

1 A. Um-hum.

2 Q. In your case, you suggested that the
3 facts were more important than the background.
4 Would you consider his background when
5 deciding punishment if we have to get to that
6 point?

7 A. I would consider his background;
8 however, I think that everyone has choices
9 that they make in life. So, yes, I would
10 consider it, but I would -- it would not have
11 a strong bearing on the choices that the
12 individual made for the crimes that they
13 committed.

14 Q. And that's reasonable. And the law
15 only says you have to consider it.

16 A. Absolutely.

17 Q. But the Court will tell us in the
18 instructions that you have to consider all of
19 the evidence. And some of the evidence will
20 be mitigation evidence, evidence on his part,
21 if we get to that point in this case.

22 In discussing the death penalty
23 itself, you mentioned in your survey that you
24 felt the death penalty under certain
25 circumstances could be the best possible

1 solution for the situation, and I wasn't sure
2 I understood what that meant.

3 A. Pretty much what I mean by that is
4 after looking at all of the facts and the
5 evidence from both sides of view, if that is
6 the direction that I feel that it should go at
7 that point based upon what the crime that was
8 committed, and, yes, that would be the most
9 possible best solution. I don't know at this
10 point because I haven't actually listened to
11 or seen the evidence.

12 Q. But in arriving at that solution, you
13 are willing to look at his background
14 evidence?

15 A. I am willing to take it into
16 consideration, yes.

17 Q. Thank you. Is there anything else we
18 should know about you that no one has asked
19 you during all of this?

20 A. No.

21 Q. Is this process helpful to you?

22 A. Um-hum, yes.

23 MR. BROOKS: Okay. Thank you very
24 much.

25 We'll pass for cause, Your Honor.

1 THE COURT: Very well. Ms. Pandukht?
2 Mr. Kane?

3 MS. PANDUKHT: Judge, I have no
4 questions for juror No. 64.

5 THE COURT: Thank you. Mr. O'Brien?

6 MR. O'BRIEN: Have we moved on,
7 Judge?

8 THE COURT: We have. She's been
9 passed for cause.

10 MR. O'BRIEN: Thank you, Judge.

11

12 VOIR DIRE EXAMINATION

13 BY MR. O'BRIEN:

14 Q. Mr. Derrico?

15 A. Derrico.

16 Q. You tell me.

17 A. I'm sorry.

18 Q. If I remember correctly, you got some
19 time problems and some money problems. Could
20 you tell me a little bit more about that?

21 A. I am a full-time -- I work full time
22 for a local sporting goods store, 45 hours a
23 week. I also work part time for a banquet
24 company here in town, doing about 20 to
25 30 hours a week for that also. My wife is out

1 of a job. She just recently got fired from
2 it. She picked up her last paycheck. And I
3 am the only primary breadwinner in the house.

4 Q. And with either of your jobs, will
5 they help reimburse you for doing your civic
6 duty?

7 A. Neither one will. One because I'm on
8 what's known as an on-call. And with the
9 season being what it is with all of the
10 holiday parties and Christmas parties, I'm
11 just an on-call. With the other job, they
12 don't, the sporting goods store I work for.

13 Q. Let me put it this way: If this
14 trial started running as long as we anticipate
15 it may go and you're on the jury, do you feel
16 your financial constraints may put you in a
17 position where you're not fully considering
18 all of the factors and you're rushing to a
19 particular verdict simply to get the heck out
20 of here?

21 A. No.

22 Q. Okay. So you would be able to put
23 that aside?

24 A. I can try to put it aside, but I've
25 got to provide for my family.

1 Q. So you're saying financially it would
2 be a real undue burden?

3 A. Financially it would.

4 Q. Your brother is a police officer; is
5 that correct?

6 A. He's a deputy sheriff.

7 Q. Does he talk to you about his cases?

8 A. He doesn't go really in depth. He
9 has told me about some, but he hasn't
10 really -- he has just been newly promoted. He
11 just got out of the academy. He's been
12 working there only for about less than a
13 month. And I hear about some of what happens.

14 Q. And does he talk to you about
15 lawyers?

16 A. No. We haven't had conversations on
17 any lawyers.

18 Q. Do you think given the fact that your
19 brother is a police officer or deputy sheriff,
20 in this case do you think naturally you're
21 going to tend to give more credence to what a
22 police officer may say?

23 A. Yes.

24 Q. But surely you would be able to take
25 a more -- take a step back and fully look at

1 all the evidence, wouldn't you?

2 A. I would. But from hearing from a
3 police officer's perspective and the schooling
4 that they go through, I wouldn't see why they
5 would do it. Is there a possibility that has
6 happened? Yeah.

7 Q. So if there is testimony from two
8 different people and their testimony is
9 opposite, one's a police officer, one's just a
10 layperson, with the same opportunity to
11 observe everything, are you going to lean one
12 way or the other?

13 A. I lean towards the police officer
14 because of the training that they've had.

15 Q. If the Judge tells you you can't do
16 that, what are you going to do?

17 A. I have to listen to the Judge.

18 Q. Okay. So you believe you would be
19 able to set it aside?

20 A. I would have to because the Judge
21 said so.

22 Q. Do you think that's easy to set
23 something that you personally believe and
24 maybe is even ingrained in you, is that easy
25 to set that aside?

1 A. No, I don't believe it's easy to set
2 aside.

3 Q. Are you confident you would be able
4 to?

5 A. I would try my best. Would I listen
6 to the Judge? I have to. It's the law. But
7 my personal convictions, would it go against
8 it? Yeah.

9 Q. Now, you mentioned that you believe a
10 defendant should have to prove his innocence.
11 Can you tell me why -- tell me more about
12 that.

13 A. I believe that the State's -- if the
14 State -- if they have to be proven -- sorry.

15 The State has to prove him guilty. I
16 think also you have to prove that they're
17 innocent. You have to go against -- point,
18 counterpoint.

19 Q. Don't you think sometimes it's hard
20 to prove a negative? I mean, can you think of
21 a situation where a person who is accused of
22 something might not be able to prove their
23 innocence?

24 A. Given this court case or any court
25 case, it's listening -- it depends on what's

1 the evidence. You would have to listen to the
2 evidence. You can't automatically assume as
3 soon as he walks down, sits down, he's guilty,
4 because you haven't heard the whole story,
5 you've only heard partial.

6 Q. But, of course, the Judge is going to
7 instruct you that you can't do that. You have
8 to presume Mr. Budd or any defendant innocent
9 until proven guilty beyond a reasonable doubt.

10 A. Um-hum.

11 Q. So that's going to be another one of
12 those things that you don't really believe
13 wholeheartedly, but you're going to have to
14 work real hard to set aside?

15 A. I would have to, yeah. I would have
16 to work hard, because what the Judge says is
17 law. I'm not going -- I don't want to go
18 against what the Judge says. But do I have my
19 personal beliefs? I believe that's what makes
20 us all unique. We all have our personal
21 beliefs.

22 Q. Well, right. And, you know, my only
23 concern is, you know, it's easy to say
24 sometimes you can put that aside, but I'm
25 concerned whether or not we are actually able

1 to do so, or in your case if you're able to do
2 so. You know, that's my concern. You know,
3 like the Judge said with the glove and the
4 mitten, not every juror is adequate for every
5 case.

6 A. Um-hum.

7 Q. So I just want to know how many of
8 these personal opinions you may have to set
9 aside and which may be most problematic for
10 you.

11 A. Um-hum.

12 Q. Isn't it true that you believe the
13 death penalty is the appropriate verdict?

14 A. In some cases, yes.

15 Q. Isn't it true that you've already
16 made a decision that if Mr. Budd was found
17 guilty in this case, that you're going to vote
18 for the death penalty?

19 A. No. I would have to consider all of
20 the possibilities.

21 Q. Okay.

22 A. Because the Judge will tell me I have
23 to consider all of the possibilities, that's
24 what I have to do.

25 Q. Okay. And --

1 A. Do I believe in the possibilities
2 that you could vote for? Yeah.

3 Q. But reading your questionnaire, it
4 sounds like if you found him guilty, boom,
5 death penalty. Is that not fair to say?

6 A. No, I would vote -- I would not vote
7 for possibility of parole. It would be
8 anything without the possibility of parole.
9 If it weren't in this case, yeah. But if me
10 and my fellow jurors come up to that thought,
11 if it's going to be a hundred years or life
12 without the possibility of parole, life with
13 the possibility of parole, or death, I
14 wouldn't consider the life with the
15 possibility. I would only consider life
16 without the possibility and death.

17 Q. Okay. And, of course, you are going
18 to be instructed you have to consider all of
19 them.

20 A. Um-hum.

21 Q. And that's going to be another one of
22 those things that personally you may not agree
23 with, but you have to do your best to follow
24 the Judge's instructions; correct?

25 A. Correct.

1 Q. What's your opinion of psychologists?
2 Do you have an opinion?

3 A. My opinion of psychologists?

4 Q. Um-hum. I mean, some people just
5 think they're junk science and it's a bunch of
6 baloney. Do you think they -- think it's a
7 science?

8 A. I believe that they do help people.
9 I have a cousin that is a child psychologist.
10 And I have -- my wife does see a psychologist.
11 I believe that they can help you. I believe
12 there are some, for lack of better word,
13 quacks. There are some ones that they don't
14 try to go -- they don't listen to the person,
15 they just try to make automatic (snapping his
16 fingers).

17 Q. Are there any things you would like
18 to know about a person in deciding their fate,
19 be it life with parole, life without parole or
20 death, what kind of things would you like to
21 know about that person's background to make
22 sure you are making the right choice?

23 A. I think that we all make our own way
24 in life. If you come from a bad background,
25 is it going to weigh on you? Yeah. But you

1 have to try your best to make the best out of
2 your life. No one's -- even if you're not
3 given anything, you still try. You don't sit
4 there and wait for a handout. You go out and
5 you apply yourself and you try to work and you
6 try to do the best that you can.

7 Do I think if his background is a bad
8 background or if his background is a
9 privileged background, it doesn't matter -- I
10 don't want to say it, but he has to make his
11 own way in life. The choices that he is going
12 to make is going to affect him for the rest of
13 his God-given life. He has to choose that --
14 he has to make that decision.

15 If he has made a decision to go
16 against what is -- if he goes against the law,
17 that's his choice in life, and nobody in his
18 background said, oh, you have to do this, that
19 I am aware of. I don't know anybody
20 personally. I don't know him personally, but
21 they made that choice in their life. And I
22 was always taught if you make a choice, you
23 have to live with that decision.

24 Q. So while, well, we're not all created
25 equal with our parents or our background or

1 the opportunities we may have, we all just
2 need to pick ourselves up and get over it; is
3 that fair to say?

4 A. I believe that we might need a little
5 help, but we have to do our best to help
6 ourselves. Do we rely on -- can we help --
7 can we ask other people for help? Yeah.

8 If I was put in a situation where I
9 was poor, would I ask for help from people?
10 Yeah, I would have to. I would ask because I
11 couldn't do it. But am I going to sit there
12 and go, oh, no, I have to do this, I'm this
13 way? No, I'm going to go out, apply myself,
14 go to different -- say go to different jobs,
15 just try and get what I can get.

16 Q. Do you think that things that
17 happened to people when they're kids or young
18 adolescents can affect those decisions they
19 make later? Later in life I should say?

20 A. It can. You formulate your own
21 opinion. It depends if your defense mechanism
22 -- going into psychology, it's a defense
23 mechanism. It's what you say -- I do believe
24 it does have an effect on you, but you also
25 know what is right and what's wrong, and you

1 know what the law is. And you see it on TV.
2 You know what the law is. You listen -- you
3 can watch Court Television, you can watch
4 almost anything, and you know what's right and
5 wrong. You have a basic sense of what's right
6 and what's wrong.

7 Q. But don't you think some people,
8 because of their upbringing or maybe because
9 of their intellect, are not as able to tell
10 the difference between right and wrong?

11 A. I believe everybody has a thought of
12 what is right and what is wrong.

13 Q. And would a mentally retarded person
14 have the same ability to discern right from
15 wrong as somebody with a 140 IQ?

16 A. Not if they're mentally retarded. If
17 you're going to play their intelligence -- you
18 said background, not mental intelligence.

19 Q. I know. I didn't trick you. I just
20 moved on to something else.

21 A. Background is different from mental
22 retardation. If he is mentally retarded, he
23 doesn't even know how to tie his shoes. He
24 has to wear strap shoes. But if you're
25 telling it's 140, yeah, he knows something

1 more than somebody else. But it's totally
2 different. You're not -- IQ plays it, but
3 you're not asking an IQ. You're asking
4 background, if the background plays it. No.

5 Q. So you would agree even if somebody
6 wasn't mentally retarded but they had a
7 significantly diminished IQ, that might affect
8 their ability to determine right from wrong?

9 A. It depends how slight you want to be,
10 or how slight you would consider it. If
11 they're found out where they can't even put a
12 circle into a circle, yeah, there's something
13 not right, they have something not right
14 inside their head.

15 Q. Okay.

16 A. But if they've gone up and you have
17 seen them, they have held a job, they've done
18 this, they've got to know right from wrong.

19 Q. But that's something you would
20 consider, an IQ of somebody? Is that fair to
21 say?

22 A. It would be one of those ones that
23 you were talking about that would be -- I
24 would have to consider it.

25 Q. Is it fair to say though, you know,

1 the fact that somebody has had a -- not even a
2 terrible life, but somebody has had some
3 problems in their early childhood and
4 throughout growing up, is that the kind of
5 background issue that you don't think should
6 be considered at all?

7 A. It depends on what his background is.
8 It depends on -- if there was abuse, is he
9 going to lean more tendency towards abuse?
10 Yeah. If he's -- it would go by a
11 case-by-case basis.

12 Q. Okay. But you would just be open to
13 consider it?

14 A. I would have to be because the Judge
15 would probably instruct us to be open to, like
16 you said, it would be one of those burdens
17 where I have to listen to the Judge.

18 Q. Is there anything else you want to
19 tell me? Anything you think we should know
20 before determining -- you know, before
21 continuing in this process?

22 A. Not that I am aware of, sir.

23 Q. Do you think you could be fair and
24 impartial?

25 A. I would have to try, yes.

1 MR. O'BRIEN: Okay. Thank you, sir.

2 THE COURT: Pass for cause?

3 MR. O'BRIEN: Pass for cause, Your
4 Honor.

5 THE COURT: Mr. Kane? Ms. Pandukht?
6 Who is next?

7 MR. KANE: I am, Judge. The State
8 has no questions for Ms. Labonne and passes
9 for cause.

10 MR. BROOKS: Thank you, Judge.

11

12 VOIR DIRE EXAMINATION

13 BY MR. BROOKS:

14 Q. Ms. Labonne, as we start this process
15 and go into the trial, what is it you want to
16 hear from the defense in the guilt phase or
17 the trial phase of these proceedings? I
18 should call it the trial, not guilt phase.

19 A. I want you to show me that he is not
20 guilty, evidence.

21 Q. Are you going to require that we show
22 you that he is not guilty?

23 A. Yes.

24 Q. What if we can't do that?

25 A. That would weigh on my decision.

1 Q. The Judge is going to tell you we
2 don't have to tell you anything, that we don't
3 have any burden to say we are not guilty. How
4 do you feel about that?

5 A. I understand that, but I still think
6 you should be able to prove if you are
7 innocent.

8 Q. Do you feel that strongly or is this
9 just a slight gut feeling? How strong is this
10 feeling for you?

11 A. Very strong.

12 Q. Very strong. You're familiar with
13 the presumption of innocence?

14 A. Yes.

15 Q. What does that mean to you?

16 A. Innocent until proven guilty.

17 Q. Okay. If we are presumed innocent
18 and don't have to legally produce a burden,
19 does that mean you're going to still require
20 us to produce a burden?

21 A. I think you should be able to prove
22 or show something.

23 Q. If we don't produce evidence, does
24 that mean you would find him guilty because we
25 did not produce evidence?

1 A. It would weigh heavy on my decision.

2 THE COURT: I'm sorry. I didn't hear
3 that answer.

4 PROSPECTIVE JUROR 065: It would
5 weigh heavy on my decision.

6 MR. BROOKS:

7 Q. So you would definitely consider the
8 fact that we did not produce evidence in
9 defense of his guilt?

10 A. Yes.

11 Q. Is that a yes?

12 A. Yes.

13 Q. I'm sorry. They are taking the stand
14 and --

15 A. I understand. Speak louder.

16 Q. So if we did not produce any evidence
17 at all, you are definitely going to weigh that
18 against us?

19 A. It would weigh heavy on my decision,
20 yes.

21 Q. Okay. And that's something you feel
22 strongly about?

23 A. Correct.

24 Q. Okay. Do you think that your
25 personal view is different than what we have

1 talked about here in terms of our having no
2 burden to produce any evidence?

3 A. Say it one more time.

4 Q. Okay. We've talked about basically
5 the rule is we don't have to do anything.
6 It's their case. They have to prove their
7 case. We don't have to say anything. We
8 don't have to do anything. And the rule is
9 nobody can hold that against us because we're
10 presumed innocent. And the question here
11 really is: Do these folks prove their case?

12 It seems to me that what you are
13 saying is different than that. Am I right or
14 am I wrong on that?

15 A. I think if they have facts and
16 evidence against him, that you should be able
17 to show something to -- in his offense -- in
18 his defense. And if you don't have it, I'll
19 be more to go with their -- what they found,
20 evidence against him.

21 Q. Are you going to require us to
22 produce some evidence in order to find my
23 client not guilty?

24 A. Yes.

25 Q. And that's a firm view?

1 A. Yes.

2 MR. BROOKS: Judge, I think that this
3 person disagrees with the law on the
4 presumption of innocence, and I'm going to
5 challenge for cause.

6 THE COURT: Let me ask you a couple
7 of questions.

8 When you say that you would require
9 the defendants to put on some evidence, you
10 know that for every witness that the State
11 puts on, the defendant by and through his
12 attorneys has the right to cross-examine those
13 witnesses, to challenge their recollection, to
14 challenge their credibility, in some way to
15 show prospective jurors whether or not -- I'm
16 sorry -- to show the jurors whether or not
17 that person is actually telling the truth,
18 whether they're recollection accurate or
19 their -- is good. You know, cross-examination
20 is actually a part of the defendant's case.
21 They don't have to put on a case.

22 Could you consider that in your need
23 to hear evidence from the defense?

24 PROSPECTIVE JUROR 065: If he was
25 cross-examined?

1 THE COURT: If the individuals that
2 the State puts on are cross-examined by the
3 defense.

4 PROSPECTIVE JUROR 065: I'm sorry.
5 I'm not following you.

6 THE COURT: Okay. I'm not sure
7 whether or not when people say they believe
8 that the defense should put on a case, they
9 should put on evidence of their innocence,
10 because that's an incorrect statement of the
11 law, if they mean they want the defense to put
12 on a case just like the State does.

13 So what I am asking you is during the
14 course of the State's case, the defendant's
15 attorneys get to cross-examine the State's
16 witnesses, and they may be able to show that a
17 witness is wrong; they may be able to show
18 that a witness didn't have the ability to
19 observe what he thought he observed, didn't do
20 the testing right on a piece of evidence; any
21 number of things can be used during
22 cross-examination. Is that sufficient for you
23 in terms of --

24 PROSPECTIVE JUROR 065: No. I still
25 think they have to --

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1 THE COURT: Thank you. Do you wish
2 to follow up?

3 MR. KANE: No, Your Honor.

4 THE COURT: I'm going to grant the
5 request to excuse for cause.

6 I'm going to thank you and you are
7 excused, Juror 065. I ask you to return to
8 the jury assembly area. Thank you for your
9 candor. I know it's very difficult to sit in
10 a courtroom and tell us you're not going to go
11 along with the law, but it's very important to
12 all of us you do so.

13 I think it is getting a bit late, but
14 I would like to go at least into one more of
15 the prospective jurors.

16 Mr. Kane or Ms. Pandukht?

17 MR. KANE: I'm sorry. I thought you
18 were going to seat another juror.

19 THE COURT: I am going to do that.
20 Whoever is next in line, Ms. Clerk.

21 THE CLERK: Juror No. 84,
22 Ms. Valenzuela.

23 THE COURT: Ms. Valenzuela, would you
24 please fill the empty seat? You told us a
25 little bit before in general voir dire, and

1 you told us you had some concerns about drug
2 activities and some pretty firmly held
3 beliefs. But is there anything else you think
4 our attorneys might need to know about you?
5 You have heard the questions that the others
6 have been asked. Anything else you think they
7 might need to know?

8 PROSPECTIVE JUROR 084: When is the
9 schedule for this? Because --

10 THE COURT: Mr. O'Brien gave you the
11 schedule: It's going to be tomorrow
12 afternoon. Nothing on Wednesday. Thursday
13 from 10:00 to 5:00. Friday is 8:30 to 12:30.
14 Next Monday is 1:30 to 5:00-ish. Tuesday is
15 1:30 to 5:00-ish. Wednesday I believe is the
16 same schedule, 1:30 to 5:00-ish.

17 PROSPECTIVE JUROR 084: I won't be
18 able to do that because I am a busser and I
19 work for tips.

20 THE COURT: I can't hear you.

21 PROSPECTIVE JUROR 084: I am a busser
22 and I work for tips, and I can't do that
23 because my money is going very low and we are
24 already going to be out of work for like
25 two weeks and a half and I won't be able to

1 make my payments.

2 THE COURT: So money would be a
3 financial concern.

4 PROSPECTIVE JUROR 084: Yes.

5 THE COURT: If, in fact, you are
6 chosen as a juror, would you be able to
7 concentrate on the evidence, the facts and
8 circumstances in this case and render a
9 verdict? And, of course, you know that you
10 are getting paid by the county.

11 PROSPECTIVE JUROR 084: Not as much
12 as I needed right now.

13 THE COURT: Understood. Do you think
14 you could focus on the trial?

15 PROSPECTIVE JUROR 084: I need my
16 money more.

17 THE COURT: Are you concerned about
18 your financial wherewithal so much that you
19 couldn't listen with an open mind?

20 PROSPECTIVE JUROR 084: Yeah, because
21 that's my living.

22 THE COURT: Well, there are a whole
23 bunch of other people who are in the same
24 situation, and I am not going to excuse them.
25 I'm more concerned about the fact that you

1 would need to focus, regardless of your
2 financial situation. Can you do that?

3 PROSPECTIVE JUROR 084: Yes.

4 THE COURT: Thank you very much.

5 Mr. Kane? Ms. Pandukht?

6

7 VOIR DIRE EXAMINATION

8 BY MS. PANDUKHT:

9 Q. Ms. Valenzuela, in your questionnaire
10 you left several questions blank. Was it
11 because the answer to those questions was no
12 or -- and I'm specifically asking about on the
13 second page. Do you remember that?

14 A. I most likely did not understand.

15 Q. Okay. Well, you know, questions
16 like: Have you ever been in the military?

17 A. Oh, no.

18 Q. And do you attend religious services?

19 A. No.

20 Q. Any relatives who are judges or
21 attorneys?

22 A. No.

23 Q. So I'm assuming if you left it
24 blank --

25 A. It was no.

1 Q. If you left it blank, the answer was
2 no, for the most part?

3 A. Yes.

4 Q. You also said that you had family
5 members, aunts, uncles, cousins, who have been
6 arrested?

7 A. Yes.

8 Q. Were those the people that have the
9 drug problems?

10 A. Yes.

11 Q. And do you know what kind of crimes
12 they were arrested for?

13 A. Different stuff. I'm not sure what
14 they were, but I know that one of my uncles --
15 (inaudible).

16 UNIDENTIFIED SPEAKER: Was deported,
17 too many times.

18 MS. PANDUKHT:

19 Q. Were they drug crimes, theft crimes
20 or violent crimes?

21 A. They were drug crimes.

22 Q. So basically just drug crimes?

23 A. Yes.

24 Q. Was there anything about how those
25 relatives were treated by the police or

1 prosecutors that you were not happy about?

2 A. No.

3 Q. Now, you also said, when you were
4 asked if you were -- any family members or
5 anyone close to you had been the victim of a
6 crime, your answer was yes, but there was
7 nothing they could do.

8 Could you give me a little bit more
9 specifics?

10 A. It had nothing -- well, my sister
11 didn't want to file anything. So there is
12 nothing that the officer or the police can
13 really do if she doesn't want to file
14 anything.

15 Q. Okay. So it was for family members?

16 A. (No audible answer.)

17 Q. You had said, you know when you had
18 the different roles of people, for crime
19 victims, you said I don't like fake victims or
20 liars. What did you mean by that?

21 A. Well, that those who pretend they are
22 a victim but really aren't. Like --

23 Q. What would make you think that
24 someone is doing that?

25 A. Well, in cases where they say they

1 were raped and they weren't, by doctors like
2 providing evidence that they weren't. It's
3 really not --

4 Q. Were you basing that on something
5 that had happened to your family member?

6 A. No.

7 Q. Were you basing on something you saw
8 on television or in the news?

9 A. Yeah.

10 Q. So there is no personal experience --

11 A. No.

12 Q. -- that would cause you to think --

13 A. No.

14 Q. -- that all victims were fake?

15 A. No.

16 Q. You would be able to consider all of
17 the possible penalties in this case?

18 A. Yes.

19 Q. You would be able to consider the
20 death penalty?

21 A. Yes. But from what I have heard,
22 it's three murders. And if two of them were
23 proven to be like first -- if two of them were
24 proven that he is guilty for it, then I would
25 automatically go for the death penalty.

1 Q. So if he was convicted of more than
2 one killing, you would not be able to consider
3 life in prison?

4 A. Um-um.

5 Q. Why is that?

6 A. Because it's too late already for --
7 one is enough.

8 Q. Would you be able to consider all of
9 the facts and circumstances of the case and
10 all of the circumstances of the killings
11 before making a decision?

12 A. Well, if it was already proven that
13 they are guilty for those cases, then what
14 else there to say?

15 Q. Well, in your questionnaire one of
16 your answers was -- the question is: Do you
17 feel that a defendant's background, the facts
18 surrounding a killing or both should be
19 considered? One of the questions you wrote
20 down was: What was the motivation for the
21 killing? You had written that. You still
22 believe that, don't you?

23 A. Not really.

24 Q. Why don't you believe what you wrote
25 in the questionnaire?

1 A. Because I've thought about it, and
2 people who do what they do at that moment make
3 their own decisions and nothing else can
4 really influence it.

5 Q. You had also said that you had
6 considered being excused mentally, I believe.
7 Do you still agree with that?

8 A. Mentally when a person is retarded?

9 Q. Well, in the same answer you said if
10 they are excused mentally.

11 A. Oh, yeah. They like -- what they
12 said, I guess, not knowing what they were
13 doing or -- yeah, being I guess retarded.

14 Q. So you would be able to consider
15 other circumstances?

16 A. I doubt it, but --

17 Q. I'm sorry?

18 A. Yes.

19 MS. PANDUKHT: I'll pass for cause.

20 BY MR. O'BRIEN:

21 Q. Good afternoon. Do you have some
22 health conditions that might affect your
23 ability to be a fair and attentive juror?

24 A. No.

25 Q. You mentioned some things on your

1 questionnaire that concerned me. And I'm just
2 wondering would you prefer we talked about
3 some of those things in private? Because
4 frankly, I couldn't read a lot of what you
5 said. So I just wanted to clarify it. And I
6 don't want to -- you know, this medical stuff
7 is kind of personal stuff. So I was just
8 wondering if you would feel better --

9 A. No.

10 Q. You're fine talking about it?

11 A. I just get really nervous and fidgety
12 and --

13 THE COURT: I'm having a hard time
14 hearing. She just gets really --

15 MR. O'BRIEN:

16 Q. Nervous and fidgety; is that correct?
17 You also get paranoid; isn't that what you
18 wrote?

19 A. Yeah. When I'm at new places and
20 with strangers.

21 THE COURT: You have to speak up.

22 PROSPECTIVE JUROR 084: When I'm with
23 new faces and with strangers.

24 ///

25 MR. O'BRIEN:

1 Q. Tell me what paranoid means to you.

2 A. Just get a little, you know, like
3 really by yourself I get really nervous, I
4 just get really nervous.

5 Q. Okay. Does that -- tell me what it
6 does to you. How do you react when you start
7 feeling like that?

8 A. Like when I was in the line for the
9 jury meeting, I started to tear up because
10 I --

11 THE COURT: I didn't hear any of
12 that. I'm sorry.

13 MR. O'BRIEN:

14 Q. Correct me if I'm wrong. For the
15 record, I believe you said when you were in
16 the jury line, you began to tear up?

17 A. Yes, on Tuesday, because I got really
18 nervous. I couldn't focus much.

19 Q. All right. And you get like this
20 when you're with new people?

21 A. Yeah.

22 Q. People you don't know?

23 A. Yeah, when I'm not familiar with the
24 face.

25 Q. How long does it take you to become

1 familiar with the person?

2 A. Just talk to them, I guess. Just to
3 talk.

4 Q. Okay. No definite answer?

5 A. Yeah.

6 Q. And when you're suffering from this
7 paranoia, it sounds like you get emotional,
8 too; is that true?

9 A. Yes.

10 Q. And it sounds like it affects your
11 attention.

12 A. Yes.

13 Q. Do you believe you are going to be
14 able to overcome this and pay attention to the
15 evidence in court?

16 A. I will try to. I'm doing it now,
17 so...

18 Q. Okay. Have you been having any
19 problems?

20 A. Not too much.

21 Q. Okay. Have you been able to follow
22 everything?

23 A. Yes.

24 Q. Tell me how that might change when
25 you're in a room deliberating a case with the

1 other jurors. Would your problem be worse
2 then?

3 A. I'm not quite sure because I didn't
4 know I would feel that way until I was already
5 in the room. So --

6 Q. So it's kind of unpredictable?

7 A. Yes.

8 Q. If everybody's laying out their
9 opinions and their beliefs and they're
10 pointing out this or they're pointing out
11 that, you're just going to just kind of sit
12 back and go along with the majority. Is that
13 fair to say?

14 A. Most likely.

15 Q. You're not really going to have an
16 independent vote with this jury, are you?

17 A. Not likely.

18 Q. I'm sorry?

19 A. Not likely.

20 MR. O'BRIEN: Judge, for an aggregate
21 of reasons, I would ask you to consider
22 excusing this juror for cause.

23 THE COURT: Mr. Kane, do you wish to
24 do follow-up? I think the excuse is a
25 challenge for cause with respect to the

1 ability to participate meaningfully. You've
2 read the questionnaires, I presume. Anything
3 else you wish to add or comment on further
4 questioning?

5 MS. PANDUKHT: No, Judge.

6 THE COURT: Ms. Valenzuela, what we
7 are concerned about here is whether or not you
8 would be able to deliberate with the other
9 jurors. One of the instructions that I
10 usually give in these cases is an instruction
11 that says that people, jurors, should not be
12 compelled to change their opinion just because
13 the majority of others feel that it should be
14 a particular way.

15 If a whole bunch of folks on the jury
16 said they thought something should be one way,
17 and in your heart of hearts, based upon your
18 analysis of the evidence, you thought it
19 should be the other way, would you surrender
20 your right to vote the other way just because
21 a whole bunch of the other people said they
22 should vote that way, or would you stand your
23 ground?

24 PROSPECTIVE JUROR 084: I would
25 follow.

1 THE COURT: I'm sorry?

2 PROSPECTIVE JUROR 084: I would
3 follow.

4 THE COURT: I think I'm going to
5 dismiss this juror on a Court's motion. It
6 doesn't qualify for a for-cause I think
7 technically. And I don't want to go into any
8 more detail here, but I think on my own
9 motion.

10 You can return to the jury assembly
11 area. Thank you very much.

12 Let's go the next in order.

13 THE CLERK: Badge No. 86, Leonard
14 Fassler.

15 MR. BROOKS: I'm sorry, Judge. What
16 was the number again, please?

17 THE COURT: 86.

18 Welcome to the hot seat, sir. It
19 usually cools down after about one or two
20 people are in and out of it. But you've heard
21 the questions that have been asked by the
22 attorneys. Anything that you think we need to
23 know about you, any stuff that we haven't
24 perhaps covered?

25 PROSPECTIVE JUROR 086: Just make a

1 statement. The same time constraints that
2 everybody has made, the same statement.

3 THE COURT: Understood.

4 Ms. Pandukht? Mr. Kane?

5 MS. PANDUKHT: I have no questions
6 for Mr. Fassler.

7 THE COURT: Pass for cause?

8 MS. PANDUKHT: Yes.

9 MR. O'BRIEN: Just briefly, Judge.
10

11 VOIR DIRE EXAMINATION

12 BY MR. O'BRIEN:

13 Q. Anything we should know about in
14 regard to you being a fair and impartial
15 juror?

16 A. I don't believe so, other than the
17 fact I stated earlier that I don't believe in
18 the death penalty.

19 MR. O'BRIEN: Okay. Thank you,
20 Judge. We'll pass for cause.

21 THE COURT: Let's go on to one more.

22 Ms. Pandukht? Mr. Kane?

23 MS. PANDUKHT: I believe we're on to
24 Ms. Pregosin.

25 PROSPECTIVE JUROR 066: Yes.

1
2 VOIR DIRE EXAMINATION

3 BY MS. PANDUKHT:

4 Q. Now, you had stated earlier when
5 asked about the death penalty, that you cannot
6 keep an open mind. Is that still your belief?

7 A. I would have a very hard time, if it
8 came down to it, voting for the death penalty
9 on somebody.

10 Q. So would you be able to give the
11 death penalty any consideration?

12 A. I really -- it's hard for me to say
13 at this point in time because I'm not faced
14 with actually having to make that decision. I
15 would think -- I believe I would have a very
16 hard time imposing the death penalty.

17 Q. So you would be able to consider the
18 death penalty as one of the options, or you
19 would not?

20 A. I don't believe so.

21 Q. So you could not give the death
22 penalty under any circumstances?

23 A. I believe I would not be able to do
24 that.

25 Q. When you say "believe," does that

1 mean you are not sure?

2 A. I have certain religious beliefs that
3 I was raised with, and I don't believe that
4 just because somebody is accused of killing
5 someone, that they should -- an eye for an
6 eye, I don't necessarily believe that.

7 I would be more comfortable with
8 voting for life imprisonment. I don't know --
9 this is very hard for me to say. I think that
10 someone sitting in prison for the rest of
11 their lives is more punishment than just
12 going, okay, that's it and they're put to
13 death. I don't know if that helps you
14 understand it better.

15 Q. Well, there's four possible penalties
16 in this case, and there's actually two others
17 that are kind of similar to each other: The
18 hundred years with the possibility of parole
19 and then life with the possibility of parole.
20 I noticed in your questionnaire you didn't
21 believe you could consider those as well.

22 A. Which ones were those?

23 Q. Basically giving the possibility for
24 parole.

25 A. I don't believe in if you're charged

1 with murder and you're found guilty of murder,
2 you should get parole.

3 Q. So you would not be able to give life
4 with the possibility of parole any
5 consideration either?

6 A. That one didn't make sense to me
7 because if it's life and you're in there, your
8 natural God-given life. Maybe I don't
9 understand what it is. But if you're put in
10 for life, it means you are going to die in
11 prison; so why would you give him the
12 opportunity for parole?

13 Q. Well, there are those different
14 options. You know, those are, by law, the
15 different penalties that a juror could give.

16 And would you be able to give any
17 consideration to a penalty of life with the
18 possibility of parole?

19 A. I don't think in the case of murder I
20 could give -- I would consider parole at all
21 in any one of those choices.

22 Q. So the only sentence that you could
23 consider would be life without the possibility
24 of parole?

25 A. In the case of murder --

1 Q. And, of course, this is a murder
2 case. I mean --

3 A. Right. Yeah, I'm just trying to
4 state my thoughts. In this particular case, I
5 do not feel that with my beliefs I could vote
6 for the death penalty. I don't believe in
7 parole when it comes to being charged with
8 murder. So I guess that would be my only
9 option.

10 MS. PANDUKHT: Your Honor, at this
11 time --

12 (Whereupon, the lights went out.)

13 THE COURT: They'll come back on.
14 Just wait. At least they usually do.

15 MR. O'BRIEN: I put that bill in the
16 mailbox, Judge.

17 THE COURT: Likely story,
18 Mr. O'Brien.

19 MS. PANDUKHT: Your Honor, at this
20 time the State has to challenge for cause.

21 THE COURT: Mr. O'Brien or
22 Mr. Brooks, do you wish to follow up?

23 MR. O'BRIEN: Thank you, Judge.

24 ///

25 BY MR. O'BRIEN:

1 Q. Tell me your name again. I can't
2 read it.

3 A. Pregosin.

4 Q. Pregosin?

5 A. Yes.

6 Q. Hi, Ms. Pregosin. When you started
7 talking with Ms. Pandukht, you said you caused
8 a lot of your answers with the phrase "not
9 necessarily." So if I may, let's wipe the
10 slate clean for a minute.

11 A. Okay.

12 Q. Can you think of any case at any time
13 where somebody didn't get the death penalty
14 and that kind of surprised you?

15 A. Someone didn't get the death penalty?
16 To be perfectly honest, I don't follow the
17 news, the current news. I don't like watching
18 the news. It makes me nervous, so I don't
19 watch the news. So I'm not current on any
20 current cases. You just mean in the history
21 of time?

22 Q. If anything comes to mind, I would
23 love to hear it. Yes, history of time. Let's
24 go back to Ghengis Khan.

25 UNIDENTIFIED SPEAKER: Let's not.

1 PROSPECTIVE JUROR 066: Can you
2 repeat that question one more time?

3 MR. O'BRIEN:

4 Q. Can you think of a case or a
5 circumstance where somebody didn't get the
6 death penalty that you thought, hmm, that's
7 just -- or you thought, geez, maybe he should
8 have gotten the death penalty?

9 A. And was actually found guilty?

10 Q. That's correct. How about Manson? I
11 don't know if he got the death penalty or not.
12 But do you think for what he did, do you think
13 maybe he --

14 A. It's easy to say it when you're not
15 on the jury. And that's the way I -- you
16 know, it's easy to say it when you're not
17 faced with making that choice

18 Q. Is it fair to say that in a case like
19 the Manson case you might be able to consider
20 the sentence of death?

21 A. If I was on the jury?

22 Q. Yes. Not necessarily impose it, but
23 would you be able to consider it?

24 A. Be able to consider it. I'm going to
25 have to say no, because I feel that if I did

1 consider it and then that person was actually
2 put to death, I couldn't live with myself.

3 Q. Okay. Now, you understand the law --
4 you never have to vote for death, you only
5 have to consider it. Do you understand that?

6 A. Yeah, I understand that.

7 Q. Okay. Does that help you in deciding
8 whether or not you might be able to consider
9 the death penalty?

10 A. Does it help me? No, it doesn't help
11 me.

12 Q. And if the Judge instructed you to
13 set aside your personal opinion and we want
14 you to consider this, do you think you would
15 be able to do that?

16 A. I don't think I could.

17 MR. O'BRIEN: Okay. Thank you,
18 ma'am. That's all.

19 THE COURT: Pass for cause?

20 MR. O'BRIEN: Pass for cause, Judge.

21 THE COURT: And, I'm sorry, did you
22 challenge for cause?

23 MS. PANDUKHT: I did.

24 MR. O'BRIEN: I believe the State
25 did.

1 THE COURT: What is most important in
2 this process is that every prospective juror
3 keep an open mind; that they would listen to
4 all facts in the evidence and they would apply
5 the law as I would instruct you to do that's
6 in the trial phase. If we get to a penalty
7 phase, essentially the same is true.

8 I'm going to give you certain
9 instructions. You are going to listen to the
10 facts in evidence, and you are going to be
11 called upon to consider the penalties or
12 possibility of penalties. Can you keep an
13 open mind and consider all of them after you
14 have heard all of the evidence?

15 PROSPECTIVE JUROR 066: To be
16 perfectly honest, I do not think I could
17 consider the death penalty. Even if I've
18 heard the evidence and the person is found
19 guilty based upon the evidence, I don't think
20 I can consider it.

21 THE COURT: So under no set of
22 circumstances could you ever consider the
23 death penalty?

24 PROSPECTIVE JUROR 066: No, I don't
25 believe so.

1 THE COURT: Does that mean, then,
2 that of the penalty options that are available
3 to you, regardless of the Court's instruction
4 or regardless of the what the law in the State
5 of Nevada is, that you would disregard at
6 least part of that in your consideration?

7 PROSPECTIVE JUROR 066: I don't want
8 to go against the law, but I have a firm
9 belief that I could not consider putting
10 someone to death if found guilty.

11 THE COURT: So you could -- you
12 wouldn't -- you could vote against it. You
13 realize that.

14 PROSPECTIVE JUROR 066: Yeah. I
15 guess, yeah, since you put it that way.

16 THE COURT: It's certainly an option.

17 PROSPECTIVE JUROR 066: Yeah, I
18 guess.

19 THE COURT: So you wouldn't be
20 uncomfortable voting against the position of
21 the death penalty if this case should get to
22 that phase?

23 PROSPECTIVE JUROR 066: I wouldn't
24 feel uncomfortable voting against it, but I
25 wouldn't vote for it.

1 THE COURT: I'm going to go ahead and
2 grant for cause. I'm going to thank you and
3 excuse Ms. Pregosin and ask you to return to
4 the jury assembly area. And we'll call the
5 next in order.

6 THE CLERK: Badge No. 88, Vedajenne
7 Wormely.

8 PROSPECTIVE JUROR 088: Close enough.

9 THE COURT: Welcome. See, the hot
10 seat changes as the case goes on. We're going
11 to try one more, at least one more of the
12 prospective jurors.

13 Is there anything, ma'am, that you
14 think our attorneys need to know about you
15 that we haven't already heard?

16 PROSPECTIVE JUROR 088: No.

17 THE COURT: Anything that you would
18 answer in the affirmative to, any of the
19 questions that they have asked the others?

20 PROSPECTIVE JUROR 088: No.

21 THE COURT: Ms. Pandukht?

22 MS. PANDUKHT: Yes.

23 ///

24 ///

25 VOIR DIRE EXAMINATION

1 BY MS. PANDUKHT:

2 Q. So from reading your questionnaire,
3 it seems as though you would be able to
4 consider all four of the penalty options in
5 this case?

6 A. Yes.

7 Q. You would be able to consider the
8 death penalty; right?

9 A. Yes.

10 Q. And life in prison without the
11 possibility of parole?

12 A. Yes.

13 Q. Life with the possibility of parole?

14 A. Yes.

15 Q. And then also the hundred years?

16 A. Yes.

17 Q. So you have no problem considering
18 and ultimately deciding on any one of those
19 options?

20 A. No.

21 Q. Okay. Now, you haven't been the
22 victim of a crime or anyone close to you?

23 A. No.

24 Q. And then you or anyone close to you
25 has never been arrested for a crime?

1 A. No.

2 Q. And then -- let's see here. You
3 wrote a lot in your questionnaire, so I wanted
4 to make sure I didn't miss anything.

5 Do you have any problems, any
6 reservations, about sitting in judgment on
7 this jury today?

8 A. No.

9 Q. You have no problems whatsoever?

10 A. No.

11 MS. PANDUKHT: I'll pass for cause.

12 THE COURT: Mr. Brooks? Mr. O'Brien?

13 MR. O'BRIEN: Thank you, Judge.

14 BY MR. O'BRIEN:

15 Q. Let's see. Your last name is
16 Wormely; is that correct?

17 A. Yes.

18 Q. Are you related to or do you know a
19 Naron Wormely?

20 A. No.

21 Q. From Southern California?

22 A. No.

23 Q. Can you be a fair and impartial
24 juror?

25 A. Yes.

1 Q. Listen to both sides fairly?

2 A. Yes.

3 Q. And sit down and listen to all of the
4 evidence, if necessary, in a penalty phase and
5 make a just decision?

6 A. Yes.

7 MR. O'BRIEN: Thank you, ma'am.

8 I'll pass for cause, Your Honor.

9 THE COURT: I think that we need to
10 stand in recess until tomorrow at 1:30.

11 For those of you who remain here in
12 this area, please don't think the time spent
13 here today has been a waste of your time.
14 It's very important that our attorneys know
15 that there are others who can replace certain
16 of the excused jurors.

17 So for each and every one of you, it
18 remains your duty not to discuss this case
19 among yourselves or with anyone else. Don't
20 read, watch, listen to any report of
21 commentary on or to any person who might be
22 associated with this matter. Don't do any
23 research of any type on any of these issues
24 including any Internet research.

25 Do not form or express an opinion on

1 any of these matters until they have been
2 fully and finally submitted to you under
3 instruction of law by me.

4 When you go home tonight, if there
5 are others in your home, you cannot discuss
6 this case with them. You simply are, yes, a
7 prospective juror in a criminal case in
8 Department XVIII, and that's all that you can
9 tell them.

10 With respect to the badges that you
11 have that were given to you this morning, it
12 is imperative that you wear them in an
13 immediately visible area from the moment you
14 get out of your car in the morning until you
15 return to your car in the evening. That means
16 it is not sufficient that you wear it on a
17 shirt sleeve. If in fact you are wearing a
18 coat, it has to be displayed on the outside of
19 your coat.

20 Sir, you are standing up. Right now
21 it's got to be displayed on the outside of
22 your coat. Just so that you all understand
23 that, again as you come and go into the
24 courthouse, please bear in mind people may be
25 witnesses, family members, members of either

1 one of our party's law firms, so please don't
2 discuss this case. If someone should try and
3 discuss this case with you, you must report
4 that to me immediately through Mr. Bailiff.

5 We will be in recess until tomorrow
6 at 1:30.

7 (Whereupon, court adjourned at 6:00 p.m.)
8
9

10 * * * * *

11
12
13 I hereby certify that the foregoing
14 is a true, accurate and complete transcription
15 of my stenographic notes taken at the time of
16 the aforementioned trial proceedings.
17

18
19 
20 GAYLE G. PICHIERRI, RPR, CRR
21 CCR No. 595, CSR No. 11406

22 Dated: 12/6/05
23
24
25

1 it.

2 THE COURT: Okay. The other one I
3 had a note by -- I think that's it. The other
4 thing, we had a couple of death penalty
5 questions. I think I'm going to allow you all
6 a little bit of follow-up. I didn't hear
7 anyone who actually said under no
8 circumstances could they impose the death
9 penalty. So I'll leave that to you all. When
10 we come back, I'll have you do the further
11 examination.

12 Mr. O'Brien, is there a question?

13 MR. O'BRIEN: Yes, a concern, Judge.

14 Juror 104, Mr. Shubert, I believe he
15 is now formerly -- he was either formerly or
16 currently security at the Imperial Palace.
17 And, of course, the concern I have is this was
18 during the Chow controversy. Of course, I
19 took some positions that may be contrary to
20 the Imperial Palace's best interests or
21 self-interests. So I'm a little concerned
22 with Mr. Shubert. And based on some of the
23 things he said, I think he's --

24 THE COURT: He has some other issues
25 I think that might require some follow-up.

1 Shubert, 104, he is retired Erie PD; he knows
2 at least one of your witnesses; security for
3 Barrick --

4 MR. O'BRIEN: Greg Chow.

5 THE COURT: A case that Mr. O'Brien
6 was involved in.

7 MR. BROOKS: Just for the record,
8 Judge, the Chow case is a murder case where
9 Mr. O'Brien represented Mr. Chow. The event
10 happened at the Imperial Palace, and he was
11 involved in the security detail in that case.

12 THE COURT: Do we know for sure he
13 was part of the security detail in that case?
14 I don't remember his name coming up.

15 MR. O'BRIEN: I'm 99 percent certain,
16 Judge. And I can't recall if he testified at
17 trial, but I know either through myself or my
18 investigators we had contact with him through
19 the subpoena process.

20 THE COURT: Okay. Yes, because there
21 was -- the body in this case was actually
22 found on the balcony of the Imperial Palace.
23 He surely would have known about it. I'm
24 going to allow you to do a little bit of
25 follow-up with him.

1 MR. O'BRIEN: I wasn't sure if you
2 wanted to do it individually. Just for the
3 record, my concern was they were kind of
4 overwhelmed and not real pleased with some of
5 our requests. And so I'm worried about a
6 little bias.

7 THE COURT: I think that you should
8 make those inquiries about whether or not he
9 is familiar with any other cases you were
10 involved in. And if you feel a need to take
11 it outside the presence of the other jurors,
12 we can do that. But right now, I think it's
13 okay.

14 Anything else?

15 MR. BROOKS: Judge, from the defense
16 side, I just want to make a record that as of
17 right now, prior to any excusings, we had 43
18 jurors in the courtroom, and by my
19 observation, five were African-American. I
20 only make this as a matter of record for
21 possible Batson issues in the future.

22 THE COURT: It's important that we
23 note that for the record. And I have no way
24 of knowing what the composition of the
25 remaining 50 are going to be. But, of course,

1 that is something in the record you need to
2 make. We will consider that if and when we
3 need to down the road. Take about
4 five minutes.

5 Mr. Bailiff, did you tell them? Ten
6 minutes? Okay. About five minutes.

7 (Recess taken.)

8 (Whereupon, the prospective jurors entered the
9 courtroom.)

10 THE COURT: Please be seated. And
11 welcome back. Let the record reflect that we
12 are present in the matter of State versus
13 Budd; this is case No. 193182. All parties
14 with counsel are present.

15 Will you stipulate, please, to the
16 presence of the jury?

17 MR. KANE: Yes, Your Honor.

18 MR. BROOKS: Defense will, Your
19 Honor.

20 THE COURT: Very well. Ladies and
21 gentlemen, I am going to have our attorneys
22 begin the questioning now. However, Counsel,
23 as I believe you all know, I would ask you
24 please confine your questions to those in the
25 box and we will move on as needed.

1 Mr. Kane?

2 MR. KANE: Thank you, Your Honor.
3 Your Honor, may I pose a couple of general
4 questions to the people in the box before
5 the individual --

6 THE COURT: Absolutely. In fact, I
7 prefer you do so. If any questions either
8 side can ask are of a general nature, it makes
9 the time go by quicker.

10 MR. KANE: I only have a couple of
11 questions for you.

12 Number one is I listed the victims
13 for you in my introductory remarks, and you
14 remember there were two 19-year-olds and a
15 14-year-old. Is there anything about the fact
16 that one of the alleged victims is 14 years
17 old that puts anyone in a position that they
18 would doubt their ability to be fair and
19 impartial?

20 Let the record reflect a negative
21 response from all jurors.

22 You're going to have to look at some
23 disturbing photographs in the course of the
24 case. We are not going to show you a mountain
25 of photographs, but it's important that you

1 understand how these killings occurred so you
2 can decide issues like the intent of the
3 person doing the killing. So we are going to
4 have to show you pictures of these people as
5 they lie after they were killed.

6 Is there anyone who doubts their
7 ability to be able to look at and fairly
8 evaluate disturbing evidence like that?

9 Let the record reflect a negative
10 response from all jurors.

11 And, finally, there was mention made
12 that drugs will be mentioned in this trial.
13 In fact, it will be our allegation that the
14 motivation for these slayings was that the
15 defendant thought that the victims had taken
16 some marijuana from him, and it was out of
17 rage for that that they were killed.

18 Is there anything about the fact that
19 this killing centers around drugs or drug
20 transactions, again, that puts anyone in a
21 position where they doubt their ability to be
22 fair and impartial?

23 With that, Judge, I don't have any
24 questions on behalf of the State for juror
25 No. 1; that is badge 059. We would pass that

1 juror for cause.

2 THE COURT: Very well.

3 MR. BROOKS: Judge, just for the
4 record, we pretty much divided the jurors
5 among ourselves, Mr. O'Brien and myself. Is
6 it okay for us to go ahead and to follow the
7 standard procedure and ask each individual
8 that way?

9 THE COURT: Yes.

10

11 VOIR DIRE EXAMINATION

12 BY MR. BROOKS:

13 Q. Thank you. I'm going to talk to
14 Mr. Shubert -- is it Shubert?

15 A. Shuman.

16 Q. Juror No. 059. You can remain
17 seated. My name is Howard Brooks -- and Mr.
18 O'Brien, both of us, are defense attorneys
19 here. What we are hoping for is we are trying
20 to identify any problems identifying someone
21 who could not be completely fair to Mr. Budd
22 as we go into what is really an incredibly
23 difficult case and very, very serious
24 allegations, and the stakes could not be
25 higher than they are for Mr. Budd here.

1 As you go through what we have gone
2 through so far, do you have any particular
3 observations or views on anything you would
4 like to share with us?

5 A. I just wanted the Court to know some
6 of my background, that's all.

7 Q. My impression is you would rather not
8 be on the jury?

9 A. That is correct.

10 Q. Why was that?

11 A. I have strong feelings against drugs.
12 I've never even smoked a joint. So I'm way
13 out of touch with the drug culture, and I
14 don't agree with it.

15 Q. It's outside of your personal
16 experience?

17 A. That's correct.

18 Q. And you're uncomfortable with it?

19 A. Well, I'm uncomfortable with the way
20 that it's prevalent in our society, I guess
21 you would say.

22 You should also know I'm originally
23 from Mississippi, and I grew up in
24 Mississippi, and I grew up in segregated
25 schools, and it's taken me a long time to

1 conquer most of those prejudices -- sorry
2 about that.

3 Q. Mr. Budd is obviously a black man,
4 and you are a white person as I am. Does
5 that -- do you think you may have trouble in
6 the sense of prejudging him in any way because
7 of the skin color?

8 A. I don't believe so, but I think you
9 should know it.

10 Q. Okay. And I appreciate so much your
11 being open and honest about that, because it's
12 difficult to do that. That's what we're
13 hoping people will do.

14 In reading through these questions --
15 let me first say this: We want to know if you
16 will follow the law as the Court instructs
17 you. And we have two challenges here. One is
18 we have a trial where the State will be
19 alleging my client committed three killings.

20 But in the event that this jury
21 convicts my client of first degree murder, we
22 will also have a penalty hearing -- it's a
23 separate proceeding -- to determine what the
24 penalty could be. And the Judge will instruct
25 you regarding the rules for that hearing and

1 will instruct you that in the event that you
2 convict my client of first degree murder for
3 any of the three killings, that the possible
4 penalties are either the death sentence, life
5 in prison with the possibility of parole after
6 spending 40 years in prison, or life in prison
7 with no parole possibility at all. One of the
8 questions in the questionnaire concerns that.

9 What is your view of those
10 punishments and this crime?

11 A. Well, I haven't heard the facts in
12 the case, so I don't -- other than the vague
13 innuendos and trying to steer us to be partial
14 or give our real thoughts and stuff. So I
15 don't know the facts in the case. I have no
16 problem with the death penalty for first
17 degree murder. I just -- I don't have a
18 problem with that. And any of the lesser
19 ones, depending on the severity of the crime,
20 and I guess the facts surrounding the case.

21 Q. By the way, if you -- if the jury
22 does not convict him of first degree murder,
23 then the Judge would be doing the sentencing;
24 so we would not have a penalty hearing.

25 I guess my concern in viewing your

1 questionnaire is I understand that you are
2 certainly open to the death penalty. Are you
3 open to life in prison --

4 A. Sure.

5 Q. -- if he's convicted of murder?

6 A. Am I open to that?

7 Q. Yes.

8 A. Again, it would depend on the
9 severity of the crime, what the facts of the
10 case are; okay? I'm not going to say I'll
11 lean toward life in prison if people were
12 executed over drugs or any other -- or for any
13 other reason; I would lean toward the most
14 severe penalty that you could get.

15 Q. But you're open to all the different
16 penalties?

17 A. I have no problem with any of them;
18 okay. But it all depends on the facts of the
19 case, and I haven't heard the case yet.

20 Q. Okay. Here we are in a very unique
21 situation because we are not dealing with just
22 one killing, we are dealing with three. So if
23 my client is convicted of two killings, are
24 you still open to a life in prison jail
25 sentence?

1 A. You're still asking me the same
2 question. I haven't heard the facts of the
3 case yet.

4 Q. Okay. But the fact of two killings
5 in and of itself would not make you rule out
6 anything but death. Do you follow what I'm
7 saying?

8 A. Ask me again.

9 Q. Let me rephrase this, and I apologize
10 for my confusing syntax.

11 In this case we have three alleged
12 killings. In the event that you convict my
13 client of two killings, are you still open to
14 the idea of the possibility of him serving a
15 life in prison sentence, or does the fact that
16 he killed two people in and of itself mean it
17 has to be the death penalty for him if he was
18 convicted of first degree murder?

19 A. I understand your question, and I'll
20 go back to the original thing. One or a
21 dozen, if that's what you are trying to get
22 at, it depends on the facts surrounding the
23 case and how heinous the crime was.

24 Q. And the fact there will be two
25 killings or even three, that would not be

1 something that would be so heinous that you
2 would eliminate the possibility of a life
3 sentence?

4 A. I hadn't thought about that before.

5 Can I have 30 seconds, Your Honor, to
6 come up with an answer?

7 THE COURT: Absolutely.

8 MR. BROOKS:

9 Q. You have as much time as you would
10 like.

11 A. I'm not sure how I would treat that.
12 I haven't thought about it from that
13 perspective.

14 Q. I'll tell you what. We'll keep
15 talking, and if you come to a decision on
16 that, let me know.

17 A. Okay.

18 Q. All right? The Judge is going to
19 tell you that in the event you convict my
20 client of first degree murder, we have a
21 penalty hearing and, at that point, you will
22 hear testimony about his background. Based on
23 your questionnaire, it seems to me that you
24 don't feel that that should be considered. Is
25 that a fair statement or not?

1 A. That's a fair statement. I'm more
2 interested in what happened during the crime;
3 okay?

4 And let me say this: I have arrested
5 people in the past, nobody hears this, whose
6 names are on schools in this town, okay, and I
7 have arrested escaped prisoners who are doing
8 double life terms for murder out of Louisiana;
9 okay? I arrested them both equally,
10 impartially, okay, with no degree of one's
11 social status; okay? So I'm not sure that
12 somebody's background is going to sway me on
13 what happened when the crime was committed.

14 Q. If the Court instructs you to
15 consider the person's background, would you
16 consider the background in making that
17 decision?

18 THE COURT: If the law allows you to
19 make that consideration, which it does -- I
20 think that's the question -- could you do
21 that?

22 PROSPECTIVE JUROR 059: I understand
23 what you are saying, and you can tell me that
24 I need to consider that, but that would have
25 very minimal impact on me as opposed to what

1 happened at the crime.

2 MR. BROOKS:

3 Q. One of the things I sensed from your
4 questionnaire, you are a very strong person.

5 A. Thank you.

6 Q. And you are a very firm person, I
7 believe; is that fair?

8 A. I'm fair.

9 Q. You're a person with strong
10 convictions and strong beliefs.

11 A. Yes, I am.

12 Q. I think based on what your
13 questionnaire says, you'll tell me the truth;
14 is that fair?

15 A. Yes, sir.

16 Q. Okay. Here is my question in a
17 nutshell: If the Court says you need to
18 consider all of the evidence at this penalty
19 phase and you need to consider his background,
20 are you going to consider it? Or are you
21 going to say, nope, I am not going to consider
22 it; for me, it's just the facts of the case.

23 A. I'll consider it, but I really want
24 you to understand it's not going to prey on my
25 mind that he had poor childhood or anything or

1 that he has had rough breaks before or
2 whatever. I'm more interested in what
3 happened at the scene of that crime and the
4 incidents that led up to that crime.

5 Q. Do you think the background has any
6 importance at all?

7 A. Probably. But not the way that -- it
8 probably does, but I'm the kind of person that
9 I believe that if you commit a crime, okay,
10 I'm not sure that I am going to say that it's
11 okay or be more tolerant of you because of
12 something that happened to you 10 years ago.

13 Q. Okay. Going back, then, as I lead
14 you here to my original question, now, if the
15 jury convicts him of either two or three
16 killings, are you going to be open to life in
17 prison?

18 A. Yes.

19 MR. BROOKS: Okay. I appreciate your
20 honesty, and I think you've lost too much of
21 your Southern accent.

22 I'll pass for cause, Your Honor.

23 THE COURT: Thank you very much.

24 Mr. Kane? Ms. Pandukht?

25 VOIR DIRE EXAMINATION

1 BY MS. PANDUKHT:

2 Q. Mr. Garbaccio?

3 A. Yes, ma'am.

4 Q. Did I say that right?

5 A. Yes.

6 Q. Now, you had stated that you were in
7 the military?

8 A. That is correct.

9 Q. It was the U.S. Air Force, for
10 23 years?

11 A. U.S. Air Force, 23 years, retired.

12 Q. Did you in any way deal with any
13 legal proceedings or anything of that nature
14 while you were in the military?

15 A. Traffic tickets for kids, guys, that
16 worked for me, in England where you had to go
17 to court with them because it was a
18 requirement. That is the sum total,
19 100 percent, other than a traffic ticket I got
20 when I was 17 years old from running a stop
21 sign.

22 Q. And you also had stated that you were
23 a supervisor for 14 years.

24 A. That is correct.

25 Q. What kind of supervisor?

1 A. I was an inventory management
2 specialist, meaning I worked in Air Force
3 supply. I attained a sufficient rank early on
4 where I was put in charge of an office that
5 had X number of people working in that office,
6 and it ranged between one person and upwards
7 of 14 or 15 at certain points in my career.

8 Once I obtained the rank of E-5,
9 which is a staff sergeant, most of the offices
10 I worked in, I was either the ranking or next
11 ranking man, which meant that a day shift or a
12 night shift, I would be in charge of one of
13 the two of them.

14 Short of my one year in Vietnam,
15 where I was not a supervisor, I worked for,
16 you know, someone higher ranking than me. And
17 in the two stints I did in the Air Force or
18 Tactical Air Command, obviously you have
19 officers in charge, I was mostly a supervisor
20 in my capacity that I was in for the last
21 14 years that I was in the service.

22 Q. Okay. And in the answers that you
23 had in your jury questionnaire, one of the
24 ones, No. 45, you stated that you honestly
25 don't know if you believe the evidence

1 warranted the death penalty if you could
2 personally vote to impose the death penalty.

3 During the course of sitting here and
4 listening to everything, has that changed in
5 any way?

6 A. No.

7 Q. Would you be able to consider all of
8 the possible penalties --

9 A. No.

10 Q. -- in this case? Which penalties
11 would you not be able to consider?

12 A. And this is not because of what has
13 happened here. This is my belief. If there
14 is a conviction of, for lack of a better word
15 major crime, a killing, I honestly do not see
16 how a parole can be even considered. If it's
17 a double, that makes that consideration even
18 stronger in my mind. If it's a triple, even
19 stronger. A quadruple, whatever.

20 I do not understand a system that can
21 convict anyone of a particular crime, be it
22 check fraud, killing, drunk driving, whatever,
23 and then say, okay, your penalty is a life
24 imprisonment, but if you're good, we'll let
25 you off in 20 years. I'm sorry.

1 Q. So you could not even consider life
2 with the possibility of parole?

3 A. No. In the case of a first degree
4 murder and there is a conviction, it's either
5 you spend the rest of your time in jail, your
6 natural life in jail and there is no way they
7 are ever going to let you out, or you get the
8 death penalty. And I'm not a hundred percent
9 sure I could actually put my hand up to say
10 yes to the death penalty. But I know I would
11 never agree to parole.

12 Q. Do you have any personal or religious
13 convictions that prevent you from considering
14 the death penalty, or you're just not sure?

15 A. It's a personal conviction in that
16 the death penalty, at least the way I
17 understand it, is a crime -- can I say the
18 word with prejudice?

19 THE COURT: You can say whatever you
20 want.

21 PROSPECTIVE JUROR 060: I've watched
22 too much TV in my lifetime. If someone over
23 here is dead and someone over here is
24 convicted of making that person dead, there is
25 pain and suffering not for the person who is

1 dead, but pain and suffering for the
2 individuals involved with that person who is
3 no longer with us. The convicted person now
4 is sentenced either, A, life in prison, which
5 maybe 50 or 60 years ago was punishment. This
6 is in my mind now, ma'am. If I'm wrong, I
7 apologize profusely.

8 MS. PANDUKHT:

9 Q. Oh, no. We want to find out what
10 your feelings are.

11 A. But to me now -- and, again, a lot of
12 what I'm saying is predicated on what you see
13 on TV and what you kind of read in the
14 newspapers now. Life in prison, you are never
15 going to get out, what do you do all day long?
16 You go on the computer, you learn a trade, you
17 go and play cards with the guys, you have
18 three square meals a day, you have a bunk. If
19 you get sick, you go to the infirmary.

20 And maybe that is -- other than the
21 fact that you are incarcerated, you are never
22 going to go out, and you're not going to meet
23 Joe down at the corner bar for a beer; okay.
24 It's not like in the days of Steve McQueen
25 sitting on some island out in the South

1 Pacific where you're cutting down trees all
2 day long or Cool Hand Luke, that type of
3 thing.

4 Q. Let me ask you this question:

5 You also said with regard to the
6 death penalty, it should be considered on a
7 case-by-case basis. Do you still believe
8 that, depending on the particular facts and
9 circumstances of this case?

10 A. Yes.

11 Q. So you would be able to consider the
12 death penalty along with the other options?

13 A. I don't think I ever said on there
14 that I couldn't consider the death penalty. I
15 just don't know if I could actually put my
16 hand up and say yes to it.

17 MS. PANDUKHT: Okay. I'll pass for
18 cause.

19 THE COURT: Mr. O'Brien?

20 MR. O'BRIEN: Thank you, Judge. Just
21 generally speaking, with the leave of the
22 Court, would it help you people if I told you
23 our tentative schedule for the next week or
24 two? May I, Judge?

25 THE COURT: Absolutely.

1 MR. O'BRIEN: Today and
2 tomorrow we're going to be -- of course, today
3 we got started at 1:30. Tomorrow we are going
4 to start at 1:30 and go to 4:30. Wednesday
5 there will be no court. And Thursday we are
6 going to begin at 10:00 a.m., and I don't
7 believe Your Honor ever goes past 5:30; is
8 that right?

9 THE COURT: I try not to.

10 MR. O'BRIEN: And Friday would be
11 8:30 to noon. So if that helps you out.

12 The following week, we would expect
13 all 1:30 starts; so if that helps you guys
14 out.

15

16 VOIR DIRE EXAMINATION

17 BY MR. O'BRIEN:

18 Q. Mr. Garbaccio?

19 A. Garbaccio, that's correct, sir.

20 Q. Now, you mentioned you could never
21 consider a sentence of life with the
22 possibility of parole.

23 A. For a killing.

24 Q. And but in all fairness, wouldn't
25 that kind of depend on how the killing

1 occurred?

2 A. You can say that. If the conviction
3 is made by a jury and the conviction stands,
4 until such time as an appeal comes through and
5 the person is not convicted or the ruling is
6 overturned, they are convicted -- the person
7 is convicted of a killing, okay, they are put
8 into jail. It is my conviction they don't get
9 parole, period.

10 Q. Okay. So you would draw no
11 distinction between, say, an imperfect self
12 defense? In other words, somebody --

13 A. Sir, if I may interrupt.

14 Q. Of course.

15 A. You kill somebody with malice, you
16 kill somebody by accident, you kill somebody
17 by self defense, and maybe you kill somebody
18 in the fact that you are having a fight with
19 somebody over something or other and you punch
20 him, you smash his nose, it goes into his
21 brain, he's dead. You did it, but it was an
22 accident. But it really wasn't an accident
23 because you're fighting; okay? Four ways
24 somebody gets killed; okay?

25 Self defense is self defense. If

1 someone pulls a gun on you and you happen to
2 get your gun out and shoot him first, that's
3 self defense. If you walk into a bar and have
4 a gun in your pocket or you're sitting in a
5 tower at the University of Texas and you start
6 picking off people, that's not self defense.
7 You get convicted, you go to jail, okay, and
8 don't come out and never do it again. I'm
9 sorry. I just feel that way. There have been
10 too many cases where somebody gets out and it
11 happens again. Not only with killing, but a
12 lot of different things.

13 Q. Would you agree, sir, you are a
14 law-abiding citizen?

15 A. I try to be.

16 Q. And TV aside, if the Judge gave you
17 instruction regarding the law, would you
18 follow that instruction?

19 A. Of course.

20 Q. And you would follow the law
21 regardless of your personal opinions and
22 beliefs?

23 A. If the next part of the question is
24 and you were instructed that part of the
25 sentence could be parole, yes, I could sit

1 with the rest of the jurors in that room. I
2 would be hard pressed to raise my hand if it
3 was decided life sentence with the possibility
4 of parole. It doesn't mean it wouldn't
5 happen. I just would be very, very, very hard
6 pressed to do so, sir.

7 Q. Okay. Now, reading your
8 questionnaire, you express some concern that
9 this case took a long time to come to trial.
10 Do you remember that?

11 A. Yes, sir, I did.

12 Q. Can you tell me more about that?

13 A. Again, I don't know the circumstances
14 behind this case. If something happened two
15 and a half years ago, like the Summer of
16 2003 --

17 Q. That's correct, probably.

18 A. Okay. So you're looking at two and a
19 half years. Was the convicted person arrested
20 the night that it happened, the next day? Was
21 he arrested two days ago after the police and
22 the detectives did their work? That was part
23 of the concern for me that it was two and a
24 half years later after the event that happened
25 that it was supposedly coming to trial.

1 I'm saying there may have been
2 appeals, there may have been this, there may
3 have been that. But, again, not knowing the
4 circumstances behind the case, I don't know if
5 the gentleman was arrested within a couple of
6 days of it happening or if for two and a half
7 years he has been waiting for this trial to
8 come along, or was it something that happened
9 last week and all of a sudden the trial is
10 coming up. The answer to that question was
11 why did it take so long for a crime like this?

12 Q. I guess what I am concerned about,
13 the fact that there was a delay, and maybe
14 that delay is never going to be explained
15 during the course of this trial, how are you
16 going to react to that? Are you going to hold
17 it against Mr. Budd or are you going to hold
18 it against Mr. Kane?

19 A. No. And the answer to the question
20 would be just filling out the questionnaire,
21 it popped into my mind this is two and a half
22 years after the fact, and I had to write it
23 down. I don't know that would have any
24 bearing on anything that happens within the
25 confines of these four walls.

1 Q. You also mentioned in your
2 questionnaire that, you know, you kind of like
3 to get to the point. You are a no-nonsense
4 guy, and you don't like to waste a lot of
5 time; fair to say?

6 A. Correct.

7 Q. You know, when we talk about
8 deliberation and the dynamics of a group
9 together, would you see yourself as a follower
10 or a leader?

11 A. Circumstances would predicate what it
12 would be.

13 Q. If a fellow juror held a belief --
14 strongly held a belief that you disagreed
15 with, would that cause you impatience?

16 A. No.

17 Q. Okay.

18 A. Because I know that that juror has a
19 belief. I also know that I have a belief. So
20 if he differed from me, then conversely the
21 same question could be asked of him: Would
22 that cause him a hardship because I don't
23 believe what he believes? Again, we are a
24 jury, X number of people are going to be
25 listening to certain facts going on, again,

1 within the Court, and we have to make a
2 decision what we believe in accordance with
3 the law of what's going on.

4 No, the impatience would be -- and
5 I'm sorry, sir, but if you were to run up 47
6 people in a row in two and a half days, and
7 they all said the sky is blue, after the first
8 two or three, we know the sky is blue. You
9 don't need to bring the other 44 in to tell me
10 something that -- we know that; okay? That
11 type.

12 It just seems like state the case,
13 state the facts, show the evidence, argue the
14 points and let's get on with it, you know.
15 Make it fair for the defendant, make it fair
16 for the prosecutor, make it fair for the --
17 you know, whatever.

18 Q. I think that addresses my concern.
19 You would have respect for your fellow jurors?

20 A. Yes, sir. Oh, yes, sir.

21 Q. You wouldn't belittle their opinion?

22 A. Oh, no, not at all.

23 Q. And you wouldn't believe that they
24 justify their belief or opinion?

25 A. I may try and convince them they're

1 wrong, but I would never belittle them or I
2 wouldn't say you're totally off base and
3 shouldn't be here. We all have our beliefs
4 and opinion.

5 MR. O'BRIEN: Thank you, sir.

6 Nothing further. I'll pass for
7 cause, Your Honor.

8 THE COURT: Ms. Pandukht?
9

10 VOIR DIRE EXAMINATION

11 BY MS. PANDUKHT:

12 Q. Mr. Osburn?

13 A. Yes.

14 Q. You had stated in your questionnaire
15 that you provide some CLEs for attorneys?

16 A. Yes.

17 Q. In what areas?

18 A. Financial statement analysis and tax
19 return analysis.

20 Q. So nothing related to criminal law?

21 A. No.

22 Q. Okay. And you had also stated that
23 your spouse's occupation is a college
24 professor?

25 A. Yes.

1 Q. In what area?

2 A. Special education.

3 Q. And, again, nothing related to the
4 law?

5 A. No.

6 Q. You also stated that you have many
7 relationships with either judges or attorneys?

8 A. Yes.

9 Q. But I believe you stated those were
10 professional relationships?

11 A. Yes.

12 Q. And that certainly wouldn't influence
13 your ability to be fair in this case to both
14 sides?

15 A. No.

16 Q. Now, same thing for relationships
17 with local law enforcement?

18 A. Same.

19 Q. None of these are close personal
20 friends, are they?

21 A. No.

22 Q. Now, you had stated that in answer to
23 the question of a family member or someone
24 close to you had ever been arrested, you had
25 stated just a petty theft?

1 A. Yes.

2 Q. Was there anything about that
3 situation that you were dissatisfied with
4 either the police or the prosecuting agency?

5 A. No.

6 Q. Was that case settled and --

7 A. Yes.

8 Q. Now, you had stated that you would --
9 in answer to the question about what penalty
10 you would consider, that you would only
11 consider the death penalty. Have you thought
12 about, after listening to everyone today,
13 would you be able to consider all of the
14 different penalties that are available in this
15 case?

16 A. Yes.

17 Q. So you would be able to consider life
18 with the possibility of parole?

19 A. Yes.

20 Q. Life without the possibility of
21 parole?

22 A. Yes.

23 Q. As well as the death penalty?

24 A. Yes.

25 Q. And then also the 100 years with

1 parole?

2 A. Yes.

3 Q. And you would be able to listen to
4 all of the evidence, all of the facts and the
5 circumstances, before rendering your decision?

6 A. Yes.

7 MS. PANDUKHT: Pass for cause.

8 THE COURT: Thank you. Mr. O'Brien?

9 BY MR. O'BRIEN:

10 Q. Mr. Osburn, if this trial reached a
11 penalty hearing in that the jury came back
12 with a verdict of guilty, for purpose of our
13 question let's say the verdict was guilty on
14 three counts of murder, isn't it true, sir,
15 that you would consider the facts of the case,
16 the facts and circumstances of the case? Is
17 that true?

18 A. Yes.

19 Q. And you would consider the facts and
20 circumstances of the case in deciding what
21 penalty to decide on. Is that fair to say?

22 A. Yes.

23 Q. Isn't it also true, sir, that you
24 wouldn't consider any aspects of Mr. Budd's
25 background?

1 A. That is true.

2 Q. If he was a poor kid, maybe he had a
3 tough life, you don't care?

4 A. That's correct.

5 Q. You believe that firmly, sir?

6 A. Yes.

7 Q. Would you be able to suspend that
8 belief and consider things like that?

9 A. No.

10 Q. Never?

11 A. Never.

12 Q. The law demands that you consider
13 mitigation evidence that we put forth. In
14 that situation, sir, would you have to follow
15 your personal beliefs?

16 A. Yes.

17 MR. O'BRIEN: Judge, I would ask you
18 to remove this juror for cause.

19 THE COURT: Sir, you understand that
20 by following your beliefs, you would be
21 ignoring the law of the State of Nevada and my
22 instruction.

23 PROSPECTIVE JUROR 062: Yes.

24 THE COURT: Do you also understand
25 how important it is, notwithstanding personal

1 beliefs and recognizing how important they are
2 to each and every one of us, that as a
3 prospective juror, your obligation to comply
4 with the law is equally as important as your
5 ability to remain or your obligation to remain
6 free and impartial, free of bias and impartial
7 to both sides of this case?

8 PROSPECTIVE JUROR 062: Yes.

9 THE COURT: And do you still believe
10 that notwithstanding jury services, your jury
11 services in this case to both sides, you could
12 not set aside your personal belief, you would
13 be willing to violate the Court's instruction
14 in order to maintain that belief?

15 PROSPECTIVE JUROR 062: Yes.

16 THE COURT: Mr. Kane, Ms. Pandukht,
17 do you wish to do any follow-up?

18 MS. PANDUKHT: No.

19 THE COURT: I will grant the
20 challenge for cause.

21 MR. O'BRIEN: Thank you.

22 THE COURT: Mr. Osburn, you can leave
23 the courtroom and you can return to the jury
24 assembly area. Thank you so much. I hope to
25 see you on another jury.

1 PROSPECTIVE JUROR 062: Thank you,
2 Your Honor.

3 THE COURT: Why don't we call the
4 next in order.

5 THE CLERK: Badge No. 82, Kimberly
6 Krempel.

7 THE COURT: Ma'am, I am going to ask
8 you to fill the seat that has just been
9 vacated. You've heard the questions that our
10 attorneys have asked the others who have come
11 before you. Is there anything that you think
12 they might need to know about you?

13 PROSPECTIVE JUROR 082: Not that I
14 can think of right off the top of my head.

15 THE COURT: Okay. Ms. Pandukht?

16

17 VOIR DIRE EXAMINATION

18 BY MS. PANDUKHT:

19 Q. Okay, Ms. Krempel. You had stated
20 that you have a master's degree?

21 A. A master's degree, yes.

22 Q. In what field?

23 A. Education.

24 Q. And then you're also working on a
25 second master's degree?

1 A. Yes, I am. I have school this
2 weekend.

3 Q. In what area?

4 A. Technology in education.

5 Q. What is it? I missed what you said.

6 A. Technology in education.

7 Q. No, before that, about this weekend?

8 A. Yes, I have school this weekend,
9 Friday, Saturday, Sunday.

10 Q. All right. Now, you had stated that
11 you had an experience where your grandmother
12 was beaten?

13 A. Yes.

14 Q. How many years ago was that?

15 A. Probably at least 15 years ago,
16 16 years ago. I don't remember exactly.

17 Q. And were you living in the same city
18 as your grandmother then?

19 A. At the time, no.

20 Q. No? And was the person who had
21 beaten your grandmother caught?

22 A. No.

23 Q. Was there something that you thought
24 the police officer should have done in order
25 to catch the individual?

1 A. I don't know. I just feel they
2 should have looked harder for him. She lost
3 the use of her eye after that.

4 Q. So it was an actual beating?

5 A. Yes. They beat her, took her purse.
6 She could no longer use her eye.

7 Q. And there was actually more than one
8 person?

9 A. Yes.

10 Q. Now, you said, "To my knowledge, the
11 person was not caught."

12 A. Right.

13 Q. The information that you got about
14 this came from your grandmother?

15 A. From my grandmother and my mom.

16 Q. Okay. Now, you were also stating in
17 this that you had some concerns about the
18 person who did it in terms of their race.

19 A. Yes.

20 Q. Does that cause you any problems in
21 being able to sit here and be fair and
22 impartial to both Mr. Budd and also to the
23 State?

24 A. Honestly, probably, yes.

25 Q. Why is that?

1 A. Because the people that attacked my
2 grandmother were black, and I just -- that
3 just left me with a bad taste in my mouth. I
4 don't know. I guess in some ways it made me
5 prejudiced, and I don't like that. But I do
6 feel prejudice many times towards black males.

7 Q. And you know this is an entirely
8 different case --

9 A. I know.

10 Q. -- with different parties and
11 everything else?

12 A. I know.

13 Q. And there is no reason to believe
14 Mr. Budd was ever involved with that.

15 A. Right.

16 Q. Would you be able to set aside that
17 prior experience and view the facts and
18 evidence in this case based solely upon what
19 you hear in this courtroom?

20 A. I would try to, yes.

21 Q. Would you be able to set aside
22 whatever feelings you had as a result of what
23 happened to your grandmother in order to be
24 fair and impartial to both Mr. Budd and to the
25 State?

1 A. Answering honestly, I would try to.
2 I don't know if I could 100 percent completely
3 say that that would not affect my thought
4 processes in this case.

5 Q. Why would it have to affect your
6 thought processes in this case?

7 A. He is a black male. I do remember
8 seeing some blurbs on the TV about this
9 particular case when it happened.

10 Q. And even though you know it has
11 nothing to do with this case, you still would
12 not be able to put that aside in order to be
13 fair and impartial in this case?

14 A. To answer honestly, I don't think I
15 could.

16 Q. Now, you also stated that you
17 wouldn't be able to consider all possible
18 penalties in this case.

19 A. No, I wouldn't.

20 Q. What penalties would you be able to
21 consider?

22 A. Life in prison.

23 Q. With or without the possibility of
24 parole?

25 A. There would be no possibility of

1 parole if the person is convicted of murder
2 and beyond a reasonable doubt.

3 Q. So the only sentence you could
4 consider would be life without the possibility
5 of parole?

6 A. Correct. I would have a very hard
7 time condoning somebody's death, due to
8 religious beliefs. I believe that's in God's
9 hands.

10 Q. So there would be no circumstance
11 where you could ever consider giving the death
12 penalty?

13 A. I personally could not vote for it.

14 MS. PANDUKHT: I'll challenge for
15 cause.

16 THE COURT: Mr. Brooks, Mr. O'Brien,
17 do you wish to do follow up?

18 MR. O'BRIEN: Briefly, Judge, if I
19 may.

20 THE COURT: Certainly.

21 BY MR. O'BRIEN:

22 Q. Now, ma'am, you said you just don't
23 think you could ever vote for the death
24 penalty; is that right?

25 A. I don't.

1 Q. And, of course, cases like this
2 especially, we are not faced with decisions
3 like this often. You have never had to make a
4 decision like this, I take it?

5 A. No, I haven't.

6 Q. Can you envision a set of
7 circumstances or facts where you would be able
8 to consider the penalty of death?

9 A. I don't know.

10 Q. Let's take Adolph Hitler. You are on
11 the jury, and you hear about the Holocaust and
12 you hear about everything he did. In a
13 situation like that, would you be able to
14 consider the death penalty? Not vote for it,
15 mind you, but consider it?

16 A. Consider it, yes. Vote for it, no.

17 Q. If the Judge -- so you would be
18 willing to follow the Judge's orders in this
19 case and consider the penalty of death; is
20 that fair to say?

21 A. I could consider it. I personally
22 don't think I can vote for it.

23 Q. Okay. But you would agree you have
24 never had to make that decision.

25 A. No.

1 Q. And the first step to making that
2 decision would be considering it; fair to say?

3 A. Fair.

4 Q. And again, honestly, would you be
5 able to consider the death penalty based on
6 the facts and circumstances?

7 A. I could consider it, but I personally
8 couldn't vote for it.

9 Q. That final conclusion, though, would
10 you have to agree you perhaps could not make
11 until you heard and considered the evidence?

12 A. I don't know. Religiously, I just --
13 I don't feel I could vote for the death
14 penalty. I just don't think I could have that
15 on my conscience.

16 Q. Does it grant you any solace to know
17 that the law never demands that you impose the
18 death penalty? It's never mandatory. Do you
19 understand that?

20 A. I understand that it's never
21 mandatory.

22 Q. As I understand it, you could
23 consider the death penalty, but you're very
24 unsure whether or not you could impose it?

25 A. Correct.

1 MR. O'BRIEN: Thank you. Submit it
2 to the Court.

3 THE COURT: Ms. Krempel?

4 PROSPECTIVE JUROR 082: Yes.

5 THE COURT: The fact that you have
6 never faced a decision such as you potentially
7 are facing here is not unusual. Fortunately,
8 very few people have ever been put in this
9 very unique position. You've indicated now, I
10 believe, that you will consider all of the
11 options. As hard as those options may be for
12 you, do you feel you will be able to consider
13 each and every one of those options in
14 consultation or in deliberation with your
15 fellow jurors if chosen; is that a fair
16 statement?

17 PROSPECTIVE JUROR 082: I could not
18 consider the possibility of parole if the
19 evidence proves --

20 THE COURT: You would never be asked
21 to consider the possibility of parole except
22 with respect to how it attaches to a
23 particular sentence. Even when we impose a
24 sentence or when I would impose a sentence
25 that provides with it the possibility of

1 parole, there is another whole board, the
2 parole board, that considers that. So while
3 the option for parole is there, there is no
4 guarantee that there will, in fact, be parole.
5 You understand that; right?

6 PROSPECTIVE JUROR 082: Correct.

7 THE COURT: So is it fair to say you
8 could consider each and every one of the
9 options that would be provided to you if, in
10 fact, we get to a penalty phase in this case?

11 PROSPECTIVE JUROR 082: The options
12 being life in prison?

13 THE COURT: Yes.

14 PROSPECTIVE JUROR 082: The death
15 penalty, life with the possibility of parole?

16 THE COURT:

17 PROSPECTIVE JUROR 082: And what's
18 the last one?

19 THE COURT: I think you've named them
20 all. Life without, life with, and death
21 penalty. Did I miss any?

22 MR. KANE: Well, there is a hundred
23 years, but --

24 THE COURT: Same thing.

25 PROSPECTIVE JUROR 082: I don't think

1 I could vote for life with the possibility of
2 parole.

3 THE COURT: Okay. But you would
4 listen with good -- with an open mind to those
5 other jurors who might suggest that certain
6 facts and circumstances of this case would, at
7 least, have you consider it? I'm not saying
8 you had to vote for it, but would you listen
9 to others?

10 PROSPECTIVE JUROR 082: I would
11 listen to others, but I won't vote for it.

12 THE COURT: I'm going to deny the
13 for-cause. You may proceed, Counsel.

14 MR. O'BRIEN: No further questions.
15 Thank you. We will pass for cause.

16 THE COURT: Very well. Ms. Pandukht?
17 Mr. Kane?

18 MR. KANE: The State has no questions
19 for Ms. Castro and passes for cause.

20 THE COURT: Very well.

21 MR. BROOKS: Thank you, Judge.

22

23 VOIR DIRE EXAMINATION

24 BY MR. BROOKS:

25 Q. Ms. Castro, do you want to be on the

1 jury?

2 A. Yes.

3 Q. Why do you want to be on the jury?

4 A. Because I've never served on one
5 before, and I just want to have the experience
6 and to be able to -- (inaudible).

7 THE COURT: I'm having a hard time
8 hearing.

9 PROSPECTIVE JUROR 063: To be able to
10 see the facts and listen to the evidence and
11 make a decision.

12 MR. BROOKS:

13 Q. One of the laws that the Judge will
14 tell the jury about is that the burden is on
15 the State. We don't have to do anything. We
16 don't have to present any evidence at all.

17 Now, assuming that we don't present
18 any evidence, are you going to hold that
19 against us?

20 A. No.

21 Q. Do you believe that we have any kind
22 of burden to prove that Glenford is not
23 guilty?

24 A. What do you mean by "burden to
25 prove"?

1 Q. As we start the trial, he is presumed
2 innocent. The Judge will tell you he is
3 presumed innocent. Right now, if we stop the
4 case and say you have to give a verdict right
5 now, the verdict has to be he is innocent, he
6 is not guilty. And the Judge will tell you a
7 person is presumed innocent until or unless
8 the State can prove their charges beyond a
9 reasonable doubt.

10 Now, we may not present any evidence
11 in this case. We may stand back and say they
12 didn't prove their case. Do you have any
13 problem with that on our part if we did that?

14 A. No.

15 Q. Do you think that's the way it should
16 be?

17 A. If that's what the Court orders at
18 that point, then I would proceed with that,
19 yes.

20 Q. Do you think that's the way a
21 court -- I mean, putting aside what the Court
22 is going to tell you the law is, do you think
23 in your gut that's the way it should be?

24 A. No. I think both sides should be
25 able to have the chance to prove their

1 innocence or their point of view of what
2 happened based upon the facts.

3 Q. Do you think the law should require
4 Glenford to prove he is innocent?

5 A. No.

6 Q. One of the questions the Judge asked
7 about was, you know, police officers come in
8 here and testify; does a juror take that
9 information and treat it differently than the
10 information from other witnesses? In other
11 words, does a police officer have instant
12 credibility? How do you feel about that?

13 A. Absolutely not.

14 Q. Do you promise to treat him like any
15 other witness --

16 A. Absolutely.

17 Q. -- and evaluate his evidence as you
18 would any other witnesses out there?

19 A. I would look at both sides,
20 absolutely.

21 Q. Okay. In your questionnaire we
22 asked, of course, about in the event that
23 Glenford is convicted of first degree murder,
24 would a person consider the background,
25 Glenford's background.

1 number.

2 PROSPECTIVE JUROR 066: 066.

3 THE COURT: You are Ms. Pregosin?

4 PROSPECTIVE JUROR 066: Pregosin.

5 THE COURT: Tell me what you are
6 concerned about.

7 PROSPECTIVE JUROR 066: I, like some
8 of the other jurors, was raised as a Catholic,
9 and we were taught, "Thou shall not kill." I
10 don't know if I could be open-minded. If it
11 actually came down to it and they decided that
12 the defendant was guilty, I don't know if I
13 could actually go along with it. And I don't
14 know if I could live with myself if I did
15 decide that, knowing that this person -- I
16 said they were guilty and we put the death
17 penalty.

18 THE COURT: I'm going to ask you the
19 same questions I asked Ms. Hardy. I think,
20 first of all, it's difficult for anyone to put
21 themselves into that position. But, first of
22 all, we have to make a determination of guilt,
23 which means the State has to prove their case
24 beyond a reasonable doubt. And no one juror
25 will be making a decision by themselves. The

1 decision would be made after consultation with
2 one another, it's called deliberation, after
3 you've seen all of the evidence. And you may
4 very well be a part of a jury that says not
5 guilty, in which case you wouldn't be called
6 upon to make that determination.

7 Assume for a moment that you have to
8 go to a penalty phase. Do you think -- you
9 realize it wouldn't be just you. It would be
10 you and a group of others. Do you think you
11 could do that with an open mind?

12 PROSPECTIVE JUROR 066: No.

13 THE COURT: Thank you very much.

14 Anyone else in the box? How about
15 out here, back row? Yes, ma'am. Badge
16 number?

17 PROSPECTIVE JUROR 120: 120.

18 THE COURT: You're going to have to
19 stand.

20 PROSPECTIVE JUROR 120: Um-hum.

21 THE COURT: Ms. Alston. Tell me what
22 your concern is.

23 PROSPECTIVE JUROR 120: Same thing,
24 I'm a Christian. I wouldn't want to have that
25 on my hands as far as if he was or wasn't

1 guilty on the death penalty. I don't believe
2 in that. Certainly, if you are guilty, you
3 should serve your time. That wouldn't be an
4 option I could choose. I know it would be a
5 group of us that would determine that factor
6 but, if it came down to it, I wouldn't choose
7 that.

8 THE COURT: Does that mean you have a
9 preconceived idea about guilt or innocence?

10 PROSPECTIVE JUROR 120: As far as our
11 man here is concerned or just overall?

12 THE COURT: In this case, have you
13 made up your mind about guilt or innocence?

14 PROSPECTIVE JUROR 120: No. No, I
15 haven't.

16 THE COURT: And you recognize, of
17 course, in the State of Nevada seeking the
18 death penalty is legal?

19 PROSPECTIVE JUROR 120: Yes, I
20 understand that.

21 THE COURT: And you would have an
22 opportunity, if you are chosen as a juror, to
23 listen to the facts the State presents in the
24 penalty phase, and you would be able to listen
25 to the mitigating facts which the defense

1 would show, and you know you may never be
2 called upon to make that decision. Do you
3 think you could do that?

4 PROSPECTIVE JUROR 120: As long as I
5 didn't have to make that decision.

6 THE COURT: Thank you very much.
7 Anyone else? Yes, ma'am. Badge
8 number?

9 PROSPECTIVE JUROR 082: 082.

10 THE COURT: You are Ms. Krempel?

11 PROSPECTIVE JUROR 082: Yes.

12 THE COURT: Tell me what your concern
13 is.

14 PROSPECTIVE JUROR 082: The same as
15 many of the other jurors, potential jurors. I
16 don't know if it got to that penalty phase, if
17 I could condemn somebody to death.

18 THE COURT: Of course you don't know
19 that, because you haven't heard the evidence.

20 PROSPECTIVE JUROR 082: Right. But I
21 don't know if it came down to that, if I could
22 do that, if I could live with myself.

23 THE COURT: I think in isolation I
24 think it's always difficult to be asked this
25 question, because you don't really know much

1 about the case. Do you think that if you were
2 comfortable that you have gone through the
3 deliberation process with respect to guilt or
4 innocence and you listen to the evidence and
5 have a chance to consult with your other
6 fellow jurors, that you could do that if
7 called upon?

8 PROSPECTIVE JUROR 082: I could
9 consult with other jurors, but I don't think I
10 could condemn him to death.

11 THE COURT: Thank you very much.
12 Anybody else? Yes, sir, badge
13 number.

14 PROSPECTIVE JUROR 086: 086.

15 THE COURT: You are Mr. Fassler?

16 PROSPECTIVE JUROR 086: Yes, ma'am.

17 THE COURT: Tell me what your concern
18 is.

19 PROSPECTIVE JUROR 086: I also don't
20 agree with the death penalty.

21 THE COURT: And the same questions.
22 You would have to first find the State has
23 proved their case against this defendant
24 beyond a reasonable doubt. You would have to
25 consult with your fellow jurors, and then we

25 PROSPECTIVE JUROR 123: It's been

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1 PROSPECTIVE JUROR 116: Here in Clark
2 County approximately three years ago.

3 THE COURT: Three years ago? Civil
4 or criminal?

5 PROSPECTIVE JUROR 116: Criminal.

6 THE COURT: Were you a foreperson?

7 PROSPECTIVE JUROR 116: No.

8 THE COURT: Did you reach a verdict?

9 PROSPECTIVE JUROR 116: Yes.

10 THE COURT: Anything about that
11 experience that would keep you from being fair
12 and impartial?

13 PROSPECTIVE JUROR 116: No.

14 THE COURT: Thank you very much.

15 Yes, ma'am. Badge number?

16 PROSPECTIVE JUROR 113: 113.

17 THE COURT: Ms. Ablaza?

18 PROSPECTIVE JUROR 113: Yes.

19 THE COURT: Tell me when and where
20 you were a juror.

21 PROSPECTIVE JUROR 113: Back in
22 Chicago, Illinois.

23 THE COURT: You're going to have to
24 speak up.

25 PROSPECTIVE JUROR 113: Back in

1 Chicago, Illinois, I think about three years
2 ago, three or four years ago.

3 THE COURT: Civil or criminal?

4 PROSPECTIVE JUROR 113: Civil.

5 THE COURT: Did you reach a verdict?

6 PROSPECTIVE JUROR 113: Yes.

7 THE COURT: Were you the foreperson?

8 Were you in charge of the deliberations?

9 PROSPECTIVE JUROR 113: Oh, no.

10 THE COURT: Anything about that
11 experience that would keep you from being fair
12 and impartial?

13 PROSPECTIVE JUROR 113: No.

14 THE COURT: Thank you very much. You
15 know, we're much better attorneys here in
16 Nevada than they are there.

17 Anyone else over here? Yes, ma'am,
18 badge number.

19 PROSPECTIVE JUROR 100: 100.

20 THE COURT: I'm sorry?

21 PROSPECTIVE JUROR 100: 100.

22 THE COURT: Ms. Schneider?

23 PROSPECTIVE JUROR 100: Yes.

24 THE COURT: Tell me when and where
25 you served as a juror.

1 PROSPECTIVE JUROR 100: I'm trying to
2 remember how many years ago it was. About
3 17 years ago in Los Angeles County.

4 THE COURT: Oh, way better than
5 California attorneys, way better. Civil or
6 criminal?

7 PROSPECTIVE JUROR 100: Criminal.

8 THE COURT: Were you the foreperson?

9 PROSPECTIVE JUROR 100: No.

10 THE COURT: Anything about that
11 experience that would keep you from being fair
12 and impartial?

13 PROSPECTIVE JUROR 100: No.

14 THE COURT: Did you reach a verdict?

15 PROSPECTIVE JUROR 100: No, mistrial.

16 THE COURT: Thank you very much.

17 Anyone else in that middle row there
18 served as a juror? How about the next row,
19 which would be the front row, anyone else?
20 How about in these chairs over here? No?

21 Anyone here? Yes, sir, badge number.

22 PROSPECTIVE JUROR 073: 073.

23 THE COURT: Mr. Johnson.

24 PROSPECTIVE JUROR 073: Yes.

25 THE COURT: When and where did you

1 serve as a juror?

2 PROSPECTIVE JUROR 073: Maricopa
3 County, Phoenix, approximately 11 years ago.

4 THE COURT: Okay. Civil or criminal?

5 PROSPECTIVE JUROR 073: Criminal.

6 THE COURT: Were you the foreperson?

7 PROSPECTIVE JUROR 073: Yes, Your
8 Honor.

9 THE COURT: And did you reach a
10 verdict?

11 PROSPECTIVE JUROR 073: Yes, Your
12 Honor.

13 THE COURT: Anything about that
14 experience that would keep you from being fair
15 and impartial?

16 PROSPECTIVE JUROR 073: No, Your
17 Honor.

18 THE COURT: Thank you very much.
19 Anyone else?

20 Yes, badge number?

21 PROSPECTIVE JUROR 074: 074.

22 THE COURT: Ms. Goldner?

23 PROSPECTIVE JUROR 074: Um-hum.

24 THE COURT: When and where did you
25 serve as a juror?

1 PROSPECTIVE JUROR 074: Approximately
2 six years ago in Orange County, California.

3 THE COURT: Civil or criminal?

4 PROSPECTIVE JUROR 074: Civil.

5 THE COURT: Did you reach a verdict?

6 PROSPECTIVE JUROR 074: Yes.

7 THE COURT: Were you the foreperson?

8 PROSPECTIVE JUROR 074: No.

9 THE COURT: Anything about that
10 experience that would keep you from being fair
11 and impartial?

12 PROSPECTIVE JUROR 074: No.

13 THE COURT: Thank you very much.

14 Anyone else in the box? Yes. Badge
15 number?

16 PROSPECTIVE JUROR 076: 076.

17 THE COURT: Thank you. When and
18 where did you serve as a juror?

19 PROSPECTIVE JUROR 076: In Nevada. I
20 served about three times, and it was all
21 civil. And, yes, we reached a verdict. And
22 it was like six years ago, ten and
23 fourteen years ago.

24 THE COURT: Anything about those
25 experiences that would affect your ability to

1 be fair and impartial?

2 PROSPECTIVE JUROR 076: No.

3 THE COURT: Were you the foreperson
4 in any of those?

5 PROSPECTIVE JUROR 076: No.

6 THE COURT: Thanks very much.

7 Anyone else?

8 Any of you who have been accused of a
9 crime? Anyone who has been accused of a
10 crime?

11 How about any of you who have had
12 someone close to you who has been accused of a
13 crime?

14 Yes, ma'am, badge number again. I'm
15 sorry.

16
17 PROSPECTIVE JUROR 074: 074.

18 THE COURT: Ms. Goldner, who do you
19 know who has been accused of a crime?

20 PROSPECTIVE JUROR 074: Ex-husband.

21 THE COURT: And in that situation,
22 did that case actually go to trial? Did it go
23 beyond mere accusation?

24 PROSPECTIVE JUROR 074: I believe
25 not, because I'm not with him since. So I

1 don't think so, no.

2 THE COURT: Were you involved or with
3 him at the time that these accusations were
4 made?

5 PROSPECTIVE JUROR 074: I was married
6 to him at the time, yes.

7 THE COURT: Anything about that
8 situation that would affect your ability to be
9 fair and impartial? Would you hold it against
10 the State? Would you hold it against defense
11 counsel?

12 PROSPECTIVE JUROR 074: No.

13 THE COURT: So was that in
14 California?

15 PROSPECTIVE JUROR 074: No.

16 THE COURT: Where was that?

17 PROSPECTIVE JUROR 074: Nevada.

18 THE COURT: Nevada? Okay. So you
19 don't know whether or not that was actually
20 prosecuted?

21 PROSPECTIVE JUROR 074: I believe it
22 was not.

23 THE COURT: You don't know either of
24 these district attorneys, do you?

25 PROSPECTIVE JUROR 074: No.

1 THE COURT: You don't recognize any
2 of the names of the policemen that they
3 anticipate will be called as witnesses?

4 Anyone else? Someone close to them?
5 Ms. Hardy.

6 PROSPECTIVE JUROR 076: My brother,
7 when he was about 18, he stole a car and he
8 was caught, and he spent about six months in
9 jail.

10 THE COURT: So anything about that
11 experience would affect your ability to be
12 fair and impartial?

13 PROSPECTIVE JUROR 076: No.

14 THE COURT: Would you hold it against
15 the State?

16 PROSPECTIVE JUROR 076: No.

17 THE COURT: How about against the
18 defense?

19 PROSPECTIVE JUROR 076: No.

20 THE COURT: Anyone else?

21 Yes, ma'am. Badge number again?

22 PROSPECTIVE JUROR 066: 066.

23 THE COURT: Ms. Pregosin?

24 PROSPECTIVE JUROR 066: Yes.

25 THE COURT: Tell me who you know has

1 been accused of a crime.

2 PROSPECTIVE JUROR 066: I actually
3 have two relatives that have been accused of a
4 crime, and one is standing trial right now.

5 THE COURT: Here in Clark County?

6 PROSPECTIVE JUROR 066: No. One is
7 in Arizona, and I believe one's in Virginia.

8 THE COURT: Are you close to those
9 relatives?

10 PROSPECTIVE JUROR 066: One of them
11 kind of, and the other one I don't really know
12 that well.

13 THE COURT: And anything about the
14 fact that these members of your family have
15 been accused of a crime that would affect your
16 ability to be fair and impartial?

17 PROSPECTIVE JUROR 066: Kind of hard
18 to say.

19 THE COURT: Okay. Of course, you
20 don't have a real close relationship with
21 either of them, so I presume that you weren't
22 there when the accusations took place.

23 PROSPECTIVE JUROR 066: With the
24 relative that's currently pending trial, we
25 were kind of close. It's my husband's first

1 cousin. I've met him maybe a couple of times.
2 And I really don't want to get into it unless
3 you want me to.

4 THE COURT: Sure.

5 PROSPECTIVE JUROR 066: But...

6 THE COURT: Is there anything about
7 that that would affect your ability to sit in
8 this case? You're not going to hold it
9 against the State, are you?

10 PROSPECTIVE JUROR 066: No.

11 THE COURT: How about against the
12 police officers who might testify?

13 PROSPECTIVE JUROR 066: No.

14 THE COURT: Thank you very much.
15 Anyone else? Yes, ma'am, badge
16 number.

17 PROSPECTIVE JUROR 063: 063.

18 THE COURT: You are Ms. Castro?

19 PROSPECTIVE JUROR 063: Yes.

20 THE COURT: Tell me who you know that
21 has been accused of a crime.

22 PROSPECTIVE JUROR 063: It was my
23 spouse.

24 THE COURT: I'm sorry?

25 PROSPECTIVE JUROR 063: My spouse.

1 THE COURT: Present spouse?

2 PROSPECTIVE JUROR 063: Um-hum.

3 THE COURT: Was that case here in
4 Nevada?

5 PROSPECTIVE JUROR 063: Yes.

6 THE COURT: Was the case actually
7 prosecuted?

8 PROSPECTIVE JUROR 063: No.

9 THE COURT: So would you hold it
10 against the State?

11 PROSPECTIVE JUROR 063: No.

12 THE COURT: How about against any
13 police officers who are going to testify?

14 PROSPECTIVE JUROR 063: No.

15 THE COURT: It wouldn't affect your
16 ability to be fair and impartial?

17 PROSPECTIVE JUROR 063: No.

18 THE COURT: Thanks very much.

19 Anyone else? How about back here?
20 Yes, ma'am, badge number.

21 PROSPECTIVE JUROR 084: 084.

22 THE COURT: You are going to have to
23 speak up.

24 PROSPECTIVE JUROR 084: 084.

25 THE COURT: Ms. Valenzuela? Tell me

1 who you know has been accused of a crime.

2 PROSPECTIVE JUROR 084: Most of my
3 relatives, my cousins and aunts and cousins.

4 THE COURT: Anyone that you are very
5 close to?

6 PROSPECTIVE JUROR 084: Most of them
7 I don't like.

8 THE COURT: Do you think that the
9 fact that some of your relatives have been
10 accused of crimes would affect your ability to
11 be fair and impartial?

12 PROSPECTIVE JUROR 084: (Inaudible.)

13 THE COURT: I can't hear you.

14 PROSPECTIVE JUROR 084: It was all
15 drug-related, so I don't have a tolerance for
16 penal --

17 THE COURT: You know what? This case
18 involves accusations that some of the conduct
19 in this case may have involved drugs. Do you
20 think that's going to affect your ability to
21 be fair and impartial?

22 PROSPECTIVE JUROR 084: Yes.

23 THE COURT: Excuse me?

24 PROSPECTIVE JUROR 084: Yes.

25 THE COURT: Why is that?

1 PROSPECTIVE JUROR 084: Because most
2 of them do it because of the drugs --

3 THE COURT: You're going to have to
4 speak up.

5 PROSPECTIVE JUROR 084: Most of their
6 issues was because of drugs. And I have to
7 say, yes, I have no tolerance for it.

8 THE COURT: No tolerance for drugs?
9 Is that what I am hearing?

10 PROSPECTIVE JUROR 084: Yes.

11 THE COURT: Okay. You know, this
12 case, as it stands right now, would require
13 the State only to prove that a crime was
14 committed and that the individual who
15 committed it is the person who was charged.
16 It may or may not deal with drugs directly.
17 Do you think you could set aside your attitude
18 about drugs and be fair to both sides?

19 PROSPECTIVE JUROR 084: I'm not sure.

20 THE COURT: Thank you very much.

21 Anyone else? Yes, ma'am, badge
22 number?

23 PROSPECTIVE JUROR 092: 092.

24 THE COURT: Ms. Slick?

25 PROSPECTIVE JUROR 092: Yes.

1 THE COURT: Who do you know who has
2 been accused of a crime?

3 PROSPECTIVE JUROR 092: My sister. I
4 don't think it will affect my judgment.

5 THE COURT: Was it here in Clark
6 County?

7 PROSPECTIVE JUROR 092: Yes, it was.

8 THE COURT: Do you know if the case
9 was prosecuted?

10 PROSPECTIVE JUROR 092: It started to
11 be, and then they made an agreement.

12 THE COURT: But you will keep an open
13 mind?

14 PROSPECTIVE JUROR 092: Oh, yeah.

15 THE COURT: Be fair to both sides?

16 PROSPECTIVE JUROR 092: Um-hum.

17 THE COURT: Thank you very much.

18 Anyone else? Yes, ma'am, badge
19 number.

20 PROSPECTIVE JUROR 111: 111.

21 THE COURT: Ms. Sannicolas?

22 PROSPECTIVE JUROR 111: Yes.

23 THE COURT: Tell me who you know who
24 has been accused of a crime.

25 PROSPECTIVE JUROR 111: My uncle.

1 THE COURT: Are you close to that
2 person?

3 PROSPECTIVE JUROR 111: No.

4 THE COURT: Okay. Anything about the
5 fact your uncle has been accused that would
6 affect your ability to be fair?

7 PROSPECTIVE JUROR 111: No.

8 THE COURT: Would you hold it against
9 the State?

10 PROSPECTIVE JUROR 111: No.

11 THE COURT: Do you lean in favor of
12 one side or the other?

13 PROSPECTIVE JUROR 111: No.

14 THE COURT: Thank you very much.
15 Anyone else? Yes, sir.

16 PROSPECTIVE JUROR 116: 116.

17 THE COURT: You are Mr. Miller.

18 PROSPECTIVE JUROR 116: Yes.

19 THE COURT: Tell me who you know
20 that's been accused of a crime.

21 PROSPECTIVE JUROR 116: Stepson.

22 THE COURT: Stepson, here in Clark
23 County?

24 PROSPECTIVE JUROR 116: York County,
25 Pennsylvania.

1 THE COURT: I'm sorry?

2 PROSPECTIVE JUROR 116: Pennsylvania.

3 THE COURT: Okay. So I presume you
4 were pretty involved in that situation?

5 PROSPECTIVE JUROR 116: Yes.

6 THE COURT: Anything about that that
7 would affect your ability to be fair and
8 impartial?

9 PROSPECTIVE JUROR 116: I don't think
10 so.

11 THE COURT: Okay. You hesitated a
12 little bit. What's your concern?

13 PROSPECTIVE JUROR 116: I think the
14 prosecution was incomplete.

15 THE COURT: I'm sorry. You wouldn't
16 hold that against these prosecutors?

17 PROSPECTIVE JUROR 116: No.

18 THE COURT: Can you be fair to both
19 sides?

20 PROSPECTIVE JUROR 116: I believe so,
21 yes.

22 THE COURT: Thank you very much.
23 Anyone else? Yes, ma'am, badge
24 number.

25 PROSPECTIVE JUROR 123: 123.

1 THE COURT: Ms. Huntt?

2 PROSPECTIVE JUROR 123: Yes.

3 THE COURT: Tell me who you know who
4 has been accused of a crime.

5 PROSPECTIVE JUROR 123: My son.

6 THE COURT: Here in Clark County?

7 PROSPECTIVE JUROR 123: No.

8 THE COURT: Where?

9 PROSPECTIVE JUROR 123: Chicago,
10 Illinois.

11 THE COURT: How long ago?

12 PROSPECTIVE JUROR 123: Sixteen years
13 ago.

14 THE COURT: The case was actually
15 prosecuted?

16 PROSPECTIVE JUROR 123: Yes.

17 THE COURT: And anything about that
18 that would affect your ability to be fair?

19 PROSPECTIVE JUROR 123: No, not
20 really. No.

21 THE COURT: Okay. You are concerned
22 a little bit. What is your concern?

23 PROSPECTIVE JUROR 123: Well,
24 evidence. But I don't think it will affect my
25 ability.

1 THE COURT: Are you going to hold it
2 against these prosecutors?

3 PROSPECTIVE JUROR 123: Nah.

4 THE COURT: You are just going to
5 make them do their job. They are going to
6 prove their case beyond a reasonable doubt;
7 right.

8 PROSPECTIVE JUROR 123: Yes.

9 THE COURT: And, in your mind, does
10 either side have a better advantage than the
11 other?

12 PROSPECTIVE JUROR 123: No.

13 THE COURT: Do you agree with the
14 concept of presumed innocent unless and until
15 the State proves beyond a reasonable doubt?

16 PROSPECTIVE JUROR 123: Yes, I do.

17 THE COURT: Thank you very much.

18 Anyone else out here? Yes, ma'am.
19 Badge number again?

20 PROSPECTIVE JUROR 066: 066.

21 THE COURT: That's right,
22 Ms. Pregosin.

23 PROSPECTIVE JUROR 066: Yes.

24 THE COURT: Something else you wanted
25 to add?

1 PROSPECTIVE JUROR 066: Yes, I did.
2 After thinking and hearing everyone else, the
3 two cases I was discussing with you are both
4 murder trials. I just feel that you should
5 know that.

6 THE COURT: Thank you very much.

7 Now, when the close of evidence comes
8 about, I will instruct you on the law. The
9 attorneys have input in terms of what
10 instructions they think should be given. But
11 I will, as the Judge, tell you what the law of
12 the State of Nevada is and what law you can
13 and should apply to these facts and
14 circumstances. Whether or not you agree with
15 what the law is is not relevant.

16 In fact, as we've talked about in
17 depth about these situations, if you are
18 instructed on the law, you have to at least
19 embrace that as a part of your deliberation.
20 You have to -- you can't just toss out
21 one piece of the law that you don't agree
22 with. You have to consider all of it.

23 Is there anyone who thinks that they
24 could not follow the law as instructed?

25 Are there any of you who know of some

1 other reason why you should not sit on a jury
2 or why you could not be fair and impartial to
3 both sides, something we haven't touched upon?

4 Okay. Let me start over here.

5 Juror number --

6 PROSPECTIVE JUROR 071: 071.

7 THE COURT: 071. Mr. Cassedy.

8 PROSPECTIVE JUROR 071: Yes.

9 THE COURT: What is your concern?

10 PROSPECTIVE JUROR 071: I have had
11 two experiences with the justice system: One
12 involving my daughter, my middle daughter,
13 whom was almost killed, and they just slapped
14 the guy on the wrist and let him go. And my
15 mother was cut out of all the money that she
16 should have had in a 20-year marriage because
17 of the "good old boy" system, including the
18 judge, and I have been completely
19 disillusioned with the justice system.

20 THE COURT: Let me ask you this: The
21 situation with your daughter I presume did not
22 involve any of the attorneys that are here in
23 this courtroom?

24 PROSPECTIVE JUROR 071: No.

25 THE COURT: Did it happen here in

1 Clark County?

2 PROSPECTIVE JUROR 071: Yes.

3 THE COURT: Okay. I'm sure it's hard
4 for you to stand up and say what you said, but
5 I've got to ask you probably an obvious
6 question. Knowing that things didn't go the
7 way you thought they should in that case,
8 could you sit with an open mind and listen to
9 the facts and the evidence and make sure that
10 at least in this case the system works, that
11 the State does their job and proves beyond a
12 reasonable doubt that a crime was committed?
13 And if they don't, then you have the ability
14 as a juror to bring back a finding of not
15 guilty. Do you think you could do that?

16 PROSPECTIVE JUROR 071: I don't
17 believe that the lawyers do the job as they
18 should.

19 THE COURT: So you're going to paint
20 all lawyers and all judges with the same brush
21 that has been a part of your experiences; is
22 that a fair statement?

23 PROSPECTIVE JUROR 071: It happened
24 twice, and I am completely disillusioned.

25 THE COURT: Thank you very much.

1 Thank you.

2 Anyone else in the box who thinks for
3 some reason they should not serve? Yes, sir,
4 badge number?

5 PROSPECTIVE JUROR 062: Badge
6 No. 062.

7 THE COURT: You are Mr. Osburn?

8 PROSPECTIVE JUROR 062: Yes.

9 THE COURT: Tell me why you have a
10 concern about whether or not you should sit.

11 PROSPECTIVE JUROR 062: Time
12 commitment, my professional time. I am a
13 self-employed business trainer.

14 THE COURT: So you have no bias.
15 You're just concerned about the time it might
16 take you to be away from your work.

17 PROSPECTIVE JUROR 062: Yes, and I am
18 the sole practitioner of my practice.

19 THE COURT: Thank you very much.

20 Anyone else in the box? Yes, ma'am.
21 Don't tell me. 066, Ms. Pregosin?

22 PROSPECTIVE JUROR 066: Yes.

23 THE COURT: Tell me the other matters
24 that we haven't touched upon.

25 PROSPECTIVE JUROR 066: The only

1 concern I have about actually giving the time
2 to serve on this jury is that I am a
3 stay-at-home mom. My child's in half-time
4 kindergarten, and I have no one to care for
5 him. My husband and my mom are the only
6 relatives we have, and they both work full
7 time.

8 THE COURT: Thank you very much.
9 Anyone else? Yes, sir, badge number?

10 PROSPECTIVE JUROR 064: 064.

11 THE COURT: Mr. Derrico?

12 PROSPECTIVE JUROR 064: Derrico.

13 THE COURT: Tell me what your concern
14 is.

15 PROSPECTIVE JUROR 064: Time
16 commitment.

17 THE COURT: Having to do with your
18 employment?

19 PROSPECTIVE JUROR 064: Yes. I carry
20 two jobs, and my wife has none. I have two
21 jobs, and my wife has none.

22 THE COURT: Okay. Anything else?

23 PROSPECTIVE JUROR 064: That's it.

24 THE COURT: Thank you very much.
25 Yes, ma'am. Badge number again?

1 PROSPECTIVE JUROR 074: 074.

2 THE COURT: Ms. Goldner?

3 PROSPECTIVE JUROR 074: Yes.

4 THE COURT: Tell me what your concern
5 is.

6 PROSPECTIVE JUROR 074: A time
7 commitment. I have one other partner I work
8 with for work, and she is out on emergency
9 surgery. So right now there is no one
10 covering my position.

11 THE COURT: Thank you very much.

12 PROSPECTIVE JUROR 073: 073.

13 THE COURT: Mr. Johnson?

14 PROSPECTIVE JUROR 073: My wife is
15 flying to New Orleans to visit her family
16 tomorrow for one week, and I will be a
17 stay-at-home father, if you will, for my
18 younger children. So it would be difficult if
19 it were to start. If it weren't this week,
20 I'd be fine.

21 THE COURT: Thank you very much.

22 Anyone else in the back? Yes, sir.

23 PROSPECTIVE JUROR 070: 070.

24 THE COURT: Mr. Stuart?

25 PROSPECTIVE JUROR 070: Yes.

1 THE COURT: Tell me what your concern
2 is.

3 PROSPECTIVE JUROR 070: I run a large
4 development company, travel extensively, and
5 I'm aware of the time commitment involved.
6 But it will create business decision problems
7 as I stay away from the office.

8 THE COURT: Thank you very much.

9 Before we go on with too many more of
10 these, let me explain a couple of things that
11 might make this a bit easier for you. I am
12 what is referred to as a split judge. That
13 means I do civil and criminal. So we will,
14 with rare exception -- and counsel will help
15 me out here -- I think we only have actually
16 two full days of trial; is that correct?
17 Pretty close?

18 MR. KANE: We only have one
19 scheduled.

20 THE COURT: We have only one full
21 day. So that means that your service as a
22 juror would be in the afternoon only, at least
23 for the most part; you will never be here for
24 a full day. So for those of you who have
25 concerns about work obligations, you would

1 have at least a morning or an afternoon to
2 take care of your business, because I have
3 other matters that I have to take care of.
4 Just so that you know.

5 And yes, sir, badge number. You had
6 a concern?

7 PROSPECTIVE JUROR 060: 060.

8 THE COURT: You are Mr. Garbaccio?

9 PROSPECTIVE JUROR 060: Garbaccio,
10 yes, ma'am.

11 THE COURT: Tell me what your concern
12 is.

13 PROSPECTIVE JUROR 060: Again, work
14 related. I work in an art gallery. I am the
15 inventory director. We are opening a major
16 show on New Year's Eve. I have no backup for
17 what I do, which is the artwork, the tagging,
18 coming back from the framers, plus all new art
19 coming in in the month of December which, as
20 you can guess, is a busy time for us.

21 THE COURT: I'm sure.

22 PROSPECTIVE JUROR 060: I do not have
23 a problem with the amount of days that this
24 trial may or may not take according to what
25 the questionnaire said. My problem is that

1 if -- and, again, you just cleared part of it,
2 working half a day. I would be at work in the
3 morning, here in the afternoon, and probably
4 at work again at night because there are just
5 so many things that have to be done for this
6 show to take place on New Year's Eve -- on New
7 Year's Eve day, actually.

8 THE COURT: We really don't
9 anticipate -- for you as well as for the
10 others, we don't anticipate that this case
11 will go much beyond Wednesday or Thursday of
12 next week, which is pretty unusual.

13 We are going to have one dark day,
14 which means no trial on Wednesday and, as I
15 said, limited time during the other days.
16 It's not going to be a long trial. It's
17 certainly not going to be like the trial I
18 just completed where we were in court for, I
19 guess, three and a half weeks, until way late
20 hours at night. So, thank you. Thank you
21 very much.

22 Anyone else out here? Yes, ma'am,
23 badge number?

24 PROSPECTIVE JUROR 090: 090.

25 THE COURT: You are Ms. -- oh, my

1 goodness -- Bieganski?

2 PROSPECTIVE JUROR 090: Yes.

3 THE COURT: Tell me what your concern
4 is.

5 PROSPECTIVE JUROR 090: Your Honor, I
6 do not understand English very well, and I
7 really don't understand all the questions
8 right now.

9 THE COURT: You're having a difficult
10 time understanding what I am saying?

11 PROSPECTIVE JUROR 090: Yes.

12 THE COURT: What is your native
13 language?

14 PROSPECTIVE JUROR 090: Korean.

15 THE COURT: And you don't work; is
16 that correct?

17 PROSPECTIVE JUROR 090: No.

18 THE COURT: Thank you very much
19 Anyone else? Yes, sir, badge number?

20 PROSPECTIVE JUROR 091: 091.

21 THE COURT: Mr. Boucher?

22 PROSPECTIVE JUROR 091: Yes.

23 THE COURT: What is your concern?

24 PROSPECTIVE JUROR 091: My concern
25 is -- let me go back a few years. Before I

1 met my fiancée, I was a more trustworthier (ph)
2 person. Today she is going to school, college
3 of crime scene investigation. I have learned
4 to hate people pretty much since she started
5 school. It just opened my eyes not to trust
6 people, even in my own family. So I think
7 maybe that would weigh against Mr. Budd in a
8 way, certain percentage.

9 THE COURT: Well, you might not want
10 to trust the State. In fact, you might want
11 to keep them right up to task. So you would
12 at least listen with an open mind to determine
13 which is the more credible of the witnesses
14 and that type of thing. Fair statement?

15 PROSPECTIVE JUROR 091: Fair
16 statement. I would like to add to that that
17 my attention span on certain things, like
18 reading a book, I cannot deal with that at
19 times. I'm fidgety and things. I'm a
20 musician, carpenter. I don't know if this is
21 really my forte here today.

22 THE COURT: It would be unlikely in
23 this trial that you would ever be in court
24 sitting as long as you have already sat in
25 this courtroom because we do take frequent

1 breaks. Do you think you could keep your mind
2 on business as long as you get a break every
3 hour, hour and 15 minutes?

4 PROSPECTIVE JUROR 091: I suppose so.

5 THE COURT: The fact that your fiance
6 has some -- or at least potentially some
7 involvement with the criminal justice system,
8 do you think that would affect your ability to
9 be fair and impartial?

10 PROSPECTIVE JUROR 091: It does. She
11 was a bail bonds owner in Cocoa Beach,
12 Florida. And I've lived with her there -- in
13 Orlando, Florida. And during that time is
14 when I realized that people are not really --
15 they don't fess up -- they're hiding something
16 else.

17 THE COURT: Let me ask you this: If
18 you are chosen as a jury, you would be told
19 you can't talk about this case to anybody,
20 including, perhaps especially, your fiance.
21 Do you think you could do that?

22 PROSPECTIVE JUROR 091: It depends on
23 her.

24 THE COURT: No, it depends on you,
25 sir. You can't talk about this case. And if

1 she asks you something, you would have to say,
2 "I can't talk about it."

3 PROSPECTIVE JUROR 091: In our
4 relationship, she has the upper hand. I don't
5 know why.

6 THE COURT: Yeah, that's the way it
7 is in my relationship, too. But he still
8 tells me --

9 PROSPECTIVE JUROR 091: I will do my
10 best.

11 THE COURT: Okay. Thank you very
12 much. Okay. I was just kidding, for anyone
13 who might be wanting to tell my husband that I
14 said that.

15 Anyone else that has a concern?

16 PROSPECTIVE JUROR 098: I'm committed
17 as a full-time student.

18 THE COURT: Badge number?

19 PROSPECTIVE JUROR 098: 098.

20 THE COURT: 098, you are
21 Ms. Tomaszewski?

22 PROSPECTIVE JUROR 098: Tomaszewski.

23 THE COURT: Tell me where you are a
24 student.

25 PROSPECTIVE JUROR 098: UNLV.

1 THE COURT: What curriculum are you
2 in?

3 PROSPECTIVE JUROR 098: Biochemistry.

4 THE COURT: What year are you in?

5 PROSPECTIVE JUROR 098: First year.

6 THE COURT: Aren't you just about
7 through with classes?

8 PROSPECTIVE JUROR 098: Finals next
9 week.

10 THE COURT: Do you think you would be
11 able to focus on the trial if chosen?

12 PROSPECTIVE JUROR 098: No.

13 THE COURT: You know, I could write a
14 letter and tell your professors that you are
15 sitting as a juror if you were chosen. I have
16 actually had the great good fortune to be an
17 associate professor at UNLV, certainly not in
18 your department. But I know that they can be
19 pretty lenient with letting you take extra
20 time, if need be, to take your finals.

21 Knowing how important jury service is, do you
22 think you could do that, sit with an open mind
23 and listen to the facts and evidence?

24 PROSPECTIVE JUROR 098: Yes.

25 THE COURT: Thank you very much.

1 Anyone else? Yes, sir. You're going to have
2 to help me again. Badge number?

3 PROSPECTIVE JUROR 094: 094.

4 This is a very difficult month for me
5 as well. Just this week alone, I have about
6 three arbitration hearings and several
7 depositions, some of which have already been
8 continued, and some are coming from out of
9 town as well. I've got over a couple of
10 hundred cases in litigation right now. So
11 it's going to be pretty difficult.

12 THE COURT: Are you a sole
13 practitioner?

14 PROSPECTIVE JUROR 094: No, I'm not.

15 THE COURT: Who do you work with?

16 PROSPECTIVE JUROR 094: Glen Lerner.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR 094: I'm one of
19 two attorneys over there handling the
20 litigation of the cases.

21 THE COURT: I understand. Thank you
22 very much.

23 Anyone else? Yes, sir, badge number?

24 PROSPECTIVE JUROR 099: 099.

25 THE COURT: Mr. Kajkowski?

1 PROSPECTIVE JUROR 099: Yes.

2 THE COURT: You live up on the
3 mountain; is that true?

4 PROSPECTIVE JUROR 099: Yup.

5 THE COURT: What other concerns do
6 you have?

7 PROSPECTIVE JUROR 099: I'm a
8 student. Right now is my busy time for work.
9 I work conventions. I do standby medical for
10 the conventions in town here.

11 THE COURT: Where do you go to
12 school?

13 PROSPECTIVE JUROR 099: Community
14 college.

15 THE COURT: And other than what most
16 people experience and that is at least some
17 financial concern about being away from their
18 work, do you think you could be fair and
19 impartial?

20 PROSPECTIVE JUROR 099: Yeah.

21 THE COURT: Thank you very much.

22 Anyone else? Other concerns about
23 their ability to be fair and impartial?

24 Yes, ma'am, badge number?

25 PROSPECTIVE JUROR 102: 102.

1 THE COURT: 102?

2 PROSPECTIVE JUROR 102: Um-hum.

3 THE COURT: Ms. Oliveira?

4 PROSPECTIVE JUROR 102: Yes.

5 THE COURT: What is your concern?

6 PROSPECTIVE JUROR 102: I don't feel
7 like I would be fair.

8 THE COURT: Why?

9 PROSPECTIVE JUROR 102: Because about
10 five years ago, someone close to me was --
11 almost died by the hands of a gun from
12 somebody who just got out of jail 30 days
13 prior for attempted murder and received
14 four years. There was a lot of things that
15 went wrong during the whole thing, and I just
16 can't --

17 THE COURT: So you know someone who
18 has been accused of a crime.

19 PROSPECTIVE JUROR 102: No.

20 THE COURT: The person who actually
21 came after your friend; right?

22 PROSPECTIVE JUROR 102: Yeah. I
23 don't know him, but --

24 THE COURT: So you have had some
25 experience with the system. Would that be a

1 better statement?

2 PROSPECTIVE JUROR 102: Yes.

3 THE COURT: Of course, none of these
4 attorneys were involved in that situation,
5 were they?

6 PROSPECTIVE JUROR 102: No.

7 THE COURT: And knowing that, like I
8 said, there is some good and there is some
9 bad, there are some trials that go the right
10 way and there are some trials that go the
11 wrong way, do you think you could keep an open
12 mind if you sat as a juror in this case?

13 PROSPECTIVE JUROR 102: No, I don't.

14 THE COURT: Why is that? You
15 distrust the whole system?

16 PROSPECTIVE JUROR 102: I also have
17 been robbed at gunpoint, and not even so much
18 as a detective called me. I just don't think
19 I could be fair.

20 THE COURT: Thank you very much.

21 Anyone else? Yes, sir.

22 PROSPECTIVE JUROR 104: It's 104.

23 THE COURT: You are Mr. Shubert?

24 PROSPECTIVE JUROR 104: Correct.

25 THE COURT: Tell me what your concern

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1 I was robbed at gunpoint in Chicago.

2 THE COURT: Here in Clark County?

3 PROSPECTIVE JUROR 107: No, in
4 Chicago, Illinois.

5 THE COURT: How long ago?

6 PROSPECTIVE JUROR 107: About 12
7 or 13 years ago.

8 THE COURT: Okay. It didn't involve
9 any of these attorneys or any of the people
10 you have heard named as witnesses; right?

11 PROSPECTIVE JUROR 107: No.

12 THE COURT: And recognizing how
13 difficult and traumatic that must be, would
14 you be able to set aside that experience and
15 listen to the facts and circumstances of this
16 case?

17 PROSPECTIVE JUROR 107: No, ma'am.

18 THE COURT: Why is that?

19 PROSPECTIVE JUROR 107: Because with
20 my case, it was never brought to trial because
21 it was already settled before the trial was
22 ever taken.

23 THE COURT: But it's different here.
24 This is a trial where the State is going to
25 put on evidence, they are going to have an

1 obligation to prove the case, and there is
2 going to be cross-examination. It might be
3 very different -- in fact, it will be a very
4 different situation than what you had happen
5 in your case. Do you think you could put that
6 aside and listen with an open mind?

7 PROSPECTIVE JUROR 107: No, ma'am.

8 THE COURT: Thank you very much.

9 Thank you, Mr. Bailiff.

10 Anyone else? Yes, ma'am, badge
11 number.

12 PROSPECTIVE JUROR 108: 108.

13 THE COURT: Speak up, please. 108?

14 PROSPECTIVE JUROR 108: Yup.

15 THE COURT: Ms. Mast?

16 PROSPECTIVE JUROR 108: Yes.

17 THE COURT: What is your concern?

18 PROSPECTIVE JUROR 108: Time
19 commitment. I have a newborn baby.

20 THE COURT: Thank you very much.

21 Anyone else? Yes, ma'am.

22 PROSPECTIVE JUROR 110: 110.

23 THE COURT: I'm sorry?

24 PROSPECTIVE JUROR 110: 110.

25 THE COURT: Ms. Williams?

1 PROSPECTIVE JUROR 110: Yeah.

2 THE COURT: What is the nature of
3 your concern?

4 PROSPECTIVE JUROR 110: Yesterday
5 when I was -- I was robbed and pulled to the
6 ground.

7 THE COURT: Here in Clark County?

8 PROSPECTIVE JUROR 110: Yeah.

9 THE COURT: Was the case prosecuted?

10 PROSPECTIVE JUROR 110: No, they
11 didn't get the guy.

12 THE COURT: Nobody was arrested?
13 Would you hold that against the prosecutors or
14 the defendant?

15 PROSPECTIVE JUROR 110: Yeah. No.

16 THE COURT: You mean no; right?

17 PROSPECTIVE JUROR 110: No, yeah.

18 THE COURT: You know that it wasn't
19 any of these people that were involved in the
20 lack of prosecution; right?

21 PROSPECTIVE JUROR 110: No.

22 THE COURT: And you are not
23 suggesting that Mr. Budd was the person that
24 did that; right?

25 PROSPECTIVE JUROR 110: I don't know.

1 THE COURT: Okay. So, of course,
2 that would be scary and a difficult situation
3 at best. Do you think you could listen to
4 both sides and be fair and keep an open mind?

5 PROSPECTIVE JUROR 110: (Nodding.)

6 THE COURT: Thank you very much.
7 Anyone else? Yes, sir, badge number?

8 PROSPECTIVE JUROR 059: 059.

9 THE COURT: You are Mr. Shuman?

10 PROSPECTIVE JUROR 059: Yes, ma'am.

11 THE COURT: Tell me what your concern
12 is.

13 PROSPECTIVE JUROR 059: I'm not sure
14 it's a concern. I just want to make sure the
15 Court knew that I was a district investigator
16 and corporate investigator for a chain of
17 stores. I was also chief of security for four
18 stores here in town.

19 THE COURT: Do you think that that
20 makes you -- strike that. Let me ask it a
21 little bit more succinctly.

22 Anything about that work that would
23 keep you from being fair and impartial to both
24 sides?

25 PROSPECTIVE JUROR 059: I'm not sure.

1 I believe I would lean towards the police
2 officer's side or the investigator's side.

3 THE COURT: You've known, I suspect,
4 in your experience, investigators who were
5 less than forthright. Would that be a fair
6 statement? Oh, come on.

7 PROSPECTIVE JUROR 059: Not with the
8 group I worked with. But I'm sure that that's
9 true in this town.

10 THE COURT: Just like good lawyers,
11 bad lawyers, good doctors, bad doctors.

12 PROSPECTIVE JUROR 059: Yes, ma'am.

13 THE COURT: Do you think you could
14 keep an open mind and listen to the facts and
15 be fair to both sides?

16 PROSPECTIVE JUROR 059: Yes.

17 THE COURT: Thank you very much.
18 Anyone else? Yes, badge number
19 again?

20 PROSPECTIVE JUROR 070: 070.

21 THE COURT: Mr. Stuart?

22 PROSPECTIVE JUROR 070: Yes, ma'am.

23 THE COURT: What other concerns do
24 you have?

25 PROSPECTIVE JUROR 070: In light of

1 your explanation of time commitment, I remove
2 my concern.

3 THE COURT: Thank you very much. We
4 seldom hear that.

5 PROSPECTIVE JUROR 062: Badge number
6 062.

7 THE COURT: Yes, Mr. Osburn.

8 PROSPECTIVE JUROR 062: Just to
9 clarify to the Court, my time commitment
10 starting tomorrow morning is extensive the
11 next two weeks. If I would have known the
12 time commitment, I could have scheduled this
13 for January when I'm open. I will be
14 financially at harm if I am placed on the
15 jury, and I am the primary breadwinner in our
16 household.

17 THE COURT: Thank you very much.

18 Yes, sir, badge number?

19 PROSPECTIVE JUROR 128: 128.

20 THE COURT: You are Mr. Cabrera?

21 PROSPECTIVE JUROR 128: Yes, ma'am.

22 THE COURT: Tell me what your concern
23 is, sir.

24 PROSPECTIVE JUROR 128: My concern
25 has nothing to do with the case; hardship for

1 my family being here. I make over 200 bucks a
2 day. I have five kids at home. Nothing
3 concerning the case, but I lose --

4 THE COURT: Lots of holiday presents
5 to buy; right?

6 PROSPECTIVE JUROR 128: Yes, just
7 money. I don't get paid for this.

8 THE COURT: Thank you very much.
9 Thank you. Anyone else? I think we need to
10 take a break. We'll take about 10 minutes.

11 Ladies and gentlemen, I have to
12 remind you that you cannot discuss this case
13 among yourselves or with anyone else. You
14 can't read, watch, listen to any report of
15 commentary on or to any person who might be
16 associated with this case. You cannot form or
17 express an opinion on any of these issues
18 until the matter has been fully and finally
19 submitted to you under instruction of law by
20 me.

21 Now, if you have to use the phone and
22 call wife, husband, spouse, significant other,
23 whatever the case may be, all you can tell
24 them is I'm in jury selection in a criminal
25 case in Department XVIII. That's all you can

1 talk about. You haven't been chosen yet, but
2 you are under the same obligation. You can't
3 talk about this case amongst yourselves or
4 with anyone else.

5 I want you to be mindful of the fact
6 there are people in and about the courtroom,
7 about the courthouse who may very well be
8 witnesses, family members, people who could
9 somehow be involved with this case. If
10 someone tries to talk to you about this case
11 or about your potential qualification as a
12 juror, you should remove yourself immediately
13 from that person and report that to
14 Mr. Bailiff as soon as you return to the area
15 that he is going to tell you to return to.

16 Also, be very careful if you are
17 using the rest room or something of that
18 nature, there may be someone in there who has
19 something to do with the case. Please bear in
20 mind you can't discuss the case. And if you
21 were to hear someone discussing the case, you
22 know what? Yell right out, even if you are in
23 the stall, I am a prospective juror in that
24 case, please don't talk about it in front of
25 me. And you would have to then report what if

1 anything you heard about that to Mr. Bailiff
2 when you reassemble.

3 So with that in mind, I would like us
4 to take about 10 minutes.

5 PROSPECTIVE JUROR: Will we be done
6 at 5:00 o'clock tonight?

7 THE COURT: Pretty close.
8 (Whereupon, the prospective jurors are exiting
9 the courtroom.)

10 THE COURT: I have to have all of the
11 prospective jurors leave the courtroom.

12 PROSPECTIVE JUROR: Oh, you do?
13 Sorry.

14 THE COURT: Yes.

15 A couple of dismissals that I am
16 going to make on my own motion.

17 Let's see. Juror No. 090, the Korean
18 woman, language barrier. You will note that
19 her questionnaire had virtually nothing filled
20 out on it. I think that speaks for itself.

21 Anyone have a problem with that?

22 MR. BROOKS: Not from the defense,
23 Your Honor.

24 MR. KANE: No, Your Honor.

25 THE COURT: I think we can excuse

1 her. Cliff actually does not bring them back
2 in. That's how we do it when someone is
3 excused in open court.

4 I don't give much leeway for people
5 who are going to miss work. I think you all
6 know that. You have all been in front of me.
7 I'll allow you to do further follow-up with
8 the folks who expressed some concern about
9 their work employment situations. But for the
10 time being, I'm not going to do any excusals
11 on that.

12 I am, however, concerned about 068,
13 Ms. Povelko. We started with her, you
14 remember, as one of the people who read about
15 the case. My concern has to do with her
16 inability, at least in my opinion, to embrace
17 the presumption of innocence. I don't know
18 how you all feel about that. If you would
19 like me to leave her on for further follow-up,
20 I will. Mr. O'Brien? Mr. Brooks?

21 MR. O'BRIEN: From the defense, we
22 would like to keep her on at this point.

23 THE COURT: The State, I would
24 presume you would as well?

25 MR. KANE: We've got no problems with

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IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENFORD A BUDD,
Appellant.

vs.
THE STATE OF NEVADA
Respondent.

Supreme Court No.:
District Court Case No.: 03C193182
Electronically Filed
Nov 10 2014 09:00 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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MATTHEW D. CARLING
51 East 400 North, Bldg. #1
Cedar City, Utah 84720
(702) 419-7330 (Office)
Attorney for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155
Counsel for Respondent

CATHERINE CORTEZ MASTO
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
Counsel for Respondent

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DISTRICT COURT
CLARK COUNTY, NEVADA

ORIGINAL

THE STATE OF NEVADA,
Plaintiff,
vs.
GLENFORD ANTHONY BUDD,
Defendant.

Case No. C193182
Dept. No. XVIII

VOLUME 1
FILED IN OPEN COURT
DEC 06 2005 20

SHIRLEY B. PARRAGUIRRE, CLERK

BY *Kristen M. Brown*

KRISTEN M. BROWN, DEPUTY

REPORTER'S TRANSCRIPT OF JURY TRIAL

Before the Honorable Justice Nancy M. Saitta

Monday, December 5, 2005
2:10 p.m.

APPEARANCES:

For the State: EDWARD KANE, ESQUIRE
Deputy District Attorney

TALEEN PANDUKHT, ESQUIRE
Deputy District Attorney

For the Defendant: HOWARD BROOKS, ESQUIRE
Deputy Public Defender

TIMOTHY O'BRIEN, ESQUIRE
Deputy Public Defender

Reported by: Gayle G. Pichierri, RPR, CRR
NV CCR No. 595, CA CSR No. 11406

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1 THE COURT: Let the record reflect we
2 are present in the matter of State versus
3 Budd. This is case No. C193182. The parties
4 are present with counsel, and we are outside
5 the presence of the jury, although I
6 believe -- do we have the jurors with us here
7 yet or not?

8 MR. BROOKS: They are outside, Judge.

9 THE COURT: We have some preliminary
10 matters we need to take up before we get into
11 the jury selection process. First of all, the
12 juror questionnaires would suggest that there
13 are some people who believe they may have
14 knowledge of this case. We are going to take
15 that up when we bring those seven jurors in.

16 I also understand, Mr. Brooks,
17 Mr. O'Brien, that there are some
18 misrepresentations you feel are necessary to
19 be made on the record with respect to concerns
20 of the family; is that correct?

21 MR. O'BRIEN: That's correct, Your
22 Honor. Mr. Budd would like to discharge
23 Mr. Brooks and myself today, and he would like
24 to retain Mr. John Momot. Apparently, the
25 family has talked to Mr. Momot. He told them

1 he would be ready to come on the case if, in
2 fact, we were withdrawn. I would ask the
3 Court to consider that. I understand this is
4 at a very late date in the procedure.

5 However, our concern, Judge, is that
6 Mr. Budd is not happy with our representation.
7 That attitude may be construed to the jurors,
8 to Mr. Budd's detriment. Additionally, Judge,
9 I am very concerned, and it may affect some of
10 Mr. Budd's decisions regarding a penalty phase
11 if, in fact, we get to a penalty phase.

12 That same concern I would have
13 concerning the family; that they are not fully
14 cooperative with me. I think it could lessen
15 the impact of our mitigation case.

16 THE COURT: Should we get to a
17 penalty phase, it is or should be obvious that
18 the cooperation of the family is going to be
19 essential to the case as a whole. Would you
20 agree with me?

21 MR. O'BRIEN: I would, Your Honor.

22 THE COURT: The oral request for a
23 motion to continue on the day of trial is, as
24 you know, extraordinary. It is unusual to the
25 extent that, if I understood your

1 representation correctly, Mr. Momot suggested
2 he would be ready to come in if we gave that
3 continuance.

4 MR. O'BRIEN: I didn't mean to
5 suggest he would be ready to seamlessly come
6 in today. It was my understanding, based on
7 talking with Mr. Budd's mother, that he was
8 interested in being retained on this case.

9 THE COURT: Let me ask you this, and
10 this has to be a question that I would have to
11 ask both Mr. Brooks and Mr. O'Brien: Do you
12 feel your relationship has deteriorated to the
13 point that you cannot offer a zealous
14 representation of your client?

15 MR. O'BRIEN: I am honestly concerned
16 that my relationship with Mr. Budd may
17 unfairly impact our mitigation presentation.

18 THE COURT: But my question is with
19 respect to -- maybe I should be more specific.

20 With respect to your preparation, you
21 wouldn't be on this case, neither of you would
22 be on this case, if you weren't experienced in
23 this type of case. Fair statement for both
24 Mr. Brooks and Mr. O'Brien?

25 MR. O'BRIEN: That's a fair

1 statement.

2 THE COURT: In fact, death penalty
3 qualified, I believe it is a requirement that
4 our State Bar has taken up quite seriously; is
5 that correct?

6 MR. O'BRIEN: In point of fact,
7 Judge, I am not death penalty qualified. I am
8 second chair.

9 THE COURT: Second chair is not
10 required to be. You have tried murder cases
11 before; is that correct?

12 MR. O'BRIEN: I have, Your Honor.

13 THE COURT: In fact, you have done at
14 least one in my courtroom.

15 MR. O'BRIEN: I have.

16 THE COURT: Mr. Brooks, you are death
17 penalty qualified; correct?

18 MR. BROOKS: Judge, I am. Supreme
19 Court Rule 250 requires death qualification
20 for one attorney. I am death qualified.

21 With regards to the Court's question,
22 let me just say this: What we are doing in
23 this case is I am handling the guilt phase,
24 essentially. Mr. O'Brien is going to handle
25 the penalty phase, if we get to a penalty

1 phase. The arguments in the penalty phase
2 allow both attorneys to argue. We would both
3 be arguing in the penalty phase, if there is a
4 penalty phase.

5 I have had extensive discussions with
6 Mr. Budd over the last year and a half or so
7 about the case itself. My relationship with
8 Mr. Budd is, at this point, almost
9 nonexistent; however, I cannot say to the
10 Court that I consider that to be an impediment
11 to trying the guilt phase of this case. I
12 think with what I have to work with, I'm not
13 sure anything is going to make it into a
14 better situation.

15 Mr. O'Brien has a better relationship
16 with Mr. Budd than I have. I think with what
17 we have to work with, our communication with
18 him is adequate for the penalty phase. It
19 would certainly be better if Mr. Budd had an
20 attorney who he wholeheartedly wanted to work
21 with. He doesn't really want to work with me.
22 I can deal with that in the guilt phase.

23 Mr. O'Brien can speak to what his
24 relationship is with respect to the penalty
25 phase.

1 THE COURT: Let's make a good record
2 here. Number one, we don't even know if we
3 are going to have a penalty phase, because
4 that remains to be seen as to a jury finding
5 guilt first, first and foremost.

6 As to -- you know, I don't know any
7 other way to say this except just to say it.
8 There is a commonly held belief that because
9 people work for the state, quote, unquote, or
10 the county as public defenders that, for some
11 reason, they are not as good as private
12 attorneys. I find that to be not only wrong,
13 but it makes me angry when I hear that, that
14 that is a commonly held belief in the
15 community.

16 You know, lawyers, whether they be
17 district attorneys, private attorneys in
18 criminal or civil, or public defenders, you
19 know, we take the good with the bad. There's
20 good apples and there's bad apples in every
21 profession, whether it be doctors, lawyers,
22 nurses, teachers. But the fact of the matter
23 is that if I were in a position -- it's funny,
24 I said this once earlier today -- if I were in
25 a position where I needed to have state or

1 county-appointed attorneys, I can tell you
2 that the people that are representing you,
3 Mr. Budd, are certainly among those who I
4 would have represent me, without a doubt,
5 without a doubt. And, as I said, this
6 mistaken belief that just because people are
7 public defenders that they don't somehow know
8 the law, work the cases as hard as others --
9 and this is meant to be no reflection upon
10 Mr. Momot. He is by far someone that, if I
11 were in a position and could afford Mr. Momot,
12 I would want to hire him, too. But you know
13 what? It is absurd, Mr. Budd, for you not to
14 work with these two gentlemen.

15 Let's face it. The trial phase of
16 this case -- and I think Mr. Brooks said it
17 fairly -- with what you have to work with,
18 I've reviewed this case and, of course, it's
19 not for me to make a determination, but the
20 fact of the matter is there is at least one
21 purported eye witness to the conduct that was
22 charged in this case, potentially two; but it
23 is what it is.

24 As to penalty, in almost all cases,
25 if we get to a penalty phase, it is the

1 family, it is the defendant and his family,
2 his or her family, that can help you the most.
3 For your family not to want to cooperate with
4 your attorneys at this point is hurting no one
5 but you. The only thing, if we get to a guilt
6 phase -- strike that -- a penalty phase that
7 these attorneys can put on in front of the
8 jury are what we refer to as mitigating
9 circumstances. And while they are enumerated,
10 have been enumerated in law, the fact of the
11 matter is that it's usually the family that
12 gets up and says please don't put my son,
13 husband, whatever, to death because I want you
14 to consider these good things about him, these
15 facts that might go into why he was found
16 responsible.

17 I'm not going to continue the trial.
18 It is a request made way too late on the
19 if-come that another attorney will be
20 retained.

21 Let me ask both Mr. Brooks and
22 Mr. O'Brien: Do you feel adequately prepared,
23 given the circumstances of this case, to move
24 forward on behalf of your client?

25 Mr. O'Brien, for the penalty phase,

1 if we get there?

2 MR. O'BRIEN: Regarding the penalty
3 phase, Judge, I am concerned that the
4 relationship that Mr. Budd and I have right
5 now, that he may not be able to follow my
6 advice and secure what I believe is in his
7 best interests. He has some personal
8 decisions to make regarding the penalty, above
9 and beyond his family, that I believe is --

10 THE COURT: Is this his family that's
11 here in the courtroom right now?

12 MR. O'BRIEN: Yes. His mother is
13 here. And just for clarification, Judge, I
14 didn't want to suggest they were not
15 cooperating with me. But as this progresses,
16 that was a concern of mine, that it could
17 impact the mitigation.

18 THE COURT: There needs to be -- for
19 those of you who are family members here, as
20 well as Mr. Budd, there needs to be open,
21 honest communication between you and your
22 attorney. I mean, for what it's worth, the
23 last case Mr. O'Brien tried in this courtroom,
24 he did so well that the jury came back, they
25 were deadlocked. And that's -- I think that's

1 what it was, if I remember correctly. All I
2 know is that we've got to retry that case.
3 And, next to a not guilty, that's pretty good
4 work.

5 Mr. Brooks, I don't know how many
6 years experience you have had. I don't want
7 to embarrass you with age. How many years in
8 this particular arena?

9 MR. BROOKS: I've been a public
10 defender, Judge, for 15 years. I spent five
11 years on a track doing everything, and then
12 ten and a half years essentially on the murder
13 team. During that time, I have handled
14 roughly 90 murder cases, and I have taken 18
15 of the murder cases to trial.

16 THE COURT: That would certainly
17 rival, if not exceed, the trial record for
18 murder cases that Mr. Momot might have, and I
19 mean no disrespect. The fact of the matter is
20 that the family needs to cooperate. If we get
21 to a penalty phase, the most important thing
22 you can do is to communicate with Mr. O'Brien
23 and/or Mr. Brooks.

24 My decision remains the same. No
25 continuance.

1 Anything else we will take up before
2 I bring in our seven jurors who believe they
3 have heard about this case?

4 MR. O'BRIEN: None from the defense.

5 MR. KANE: None from the State.

6 THE BAILIFF: Bring all seven in,
7 Your Honor?

8 THE COURT: Yes, please.

9 Let the record reflect that the
10 official reporter for this proceeding is going
11 to be in front of me. It is the actual
12 reporter transcript as opposed to the recorder
13 transcript. The recorder will act as an
14 unofficial recorder of the proceeding and, of
15 course, it is necessary for my recorder to
16 take care of the technology that we have here
17 in the courtroom.

18 And is it an accurate statement both
19 sides would waive the reading of the
20 information?

21 MR. KANE: Yes, Your Honor.

22 MR. BROOKS: We would, Your Honor.
23 And, for the record, it's my understanding we
24 will be bringing these people in one by one.
25 There are only seven of them; correct?

1 THE COURT: Correct. I may have led
2 Mr. Bailiff astray. Perhaps if one of the --
3 Ms. Brown, would you step out and tell him he
4 can bring the seven back into our little
5 waiting room, but one at a time.

6 Yes, my fault.

7 MR. BROOKS: Also, Judge, as far as
8 the range of discussions here with these
9 jurors, we are going to discuss with them
10 their media knowledge of the case.

11 THE COURT: Absolutely. That was my
12 understanding the only thing you all were
13 concerned about; correct?

14 MS. PANDUKHT: Yes.

15 MR. BROOKS: Correct.

16 (Pause.)

17 THE COURT: For the record, of the
18 seven names and numbers that you gave me with
19 respect to media knowledge, only four of them
20 are in the first group. If we have to go into
21 the second group of prospective jurors, we
22 will take those remaining three outside the
23 presence just as we will these.

24 So for the time being, whoever you
25 have up first, Mr. Bailiff, you can bring them

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1 THE COURT: What else besides that
2 did you hear or do you think you heard?

3 PROSPECTIVE JUROR 068: That's really
4 all I can recall is that it was three young
5 black men, and they found them in an apartment
6 and they had been slain, had been killed, and
7 that they were looking for the person who did
8 it.

9 THE COURT: Anything -- did you hear
10 that in the print media or on television?

11 PROSPECTIVE JUROR 068: On the news,
12 on the television.

13 THE COURT: Did you hear it more than
14 once?

15 PROSPECTIVE JUROR 068: I believe I
16 heard it a couple of times.

17 THE COURT: Did you do any follow-up
18 research?

19 PROSPECTIVE JUROR 068: No.

20 THE COURT: If, in fact, that turned
21 out to be the case that you have been
22 potentially called to serve for, would that
23 knowledge in any way affect your ability to be
24 fair and impartial in this case?

25 PROSPECTIVE JUROR 068: Yes, I do

1 think it would.

2 THE COURT: To what extent?

3 PROSPECTIVE JUROR 068: To be
4 completely honest, I just feel if the person
5 who did it was here, they must have had proof
6 that he did it. With the news portrayed and
7 so forth, you know, they're portraying some
8 sort of evidence.

9 THE COURT: Okay. So, now, you said
10 the news you heard was that three individuals
11 had been found slain and they were looking for
12 a person.

13 PROSPECTIVE JUROR 068: Um-hum.

14 THE COURT: So you don't know whether
15 or not they ever caught a person; right?

16 PROSPECTIVE JUROR 068: True.

17 THE COURT: And you don't even know
18 whether or not this is the case; right?

19 PROSPECTIVE JUROR 068: True.

20 THE COURT: Because, unfortunately,
21 we hear about more often than I am comfortable
22 with slayings take place in the Valley pretty
23 frequently; fair?

24 PROSPECTIVE JUROR 068: True.

25 THE COURT: Now, let me ask you a

1 different question.

2 PROSPECTIVE JUROR 068: Sure.

3 THE COURT: You made a comment about
4 thinking that if someone was charged with an
5 offense such as murder, that if they're in
6 court, they must be guilty of something.

7 PROSPECTIVE JUROR 068: I just feel
8 that, you know, with the way that the judge --
9 I mean, I don't have any experience in the
10 courtroom whatsoever. But, I mean, just from
11 my own personal thoughts, I just feel that if
12 it's come this far that, you know, there is
13 good cause behind it.

14 THE COURT: So, now, you realize any
15 time we convene a trial, particularly in the
16 criminal area, that the person who sits
17 accused, the person who gets to where he is
18 labeled defendant, they are merely accused of
19 a crime; and, in fact, you and I and everyone
20 else are entitled to have the State prove the
21 case that is charged --

22 PROSPECTIVE JUROR 068: Yes.

23 THE COURT: -- beyond a reasonable
24 doubt.

25 PROSPECTIVE JUROR 068: Um-hum.

1 THE COURT: So you or I could be
2 sitting here and, you know, assuming that we
3 have had no contact with the police, we could
4 be sitting here charged with a crime, and it
5 doesn't mean that we have done anything. This
6 is what I refer to as the cloak of innocence.
7 Is one of the most highly respected
8 constitutional rights that we all have. Would
9 it be fair for me to say that you are not
10 buying that concept? That you think if
11 someone sits in court charged with an offense
12 that they must be guilty?

13 PROSPECTIVE JUROR 068: Honestly, I
14 do -- I understand the concept, but I just --
15 my own personal views is that, you know, I
16 understand everyone has a right to prove
17 themselves innocent.

18 THE COURT: They have a right to be
19 presumed innocent --

20 PROSPECTIVE JUROR 068: Presumed
21 innocent.

22 THE COURT: -- unless and until the
23 State proves a case against them beyond a
24 reasonable doubt.

25 PROSPECTIVE JUROR 068: Yes.

1 THE COURT: Which is for a jury to
2 determine.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: So, in other words, the
5 defendant sitting here right now, with what
6 you know, you would have to presume him
7 innocent. Can you do that?

8 PROSPECTIVE JUROR 068: Honestly, no.

9 THE COURT: State, do you want to do
10 follow up?

11 MS. PANDUKHT: No, Judge.

12 THE COURT: Mr. Brooks? Mr. O'Brien?

13 MR. O'BRIEN: Briefly, Judge, if I
14 may.

15 Hi, Ms. Povelko.

16 PROSPECTIVE JUROR 068: Yes, sir.

17 MR. O'BRIEN: You consider yourself
18 to be a law-abiding citizen?

19 PROSPECTIVE JUROR 068: Yes, sir.

20 MR. O'BRIEN: And you realize as a
21 law-abiding citizen, it's our duty to follow
22 the law, even though sometimes we may not
23 agree with it?

24 PROSPECTIVE JUROR 068: Yes, sir.

25 MR. O'BRIEN: And if you were

1 instructed by this judge to follow her
2 instructions on the law, you would do that,
3 wouldn't you?

4 PROSPECTIVE JUROR 068: Yes, I would.

5 MR. O'BRIEN: And if she gave you an
6 instruction that told you not to return a
7 verdict of guilty in this case unless guilt
8 was proven beyond any reasonable doubt, you
9 would do that, wouldn't you?

10 PROSPECTIVE JUROR 068: Yes.

11 MR. O'BRIEN: Thank you.

12 THE COURT: Anything from the State?

13 MS. PANDUKHT: No, Your Honor.

14 THE COURT: I'm going to thank you
15 and ask you to return out to the waiting area
16 that we've arranged. You may go with my
17 bailiff.

18 PROSPECTIVE JUROR 068: Thank you.

19 THE COURT: Thank you.

20 THE BAILIFF: Number 120, Your Honor,
21 Jenine Alston.

22 THE COURT: 120.

23 Good afternoon, Ms. Alston. We
24 pulled you out of order together with the
25 other jurors because in your questionnaire you

1 indicated that you thought that you had heard
2 or seen or read something about this case.
3 Can you tell me what you think you might know
4 about this?

5 PROSPECTIVE JUROR 120: From my
6 reading, which would have been a while back,
7 that he, the accused person, Mr. Budd, I guess
8 that he allegedly murdered these people due to
9 them finding or taking his drugs or something
10 to that effect. And he said he had a dream
11 about it once upon a time or something like
12 that. But I don't have, like, all the details
13 or anything.

14 THE COURT: So you read about it.

15 PROSPECTIVE JUROR 120: Um-hum.

16 THE COURT: Did you read more than
17 one article?

18 PROSPECTIVE JUROR 120: Possibly.

19 THE COURT: Okay. Anything about
20 what you read -- would anything that you read
21 affect your ability to be fair and impartial?

22 PROSPECTIVE JUROR 120: You know, to
23 be honest, I really don't know.

24 THE COURT: That's always a tough
25 question. And people who say they don't know

1 I'm always more content with, because I think
2 when I ask a tough question like that, if
3 people say absolutely, I'm okay, or
4 absolutely, I'm not, you can't get there.

5 Let me ask you this: You actually
6 called the defendant by name. There is a
7 concept in law that each and every one of us
8 as citizens of United States are entitled to,
9 and that is the presumption of innocence;
10 actually, it's a joint concept, with the right
11 to have a trial by jury. And that right means
12 that the individual who comes before a jury as
13 a defendant is just charged with an offense.
14 In fact, you and other jurors would have to
15 presume that this individual is innocent
16 unless and until the State could prove their
17 case beyond a reasonable doubt. And it's a
18 very heavy burden.

19 Do you think that anything you read
20 about this case would keep you from applying
21 the principle of law that says unless the
22 State does their job, you really can't convict
23 this individual who was charged?

24 PROSPECTIVE JUROR 120: To be honest,
25 I wouldn't want to be a juror.

1 THE COURT: Why is that?

2 PROSPECTIVE JUROR 120: I wouldn't
3 want to. It's different from a shooting you
4 watch on TV and seeing the facts that way.
5 Maybe I might be tainted by knowing just a
6 little bit about it and, of course, you want
7 to give someone the benefit of the doubt he
8 could be innocent. But you really don't know,
9 and I'm just like --

10 THE COURT: Because you don't know
11 anything more than what the media has put out;
12 right?

13 PROSPECTIVE JUROR 120: That's true.

14 THE COURT: So when I tell you the
15 State has an obligation to prove their case
16 beyond a reasonable doubt, you wouldn't have
17 any idea what the case involved at this point
18 except what you read; right?

19 PROSPECTIVE JUROR 120: True. That's
20 true.

21 THE COURT: And so if I told you the
22 law requires you to keep an open mind until
23 you hear all of the evidence put on by the
24 State and any evidence put on by the defense
25 and then to discuss that with your fellow

1 jurors, could you do that?

2 PROSPECTIVE JUROR 120: I would do my
3 best to keep an open mind.

4 THE COURT: You haven't already made
5 up your mind about the guilt of anyone in this
6 case?

7 PROSPECTIVE JUROR 120: No.

8 THE COURT: State, do you want to do
9 a follow up?

10 MS. PANDUKHT: No, Judge.

11 THE COURT: How about defense,
12 Mr. O'Brien or Mr. Brooks?

13 MR. O'BRIEN: No, Judge.

14 THE COURT: Very well. You can be
15 excused and return back to the area our
16 bailiff is keeping everyone in.

17 THE BAILIFF: Juror No. 129, Judge.

18 THE COURT: Good afternoon.

19 PROSPECTIVE JUROR 129: Hello.

20 THE COURT: You are Ms. Santos?

21 PROSPECTIVE JUROR 129: Yes.

22 THE COURT: In your questionnaire you
23 indicated you thought you may have heard or
24 read or seen something about this case in the
25 media.

1 PROSPECTIVE JUROR 129: Yes.

2 THE COURT: Tell me what you think
3 you heard.

4 PROSPECTIVE JUROR 129: I just heard
5 it was a murder case. I didn't hear really
6 the details of it, but I do know that it was a
7 few gentlemen that were killed. That's all I
8 know.

9 THE COURT: Anything -- I'm sorry.

10 PROSPECTIVE JUROR 129: And that's
11 all I know.

12 THE COURT: Anything about what you
13 heard that would affect your ability to be
14 fair and impartial?

15 PROSPECTIVE JUROR 129: No.

16 THE COURT: In fact, one of the
17 things you are going to hear me talk about
18 when the rest of the jurors are here that the
19 defendant, like anyone else charged with a
20 crime, is entitled to be presumed innocent
21 unless and until the State proves their case
22 beyond a reasonable doubt. Can you do that?

23 PROSPECTIVE JUROR 129: Yes.

24 THE COURT: Keep an open mind?

25 PROSPECTIVE JUROR 129: Yes.

1 THE COURT: Nothing about what you
2 read or heard about this case is going to
3 affect your ability to be fair and impartial,
4 is it?

5 PROSPECTIVE JUROR 129: No.

6 THE COURT: State, any questions?

7 MR. KANE: No, Your Honor.

8 THE COURT: Mr. Brooks or
9 Mr. O'Brien?

10 MR. BROOKS: No questions, Your
11 Honor.

12 THE COURT: You may step back into
13 the area that we are keeping the folks in.

14 THE BAILIFF: Juror No. 079.

15 THE COURT: Thank you.

16 MS. PANDUKHT: What was the next
17 number, Judge?

18 THE COURT: 079, Mr. Medovich.
19 Good afternoon, sir.

20 PROSPECTIVE JUROR 079: Hi.

21 THE COURT: One of the questions in
22 your juror questionnaire indicated that you
23 may have heard something about this case in
24 the media. Can you tell me what you think you
25 heard?

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1 PROSPECTIVE JUROR 079: Illinois. My
2 wife is going --

3 THE COURT: You get to be gone that
4 long? That's almost a whole month.

5 PROSPECTIVE JUROR 079: Yeah. I own
6 my own business. So, basically, my business
7 is an Internet-based business. So whenever I
8 travel, I literally take my laptop on my
9 business travels with me.

10 THE COURT: Do you have plane
11 tickets?

12 PROSPECTIVE JUROR 079: No, we're
13 driving. I know, I know. It's the time of
14 the season, and -- but we are taking the
15 family.

16 THE COURT: And all three of your
17 kids?

18 I'm not inclined to do any more
19 questioning given the circumstances. State,
20 do you have any problem with that?

21 MR. KANE: No, Your Honor.

22 THE COURT: Actually, I'm inclined to
23 dismiss this juror right now.

24 MR. KANE: That's how I understood
25 it.

1 THE COURT: Mr. Brooks?

2 MR. BROOKS: No objection, Your
3 Honor.

4 THE COURT: I'm going to thank and
5 excuse you, sir. You may return to the jury
6 assembly area. Please have a safe and
7 enjoyable holiday.

8 PROSPECTIVE JUROR 079: Okay. Thank
9 you.

10 (Pause.)

11 THE COURT: And I think those look
12 like the only ones that we had. Do we have
13 one more?

14 THE CLERK: That was it.

15 THE COURT: For the record, anything
16 that you want to add before we bring the rest
17 of the jurors in?

18 MR. KANE: No, Your Honor.

19 THE COURT: On behalf of the defense?

20 MR. BROOKS: Nothing, Your Honor.

21 THE COURT: Very well. Mr. Bailiff,
22 let's bring the first part of our jurors in.

23 MR. BAILIFF: Officers and members of
24 the Court, Department XVIII prospective
25 jurors.

1 (Whereupon, the panel of prospective jurors
2 entered the courtroom.)

3 THE COURT: Welcome, ladies and
4 gentlemen. This is the case known as State of
5 Nevada versus Glenford Anthony Budd, case
6 No. 193182. This is the date and time set for
7 trial. This is Department XVIII.

8 Did someone come down and talk to
9 you? Did you see a little movie, and did a
10 judge come down and talk to you about the jury
11 selection process? Yes? No? You saw a
12 movie? No judge came and talked to you?

13 VOICES: No, no judge.

14 THE COURT: First of all, the record
15 should reflect the presence of the defendant,
16 Mr. Budd, with his counsel, the district
17 attorneys, who have been assigned to prosecute
18 this case.

19 State, can you announce ready?

20 MR. KANE: Yes, Your Honor.

21 THE COURT: And on behalf of defense,
22 are you ready?

23 MR. BROOKS: Yes, Your Honor, we're
24 ready.

25 THE COURT: Ladies and gentlemen, you

1 have been summoned to potentially serve in a
2 case that is a criminal case. This is a
3 matter where the district attorney, who has
4 been assigned to prosecute this case, is going
5 to tell you a little bit about the case, some
6 of the witnesses -- in fact, all of the
7 witnesses they are going to call.

8 The defense will tell us what, if
9 any, witnesses they are going to call, and we
10 are going to ask you a series of rather
11 personal questions to find out whether or not
12 you are qualified for this particular case.

13 Now, we talk about qualifications.
14 We are going to talk an awful lot about bias
15 and prejudice. I don't want you to be
16 concerned. We all sort of embrace the concept
17 of bias and prejudice as being something that
18 is negative. In the jury selection process,
19 it really isn't something you need to be
20 concerned about in terms of whether it's
21 politically correct to say I have a bias or a
22 predisposition to A, B, C or D. In fact, it's
23 very important that you tell us if you have
24 some concerns about your ability to be fair
25 and impartial.

1 Everything that we say and do in the
2 courtroom is recorded. In fact, in this case,
3 it's going to be recorded by two different
4 people. Everything that everyone says is said
5 into a microphone or a type of a microphone so
6 that we can be sure it becomes a part of the
7 official court record.

8 You are going to be sworn. The oath
9 that you are going to take is going to be that
10 you are going to tell the truth to all of the
11 questions that I ask and the questions that
12 these attorneys ask, because if you don't tell
13 the truth, it could, of course, subject you to
14 proceedings beyond the actual trial in this
15 case. And it's very important that you be
16 open and honest.

17 I know how difficult it is for you to
18 talk about things that are personal and
19 sensitive or delicate in front of a roomful of
20 people that you don't know, but it is
21 essential to the jury selection process. And,
22 in fact, each and every one of us as citizens
23 of the United States have the right to have
24 any case that is brought against us heard by a
25 jury of our peers and, most importantly, a

1 jury of our peers who are free of bias and
2 prejudice and who will keep an open mind as
3 they hear the evidence in this case.

4 I'm going to ask that you please
5 rise, raise your right hand while my clerk
6 administers the oath.

7 (Whereupon the Clerk of Court swore in the
8 prospective jurors.)

9 THE COURT: Welcome. As you know,
10 you filled out -- you should recall filling
11 out juror questionnaires where we asked you --
12 told you a little bit about the case, asked
13 you to fill out the answers to some questions
14 that will help the attorneys to determine
15 whether or not you are a good fit for this
16 particular jury.

17 One of the things that I try to do is
18 I explain that when we are doing the jury
19 selection process, first of all, it's
20 extremely important -- these attorneys are not
21 asking these questions or looking at the
22 answers that you have provided because they
23 have some perverse desire to know personal
24 things about you. It is because they all have
25 a job, and that is to represent their

1 clients -- whether it be the State or the
2 accused -- zealously, to the best of their
3 abilities, and what that means is they've got
4 to figure out a jury that fits the case.

5 And I try to use the example: I was
6 born and raised in the Midwest, and the
7 example I use is in the winter when we wanted
8 to keep our hands warm in the cold, there were
9 two different types of outer clothing,
10 outerwear we could put on our hands to keep
11 our hands warm. One was mittens, one was
12 gloves. If we used mittens, it didn't matter
13 how we put our hands into that particular
14 outerwear because it worked no matter what.
15 Just kept your hands warm, but your fingers
16 could wiggle around.

17 If you were putting your hands into a
18 glove, you had to have each of your fingers
19 hopefully get into the right slot so you
20 weren't uncomfortable in the gloves.

21 What we are looking for in a jury
22 selection is hand-in-a-glove fit; not perfect,
23 necessarily, but it needs to be a bit tighter
24 than the hand in the mitten. That's really
25 what we are looking for. Some of you may not

1 be glove-in-the-hand fits for this jury. It
2 doesn't mean that you are not a good juror for
3 another type of case that we have in the
4 courthouse. I will tell you that on this
5 floor alone today where there are only four
6 judges, we have at least two jury selections
7 going on. So there is a lot of work going on
8 in this courthouse.

9 If you don't qualify for this jury,
10 you are likely to qualify for another one at
11 another date and time. So in addition to the
12 oath that you all have just taken, I urge you
13 to be open and honest about your biases, your
14 prejudices, what experiences you have had as
15 you have gone through your life experiences so
16 that we can determine whether you are that
17 hand-in-the-glove fit.

18 You know a little bit about this
19 case. I want to stress something to you. In
20 every single criminal case, the case is
21 brought by the State or State entity against
22 an individual. An individual, no matter what,
23 is presumed innocent until such time as the
24 jury determines that the State has proven the
25 case charged against the individual beyond a

1 reasonable doubt. It's a very high standard.
2 You will hear me talk about what a reasonable
3 doubt is when I give you jury instructions.

4 But I want you to understand or to
5 tell me if you don't understand that just
6 because someone is sitting here in the
7 courtroom, just because they are sitting at
8 the defendant's table, doesn't mean that they
9 are guilty of anything. In fact, the opposite
10 is true. They are absolutely and completely
11 presumed innocent unless the State does their
12 job. Is there anyone who doesn't agree with
13 that concept?

14 Very well. On behalf of the State,
15 Mr. Kane, would you introduce, your co-counsel
16 and make a brief statement about what this
17 case is and who you anticipate you will call
18 as witnesses?

19 MR. KANE: Yes. Thank you, Your
20 Honor. Ladies and gentlemen, my name is
21 Edward Kane, K-A-N-E. Seated at counsel table
22 with me is Ms. Taleen Pandukht,
23 P-A-N-D-U-K-H-T. Ms. Pandukht and I are
24 deputy district attorneys. We work for Clark
25 County, Nevada, and we will be presenting the

1 evidence to you in support of the charges in
2 the case of State of Nevada versus Glenford
3 Budd.

4 And what the accusation is is that
5 between May the 26th and May the 27th of
6 2003 -- and we have done that because this
7 happened right around midnight, so some of it
8 may have happened a couple of minutes before
9 midnight and some a couple of minutes after --
10 but around midnight of May the 26th, May the
11 27th, 2003, at an apartment complex called the
12 Saratoga Palms East No. 2, located at 2895
13 East Charleston Boulevard here in Las Vegas,
14 Nevada, three young African-American men were
15 shot to death. They were Jason Moore, age 19;
16 Derrick Jones, age 19; and Dajon Jones, age
17 14. And the accusation is that Mr. Budd is
18 the person who murdered those three
19 individuals.

20 Now, we are going to call a number of
21 witnesses. And we won't call all of the
22 people whose names I am going to read to you,
23 but it's important that you listen because the
24 Judge is going to ask you in a few minutes if
25 you know any of those people and if that would

1 cause you any problems sitting as a juror, and
2 that's why we read you this list of names.

3 We are going to call Dr. Rexene
4 Worrell from the Clark County Coroner's
5 Office, who will testify about the cause of
6 death of these individuals. We are going to
7 call a number of police officers, and the next
8 group of names I read are all police officers:
9 Homicide detectives James Vaccaro, Martin
10 Wildemann and Michael Wallace. Another
11 detective not assigned to homicide, Patricia
12 Spencer. Some crime scene analysts, those
13 people you see on television who go out to the
14 crime scenes and actually gather up the
15 physical evidence, and they will be: David
16 Horn, Marc Washington, Ebony McGhee, Thomas
17 Kern and Louise Renhard.

18 And, finally, some experts who
19 analyze the evidence that's recovered, whether
20 it be DNA or firearms evidence, and those are
21 David Welch, who is a DNA expert with Metro,
22 and James Krylo, who is a firearms expert.

23 And, finally, the following witnesses
24 who are not affiliated with law enforcement:
25 Dajon Jones, Jr., Celeste Palau, and that's

1 spelled P-A-L-A-U; Tracey Richards, Linda
2 Moore, Greg Lewis, Sheryl Lynn Jones, Winston
3 Budd, Krissy Smith, Nakia Washington, and
4 Terry McKinley Key. Thank you.

5 THE COURT: Okay, Mr. Kane.

6 Mr. Brooks, Mr. O'Brien, would you
7 please introduce yourself and advise what, if
8 any, witnesses you intend to call.

9 MR. BROOKS: Thank you, Judge. My
10 name is Howard Brooks. I am a criminal
11 defense lawyer here in town. My co-lawyer is
12 Timothy O'Brien. We represent Glenford Budd.
13 The State has their burden to prove their case
14 beyond a reasonable doubt. Whether we call
15 witnesses in the guilt phase will be
16 determined entirely on according to what the
17 State presents.

18 THE COURT: Thank you very much.

19 Ladies and gentlemen, I have to
20 caution you or emphasize to you how important
21 full and complete answers to the questions
22 are. If you fail to answer truthfully or
23 attempt to hide or withhold certain
24 information that would touch upon your
25 qualifications to serve as a juror, it will or

1 could contaminate your verdict and certainly
2 subject you to further proceedings. I am
3 going to ask you a series of general
4 questions. The attorneys will be allowed to
5 do some follow up. But I want you to
6 understand those of you who are seated here in
7 the box, I will probably focus on you, as will
8 our attorneys.

9 For those of you who are seated out
10 here in the gallery, please be advised that
11 this -- the reason these folks are up here is
12 just as a result of sort of a numerical
13 designation. There is no special secret to
14 it. And as, or if, any of them are
15 challenged, you will come up in the order that
16 you are presently seated to replace those who
17 have been challenged.

18 There are a couple of different types
19 of challenge. There is a peremptory
20 challenge, and that means each side gets the
21 same number of peremptory challenges. A
22 peremptory challenge is real simple. The
23 attorneys don't have to state a reason why
24 they are challenging that person. They can
25 decide today they are going to excuse everyone

12 The other type of challenge is what's
13 referred to as a for-cause challenge, and a
14 for-cause challenge is controlled actually by
15 statute and by case law. And the attorneys
16 have to state a reason on the record why they
17 believe a particular juror cannot sit or why
18 they don't have an open mind, why they cannot
19 be fair and impartial, and then I determine
20 whether or not they have met the criteria for
21 that type of a challenge, and I can excuse the
22 juror based upon a for-cause challenge.
23 For-cause challenges are not limited but do
24 require, if you will, a degree of at least
25 suggestion or proof by our attorneys that the

1 individual they are challenging cannot be
2 fair.

3 Now, finally, if you are challenged
4 for either of these reasons, please don't take
5 it personally. Remember what I said earlier.
6 These attorneys must do the very best they can
7 for the clients that they have. If they think
8 for any reason, whether it's as simple as a
9 brown turtleneck or they think for some other
10 reason you cannot sit as a fair and impartial
11 juror, it is their obligation to challenge
12 you. Don't take it personally. You will be
13 returned down to the jury assembly area. And
14 the good news you are probably done for today,
15 and the bad news is we know where to find you.
16 We have your address, and we are likely to
17 bring you back on a subsequent jury selection
18 process.

19 Let me begin with the easy questions.
20 Are any of you familiar with the defendant in
21 this case?

22 Are any of you familiar with the
23 attorneys or any of the witnesses that have
24 been identified as likely to testify in this
25 case?

1 Yes, sir, would you stand and give me
2 the last three digits of your juror number?

3 PROSPECTIVE JUROR 104: Yes, 104.

4 THE COURT: Hold on a second. In
5 addition to your juror questionnaires, we had
6 another sheet that gives us a little bit of
7 information about you. You are Mr. Shubert?

8 PROSPECTIVE JUROR 104: Correct.

9 THE COURT: And your occupation is
10 retired. Who do you think you know?

11 PROSPECTIVE JUROR 104: James
12 Vaccaro.

13 THE COURT: How do you know him?

14 PROSPECTIVE JUROR 104: I've worked
15 with him in the past on a homicide case --

16 THE COURT: Where did you retire
17 from, sir?

18 PROSPECTIVE JUROR 104: With the Erie
19 Police Department.

20 THE COURT: You worked for Metro?

21 PROSPECTIVE JUROR 104: No, not with
22 Metro. The City of Erie Police Department.

23 THE COURT: The City of Erie?

24 PROSPECTIVE JUROR 104: Yes,
25 Pennsylvania.

1 THE COURT: How long ago did you
2 retire?

3 PROSPECTIVE JUROR 104: About
4 15 years ago.

5 THE COURT: Good for you.

6 PROSPECTIVE JUROR 104: Thank you.

7 THE COURT: Is there anything about
8 your experience with that particular witness
9 or as a member of law enforcement that would
10 keep you from being fair and impartial?

11 PROSPECTIVE JUROR 104: Not that I
12 believe so.

13 THE COURT: Okay. Do you consider
14 yourself to be friends with one of the State's
15 witnesses, or a professional relationship?

16 PROSPECTIVE JUROR 104: Professional
17 relationship.

18 THE COURT: Okay. And would you
19 treat that person's testimony the same as you
20 would anyone else? In other words, you listen
21 to the testimony that is being provided. You
22 listen with the same open mind to the
23 cross-examination, and weigh both the
24 credibility and the essence of the testimony
25 the same way you would any other witness?

1 PROSPECTIVE JUROR 104: Yes.

2 THE COURT: Thank you very much. Let
3 me also introduce myself and the people that I
4 get to work with in this courtroom. My name
5 is Nancy Saitta. And although it doesn't
6 happen too much anymore, it used to be a lot
7 of people thought they knew me or my brother,
8 husband, father, son, an individual in town
9 who sells cars. Same last name, no relation.
10 So if you think you know me from the car
11 dealership, you would be wrong.

12 And to my immediate right is Kristin
13 Brown. She is my court clerk. She makes sure
14 that every piece of evidence is maintained
15 appropriately, that I don't keep something
16 that needs to become a part of the court
17 record. She generally makes sure I'm dotting
18 all of my I's and crossing my T's.

19 Immediately to her right is Jo Anne
20 Pierpont, who is the court recorder, and she
21 takes down everything that everybody says in
22 this courtroom, as well as because of her new
23 technological job, she takes care of all the
24 microphones and all of the technology that we
25 have in our new courthouse, of which I am very

1 proud. I hope you are enjoying our new
2 courthouse as much as all of us are.

3 And to my sort of below me here on my
4 left is a court reporter. And this is Gayle
5 -- Gayle, you're going to have to help me out.

6 THE COURT REPORTER: Pichierri.

7 THE COURT: And she is taking down
8 verbatim, as you see her hands moving,
9 everything that everyone says in this
10 courtroom. She is sort of the same thing as
11 Pierpont, but she does it in a different
12 manner. If she can't hear something, she is
13 going to interrupt us so she can be sure that
14 she is getting it down correctly.

15 And in the back of the courtroom, the
16 person with whom you have already had contact,
17 is my bailiff, the best in the courthouse,
18 Walter Clifton. You probably have already
19 been introduced to him as Cliff; that's the
20 name he goes by. He is the person with whom
21 you will have the most contact.

22 You can't talk to any of us during
23 the course of the trial, because for us to
24 have any communication with you would be, at
25 least potentially, to violate our ethical

1 obligations and/or to taint the verdict in
2 this case; not because we don't want to talk
3 to you or acknowledge your presence, but
4 because we are just not allowed to do so.

5 Now, with those additional
6 introductions, are there any of you who think
7 you know any of us? Yes, sir, badge number,
8 last three digits?

9 PROSPECTIVE JUROR 094: 094.

10 THE COURT: You are Mr. -- help me.

11 PROSPECTIVE JUROR 094: Naqvi.

12 THE COURT: Yes, who do you think you
13 know?

14 PROSPECTIVE JUROR 094: I know you
15 because I'm an attorney.

16 THE COURT: I hate to have to ask
17 this question. Is there anything about your
18 knowing me that would affect your ability to
19 be fair and impartial in this case?

20 PROSPECTIVE JUROR 094: No, Your
21 Honor.

22 THE COURT: Thank you, very much.
23 Anyone else who thinks you know any
24 of us?

25 And, please, let me also make a

1 statement. There will be some things as we go
2 through this process, much like the comment I
3 made with one of our prospective jurors, where
4 it may appear as if I am making light of what
5 we are doing here. Please understand I am not
6 making light of the trial or justice process.
7 What I am trying to do is to put you all a
8 little bit at ease so as the questions are
9 asked of you, you will feel a little bit more
10 comfortable responding in a roomful of
11 strangers.

12 So when there is an opportunity for
13 me to make fun of myself, hopefully only
14 myself, I try to do that. But it is not
15 because I don't take very seriously the job
16 that I am doing and the responsibility that
17 each and every one of you have as prospective
18 jurors.

19 Now, this is a very sensitive case,
20 obviously. It involves the death of some
21 individuals. And, in fact, Mr. Budd is
22 facing, as a defendant, some very serious
23 charges.

24 Again, the State is obligated to
25 prove beyond a reasonable doubt that a crime

1 took place in Clark County and that the
2 individual who was charged is the person who
3 committed that crime.

4 Are there any of you who think that
5 merely because someone is charged with a crime
6 that they must be guilty?

7 Are there any of you who think that
8 because police officers come in and testify in
9 a case, that the police officers must be doing
10 something right and so, therefore, that person
11 who is charged must be guilty?

12 Yes, ma'am. And we talked to you
13 before. You are Ms. --

14 PROSPECTIVE JUROR 068: Povelko.

15 THE COURT: And you are juror
16 No. 068; is that correct?

17 PROSPECTIVE JUROR 068: Yes, ma'am.

18 THE COURT: Tell us your concern
19 about the presumption of innocence.

20 PROSPECTIVE JUROR 068: No, I don't
21 have a question for presumption of innocence.
22 I just struggle with, you know, with the --
23 about the police officers and so forth. I
24 just feel that the training is there, and I
25 don't think they would bring in an individual

1 if there wasn't some kind of substance or
2 reason behind it. I struggle with that.

3 THE COURT: Let me ask you a
4 question. We are at a red light. There is an
5 accusation that I went through a red light.
6 And I testify I'm -- I'm not a judge, I'm just
7 me -- and I testify: You know what? It was
8 yellow when I went through it, because if it
9 was red, I would have stopped. And the police
10 officer gets on the stand and says it was red,
11 and she didn't even look up.

12 Are you going to believe him just
13 because he's a police officer, or are you
14 going to believe me because you're going to
15 weigh and balance my credibility? Or might
16 you wait to hear more testimony to see which
17 of us is telling the better story?

18 PROSPECTIVE JUROR 068: Right, I
19 would wait.

20 THE COURT: So in other words, even
21 though the police officer says I blew the red,
22 you would wait to hear all of the evidence,
23 including the cross-examination of the police
24 officer, where we might find out he wasn't
25 even at that corner that day or we might find

1 out he just got new glasses. All kinds of
2 things could affect his ability to --

3 PROSPECTIVE JUROR 068: Yes.

4 THE COURT: He may believe what he is
5 saying is true, and I'm certain that I would
6 believe what I am saying is true. But do you
7 think you could listen to all of the evidence
8 and then render a decision?

9 PROSPECTIVE JUROR 068: Yes.

10 THE COURT: Thank you. Anyone else?

11 As you know from your juror
12 questionnaire, this is a case wherein the
13 State is seeking the death penalty. Now, the
14 matter of punishment, should there be such a
15 thing, comes after the trial, what we refer to
16 as -- I refer to as the trial, the guilt
17 phase. Before we ever get to any penalty
18 phase, a jury has to determine whether or not
19 the State has proved their case beyond a
20 reasonable doubt, and the person who is
21 charged with the crime is, in fact, the one
22 who committed that crime.

23 Are there any of you who hold a
24 belief about the death penalty that that
25 opinion would influence your ability to be a

1 fair and impartial juror?

2 I can barely see you, but way in the
3 back. Badge number, please?

4 PROSPECTIVE JUROR 114: 114.

5 THE COURT: You are Ms. Shields?

6 PROSPECTIVE JUROR 114: Yes.

7 THE COURT: Tell me what your concern
8 is about the death penalty.

9 PROSPECTIVE JUROR 114: I don't
10 believe in it. I don't believe in an eye for
11 an eye.

12 THE COURT: I'm sorry. You don't
13 believe --

14 PROSPECTIVE JUROR 114: I don't
15 believe in the death penalty.

16 THE COURT: Of course, you recognize
17 in the State of Nevada that is part of our
18 law. And, in fact, so long as the State
19 proves their case and we move into -- should
20 that happen, and we move into a penalty phase,
21 the State is absolutely entitled to make that
22 request. Do you think that would affect your
23 ability to sit as a fair and impartial juror?

24 PROSPECTIVE JUROR 114: As a
25 Catholic, it would. It would be hard for me,

1 yes.

2 THE COURT: So it is a religious
3 belief that keeps you from believing that even
4 the State shouldn't take the life of another;
5 is that a fair statement?

6 PROSPECTIVE JUROR 114: Yes.

7 THE COURT: Thank you very much.

8 Anyone else? Yes, ma'am, Ms. --

9 All right. I'm going to take Ms.
10 Povelko. Yes. Tell me what you believe about
11 the death penalty.

12 PROSPECTIVE JUROR 068: I have the
13 same belief. I don't believe in the death
14 penalty. I don't -- for religious reasons, I
15 cannot condone it.

16 THE COURT: Thank you very much.

17 Anyone else? Yes, ma'am, badge
18 number.

19 PROSPECTIVE JUROR 076: 076.

20 THE COURT: You are Ms. Hardy?

21 PROSPECTIVE JUROR 076: Yes.

22 THE COURT: Tell me what your concern
23 is about the death penalty.

24 PROSPECTIVE JUROR 076: I don't know
25 if I could put someone to death or not. I've

1 never sat on a trial where I had to make that
2 decision. And my whole life I've just said if
3 I had to make it, I don't know if I could or
4 not because of religious reasons and, you
5 know --

6 THE COURT: I think undoubtedly
7 should we get to a penalty phase in this case,
8 you know, as I said, which remains to be seen,
9 it would be a difficult decision for anyone to
10 make. Do you think that you could keep an
11 open mind, listen to the facts and the
12 evidence in this case, render a verdict that
13 would be free of bias or prejudice and then,
14 if we get to a penalty phase, could you listen
15 to the facts and the evidence and mitigators,
16 aggravators?

17 PROSPECTIVE JUROR 076: Yes.

18 THE COURT: And consult with your
19 other prospective jurors?

20 PROSPECTIVE JUROR 076: Yes.

21 THE COURT: You would be able to do
22 that?

23 PROSPECTIVE JUROR 076: Yes.

24 THE COURT: Thank you very much.

25 Anyone else? Yes, ma'am, badge