yes, sir.

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

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8JD04612

8JD04613

1 PROSPECTIVE JUROR NO. 11: Yes, sir.

2 THE COURT: Let me ask my question another way.

3 If you are selected as a juror, and I've asked you some  
4 questions, do you have any other reasons or have any reason, and  
5 I have not asked you about them, why you cannot sit as a fair and  
6 impartial juror in this case?

7 PROSPECTIVE JUROR NO. 11: No, sir.

8 THE COURT: Mr. Schieck?

9 MR. SCHIECK: Thank you, your Honor.

10 Ms. Shields, you understand that there is three possible  
11 punishments in this case?

12 PROSPECTIVE JUROR NO. 11: Yes, sir.

13 MR. SCHIECK: If you're selected on the jury, would you  
14 be able to consider all three of those punishments?

15 PROSPECTIVE JUROR NO. 11: Yes, sir.

16 MR. SCHIECK: You would consider them equally?

17 PROSPECTIVE JUROR NO. 11: Yes, sir.

18 MR. SCHIECK: In your questionnaire, No. 54, the  
19 question is: "I never disagree with the law." And you say  
20 "False." Do you sometimes disagree with the law?

21 PROSPECTIVE JUROR NO. 11: Sometimes, sir.

22 MR. SCHIECK: Can you give me an example of when you  
23 might disagree with the law?

24 PROSPECTIVE JUROR NO. 11: I don't know, because I just  
25 listen to most people say sometimes the law -- like an example,

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SA626

8JD04613

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 3 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

8JD04488

1 that.

2 MR. WOLFBRANDT: And that's bothered you for however  
3 long it's been since then?

4 PROSPECTIVE JUROR NO. 10: Every once in awhile it  
5 comes up that somebody's going up for parole, and they bring it  
6 up, and I think about it. You know, I stop and think, what would  
7 happen if these people got loose again?

8 MR. WOLFBRANDT: In response to Question No. 63, which  
9 I'm sure you have no recollection what Question 63 was...

10 PROSPECTIVE JUROR NO. 10: No.

11 MR. WOLFBRANDT: ...so, I'll read it back to you. "Do  
12 you believe that the legal system unduly favors a person accused  
13 of a crime," and your answer was, "If the crime is very bad I do  
14 not believe the person should be allowed to plea bargain to a  
15 lesser crime to get a lighter sentence."

16 PROSPECTIVE JUROR NO. 10: Right.

17 MR. WOLFBRANDT: Is this one of those types of cases --  
18 well, first it's not one of those types of cases.

19 PROSPECTIVE JUROR NO. 10: No, this isn't, no.

20 MR. WOLFBRANDT: Because we're here now with a jury...

21 PROSPECTIVE JUROR NO. 10: Right.

22 MR. WOLFBRANDT: ...to decide the penalty. Would you  
23 consider life with the possibility of parole as a possible  
24 sentence in this case given that that in general terms would be  
25 considered a lighter sentence versus life without the possibility

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8JD04488

1 of parole and the death penalty?

2 PROSPECTIVE JUROR NO. 10: No, I don't think so. I  
3 think I would be able to consider all three of the possibilities  
4 of sentence.

5 MR. WOLFBRANDT: Well, maybe you misunderstood me. I  
6 was asking if you would consider that as one of the possible  
7 punishments here?

8 PROSPECTIVE JUROR NO. 10: Oh, yes, sir.

9 MR. WOLFBRANDT: Okay. I mean, you would agree that  
10 most everybody would consider that to be the lesser of the three  
11 possibilities?

12 PROSPECTIVE JUROR NO. 10: Right.

13 MR. WOLFBRANDT: But you could still consider that?

14 PROSPECTIVE JUROR NO. 10: Yes, sir.

15 MR. WOLFBRANDT: You could consider life without the  
16 possibility of parole?

17 PROSPECTIVE JUROR NO. 10: Yes, sir.

18 MR. WOLFBRANDT: As you sit here right now, would you  
19 consider all three of those equally?

20 PROSPECTIVE JUROR NO. 10: Yes, sir.

21 MR. WOLFBRANDT: Okay. You don't lean in any direction  
22 right now?

23 PROSPECTIVE JUROR NO. 10: No, sir.

24 MR. WOLFBRANDT: In response to Question 58 about  
25 whether or not you've heard anything about this case, you said

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8JD04489

1 you read the story in the newspaper. . Does anything that you've  
2 read in the newspaper and what's been -- what you've heard here  
3 in court cause you to have any preconceived conception as to what  
4 a penalty ought to be in this case?

5 PROSPECTIVE JUROR NO. 10: No, sir.

6 MR. WOLFBRANDT: All right. Thank you. I'd pass for  
7 cause.

8 THE COURT: Mr. Seaton.

9 MR. SEATON: Thank you, Judge. Good afternoon.

10 PROSPECTIVE JUROR NO. 10: Good afternoon.

11 MR. SEATON: You mentioned the Charley Manson case?

12 PROSPECTIVE JUROR NO. 10: Yes, sir.

13 MR. SEATON: And it truly is one of the more celebrated  
14 mass murder cases that our country has seen. Do you agree?

15 PROSPECTIVE JUROR NO. 10: Yes, sir.

16 MR. SEATON: And you thought that the death penalty  
17 should have been given there?

18 PROSPECTIVE JUROR NO. 10: Yes, sir.

19 MR. SEATON: When you say that to the exclusion of  
20 other cases, does that mean that in this case where two people  
21 are killed, not several as were in the Manson case, that you  
22 would not consider the death penalty in this case?

23 PROSPECTIVE JUROR NO. 10: No, sir, that's not what I  
24 meant.

25 MR. SEATON: All right. Were you saying there that

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8JD04490

1 there are a class of cases where you would not consider the death  
2 penalty?

3 PROSPECTIVE JUROR NO. 10: No, not if it was in the  
4 instructions.

5 MR. SEATON: All right. So I take it you are going to  
6 be willing to listen to all of the evidence that we've been  
7 talking about, both from the State and from the Defense?

8 PROSPECTIVE JUROR NO. 10: Yes, sir.

9 MR. SEATON: And then taking that into consideration,  
10 go through the weighing process that we talked about?

11 PROSPECTIVE JUROR NO. 10: Yes, sir.

12 MR. SEATON: And then come up with the appropriate  
13 penalty?

14 PROSPECTIVE JUROR NO. 10: Yes, sir.

15 MR. SEATON: And from all of the things that you've  
16 heard, and you've heard quite a bit now in the last few days, the  
17 option of death in this case is not foreclosed in your mind, I  
18 take it?

19 PROSPECTIVE JUROR NO. 10: No, sir.

20 MR. SEATON: Thank you. I would pass you cause, Judge.

21 THE COURT: Ms. Brush, how long have you lived in Clark  
22 County, Nevada?

23 PROSPECTIVE JUROR NO. 11: Seventeen years.

24 THE COURT: Where were you born and raised?

25 PROSPECTIVE JUROR NO. 11: San Pedro, California.

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8JD04491



1 THE COURT: What is your educational background?  
2 PROSPECTIVE JUROR NO. 11: High school graduate.  
3 THE COURT: What has been your employment the last ten  
4 years?  
5 PROSPECTIVE JUROR NO. 11: Nevada Power Company.  
6 THE COURT: What is your religious preference?  
7 PROSPECTIVE JUROR NO. 11: I was baptized Catholic.  
8 THE COURT: Do you attend mass regularly?  
9 PROSPECTIVE JUROR NO. 11: No, I don't.  
10 THE COURT: How old are you?  
11 PROSPECTIVE JUROR NO. 11: Forty-three.  
12 THE COURT: Are you married?  
13 PROSPECTIVE JUROR NO. 11: Yes, I am.  
14 THE COURT: Is your husband employed?  
15 PROSPECTIVE JUROR NO. 11: Yes, he is.  
16 THE COURT: Where does he work and what are his duties?  
17 PROSPECTIVE JUROR NO. 11: He's a owner/operator of a  
18 trucking company.  
19 THE COURT: Are you acquainted with either of the  
20 Defendants or their attorneys?  
21 PROSPECTIVE JUROR NO. 11: No, I'm not.  
22 THE COURT: Do you know anyone in the District  
23 Attorney's Office?  
24 PROSPECTIVE JUROR NO. 11: No, I don't.  
25 THE COURT: Did you recognize any of the persons whose

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SA505

8JD04492

1 names were given to you as possible prosecution witnesses?

2 PROSPECTIVE JUROR NO. 11: No, I didn't.

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 ma'am?

11 PROSPECTIVE JUROR NO. 11: Yes, I do.

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. 11: Yes, I can.

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

19 PROSPECTIVE JUROR NO. 11: No, I don't.

20 THE COURT: Have you ever been involved with any law  
21 enforcement work?

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

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

25 PROSPECTIVE JUROR NO. 11: No, I don't.

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8JD04493

8JD04494

1 THE COURT: Have you ever appeared as a witness in any  
2 criminal prosecution?

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

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

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

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

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

8 THE COURT: Have you ever been -- strike that. Have  
9 you ever been a victim of a crime?

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

11 THE COURT: Do you have any close friends or relatives  
12 who have been victims of crime?

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

14 THE COURT: If you were either of the Defendants, would  
15 you care to have someone in your present state of mind sit and  
16 judge your case?

17 PROSPECTIVE JUROR NO. 11: Yes, I would.

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. 11: No, I don't.

22 THE COURT: Mr. Wall.

23 MR. WALL: Thank you, your Honor.

24 THE COURT: You're welcome, sir.

25 MR. WALL: Ms. Brush, you've lived here about 17 years.

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8JD04494

1 Is that right?

2 PROSPECTIVE JUROR NO. 11: Yes, I have.

3 MR. WALL: You indicated in the questionnaire at  
4 Question 58 that you remembered this case?

5 PROSPECTIVE JUROR NO. 11: I vaguely remember it.

6 MR. WALL: Okay. There were facts set forth in the  
7 questionnaire and you've heard some over the last several day.  
8 Without telling me what they are, are there things that you  
9 remember about the case other than what you've heard discussed  
10 here?

11 PROSPECTIVE JUROR NO. 11: I don't know any facts  
12 regarding the case other than it happened on Washburn Road.  
13 That's it.

14 MR. WALL: Okay. Are you familiar with that area at  
15 all?

16 PROSPECTIVE JUROR NO. 11: I can remember thinking back  
17 that was a remote area at the time, and that's it.

18 MR. WALL: Okay. Any other, and this is just a yes or  
19 no question, are there any other facts that you remember about  
20 the case that you haven't heard discussed here?

21 PROSPECTIVE JUROR NO. 11: No.

22 MR. WALL: Okay. Another yes or no question, did you  
23 follow the case in the newspapers after it had occurred?

24 PROSPECTIVE JUROR NO. 11: No, I didn't.

25 MR. WALL: Okay. Or at no time since?

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8JD04495

1 PROSPECTIVE JUROR NO. 11: At no time.

2 MR. WALL: Okay. On Question 38, I'm pretty sure I  
3 know the answer to this question but I'll ask it anyway, you said  
4 -- the question was about your opinions about the justice system,  
5 and you first wrote, fair most of the time. Do you mean fair  
6 like just, or fair like just okay?

7 PROSPECTIVE JUROR NO. 11: Oh, fair as far as just.  
8 Uh-huh.

9 MR. WALL: Okay. Why do you feel that way? You also  
10 wrote in that question that you'd be honored to be a part of it.  
11 Can you tell me why?

12 PROSPECTIVE JUROR NO. 11: I feel it's a privilege to  
13 be on a jury, and I think it takes a special type of person,  
14 open-minded, fair person, to be a part of a jury, and I would  
15 welcome the experience.

16 MR. WALL: The Judge asked you as one of his last  
17 questions whether, if you were seated here, you would want  
18 someone in your frame of mind to act as a juror. And then you  
19 said that you think the responsibility of a jury includes an  
20 open-minded and a fair quality. Do you think you fit that and  
21 tell me why?

22 PROSPECTIVE JUROR NO. 11: I do because I guess that's  
23 the way I've been my whole life, open-minded, fair, liberal.  
24 That's the only way I've ever been. I don't know how else to  
25 explain it.

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8JD04497

1 MR. WALL: Okay. Let me ask you a little bit about  
2 your attitudes about the death penalty. In both the  
3 questionnaire and in answer to the Judge's questions, you  
4 indicated that you could consider all three possible penalties,  
5 but how do you feel about the death penalty?

6 PROSPECTIVE JUROR NO. 11: To be honest with you, I've  
7 never had any occasion to really think about it one way or the  
8 other until now. So I'm not for it, I'm not against it. I think  
9 it should be used. In what cases, I don't know because I've  
10 never been involved with a trial of this magnitude.

11 MR. WALL: Have you had a chance over the last five or  
12 six days since you filled out the questionnaire to give the death  
13 penalty some thought?

14 PROSPECTIVE JUROR NO. 11: I've tried not to think  
15 about it one way or the other.

16 MR. WALL: Okay. Do you think that it's a part of our  
17 criminal justice system that's necessary?

18 PROSPECTIVE JUROR NO. 11: Yes, I do.

19 MR. WALL: Do you think that in some cases it's the  
20 only possible sentence?

21 PROSPECTIVE JUROR NO. 11: I don't think it's ever the  
22 only possible sentence. It's depends on each case individually.

23 MR. WALL: Okay. Would you consider the qualities of  
24 Mr. Flanagan or Mr. Moore and things that you may hear about  
25 their character or their behavior other than this offense for

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8JD04497

1 which they've been convicted in determining what you think the  
2 best sentence ought to be?

3 PROSPECTIVE JUROR NO. 11: Yes, I would.

4 MR. WALL: Are you leaning in any particular direction,  
5 knowing what you know now about the facts, as to which sentence  
6 you might impose?

7 PROSPECTIVE JUROR NO. 11: No, I'm not.

8 MR. WALL: Okay. Let me ask you, before you went to  
9 work for Nevada Power, what kind of work did you do?

10 PROSPECTIVE JUROR NO. 11: Furniture sales.

11 MR. WALL: Okay. You've never been involved in any  
12 kind of law enforcement?

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

14 MR. WALL: Thank you. I'll pass for cause.

15 THE COURT: Mr. Wolfbrandt.

16 MR. WOLFBRANDT: Yes, Judge, thanks. Mrs. Brush,  
17 you've been at Nevada Power Company for about nine-and-a-half  
18 years?

19 PROSPECTIVE JUROR NO. 11: Thirteen almost. I put  
20 nine-and-a-half?

21 MR. WOLFBRANDT: Maybe my math's horrible anymore.

22 PROSPECTIVE JUROR NO. 11: October it'll be 13 years.

23 MR. WOLFBRANDT: Okay. It says October of '83. I've  
24 been reading it wrong. Currently you're a customer service  
25 representative?

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8JD04498

1 PROSPECTIVE JUROR NO. 11: Yes, I am.

2 MR. WOLFBRANDT: Can you kind of describe what you do  
3 during the day as a customer service representative?

4 PROSPECTIVE JUROR NO. 11: Turn power on and off,  
5 handle a lot of new construction requests, custom homes, billing  
6 complaints.

7 MR. WOLFBRANDT: Okay. Pretty much you're at a  
8 telephone talking with customers all day long?

9 PROSPECTIVE JUROR NO. 11: No, in person in the office.

10 MR. WOLFBRANDT: Okay. So it's pretty much hands on  
11 with customers all day long?

12 PROSPECTIVE JUROR NO. 11: One on one, uh-huh, yes.

13 MR. WOLFBRANDT: Do you think that the death penalty  
14 has been a deterrent in the United States?

15 PROSPECTIVE JUROR NO. 11: Like I've said before, I  
16 really haven't thought about the death penalty one way or the  
17 other. I know it's an option.

18 MR. WOLFBRANDT: You've mentioned in your questionnaire  
19 here that you live in a community...

20 THE COURT: Number?

21 MR. WOLFBRANDT: I'm looking, Judge. Fifty-seven.  
22 ...an established neighborhood where neighbors all watch out for  
23 each other?

24 PROSPECTIVE JUROR NO. 11: Yes, we do.

25 MR. WOLFBRANDT: Is that part of a crime watch...

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8JD04499



1 PROSPECTIVE JUROR NO. 11: No.

2 MR. WOLFBRANDT: ...a Neighborhood Watch program, an  
3 organized program?

4 PROSPECTIVE JUROR NO. 11: It's on our own.

5 MR. WOLFBRANDT: Okay. You've gotten to know all the  
6 neighbors?

7 PROSPECTIVE JUROR NO. 11: Right.

8 MR. WOLFBRANDT: Do you get together and do block  
9 parties and whatnot?

10 PROSPECTIVE JUROR NO. 11: Not that close.

11 MR. WOLFBRANDT: Okay. But at least to a certain  
12 extent, there's some active involvement with each neighbor  
13 looking out for other neighbors?

14 PROSPECTIVE JUROR NO. 11: There is.

15 MR. WOLFBRANDT: And when one goes on vacation the  
16 others watch the house?

17 PROSPECTIVE JUROR NO. 11: All you have to do is say,  
18 "We'll be gone a week," yeah.

19 MR. WOLFBRANDT: Is that because you feel that crime in  
20 Southern Nevada has gotten to a certain point that you have to do  
21 that?

22 PROSPECTIVE JUROR NO. 11: No, it's something that we  
23 all choose to do.

24 MR. WOLFBRANDT: You just got a friendly neighborhood?

25 PROSPECTIVE JUROR NO. 11: Not everybody, a majority.

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1 MR. WOLFBRANDT: Okay. Fair enough. Thank you, I'd  
2 pass for cause.

3 THE COURT: Mr. Seaton.

4 MR. SEATON: Thank you, Judge.

5 THE COURT: You're welcome, sir.

6 MR. SEATON: Ms. Brush, can you tell us where you have  
7 developed any of your -- the attitudes that you've expressed so  
8 far about the death penalty? How have you come to believe, for  
9 example, that it should be a part of the system?

10 PROSPECTIVE JUROR NO. 11: I really don't think I have  
11 an attitude either way. It's there. I don't disagree with it.  
12 And as far as whether I think it's right or wrong or should be  
13 removed, I don't really have an opinion.

14 MR. SEATON: I have to tell you that makes it hard on  
15 us.

16 PROSPECTIVE JUROR NO. 11: That's the way I feel. I'm  
17 not against it.

18 MR. SEATON: Are you for it?

19 PROSPECTIVE JUROR NO. 11: I'm for it, I'm against -- I  
20 mean, I'm not against it. Mainly, that might be because it's  
21 there and it's part of our system.

22 MR. SEATON: Okay. If it's not there and you get the  
23 choice, you going to put it in or not?

24 PROSPECTIVE JUROR NO. 11: I would put it in as one of  
25 the three options.

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8JD04501

8JD04502

1 MR. SEATON: Okay. And you get to be a juror on a  
2 case, would you willingly vote for the death penalty in certain  
3 cases as a juror?

4 PROSPECTIVE JUROR NO. 11: It depends on the evidence  
5 and whatever the good stuff is called. I forgot what it was.

6 MR. SEATON: Mitigating.

7 PROSPECTIVE JUROR NO. 11: Okay. And the Judge's  
8 instructions.

9 MR. SEATON: Well, he is going to tell you probably to  
10 weigh the mitigating against the aggravating and decide which  
11 outweighs the other. And when the aggravating outweighs the  
12 mitigating then to go ahead and choose from the three penalties,  
13 including the death penalty.

14 PROSPECTIVE JUROR NO. 11: They would all be equal...

15 MR. SEATON: Okay.

16 PROSPECTIVE JUROR NO. 11: ...depending on the case.  
17 It's hard to say right now without hearing evidence and facts.

18 MR. SEATON: Okay. What kind of a decision-maker are  
19 you? Would you consider yourself to be a good decision-maker?

20 PROSPECTIVE JUROR NO. 11: Good one, good one.

21 MR. SEATON: This is one of the biggest.

22 PROSPECTIVE JUROR NO. 11: I know.

23 MR. SEATON: Does that make it tougher?

24 PROSPECTIVE JUROR NO. 11: No. It's not going to be  
25 easy, but I would be able to make a decision and live with it.

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8JD04502

1 MR. SEATON: Uh-huh. All right. I want you to take a  
2 look at these two fellows. The fellow closest to me is Dale  
3 Flanagan. He killed his grandma. And the fellow sitting next to  
4 him is Randy Moore, and he killed Dale's granddad. They're  
5 fairly nice-looking guys, do you agree?

6 PROSPECTIVE JUROR NO. 11: I agree.

7 MR. SEATON: Nothing sinister or evil about them or  
8 anything?

9 PROSPECTIVE JUROR NO. 11: Just sitting there, no.

10 MR. SEATON: But we do know something about them. We  
11 know that they've been convicted of those killings.

12 PROSPECTIVE JUROR NO. 11: Yes.

13 MR. SEATON: And we know that I'm going to come along  
14 in a little while and suggest, if the evidence comes  
15 out as we expect it to, that the appropriate punishment  
16 is the death penalty. Now, as we have suggested with some  
17 of the other jurors, that is a real important and difficult  
18 decision.

19 PROSPECTIVE JUROR NO. 11: I realize that.

20 MR. SEATON: And we don't know you. We're trying to  
21 get to know you a little bit, but what I'm concerned about and  
22 you need to tell us is it within your capacity, if you feel it's  
23 appropriate, to come back in this courtroom and look these two  
24 nice-looking fellows in the eye and tell them that they should  
25 get the death penalty.

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8JD04503

1 PROSPECTIVE JUROR NO. 11: Yes, I would be able to do  
2 that.

3 MR. SEATON: You can do that?

4 PROSPECTIVE JUROR NO. 11: Yes, I can.

5 MR. SEATON: Is there anything you've heard about this  
6 case that would make you think that maybe that's not going to  
7 happen?

8 PROSPECTIVE JUROR NO. 11: No, because I really don't  
9 have any particular facts.

10 MR. SEATON: Well, I'm just saying of everything that  
11 you've heard so far, that if you've heard anything that would  
12 suggest to you that, well, I really don't think this is going to  
13 be a death penalty case, maybe one of the other two.

14 PROSPECTIVE JUROR NO. 11: I wouldn't be able to make  
15 an intelligent decision at this point.

16 MR. SEATON: Okay. Thank you very much.

17 PROSPECTIVE JUROR NO. 11: Uh-huh.

18 MR. SEATON: I pass for cause, Judge.

19 THE COURT: Mr. Masters [sic].

20 PROSPECTIVE JUROR NO. 12: Yes, your Honor.

21 THE COURT: How long have you lived in Clark County,  
22 Nevada?

23 PROSPECTIVE JUROR NO. 12: Seven years, sir.

24 THE COURT: Where did you come from?

25 PROSPECTIVE JUROR NO. 12: Ankeny, Iowa.

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SA517

8JD04504

1 THE COURT: And where were you born and raised?

2 PROSPECTIVE JUROR NO. 12: Boone County, Iowa.

3 THE COURT: What is your educational background?

4 PROSPECTIVE JUROR NO. 12: I have a B.S. degree in  
5 Industrial Education from Iowa State University of Ames, Iowa.

6 THE COURT: Did you take up any law courses at Iowa  
7 State?

8 PROSPECTIVE JUROR NO. 12: Pardon?

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

10 PROSPECTIVE JUROR NO. 12: Business law.

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

13 PROSPECTIVE JUROR NO. 12: I retired from Sears Roebuck  
14 1987. And...

15 THE COURT: And what did you do at Sears?

16 PROSPECTIVE JUROR NO. 12: I was an office manager,  
17 commercial credit department.

18 THE COURT: And then I think I heard an "and."

19 PROSPECTIVE JUROR NO. 12: Well, since '87 I worked at  
20 NEC America in Dallas, Texas, and then I moved to Nevada, and  
21 here I am.

22 THE COURT: And what did you do in Dallas?

23 PROSPECTIVE JUROR NO. 12: I worked for NEC America.

24 THE COURT: As what? Doing what?

25 PROSPECTIVE JUROR NO. 12: Commercial credit.

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8JD04505

1 THE COURT: What is your religious preference?  
2 PROSPECTIVE JUROR NO. 12: 'My what?  
3 THE COURT: Religious preference.  
4 PROSPECTIVE JUROR NO. 12: Catholic.  
5 THE COURT: Do you attend mass regularly?  
6 PROSPECTIVE JUROR NO. 12: Yes, I do.  
7 THE COURT: How old are you?  
8 PROSPECTIVE JUROR NO. 12: Fifty-seven.  
9 THE COURT: Are you married?  
10 PROSPECTIVE JUROR NO. 12: Divorced.  
11 THE COURT: Do you have any children?  
12 PROSPECTIVE JUROR NO. 12: No, I do not.  
13 THE COURT: Are you acquainted with either of the  
14 Defendants or their attorneys?  
15 PROSPECTIVE JUROR NO. 12: No, I am not.  
16 THE COURT: Do you know anyone in the District  
17 Attorney's Office?  
18 PROSPECTIVE JUROR NO. 12: No, I do not.  
19 THE COURT: Did you recognize any of the persons whose  
20 names were given to you as possible prosecution witnesses?  
21 PROSPECTIVE JUROR NO. 12: No.  
22 THE COURT: In the State of Nevada, there are three  
23 possible forms of punishment that the jury may consider and then  
24 select the one that they believe is the most appropriate under  
25 the laws and facts of this case. Those three possible forms of

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8JD04506

1 punishment are: (a) the imposition of the death penalty; (b)  
2 life imprisonment without the possibility of parole; and (c) life  
3 imprisonment with the possibility of parole. Do you understand,  
4 ma'am?

5 PROSPECTIVE JUROR NO. 12: Yes, I do, your Honor.

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

10 PROSPECTIVE JUROR NO. 12: Yes, I can.

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

13 PROSPECTIVE JUROR NO. 12: No, I do not.

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

16 PROSPECTIVE JUROR NO. 12: No.

17 THE COURT: Do you have any close friends or  
18 relatives...

19 PROSPECTIVE JUROR NO. 12: I have a...

20 THE COURT: ...who are members of any law enforcement  
21 agency?

22 PROSPECTIVE JUROR NO. 12: I have a second cousin,  
23 LAPD, vice squad. I only see him once a year at Christmas.

24 THE COURT: And does he discuss his business with you?

25 PROSPECTIVE JUROR NO. 12: No.

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8JD04507



81004508

1 THE COURT: Would you tend to give a peace officer's  
2 testimony any greater or any lesser weight than any other person  
3 who testifies merely because they happen to be peace officers?

4 PROSPECTIVE JUROR NO. 12: Well, as the other witnesses  
5 have said, or jurors, they do take an oath, and you hope that  
6 they follow through on their oath.

7 THE COURT: They -- all the witnesses will take oaths,  
8 and we hope they will all follow through on their oaths. My  
9 question, would you give a person any -- just because they happen  
10 to be a peace officer, would you give their testimony any greater  
11 or lesser weight than anyone else who testifies?

12 PROSPECTIVE JUROR NO. 12: I might.

13 THE COURT: I'll have Counsel go into that further at  
14 the proper time. Have you ever appeared as a witness before a  
15 grand jury?

16 PROSPECTIVE JUROR NO. 12: No.

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

18 PROSPECTIVE JUROR NO. 12: Yes.

19 THE COURT: When was this?

20 PROSPECTIVE JUROR NO. 12: Right after I arrived here.  
21 I was empaneled on a jury, and we were dismissed at 4:30.

22 THE COURT: You did not go -- have a chance...

23 PROSPECTIVE JUROR NO. 12: The Defendant...

24 THE COURT: You did not have a chance to go back and  
25 discuss the case, did you?

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8JD04508

1 PROSPECTIVE JUROR NO. 12: No.

2 THE COURT: All right. Have you ever been in military  
3 service?

4 PROSPECTIVE JUROR NO. 12: No.

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

7 PROSPECTIVE JUROR NO. 12: No.

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

10 PROSPECTIVE JUROR NO. 12: Yes, I can.

11 THE COURT: If you were the Defendants, would you want  
12 somebody in your present state of mind to sit and judge your  
13 case?

14 PROSPECTIVE JUROR NO. 12: Yes.

15 THE COURT: And do you know of any reason whatsoever,  
16 whether I've asked you or not, why you cannot sit as a fair and  
17 impartial juror in this case?

18 PROSPECTIVE JUROR NO. 12: No.

19 THE COURT: Mr. Wall?

20 MR. WALL: Thank you.

21 Ma'am, how do you pronounce your last name?

22 PROSPECTIVE JUROR NO. 12: Nosal.

23 MR. WALL: Nosal, okay. Ms. Nosal, you work at Nevada  
24 Power now?

25 PROSPECTIVE JUROR NO. 12: Yes, I do.

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8JD04509

1 MR. WALL: Do you know Gail Brush to your left?

2 PROSPECTIVE JUROR NO. 12: We just met in the hallway.

3 MR. WALL: Okay. You didn't know her before?

4 PROSPECTIVE JUROR NO. 12: No.

5 MR. WALL: Okay. Would the fact that -- well, let me  
6 back up. You've been a juror, a prior juror, on a couple of  
7 occasions?

8 PROSPECTIVE JUROR NO. 12: Yes.

9 MR. WALL: Okay. And from your questionnaire, it looks  
10 like once the jury reached a verdict, and once there was a hung  
11 jury.

12 PROSPECTIVE JUROR NO. 12: Right.

13 MR. WALL: And once the jury never even got to consider  
14 the case.

15 PROSPECTIVE JUROR NO. 12: Right.

16 MR. WALL: Okay. Were those all criminal cases?

17 PROSPECTIVE JUROR NO. 12: Yes, they were.

18 MR. WALL: Were they all here in Las Vegas?

19 PROSPECTIVE JUROR NO. 12: No. The one that was  
20 dismissed was here. The other two were about twelve years ago in  
21 Las Angeles.

22 MR. WALL: Okay. You wrote a note about how you felt  
23 about being part of a jury that was hung, and -- on the  
24 questionnaire is what I... And you made it sound as though --  
25 that there was one holdout, and that it was frustrating because

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SA523

8JD04510

8JD04511  
1 you didn't agree with that person's position.

2 PROSPECTIVE JUROR NO. 12: Right.

3 MR. WALL: Okay. How long did that jury deliberate, do  
4 you recall?

5 PROSPECTIVE JUROR NO. 12: About a whole day.

6 MR. WALL: When you were in that room and there was one  
7 juror who felt differently than the other eleven, it's not  
8 important really which way that person thought, did the other  
9 eleven take steps to try to convince that one that their position  
10 maybe was incorrect?

11 PROSPECTIVE JUROR NO. 12: Yes.

12 MR. WALL: Was it frustrating just because you'd spent  
13 a lot of time there and didn't read your verdict, or was it  
14 frustrating because you thought that person didn't see the case  
15 the right way?

16 PROSPECTIVE JUROR NO. 12: I did not feel he saw the  
17 case the right way.

18 MR. WALL: Did it get a little heated in there  
19 sometimes?

20 PROSPECTIVE JUROR NO. 12: You could say that.

21 MR. WALL: Did the eleven put some pressure on that  
22 one?

23 PROSPECTIVE JUROR NO. 12: Yes.

24 MR. WALL: Okay. What if you were in the situation  
25 selected as a juror and whatever your opinion was it was

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SA524

8JD04511

8JD04512  
1 diametrically opposed to the other eleven? Having gone through  
2 the experience from the other side, what would you expect and how  
3 would you handle it?

4 PROSPECTIVE JUROR NO. 12: That was a good lesson of  
5 the system, because that one person held out the decision, and it  
6 just goes to show that the system really does work, because we  
7 couldn't change his mind. And whatever he thought he was able to  
8 get another trial, the Defendant would have gotten another trial,  
9 so I've learned that much.

10 MR. WALL: Even though you disagreed with that one  
11 juror, did you respect his ability or her ability to stick to  
12 their beliefs, even if you didn't agree with them?

13 PROSPECTIVE JUROR NO. 12: Right.

14 MR. WALL: Okay. Did you come out of that experience  
15 having more or less respect for the system?

16 PROSPECTIVE JUROR NO. 12: I had more respect, because  
17 like I said, eleven people could not change that man's opinion,  
18 and that gave that Defendant another chance to go on trial.

19 MR. WALL: So if you were put in that position, no  
20 matter which of the three sentences you felt was the right one,  
21 if the other eleven felt a different way, would you be able to  
22 draw from that experience that you've had being on the other  
23 side...

24 PROSPECTIVE JUROR NO. 12: You bet.

25 MR. WALL: ...and stick to your position if you thought

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8JD04512

1 it was right?

2 PROSPECTIVE JUROR NO. 12: Yes, I sure could.

3 MR. WALL: You'd still consider what the other people  
4 had to say, but if it got a little heated in there, you'd be  
5 able...

6 PROSPECTIVE JUROR NO. 12: Eight hours.

7 MR. WALL: If it got a little heated on this jury if  
8 you were there, you'd be able to stick to your position and not  
9 -- I want to use the phrase, cave in, but I'm not sure that's the  
10 right one -- just to the pressure of the other eleven jurors?

11 PROSPECTIVE JUROR NO. 12: I wouldn't cave in to the  
12 pressure.

13 MR. WALL: Okay. You also indicated on the  
14 questionnaire after Question 31, it's actually probably 33, that  
15 at least after one or more of the trials on which you served as a  
16 juror, you talked to some of the attorneys involved. Did you  
17 find that was helpful in any way? Were you able to voice some  
18 concerns about the systems or have some questions answered? Was  
19 that valuable to you?

20 PROSPECTIVE JUROR NO. 12: Yes. That was all in the  
21 hung jury, and they all wanted to interview us and find out why  
22 we voted the way we did or why we didn't.

23 MR. WALL: Okay. You indicated to the Judge that  
24 probably in certain circumstances you might accept the word of a  
25 police officer, maybe give it greater or lesser weight than you

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8JD04513

8JD04514  
1 would -- probably greater weight than you would a lay person  
2 because of the oath they take and the expectations that we have  
3 of police officers. Is that about right?

4 PROSPECTIVE JUROR NO. 12: Yeah.

5 MR. WALL: You understand, of course, that police  
6 officers are human beings?

7 PROSPECTIVE JUROR NO. 12: Yes.

8 MR. WALL: And as human beings, police officers can be  
9 mistaken. Some human beings don't always tell the truth; others  
10 do. Things like that.

11 PROSPECTIVE JUROR NO. 12: Yes.

12 MR. WALL: Recognize that there are good police  
13 officers and bad police officers just as there are good and bad  
14 in every occupation?

15 PROSPECTIVE JUROR NO. 12: Yes, I do.

16 MR. WALL: Okay. When you worked -- you work in a  
17 credit or credit-type department at Nevada Power?

18 PROSPECTIVE JUROR NO. 12: No, I'm a bilingual customer  
19 service rep.

20 MR. WALL: Okay. You guys are both customer service  
21 reps?

22 PROSPECTIVE JUROR NO. 12: I work on phones.

23 MR. WALL: Okay.

24 PROSPECTIVE JUROR NO. 12: She works in an office, I  
25 guess.

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8JD04514

81004515

1 MR. WALL: Okay. As a customer service rep, as Ms.  
2 Brush told us, do you get to deal with customers maybe who are  
3 about to have their power turned off or maybe have had it turned  
4 off?

5 PROSPECTIVE JUROR NO. 12: A little hostile, yes.

6 MR. WALL: Okay. You have to deal with some people who  
7 are upset and try to explain to you why in their particular  
8 circumstance their power shouldn't be shut off or should be  
9 turned back on?

10 PROSPECTIVE JUROR NO. 12: Yes.

11 MR. WALL: Sometimes -- well, let me ask you rather  
12 than say it. Are there times when if someone gives you a  
13 reasonable explanation as to why a bill hadn't been paid  
14 that as a customer service rep you might grant them an extension  
15 of time and turn their power back on and see if their bill's  
16 paid?

17 PROSPECTIVE JUROR NO. 12: Yeah. We do that.

18 MR. WALL: Are there instances where someone gives you  
19 an explanation or an excuse that isn't acceptable at all to you  
20 and you don't grant them the extra time?

21 PROSPECTIVE JUROR NO. 12: Yes.

22 MR. WALL: So you have the opportunity to listen to  
23 explanations or excuses and sift through them basically and  
24 determine which ones make sense to you and which ones maybe  
25 don't.

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8JD04515



1 PROSPECTIVE JUROR NO. 12: Right. We make the  
2 judgments.

3 MR. WALL: Okay. That's part of your duties there. I  
4 suppose the same thing could be said in your employment in the  
5 credit capacity?

6 PROSPECTIVE JUROR NO. 12: Right.

7 MR. WALL: Okay.

8 PROSPECTIVE JUROR NO. 12: My credit experience was not  
9 with persons; it was with institutions. So I never had to make a  
10 yes or no -- no, you can't have it.

11 MR. WALL: Okay.

12 PROSPECTIVE JUROR NO. 12: It was with prisons and U.S.  
13 Air Force, universities, buying in a large volume capacity.

14 MR. WALL: Okay. How long have you been with Nevada  
15 Power as a customer... T

16 PROSPECTIVE JUROR NO. 12: Three years.

17 MR. WALL: Let me ask you a little bit about how you  
18 feel about the death penalty. I know you've heard the same  
19 questions, the same types of questions. Tell me how you feel  
20 about the issue.

21 PROSPECTIVE JUROR NO. 12: Well, I know you've asked  
22 the other ones, and I will start with this one. I've given it a  
23 lot of thought since I've been in this panel. I've gone home and  
24 thought about it. It's very easy to blurt out and say, "Well,  
25 this guy should have had it," but all of a sudden it's in my

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8JD04516

1 hands and I've really given it a lot of thought. I do think  
2 there's a place for it. One of the jurors brought up the Manson  
3 thing, being from California, I'm aware of that one.

4 Also the Dahmer case. I though in the Midwest was terrible.  
5 I felt that the death penalty probably wasn't even enough for  
6 that one. But to be fair, and this system is very fair, you have  
7 to judge every single case separately.

8 MR. WALL: Knowing what you know about the facts of  
9 this case, that Dale Flanagan has been accused of killing his  
10 grandmother, are you in a position where you've thought about  
11 which one of those three would be appropriate for him?

12 PROSPECTIVE JUROR NO. 12: I haven't thought of it as  
13 being appropriate. I don't know the circumstances behind it. I  
14 don't know anything about it. I wasn't even living here, so I  
15 really don't even know anything about it. But I could certainly  
16 be fair.

17 MR. WALL: Okay.

18 PROSPECTIVE JUROR NO. 12: You might -- my reasoning.

19 MR. WALL: You haven't made any kinds of prejudgments?

20 PROSPECTIVE JUROR NO. 12: No.

21 MR. WALL: Okay. Do you think that life in prison -- a  
22 sentence of spending the rest of your life in prison with the  
23 possibility somewhere down the road of parole, do you think  
24 that's an appropriate sentence for someone who commits a first-  
25 degree murder? In certain circumstances.

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8JD04517

1 PROSPECTIVE JUROR NO. 12: In certain circumstances,  
2 probably.

3 MR. WALL: Understanding that first-degree murder by  
4 its nature includes premeditated murder?

5 PROSPECTIVE JUROR NO. 12: Yes.

6 MR. WALL: Okay. You still think that that could be  
7 appropriate?

8 PROSPECTIVE JUROR NO. 12: Yes.

9 MR. WALL: Okay. Thank you. I'll pass for cause.

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

11 MR. WOLFBRANDT: Your Honor, I would pass for cause.

12 THE COURT: Mr. Seaton?

13 MR. SEATON: Thank you, Judge. You indicated that  
14 since you were brought on this panel, you've given a great deal  
15 of thought to the death penalty.

16 PROSPECTIVE JUROR NO. 12: Yes.

17 MR. SEATON: Had you not done that in the past?

18 PROSPECTIVE JUROR NO. 12: I think I've given it some  
19 thought, but I was never closely personally involved as I am now.

20 MR. SEATON: Right.

21 PROSPECTIVE JUROR NO. 12: Seeing something in the  
22 news, you just throw it away and say, "Well, he deserves that,"  
23 is one thing, but taking a person's life into your hands is  
24 something very grave.

25 MR. SEATON: Prior to this opportunity to give it so

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8JD04518

8JD04519  
1 much thought, if someone had asked you immediately, would you  
2 have said that, "I believe in the death penalty. I think it  
3 serves an appropriate role..."

4 PROSPECTIVE JUROR NO. 12: Yes.

5 MR. SEATON: "...in the criminal justice system"?

6 PROSPECTIVE JUROR NO. 12: Yes.

7 MR. SEATON: Do you pretty firmly believe that? Is  
8 that a -- let me stop there.

9 PROSPECTIVE JUROR NO. 12: Yeah, I think in general, I  
10 think we -- I believe that there should be a death penalty.

11 MR. SEATON: Okay. Do you similarly believe -- and I'm  
12 talking now about before giving it so much thought. Would you  
13 have said that, "I could be one of those people on a jury and be  
14 able to return a verdict of death"?

15 PROSPECTIVE JUROR NO. 12: Yes.

16 MR. SEATON: Do you believe that about yourself?

17 PROSPECTIVE JUROR NO. 12: Yeah.

18 MR. SEATON: All right. Now, you've had an opportunity  
19 to give it some thought. Have your feelings in any of those  
20 areas that we've just discussed changed at all? And if so, how?

21 PROSPECTIVE JUROR NO. 12: Well, like I said, the only  
22 area that it's changed is it's very easily to judge somebody from  
23 a newspaper article, but then now I'm looking at two gentlemen  
24 here. And then I think my decision and eleven others have  
25 something to do with their future, and it's not the same thing as

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8JD04519

1 it is prejudging them and saying, "Tomorrow you die."

2 MR. SEATON: The answer to one of my questions was,  
3 "Yes, I could be one of the people to come back and render a  
4 verdict of death." Do you feel any differently about that now  
5 that you're face to face with the real situation?

6 PROSPECTIVE JUROR NO. 12: No.

7 MR. SEATON: You still think that you're...

8 PROSPECTIVE JUROR NO. 12: I still think I could  
9 give...

10 MR. SEATON: ...capable of doing that?

11 PROSPECTIVE JUROR NO. 12: Yeah.

12 MR. SEATON: Would it be a harder decision than you  
13 think it would have been before?

14 PROSPECTIVE JUROR NO. 12: Yes.

15 MR. SEATON: But one that you're capable of rendering?

16 PROSPECTIVE JUROR NO. 12: Yes.

17 MR. SEATON: Anything about this case that you've heard  
18 thus far that would cause you to think that maybe the death  
19 penalty won't be appropriate in this case?

20 PROSPECTIVE JUROR NO. 12: No.

21 MR. SEATON: Thank you. I'd pass for cause, Judge.

22 THE COURT: The State may exercise its first peremptory  
23 challenge.

24 MR. SEATON: Judge, the State would thank and excuse --  
25 I don't have the number in front of me, but it is Brandi Stahl

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8JD04520

1 who is Juror No. 7.

2 THE COURT: Ms. Stahl, you are excused. Report back to  
3 the Jury Commissioner and tell him you have been excused. Thank  
4 you for coming down. The Clerk may draw another number.

5 THE CLERK: Deborah A. Taylor, Badge No. 507,  
6 T-A-Y-L-O-R.

7 THE COURT: Might I see Counsel, please?  
8 (Bench conference)

9 THE COURT: Ms. Taylor, how long have you lived in  
10 Clark County, Nevada?

11 PROSPECTIVE JUROR NO. 7: I believe it was 1971 or '72,  
12 my father retired from the military and moved here.

13 THE COURT: Where were you born and raised?

14 PROSPECTIVE JUROR NO. 7: Alexander, Louisiana.

15 THE COURT: And what is your educational background?

16 PROSPECTIVE JUROR NO. 7: Twelve years of high school.

17 THE COURT: What has been your employment for the last  
18 ten years?

19 PROSPECTIVE JUROR NO. 7: Working for CaterAd  
20 [phonetic], catering the foods for the airlines.

21 THE COURT: And what is your religious preference?

22 PROSPECTIVE JUROR NO. 7: Jehovah Witness.

23 THE COURT: In the State of Nevada, there are three  
24 possible forms of punishment that the jury may consider and then  
25 select the one that they believe is the most appropriate under

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8JD04521

1 the laws and facts of this case. Those three possible forms of  
2 punishment are: (a) the imposition of the death penalty; (b)  
3 life imprisonment without the possibility of parole; and (c) life  
4 imprisonment with the possibility of parole. Do you understand,  
5 ma'am?

6 PROSPECTIVE JUROR NO. 7: I understand.

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

11 PROSPECTIVE JUROR NO. 7: No, sir.

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

14 PROSPECTIVE JUROR NO. 7: Yes.

15 THE COURT: Which one?

16 PROSPECTIVE JUROR NO. 7: It's against my religion to  
17 judge anyone to death as only Jehovah God to judge human kind,  
18 not us to judge humans.

19 THE COURT: Is there a challenge?

20 MR. SCHIECK: Challenge.

21 MR. SEATON: There's, Judge.

22 THE COURT: Wait your turn. Is there a challenge?

23 MR. SCHIECK: Yes, your Honor.

24 THE COURT: Do you join?

25 MR. WALL: Yes, your Honor.

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8JD04522

1 THE COURT: Now, Mr. Seaton?

2 MR. SEATON: Thank you, Judge. Yes, I do.

3 THE COURT: Thank you, ma'am. You are excused. Thank  
4 you for coming down.

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

6 THE COURT: Report back to the Jury Commissioner and  
7 tell her I have excused you.

8 PROSPECTIVE JUROR NO. 7: Okay.

9 THE CLERK: Russell Allen Isrow, Badge No. 508,  
10 I-S-R-O-W.

11 THE COURT: Mr. Isrow -- strike that. Ladies and  
12 gentlemen of the jury, Counsel have asked for some extra time  
13 tonight so they may go over some of their challenges that they're  
14 going to make tomorrow. And inasmuch as we were going to quit at  
15 4:00 anyway, we'll quit now.

16 In the meantime, it is your duty not to talk among  
17 yourselves or with anyone else on any matter pertaining to this  
18 trial; read, watch or listen to any report of or commentary on  
19 the trial by any person or by any medium of information,  
20 including without limitation newspapers, radio or television;  
21 form or express any opinion on any matter pertaining to this  
22 trial until it is finally submitted to you. Have a good night.  
23 We'll see you tomorrow morning at 9:00.

24 (Jury out at 3:53 p.m.; colloquy not on record)

25 THE COURT: Will Counsel stipulate as to the absence of

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8JD04523



1 the jury?

2 MR. SEATON: Yes, Judge.

3 MR. WALL: Yes, your Honor.

4 THE COURT: Does anybody have anything to say...

5 MR. SCHIECK: Yes, your Honor.

6 THE COURT: ...outside the presence of the jury?

7 MR. SCHIECK: Your Honor, it was the intent on behalf  
8 of Mr. Moore to renew the challenge for cause that had been made  
9 to Juror No. 2, Mr. Jacintho. And I realize the Court has  
10 already heard the challenge and has made its ruling, but I wanted  
11 the record to be clear as to our position on it, especially now  
12 that we've had the benefit of a transcript of exactly what Mr.  
13 Jacintho said at the time that he was questioned. And I know the  
14 Court has to leave right at 4:00 and whether the Court wants me  
15 to put those exact statements on the record now...

16 THE COURT: We have ten minutes, eight minutes. See if  
17 you can't do it. Do you have my copy of the transcript? What  
18 page are you reading from? What line?

19 MR. SCHIECK: Starting on page 59, your Honor. And  
20 this is Volume I, so it would be Roman numeral I.

21 THE COURT: I have page 59, line 1.

22 MR. SCHIECK: Let me just be sure I'm looking at the  
23 right place, your Honor. I apologize, your Honor. That's the  
24 first juror. That's not Mr. Jacintho.

25 THE COURT: It starts at line 23, I believe. That's

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8JD04524

1 not where he starts.

2 MR. SCHIECK: That's during the Court's questioning,  
3 and Mr. Jacintho at line 4 on page 59 indicates that he'll follow  
4 the Court's instructions depending on the circumstances, which  
5 was the first signal that we had as to a problem with Mr.  
6 Jacintho. He later then on line 23 states that he can set aside  
7 any viewpoints he has and follow the Court's instructions on the  
8 law. That was the status of Mr. Jacintho as we proceeded through  
9 the questioning. He proceeds to say...

10 THE COURT: What page?

11 MR. SCHIECK: On page 61 on to 62, your Honor.

12 THE COURT: What line on page 61?

13 MR. SCHIECK: Starting at line 23, your Honor, the  
14 Court's question:

15 "Would you want twelve people in your present state of  
16 mind to sit and judge your case?" "No, I wouldn't."

17 "And why not, sir?" "Cause nobody wants to die."

18 And at that point, I believe Mr. Wolfbrandt makes his challenge.

19 Mr. Seaton then... Your Honor, I was correct the first time  
20 that that's all Mr. Rehman, and our question does not go to Mr.  
21 Rehman. All of what I just said is on the wrong juror. And  
22 again, I apologize. I thought I had these things tagged this  
23 morning.

24 THE COURT: I have a problem, too, because the  
25 transcript, as it's written here...

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8JD04525

1 (Pause)

2 MR. SCHIECK: Okay. Mr. Jacintho...

3 THE COURT: Just a minute, please. Madam Court  
4 Reporter, if you would just ask your people on the transcribing,  
5 please check on page 56. It's referring to Mr. Rehman as to  
6 Prospective Juror No. 2, for several pages until we get over to  
7 page 60, I believe it is, and it drops back to Prospective Juror  
8 No. 1. Somebody probably made a typographical error there.  
9 Please ask them to fix it.

10 E.R. TECHNICIAN: Yes.

11 MR. SCHIECK: Your Honor, I found it. Mr. Jacintho  
12 actually starts on page 96, and the objectionable questioning and  
13 answers actually begin on page 109.

14 THE COURT: All right. What line, sir?

15 MR. SCHIECK: Beginning at line 17 which is his answer  
16 to my question of how he proceeds to death penalty. He puts it  
17 into a nutshell, and it says, starting on line 19,

18 "...I would say anyone that committed a violent -- this  
19 is going to sound ridiculous with the O.J. trial going  
20 on. Committing a violent murder, premeditated, I guess  
21 that's in a nutshell, that is, in my opinion--I don't  
22 care if it was an altar boy or what--does not justify  
23 any leniency, because the victims weren't shown any  
24 leniency. And that's putting it in general terms."

25 I continue with him on to page 110, and his answer again to

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8JD04526

1 my question:

2 "Well, let's get a little more specific. Do you feel  
3 that if someone is convicted of a premeditated  
4 preplanned murder then they should automatically get  
5 the death penalty?

6 His answer...

7 THE COURT: And which line are you reading from?

8 MR. SCHIECK: Starting on line 1. It was my question,  
9 your Honor, on page 110. And his answer on line 5,

10 "I guess the bottom line is, yes, I do--no questions  
11 asked. If they [get] their day in court and they were  
12 found guilty, then they should get the max."

13 Then I go on and the next language I'd like to point out to  
14 the Court is his answer beginning on line 21. And this is  
15 quoting from Mr. Jacintho,

16 "Unless, I'll equalize as the lawyers do, unless there  
17 was some overwhelming mitigating circumstances, which  
18 to be perfectly honest to you is beyond my  
19 comprehension. But I'm sure there may be a case  
20 somewhere along the line overwhelming evidences,  
21 whatever that may be, overwhelming. And I'm trying to  
22 be as honest..."

23 His next answer as I go on with him, beginning on line 5,  
24 page 111,

25 "For a premeditated violent murder for me to -- no, I

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8JD04527

1 cannot, to be honest with you. I'm not saying there  
2 isn't one or I couldn't be convinced. But as it stands  
3 now, it's beyond my comprehension."

4 Your Honor, at that point, we challenged and Mr. Seaton  
5 rehabilitated this juror. It is my position that his answers to  
6 my questions were unequivocal. And I obviously don't have time  
7 to read all of Mr. Seaton's attempts to rehabilitate these  
8 jurors.

9 THE COURT: Mr. Schieck, I'm late. We'll meet tomorrow  
10 morning at 8:45. This will give Mr. Seaton a chance to read the  
11 testimony. It will give me a chance to glance at it myself and  
12 see why I did what I did.

13 MR. SCHIECK: Thank you, Judge.

14 THE COURT: Anything else?

15 MR. SCHIECK: That's it.

16 MR. WALL: Do we still have the other matter on at 8:45  
17 as well, that Havens matter?

18 THE COURT: This will follow the Havens.

19 MR. WALL: Okay.

20 THE COURT: See you tomorrow morning. Have a good one.

21 ALL COUNSEL: Thank you, Judge.

22 (Proceedings concluded at 4:00 p.m.)

23 \* \* \* \* \*

24

25

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8JD04528

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4  
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6  
7 CERTIFICATION  
8

9 I (we) certify that the foregoing is a correct transcript from  
10 the electronic sound recording of the proceedings in the above-  
11 entitled matter.  
12

13 Donnie R Hughes  
14 Signature of Transcriber  
15

16  
17 Linda Kay Gorn  
18 Signature of Transcriber/Verifier  
19 Federally Approved  
20  
21  
22  
23  
24  
25

June 14, 1995  
Date

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8JD04529

8JD04530

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FILED IN OPEN COURT

DISTRICT COURT JUN 16 1995 19

CLARK COUNTY, NEVADA LORETTA BOWMAN, CLERK

By *Lina Hurd* Deputy

THE STATE OF NEVADA,

Plaintiff,

vs,

DALE EDWARD FLANAGAN &  
RANDOLPH MOORE,

Defendants.

Case No. C069269

Dept. No. XI

Docket "S"

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BEFORE THE HONORABLE ADDELIAR D. GUY, III, DISTRICT JUDGE

JURY TRIAL -- PENALTY PHASE  
(DAY 3, VOLUME III)

THURSDAY; JUNE 15, 1995

APPEARANCES:

For the Plaintiffs:

DANIEL M. SEATON, ESQ.  
Deputies District Attorney  
200 S. Third St.  
Las Vegas, NV 89155

For Defendant Flanagan:

DAVID T. WALL, ESQ.  
REBECCA A. MOUNTS, ESQ.  
Deputy Public Defenders  
309 S. Third St., #226  
Las Vegas, NV 89101

For Defendant Moore:

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Las Vegas, NV 89101

Recorded by:

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S  
(CE)  
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SA544

8JD04531



Also appearing:  
(for Rusty Havens,  
witness)

BELL, DAVIDSON & MYERS  
BY: MICHAEL D. DAVIDSON, ESQ.  
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Proceedings recorded by electronic sound recording;  
transcript by electronic sound transcriber.

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8JD04532

8JD04533

1                    THURSDAY, JUNE 15, 1995, 9:00 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                    Please be quiet. Thank you.

8                    Continuation of case No. C69269, The State vs. Flanagan &

9 Moore. Let the record reflect the presence of Defendants with

10 Counsel, District Attorney, other officers of the Court.

11                    Will counsel stipulate as to the absence of the jury?

12                    MR. SEATON: Yes, Judge.

13                    MR. WALL: Yes, your Honor.

14                    MR. SCHIECK: Yes, your Honor.

15                    THE COURT: This morning from Ms. Mounts I received

16 Case No. 23238, The Supreme Court, State of Nevada, 111 Nevada,

17 Advanced Opinion 37, which I have read. Let's take care of this

18 young man here first, Mr. Schieck so we can get busy.

19                    MR. SCHIECK: I'm just going through my file, your

20 Honor. I'm sorry.

21                    THE COURT: Mr. Davidson?

22                    MR. DAVIDSON: Sir?

23                    THE COURT: It's my understanding that you represent --

24 may I have your name again, sir?

25                    MR. HAVENS: Rusty Havens. Rusty Havens.

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8JD04533

1 THE COURT: Is that correct, sir?

2 MR. DAVIDSON: Judge, I have not confirmed as his  
3 attorney. I got a call yesterday from Judge Huffacker's office  
4 advising that I was being appointed to represent him in other  
5 cases and was advised that you would like me here this morning.  
6 I assume it's to try to counsel him as a witness in this case.

7 THE COURT: Okay.

8 MR. DAVIDSON: But I haven't had a chance to talk to  
9 him other...

10 THE COURT: He has given past testimony in this case.  
11 The State intended to either use him or his testimony before it  
12 came to the attention of the Public Defender, the last hundred  
13 hours (more or less) that he is up on new charges. Frankly, I  
14 don't see any problem with it; but inasmuch as this is a capital  
15 case, I'd like it to be on the record. Can you confirm or not?

16 MR. DAVIDSON: I can confirm, Judge, yes.

17 THE COURT: Good. Mr. Seaton, do you want to state  
18 your problem?

19 MR. SEATON: I don't have a problem, Judge.

20 THE COURT: Mr. Wall?

21 MR. WALL: Judge, just, you know, it was brought to the  
22 attention of the Court because of an appearance of a possible  
23 conflict. Mr. Havens is up on new charges; our office  
24 represented him in Justice Court and apparently struck a deal  
25 with him. I have no idea whether the terms of that deal involved

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8JD04534

8JD04535  
1 any testimony in this case or not; but if he gets on the stand,  
2 one area of cross-examination would be any benefit he expects to  
3 receive in return for his testimony.

4 If he gives testimony in this case thinking that either  
5 "I've got to deal, and part of it as I need to testify," or "I no  
6 longer have a deal, and I need to get one from the same guys who  
7 are going to be putting me on the stand in this case," I think it  
8 would probably be incumbent upon me to cross-examine him on that  
9 issue.

10 Since we represented him until yesterday, there probably  
11 presents in the record the appearance of at least a conflict of  
12 interest, in that the Public Defender's Office, essentially the  
13 same attorney that represented him and negotiated a deal for him  
14 is cross-examining him about that case and about at least the  
15 procedural portions of that case.

16 And I think that because this is a capital case certainly  
17 Mr. Flanagan probably has an interest in having counsel who  
18 doesn't have any ethical duty to a witness or any fiduciary duty  
19 on a deal to a witness.

20 I've explained to Mr. Flanagan, you know, what the issue is  
21 and what the substance of the issue is and told him that I would  
22 present it to the Court. I don't know whether he needs to waive  
23 any possible conflict or whether, for the record, our office  
24 would need to make any kind of motion to withdraw on this case.  
25 I'm just concerned that there is that apparent issue and that if

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8JD04535

1 it isn't addressed on the record it may come back sometime later.

2 THE COURT: As to Mr. Flanagan, of course, you  
3 represent him on this case; and so I guess you can advise him on  
4 this case whether he should waive or not.

5 Mr. Davidson, do you have a problem?

6 MR. DAVIDSON: With?

7 THE COURT: The problem Mr. Rusty -- that Mr. Wall just  
8 gave you concerning Rusty?

9 MR. DAVIDSON: Well, Judge, if the Public Defender's  
10 Office is not going to be representing him on the case that I'm  
11 going to be appointed on, he doesn't have a prospective problem.  
12 I can discuss with Mr. Havens, although I haven't had a chance to  
13 do so yet, whether he wishes to claim that there's a conflict  
14 based on the fact that the Public Defender did represent him in  
15 the past and would obviously be trying to attack him on cross-  
16 examination in this case. I don't see it as a prospective  
17 problem.

18 The other case apparently is finished with, so from his  
19 prospective I don't see that it's a problem. From the Public  
20 Defender's prospective I can see where it might be a problem, an  
21 ethical problem. But to protect Mr. Havens, you know, if they're  
22 no longer involved in the previous case and I'm going to take  
23 over the new case, I don't see a problem.

24 THE COURT: Will you take some time with it this  
25 morning and talk with Mr. Havens then? If he does not want to

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8JD04536

81004537  
1 take the stand on the possibility that he may feel that may be a  
2 new problem, then I'd like to find out now. And if not, we can  
3 use his testimony. I don't see any problem.

4 But as this is a capital case; somewhere down the line some  
5 federal judge 40 years from now or ten years from now or one year  
6 from now (depending on where he's located) may say, "I think  
7 that's a problem," and we don't want to do this again.

8 So if you'll talk with him today; I doubt if we'll get to  
9 him today anyway, and let us know tomorrow. So you can be back  
10 at the same time, same station tomorrow, and then we can go.

11 How's that?

12 MR. DAVIDSON: Whatever the Court would like I'm at  
13 your service.

14 THE COURT: That being the case, do it.

15 Mr. Seaton has already stated yesterday on the record that  
16 there are no deals concerning this case that he knows of.

17 MR. WALL: Your Honor, may I? And I don't for one  
18 minute think that Mr. Seaton would say that if it weren't true,  
19 but that is just to his knowledge. I don't know if he was  
20 involved in anyway in the negotiations for Mr. Havens originally.

21 THE COURT: That was for the knowledge of Mr. Davidson  
22 primarily, because he's going to be back tomorrow.

23 MR. WALL: Okay.

24 THE COURT: Of course, you can talk with your people  
25 too...

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8JD04537

1 MR. WALL: Well, I don't know if that violates...

2 THE COURT: Let me finish, please. ...who are  
3 representing him today with negotiations up until yesterday. And  
4 you have a duty on that too, until he's guilty.

5 MR. WALL: I'm not so sure that I can, Judge.

6 THE COURT: Well, you're a Public Defender. To file...

7 MR. WALL: I mean, if I talk to Mr. Hastings, who  
8 represented him, and get the substance of some attorney/client  
9 protected...

10 THE COURT: The only question that you need to ask him  
11 was: Was there anything concerning negotiations concerning this  
12 case. You either get a yes or a no. Mr. Seaton says no. I  
13 assume he's talked with his people, and I see no conflict with  
14 that, because you can't make an intelligent decision if you can't  
15 ask a question.

16 MR. WALL: Well, that's the paradox that I find myself  
17 in because...

18 THE COURT: Well, sir, I'll tell you now, you check  
19 with your Public Defender and ask him the one question--if he  
20 made any negotiations that concerns this case whatsoever. That  
21 is not a conflict of interest; that's a decision you have to  
22 make, and you can't do it in a vacuum.

23 And it enables me to sit down -- now, you want me to  
24 subpoena everybody in it, you hold off; I don't mind doing that.

25 MR. WALL: No, I just don't want to get in a position

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8JD04538

8JD04539  
1 where somehow I'm violating Mr. Havens...

2 THE COURT: He has counsel.

3 MR. WALL: Right.

4 THE COURT: And you talk with his counsel; I don't  
5 care. I'll tell you what you do. I don't see a problem. Who's  
6 handling the case down below in your office?

7 MR. WALL: I think Mr. Hastings.

8 THE COURT: Have him here in court tomorrow.

9 MR. WALL: Actually, he's out of town this whole week,  
10 Judge.

11 THE COURT: Then I'll make a decision based upon what  
12 I've heard so far tomorrow. Mr. Davidson?

13 MR. DAVIDSON: Yes, sir.

14 THE COURT: Are you talking to him now?

15 MR. DAVIDSON: Yes.

16 THE COURT: Do you want to take him out in the hall  
17 there...

18 MR. DAVIDSON: Be happy to.

19 THE COURT: ...because I have another motion outside  
20 the presence of the jury.

21 MR. SEATON: Judge, before they do leave, let me say  
22 one added piece of information for the record that they probably  
23 need to hear and I learned this morning.

24 Yesterday I had indicated to you, as you said, there have  
25 been no plea bargaining going on that I was ever aware of; I

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8JD04539



1 learned about it after the fact. I told the Court that Kim  
2 Maxson was in charge of the case from our office. She came to my  
3 office this morning and spoke with me about the case, and she  
4 told me that she is probably going to offer again to Mr. Havens  
5 the same deal that she had offered before, which was to plead to  
6 an attempt burglary, no recommendation from the DA's office.

7 I instructed her that whatever negotiations she did were to  
8 be in her own role as a team deputy and to have nothing to do  
9 whatsoever with this case. And she assured me that that would be  
10 the case.

11 I guess I should point out also for the record we have no  
12 other inmates in here other than the Defendants, who won't be  
13 around. I think this needs to be said. I got a call...

14 THE COURT: May I see counsel, please?

15 (Bench conference)

16 THE COURT: Okay. Mr. Davidson, I'm going to send him  
17 back out in the hall there.

18 Do you want to take him out in the hall so Mr. Davidson can  
19 talk with him?

20 MR. DAVIDSON: Maybe we can resolve this this morning,  
21 so we'll know this morning, and we don't have to wait until  
22 tomorrow, Judge.

23 THE COURT: Hopefully, yes.

24 All right. We had a motion made by Mr. Schleck yesterday.  
25 We were in the process of having that concerning... -- (pause)

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8JD04540

81004541

1 That's not one of my jurors -- ...on Juror No. 2. And Mr.  
2 Schieck said after reading the transcript of the things before,  
3 and he read into some parts of it, which I now believe are at  
4 page 59 and 60, somewhere along there. And he read parts of that  
5 into the transcript, into the record. Ms. Mounts and Mr. Wall  
6 also joined in the motion.

7 As I indicated I received from Ms. Mounts this morning, The  
8 State vs. Cody Thompson, State of Nevada 23238, The Supreme Court  
9 of the State of Nevada, 111 Nevada Advanced Opinion 27, April  
10 27th, 1995.

11 Mr. Seaton, have you had a chance to read it?

12 MR. SEATON: I did yesterday, Judge, yes.

13 THE COURT: I read some of that transcript. And do you  
14 have any objection, Mr. Seaton? I'm inclined at this moment,  
15 after reading the transcript to grant the motion.

16 MR. SEATON: Then I'd grant it, Judge.

17 THE COURT: Does anybody else have anything else to say  
18 on it?

19 MR. WALL: No, your Honor.

20 THE COURT: Yeah, I read the transcript; and as you  
21 indicated, Mr. Schieck, sometimes maybe the transcript is much  
22 more prepared than otherwise.

23 Anybody have anything else to say on it?

24 Okay. Mr. Bailiff, bring in my jury.

25 (Prospective jurors in at 9:09 a.m.)

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8JD04541

1 THE COURT: This is a continuation of jury case No.  
2 C69269, The State of Nevada vs. Dale Flanagan & Randolph Moore.  
3 Let the record reflect the presence of Defendants with Counsel,  
4 the District Attorney, other officers of the Court.

5 Will the Clerk please call roll call of the jury?

6 (Clerk calls roll of prospective jurors; all present)

7 THE COURT: Will counsel stipulate to the presence of  
8 the jury?

9 MR. SEATON: Yes, Judge.

10 MR. WALL: Yes, your Honor.

11 MR. SCHIECK: Yes, your Honor.

12 THE COURT: Good morning, jury.

13 ALL PROSPECTIVE JURORS: Good morning.

14 THE COURT: Mr. Jacintho, I think we'll have to excuse  
15 you. Thank you for coming down.

16 PROSPECTIVE JUROR NO. 432: Thank you.

17 THE COURT: Juror No. 2. Thank you for coming down,  
18 sir. Report back to the jury commissioner and tell him that  
19 you've been excused. Thank you for coming down.

20 PROSPECTIVE JUROR NO. 432: Okay. Thank you very much.

21 THE COURT: All right. The Clerk will please draw  
22 another number.

23 THE CLERK: Joan Kay Rogers, Badge No. 509,  
24 R-O-G-E-R-S.

25 THE COURT: May I have that number again, please?

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1 THE CLERK: 509.

2 THE COURT: Microphone. May I have the microphone,  
3 please?

4 UNIDENTIFIED SPEAKER: I've got it. I've got it.

5 THE CLERK: No. 2?

6 THE COURT: Yeah, I want to get done first.

7 Ms. Rogers?

8 PROSPECTIVE JUROR NO. 2: Yes.

9 THE COURT: How long have you lived in Clark County,  
10 Nevada?

11 PROSPECTIVE JUROR NO. 2: Almost five years.

12 THE COURT: And where did you come from?

13 PROSPECTIVE JUROR NO. 2: Hawaii.

14 THE COURT: And how long did you live in Hawaii?

15 PROSPECTIVE JUROR NO. 2: About five years.

16 THE COURT: Where were you born and raised?

17 PROSPECTIVE JUROR NO. 2: Henderson, North Carolina.

18 THE COURT: And what is your educational background?

19 PROSPECTIVE JUROR NO. 2: I've completed a Bachelor's  
20 Degree and have worked on some graduate courses.

21 THE COURT: And what was your field of endeavor in your  
22 Bachelor's Degree?

23 PROSPECTIVE JUROR NO. 2: Nursing.

24 THE COURT: And what was your field of endeavor for  
25 your graduate courses?

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8JD04543

1 PROSPECTIVE JUROR NO. 2: Nursing.

2 THE COURT: What colleges have you attended?

3 PROSPECTIVE JUROR NO. 2: I got the Bachelor's Degree  
4 at the Medical College of Virginia School of Nursing. And I  
5 attended a few other colleges--UNLV, University of Texas Health  
6 Science Center, University of North Carolina at Chapel Hill,  
7 several others.

8 THE COURT: And those were for your graduate courses?

9 PROSPECTIVE JUROR NO. 2: No, they were just courses  
10 working on a Bachelor's.

11 THE COURT: All right. Did you take any courses  
12 concerning the law?

13 PROSPECTIVE JUROR NO. 2: The nursing courses had a  
14 little bit of public health law, but no specific law course.

15 THE COURT: What has been your employment during the  
16 past ten years?

17 PROSPECTIVE JUROR NO. 2: I worked per diem for about  
18 three years at Integrated Health Services of Las Vegas. And  
19 before that I worked at a hospital, Triple Army Medical Center,  
20 in Hawaii and Schofield Army Health Clinic in Hawaii.

21 THE COURT: Anywhere in health services, that means you  
22 go from hospital to hospital as you're called?

23 PROSPECTIVE JUROR NO. 2: No, it's -- no, sir, it's a  
24 combination rehab and skill nursing facility here in Las Vegas.

25 THE COURT: What is your religious preference?

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1 PROSPECTIVE JUROR NO. 2: Protestant.  
2 THE COURT: Do you attend church regularly?  
3 PROSPECTIVE JUROR NO. 2: No.  
4 THE COURT: How old are you?  
5 PROSPECTIVE JUROR NO. 2: Fifty-one.  
6 THE COURT: Are you married?  
7 PROSPECTIVE JUROR NO. 2: No.  
8 THE COURT: Do you have any children?  
9 PROSPECTIVE JUROR NO. 2: No.  
10 THE COURT: Are you acquainted with either the  
11 Defendants or their attorneys?  
12 PROSPECTIVE JUROR NO. 2: No.  
13 THE COURT: Do you know anyone in the District  
14 Attorney's Office?  
15 PROSPECTIVE JUROR NO. 2: No.  
16 THE COURT: Did you recognize the names of any persons  
17 given to you as possible prosecution witnesses?  
18 PROSPECTIVE JUROR NO. 2: No.  
19 THE COURT: Ms. Rogers, in the State of Nevada there  
20 are three possible forms of punishment that the jury may consider  
21 and then select the one that they believe is the most appropriate  
22 under the law and facts of this case. Those three possible forms  
23 of punishment are: (a) the imposition of the death penalty;  
24 (b) life imprisonment without the possibility of parole; and  
25 (c) life imprisonment with the possibility of parole. Do you

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8JD04545

1 understand, ma'am?

2 PROSPECTIVE JUROR NO. 2: Yes.

3 THE COURT: In your present state of mind, can you, if  
4 you are selected as a juror, consider equally all three possible  
5 forms of punishment and then select the one that you feel is most  
6 appropriate?

7 PROSPECTIVE JUROR NO. 2: Yes.

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

10 PROSPECTIVE JUROR NO. 2: No.

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

13 PROSPECTIVE JUROR NO. 2: No.

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

16 PROSPECTIVE JUROR NO. 2: I have a couple of cousins  
17 that are law enforcement officers, and I have a brother that's a  
18 correctional facility guard.

19 THE COURT: And where are they located?

20 PROSPECTIVE JUROR NO. 2: North Carolina.

21 THE COURT: And per chance have you had any chance to  
22 talk with them about their jobs?

23 PROSPECTIVE JUROR NO. 2: A couple of times with my  
24 brother, not with my cousins.

25 THE COURT: Is there anything about those experiences

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8JD04546

8JD04547  
1 or those relationships that would cause you to have any biases  
2 for or against either side?

3 PROSPECTIVE JUROR NO. 2: No.

4 THE COURT: Would you tend to give a police officer's  
5 testimony any greater or any lesser weight than any other witness  
6 who testified merely because they happened to be police officers?

7 PROSPECTIVE JUROR NO. 2: No.

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

10 PROSPECTIVE JUROR NO. 2: No.

11 THE COURT: Have you ever sat on any jury before?

12 PROSPECTIVE JUROR NO. 2: No.

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

14 PROSPECTIVE JUROR NO. 2: Yes.

15 THE COURT: Tell us when and what branch?

16 PROSPECTIVE JUROR NO. 2: I was in the Army Nurse Corp  
17 for 23 years.

18 THE COURT: Did you ever sit on any court-martials or  
19 boards?

20 PROSPECTIVE JUROR NO. 2: Yes, one.

21 THE COURT: And were you a member of the board or were  
22 you...

23 PROSPECTIVE JUROR NO. 2: I was one of the members of  
24 the board.

25 THE COURT: Have you ever been or anyone close to you

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1 ever been a victim of a crime?

2 PROSPECTIVE JUROR NO. 2: I have been. One of my homes  
3 was burglarized once.

4 THE COURT: And when was this?

5 PROSPECTIVE JUROR NO. 2: Where?

6 THE COURT: When?

7 PROSPECTIVE JUROR NO. 2: When.

8 THE COURT: When?

9 PROSPECTIVE JUROR NO. 2: I believe 1975.

10 THE COURT: The next question is where?

11 PROSPECTIVE JUROR NO. 2: In Georgia.

12 THE COURT: Is there any...

13 PROSPECTIVE JUROR NO. 2: I was going to say another  
14 time I was a customer in a drug store that was robbed.

15 THE COURT: When was this and where?

16 PROSPECTIVE JUROR NO. 2: That was in the Washington  
17 D.C. area in 1981.

18 THE COURT: Is there anything about those experiences  
19 that would cause you to have any biases for or against either  
20 side in this case?

21 PROSPECTIVE JUROR NO. 2: No.

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

24 PROSPECTIVE JUROR NO. 2: Yes.

25 THE COURT: If you were either one of the Defendants,

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8JD04548

8JD04549  
1 would you want twelve people in your present state of mind to sit  
2 and judge your case?

3 PROSPECTIVE JUROR NO. 2: No.

4 THE COURT: And why not?

5 PROSPECTIVE JUROR NO. 2: I'm not very thrilled about  
6 being here. And I think if I were a defendant, I would want  
7 someone to be in my place that was glad to be here.

8 THE COURT: Other than the fact that you feel  
9 discomfort in being here and want to be someplace else, do you  
10 have any other reasons?

11 PROSPECTIVE JUROR NO. 2: No.

12 THE COURT: Does the fact that you might want to be  
13 someplace else instead of being here, would that in anyway  
14 prevent you from hearing all the evidence and determine this case  
15 strictly from the evidence that you hear?

16 PROSPECTIVE JUROR NO. 2: No.

17 THE COURT: Do you know of any other reason, whether  
18 I've asked you or not, why you cannot serve--sit as a fair and  
19 impartial juror in this case?

20 PROSPECTIVE JUROR NO. 2: No.

21 THE COURT: At this time Mr. Schieck will start this  
22 morning.

23 MR. SCHIECK: Mr. Wolfbrandt this morning, your Honor.

24 THE COURT: I knew I'd guess wrong. Mr. Wolfbrandt?

25 MR. WOLFBRANDT: Good morning, Ms. Rogers?

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1 PROSPECTIVE JUROR NO. 2: Good morning.

2 MR. WOLFBRANDT: Could you expand a little bit more as  
3 to why you're not thrilled with being here?

4 PROSPECTIVE JUROR NO. 2: This isn't my idea of fun.

5 MR. WOLFBRANDT: Well, it's nobody's idea of fun who  
6 are here.

7 PROSPECTIVE JUROR NO. 2: Well, yeah. I mean...

8 MR. WOLFBRANDT: But, I mean, is it because of the  
9 responsibility that could be imposed upon you in deciding the  
10 fate of these two individuals?

11 PROSPECTIVE JUROR NO. 2: No.

12 MR. WOLFBRANDT: Or is it just that you'd rather be  
13 doing something else?

14 PROSPECTIVE JUROR NO. 2: I'd rather be doing something  
15 else.

16 MR. WOLFBRANDT: And anything else?

17 PROSPECTIVE JUROR NO. 2: Anything else practically.

18 MR. WOLFBRANDT: I understand that you've got a  
19 vacation coming up next month. It's early next month?

20 PROSPECTIVE JUROR NO. 2: Yes, I've planned one, yes.

21 MR. WOLFBRANDT: Is that on your mind, too?

22 PROSPECTIVE JUROR NO. 2: Not yet. It's not that close  
23 at hand.

24 MR. WOLFBRANDT: Okay. And we don't expect this to go  
25 -- we didn't expect it to go quite this long, but we certainly

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