

1 up this part of the process, which will allow a bunch of
2 you to leave.

3 My preference is take a short recess. Bring you back
4 and finish up, rather than taking an hour-and-a-half lunch
5 break.

6 We'll take a ten minute recess.

7 JURY ADMONITION

8 During the recess, ladies and gentlemen,
9 you are admonished not to converse among yourselves or
10 with anyone else, including, without limitation, the
11 lawyers, parties and witnesses, on any subject connected
12 with this trial, or any other case referred to during it,
13 or read, watch, or listen to any report of or commentary
14 on the trial, or any person connected with this trial, or
15 any such other case by any medium of information
16 including, without limitation, newspapers, television,
17 internet or radio.

18 You are further admonished not to form or
19 express any opinion on any subject connected with this
20 trial until the case is finally submitted to you.

21 THE COURT: We're still on the record,
22 outside the presence of the jury.

23 As to the three challenges for cause raised this
24 morning. I'm going to grant all three of those. Ms. Ware
25 was the individual -- Badge number 061 -- that indicated

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1 she would only consider the death penalty as a punishment
2 and was fairly firm on that. Ms. Matts, badge number 069,
3 indicated for religious reasons she would not consider the
4 death penalty under any circumstances. And similarly Ms.
5 Jackson, badge number 080, said the same thing.

6 So I'll grant the challenges for cause as to those
7 three. That puts us at 27 folks passed for cause so far.
8 So we only need five more passed for cause and you'll have
9 your panel of 32.

10 MR. SCHIECK: Are we going to fill those
11 slots directly back into those slots?

12 THE COURT: What it is, let's assume
13 nobody else gets passed for cause, then you will have
14 questioned 38 people. I'll excuse the six that have
15 already been challenged for cause and granted. You'll --
16 in order -- have the 32 people you can begin making
17 strikes on. Understood?

18 MR. SCHIECK: I think I understand.

19 MR. OWENS: Do us a favor and run the
20 names down to us.

21 THE COURT: I'm keeping a list so I'll
22 make a copy of it.

23 MR. OWENS: Could be ask about
24 scheduling.

25 THE COURT: Well, I want to kind of keep

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1 going until we could get the next five passed for cause.

2 Then take a lunch break. You have your 32. I know the
3 other people from earlier today will be here at 1:30.
4 They have the whole morning off so they don't have to sit
5 around.

6 We'll take a lunch break. When we come back after
7 lunch break we should have the jury in place, I would
8 think. And you can still get to openings today.

9 MR. SCHIECK: Do the challenges after
10 lunch break, so we've got a lunch break to think about
11 it.

12 THE COURT: No, actually -- you want to do
13 it that way?

14 MR. OWENS: I think he wants to let jurors
15 go.

16 MS. WECKERLY: Could you maybe after we
17 get to that number take a ten minute break and confer
18 before we do the kicks?

19 THE COURT: Either or. If you want the
20 lunch break to kick over the 32 names and figure out what
21 you want to do.

22 MR. SCHIECK: Ten is fine for us. We just
23 take ten, do the strikes and send everybody home and go to
24 lunch and come back for openings.

25 THE COURT: All right.

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1 We'll be in recess. Thank you.

2 (Brief recess taken.)

3 THE COURT: Back on record the record in
4 C-131341, State of Nevada versus James Chappell. The
5 record will reflect the presence of Mr. Chappell with his
6 attorneys, State's attorneys. We're in the presence of
7 our prospective jurors.

8 We'll continue on with questioning of our prospective
9 jury panel.

10 Mr. Owens, as to Ms. Gernot.

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Badge 085.

13 MR. OWENS: Ms. Gernot, how are you?

14 PROSPECTIVE JUROR: Good.

15 MR. OWENS: How's your parenting style?

16 PROSPECTIVE JUROR: Pretty strict.

17 MR. OWENS: You said in here, you don't
18 have any children.

19 PROSPECTIVE JUROR: I have a dog.

20 MR. OWENS: But you have animals, and
21 you're strict with your animals.

22 PROSPECTIVE JUROR: She's a very good dog.

23 She's a medical dog for my mother. I did her training.

24 MR. OWENS: You found that strict works
25 with her too?

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1 PROSPECTIVE JUROR: You can't -- you have
2 to be the head of the pack, it says in training. But she
3 still gets treats and belly rubs, so she's a happy puppy.
4 I have a picture if anyone wants to see it later.

5 MR. OWENS: The -- you had a situation --
6 you're a very young person. I was talking about that
7 earlier. Do you feel you're prepared for this type of
8 experience, this weight of responsibility to consider
9 thinking about?

10 PROSPECTIVE JUROR: Well, I think it is a
11 good experience, helping me prepare for the future and
12 other hard decisions I'm going to have to make
13 eventually. This is our justice system. I have to uphold
14 to that. And being that that is one of the choices, I'm
15 willing to accept it and look at the circumstances and do
16 what I have to do.

17 MR. OWENS: You feel you can step up to
18 that responsibility and fulfill that?

19 PROSPECTIVE JUROR: Yes.

20 MR. OWENS: You consider yourself to be a
21 fairly strong person?

22 PROSPECTIVE JUROR: I try.

23 MR. OWENS: And you have been involved in
24 the trial programs and other things. Are you studying
25 that at the community college?

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1 PROSPECTIVE JUROR: No. It's only -- when
2 I was in it, it was only a high school program. After
3 high school, you graduated and did whatever you wanted to
4 do. So I was in it in 10th and 12th grade.

5 MR. OWENS: You've taken some classes in
6 criminal justice, working toward a communications degree?

7 PROSPECTIVE JUROR: Yes.

8 MR. OWENS: Is that media or --

9 PROSPECTIVE JUROR: Well, I already have a
10 general communications degree. Now I'm either going to do
11 a bachelors in English, and a minor in marketing and
12 advertising.

13 MR. OWENS: All right. You must have had
14 a bad experience as a victim?

15 PROSPECTIVE JUROR: Yeah. Yes. It was
16 not good.

17 MR. OWENS: You didn't put a lot of
18 details in here.

19 PROSPECTIVE JUROR: I figured I could talk
20 to you about it. In September of last year -- September
21 18, 2006, I was -- I was robbed. And it was actually --
22 it was more of a con artist thing. It was supposed to be
23 a brother/sister situation, and it turns out that they go
24 around befriending people than months later they rob them.
25 And they're convicted felons. And they both got let off

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1 very easy. I was subpoenaed, but they did plea bargain so
2 I never got to go to court or state my opinion. I got
3 maybe ten percent of the restitution owed. I haven't
4 received a check from that, yet. It was pretty hush for
5 me. I'm an up-standing citizen with just like a parking
6 ticket on my record. And I thought that I knew some
7 things about the justice system. It was more like a
8 reality check for me that of the way things go, I
9 suppose.

10 MR. OWENS: How much money did you lose?

11 PROSPECTIVE JUROR: Over three thousand
12 dollars.

13 MR. OWENS: And you felt that a violation
14 of the trust you had was gone?

15 PROSPECTIVE JUROR: Yeah. It was hard.
16 In fact, in my witness statement I put like I felt like I
17 was raped. These were people I trusted, and I
18 befriended.

19 MR. OWENS: Like a personal invasion?

20 PROSPECTIVE JUROR: Exactly.

21 MR. OWENS: What did they plead guilty to?

22 PROSPECTIVE JUROR: Well, actually the
23 male was charged with five felonies. He plea bargained
24 after two weeks in jail to two misdemeanors and a year of
25 probation. And the girl was let off. The police officers

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1 were great. They were arrested. They were booked and
2 everything. But the girl was released the next day and --
3 and even trying to speak with her DA, the DA didn't even
4 call me until after she put in the plea bargain and her
5 felony got reduced to a misdemeanor.

6 MR. OWENS: They both got misdemeanors?

7 PROSPECTIVE JUROR: Yes. When they are
8 previous felons. That's what hurt me, when we researched
9 into their background.

10 MR. OWENS: Was it for that same kind of
11 stuff?

12 PROSPECTIVE JUROR: Yeah -- yes.

13 MR. OWENS: You were hoping for a felony
14 conviction?

15 PROSPECTIVE JUROR: It can't be overturned
16 now.

17 MR. OWENS: That's what you were hoping
18 for?

19 PROSPECTIVE JUROR: I was hoping for
20 something more serious to happen, yes.

21 MR. OWENS: Are your feelings about that
22 such that it would create an unfair situation for us or
23 the Defendant? You might say now is my chance to get back
24 at somebody?

25 PROSPECTIVE JUROR: No. Because I don't

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1 really hold vengeance. It's something I had to cope with
2 personally and get over and try to understand myself.
3 That situation has nothing to do with the situation at
4 hand here.

5 MR. OWENS: You can separate that in your
6 mind?

7 PROSPECTIVE JUROR: Yes.

8 MR. OWENS: You wouldn't hold that against
9 the State or the police?

10 PROSPECTIVE JUROR: No, definitely not.

11 MR. OWENS: Then you said you were okay
12 with the death penalty as one of the options here?

13 PROSPECTIVE JUROR: Yes.

14 MR. OWENS: You don't have any
15 philosophical problems with it?

16 PROSPECTIVE JUROR: No.

17 MR. OWENS: You felt that it might be
18 appropriate for brutal crimes?

19 PROSPECTIVE JUROR: Yes.

20 MR. OWENS: You haven't heard what the
21 criteria is from the court.

22 PROSPECTIVE JUROR: NO.

23 MR. OWENS: You're willing to keep an open
24 mind about it.

25 PROSPECTIVE JUROR: Yes.

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1 MR. OWENS: And see what the law is and
2 what all circumstances are before you make your decision?

3 PROSPECTIVE JUROR: Yes.

4 MR. OWENS: If after hearing all of the
5 evidence in the case and you felt that the death penalty
6 was appropriate, would you be able to do that?

7 PROSPECTIVE JUROR: Yes.

8 MR. OWENS: Okay. There's a slight
9 hesitation there.

10 PROSPECTIVE JUROR: I mean, I would really
11 have to feel that that was a fair punishment, after
12 examining the evidence and taking in all the excruciating
13 circumstances. I would have to be very genuine that that
14 is what he should get. If I did feel that way, yes, I
15 could pass that judgment.

16 MR. OWENS: You talked about because of
17 your experience with the trial (sic) and the court type
18 situation you had, you look forward to being involved in
19 the process.

20 PROSPECTIVE JUROR: That was before we
21 waited like two days. But now we're getting to the point,
22 I still would like to be a part of the process. It's been
23 interesting.

24 MR. OWENS: You can appreciate that that
25 makes you unique in wanting to be on the jury.

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1 PROSPECTIVE JUROR: Yes.

2 MR. OWENS: Your interest in the system
3 isn't such that you might want to get on so bad that you
4 are not worrying to much about what the consequences are
5 on that serious judgment?

6 PROSPECTIVE JUROR: I have had lots of
7 time to think of this in the room and speaking to it with
8 my mother and really questioning myself, if this was
9 something I can do. So I've thought about it.

10 MR. OWENS: Okay. Thank you. Pass for
11 cause, your Honor.

12 THE COURT: Thank you. Mr. Schieck.

13 MR. SCHIECK: Thank you, your Honor.

14 Ms. Gernot, you indicate that, with
15 respect to the death penalty, you didn't think that it was
16 used enough.

17 PROSPECTIVE JUROR: Well, more like what
18 the fellow juror was saying that not so much that it's not
19 used enough, but it's the time span is outrageous that
20 these people are sitting, and sitting, and sitting, and
21 like they are serving life. So not that it's not used
22 enough, but maybe it's not executed fast enough.

23 MR. SCHIECK: But you don't have any
24 problems deciding what the appropriate punishment is and
25 not worrying about the other things?

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1 PROSPECTIVE JUROR: No.

2 MR. SCHIECK: And you say you are
3 generally in favor of the death penalty. Is that
4 something you thought about before you filled out the
5 questionnaire or just confronted you at that time?

6 PROSPECTIVE JUROR: I have done papers in
7 school and such, research. And I have formed an opinion
8 back in high school.

9 MR. SCHIECK: You did papers in high
10 school about the death penalty?

11 PROSPECTIVE JUROR: And in college.

12 MR. SCHIECK: What type of courses were
13 you taking?

14 PROSPECTIVE JUROR: It started in my
15 government classes. And then being with trial-by-peers
16 and doing misdemeanor cases, they still taught us about
17 all the types of penalties for the crimes. So basically
18 having to research it for my 12th grade government class
19 is what decided me.

20 MR. SCHIECK: In doing that paper, were
21 you required to take a position for or against, or was it
22 a paper where you are sort of giving general information
23 about it?

24 PROSPECTIVE JUROR: She asked us to take a
25 position.

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1 MR. SCHIECK: What position did you take?
 2 PROSPECTIVE JUROR: For.
 3 MR. SCHIECK: Did you have a choice as to
 4 which position to take or was it assigned?
 5 PROSPECTIVE JUROR: There was no wrong
 6 answer.
 7 MR. SCHIECK: There was no wrong answer,
 8 in that you could choose whichever way you wanted to write
 9 the paper?
 10 PROSPECTIVE JUROR: Yes.
 11 MR. SCHIECK: Why did you back when you
 12 were a senior in high school choose to write in favor of
 13 the death penalty?
 14 PROSPECTIVE JUROR: Well, first of all
 15 because of the appeals process. If they are -- if they
 16 are sentenced to murder or death, they do get another
 17 chance to have their case overlooked. And because -- from
 18 what I researched -- this was like 7 years ago -- it
 19 seemed like the cases that did have the death penalty
 20 applied to them. I felt that it was substantiated.
 21 MR. SCHIECK: But you thought the process
 22 that we go through before that's ever considered as an
 23 appropriate punishment is a fair one?
 24 PROSPECTIVE JUROR: Yes.
 25 MR. SCHIECK: That's the one you want to

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1 be part of, the one that considers all the factors and all
 2 the circumstances.
 3 PROSPECTIVE JUROR: That's important.
 4 MR. SCHIECK: In preparing your paper,
 5 back in high school, did you find that there were some
 6 cases that the death wasn't deserved, even though it was
 7 first degree murder, you felt the system worked in those
 8 cases also?
 9 PROSPECTIVE JUROR: Not being there
 10 first-hand, not knowing the families, not go to in depth
 11 with the case itself, I didn't even try to think to pass
 12 judgment like that at that time.
 13 MR. SCHIECK: Thank you, very much,
 14 Ms. Gernot. We pass for cause, your Honor.
 15 THE COURT: Mr. Owens, as to
 16 Mr. Schechter.
 17 MR. OWENS: How are you, sir?
 18 PROSPECTIVE JUROR: Fine.
 19 MR. OWENS: You feel you're an open minded
 20 person?
 21 PROSPECTIVE JUROR: Yes, I do.
 22 MR. OWENS: Are you okay with the idea of
 23 this process of listening to all the facts and
 24 circumstances before making up your mind as to what the
 25 appropriate punishment should be?

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1 PROSPECTIVE JUROR: Yes, of course.
 2 MR. OWENS: You don't have a problem doing
 3 that?
 4 PROSPECTIVE JUROR: I have to listen
 5 first. How can I make up my mind when I have no
 6 information.
 7 MR. OWENS: You have no problem with the
 8 different types of punishment that are available?
 9 PROSPECTIVE JUROR: I know the jury coming
 10 in may have their voices heard, but, you know, I haven't
 11 decided personally. I think after what little I read on
 12 the case so far, I have yet to come up with all of that.
 13 MR. OWENS: Okay. Well, in that sense the
 14 majority has to agree to it, okay. And when you talk
 15 about this other range of punishment, on the one side it's
 16 life with the possibility of parole, you can't imagine a
 17 situation right now where that would be appealing to you?
 18 PROSPECTIVE JUROR: I cannot imagine it
 19 now, but --
 20 MR. OWENS: You'll leave it open to the
 21 possibility there may be one?
 22 PROSPECTIVE JUROR: Yeah.
 23 MR. OWENS: Once you've heard the
 24 evidence, there may be a circumstance where it may be
 25 appropriate?

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1 PROSPECTIVE JUROR: Possibly.
 2 MR. OWENS: So you are willing to keep an
 3 open mind and wait until you've heard everything?
 4 PROSPECTIVE JUROR: Sure. I'll consider
 5 all four forms of punishment before rendering a
 6 decision.
 7 PROSPECTIVE JUROR: Yes, sir.
 8 MR. OWENS: You are not eliminating any up
 9 front?
 10 PROSPECTIVE JUROR: I'm not eliminating
 11 them, no. I'm leaning toward death.
 12 MR. OWENS: Leaning is okay.
 13 PROSPECTIVE JUROR: I haven't chosen it
 14 right off the bat.
 15 MR. OWENS: You've got to hear everything
 16 first. There was some things you said in here about your
 17 opinion at the time you filled out the questionnaire. You
 18 were asked your opinion about the case. You pointed out,
 19 appropriately, that you were told at the beginning of the
 20 questionnaire Mr. Chappell was convicted of these charges.
 21 You know that about the situation, right?
 22 PROSPECTIVE JUROR: Yes.
 23 MR. OWENS: Then you said his punishment
 24 ought to be the strictest. There makes it sound kind of
 25 like you have made up your mind. Is that what you meant?

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1 PROSPECTIVE JUROR: No. I only mean I'm
2 leaning toward death. But I can't make a final
3 decision.

4 MR. OWENS: So you meant based upon what
5 you knew at the time?

6 PROSPECTIVE JUROR: Yes. What I know so
7 far, as little as that is.

8 MR. OWENS: You're willing to listen to
9 everything before coming to a decision in the case?

10 PROSPECTIVE JUROR: Yes, sir.

11 MR. OWENS: You have been involved or
12 somebody was involved in some kind of arrest, DUI or
13 something?

14 PROSPECTIVE JUROR: Yes.

15 MR. OWENS: What was that about?

16 PROSPECTIVE JUROR: He is still a friend
17 of mine. I think he is basically a decent guy. He
18 just -- it was a time of his life he was drinking too
19 much, and he wasn't -- he hadn't really thought it
20 through, even now. He's a nice guy. Not a thoughtful
21 person. I think he's learned his lesson. After that he
22 doesn't drink as much. He was out on the road and was
23 pulled over, caught, that kind of thing. Well, the
24 consequences thereof --

25 MR. OWENS: This was a person you felt

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1 evidence in the case and all the facts and circumstanced
2 surrounding the event, you felt that the death penalty was
3 the appropriate sentence, would you be able to come back
4 with that verdict?

5 PROSPECTIVE JUROR: Yes, sir. I could.

6 MR. OWENS: How do you feel about the idea
7 of rendering judgment like that on a fellow human being?

8 PROSPECTIVE JUROR: It is not something
9 that I would take lightly. I mean, if I felt if after
10 thinking it through, as much as -- from every possible
11 angle, yes, if that's the judgment that needs to be
12 rendered, then yes.

13 MR. OWENS: That's something you can do?

14 PROSPECTIVE JUROR: Yes.

15 MR. OWENS: All right. Thank you. Pass
16 for cause.

17 THE COURT: Mr. Schieck.

18 MR. SCHIECK: Thank you, your Honor.

19 Mr. Schechter, do you have any problem
20 with the concept that not all first degree murder requires
21 a death penalty?

22 PROSPECTIVE JUROR: No.

23 MR. SCHIECK: You understand that there is
24 a system in place where there could be a first degree
25 murder conviction where the death penalty is not even an

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1 close to?

2 PROSPECTIVE JUROR: Not close. I mean, he
3 is a friend. Not one of my close friends.

4 MR. OWENS: Did you go to court or
5 participate in that process at all?

6 PROSPECTIVE JUROR: I heard about this all
7 after the fact.

8 MR. OWENS: In some of these questions on
9 the death penalty you were asked about what kind of
10 circumstances. You gave a number of different things.
11 Like most of the jurors say, they said, if I know a
12 hundred percent, of it it's a really brutal crime. Then I
13 think the thing that's important to remember here is you
14 may have certain ideas in your head as to what is
15 deserving of the death penalty, okay. But the court is
16 going to give you law about the factors that are set out
17 for consideration by law. Are you okay with that?

18 PROSPECTIVE JUROR: Yes, sir.

19 MR. OWENS: Can you follow the law that
20 the court gives you?

21 PROSPECTIVE JUROR: Yes.

22 MR. OWENS: And apply the factors that the
23 court instructs you on?

24 PROSPECTIVE JUROR: Yes, sir.

25 MR. OWENS: If after hearing all the

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1 option in that case?

2 PROSPECTIVE JUROR: Not even an option?

3 MR. SCHIECK: Let me explain. In order to
4 be eligible to receive the death penalty, the State has to
5 prove an aggravated circumstance or circumstances beyond a
6 reasonable doubt to the jury. If there is not such
7 aggravating circumstances in the case, even though it's
8 first degree murder, the death penalty is not an option in
9 that case.

10 PROSPECTIVE JUROR: Aggravating
11 circumstance?

12 MR. SCHIECK: Yes. The judge will define
13 those for you -- or the members of the jury when he gives
14 instructions to the jury. Do you have any problem with
15 that concept?

16 PROSPECTIVE JUROR: No.

17 MR. SCHIECK: You indicated that you're
18 leaning toward the death penalty as an appropriate
19 punishment for first degree murder?

20 PROSPECTIVE JUROR: Yes, I do.

21 MR. SCHIECK: But you can keep an open
22 mind.

23 PROSPECTIVE JUROR: I'm willing to listen.
24 I'm willing to listen.

25 MR. SCHIECK: Are you willing, if you

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1 don't think the death penalty is appropriate, to check
2 that box also, the box that says a life sentence?

3 PROSPECTIVE JUROR: Yes, sir. I don't
4 think -- to be honest, I don't think that's necessarily
5 more lenient, because -- well, the death penalty, even
6 with all of the issues surrounding it, one thing is for
7 certain, a dead man is beyond harm, a life man is not.

8 Previously one of the questions you asked the jury,
9 no, I'm not -- no members of my family has gotten involved
10 in that sort of thing, but I met some characters in my
11 life. One or two I've known, former convicts. And you
12 know, I've never been to prison myself, but I have heard
13 about what goes on in there. And thinking even life in
14 prison is like, is that more lenient, after hearing about
15 it. That could be a death sentence itself. You could end
16 up killed in the yards. So I don't necessarily think
17 that's more lenient or just.

18 MR. SCHIECK: Thank you, very much. We
19 pass for cause, your Honor.

20 THE COURT: Thank you. Ms. Weckerly, as
21 to Ms. Bundren (sic).

22 MS. WECKERLY: You indicated on your
23 questionnaire that you know either lawyers or police
24 officers in the criminal justice system.

25 PROSPECTIVE JUROR: Yes.

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1 MS. WECKERLY: What context?

2 PROSPECTIVE JUROR: Where I work they come
3 in for checks, the DA running for election. They
4 socialize with a couple of judges, police officers through
5 acquaintances. One is married to a friend of mine.

6 MS. WECKERLY: And the fact that you have
7 these relationships, would that cause you to favor or
8 disfavor one side or the other in this proceeding?

9 PROSPECTIVE JUROR: No.

10 MS. WECKERLY: You're able to separate
11 that?

12 PROSPECTIVE JUROR: Yes.

13 MS. WECKERLY: And you also mentioned on
14 your questionnaire that you or a close family member had
15 been arrested for --

16 PROSPECTIVE JUROR: Myself.

17 MS. WECKERLY: I think you mentioned that
18 yesterday. Can you explain that?

19 PROSPECTIVE JUROR: I like to shop. I
20 bought something from someone I shouldn't have. He was an
21 undercover police. So I went through the system.

22 MS. WECKERLY: Did you feel like you were
23 treated fairly?

24 PROSPECTIVE JUROR: I thought I was pretty
25 stupid.

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1 MS. WECKERLY: But nothing about that
2 experience gives you a bad feeling about police officers?

3 PROSPECTIVE JUROR: No. No.

4 MS. WECKERLY: You wrote that you or
5 someone close to you had been the victim of a crime as
6 well.

7 PROSPECTIVE JUROR: We had our house
8 robbed a couple of times.

9 MS. WECKERLY: Were you home at the time?

10 PROSPECTIVE JUROR: No. No.

11 MS. WECKERLY: So you were away out for
12 the night?

13 PROSPECTIVE JUROR: Right. Right.

14 MS. WECKERLY: Was anyone ever caught?

15 PROSPECTIVE JUROR: No, because I kind of
16 knew who may have robbed me the first time, so there was
17 no catching her. The second time it was kids.

18 MS. WECKERLY: Did you call the police in
19 either case?

20 PROSPECTIVE JUROR: Yeah. They came out
21 to the house.

22 MS. WECKERLY: Were you happy with how
23 they investigated.

24 PROSPECTIVE JUROR: Sure. Sure.

25 MS. WECKERLY: Reading your questionnaire

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1 you indicated that you can consider the death penalty as a
2 potential punishment.

3 PROSPECTIVE JUROR: Yes.

4 MS. WECKERLY: You're someone that would
5 like to hear all of the information that you could hear
6 before making that type of decision?

7 PROSPECTIVE JUROR: After reading that,
8 where a weapon was used, a person murdered, I just could
9 not see how it could go any other way except the death
10 penalty.

11 MS. WECKERLY: Well, the judge has talked
12 about it a little bit, and I think Mr. Schieck just
13 mentioned that there are certainly legal requirements that
14 have to be met before the jury can consider the death
15 penalty as a potential punishment. And Judge Herndon is
16 going to instruct you on that law at the end of this
17 proceeding. Would you be able to follow the judge's
18 instructions on that?

19 PROSPECTIVE JUROR: Probably not.

20 MS. WECKERLY: You wouldn't?

21 PROSPECTIVE JUROR: I would think just
22 reading what was on the paper, the questionnaire, I
23 really -- I don't bend easily, so ...

24 MS. WECKERLY: You think you'd
25 automatically pick out a punishment without hearing the

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1 information?
2 PROSPECTIVE JUROR: I think I would.
3 MS. WECKERLY: And I take it, it didn't
4 matter what the judge's instructions would be, you do it
5 anyway?
6 PROSPECTIVE JUROR: I'd do what I thought
7 was right.
8 MS. WECKERLY: So there is no way you
9 could see yourself looking at all four punishments in this
10 situation?
11 PROSPECTIVE JUROR: I don't think so. I
12 can't say positive, but I don't think so.
13 MS. WECKERLY: That's sort of the
14 question.
15 PROSPECTIVE JUROR: I really don't think
16 so. I quite honestly cannot see how I could not
17 punishment somebody that committed a murder.
18 MS. WECKERLY: You understand that not all
19 murders are eligible for the death penalty?
20 PROSPECTIVE JUROR: I'm not familiar with
21 things like that. I was just, off the questionnaire it
22 said he used a weapon, things like that. And he murdered
23 her, so that's what I would be going by.
24 MS. WECKERLY: And there are people that
25 commit first degree murder with a weapon that are not

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1 eligible, legally, for the death penalty. Is that
2 something you could accept?
3 PROSPECTIVE JUROR: I would have to, if
4 it's not an option.
5 MS. WECKERLY: Okay. So in that type of
6 situation, you're saying you'd follow the law?
7 PROSPECTIVE JUROR: I can follow the law,
8 sure.
9 MS. WECKERLY: And the law also tells you
10 in and penalty hearing or this type of situation that you
11 have to at least consider -- not telling you what weight
12 you have to give certain pieces of information -- but you
13 have to at least listen to information that's presented in
14 a hearing like this. Would you be able to do that?
15 PROSPECTIVE JUROR: I could always
16 listen.
17 MS. WECKERLY: After that, of course, the
18 decision is left to you and your fellow jurors. I assume
19 you can make a decision at that point?
20 PROSPECTIVE JUROR: I could.
21 MS. WECKERLY: Thank you, ma'am. Pass for
22 cause, your Honor.
23 THE COURT: Mr. Patrick.
24 MR. PATRICK: Ms. Bundren, Ms. Weckerly
25 asked you, you said you would automatically pick a

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1 penalty.
2 PROSPECTIVE JUROR: I would automatically
3 pick a penalty -- just off the questionnaire.
4 MR. PATRICK: What penalty would you
5 automatically pick?
6 PROSPECTIVE JUROR: Death.
7 MR. PATRICK: In your questionnaire you
8 said you've always thought this way about the death
9 penalty?
10 PROSPECTIVE JUROR: I have.
11 MR. PATRICK: I think the last thing you
12 wrote on the questionnaire was that you are not open
13 minded enough to think there's an excuse?
14 PROSPECTIVE JUROR: I'm very narrow
15 minded about that.
16 MR. PATRICK: What you're telling us is
17 your mind is made up?
18 PROSPECTIVE JUROR: It pretty much is.
19 MR. PATRICK: There's not much chance
20 we'll change that, is there?
21 PROSPECTIVE JUROR: Not by going off the
22 questionnaire, no.
23 MR. PATRICK: We'd challenge for cause,
24 your Honor.
25 THE COURT: Let me ask you a question,

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1 Ms. Bundren, because a couple of times you kind of put a
2 caveat to your statement about saying, off the
3 questionnaire. You understand there's going to be a
4 hearing where witnesses, evidence is going to come in.
5 Both sides have to present whatever they want to examine
6 the witnesses on. And that's the evidence that you're
7 going to rely upon to make a decision, not --
8 PROSPECTIVE JUROR: Not the questionnaire.
9 Right.
10 THE COURT: That being the case, can you
11 listen to the evidence presented in the hearing?
12 PROSPECTIVE JUROR: I could.
13 THE COURT: And after having listened to
14 that evidence, is it your statement today that you would
15 be able to consider all of the forms of punishment?
16 PROSPECTIVE JUROR: I could if it was
17 different from the statement.
18 THE COURT: I don't know that it's
19 different from the statement, but obviously it's more
20 expansive. You're going to get more information about
21 things during the penalty hearing. So I don't want to say
22 it's going to be different. I'm just going to say that I
23 would expect you'll receive more information about
24 everything involved here.
25 So what I need to know is if you'll be

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1 able to consider all forms of punishment.
2 PROSPECTIVE JUROR: I could consider it.
3 THE COURT: Okay, yes or no?
4 PROSPECTIVE JUROR: Yes.
5 THE COURT: Does either side want to ask
6 any questions based on my questions to the juror?
7 MR. PATRICK: Court's indulgence. No,
8 your Honor.
9 THE COURT: All right. Mr. Owens, as to
10 Ms. Staley.
11 MR. OWENS: How are you?
12 PROSPECTIVE JUROR: Fine. I would like to
13 say something I didn't put in there.
14 MR. OWENS: Sure.
15 PROSPECTIVE JUROR: Just because of this
16 hearing and everything I have an uncle that I haven't seen
17 for 35 years was incarcerated. My father's -- my
18 husband's father was murdered in 1967.
19 MR. OWENS: All of these questions make
20 you think a lot more, don't they.
21 PROSPECTIVE JUROR: I forgot about that
22 when I was filling that out.
23 MR. OWENS: His uncle was murdered.
24 PROSPECTIVE JUROR: My husband's father
25 was murdered.

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1 MR. OWENS: Were these so remote that they
2 are not something that you think about that much?
3 PROSPECTIVE JUROR: With my uncle, like I
4 said, I haven't seen him for in 35 years so that's pretty
5 remote.
6 MR. OWENS: Right.
7 PROSPECTIVE JUROR: My husband, it affects
8 him, of course. He lost his father. But it was 1967. So
9 for me it's more local folklore. It is talked about
10 because in the community we live in -- I would say the
11 community started in the mid 1800s -- these were the only
12 three murders at the same time committed until today, so
13 of course everybody knows.
14 MR. OWENS: So you remember them?
15 PROSPECTIVE JUROR: People remember
16 that.
17 MR. OWENS: This is the same community
18 where you live now.
19 PROSPECTIVE JUROR: Yes.
20 MR. OWENS: It comes up from time to
21 time.
22 PROSPECTIVE JUROR: It was a bank robbery,
23 so every time I enter the bank someone makes a comment
24 about it.
25 MR. OWENS: Do you get tired of hearing

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1 about that?
2 PROSPECTIVE JUROR: It's more
3 uncomfortable for my in-laws and my husband and his
4 family. That's a fact of life.
5 MR. OWENS: So you experienced emotions
6 about this through your husband, but indirectly because of
7 the community.
8 PROSPECTIVE JUROR: It's not something the
9 community is going to forget.
10 MR. OWENS: What happen with that case?
11 Was someone prosecuted for it?
12 PROSPECTIVE JUROR: Yes. I believe he
13 died in prison from cancer. Does the family dwell on
14 that, more on the loss of a father figure. I believe they
15 felt the court handle it and police handle it quite well.
16 MR. OWENS: Is there anything about that
17 experience that would cause you not to be able to be fair
18 and impartial in this case.
19 PROSPECTIVE JUROR: Well, to be honest I
20 didn't think about it until last night when I was driving
21 home. I thought I better mention it.
22 MR. OWENS: I appreciate that. You said
23 the community you live in, you did mention it here. It's
24 quite a distance away from the court. Is it hard for you
25 to get here? Is that something you've dealt with?

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1 PROSPECTIVE JUROR: It has been, because
2 we have one car. It's kind of -- get the kids off, get my
3 husband to work, then down here. But the car now is
4 running. I'm just worried that I'll late to court because
5 I can't control traffic.
6 MR. OWENS: Sure. That's the same problem
7 everybody's got. You got further to go.
8 PROSPECTIVE JUROR: Right.
9 MR. OWENS: Is that something you feel you
10 can deal with -- transportation issues?
11 PROSPECTIVE JUROR: Yes.
12 MR. OWENS: You're okay with the range of
13 punishments we've talked about in the case?
14 PROSPECTIVE JUROR: I'm very relieved
15 that's there's a range of options. I'm glad I don't live
16 in Texas.
17 MR. OWENS: If you had to make a decision
18 like this, you're glad you have a number of things to
19 choose from?
20 PROSPECTIVE JUROR: Right.
21 MR. OWENS: Sight unseen right now, you
22 don't really know what used do?
23 PROSPECTIVE JUROR: I don't have the full
24 facts. I can't make a decision. Especially of this
25 magnitude without having the full facts.

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1 MR. OWENS: You feel like you are an open
2 minded person?
3 PROSPECTIVE JUROR: I hope so.
4 MR. OWENS: Are you okay with the idea of
5 deliberating with other people and sharing ideas?
6 PROSPECTIVE JUROR: Yes. That helps the
7 people, as you said. It would be extremely hard to have
8 the make this decision by yourself.
9 MR. OWENS: Like having moral support.
10 PROSPECTIVE JUROR: Exactly.
11 MR. OWENS: You know, in the end, one
12 person signs the verdict. A lot of times they poll the
13 jury and each has to say if that's their verdict. Is that
14 something you could do?
15 PROSPECTIVE JUROR: Yes. I would have to
16 really -- it would have to be a decision that I have to
17 live with, besides Mr. Chappell. Yes, that would be -- I
18 would have to agree and think of all of the options.
19 MR. OWENS: If you felt after hearing all the facts
20 and circumstances surrounding this event the appropriate
21 punishment was the death penalty, would you be able to
22 come back with that judgment?
23 PROSPECTIVE JUROR: Yes.
24 MR. OWENS: It's not the kind of thing
25 where you get up and say, I think it's the right thing, I

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1 don't think I can do that.
2 PROSPECTIVE JUROR: I'm not sure how to
3 answer that question.
4 MR. OWENS: Best estimate right now, you
5 feel it's something you could do.
6 PROSPECTIVE JUROR: If that was -- after
7 hearing all of the facts that's what we arrive at, I have
8 to live by that decision. You can't second guess after
9 you've left the court room. There are other options. We
10 have to have heard the case.
11 MR. OWENS: Thank you. Pass for cause.
12 THE COURT: Mr. Schieck.
13 MR. SCHIECK: Thank you, your Honor.
14 Ms. Staley, there's a number of questions
15 you left blank in the questionnaire. Was that by
16 intention?
17 PROSPECTIVE JUROR: I wasn't sure how to
18 answer them. I have never been involved in the court
19 system. I have no basis to answer some of the questions,
20 which is probably why I left them blank.
21 MR. OWENS: One of questions asked about
22 strong moral or religious views about the death penalty
23 and its imposition. You didn't indicate one way or the
24 other. Do you have thoughts on that area?
25 PROSPECTIVE JUROR: I believe I'm a very

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1 religious person. And in my religious viewpoint if a man
2 is punished here for his sins on earth, he will not be
3 held accountable in the next life, because he has been
4 punished for those sins already. That's how come I left
5 it blank, because if he's not punished here he will be
6 punished in the next life.
7 MR. OWENS: You understand and are pleased
8 that there are four different punishments for first degree
9 murder. You'd consider all four of those to be
10 punishment?
11 PROSPECTIVE JUROR: Yes. Like I stated
12 before, I'm glad there are more options because not every
13 crime is the same.
14 MR. OWENS: You don't have any problems
15 with the concept that really what we're doing here is
16 choosing between four very serious forms of punishment.
17 Just picking which punishment is the appropriate
18 punishment.
19 PROSPECTIVE JUROR: Picking which
20 punishment is the appropriate punishment for what was
21 done.
22 MR. OWENS: Everything you have known you
23 know from the questionnaire and have heard here in court,
24 you're open to all four possible punishments as you hear
25 more information?

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1 PROSPECTIVE JUROR: That's correct.
2 MR. OWENS: Thank you. Pass for cause,
3 your Honor.
4 THE COURT: Thank you. Mr. Owens, as to
5 Ms. Larson.
6 MR. OWENS: You had indicated there might
7 be a hardship issue for you. Tell us about that? Have
8 you worked that out?
9 PROSPECTIVE JUROR: No. I don't think
10 that I could give my full attention to this proceeding.
11 MR. OWENS: That's because of the -- you'd
12 be worrying if you were someplace else, something is not
13 getting done. That has to do with your business?
14 PROSPECTIVE JUROR: Yes. And my work,
15 right.
16 MR. OWENS: You understand this is a
17 serious matter?
18 PROSPECTIVE JUROR: I do.
19 MR. OWENS: And you'd probably rather be
20 doing the work then being here?
21 PROSPECTIVE JUROR: I would rather be
22 doing the work then being here. And I'd rather be doing
23 anything then looking at pictures of anything. I really
24 would.
25 MR. OWENS: But if you -- if you were

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1 selected to be on the jury knowing the seriousness of this
2 proceeding, you would be able to give a fair hearing and
3 focus and attention to what is going on here?

4 PROSPECTIVE JUROR: I don't know that.

5 That's why I put that down. I'm torn in a lot of
6 directions already, and that would be difficult for me to
7 shut that off.

8 MR. OWENS: But that's something you would
9 try to do?

10 PROSPECTIVE JUROR: Sure. I don't know if
11 I'd be successful, but I'd try.

12 MR. OWENS: You don't have a problem with
13 the death penalty?

14 PROSPECTIVE JUROR: Absolutely not. No.

15 MR. OWENS: You heard about the full range
16 of available punishments in this case?

17 PROSPECTIVE JUROR: Yes.

18 MR. OWENS: Then you feel that you could
19 keep an open mind until you've heard all of the evidence?

20 PROSPECTIVE JUROR: I would struggle with
21 that.

22 MR. OWENS: Okay.

23 PROSPECTIVE JUROR: In my corporate job, I
24 daily have to make decisions an judgments and over the
25 course of 18 years I had become -- have become quick to

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1 make decisions, somewhat cynical. And I'm a judgmental
2 person, because of that. And I react quickly, and once
3 I've made a judgment I'm pretty firm with it. I have to
4 be.

5 MR. OWENS: This is a very different
6 situation then a business decision.

7 PROSPECTIVE JUROR: I understand that.

8 MR. OWENS: Are you okay with the idea of
9 waiting until you hear the circumstances before you make a
10 decision of this gravity?

11 PROSPECTIVE JUROR: Can I ask a question?

12 MR. OWENS: Sure. The judge will decide
13 if I can answer or not, but you're free to ask.

14 PROSPECTIVE JUROR: Is the death penalty
15 on the table?

16 MR. OWENS: That's what we're telling
17 people. It's one of the four possible punishments.

18 PROSPECTIVE JUROR: I can't conceive of
19 anything that anybody could tell me that would make me
20 pick anything different than that. My mind can't figure
21 anything out that makes it okay not to give him the death
22 penalty.

23 MR. OWENS: Even though you can't conceive
24 of one, can you leave open the possibility there could be
25 one out there you just haven't been thinking about it?

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1 PROSPECTIVE JUROR: I can't imagine what
2 that would be.

3 MR. OWENS: Well, that's the whole point
4 of the question. You can't imagine right now, but can you
5 leave open the possibility that there may be a situation
6 where that might seem appropriate to you?

7 PROSPECTIVE JUROR: As my mind has run
8 through everything over the last two days anything that
9 could possibly have happened that would make that okay,
10 I've answered no to each one of those in my head. And to
11 think there's something else out there, I wouldn't want to
12 know what that was that a person was capable of doing
13 that.

14 MR. OWENS: So what you're saying is your
15 mind is close off. It doesn't matter what you hear. You
16 just feel like you'd vote for the death penalty?

17 PROSPECTIVE JUROR: I don't know that it's
18 close off. But I prefer not to clutter my mind with it.

19 MR. OWENS: You know, on question number
20 50 on the form here it says -- you are asked about what
21 you felt about the four forms of punishment. You said,
22 yes, it's part of the system. And to make that decision
23 it's only fair to hear sides before casting judgment.

24 PROSPECTIVE JUROR: Yes. That was
25 probably a weak moment.

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1 MR. OWENS: I know you're worrying about
2 your business and everything of that nature.

3 PROSPECTIVE JUROR: I am. I just worry
4 about having to hear all of this stuff.

5 MR. OWENS: But back then you thought you
6 would consider everything, and now you're thinking, no, I
7 don't think I could consider everything. And I just want
8 to make sure we are getting a candid sense of where you
9 are at right now.

10 PROSPECTIVE JUROR: You're getting a
11 candid sense.

12 MR. OWENS: Then you felt open minded.
13 Today you're definitely sounding very closed minded.

14 PROSPECTIVE JUROR: Yeah. Yeah. Yeah.

15 MR. OWENS: All right. I don't have
16 anything further, Judge.

17 THE COURT: Thank you. Mr. Schieck.

18 MR. SCHIECK: Challenge for cause, your
19 Honor.

20 THE COURT: Thank you. Ms. Weckerly, as
21 to Ms. Stio.

22 MS. WECKERLY: Ms. Stio, correct?

23 PROSPECTIVE JUROR: Yes, correct.

24 MS. WECKERLY: Ma'am, you sort of have a
25 different opinion that you indicated in your questionnaire

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1 from the lady next to you. You said that God was the only
2 person who could judge.

3 PROSPECTIVE JUROR: Yeah, in finality.
4 Yes.

5 MS. WECKERLY: So you know from sitting
6 here two days now that the death penalty is a potential
7 punishment in this case?

8 PROSPECTIVE JUROR: I know.

9 MS. WECKERLY: Knowing that you have these
10 religious beliefs, you indicate on your questionnaire that
11 it is up to God to make that type of decision. Are you
12 someone that can consider the death penalty?

13 PROSPECTIVE JUROR: Quite truthfully, I
14 think I could consider any of the three, but I don't think
15 I could consider the fourth.

16 MS. WECKERLY: That would be just a
17 religious belief that that's not something that we should
18 decide?

19 PROSPECTIVE JUROR: I don't feel that I
20 could judge. We're talking about a real person's life.
21 There have been so many people that have been convicted
22 and then so many years later they find out they were
23 innocent. And if that person were already put to death
24 and I was part of that judgment, I wouldn't be able to
25 live with myself.

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1 MS. WECKERLY: So --

2 PROSPECTIVE JUROR: So I wouldn't want to
3 make that decision.

4 MS. WECKERLY: As you sit here now you
5 can't consider the death penalty as a potential
6 punishment?

7 PROSPECTIVE JUROR: No.

8 MS. WECKERLY: Challenge for cause.

9 THE COURT: Any questions Mr. Patrick?

10 MR. PATRICK: No, your Honor.

11 THE COURT: Thank you. Mr. Owens as to
12 Ms. Cohen.

13 MR. OWENS: Ms. Cohen, how are you?

14 PROSPECTIVE JUROR: Good. How are you.

15 MR. OWENS: Good. You've also got some
16 philosophical thoughts with the death penalty?

17 PROSPECTIVE JUROR: Right.

18 MR. OWENS: You don't think the death
19 penalty is something you can do?

20 PROSPECTIVE JUROR: Absolutely not.

21 MR. OWENS: Under any circumstances?

22 PROSPECTIVE JUROR: No.

23 MR. OWENS: Is this a moral belief or
24 religious belief?

25 PROSPECTIVE JUROR: Just a moral belief.

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1 MR. OWENS: You can consider each of the
2 other types of punishment?

3 PROSPECTIVE JUROR: Right.

4 MR. OWENS: But there's no circumstance
5 which you would be able --

6 PROSPECTIVE JUROR: I would not be able to
7 change my mind on that.

8 MR. OWENS: I think you on here said you
9 would automatically vote against the death penalty
10 regardless of the situation.

11 PROSPECTIVE JUROR: Right.

12 MR. OWENS: There was no situation you
13 could do that.

14 PROSPECTIVE JUROR: Right.

15 MR. OWENS: Thank you. No further
16 questions, your Honor.

17 THE COURT: Mr. Schieck.

18 MR. SCHIECK: Did he pass for cause, your
19 Honor?

20 THE COURT: Pass or challenge?

21 MR. OWENS: I don't have any further
22 questions. I'll challenge.

23 THE COURT: Thank you.

24 MR. SCHIECK: No questions, your Honor.

25 THE COURT: Ms. Weckerly, as to Mr.

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1 Kitchen.

2 MS. WECKERLY: How are you, sir?

3 PROSPECTIVE JUROR: Hello.

4 MS. WECKERLY: You work in law
5 enforcement?

6 PROSPECTIVE JUROR: Yes.

7 MS. WECKERLY: Probably most of your adult
8 life -- you said 25 years?

9 PROSPECTIVE JUROR: Ever since two days
10 after my 21st birthday.

11 MS. WECKERLY: The fact that you have that
12 background, knowing this is a limited proceeding in this
13 case to determine punishment, do you think you can be fair
14 to both sides?

15 PROSPECTIVE JUROR: Yes. I don't believe
16 that practicing law enforcement people should sit on
17 juries, especially criminal. It's probably an appeal
18 waiting to happen if I reach that point.

19 MS. WECKERLY: Well, we ask those jurors
20 like everybody else, can you be fair to both sides in this
21 case.

22 PROSPECTIVE JUROR: I can fill a seat for
23 you, yes.

24 MS. WECKERLY: You indicated that you'd
25 considered the death penalty as a potential punishment?

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1 PROSPECTIVE JUROR: Yes.
 2 MS. WECKERLY: I assume your mind is not
 3 made up. You want to hear all of the information before
 4 you make a decision about what's the appropriate
 5 punishment in the case?
 6 PROSPECTIVE JUROR: Yes.
 7 MS. WECKERLY: You can listen to the
 8 information that's presented by both sides and make that
 9 decision?
 10 PROSPECTIVE JUROR: Yes.
 11 MS. WECKERLY: You'll follow the judge's
 12 instructions?
 13 PROSPECTIVE JUROR: Yes.
 14 MS. WECKERLY: Thank you, sir. Pass for
 15 cause.
 16 THE COURT: Mr. Patrick.
 17 MR. PATRICK: Good afternoon, Mr. Wells
 18 (sic). You mentioned your aunt was killed by her husband?
 19 PROSPECTIVE JUROR: No.
 20 THE COURT: You've got the wrong one.
 21 MR. PATRICK: Mr. Kitchen?
 22 PROSPECTIVE JUROR: Right.
 23 THE COURT: How is your aunt today?
 24 PROSPECTIVE JUROR: I haven't checked.
 25 Hope she's okay.

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1 MR. PATRICK: In your questionnaire you
 2 put down that we should be keeping up with Texas, correct?
 3 Is this the right questionnaire?
 4 PROSPECTIVE JUROR: That sounds familiar,
 5 yes.
 6 MR. PATRICK: What do you mean by that?
 7 PROSPECTIVE JUROR: Was that the death
 8 penalty portion of the question?
 9 MR. PATRICK: Yes, sir, it was.
 10 PROSPECTIVE JUROR: I believe in how the
 11 death penalty is used. I don't care for the delay
 12 process, the appeal process after the death penalty. It
 13 should be quicker.
 14 MR. PATRICK: Because you are in law
 15 enforcement, would you tend to give greater weight to
 16 testimony given by a law enforcement officer.
 17 PROSPECTIVE JUROR: Yes, definitely.
 18 MR. PATRICK: If two people were up here
 19 and told the same story but told it differently, and one
 20 was a police officer, you'd automatically believe him?
 21 PROSPECTIVE JUROR: Yes.
 22 MR. PATRICK: Would discount some or all
 23 of what the other person said because they are not a
 24 police officer?
 25 PROSPECTIVE JUROR: Quite possibly, yes.

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1 MR. PATRICK: When asked what your general
 2 opinions with about the system, you say it was a good
 3 system, but imperfect because of the attorneys and the
 4 judges?
 5 PROSPECTIVE JUROR: Yes, sir.
 6 MR. PATRICK: What part of the system is
 7 good then?
 8 PROSPECTIVE JUROR: I believe it's a basic
 9 written system. You throw the human factor in, everyone
 10 has their own personal opinions and interpretations, and I
 11 think it's twisted.
 12 MR. PATRICK: Twisted more so the
 13 attorneys or the judges?
 14 PROSPECTIVE JUROR: Probably the
 15 attorneys.
 16 MR. PATRICK: More so either side?
 17 PROSPECTIVE JUROR: No.
 18 MR. PATRICK: Okay. Do you think you
 19 would be a fair juror to both sides in this case?
 20 PROSPECTIVE JUROR: Hopefully, yes.
 21 MR. PATRICK: Hopefully, yes. It took a
 22 long time to answer. Tell me your gut opinion. What was
 23 the first thing that came to mind?
 24 PROSPECTIVE JUROR: The same thing again.
 25 I'm a commissioned police officer. I have been most of my

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1 adult life. It's my personal opinion I should not be a
 2 juror in this case or any other criminal case in this
 3 county or this state.
 4 MR. PATRICK: Thank you. I appreciate
 5 your honesty.
 6 PROSPECTIVE JUROR: You're welcome.
 7 MR. PATRICK: Your Honor, we challenge for
 8 cause.
 9 THE COURT: Thank you. Ms. Weckerly, as
 10 to Ms. Berry.
 11 MS. WECKERLY: Ma'am, you indicated on
 12 your questionnaire you don't believe in the death penalty.
 13 PROSPECTIVE JUROR: No.
 14 MS. WECKERLY: Would that be a religious
 15 belief?
 16 PROSPECTIVE JUROR: No. It's just don't
 17 want it on my conscience.
 18 MS. WECKERLY: Just a decision you don't
 19 want to be making?
 20 PROSPECTIVE JUROR: Yes.
 21 MS. WECKERLY: You wrote on your
 22 questionnaire, I don't want it on my conscience. Only the
 23 Lord has the right to say when.
 24 PROSPECTIVE JUROR: Well, I do believe
 25 that when something happens, someone does something, that

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1 will come back to him in a different way. Not the same
2 way, come back to them. It's not for me to make that
3 decision when and where that's going to take place.

4 MS. WECKERLY: Because you have that
5 belief, I take it you could not consider the death penalty
6 ever as a potential punishment?

7 PROSPECTIVE JUROR: I don't know.

8 MS. WECKERLY: You wrote on your
9 questionnaire that basically you said, no death penalty,
10 try another punishment. To me that indicated that you are
11 not going to consider that as a potential punishment.

12 PROSPECTIVE JUROR: Well, I didn't mean it
13 like that. I meant, like I said, people get what they do
14 in life, so who am I to make that judgment.

15 MS. WECKERLY: Well, can you do that? Can
16 you serve as a juror in this case when you know the death
17 penalty is a potential punishment?

18 PROSPECTIVE JUROR: No.

19 MS. WECKERLY: On number 50, in your
20 questionnaire, you were asked would you consider all four
21 possible punishments. You said everything would, except
22 the death penalty.

23 PROSPECTIVE JUROR: Right.

24 MS. WECKERLY: You still feel the same?

25 PROSPECTIVE JUROR: I wouldn't want it on

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1 my conscience.

2 MS. WECKERLY: So you wouldn't be able to
3 consider it?

4 PROSPECTIVE JUROR: I don't think I've
5 never experienced it. I don't know. Even though, like I
6 said, these few days sitting here, I hear things. You
7 know, it's a lot about the court system that I'm not
8 familiar with, because, you know, I try my best to get
9 away from any criminal, from the situation, period. So I
10 just don't associate myself with that.

11 But now it's here at hand, you know, it
12 has been brought to me. But, you know, personally I would
13 not like to be the one to make a judgment on somebody
14 else's life.

15 MS. WECKERLY: Well, I don't think anyone
16 wants to be that person. But the question we need you to
17 answer is do you think you can be the person that
18 considers all possible punishments including the death
19 penalty?

20 PROSPECTIVE JUROR: I can listen. But it's
21 a first experience, so I don't know. I honestly don't
22 know.

23 MS. WECKERLY: Okay. Another part of your
24 questionnaire you indicated that you would automatically
25 vote against the death penalty, about the facts and

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1 circumstances of the case. Do you still feel that way?

2 PROSPECTIVE JUROR: Say that again. I'm
3 sorry.

4 MS. WECKERLY: On your questionnaire you
5 were asked are your beliefs about the death penalty such
6 that you would automatically vote against the death
7 penalty regardless of the facts and circumstances of the
8 case.

9 PROSPECTIVE JUROR: No.

10 MS. WECKERLY: You indicated on your
11 questionnaire --

12 PROSPECTIVE JUROR: I heard some things
13 the last three times that I didn't hear, so you get a
14 different perspective about things. Mostly because of the
15 things, like I said, I don't know, the unknown. And I
16 have never been involved in the court, anything like that.
17 Other than an automobile accident. So it's unknown.

18 MS. WECKERLY: What have you heard or
19 learned that would -- over the last few day or two -- that
20 cause you to change your opinion?

21 PROSPECTIVE JUROR: Well, I know that it
22 is my civil duty, which I knew that already. And I know
23 there possibly are probable cause for death -- well any of
24 the sentences -- all of them are health sentences, as far
25 as I'm concerned. I just don't want to -- I don't

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1 particularly care for it on my conscience. But if it has
2 to be done, it can be done. I think. I never experienced
3 it. It's a new experience for me. All my adult life I
4 always just got away from courts or any of that, crime.

5 I'm not sure if I mentioned that I have had criminal
6 people in my family. But I don't know the ins and outs of
7 what happen and it's always through information through a
8 another family member like my sister. But I just steered
9 myself away from it. I wanted no involvement of it.

10 MS. WECKERLY: You kind of indicated some
11 of that in your questionnaire, that you didn't have a lot
12 of faith in the criminal justice system.

13 PROSPECTIVE JUROR: Well, I had an
14 incident that happened to me. And it didn't go as far as
15 I thought it should. But that is 25 years ago.

16 MS. WECKERLY: Explain just a little
17 bit.

18 PROSPECTIVE JUROR: I got robbed. And I
19 had a gun at my head. The only thing taken was like all
20 of my personal stuff was taken. I was body searched and
21 everything like that. And I reported it.

22 And it went through the procedures, whatever the
23 procedures were. And I went to set a court date. I went
24 and -- the policeman asked me to please follow through
25 with this, and this is why they get the people, they don't

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1 show up to court.

2 I came to court. I got to court I went and signed
3 in. The defendant came in the door, saw that we did show
4 up, and they left. So I felt right there there was
5 nothing -- didn't go further than that. So I felt it
6 was -- I couldn't understand how the policeman told me --
7 it was a couple -- told me that they had a record as long
8 as your arm. I couldn't understand.

9 I know it was just me, but I couldn't understand if
10 they had such a long record how could they allow -- just
11 allow them to be on bail like that -- bailing out. You
12 know, I just have a problem understanding that.

13 MS. WECKERLY: And you are saying they
14 left the courtroom. Are you telling us they were never
15 caught again?

16 PROSPECTIVE JUROR: I don't know, because I
17 didn't hear anything else about it. I didn't get my
18 personal possessions back. Like I say, she -- it was some
19 of my identification. I was able to hopefully -- I didn't
20 have problems with it after that.

21 MS. WECKERLY: I mean, what you are
22 describing sounds like justice wasn't served because that
23 person or the couple that did this to you were never
24 punished.

25 PROSPECTIVE JUROR: I just feel like at

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1 that time I don't know just steering myself away from it.

2 Just a lot of people in the --

3 MS. WECKERLY: So they got away?

4 PROSPECTIVE JUROR: Yes.

5 MS. WECKERLY: Did you think that they
6 were able to getaway with something because of something
7 that the police did or the prosecutors did. Or do you
8 think it was just -- sounds like they kind of absconded or
9 fled.

10 PROSPECTIVE JUROR: You know, I really
11 don't know what to think of it. All I can concentrate on
12 is that I was the victim, and, you know, I didn't take it
13 further, seek out -- see what happened. Once the
14 policeman told me that they had armed record -- record arm
15 length long, I figured they were doing this all a long.
16 Eventually it got to come to an end. But the system -- at
17 that time the system didn't -- didn't catch it.

18 MS. WECKERLY: Right.

19 PROSPECTIVE JUROR: Didn't do anything
20 about it.

21 MS. WECKERLY: It's sort of the opposite of
22 what you are saying earlier, if you do something bad
23 something bad comes back.

24 PROSPECTIVE JUROR: I believe, like I
25 said, it didn't happen at that time but it had to come

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1 to -- you know had to come to an end. You can't keep

2 applying something -- applying throwing something up, and
3 up, and up and couldn't come down. Eventually. But I was
4 just saying who am I to say whether that's going to
5 happen. That's the only thing I'm saying.

6 MS. WECKERLY: What you're saying you are
7 not judging people. And this proceeding is unique in that
8 way because that's exactly what you are going to be doing.
9 We're not deciding guilt. He's guilty. So what the jury
10 will be doing in this case is judging and assessing which
11 punishment is appropriate, given that it's first degree
12 murder with use of a deadly weapon.

13 Are you someone who can make a judgment about those
14 four possible punishments?

15 PROSPECTIVE JUROR: I can make decisions,
16 but like I say I don't know if I can -- this particular
17 kind of decision, I don't -- I don't know if I can or not.

18 MS. WECKERLY: Well, I don't think anyone
19 here has been through this exact situation before so it's
20 hard to say. But we don't want to get into this and have
21 you say you know what, this is not what I can do.

22 PROSPECTIVE JUROR: Well, like I said the
23 judgment has really been made or the conviction. I think
24 I can. I would prefer not to.

25 MS. WECKERLY: Well, like a lot of fellow

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1 jurors.

2 PROSPECTIVE JUROR: I think it will remain
3 on my conscience for awhile -- along time. Eventually
4 I'll work it out.

5 MS. WECKERLY: Well, that's not a decision
6 that you are comfortable with?

7 PROSPECTIVE JUROR: True. True.

8 MS. WECKERLY: If you thought it was
9 appropriate, could you mark that box?

10 PROSPECTIVE JUROR: I'm not sure. I'm
11 really not sure.

12 MS. WECKERLY: Thank you. We challenge
13 for cause.

14 THE COURT: Thank you. Mr. Patrick.

15 MR. PATRICK: No questions.

16 THE COURT: Let me ask you a question,
17 Ms. Berry. It really isn't what are you going to do when
18 you get in the jury room down the road. You haven't heard
19 anything yet. The question that is important today, as
20 you sit here, are you willing to consider all forms of
21 punishment?

22 PROSPECTIVE JUROR: Yes. I will do what
23 I'm supposed to do, your Honor.

24 THE COURT: Okay. If -- well, you'll
25 consider all forms of punishment and you'll listen to the

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1 evidence. Then I'll give you legal instructions, and you
2 determine what you think is appropriate and reach your
3 conclusions on what you think is appropriate.

4 I need to know that going in you're open minded
5 enough to consider the possibility that any of those four
6 forms of punishment could be appropriate.

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: All right. Counsel approach,
9 please.

10 (Discussion held at the bench.)

11 THE COURT: Ladies and gentlemen,
12 Mr. Franks, Ms. Carmosino, Mr. Rosenkrantz, Fuller,
13 Bogner, Vargas, Morella-Krupa, Mayorga, Herring, Moran,
14 Leavitt, Potter, Meza, Brooks, Lomasney, and Ms. Cruz, you
15 all are excused. Thank you very much for your patience
16 over several days it's taking us to get to this point.

17 Report back to jury services before you leave for the
18 day.

19 Everybody else, we'll take a recess for about fifteen
20 minutes for the attorney to go through the 32 people that
21 we have remaining. We'll get this whittled down to who
22 will hear our case and some of you will be excused as
23 well.

24 The rest of you, once we get to that point, we'll
25 take a recess and get something to eat. I know we have

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1 been going late in the day before we've taken a lunch
2 recess. But nonetheless, I wanted to get you all out of
3 here.

4 JURY ADMONITION

5 During the recess, ladies and gentlemen,
6 you are admonished not to converse among yourselves or
7 with anyone else, including, without limitation, the
8 lawyers, parties and witnesses, on any subject connected
9 with this trial, or any other case referred to during it,
10 or read, watch, or listen to any report of or commentary
11 on the trial, or any person connected with this trial, or
12 any such other case by any medium of information
13 including, without limitation, newspapers, television,
14 internet or radio.

15 You are further admonished not to form or
16 express any opinion on any subject connected with this
17 trial until the case is finally submitted to you.

18 Thank you, very much.

19 (Brief recess taken.)

20 THE COURT: On the record, outside the
21 presence of the jury.

22 I'm going to deny the challenge for cause
23 as to Ms. Bundren (sic) Badge 088. I'll grant the
24 challenges for cause as to Ms. Larsen 091, Stio 092, Ms.
25 Cohen 093, Mr. Kitchen 096.

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1 I'll deny the challenge for cause as to
2 Ms. Berry, 100.

3 So on your lists, after Mr. Parramore, the
4 next 5 passed for cause now would be, Brianne Gernot --
5 position 28 -- 085; Mr. Schechter 087; Ms. Bundren (sic)
6 088 -- 30; Ms. Staley 089 -- will be 31; Ms. Berry, badge
7 number 100 -- will be number 32.

8 (Brief recess taken.)

9 THE COURT: We will be back on the record
10 in C-131341, State of Nevada versus James Chappell.

11 The record will reflect the presence of
12 Mr. Chappell with his attorneys, the State's attorneys, in
13 the presence of our prospective jury pool.

14 Ladies and gentlemen, thank you all as
15 sincerely as I can for your patience and understanding
16 over the course of the last several days. I include, when
17 I say several days of having come in and filled out the
18 questionnaire. I wish there was a more efficient way and
19 we had a bigger courtroom so we could have accommodated
20 everybody all at once and have this run a little
21 smoother.

22 Nonetheless, we did the best that we
23 could. And the delays in getting this finished aren't
24 occasion by the attorneys. As I said I had calendar
25 issues in the morning and we needed to come in later. So

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1 a lot of times it's such that sometimes you're trying to
2 work for the good of the many, which is most of you are
3 going to be leaving now, rather than the good of a few,
4 and that's why we didn't take our normal lunch break
5 today.

6 But the good news is I'm going to -- we
7 finish with the process. We have the 14 names that are
8 going to serve as our jurors. And rather than get you
9 sworn in and have me read all the instructions and remarks
10 and try to get through opening statements today, we just
11 going to get to my opening remarks, then release you for
12 the day. Rather than trying to do a late lunch hour. So
13 you get to go home early today and we'll come back
14 tomorrow morning at 10:00 o'clock to get started.

15 But what I'm going to do is read the 14
16 names of the folks that are going to stay with us and
17 serve as jurors. If I read your name, just -- once
18 everybody gets up to leave -- stay seated if I've read
19 your name. Everybody else, I thank you very much again.
20 You can report back to jury services.

21 The folks that are going to stay with us
22 are Badge number 007, Ms. Johnson; 009, Mr. Jerry Taylor;
23 020, Larry Henck; 022, George Smith; 026, Cheryl Cardillo;
24 036, Davy Noahr; 039, Christine Bundren; 050, Angelo
25 Morin; 058, Blayne White; 063, Darlene Washington; 073,

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1 Duane Feuerhammer; 074, David Forbes; 078, Brinnon Scott;
2 and 089, Laura Staley. The 14 of you will stay seated for
3 right now. Everybody else, I thank you again. You can
4 report back to jury services before you leave for the
5 day.

6 Ladies and gentlemen now that I've got
7 you comfortable and seated, I need for you to stand and
8 raise your right hand and be sworn in.

9 THE CLERK: You and each of you do
10 solemnly swear you will well and truly try the case at
11 issue and a true verdict render according to the evidence,
12 so help you God.

13 PROSPECTIVE JUROR: (Choir of I do.)

14 THE CLERK: Be seated.

15 THE COURT: As I said a little bit ago,
16 I'm going to read a bit of information to you now before
17 we release you for the evening. It will kind of serve as
18 an introduction to the trial with some very preliminary,
19 basic instructions on certain aspects of the law, as well
20 as a guideline as to how things will occur.

21 It is not a substitute for the
22 instructions I'll give you at the close of the case, after
23 you've heard all of the evidence.

24 This is a criminal proceeding commenced by
25 the State of Nevada, which I may sometimes refer to as the

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1 State, against James Chappell, who I may sometimes refer
2 to as the Defendant.

3 The proceeding is based upon
4 Mr. Chappell's conviction of three charges, which are
5 contained in what's called a charging document, which is
6 an information. The information is not the evidence of
7 the charges, it just lists the charges.

8 I'll have Carol now read to you what the
9 charges were that Mr. Chappell was previously convicted
10 of.

11 THE CLERK: That James Montel Chappell,
12 the Defendant, having committed the crimes of burglary,
13 robbery with use of a deadly weapon, and murder, open,
14 with use of a deadly weapon, on or about the 31st day of
15 August 1995, at, and within the County of Clark, State of
16 Nevada contrary to the form, force, and effect of the
17 statutes in such cases made and provided and against the
18 peace and dignity of the State of Nevada.

19 Count (1), burglary, did then and there
20 willfully, unlawfully and feloniously enter with intent to
21 commit larceny; and/or assault; and/or battery; and/or
22 robbery; and/or murder, that certain building located at
23 839 North Lamb Boulevard, Las Vegas, Clark County Nevada,
24 Space No. 125, thereof occupied by Debra Panos.

25 Count (2), robbery with use of a deadly

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1 weapon; did then and there willfully, unlawfully, and
2 feloniously take personal property, to wit, social
3 security cards and/or keys; and/or a motor vehicle from
4 the person of Debra Panos, or in her presence by means of
5 force or violence, or fear of injury to and without
6 consent and against the will of Debra Panos; said
7 Defendant using a deadly weapon, to wit, a knife, during
8 the commission of said crime.

9 Count (3), murder, open, with use of a
10 deadly weapon, did then and there, without authority of
11 law and with malice of forethought willfully and
12 feloniously kill Debra Panos, a human being, by stabbing
13 at and into the body of the said Debra Panos, with a
14 deadly weapon, to wit, a knife during the commission of
15 said crime.

16 Defendant committing said act with
17 premeditation and deliberation; and/or committing said act
18 during the perpetration of a burglary and/or a robbery.

19 THE COURT: All right, ladies and
20 gentlemen. As I explain to you when we were doing the
21 selection process we also talked about the principles of
22 law defined in a criminal proceeding, one is the State has
23 the burden of proof in a criminal proceeding.

24 The State is going to have a burden of
25 proving certain things in this case. And the attorneys

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1 kind of talked to you about it, in regards to aggravating
2 circumstances before the death penalty can be a
3 consideration of you all when you go to deliberate.

4 The purpose of the trial -- or the
5 proceeding, rather, is to present evidence to you upon
6 which you can base a sentencing verdict. And the State
7 will have to meet the burden beyond a reasonable doubt as
8 to certain things, and will instruct about all of these
9 things at the each of the case as well.

10 It will be your primary responsibility, as
11 jurors, to find and determine what the facts are. You are
12 the sole judge of the facts that will be brought out
13 during the course of this proceeding. You'll determine
14 the facts from the testimony you hear and the other
15 evidence which will be brought before you, which include
16 exhibits introduced in this proceeding, as well as
17 possibly exhibits that were introduced in Mr. Chappell's
18 underlying trial. It will be your job to determine the
19 inferences which you feel may be drawn from those facts as
20 well.

21 During the course of this proceeding you
22 will also hear, in a somewhat different fashion than at a
23 trial, hearsay testimony that may come in in the form of
24 witnesses testifying about other things that other people
25 have said, as well as the reading of transcripts of people

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1 that testified in the trial down below. In a criminal
2 proceeding such as this, a sentencing hearing, hearsay is
3 admissible evidence unlike it would be in a normal trial
4 setting. So that will be a little different.

5 At times during the proceeding I may
6 sustained objections or direct that you disregard certain
7 testimony or exhibits. You must not consider any evidence
8 to which an objection has been sustain or which I
9 instructed you to disregard. Anything you may have seen
10 or heard outside the courtroom is not evidence and must
11 also be disregarded.

12 You also must not be influenced in any
13 degree by any personal feelings of sympathy for or
14 prejudice against either the State or Defendant. Both
15 sides are entitled to the same fair and impartial
16 consideration.

17 In terms of witness testimony, in
18 considering the weight and value of such testimony, you
19 may take into consideration the appearance, attitude, and
20 behavior of the witness; the interest of the witness in
21 the outcome of the case, if any; the relation of the
22 witness to the Defendant or the State; the inclination of
23 the witness to speak truthfully or not, and the
24 probability or improbability of the witness's statements,
25 as well as all the other facts and circumstances in

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1 evidence.

2 Thus, you may give the testimony of any
3 witness just such weight and value as you believe the
4 testimony of that witness entitled to receive.

5 There are two kinds of evidence, direct
6 and circumstantial evidence. Direct evidence is testimony
7 by a witness about what that witness personally saw or
8 heard or did. Circumstantial evidence is testimony or
9 exhibits which are proof of a particular fact from which
10 another fact may be proven. You can infer the existence
11 of that second fact, essentially.

12 You may consider both direct and
13 circumstantial evidence in deciding your sentencing
14 decision here. The law permits you to give equal weight
15 to both direct and circumstantial evidence. But it is for
16 you to decide how much weight to give any evidence.

17 As I mentioned during the selection
18 process, they'll be opening statements by attorneys as
19 well as closing arguments by the attorneys. The opening
20 statements and the closing arguments are intended to help
21 you in understanding the evidence and apply the law, but
22 they are not in and of themselves evidence. They are the
23 contentions of the parties as to what will be proven or
24 what has been proven, depending on whether we are talking
25 by opening statements or closing arguments.

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1 Until the case is submitted to you you
2 must not discuss it with anyone, even with your fellow
3 jurors. After it is submit to you you must discuss it
4 only in the jury room with your fellow jurors. It is
5 important that you keep an open mind and not decide any
6 issue in the case until the entire case has been submitted
7 to you under the legal instructions from myself.

8 If during the course of the proceeding you
9 cannot hear a witness, please, raise your hand. And if
10 you need to use the restroom, or if you feel ill, raise
11 your hand as an indication.

12 I think I indicated yesterday that we'll
13 tend to take a break about every 90 minutes or so, for the
14 most part. You can count on that, give or take a few
15 minutes. You can bring drinks into the courtroom, bring a
16 cup of coffee in the morning, if you've got a Styrofoam
17 cup or something of that sort.

18 I may during the trial take notes of the
19 witnesses' testimony. Please don't make any inference
20 from that action. I have to be prepared for arguments of
21 the attorneys and the instructions given at the end of the
22 case, as well. So there are at lot of times where I'll be
23 taking notes. Sometimes I take them on a note pad.
24 Sometimes I type on the computer. I'll also tell you,
25 since the computer is here, a lot of times I'll send

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1 e-mails to my secretary. That's the best way for me to
2 figure out what's on calendar the next day in the morning,
3 afternoon, and so forth. So I can kind of get a good idea
4 what time to bring you all back in the morning or
5 afternoon and so forth.

6 You will not have a transcript to consult
7 at the close of the case. But you will be given note pads
8 tomorrow and you'll be allow to take notes during the
9 course of the proceeding in your note pad. I would
10 caution you not to let overly copious note taking
11 interfere with your ability to watch and listen and
12 observe people as they're testifying. I will also tell
13 you that you will be given the opportunity to ask written
14 questions of any of the witnesses that are called to
15 testify in the case.

16 You are not encouraged to ask a large
17 number of questions, because that is the primary
18 responsibility of the attorneys. Only a limit number of
19 questions may be posed by jurors. And you will not be
20 allowed to become the quote, unquote third attorney or
21 advocate a certain position by your questions.

22 I have the discretion to preclude
23 individuals from an excessive number of questions.

24 Questions may be asked after both lawyers
25 have finished questioning a witness and only at that time.

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1 For instance, Mr. Owens and Ms. Weckerly may call a
2 witness to the stand. They'll conduct a direct
3 examination of the witness. The defense attorney, Mr.
4 Schieck and Mr. Patrick may cross-examine that witness.
5 Sometimes it goes back, redirect examination and
6 recross-examination.

7 Once that process is finished, before I
8 tell a witness you're excused, thank you, I'll look over
9 to the jury to see if there's an indication anybody has
10 their hand in the air about wanting to ask questions.
11 Should you desire to ask a question, write it down in your
12 note pad with your juror number. We'll designate Ms.
13 Johnson is number one, all the way to Ms. Staley's number
14 14.

15 So when you write it in your sheet, write
16 down number one -- write juror number one and what your
17 question is. Raise your hand and I'll know you have a
18 question. The bailiff will pick up your question. Show
19 it to me. I'll consult with the attorneys. If it's a
20 legally proper question, I will ask it of the witness. It
21 has to be a legally factual question and it has to be
22 factual in nature.

23 It can't be direct towards me. It can't
24 be direct towards the attorneys. It has to be directed
25 towards the witness and designed to clarify information

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1 already presented.

2 Only questions permissible under the rules
3 of evidence will be asked, and you cannot draw any
4 inferences or conclusions if a question you submitted is
5 not asked of a witness. As I said, if you determine the
6 question is legally proper I'll go ahead and ask it of the
7 witness. Then the attorney will be allowed to ask
8 follow-up questions, as necessary.

9 The trial will proceed in the following
10 manner. The deputy district attorneys will make an
11 opening statement, which, as I said is an outline to help
12 you understand what they intend to put forth during the
13 course of this proceeding, the evidence which they intend
14 to put forth and prove to you.

15 Next the defense attorneys may, but do not
16 have to, make an opening statement. Opening statements, as
17 I said, serve as an introduction to the evidence which the
18 parties making the statement intends to put forth or
19 prove.

20 The State will then present its evidence.
21 Call its case in chief. Counsel for defense may
22 cross-examine the State's witnesses. Following the
23 State's case in chief the defense may present evidence,
24 but is not obligated to do so. That will be the defense
25 case in chief. And during that the deputy district

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1 attorneys may cross-examine the defense witnesses, as
2 well.

3 After all the evidence has been presented,
4 I will then instruct you on the law that applies to this
5 particular criminal proceeding. After the instructions on
6 the law have been read to you, each side will have the
7 opportunity to present oral arguments. What is said in
8 closing arguments is not evidence. The arguments are
9 designed to summarize and interpret the evidence and the
10 law. Since the State has the burden of proving the
11 essential elements, which we'll go through in those legal
12 instructions, the State will have the right to open and
13 close the arguments. That means the State will make a
14 closing argument. The defense will make a closing
15 argument in response to the State. Then the State will
16 make a rebuttal closing argument.

17 After all the arguments are completed, you
18 will retire to deliberate on your sentence. Let me remind
19 you that until the case is submitted to you, do not talk
20 to each other about the case or about anyone who has
21 anything to do with the case until the end of the case
22 when you go to the jury room to decide on your verdict.

23 Do not talk with anyone else about the
24 case or about anyone who has anything to do with the case
25 until the trial has ended and you have been discharged as

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1 jurors.

2 Anyone else includes members of your
3 family, and your friends. You may tell them that you are
4 a juror in a criminal proceeding, but please do not tell
5 them anything else about it until have you been discharged
6 from your jury service by myself.

7 Don't let anyone talk to you about the
8 case or about anyone who has anything to do with it. If
9 someone should try to talk to you, report that to me
10 immediately by telling Leslie, my bailiff.

11 Don't read any news stories or articles,
12 or listen to any radio or television reports about the
13 case, or about anyone who has anything to do with it.
14 Maybe most importantly of all, do not visit the scene of
15 any of the events mentioned during the course of this
16 proceeding, or undertake any investigation or research on
17 your own. Everything you need to know to decide the case
18 you will learn from the testimony of the witnesses, the
19 exhibits introduced into court, the legal instructions,
20 and the arguments of the attorneys. Do not go to the
21 library, or go on the internet, or go searching for
22 anything, or look up legal terms. Anything about it,
23 okay. I can't emphasize that enough to you.

24 All right. That's all I have for you for
25 this evening. I'll release you and we'll get started

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1 tomorrow morning at 10:00 o'clock. Leslie will change out
2 your badges as you walk out tonight. You can get rid of
3 those little paper badges for plastic badges.

4 When you come back to court, please make
5 sure you're wearing that in the court house so everybody
6 knows you are a juror in a trial and they'll avoid you.

7 And then just come on up here and have a
8 seat outside the courtroom and we'll get started as close
9 to 10:00 as we can.

10 Thank you all very much.

11 (Jury is dismissed.)

12 THE COURT: Outside the presence of the
13 jury. Anything outside the presence?

14 MR. PATRICK: No, your Honor.

15 MS. WECKERLY: No, your Honor.

16 MR. OWENS: Your Honor we do have one
17 thing. We have a couple of family members coming in
18 early. The mother and the aunt. They wanted to be able
19 to be present in the courtroom during the proceeding. I
20 wanted to advise the court of that.

21 THE COURT: Are they going to be witnesses?

22 MR. OWENS: Yeah, probably at some
23 point.

24 THE COURT: I don't have a problem.

25 Mr. Schieck?

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1 packet you can give me that I can start looking at.

2 MS. WECKERLY: Okay.

3 THE COURT: Thank you.

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1 MR. SCHIECK: As long as there is no
2 outward displays of emotion and things that could be
3 prejudicial, your Honor.

4 I acknowledge that the Supreme Court said the
5 exclusionary rule does not apply to penalty hearings.

6 THE COURT: I'll ask the State to talk to
7 them. And if you feel it's necessary, let me know, and
8 I'll admonish them as well.

9 MR. OWENS: They'll be fine.

10 MR. SCHIECK: I would assume the same for
11 our family members?

12 THE COURT: I have no problem either way.
13 Just everybody talk to their witnesses about that.

14 All right.

15 MR. PATRICK: One last thing. If we were
16 to hear witnesses on Friday, what time would you start?

17 THE COURT: Generally we can start at 8:30
18 Friday morning if we need to. I don't -- I specifically
19 don't set anything on calendar on Friday so that if we're
20 in trial we can get a day in.

21 You all have jury instructions?

22 MS. WECKERLY: We can have them
23 tomorrow.

24 THE COURT: I don't expect you all to have
25 gotten together and decided on them. But if you have a

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1 CERTIFICATE
2 OF
3 CERTIFIED COURT REPORTER

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8 I, the undersigned certified court reporter in and for the
9 State of Nevada, do hereby certify:

11 That the foregoing proceedings were taken before me at the
12 time and place therein set forth; that the testimony and
13 all objections made at the time of the proceedings were
14 recorded stenographically by me and were thereafter
15 transcribed under my direction; that the foregoing is a
16 true record of the testimony and of all objections made at
17 the time of the proceedings.


Sharon Howard
C.C.R. #745

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3:30pm

FILED IN OPEN COURT

March 21 2007

CHARLES J. SHORT
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Carol Green
DEPUTY

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 JAMES MONTELL CHAPPELL,

11 Defendant.

Case No. C131341

Dept No. III

14 SPECIAL VERDICT

15 We, the Jury in the above entitled case, having heard evidence in the above-
16 referenced matter in which the Defendant, JAMES MONTELL CHAPPELL has previously
17 been convicted of COUNT 3 - FIRST DEGREE MURDER WITH USE OF A DEADLY
18 WEAPON, one or more of the jurors designate that mitigating circumstance or
19 circumstances which have been listed below have been established.

- 20 1. James Chappell suffered from substance abuse.
21 2. James Chappell has had no father figure in
22 his life.
23 3. James Chappell was raised in an abusive
24 household.
25 4. James Chappell was the victim of physical
26 abusive as a child.
27 5. James Chappell was born to a drug/alcohol
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addicted mother.

6. James Chappell suffered a learning disability.

7. James Chappell was raised in a depressed housing area.

DATED this 21 day of March, 2007.


FOREPERSON

1 VER

3:30pm

DISTRICT COURT
March 21 2007
CLARK COUNTY
Carol Green
DEPUTY

6 DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JAMES MONTELL CHAPPELL,

12 Defendant.

Case No. C131341

Dept No. III

14 V E R D I C T

15 The Defendant, JAMES CHAPPELL, having been found guilty of COUNT 3 -
16 MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, and we, the
17 Jury, having found that the aggravating circumstance outweighs any mitigating
18 circumstances, impose a sentence of

19 ☒ Death

20 ☐ Life in Nevada State Prison Without the Possibility of Parole

21 ☐ Life in Nevada State Prison With the Possibility of Parole

22 ☐ A definite term of 100 years imprisonment, with eligibility for parole beginning
23 when a minimum of 40 years has been served

24 DATED at Las Vegas, Nevada, this 21 day of March, 2007

25 
26 FOREPERSON

JUDGMENT ENTERED

MAR 22 2007

517

CE-01

AA00127

1 INST

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

3:30pm FILED IN OPEN COURT
March 21 2007

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 JAMES MONTELL CHAPPELL,

9 Defendant.
10
11

CHARLES J. SHORT
CLERK OF THE COURT
Case No. C131341 DEPUTY

Dept No. III

12 INSTRUCTIONS TO THE JURY
13 (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this penalty
16 hearing. It is your duty as jurors to follow these instructions and to apply the rules of law to
17 the facts as you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it
20 would be a violation of your oath to base a verdict upon any other view of the law than that
21 given in the instructions of the Court.
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INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

INSTRUCTION NO. 3

In the penalty hearing, evidence may be presented concerning aggravating and mitigating circumstances relative to the offense.

Hearsay is admissible in a penalty hearing.

INSTRUCTION NO.: 4

The jury shall fix the punishment for every person convicted of murder of the first degree.

The jury shall fix the punishment at:

1. A definite term of 100 years imprisonment, with eligibility for parole beginning when a minimum of 40 years has been served;

2. Life imprisonment with eligibility for parole beginning when a minimum of forty years has been served;

3. Life imprisonment without the possibility of parole; or

4. Death.

INSTRUCTION NO.: 5

Life imprisonment with the possibility of parole is a sentence of life imprisonment which provides that a defendant would be eligible for parole after a period of forty years. This does not mean that he would be paroled after forty years, but only that he may be eligible after that period of time.

Life imprisonment without the possibility of parole means exactly what it says, that a defendant shall never be paroled.

If you sentence a defendant to death, you must assume that the sentence will be carried out.

The State has alleged that one aggravating circumstance is present in this case.

The Defendant has alleged certain mitigating circumstances are present in this case.

It shall be your duty to determine:

(a) whether the aggravating circumstance is found to exist; and

(b) whether a mitigating circumstance or circumstances are found to exist; and

(c) based upon these findings, whether the Defendant should be sentenced to a definite term of 100 years imprisonment, life imprisonment with or without the possibility of parole or death.

The jury may consider a sentence of death only if (1) the jurors unanimously find at least one aggravating circumstance has been established beyond a reasonable doubt and (2) the jurors unanimously find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

A mitigating circumstance itself need not be agreed to unanimously; that is, any one juror can find a mitigating circumstance without the agreement of any other juror or jurors. The entire jury must agree unanimously, however, as to whether the aggravating circumstances outweigh the mitigating circumstances.

Otherwise, the punishment imposed shall be imprisonment in the State Prison for a definite term of 100 years imprisonment, with eligibility for parole beginning when a minimum of 40 years has been served or life with or without the possibility of parole.

INSTRUCTION NO. 7

You are instructed that the following factors are circumstances by which Murder of the First Degree may be aggravated:

The murder was committed during the perpetration of a sexual assault.

A person who subjects another person to sexual penetration against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

"Sexual penetration" includes any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning. Evidence of the emission is not necessary.

Sexual intercourse is the placing of the penis of the perpetrator into the vagina of the victim.

Fellatio is the placing of the penis of the perpetrator into the mouth of the victim.

INSTRUCTION NO. 7

Physical force is not necessary ingredient in the commission of the crime of sexual assault. The question is not whether the victim was penetrated by physical force, but whether the act was committed without her consent and/or under conditions in which Defendant knew or should have known, the victim was incapable of giving her consent or understanding the nature of the act.

INSTRUCTION NO. 10

The victim of a sexual assault is not required to do more than her age, strength, surrounding facts and attending circumstances make it reasonable for her to do to manifest her opposition.

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INSTRUCTION NO. 11

There is no consent where the victim is induced to submit to sexual acts through fear of death or serious bodily injury.

INSTRUCTION NO.: 12

Mitigating circumstances are those factors which, while they do not constitute a legal justification or excuse for the commission of the offense in question, may be considered, in the estimation of the jury, in fairness and mercy, as extenuating or reducing the degree of the Defendant's moral culpability.

Any aspect of the defendant's character or record and any of the circumstances of the offense, including any desire you may have to extend mercy to the defendant, may be considered by you as a mitigating factor.

In balancing aggravating and mitigating circumstances, it is not the mere number of aggravating circumstances or mitigating circumstances that controls.

INSTRUCTION NO. 13

In determining whether mitigating circumstances exist, jurors have an obligation to make an independent and objective analysis of all the relevant evidence. Arguments of counsel or a party do not relieve jurors of this responsibility. Jurors must consider the totality of the circumstances of the crime and the defendant, as established by the evidence presented in the guilt and penalty phases of the trial. Neither the prosecution's nor the defendant's insistence on the existence or nonexistence of mitigating circumstances is binding upon the jurors.

There are certain circumstances which may be considered as mitigating the crime of Murder of the First Degree, even though the mitigating circumstance is not sufficient to constitute a defense or reduce the degree of the crime.

In this case, the Defense alleges that the following mitigating circumstances are present:

1. James Chappell suffered from substance abuse addictions;
2. James Chappell attempted to be a good father;
3. James Chappell's mother was killed when he was very young;
4. James Chappell has had no father figure in his life;
5. James Chappell was raised in an abusive household;
6. James Chappell was the victim of physical abuse as a child;
7. James Chappell was the victim of mental abuse as a child;
8. James Chappell was born to a drug/alcohol addicted mother;
9. James Chappell suffered a learning disability;
10. James Chappell was raised in a depressed housing area;
11. James Chappell was involved in a racially tense relationship;
12. James Chappell was taken away from his support system by his relationship with Deborah Panos;
13. Any other mitigating circumstances.

INSTRUCTION NO. 15

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

INSTRUCTION NO.: 16

The jury is instructed that in determining the appropriate sentence in this matter that it may consider all evidence introduced at both the penalty hearing phase of these proceedings and at the trial of this matter.

In deciding on an appropriate sentence for the defendant, you will consider three types of evidence: evidence relevant to the existence of aggravating circumstances, evidence relevant to the existence of mitigating circumstances, and other evidence presented against the defendant. You must consider each type of evidence for its appropriate purposes.

In determining unanimously whether any aggravating circumstance has been proven beyond a reasonable doubt, you are to consider only evidence relevant to that aggravating circumstance. You are not to consider other evidence against the defendant.

In determining individually whether any mitigating circumstance exists, you are to consider only evidence relevant to that mitigating circumstance. You are not to consider other evidence presented against the defendant.

In determining individually whether any mitigating circumstances outweigh any aggravating circumstances, you are to consider only evidence relevant to any mitigating and aggravating circumstances. You are not to consider other evidence presented against the defendant.

If you find unanimously and beyond a reasonable doubt that at least one aggravating circumstance exists and each of you determines that any mitigating circumstances do not outweigh the aggravating circumstances, the defendant is eligible for a death sentence. At this point, you are to consider all three types of evidence, and you still have the discretion to impose a sentence less than death. You must decide on a sentence unanimously.

If you do not decide unanimously that at least one aggravating circumstance has been proven beyond a reasonable doubt or if at least one of you determines that the mitigating circumstances outweigh the aggravating, the defendant is not eligible for a death sentence. Upon determining that the defendant is not eligible for death, you are to consider all three types of evidence in determining a sentence other than death, and you must decide on such a sentence unanimously.

INSTRUCTION NO. 18

In your deliberation you may not discuss or consider the subject of guilt or innocence of a Defendant, as that issue has already been decided.

INSTRUCTION NO. 19

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

INSTRUCTION NO. 20

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 21

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

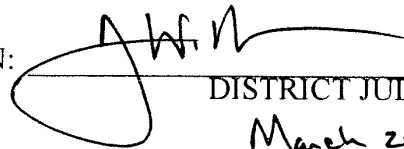
INSTRUCTION NO. 22

The Court has submitted three sets of verdicts to you. One set is for a determination of the existence of an aggravating circumstance. The second set is for a determination of the existence of mitigating circumstances. The third set is for a determination of weight to be given the aggravating and/or mitigating circumstances.

INSTRUCTION NO. 23

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:



DISTRICT JUDGE

March 20, 2007

TRAN
CASE NO. C-131341
DEPT. NO. 3

ORIGINAL FILED IN OPEN COURT
March 22 2007
CHARLES J. SMITH
CLERK OF THE COURT
BY *Carol Green*
DISTRICT COURT DEPUTY

CLARK COUNTY, NEVADA

* * * * *

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
JAMES M. CHAPPELL,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT
OF
PENALTY HEARING
VERDICT

BEFORE THE HONORABLE DOUGLAS HERNDON
DISTRICT COURT JUDGE

DATED: WEDESDAY, MARCH 21, 2007

REPORTED BY: Sharon Howard, C.C.R. #745

1 APPEARANCES:

2 For the State: CHRISTOPHER OWENS, ESQ.

3 PAM WECKERLY, ESQ.

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6 For the Defendant: DAVID M. SCHIECK, ESQ.

7 CLARK W. PATRICK, ESQ.

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1 LAS VEGAS, NEVADA; WEDNESDAY, MARCH 21, 2007

2 P R O C E E D I N G S

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5 THE COURT: We'll be back on the record in
6 C-131341, State of Nevada versus James Chappell.

7 Let the record reflect Mr. Chappell is
8 preset, with his attorneys, State's attorneys, and our
9 jury.

10 Ladies and gentlemen of the jury, did you
11 first of all elect a foreperson?

12 IMPANELED JUROR: Yes.

13 THE COURT: Who is that? Juror number
14 one, for record is our foreperson. Ma'am did the jury
15 reach a verdict?

16 IMPANELED JUROR: Yes.

17 THE COURT: Hand the verdict forms to my
18 bailiff, please.

19 The clerk will now record the verdict into
20 the record.

21 THE CLERK: District Court, Clark County,
22 Nevada, plaintiff, versus James Montel Chappell,
23 defendant, case number C-131341, Department 3, Special
24 Verdict: We the jury in the above-entitled case having
25 heard evidence in the above-referenced matter in which the

1 defendant, James Montel Chappell has previously been
2 convicted of Count (3) first degree murder with use of a
3 deadly weapon, designate that the aggravating circumstance
4 or circumstances which have been checked below have been
5 established unanimously and beyond a reasonable doubt, the
6 murder was committed during the perpetration of a sexual
7 assault, dated this 21st day of March 2007, signed by the
8 foreperson.

9 Special Verdict: We the jury in the
10 above-entitled case, having heard evidence in the above
11 referenced matter in which the defendant, James Montel
12 Chappell has previously been convicted of Count (3), first
13 degree murder use of a deadly weapon, one or more of the
14 jurors designate that mitigating circumstance or
15 circumstances, which have been listed below, have been
16 established:

17 1. James Chappell suffered from substance
18 abuse.

19 2. James Chappell had no father figure in
20 his life.

21 3. James Chappell was raised in an abusive
22 household.

23 4. James Chappell was the victim of
24 physical abuse as a child.

25 5. James Chappell was born to a drug,

1 alcohol addicted mother.

2 6. James Chappell suffered a learning
3 disability.

4 7. James Chappell was raised in a
5 depressed housing area.

6 Dated this 21st is day of March 2007,
7 signed by the foreperson.

8 Special Verdict: We the jury in the
9 above-entitled case, having heard evidence in the
10 above-referenced matter, in which the defendant, James
11 Montel Chappell has previously been convicted of Count
12 (3), first degree murder with use of a deadly weapon, find
13 the mitigating circumstances do not outweigh the
14 aggravating circumstance, date this 21st day of March
15 2007, signed by the foreperson.

16 Special verdict: The defendant, James
17 Chappell, having been found guilty of Count (3), murder of
18 the first degree with use of a deadly weapon, we the jury
19 having found that the aggravating circumstance outweighs
20 any mitigating circumstance impose a sentence of death,
21 dated at Las Vegas, Nevada, this 21st day of March 2007,
22 signed by the foreperson.

23 Ladies and gentlemen of the jury, are
24 these your verdicts as read, so say you one, so say you
25 all?

1 IMPANELED JURY: Yes.

2 THE CLERK: Thank you.

3 THE COURT: Does either side wish to have
4 the jury polled?

5 MR. SCHIECK: Yes, your Honor.

6 THE CLERK: Juror number one, are those
7 your verdicts as read?

8 MS. JOHNSON: Yes.

9 THE CLERK: Juror number two, are those
10 your verdicts as read?

11 MR. TAYLOR: Yes, they are.

12 THE CLERK: Juror number three, are those
13 your verdicts as read?

14 MR. HENCK: Yes ma'am.

15 THE CLERK: Juror number four, are those
16 your verdicts as read?

17 MR SMITH: Yes, ma'am.

18 THE CLERK: Juror number five, are those
19 your verdicts as read?

20 MS. CARDILLO: Yes.

21 THE CLERK: Juror number six, are those
22 your verdicts as read?

23 MS. NOAHR: Yes.

24 THE CLERK: Juror number seven, are those
25 your verdicts as read?

1 MS. BUNDREN: Yes, ma'am.

2 THE CLERK: Juror number eight, are those
3 your verdicts as read?

4 MR. MORIN: Yes, ma'am.

5 THE CLERK: Juror number nine, are those
6 your verdicts as read?

7 MR. WHITE: Yes, ma'am.

8 THE CLERK: Juror number ten, are those
9 your verdicts as read?

10 MS. WASHINGTON: Yes.

11 THE CLERK: Juror number eleven, are those
12 your verdicts as read?

13 MR. FEUERHAMMER: Yes, ma'am.

14 THE CLERK: Juror number twelve, are those
15 your verdicts as read?

16 MR. FORBES: Yes, ma'am, they are.

17 THE COURT: The clerk will enter the
18 verdicts for the minutes.

19 Ladies and gentlemen -- and we're going to
20 go ahead and set a formal sentencing date, if you would,
21 in 45 days.

22 THE CLERK: May 10th, at 9:00 a.m.

23 THE COURT: Ladies and gentlemen, at this
24 time, I'm going to excuse you. I'm sure you'll be happy
25 that I'm not going to recite to you that admonition one

1 final time. You're completely discharged from your
2 service.

3 What I'm going to tell the attorneys is
4 that after I release you here -- I'll be available to talk
5 to you for a few minutes, if you wish -- I'll have Leslie
6 take you back downstairs so you can get your vouchers, and
7 if the attorneys wish to try to you for a few minutes they
8 can meet you downstairs. I would advise you that, to the
9 extent you have a little bit of time and can give them a
10 few minutes, please go ahead and talk to them. It's very
11 valuable for the attorneys, and the best way for us as
12 attorneys to learn a little about, not only our
13 performance as attorneys, but things you think about the
14 case, the way things are presented, is to talk to you all
15 because you are the representatives of the community that
16 hear the trial, watch the process unfold and can give them
17 the best input on how that unfolded in this particular
18 case.

19 I know it's been a long week-and-a-half,
20 but nonetheless, if you have a few minutes, I'd appreciate
21 it if you would talk to them, and just chat with them for
22 a few moments.

23 With that, I will tell you that it's
24 obviously been a very difficult case. I realize that.
25 It's never an easy thing to sit as a jury on a capital

1 penalty hearing. Nonetheless, over the last
2 week-and-a-half you have everything expected of you, not
3 only by the court and the attorneys, but by your fellow
4 community members as well.

5 I thank you for the service you have given
6 to the court system and the community.

7 You are free to talk to whomever you want
8 to now. I encourage you to chat with the attorneys, but
9 whether it's the attorneys or anybody else, you do not
10 have to talk to anybody that you do not want to.

11 But to the extent somebody persists in
12 trying to talk to you after you told them you do not wish
13 to talk to them about the case, let Leslie know that, if
14 it's today or any other day, you can contact my chambers
15 and we'll do what we need to to help you out in that
16 regard as well. But that's your decision.

17 Co-workers, family members, friends, you
18 can talk to whoever you want to now. But you certainly
19 don't have to.

20 Thank you, very much. You all can go with
21 Leslie.

22 Still on the record, outside the presence.
23 Does anybody have anything for the record?

24 MS. WECKERLY: Not on behalf of the
25 State.

1 MR. SCHIECK: Your Honor, I don't know if
2 the court would consider remanding him back to High Desert
3 as opposed to being held here at the Detention Center, due
4 to his custody status.

5 THE COURT: I don't have a problem with
6 that. Does the State have a problem?

7 MR. OWENS: I won't take a position on
8 that.

9 THE COURT: I will order that Mr. Chappell
10 be returned to High Desert State Prison. If the State
11 would prepare a transport order and have him come back on
12 May 10th, for formal sentencing.

13 We'll be in recess. Thank you all very
14 much.

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1 CERTIFICATE
2 OF
3 CERTIFIED COURT REPORTER

4 * * * * *

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7
8 I, the undersigned certified court reporter in and for the
9 State of Nevada, do hereby certify:

10
11 That the foregoing proceedings were taken before me at the
12 time and place therein set forth; that the testimony and
13 all objections made at the time of the proceedings were
14 recorded stenographically by me and were thereafter
15 transcribed under my direction; that the foregoing is a
16 true record of the testimony and of all objections made at
17 the time of the proceedings.
18
19
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21

22 Sharon Howard
23 Sharon Howard
24 C.C.R. #745
25

AFFIRMATION

PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the
proceeding

Stata v. Chappell,
filed in District Court Case No. C 131341,

☒ Does not contain the social security number of any
person.

☐ Contains the social security number of a person as
required by:

(A) NAC 656.350

-or-

(B) For the administration of a public program or for
an application for a federal or state grant.

Sharon Howard

Sharon Howard, CCR #745

3/25/07

Date

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9

TRAN
CASE NO. C-131341
DEPT. NO. 3

FILED

JUL 16 9 23 AM '07

ORIGINAL

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
JAMES MONTELL CHAPPELL,)
)
Defendant.)
)

REPORTER'S TRANSCRIPT
OF
SENTENCING

BEFORE THE HONORABLE DOUGLAS HERNDON
DISTRICT COURT JUDGE

DATED: THURSDAY, MAY 10, 2007

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

RECEIVED
JUL 16 2007
CLERK OF THE COURT

1 APPEARANCES:

2 For the State: CHRIS OWENS, ESQ.

3

4 For the Defendant: CLARK PATRICK, ESQ.

5 DAVID SCHIECK, ESQ.

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1 LAS VEGAS, NEVADA; THURSDAY, MAY 10, 2007

2 P R O C E E D I N G S

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5 THE COURT: Page 6, State of Nevada versus
6 James Chappell. Record will reflect the presence of
7 Mr. Chappell, in custody -- Mr. Schieck, Mr. Patrick, on
8 his behalf. Ms. Rinetti on behalf of the State.

9 Do you have the file, Ms. Rinetti?

10 MS. RINETTI: No, Judge. Mr. Owens and
11 Mr. Kephart will be here.

12 THE COURT: Mr. Owens is here. Mr. Owens
13 is present on behalf of the State.

14 This is time set for sentencing. Is there any legal
15 cause or reason why sentencing cannot take place.

16 MR. PATRICK: No, your Honor.

17 MR. OWENS: May we approach, your Honor.

18 THE COURT: Sure.

19 (Discussion held at the bench.)

20 THE COURT: Back on the record in State
21 versus Chappell. Anything the State wants to add in terms
22 of sentencing.

23 MR. OWENS: No, your Honor.

24 THE COURT: Mr. Chappell, is there
25 anything you want to tell the court before your attorney

1 speaks on your behalf?

2 THE DEFENDANT: No.

3 THE COURT: Thank you, sir.

4 Mr. Schieck, Mr. Patrick, anything you all want to
5 add before we pronounce sentence?

6 MR. SCHIECK: No, your Honor. The jury
7 has imposed a sentence in this case.

8 THE COURT: As to the burglary and robbery
9 with use of a deadly weapon counts, those were already
10 adjudicated and sentenced at the time of the original
11 trial. They aren't part of the sentencing today. This is
12 as to murder with use of a deadly weapon.

13 So, in accordance with the laws of the State of
14 Nevada, I do adjudicate you guilty of that crime,
15 Mr. Chappell, and pursuant to the jury's verdict at the
16 penalty hearing, I sentence you to death for Count (3),
17 murder with use of a deadly weapon.

18 The state has provided ad judgment of conviction. I
19 know normally the clerk's office prepares these now when
20 the defendant is in custody, but Counsel for the State and
21 defense have both looked at it. I think it's an
22 appropriate judgment of conviction, so I'll go ahead and
23 sign that.

24 I believe the defense also has a stay of execution to
25 present to the court, as well.

1 MR. SCHIECK: That's correct.

2 THE COURT: I'll sign that, as well.

3 Thank you.

4 MR. SCHIECK: We'll fill in the date to --
5 with the State's warrant.

6 THE COURT: Okay.

7 For the record I should add that judgment of
8 conviction includes the warrant of execution and order of
9 execution. Mr. Owens.

10 MR. OWENS: Thank you, your Honor. We'll
11 make copies of that.

12 THE COURT: Thank you.

13 MR. OWENS: We'll file that after we get
14 our copies.

15 THE COURT: Thank you, gentlemen.

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CERTIFICATE
OF
CERTIFIED COURT REPORTER

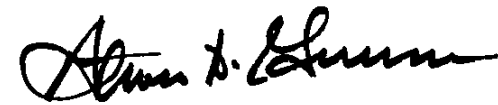
* * * * *

I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.



Sharon Howard
C.C.R. #745



CLERK OF THE COURT

PWHC
RENE L. VALLADARES
Federal Public Defender
Nevada Bar No. 11479
BRAD D. LEVENSON
Assistant Federal Public Defender
Nevada Bar No. 13804C
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DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

JAMES MONTELL CHAPPELL,

Petitioner,

v.

TIMOTHY FILSON, Warden, Ely State
Prison; ADAM LAXALT, Attorney
General, State of Nevada,

Defendant.

Case No. C131341

Dept. No. 5

Date of Hearing:

Time of Hearing:

(Death Penalty Habeas Corpus Case)

**PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)**

Petitioner, James Montell Chappell, hereby files this Petition for Writ of Habeas Corpus pursuant to Nevada Revised Statutes sections 34.724 and 34.820. Mr. Chappell alleges that he is being held in custody in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution of the United States of America; Article 1, sections Three, Six, Eight, and Nine and Article Four, section Twenty-one of the Constitution of the State of Nevada; and the rights afforded him

1 under international law enforced under the Supremacy Clause of the United States
2 Constitution, U.S. Const. art VI, cl.2.

3 DATED this 16th day of November, 2016.

4 Respectfully submitted
5 RENE L. VALLADARES
6 Federal Public Defender

7 /s/ Brad D. Levenson
8 BRAD D. LEVENSON
9 Assistant Federal Public Defender

10 /s/ Sandi Ciel
11 SANDI CIEL
12 Assistant Federal Public Defender

13 **NOTICE OF MOTION**

14 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Defendant

15 PLEASE TAKE NOTICE that the "PETITION FOR WRIT OF HABEAS
16 CORPUS (POST-CONVICTION)" filed November 16, 2016 will be heard on the
17 ⁴ day of ^{J a n .}, at the hour of ^{9 : 0 0 a m} a.m./p.m., in Department V of
18 the District Court.

19 DATED this 16th day of November, 2016.

20
21 Respectfully submitted
22 RENE L. VALLADARES
23 Federal Public Defender

24 /s/ Brad D. Levenson
25 BRAD D. LEVENSON
26 Assistant Federal Public Defender

27 /s/ Sandi Ciel
SANDI CIEL
Assistant Federal Public Defender

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PROCEDURAL HISTORY

1. Mr. Chappell is currently in the custody of the State of Nevada at Ely State Prison in Ely, Nevada, pursuant to a state court judgment of conviction and sentence of death. Ex. 24. Respondents are Timothy Filson, the Warden of Ely State Prison, and Adam Paul Laxalt, the Attorney General of the State of Nevada. The Respondents are sued in their official capacities.

2. On September 8, 1995, a criminal complaint was filed against Mr. Chappell in Justice Court, Las Vegas Township, Clark County, Case No. 95F08114X, charging him with Count 1, burglary, Count 2, robbery with use of a deadly weapon, and Count 3, murder with use of a deadly weapon, Ex. 141. Mr. Chappell made his initial appearance that day and the Clark County Public Defender was appointed to represent him. Ex. 177. A preliminary hearing was held in the Justice Court, Las Vegas Township on October 3, 1995. Ex. 127.

3. On October 11, 1995, Mr. Chappell was charged by criminal information with burglary, robbery with the use of a deadly weapon, and murder with the use of a deadly weapon in the Eighth Judicial District Court, Clark County, Nevada, Case No. C131341. Ex. 24. On October 18, 1995, Mr. Chappell pleaded not guilty. Ex. 62. The State filed a notice of intent to seek the death penalty on November 8, 1995. Ex. 25.

4. Jury selection began on October 7, 1996, and continued through October 8, 1996. Exs. 129, 130, 131. Trial testimony began on October 10, 1996. Ex. 132. Mr. Chappell testified on October 14, 1996. Ex. 137 at 17–120. After a six-day trial, on October 16, 1996, the jury convicted Mr. Chappell of burglary, robbery with the use of a deadly weapon, and murder of the first degree with use of a deadly weapon. Ex. 143.

5. The penalty hearing lasted from October 21 to October 24, 1996. Ex. 138 at 4. Mr. Chappell made a statement of allocution on October 22, 1996. Ex. 140 at 61–62. The jury found four aggravating circumstances beyond a reasonable doubt: (1) the

1 murder was committed in the course of a burglary; (2) the murder was committed in
2 the course of a robbery; (3) the murder was committed in the course of a sexual assault;
3 and (4) the murder involved torture or depravity of mind. The jury also found two
4 mitigating circumstances: (1) the murder was committed while Chappell was under the
5 influence of extreme mental or emotional disturbance and (2) "any other mitigating
6 circumstance." The jury found that aggravators outweighed the mitigators and
7 imposed a sentence of death. Ex. 30; Ex. 146 at 4–5.

8 6. Mr. Chappell's opening brief on direct appeal was filed on June 13, 1997.¹
9 Ex. 110. On December 30, 1998, in Case No. 29884, the Nevada Supreme Court

11 ¹ The following claims were raised on direct appeal:

- 12 I. The Trial Court Abused Its Discretion By Allowing The State To Introduce
13 Evidence Of Prior Domestic Batteries By Chappell When That Evidence
Was Not Relevant To Matters In Issue
- 14 II. The Trial Court Abused Its Discretion By Allowing State Witnesses To
15 Testify Regarding The State Of Mind Of Panos, Thereby Improperly
Impeaching Chappell's Credibility
- 16 III. The Trial Court Abused Its Discretion By Allowing The State To Introduce
17 Testimony Regarding A Shoplifting Incident That Occurred The Day After
The Killing
- 18 IV. The Trial Court Abused Its Discretion By Allowing The State To Introduce
19 Character Evidence That Chappell Was Unemployed And A Chronic Thief
And This Evidence Was Admitted Without The Scrutiny Of A Pre-Trial
20 Petrocelli Hearing
- 21 V. The Cumulative Effect Of The Trial Court's Evidentiary Rulings Was To
22 Allow The State To Introduce Overwhelming Character Evidence At
Trial, Thereby Denying Chappell His Due Process
23 Rights To A Fair Trial
- 24 VI. The State Discriminated Against The Defendant By Using Peremptory
25 Challenges To Selectively Exclude The Only Two Black Persons Qualified
For The Jury Pool
- 26 VII. The State Failed To Prove Beyond A Reasonable Doubt The Charges Of
Burglary, Robbery And First Degree Murder
- 27 VIII. The Trial Court Committed Reversible Error By Denying Defendant's
Motion To Strike The Notice Of Intent To Seek The Death Penalty
- IX. The Prosecution Committed Misconduct During Closing Argument By
Attacking The Defendant's Post-Arrest Silence

1 affirmed Mr. Chappell's conviction and death sentence. The Nevada Supreme Court
2 concluded that the evidence did not support the torture or depravity of mind
3 aggravator, but held that the death sentence was still supported by the remaining three
4 aggravators. Ex. 2. An order denying rehearing was filed on March 17, 1999. Ex. 3.

5 7. Mr. Chappell sought a writ of certiorari in the United States Supreme
6 Court. The Supreme Court issued an order denying Chappell's petition on October 4,
7 1999. Chappell v. Nevada, 528 U. S. 853 (1999). Remittitur was issued by the Nevada
8 Supreme Court on October 26, 1999. Ex. 150.

9 8. Mr. Chappell filed a proper person petition for writ of habeas corpus (post-
10 conviction) in this Court on October 19, 1999. Ex. 262. He subsequently filed a
11 supplemental petition for writ of habeas corpus on April 30, 2002.² Ex. 43.

-
- 13 X. The State Committed Prosecutorial Misconduct In The Penalty Phase By
14 Appealing To The Jury For Vengeance
15 XI. Appellant Was Denied A Fair Penalty Hearing When The State's
16 Witnesses Implored The Jury To Impose "Death" Upon The Defendant
17 XII. The State Failed To Prove Beyond A Reasonable Doubt The Existence Of
18 Certain Aggravating Circumstances
19 XIII. The Sentence Of Death Was Excessive Considering The Crime And The
20 Defendant.

21 ² The following claims were raised in the supplemental petition for writ of habeas
22 corpus:

- 23 I. Chappell's Conviction And Death Sentence Are Invalid Under The State
24 And Federal Guarantee of Effective Assistance of Counsel, Due Process of
25 Law, Equal Protection Of The Laws, Cross-Examination And
26 Confrontation And A Reliable Sentence Due To The Failure Of Trial
27 Counsel To Provide Reasonably Effective Assistance Of Counsel.
- 28 II. Chappell's Conviction And Sentence Are Invalid Under The State And
29 Federal Constitutional Guarantees Of Due Process, Equal Protection,
30 Impartial Jury From Cross-Section Of The Community, And Reliable
31 Determination Due To The Trial, Conviction and Sentence Being Imposed
32 By A Jury From Which African Americans And Other Minorities Were
33 Systematically Excluded And Under Represented.
- 34 III. Chappell's Conviction And Sentence Are Invalid Under The State And
35 Federal Constitutional Guarantees Of Due Process, Equal Protection Of
36 The Laws, Effective Assistance Of Counsel And Reliable Sentence

1 9. On September 13, 2002, an evidentiary hearing was held at which trial
2 counsel testified. Ex. 109. On June 2, 2004, this Court denied Mr. Chappell's petition
3 as to the guilt phase claims, but granted it as to the penalty phase, finding Mr. Chappell
4 was entitled to a new penalty hearing based on the ineffective assistance of trial
5 counsel for failing to investigate and present mitigating evidence. Ex. 4.

6 10. Mr. Chappell filed a notice of appeal and the State filed a cross appeal.
7 Exs. 152, 153. On April 7, 2006, the Nevada Supreme Court affirmed the grant of a
8 new penalty hearing because Chappell was prejudiced by counsel's deficient
9

10 Because Chappell Was Not Afforded Effective Assistance Of Counsel On
Direct Appeal.

11 IV. Chappell's Conviction And Sentence Are Invalid Under The State And
12 Federal Constitutional Guarantees Of Due Process, Equal Protection Of
The Laws And Reliable Sentence Due To The Failure Of The Nevada
Supreme Court To Conduct Fair And Adequate Appellate Review.

13 V. Chappell's Conviction And Sentence Are Invalid Under The State And
14 Federal Constitutional Guarantees Of Due Process, Equal Protection Of
The Law, Effective Assistance Of Counsel And Reliable Sentence Because
15 The Number Of Jury Instructions Given At Trial Were Faulty And Were
Not The Subject Of Contemporaneous Objection By Trial Counsel, And
16 Not Raised On Direct Appeal By Appellate Counsel.

17 VI. Chappell's Conviction And Sentence Are Invalid Under The State And
Federal Constitutional Guarantees Of Due Process, Equal Protection Of
18 The Law, Effective Assistance Of Counsel And Reliable Sentence Because
The Jury Was Allowed To Use Overlapping Aggravating Circumstances
In Imposing The Death Penalty.

19 VII. The Instructions Given At The Penalty Hearing Failed To Appraise Jury
20 Of The Proper Use Of Character Evidence And As Such The Imposition
Of The Death Penalty Was Arbitrary And Not Based On Valid Weighing
21 Of Aggravating And Mitigating Circumstances In Violation Of The Eighth
Amendment To The Constitution.

22 VIII. Chappell Was Denied His Right Under The Fifth and Sixth, Eighth and
Fourteenth Amendments To The United States Constitution To Due
23 Process, Equal Protection, And Reliable Sentence, And Therefore His
Death Sentence Is Invalid As It Is The Product of Purposeful Racial
24 Discrimination By State Officials.

25 IX. Chappell's Death Sentence Is Invalid Under The Federal Constitutional
Guarantees Of Due Process, Equal Protection, And A Reliable Sentence
26 Because The Nevada Capital Punishment System Operates In An
Arbitrary And Capricious Manner And Does Not Narrow The Class
27 Eligible To Receive The Death Penalty.

1 performance. The court also struck the burglary and robbery aggravators under
2 McConnell v State, 102 P.3d 606 (Nev. 2004), but held that the sexual assault
3 aggravator was still available. Ex. 5. The Nevada Supreme Court issued remittitur on
4 May 2, 2006. Ex. 263.

5 11. The second penalty phase testimony began on March 12, 2007 in this
6 Court, and continued for six days. Exs. 155, 176. The jury found the sole aggravating
7 circumstance alleged by the State, that the murder was committed in the course of a
8 sexual assault. The jury found the following mitigators: (1) Chappell suffered from
9 substance abuse; (2) Chappell had no father figure in his life; (3) Chappell was raised
10 in an abusive household; (4) Chappell was the victim of physical abuse as a child; (5)
11 Chappell was born to a drug/alcohol addicted mother; (6) Chappell suffered a learning
12 disability; and (7) Chappell was raised in a depressed housing area. Ex. 39. The jury
13 found the mitigators did not outweigh the aggravator and imposed a sentence of death.
14 A judgment of conviction was entered on May 10, 2007. Ex. 6.

15 12. Counsel filed an opening brief in the Nevada Supreme Court on June 9,
16 2008. Ex. 156.³ The Nevada Supreme Court affirmed the judgment of conviction on
17

18 ³ The following claims were raised in the opening brief for the penalty retrial:

- 19 A. Chappell's Conviction For First Degree Murder Must Be Reversed
20 Because The Jury Was Not Properly Instructed On The Elements Of The
21 Capital Offense.
- 22 B. Chappell's Conviction For First Degree Murder Must Be Reversed
23 Because The Jury Was Not Properly Instructed On The Elements Of
24 Felony Murder.
- 25 C. Chappell's Sentence of Death Must Be Vacated Because Nev. Rev. Stat.
26 177.055(3) Is Unconstitutional.
- 27 D. Chappell Was Entitled To Review By The District Attorney's Death
Review Committee.
- E. Chappell's Death Sentence Is Unconstitutional Because of the Trial Court
Failed to Dismiss Jurors For Cause Who Would Always Impose A
Sentence of Death.
- F. Chappell's Conviction Is Unconstitutional Because The State Was
Permitted To Introduce Unreliable Hearsay Evidence During The Penalty

1 October 20, 2009. Ex. 9. Mr. Chappell filed a petition for rehearing in the Nevada
2 Supreme Court on October 28, 2009. Ex. 158. The petition for rehearing was denied on
3 December 16, 2009. Ex. 8. A petition for writ of certiorari was noticed on March 1, 2010,
4 and denied by the United States Supreme Court on May 3, 2010. Ex. 158. Remittitur
5 was issued by the Nevada Supreme Court on June 8, 2010. Ex. 159.

6 13. Mr. Chappell filed a proper person petition for writ of habeas corpus (post-
7 conviction) in this Court on June 22, 2010. Ex. 160. Subsequently, a supplemental brief
8 in support of defendant's writ of habeas corpus was filed on February 15, 2012.⁴ Ex.
9 43.

12 Hearing In Support of The Aggravating Circumstance and as Other
13 Matter Evidence.

- 14 G. The District Court Erroneously Admitted Presentence Investigation
15 Reports.
16 H. The District Court Allowed Improper Victim Impact Testimony.
17 I. The District Court Erred In Allowing Admission of Chappell's Prior
18 Testimony.
19 J. The State Committed Prosecutorial Misconduct By Making Arguments
20 Based Upon Comparative Worth Arguments.
21 K. The State Committed Extensive Prosecutorial Misconduct.
22 L. The District Court Failed To Instruct The Jury That The State Was
23 Required To Establish Beyond On Beyond a Reasonable Doubt That
24 Mitigating Circumstances Did Not Outweigh Aggravating
25 Circumstances.
26 M. The Jury's Failure to Find Mitigating Circumstances Was Clearly
27 Erroneous and Requires That the Death Sentence Be Vacated.
N. There Is Insufficient Evidence To Support The Sexual Assault
Aggravator.
O. The Sexual Assault Aggravating Circumstance Is Invalid Under
McConnell v. State.
P. The Judgment Must Be Reversed Because of Cumulative Error.

⁴ The following claims were raised in the supplemental petition for writ of habeas
corpus.

- I. Standard of Review for Ineffective Assistance of Counsel.

-
- II. Mr. Chappell Received Ineffective Assistance of Counsel During the Third Penalty Phase in Violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United State Constitution.
- III. Mr. Chappell Received Ineffective Assistance of Penalty Phase Trial Counsel and Appellate Counsel for Failure to Object to the Cumulative Victim Impact Panel in Violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.
- IV. Penalty Phase Counsel was Ineffective for Failing to Object to Improper Prosecutorial Arguments During the Penalty Phase in Violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.
- V. Penalty Phase Counsel and Penalty Phase Appellate Counsel Was Ineffective for Failing to Raise Several Instances of Improper Prosecutorial Argument Which Should Have Been Raised Simultaneously in Mr. Chappell's Appeal in Violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.
- VI. Mr. Chappell Received Ineffective Assistance of Penalty Phase Counsel and Appellate Counsel for Failure to Object to Improper Impeachment in Violation of the Fifth, Sixth, and Fourteen Amendments to the United States Constitution.
- VII. The District Court Committed Reversible Error in Allowing the Admission of Evidence of Several Bad Acts Thus Violating Appellant's Fifth, Sixth, and Fourteenth Amendment Rights and Warranting Reversal of His Penalty Phase.
- VIII. The Death Penalty is Unconstitutional.
- IX. Mr. Chappell's Death Sentence is Invalid Under the State and Federal Constitutional Guarantees of Due Process, Equal Protection, and a Reliable Sentence, Because the Nevada Capital Punishment System Operates in an Arbitrary and Capricious Manner, U.S. Const. Amends, V, VI, VIII and XIV; NEV, Const. Art. I SECS, 3, 6 and 8; ART IV, SEC. 21.
- X. Mr. Chappell's Conviction and Death Sentence Are Invalid Under the State and Federal Constitutional Guarantees of Due Process, Equal Protection, Trial Before an Impartial Jury and a Reliable Sentence Because the Proceedings Against Him Violate International Law, U.S. Const. Amends. V, VI, VIII and XIV; NEV, CONST, ART. I SECS. 3,6 and 8; ART IV, SEC. 21.
- XI. Chappell's Conviction and Sentence are Invalid Under the State and Federal Constitutional Guarantee of Due Process, Equal Protection of the Laws, Effective Assistance of Counsel and Reliable Sentence Because the Jury Instructions Given at Trial Were Faulty and Were Not the Subject of Contemporaneous Objection by Trial Counsel, Not Raised on Direct Appeal by Appellate Counsel, Not Raised by Penalty Phase Appellate Counsel, and Not Re-Raised by Penalty Phase Counsel.
- XII. Mr. Chappell Received Ineffective Assistance of Counsel Based Upon Cumulative Error.
- XIII. Mr. Chappell is Entitled to an Evidentiary Hearing.

1 14. On February 15, 2012, Mr. Chappell filed motions with this Court seeking
2 funds to hire an investigator, a mitigation specialist, and experts in Fetal Alcohol
3 Spectrum Disorder and sexual assault. Exs. 44, 154, 97. This Court filed a findings of
4 fact, conclusions of law and order on November 16, 2012, denying Mr. Chappell's
5 petition and all pending motions. Ex. 9.

6 15. Mr. Chappell filed an opening brief with the Nevada Supreme Court on
7 January 8, 2014.⁵ Ex. 163. The Nevada Supreme Court issued an order of affirmance
8 on June 18, 2015. Ex. 10. Mr. Chappell filed a petition for rehearing on July 6, 2015.
9 Ex. 164. An order denying rehearing was filed on October 22, 2015. Ex. 164; Ex. 11.
10 The Nevada Supreme Court issued Remittitur on November 17, 2015. Ex. 165.

13 ⁵ The following issues were raised:

- 14 I. The District Court Erred In Failing To Hold An Evidentiary Hearing.
15 II. Standard For Ineffective Assistance Of Counsel.
16 III. Mr. Chappell Received Ineffective Assistance Of Counsel During The
17 Third Penalty Phase In Violation Of The Fifth, Sixth, Eighth And
18 Fourteenth Amendments To The United States Constitution.
19 IV. Mr. Chappell Received Ineffective Assistance Of Penalty Phase Trial
20 Counsel And Appellate Counsel For Failure To Object To The Cumulative
21 Victim Impact Panel In Violation Of The Fifth, Sixth, Eighth, And
22 Fourteenth Amendments To The United States Constitution.
23 V. Penalty Phase Counsel Was Ineffective For Failing To Object To Improper
24 Prosecutorial Arguments During The Penalty Phase In Violation Of The
25 Fifth, Sixth, And Fourteenth Amendments To The United States
26 Constitution.
27 VI. Penalty Phase Counsel And Penalty Phase Appellate Counsel Was
 Ineffective For Failing To Raise Several Instances Of Improper
 Prosecutorial Argument Which Should Have Been Raised Simultaneously
 In Mr. Chappell's Appeal In Violation Of The Fifth, Sixth, Eighth And
 Fourteenth Amendments To The United States Constitution.
 VII. Mr. Chappell Received Ineffective Assistance Of Penalty Phase Counsel
 And Appellate Counsel For Failure To Object To Improper Impeachment
 In Violation Of The Fifth, Sixth, And Fourteenth Amendments.

1 16. Mr. Chappell filed a proper person petition for writ of habeas corpus in
2 the Federal District Court for the District of Nevada on March 23, 2016. Chappell v.
3 Filson, Case No. 3:16-cv-00645, Petition for Writ of Habeas Corpus By A Person in
4 State Custody Sentenced to Death, Dkt. 1 (D. Nev.). On April 4, 2016, the federal court
5 appointed the Federal Public Defender (FPD) to represent Mr. Chappell. Chappell v.
6 Filson, Case No. 3:16-cv-00645, Notice of Appointment, Dkt. 8 (D. Nev.). Mr. Chappell
7 filed an amended petition for writ of habeas corpus on August 17, 2016.⁶ Chappell v.

8
9 ⁶ The following Claims were raised in the amended petition:

- 10 (1) Ineffective assistance of counsel for failing to investigate and prepare for
11 the guilt phase of trial;
- 12 (2) Trial court failed to properly instruct the jury at the guilt phase of trial;
- 13 (3) Ineffective assistance of counsel for failing to investigate and present
14 mitigating evidence at the penalty phase of trial;
- 15 (4) The sexual assault aggravator was not proven by sufficient evidence and it
16 invalid as applied;
- 17 (5) Trial court failed to properly instruct the jury at the penalty phase retrial;
- 18 (6) The State engaged in purposeful discrimination by using peremptory
19 strikes to remove African-American venire members from Mr. Chappell's
20 first trial;
- 21 (7) Trial court erred by failing to strike biased prospective jurors for cause;
- 22 (8) The State engaged in purposeful discrimination by using peremptory
23 strikes to remove African-American venire members at Mr. Chappell's
24 penalty re-trial;
- 25 (9) Trial court erred by failing to strike biased prospective jurors for cause at
26 Mr. Chappell's penalty re-trial;
- 27 (10) Trial court erred by admitting inadmissible evidence;
- (11) The State failed to prove the charges of burglary, robbery, and first degree
 murder;
- (12) Trial court erred by allowing impermissible and cumulative victim-impact
 evidence;
- (13) Death penalty is unconstitutional as imposed and administered in
 Nevada;
- (14) Mr. Chappell's severe mental health impairments render him ineligible
 for the death penalty;
- (15) The prosecutor committed misconduct at the guilt phase;
- (16) The prosecutor committed misconduct at the penalty phase;

1 Filson, Case No. 3:16-cv-00645, Amended Petition for Writ of Habeas Corpus, Dkt. 24
2 (D. Nev.).

3 17. On September 2, 2016, Mr. Chappell filed a motion to stay the federal
4 proceedings and hold them in abeyance, in order to permit him to exhaust any state
5 remedies available. Chappell v. Filson, Case No. 3:16-cv-00645, Motion to Stay and
6 Abeyance, Dkt. 29 (D. Nev.). On September 7, 2016, the State filed an opposition to the
7 motion for stay. Chappell v. Filson, Case No. 3:16-cv-00645, Opposition to Motion to
8 Stay and Abeyance, Dkt. 30 (D. Nev.). On September 16, 2016, Mr. Chappell filed a
9 reply to the State's opposition. Chappell v. Filson, Case No. 3:16-cv-00645, Reply to
10 Opposition to Motion to Stay and Abeyance, Dkt. 34 (D. Nev.). The motion was granted
11 on November 1, 2016. Chappell v. Filson, Case No. 3:16-cv-00645, Order granting
12 Motion to Stay, Dkt. 36 (D. Nev.).

13 18. The instant petition follows.
14
15
16

17 (17) Trial court erred by improperly admitting inadmissible evidence at the
18 penalty re-trial;

19 (18) Mr. Chappell's jury was drawn from a venire from which African-
20 Americans were systematically excluded and unrepresented;

21 (19) First direct appeal counsel were ineffective;

22 (20) Second direct appeal counsel were ineffective;

23 (21) Popularly elected state judges failed to conduct fair and adequate
24 appellate review;

25 (22) Mr. Chappell's conditions of confinement on death row violate the Eight
26 Amendment prohibition on cruel and unusual punishment;

27 (23) Trial Court erred in denying Mr. Chappell's motion to strike the State's
notice of intent to seek the death penalty;

(24) Trial counsel at guilt and penalty phases failed to preserve record of
objections and court rulings for direct appeal and post-conviction litigation;

(25) Execution by lethal injection is unconstitutional;

(26) Mr. Chappell is entitled to relief based upon the cumulative errors in his
trial, appeal, and post-conviction proceedings.

**STATEMENT WITH RESPECT TO CLAIMS RE-RAISED IN THE INSTANT
PETITION**

1. Mr. Chappell re-raises, in the instant petition, the grounds raised on direct appeal to the Nevada Supreme Court because Mr. Chappell is entitled to a cumulative consideration of the constitutional errors which infected his conviction and death sentence. This Court cannot perform an appropriate harmless error review without considering claims that Mr. Chappell has raised previously. The failure to raise these claims adequately on direct appeal was the result of ineffective assistance of counsel on direct appeal. Specifically, Mr. Chappell's direct appeal counsel raised but, in some instances, failed to adequately plead, the following claims: Claim Two (Guilt Phase Jury Instructions) (in part), Claim Four (Sexual Assault Aggravator) (in part), Claim Five (Penalty Phase Jury Instructions) (in part), Claim Six (Batson Guilt Phase) (in part), Claim Seven (Witt Error Guilt Phase), Claim Ten (Trial Court Error Guilt Phase), Claim Eleven (Insufficiency of the Evidence), Claim Twelve (Improper Victim Impact Evidence—Penalty Trial), Claim Fifteen (Prosecutorial Misconduct Guilt Phase), Claim Sixteen (Prosecutorial Misconduct Penalty Phase), Claim Seventeen (Trial Court Error Penalty Trial), Claim Twenty-Three (Trial Court Error in Not Striking the State's Notice of Intent to Seek Death Penalty—First Trial). Claim Twenty-Six (Cumulative Error) (in part).

2. Furthermore, Mr. Chappell re-raises, in the instant petition, claims which were previously raised during his prior post-conviction proceedings because state post-conviction counsel failed to adequately develop, present, or demonstrate prejudice with respect to those claims. Under state law, Mr. Chappell had a right to the effective assistance of counsel during the previous state habeas proceedings, and Mr. Chappell did not consent to the failure to develop or adequately present any available constitutional claim or knowingly and intelligently waive any such claim. Mr. Chappell

1 did not voluntarily conceal from or fail to disclose to appointed-counsel any fact
2 relevant to any available constitutional claim. Specifically, Mr. Chappell's previous
3 post-conviction counsel, David Schieck and Chris Oram, were ineffective in failing to
4 present the additional information contained in Claim One (IAC Guilt Phase), Claim
5 Two (Guilt Phase Jury Instructions), Claim Three (IAC Penalty Phase), Claim Four
6 (Sexual Assault Aggravator), Claim Five (Penalty Phase Jury Instructions), Claim Six
7 (Batson Guilt Phase), Claim Nine (Witt Error Penalty Phase), Claim Ten (Trial Court
8 Error Guilt Phase), Claim Eleven (Insufficiency of the Evidence), Claim Twelve
9 (Improper Victim Impact Evidence—Penalty Trial), Claim Thirteen (Death Penalty is
10 Unconstitutional), Claim Fifteen (Prosecutorial Misconduct Guilt Phase), Claim
11 Sixteen (Prosecutorial Misconduct Penalty Phase), Claim Nineteen (IAC of First Direct
12 Appeal Counsel), Claim Twenty (IAC of Second Direct Appeal Counsel), Claim Twenty-
13 three (Trial Court Error in Not Striking the State's Notice of Intent to Seek Death
14 Penalty—First Trial), Claim Twenty-five (Lethal Injection), Claim Twenty-six
15 (Cumulative Error). There is a reasonable probability of a more favorable outcome at
16 either post-conviction proceeding if counsel had performed effectively. The newly
17 developed facts, which are outlined in detail in the above-referenced claims
18 demonstrate that Mr. Chappell was prejudiced by his previous state post-conviction
19 counsel's ineffective assistance.

20 3. Good cause exists to excuse any failure to previously develop the factual
21 basis for claims stemming from Mr. Chappell's second penalty phase. This Court failed
22 to grant an evidentiary hearing, preventing Mr. Chappell from adequately developing
23 the factual basis for his claims. In particular, the court's refusal to grant investigative
24 or expert funds, or to conduct an evidentiary hearing, constitutes good cause for re-
25 raising Claim Three (IAC Penalty Phase), Claim Thirteen (Death Penalty is
26 Unconstitutional), Claim Twenty (IAC of Second Direct Appeal Counsel), and Claim
27 Twenty-six (Cumulative Error). The newly developed facts, which are outlined in the

1 claims referenced above, demonstrate that Mr. Chappell was prejudiced by the court's
2 failure to grant him a full and fair opportunity to litigate his second state post-
3 conviction petition.

4 4. Application of procedural default to bar consideration of Mr. Chappell's
5 constitutional claims would violate due process and equal protection under the state
6 and federal constitutions, because the Nevada Supreme Court applies or disregards
7 default rules arbitrarily and treats similarly-situated habeas petitioners inconsistently
8 with regard to procedural default.

9 **STATEMENT WITH RESPECT TO CLAIMS RAISED FOR THE FIRST TIME**
10 **IN THE INSTANT PETITION**

11 1. Mr. Chappell has raised new grounds for relief in the instant post-
12 conviction petition. These claims that have not been raised previously due to ineffective
13 assistance of trial, appellate, and state post-conviction counsel. Martinez v. Ryan, 132
14 S. Ct. 1309 (2012); Maples v Thomas, 132 S. Ct. 912 (2012); Evitts v. Lucey, 469 U.S.
15 387, 395–97 (1985); Strickland v. Washington, 644 U.S. 668, 687-91 (1984); Crump v.
16 Warden, 113 Nev. 293, 302-3, 934 P.2d 247, 254 (1997). Specifically, the following
17 claims are new, in whole or in part: Claim One (in part); Claim Two (in part); Claim
18 Three (in part); Claim Five (in part); Claim Eight, Claim Nine, Claim Thirteen (in
19 part), Claim Fourteen, Claim Eighteen, Claim Nineteen (in part), Claim Twenty (in
20 part), Claim Twenty-One, Claim Twenty-two, Claim Twenty-Four, Claim Twenty-Five,
21 Claim Twenty-Six (in part).

22 2. Mr. Chappell also alleges that this Court prevented counsel from
23 litigating Mr. Chappell's constitutional claims in the previous post-conviction
24 proceedings, and violated Mr. Chappell's state and federal constitutional right to due
25 process, by denying necessary funds and preventing him from developing the facts
26 necessary to prove his claims. Mr. Chappell was prevented from proving the necessary
27

1 elements of his ineffective assistance of counsel claims by this Court's refusal to admit
2 and consider relevant evidence, and concomitant failure to provide resources adequate
3 to allow counsel to fully and fairly litigate these constitutional issues. This Court's
4 denial of funds rendered the state corrective process inadequate. Specifically, Mr.
5 Chappell was prevented from litigating Claim One (IAC Guilt Phase) and Claim Three
6 (IAC Penalty Phase).

7 3. Mr. Chappell was prevented from raising certain facts supporting Claim
8 Fifteen G by the State's failure to disclose material exculpatory and impeachment
9 evidence. Brady v. Maryland, 373 U.S. 83, 87 (1963). Other claims are being raised for
10 the first time due to intervening changes in the law.

1 **PRIOR COUNSEL**

2 The attorneys who previously represented Mr. Chappell were appointed by the
3 courts. They were:

- 4 a. 1996 Pre-trial, Trial and Sentencing Proceedings:
5 Howard Brooks (Clark County Public Defender)
6 Willard Ewing (Clark County Public Defender)
7 b. First Direct Appeal:
8 Howard Brooks (Clark County Public Defender)
9 Michael Miller (Clark County Public Defender)
10 c. State Post-Conviction (Guilt and First Penalty):
11 David Schieck (Private)
12 d. 2007 Penalty Re-trial:
13 David Schieck (Clark County Special Public Defender)
14 Clark Patrick (Clark County Special Public Defender)
15 f. Second Direct Appeal:
16 JoNell Thomas (Clark County Special Public Defender)
17 g. State Post-Conviction (Second Penalty):
18 Christopher Oram (Private)
19

20 **GROUND FOR RELIEF**

21 Mr. Chappell alleges the following grounds for relief from the judgment of
22 conviction and sentence. References in this Petition to the accompanying exhibits
23 incorporate the contents of the exhibit as if fully set forth herein. References to one
24 claim within another claim incorporate all of the arguments contained within the
25 incorporated claim as if fully set forth therein.
26
27

1 **CLAIM ONE (IAC GUILT PHASE)**

2 Mr. Chappell's conviction is invalid under federal constitutional guarantees of
3 due process, confrontation, right to counsel, a reliable sentence, and equal protection
4 due to the ineffective assistance of trial counsel during the pretrial and guilt phases of
5 the 1996 capital proceeding. U.S. Const. Amends. V, VI, VIII, XIV; Nev. Const. art. 1,
6 §§ 1, 6, 8, and art. 4 § 21.

7 **SUPPORTING FACTS**

8 1. From the outset of this case, James Chappell accepted responsibility for
9 the death of Deborah Panos, his long-time girlfriend and mother of his three children.
10 His position has always been that he committed the offense in the heat of passion, after
11 learning that Ms. Panos had cheated on him. While trial counsel accepted this position,
12 they ineffectively failed to investigate the case, hold the State to its burden of proof, or
13 present a defense in a coherent and persuasive manner.

14 2. Reasonably competent counsel would have investigated and presented
15 evidence that Mr. Chappell suffered from Fetal Alcohol Spectrum Disorder (FASD),
16 specifically Alcohol Related Neurodevelopmental Disorder (ARND), rebutting the
17 State's theory that Mr. Chappell intentionally, knowingly, and with premeditation
18 caused Ms. Panos's death. Furthermore, counsel were deficient in failing to effectively
19 challenge the State's evidence at the guilt phase by calling lay witnesses to testify on
20 behalf of Mr. Chappell.

21 3. Counsel also failed to argue that Mr. Chappell was not guilty of burglary
22 due to the fact he was a legal resident of the home he shared with Ms. Panos. This
23 argument would have precluded the jury from convicting Chappell of felony-murder
24 based upon burglary as the underlying predict act.

1 4. In addition, counsel failed to withdraw the defense stipulation⁷ when it
2 became apparent the court was going to admit evidence of Mr. Chappell's prior bad
3 acts despite the stipulation; failed to request a continuance to investigate the guilt-
4 phase case after it became apparent the focus of the State's case was going to be the
5 long relationship between Mr. Chappell and Ms. Panos; failed to investigate the prior
6 bad acts presented at the Petrocelli⁸ hearing; failed to properly prepare psychologist
7 Lewis Etcoff and James Chappell for their testimony; failed to present evidence that
8 pre-ejaculation fluids carry sperm; failed to raise necessary objections; failed to
9 rehabilitate potential jurors after they expressed some discomfort with the death
10 penalty; and waived Mr. Chappell's right to confront the State's DNA expert within the
11 meaning of Crawford v. Washington, 541 U.S. 36 (2004); Ohio v. Roberts, 448 U.S. 56
12 (1980).

13 **A. Mr. Chappell had a Sixth Amendment right to the effective**
14 **assistance of counsel at trial**

15 5. The Sixth Amendment guarantees that a person accused of a crime
16 receive the effective assistance of counsel for his defense. An ineffective assistance of
17 counsel claim has two components: the petitioner must show that counsel's
18 performance was deficient, and that the deficiency prejudiced the defense. Strickland
19 v. Washington, 466 U.S. 668, 687 (1984); accord Porter v. McCollum, 558 U.S. 30, 38-
20 39 (2009) (per curiam); Wiggins v. Smith, 539 U.S. 510, 521 (2003); Crace v. Herzog,
21 798 F.3d 840, 846 (9th Cir. 2015); Rippo v. State, 368 P.3d 729, 733-34 (Nev. 2016)
22 (citing to two-prong test set forth in Strickland).

25 ⁷ At trial, the defense stipulated that Mr. Chappell: (1) entered the trailer rented
26 to Ms. Panos through a window; (2) engaged in sexual intercourse with Panos; (3)
27 caused the death of Panos by stabbing her with a kitchen knife; and (4) and was jealous
of Panos. Ex. 135 at 121-22.

⁸ Petrocelli v. State, 692 P.2d 503 (Nev. 1985).

1 6. To establish deficiency, a petitioner must show his counsel's
2 representation fell below an objective standard of reasonableness. Porter, 558 U.S. at
3 38-39 (quoting Strickland, 466 U.S. at 688). The Supreme Court has reiterated that it
4 applies a "case-by-case approach to determining whether an attorney's performance
5 was unconstitutionally deficient under Strickland." Rompilla v. Beard, 545 U.S. 374,
6 393-94 (2005) (O'Connor, J., concurring) (citing Strickland, 466 U.S. 668).

7 7. Deficient performance is performance that is "inconsistent with the
8 standard of professional competence in capital cases that prevailed [at the time of the
9 trial]." Cullen v. Pinholster, 563 U.S. 170, 196 (2011). The Supreme Court has
10 repeatedly assessed the reasonableness of counsel's performance by looking to
11 "[p]revailing norms of practice as reflected in [the] American Bar Association
12 standards." Strickland, 466 U.S. at 688; Wiggins, 539 U.S. at 524; see also Padilla v.
13 Kentucky, 559 U.S. 356, 367 (2010) (noting that the ABA Standards "may be valuable
14 measures of the prevailing professional norms of effective representation"); Rompilla,
15 545 U.S. at 387 ("[W]e long have referred [to the ABA Standards for Criminal Justice]
16 as "guides to determining what is reasonable."" (quoting Wiggins, 539 U.S. at 524)).

17 8. ABA Guideline 11.4.1 speaks about the investigation necessary in a
18 capital case, requiring counsel to "conduct independent investigation relating to the
19 guilt/innocence phase . . . immediately upon counsel's entry into the case and should
20 be pursued expeditiously." ABA Guidelines for the Appointment and Performance of
21 Counsel in Death Penalty Cases, 31 HOFSTRA L. REV. 913 (1989) ("1989 ABA
22 Guidelines"); Guideline 11.4.1(A). The Guidelines also state that the "investigation for
23 preparation of the guilt/innocence phase of the trial should be conducted regardless of
24 any admission or statement by the client concerning facts constituting guilt." 1989
25 Guideline 11.4.1(B). The same Guidelines urge capital counsel to interview potential
26 witnesses, including "witnesses familiar with aspects of the client's life history that
27 might affect the likelihood that the client committed the charged offense(s)" 1989

1 Guideline 11.4.1(D)(3). 1989 Guideline 11.4.1 also requires capital counsel to secure
2 the assistance of experts where it is necessary or appropriate for the “preparation of
3 the defense,” an “adequate understanding of the prosecution’s case,” and “rebuttal of
4 any portion of the prosecution’s case at the guilt/innocence phase. . . .” 1989 Guideline
5 11.4.1(D)(7).

6 9. To establish prejudice, the standard is whether there is a reasonable
7 probability that, absent the errors by counsel, the factfinder would have had a
8 reasonable doubt respecting guilt. Hardy v. Chappell, __ F.3d. __, 2016 WL 4247752
9 (9th Cir. Aug. 11, 2016) (citing Strickland).

10 **B. The Clark County Public Defender’s Office (CCPD) was appointed to**
11 **represent Mr. Chappell**

12 10. On September 8, 1995, at his initial arraignment in the Justice Court, the
13 Clark County Public Defender’s Office (“CCPD”) was appointed to represent Mr.
14 Chappell. Ex. 95; Ex. 177. Two days later, on September 10, 1995, Deputy Public
15 Defender Howard Brooks became Mr. Chappell’s lead trial attorney. Ex. 109 at 5.

16 11. At the time he was assigned to represent Mr. Chappell, Mr. Brooks had
17 been practicing for seven years, five of them as a deputy public defender. Ex. 109 at 4-
18 5; Ex. 118 at ¶4. Mr. Brooks was assigned to CCPD’s murder team, and he carried a
19 case load of about ten murder cases—which Mr. Brooks acknowledged was a heavy
20 caseload. Ex. 109 at 5-6; Ex. 118 at ¶¶4-5. Mr. Chappell’s case was Mr. Brooks’s second
21 capital trial. Ex. 118 at ¶4. The first capital trial was the Chris Schoels case, which
22 occurred in the fall of 1995. Mr. Brooks was Rule 250 qualified⁹ after the Schoels case
23 and had previously worked on two other non-capital murder cases. Ex. 109 at 6. As
24 this was only Mr. Brooks’s second capital case, he did not fully appreciate or
25 understand how to adequately prepare and litigate a capital case. Ex. 118 at ¶4.

26
27 ⁹ Nevada Supreme Court Rule 250(2) describes the qualifications needed to
be appointed to represent an indigent defendant in a capital case.

1 12. Deputy Public Defender Willard Ewing was assigned to work as second
2 chair counsel on Mr. Chappell's case in approximately August 1996, about two months
3 before the start of Mr. Chappell's trial. Ex. 109 at 6-7, 56; Ex. 118 at ¶5; Ex. 120 at ¶4.
4 Mr. Ewing met Mr. Chappell for the first time on September 16, 1996, less than one
5 month before the start of trial. Ex. 102. Mr. Ewing had been an attorney for six years
6 at the time of Mr. Chappell's trial, approximately four of them at the CCPD. *Id.* at 55-
7 56¹⁰; Ex. 120 at ¶¶2-3. Mr. Chappell was Mr. Ewing's first capital murder case, and
8 possibly the first murder case he tried. Ex. 109 at 57; Ex. 120 at ¶4. Mr. Ewing was
9 not Rule 250 qualified. Ex. 109 at 6-7, 57. He was assigned to the case so close to trial
10 because the CCPD wanted to get Mr. Ewing Rule 250 qualified. Ex. 120 at ¶4.

11 13. Mr. Chappell's case was essentially Mr. Brooks's case, and he worked on
12 it from the beginning. Ex. 109 at 7. Mr. Brooks was in charge of the guilt phase case,
13 with the exception of Dr. Etcoff, who was Mr. Ewing's witness. Mr. Ewing was in
14 charge of the penalty phase case, with the exception of Lansing Parole Officer William
15 Moore, who was Mr. Brooks's witness. *Id.* at 7, 56. Mr. Ewing also did much of the
16 voir dire questioning, even though this was his first capital case.

17 **C. Trial counsel were ineffective for failing to investigate and prepare**
18 **for the guilt phase of trial**

19 **1. Trial counsel were ineffective for failing to investigate the**
20 **State's case prior to the Petrocelli hearing**

21 14. The State filed their witness lists (Order to Endorse Names on
22 Information) on July 9, 1996, Ex. 126, July 15, 1996, Ex. 98, August 22, 1996, Ex. 99,
23 September 4, 1996, Ex. 101, and October 14, 1996, Ex. 106. Trial counsel never
interviewed any of these witnesses noticed by the State.

24 15. On May 9, 1996, the State filed a motion to admit prior bad acts involving
25 Mr. Chappell, mainly with respect to his prior domestic violence against Ms. Panos.

26
27 ¹⁰ Mr. Ewing left the CCPD in 1990 and returned in 1993 or 1994. Ex. 109
at 55-56.

1 Ex. 109 at 8; Ex. 17. The State filed a supplement to that motion on August 29, 1996.
2 Ex. 18. As a result of these filings, counsel figured out that the focus of the State's case
3 was going to be the long-term relationship between Ms. Panos and Mr. Chappell:
4 specifically, the history of domestic abuse. Ex. 17; Ex. 18; Ex. 102. The State's strategy
5 caught defense counsel by surprise as counsel believed, up to that point, that the case
6 was going to center around the facts of the instant offense and whether the State could
7 prove first-degree murder, second-degree murder, or voluntary manslaughter. Ex. 109
8 at 44. If trial counsel had interviewed the witnesses listed by the State, they would
9 have sooner recognized that the trial would focus on Mr. Chappell and Ms. Panos's
10 relationship and history of domestic violence. Ex. 109 at 43-44.

11 16. Mr. Brooks wanted to limit the guilt phase evidence to the facts
12 surrounding Ms. Panos's death, making an argument that the killing was either
13 voluntary manslaughter or, at the most, second-degree murder. Ex. 109 at 8. Mr.
14 Brooks intended to prevent the prior domestic battery priors from being introduced
15 into evidence in the guilt phase "by eliminating the issue of the identity of the killer."
16 Mr. Brooks also wanted to limit the State's evidence of prior domestic violence so that
17 Mr. Chappell would have credibility with the jury when he testified to the events
18 surrounding Ms. Panos's death. Ex. 109 at 8.

19 17. Without having interviewed any of the State's witnesses, Mr. Brooks
20 concluded that stipulating that Mr. Chappell killed Ms. Panos would render the prior
21 bad act evidence irrelevant and focus the jury on whether the killing was voluntary
22 manslaughter versus focusing on the issues of domestic violence between Mr. Chappell
23 and Ms. Panos. Ex. 109 at 8.

24 18. In early September 1996, about a month before the commencement of
25 trial, Mr. Brooks discussed with Mr. Chappell the idea of entering into the stipulation.
26 And based upon Mr. Brooks's recommendation, Mr. Chappell agreed. Mr. Brooks filed
27

1 the offer to stipulate to facts on September 10, 1996. Ex. 109 at 8-9; Ex. 20. The offer
2 to stipulate read was as follows:

3 1. That James Chappell on August 31, 1995, entered the trailer
4 rented to Deborah Ms. Panos through a window;

5 2. That James Chappell engaged in sexual intercourse with
6 Deborah Ms. Panos on August 31, 1995, and

7 3. That James Chappell caused the death of Deborah Ms. Panos by
8 stabbing her with a kitchen knife and the act was not an accident.

9 4. That James Chappell was jealous of Deborah Ms. Panos giving
10 attention to, or receiving attention from, other men.

11 Ex. 20.

12 19. The same day he filed the stipulation, Mr. Brooks also filed a motion to
13 hold a hearing within the meaning of Petrocelli, 692 P.2d 503—compelling the State to
14 present “clear and convincing” evidence of the alleged prior acts in a hearing before the
15 commencement of the trial, Ex. 22—and another motion objecting to the admission of
16 the other crimes evidence based on Mr. Chappell’s proffered stipulation. Ex. 19.

17 20. Despite the witness lists filed by the State, counsel’s recognition that the
18 State intended to focus on the prior bad acts, and the upcoming Petrocelli hearing,
19 which defense counsel requested, trial counsel still failed to interview any of the
20 witnesses noticed by the State prior to the Petrocelli hearing. Ex. 118 at ¶12.
21 According to Mr. Brooks, at the time of Mr. Chappell’s trial, he did not know how to
22 use an investigator because the ones employed at the CCPD were not very good. Id.

23 21. The Petrocelli hearing was held on October 7, 1996. Though the defense
24 believed the State would be required to prove the prior bad acts through live witness
25 testimony, the trial court allowed the State to simply make a proffer as to what its
26 witnesses would testify to if called. Ex. 111 at 12-13, 20-21, 29, 31-32. At the conclusion
27 of the hearing, based solely on the State’s proffer, the court ruled that the following
evidence would be admitted against Mr. Chappell: episodes of domestic violence that

1 occurred in February 1994 in Tucson, December 1994 in Las Vegas, January 1995 in
2 Las Vegas, and June 1995 in Las Vegas; University Medical Center (UMC) records
3 related to the January 1995 episode of domestic violence; threats from Mr. Chappell
4 that a witness heard during various telephone calls in February, September, and
5 November 1994; and evidence of a temporary protective order requested by Ms. Panos
6 against Mr. Chappell in January 1995. This evidence included witness testimony from
7 Lisa Duran, Dina Freeman, City of Tucson Police Officer Jeri Earnst, Las Vegas Metro
8 Police Officer Daniel Giersdorf, and Las Vegas Metro Police Officer Allen Williams. Ex.
9 111 at 31-33.

10 22. If they had interviewed these witnesses prior to the hearing, trial counsel
11 would have been better prepared to rebut their proffered testimony and convince the
12 trial judge not to allow the prior bad act evidence in at trial. Ex. 109 at 44. Counsel
13 did not have a strategic reason for not conducting these interviews. Ex. 118 at ¶12.

14 23. Defense counsel also would have been better prepared to rebut the State's
15 evidence at trial. As counsel admitted, the defense had to limit the testimony about Mr.
16 Chappell and Ms. Panos's relationship and prior acts of domestic violence for Mr.
17 Chappell to receive a fair trial. Ex. 109 at 10. But without an investigation into the
18 prior acts, counsel was impotent to rebut the State's case. Ex. 109 at 14, 52.

19 24. For example, the defense narrative in this case was that Mr. Chappell and
20 Ms. Panos had a rocky relationship, made up of a series of fights, break-ups, and
21 reconciliations, but most importantly the two loved one another and were still in a
22 committed relationship. According to the defense case, Mr. Chappell went home after
23 his release from jail on August 31 for another of those reconciliations. It was only when
24 he returned home did Mr. Chappell learn the truth, and after discovering that Ms.
25 Panos had been unfaithful to him, he killed her in a jealous rage. Ex. 132 at 44-51.

26 25. However, the State's witnesses portrayed an entirely different scenario—
27 this one involving Mr. Chappell repeatedly abusing Ms. Panos, Mr. Chappell stealing

1 from Ms. Panos and their children, and Ms. Panos being nervous about Mr. Chappell's
2 ultimate release from jail.¹¹ And because counsel had not interviewed any of the State's
3 witnesses, nor investigated the allegations of prior domestic violence, the defense was
4 ill-equipped to rebut the State's damaging evidence, other than with their own client's
5 testimony—(see subsection 3(b), post).

6 26. If counsel had conducted an investigation as required, the defense would
7 have been able to defend their client against the State's damaging and almost
8 completely un rebutted allegations. Counsel's failure fell below objective standards of
9 reasonableness.

10 2. **Following the Petrocelli hearing, trial counsel were ineffective**
11 **for failing to withdraw the stipulation, seek a continuance, and**
prepare a defense to the prior bad act evidence

12 27. Despite the court's ruling that the State could present evidence of prior
13 incidents of domestic violence between Ms. Panos and Mr. Chappell, Ex. 109 at 9, Mr.
14 Brooks did not withdraw the offer to stipulate that Mr. Chappell killed Ms. Panos. This
15 is so even though Mr. Brooks was still convinced that Mr. Chappell would not get a fair
16 trial if the evidence was introduced. Ex. 109 at 9-10. What is worse, Mr. Brooks did
17 not even sign the stipulation until October 10, 1996, after the trial court's ruling at the
18 Petrocelli hearing. Ex. 135 at 122; Ex. 21. The stipulation was entered into evidence
19 before the jury on October 11, 1996, during the State's case in chief. Ex. 135 at 121-22.

20 28. Trial counsel's failure to withdraw the stipulation in light of the court's
21 order admitting evidence of prior bad acts of domestic violence fell below an objective
22 standard of reasonableness. By making the admissions that Mr. Chappell did in the
23

24 ¹¹ The State intentionally obscured evidence that would have undermined the
25 State's theory and bolstered the defense narrative that Mr. Chappell acted in the heat
26 of passion after first learning that Ms. Panos had relations with another man. At least
27 one of the State's witnesses was requested by the prosecution not to mention Ms.
Panos's relationship with another man, Willie Wiltz, Jr., "because she believed that the
defense attorneys might use the relationship to assist their heat of passion defense."
Ex. 326 at ¶10.

1 stipulation, the defense unconstitutionally failed to hold the State to its burden of proof.
2 See Ex. 142 at 83-85 (State’s closing argument centering on the stipulation entered into
3 by Chappell).

4 29. Furthermore, trial counsel’s failure to interview witnesses regarding the
5 prior bad act acts, or to investigate possible defenses to this evidence, despite already
6 knowing the evidence of prior domestic violence would be admitted, fell below an
7 objective standard of reasonableness.

8 30. To the extent that trial counsel needed additional time to undertake and
9 complete such an investigation, counsel were ineffective for failing to seek a
10 continuance. Even counsel admitted later that he “probably should have [moved for a
11 continuance].” Ex. 109 at 14, 18-19.

12 31. In addition, counsel’s reasoning for not moving for a continuance was
13 unreasonable. According to defense counsel, “[i]t was a matter of we were there, I was
14 going to get the case done.” Ex. 109 at 19; accord Ex. 118 at ¶6. But counsel also knew
15 that they had not done any investigation into the prior domestic acts of violence Mr.
16 Chappell committed and had not interviewed any of the State’s witnesses. And because
17 it was clear to counsel that the State’s case was going to focus on those prior acts and
18 the turbulent relationship between Mr. Chappell and Ms. Panos, counsel’s failure to
19 request a continuance to investigate placed their client in a weakened position—being
20 on the eve of trial with no investigation and no defense. Counsel had valid reasons for
21 requesting a continuance and failed to do so. That action was not strategic and
22 amounted to deficient performance.

23 32. Nor was counsel’s other reason for not requesting a continuance—
24 believing that the judge would deny it, Ex. 109 at 19-20—in any way strategic. In
25 short, once the defense realized they had not investigated the State’s case, counsel
26 should have requested a continuance. Counsel’s failure to do so, and to withdraw the
27 stipulation, prejudiced Mr. Chappell.

1 33. As will be explained, there was a plethora of evidence available to counsel
2 that a full and reasonable investigation would have uncovered, which would have
3 rebutted the State's case.

4 **3. Trial counsel were ineffective for failing to adequately prepare**
5 **the testifying witnesses they did present**

6 34. In support of their defense that Mr. Chappell acted in the heat of passion,
7 trial counsel presented a mere three witnesses: Bret Robello, a former Las Vegas
8 neighbor of Mr. Chappell and Ms. Panos who testified that the trailer Mr. Chappell
9 and Ms. Panos inhabited was normally messy;¹² Mr. Chappell himself; and psychologist
10 Lewis Etkoff, who relied almost entirely on Mr. Chappell's own statements in forming
11 his opinions. Counsel's failure to prepare their witnesses amounted to deficient
12 performance.

13 a. **Dr. Etkoff**

14 35. On April 23, 1996, Mr. Brooks contacted, for the first time, psychologist
15 Dr. Lewis Etkoff. Mr. Brooks requested that Dr. Etkoff evaluate Mr. Chappell
16 regarding possible mitigating circumstances. Specifically, Dr. Etkoff was asked to
17 conduct a "criminal psychological evaluation." Ex. 178; Ex. 172 at 3-7; Ex. 85 at ¶7.

18 36. Dr. Etkoff was not asked to conduct a full neuropsychological battery nor
19 was he provided any information from the defense team indicating that Mr. Chappell
20 might suffer from brain damage. Ex. 85 at ¶7.

21
22
23 ¹² Mr. Robello, an EMS worker and former law enforcement employee, who
24 testified that he heard other couples living in the same trailer space occupied by Mr.
25 Chappell and Ms. Panos fighting and making up, Ex. 137 at 8, would have testified
26 that he saw no evidence of either drug abuse or domestic violence from Mr. Chappell
27 or Ms. Panos. Ex. 332 at ¶4. He never saw Mr. Chappell intoxicated or in poor hygiene;
he never saw bruises on Ms. Panos or any evidence that she was afraid of Mr. Chappell;
he never heard arguing or strange noises from the thin-walled trailer Mr. Chappell and
Ms. Panos occupied. Ex. 332 at ¶4-5. Trial counsel were ineffective for not eliciting
from Mr. Robello information beyond the fact that the trailer was messy on the one
occasion he saw portions of the inside. Ex. 137 at 9.

1 37. In preparation for the evaluation, Dr. Etkoff reviewed only a handful of
2 records including the police report of the crime, a statement made by Lisa Duran, and
3 some letters purportedly written by Mr. Chappell to Ms. Panos. Dr. Etkoff was also
4 made aware of a watered-down version of Mr. Chappell's history of domestic abuse
5 against Ms. Panos through Mr. Chappell's self-reporting to Dr. Etkoff, which tended to
6 minimize the incidents and leave out crucial details. Ex. 172 at 11-14; Ex. 85 at ¶8.

7 38. On June 10, 1996, Mr. Brooks visited Mr. Chappell at the jail and assisted
8 Mr. Chappell with the filling out of a forensic life history questionnaire.¹³ Mr. Brooks
9 then delivered that life history document to Dr. Etkoff's office. Ex. 85 at ¶8. On June
10 11, 1996, Mr. Chappell was transported to Dr. Etkoff's office for an evaluation. Exs.
11 178-79.

12 39. At the evaluation, Mr. Chappell was given three hours of testing that
13 included an intelligence test (the Weschler Adult Intelligence Scale Revised (WAIS-
14 Revised)) and a personality test (the Millon Clinical Multiaxial Inventory).¹⁴ The
15 testing was not a full neuropsychological battery, nor was it intended to reveal whether
16 Mr. Chappell suffered from brain damage. Dr. Etkoff also interviewed Mr. Chappell
17 for about two hours regarding Mr. Chappell's psycho-social and medical history. Ex.
18 172 at 12, 17, 22; Ex. 85 at ¶7, 10.

19 40. On June 13, 1996, Dr. Etkoff wrote a report for defense counsel based on
20 his testing, evaluation, and interview with Mr. Chappell. Ex. 107; Ex. 172 at 12-13. In
21 that report, Dr. Etkoff explained the scoring on the achievement and personality tests,
22 discussed his clinical interview with Mr. Chappell, and diagnosed Mr. Chappell with a
23 severe learning disability and Borderline Personality Disorder with avoidant, self-
24

25
26 ¹³ Dr. Etkoff created this forensic life history questionnaire for criminal
defendants he was asked to evaluate. Ex. 85 at ¶8,

27 ¹⁴ A member of Dr. Etkoff's staff gave Mr. Chappell the WAIS-Revised, and Mr.
Chappell took the personality test by audio-tape. Ex. 172 at 45.

1 defeating, and schizoid personality features. Ex. 107. As Dr. Etcoff was going to testify
2 as a penalty-phase expert, Dr. Etcoff found the following mitigating factors in Mr.
3 Chappell's case: the death of Mr. Chappell's mother when Mr. Chappell was two years
4 old; no involvement with his father throughout Mr. Chappell's life; Mr. Chappell's
5 grandmother was an inadequate and physically abusive parental figure; Mr. Chappell
6 suffered from a neurologic-based receptive language disorder which correlates with
7 aggressive acting out in children and teens; Mr. Chappell developed feelings of low self-
8 worth and personal inadequacy which resulted in his having Borderline Personality
9 Disorder; the development of Mr. Chappell's Borderline Personality Disorder was the
10 result of his low self-worth, humiliating childhood experiences, and the absence of a
11 normal adult role-model during childhood; Mr. Chappell's cocaine dependence was an
12 understandable occurrence because he used dependence on drugs as a means to escape
13 his feelings of inadequacy and low self-worth; that as a result of his cocaine dependence,
14 Mr. Chappell was unable to have the normal opportunities to learn to cope with his
15 problems and to find success in his life which would have led to greater self-worth and
16 less anxiety concerning the loss of a loved one; and finally, while in jail, Mr. Chappell
17 became so fearful and anxious about losing Ms. Panos that he was less able to think
18 logically and rationally, which contributed to his impetuously taking Ms. Panos's life.
19 Ex. 107 at 11-12.

20 41. Dr. Etcoff also stated in his report that Mr. Chappell's borderline
21 personality disorder contributed to his unstable mood and difficult interpersonal
22 relationships and that Mr. Chappell's poor self-image was manifested within his
23 intense, interpersonal relationships characterized by the extremes of over-idealizing
24 Ms. Panos and devaluing Ms. Panos. According to Dr. Etcoff, Mr. Chappell's
25 personality disorder was manifested in inappropriate intense anger and lack of control
26 of anger, and culminated in the months leading up to the killing when he believed he
27 was losing Ms. Panos, the "one source of strength in his life." Ex. 107 at 12.

1 42. On September 18, 1996, Mr. Brooks sent Mr. Chappell's school records to
2 Dr. Etkoff and asked him to review and incorporate them into a revised report. Ex. 85
3 at ¶8.

4 43. About a week before the start of the trial, on September 27, 1996, Mr.
5 Brooks reversed course and requested that Dr. Etkoff testify instead at the guilt-phase
6 regarding Mr. Chappell's personality features as it related to intent and the killing of
7 Ms. Panos. Ex. 85 at ¶11. Intent was not an area that Dr. Etkoff normally testified to
8 as the majority of his work on criminal cases involved whether mitigation evidence
9 existed or whether a defendant was competent to stand trial. Ex. 85 at ¶¶6, 11.

10 44. Dr. Etkoff prepared a supplemental report for defense counsel on
11 September 28, 1996, adding his analysis of Mr. Chappell's school records. Ex. 178.

12 45. Because counsel failed to conduct a reasonable investigation at the guilt-
13 phase, Dr. Etkoff was not able to properly form a basis for his opinion, which left him
14 vulnerable later when he testified at the trial.

15 46. At the time of Mr. Chappell's trial in 1996, Dr. Etkoff did not have much
16 experience with criminal forensic work. His work mainly involved private practice as
17 a clinical psychologist and neuropsychologist, conducting psychological and
18 neuropsychological evaluations of children, adolescents, and adults in connection with
19 child custody and personal injury cases. Only about 10% of Dr. Etkoff's practice at that
20 time involved criminal cases. Ex. 85 at ¶¶4, 6, 9.¹⁵

21 47. Because of his lack of experience in criminal matters, Dr. Etkoff took his
22 direction from defense counsel on what records he should review for purposes of his
23 evaluation of a defendant. However, even in 1996, Dr. Etkoff knew that it was better
24 to review as much information as possible about a defendant in order to conduct a
25 proper forensic criminal mental health evaluation and to build a case, including
26

27 ¹⁵ Dr. Etkoff stopped working on criminal cases in the early 2000s. Ex. 85 at ¶6.

1 speaking with independent sources for corroboration of what the defendant self-
2 reported, and receiving and reviewing as many records as possible. This included a
3 review of medical and mental health records, criminal records, and school records. Ex.
4 85 at ¶9. This also included interviewing members of a defendant's family or close
5 friends "to get an outside opinion or a collateral opinion of what their functioning had
6 been like." Ex. 174 at 28.

7 48. Dr. Etkoff asked counsel if anyone from Mr. Chappell's family was
8 available to interview either over the phone or in person. The only person that counsel
9 made available to Dr. Etkoff was Mr. Chappell. Ex. 174 at 28; see also Ex. 174 at 84
10 (no Chappell family members were provided for Dr. Etkoff to interview and an expert
11 would have found it important to interview such witnesses as a way of getting
12 independent sources for corroboration); Ex. 85 at ¶10. Because of this lack of
13 information, Dr. Etkoff had to rely on Mr. Chappell's self-reports from both the clinical
14 interview and the forensic life history questionnaire. Id. Nor was Dr. Etkoff given any
15 statements by State witnesses, which further left his opinion open to impeachment.
16 See Ex. 142 at 51-52.

17 49. Because Dr. Etkoff was not given any documentation of the prior domestic
18 abuse charges except for Mr. Chappell's self-reports, Dr. Etkoff was heavily impeached
19 on cross-examination as to prior bad acts with which he was unfamiliar. As Dr. Etkoff
20 had to admit, these unreported prior acts would cause him to reconsider his opinion.
21 In the end, Dr. Etkoff's opinion was severely impeached. See Ex. 142 at 48-49, 50-51,
22 52-55, 57, 64-65.

23 50. For example, on cross-examination Dr. Etkoff admitted that he did not
24 know about a June 1995 incident where Mr. Chappell pushed Ms. Panos onto the bed,
25 got on top of her, pinned her down, and threatened her with a knife. Ex. 142 at 53-54.
26 Dr. Etkoff also admitted that if Mr. Chappell intentionally omitted this fact, this would
27

1 affect the doctor's opinion about how cooperative Mr. Chappell was during the
2 evaluation. Id. at 55.

3 51. Dr. Etkoff did not know these facts because counsel failed to give Dr. Etkoff
4 the evidence the State used to prove all of the prior bad act evidence—information that
5 the defense knew would be presented following the Petrocelli hearing. Instead, Dr.
6 Etkoff formed his opinion relying solely upon Mr. Chappell's self-reports, which Dr.
7 Etkoff knew was problematic. If counsel had given Dr. Etkoff the necessary evidence
8 to review before testifying, or permitted Dr. Etkoff to talk with Mr. Chappell's friends
9 and family (to the extent the defense knew they existed), Dr. Etkoff would not have
10 been impeached by the State and his testimony would have been given more credibility
11 by the jury.

12 52. Dr. Etkoff also admitted that if sperm was found in Ms. Panos's vagina
13 and Mr. Chappell stated he had not ejaculated, that would go to Mr. Chappell's candor
14 in his discussion with the doctor. Ex. 142 at 64-66.

15 53. If counsel had prepared Dr. Etkoff with the facts of the case, by giving him
16 the police reports relating to the crime, then Dr. Etkoff could have been prepared for
17 this question by testifying that pre-ejaculate can contain sperm and that Mr.
18 Chappell's testimony could have been truthful. See Free, M.J. and Alexander, N.J.,
19 Male contraception without prescription. A reevaluation of the condom and coitus
20 interruptus, 1976 Public Health Reports, 91(5), p.437; Clark, S., An examination of the
21 sperm content of human pre-ejaculatory fluid, Sept. 1981; Ex. 118 at ¶14; Ex. 120 at
22 ¶11. This also would have combatted the State's closing argument. See Ex. 142 at 83.

23 54. Dr. Etkoff also admitted on cross-examination that if Mr. Chappell said
24 he remembered everything that happened up to and then after the killing of Ms. Panos
25 but not the actual killing, then Mr. Chappell was selectively remembering and thus
26 might not have been entirely candid with the doctor. Id. at 67.

1 55. Dr. Etkoff also admitted that if the police did not list boxer shorts on any
2 impound report of evidence recovered at the scene, then Mr. Chappell's version of
3 events—that the effect of finding boxer shorts at the mobile home made him “really
4 pissed” and at that point his “mind was spinning”—might not be credible. Ex. 142 at
5 68-69.

6 56. The Ninth Circuit has repeatedly found trial counsel ineffective for failing
7 to adequately prepare their mental health experts or provide them with sufficient
8 “informational foundations.” Hovey v. Ayers, 458 F.3d 892, 925 (9th Cir. 2006)
9 (“Regardless of whether a defense expert requests specific information relevant to a
10 defendant's background, it is defense counsel's ‘duty to seek out such evidence and
11 bring it to the attention of the experts.’”) (quoting Wallace v. Stewart, 184 F. 3d 1112,
12 1116 (9th Cir. 1999)); see Jennings v. Woodford, 290 F.3d 1006, 1014-16 (9th Cir. 2002)
13 (holding that where “trial counsel failed adequately to investigate and present
14 considerable evidence regarding petitioner's psychological and family history that
15 might have . . . defeated the jury's finding of the requisite intent for first degree murder
16 in the guilty phase,” defendant was denied effective assistance of counsel); see also
17 1989 ABA Guidelines 11.4.1, 11.7.1, 11.8.3, 11.8.6.

18 57. Here, Mr. Chappell's counsel did little to assist Dr. Etkoff in establishing
19 a link between Mr. Chappell's mental illness and the crimes charged, and they failed
20 to provide Dr. Etkoff with sufficient background information about Mr. Chappell,
21 except Mr. Chappell's own self-reports, allowing the State to discredit the expert's
22 testimony on cross-examination. And counsel limited Dr. Etkoff's inquiry to a “criminal
23 psychological evaluation” rather than asking him to conduct a thorough
24 neuropsychological evaluation that could have uncovered support for a mental health
25 defense (see subsection E, post). Trial counsel's failure to adequately prepare Dr. Etkoff
26 fell below objective standards of reasonableness.

1 58. Trial counsel's failure to investigate and present additional witnesses to
2 corroborate his testimony also fell below objective standards of reasonableness. "A
3 lawyer who fails adequately to investigate, and to introduce into evidence, records that
4 demonstrate his client's factual innocence, or that raise sufficient doubt as to that
5 question to undermine confidence in the verdict, renders deficient performance." Hart
6 v. Gomez, 174 F.3d 1067, 1070 (9th Cir. 1999).

7 **b. Mr. Chappell**

8 59. Trial counsel were also ineffective for failing to adequately prepare Mr.
9 Chappell for his testimony. For example, Mr. Chappell testified that on the day he was
10 released from jail, he went to the Vera Johnson housing project to see some friends but
11 did not drink or take drugs while there. Ex. 137 at 97. However, trial counsel knew
12 from Dr. Etkoff's June, 1996 report that Mr. Chappell had previously told Dr. Etkoff he
13 had consumed a couple of beers with his friend while at the housing project. Ex. 178 at
14 9. The State pointed out this inconsistency during its cross-examination of Dr. Etkoff,
15 Ex. 142 at 68, and it impeached Mr. Chappell's testimony. Further, counsel was aware
16 of the fact that Mr. Chappell's version of events that he told to counsel was different
17 from what he told Dr. Etkoff. Despite that, counsel still put Mr. Chappell on the stand,
18 unprepared.

19 60. Furthermore, trial counsel failed to prepare Mr. Chappell concerning his
20 testimony about the prior domestic violence incidents and, as a result, he downplayed
21 his prior violent acts against Ms. Panos in a way that undermined his credibility. See
22 Ex. 137 at 37-38, 75-76 (Mr. Chappell testified that he never beat Ms. Panos and never
23 threw a coffee cup at her face despite evidence to the contrary); id. at 75 (Mr. Chappell
24 testified that he never kicked Ms. Panos during an argument despite testimony to the
25 contrary); id. at 85-87 (Mr. Chappell testified that he never threatened Ms. Panos with
26 a knife; he "showed" her the knife to "get information out of her"). Mr. Chappell's
27

1 unwillingness to take responsibility for his own actions was exploited by the State
2 during cross-examination. See Ex. 137 at 70-71 (Mr. Chappell testified that, even
3 though he was a drug addict and spent the scant household money to support his drug
4 habit, he was still a good provider for his family); 73 (Mr. Chappell testified that, even
5 though he regularly spent the night at the Vera Johnson housing projects getting high,
6 he was still concerned about his family's welfare); 74-75 (Mr. Chappell testified he was
7 not wrong in selling the dresser Ms. Panos bought for the children because the house
8 had "plenty of dressers" already); 75-76 (Mr. Chappell testified he did not knock Ms.
9 Panos to the floor or kick her during one of the Tucson arguments); 89 (Mr. Chappell
10 testified he did not remember writing a letter to Ms. Panos saying she was going to
11 hell); 89-90 (Mr. Chappell testified he wrote a letter to Ms. Panos asking if she had
12 contracted AIDS because he was concerned for her health). Mr. Chappell was also
13 caught telling various versions of events about the day he was released, stating first
14 that he knew he was going to be released and told Ms. Panos that and then quickly
15 varying from that testimony stating instead that he was surprised when he was
16 released on August 31. Ex. 137 at 92-94. All of these failures to take responsibility for
17 his own actions and inconsistencies in testimony impeached Mr. Chappell's own
18 credibility with the jurors.

19 61. Trial counsel failed to prepare Mr. Chappell to testify in a way that was
20 consistent with his defense and the known evidence. Mr. Chappell testified that the
21 State's witnesses were lying, see Ex. 137 at 36-37, 85-86 (Dina Freeman lied); 79-80,
22 86 (Officer Giersdorf lied); 87 (Officer Williams lied), and that he had been subjected to
23 police brutality, see Ex. 137 at 38, 86-87. The point of Mr. Chappell's testimony was to
24 have him take responsibility for his actions; thus, for him to attempt to portray all of
25 the State's witnesses as liars, and himself as the only honest person in the courtroom,
26 was ill conceived.

1 62. In short, counsel should have prepared Mr. Chappell before his testimony
2 to avoid these problems. Counsel should have insisted Mr. Chappell review all of the
3 domestic abuse charges and allegations leveled against him. Defense counsel should
4 have also reviewed Dr. Etkoff's report and made sure that Mr. Chappell was testifying
5 to the same information that he gave Etkoff. Counsel should have additionally
6 prepared Mr. Chappell for the vigorous cross-examination that was going to follow Mr.
7 Chappell's direct testimony.

8 63. Trial counsel's failure to adequately prepare their own client fell below
9 objective standards of reasonableness. Hart, 174 F.3d 1067 (deficient performance for
10 failing to present available corroboration for client's girlfriend's testimony); Brown v.
11 Meyers, 137 F.3d 1154, 1156-57 (9th Cir. 1998) (deficient performance for failing to
12 investigate and present alibi evidence that would have corroborated defendant's
13 testimony).

14 **4. Trial counsel were ineffective for failing to support Mr.**
15 **Chappell's testimony that he lived at the trailer and thus could**
16 **not have committed an act of burglary**

17 64. The State's theory of the case was that Ms. Panos had broken up with Mr.
18 Chappell at some point prior to the day of the offense, and on the morning of the offense,
19 Mr. Chappell broke into Ms. Panos's trailer with the intent to either kill her or rob her
20 or rape her, thereby committing burglary. Mr. Chappell testified, however, that he
21 lived with Ms. Panos, and he entered the trailer that morning with permission and no
22 ill intentions.

23 65. Trial counsel ineffectively failed to investigate and present evidence to
24 support Mr. Chappell's testimony that he lived with Ms. Panos at the time of the
25 killing. A constitutionally adequate investigation would have revealed Wilfred Gloster,
26 Jr. Ex. 93. Mr. Gloster was a friend of Ms. Panos's—the two meet in Tucson in 1990 or
27 1991. Ex. 93 at ¶¶1-2. Gloster moved to Las Vegas in 1992 and came into contact
again with Ms. Panos in late 1994. Id. at ¶3. Ms. Panos told Gloster that she had

1 moved Mr. Chappell to Las Vegas to be with her and that he was living with her in the
2 trailer. Id. at ¶5.

3 66. Mr. Gloster spent a night at Ms. Panos's trailer (at the request of Ms.
4 Panos's then—roommate, Clare McGuire). In the middle of the night Gloster heard a
5 noise and went to investigate. Ex. 93 at ¶6. Gloster found Mr. Chappell removing a
6 window screen and attempting to enter the trailer through a window. Id. Gloster
7 forced Mr. Chappell outside and the police were contacted. Id. The police later told
8 Gloster that Mr. Chappell was still listed as a resident at the trailer and that he had a
9 right to enter the home. Id.

10 67. After that incident, Gloster told Ms. Panos to fill out the paperwork to
11 remove Mr. Chappell's name as a resident of the trailer. To Gloster's knowledge, Ms.
12 Panos never removed Mr. Chappell's name and, at the time of the killing, he was still
13 an official resident of the trailer. Ex. 93 at ¶7; see also Ex. 167 at ¶10 (Dina
14 Richardson); Ex. 166 at ¶12 (Rosemary Pacheco); Ex. 105 at ¶¶8-9 (Clare McGuire).

15 68. Counsel also did not need to look any further than their client's own court
16 file for proof he lived at the trailer. A letter from the City of Las Vegas Municipal
17 Court, dated August 1995 informing Mr. Chappell of a resetting of his court date, was
18 addressed to Mr. Chappell's home—that being the trailer he shared with Ms. Panos.
19 See Ex. 144. Trial counsel's failure to use evidence in the court file to undermine the
20 State's argument that Mr. Chappell broke into Ms. Panos's trailer fell below objective
21 standards of reasonableness.

22 69. If defense counsel had investigated Mr. Chappell's residency at the trailer,
23 they could have presented evidence that supported Mr. Chappell's testimony that he
24 lived there. Such evidence could have proven that Mr. Chappell was not guilty of
25 burglary because, under Nevada law, one cannot be convicted of burglarizing his own
26 home. See State v. White, 330 P.3d 482, 485-86 (Nev. 2014); following People v. Gauze,
27 542 P.2d 1365, 1366 (Cal. 1975). It would also have generally undermined the State's

1 theory of the case while corroborating Mr. Chappell's theory. Counsel's actions were
2 clearly deficient.

3 **5. Trial counsel were ineffective for failing to interview Deborah**
4 **Turner**

5 70. Deborah Turner was a witness for the State and offered very damaging
6 testimony against Mr. Chappell.

7 71. Ms. Turner, who was nineteen years old at the time of trial, lived at the
8 Vera Johnson housing project, where Mr. Chappell occasionally hung out. Ms. Turner
9 knew Mr. Chappell as "Hip Hop" because he was always dancing around with his radio.
10 According to Ms. Turner, Mr. Chappell, who was a "crack head," typically rented out
11 Ms. Panos's vehicle to residents of the housing project in exchange for money or crack
12 cocaine. Ex. 133 at 14-16, 27.

13 72. On the evening of August 31, 1995 (presumably after Mr. Chappell killed
14 Ms. Panos), Ms. Turner saw Mr. Chappell at the housing project driving Ms. Panos's
15 car. Mr. Chappell was selling shrimp and pie to residents of the housing project and
16 renting out Ms. Panos's vehicle for \$15. According to Ms. Turner, Mr. Chappell was
17 joking and dancing around that evening as he normally did, and was acting normally.
18 Ex. 134 at 17-21. Unprompted, Ms. Turner testified that her reason for coming forward
19 was she felt it was the right thing to do and she was not a "snitch." Ex. 134 at 23 ("I'm
20 not no snitch or nothing").

21 73. Ms. Turner's testimony was unimpeached at trial because counsel failed
22 to investigate and interview Turner. If counsel had, they would have learned that Ms.
23 Turner had multiple felony charges pending against her at the time of Mr. Chappell's
24 trial and received a possible benefit in exchange for her testimony. See Ex. 118 at ¶13;
25 Ex. 120 at ¶10.

26 74. Ms. Turner was arrested for robbery with a deadly weapon on August 30,
27 1996. According to records, Turner arrived at a 7-Eleven store where her friend worked

1 “dressed as a man and . . . jumped the counter and initiated the robbery.” Ex. 314 at 5.
2 Ms. Turner was not formally charged in district court until September 13, 1996, when
3 an information was filed charging her with conspiracy to commit robbery and
4 attempted robbery. Ex. 310. She pled guilty three days later. Ex. 311.

5 75. Ms. Turner’s sentencing was originally set for November of 1996, but
6 because Turner did not appear, her sentencing did not take place until April 30, 1997.
7 Ex. 314; Ex. 312; Ex. R. Ms. Turner faced a maximum sentence of six years for the
8 conspiracy charge and ten years for the attempted robbery charge, which potentially
9 exposed her to a sentence of sixteen years. Ex. 311. However, Ms. Turner was
10 sentenced to only twelve to thirty-six months for the conspiracy charge and twelve to
11 forty-eight months for the attempt robbery charge, to run concurrently. Ex. 314; Ex.
12 312. Thus, the maximum time that Turner would serve was four years as opposed to
13 the sixteen she could have faced. See Ex. 313; Ex. 314.

14 76. Also, Ms. Turner’s sentence was more lenient than that of her co-
15 defendant, Tommie Turner, who was sentenced to twenty-eight to seventy-two months,
16 despite the fact that Tommie Turner was nothing more than the lookout and Ms.
17 Turner was the primary actor. Ex. 314. Therefore, there is evidence to suggest that
18 Ms. Turner received a benefit. This is bolstered by the fact that she was paid witness
19 fees for three days of testimony, despite the fact that she testified for only one of those
20 days. Ex. 315.

21 77. The fact that Ms. Turner pled guilty to two serious felonies less than a
22 month prior to her testimony in Mr. Chappell’s case, and was awaiting sentencing, was
23 relevant impeachment information for trial counsel to have known. Assuming the
24 information about Ms. Turner’s case was contained in the State’s open file and trial
25
26
27

1 counsel failed to impeach her with that information, trial counsel was ineffective.¹⁶ Ex.
2 118 at ¶13; Ex. 120 at ¶10; see Reynoso v. Giurbino, 462 F.3d 1099, 1120 (9th Cir.
3 2006).

4 **6. Trial counsel were ineffective for failing to conduct a full**
5 **neuropsychological evaluation of Mr. Chappell**

6 78. Trial counsel never asked their only mental health expert, Dr. Etcoff, to
7 perform a full neuropsychological battery of Mr. Chappell. Nor did defense counsel
8 indicate to Dr. Etcoff that Mr. Chappell might suffer from brain damage.

9 79. Due to his inexperience, at the time of Mr. Chappell's trial, counsel knew
10 very little about neuropsychological testing or how to determine if a client suffered from
11 brain damage. Specifically, counsel did not know what kinds of testing to request from
12 Dr. Etcoff, nor did counsel intentionally limit the testing the expert conducted. Ex. 118
13 at ¶9; Ex. 120 at ¶7. Counsel believed that the IQ testing and personality testing was
14 sufficient to reveal any relevant mental disorders. Counsel understands now that it
15 was not. Id. Counsel admits that there was no strategic reason for failing to request
16 that Dr. Etcoff perform a full neuropsychological evaluation of Mr. Chappell. Id.

17 80. Counsel's failure to request that Dr. Etcoff perform a neuropsychological
18 evaluation amounted to deficient performance as it deprived Mr. Chappell of evidence
19 to support a mental state defense: Mr. Chappell lacked the intent to commit first degree
20 murder. See ABA Guideline 11.4.1(D)(7), 11.8.6(B)(8).

21 81. Counsel requested Dr. Etcoff testify at the guilt-phase regarding Mr.
22 Chappell's to intent to kill Ms. Panos based upon Mr. Chappell's mental health. Ex. 85
23 at ¶11. However, counsel did not give Dr. Etcoff the necessary materials to support his

24 ¹⁶ The Clark County District Attorney's Office has refused Mr. Chappell's
25 request to review their file. Ex. 293. If it turns out that information concerning
26 Deborah Turner's 1996 felony conviction is not contained within the CCDA's open file,
27 then there is a potential, as yet undiscovered, claim that the State violated its
constitutional disclosure obligations under Brady v. Maryland, 373 U.S. 83 (1963), and
knowingly presented false testimony under Napue v. Illinois, 360 U.S. 264 (1959). See
Claim Fifteen, post.

1 testimony that Mr. Chappell lacked “free will” in his decision to kill Ms. Panos. Ex. 85
2 at ¶15.

3 82. If counsel had asked Dr. Etcoff to conduct a neuropsychological battery,
4 Dr. Etcoff would have found that Mr. Chappell suffered from brain impairment in
5 several domains in functioning, all indicative of possible organic brain damage. Ex. 85
6 at ¶¶14-15. Thus, the results of that testing, would have greatly supported Dr. Etcoff’s
7 testimony. Ex. 85 at ¶14.

8 83. Mr. Chappell too could have been diagnosed with Cognitive Disorder,
9 NOS, a mental disease or defect. Ex. 88 at 24; Ex. 87 at 3, 12.

10 84. A full neuropsychological examination would have uncovered the need for
11 a quantitative electroencephalogram analysis (qEEG) to be performed. Ex. 100; Ex.
12 89. A qEEG compares surface measurements of brain electrical activity to a normative
13 database, digitally analyzing various aspects of brain function including electrical
14 power, asymmetry, coherence, and phase lag between regions of the brain. Ex. 89 at
15 22.

16 85. Mr. Chappell’s qEEG indicated abnormalities in the frontal and limbic
17 lobes of the brain, and in patterns which are suggestive of reduced speed and efficiency
18 of information processing. Ex. 89 at 22. The abnormal qEEG indicates a more scientific
19 sign of brain damage and dysfunction. Id. at 22-23.

20 86. Counsel was ineffective in their failure to request their only expert to
21 conduct a neuropsychological evaluation of Mr. Chappell, especially in light of the fact
22 counsel requested their mental health expert opine about Mr. Chappell’s intent without
23 doing a reasonable investigation.

24 **7. Trial counsel were ineffective for failing to investigate FASD**

25 87. Counsel provided ineffective assistance to Mr. Chappell, in failing to
26 investigate and discover crucial evidence pertaining to FASD/ARND, which could have
27

1 been presented to Mr. Chappell's jury as evidence of Mr. Chappell's inability to form
2 the mental states necessary for conviction of the charged offenses.

3 88. Although an attorney is not required to be in a position to diagnose a
4 medical condition in the absence of any indicators, see Clark v. Mitchell, 425 F.3d 270,
5 286 (6th Cir. 2005), that does not excuse an attorney's deficient performance when red
6 flags alert him to the possibility of such an issue. In addition, while a reasonable
7 strategy not to investigate further when based on "sound assumptions" will not be
8 faulted, "[c]ounsel can hardly be said to have made a strategic choice against pursuing
9 a certain line of investigation when s/he has not yet obtained the facts on which such a
10 decision could be made." Kenley v. Armontrout, 937 F.2d 1298, 1308 (8th Cir. 1991)
11 (quoting Chambers v. Armontrout, 907 F.2d 825, 835 (8th Cir. 1990)); Williams v.
12 Woodford, 384 F.3d 567, 610 (9th Cir, 2002), citing Strickland, 466 U.S. at 690-91.

13 89. Alcohol Related Neurodevelopmental Disorder (ARND) is a medical
14 condition that falls under the Fetal Alcohol Spectrum Disorder (FASD) umbrella. Ex.
15 88 at 1; Ex. 89. Fetal Alcohol Syndrome (FAS) was first identified in the United States
16 in 1973. Id. at 5. "By 1977 a health advisory was issued by the National Institute of
17 Alcohol Abuse and Alcoholism to medical practitioners about the dangers of alcohol
18 during pregnancy." Id. "By 1978, the U.S. Congress was so alarmed about the birth
19 defects due to FAS that it mandated a status report on the condition—Third Special
20 Report to Congress on Alcohol and Health: Fetal Alcohol Syndrome—which was
21 published jointly by the Department of Health and Human Services (HHS) and the
22 National Institute on Alcoholism and Alcohol Abuse (NIAAA)." Ex. 88 at 1.

23 90. Since its identification in the United States over four decades ago, FAS
24 always has involved three categories of diagnostic criteria: growth deficiency in height
25 and/or weight, dysmorphic facial characteristics, and central nervous system (CNS)
26 abnormalities. Ex. 88 at 5. By 1989, the diagnostic criteria for FAS were: (a) prenatal
27 and/or postnatal growth retardation determined by weight and/or length below the

1 10th percentile; (b) a characteristic face with short palpebral fissures, thin upper lip,
2 and elongated flattened midface and philtrum; and (c) CNS involvement, including
3 neurological abnormalities, developmental delays, behavioral dysfunction, intellectual
4 impairment, and skull or brain malformations. Id. Those with CNS abnormalities and
5 prenatal alcohol exposure histories who did not display the external physical signs of
6 FAS (i.e., facial abnormalities and growth deficits) were diagnosed with Fetal Alcohol
7 Effect(s) (FAE). Similar to FAS with respect to the CNS criterion, an FAE diagnosis
8 required some cognitive deficits plus a history of prenatal alcohol exposure. As there
9 was no difference between the brain damage in FAS versus FAE, those with FAE
10 tended to show the same functional impairments and behavior problems as those with
11 FAS. Id. at 5-6.

12 91. By 1996, the time of Mr. Chappell's trial, there was a great deal of
13 information known in the legal field about the nature and cause of FASD, including
14 that alcohol caused serious birth defects that affect executive control and lifelong
15 adaptive functioning. Ex. 88 at 2, 7. Specifically, in April 1996, the Institute of
16 Medicine (IOM) published diagnostic criteria for FAS. These criteria included
17 diagnostic criteria for five conditions under the FASD umbrella: FAS with confirmed
18 prenatal exposure, FAS without confirmed prenatal exposure, Partial FAS, ARND, and
19 Alcohol Related Birth Defects. With the 1996 IOM publication, original terminology
20 (e.g., "FAE") began to be replaced with newer terms such as "Partial FAS" and "ARND."
21 Eventually, experts began to promulgate the umbrella term "Fetal Alcohol Spectrum
22 Disorders (FASD)" as an inclusive term for all IOM diagnostic categories. Id. at 6.
23 Thus, in 1996, Mr. Chappell could have been diagnosed with either FAE or ARND. Id.

24 92. It was also known in 1996 that, because of pervasive brain damage in
25 FASD, individuals diagnosed with FASD were at high risk to commit crimes in
26 unstructured contexts involving high stress and or unexpected events. Ex. 88 at 4.

1 93. Here, at the time of the 1996 trial, counsel knew from various sources,
2 including Mr. Chappell's grandmother, Mr. Chappell's maternal aunt, Mr. Chappell's
3 former Lansing probation officer, Mr. Chappell's own mental health expert Dr. Etkoff,
4 and from school and juvenile records, that Mr. Chappell's mother drank and took drugs
5 during her pregnancy with Mr. Chappell, that Mr. Chappell suffered from some sort of
6 learning disability/mental slowness, and that Mr. Chappell suffered from
7 developmental disorders that stemmed from neurological origins (brain damage). See
8 Ex. 182; Ex. 181; Ex. 88 at 10-12, 23-24; Ex. 118 at ¶7; Ex. 120 at ¶5; Ex. 265; Ex. 181.
9 All of this information should have alerted counsel to the need to investigate and
10 present evidence of FASD as it related to Mr. Chappell. Ex. 88 at 23-24.

11 94. However, counsel never hired an expert to evaluate Mr. Chappell for
12 FASD. And while counsel made a motion to continue the trial to investigate FASD,
13 counsel withdrew that motion without conducting such an investigation. Ex. 118 at
14 ¶8; Ex. 120 at ¶6. Counsel had no strategic reason for failing to investigate, develop,
15 and present evidence that Mr. Chappell suffered from FASD. Ex. 118 at ¶7; Ex. 120 at
16 ¶5.

17 95. If counsel had hired such experts, counsel would have discovered that Mr.
18 Chappell suffers from FASD, specifically ARND and/or FAE. See Ex. 89; Ex. 87; Ex.
19 88. And as will be explained in detail below, such a diagnosis would have given counsel
20 the opportunity to present evidence that, because of this medical condition, Mr.
21 Chappell's ARND would have influenced his ability to control his actions at the time of
22 the crime (he did not have the requisite intent to commit first degree murder), and that
23 Mr. Chappell's prior acts of domestic violence against Ms. Panos were due in part to
24 his FASD. Ex. 88 at 24-33; Ex. 118 at ¶7; Ex. 120 at ¶5.

25 96. Dr. Etkoff, the defense's only mental health expert, was not an expert in
26 FASD. Ex. 85 at ¶16. And while Dr. Etkoff does not remember being asked about
27

1 FASD by defense counsel, he would have informed counsel that they needed to retain
2 an expert with knowledge in this field. Id.

3 97. Had Mr. Chappell's trial counsel requested, investigated, developed and
4 presented this crucial information, it is reasonably likely that Mr. Chappell would not
5 have been convicted of first degree murder. Trial counsel, however, never requested a
6 mental health professional perform a thorough and timely neuropsychological
7 evaluation of Mr. Chappell. Instead, counsel retained Dr. Etcoff to evaluate Mr.
8 Chappell for purposes of mitigation. In turn, Dr. Etcoff conducted a cursory review of
9 Mr. Chappell's IQ and mental health, which failed to uncover evidence of ARND, an
10 area which Dr. Etcoff was not qualified to offer an opinion.

11 98. Counsel's failure to have experts evaluate and diagnose Mr. Chappell for
12 ARND was prejudicial to Mr. Chappell's guilt phase case.

13 **D. As a result of trial counsel's ineffective failure to investigate and**
14 **prepare for the guilt phase of trial, their defense was weak, not**
compelling, and easily discredited

15 99. In their case-in-chief, the State presented evidence suggesting Mr.
16 Chappell regularly inflicted domestic violence against Ms. Panos; that Mr. Chappell
17 followed Ms. Panos from city to city despite her desire to leave him behind; that Ms.
18 Panos lived in fear of Mr. Chappell; that Mr. Chappell did not live with Ms. Panos in
19 Las Vegas; that Mr. Chappell had threatened to exact some sort of revenge on Ms.
20 Panos as soon as he was released from the Clark County Jail; and that Ms. Panos had
21 broken up with Mr. Chappell and decided to leave the trailer before his release from
22 jail so that he could not locate her. See Ex. 132 at 53 et seq. (testimony of Lisa Duran);
23 Ex. 135 at 33 et seq. (testimony of Dina Freeman); Ex. 135 at 60 et seq. (testimony of
24 Jeri Earnst); Ex. 135 at 83 et seq. (testimony of Daniel Giersdorf); Ex. 135 at 91 et seq.
25 (testimony of Tanya Hobson); Ex. 135 at 107 et seq. (testimony of Allen Williams); and
26 Ex. 135 at 111 et seq. (testimony of Shirry Smith). The State argued that this evidence
27 supported its theory that the killing of Ms. Panos amounted to either willful, deliberate,

1 and premediated first degree murder or first degree felony-murder. Ex. 142 at 94-95,
2 98-109.

3 100. On the other hand, Mr. Chappell's defense at the guilt phase was that he
4 killed Ms. Panos during a jealous rage, making the crime one of voluntary
5 manslaughter or, at most, second-degree murder. The defense presented evidence that
6 Ms. Panos and Mr. Chappell had a history of fighting, breaking up, and getting back
7 together; that Mr. Chappell moved to Tucson and Las Vegas at the behest of Ms. Panos;
8 that Mr. Chappell lived at the trailer with Ms. Panos and considered it his home; that
9 Mr. Chappell and Ms. Panos were reconciling on the August day Mr. Chappell was
10 released from jail; and that Mr. Chappell's killing of Ms. Panos was done in a fit of
11 jealousy upon learning that she was seeing another man. All of the defense evidence,
12 however, came solely through the testimony of Mr. Chappell himself, and counsel
13 offered no other evidence to corroborate Mr. Chappell's version of events over that of
14 the State's version.

15 **1. James Chappell's testimony**

16 101. Mr. Chappell testified on his own behalf. Ex. 137 at 17. Generally, Mr.
17 Chappell testified about growing up in Lansing; how he met Ms. Panos; how Ms.
18 Panos's parents were against Mr. Chappell and their daughter being together; how Ms.
19 Panos's parents were racist; how he and Ms. Panos had three children together; what
20 happened during their ten-year relationship; and what happened the day he killed Ms.
21 Panos.

22 102. Specifically, Mr. Chappell testified as follows: Mr. Chappell met Ms.
23 Panos while the two were in high school in Lansing. Ms. Panos's parents were racist
24 and did not approve of their daughter dating Mr. Chappell. Mr. Chappell and Ms.
25 Panos had to hide their relationship from Ms. Panos's parents. In 1988, Ms. Panos
26 became pregnant with Mr. Chappell's first child. Ex. 137 at 17-19.

1 103. After the child was born, Ms. Panos's parents moved to Tucson, Arizona.
2 They told their daughter that she could not move with them unless she gave up the
3 baby for adoption. A few months later Ms. Panos's parents relented and Ms. Panos and
4 her daughter moved to Tucson. Ex. 137 at 21-22.

5 104. While in Tucson, Ms. Panos had to hide from her parents that she was
6 still in communication with Mr. Chappell, who was still in Michigan. Ms. Panos later
7 visited Michigan where she became pregnant again by Mr. Chappell. Ms. Panos
8 returned to Tucson and sent for Mr. Chappell, paying for his air travel to Arizona. The
9 two lived in Ms. Panos's parents' home, unbeknownst to the parents who were visiting
10 Michigan. When her parents returned to Tucson, Ms. Panos rented Mr. Chappell a
11 furnished studio. Eventually, Ms. Panos's parents found out Mr. Chappell was in
12 Tucson and Ms. Panos and her children moved into a two-bedroom apartment with Mr.
13 Chappell. Ex. 137 at 21-26.

14 105. At some point Mr. Chappell moved back to Michigan to get away from Ms.
15 Panos's parents. Ms. Panos paid for Mr. Chappell's ticket back to Michigan. But Ms.
16 Panos wanted Mr. Chappell to return to Tucson and so he did. Ms. Panos became
17 pregnant again and the two had their third child together. Ex. 137 at 27-29.

18 106. Mr. Chappell had many low paying jobs that he usually could not hold
19 onto for long. Ms. Panos, on the other hand, always worked. While in Tucson, Mr.
20 Chappell used drugs in about the same amount he did in Lansing. His drugs of choice
21 were marijuana and cocaine. Ex. 137 at 31-32. Mr. Chappell admitted to hitting Ms.
22 Panos while living in Tucson. Id. at 31-32.

23 107. Mr. Chappell and Ms. Panos visited Las Vegas for a week—finding jobs
24 and a place to live—and then returned to Tucson where they packed and permanently
25 left for Las Vegas. Mr. Chappell lost his new job in Las Vegas, and he and Ms. Panos
26 decided he would stay at home with the children while she worked. Ex. 137 at 33-36.

1 Mr. Chappell continued to use drugs in Las Vegas and began to hang out at the Vera
2 Johnson housing project. Id. at 36.

3 108. Mr. Chappell admitted to domestic violence with Ms. Panos, including an
4 episode where he argued with Ms. Panos and threw a cup, breaking her nose, and an
5 incident where he pinned Ms. Panos to the bed and showed her a knife. He was later
6 arrested for that incident and jailed from the end of February until mid-May of 1995.
7 When he got out of jail, Ms. Panos picked him up and brought him home. Ex. 137 at
8 37-40. Mr. Chappell went back to jail for another domestic battery against Ms. Panos
9 in June, for a week. Id. at 40. Mr. Chappell then returned to jail on June 26 and was
10 released on August 31. Id.

11 109. During this last time in jail, Ms. Panos accepted Mr. Chappell's phone
12 calls. During these calls, Ms. Panos never told Mr. Chappell that the relationship was
13 over. Ex. 137 at 40. Mr. Chappell, however, suspected something was wrong because
14 Ms. Panos never visited him, and sometimes when he called Ms. Panos, strange men
15 would answer the phone and Mr. Chappell could hear music and various other voices
16 in the background. Id. at 41.

17 110. Mr. Chappell described the events of August 31, 1995, the day he was
18 released from jail and killed Ms. Panos. Mr. Chappell went to the Vera Johnson
19 housing project where he talked to some friends, borrowed a bicycle, and then went
20 home to see Ms. Panos and his children. Mr. Chappell telephoned home twice and no
21 one answered. Because he lost his key, when he got to the house, he climbed through
22 a window, thinking no one was home. Mr. Chappell had climbed through windows in
23 residences he and Ms. Panos had shared in Michigan and Arizona, so he did not believe
24 there was anything wrong with doing the same thing in their Las Vegas home. Ex. 137
25 at 45-47.

26 111. Ms. Panos was, in fact, home and helped Mr. Chappell through the
27 window. The two talked and then began to have sexual intercourse during which Mr.

1 Chappell stopped before ejaculating because he believed that Ms. Panos had been with
2 someone else based on the condition of her vagina. Mr. Chappell accused Ms. Panos of
3 being with other men, which Ms. Panos denied. Ms. Panos then performed oral sex on
4 Mr. Chappell. Ex. 137 at 47-50. Afterwards, they both dressed and left to pick up the
5 children at day care. Id. at 50-51.

6 112. It was when Mr. Chappell found a love letter from another man in Ms.
7 Panos's car that Mr. Chappell went into a rage, dragged Ms. Panos back into the house,
8 and killed her. During this time, Mr. Chappell blacked out and did not come back to
9 reality until after he had stabbed Ms. Panos. Ex. 137 at 54-56. Mr. Chappell then left
10 the trailer, not realizing that he had killed Ms. Panos. Id. at 57-58. Mr. Chappell did
11 not ransack their bedroom nor did he take anything. Id. at 59.

12 113. As explained below, if counsel had performed the necessary investigation
13 required of capital counsel, the jurors would have heard from witnesses, other than Mr.
14 Chappell, who would have lent support and credibility to Mr. Chappell's version of
15 events. Unfortunately for Mr. Chappell, these witnesses were never investigated,
16 interviewed, or called to the stand to testify on Mr. Chappell's behalf as will be
17 explained below.

18 2. Dr. Etkoff's testimony

19 114. Dr. Etkoff was called as the defense's final witness at the guilt phase. Ex.
20 142 at 3. Mr. Brooks decided to call Dr. Etkoff at the guilt phase because he felt the
21 limited testing explained why Mr. Chappell killed Ms. Panos. According to Mr. Brooks,
22 the defense wanted to show that Mr. Chappell loved Ms. Panos, his concept of self was
23 "wrapped up" with Ms. Panos, Mr. Chappell was prone to rage when confronted with
24 the idea that Ms. Panos was cheating on him, and his fear of losing Ms. Panos was the
25 most important fear in his life. See Ex. 85 at ¶11

26 115. On direct examination, Dr. Etkoff testified generally to the following. Ex.
27 142 at 3.

1 116. Dr. Etcoff spoke to Mr. Chappell about his childhood. Mr. Chappell was
2 Dr. Etcoff's only source of information on this topic, although Mr. Chappell's school
3 records corroborated some of Mr. Chappell's information. Ex. 142 at 14-15.

4 117. Mr. Chappell received a full-scale IQ of 80 on the WAIS, which was
5 considered to be at the bottom of the low average range of intelligence. Ex. 142 at 17-
6 18. While Mr. Chappell's performance IQ was 91, which was considered average, his
7 verbal IQ of 77 was classified as being in the borderline range for intellectual
8 disability.¹⁷ This meant that Mr. Chappell was very diminished in his intellectual
9 capabilities, had difficulty thinking in words, and had poor language skills. Id. at 18-
10 19.

11 118. Dr. Etcoff opined that the WAIS scores and Mr. Chappell's educational
12 records indicated that Mr. Chappell would have been, as a child, eligible for a diagnosis
13 of receptive language disorder. Ex. 142 at 19-20. According to Dr. Etcoff, children who
14 suffer from language abnormalities tend to become easily frustrated because they do
15 not understand what is being said or what is expected of them, get into trouble, and
16 tend to be aggressive in adolescence and adulthood. Id. at 20.

17 119. Mr. Chappell's scores on the WAIS also showed that his spelling skills
18 were low average and his math skills demonstrated he had a learning disability. Ex.
19 142 at 21-22.

20 120. The personality test given to Mr. Chappell showed that, among other
21 things, Mr. Chappell was socially awkward, introverted, mistrustful of others,
22 frightened to be rejected and humiliated, and suffered from low self-worth. The
23 personality test also showed that Mr. Chappell suffered from Borderline Personality
24

25 ¹⁷ While Dr. Etcoff referred to "mental retardation" in his 1996 testimony, the
26 current terminology is "Intellectual Disability." See Hall v. Florida, 134 S. Ct. 1986,
27 1990 (2014) ("Previous opinions of this Court have employed the term 'mental
retardation.' This opinion uses the term 'intellectual disability' to describe the identical
phenomenon.").

1 Characteristic Disorder. According to Dr. Etkoff, Mr. Chappell had no sense of self and
2 relied upon others to take care of him. Ex. 142 at 22-25. For Mr. Chappell, Ms. Panos
3 was the person he became attached to. Id. at 25-26.

4 121. According to Dr. Etkoff, due to Mr. Chappell's low verbal IQ, his childhood
5 experiences, and personality disorder, Mr. Chappell would inevitably have paranoid
6 thoughts and be out of touch with reality. Ex. 142 at 28.

7 122. Dr. Etkoff discussed with Mr. Chappell his substance abuse, including
8 that Mr. Chappell became dependent on cocaine around 1992 after a history of using
9 marijuana and cocaine socially and recreationally during his late teenage years. Ex.
10 142 at 28-29. Two classic symptoms of cocaine dependence, according to Dr. Etkoff, are
11 aggressive behaviors and paranoid thoughts. Id. at 29.

12 123. Dr. Etkoff also discussed with Mr. Chappell his relationship with Ms.
13 Panos, describing it as a "rocky road" and admitting that he had hit Ms. Panos in the
14 past. Ex. 142 at 29-30. Mr. Chappell also discussed being jailed for shoplifting, which,
15 according to Dr. Etkoff, was common for people who use cocaine. Id. at 33.

16 124. Dr. Etkoff recounted his conversation with Mr. Chappell about the events
17 leading to the killing, including Mr. Chappell's paranoid thoughts that Ms. Panos was
18 sleeping with other men. Mr. Chappell informed Dr. Etkoff that he had not intended
19 to harm Ms. Panos when he arrived at the trailer. It was the finding of the letter and
20 the realization that Ms. Panos had been with another man that caused him to kill her,
21 although he did not remember doing so. Ex. 142 at 32-37.

22 125. Dr. Etkoff testified that Mr. Chappell was severely learning disabled and
23 pointed to past school records for support. Dr. Etkoff also relied on an earlier school
24 psychologist's report that described Mr. Chappell as having low self-concept,
25 depression, few coping skills, low self-image, poor problem-solving skills, and difficulty
26 completing assignments. Ex. 142 at 38-41.

1 126. Dr. Etkoff stated that Mr. Chappell probably met the criteria for Attention
2 Deficit Hyperactivity Disorder. Finally, Dr. Etkoff opined that everyone in life does not
3 have the same level of “free will.” The fact that Mr. Chappell had low verbal IQ,
4 experienced a difficult childhood, and was diagnosed with specific personality disorders
5 all lowered his ability to make choices. Id. at 43-44.

6 127. However, what was absent from Dr. Etkoff’s testimony was any evidence
7 that Mr. Chappell suffered from FASD/ARND. This is because Dr. Etkoff was never
8 told that there were at least nine witnesses who could have testified to Mr. Chappell’s
9 mother’s use of alcohol, drugs, and/or cigarettes during her pregnancy with Mr.
10 Chappell: James Wells (Ex. 60 at ¶4 (drugs)); Willie Chappell, Sr. (Ex. 74 at ¶¶6-7
11 (alcohol and cigarettes)); William Bonds (Ex. 71 at ¶6 (alcohol and drugs)); William
12 Moore (Ex. 72 at ¶4 (alcohol and drugs)); Rose Wells-Canon (Ex. 67 at ¶10 (alcohol and
13 drugs)); Sharon Axam (Ex. 68 at ¶14 (drugs)); Georgette Sneed (Ex. 57 at ¶12 (heroin
14 and alcohol); and Myra Chappell-King (Ex. 64 at 3 (heroin and alcohol); Louise
15 Underwood (Ex. 330 at ¶¶ 20–21). For that matter, Sharon Axam was already a
16 defense witness at the guilt-phase. See Ex. 140 at 58 et seq.¹⁸

17 128. If counsel had conducted an objectively reasonable investigation, as
18 expected of capital counsel, Hart, 174 F.3d at 1070, they would have had supporting
19 evidence to pursue a FASD diagnosis.

20 129. Furthermore, Dr. Etkoff was not an expert in FASD and thus, was not
21 even the proper expert to offer this medical diagnosis. Ex. 85 at ¶16. Because the one
22 expert who testified at Mr. Chappell’s trial failed to present the most important
23 evidence regarding Mr. Chappell’s lack of mental state to commit first-degree murder,
24 the jury was never given any evidence to reject the State’s case.

25
26 ¹⁸ It is probable that counsel also could have questioned Mr. Chappell’s
27 grandmother, Clara Axam about her daughter’s drinking and drug use during her
pregnancy with Mr. Chappell. Ms. Axam testified at the penalty trial showing that she
was available to counsel. See Ex. 140 at 53 et. seq.

1 130. If they had, it is reasonably probable Mr. Chappell would have been
2 convicted of voluntary manslaughter or at the very worst, second-degree murder.

3 **E. There is a reasonable probability of a more favorable outcome if trial**
4 **counsel had performed effectively**

5 131. If trial counsel had performed effectively and not stipulated to Mr.
6 Chappell's killing of Ms. Panos, the State would have been held to its burden of proof.
7 If trial counsel had performed effectively, they could have challenged the State's
8 witnesses and presented compelling testimony to corroborate Mr. Chappell's
9 testimony. And if trial counsel had performed effectively, they could have presented
10 evidence that Mr. Chappell suffered from both a medical defect (FASD) and a mental
11 health defect (Cognitive Disorder, NOS), demonstrating that Mr. Chappell could not
12 have formed the intent to commit capital murder. This evidence, too, would have gone
13 a long way in explaining Mr. Chappell's incidents of domestic violence against Ms.
14 Panos. The cumulative effect of the aforementioned instances of deficient performance
15 prejudiced Mr. Chappell.

16 **1. Medical defect of FASD**

17 132. In a case such as this, where "the only reasonable and available defense
18 strategy requires consultation with experts or introduction of expert evidence," failure
19 to consult with and present the testimony of necessary experts amounts to ineffective
20 assistance of counsel. Hinton v. Alabama, 134 S. Ct. 1081, 1088 (2014). Here, if counsel
21 had performed effectively, the jury would have heard that Mr. Chappell suffered from
22 Fetal Alcohol Spectrum Disorder (FASD) – and specifically, Alcohol Related
23 Neurodevelopmental Disorder (ARND). The jury would have also heard that, because
24 of this medical diagnosis, Mr. Chappell was unable to form the intent to commit first-
25 degree murder and his prior bad act evidence would have been put in context.

26 133. Mr. Chappell has been diagnosed with both a medical defect, ARND,
27 which falls under the FASD umbrella, and a mental health defect, Cognitive Disorder,

1 NOS (which is part of the FASD diagnosis). See Ex. 89; Ex. 88; 87; Ex. 100. It is likely
2 that Mr. Chappell's ARND and Cognitive Disorder, NOS influenced his ability to
3 control his actions at the time he killed Ms. Panos. Both conditions also played a role
4 in Mr. Chappell's use of domestic violence against Ms. Panos. Unfortunately the jury
5 never heard this evidence.

6 134. Neuropsychological testing shows that Mr. Chappell has deficits in six
7 broad cognitive domains: academic achievement; learning and memory, visuospatial
8 construction and organization; attention; processing speed; and executive functioning.
9 Ex. 88 at 24-25. In addition to these, testing and witness assessments have shown
10 deficits in three adaptive domains: communication, daily living skills, and
11 socialization. Id. at 25. Mr. Chappell's neuropsychological profile thus meets both the
12 Centers for Disease Control and the IOM's diagnostic guidelines for FASD. Id.; Ex. 89
13 at 20-21.

14 135. Most importantly, testing related to Mr. Chappell's executive functioning
15 skills show that in a "real world" setting, Mr. Chappell's adaptive functioning is
16 moderately impaired, which is consistent with a diagnosis of FASD. This is important
17 because, in non-routine real world situations involving minimal structure, Mr.
18 Chappell's adaptive behavior resembles that of an individual with intellectual
19 disabilities. Ex. 88 at 30. Furthermore, research has shown that it is executive
20 functioning rather than IQ that determines behavior in unstructured settings. Thus,
21 Mr. Chappell's numerous deficits in executive functioning—rather than his IQ—
22 determines his coping capacity. Id. at 29.

23 136. Individuals with FASD, like Mr. Chappell, have "life course" difficulties
24 due to executive dysfunction. Ex. 88 at 30. And childhood adversity, like Mr.
25 Chappell's—including his mother's use of drugs and alcohol in utero; his mother's
26 death; the absence of a father figure; being raised in a neighborhood of violence, drugs,
27 and marked poverty; and being brought up in an environment of extreme physical and

1 emotional abuse and neglect—interact with executive dysfunction to increase the risk
2 of a negative developmental trajectory, including trouble with law enforcement and
3 substance abuse. Id. at 30-31.

4 137. Research shows the negative impact of executive dysfunction in
5 individuals with FASD on behaviors implicated in offense conduct. These behaviors
6 include lack of impulse control, trouble thinking of consequences, difficulty connecting
7 cause and effect planning, problems in empathizing and taking responsibility, inability
8 to delay gratification and making sound judgments, poor emotional control, and a
9 tendency to engage in explosive episodes. Ex. 88 at 31.

10 138. Specifically related to Mr. Chappell, neuropsychological testing shows his
11 working memory was significantly impaired. Ex. 88 at 31. Working memory itself is
12 the key executive skill responsible for holding relevant neural information “while
13 manipulating, synthesizing, and processing it for purposes of completing a task.” Id.
14 Working memory is also where “intentions are formed and planning occurs and at the
15 same time, where strong urges and emotions are controlled.” “In the legal context,
16 working memory is equivalent to reflection, reasoning, and impulse control.” Id. at 31-
17 32.

18 139. Mr. Chappell’s working memory is impaired due to his FAS and other
19 neuropsychological insults. Even under the best circumstances, Mr. Chappell’s
20 executive control over his behavior is significantly impaired due to his FASD. Ex. 88
21 at 32.

22 140. It was known at the time of trial in 1996 that Mr. Chappell was under
23 stress at the time of the offense as he perceived Ms. Panos was cheating on him and
24 was overcome with jealous rage. Ex. 88 at 32; Ex. 135 at 121-22. Individuals with
25 FASD, like Mr. Chappell, do not have the “cognitive capacity” to cope effectively with
26 stress and other negative emotions. Ex. 88 at 32. The reason for this is that alcohol
27 exposure in utero affects formation of the hypothalamic-pituitary-adrenal system in

1 the developing fetal brain, which increases sensitivity to stress. Id. As a result, those
2 with FASD, like Mr. Chappell, are “hard-wired” at birth to be hyper-reactive to stress.
3 If there is also an impaired executive function control, as testing has found in Mr.
4 Chappell, “the combination of hyper-activity to stress and impaired executive control”
5 can have a catastrophic consequence when working memory is unable to exert “top-
6 down control” over intense limbic-drive emotional reactions. Id.; see also Ex. 89 at 22-
7 23.

8 141. In this case, if counsel had hired an expert(s) in FASD and had requested
9 a full neuropsychological evaluation of Mr. Chappell and administered a qEEG¹⁹, the
10 jury would have understood that Mr. Chappell, under intense stress at the time of the
11 crime, could not have formed the intent to commit first-degree murder or felony
12 murder. Mr. Chappell’s executive control was severely impaired by his FASD and
13 neuropsychological impairment and his was unable to control his actions. Ex. 88 at 32-
14 33; Ex. 100; Ex. 89 at 1-2, 13-14, 18, 23, 27. If the jury had heard this evidence, there
15 is a reasonable probability at least one juror would have voted for a conviction of
16 second-degree murder or voluntary manslaughter, excluding Mr. Chappell from the
17 death penalty.

18 142. In that same vein, Mr. Chappell’s impaired executive control would have
19 similarly influenced his prior domestic abuse of Ms. Panos. Ex. 88 at 32-33. That is to
20 say, during times of intense negative emotion, like anger, Mr. Chappell’s executive
21 control impairments would have limited his capacity to control his conduct. If the
22 jurors would have heard this evidence, they would have understood that Mr. Chappell’s
23 assaults against Ms. Panos were also a product of Mr. Chappell’s FASD and
24 neuropsychological impairments. This explanation would have combatted the State’s
25 argument that Mr. Chappell was an evil monster and a murderer. Ex. 142 at 80.

26
27 ¹⁹ The administration of a qEEG was available at the time of trial in 1996. See
Ex. 84 at 24.

1 Counsel's failure to present this evidence prejudiced Mr. Chappell and his conviction
2 should be reversed.

3 **2. Lay witness testimony**

4 143. During the pre-trial investigation, Mr. Chappell had given defense
5 counsel a list of witnesses that he wished them to interview and call at trial. To those
6 that counsel interviewed, the questions concentrated on mitigation evidence, not the
7 long abusive relationship between Mr. Chappell and Ms. Panos. Ex. 109 at 13.
8 According to defense counsel Brooks, he "had no idea that the trial was going to be all
9 about the long relationship." Id.

10 144. If counsel had investigated lay witnesses (family and friends) who knew
11 Mr. Chappell, the following evidence would have been presented at trial and thus given
12 credibility and support to Mr. Chappell and his defense.

13 **a. The Chappell/Panos relationship**

14 145. The State presented a very one-sided portrayal of the relationship
15 between Mr. Chappell and Ms. Panos, portraying Mr. Chappell as freeloader, serial
16 abuser, and bad father to his three children. However, the ten-year relationship
17 between Mr. Chappell and Ms. Panos was much more complicated than that. If counsel
18 had performed effectively and conducted interviews of witnesses that knew the couple
19 long-term, there is a reasonable probability of a more favorable outcome if the jurors
20 had heard the following information.

21 146. Ms. Panos was Mr. Chappell's only long-term relationship. Ms. Panos and
22 Mr. Chappell met in high school and were together from that point until her death. Ex.
23 59 at ¶¶13, 37-38; Ex. 63 at ¶10; Ex. 54 at ¶18; Ex. 52 at ¶18. Ms. Panos was a shy
24 person but she seemed to liven up when she was around Mr. Chappell. Ex. 63 at ¶10.
25 Ms. Panos also accepted Mr. Chappell with all his shortcomings, something that other
26 women did not do. The early years of the relationship between the two were positive
27 and loving. Ex. 63 at ¶10; Ex. 70 at ¶12; Ex. 53 at ¶36. To some who knew Mr.

1 Chappell, it appeared that when Ms. Panos and Mr. Chappell became involved, Ms.
2 Panos picked up where Mr. Chappell's grandmother left off in caring for Mr. Chappell.
3 Ex. 61 at ¶19; Ex. 64 at ¶46; Ex. 54 at ¶18.

4 147. Ms. Panos's parents disapproved of the relationship between their
5 daughter and Mr. Chappell. When they learned that Ms. Panos had been sneaking an
6 African-American into the family home while they were at work, Ms. Panos's parents
7 demanded Ms. Panos give them Mr. Chappell's name and address. Ms. Panos's parents
8 then contacted the police, who later went to Mr. Chappell's grandmother's home. When
9 Mr. Chappell learned the police were looking for him, he became afraid and did not
10 return home for a number of days. Ex. 59 at ¶39; Ex. 53 at ¶36.

11 148. After some time, Ms. Panos told her parents that she was dating a boy,
12 but did not tell them the boy was Mr. Chappell. When she finally brought Mr. Chappell
13 to the house, Mr. Chappell was greeted with hostility and rejection. Ms. Panos's
14 parents forbade Ms. Panos from seeing Mr. Chappell again, calling Mr. Chappell a
15 "nigger" to his face. Ms. Panos's stepfather said he would "kill that fucking nigger" if
16 he ever set foot in the house again. Ex. 59 at ¶40; see also Ex. 73 at ¶43; Ex. 63 at ¶12;
17 Ex. 70 at ¶12. Despite the danger, Mr. Chappell and Ms. Panos continued to see one
18 another, and Ms. Panos continued to sneak Mr. Chappell into the family home to spend
19 the night. Ex. 59 at ¶40; Ex. 53 at ¶36.

20 149. Mr. Chappell was confused by the reaction of Ms. Panos's parents and
21 could not understand why they were so angry about the relationship. Mr. Chappell
22 himself had no concept of this type of prejudice. Ex. 59 at ¶42; see Ex. 105 at ¶6.

23 150. And it was not only Ms. Panos's parents who made things difficult for the
24 couple—Mr. Chappell's grandmother also created obstacles. When Ms. Panos became
25 pregnant with her first child with Mr. Chappell, Ms. Panos's parents made her leave
26 the family home. But because Mr. Chappell's grandmother also did not approve of the
27 relationship, she forbade Ms. Panos from living in her home as well. As a result, Mr.

1 Chappell and Ms. Panos were both homeless for a time, living in spare rooms in other
2 people's homes. Ex. 59 at ¶44; Ex. 53 at ¶36.

3 151. Because Mr. Chappell was only able to get low paying jobs that did not
4 require much skill or knowledge, Ms. Panos was the bread winner of the family and
5 Mr. Chappell became the stay-at-home father. Ex. 59 at ¶46; Ex. 53 at ¶37. Mr.
6 Chappell was a loving father to his children and had a great relationship with them.
7 Mr. Chappell cleaned and fed the children and played with them. Ex. 59 at at ¶47.

8 152. Ms. Panos and Mr. Chappell's relationship was filled with fights, break-
9 ups, and reconciliations. This happened almost on a weekly basis when the couple
10 lived in Lansing. Ex. 59 at ¶¶43, 48. During some of these fights, Ms. Panos called
11 Mr. Chappell a "nigger," and referred to first born, JP, as Mr. Chappell's "nigger child."
12 Id. at ¶43. But Mr. Chappell always returned to Ms. Panos, telling people that he loved
13 her too much and was completely committed to her. Id. at ¶43; Ex. 70 at ¶13. Mr.
14 Chappell told people that he could not see himself with anyone else because Ms. Panos
15 was his ideal woman. Mr. Chappell often said how much he loved Ms. Panos, even
16 during the bad times in their relationship. Ex. 59 at ¶50; Ex. 63 ¶13. Mr. Chappell's
17 brother Willie could tell Ms. Panos and Mr. Chappell cared for one another and were
18 in a loving relationship, despite their problems. Ex. 73 at ¶¶43, 45.

19 153. Despite their clear affection, their relationship quickly became volatile.
20 Ms. Panos did not like Mr. Chappell hanging out with his friends in the evening and
21 was jealous of that. To get back at Mr. Chappell, Ms. Panos would move back in with
22 her parents for extended periods of time, leaving Mr. Chappell alone in the apartment
23 with their son, JP. And while Ms. Panos would continue to pay the rent, she would not
24 pay the utilities and Mr. Chappell and JP would be without heat and a way to cook a
25 meal. When Ms. Panos was ready to make up, she would return home and have the
26 utilities restored. Ex. 59 at ¶¶48, 49; Ex. 64 at ¶49.

1 154. On some occasions it would be Mr. Chappell who would leave the
2 relationship because he was so upset about how he was being treated by Ms. Panos.
3 Ms. Panos would call around to locate Mr. Chappell. When she located Mr. Chappell,
4 she would promise to buy him gifts to get him to come home. Ex. 59 at ¶53.

5 155. When Ms. Panos's parents relocated to Tucson, they invited Ms. Panos
6 and JP to move with them as long as she left Mr. Chappell in Lansing and moved on
7 with her life. Ms. Panos accepted the invitation but secretly planned to bring Mr.
8 Chappell out to Arizona. Ex. 59 at ¶55. Ms. Panos brought Mr. Chappell to Tucson a
9 few months later and put him in an apartment on the other side of town. But Mr.
10 Chappell once again was forced to hide his relationship from Ms. Panos's parents.
11 Additionally, the fighting between Ms. Panos and Mr. Chappell continued in Tucson,
12 with Ms. Panos calling Mr. Chappell a "nigger," threatening to take his child away from
13 him, or telling him she would no longer give him money. Id. at ¶57; Ex. 73 at ¶45; Ex.
14 64 at ¶49.

15 156. Terrance Wallace was one of the people who tried to talk Mr. Chappell out
16 of moving to Tucson to be with Ms. Panos. Ex. 70 at ¶13. But Mr. Chappell told Wallace
17 that he had to be with Ms. Panos because he loved her. Id.; see also Ex. 53 at ¶38; Ex.
18 61 at ¶20.

19 157. The pattern of fighting, breaking up, and getting back together again
20 continued in Tucson. Ms. Panos would kick Mr. Chappell out of the house, leaving him
21 with nowhere to go, and then allow him to return a few days later. This happened on
22 eight to ten occasions while the couple lived in Tucson. Mr. Chappell would stay the
23 night with a coworker or just wander the streets until morning and hope that Ms.
24 Panos would let him back in the house. Mr. Chappell's grandmother eventually sent
25 Mr. Chappell a plane ticket to come back to Lansing, and Mr. Chappell returned to
26 Michigan. Ex. 59 at ¶57; Ex. 73 at ¶45; Ex. 105 at ¶4.

1 158. Despite the urging of his friends to stay in Lansing, Mr. Chappell was
2 unable to resist. Ms. Panos bought Mr. Chappell a one-way ticket back to Tucson and
3 Mr. Chappell went back to Ms. Panos. There, the relationship repeated its prior
4 pattern of fights and reconciliations. Ex. 59 at ¶58; Ex. 73 at ¶¶ 41, 46. Mr. Chappell
5 would call his friend James Ford during the fights with Ms. Panos, and Mr. Ford could
6 often hear Ms. Panos yelling in the background. Ex. 59 at ¶59.

7 159. When Mr. Chappell was back in Lansing, Ms. Panos called Mr. Chappell
8 almost every day and begged him to return. Mr. Chappell told his brother Michael that
9 he needed to be with Ms. Panos because he loved her and wanted to be a father to their
10 son. Ex. 63 at ¶13. Mr. Chappell returned to Tucson.

11 160. Mr. Chappell's drug use escalated at some point in Tucson, with Mr.
12 Chappell becoming dependent on cocaine. At one point Mr. Chappell was smoking
13 crack cocaine five times a week. Ex. 73 at ¶41; Ex. 195 at ¶5; Ex. 166 at ¶8; Ex. 167 at
14 ¶8; Ex. 168 at ¶6.

15 161. Sometime in 1992, Mr. Chappell called friend Terrance Wallace from
16 Tucson and again asked for help in returning to Lansing. Ex. 70 at ¶14; see Ex. 168 at
17 ¶8. Mr. Wallace sent Mr. Chappell a bus ticket and Mr. Chappell returned to Michigan.
18 He was heavily abusing drugs in Tucson and felt like he was losing control of his own
19 life. Id. Mr. Chappell also felt his relationship with Ms. Panos was not working out.
20 Ms. Panos began calling Mr. Chappell and begging with him to return home, but this
21 time Mr. Chappell refused. Finally Ms. Panos bribed Mr. Chappell with tickets to a
22 Bobby Brown concert in Arizona. Ex. 329 at ¶10. Mr. Chappell went back to Tucson
23 once again. Ex. 59 at ¶60.

24 162. In 1994, Ms. Panos moved to Las Vegas and paid for Mr. Chappell to move
25 there as well. Ex. 91 at ¶4; see Ex. 104 at ¶7; Ex. 105 at ¶8; Ex. 166 at ¶12; Ex. 167 at
26 ¶10. There, the same problems that had plagued their relationship followed. Ex. 167
27 at ¶11. Ms. Panos would kick Mr. Chappell out of the house and then ask him to return.

1 This happened on at least three occasions that James Ford knew about. Ex. 59 at ¶61.
2 When Ms. Panos told Mr. Chappell to leave, Mr. Chappell wandered the streets
3 homeless for days at a time. Id. at ¶¶ 61-62.

4 163. Mr. Chappell's drinking and drug use escalated while living in Las Vegas.
5 Mr. Chappell went on frequent crack binges. Even Mr. Chappell realized that his drug
6 addiction was beyond his control. Ex. 59 at ¶61. Mr. Chappell told Mr. Ford that the
7 crack cocaine in Las Vegas was more potent than what he was used to in Michigan.
8 Mr. Chappell was trying to cope with the difficulties of his relationship by using drugs,
9 but that just made life worse for him. Id.; see Ex. 105 at ¶9.

10 164. A few months before his arrest in 1995, Joetta Ford received a collect call
11 from Mr. Chappell in the middle of the night. Mr. Chappell was living in Las Vegas
12 and had been put out of the house by Ms. Panos; he was walking the streets with
13 nowhere to go and no one to turn to. Ex. 61 at ¶21. Mr. Chappell told Ms. Ford he
14 called her because he was alone and afraid and needed to hear a familiar voice. Id.

15 165. Had counsel presented this testimony, the jurors would have heard
16 evidence, other than from Mr. Chappell, that corroborated the fact that Mr. Chappell
17 and Ms. Panos had a long history of breaking up and making up, thus casting a much
18 different and more accurate light on the relationship between the two.

19 166. There is a reasonable probability of a more favorable outcome if this
20 evidence would have been presented. The evidence would have confirmed that Mr.
21 Chappell and Ms. Panos were still together at the time of the crime. This would have
22 not only supported Mr. Chappell's defense that the murder was committed in a jealous
23 rage, and was not premeditated first-degree murder, but also would have shown that
24 Mr. Chappell could not have been guilty of burglarizing his own home.

1 **b. Addiction**

2 167. The State presented Mr. Chappell's addiction in the form of character
3 assassination—portraying Mr. Chappell as someone who would steal money and
4 furniture from his own wife and children with no good cause. But in reality, Mr.
5 Chappell's addiction was a life-long battle that started in childhood and affected his
6 entire life and that of the people around him. This more accurate (and more
7 sympathetic) portrayal of Mr. Chappell's addiction could have been testified to by
8 available lay witnesses. And if the jury had heard this more accurate portrayal of Mr.
9 Chappell and his addiction, the State's prejudicial evidence would have been blunted,
10 and the jurors would have made a decision regarding Mr. Chappell's guilt based upon
11 the evidence and not emotion.

12 168. Mr. Chappell starting drinking alcohol and smoking marijuana when he
13 was twelve years old—around the sixth grade. As he got older, Mr. Chappell drank an
14 average of twenty to forty beers during the work week and would then binge drink on
15 the weekends, mixing beer and hard liquor. Ex. 59 at ¶¶27-28 ; Ex. 70 at ¶25; Ex. 69
16 at ¶13; Ex. 58 at ¶8; Ex. 64 at ¶14; Ex. 53 at ¶¶33-34; Ex. 54 at ¶16; Ex. 52 at ¶11.
17 One time, Carla Chappell (Chappell's sister) found enough wine bottles under Mr.
18 Chappell's bed to fill three trash bags. Ex. 53 at ¶33.

19 169. In high school, Mr. Chappell liked to drink alcohol while smoking
20 marijuana. Ex. 73 at ¶40; Ex. 63 at ¶9; Ex. 58 at ¶11; Ex. 53 at ¶33; Ex. 56 at ¶5. And
21 on occasion, Mr. Chappell would hang out with a gay neighbor, Rob Williams. Mr.
22 Williams would purchase alcohol for Mr. Chappell and his friends. Ex. 53 at ¶33. It
23 appeared to Michael Chappell that his brother was abusing substances to escape his
24 problems. Ex. 63 at ¶9.

25 170. Mr. Chappell had an unlimited supply of drugs at his disposal because his
26 Uncle Rodney and Aunt Sharon were drug addicts. Mr. Chappell also got drugs from
27

1 dealers he was friends with and from his brother Ricky. Ex. 59 at ¶24; Ex. 53 at ¶¶30,
2 34; Ex. 54 at ¶16.

3 171. Mr. Chappell also turned to crack cocaine when he was about seventeen
4 or eighteen years old. Ex. 70 at ¶26; Ex. 59 at ¶33; Ex. 69 at ¶13; Ex. 68 at ¶17; Ex. 64
5 at ¶14; Ex. 53 at ¶30; Ex. 54 at ¶16. Initially, Mr. Chappell smoked crack and
6 marijuana combined in a joint and then later started smoking crack from a pipe. Ex.
7 59 at ¶33; Ex. 73 at ¶35; Ex. 54 at ¶16; Ex. 52 at ¶12. When he was sober, drinking
8 beer, or smoking marijuana, Mr. Chappell was easy-going and fun loving. However,
9 when Mr. Chappell was on crack, he became paranoid and behaved oddly, becoming
10 jumpy, overly alert to his surrounding, aggressive, agitated, and easily frightened. He
11 also complained of hearing voices and suspicious sounds when on crack and spoke
12 about possible threats and dangers. Most of Mr. Chappell's crack related delusions
13 centered on hearing things. Ex. 59 at ¶34; Ex. 70 at ¶28; Ex. 68 at ¶17; Ex. 53 at ¶37;
14 Ex. 52 at ¶11; Ex. 55 at ¶¶3-4.

15 172. Mr. Chappell's addiction was so severe that he stole from Ms. Panos to
16 supply his drug habit. Ex. 68 at ¶17; Ex. 64 at ¶47; Ex. 53 at ¶37; Ex. 330 at ¶26. He
17 also shoplifted and used the proceeds to purchase drugs. Ex. 55 at ¶2.

18 173. At first, while in Tucson, Mr. Chappell's drug addiction seemed under
19 control. Ex. 166 at ¶¶3-6; Ex. 167 at ¶¶4-5; Ex. 168 at ¶4. However, as in Lansing,
20 the addictions again took over Mr. Chappell's life. Mr. Chappell used crack (and
21 alcohol) to escape the problems he was having with Ms. Panos. Whenever Ms. Panos
22 got on Mr. Chappell's nerves or made him feel bad, Mr. Chappell would cope by getting
23 high. Ex. 59 at ¶35; see Ex. 91 at ¶2; Ex. 105 at ¶2; Ex. 166 at ¶¶8-9; Ex. 168 at ¶¶ 5-
24 6, 9.

25 174. The drug and alcohol use continued when Mr. Chappell moved to Las
26 Vegas. Mr. Chappell had frequent crack binges and his addition spiraled out of control.

1 One reason for this was that crack was more potent in Las Vegas. Ex. 59 at ¶ 61; see
2 Ex. 55 at ¶¶ 4-5; Ex. 167 at ¶11. See subsection (3), post.

3 175. Had counsel presented this testimony, the jurors would have heard a more
4 accurate portrayal of Mr. Chappell's drug addiction. But without it, the jurors were
5 left with only prejudicial evidence that destroyed the juror's ability to make an
6 informed and unbiased decision on Mr. Chappell's guilt. Counsel's ineffectiveness was
7 prejudicial to Mr. Chappell.

8 **c. Learning disabilities**

9 176. The jurors did not have sufficient evidence before them regarding Mr.
10 Chappell's learning disabilities. Additional evidence would have explained why Mr.
11 Chappell could only temporarily hold menial jobs. Additional evidence also would have
12 explained why Mr. Chappell was so dependent on Ms. Panos and why the possibility of
13 her leaving him caused him to fly into a jealous rage and kill her. But sadly the jurors
14 did not have the benefit of this first-hand lay witness evidence.

15 177. Mr. Chappell suffered from a learning disability at an early age and was
16 in special education classes while in school (along with his sister Carla). Ex. 59 at ¶7;
17 Ex. 73 at ¶35; Ex. 69 at ¶5; Ex. 61 at ¶11; Ex. 64 at ¶¶4, 26; Ex. 72 at ¶7; Ex. 53 at ¶5;
18 Ex. 54 at ¶3; Ex. 330 at ¶22. He was not academically inclined, struggled with reading,
19 writing, and math, and appeared mentally slow. Ex. 59 at ¶7; Ex. 70 at ¶17; Ex. 69 at
20 ¶5; Ex. 68 at ¶16; Ex. 58 at ¶¶2-3; Ex. 64 at ¶¶4, 26; Ex. 72 at ¶¶2, 7; Ex. 53 at ¶5; Ex.
21 54 at ¶¶3, 5; Ex. 52 at ¶4; Ex. 56 at ¶2. And because he was slow and a special education
22 student, Mr. Chappell was often teased in school and around the neighborhood. Ex. 58
23 at ¶5; Ex. 64 at ¶26; Ex. 53 at ¶5; Ex. 56 at ¶2.

24 178. Joetta Ford was a nurse and recognized the signs of intellectual disability.
25 Ex. 61 at ¶11. One of Mr. Chappell's teachers informed Ms. Ford that Mr. Chappell's
26
27

1 IQ was in the low 70s, which was a red flag to Ms. Ford because people with low IQ
2 scores normally did not function well. Id. at ¶12.

3 179. Mr. Chappell would often ask friends and family members to read things
4 to him that he did not understand. This lasted even when Mr. Chappell was a grown
5 man. Ex. 59 at ¶¶7-8; Ex. 61 at ¶13; Ex. 64 at ¶27; Ex. 54 at ¶5.

6 180. Mr. Chappell also had a poor sense of direction and was not able to learn
7 to drive. Ex. 70 at ¶¶18-19, 22; Ex. 54 at ¶10. He spoke slowly and was physically
8 uncoordinated. It also took Mr. Chappell additional time to process questions and give
9 responses. Ex. 69 ¶¶6, 8; Ex. 58 at ¶5; Ex. 52 at ¶4.

10 181. Mr. Chappell had a short attention span and had difficulty focusing on
11 anything for more than a few minutes. He learned from watching and imitating others.
12 Ex. 73 at ¶30; Ex. 58 at ¶3; Ex. 54 at ¶4; Ex. 52 at ¶4. Even when he was repeatedly
13 shown how to do tasks, Mr. Chappell was not able to learn things quickly. Ex. 73 at
14 ¶33; Ex. 58 at ¶2. Mr. Chappell had a limited vocabulary and normally used words
15 with few syllables. Ex. 73 at ¶34; Ex. 58 at ¶2; Ex. 64 at ¶¶29, 31; Ex. 54 at ¶4; Ex. 56
16 at ¶2.

17 182. Because Mr. Chappell had low intellectual function and no high school
18 diploma, he was only able to secure menial jobs that did not require much skill or
19 interaction with the public. Ex. 61 at ¶18; Ex. 64 at ¶26; Ex. 53 at ¶5.

20 183. Mr. Chappell's juvenile probation officer, William Moore, found that while
21 he could teach Mr. Chappell how to do simple tasks like clean or garden, it was almost
22 impossible to teach him intangible concepts. Ex. 72 at ¶7. To Mr. Moore, it was as if
23 "no one was home" when he was trying to teach or tutor Mr. Chappell. Mr. Moore did
24 not believe that Mr. Chappell ever grasped the concepts of self-care, schooling, or
25 reading. Id. at ¶8. Mr. Moore believed that Mr. Chappell should have been placed in
26 a twenty-four hour intensive care program for his mental health needs and behavioral
27 issues. Id. at ¶10.

1 184. There is a reasonable probability of a more favorable outcome if lay
2 witness testimony corroborating Mr. Chappell's learning disabilities and adaptive
3 deficits had been presented.

4 **d. Conclusion**

5 185. The presentation of this lay witness testimony, as outlined above, would
6 have given the jurors a more accurate portrayal of Mr. Chappell, and much-needed
7 support to Mr. Chappell's own testimony that he killed Ms. Panos in a rage of jealousy.
8 The evidence would have shown that Mr. Chappell was deeply dependent upon Ms.
9 Panos, that Mr. Chappell could not foresee living without Ms. Panos's support, and,
10 based upon his mental slowness and drug addiction, that he killed Ms. Panos in the
11 heat of passion. This lay witness testimony was also important as it corroborated Mr.
12 Chappell's own testimony, which was heavily impeached by the prosecution.

13 186. Counsel's failure to investigate and present such evidence amounted to
14 deficient performance, which prejudiced Mr. Chappell and ultimately led to his
15 erroneous conviction for capital murder.

16 **3. Expert on Neuropharmacological Influences**

17 187. As discussed previously, the State presented evidence at the guilt phase
18 that Mr. Chappell sold his daughter's furniture, sold his children's diapers, rented Ms.
19 Panos's car to people at the housing project, and committed repeated acts of domestic
20 violence against Ms. Panos. This evidence was inadmissible and clearly introduced to
21 prejudice Mr. Chappell's character.

22 188. However inadmissible it was, counsel did little to combat it, leaving Mr.
23 Chappell's character impeached. Had counsel hired a neuropharmacological expert,
24 like Dr. Jonathan Lipman, the jurors would have heard evidence that would have
25 mitigated and explained Mr. Chappell's behavior and assisted in his defense that he
26 killed Ms. Panos in the heat of passion.

1 189. According to Dr. Lipman, Mr. Chappell was genetically vulnerable and
2 predisposed from birth (in utero) to drug abuse, and this drug abuse impaired his ability
3 to control his impulse to abuse drugs. Ex. 90 at 1, 3, 8-10. Mr. Chappell was also
4 environmentally shaped in his postnatal and early childhood development, by modeling
5 and enculturation, to drug abuse. Id. Such evidence would have shown the jury that
6 Mr. Chappell was predisposed to drug addiction and he could not voluntarily choose to
7 stop using as easily as someone without such a predisposition.

8 190. Furthermore, Mr. Chappell's personality and neurocognitive development
9 was seriously influenced by his alcohol and cocaine use, which was brought about by
10 either his gestational or early developmental impairment, or both, likely due at least
11 in part to his mother's use of drugs throughout her own pregnancy. Ex. 90 at 18.

12 191. Dr. Lipman opined that the severity of Mr. Chappell's addiction to crack
13 cocaine, "is indexed by the lengths to which he would descend to obtain money for
14 drugs," like his selling of his children's diapers and furniture. Ex. 90 at 3. Mr.
15 Chappell's short-sighted, irresponsible, and often larcenous behavior was guaranteed
16 to alienate those most supportive of him, without regard for the inevitable
17 consequences, and is typical behavior of the crack addicted individual driven by the
18 overwhelming craving and by the felt necessity of avoiding the painful consequences of
19 drug withdrawal. Id. Thus, Mr. Chappell's actions of selling his children's diapers or
20 furniture, or any such actions, which on their face made Mr. Chappell appear to be a
21 bad father and husband, can be more readily explained by the involuntariness of his
22 actions, not intentional violation.

23 192. The defense also introduced, through Dr. Etcoff, testimony that Mr.
24 Chappell suffered from a learning disability and from borderline personality disorder.
25 Dr. Etcoff's testimony, however, could have been supported by the testimony of Dr.
26 Lipman or someone like him. If counsel had hired a neuropharmacological expert, the
27 jurors could have heard the following evidence.

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JAMES MONTELL CHAPPELL,

Appellant,

v.

WILLIAM GITTERE, et al.,

Respondents.

No. 77002

District Court Case No.

(Death Penalty Case)

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APPELLANT'S APPENDIX

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Appeal From
Eighth Judicial District Court, Clark County
The Honorable Valerie Adair, District Judge

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 2nd day of May, 2019. Electronic Service of the foregoing Appellant's Appendix shall be made in accordance with the Master Service List as follows:

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DISTRICT COURT

CLARK COUNTY, NEVADA FILED IN OPEN COURT

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THE STATE OF NEVADA,
Plaintiff,
Vs
JAMES MONTELL CHAPPELL,
Defendant.

CASE NO. C131341
DEPT. NO. VII
DOCKET P

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

WEDNESDAY, OCTOBER 23, 1996, 11:25 A.M.

PENALTY PHASE - VOLUME III

APPEARANCES:

FOR THE STATE: MELVYN T. HARMON &
ABBI SILVER
Deputies District Attorney

FOR THE DEFENDANT: HOWARD S. BROOKS &
WILLARD N. EWING
Deputies Public Defender

REPORTED BY: PATSY K. SMITH, C.C.R. #190

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CE

1 WEDNESDAY, OCTOBER 23, 1996, 11:25 A.M.

2 THE COURT: Counsel stipulate to the
3 presence of the jury?

4 MR. HARMON: Yes, your Honor.

5 MR. EWING: Yes, your Honor.

6 THE COURT: All right.

7 I have excused Ms. Lucido from jury service
8 for one of the alternates. The reason is that we were
9 advised, most unhappily this morning, she sustained a death
10 in her family this morning and she wished to go back to the
11 Philippines to attend the funeral. I didn't think the
12 parties would mind that decision. So I went ahead and
13 excused her.

14 Do both the parties agree with that
15 decision?

16 MR. HARMON: The State does.

17 MR. EWING: Yes, your Honor.

18 THE COURT: The defense may continue with
19 its closing statement to the jury.

20 MR. EWING: Thank you, your Honor.

21 Good morning, your Honor, counsel, ladies
22 and gentlemen of the jury, I'd like to thank you in advance
23 for the time and attention you are willing to pay to my
24 closing argument. I would like to request that you bear
25 with me and pay close attention. This is the only

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1 opportunity I will get to speak to you and I will try to
2 state our position plainly and simply so that there will be
3 no confusion about where we stand on these very important
4 issues.

5 Now, we sat over her during the course of
6 the trial and we listened to the same witnesses that you
7 listened to and we heard about this terrible tragedy. We
8 heard about Deborah Panos and her life and we felt for her
9 just as you did. We felt sorrow, we felt pain. We saw the
10 pain on the faces of her family, as they came in to
11 testify, and we are not asking you to forget her. I want
12 you to remember that. We have never, ever asked you to
13 forget her.

14 James told you that if he could exchange his
15 life for hers, he would, but nothing we do today is going
16 to bring her back and that's not what can be accomplished
17 by a penalty phase in this case. The penalty phase is not
18 about vengeance. In a few minutes, the case will be yours
19 and you will have to make some difficult decisions, but you
20 can look at the bright side. This case is so far removed
21 from any case which would warrant death penalty
22 consideration, that you can summarily dismiss that as an
23 option and let's talk about why that's the case.

24 Penalty phases, as the Judge instructed you,
25 are about aggravating and mitigating circumstances.

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1 Generally, the aggravating circumstances apply to the facts
2 of the case, how the murder was committed. I say generally
3 because there is exceptions. Generally, the mitigating
4 circumstances apply to the history of the defendant and
5 circumstances surrounding him.

6 The Court, in the Jury Instructions, told
7 you that the penalty phase is about aggravating and
8 mitigating circumstances, which means that the penalty
9 phase is about James Chappell. We don't say that to be
10 insensitive, we say that because that's true. The penalty
11 phase in this case, the State did not present one shred of
12 evidence to assist you in the validity of the aggravating
13 circumstances.

14 During the guilt phase, the State presented
15 that James Chappell was not always a nice person, that he
16 was a cocaine addict, that he was a petty thief, that, on
17 occasion, he abused Deborah Panos, that she was afraid of
18 him, and that she wanted out of the relationship.

19 In the penalty phase of the trial, after the
20 guilt phase, the State presented evidence that James
21 Chappell was not always a nice person, that he was a
22 cocaine addict, that he was a petty thief, that he
23 sometimes abused Deborah Panos, that she was afraid of him,
24 and that she wanted out of the relationship. They gave you
25 no assistance in determining the existence of these alleged

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JChappell-8JDC2345

1 aggravating circumstances. They didn't because they
2 couldn't. They brought in character evidence through
3 hearsay and innuendo so that they could conceal the fact
4 that they could not prove the alleged allegations of
5 aggravating circumstances. They could not do what the law
6 requires them to do.

7 Let's talk about these alleged aggravating
8 circumstances for a few minutes. During the guilt phase,
9 you found beyond a reasonable doubt the existence of a
10 robbery and a burglary. We can't, at this juncture,
11 dispute that and those are the alleged aggravators. The
12 law allows you to consider those as two aggravators. My
13 argument to you is that these two incidents occurred at the
14 same time. I don't know, I can't speculate about what
15 occurred during your deliberation, but I assume that you
16 determined that James entered with the intent to steal
17 something and he stole something. They are the same course
18 of conduct and for purposes of this hearing and your
19 deliberation, our argument is you should consider that as
20 one aggravating circumstance.

21 The State alleged sexual assault as an
22 aggravating circumstance. Never once in the penalty phase
23 was the word sexual assault even mentioned. Never once in
24 the guilt phase was the word sexual assault mentioned. It
25 wasn't mentioned until closing argument and in this closing

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1 argument, the State asks you to speculate that there was a
2 sexual assault with absolutely no corroborating evidence.

3 What do we actually know about this case?

4 We know James and Deborah had a ten year relationship. We
5 know that they had a sexual relationship for 10 years. We
6 know that they had three children together. We know that
7 Debbie's friends told you that she loved James. We know
8 that James admitted that they had consensual sex. We know
9 that Deborah was found dead right next to the front door
10 fully clothed. We know there was no evidence presented
11 from any experts indicating any injuries consistent with
12 sexual assault. We know there was no evidence presented by
13 any expert, including bodily fluids on the carpeting where
14 she was lying, indicating that there was a sexual assault.

15 The State asks you to speculate and our
16 argument is, our contention is that to make an arbitrary
17 decision about a sexual assault without any evidence is
18 wrong and it would be improper for you to do so in this
19 case.

20 The prosecutor went into quite a dialogue
21 about no means no. Where was there any evidence that
22 Deborah ever said no or ever wanted to say no? I wish I
23 could count the number of times in counsel's closing
24 argument that she used the word maybe or perhaps or might
25 have been. She used these to describe her unsubstantiated

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1 theories about what might have occurred.

2 The Court instructed you that aggravating
3 circumstances have to be proven beyond a reasonable doubt
4 and in the instruction, it says you cannot speculate and
5 that's exactly what she asked you to do. She asked you not
6 to follow the law and I'm asking you to follow the law. In
7 voir dire, we asked each and every one of you, "Are you the
8 kind of a person who can be fair to James Chappell? Are
9 the kind of a person, if you were a defendant, that you
10 would want you to be on your jury," and each one of you
11 responded in the affirmative.

12 Our position is that that type of juror
13 would have looked at yesterday's closing argument as a pile
14 of speculation and innuendo and looked at that closing
15 argument as an attempt to outrage, to cause you to hate,
16 and to cause you to seek vengeance and that's not why you
17 are here.

18 Let's talk about the aggravating
19 circumstance of torture for a few minutes. Never once in
20 the penalty phase did the State mention the word torture.
21 Never once in the guilt phase did the State mention the
22 word torture, not until closing argument. Initially, they
23 wanted you to look at the alleged punches that were
24 thrown. Now, James admitted to you that he caused the
25 injuries that Deborah Panos suffered on that day. To stand

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1 here and speculate about the number of blows without any
2 corroborating evidence is wrong and, also, the legal
3 interpretation was wrong and I'm going to try and explain
4 that to you.

5 The Instruction No. 20, which defines
6 torture, generally states that the act or acts which caused
7 the death -- I'm paraphrasing here, but look at the
8 instruction -- the act or acts which caused the death must
9 involve a high degree of probability of death. Let me do
10 it this way. Let me just read you the Instruction. That
11 way I'm not paraphrasing and you can understand. "The
12 essential elements of murder by means of torture are, one,
13 the act or acts which caused the death must involve a high
14 degree of probability of death." Those punches did not
15 have a high degree of probability of death.

16 Number two, "The defendant must commit such
17 act or acts," same acts that caused a high degree of
18 probability of death, "with the intent to cause cruel pain
19 and suffering for the purpose of revenge, persuasion or for
20 any other sadistic purpose." Those punches could not cause
21 death, therefore, they are not torture.

22 But, more importantly, referring to the
23 punctures and stab wounds, the only evidence we had was Dr.
24 Green. Dr. Green said they were all contemporaneous, they
25 all happened at the same time. There was no attempt to

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1 prolong anything and they were all rapid. We don't know
2 which wound caused the death. We don't know what the order
3 of the wounds were, but they were all contemporaneous.
4 James, as Instruction 21 states, James did nothing, did
5 nothing beyond the act of killing itself. There is no
6 torture and there is no depravity of mind.

7 The only aggravator you can find in this
8 case is the robbery and burglary and I say the word
9 aggravator in a singular sense because, based on the facts
10 of the case, in all fairness, you should consider that as
11 one aggravator. There are many, many other aggravating
12 circumstances under our system of justice which can cause a
13 first degree murder to be subjected to the possibility of a
14 death sentence and I want to talk to you about what this
15 case isn't for a few minutes.

16 The only circumstances by which murder of
17 the first degree may be an aggravated are, number one, and
18 I want you to keep in mind this is our legislature's
19 attempt to compile an inclusive list. These are the only
20 circumstances which can aggravate a first degree murder.
21 Number one, "The murder was committed by a person under a
22 sentence of imprisonment." Mr. Chappell never has been
23 under a sentence of imprisonment. He wasn't at the time.
24 He's never been convicted of a felony and during voir dire,
25 that was important to you, was he an ex-felon, had he

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1 committed murders in the past.

2 That's the next one, "The murder was
3 committed by a person who had previously been convicted of
4 another murder or of a felony involving the use or threat
5 of violence to the person of another." The State did not
6 allege that because that's not James. He didn't commit
7 that aggravating circumstance.

8 Number three, "The murder was committed by a
9 person who knowingly created a great risk of death to more
10 than one person by means of a weapon, device or course of
11 action which would normally be hazardous to the lives of
12 more than one person." The primary example is someone who
13 sits in a garage, meticulously makes a bomb, takes it to a
14 building where a lot of people are going to be, and set it
15 off. A cold and malignant heart.

16 Number four is the one and only circumstance
17 that applies to James Chappell. "The murder was committed
18 while the person was engaged in the commission of or an
19 attempt to commit or flight after committing or attempting
20 to commit any robbery, sexual assault, arson, burglary,
21 invasion of the home or kidnapping." That is the one and
22 only circumstance that applies to James Chappell.

23 Number five, "The murder was committed to
24 avoid or prevent a lawful arrest or to effect an escape
25 from custody."

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1 Again, insinuating somebody plans a cold and
2 calculated act, "The murder was committed by a person to
3 receive money or any other thing of monetary value." The
4 primary example of that would be murder for hire or killing
5 someone for an inheritance. Again, does not apply to
6 James.

7 "The murder was committed upon a peace
8 officer or a fireman who was killed while engaged in the
9 performance of his official duty or because of an act
10 performed in his official capacity and the defendant knew
11 he was a police officer or a fireman." Doesn't apply to
12 James.

13 "The murder involved torture or the
14 mutilation of the victim." As I have already argued to
15 you, that does not apply to James.

16 "The murder was committed upon one or more
17 persons at random and without apparent motive." Again,
18 indicating a cold blooded, heartless-type of killing that
19 does not apply in this case.

20 "The murder was committed upon a person
21 less than 14 years of age." Doesn't apply to James.

22 "The murder was committed upon a person
23 because of the actual or perceived race, color, religion,
24 national origin, physical or mental disability or sexual
25 orientation of that person." A hate crime. Doesn't apply

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1 to James.

2 And the last one, number 12 states, "The
3 defendant has, in the immediate proceeding, been convicted
4 of more than one offense of murder." The case of a
5 multiple murder situation, which again doesn't apply to
6 James.

7 These cases are the statutory aggravators.
8 I think it gives you a good indication, I think, on what
9 the legislature was looking for in terms of people who
10 would commit premeditated, preplanned acts that are not the
11 case in this case and you keep in mind the only aggravating
12 circumstance basically alleged is that James went in there
13 to commit a crime and, during the course of the crime,
14 killed Deborah. Completely different.

15 I want to introduce to you a term of art I'd
16 like to call the worst of the worst and I'm going to use a
17 little chart to give you a visual aid of about what I'm
18 talking about. If I could have the Court's indulgence.

19 I think we can all accept, first of all, we
20 know James has been convicted of first degree murder with
21 use of a deadly weapon and this is the worst kind of a
22 case. I think we can all accept the proposition, though,
23 that all killings are bad, but some killings are worse and
24 I think we can accept the proposition that all killers are
25 bad, but some killers are worse.

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1 This is not the case of a mass murderer,
2 which some of you mentioned in voir dire that you thought
3 was important. This is not the case of someone who sits in
4 their garage and puts together a bomb so they can blow up a
5 building full of people. This is not the case where an
6 individual kidnaps and tortures and murders small
7 children. This is a case where a man got into a
8 relationship and relationships are difficult. He got into
9 a relationship he couldn't handle. With his emotional and
10 psychological problems, he couldn't handle the relationship
11 and he killed Deborah. This is not a case where the death
12 penalty is appropriate. It is not a case of the worst of
13 the worst.

14 The Court instructed you during your
15 deliberation to consider both aggravating and mitigating
16 circumstances. They are both important and that's the
17 law. This is part of this slow, careful, well thought out
18 decision that Mr. Brooks asked you to make yesterday. The
19 prosecutor stood up yesterday and told you to ignore the
20 mitigating circumstances. They are all excuses, they don't
21 matter. Again, she asked you to not follow the law. We're
22 going to talk a few minutes about the mitigating
23 circumstances.

24 Instruction No. 7, and I'm just going to
25 focus on the part that deals with mitigation because

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1 Instruction 7 also deals with aggravation and if you have
2 any questions about that, make sure you refer to that
3 Instruction. A mitigating circumstance itself need not be
4 unanimous. That is if only one juror can find a mitigating
5 circumstance without the agreement of the other jurors,
6 then that juror can consider that and that's important as
7 we consider these mitigating circumstances, as I'm going to
8 list them. I'm going to talk about seven mitigating
9 circumstances and my list isn't all inclusive either. You
10 have the liberty and the right to consider anything you
11 want to be mitigating.

12 First thing I want to talk about is the
13 youth of Mr. Chappell. He was born December 27th, 1969.
14 At the time he committed the offense, he was 26 years old.
15 At the time of the offense, Deborah Panos, who was born on
16 May 4th, 1969, was also 26 years old. She was a few months
17 older than James. The State, in its closing argument,
18 referred to her as young Deborah Panos inferring Deborah
19 Panos was still young in her life and we will concede
20 that's true and so was James. The State later argued that
21 James was not young, he was older and experienced. This is
22 not consistent arguments. The truth of that is both were
23 young. Both of them were probably in their first serious
24 relationship. They had gotten together when they were 16.
25 Therefore, they were probably both experiencing their first

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1 breakup.

2 In terms of dealing with relationships, they
3 were both very young. I want you to remember Dr. Etcoff's
4 testimony because it's important to realize that James had
5 some problems and, in actuality, emotionally and
6 intellectually he was probably younger than his
7 chronological years. The youth of the defendant, James
8 Chappell, is a mitigating circumstance and it's something
9 that you should consider.

10 Next, I want to talk about the lack of
11 significant criminal history. When James was 14 years old,
12 he was arrested in Michigan for petty thefts and petty
13 crimes. His probation officer came in here to talk to
14 you. He was arrested, he was put under community
15 supervision, and he did very well. He thrived under that
16 support and that authority. He did what he was asked and I
17 think it is pretty obvious his probation officer liked him,
18 took an interest in him, and liked the way that he was
19 treated as his probation officer.

20 As an adult, he had some problems. He had
21 an addiction to crack cocaine. He had incidents of
22 domestic abuse and he was a petty thief. And he's admitted
23 all this to you from the beginning. The system never
24 intervened and the State made a big deal about how the
25 system failed Deborah Panos. James has no felony

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1 convictions. He has never been to prison. The question to
2 ask yourself is, does James' history warrant the death
3 penalty? Do you execute people because they are petty
4 thieves? Do you execute people because they are cocaine
5 addicts? Do you execute people because they have emotional
6 problems and commit domestic violence? That's the issue.

7 The phrase is significant criminal history
8 and the operative word is the word significant. When I was
9 discussing the aggravating circumstances with you a few
10 minutes ago, we talked about different types of criminal
11 history which can aggravate a first degree murder and James
12 didn't fall into any of those categories because his
13 criminal history is not substantial and it should not be a
14 aggravating fact. It should be considered mitigating.
15 This is not again -- I mean I have said this before and I'm
16 going to say it again, this is not the case of the ultimate
17 murder situation, a murder for hire, this was not the case
18 of a bombing or the torture and killing of children. James
19 does not have a significant criminal history warranting the
20 consideration of the death penalty.

21 I found it very ironic that the State of
22 Nevada would stand up and say that because the system, the
23 very system that they are a part of, failed Deborah Panos.
24 The result is that you should kill James Chappell. I think
25 that was incredibly ironic. The system failed a lot of

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1 people in this case and vengeance and hate is not the
2 solution.

3 The murder was committed while James was
4 under the influence of extreme mental and emotional
5 disturbance. You may ask why did we put Dr. Etcoff on the
6 stand? Did we put him on the stand to show you what James
7 did was okay? Absolutely not. We put him on the stand so
8 you could understand James, understand how he functions,
9 how he thought, and some of his deficiencies and always
10 keep in mind that James didn't ask for these deficiencies,
11 he didn't choose to have these problems he had. There was
12 a lot in his life.

13 We have all been involved in relationships
14 that have ended, at least I assume we all have and we know
15 how that feels. The knot you get in your stomach, the fact
16 you can't concentrate, you can't see the words on the page
17 in the book in front of you. Now I can accept the fact
18 that none of us killed the person that the relationship was
19 with that was ending, but you see, we have abilities to
20 choose and channel that James does not have. We have
21 control mechanisms that James does not have. We have
22 communication skills and emotional stability that James
23 does not have. I want to refer to a couple things that Dr.
24 Etcoff said in his examination, during the guilt phase of
25 the trial, and this is going to be brief and I realize that

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1 it's only a part of what he said. I'm trying not to take
2 it out of context and I want you to understand that I'm
3 aware that I'm just pulling a few excerpts out of this
4 testimony.

5 He was referring to the low verbal IQ that
6 put him in the seventh percentile nationally. Out of a
7 hundred people, 93 had better verbal skills than James
8 did. He said, "The important aspect of Mr. Chappell's
9 language deficits is that if you place someone like Mr.
10 Chappell in a stressful situation, he's already learning
11 disabled, he can't think well in words, if he has to make a
12 snap decision or filters through the problems of solving
13 complex information rapidly," -- excuse me -- "filter
14 through and problem solve complex information rapidly, you
15 will not find someone of his intellectual capacities
16 verbally doing a very good job and making the best choices
17 as a result of these language problems that are thought to
18 be genetically caused at this point."

19 And he went onto refer to how people who
20 have this deficiency tend to be aggressive and tend to be
21 over represented in the population of prisons.

22 And in regards to the personality test, he
23 stated, "The personality test suggests strongly that he is
24 very socially awkward, introverted, a man who is
25 distrustful of others, who wants to be liked and accepted,

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1 but is frightened of rejection and humiliation because he
2 expects that to occur, if he gets to know someone very
3 well, he'll be hurt."

4 Then he refers to horrible personality
5 borderline characteristics. He refers to those people who
6 have absolutely no sense of identity, they have no sense of
7 self.

8 Again, James didn't ask for these
9 deficiencies, he didn't request them. They were given to
10 him. There is a lot of things he's done in his life. He
11 is responsible for his crimes. There's no question, but he
12 is responsible for his action.

13 Remorse. Number four, remorse. James came
14 to you in court and cried. I would submit to you his tears
15 were genuine and they were the same tears Dr. Etkoff
16 testified he saw and he is trained to view people. And he
17 was remorseful to you. I will say that I expect some of
18 the remorse was towards James. He is in a very difficult
19 position. How can you argue that the vast majority of that
20 wasn't addressed to Deborah Panos? He killed the woman he
21 loved and he feels terrible about it. He told you he would
22 trade places if he could, but he can't. His remorse is
23 genuine. It's mitigating because it demonstrates he
24 doesn't have that cold and malignant heart that I talked
25 about before.

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1 James accepts responsibility for his
2 actions. That's mitigating circumstance number five. He
3 told you whatever you do, he will accept. He told you he
4 killed her, he knew it was criminal. Now his lawyers
5 presented a defense of voluntary manslaughter because we
6 listened to his story and we thought that's what he was
7 telling us. It's difficult for him to understand the
8 differences between the two. He stood up there and told
9 you he committed the crime and he also told you whatever
10 you do, he will accept. This again strongly demonstrates
11 that he doesn't have that cold, malignant heart of someone
12 who is worthy of the death penalty consideration.

13 I want you to consider his family's love for
14 him. They came in here yesterday and briefly told you a
15 little bit about him and it was difficult for them and they
16 asked you to allow him to remain a part of their lives.

17 I want to talk to you for a few minutes
18 about his obvious willingness to adapt to a prison
19 environment, to a prison setting. It's mitigating.
20 There's been no evidence that he had a problem in jail.
21 He's been in jail since the crime was committed a year and
22 a couple months ago. No evidence he's had any problems.
23 Bill Moore told you, when he was under his supervision, he
24 responded well to authority, he was respectful, he liked
25 the structure, he listened. There is no evidence presented

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1 that he would be a problem in prison and you are in a
2 position where you can severely punish him, where you can
3 protect society, where you can rest assure that the inmates
4 aren't in danger and you can do that with a life sentence.

5 The last mitigator I want to discuss is
6 James' childhood. There was particular individual
7 tragedies which he had to endure to shape his life. The
8 loss of his mother, when he was two and a half, which
9 interestingly resulted in his inability to speak for at
10 least a year. His grandma said a year. Bill Moore said
11 two years. That had to have been a substantial trauma. He
12 grew up in a neighborhood where there was drug, violence,
13 and theft. These things he saw all the time. Bill Moore
14 said it would have taken an exceptional youth to be able to
15 rise out of that situation and not have problems and he
16 said James wasn't that exceptional youth.

17 Now did James choose to be born where he was
18 born in the neighborhood he was forced to live in? He
19 didn't make those choices. He was forced and he is
20 suffering the consequences because of that. Is that an
21 excuse? No, but it's a reason and it's mitigating. It's
22 clear in this case that the mitigators vastly and
23 drastically outweigh the existence of any aggravators.

24 I want to talk to you now about the fact
25 that our law, which you've all sworn to uphold and which

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1 you talked about during voir dire being important to you,
2 the law favors life. The law we live under favors life.
3 There is lots of kinds of criminal homicide, as I listed in
4 my chart, criminal homicide where there is a death and it's
5 a crime and I've listed those. Involuntary manslaughter is
6 punishable up to one to six years in prison. It's
7 probationable.

8 Voluntary manslaughter is punishable up to
9 one to 20 years.

10 Second degree murder, which is the
11 intentional, malicious killing, 25 years or life with
12 parole eligibility after 10 years.

13 First degree murder, premeditated and
14 deliberate or a felony murder, punishable by 50 years or
15 life with or without the possibility of parole. If there
16 is parole eligibility, it will be after 20 years and only
17 in this last area here, the point of this triangle is the
18 death penalty even as an option and that's where there is
19 murder in the first degree with aggravating circumstances.

20 Now, if you conclude that there is
21 aggravating circumstances, then you are asked to weigh them
22 against the mitigating circumstances and if the mitigating
23 circumstances outweigh the aggravators, then you must vote
24 life. If you compare them and the aggravators outweigh the
25 mitigators, but you determine that life -- that death isn't

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1 appropriate, then you must vote life. Only when the
2 aggravators outweigh the mitigators and you conclude that
3 death is appropriate, then you have the option of
4 considering it and you may. You may impose a death
5 penalty, but even then it's not required. You have the
6 right to say no. You have the right to say it's not
7 appropriate.

8 The prosecutors would have you believe that
9 if you don't vote death, you are somehow giving James a
10 free ride. I would submit to you that is absolutely
11 ridiculous to say that a life sentence is a free ride.
12 Remember that first degree murder with use of a deadly
13 weapon with the possibility of parole would mean that James
14 would not even be parole eligible for 40 years until he is
15 66 years old. If you give him life without the possibility
16 of parole, he'll never get out and what is prison like?
17 What's it like? Is it a walk in the park? You know, when
18 I'm sitting over her preparing for court everyday, I know
19 when James is coming down the hall because I can hear the
20 chains rattling. He is in chains when he comes and goes.
21 When he gets to jail, he is behind bars. He eats when they
22 tell him to eat. He sleeps when they tell him to sleep.
23 He has visitors when they tell him he can have visitors.
24 He never gets to go to the park and he never gets to go
25 anywhere. And I acknowledge the fact that Deborah Panos

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1 doesn't either. That's true. We are not asking you to
2 forget her. We are asking you to accept the fact that
3 prison is harsh and it's a severe punishment.

4 Prosecutor made a real valid point in her
5 argument yesterday. She said that mercy can never rob
6 justice and she is absolutely true. She's absolutely
7 correct. Being merciful and showing mercy will never rob
8 justice. Justice and mercy are intertwined, they are a
9 part of each other. Mercy is not part of hate. Mercy is
10 not part of vengeance, but neither is justice.

11 The State wants you to hate, they want you
12 to seek vengeance, and that's why the closing argument was
13 presented yesterday the way it was. That's why the case
14 has been presented the way that it was. They want you to
15 hate and they want you to seek vengeance. They asked you
16 to stoop way down to the level of someone who would commit
17 first degree murder and show him that same kind of mercy.
18 That's scary, that's very scary.

19 The State also wanted to talk about winning
20 and losing. Nobody wins here. Everybody loses. If James
21 gets a life sentence with the possibility of parole, he
22 will probably die in prison. I'm confident that you are
23 going back to the jury room and make a reasoned, thought
24 out decision based upon the evidence, that you are going to
25 put aside the emotion, that you are going to remember

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1 Deborah Panos, you are going to remember James Chappell,
2 you are going to remember the evidence, and you are going
3 to make a conclusion what this case deserves, and you are
4 going to send James to prison for life. That's obvious.
5 You are going to send him to prison for life, but you
6 should do that with the possibility of parole for one
7 simple reason.

8 Number one, there is very little difference
9 between the two. He'll be 66 years old when he even has
10 the eligibility of being released, but what it will do is
11 provide for James some type of motivation to make prison a
12 positive experience in the event that some day he has a
13 chance of getting out. It provides him more motivation to
14 continue to do, as he has done before, to be cooperative,
15 to be helpful, to respect authority, and to respond well to
16 that type of a situation.

17 That's what justice deserves in this case
18 and that's what we're asking for. Please don't hate,
19 please don't seek vengeance. Look at the facts in a
20 reasoned and calculated manner and return a verdict of life
21 with the possibility of parole.

22 Thank you.

23 THE COURT: Thank you.

24 Mr. Harmon, for the State of Nevada.

25 MR. HARMON: May it please the Court,

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1 co-counsel, gentlemen for the defense, good morning, ladies
2 and gentlemen. I want to congratulate a number of people
3 in this case. The Court, as usual, Judge Maupin has been
4 very thoughtful, very fair, and objective and professional
5 in conducting these proceedings. He's a gentleman and a
6 true credit to the judiciary.

7 I congratulate my co-counselor, Abbi
8 Silver. She's been a great assistance on this case and has
9 done what I submit the citizens expect of a prosecutor and
10 that is to prosecute as vigorously as she is capable of
11 doing and to strike hard blows, but not foul ones.

12 I also congratulate the esteemed defense
13 counselors. Mr. Brooks and Mr. Ewing are fine gentlemen,
14 but very capable lawyers and although there isn't a person
15 in this courtroom who would want to exchange places with
16 Mr. Chappell, having said that and with that understanding,
17 he is a very lucky man. He's lucky to live in America.
18 He's lucky to be someone who, having committed a heinous
19 crime, is provided under our system due process of law.
20 He's lucky that he has two bright, skilled, very fluent
21 attorneys to state his position in this courtroom and
22 they've done so very ably and I congratulate them for their
23 effort.

24 This is an adversary system and surely, as
25 intelligent men and women, you didn't come to the courtroom

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1 thinking that the prosecuting attorneys and the defense
2 attorneys were going to agree about all the issues in this
3 case. It doesn't work that way in an adversary system and
4 we each have our roles to be performed. Without appearing
5 to try to curry favor because I want to assure you that the
6 decision in this case, as it has been from the time it was
7 submitted to you at the conclusion of the guilt phase, the
8 decision is yours. You are the triers of fact and you are
9 now judges in the sense that you have the awesome
10 responsibility of passing judgment upon a fellow human
11 being and you must do that without submitting to any type
12 of temptation to do it based upon prejudice, based upon
13 gender or race.

14 Ms. Silver and I are confident that you can
15 do that and we congratulate you, as a juror, for your
16 willingness to serve on this case and for the fact that you
17 were obviously conscientious, you are fair minded, decent
18 human beings, and what I say to you now is just an
19 expression of some thoughts about the evidence in this
20 case, but it's with full realization that the persons who
21 must wrestle with the decision after the attorney rhetoric
22 is done will be you, as the members of the jury, and we are
23 fully confident that you will do your very best to give Mr.
24 Chappell what you believe he is due given the facts and
25 circumstances of this case.

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1 There are a number of comments by the
2 defense attorneys that I wish to reply to. It's been at
3 least inferred by Mr. Ewing that the aggravating
4 circumstances become inferior at the penalty phase if there
5 wasn't additional evidence presented concerning them and
6 with that inference in mind, I want to direct your
7 attention to penalty hearing Instruction No. 25. It reads,
8 "The jury is instructed that in determining the
9 appropriate penalty to be imposed in this case, that it may
10 consider all evidence," those are the operative words, "all
11 evidence introduced and the Instructions given both at the
12 penalty hearing phase of these proceedings and at the trial
13 of this matter." We have different phases, but it's all
14 one trial and when you retire to deliberate and to
15 determine the judgment to be imposed upon Mr. Chappell, you
16 aren't limited to the circumstances that were described at
17 the penalty hearing. You may consider all the evidence.

18 So with due respect to Mr. Ewing, it's
19 somewhat slightly misleading to suggest that a
20 circumstance, an aggravator somehow carries less weight
21 because the prosecution didn't supplement it at the penalty
22 hearing with additional evidence. Many aggravating
23 circumstances, as you can tell from the list of 12,
24 described to you by Mr. Ewing and he accurately did so;
25 those are the legislative enactments regarding mitigation,

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1 but many of them relate to the facts and circumstances of
2 the murder because in some cases, and this is one of those
3 cases, there are factors about this case that aggravate it,
4 they make it worse, they arguably make it among the worst
5 of the worst. And, actually, when you consider the
6 significance of the statement premeditated murder, then
7 it's surely not far off the mark to argue that any
8 premeditated murder falls into the category of the worst of
9 the worst, as we look at various crimes which can occur.

10 Now, Mr. Ewing has characterized the
11 prosecution arguments and I assume has referred to my
12 partner, since I hadn't stood up yet, the argument as a
13 pile of speculation and innuendo. Mr. Ewing and Mr.
14 Brooks, of course, are entitled to whatever opinions they
15 choose to form. The statement, as it implies that you
16 should not guess or should not speculate by Mr. Ewing is
17 accurate, but I don't concede for a moment that the
18 position of the prosecution is based upon a pile of
19 speculation and innuendo.

20 You may draw just and reasonable inferences
21 from the evidence presented and that doesn't amount to
22 innuendo or speculation. In Instruction 28, if I might
23 command your attention to another Instruction, the Court
24 points out, and I'm reading in part from the Instruction
25 beginning at line four, "You may draw reasonable inferences

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1 from the evidence which you feel are justified in the light
2 of common experience."

3 Now contrary to the notion of some persons,
4 trials such as this are based upon the rule of reason and
5 nobody asked you to leave your common sense, your good
6 judgment, your ability to be thoughtful and reasonable and
7 to draw appropriate inferences from the evidence outside of
8 the courtroom. We want you to bring that with you and we
9 want you to draw just and reasonable inferences from the
10 evidence during the deliberation process. And so if Mr.
11 Ewing meant to imply that you aren't to draw reasonable
12 inferences, I simply wanted to remind him and you of the
13 Court's Instruction No. 28.

14 This is World Series time. I'm a baseball
15 fan and somehow, as I heard the argument of Mr. Ewing this
16 morning and the short but very direct remarks of Mr. Brooks
17 yesterday afternoon, I thought of an interview that the
18 great home run hitter Hank Aaron had with the media a
19 number of years ago after he had succeeded in breaking the
20 home run record of Babe Ruth and Hammering Hank was asked
21 by the journalists if he would explain how he had managed
22 to hit so many home runs. There was a very short pause and
23 then Hank Aaron responded, "I did it this way. I did it by
24 always keeping my eyes on the ball."

25 What that suggests to me is, in addition to

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1 the literal application to baseball, Mr. Aaron was saying
2 if you want to succeed, stay focused. Don't lose sight of
3 what is important in your experience and, as it applies to
4 this case, I'm suggesting that many things are a matter of
5 perspective. The defense says one perspective, the
6 prosecution another, and, as the jury, you are in the
7 middle and you would have a somewhat different perspective,
8 but it is important, as the triers of fact, to stay focused
9 on the things which are truly important about this case,
10 not to become distracted, not to lose your concentration or
11 your resolve to do what is proper.

12 Well, despite the disclaimer of Mr. Ewing
13 this morning and he said we're not asking you to forget
14 her, we have never, never asked you to forget Deborah
15 Panos. Mr. Ewing said later, in his argument this morning,
16 he said it twice during his opening statement commencing
17 the penalty hearing proceedings, "The penalty phase is
18 about James Chappell." I said he mentioned that twice as
19 though he wanted to make the point. A little later, he
20 said, and I quote, "The penalty hearing is no longer about
21 Deborah Panos. It is about James Chappell." Well, in
22 part, it's about James Chappell, but if Mr. Ewing meant to
23 say that you eliminate during this sentencing phase all
24 consideration of the person whose life was taken, that is
25 ridiculous, with due respect, Mr. Ewing.

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1 I recall from this evidence a mother and
2 grandmother testifying about an event occurring in her life
3 that forever changed her mortal life on August the 31st,
4 1995. I remember the testimony of Norma Penfield that she
5 got a fateful telephone call and a strange man's voice came
6 on the telephone and he uttered the words no mother ever
7 wants to hear, "Debbie is dead."

8 Now, when you fix a punishment for the worst
9 of the worst, a premeditated killer, someone who has been
10 convicted of murder of the first degree, surely, it is of
11 paramount importance to try to determine the degree, the
12 scope of moral culpability. You must determine what the
13 loss is, what the impact has been upon the friends and
14 family of this person whose life was prematurely taken.
15 That's part of the calculus of imposing sentence, to
16 determine the degree of evil. Just how bad is this? Just
17 how much has it damaged not only the life of the victim,
18 who was taken from her little children, but how much has it
19 effected those who loved her, those who respected her,
20 those who knew she was intelligent, she was hard working,
21 she was generous, she made many friends, she was a devoted
22 mother of three children, she loved to be with her parents,
23 her aunts, her uncles, her nieces, and nephews on special
24 occasions. She was a very nice lady, a good person, a
25 loving, decent human being. Now, there's no requirement in

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1 this state that this had to be a mass murder to make it
2 appropriate for a death sentence. It's important to
3 consider this was a good, decent human being and it is a
4 terrible injustice, it is a hideous evil that she has been
5 murdered.

6 Now I recall the testimony of the aunt,
7 Carol Monson, and the words were echoed also by Debbie's
8 mother, Norma Penfield. They were talking about the impact
9 upon the children of tender years when they lose their
10 mother and little Chantell, only three years old when this
11 happened, four years old now, made the statement, "I want
12 to die and go to heaven so I can see my mommy," and the
13 defense tells you that the penalty hearing is only about
14 James Chappell.

15 Defense, and I refer now to my esteemed
16 colleague, Mr. Brooks, tells you to be thoughtful, well
17 reasoned, conscientious, and objective and, yet, he chose,
18 in his brief remarks yesterday afternoon, to ignore all
19 semblance of respect and instead, he chose to indulge in
20 attacking personalities by accusing the State of a, "rabid
21 dog style of prosecution." Well, I hadn't spoken yet. He
22 isn't a mind reader. So I must conclude, by inference, Mr.
23 Brooks was saying my colleague, Abbi Silver, is a rabid
24 dog. That's offensive. She is a dedicated, skillful
25 professional, who articulated tremendously well the

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1 legitimate position of the prosecution in this case and
2 while Mr. Brooks says that he wants you to be thoughtful
3 and well reasoned, what Mr. Brooks really wants you to do
4 is to lose your focus, to take your eyes off of the ball
5 and become distracted, when he accuses the prosecution of
6 having an ulterior motive.

7 The philosopher Goethe is quoted as saying,
8 and I adopt his remarks for the remainder of my argument,
9 "I can promise you to be sincere, but not impartial." Ms.
10 Silver and myself are not impartial on the subject of
11 murder of the first degree. The murder of this young woman
12 was hideous. There weren't any eyewitnesses left, so no
13 one knows for sure the exact sequence of events. You heard
14 the account of the defendant, but he surely has an interest
15 when this case occurs. When he cries, we must all wonder
16 why does he cry? When he is tearful and convinces a
17 clinical psychologist, Dr. Etcoff, months after he's been
18 arrested, after the preliminary hearing, after he's heard
19 witnesses testify about the State's case, when he does this
20 after he's been bound over, after the Information charging
21 him with murder and robbery and burglary have been filed,
22 and after the State's filing of its Notice of Intent to
23 Seek the Death Penalty, and after all this, the defendant
24 speaks with a psychologist. He surely must know the intent
25 to call to the witness stand if he makes the right

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1 impression. Now are those remarks inherently suspect? Is
2 there an attitude, something to be gained by the defendant
3 and Dr. Etcoff acknowledged if he was being given
4 inaccurate information, his whole premise fails because if
5 the defendant was being untruthful, if he wasn't explaining
6 this how it happened, then his opinions are invalid.

7 Was the defendant credible in June when he
8 was interviewed by the doctor? Is he credible now on the
9 witness stand? Debbie Panos is beyond our jurisdiction.
10 We can't subpoena her. She is not subject to service of
11 process. She can't be brought into the courtroom to
12 explain how this occurred from her perspective. So the
13 defendant tells us he got there after she arrived.

14 Well, having said, as I did, that no one
15 knows, can know for sure because there are no surviving eye
16 witnesses except the killer, who has an interest in what
17 happens to him in this case. Let me refer you to a couple
18 of things the defendant said on the witness stand and a
19 number of other factors about the case that offer a rather
20 convincing argument that she didn't get there first, he got
21 there first, and that he got there and, of course, that's
22 when he could ransack the trailer, look for anything he
23 wanted. That's when he could locate the knife and have
24 that ready. That's when he could lay in wait for her.

25 What did he say he did from the witness

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1 stand when he was excused by the law enforcement officer we
2 now know to be Bill Duffy of Parole & Probation? He said
3 he took a hike down Bonanza to Nellis and Lamb and he said
4 he went to the projects, said he stayed there for awhile,
5 borrowed a bicycle. He claims he watched a couple of other
6 people drink a couple of beers and then he went over to 839
7 North Lamb, space 125 and he says he didn't knock; didn't
8 do the logical thing, didn't knock, didn't even go up and
9 try the door. That's what he claims. That is what he is
10 asking you to accept to see if the door was opened.
11 Instead, he went directly to a window and he gave a
12 justification for that. Mr. Chappell said, "I had just
13 called two times." Didn't he say that from the witness
14 stand? "I had just called two times and nobody answered
15 the phone." Just called and where are the projects? Where
16 is this Vera Johnson apartment complex from the crime
17 scene? A couple of blocks away. How long did it take to
18 get there? Minutes.

19 Then a little later, he was asked, "Why
20 didn't you knock? I didn't knock because nobody answered
21 the phone when I called." Well, if she had just been
22 called and she wasn't there to answer and that's his
23 testimony, why are we to accept that she was there when he
24 got over after he had ridden the bicycle the several blocks
25 to her place? Well, ladies and gentlemen, I submit the far

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1 more reasonable inference in this case is that he did knock
2 to make she wasn't there, but he was real sure she wasn't
3 anyway because he had just barely telephoned. He
4 telephoned her from Duffy's office and she wasn't there and
5 he telephoned again from the projects and she wasn't there
6 and he went over and knocked and she didn't answer because
7 she wasn't there and he went in through the window because
8 he wanted to get in and he went in through the window he
9 did that goes through the master bedroom because he
10 couldn't without more effort that he wanted to employ get
11 the others opened and we know that to be true because the
12 officers tried from the Metropolitan Police Department and
13 they ended up going in through the same window he went in
14 through.

15 Now, there's another reason. He had to
16 remove the screen, didn't he. There are photographs that
17 show that it was inside. Well, if this was all something
18 that was reasonable, if there was no malice involved, why
19 did he put the screen inside? This is the window right out
20 next to the driveway. When she would pull up, she'd have
21 to see it, but if he puts the screen inside instead of
22 outside the house, Debbie, when she arrives, has no way of
23 knowing he is inside the house. And so he put it inside
24 and he put his foot on it and he bent it in going to the
25 house and then he prepared for murder, for premeditated

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1 murder of the first degree.

2 We know that for months he had indulged in
3 thoughts of murder. You heard Dina Freeman testify. I'm
4 not going to repeat the threats that she described. Lisa
5 Duran testified about threats that she heard and most
6 recently and something which is truly significant in this
7 case is what happened the day before Debbie was murdered.
8 She had been given something by the City of Las Vegas.
9 That something was a subpoena and that subpoena didn't just
10 invite her to go somewhere. It commanded her to appear at
11 the Municipal Court on August the 30th for the purpose of
12 giving testimony in the matter of the City of Las Vegas
13 versus James Chappell and the charge was domestic violence
14 and the woman who hadn't bothered in January, 1995 to
15 follow-up on the temporary protective order and so it
16 expired, elected to follow-up this time. And the woman the
17 defendant had already been calling vile names in his letter
18 I supposed to him added insult to injury because she
19 responded to the subpoena, she came to court, and was there
20 prepared to testify against him and Michelle Mancha and
21 Lisa Duran both mentioned that they had seen the subpoena
22 at work, they both said that Debbie left work early that
23 day, and Michelle Mancha said she talked with Debbie over
24 the telephone. She estimated at perhaps 2 or 2:30 in the
25 afternoon still on the same day and Debbie said she had

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1 been to court, explained that the judge assured her that
2 the defendant was going to an in-patient drug program, that
3 he wouldn't be released for three months, and remember how
4 Michelle said that made everyone feel a lot better. We
5 felt a safety zone and then Debbie explained that she had
6 talked with the defendant and, although Michelle got the
7 idea it was right in court; it wasn't clear to her whether
8 it was during the time that she was at the courthouse, the
9 municipal courthouse or whether it was after and it was a
10 visit with the defendant at the jail, but words were
11 exchanged and according to what the victim related to
12 Michelle Mancha, she had told the defendant that it was
13 over.

14 Now, the defense said there wasn't any
15 evidence at all that bears on the aggravating
16 circumstances, but I submit if, in fact, the victim in this
17 case, within 24 hours of her murder, number one, appeared
18 in court to testify against the defendant and that resulted
19 in his guilty plea to domestic battery of her, and if she
20 had the occasion and, in fact, used it to tell him that the
21 relationship was finished, does that have a bearing on
22 whether a burglary occurred? Does that have a bearing on
23 whether he committed robbery and does that have a bearing,
24 despite their prior acts through the years of consensual
25 sex, does that have a bearing on whether she said yes or no

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JChappell-8JDC2381

1 or whether she had any choice to respond at all to sexual
2 penetration? Did the defendant have a response to the
3 statement by the victim that their relationship was done,
4 finished, over? Michelle Mancha testifies that her
5 co-worker and friend Deborah Panos told her that the
6 defendant then said that he was going to kill her. Well,
7 that's a statement that certainly has sinister implications
8 when we realize it was made less than 24 hours before he did
9 kill her. Those types of statements are self prophecies
10 and they can be self-fulfilled, as indeed that one was by
11 the defendant.

12 The defense refers to a rabid dog style of
13 prosecution, and, yet, Mr. Brooks yesterday conceded, as
14 did Mr. Ewing this morning, that the defendant is a
15 worthless SOB, a thief, and a wife beater. Those were Mr.
16 Brooks' words yesterday afternoon. Of course, Mr. Brooks,
17 he is isn't a wife beater, now is he? He never married the
18 woman. We made that point already. She never wore a
19 wedding band around her finger. He didn't beat a wife. He
20 beat someone who was a free woman, free to go anywhere and
21 be with anyone she chose and, perhaps, inadvertently in
22 listing the negative descriptions of the defendant, Mr.
23 Brooks forgot to mention in addition to being a worthless
24 SOB and a thief and a woman beater, he's a murderer.

25 The defense said -- Mr. Brooks said that

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JChappell-8JDC2382

1 James Chappell will never be reasoned. Well, is murder
2 reasoned? Any murder? Is anyone ever justified in
3 committing premeditated murder of the first degree? The
4 fact is murder, by its definition, is unreasonable. So
5 that doesn't somehow distinguish Mr. Chappell because he
6 will never be well reasoned. Murder is irrational, it's
7 illogical, it is stupid. It doesn't make sense and, yet,
8 fortunately, we don't have a defense either during the
9 guilt or at sentencing in this state called felony stupid.

10 Now, the defense says James Chappell will
11 never be deliberate in what he does. Wrong. Wrong. He
12 said on August the 30th he was going to kill her and, as
13 soon as he was released, even though he had promised,
14 begged for the opportunity to go to EOB to personally
15 petition to get admitted to their drug rehabilitation
16 program, he didn't go to EOB, he didn't go to D Street and
17 Washington. He went in the opposite direction. Now was
18 that deliberate? Was he making choices? You know the
19 psychologist comes in to this courtroom and it is months
20 after the crime has occurred. He doesn't know the
21 principles in this case. He spent two hours with this guy
22 and he reads his books and he gives his tests and then he
23 forms certain conclusions. Was this defendant being a free
24 agent when he walked out of Duffy's office and turned
25 right, not left? Was he being deliberate when he went to

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1 the trailer and he broke in and then he ransacked and then
2 he confronted her?

3 I want to talk about something called shared
4 responsibility. My partner, Ms. Silver, very ably has
5 discussed in her argument the primary purposes for the
6 imposition of penalty for first degree murder. Punishment
7 is a primary purpose. It is legitimate for society, in
8 some way, to vent its sentence of moral outrage, at
9 conduct which is unconscionable, which is totally
10 unacceptable.

11 My partner also mentioned deterrence.
12 There's nothing illegitimate about deterrence as a factor
13 to be considered. You have it in this case, as the ladies
14 and gentlemen of this jury, within your power to guarantee
15 by the punishment you impose that Mr. Chappell never makes
16 another woman a corpse. You can certainly deter him and
17 you have it within your power to send a message today out
18 into this community, which is we do not tolerate those who
19 have a history of domestic violence, who will let it
20 accelerate and become a murderer and you can tell the other
21 would be James Chappells what the consequence is when you
22 engage in that type of action. That's a legitimate
23 position to take and, yet, the defense says the prosecution
24 wants you to hate. They want you to stoop way down and Mr.
25 Brooks yesterday said the State asks you to act in the way

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1 he acted. Asinine.

2 Mr. Brooks, with due respect, sir, imposing
3 a death sentence within the criminal justice system is not
4 the equivalent of battering a woman into submission and of
5 murdering her with a knife, but Mr. Brooks continues, "You
6 are not cocaine addicts, you are not thieves, you are not
7 to descend to the level of James Chappell," in what
8 basically he is saying, once again, is forget about the
9 ball, don't focus and Mr. Brooks wants on your shoulders,
10 each of you, guilt. He wants you to feel guilty and
11 invites you to go on that trip and so I want to talk for
12 just a moment about shared responsibility.

13 Long before you were summoned by the jury
14 commissioner to come to the courthouse, long before you
15 were selected on this case certain decisions were made
16 about the criminal justice system and a legislature decided
17 that we would have capital punishment in this state. The
18 legislature made a policy judgment and we all elect our
19 legislators and, hopefully, what they decide represents the
20 consensus of a society and there are aggravating
21 circumstances that apply to this case and you weren't
22 involved in the statute making process. So if there is
23 guilt, at least let it be shared by the legislature, which
24 adopted the statutory scheme which applies to the case of
25 State of Nevada versus James Chappell.

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1 Well, long before you got involved, long
2 before the office of the district attorney got involved,
3 the Las Vegas Metropolitan Police Department investigated
4 this case, and the primary officers who were assisted by
5 crime lab specialists, patrol officers, and many other
6 people, were the homicide detectives, Detectives Ramos and
7 Vaccaro, and, surely, they have some responsibility in what
8 occurs here. They interviewed the witnesses, they
9 investigated the case, they submitted the case to the
10 Office of the District Attorney, and then the D.A.'s office
11 made certain choices. A public agency and the police
12 department and the legislature and the Office of the
13 District Attorney all share in the responsibility that this
14 is before you today. All share in the responsibility of
15 imposing a severe punishment.

16 When you retire to deliberate and you select
17 whatever punishment you deem to be appropriate, it's not
18 going to be an individual thing, it's going to be an
19 experience, a decision, a judgment shared by 12. It is
20 ridiculous, however, to attempt to equate what you will do
21 under the Court's legal Instructions, having been drafted
22 into jury service, not having any axe to grind, no interest
23 in this case to suggest that somehow the blood this man has
24 on his hands is the equivalent of what you will do. Mr.
25 Brooks, Mr. Ewing is not thoughtful, that argument is not

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1 objective, it's not reasoned.

2 Now the State, as you know, has alleged a
3 total of four aggravating circumstances. As my partner
4 expressed yesterday, murder is the ultimate act of
5 selfishness. Mr. Chappell, as he had said to Lisa Duran,
6 within that several month time span after Memorial Day
7 Weekend, "If I can't have her, nobody can," was simply
8 lived out in all of its brutal details August the 31st.
9 Harry Emerson Fosdick once said, "The person completely
10 wrapped up in himself makes a small package," and a
11 murderer, a thief, someone who would steal not only from
12 his girlfriend, but from his children food, shoes, jackets,
13 diapers, toys is a selfish person. He is a small package,
14 he is someone who has forfeited the right to live because
15 his conduct cannot, will not be condoned not by decent
16 minded persons.

17 This is a case where a burglary occurred in
18 connection with the murder. You may ask rhetorically,
19 well, why does burglary aggravate? Perhaps you haven't
20 asked that rhetoric. My thought is the legislature made a
21 judgment because things are worse when they happen in
22 somebody's home. Debbie Panos had worked hard for this
23 trailer where she lived, 839 North Lamb, space 125, and her
24 mother, who came up with the down payment to get her into
25 the trailer, made a sacrifice, but she had been there for

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1 six or eight or nine months; it would have apparently been
2 a year in early October and this defendant invaded her
3 home, her refuge, her sanctuary, her special place where,
4 except for his repeated intrusions, she should have found
5 safety.

6 Well, in the view of this evidence and from
7 the perspective of the prosecution and I submit the
8 legislature, when you do that, when you commit a burglary,
9 particularly when you kill someone in their home, you have
10 made it one of the worst of the worst. Now to add insult
11 to injury, he also stole from her after he killed her, he
12 stole from her and the legislature made a judgment about
13 robbery because robbery is an inherently dangerous crime
14 because it very often involves force and violence and fear
15 of injury and so the legislature said you have a strict
16 liability if you commit that crime and someone dies, then
17 you must know, first, you are guilty of murder of the first
18 degree and, second, you must know we say that aggravates
19 the murder.

20 Well, there are certainly two aggravating
21 circumstances already found by you in your previous
22 deliberation. The third circumstance is rape, murder.
23 Instruction 18 defines sexual penetration. It says,
24 "Sexual penetration means cunnilingus, fellatio or any
25 intrusion, however slight, of any part of a person's body

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1 or any object manipulated or inserted by a person into the
2 genital or anal openings of the body of another including
3 sexual intercourse," and then the Court says, " Sexual
4 intercourse is the placing of the penis of the perpetrator
5 into the vagina of the victim."

6 Mr. Ewing says the State asks you to
7 speculate with absolutely no corroboration and, ladies and
8 gentlemen, I say to the contrary, agreeing wholeheartedly
9 with the remarks already made by my co-counsel, this case
10 to almost an absolute certainty, when just and reasonable
11 inferences are drawn from the totality of the evidence,
12 proves that this had to have been a sexual assault. For
13 the victim told her friend Michelle Mancha, during the
14 telephone conversation the day before, that she had told
15 him no and if she said no, it's over, it's finished on the
16 30th, why is it reasonable that she would suddenly have
17 done a hundred eighty degree turn and helped him into her
18 trailer? It's just absurd when you put it in the
19 chronology of what was happening because this is the woman
20 who was accompanied from work on the 31st, the day she was
21 to be killed, Michael Pollard. She went to his residence,
22 dropped him off, and then went on home and to his surprise,
23 she showed back up just a few minutes later. This is the
24 woman who apparently had already received the telephone
25 message that Mr. Chappell made from Bill Duffy's office and

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1 she had learned, to her surprise, that he was going to be
2 released.

3 So how did Pollard describe her when she got
4 back to his residence? He said she was curled up like a
5 ball on the sofa crying and shivering and shaking. She was
6 so afraid of this defendant and the defense is saying that
7 it's speculation in view of the fact that she told a friend
8 the day before that it was over and that he replied he was
9 going to kill her and when you understand that after his
10 release, within two hours, he had killed her. Well, surely
11 if she was saying no on the 30th, she was saying no, if it
12 was within her physical capacity to do so. She was saying
13 no on the 31st.

14 The Court in Instruction 19 explains
15 something helpful, "Physical force is not a necessary
16 element in the commission of sexual assault. The issue is
17 not whether the victim was physically forced to engage in a
18 sexual assault, but whether the act was committed without
19 her consent. A victim of a sexual assault is not required
20 to do more than her age, strength, surrounding facts and
21 attending circumstances make it reasonable for her to do to
22 manifest her opposition."

23 Well, ladies and gentlemen, this is a woman
24 who was battered, been, by the concession of the defendant,
25 a woman that he grabbed around the throat with his right

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1 hand. This is a woman he used a knife on. This is a woman
2 whose residence he ransacked. This is a crime scene where,
3 as the point of entry, he didn't use the door, neither the
4 front door or the back door. He came in through the window
5 forcing his way inside and the defense says there's no
6 evidence that he sexually assaulted her. Well, he said he
7 never ejaculated, but that is rebutted by the DNA
8 evidence. One in 14 billion in describing the genetic
9 profile. I submit to you that the State has proven beyond
10 a reasonable doubt that he not only murdered her, he raped
11 her. He not only murdered her, he robbed her. He not only
12 committed murder, he broke and entered and he committed
13 burglary and the defense says it's all the same course of
14 conduct. If the legislature wanted to make those types of
15 distinctions, they would have done so and your obligation,
16 as objectively and as dispassionately as you can, is to
17 apply the law to the evidence in this case. That's all we
18 can ask.

19 The State's fourth aggravating circumstance
20 is that this murder involved torture or depravity of mind.
21 Instruction No. 20 describes torture. My partner ably
22 explained to you the elements of murder by torture
23 yesterday. I'm not going to repeat what she said.
24 Instead, I want to emphasize depravity of mind. This
25 aggravating circumstance is couched in disjunctive

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1 language. It doesn't necessarily require torture. It says
2 murder involving torture or depravity of mind. Now, you
3 think back about the circumstances of this case, is this a
4 depraved murder? Is this depravity when the individual who
5 kills is writing letters hurling defamatory adjectives at
6 the woman who was supposedly the love of his life?

7 The Court defines depravity of mind in
8 Instruction 21 and I commend that to your attention when
9 you deliberate. "The condition of mind described as
10 depravity of mind is characterized by an inherent
11 deficiency of moral sense and rectitude. It consists of
12 evil, corrupt, and perverted intent which is devoid of
13 regard for human dignity and which is indifferent to human
14 life." Weren't the actions of Mr. Chappell on the day of
15 this murder devoid of regard for human dignity? Didn't he
16 act in a way totally indifferent to the sanctity of human
17 life?

18 The Court concludes at line six and seven,
19 "To find an aggravating circumstance based on depravity of
20 mind, you must additionally find that there was torture,"
21 that's one of the ways to get there or there's the
22 disjunctive again, "torture or other serious and depraved
23 physical abuse beyond the act of killing itself." Now the
24 defense says the only evidence we have in this case is the
25 testimony of Dr. Green. Of course, they were focusing

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1 primarily upon the torture argument and it's quite true Dr.
2 Green, the Chief Medical Examiner in Clark County,
3 explained that, in his opinion, all of the wounds inflicted
4 on this victim were contemporaneous. Well, Dr. Green
5 didn't tell us what contemporaneous means except to say
6 they all happened at about the same time. He doesn't know
7 what the sequence of these lethal blows happened to be any
8 more than Dr. Etkoff. Dr. Green is not an eye witness. He
9 didn't see this as it happened and what he's, basically,
10 saying is that the knife wounds happened at about the same
11 time. He wouldn't know if there was a five minute
12 interval. He couldn't tell that from his medical
13 findings. He wouldn't know if there was a fifteen minute
14 interval. He can say from the evidence of the battering,
15 the pommeling to the head and face and body and arms of
16 this victim, that those acts were before she died. The
17 fact that she has defensive wounds, the bruises on her arms
18 suggests that she was trying to cover herself up.

19 Well, that's Dr. Green, the expert that he
20 is, is still subject to limitations. What he did say is
21 that this woman died of multiple stab wounds and that's the
22 point I wish to make regarding depravity of mind because
23 the requirement is if the action is depraved, that in order
24 to find it, you must additionally find that there was
25 torture or other serious and depraved physical abuse beyond

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1 the act of killing herself. Now, as horrendous as 13 stab
2 wounds are, they didn't all kill her. My partner yesterday
3 referred to the wound close to the naval. It was
4 gratuitous, that was depraved. There's a stab wound down
5 near her pubic area. Why does he stab her there? Do we
6 get some insight from the fact that a few weeks ago, he had
7 been writing from the jail, "You're going to hell, you are
8 a slut, you are a whore, you are a stupid bitch," and he
9 stabs her near her pubic area. That didn't kill her.

10 So are those acts of serious and depraved
11 physical abuse beyond the act of killing itself and when
12 the defendant says that things weren't right, he says when
13 they were having consensual sex and the prosecution alleges
14 when he was raping her, he says he jumped up and she was
15 still laying down and he grabbed her with his right hand
16 around the neck. He says, "No, I wasn't cutting off her
17 air supply, I wasn't choking her. No, it wasn't anything
18 like that," but he demonstrated how he grabbed her. Is
19 that a serious and depraved act of physical abuse beyond
20 the act of killing itself and he battered her. My partner
21 counted 12. I don't know if it was six or 10 or 12 or 30
22 times. She bears the scrapes and bruises which show the
23 number of times the fists of this defendant impacted her
24 body. That didn't kill her, though. She died of stab
25 wounds and so those are serious and depraved acts of

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1 physical abuse beyond the act of killing itself and this
2 was a depraved murder.

3 The defense has talked about mitigation.
4 Ladies and gentlemen, to say that somebody who is now 26
5 going on 27 and when he committed these depraved acts was
6 25 years, going on 26, that somehow because of his youth,
7 that is a mitigating circumstance that outweighs his
8 heinous violent acts is an absurd position to take.

9 The defense says that he has a lack of
10 significant criminal history. Ladies and gentlemen, the
11 guy that got hit in the back with his brick, Mr. Gay, from
12 Lansing, Michigan might have something to say about that
13 defense argument. The stores who have been repeatedly
14 victimized by his efforts to satisfy his cocaine habit
15 might disagree. The Tucson Police Department that had to
16 respond repeatedly to the allegations of domestic violence
17 might disagree and certainly the woman whose nose was
18 broken, who was threatened with a knife to her throat on
19 June the 1st, Debbie Panos might beg to disagree and in all
20 likelihood, these persons would allege that the man who was
21 being supervised on probation when he committed this crime
22 for a gross misdemeanor, in fact, was the person who had a
23 very significant criminal history.

24 Because the defendant takes the witness
25 stand and cries, because he's tearful when interviewed by

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1 the defense psychologist, does that mean he's remorseful?
2 Well, even Dr. Etcoff said this is a very angry person and
3 when he began to explain what happened, I could see how
4 close to the surface the anger was and the prosecution
5 submits the remorse is phony. It's all an effort simply to
6 mitigate the punishment. It's an effort to diffuse his
7 responsibility. The defense says he fully accepts
8 responsibility. Not if he lies about what he did. Not if
9 he was there, laid around and waited, not if he raped her.
10 They say it's mitigation that he can adapt to prison life
11 and then they talk about his childhood.

12 Well, ladies and gentlemen, you'll be
13 thankful to know I'm almost done. There are two operative
14 words at this stage of the proceedings and in view of the
15 position taken by Dr. Etcoff, whose opinions are valid only
16 if what the defendant told him is valid, and in view of the
17 arguments made by the defense, these words are particularly
18 appropriate. The words are accountability and commitment.
19 Shakespeare in the play Julius Caesar has one of his
20 characters make a statement that I'm very fond of. The
21 statement is, "The fault, dear Brutus, is not in our stars,
22 it is in ourselves." Mr. James Chappell, the fault does
23 not lie in your stars nor, to borrow a phrase from Flip
24 Wilson, "Did the devil make you do it?" Ralph Waldo
25 Emerson said, "Things are in the saddle and ride mankind,"

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1 and crack cocaine rides hard and with a heavy spur and he
2 was an addict, that's for sure, and he had a problem, but
3 it is not an excuse, even though criminals repeatedly try
4 to make it an excuse, because nobody made him use crack
5 cocaine. Crack didn't make you do it, Mr. Chappell. Drugs
6 don't kill, people kill.

7 It wasn't the fault of Debbie Panos. She
8 didn't make James Chappell do it. He sought her out, he
9 came to her home, he was the aggressor, she denied his
10 accusations, she did nothing to provoke him into burglary
11 and robbery and rape and murder. It isn't even the fault
12 of the knife, 68-A-1. Without Mr. Chappell, the knife
13 could never have got outside of the drawer in the kitchen.
14 It is an aminate object, it was the instrument used by him
15 to destroy her life, but he is the one who picked it up.
16 He made the series of choices. His hand grasped the knife,
17 his hand, his arm plunged the cold steel of the knife
18 repeatedly into her neck and her chest and other parts of
19 her body.

20 It isn't the fault of EOB. When they
21 interviewed him the first time, he didn't have the attitude
22 of someone who was ready to change his life-style, to give
23 up dope. It's not the fault of William Moore, the
24 probation officer from Michigan, who did his best with this
25 defendant and with his family and it isn't the fault of

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1 grandmother Clara Axam. She undoubtedly did her best under
2 the circumstances with the defendant James Chappell. It's
3 not the fault of his Aunt Sharon Axam. This defendant made
4 the choice. He was the free agent who turned right down
5 Bonanza and didn't go over to EOB. It isn't the fault of
6 the absentee father. It's not the fault of the police in
7 this case. It isn't the fault of the witnesses, not the
8 fault of the Office of the District Attorney, it's not the
9 fault of Judge Maupin. He has a hefty case calendar. He
10 didn't need the Chappell case. No one made James Chappell
11 do what he did.

12 Mr. James Chappell, the fault lies in you
13 and if the criminal justice system means anything, it means
14 that when persons commit serious crimes of violence, they
15 must be held personally accountable. And you've already
16 held him accountable to some extent, but now it's judgment
17 day for James Chappell and the issue now becomes whether
18 you, as the ladies and gentlemen of this jury, possess the
19 resolve, the determination, the courage, the conviction,
20 the intestinal fortitude, the sense of commitment to do
21 your legal duty.

22 What about punishment? How does Mr.
23 Chappell feel? He testified about life with the
24 possibility of parole. "I would be honored," the murderer
25 would be honored to have life with parole. "I would be

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Chappell-8JDC2397

1 honored to be able to get out some time in my life." Don't
2 honor him, don't honor the depraved killer of Deborah
3 Panos. Don't honor someone who batters the head and face
4 and arms of a helpless mother of three children, who simply
5 lays on the floor and covers her face inside her home.
6 Don't honor someone who then culminates his murder, his
7 assault by repeatedly plunging a knife into his victim's
8 neck and chest and abdomen and pubic area. Those actions
9 make James Chappell an object of derision, not someone
10 worthy of the badge of honor of life with the possibility
11 of parole.

12 The grandmother quoted JP, the oldest child,
13 as saying about his father, "He's mean and he's in jail,"
14 and she also described why she -- I'm talking about Norma
15 Jean Penfield, her greatest fear, that after she dies, this
16 defendant gets out to further torment her grandchildren and
17 I'm asking you, I'm imploring you, as the ladies and
18 gentlemen of this jury, to grant a grandmother peace of
19 mind.

20 Remember the words of the defendant, Exhibit
21 75, the words of someone who is filled with the spirit of
22 vengeance and hatred, adding insult to injury. Well, a
23 wise man many years ago said, "The world once in a broad
24 flies irrevocably." A fist, a steak knife, these
25 instruments once sent abroad flied irrevocably. Ask the

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1 loved ones and friends of Deborah Panos if these aren't
2 irrevocable. Ladies and gentlemen, I ask you, on behalf of
3 the State of Nevada, specifically on behalf of my partner
4 Abbi Silver, in this case to impose a sentence which is
5 just as severe, just as deadly, just as final, just as
6 irrevocable as the fists and knife of James Chappell.

7 Deborah Panos had no due process of law, no
8 fine lawyers urging the defendant to back off, no right of
9 allocution, no jury, no safety net, no domestic violence
10 hotline. With the most profound disrespect for one who
11 would steal food and clothes and toys from his children and
12 from the so-called love of his life for crack cocaine, who
13 then stole from these children their mother and prematurely
14 sent her to heaven, I add my words to the words of Debbie's
15 aunt, Carol Monson, "Give James what he gave Debbie." I
16 mean by that death.

17 THE COURT: Does this matter now stand
18 submitted?

19 MR. HARMON: Yes, your Honor.

20 MR. EWING: Yes.

21 THE COURT: At this time we will leave this
22 case with the jury. I will ask the clerk to swear the
23 officers to take charge of the jury and the alternates.

24

25 (At this time the officers were duly sworn

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1 by the clerk.)

2
3 THE COURT: Ladies and gentlemen of the
4 jury, if you will now accompany the officers to
5 deliberation. First order of business is that they will
6 take you to lunch.

7 We will be at ease while the jury departs
8 the confines of the courtroom.

9
10 (At this time the jury left the courtroom.)

11
12 THE COURT: Mr. Ewing, you have something
13 you wish to bring to the Court's attention at this time.

14 MR. EWING: Your Honor, yes.

15 Yesterday afternoon, I made a motion for
16 mistrial. The Court made a ruling, but the Court allowed
17 me an opportunity to present the Court with a case for the
18 Court's file relating to the motion and the validity of a
19 mistrial.

20 THE COURT: You rely upon this case in
21 support of your argument?

22 MR. EWING: Yes, that's correct. It's
23 pretty much on point and I provided a copy to the
24 prosecution.

25 Does the Court wish to hear any more

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1 argument on the subject?

2 THE COURT: The Court believes that each
3 accusation of misconduct and argument has to be considered
4 on its special facts. The case of Lesko versus Lehman, 925
5 F.2d 1527, in the Court's view, apply to the discrete facts
6 of that case and is distinguishable and, therefore, makes
7 the case part of this record and incorporates it as part of
8 the defense's argument for mistrial.

9 Anything further at this time?

10 MR. HARMON: Not from the State, your
11 Honor.

12 MR. EWING: Not from the defense.

13 THE COURT: All right, we're in recess.

14

15 (Off the record at 1:26 p.m.)

16

17 * * * * *

18

19 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

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PATSY K. SMITH, C.C.R. #190

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PATSY K. SMITH, OFFICIAL COURT REPORTER

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DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
DEC 31 1996

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LORETTA BOWMAN, CLERK
BY [Signature] Deputy

ORIGINAL

THE STATE OF NEVADA,)
Plaintiff,)
Vs)
JAMES MONTELL CHAPPELL,)
Defendant.)

CASE NO. C131341
DEPT. NO. VII
DOCKET P

BEFORE THE HONORABLE:
A. WILLIAM MAUPIN DISTRICT JUDGE
MONDAY, DECEMBER 30, 1996, 9:00 A.M.

APPEARANCES:

FOR THE STATE: JOHN P. LUKENS
Chief Deputy District Attorney

FOR THE DEFENDANT: HOWARD S. BROOKS
Deputy Public Defender

FOR THE DEPT. OF
PAROLE & PROBATION: ELAINE LOWREY

REPORTED BY: PATSY K. SMITH, C.C.R. #190

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CE11

JChappell-8JDC2478

1 MONDAY, DECEMBER 30, 1996, 9:00 A.M.

2 THE COURT: C131341, State of Nevada versus
3 James Montell Chappell.

4 The defendant is present in custody
5 represented by his counsel, State of Nevada represented by
6 the Deputy District Attorney. Also present are
7 representatives of the Department of Parole & Probation.

8 This is the time set for the entry of
9 judgment and imposition of sentence. Are the parties ready
10 to proceed?

11 MR. BROOKS: Defense is, your Honor.

12 MR. LUKENS: And the State is, your Honor.

13 THE COURT: All right.

14 First, there is a motion for stay of
15 execution.

16 MR. BROOKS: We can handle that after the
17 sentencing, Judge. Whatever the Court's pleasure.

18 THE COURT: All right.

19 On October the 16th, 1996, the trial in this
20 matter was concluded and the jury found the defendant
21 guilty of burglary under Count I, robbery with the use of a
22 deadly weapon under Count II, and murder with the use of a
23 deadly weapon under Count III and the jury also having
24 imposed the death penalty on Count III, we're now
25 proceeding on the sentencing for these charges.

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JChappel11-8JDC2479

1 The Information in this case that generated
2 these charges was filed in this matter -- it's not on the
3 calendar. When was the Information filed?

4 MR. BROOKS: Judge, it was filed October
5 11th, 1995.

6 THE COURT: All right, the record will so
7 reflect.

8 Is there any legal cause or reason why
9 judgment should not be pronounced against the defendant at
10 this time?

11 MR. BROOKS: No, your Honor.

12 THE COURT: By virtue of the jury verdicts,
13 the defendant is hereby adjudged guilty of burglary, a
14 felony, under Count I, robbery with use of a deadly weapon,
15 a felony, under Count II, and murder in the first degree
16 with the use of a deadly weapon under Count III.

17 Does the Department have anything to add to
18 its report?

19 MS. LOWREY: No, your Honor.

20 THE COURT: State of Nevada.

21 MR. LUKENS: Briefly, your Honor.

22 I would advise the Court that the victim's
23 relatives are in court this morning and declined an
24 opportunity to speak because they felt that they would be
25 too emotional and would not be able to address the Court as

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1 they felt the Court should be addressed.

2 THE COURT: The Court has a clear
3 recollection of the testimony that was had during the
4 trial.

5 MR. LUKENS: Thank you.

6 I simply wish to comment regarding what this
7 man wrote to the Court after he was convicted on October
8 16th, 1996.

9 Winston Churchill, when once describing one
10 of the most horrendous men to have lived in our century,
11 simply said, "He was an evil man." It would be easy to
12 call this man some sort of monster, someone who does
13 horrific and terrible things, but that would be to dignify
14 him. He was not and is not that. He is a little man who
15 is evil. He's a little man who even, when called before
16 the Court, says of his victim, the mother of his three
17 children, he says, "But she still made a bad choice and got
18 caught. Yes, she thought I would let her get away with
19 this since I let her get away with so much in the past."

20 Even today, he cannot accept and understand
21 as a decent human being. He simply says, in his delusion
22 when he says, "But I'm going to need to learn a little bit
23 for when I get free, so what I'm going to do now is learn
24 as much as possible. If I ever get free," and so forth.

25 This man forfeited his right to live. The

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JChappell-8JDC2481

1 jury imposed the sentence and the sentence is just. He
2 deserves to die for what he did, but because often times in
3 the nature and the course in the events, that, for some
4 reason, the Supreme Court in the future sees some reason
5 not to have this man forfeit his life, I'm going to ask the
6 Court to run all of those sentences consecutive rather than
7 concurrent as recommended by the Department of Parole &
8 Probation. There's no question that this type of person
9 should never, ever be a free man to walk among us or among
10 decent people and breathe free air. Those sentences should
11 be consecutive.

12 I would submit it.

13 THE COURT: Thank you.

14 Mr. Chappell, your attorney will have an
15 opportunity to make a statement on your behalf. Do you
16 have anything to tell the Court in mitigation of punishment
17 before sentence is pronounced?

18 THE DEFENDANT: Of course, your Honor.

19 First of all, I would like to thank you and
20 the State for my glasses that you bought me and I would
21 like to send my most sincere apologies to my three lovely
22 children and their beloved mother, who I tried very hard to
23 love, but somewhere along the way obsession took over and I
24 lost all my self-esteem and self control.

25 I did not and could not burglarize my own

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1 children's home. I did not and could not rob my own
2 children's mother. I did not and could not plan to kill my
3 own children's mother or any other human being. I am not a
4 cold blooded, violent person and my misdemeanor history
5 with the law shows that.

6 I have never in my life seen so many people
7 lie under oath in my trial. My trial was completely full
8 of hearsay. Not one witness who testified knew me or Ms.
9 Panos but her mother, who did a lot for us, bless her
10 heart, and our children and, Norma, I'm truly sorry. Your
11 daughter was the most caring person I've ever met in my
12 life. I learned so much from her. She will always remain
13 in my heart and soul to the very last day I am on this
14 earth.

15 I still can't believe all this has
16 happened. I made a very bad mistake and I'm about to pay
17 for it. I knew from the beginning that no one would
18 understand me or listen to me. Maybe if I had some African
19 Americans on my jury things would have came out different.

20 I would like to say to James Panos, Anthony
21 Panos, and Chantel Panos who are the real victims here and
22 I am going to do all I can to reunite with them and my
23 family. They know the real James Chappell. You all
24 don't.

25 Once again, I would like to say I'm truly

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1 sorry and I apologize to each person I have hurt and
2 brought into this case of mine. May God forgive me and
3 bless us all.

4 I'm prepared to be sentenced, your Honor.

5 THE COURT: Thank you, Mr. Chappell.

6 Mr. Brooks, on behalf of the defendant.

7 MR. BROOKS: Judge, first, I would like to
8 correct a mistake in the presentence investigation report.
9 On page five, the Department of Parole & Probation quotes
10 the mother of the victim as stating, "I can't forgive the
11 courts for letting him out." I just want to make sure that
12 the record is absolutely clear, I went and read the order
13 of the courts in this case and the court specifically
14 ordered in this case that he not be released on the
15 streets, that he be sent to a drug program by the actual
16 personnel of the Department of Parole & Probation. The
17 people who released him were not the courts in this case,
18 it was the Department of Parole & Probation that released
19 him and they didn't mention that in their report.

20 Obviously, the jury has spoken in this case,
21 Judge, and I will simply say this. I have known this man
22 now for almost a year and a half. He has been one of the
23 most consistently polite and cooperative people I've ever
24 represented. He's an absolute pleasure to work with and
25 it's very interesting because in my dealings with James,

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1 there's only one time when he ever raises his voice and
2 that's when he discusses Deborah Panos and her cheating on
3 him and the experience of calling his home and talking to
4 other men who were living in his home with his girlfriend
5 and his children and that makes him mad, it makes him
6 upset, and, by golly, that is exactly what caused this
7 terrible crime to occur and I will say this. If that makes
8 him a evil man, the fact that he was jealous, then I would
9 submit that the world is full of evil people because truly
10 this is a crime that occurred from passion, it occurred
11 from jealousy, and I do not believe this man is an evil man
12 and I'll submit it on that, your Honor.

13 THE COURT: Well, I'm afraid that I have to
14 take the most vigorous exception to the last portion of
15 counsel's statement with regard to how this occurred. The
16 circumstances that led to this tragic event were not such
17 that -- could not be described as circumstances of
18 provocation. There was absolutely no excuse, sociologic or
19 otherwise, for this final act of defiant control over this
20 woman.

21 The argument that was made during the trial
22 and has been made this morning that this was his home, his
23 children, and, in fact, I believe he even said, during his
24 testimony or even used during his testimony, the possessive
25 when it came to -- the possessive tense when it came to

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1 describing the victim in this case, his possessions.

2 No human being owns another human being.

3 This was not his home. She paid for it, she lived there.

4 He was only an itinerant visitor to this home and he was
5 only, at best, an itinerant father. In fact, he was not a
6 father at all to these children. He was simply the
7 biological father of these children.

8 I can think of no more degrading or
9 counterproductive or damaging result than if this gentleman
10 should ever be reunited with his children. Before he did
11 this, I regret to say he was simply a shiftless bum. Now
12 he is a murderer of the mother of his children. The State
13 says that he is but a little man. I'm afraid that's not
14 true. He's really not a man at all.

15 In accordance with the law of the State of
16 Nevada, in addition to a \$25 administrative assessment, I
17 hereby sentence you, James Montell Chappell, as follows:

18 Count I, 120 months maximum in the Nevada
19 Department of Prisons with minimum parole eligibility to
20 commence when 48 months has been served.

21 Count II, 180 months in the Nevada
22 Department of Prisons with minimum parole eligibility to
23 commence in 72 months. Plus an equal and consecutive
24 sentence for the use of a deadly weapon.

25 The sentence under Count II is to be served

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1 consecutive with that sentence under Count I.

2 Count III, the defendant is hereby sentenced
3 to death by statute in the Nevada Department of Prisons and
4 he is subject to an equal and consecutive sentence for the
5 use of a deadly weapon in the commission of that crime and
6 that sentence is imposed accordingly and the sentence under
7 Count III is to be served consecutively with the sentences
8 of Count I and Count II.

9 Credit for time served?

10 MS. LOWREY: Hundred seventy three days.

11 MR. BROOKS: Judge, may we approach with an
12 order on the stay of execution? It's an automatic stay.

13 THE COURT: Yes, I understand that. I will
14 sign that at this time and indicate to Ms. Panos' family,
15 my sincere sympathy and my hope that you can at least go
16 forward with your lives and in the hopes that these three
17 children can have the kind of life that they deserve.

18 MR. LUKENS: I think there is statutory
19 restitution, your Honor.

20 THE COURT: Statutory restitution.

21 MS. LOWREY: Your Honor, I was wrong with
22 the credit for time served. It's a hundred ninety two
23 days.

24 THE COURT: Anything further from the
25 parties at this time?

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MR. LUKENS: Nothing by the State.

MR. BROOKS: Nothing, Judge. Thank you.

THE COURT: Thank you.

* * * * *

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.


PATSY K. SMITH, C.C.R. #190

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TRAN
CASE NO. C-131341
DEPT. NO. 3

FILED

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ORIGINAL

Chaf SRS
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
JAMES MONTELL CHAPPELL,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT
OF
PENALTY HEARING

BEFORE THE HONORABLE DOUGLAS HERNDON
DISTRICT COURT JUDGE

DATED: TUESDAY, MARCH 13, 2007

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

RECEIVED
JUL 16 2007
CLERK OF THE COURT

1 TRAN
2 CASE NO. C-131341
3 DEPT. NO. 3

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5
6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

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10 STATE OF NEVADA,)
11 Plaintiff,)
12 vs.)
13)
14 JAMES MONTELL CHAPPELL,)
15 Defendant.)

REPORTER'S TRANSCRIPT
OF
PENALTY HEARING

16
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18 BEFORE THE HONORABLE DOUGLAS HERNDON
19 DISTRICT COURT JUDGE

20 DATED: TUESDAY, MARCH 13, 2007

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24 REPORTED BY: SHARON HOWARD, C.C.R. NO. 745
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1

1 LAS VEGAS, NEVADA; TUESDAY, MARCH 13, 2007

2 PROCEEDINGS

3 * * * * *

4
5 THE COURT: Welcome to Department 3, in
6 the trial of C-131341, State of Nevada versus James
7 Chappell.

8 The record will reflect the presence of
9 Mr. Chappell with his attorneys, the State's attorneys, in
10 the presence of our prospective jurors.

11 Ladies and gentlemen from yesterday,
12 welcome back. Thank you for your patience this morning.
13 We're starting late because we were missing a number of
14 people that were supposed to be back at 10:30. We need a
15 certain amount to finish up this process, so what we had
16 to eventually do is get 15 of your brethren from
17 downstairs and bring them up. Welcome to you all.

18 My name is Douglas Herndon. I'm the
19 presiding judge in District Court, Department 3. You all
20 have been subpoenaed here, as you know from filling out
21 the jury questionnaire, as potential jurors in a criminal
22 proceeding.

23 I'm going to tell you a few things and
24 then I'm going to have the attorneys give you a little bit
25 of introduction of the case and tell you about some

3

1 APPEARANCES:

2 For the State: CHRIS OWENS, ESQ.
3
4 For the Defendant: CLARK PATRICK, ESQ.
5 DAVID SCHIECK, ESQ.
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1 witnesses that may be called. Then we'll have some
2 questions for you all. Then we'll get back to the process
3 at the point we were yesterday.

4 Just so you understand, seated in front of
5 me is Sharon. Sharon is my court reporter. Everything
6 that I say, or the attorneys say, or any questions you are
7 asked to answer you give she reports. So it is going to
8 be really important that if you are asked questions that
9 you speak loud enough so we can hear you, and please
10 answer out loud. Don't just shake your head or nod your
11 head. And don't say Uh-huh or Huh-uh, because it's hard
12 to make sure we get that right in a report. So try and
13 answer "yes" or "no," if you could please.

14 Additionally, seat to my left is Carol.
15 Carol is the court clerk. She is going to administer an
16 oath to you all in a minute to we make sure you're sworn
17 in before you answer any questions. Seated to her left is
18 my law clerk, Steve, who helps me out with a lot of legal
19 things that come up during the trial.

20 You have already met Leslie. Leslie is my
21 bailiff. What you're going to find out is most of the
22 court personnel, as well as the attorneys are under
23 certain ethical and legal obligations not to converse with
24 the jury, other than in here during the jury selection
25 process. That means in the hallway, they're not going to

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1 sit around and chat you up about the basketball tournament
2 or anything like that. They are not supposed to.

3 Nonetheless, there may be some things you
4 need to bring to the court's attention, so you can always
5 communicate with Leslie. You can tell her anything you
6 need to tell her; and she'll get it to my attention if
7 necessary.

8 What I'm going to do is ask you a series
9 of questions, as quickly as I can, so we can kind of move
10 forward. But before I do that, Mr. Owens, if you'd
11 introduce yourself and Ms. Weckerly and tell these new
12 folks about the case and the potential witnesses.

13 MR. OWENS: Thank you, your Honor.

14 I think for this group here it's a review,
15 right. So we'll be testing you on it in a minute. I
16 don't think you've heard this before, but if you have I
17 apologize.

18 My name is Chris Owens. This is Pam
19 Weckerly. We're prosecutors in the district attorney's
20 office. We're presenting this case for the State of
21 Nevada. This is a incident that occurred back on August
22 31st of 1995. It went to trial a little over a year
23 later, and the Defendant was convicted on charges of
24 burglary, robbery, with use of a deadly weapon, and first
25 degree murder with use of a deadly weapon. As he sits

5

1 here in court, he's been convicted of those charges.

2 The purposes of impaneling this jury is to
3 make a finding of a sentence regarding the Defendant, Mr.
4 Chappell. That's all that's going on with regard to the
5 jury here.

6 In regard to sentencing procedure, there
7 are four options that will be available. Those are the
8 death penalty, life without the possibility of parole,
9 life with the possibility of parole after 40 years, and a
10 term of years in prison with parole eligibility after 40
11 years. Those are the options.

12 The incident in question here was a murder
13 that occurred at the Ballerina Mobile Home Park. It was
14 at 839 North Lamb. Just a few miles to the east of here,
15 down Bonanza. You'll here facts that it occurred in the
16 trailer in that area, the trailer home. And also about
17 some things that happened in regard to the jail here
18 downtown and parole and probation.

19 Now, witnesses that the State may call in
20 this matter are as follows, I ask you to pay attention to
21 see if you might know or have heard of any of these people
22 for questions later: Luana Aires, Lisa Duran, Tayna
23 Hobson, LaDonna Jackson, Clairra McQuire, Mike Pollard, Kim
24 Simpson, Sherry Smith, Debra Turner, Laura Burfield,
25 Greg Urnst, Dena Freeman, Michell Munson, Carol Munson,

6

1 Norma Penfield, and Paul Widner. The victim's name in
2 this case was Debbie Panos.

3 We have a coroner that will testify. He's
4 actually a retired pathologist from the coroner's office,
5 Dr. Green.

6 Police officers who may testify:
7 Daniel Dersdorff, Darren Heiner, Art Lee, Paul Ocsuch,
8 Mike Perkins, James Viccarro, Alen Williams, and
9 Cal Winchells.

10 Parole and probation officers:
11 Larry Arava, Mike Compton, William Duffy, Bet Henderson,
12 Germaine Smith. And then a possible witness, a
13 psychiatrist from the North Reno area, Dr. Thomas Vicker.

14 I appreciate your patience with us through
15 this process, and your candor in answering our questions,
16 because this is obviously an important proceeding here.

17 THE COURT: Thank you, Mr. Owens.

18 Mr. Schieck.

19 MR. SCHIECK: Thank you, your Honor.

20 Good morning, ladies and gentlemen. My name is David
21 Schieck. I'm with the special public defender's office
22 here in Clark County, Nevada. Also with the office is
23 Clark Patrick, who will be assisting during the trial of
24 the case. This is James Chappell, the Defendant in the
25 case.

7

1 The list of witnesses we may call during
2 these proceedings are as follows: James Ford, Ivory
3 Morrell, Ben Dean, Charles Dean, Fred Dean, Willy
4 Chappell, Mira Chappell-King, Kisha Axion, Dennis Reffer,
5 Marabel Rosalez and Howard Brooks.

6 Additionally, we would hear testimony from
7 Dr. Lewis Etkoff, Dr. Tod Grey, and Dr. William Dan.
8 Thank you.

9 THE COURT: All right. Ladies and
10 gentlemen, I'll have Carol swear approximately fifteen of
11 you that just came. If you'd stand up and raise your
12 right hand and she'll swear you in.

13 THE CLERK: You do solemnly swear you will
14 well truly answer such questions that may be put to you
15 touching upon your qualifications to act as jurors in this
16 case at issue, so help you God.

17 PROSPECTIVE JURORS: (Choir of I do).

18 THE CLERK: You may be seated.

19 THE COURT: She's going to call the role
20 to make sure we have fifteen of you that we believe we
21 have. When you hear your name, answer present or here,
22 please.

23 THE CLERK: Joanne Carmosino.

24 PROSPECTIVE JUROR: Present.

25 THE CLERK: Gary Rosenkrantz.

8

1 PROSPECTIVE JUROR: Present.
 2 THE CLERK: Craig Fuller.
 3 PROSPECTIVE JUROR: Present.
 4 THE CLERK: Lisa Bogner.
 5 PROSPECTIVE JUROR: Present.
 6 THE CLERK: Rene Vargas.
 7 PROSPECTIVE JUROR: Here.
 8 THE CLERK: Donna Morella-Krupa.
 9 PROSPECTIVE JUROR: Here.
 10 THE CLERK: David Mayorga.
 11 PROSPECTIVE JUROR: Here.
 12 THE CLERK: Jedediah Herring.
 13 PROSPECTIVE JUROR: Here.
 14 THE CLERK: Patricia Moran.
 15 PROSPECTIVE JUROR: Here.
 16 THE CLERK: Steven Leavitt.
 17 PROSPECTIVE JUROR: Here.
 18 THE CLERK: Alan Potter.
 19 PROSPECTIVE JUROR: Present.
 20 THE CLERK: Karen Meza.
 21 PROSPECTIVE JUROR: Here.
 22 THE CLERK: Charles Brooks.
 23 PROSPECTIVE JUROR: Here.
 24 THE CLERK: Michael Lomasney.
 25 PROSPECTIVE JUROR: Here.

9

1 you're ultimately selected as a jurors, then we find out
 2 about that, that could contaminate your verdict. And
 3 that's bad. So, please, if you have any feeling there's a
 4 question before, you think there's something that maybe
 5 you're not sure you should tell, should you not tell, let
 6 us know about it. There is no wrong answer of anything
 7 that happens during a jury selection process.
 8 First off, what I would like to know is is
 9 there anybody, of the 15 of you, who has been convicted of
 10 a felon? I see no hands. Thank you.
 11 Any of you all not U.S. citizens? I see
 12 no hands. Thank you.
 13 Do any of you believe that you know or are
 14 acquainted with any of the attorneys here today, either
 15 Mr. Owens or Ms. Weckerly from the DA's office or
 16 Mr. Schieck or Mr. Patrick on behalf of Mr. Chappell? I
 17 see no hands. Thank you.
 18 Any of you believe you know or are
 19 acquainted with Mr. Chappell? I see no hands. Thank
 20 you.
 21 Any of you all believe you know or are
 22 acquainted with any of the witness spoken to you about by
 23 Mr. Owens or Mr. Schieck? I see no hands. Thank you.
 24 Anybody believe they know anything about
 25 the case, other than the very short synopsis that Mr.

11

1 THE CLERK: Luz Cruz.
 2 PROSPECTIVE JUROR: Here.
 3 THE COURT: Anybody's name that is present
 4 whose name was not called? I see no hands. Thank you
 5 very much.
 6 All right, ladies and gentlemen. As I
 7 said a minute ago, I'm going to ask a few quick questions
 8 then the attorneys will get back to their questioning of
 9 the prospective jurors. To those 15 of you that have just
 10 arrived, understand that it is my desire, as well as the
 11 attorneys' desire, to seat 14 people to hear this case who
 12 are as essentially as fair open-minded and neutral as
 13 possible base upon the facts of this case. There are a
 14 number of questions we need to ask you about today.
 15 The questionnaires speeded this up a lot. I know it
 16 doesn't seem like that, because you were sitting around
 17 yesterday and you're back here again today. But in a case
 18 of this nature the questionnaire has really expedited a
 19 lot of things, but obviously, base upon some of the
 20 answers in there, there's a need to follow up and ask a
 21 few questions.
 22 Please make sure that any questions you're
 23 asked today, you give as full, complete, and honest
 24 answers to those questions as possible. If you hide or
 25 withhold something that has reference to this process and

10

1 Owens just spoke to you about, as well as the synopsis that
 2 was in the jury questionnaire? I see no hands. Thank
 3 you.
 4 Some of you indicated in your
 5 questionnaire, if I recall correctly, that you have been a
 6 juror before. To the extent you have been a juror before,
 7 did any of you serve as a foreperson of those juries? I
 8 see no hands. Thank you.
 9 Have you or any of your close family
 10 members ever been accused of a crime? Yes, sir? What's
 11 your name, sir?
 12 PROSPECTIVE JUROR: Donna Morella-Krupa.
 13 THE COURT: Badge number, sir?
 14 PROSPECTIVE JUROR: 0111.
 15 THE COURT: Ms. Morella-Krupa?
 16 PROSPECTIVE JUROR: Yes.
 17 THE COURT: Sorry. What's the crime?
 18 When was it?
 19 PROSPECTIVE JUROR: My sister. She was --
 20 she stole funds or money from the company she worked from.
 21 She was prosecuted.
 22 THE COURT: Was that heard locally?
 23 PROSPECTIVE JUROR: Chicago.
 24 THE COURT: All right. Thank you, ma'am.
 25 Anybody else? Yes. In the front row, tan shirt.

12

1 PROSPECTIVE JUROR: Badge number 050104.
 2 THE COURT: Mr. Rosenkrantz.
 3 PROSPECTIVE JUROR: Yes. My brother.
 4 THE COURT: What was that?
 5 PROSPECTIVE JUROR: Possession of
 6 marijuana with intent to sell, and methamphetamine.
 7 THE COURT: Was that locally?
 8 PROSPECTIVE JUROR: No, it was not.
 9 THE COURT: Thank you. Anybody else?
 10 Middle row, sir, in the dark shirt.
 11 PROSPECTIVE JUROR: 050126.
 12 THE COURT: Mr. Potter, what do you have?
 13 PROSPECTIVE JUROR: My son, statutory
 14 rape.
 15 THE COURT: Okay. Was that locally?
 16 PROSPECTIVE JUROR: Yes.
 17 THE COURT: Thank you. Back row.
 18 PROSPECTIVE JUROR: 050130.
 19 THE COURT: Ms. Cruz.
 20 PROSPECTIVE JUROR: It was my niece.
 21 Possession of controlled substance.
 22 THE COURT: Thank you. Next to you, is
 23 that Ms. Lomasney?
 24 PROSPECTIVE JUROR: Yes, sir.
 25 PROSPECTIVE JUROR: I have an uncle that

13

1 killed his wife.
 2 THE COURT: Was he convicted of that
 3 charge?
 4 PROSPECTIVE JUROR: He kill himself after
 5 that.
 6 THE COURT: Locally or elsewhere?
 7 PROSPECTIVE JUROR: California.
 8 THE COURT: Thank you. Any other hands
 9 up? Did I miss anybody? No. Thank you very much.
 10 Are there any of you that would tend to
 11 give more weight or credence or less weight or credence to
 12 the testimony of a police officer because that person was
 13 a police officer? Why am I not surprised to see you hand,
 14 Mr. Rosenkrantz.
 15 PROSPECTIVE JUROR: That's because I'm a
 16 police officer.
 17 THE COURT: Are you with Metro?
 18 PROSPECTIVE JUROR: Yes, your Honor.
 19 THE COURT: Thank you. Anybody else? No.
 20 Thank you.
 21 Is there anybody that believes they would
 22 not be able to follow the instructions on the law that I
 23 give you in this case, even if those instructions differ
 24 from what your personal beliefs of what the law ought to
 25 be?

14

1 I'm going to give you -- your job as
 2 jurors is to be fact finders. My job as a judge is to
 3 instruct you on the appropriate law in the State of Nevada
 4 that applies to this case. You then take the facts as you
 5 find them, apply the law and reach what you believe is an
 6 appropriate decision.
 7 You have to accept the law as I tell you
 8 it exists, even if you disagree with it, if you're going
 9 to be a juror.
 10 Is there anybody that thinks they would not
 11 be able to follow the law as I tell you it exists? I see
 12 no hands. Thank you very much.
 13 There are a number of principles of law
 14 that pertain to every criminal proceeding. In this
 15 proceeding one of those is the fact that the State has the
 16 burden of proof in proving all of the elements necessary
 17 for certain things in this case related to the sentencing.
 18 Does everybody understand that principle? Proof beyond a
 19 reasonable doubt, does everybody agree with that
 20 principle? Anybody disagree with that? I see no hands.
 21 Anybody disagree with holding the State to
 22 their burden of proof? I see no hands. Thank you very
 23 much.
 24 All right. We will get back to our
 25 questioning of the prospective jurors, which I believe

15

1 puts us with Ms. Ware. Who is up in seat number one.
 2 Good morning, Ms. Ware. How are you?
 3 PROSPECTIVE JUROR: Fine.
 4 THE COURT: All right. Mr. Owens.
 5 MR. OWENS: Thank you. Good morning, Ms.
 6 Ware. You had -- there was quite a few of these questions
 7 you noted some sort of experience or knowledge about.
 8 One was about drugs. You had somebody you knew or were
 9 close to that had an experience with that?
 10 PROSPECTIVE JUROR: Experience in doing it
 11 or selling it?
 12 MR. OWENS: Well, I'm not sure.
 13 PROSPECTIVE JUROR: What are you asking,
 14 either doing it or selling it?
 15 MR. OWENS: It said what are your feelings
 16 and you said, did not deal with them. Was this somebody
 17 you were close to?
 18 PROSPECTIVE JUROR: Just a friends.
 19 MR. OWENS: How long ago was that?
 20 PROSPECTIVE JUROR: Two years ago.
 21 MR. OWENS: So there wasn't anything about
 22 that that would affect your ability to be fair here if the
 23 subject to drugs came up?
 24 PROSPECTIVE JUROR: I guess not.
 25 THE COURT: Speak up. I need to be able

16

1 to hear you.
 2 MR. OWENS: You indicated you had some
 3 contact with a situation of domestic violence. Was it a
 4 friend or something?
 5 PROSPECTIVE JUROR: Yes.
 6 MR. OWENS: There was also an aunt?
 7 PROSPECTIVE JUROR: Yes.
 8 MR. OWENS: Was that in town?
 9 PROSPECTIVE JUROR: No.
 10 MR. OWENS: How close were you to that
 11 situation when that was happening?
 12 PROSPECTIVE JUROR: I was told about it.
 13 MR. OWENS: Okay. So you didn't go to
 14 court? You didn't talk to people?
 15 PROSPECTIVE JUROR: No.
 16 MR. OWENS: What were your feelings about
 17 that at that time?
 18 PROSPECTIVE JUROR: I don't know.
 19 MR. OWENS: Down here you indicated
 20 that -- it said what are your feelings about this. And
 21 you wrote, eye for an eye. Are those your feelings at the
 22 time?
 23 PROSPECTIVE JUROR: Yeah.
 24 MR. OWENS: And what are your thoughts
 25 about it at this point?

17

1 PROSPECTIVE JUROR: The same.
 2 MR. OWENS: The same. Now, you were asked
 3 a number of questions about the death penalty. You said
 4 that you were supportive of the death penalty?
 5 PROSPECTIVE JUROR: Yes.
 6 MR. OWENS: You've heard about the four
 7 options that were talk about in this case. There was
 8 death, life with, life without, term of years. On
 9 question 22 you indicated that you'd already formed an
 10 opinion about what the results should be, right?
 11 PROSPECTIVE JUROR: Yes.
 12 MR. OWENS: Tell us about that.
 13 PROSPECTIVE JUROR: The opinion?
 14 MR. OWENS: Yeah. And why you had that
 15 opinion.
 16 PROSPECTIVE JUROR: If you take somebody's
 17 life --
 18 MR. OWENS: Yeah.
 19 PROSPECTIVE JUROR: The world is round.
 20 What goes around comes around. Eventually it comes
 21 back.
 22 MR. OWENS: You already formed an opinion,
 23 the opinion was the death sentence?
 24 PROSPECTIVE JUROR: Yes.
 25 MR. OWENS: When you say things come

18

1 around, what you're saying seems to be that somebody did
 2 something wrong something wrong is going to happen to them
 3 at some point.
 4 PROSPECTIVE JUROR: Yes.
 5 MR. OWENS: You feel that that's always
 6 the case?
 7 PROSPECTIVE JUROR: Yes.
 8 MR. OWENS: You feel with regard to this
 9 particular case that you've already made a judgment as to
 10 what the jury should do?
 11 PROSPECTIVE JUROR: Yes.
 12 MR. OWENS: So the comes around part would
 13 be this jury?
 14 PROSPECTIVE JUROR: Yes.
 15 MR. OWENS: I think you had said that you
 16 didn't feel that you could consider any of the other
 17 alternatives?
 18 PROSPECTIVE JUROR: No.
 19 MR. OWENS: Is that your feeling right
 20 now?
 21 PROSPECTIVE JUROR: Yes.
 22 MR. OWENS: You said your mind is made up?
 23 PROSPECTIVE JUROR: Yes.
 24 MR. OWENS: You said you would
 25 automatically vote for the death penalty?

19

1 PROSPECTIVE JUROR: Yes.
 2 MR. OWENS: So the feelings you express in
 3 your questionnaire on the subject are the same way you
 4 feel now?
 5 PROSPECTIVE JUROR: Yes.
 6 MR. OWENS: You didn't have a real high
 7 opinion of the system -- criminal justice and the lawyers,
 8 like that?
 9 PROSPECTIVE JUROR: No.
 10 MR. OWENS: A lot of people have those
 11 sorts of feelings today. You're not alone in that. Is
 12 that something that would make it different for you to be
 13 fair to all the parties in this case?
 14 PROSPECTIVE JUROR: Yes.
 15 MR. OWENS: You feel like you might have
 16 feelings against an attorney and might take it out on one
 17 side or the other?
 18 PROSPECTIVE JUROR: Yes.
 19 MR. OWENS: Have you had an experience
 20 where you were a victim of a crime?
 21 PROSPECTIVE JUROR: Yes.
 22 MR. OWENS: How many times has that
 23 happened?
 24 PROSPECTIVE JUROR: Once.
 25 MR. OWENS: How long ago was that?

20

1 PROSPECTIVE JUROR: 1994.
 2 MR. OWENS: What kind of crime was that?
 3 PROSPECTIVE JUROR: I was shot in the
 4 head.
 5 MR. OWENS: Was that in town here?
 6 PROSPECTIVE JUROR: No.
 7 MR. OWENS: Was there a prosecution of
 8 that?
 9 PROSPECTIVE JUROR: No.
 10 MR. OWENS: What happened? Did they not
 11 find the guy?
 12 PROSPECTIVE JUROR: They didn't do
 13 anything.
 14 MR. OWENS: They didn't do anything?
 15 PROSPECTIVE JUROR: Anything.
 16 MR. OWENS: Are you still upset about
 17 that?
 18 PROSPECTIVE JUROR: Yes.
 19 MR. OWENS: Where was that?
 20 PROSPECTIVE JUROR: In Mexico.
 21 MR. OWENS: You feel like there is
 22 something they could have done and they didn't do it?
 23 PROSPECTIVE JUROR: Exactly.
 24 MR. OWENS: Do you feel like there is some
 25 animosity from that, that you might take out on these

21

1 people?
 2 PROSPECTIVE JUROR: Yes.
 3 MR. OWENS: You really don't want to have
 4 anything to do with this?
 5 PROSPECTIVE JUROR: No.
 6 MR. OWENS: Do you?
 7 PROSPECTIVE JUROR: No.
 8 MR. OWENS: I don't have any more
 9 questions, your Honor.
 10 THE COURT: All right. Pass or challenge
 11 for cause?
 12 MR. SCHIECK: Just one question, your
 13 Honor. Ms. Ware, we've got all the things you wrote in
 14 your questionnaire. Do you still feel the same way after
 15 sitting here all day yesterday and listening to
 16 everything?
 17 PROSPECTIVE JUROR: Like what?
 18 MR. SCHIECK: You haven't changed your
 19 mind about how you'll feel about the case?
 20 PROSPECTIVE JUROR: No.
 21 MR. SCHIECK: We would challenge for
 22 cause. Thank you, ma'am.
 23 THE COURT: Mr. Owens, as to
 24 Ms. Washington.
 25 MR. OWENS: You've got friends in law

22

1 enforcement or people that you know?
 2 PROSPECTIVE JUROR: Yes.
 3 MR. OWENS: What is that relationship?
 4 PROSPECTIVE JUROR: I'm a pretrial officer
 5 for the City of Las Vegas. I know several police
 6 officers, judges, attorneys. Just miscellaneous. I'm
 7 been doing this for 24 years, so I know quite a few
 8 people.
 9 MR. OWENS: So you have contact with
 10 police officers all the time?
 11 PROSPECTIVE JUROR: Yes.
 12 MR. OWENS: Anything about your
 13 relationships there that would come over to this trial in
 14 a way that would create an unfair situation?
 15 PROSPECTIVE JUROR: No.
 16 MR. OWENS: You've never had a chance to
 17 serve on a jury before?
 18 PROSPECTIVE JUROR: No.
 19 MR. OWENS: Have you ever been involved in
 20 a court process, because of your job?
 21 PROSPECTIVE JUROR: Yes.
 22 MR. OWENS: What manner -- witness, go in
 23 and make reports?
 24 PROSPECTIVE JUROR: Well, we -- as
 25 pretrial officers we sometimes have to prepare reports for

23

1 the courts, for the judges. I have sat in on several
 2 trials. I never participated in one. I just watched what
 3 was going on.
 4 MR. OWENS: So you prepare the reports.
 5 And the judge reads those and makes decisions?
 6 PROSPECTIVE JUROR: Yes.
 7 MR. OWENS: This is about custody status?
 8 PROSPECTIVE JUROR: No. Our court, we do
 9 misdemeanors. We don't do that.
 10 MR. OWENS: Does it have to do with
 11 sentencing?
 12 PROSPECTIVE JUROR: Sentencing, prepare
 13 for the work program. If they completed whatever the
 14 judge told them they had to do, and they didn't do it.
 15 Any those types of things.
 16 MR. OWENS: You make recommendations to
 17 the court in those reports?
 18 PROSPECTIVE JUROR: On a limited basis.
 19 MR. OWENS: When the judge reviews those
 20 reports or reads them are you in court sometimes?
 21 PROSPECTIVE JUROR: Sporadically. Not to
 22 often.
 23 MR. OWENS: Does the judge ask you
 24 questions about them from time to time?
 25 PROSPECTIVE JUROR: They used to. Not

24

1 anymore. We're not in the Regional Justice Center
2 anymore.

3 MR. OWENS: You've never actually had to
4 be sworn and give testimony in a case?

5 PROSPECTIVE JUROR: In my own. I had a
6 couple of trial matters, yeah.

7 MR. OWENS: Okay. Just traffic?

8 PROSPECTIVE JUROR: Yes.

9 MR. OWENS: How long ago was that?

10 PROSPECTIVE JUROR: '95, '96.

11 MR. OWENS: So you testified for yourself?

12 PROSPECTIVE JUROR: The officer gave me a
13 ticket I pled not guilty and went to trial.

14 MR. OWENS: Your word against the police
15 officer?

16 PROSPECTIVE JUROR: More or less.

17 MR. OWENS: How did that come out.

18 PROSPECTIVE JUROR: They took the word of
19 the officer.

20 MR. OWENS: That's a tough one.

21 PROSPECTIVE JUROR: That generally
22 happens.

23 MR. OWENS: Anything about that experience
24 that would make it difficult for you to be fair here?

25 PROSPECTIVE JUROR: No.

25

1 MR. OWENS: Did you have some resentment
2 against those particular police officers?

3 PROSPECTIVE JUROR: No.

4 MR. OWENS: What are your feelings about
5 the death penalty?

6 PROSPECTIVE JUROR: When I was younger I
7 didn't know what the death penalty was, so I was against
8 it. And in my later years and life experience, I now -- I
9 support the death penalty.

10 MR. OWENS: When did that change occur?

11 PROSPECTIVE JUROR: I would say within the
12 last 6 to 7 years. I'm 42 now. When I was younger I
13 really didn't think about it. I thought everybody
14 deserved a second chance in case they were convicted in
15 time to fight or appeal the process. I don't feel that
16 way anymore.

17 MR. OWENS: And the death penalty doesn't
18 have anything to do with the appellate process. Everybody
19 has an opportunity to fight and to appeal everything. You
20 understand that?

21 PROSPECTIVE JUROR: Yes.

22 MR. OWENS: But then you started feeling
23 like the death penalty might be an appropriate thing in
24 some circumstances?

25 PROSPECTIVE JUROR: Yes.

26

1 MR. OWENS: You still feel that way now?

2 PROSPECTIVE JUROR: Yes.

3 MR. OWENS: When you were asked about your
4 feelings about the death penalty, just generally here, you
5 said I don't feel it's just. I would prefer life in
6 prison over the death penalty for inmates. What did you
7 mean by that?

8 PROSPECTIVE JUROR: What was that again?

9 MR. OWENS: It says, I don't feel it's
10 just. I would prefer life in prison over death for an
11 inmate.

12 PROSPECTIVE JUROR: When I wrote that I
13 was referring to the fact that when you're convicted there
14 are sometimes you may or may not get a chance to appeal.
15 I was speaking of the appeal process, not realizing it's
16 two separate issues.

17 MR. OWENS: I understand. Even if a
18 person gets the death penalty, they can still appeal.

19 PROSPECTIVE JUROR: Yes.

20 MR. OWENS: You're okay with that?

21 PROSPECTIVE JUROR: Yes.

22 MR. OWENS: Okay. That's why you are
23 saying you weren't sure it was just. Because you are
24 thinking maybe they just execute them and they don't have
25 a court review it?

27

1 PROSPECTIVE JUROR: Yes.

2 MR. OWENS: Knowing that that doesn't
3 happen, does that make you feel like it can be just under
4 certain circumstances, base on the crime?

5 PROSPECTIVE JUROR: Yes.

6 MR. OWENS: Then you said -- you were
7 asked about an eye for an eye, a tooth for a tooth. You
8 said I believe it's fair if you murder someone you should
9 be put to death immediately. Now that would mean if it's
10 immediate, then you wouldn't get an appeal.

11 PROSPECTIVE JUROR: I kind of contradicted
12 myself when I was writing everything. Some of the
13 questions were kind of --

14 MR. OWENS: They're terrible questions.
15 They give us sort of a starting point to talk about.
16 The -- when you said immediately, because you kind of
17 thought that's what the law was. But you understand that
18 it's not?

19 PROSPECTIVE JUROR: Exactly.

20 MR. OWENS: Then you asked if you ever had
21 a different views on the death penalty. You said you
22 never had a different view on the death penalty. But
23 today you're kind of explaining how you started off
24 against it and you changed?

25 PROSPECTIVE JUROR: Yes.

28

1 MR. OWENS: Were you not thinking of that
2 when you read the questionnaire?
3 PROSPECTIVE JUROR: No, I wasn't.
4 MR. OWENS: There has been an evolution in
5 your mind?
6 PROSPECTIVE JUROR: Yes.
7 MR. OWENS: Then you said, I would be
8 willing to consider all forms of punishment and deliberate
9 on the appropriateness of the outcome with other jurors.
10 Do you feel that way now, that you'd consider all four
11 forms of punishment?
12 PROSPECTIVE JUROR: Yes.
13 MR. OWENS: Death, life with parole, life
14 without parole. You're okay with that?
15 PROSPECTIVE JUROR: Yes.
16 MR. OWENS: And you'd select the one you
17 feel is appropriate or fair in light of what happened?
18 PROSPECTIVE JUROR: Yes.
19 MR. OWENS: Okay. You felt like it was
20 important to serve and you wanted to make a contribution
21 to the process.
22 PROSPECTIVE JUROR: Yes.
23 MR. OWENS: You do that a lot everyday in
24 what you do. You just never had the jury experience
25 before?

29

1 PROSPECTIVE JUROR: They've selected me a
2 couple of times. I never served on the jury.
3 MR. OWENS: In about three or four days,
4 Ms. Weckerly and myself are going to be standing up asking
5 the jury to return the death penalty. Do you feel that
6 that's something you could do?
7 PROSPECTIVE JUROR: Yes.
8 MR. OWENS: How do you feel about the idea
9 of sitting in judgment on another person?
10 PROSPECTIVE JUROR: Well, I think it goes
11 back to a moral issue. My mother always raised us to
12 treat people the way you want to be treated. Again, as I
13 wrote, do unto others as they would do unto you. If you
14 murder someone or steal their car, doesn't mean I have to
15 steal their care. What you do, at some point in time,
16 comes back to you. It doesn't always -- you're not always
17 going to get away with the things you do. You have to
18 take some responsibility for the consequences of your
19 actions, whether it's take a piece of bubble gum or
20 whatever it may be.
21 MR. OWENS: Part of that is why we have
22 juries. Particularly for the serious stuff, like this.
23 So you feel as you sit here now, in your present state of
24 mind, you could be fair and impartial to both sides in
25 this case?

30

1 PROSPECTIVE JUROR: Yes.
2 MR. OWENS: You'd consider all of the
3 alternatives?
4 PROSPECTIVE JUROR: Yes.
5 MR. OWENS: Pick the one that's
6 appropriate?
7 PROSPECTIVE JUROR: Yes.
8 MR. OWENS: Thank you.
9 THE COURT: Pass for cause, Mr. Owens?
10 MR. OWENS: Yes, your Honor.
11 THE COURT: Mr. Schieck.
12 MR. SCHIECK: Thank you, your Honor.
13 Ms. Washington, in your job with pretrial,
14 do you view yourself as an advocate on behalf of the
15 prosecution or on behalf of the Defendant, or sort of a
16 neutral person?
17 PROSPECTIVE JUROR: As a neutral person.
18 I can't make -- we have guidelines we have to follow. So
19 we follow the perimeters of the guidelines. If there is a
20 question as to fairness of it or the legality of it that's
21 why we have supervisors. But I feel I'm a neutral person,
22 making sure all the paperwork is where it needs to be.
23 MR. SCHIECK: And that you provide the
24 court as much information as you can so the court can make
25 the ultimate decision?

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1 PROSPECTIVE JUROR: Yes.
2 MR. SCHIECK: Any particular thing that
3 caused you to change, what was your early view about the
4 death penalty, to what it was now. Anything in
5 particular?
6 PROSPECTIVE JUROR: Just life in general.
7 When I was younger I didn't really think about it. I had
8 a different view on things when I was younger. As I got
9 older my views changed. A lot of them, not just this, but
10 a lot of different things changed over the years. I
11 didn't realize that they had, until I examined it.
12 MR. SCHIECK: And you are of the belief
13 that someone commits a criminal act, there should be some
14 consequences for having done that? They should be
15 punished for it?
16 PROSPECTIVE JUROR: Criminal act, traffic,
17 whatever it is. Just like I got a ticket for what I did,
18 apparently, I was supposed to have it.
19 MR. SCHIECK: Even though you didn't
20 agree, you accepted your punishment, whatever that might
21 have been.
22 PROSPECTIVE JUROR: Yes.
23 MR. SCHIECK: Do you feel that the
24 sentence of life in prison is a punishment?
25 PROSPECTIVE JUROR: Is it a punishment --

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1 yes, it is.

2 MR. SCHIECK: And in a first degree murder
3 case, would you be open to considering all of the forms of
4 punishment that the legislature says are available?

5 PROSPECTIVE JUROR: Yes, sir.

6 MR. SCHIECK: That would be not only the
7 death penalty but life without parole, life with parole?

8 PROSPECTIVE JUROR: Yes.

9 MR. SCHIECK: You could consider all of
10 those?

11 PROSPECTIVE JUROR: Yes.

12 MR. SCHIECK: You would consider all of
13 those forms of punishment?

14 PROSPECTIVE JUROR: Yes.

15 MR. SCHIECK: Would it be fair to say that
16 you would want to hear as much information, just as do you
17 in your job, as would hear as much information in court as
18 possible to make the decision as to what the correct
19 punishment should be?

20 PROSPECTIVE JUROR: Yes.

21 MR. SCHIECK: Thank you. We pass for
22 cause, your Honor.

23 THE COURT: Thank you. Mr. Owens, as to
24 Ms. Lee.

25 MR. OWENS: Thank you. How are you

33

1 doing.

2 PROSPECTIVE JUROR: Okay.

3 MR. OWENS: Have you been involved in the
4 criminal justice system before?

5 PROSPECTIVE JUROR: No.

6 MR. OWENS: Have you ever sued anybody or
7 been sued in court?

8 PROSPECTIVE JUROR: No.

9 MR. OWENS: Yo know somebody that's been
10 arrested or something?

11 PROSPECTIVE JUROR: I had a friend that
12 killed his wife.

13 MR. OWENS: How long ago was that?

14 PROSPECTIVE JUROR: Probably 20 years
15 ago.

16 MR. OWENS: Were you close to this
17 individual?

18 PROSPECTIVE JUROR: Yes.

19 MR. OWENS: Did you kind of watch that
20 process run its course?

21 PROSPECTIVE JUROR: Not really because he
22 did it and he knew it. And he just pled guilty going
23 through the whole process.

24 MR. OWENS: I see. So it's not like he
25 went to court or anything?

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1 PROSPECTIVE JUROR: No.

2 MR. OWENS: How did you feel about that?

3 PROSPECTIVE JUROR: I was sad that he did
4 it. But actually it was, I guess, you could put it it was
5 an accident. They got in a fight and he lost it and
6 choked her. It was an accident. He shouldn't have done
7 it. But he shouldn't have been drinking and doing what
8 they were doing, fighting like that. But it happened. He
9 paid his price.

10 MR. OWENS: You know, question number 19
11 you were asked about domestic violence, which would be
12 like what you are talking about. And you're saying I have
13 no sympathy for spousal abusers.

14 PROSPECTIVE JUROR: I went through it.

15 MR. OWENS: Did you see that situation as
16 different from your situation?

17 PROSPECTIVE JUROR: I don't quite
18 understand.

19 MR. OWENS: Well, did you view that murder
20 that occurred, that killing, you said it was kind of an
21 accidental death. You don't view that as a domestic
22 violence situation?

23 PROSPECTIVE JUROR: Well, I guess you can
24 put it like that. He never physically abused her, but
25 they were always fighting constantly. But he never hit

35

1 her or anything. It was just that one particular time.

2 They had both been drinking. And she kicked him where she
3 shouldn't have kicked him. And he lost it.

4 MR. OWENS: So you just never viewed that
5 situation that way as domestic violence.

6 PROSPECTIVE JUROR: Probably not, because
7 it was just that one time.

8 MR. OWENS: So it could have been mental
9 abuse or emotional abuse, but not the physical kind of
10 abuse that you associate with your situation.

11 PROSPECTIVE JUROR: She was more mentally
12 abusive than him -- than he was to her.

13 MR. OWENS: But you had something in your
14 life that you thought was what you would consider domestic
15 violence. How long ago was that?

16 PROSPECTIVE JUROR: It lasted twelve
17 years. It was just verbal abuse. Took me thirty-four
18 years to get out, but I finally did.

19 MR. OWENS: When did you separate yourself
20 from that?

21 PROSPECTIVE JUROR: Almost a year year and
22 a -- months ago.

23 MR. OWENS: Are you feelings about that
24 whole thing kind of strong and upsetting to you.

25 PROSPECTIVE JUROR: Yeah, because he still

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1 is abusive to me. But I don't have to live with it now.
2 I'm on my own.

3 MR. OWENS: Now, if in this trial you
4 heard facts about physical violence in a relationship,
5 that might trigger some unpleasant memories for you?

6 PROSPECTIVE JUROR: Probably. I'm open.
7 There's things that happened. I definitely don't agree
8 with violence toward children, abuse or anything like
9 that. Been there done that. But there's always different
10 sides, what you call it, opinions I guess. But there is
11 no need for violence.

12 MR. OWENS: Okay. So you feel that you
13 could separate your situation from --

14 PROSPECTIVE JUROR: Everybody's situation
15 is different.

16 MR. OWENS: Okay. Now you said your sort
17 of a conscientious objector. You don't believe in the
18 death penalty?

19 PROSPECTIVE JUROR: It's not that I don't
20 believe in it. Right now there is over 3000 people
21 sitting on death row, 79 in Nevada. There's only been,
22 what, 12 or 13 since 1976 actually put to death. You
23 convict them of the death penalty. You give them that
24 sentence. Then there is appeal, after appeal, after
25 appeal. So what does it -- I don't think it accomplishes

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1 anything.

2 MR. OWENS: So it's kind of a practical
3 assessment there, that if we're not going to execute him
4 what's he doing?

5 PROSPECTIVE JUROR: You put them in jail
6 for the rest of their life basically. That's what it is
7 anyway, if they're allowed all the appeals, which is their
8 right, but just --

9 MR. OWENS: Are there other reasons,
10 religious or moral reasons, you'd be opposed to the death
11 penalty?

12 PROSPECTIVE JUROR: No. No. I'm for the
13 death penalty, because there are certain circumstances
14 that involve. There should be. But, in my opinion,
15 really, they get off easy if they get the death penalty.
16 The person that -- the relatives of the person that you
17 know was the victim, they still have to live with that.
18 These people should have to live with their conscience the
19 rest of their life that they did that.

20 MR. OWENS: That conscience, having to
21 live with that is a worse punishment then, maybe.

22 PROSPECTIVE JUROR: If they're no longer
23 living, they don't have to think about it anymore.

24 MR. OWENS: Right. And that would be true
25 if people commit crimes against others and have a

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1 conscience that bothers them. If they don't would you
2 revise your opinion of that as punishment?

3 PROSPECTIVE JUROR: If they don't have a
4 conscience?

5 MR. OWENS: If it doesn't bother them for
6 the rest of their life. It's only a punishment if it
7 bothered them.

8 PROSPECTIVE JUROR: Good point. It would
9 bother me.

10 MR. OWENS: That would be the worst
11 punishment for you.

12 PROSPECTIVE JUROR: I guess if you could
13 commit a crime like that, you wouldn't have a conscience
14 anyway. Good point. Never thought of that.

15 MR. OWENS: Well, like you said there are
16 a lot of people that are doing appeals on death row. So
17 apparently their consciences aren't bothering them.

18 MR. SCHIECK: Objection. This is improper
19 questioning.

20 THE COURT: I'll sustain the objection as
21 to the issue of appeals.

22 MR. OWENS: You said your beliefs about
23 the death penalty are such that you would vote against the
24 death penalty, regardless of the facts and circumstances
25 of the case. You said, yes.

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1 PROSPECTIVE JUROR: I said that?

2 MR. OWENS: Yes.

3 PROSPECTIVE JUROR: I must have read it
4 wrong. I wouldn't automatically vote against it. It
5 would determine the evidence and circumstances surrounding
6 the act.

7 MR. OWENS: You said the person should
8 have to spend their life behind bars, not to get off so
9 easy as to put to death. Is that what you were telling
10 us a moment ago.

11 PROSPECTIVE JUROR: Yes.

12 MR. OWENS: And so you said you were
13 generally opposed to it. And what we're trying to find
14 out is would that be a consideration for you -- if that's
15 a legitimate option in the case?

16 PROSPECTIVE JUROR: I could consider it
17 definitely. I'm not opposed to the death penalty. Not by
18 a long shot. There are certain people that deserve it.
19 But I'm not opposed to it. It would be a factor to be
20 considered.

21 MR. OWENS: All right. So you feel if you
22 could -- if you got on the jury you could fairly consider
23 all four forms of punishment?

24 PROSPECTIVE JUROR: Yes.

25 MR. OWENS: If this seemed like the

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1 appropriate punishment, the death penalty, you would be
2 able to come back with that verdict?

3 PROSPECTIVE JUROR: Yes.

4 MR. OWENS: You could make that type of
5 judgment on a fellow human being?

6 PROSPECTIVE JUROR: Yes.

7 MR. OWENS: It's something you could live
8 with?

9 PROSPECTIVE JUROR: Yes.

10 MR. OWENS: Thanks. We'll pass for cause,
11 your Honor.

12 THE COURT: Thank you. Mr. Schieck.

13 MR. SCHIECK: Thank you, your Honor.

14 Ms. Lee, you talked about the unfortunate
15 situation with a friends that was killed by her husband, I
16 take it?

17 PROSPECTIVE JUROR: He was more my friend
18 than she was.

19 MR. SCHIECK: Was he convicted of first
20 degree murder?

21 PROSPECTIVE JUROR: Yes.

22 MR. SCHIECK: Did you think he should
23 serve the rest of his life in prison as opposed to getting
24 the death penalty?

25 PROSPECTIVE JUROR: For the situation, no,

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1 I didn't. For what had happened and how it happened in
2 their -- no, I didn't. I guess because I knew him and I
3 knew what had happened and how it had happened. But he
4 spent ten years of his life in prison, and he wasn't a bad
5 person.

6 MR. SCHIECK: Did you think that that was
7 a sufficient penalty?

8 PROSPECTIVE JUROR: Yes.

9 MR. SCHIECK: Even though it was first
10 degree murder?

11 PROSPECTIVE JUROR: Yes.

12 MR. SCHIECK: So would you agree then that
13 there are some first degree murder cases that don't
14 deserve the death penalty?

15 PROSPECTIVE JUROR: Yes. I mean,
16 circumstances -- I don't know the circumstances
17 surrounding this. I can't make that decision right now.

18 MR. SCHIECK: When you are talking about
19 the death penalty and life in prison as being worse than
20 the death penalty, you're just talking in general terms
21 about punishment; is that fair to say?

22 PROSPECTIVE JUROR: I'm not quite sure.

23 MR. SCHIECK: Your philosophy of
24 punishment as opposed to a particular case.

25 PROSPECTIVE JUROR: I lost you.

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1 MR. SCHIECK: In the case of your friend,
2 you thought ten years was sufficient for first degree
3 murder, right. You didn't think he should have to serve
4 the rest of his life in prison?

5 PROSPECTIVE JUROR: Because I knew the
6 circumstances surrounding it. I knew their relationship.
7 I knew the whole thing.

8 MR. SCHIECK: Which is what this hearing
9 is about, so the jury understands.

10 PROSPECTIVE JUROR: I understand because I
11 have no knowledge of what has happened or what transpired
12 so I can't sit here and say, yeah, I'm not going to give
13 the death penalty, life in prison. I have to know the
14 circumstances involved.

15 MR. SCHIECK: Right. And you gave figures
16 about people on death row, about the death penalty. Is
17 that something you are interested in or have done research
18 on?

19 PROSPECTIVE JUROR: I have to have a paper
20 done in nine weeks. About three weeks ago, before I got
21 called for jury duty, I did just a bit of research.

22 MR. SCHIECK: You are taking a class at
23 community college?

24 PROSPECTIVE JUROR: University of Phoneix
25 on criminal justice?

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1 MR. SCHIECK: The paper is obviously on
2 the death penalty?

3 PROSPECTIVE JUROR: Yes.

4 MR. SCHIECK: That is a pretty good
5 coincidence for me.

6 Do you understand in a few days, this
7 judge is going to give you instructions on the law before
8 the jury goes back to deliberate. Would you have any
9 problem following instructions given to you by the judge,
10 even if they differ from any research you have done
11 concerning the death penalty.

12 PROSPECTIVE JUROR: Like I said, I haven't
13 got that far into the research. The judge knows the law
14 better than I. I have to follow that.

15 MR. SCHIECK: Would you be willing to base
16 your decision on the evidence presented to you here in
17 court, and the instructions on the law, as opposed to
18 research you had done?

19 PROSPECTIVE JUROR: Yes.

20 MR. SCHIECK: Thank you. Pass for cause,
21 your Honor.

22 THE COURT: Thank you. Mr. Owens, as to
23 Ms. Matts.

24 MR. OWENS: How are you doing. You
25 indicated you are opposed to the death penalty for

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1 religious principles or moral principles?
2 PROSPECTIVE JUROR: Both.
3 MR. OWENS: You're feeling that you would
4 not be able to vote for the death penalty under any
5 circumstance?
6 PROSPECTIVE JUROR: Yes.
7 MR. OWENS: And that's based upon your
8 religious point of view?
9 PROSPECTIVE JUROR: That's the root of
10 it.
11 MR. OWENS: You consider yourself a fairly
12 religious person?
13 PROSPECTIVE JUROR: Somewhat, yes.
14 MR. OWENS: This particular facet of your
15 beliefs is something you feel is important to adhere to?
16 PROSPECTIVE JUROR: I have had this belief
17 for years. It's not changed.
18 MR. OWENS: You say that you would not be
19 able to vote for death in this particular case?
20 PROSPECTIVE JUROR: Correct.
21 MR. OWENS: That would be regardless of
22 the circumstances. It wouldn't be an option for you.
23 PROSPECTIVE JUROR: Correct.
24 MR. OWENS: You said you strongly oppose
25 the death penalty. You're pro life on all counts?

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1 PROSPECTIVE JUROR: Right.
2 MR. OWENS: You weren't sure you would be
3 able to do life with parole. Am I misreading that? Are
4 you just saying life without parole is what you would
5 choose rather than death?
6 PROSPECTIVE JUROR: Correct.
7 MR. OWENS: But other than death, you
8 could consider the other three options?
9 PROSPECTIVE JUROR: Yes.
10 MR. OWENS: You made a comment about
11 violent relationships towards the end, remember that?
12 PROSPECTIVE JUROR: My uncle beat my
13 aunt.
14 MR. OWENS: Was that a situation you are
15 close to?
16 PROSPECTIVE JUROR: Yes.
17 MR. OWENS: How recent was that?
18 PROSPECTIVE JUROR: I was a young girl, 8
19 years old. I witnessed it for about five years.
20 MR. OWENS: So you have some pretty strong
21 feelings about that?
22 PROSPECTIVE JUROR: I do. But as an adult
23 I understand the whole scenario a little better.
24 MR. OWENS: Just in the matter of
25 potential punishment in this case, regardless of what are

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1 the facts, violence, things like that, the death is not
2 something you could honestly consider?
3 PROSPECTIVE JUROR: I could not live with
4 myself.
5 MR. OWENS: You couldn't be a person that
6 could take responsibility for that kind of decision
7 either?
8 PROSPECTIVE JUROR: No.
9 MR. OWENS: Thank you. Appreciate your
10 candor on that. Challenge, your Honor.
11 THE COURT: Mr. Schieck.
12 MR. SCHIECK: No questions.
13 THE COURT: Thank you. Mr. Owens, as
14 to -- I apologize, sir -- Mr. Feuerhammer.
15 MR. OWENS: All right. You answered all
16 of the questions. There were a lot of them that didn't
17 tag anything in a lot of these areas. You have never been
18 involved in the criminal justice system before?
19 PROSPECTIVE JUROR: No, sir.
20 MR. OWENS: Never had an opportunity to be
21 a juror before?
22 PROSPECTIVE JUROR: No, sir.
23 MR. OWENS: Never been victimized?
24 PROSPECTIVE JUROR: No, sir.
25 MR. OWENS: You never been close to

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1 anybody arrested or involved in the system at all?
2 PROSPECTIVE JUROR: I have been lucky,
3 sir.
4 MR. OWENS: You have done pretty good to
5 avoid all of those issues. You don't have any
6 prejudgments about this case based on what you have heard?
7 PROSPECTIVE JUROR: No, sir.
8 MR. OWENS: Do you consider yourself to be
9 an open-minded person?
10 PROSPECTIVE JUROR: Yes, sir.
11 MR. OWENS: Are you okay with the process
12 described here ad nauseam the past two days?
13 PROSPECTIVE JUROR: Yes, sir.
14 MR. OWENS: The idea for the jury
15 determining punishment on first degree murder?
16 PROSPECTIVE JUROR: Yes, sir.
17 MR. OWENS: Are you okay with the idea of
18 the deliberating process of sharing your ideas and
19 listening to opinions of others?
20 PROSPECTIVE JUROR: Absolutely.
21 MR. OWENS: Do you feel able to fairly
22 evaluate the evidence and render a decision that would be
23 fair to both sides?
24 PROSPECTIVE JUROR: Yes, sir.
25 MR. OWENS: You said that you are

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1 supportive of the death penalty?
2 PROSPECTIVE JUROR: I am.
3 MR. OWENS: You wouldn't automatically
4 impose it?
5 PROSPECTIVE JUROR: No, sir.
6 MR. OWENS: You're willing to keep an
7 open-mind about all four punishments?
8 PROSPECTIVE JUROR: I might have a problem
9 with the one, considering the time served.
10 MR. OWENS: What do you mean by that?
11 PROSPECTIVE JUROR: If you give him 40
12 years with the opportunity for parole, and ten years is
13 already served, leave thirty, I have a problem with
14 that.
15 MR. OWENS: Well, you know, eligibility or
16 time served, whatever, you don't know anything about that
17 and that's really a matter up to the judge.
18 PROSPECTIVE JUROR: I understand that.
19 MR. OWENS: It's not something that get
20 information on anyway.
21 PROSPECTIVE JUROR: Yes, sir.
22 MR. OWENS: I guess the questions is is
23 with any one of these punishments you may, after hearing
24 everything, just decide that that is not for you. You
25 can't go along with that. The key point is will you wait

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1 until you hear everything?
2 PROSPECTIVE JUROR: Absolutely.
3 MR. OWENS: Are you willing, at least at
4 that point, to keep an open mind about all four
5 punishments until you have heard everything?
6 PROSPECTIVE JUROR: Yes, sir.
7 MR. OWENS: And after you have heard
8 everything can you come back with a punishment that is
9 appropriate here?
10 PROSPECTIVE JUROR: I can, sir.
11 MR. OWENS: If you feel after hearing
12 everything that the appropriate thing is the death
13 penalty, would you be able to come back with that
14 judgment?
15 PROSPECTIVE JUROR: Yes, sir.
16 MR. OWENS: You feel that that's something
17 you can personally take responsibility for?
18 PROSPECTIVE JUROR: Yes, sir.
19 MR. OWENS: I will serve if called upon.
20 I will not volunteer. Sounds like a good policy.
21 PROSPECTIVE JUROR: I would rather not
22 judge somebody.
23 MR. OWENS: Sure. That's a very similar
24 feeling. Thank you. Pass, your Honor.
25 THE COURT: Thank you. Mr. Schieck.

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1 MR. SCHIECK: Thank you, your Honor. I'm
2 not going to try to pronounce your name. You're from
3 Wisconsin.
4 PROSPECTIVE JUROR: Yes, sir.
5 MR. SCHIECK: Are you aware that Wisconsin
6 doesn't have the death penalty?
7 PROSPECTIVE JUROR: Yes, sir.
8 MR. SCHIECK: We're here because Nevada
9 does. You think Wisconsin should have the death penalty?
10 PROSPECTIVE JUROR: I think it should be an
11 option.
12 MR. SCHIECK: Do you think it should be
13 imposed in every case of first degree murder?
14 PROSPECTIVE JUROR: No, sir.
15 MR. SCHIECK: You think that it's
16 appropriate to have all the options available that we
17 talked about -- the four options?
18 PROSPECTIVE JUROR: Yes, sir.
19 MR. SCHIECK: Even the option that
20 includes the possibility of parole?
21 PROSPECTIVE JUROR: Yes, sir.
22 MR. SCHIECK: You were in the marines?
23 PROSPECTIVE JUROR: Yes, sir.
24 MR. SCHIECK: Is that where you would
25 serve if called upon, but not volunteer comes from. You

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1 learn not to volunteer.
2 PROSPECTIVE JUROR: Yes, sir.
3 MR. SCHIECK: There was one area that I
4 sort of picked up a difference in the answers. One is, I
5 agree with the death penalty. And the next question is on
6 an eye for an eye and a tooth for a tooth, you said do not
7 agree. It's up to God to make that termination. Is there
8 an inconsistency there, or am I missing something?
9 PROSPECTIVE JUROR: Basically, the
10 state -- we have to go by the laws of the state. That is
11 where that comes in. It's not up to me to make take
12 judgment. I leave that up to the state.
13 MR. SCHIECK: If the state says we have a
14 jury of 12 people to make that decision, you agree with
15 that and will go along with that?
16 PROSPECTIVE JUROR: Yes, sir.
17 MR. SCHIECK: Okay. Thank you. Pass for
18 cause, your Honor.
19 THE COURT: Thank you. Ms. Weckerly, as
20 to Mr. Forbes.
21 MS. WECKERLY: You mentioned in your
22 questionnaire that you had an experience with child abuse
23 with a step dad.
24 PROSPECTIVE JUROR: Sure.
25 MS. WECKERLY: He was abusing you?

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1 PROSPECTIVE JUROR: My Mom, myself, and
2 two sisters.
3 MS. WECKERLY: You said two sisters as
4 well as you?
5 PROSPECTIVE JUROR: Yes.
6 MS. WECKERLY: Did that situation go on
7 for several years?
8 PROSPECTIVE JUROR: 6 or 7 years.
9 MS. WECKERLY: How old were you at the
10 time?
11 PROSPECTIVE JUROR: 11 through 17, I put
12 an end to it at by the time I was 18.
13 MS. WECKERLY: By moving out?
14 PROSPECTIVE JUROR: I finally got big
15 enough and made him stop.
16 MS. WECKERLY: He left you alone?
17 PROSPECTIVE JUROR: Yes.
18 MS. WECKERLY: Because you had that
19 experience, it was a long term thing, and it ended because
20 you were able to defend yourself, do you think you would
21 have trouble in this case?
22 PROSPECTIVE JUROR: No.
23 MS. WECKERLY: You could be fair to both
24 sides?
25 PROSPECTIVE JUROR: Yes.

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1 MS. WECKERLY: You also mentioned in your
2 questionnaire that -- I wasn't sure if it was you or
3 someone close to or you had some familiarity with
4 controlled substances or use of controlled substance.
5 PROSPECTIVE JUROR: Myself and the people
6 around me.
7 MS. WECKERLY: Was that something that was
8 in the past as well?
9 PROSPECTIVE JUROR: Again, another lifetime
10 ago.
11 MS. WECKERLY: You also said in your
12 questionnaire that you had some experience with the
13 criminal justice system and your opinion of it isn't
14 great.
15 PROSPECTIVE JUROR: I had a younger
16 brother, back in the late 70s early 80s, got railroaded
17 through the public defender's office. He was picked up by
18 a street walker who was on the street the next day. I had
19 some bitterness about that. But it's been 25, 30 years
20 ago.
21 MS. WECKERLY: So if I'm understanding you
22 felt like he wasn't well represented?
23 PROSPECTIVE JUROR: I felt guilty because
24 if I had had the money at the time, we could have went and
25 hired an attorney and he never would have went to prison.

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1 Still feel that way.
2 MS. WECKERLY: You think generally an
3 outsider might do better job?
4 PROSPECTIVE JUROR: In that instance,
5 yes.
6 MS. WECKERLY: How about how your brother
7 was treat by the police.
8 PROSPECTIVE JUROR: You do the crime, you
9 get what you deserve, you know. I have no issue with
10 that.
11 MS. WECKERLY: But it sounds like maybe
12 you think that that outcome of the case wasn't just, that
13 justice wasn't served?
14 PROSPECTIVE JUROR: Well, yeah. He had
15 done so many things, but just that particular one that he
16 got convicted on. So he was going to go to prison. He was
17 going one way or the other. Whether it be on that case or
18 another case.
19 MS. WECKERLY: So you didn't think the
20 police treated him unfairly, even though he wasn't
21 necessarily guilty of the --
22 PROSPECTIVE JUROR: Not the police, once he
23 got into the system.
24 MS. WECKERLY: Okay. Maybe he got labeled
25 because of a history.

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1 PROSPECTIVE JUROR: Sort of kind of.
2 MS. WECKERLY: Anything about that that
3 would cause you to be unfair to the state or the defense?
4 PROSPECTIVE JUROR: No.
5 MS. WECKERLY: On your questionnaire, you
6 indicated -- you said you were pro death penalty?
7 PROSPECTIVE JUROR: Yes.
8 MS. WECKERLY: You also indicate that an
9 eye for an eye, or a tooth for a tooth, if it fits.
10 PROSPECTIVE JUROR: Meaning, for example,
11 there are violent crimes, a crime of passion or something
12 to that affect. But with certain crimes, yeah, definitely
13 it fits.
14 MS. WECKERLY: I don't know if maybe the
15 question wasn't phrased that clearly. But you wrote that
16 your views are such that you would automatically vote for
17 the death penalty. I take it from what you're saying now,
18 maybe you misread that question, and your opinions aren't
19 so automatic, what you would do isn't so automatic.
20 PROSPECTIVE JUROR: I wrote that
21 truthfully thinking I put that I wouldn't be where I am
22 right now.
23 MS. WECKERLY: That's honest.
24 PROSPECTIVE JUROR: Two days later if I'm
25 obligated to, I'll do my duty. I would not -- I would not

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1 automatically vote for that. I'd weigh everything and the
2 options also.

3 MS. WECKERLY: So you are, as you sit
4 here, you are someone who wants to hear all of the
5 information before you make a decision.

6 PROSPECTIVE JUROR: Yes.

7 MS. WECKERLY: You lead me to my next
8 question, you wrote that you were concerned about the
9 financial strain and that you wouldn't be able to
10 concentrate?

11 PROSPECTIVE JUROR: You get caught up in
12 your own life and it takes a minute to slow down. I've
13 been here two days now. I have had a chance, if I need to
14 do this, I can do this.

15 MS. WECKERLY: What if at the end of this
16 couple of days you feel that the death penalty is an
17 appropriate punishment for this Defendant, would you have
18 any trouble returning that kind of verdict?

19 PROSPECTIVE JUROR: Absolutely not.

20 MS. WECKERLY: Thank you, sir. Pass for
21 cause.

22 THE COURT: Thank you. Mr. Patrick.

23 MR. PATRICK: Good morning, Mr. Forbes.

24 PROSPECTIVE JUROR: Good morning.

25 MR. PATRICK: I would like to talk about

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1 your step father and the abuse.

2 PROSPECTIVE JUROR: Sure.

3 MR. PATRICK: If this case had to do with
4 domestic violence and abuse, would that cause you to think
5 any -- change your opinion upon what punishment should be
6 given?

7 PROSPECTIVE JUROR: No. Like I said, it's
8 30 years ago.

9 MR. PATRICK: You'll keep an open mind.

10 PROSPECTIVE JUROR: Yes.

11 MR. PATRICK: Same thing with the drug
12 use. If this case had any drug use, would that make you
13 think of a specific penalty or could you still keep an
14 open mind on that?

15 PROSPECTIVE JUROR: I'd still keep an open
16 mind.

17 MR. PATRICK: Now, was it your brother or
18 step brother?

19 PROSPECTIVE JUROR: Brother.

20 MR. PATRICK: You thought that he got
21 railroaded because he had a public defender?

22 PROSPECTIVE JUROR: It's not per se the
23 public defender. The system failed him in general. He
24 was a young kid, had a lot of little petty things. There
25 were youth camps around. It was his time.

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1 MR. PATRICK: So you're not blaming the
2 railroading on the public defender totally, just
3 partially?

4 PROSPECTIVE JUROR: A little at the time.
5 I don't think the way he was convicted, I have, to this
6 day, I have an issue with that. Not enough to influence
7 my decision, something like this.

8 MR. PATRICK: So the fact that Mr.
9 Chappell is being defended by a public defender, that
10 wouldn't color your opinion?

11 PROSPECTIVE JUROR: Absolutely not.
12 That's Mr. Chappell's choice.

13 MR. PATRICK: On the question asked, if
14 the fact that Mr. Chappell was African-American, would
15 that affect your feelings on this case. You wrote, no
16 comment.

17 PROSPECTIVE JUROR: It's so irrelevant.
18 It makes no difference to me if Mr. Chappell is
19 African-American, Hispanic, Asian. I don't care. No
20 difference.

21 MR. PATRICK: Makes no difference to you
22 at all.

23 PROSPECTIVE JUROR: I can't acknowledge
24 that question.

25 MR. PATRICK: Ms. Weckerly mentioned the

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1 question if you would automatically vote for the death
2 penalty. You checked yes.

3 PROSPECTIVE JUROR: I was wrong about
4 that. That doesn't sound like me.

5 MR. PATRICK: Well, I think you explained
6 it well to her. Last week you really didn't want to be
7 bothered with this.

8 I'm wondering about the question before
9 that. It asks if you'd automatically vote against the
10 death penalty, you didn't answer that. Was that an
11 oversight?

12 PROSPECTIVE JUROR: Probably an oversight.
13 Truthfully, I didn't have my glasses with me that day, so
14 I struggled with that.

15 MR. PATRICK: So basically some of the
16 answers in the questionnaire were -- you were consciously
17 trying to get out of having to serve on this jury?

18 PROSPECTIVE JUROR: Yes.

19 MR. PATRICK: Now you've been here for
20 two days, you see how important it is?

21 PROSPECTIVE JUROR: Yes.

22 MR. PATRICK: You'd give your full
23 attention?

24 PROSPECTIVE JUROR: Yes, sir.

25 MR. PATRICK: And listen to everything

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1 presented before you made any decision?
2 PROSPECTIVE JUROR: Yes.
3 MR. PATRICK: And I know you have heard
4 this question many times, if you were sitting at this
5 table or if you were sitting at this table, would you want
6 somebody like you to be a juror on this panel?
7 PROSPECTIVE JUROR: Absolutely. Without a
8 doubt.
9 MR. PATRICK: Thank you, sir. Pass for
10 cause, your Honor.
11 THE COURT: Mr. Owens, as to
12 Mr. Tempelton.
13 MR OWENS: How are you feeling today after
14 listening to this.
15 PROSPECTIVE JUROR: I feel good.
16 MR. OWENS: You stress concern in the
17 question about judging somebody else.
18 PROSPECTIVE JUROR: Yes.
19 MR. OWENS: You thought about that more as
20 you've been sitting here?
21 PROSPECTIVE JUROR: Yeah, I wouldn't feel
22 comfortable with myself judging someone, putting
23 someone -- life in prison, or death. I'm not comfortable
24 with that.
25 MR. OWENS: You'd have a difficult time

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1 living with that decision of life in prison or the death
2 penalty. You're not opposed to the death penalty?
3 PROSPECTIVE JUROR: No.
4 MR. OWENS: You're not opposed to any of
5 the range of potential punishments?
6 PROSPECTIVE JUROR: No.
7 MR. OWENS: Just that you thought you
8 might not be able to make the decision of that magnitude?
9 PROSPECTIVE JUROR: Yes.
10 MR. OWENS: What's your feeling now? You
11 said -- back then you said, it would be difficult. I
12 think it's always going to be difficult. The question is
13 as you thought about it, it's so difficult, you don't
14 think you could do it.
15 PROSPECTIVE JUROR: Well, if I had to do
16 it, I could. But I still feel the same. It's difficult
17 for me.
18 MR. OWENS: If you get selected and you
19 get sworn, you'd do it?
20 PROSPECTIVE JUROR: Yeah.
21 MR. OWENS: You are saying you could?
22 PROSPECTIVE JUROR: Yes.
23 MR. OWENS: So it wouldn't be a thing
24 where you get down to the end and you are confronted with
25 the choices and say, well, I really now I don't think I

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1 can do it. Can you see that happening?
2 PROSPECTIVE JUROR: No.
3 MR. OWENS: So you rather not. But if you
4 are select, you can do it?
5 PROSPECTIVE JUROR: Yes, I could.
6 MR. OWENS: Can you do the right thing,
7 even if it's a hard thing to do?
8 PROSPECTIVE JUROR: Yes.
9 MR. OWENS: You can do it, right?
10 PROSPECTIVE JUROR: Yes.
11 MR. OWENS: If that includes the death
12 penalty, would you be able to come back and announce that
13 judgment on another human being?
14 PROSPECTIVE JUROR: Yes. I wouldn't be
15 comfortable, but I could do it.
16 MR. OWENS: You mentioned you had some
17 kind of situation involving an arrest in the past. You
18 said -- you or a family member was arrested, charged with
19 a crime. You said, yes. It said, do you feel the person
20 was fairly treated. You said, yes. You know what that
21 was about?
22 PROSPECTIVE JUROR: Yeah. It was
23 my Father for DUI.
24 MR. OWENS: How long ago was that?
25 PROSPECTIVE JUROR: Years ago.

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1 MR. OWENS: Did that go to court?
2 PROSPECTIVE JUROR: Yes.
3 MR. OWENS: Was there a trial or
4 something?
5 PROSPECTIVE JUROR: Yes.
6 MR. OWENS: Did that resolve in some
7 manner?
8 PROSPECTIVE JUROR: Yeah. It got
9 resolved, suspended license for a year. He did all the
10 classes.
11 MR. OWENS: Sounds pretty serious.
12 PROSPECTIVE JUROR: Yeah.
13 MR. OWENS: How did you feel about that?
14 PROSPECTIVE JUROR: I thought it was fair.
15 It was dangerous to drive under the influence.
16 MR. OWENS: Did you feel like he was
17 treated fairly by the system?
18 PROSPECTIVE JUROR: Yes.
19 MR. OWENS: There wasn't anything about
20 that that would interfere with your ability to be fair to
21 both sides in this case?
22 PROSPECTIVE JUROR: No.
23 MR. OWENS: You also indicated that you
24 had definite feelings about substance abuse or drugs or
25 alcohol.

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1 PROSPECTIVE JUROR: Yeah.
 2 MR. OWENS: Where does that come from?
 3 PROSPECTIVE JUROR: Well, my sister uses,
 4 and I don't like it when she's on controlled substances.
 5 She's different. I hate the stuff.
 6 MR. OWENS: Is that something she is
 7 grappling with?
 8 PROSPECTIVE JUROR: Yes.
 9 MR. OWENS: Are you fairly close to that
 10 situation?
 11 PROSPECTIVE JUROR: Yes.
 12 MR. OWENS: Is there something about that
 13 that you think might spill over into your decision making
 14 process here in an unfair manner?
 15 PROSPECTIVE JUROR: No.
 16 MR. OWENS: You are a young person?
 17 PROSPECTIVE JUROR: Yeah.
 18 MR. OWENS: 21.
 19 PROSPECTIVE JUROR: Yeah.
 20 MR. OWENS: I go back to that. I want to
 21 make sure you feel that you can take the weight of a
 22 decision process like this.
 23 PROSPECTIVE JUROR: Yeah, I could.
 24 MR. OWENS: Thank you. Pass for cause.
 25 THE COURT: Mr. Schieck.

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1 MR. SCHIECK: Thank you.
 2 Mr. Templeton, you indicated that --
 3 you're asked your opinion on different people in law
 4 enforcement and prosecutes. You said you applaud them.
 5 Anything in particular that causes you to focus on your
 6 applause them as opposed to anyone else, like the judges
 7 or police officers?
 8 PROSPECTIVE JUROR: I just think this job
 9 you do is very good.
 10 MR. SCHIECK: Do you have any personal
 11 dealings with prosecutors?
 12 PROSPECTIVE JUROR: No.
 13 MR. SCHIECK: Just a general perception
 14 you have?
 15 PROSPECTIVE JUROR: Yes.
 16 MR. SCHIECK: Is that something you picked
 17 up watching crime on TV?
 18 PROSPECTIVE JUROR: I don't watch crime on
 19 TV.
 20 MR. SCHIECK: You watch Law and Order,
 21 shows like that?
 22 PROSPECTIVE JUROR: No.
 23 MR. SCHIECK: Have you really thought
 24 about the death penalty all that much?
 25 PROSPECTIVE JUROR: I haven't given it

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1 much thought.
 2 MR. SCHIECK: Until you got this
 3 questionnaire and suddenly you're confronted with it?
 4 PROSPECTIVE JUROR: Yes.
 5 MR. SCHIECK: Since you filled out the
 6 questionnaire, have you had a chance to think about it
 7 more?
 8 PROSPECTIVE JUROR: Yes.
 9 MR. SCHIECK: Has your opinion changed or
 10 developed as you've been thinking about it?
 11 PROSPECTIVE JUROR: I still agree with the
 12 death penalty.
 13 MR. SCHIECK: But not in every case?
 14 PROSPECTIVE JUROR: Not in every case.
 15 MR. SCHIECK: Thank you, very much. Pass
 16 for cause.
 17 THE COURT: Thank you. Ms. Weckerly, as
 18 to Mr. Scott, 078.
 19 MS. WECKERLY: Thank you, your Honor.
 20 Hello.
 21 PROSPECTIVE JUROR: Hi.
 22 MS. WECKERLY: Sir, when you filled out
 23 your questionnaire, you wrote that death penalty was -- I
 24 think you wrote a necessary evil. Can you explain that?
 25 PROSPECTIVE JUROR: I just think it's an

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1 acceptable punishment in some situations. But you know it
 2 is tough. I mean, it's not real a pleasant thought, but I
 3 think it's necessary in some situations.
 4 MS. WECKERLY: And certainly it's not a
 5 comfortable decision, I don't think for anybody.
 6 Certainly one that is not -- I don't think anyone ever
 7 takes lightly. But I take it from your answer, though,
 8 that you think there are some situations where that form
 9 of punishment is what is just or is correct?
 10 PROSPECTIVE JUROR: Yeah.
 11 MS. WECKERLY: And you're someone that
 12 could listen to all of the information before you make a
 13 decision of that magnitude?
 14 PROSPECTIVE JUROR: It was something I
 15 have to take into account, weighing the circumstances and
 16 things that are involved.
 17 MS. WECKERLY: Okay. You wrote on your
 18 questionnaire that you are a member of an organization
 19 that doesn't support the death penalty though. A
 20 religious group that doesn't --
 21 PROSPECTIVE JUROR: I mean, I think you
 22 can be affiliated with groups and disagree with certain
 23 rules. I have gone to Catholic school since I was a
 24 little kid, and they are opposed to the death penalty.
 25 But that's not something -- I don't personally agree with

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1 their stance on that.

2 MS. WECKERLY: Okay. I'm sure your
3 religion is important, just to make sure I understand it.
4 You're able to separate yourself from the church's view
5 and make your own decision in a case like this?

6 PROSPECTIVE JUROR: You have to. I think
7 you have to develop your own opinions. Over time, you
8 know, that's just not something I'm in line with them on.
9 I think, like I said earlier, in some certain
10 circumstances it's an acceptable punishment.

11 MS. WECKERLY: And you also indicated that
12 you would like to hear the circumstances surrounding this
13 case?

14 PROSPECTIVE JUROR: Yeah. I mean, I think
15 if you're going to -- when you're dealing with somebody's
16 life or dealing with something as heavy as this, it's
17 important to hear all of the factors, basically,
18 involved.

19 MS. WECKERLY: Thank you, sir. Pass for
20 cause, your Honor.

21 THE COURT: Thank you. Mr. Patrick.

22 MR. PATRICK: Good morning, Mr. Scott.
23 You have been here for a day and a half now.

24 PROSPECTIVE JUROR: Yeah.

25 MR. PATRICK: You probably know every

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1 question I'm going to ask you. You've heard them all.
2 You've heard me ask them, Ms. Weckerly, and Mr. Owens ask
3 them. Anything you've heard over the last day and a half
4 that pops in your mind that you think I should ask you or
5 Ms. Weckerly should ask you, or something you want to say
6 about this whole thing about you being on this jury?

7 PROSPECTIVE JUROR: Well, you know, when I
8 was filling out the questionnaire and raising your hands
9 and stuff, I have had interaction with the court system.
10 I got in trouble for disorderly conduct.

11 I didn't know if that was something I should put in
12 there. I think I should right now, because when you're
13 filling this out you don't know the context of what people
14 want to know. I guess that's the only thing I would add.
15 I felt it was very minor, but I had dealt with that. I
16 felt it was fair.

17 MR. PATRICK: You felt you were treated
18 fair.

19 PROSPECTIVE JUROR: Yeah.

20 MR. PATRICK: So that wouldn't make you
21 partial to one side or the other?

22 PROSPECTIVE JUROR: No.

23 MR. PATRICK: Your uncle had a problem
24 with alcohol abuse?

25 PROSPECTIVE JUROR: Yes.

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1 MR. PATRICK: Is he still battling that?

2 PROSPECTIVE JUROR: From talking to him, I
3 think it's something you always battle with the disease.
4 You are never quite over it. But he hasn't drank in
5 twelve years.

6 MR. PATRICK: That's very good. If this
7 case had to do with alcohol abuse or drug abuse, because
8 of your uncle, would that make you partial to one side or
9 the other?

10 PROSPECTIVE JUROR: As far as that
11 question, I think it's tough to like -- not all alcoholics
12 are the same, not all drug users are the same. It's like a
13 factor, but I don't really see it as -- you know, my uncle
14 has -- that's just one facet of his personality. I have a
15 lot of respect for him, for a lot of other things. So
16 that's a tough question. It would not influence me,
17 because I don't see that -- all alcoholics are
18 different.

19 MR. PATRICK: You could still keep an open
20 mind, even if something like that came up.

21 PROSPECTIVE JUROR: Yes, sir.

22 MR. PATRICK: In the statement that asks
23 about an eye for an eye, you say that -- you mention that
24 being a very emotional reaction?

25 PROSPECTIVE JUROR: I think it's like

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1 spanking your kid. You don't grab him and spank him,
2 you've got to step back. That's acceptable punishment.
3 An eye for an eye seems like a knee-jerk reaction. If you
4 step back and you go and assess it and that seems like the
5 acceptable punishment, then that's right.

6 MR. PATRICK: Is that how you would
7 approach this case, wait for all the evidence to come in
8 and before you make a decision, not make a knee-jerk
9 reaction?

10 PROSPECTIVE JUROR: Yes.

11 MR. PATRICK: Keep a fair and open mind
12 throughout the process?

13 PROSPECTIVE JUROR: Yes, sir.

14 MR. PATRICK: In reading on the last
15 question, it sounds to me like you actually want to be on
16 the jury?

17 PROSPECTIVE JUROR: Not really. But I
18 think that we're all blessed living in this country. This
19 is something that's not fun.

20 It's 85 degrees outside. It's nice to be in here.
21 But I think it's like if I was the Defendant I would want
22 people who were taking it seriously. And I think it's a
23 civic duty. I don't want to be here. It's -- I think
24 it's a responsibility we have.

25 MR. PATRICK: You'd take this seriously?

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1 PROSPECTIVE JUROR: Of course.
 2 MR. PATRICK: And give it your utmost
 3 attention?
 4 PROSPECTIVE JUROR: Yes.
 5 MR. PATRICK: And be as fair as you
 6 possibly could?
 7 PROSPECTIVE JUROR: Yes.
 8 MR. PATRICK: Thank you, sir. Pass for
 9 cause.
 10 THE COURT: Ms. Weckerly, as to
 11 Ms. Jackson.
 12 MS. WECKERLY: Ms. Jackson, how are you?
 13 PROSPECTIVE JUROR: Okay.
 14 MS. WECKERLY: I bet you know what I'm
 15 going to ask you. You wrote out in your questionnaire
 16 that you have some questions about the fairness of the
 17 criminal justice system.
 18 PROSPECTIVE JUROR: Yes.
 19 MS. WECKERLY: To put it mildly, I
 20 guess.
 21 PROSPECTIVE JUROR: Yes.
 22 MS. WECKERLY: Is that all based on the
 23 experience with your nephew?
 24 PROSPECTIVE JUROR: Yes.
 25 MS. WECKERLY: Are your feelings such that

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1 you had such a bad experience, or that left such a bad
 2 taste in your mouth that you don't feel you could be fair
 3 in this proceeding?
 4 PROSPECTIVE JUROR: I could.
 5 MS. WECKERLY: And you indicate on your
 6 questionnaire when asked about the criminal justice
 7 system, you said, it does not work. So you don't seem to
 8 have a lot of faith.
 9 PROSPECTIVE JUROR: No.
 10 MS. WECKERLY: Ma'am, you were also asked
 11 about the death penalty. You indicate on your
 12 questionnaire you don't agree?
 13 PROSPECTIVE JUROR: No. No.
 14 MS. WECKERLY: That would be under any
 15 circumstances?
 16 PROSPECTIVE JUROR: Correct.
 17 MS. WECKERLY: That's just -- if I'm
 18 understanding you correctly -- a punishment that you
 19 flat-out can't consider?
 20 PROSPECTIVE JUROR: Correct.
 21 MS. WECKERLY: Is it a personal belief of
 22 yours that that's just not a decision we should be making?
 23 PROSPECTIVE JUROR: Correct.
 24 MS. WECKERLY: So under no circumstances
 25 could you even consider it as a potential punishment?

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1 PROSPECTIVE JUROR: No.
 2 MS. WECKERLY: Thank you. We'd challenge,
 3 your Honor.
 4 THE COURT: Thank you.
 5 MR. PATRICK: No questions, your Honor.
 6 THE COURT: Thank you, very much. Mr.
 7 Owens, as to Ms. Norris.
 8 MR. OWENS: Ms. Norris, how are you?
 9 PROSPECTIVE JUROR: Fine, thank you.
 10 MR. OWENS: You're another one of those
 11 rare individuals that hasn't bumped up against any of
 12 these questions that we've talked about. Have you ever
 13 been a victim, or sue someone, or been sued?
 14 PROSPECTIVE JUROR: I have had my car
 15 broken into. That's -- no. I have -- I had my horse
 16 stolen. Nothing --
 17 MR. OWENS: Well, that's a victim kind of
 18 thing.
 19 PROSPECTIVE JUROR: Well, okay. We came
 20 out ahead on that deal. We got the horse back.
 21 MR. OWENS: Did you find it or did the
 22 police find him?
 23 PROSPECTIVE JUROR: The police gave us
 24 clues, but I actually found him. I did the work.
 25 MR. OWENS: But the police helped a

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1 little.
 2 PROSPECTIVE JUROR: Yes, they helped.
 3 MR. OWENS: It's good to see they solved
 4 one of these things we've been hearing about. Did it end
 5 up going to court or anything?
 6 PROSPECTIVE JUROR: Actually we went to
 7 small claims, and I won. This individual took us to the
 8 next court. And he wasn't supposed to, so, yes. Then we
 9 had a special case, so we had their Court TV. Very
 10 interesting. But I didn't want to go into this. But I
 11 don't know how to answer that question.
 12 MR. OWENS: You didn't want to talk about
 13 it. You don't want to talk about it now?
 14 PROSPECTIVE JUROR: No. I can talk about
 15 it.
 16 MR. OWENS: It's about the Court TV
 17 people?
 18 PROSPECTIVE JUROR: I didn't want to be on
 19 Court TV. I just wanted my horse back. End of story.
 20 MR. OWENS: So they found it an
 21 interesting case, of course.
 22 PROSPECTIVE JUROR: And it was very
 23 unusual.
 24 MR. OWENS: Okay. Did that all come out
 25 okay for you?

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1 PROSPECTIVE JUROR: Yes, it did actually.
 2 It was very fair. Yes. The outcome was good.
 3 MR. OWENS: Okay. You ever been to court
 4 for other reasons? You know anyone that's been arrested,
 5 or that you had to go to court for support?
 6 PROSPECTIVE JUROR: No.
 7 MR. OWENS: You consider yourself to be a
 8 fair person?
 9 PROSPECTIVE JUROR: I would like to think
 10 so.
 11 MR. OWENS: You heard of all the possible punishments
 12 in this case that are available?
 13 PROSPECTIVE JUROR: Yes.
 14 MR. OWENS: Are you okay with all four of
 15 those?
 16 PROSPECTIVE JUROR: Yes.
 17 MR. OWENS: Are you willing to wait until
 18 you hear all of the evidence until you decide which one is
 19 the right one to pick?
 20 PROSPECTIVE JUROR: Yes.
 21 MR. OWENS: How do you feel about the idea
 22 of sitting in judgment on another person?
 23 PROSPECTIVE JUROR: You know, I feel I
 24 could do it. I would be helping out. It's not something
 25 that I'm incapable of doing at all.

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1 MR. OWENS: You're willing to do that?
 2 PROSPECTIVE JUROR: I'd be very willing to
 3 do that.
 4 MR. OWENS: If after hearing all of the
 5 evidence in the case you felt the death penalty was the
 6 appropriate punishment, would you be able to come back
 7 with that verdict?
 8 PROSPECTIVE JUROR: I certainly would.
 9 But I would have to hear, you know, I would have to have
 10 all of the facts presented and take all of the
 11 circumstances, you know.
 12 MR. OWENS: Right. Okay.
 13 PROSPECTIVE JUROR: Into consideration.
 14 MR. OWENS: Perfect answer.
 15 PROSPECTIVE JUROR: Thank you.
 16 MR. OWENS: Thank you. Pass for cause.
 17 THE COURT: Thank you. Mr. Schieck.
 18 MR. SCHIECK: Thank you, your Honor.
 19 Ms. Norris, you said that someone stole your horse.
 20 PROSPECTIVE JUROR: Yes.
 21 MR. SCHIECK: Were they criminally
 22 prosecuted for that, or did you end up in civil court?
 23 PROSPECTIVE JUROR: No. You know, I
 24 bought the horse and -- here we go again. I didn't get,
 25 quote, unquote, like a pink slip. If you don't have that,

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1 you just have a pet. You don't have a horse that you can
 2 show and so the horse is of no value.
 3 But I trusted the source that I bought it
 4 from. Anyway the source left town, and I was left with a
 5 horse without any papers.
 6 THE COURT: A horse with no name.
 7 PROSPECTIVE JUROR: So the individual --
 8 an individual showed up at my doorstep and said that this
 9 is my horse and so on and so forth. Well, I had the bill
 10 of sale. And he had nothing but he claimed he was -- so
 11 anyway, he took me to small claims.
 12 MR. SCHIECK: Let me interrupt you
 13 because --
 14 PROSPECTIVE JUROR: You don't have time
 15 for this.
 16 MR. SCHIECK: It's very interesting. I'm
 17 sure that everyone wants to listen to us talk. There was
 18 a question of ownership of the horse that came up and you
 19 ended up in small claims over it.
 20 PROSPECTIVE JUROR: Yes.
 21 MR. SCHIECK: Not a criminal type of
 22 procedure?
 23 PROSPECTIVE JUROR: No.
 24 MR. SCHIECK: Although you called the
 25 police to say what was going on -- and they helped you

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1 find the horse.
 2 PROSPECTIVE JUROR: Right.
 3 MR. SCHIECK: Okay. You indicated that
 4 your feeling about the death penalty had changed over
 5 time.
 6 PROSPECTIVE JUROR: Yes.
 7 MR. SCHIECK: I think you indicated the
 8 increasing crime rate has caused that change of opinion?
 9 PROSPECTIVE JUROR: Yes.
 10 MR. SCHIECK: Anything in particular that
 11 you read or heard that caused you to have that belief?
 12 PROSPECTIVE JUROR: Well, no. But I watch
 13 TV -- and not -- I watch the news and read the paper.
 14 And, yes, I see a lot of crime.
 15 MR. SCHIECK: But have you heard or have
 16 any information whether we have the death penalty or don't
 17 have the death penalty, it really doesn't affect the crime
 18 rate?
 19 PROSPECTIVE JUROR: I think you have to --
 20 in order to give the death penalty you have to hear the
 21 consequences and be open to any circumstances before
 22 making any kind of judgment whether it's the death penalty
 23 or not.
 24 MR. SCHIECK: You agree that is a pretty
 25 serious decision to make. And you want all of the

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1 evidence you could have before you make that decision?

2 PROSPECTIVE JUROR: Absolutely.

3 MR. SCHIECK: Thank you, Ms. Norris. Pass
4 for cause, your Honor.

5 THE COURT: Thank you. Ms. Weckerly, as
6 to Mr. Parramore.

7 MS. WECKERLY: Sir, you indicated on your
8 questionnaire you had personal contact with law
9 enforcement on a DUI?

10 PROSPECTIVE JUROR: Yes.

11 MS. WECKERLY: Was that a couple of years
12 ago?

13 PROSPECTIVE JUROR: More than ten, less
14 than 20.

15 MS. WECKERLY: Awhile ago.

16 PROSPECTIVE JUROR: Yes.

17 MS. WECKERLY: Did you think you were
18 treated fairly by the police?

19 PROSPECTIVE JUROR: Yes.

20 MS. WECKERLY: Nothing about that would
21 cause you to be unfair to either side in this case?

22 PROSPECTIVE JUROR: No.

23 MS. WECKERLY: You actually had a
24 different opinion about our criminal justice system than
25 this lady over here. You said it was generally good. And

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1 that's still your feeling as you sat here for two days?

2 PROSPECTIVE JUROR: Yes, ma'am.

3 MS. WECKERLY: Slow, but good.

4 PROSPECTIVE JUROR: It's fine.

5 MS. WECKERLY: You said it wasn't perfect.
6 I goes nothing probably is.

7 PROSPECTIVE JUROR: I'm not going to agree
8 100 percent. Generally I think it is.

9 MS. WECKERLY: You indicated that when you
10 talked about the potential range of punishments in this
11 case. You said that you could consider all four possible
12 punishments?

13 PROSPECTIVE JUROR: Yes, ma'am.

14 MS. WECKERLY: You also indicated that you
15 are someone that is going to want to hear all the
16 information before you make a decision?

17 PROSPECTIVE JUROR: Yes.

18 MS. WECKERLY: You're not going to
19 automatically include or disregard a punishment before you
20 hear any information?

21 PROSPECTIVE JUROR: No, ma'am.

22 MS. WECKERLY: Sounds to me like you can
23 be fair to both side?

24 PROSPECTIVE JUROR: I would like to think
25 so.

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1 MS. WECKERLY: When you wrote about

2 whether you could consider all four possible punishments,
3 you said, yes, if the crime is so horrible, or so bad that
4 the world would be better off without him, then maybe the
5 death penalty. Did he commit the crime for an
6 understandable reason. And you gave some examples.

7 PROSPECTIVE JUROR: Let me apologize. The
8 hand writing may not be the easiest to read.

9 MS. WECKERLY: I can ready it. I wanted
10 to ask you a little about that. You said like greed or
11 jealousy. I think you wrote, et cetera. Were you just
12 trying to come up with examples?

13 PROSPECTIVE JUROR: Yes. First of all, in
14 my opinion all four are the death penalty. I was sitting
15 there with a little bit of information we had, that he's
16 probably 18 years old. It's committed in -- found guilty
17 in 1996. Committed in 1995, '96 somewhere around there.
18 So now he's 28, at a minimum, probably 30. The smallest
19 amount he can get is 40 years. And from what you pick up
20 off the questionnaire, you think it's a pretty horrific
21 crime, so chances get paroled after the first parole
22 hearing are slim to none. So we're looking at a man
23 that's in his 70s before he is eligible for parole.

24 With my opinion, all four are the death penalty. So
25 to me the death penalty would be to send a message to

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1 society that this crime is so horrible that, as a society,
2 we can't stand and you have to do the ultimate.

3 MS. WECKERLY: So from what you're saying,
4 I mean, there are some circumstances that set certain
5 crimes apart from other first degree murders, which may
6 only get the minimum sentence in the State of Nevada,
7 which is 40 years.

8 PROSPECTIVE JUROR: Yes, ma'am.

9 MS. WECKERLY: You can conceive of a
10 situation where someone isn't deserving of a lenient
11 sentence?

12 PROSPECTIVE JUROR: Yes, ma'am.

13 MS. WECKERLY: And they may be on the
14 other end of the spectrum?

15 PROSPECTIVE JUROR: Yes, ma'am.

16 MS. WECKERLY: If you felt that way, I
17 assume that you could return a verdict or mark a box like
18 that?

19 PROSPECTIVE JUROR: It's no pleasure. I
20 guess I could.

21 MS. WECKERLY: Certainly not. It's not
22 ever an easy decision. But you are not someone who just,
23 I can't make a decision like that. You could make that
24 sort of decision?

25 PROSPECTIVE JUROR: I could.

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1 MS. WECKERLY: Thank you, sir. Pass for
2 cause, your Honor.
3 THE COURT: Mr. Patrick.
4 MR. PATRICK: Good morning.
5 Who represented you in your DUI?
6 PROSPECTIVE JUROR: I have no idea. I
7 hired an attorney.
8 MR. PATRICK: You were happy with your
9 representation?
10 PROSPECTIVE JUROR: It was a lady. But,
11 yes.
12 MR. PATRICK: You thought you were treated
13 fair?
14 PROSPECTIVE JUROR: Yes.
15 MR. PATRICK: Got an appropriate
16 punishment?
17 PROSPECTIVE JUROR: Yes, sir.
18 MR. PATRICK: That was at least ten years
19 ago?
20 PROSPECTIVE JUROR: Yes.
21 MR. PATRICK: So that in no way would
22 influence you as to these proceeding?
23 PROSPECTIVE JUROR: No, sir.
24 MR. PATRICK: One comment I found
25 interesting was when you are put down you are not patient

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1 with stupid. Could you explain that?
2 PROSPECTIVE JUROR: It's pretty much true
3 all of my life, not just since I've been here. I've seen
4 people too busy with their personal life to pay attention
5 to jury services. To get in line and not turn off their
6 telephone. Maybe stupid isn't the right word,
7 inconsiderate. This is very serious for Mr. Chappell, for
8 the rest of us. It's kind of rude, not to take it as
9 serious and not put down what you're doing and give it
10 your time and attention.
11 MR. PATRICK: You understand the
12 seriousness of this. And you would devote your full
13 attention to anything that goes on if you were picked as a
14 juror.
15 PROSPECTIVE JUROR: If you put me on the
16 jury, there's a good chance I might be taking my belt off
17 and spanking somebody for showing up late or not paying
18 attention.
19 MR. PATRICK: Well, if we pick you for the
20 jury, could you refrain from that at least until we're
21 done?
22 PROSPECTIVE JUROR: I could try.
23 MR. PATRICK: Now, on the question where
24 it asked whether or not it would make a difference whether
25 the victim in this case was of a different race, you

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1 marked down if it was a hate crime.
2 PROSPECTIVE JUROR: If the victim was
3 chosen because of their race. Now, I know quite a bit --
4 we've all heard the stories about the gentleman that was
5 dragged behind the car because of his race. All of the
6 others, yes, that would make a difference.
7 MR. PATRICK: But if the victim was of a
8 difference race and it wasn't a hate crime, then it
9 wouldn't happen.
10 PROSPECTIVE JUROR: It would happen to be
11 just two people.
12 MR. PATRICK: Ms. Weckerly was talking
13 about the list you had. Jealousy and greed I think were
14 the two main ones. If this case had to do with either one
15 of those, would you automatically vote for the death
16 penalty?
17 PROSPECTIVE JUROR: I'm more understanding
18 of what I can understand of what motives were, as opposed
19 to the snipers -- the two gentlemen that were taking pot
20 shots out of their car for what I see to be no reason. I
21 could be more understanding of jealousy, more
22 understanding of greed then I could be of just somebody
23 for giggles getting in the back of the car and taking pot
24 shots at strangers for fun.
25 MR. PATRICK: You listed those as reasons

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1 for the death penalty --
2 PROSPECTIVE JUROR: Maybe I put those down
3 as reasons I could oversee the death penalty, or not give
4 the death penalty.
5 MR. PATRICK: You still want to hear all
6 of the facts before you make a decision.
7 PROSPECTIVE JUROR: If I were to find out
8 that this was his motive -- this was his girlfriend, which
9 this doesn't say in here -- and she was cheating with
10 another man and he lost his temper and got jealous and
11 shot him. Then I could understand that. And I might be
12 more lenient, then if it was a perfect stranger and he
13 drove to her house and killed her.
14 MR. PATRICK: You'd listen to all the
15 evidence and keep an open mind throughout the whole
16 process before you made a decision?
17 PROSPECTIVE JUROR: Yes, sir.
18 MR. PATRICK: You'd make a decision that
19 you felt was the best one for the situation?
20 PROSPECTIVE JUROR: Yes, sir.
21 MR. PATRICK: Thank you, sir. Pass for
22 cause, your Honor.
23 THE COURT: Thank you. We'll take a --
24 it's about 12:45. We really need a very small number of
25 people to be questioned by the attorneys before we finish

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