

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

Volume 16 of 31

Appeal From  
Eighth Judicial District Court, Clark County  
The Honorable Valerie Adair, District Judge

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## INDEX

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
3	Exhibits in Support of Petition for Writ of Habeas Corpus (Post Conviction)(List), <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (November 16, 2016) .....	562-632
	<b>EXHIBITS</b>	
3	1. Judgement of Conviction, <i>State v. Chappell</i> , Eighth Judicial District Court Case No. 95-C13141, December 31, 1996 .....	633-636
3	2. Opinion, <i>Chappell v. State</i> , Nevada Supreme Court Case No. 29884, December 30, 1998 .....	637-648
3	4. Findings of Fact, Conclusions of Law and Order, <i>Chappell v. State</i> , Eighth Judicial District Court Case No. 95-C13141, June 3, 2004 .....	649-653
3	5. Order of Affirmance, <i>Chappell v. State</i> , Nevada Supreme Court Case No. 43493, April 7, 2006 .....	654-668
3	6. Judgement of Conviction, <i>State v. Chappell</i> , Eighth Judicial District Court Case No. 95-C13141, May 10, 2007 .....	669-671
3	7. Order of Affirmance, <i>Chappell v. State</i> , Nevada Supreme Court Case No. 49478, October 20, 2009 ....	672-704
3	8. Order Denying Rehearing and Amended Order, <i>Chappell v. State</i> , Nevada Supreme Court Case No. 49478, December 16, 2009 .....	705-709
3	9. Findings of Fact, Conclusions of Law and Order, <i>State v. Chappell</i> , Eighth Judicial District Court Case No. 95-C131341, November 16, 2012 .....	710-721
3	10. Order of Affirmance, <i>Chappell v. State</i> , Nevada Supreme Court Case No. 61967, June 18, 2015 .....	722-738

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
3	11. Order Denying Rehearing, <i>Chappell v. State</i> , Nevada Supreme Court Case No. 61967, October 22, 2015 .....	739-742
3-4	12. Juror Questionnaire, Olga C. Bourne (Badge #427), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	743-751
4	13. Juror Questionnaire, Adriane D. Marshall (Badge #493), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	752-760
4	14. Juror Questionnaire, Jim Blake Tripp (Badge #412), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	761-769
4	15. Juror Questionnaire, Kellyanne Bentley Taylor (Badge #421), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	770-778
4	16. Juror Questionnaire, Kenneth R. Fitzgerald (Badge #473), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	779-788
4	17. Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts, <i>State v. Chappell</i> , Eighth Judicial District Court, May 9, 1996 .....	789-799
4	18. Supplemental Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts, <i>State v. Chappell</i> , Eighth Judicial District Court, August 29, 1996 .....	800-803
4	19. Defendant's Opposition to State's Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts, <i>State v. Chappell</i> , Eighth Judicial District Court, September 10, 1996 .....	804-814
4	20. Defendant's Offer to Stipulate to Certain Facts, <i>State v. Chappell</i> , Eighth Judicial District Court, September 10, 1996 .....	815-818
4	21. Stipulation to Certain Facts, <i>State v. Chappell</i> , Eighth Judicial District Court, September 10, 1996 .....	819-822

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
4	22. Defendant's Motion to Compel Petrocelli Hearing Regarding Allegations of Prior Bad Acts, <i>State v. Chappell</i> , District Court, Clark County, Nevada (September 10, 1996) .....	823-829
4	23. Defendant's Motion in Limine Regarding Events Related to Defendant's Arrest for Shoplifting on September 1, 1995, <i>State v. Chappell</i> , Eighth Judicial District Court, October 4, 1996 .....	830-836
4	24. Information, <i>State v. Chappell</i> , Eighth Judicial District Court, October 11, 1995 .....	837-843
4	25. Notice of Intent to Seek the Death Penalty, <i>State v. Chappell</i> , Eighth Judicial District Court, November 8, 1995.....	844-847
4	26. Defendant's Motion to Strike State's Notice of Intent to Seek Death Penalty, Because the Procedure in this Case is Unconstitutional, <i>State v. Chappell</i> , Eighth Judicial District Court, July 23, 1996.....	848-862
4	27. Criminal Court Minutes, <i>State v. Chappell</i> , Eighth Judicial District Court, September 30, 1996 .....	863-865
4	28. Affidavits in Support of Petition for Writ of Habeas Corpus (Post-Conviction), <i>State v. Chappell</i> , Eighth Judicial District Court, March 7, 2003.....	866-877
4	29. Affidavits in Support of Petition for Writ of Habeas Corpus (Post-Conviction), Eighth Judicial District Court, March 10, 2003.....	878-888
4	30. Verdict, October 24, 1996; Special Verdicts, October 24, 1996.....	889-894
4	36. Jury List, March 13, 2007 .....	895-896
4	37. Pre-Sentence Investigation Report, 1995 .....	897-903
4	38. Pre-Sentence Investigation Report, December 5, 1996 .....	904-912
4	39. Special Verdicts, March 21, 2007.....	913-918



<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
4	40. Instructions to the Jury, March 21, 2007 .....	919-942
4	41. Verdict Forms Counts I, II, III, October 16, 1996.....	943-946
4	42. Motion to Strike Sexual Assault Aggravator of the State's Notice of Intent to Seek the Death Penalty or in the Alternative, Motion in Limine to Allow Defendant to Introduce Evidence in Defense of Sexual Assault, September 20, 2006.....	947-963
4-5	43. Supplemental Brief in Support of Defendant's Writ of Habeas Corpus, February 15, 2012.....	964-1046
5	44. Motion for Authorization to Obtain an Investigator and for Payment of Fees Incurred Herein, February 15, 2012 .....	1047-1053
5	45. Recorder's Transcript re: Evidentiary Hearing Argument held on October 19, 2012, October 29, 2012.....	1054-1066
5	46. Supplemental Petition for Writ of Habeas Corpus (Post-Conviction), April 30, 2002.....	1067-1131
5	47. Instructions to the Jury, October 16, 1996.....	1132-1178
5	48. <u>State of Nevada v. Richard Edward Powell</u> , Case No. C148936, Eighth Judicial District Court, Verdict Forms, November 15, 2000.....	1179-1199
5	49. <u>State of Nevada v. Jeremy Strohmeyer</u> , Case No. 97-C- 144577, Eighth Judicial District Court Minutes, September 8, 1998.....	1200-1202
5	50. <u>State of Nevada v. Fernando Padron Rodriguez</u> , Case No. C130763 Eighth Judicial District Court, Verdict Forms, November 1, 1995.....	1203-1205
5	51. <u>State v. Jonathan Cornelius Daniels</u> , Case No. C126201, Eighth Judicial District Court, Verdict Forms, May 7, 1996 .....	1206-1216

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
5	52. Declaration of Benjamin Dean, April 7, 2016 .....	1217-1224
5	53. Declaration of Carla Chappell, April 23, 2016 .....	1225-1237
5	54. Declaration of Charles Dean, April 19, 2016 .....	1238-1245
5	55. Declaration of Ernestine ‘Sue’ Harvey, July 2, 2016 .....	1246-1248
5-6	56. Declaration of Fred Dean, June 11, 2016 .....	1249-1255
6	57. Declaration of Georgette Sneed, May 14, 2016 .....	1256-1260
6	58. Declaration of Harold Kuder, April 17, 2016 .....	1261-1265
6	59. Declaration of James Ford, May 19, 2016 .....	1266-1286
6	60. Declaration of James Wells, January 22, 2016 .....	1287-1290
6	61. Declaration of Joetta Ford, May 18, 2016 .....	1291-1297
6	62. Criminal Court Minutes, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 18, 1995.....	1298-1299
6	63. Declaration of Michael Chappell, May 14, 2016 .....	1300-1304
6	64. Declaration of Myra Chappell-King, April 20, 2016 .....	1305-1319
6	65. Declaration of Phillip Underwood, April 17, 2016 .....	1320-1326
6	66. Declaration of Rodney Axaam, April 18, 2016 .....	1327-1329
6	67. Declaration of Rose Wells-Canon, April 16, 2016 .....	1330-1334

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
6	68. Declaration of Sharon Axam, April 18, 2016 .....	1335-1341
6	69. Declaration of Sheron Barkley, April 16, 2016 .....	1342-1346
6	70. Declaration of Terrance Wallace, May 17, 2016 .....	1347-1354
6	71. Declaration of William Earl Bonds, May 13, 2016 .....	1355-1360
6	72. Declaration of William Roger Moore, April 17, 2016 .....	1361-1367
6	73. Declaration of Willie Richard Chappell, Jr., May 16, 2016 .....	1368-1382
6	74. Declaration of Willia Richard Chappell, Sr., April 16, 2016 .....	1383-1388
6	75. State's Exhibit No. 25, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1389-1391
6	76. State's Exhibit No. 37, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1392-1394
6	77. State's Exhibit No. 38, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1395-1397
6	78. State's Exhibit No. 39, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1398-1400
6	79. State's Exhibit No. 40, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1401-1403
6	80. State's Exhibit No. 41, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1404-1406

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
6	81. State's Exhibit No. 42, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1407-1409
6	82. State's Exhibit No. 43, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1410-1412
6	83. State's Exhibit No. 1, Photo of Front Window at Crime Scene, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1413-1415
6	84. State's Exhibit No. 45, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1416-1418
6	85. Declaration of Dr. Lewis Etkoff, July 11, 2016 .....	1419-1423
6	86. State's Exhibit No. 47, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1424-1426
6	87. Neuropsychological Report, Dr. Paul D. Connor, July 15, 2016 .....	1427-1464
6-7	88. Functional and Behavioral Assessment Report, Dr. Natalie Novick-Brown, August 3, 2016.....	1465-1514
7	89. Medical Expert Report, Dr. Julian Davies, August 5, 2016.....	1515-1549
7	90. Report of Neuropharmacology Opinion, Dr. Jonathan Lipman, August 12, 2016.....	1550-1582
7	91. Juror Selection List, <i>State v. Chappell</i> , Eighth Judicial District Court, Case no. 95-C131341, March 13, 2007.....	1583-1584
7	92. Juror Selection List, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 7, 1996.....	1585-1586

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
7	93. Declaration of Wilfred Gloster, Jr., July 25, 2016 .....	1587-1589
7	94. Declaration of David M. Schieck, August 2, 2016 .....	1590-1592
7	95. Client Interview Statement, September 8, 1995 .....	1593-1594
7	96. Reporter's Transcript of Oral Argument, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 29884, November 12, 1997 p.m. ....	1595-1636
7	97. Motion for Authorization to Obtain a Sexual Assault Expert and for Payment of Fees Incurred Herein, <i>State v. Chappell</i> , Eighth Judicial Court, Case no. 95-C131341, February 15, 2012 .....	1637-1643
7	98. Order to Endorse Names on Information, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, July 15, 1996.....	1644-1646
7	99. Order to Endorse Names on Information, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, August 22, 1996 .....	1647-1652
7	100. Quantitative Analyses Report, Dr. Robert Thatcher, August 1, 2016.....	1653-1712
7	101. Order to Endorse Names on Information, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, September 4, 1996 .....	1713-1716
7	102. Criminal Court Minutes, <i>State v. Chappell</i> , Eighth Judicial District Court, Case no. 95-C131341, September 16, 1996.....	1717-1718
7	103. Juror Questionnaire, Hill, (Badge #474), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	1719-1727
7	104. Declaration of Lila Godard, August 5, 2016 .....	1728-1731

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
7	105. Declaration of Clare McGuire, August 6, 2016 .....	1732-1734
7	106. Motion and Notice to Endorse Names on Information, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 14, 1996.....	1735-1739
7-8	107. Psychological Evaluation, Dr. Lewis Etcoff, June 13, 1996 .....	1740-1754
8	108. Declaration of Clark W. Patrick, August 4, 2016 .....	1755-1757
8	109. Reporter's Transcript of Proceedings of Evidentiary Hearing, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, September 13, 2002 .....	1758-1826
8	110. Appellant's Opening Brief, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 29884, June 13, 1997 ...	1827-1925
8-9	111. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 7, 1996 a.m. ....	1926-2005
9	112. Juror Questionnaire, Larsen (Badge #442), <i>State v.</i> <i>Chappell</i> , Eighth Judicial District Court, Case No. 95- C131341, October 2, 1996 .....	2006-2014
9	113. Juror Questionnaire, Lucido (Badge #432), <i>State v.</i> <i>Chappell</i> , Eighth Judicial District Court, Case No. 95- C131341, October 2, 1996 .....	2015-2023
9	114. Juror Questionnaire, Terry (Badge #455), <i>State v.</i> <i>Chappell</i> , Eighth Judicial District Court, Case No. 95- C131341, October 2, 1996 .....	2024-2032
9	115. Juror Questionnaire, Parr (Badge #405), <i>State v.</i> <i>Chappell</i> , Eighth Judicial District Court, Case No. 95- C131341, October 2, 1996 .....	2033-2041
9	116. Juror Questionnaire, Fryt (Badge #480), <i>State v.</i> <i>Chappell</i> , Eighth Judicial District Court, Case No. 95- C131341, October 2, 1996 .....	2042-2050

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
9	117. Juror Questionnaire, Ewell (Badge #435), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	2051-2059
9	118. Declaration of Howard Brooks, August 2, 2016 .....	2060-2063
9	119. Juror Questionnaire, Fittro (Badge #461), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	2064-2072
9	120. Declaration of Willard Ewing, August 5, 2016 .....	2073-2076
9	121. Juror Questionnaire, Harmon (Badge #458), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	2077-2085
9	122. Juror Questionnaire, Sprell (Badge #402), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	2086-2094
9	123. Juror Questionnaire, Gritis (Badge #406), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	2095-2103
9	124. Juror Questionnaire, Bennett (Badge #479), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	2104-2112
9	125. Declaration of Tammy R. Smith, August 11, 2016 .....	2113-2115
9	126. Motion and Notice of Motion to Endorse Names on Information, <i>State v. Chappell</i> , Eighth Judicial District Court Case No. 95-C131341, July 9, 1996 .....	2116-2120
9-10	127. Preliminary Hearing Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Justice Court of Las Vegas Township, Case No. 95-F08114X, October 3, 1995 .....	2121-2280
10	128. Report of Matthew Mendel, Ph.D., June 27, 2016 .....	2281-2300

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
10	129. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 7, 1996 p.m. ....	2301-2485
10-11	130. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 8, 1996 a.m. ....	2486-2612
11	131. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 8, 1996 p.m. ....	2613-2712
11-12	132. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 a.m. ....	2713-2801
12	133. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 p.m. ....	2802-2936
12-13	134. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 11, 1996 a.m. ....	2937-3047
13	135. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 11, 1996 p.m. ....	3048-3201
13-14	136. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 14, 1996 a.m. ....	3202-3260
14	137. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 14, 1996 p.m. ....	3261-3382
14	138. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 21, 1996 a.m. ....	3383-3454
14-15	139. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 21, 1996 p.m. ....	3455-3580



<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
15	140. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 22, 1996 a.m. ....	3581-3692
15	141. Criminal Complaint, <i>State v. Chappell</i> , Justice Court of Las Vegas Township, Case No. 95F08114X, September 8, 1995.....	3693-3695
15-16	142. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 15, 1996.....	3696-3867
16	143. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 16, 1996.....	3868-3875
16	144. City of Las Vegas, Municipal Court, Notice of Court Dates for James Montel Chappell, Case Nos. 0264625 A/B, 0267095A.....	3876-3878
16	145. Motion for Authorization to Obtain Expert Services and for Payment of Fees Incurred Herein, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, February 15, 2012 .....	3879-3885
16	146. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 24, 1996.....	3886-3897
16	147. Notice of Appeal, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, January 17, 1997 .....	3898-3900
16	148. Presentence Report, Division of Parole and Probation, April 18, 1995 .....	3901-3924
16	149. Notice of Filing of Petition for Writ of Certiorari, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 49478, March 1, 2010.....	3925-3926
16	150. Order re: Staying the Issuance of the Remittitur, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 29884, October 26, 1999.....	3927-3928

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
16-17	155. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, Penalty Hearing, March 12, 2007 .....	3929-4012
17	156. Appellant's Opening Brief, <i>Chappell v. State of Nevada</i> , Supreme Court of Nevada, Case No. 49478, June 9, 2008 .....	4013-4106
17	159. Remittitur, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 49478, June 8, 2010 .....	4107-4109
17	160. Petition for Writ of Habeas Corpus, <i>Chappell v. State</i> , Eighth Judicial District Court, Case No. 95-C131341, June 22, 2010.....	4110-4123
17	161. Presentence Report, Division of Parole and Probation, James M. Chappell, May 2, 2007 .....	4124-4131
17	162. Juror Questionnaire, Ochoa (Badge #467), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	4132-4141
17	163. Appellant's Opening Brief, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 61967, January 8, 2014 .....	4142-4212
17	165. Remittitur, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 61967, November 17, 2015 .....	4213-4214
17	166. Declaration of Rosemary Pacheco, August 9, 2016 .....	4215-4220
17	167. Declaration of Dina Richardson, August 9, 2016 .....	4221-4224
17	168. Declaration of Angela Mitchell, August 9, 2016 .....	4225-4229
17-18	169. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 19, 2007.....	4230-4337

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
18	170. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 14, 2007 a.m. ....	4338-4457
18-19	171. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 14, 2007 p.m. ....	4458-4514
19	172. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 15, 2007 a.m.....	4515-4651
19	173. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 15, 2007 p.m.....	4652-4696
19-20	174. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 16, 2007 a.m.....	4697-4875
20	175. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 16, 2007 p.m.....	4876-4921
20	176. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 20, 2007.....	4922-4976
20	177. Defendant's Offer to Stipulate to Certain Facts, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, September 10, 1996 .....	4977-4979
20	178. Supplemental Psychological Evaluation, Dr. Lewis Etcoff, September 28, 1996 .....	4980-4992
20	179. Order to Transport, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C13141, April 26, 1996 .....	4993-4994
20-21	181. Juvenile Records, State of Michigan, James M. Chappell.....	4995-5036
21	182. School Records, Lansing School District, James M. Chappell.....	5037-5080

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
21	183. Juror Questionnaire, Perez (Badge #50001), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5081-5091
21	184. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 13, 2007.....	5092-5145
21	185. Juror Questionnaire, Brady (Badge #5004), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5146-5156
21	186. Juror Questionnaire, Hibbard (Badge #50015), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5157-5167
21	187. Juror Questionnaire, Bailey (Badge #50015), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5168-5178
21	188. Juror Questionnaire, Mills (Badge #50016), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5179-5189
21	189. Juror Questionnaire, Smith (Badge #50045), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5190-5200
21	190. Juror Questionnaire, Schechter (Badge #50087), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5201-5211
21	191. Juror Questionnaire, Kitchen (Badge #50096), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5212-5222
21	192. Juror Questionnaire, Morin (Badge #50050), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5223-5233
21	193. Juror Questionnaire, Kaleikini-Johnson (Badge #50034), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5234-5244

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
21-22	194. Juror Questionnaire, Ramirez (Badge #50034), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5245-5255
22	195. Juror Questionnaire, Martino (Badge #50038), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5256-5266
22	196. Juror Questionnaire, Rius (Badge #50081), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5267-5277
22	197. Juror Questionnaire, Bundren (Badge #50039), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5278-5288
22	198. Juror Questionnaire, White (Badge #50088), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5289-5299
22	199. Juror Questionnaire, Forbes (Badge #50074), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5300-5310
22	200. Juror Questionnaire, Templeton (Badge #50077), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5311-5321
22	201. Juror Questionnaire, Button (Badge #50088), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5322-5332
22	202. Juror Questionnaire, Feuerhammer (Badge #50073), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5333-5343
22	203. Juror Questionnaire, Theus (Badge #50035), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5344-5354
22	204. Juror Questionnaire, Scott (Badge #50078), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5355-5365

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
22	205. Juror Questionnaire, Staley (Badge #50089), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5366-5376
22	206. Juror Questionnaire, Salak (Badge #50055), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5377-5387
22	207. Juror Questionnaire, Henck (Badge #50020), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5388-5389
22	208. Juror Questionnaire, Smith (Badge # 50022), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5399-5409
22	209. Juror Questionnaire, Cardillo (Badge #50026), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5410-5420
22	210. Juror Questionnaire, Noahr (Badge #50036), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5421-5431
22	211. Declaration of Christopher Milan, August 12, 2016 .....	5432-5436
22	212. Juror Questionnaire, Yates (Badge #455), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	5437-5445
22	213. Special Verdict, <i>State v. Xiao Ye Bai</i> , Eighth Judicial District Court, Case No. 09C259754-2, December 3, 1996 .....	5446-5454
22	214. Special Verdict, <i>State v. Victor Orlando Cruz-Garcia</i> , Eighth Judicial District Court, Case No. 08C240509, June 24, 2012 .....	5455-5462
22	215. Special Verdict, <i>State v. Marcus Washington</i> , Eighth Judicial District Court, Case No. C-11-275618, March 30, 2012.....	5463-5471

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
22	216. Special Verdict, <i>State v. Lashana Monique Haywood and Charles Pilgrim Nelson</i> , Eighth Judicial District Court, Case No. C255413, May 11, 2011 .....	5472-5479
22	217. Verdict and Special Verdict, <i>State v. Rafael Castillo-Sanchez</i> , Eighth Judicial District Court, Case No. C217791, July 2, 2010 .....	5480-5485
22	218. Verdict and Special Verdict, <i>State v. Eugene Hollis Nunnery</i> , Eighth Judicial District Court, Case No. C227587, May 11, 2010 .....	5486-5493
22	219. Verdict and Special Verdict, <i>State v. Bryan Wayne Crawley</i> , Eighth Judicial District Court, Case No. C233433, December 9, 2008 .....	5494-5499
22-23	220. Verdict and Special Verdict, <i>State v. Marc Anthony Colon</i> , Eighth Judicial District Court, Case No. C220720, October 10, 2008.....	5500-5504
23	221. Verdict and Special Verdict, <i>State v. Sterling Beatty</i> , Eighth Judicial District Court, Case No. C230625, February 12, 2008.....	5505-5509
23	222. Verdict and Special Verdict, <i>State v. John Douglas Chartier</i> , Eighth Judicial District Court, Case No. C212954, June 20, 2006 .....	5510-5518
23	223. Verdict and Special Verdict, <i>State v. David Lee Wilcox</i> , Eighth Judicial District Court, Case No. C212954, June 20, 2006 .....	5519-5526
23	224. Verdict and Special Verdict, <i>State v. James A. Scholl</i> , Eighth Judicial District Court, Case No. C204775, February 17, 2006 .....	5527-5531
23	225. Verdict and Special Verdict, <i>State v. Anthony Dwayne Prentice</i> , Eighth Judicial District Court, Case No. C187947, March 3, 2004.....	5532-5537
23	226. Verdict and Special Verdict, <i>State v. Pascual Lozano</i> , Eighth Judicial District Court, Case No. 188067, September 15, 2006.....	5538-5547

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
23	227. Verdict and Special Verdict, <i>State v. Robert Lee Carter</i> , Eighth Judicial District Court Case No. C154836, April 25, 2003 .....	5548-5553
23	228. Verdict and Special Verdict, <i>State v. Mack C. Mason</i> , Eighth Judicial District Court, Case No. C161426, March 6, 2001 .....	5554-5558
23	229. Verdict and Special Verdict, <i>State v. Richard Edward Powell</i> , Eighth Judicial District Court, Case No. C148936, November 15, 2000.....	5559-5571
23	230. Verdict and Special Verdict, <i>State v. Kenshawn James Maxey</i> , Eighth Judicial District Court, Case No. C151122, February 8, 2000 .....	5572-5576
23	231. Verdict and Special Verdict, <i>State v. Ronald Ducksworth, Jr.</i> , Eighth Judicial District Court, Case No. C108501, October 23, 1993 .....	5577-5588
23	232. Verdict and Special Verdict, <i>State v. Fernando Padron Rodriguez</i> , Eighth Judicial District Court, Case No. C130763, May 7, 1986.....	5589-5595
23	233. Declaration of Mark J.S. Heath, M.D., May 16, 2006 .....	5596-5722
23	234. Verdict and Special Verdict, <i>State v. Carl Lee Martin</i> , Eighth Judicial District Court, Case No. C108501 .....	5723-5730
23-24	235. Jury Composition Preliminary Study, Eighth Judicial District Court, Clark County, Nevada .....	5731-5787
24	236. Report of the Supreme Court of Nevada, Jury Improvement Commission, October, 2002.....	5788-5881
24	237. Reporter's Transcript of Proceedings, <i>State v. Jimenez</i> , Eighth Judicial District Court, Case No. C77949 & C77955, April 30, 1987 .....	5882-5887
24	238. Reporter's Transcript of Proceedings, <i>State v. Parker</i> , Eighth Judicial District Court, Case No. C92278, February 8, 1991 a.m. ....	5888-5892



<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
24	239. Reporter's Transcript of Proceedings, Penalty Phase-Three Judge Panel, <i>State v. Riker</i> , Eighth Judicial District Court, Case No. c107751, February 23, 1994 .....	5893-5897
24	240. Reporter's Transcript of Proceedings on, <i>State v. Walker</i> , Eighth Judicial District Court, Case No. C107751, June 16, 1994 .....	5898-5905
24	241. Juror Questionnaire, Taylor (Badge #050009), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5906-5916
24	242. Excerpt of Testimony of Terry Cook, Reporter's Transcript of Proceedings, <i>State v. Bolin</i> , Eighth Judicial District Court, Case No. C130899, May 30, 1996 p.m. ....	5917-5924
24	243. Handwritten Notes of Terry Cook, Las Vegas Metropolitan Police Department, Richard Allan Walker, Event No. 920414-0169, April 22, 1992 .....	5925-5930
24	244. Memorandum from Michael O'Callaghan to Terry Cook, Las Vegas Metropolitan Police Department, Richard Allan Walker, Event No. 920414-0169, January 7, 2002 .....	5931-5933
24	245. Excerpt of Testimony of Terry Cook, Reporter's Transcript of Proceedings, <i>State v. Jiminez</i> , Eighth Judicial District Court, Case No. C79955, March 2, 1988 .....	5934-5940
24	246. Newspaper Article, "Las Vegas Police Reveal DNA Error Put Wrong Man in Prison," Las Vegas Review Journal, July 7, 2011 .....	5941-5945
24	247. Respondent's Answering Brief on Appeal and Opening Brief on Cross-Appeal, Cross-Appeal from a Post-Conviction Order Granting a New Penalty Hearing, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 43493, June 2, 2005 .....	5946-5987
24-25	248. Nevada Indigent Defense, Standards of Performance, Capital Case Representation .....	5989-6061

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
25	252. Billing Statement, Dr. Lewis Etkoff, March 16, 2007 .....	6062-6063
25	253. Death Certificate, Shirley Axam-Chappell, August 23, 1973.....	6064-6065
25	254. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, April 2, 2004 .....	6066-6072
25	255. State's Trial Exhibit List, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 12, 2007.....	6073-6076
25	256. Report of Laboratory Examination, Cellmark Diagnostics, June 28, 1996 .....	6077-6079
25	258. The American Board of Anesthesiology, Inc., <u>Anesthesiologists and Capital Punishment</u> ; American Medical Association, <u>AMA Policy E-2.06 Capital Punishment</u> .....	6080-6084
25	262. Petition for Writ of Habeas Corpus (Post Conviction), <i>James Montell Chappell v. E.K. McDaniel, Warden</i> , Eighth Judicial Court, Case No. 95-C131341, October 19, 1999 .....	6085-6144
25	263. Remittitur, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 43493, May 2, 2006.....	6145-6147
25	264. Notice of Witnesses, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, February 28, 2007 .....	6148-6152
25	265. Excerpt from Dr. Lewis Etkoff's Life History Questionnaire, June 10, 1996.....	6153-6155
25	266. Las Vegas Metropolitan Police Department Officer's Report, James M. Chappell, Event No. 950831-1351 .....	6156-6170
25	267. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 23, 1996.....	6171-6231

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
25-26	268. Jury Instructions, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 24, 1996 .....	6232-6263
26	274. Declaration of Howard Brooks, July 30 1996 .....	6264-6266
26	275. <i>State v. Chappell</i> , Answer to Motion to Compel Discovery, Eighth Judicial District Court, Case No. C131341, September 11, 1996.....	6267-6269
26	276. Declaration of Tina L. Williams, June 7, 2016 .....	6270-6271
26	277. Trial Transcript, pp.86-88, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 15, 1996 a.m. ....	6272-6276
26	278. Trial Transcript, pg. 92, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 15, 1996 a.m. ....	6277-6280
26	279. Trial Transcript, pg. 158, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 15, 1996 a.m. ....	6281-6283
26	280. Trial Transcript, pg. 36-38, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 23, 1996 a.m. ....	6284-6288
26	281. Trial Transcript, pg. 45-46, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 23, 1996 a.m. ....	6289-6292
26	282. Trial Transcript, pg. 49, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 23, 1996 a.m. ....	6293-6295
26	283. Las Vegas Metropolitan Police .....	6296-6299
26	284. Trial Transcript, pg. 98-99, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 14, 1996 a.m. ....	6300-6303

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
26	285. Subpoena Duces Tecum, LVMPD Evidence Vault .....	6304-6307
26	286. Judgement of Conviction (Plea), <i>State v. Turner</i> , Eighth Judicial District Court, Case no. C138219B, April 30, 1997 .....	6308-6310
26	287. Sentencing Minutes, <i>State v. Turner</i> , Eighth Judicial District Court, Case No. C138219B, April 30, 1997 .....	6311-6312
26	288. Minutes, <i>State v. Turner</i> , Eighth Judicial District Court, Case No. C138219B, November 20, 1996 .....	6313-6314
26	289. Hearing Transcript, pp. 14-16, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, September 13, 2002.....	6315-6319
26	296. Trial Transcript, pp. 48-50, <i>State v. Chappell</i> , Eighth Judicial District Court, Case no. C131341, October 14, 1996 p.m. ....	6320-6324
26	297. Trial Transcript, p. 69, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, March 20, 2007 .....	6325-6327
26	298. Trial Transcript, pp. 32-54, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 14, 1996 a.m. ....	6328-6352
26	299. Letter from Tina Williams to Cellmark Diagnostics re: Requests for records, May 3, 2016.....	6353-6357
26	300. Email to Tina Williams from Joan Gulliksen, Customer Liaison, Bode Cellmark Forensics, Denying request for records and requesting a subpoena from LVMPD Crime Lab, May 20, 2016 .....	6358-6360
26	301. Records Request refusals from LVMPD Criminalistics Bureau, Patrol Division, Secret Witness and Homicide Section .....	6361-6366

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
26	307. Trial Transcript, p. 23, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 11, 1996 a.m. ....	6367-6369
26	310. Information, <i>State v. Turner (D.)</i> , Eighth Judicial District Court, CaseNo. C138219, September 13, 1996.....	6370-6372
26	311. Guilty Plea Agreement, <i>State v. Turner (D)</i> , Eighth Judicial District Court, Case No. C138219B, September 16, 1996.....	6373-6378
26	312. Register of Actions, <i>State v. Turner (D.)</i> , Eighth Judicial District Court, Case No. 96C138219-2, April 30, 1997 .....	6379-6381
26	313. Minutes, September 16, 1996, September 23, 1996, September 30, 1996, October 2, 1996, October 7, 1996, November 13, 1996, February 24, 1997, March 5, 1997, April 23, 1997, April 30, 1997, <i>State v. Turner (D.)</i> , Eighth Judicial District Court, Case No. C138219C .....	6382-6388
26	314. Minutes, September 16, 1996, September 23, 1996, September 30, 1996, October 2, 1996, November 15, 1996, January 3, 1997, February 19, 1997, April 16, 1997, April 23, 1997, April 30, 1997, <i>State v. Turner (T.)</i> , Eighth Judicial District Court, Case No. C138219C .....	6389-6398
26	315. Witness payment vouchers, Office of the District Attorney, Deborah Ann Turner, October 3, 1995, October 10-11, 1996 .....	6399-6401
26	316. Trial Transcript pp. 86, 156-158, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 15, 1996 a.m. ....	6402-6407
26	317. Witness payment vouchers, Office of the District Attorney, LaDonna Jackson, October 3, 1995, October 9-11, 1996 .....	6408-6412
26	318. Trial Transcript, pp. 72, 136-38, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, March 20, 2007.....	6413-6418

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
26	319. Inmate Profile, Arizona Department of Corrections, Michael Pollard, June 16, 2016 .....	6419-6421
26	320. Public Access Case Lookup, Supreme Court of Arizona, Michael Pollard, June 16, 2016 .....	6422-6424
26	324. Trial Transcript, pp. 54-55, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 14, 1996 p.m. ....	6425-6428
26	325. Trial Transcript pp. 121-123, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 10, 1996 p.m. ....	6429-6433
26	326. Declaration of Michael Pollard, September 14, 2016.....	6434-6437
26	327. Declaration of Madge Cage, September 24, 2016 .....	6438-6441
26	328. Declaration of Helen Hosey, October 27, 2016 .....	6442-6446
26	329. Declaration of Shirley Sorrell, September 23, 2016.....	6447-6451
26	330. Declaration of Louise Underwood, September 22, 2016.....	6452-6460
26	331. Declaration of Verlean Townsend, September 24, 2016.....	6461-6467
26	332. Declaration of Bret Robello, September 29, 2016.....	6468-6470
26	333. Declaration of Dennis Reefer, October 20, 2016.....	6471-6473
26	334. Declaration of Maribel Yanez, November 4, 2016.....	6474-6477
30	Exhibits in Support of Post-Hearing Brief in Support of Writ of Habeas Corpus, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (April 27, 2018) .....	7431-7433

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
<b>EXHIBITS</b>		
30	1. Recorder's Transcript, <i>State v. Hover</i> , Eighth Judicial District Court, Case No. 10-C263551-1 (January 25, 2018) .....	7434-7439
30	2. Decision, <i>State v. Hover</i> , Nevada Supreme Court, Case No. 63888 (February 19, 2016) .....	7440-7450
30	3. Reply to State's Response to Supplemental Brief in Support of Defendant's Writ of Habeas Corpus, <i>Chappell v. State</i> , Eighth Judicial District Court, Case No. C131341 (July 30, 2012) .....	7451-7475
30	4. Miscellaneous Archived Web Pages .....	7476-7497
31	Exhibits in Support of Post-Hearing Reply Brief, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (May 11, 2018) .....	7529-7530
<b>EXHIBITS</b>		
31	5. Recorder's Transcript, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95C131341 (April 5, 2018) .....	7531-7537
31	6. Declaration of David M. Schieck (August 2, 2016) .....	7538-7541
31	7. Declaration of Clark W. Patrick (August 4, 2016) .....	7542-7544
27	Exhibits in Support of Reply to State's Response to Petition for Writ of Habeas Corpus (Post-Conviction) Exhibits 335-368, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (July 5, 2017) .....	6648-6652
<b>EXHIBITS</b>		
27	335. Order Affirming in Part, Reversing in Part, and Remanding, <i>Moore v. State</i> , Case No. 46801, Nevada Supreme Court (April 23, 2008) .....	6653-6675
27	336. State's Opposition to Motion for Authorization to Obtain Sexual Assault Expert and Payment of Fees, and	

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
	Opposition to Motion for Investigator and Payment of Fees, <i>State v. Chappell</i> , Case No. 95-C131341, Eighth Judicial District Court (May 12, 2012) .....	6676-6681
27	Exhibit List and Exhibits from Evidentiary Hearing, <i>State of Nevada v. James Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (April 6, 2018) .....	6736-6737
<b>MARKED EXHIBITS</b>		
27	1. Register of Actions, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. 95C131341 (October 5, 2010) .....	6738
27	2. Receipt of File, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (January 14, 2010) .....	6739-6740
27	3. Motion for Authorization to Obtain Expert Services and for Payment of Fees Incurred Herein, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (February 15, 2012) .....	6741-6746
27-28	4. State's Opposition to Motion for Authorization to Obtain Expert Services and Payment of Fees, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. 95-C131341 (May 16, 2012) .....	6747-6752
28	5. Recorder's Transcript Re: Evidentiary Hearing: Argument, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (October 29, 2012) .....	6753-6764
28	6. Findings of Fact, Conclusions of Law and Order, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. 95C131341 (November 16, 2012) .....	6765-6773
28	7. Supplemental Brief in Support of Defendants Writ of Habeas Corpus, <i>State v. Donte Johnson</i> , District Court, Clark County, Case No. C153154 (October 12, 2009) .....	6774-6841
28	8. Dr. Lewis Etcoff's Life History Questionnaire of James Chappell (June 12, 1996) .....	6842-6865



<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
28	9. Special Verdict, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (March 21, 2007) .....	6866-6870
28	10. Functional and Behavioral Assessment Report, Dr. Natalie Novick-Brown, (August 3, 2016) .....	6871-6919
28	11. Materials Relied Upon (Amended), Natalie Novick-Brown, Ph.D. ....	6920-6922
28	12. Curriculum Vitae, Natalie Novick-Brown, Ph.D., .....	6923-6934
28	13. Report by Dr. Lewis Etcoff, Ph.D., A.B.P.N. (September 28, 1996) .....	6935-6946
8	14. Probation Records of James Chappell, Probation Court, Juvenile Division, County of Ingham, State of Michigan File No. D-10273A (January 23, 1986) .....	6947-6985
28-29	15. School Records of James Chappell .....	6986-7028
29	16. Newspaper Article: City's 13 <sup>th</sup> Auto Fatality, Car Victim Identified, Lansing State Journal, Michigan (August 24, 1973) .....	7029
29	17. Neuropsychological Report of Paul Connor, Ph.D., (July 13, 2016) .....	7030-7050
29	18. Materials Relied Upon (Amended), Dr. Paul Connor, Ph.D. ....	7051-7052
29	19. Medical Expert Report by Dr. Julian Davies (August 5, 2016) .....	7053-7081
29	20. Materials Relied Upon (Amended), Dr. Julian Davies .....	7082-7083
29	21. Power Point Presentation, Neuropsychological Functioning: James Chappell, by Paul Connor, Ph.D. ....	7084-7163
31	Findings of Fact, Conclusions of Law and Order, <i>Chappell v. State</i> , District Court, Clark County, Nevada Case No. C131341 (August 8, 2018) .....	7579-7589

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
1	Instructions to the Jury, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (March 21, 2007) .....	128-150
31	Notice of Appeal, <i>Chappell v. Gittere</i> , District Court, Clark County, Nevada Case No. 95C-131341 (September 14, 2018) .....	7591-7593
31	Notice of Entry Findings of Fact, Conclusions of Law and Order, <i>Chappell v. State</i> , District Court, Clark County, Nevada Case No. C131341 (August 17, 2018) .....	7590
26	Notice of Errata with Regard to Exhibit 328 in Support of Petition for Writ of Habeas Corpus, <i>Chappell v. Filson</i> , Eighth Judicial District Court, Clark County, Nevada Case No. C131341(November 18, 2016) .....	6478-6487
27	Notice of Errata with Regard to Exhibit 333 in Support of Petition for Writ of Habeas Corpus, <i>Chappell v. Filson</i> , Eighth Judicial District Court, Clark County, Nevada Case No. C131341 (October 05, 2017) .....	6698-6705
27	Notice of Supplemental Authority, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (September 29, 2017) .....	6693-6697
31	Objection to State’s Proposed Findings of Fact, Conclusions of Law, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (June 8, 2018) .....	7573-7578
27	Opposition to Motions for Discovery and for Evidentiary Hearing, <i>Chappell v. State</i> , District Court, Clark County, Nevada Case No. 95C131341 (July 28, 2017) .....	6682-6686
1-3	Petition for Writ of Habeas Corpus (Post-Conviction), <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (November 16, 2016) .....	169-561
30	Post-Hearing Brief In Support of Petition for Writ of Habeas Corpus, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (April 27, 2018) .....	7389-7430

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
31	Post-Hearing Reply Brief, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (May 11, 2018) .....	7512-7528
26	Recorder's Transcript of Hearing Re: Petitioner's Petition for Writ of Habeas Corpus (Post Conviction), District Court, Clark County, Nevada Case No. C131341 (January 4, 2017) .....	6488-6492
31	Recorder's Transcript of Hearing: Supplemental Briefing, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (May 21, 2018) .....	7545-7572
27	Recorder's Transcript of Proceedings, Defendant's Motion for Leave to Conduct Discovery; Exhibits, Defendant's Motion for Evidentiary Hearing; Exhibits, Petitioner's Petition for Writ of Habeas Corpus, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. 95C131341 (October 9, 2017) .....	6706-6723
27	Recorder's Transcript RE: Defendant's Motion for Leave to Conduct Discovery: Exhibits, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. 95C131341 (March 19, 2018) .....	6729-6735
27	Recorder's Transcript RE: Status Check: Set Evidentiary Hearing RE: Petition for Writ of Habeas Corpus and Motion for Leave to Conduct Discovery: Exhibits, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341? (January 18, 2018) .....	6724-6728
27	Reply to Opposition to Motions for Discovery and for Evidentiary Hearing, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (July 31, 2017) .....	6687-6692
27	Reply to State's Response to Petition for Writ of Habeas Corpus (Post-Conviction); Exhibits, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (July 5, 2017) .....	6567-6647

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
1	Reporter's Transcript of Penalty Hearing, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (March 13, 2007) .....	72-124
1	Reporter's Transcript of Penalty Hearing Verdict, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (March 21, 2007) .....	151-162
1	Reporter's Transcript Penalty Phase – Volume III, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (October 23, 1996) .....	1-60
1	Reporter's Transcript of Sentencing, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (May 10, 2007) .....	163-168
1	Reporter's Transcript Sentencing Hearing, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (December 30, 1996) .....	61-71
30-31	State's Post-Hearing Brief, <i>Chappell v. State</i> , District Court, Case No. 95C131341 (May 4, 2018) .....	7498-7511
26-27	State's Response to Petition for Writ of Habeas Corpus (Post-Conviction), <i>Chappell v. State</i> , District Court, Clark County, Nevada Case No. 95C131341 (April 5, 2017) .....	6493-6566
29-30	Transcript of Proceedings, Evidentiary Hearing: Petition for Writ of Habeas Corpus, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (April 6, 2018) .....	7164-7388
1	Verdict and Special Verdict, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (March 21, 2007) .....	125-127

## **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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JChappell-8JDC1707

1 correct?

2 A Yes.

3 Q But assuming for a moment that the  
4 omission by the defendant, when he talked to you in  
5 describing the act of domestic violence occurring on June  
6 the 1st was deliberate on his part, would that effect your  
7 opinion about how cooperative he was being and how credible  
8 he is?

9 A Yes.

10 Q Suffice it to say there had been a  
11 history of domestic violence involving the defendant and  
12 Ms. Panos?

13 A That's correct.

14 Q Were you aware there were three small  
15 children that were born by Ms. Panos, sired by the  
16 defendant?

17 A Yes, I was.

18 Q Did you know their ages were seven,  
19 five, and three?

20 A I don't recall at this moment, but I  
21 will take your word for it.

22 Q You have told us that half of your  
23 practice involves children?

24 A That's correct.

25 Q For that reason, do you have opinions

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1 about the affect upon children of 10 years of age --

2 MR. EWING: I'm going to object as to  
3 relevancy.

4 Q (BY MR. HARMON) -- who were subject to  
5 a history of domestic violence?

6 MR. EWING: Mr. Chappell is not charged with  
7 any crimes relating to his children. I object on relevancy  
8 grounds.

9 THE COURT: Sustained.

10 Q (BY MR. HARMON) Dr. Etscoff, would you  
11 agree that at least partial opinions that you formed would  
12 be invalidated if you weren't receiving accurate in  
13 information from the defendant?

14 A I'm not ready, based upon the one  
15 admission -- the one omission of Mr. Chappell about a  
16 domestic violence episode that took place in 1995 to change  
17 my professional opinion about this particular event. I  
18 would --

19 Q Did you understand the question?

20 A I thought I did.

21 Q If he misrepresented to you, if, if he  
22 misrepresented to you what occurred on the date of the  
23 murder, not at night, during the daytime when the murder  
24 occurred, if he did that, would that tend to invalidate  
25 many of your opinions?

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JChappell-8JDC1709

1           A     It might have an effect of making me  
2     re-think my opinions, especially if the facts in the case  
3     were much different than how he portrayed them to me. If  
4     there were minor changes, I'm not certain how great an  
5     effect it would have on my opinion, but if what he told me  
6     what occurred was completely different than fact, then I  
7     would really have to re-think my opinion.

8           Q     In your experience interviewing persons  
9     who are charged with serious crimes, don't they very often  
10    attempt to justify what they did?

11          A     Yes.

12          Q     Don't you find very often that they try  
13    to convince you that there is an area which mitigates their  
14    responsibility for their acts?

15          A     The very sophisticated ones do. The  
16    ones who are not so sophisticated or smart don't even  
17    understand that they should try to do that in their  
18    defense.

19          Q     It isn't a natural instinct of any  
20    individual to attempt to excuse or explain or justify what  
21    he did?

22          A     That's a natural human inclination.

23          Q     You've explained to us that despite  
24    your findings in terms of the defendant's IQ and I think  
25    you said his full scale intelligence quotient was 80?

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1 A That's correct.

2 Q Which is the 9th percentile of the  
3 population, you, nevertheless, emphasized that he is not  
4 mentally retarded?

5 A That's correct.

6 Q Does this defendant, in your opinion,  
7 have the ability to distinguish between right and wrong?

8 A Yes.

9 Q In your opinion, did he know it was  
10 wrong on August the 31st, 1995 to kill Deborah Panos?

11 A That's -- there's a simple answer,  
12 which is, of course, he did and then there is the  
13 complicated but perhaps better answer that you can know  
14 something is wrong, but have very bad control of yourself  
15 and do something that's wrong without much control.

16 Q Well, that's a different issue, isn't  
17 it?

18 A It's a different issue.

19 Q My question was, in your opinion, did  
20 he know on August the 31st, 1995 that it was wrong to kill?

21 A Yes.

22 Q Now, you are suggesting that he may  
23 have been prompted by various personality disorders, by  
24 being obsessively attached to her, by being paranoid, by  
25 his drug dependency to act impulsively?

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JChappell-8JDC1711

1 A Yes.

2 Q But he certainly knew the action was  
3 wrong?

4 A Yes, he did.

5 Q In your opinion, does he have the  
6 capacity to premeditate?

7 A Yes, he can have the capacity to  
8 premeditate.

9 Q Mr. Chappell certainly is of sufficient  
10 soundness of mind to, for example, sit in the jail and  
11 become so angry that he plans on committing a murder; he  
12 could do that, couldn't he?

13 A He could.

14 Q And you can't actually climb into his  
15 mind to know exactly what he had planned or decided to do  
16 before going to her house that day?

17 A That's correct, I can't do that.

18 Q You simply don't actually know what  
19 happened?

20 A That's correct.

21 Q You have a certain basis for an opinion  
22 that you certainly are an expert in your field and you are  
23 offering expert opinions, but it's basically all theory, is  
24 it not?

25 A Well, the question you are asking is do

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JChappell-8JDC1712

1 I know what happened that day and I believe I previously  
2 answered, in my caveat to the jury, that I don't, I wasn't  
3 there, I can't read his mind, I have no idea what really  
4 transpired that day. All I can do is what a psychologist  
5 does is to attempt to explain why he did what he did to the  
6 best of my ability.

7 Q As apparently with the defendant's  
8 statement, about two hours with you, in attempting to  
9 explain what he did -- why he did what he did?

10 A He probably spent 10 minutes or 15  
11 minutes trying to explain what he did and rest of the time  
12 was spent talking about other aspects of his life.

13 Q Now, as I remember in the account the  
14 defendant gave you June the 11th, 1996, he told you that he  
15 went to the mobile home and entered through the window?

16 A I believe that's correct.

17 Q Now, at the time he was explaining  
18 this, were you aware that it was certainly after his arrest  
19 for murder?

20 A Oh, yes.

21 Q Did you know it was after a preliminary  
22 hearing had been conducted?

23 A I probably didn't think of it at that  
24 moment, but that makes sense.

25 Q The record in this case indicates that

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JChappel1-8JDC1713

1 the preliminary hearing for this defendant occurred October  
2 the 3rd, 1995?

3 A Okay.

4 Q Did you know how many witnesses he  
5 heard testify at his preliminary hearing?

6 A No, no, sir, I don't.

7 Q You didn't know that Dr. Sheldon Green,  
8 a medical examiner, detailed the cause and manner of death,  
9 that William Duffy, Lisa Duran, Russell Lee, Kimberly  
10 Sempson, Mike Osuch, and Jimmy Vaccaro all testified at his  
11 preliminary hearing?

12 A I didn't know.

13 Q So if he was paying attention, he knew  
14 a lot about the evidence which had been arrayed against him  
15 when he heard that evidence presented October the 3rd,  
16 1995?

17 A That would make sense.

18 Q Were you aware that the State's notice  
19 of intent to seek the death penalty was filed in this case  
20 on November the 8th, 1995?

21 A I don't know if I ever knew that. I  
22 certainly don't recall that at the moment.

23 Q Well, if all of those chronologies in  
24 terms of when significant things happened in this case are  
25 true, then when the defendant begins to give his version of

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JChappe11-8JDC1714

1 these offenses on June the 11th, 1996, he's already been  
2 arrested, he knows what he's charged with, he's had a  
3 preliminary hearing, he knows what the evidence is, and he  
4 knows that the State is seeking the death penalty. , now,  
5 as you think about this objectively, even with a person of  
6 this defendant's background and with his personality, with  
7 his IQ, does it not occur to you that there might have been  
8 the temptation on his part to justify or perhaps distort,  
9 to some extent, what occurred to make himself appear to be  
10 in a more favorable light?

11 A That would be perfectly normal to  
12 occur.

13 Q Now, you read from your report the  
14 description the defendant made about when he had sexual  
15 intercourse with her?

16 A Yes, sir.

17 Q And you read his description of the way  
18 her anatomy seemed to him and then, as I remember, you read  
19 from your report that it wasn't right and I instantly got  
20 up?

21 A That's what he stated.

22 Q And that was after he had begun the act  
23 of sexual intercourse?

24 A I imagine, yes.

25 Q You are looking at me like I'm --

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1 A No, I don't think I paid as much  
2 attention to the minutiae and details of how he had sex  
3 with her, as you asked me to. I didn't give it much  
4 thought.

5 Q I'm not asking for details of it. You  
6 read the description, "He entered her vagina and it was all  
7 loose?"

8 A Right, that's what he said.

9 Q "It wasn't right," and then he said,  
10 "So I instantly got up?"

11 A Yes.

12 Q Did he tell you he ejaculated?

13 A I don't believe he used those words or  
14 any other words and I don't believe I asked.

15 Q In fact, he told you that he entered  
16 her and it was loose and it wasn't right and he instantly  
17 got up, which would suggest, would it not, from his act to  
18 you that he did not ejaculate?

19 A It could suggest that.

20 Q Well, if that was his suggestion and,  
21 in fact, if he said from the witness stand yesterday in  
22 this courtroom that he did not ejaculate, would that  
23 further buttress the notion, when he said he instantly got  
24 up, that he was telling you that that didn't happen?

25 A I guess what I'm thinking is you are

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JChappe11-8JDC1716

1 saying this, is that whether he remembered precisely  
2 exactly what occurred during the sex act would be of less  
3 consequence to me or little consequence to me in contrast  
4 to him telling me we had sex, when in fact it never took  
5 place or it never happened, I don't expect him to be able  
6 to recount that one sexual experience perfectly a year or  
7 so later, as I would not expect you to recount a sexual  
8 experience you had a year ago with your wife perfectly to  
9 me a year later.

10 Q We are not talking about me and my wife  
11 just on some day when nothing significant happened. We're  
12 talking about an act of which he is telling you occurred  
13 within moments of his killing another human being.

14 A I understand.

15 Q Well, the validity of your opinions,  
16 many of them seem to be based upon the defendant being  
17 cooperative and credible and believable?

18 A Yes.

19 Q And if he told you it happened at  
20 nighttime and it happened during the daytime, if -- I'm  
21 saying because you had formed the opinion that this  
22 happened at night and if he omitted telling you about  
23 certain arrests, particularly one where he pulled a knife  
24 on his girlfriend and now if he said he didn't ejaculate,  
25 if he did, isn't that another example that would tend to

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1 suggest maybe he isn't so credible?

2 A It could be. I'm not certain he was  
3 the one who said it happened at night. I might have just  
4 assumed that at this moment, but to the extent that the  
5 evidence in the case is different than his depiction of the  
6 evidence in the case, it does take away from his  
7 credibility.

8 Q Well, the evidence in this case is that  
9 his semen was inside of her. DNA has been done on it and  
10 the genetic profile was consistent with him and the  
11 frequency of this type of DNA profile being repeated is one  
12 in 14 billion. So the evidence conclusively establishes  
13 that he did ejaculate.

14 A I believe you.

15 MR. EWING: Your Honor, I'm going to object  
16 to the characterization of the evidence. I don't think any  
17 expert came in and said there is only semen after  
18 ejaculation and that's incumbent upon the State to meet  
19 that burden.

20 THE COURT: That's true, but it is a  
21 permissible inference and, therefore, it's a proper subject  
22 of cross examination. Your objection is overruled.

23 Q (BY MR. HARMON) To the extent each  
24 time that this defendant has not engaged in total candor  
25 with you during your evaluation, that also makes his

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1 credibility to that extent more suspect, isn't it?

2 A That's correct.

3 THE COURT: Mr. Harmon, how much longer do  
4 you have?

5 MR. HARMON: Probably about five minutes,  
6 your Honor.

7 THE COURT: How much do you have in  
8 rebuttal?

9 MR. EWING: Three.

10 THE COURT: All right.

11 Q (BY MR. HARMON) Now you said, Doctor,  
12 that you didn't press him for the gruesome details --

13 A That's correct.

14 Q -- of exactly how he killed her?

15 A That's correct.

16 Q But you also are of the opinion that,  
17 to some extent, he probably did remember what he did?

18 A Yes.

19 Q Based upon your opinion, if the  
20 defendant said yesterday from the witness stand that he  
21 does not remember, do you find that statement to be  
22 somewhat suspect?

23 A Yes, but not in quite the same way as  
24 you mean it in the sense that if -- there is a natural  
25 desire to block out from your mind a horrible action such

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JChapelle11-8JDC1719

1 as that, especially a murder, and I think it would be his  
2 first basic instinct to kind of say I don't remember much,  
3 I don't really know that much, and not to attempt to dig,  
4 dig, dig and try to come back with as many memories as  
5 possible. But I, on the other hand, believe that some  
6 memories exist.

7 Q Isn't it the easy way out simply to  
8 deny memory about something that you wish to avoid  
9 describing?

10 A Yes.

11 Q Suppose the evidence suggests in this  
12 case that, at least he represented to those of us in the  
13 courtroom that he had a detailed memory about everything  
14 that occurred right up to the moment that he inflicted the  
15 fatal injuries upon Deborah Panos and suppose immediately  
16 afterward, again, he has detailed memory, but he claims to  
17 have only a loss of memory at the time of the murder, would  
18 you think that would tend to indicate he is selectively  
19 remembering?

20 A Yes.

21 Q Well, is that entirely candid? Is that  
22 being cooperative to remember selectively?

23 A No.

24 Q He told you in his account to you that,  
25 after he was released from jail, that he went to his old

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1 hangout?

2 A Yes.

3 Q And he told you the first thing he did  
4 was he drank a couple of beers with the guys?

5 A Yes.

6 Q That seems to be a good memory for  
7 detail, if that's correct?

8 A Yes.

9 Q Now, as I remember, you told us a few  
10 minutes ago that he found some men's boxers in the mobile  
11 home?

12 A Yes, I believe so.

13 Q Did he tell you where he found them?

14 A I don't recall him telling me where he  
15 found them. He might have said something.

16 Q Did he tell you that might make him  
17 even more suspicious?

18 A I believe so, yes.

19 Q Did he tell you he confronted the  
20 victim with the existence of these men's boxer shorts?

21 A I don't recall, but that would make  
22 sense.

23 Q Did he tell you that her response was,  
24 "It must be Claire or Lisa's friends?"

25 A Yes, I recall now. Yes, that's true.

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JChappel1-8JDC1721

1 Q And he told you that the effect of that  
2 was to make him really pissed and he said, "At that point  
3 my mind was spinning?"

4 A Yes.

5 Q Did you accept the existence of the  
6 men's boxer shorts as being an accurate recitation of  
7 something he observed that day?

8 A I didn't have any reason to doubt him.

9 Q You wouldn't, of course, know that the  
10 police didn't list any men's boxer shorts on any impound  
11 report of evidence recovered at the crime scene?

12 A I didn't know that.

13 Q You, of course, wouldn't be aware that  
14 the defendant omitted to mention that at all yesterday on  
15 the witness stand when he explained what things had made  
16 him so upset?

17 A I didn't know that.

18 Q Well, would that tend to suggest that  
19 when he talked to you about finding the men's boxers, that,  
20 perhaps, he wasn't being fully cooperative or credible?

21 A Yes, that could suggest that.

22 Q You stated that the defendant explained  
23 to you that, when he dragged her back into the mobile home,  
24 he threw her to the floor and she just laid on the floor  
25 and covered her face?

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JChappell-8JDC1722

1 A Yes.

2 Q Did he tell you that she ever attacked  
3 him that day?

4 A No.

5 Q Did she say -- did he say there was any  
6 attempt by Deborah Panos to injure him?

7 A No.

8 Q Didn't he tell you that he came to her  
9 house and went into the window and then this occurred after  
10 he had come?

11 A Yes.

12 Q Did he describe that she indulged in  
13 any attempt or actual physical violence towards him?

14 A No.

15 Q During your interview with the  
16 defendant, did he admit that he felt abandoned by Deborah  
17 Panos?

18 A I don't recall if he said so in words  
19 such as that, but I think that if he didn't say-so in those  
20 words, he said so in his -- in other words and certainly it  
21 would be consistent for him to feel that way.

22 Q I've got the supplemental report,  
23 Doctor, which included the Lansing, Michigan school records  
24 and your initial report and on the initial report, at page  
25 11 in the middle of the page, you have written, "Mr.

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1 Chappell admitted that he felt abandoned by Deborah Panos.  
2 He believes that she lied to him about not having seen  
3 other men?"

4 A Oh, I doubt that he used the word  
5 abandoned because of his vocabulary being poor, but I used  
6 that word to describe how he was feeling. Had it been a  
7 quote, I would have quoted it. So that's accurate.

8 Q You talk about limited free will. In  
9 your opinion, wasn't the defendant very capable at some  
10 point that afternoon at the crime scene of deciding that he  
11 was going to kill her?

12 A That's possible, he could.

13 Q Do you know where he got the knife  
14 from?

15 A I can't testify to where it came from.  
16 I think it was there in some capacity around there.

17 Q You don't know what his thought process  
18 was at the time he decided to use a knife?

19 A No.

20 Q If he took a kitchen knife or steak  
21 knife and if he plunged it 10 times into her neck and  
22 chest, are you of the opinion that he had the capacity to  
23 make decisions to do that each time?

24 A Obviously, he was capable of forming a  
25 thought to plunge the knife into her body or it couldn't

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1 have been -- or it couldn't have occurred. Neurologically,  
2 he had to have had that thought to do that.

3 Q If the evidence further suggests that  
4 on the other side of her neck he had stabbed her again and  
5 she's also stabbed just to the right of her naval and also  
6 just above and to the right of her pubic hair, would that  
7 suggest the possibility that he was acting maliciously and  
8 vengefully towards this victim?

9 A Yes.

10 MR. HARMON: That's all, Judge.

11 THE COURT: Redirect.

12 MR. EWING: Thank you, your Honor.

13

14 REDIRECT EXAMINATION

15 BY MR. EWING:

16 Q Dr. Etcoff, as you sit here today, do  
17 you have any specific recollection that James told you this  
18 happened at night?

19 A No, I don't.

20 Q You were told that James had a history  
21 of domestic abuse, correct?

22 A Yes.

23 Q Did you ever ask him to go into a great  
24 amount of detail in discussing his history of domestic  
25 abuse?

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1 A No. I didn't ask in this case to list  
2 every single arrest or every single instance of abuse,  
3 which may account for his record being incomplete in that  
4 respect. I just wanted to know in general was there a  
5 history.

6 Q When he was discussing what occurred on  
7 the date that Deborah was killed and he was explaining to  
8 you what happened when they were engaging sex, did you stop  
9 him and ask him if he ejaculated?

10 A No I didn't.

11 Q Mr. Harmon asked you questions about  
12 other individuals attempting to justify what they did. Did  
13 James Chappell ever attempt to make excuses for what he  
14 did?

15 A None.

16 Q Did he ever attempt to justify what he  
17 did?

18 A No.

19 Q Mr. Harmon asked you about his ability  
20 to premeditate and you said, "Yes, James has the ability to  
21 premeditate." Does James have the same ability to  
22 premeditate as someone with an average verbal like you?

23 A Not as much, no.

24 Q Does he have the same ability with the  
25 average performance IQ?

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1 A Yes.

2 Q Does he have the same ability to  
3 premeditate as someone who is not severely learning  
4 disabled?

5 A That probably -- the answer is probably  
6 a little less.

7 Q Does he have the same ability to  
8 premeditate as someone who does not have a borderline  
9 personality disorder?

10 A He doesn't have the same ability to  
11 premeditate.

12 Q Mr. Harmon asked you about the number  
13 of stab wounds?

14 A Yes.

15 Q Would 13 vicious stab wounds also be  
16 indicative of someone who was in a rage?

17 A Yes.

18 MR. EWING: I don't have any other  
19 questions.

20 MR. HARMON: Nothing further, Judge.

21 THE COURT: May this witness be discharged?

22 MR. HARMON: Yes, your Honor.

23 THE COURT: Thank you. You may step down.

24 We will take our noon recess at this time.

25 Would counsel approach the bench briefly so we can discuss

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1 scheduling.

2 (Off the record discussion not reported.)

3 THE COURT: Ladies and gentlemen of the  
4 jury, we are going to take our noon recess at this point.  
5 It's my understanding that the defense is about to rest its  
6 case in chief.

7 MR. BROOKS: Judge, as a matter of fact, we  
8 can rest at this moment.

9 THE COURT: Any other exhibits to admit?

10 MR. BROOKS: No.

11 THE COURT: Any rebuttal?

12 MR. HARMON: The State also rests.

13 THE COURT: All right, thank you.

14 In that case, we will adjourn in your  
15 absence to complete the process of finalizing the Jury  
16 Instructions, after which they will be read to you and then  
17 you will hear the final arguments of the attorneys in the  
18 case. Our estimation is that we probably will not be ready  
19 to proceed in terms of -- because we have to make a record  
20 of everything outside your presence with regard to the Jury  
21 Instructions and make arguments with regard to the content  
22 of those Jury Instructions. So we probably won't be ready  
23 for you until about 2:15. So we will reconvene for your  
24 purposes at 2:15.

25 During this recess, you are admonished it is

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JChappel11-8JDC1728

1 your duty not to converse among yourselves or with anyone  
2 else on any subject connected with this trial or to read,  
3 watch, or listen to any report of or commentary on this  
4 trial or any person connected with this trial by any medium  
5 of information, including, without limitation, newspapers,  
6 television, or radio, and you are not to form or express an  
7 opinion on any subject connected with this case until it is  
8 finally submitted to you.

9 We will be at ease while you depart the  
10 confines of the courtroom.

11 We will see you all at about 1:45.

12  
13 (Off the record at 12:25 p.m. and back on  
14 the record at 2:05 p.m.)

15  
16 THE COURT: We are on the record outside  
17 presence of the jury.

18 Do the parties waive the presence of the  
19 defendant?

20 MR. BROOKS: Defense does, your Honor.

21 THE COURT: We are here to settle Jury  
22 Instructions. Are the parties familiar with the Court's  
23 Proposed Jury Instructions 1 through 46?

24 MR. HARMON: State is familiar, your Honor.

25 MR. BROOKS: Defense is as well, your Honor.

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JChappell-8JDC1729

1 THE COURT: Does the State have any  
2 objection to the giving of any of these Instructions?

3 MR. HARMON: No, your Honor .

4 THE COURT: Does the State have any  
5 additional Instructions to offer at this time?

6 MR. HARMON: No, your Honor.

7 THE COURT: Does the defense object to any  
8 of the Court's Proposed Jury Instructions 1 through 46.

9 MR. BROOKS: Yes, Judge. We object to No.  
10 23, which states "The intention to kill may be ascertained  
11 or deduced from the facts and circumstances of the killing,  
12 such as the use of a weapon calculated to produce death,  
13 the manner of its use, and the attendant circumstances  
14 characterizing the act."

15 Our position is that this Instruction is  
16 essentially an argument and it's lightening the burden on  
17 the State to show an intention to kill by almost suggesting  
18 that the use of the weapon means intention to kill, where,  
19 in fact, a use of a weapon is an equivocal thing and it may  
20 or may not be an intention to kill. Therefore, we object.

21 THE COURT: The objection is overruled. The  
22 Court believes that it's a appropriate theory of the case  
23 in the Instructions. The State wants it in and it is a  
24 correct statement of the legal doctrine governing these  
25 proceedings.

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JChapell-8JDC1730

1 Any other objections?

2 MR. BROOKS: Not from the defense, your

3 Honor.

4 THE COURT: Does the defense have any other  
5 additional instructions to propose at this time?

6 MR. BROOKS: No, your Honor.

7 THE COURT: Very well.

8 Does either party wish to have the jury  
9 instructed prior to final argument?

10 MR. HARMON: The State makes that request,  
11 Judge.

12 THE COURT: That will be the order.

13  
14 (Off the record at 2:10 p.m. and back on the  
15 record at 2:30 p.m.)

16  
17 THE COURT: Counsel stipulate to the  
18 presence of the jury?

19 MR. HARMON: Yes, your Honor.

20 MR. BROOKS: Defense will, your Honor.

21 THE COURT: The defense has rested and the  
22 State has also rested its case, correct?

23 MR. HARMON: That is correct, your Honor.

24 THE COURT: So the parties agree at this  
25 time we have settled the instructions in chambers and we

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JChappel11-8JDC1731

1 can begin with the process of instructing the jury and then  
2 proceed onto closing arguments?

3 MR. HARMON: Yes, Judge.

4 MR. BROOKS: Yes, your Honor.

5 THE COURT: Thank you very much.

6 Ladies and gentlemen of the jury I'm about  
7 to instruct you upon the law as it applies in this case. I  
8 would like to instruct you orally without reading to you.  
9 However, to ensure that the Instructions comply with Nevada  
10 law, it is necessary for me to read to you these carefully  
11 prepared written Instructions.

12 The Instructions are long and some are quite  
13 complicated. If they are not especially clear when I read  
14 them to you, please bear in mind, when you go to the jury  
15 room, you will be able to take these written Instructions  
16 with you so that you can there read and consider them  
17 carefully.

18

19 (At this time the Court read the  
20 Instructions to the jury.)

21

22 THE COURT: Given in open court this 15th  
23 day of October, 1996, A. William Maupin, District Judge,  
24 Department No. VII of the Eighth Judicial District.

25 At this time, ladies and gentlemen of the

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JChappell-8JDC1732

1 jury, you will hear final arguments. The State of Nevada  
2 may make its first presentation.

3 MR. HARMON: May it please the Court, Ms.  
4 Silver, defense counsel, good afternoon, ladies and  
5 gentlemen. The philosopher Pascal has made this  
6 observation. " Evil is easy and has infinite forms."

7 All evil required on August the 31st, 1995  
8 was two hours -- two months of incarceration from June the  
9 26th until August the 31st, a malignant and vengeful heart  
10 and unfortunate release at about 10:45 in the morning, a  
11 sinister choice by that inmate released from custody.

12 All evil required with sturdy legs and  
13 resolute strides from an opposite Main Street and Bonanza  
14 down to North Lamb Boulevard. A borrowed bicycle to be  
15 used for what? As a get away vehicle if he couldn't get  
16 the car. A pretext, a letter the accused asserts that he  
17 found in the console. He could have found it anywhere at  
18 839 North Lamb, space 125.

19 All evil required was a kitchen knife,  
20 Exhibit 6B-A-1. Not a large knife, but deadly in its  
21 consequences for Deborah Panos. All evil required was a  
22 cowering victim. Deborah Ann Panos, 26 years of age, the  
23 mother of three little children aged seven, five, and  
24 three. Where is the promise of her years once written on  
25 her brow? Where sleeps that promise now?

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JChappell-80061733

1                   Thomas Carlyle has said, " man makes the  
2   circumstances." In this case, as any other criminal case,  
3   one of the primary responsibilities of the jury is to  
4   decide what man, what person made these circumstances? The  
5   evidence to an absolute certainty perhaps in this case  
6   establishes that the man who made the circumstances causing  
7   the premature and untimely death of Debbie Panos is James  
8   Chappell. He was identified leaving the scene of the crime  
9   in the victim's car by Lisa Duran. He had possession of  
10   stolen property when confronted by the police, keys to the  
11   car, the car, and social security cards belonging to his  
12   victim and her children.

13                  When the vehicle was inspected at the crime  
14   lab by Analyst Washington, who recovered evidence and then  
15   submitted that to Criminalist Terry Cook, blood consistent  
16   with that of James Chappell was found on the trunk of the  
17   vehicle just inside close to the rim. Analyst Cook  
18   discovered an indication of blood on the right heel of the  
19   shoe being worn by the defendant and the defendant's  
20   seminal fluid was found inside Deborah Panos.

21                  Now given the relationship of eight to 10  
22   years, that wouldn't have been unusual except for one  
23   salient feature. He had been in custody since June the  
24   26th. The Court has instructed you about the various forms  
25   of evidence in this case. There are two great bodies of

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1 evidence in criminal trial work. They are identified as  
2 direct and circumstantial evidence and direct has a very  
3 simple definition. If it's something that a witness  
4 perceived with any of his or her physical senses, if they  
5 saw it or smelled it or heard it or touched it, then it's  
6 direct evidence and when Lisa Duran saw the defendant in  
7 the victim's car driving away from the crime scene, that's  
8 direct evidence. Anything which isn't direct is  
9 circumstantial and attorneys in this courthouse have  
10 various examples of circumstantial evidence. I'm very  
11 fond of one announced by Thoreau many years ago and his  
12 quotation is, "Some circumstantial evidence is very strong  
13 as when you find a trout in the milk."

14 It may surprise you I'm attired in a suit,  
15 am employed by the District Attorney's Office, but I  
16 haven't been a lawyer all my life. I was raised on a dairy  
17 farm and it's for that reason that Thoreau's example is  
18 appealing to me. I happen to know, from personal  
19 experience, that the cows didn't always give as much milk  
20 as we hoped at our farm and so the temptation was always  
21 there because it was important to have bulk in the milk we  
22 sold to, perhaps, make the milk go a little bit further.

23 Now I don't acknowledge that we ever did  
24 that at the Harmon farm, but what Thoreau had in mind is  
25 that some dairy farmers would succumb to the temptation and

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JChappel11-8JDC1735

1 to make the milk go a little bit further, they would take  
2 the dairy can down to the stream and in the process of  
3 making the milk go further, sometimes fish would swim into  
4 the can. And so his point, some circumstantial evidence is  
5 very strong as when you find a rainbow trout in the milk or  
6 he could have put it another way, the natural habitat of a  
7 rainbow trout isn't a ten gallon can of milk. The fact is  
8 if there is fish in the milk container, we all know it  
9 didn't come from the utter of the cow. We all know from  
10 that that the farmer was involved in doing something he  
11 ought not to have done. He was watering down his milk and  
12 in the process, the fish got into the milk.

13 Well, we know in this case absolutely,  
14 conclusively that this defendant had contact with her at a  
15 time proximate to her death because a fluid from his body  
16 and the DNA genetic profile had a frequency rate of one in  
17 14 billion. It would be 14 billion other persons before  
18 the type of DNA that was found inside Ms. Panos would be  
19 discovered and it is proof positive that this defendant had  
20 sexual relations with her and so he is connected to the  
21 crime almost to an absolute certainty.

22 And if there should be any doubt, the  
23 defense has entered into a stipulation with the State in  
24 this case, a rather extraordinary stipulation which has  
25 already been read to you. I will read it again, if you

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JChappell-8JDC1736

1 will indulge me. The parties have stipulated in this case,  
2 one, that James Chappell, on August 31, 1995, entered the  
3 trailer rented to Deborah Panos through a window. They  
4 didn't stipulate that he came in through the door. They  
5 didn't stipulate that he knocked on the door, that she came  
6 to the door and let him in. He went through a window.

7 Two, that James Chappell engaged in sexual  
8 intercourse with Deborah Panos on August the 31st, 1995.  
9 Well, having heard the testimony of Dan Peterson, who  
10 recovered the sexual assault kit at the time of the  
11 autopsy, September the 1st, 1995, and having heard the  
12 criminalist, Mr. Cook, testify, and having heard Thomas  
13 Wahl, the DNA expert, describe the findings of Cellmark  
14 Diagnostics in Germantown, Maryland and learning the chance  
15 of someone else having deposited the semen in this woman is  
16 one in 14 billion, should it come as a surprise to any  
17 reasonable persons in this courtroom that the defense  
18 decided that they would stipulate to sexual relations?

19 Now you are left with your own imagination  
20 of whether there would or would not have been a stipulation  
21 had there not been the DNA findings. Some things that  
22 happen in criminal courtrooms are a matter of necessity and  
23 some times parties agree to facts they have to agree to or  
24 they lose credibility.

25 Number three, continuing with the

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JChappell-8JDC1737

1 stipulation, that James Chappell caused the death of  
2 Deborah Panos by stabbing her with a kitchen knife and the  
3 act was not an accident.

4 Four, that James Chappell was jealous of  
5 Deborah Panos because he believed she was giving attention  
6 to or receiving attention from other men.

7 As I've indicated, this evidence, along with  
8 the stipulation, proves conclusively, as horrible really as  
9 it is to contemplate, and in decent minded persons, it's  
10 hard to accept the fact that in this courtroom, a few feet  
11 from everyone of us sits a killer. Someone who, without  
12 legal justification, has brutally ended the life of another  
13 human being.

14 The second fundamental issue to be resolved  
15 by any jury in a criminal case, particularly in a murder  
16 case, involves the resolution of the question assuming then  
17 that the defendant is responsible for the terrible, illegal  
18 acts, what crimes has he committed and with your  
19 indulgence, I'd like to spend the rest of my argument  
20 discussing that issue.

21 James Chappell has been charged by the  
22 prosecution with three crimes. He's been charged with  
23 committing burglary, he's been charged with committing  
24 robbery, robbery with the use of a deadly weapon; the  
25 deadly weapon in this case being 68-A-1, the kitchen knife,

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1 and he's charged with first degree murder with the use of a  
2 deadly weapon.

3 Now the question is, since the State has  
4 obviously met its burden of proof regarding the identity of  
5 the perpetrator, has the prosecution also met its burden,  
6 has it been shown beyond a reasonable doubt that this  
7 defendant is guilty of burglary, robbery, and murder of the  
8 first degree and I submit, ladies and gentlemen, that the  
9 evidence has proved that that burden was met. The  
10 defendant is guilty of all three counts.

11 The Court has given you a series of  
12 instructions identifying the elements of the various  
13 crimes. I will start with burglary. The place the  
14 defendant is alleged to have burglarized he lived at from  
15 time to time, not too much of the time in 1995 because he  
16 spent most of the time at the jail, but I haven't  
17 forgotten -- the State didn't forget in alleging burglary  
18 that the defendant had resided there, on occasion, 839  
19 north Lamb, space 125.

20 Instruction 4 is the general instruction  
21 defining burglary. "Any person who, by day or night, enters  
22 any residence or mobile home or building with intent to  
23 commit larceny and/or assault and/or battery and/or robbery  
24 and/or murder or any felony is guilty of burglary."

25 Well, there are lots of possibilities. The

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JChappel11-8JDC1739

1 State isn't perfect with its crystal ball. State doesn't  
2 actually read minds a bit better than Dr. Etcoff does,  
3 despite his expertise in the field of psychology. Burglary  
4 is a crime of entry. It's not a crime against the person.  
5 It is a crime of illegal entry and a person may have  
6 entered a business a hundred times or a house or a mobile  
7 home a thousand times with the consent of the occupant.

8                   However, if on the date in question the  
9 entry was made by this defendant with the intention either  
10 to steal, she wasn't going to let him come into that mobile  
11 home for any purpose consistent with theft. If he entered  
12 with the intent to assault her or to commit a domestic  
13 battery or to commit robbery when he was inside or to  
14 murder her, if any of those thoughts were in his mind, then  
15 as soon as he stepped across the threshold, as soon as he  
16 entered, he had committed burglary. It's not a complicated  
17 principle. It involves entry and criminal intent.

18                   While the Court in Instruction No. 5  
19 describes larceny for you, you all probably knew it without  
20 the Instruction, but we don't take anything for granted.  
21 Larceny is theft. Larceny is the theft of personal goods  
22 or property of another. Let's just take that as an  
23 example. What evidence is there in this case that the  
24 defendant has been proven beyond a reasonable doubt to have  
25 been a person who entered the mobile home on August the

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JChappell-8JDC1740

1 31st, 1995, with the intention to steal and I'm not  
2 eliminating the other possible intentions of assault or  
3 battery or robbery or murder or any felony, but let's just  
4 use larceny as an example. What evidence?

5 Well, let's start with his point of entry.  
6 Despite his protestation that he went in through the window  
7 all the time, when a person goes through a window and has  
8 to remove a screen and ends up placing that inside the  
9 mobile home and has to walk on it and bend it and damage it  
10 and this wasn't his property, this isn't his mobile home,  
11 he wasn't paying the rent, she didn't own it. Panos had to  
12 pay the rent and when there is this type of surreptitious  
13 entry and when it causes potential damage, doesn't that  
14 suggest that the entry is made for some illegal purpose?

15 Now, despite the assertion of the defendant  
16 that he didn't ransack, other witnesses in this case who  
17 saw the crime scene were of a different opinion. Michael  
18 Perkins is the crime scene analyst who identified the  
19 diagram, who identified all the photographs of the crime  
20 scene and he said it looked like to him, particularly in  
21 the master bedroom, that somebody had gone through the  
22 property. He acknowledged he wasn't familiar with the  
23 housekeeping habits of Deborah Panos and none of these  
24 witnesses, with the exception of Lisa Duran, were that I'm  
25 going to allude to now, but it was very apparent to

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JChappel1-8JDC1741

1 Perkins. Do you think this was the first crime scene  
2 Perkins ever went to? He works in the crime lab of the  
3 Metropolitan Police Department. His duties are, as a crime  
4 scene analyst, going out to crime scenes, taking  
5 photographs, drawing sketches, and collecting evidence. He  
6 has seen hundreds, perhaps thousands of crime scenes and he  
7 said it appeared to him, particularly in the master  
8 bedroom, that someone had been going through the property,  
9 through drawers looking for something.

10 And the homicide detective in this case,  
11 Vaccaro said it was apparent, there were drawers out, there  
12 were doors opened, there was the type of dishevelment, even  
13 granting that the occupant wasn't a perfect housekeeper,  
14 which convinced Vaccaro there was ransacking by the  
15 assailant.

16 Lisa Duran, who went in at some point after  
17 this, also observed that there was evidence of ransacking  
18 in her opinion and she had lived there and she knew Deborah  
19 Panos very well.

20 The State called the witness from the Angel  
21 Day Care Center. Sherry LaTronna Smith got a very curious  
22 telephone call. As I remember, she said perhaps at 12:15,  
23 or 12:30 in the afternoon and it was from Deborah Panos and  
24 this was the first time Deborah Panos had ever called her  
25 or, to her knowledge, persons at the day care center and

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JChappell-8JDC1742

1 wanted to know when she had to pick her kids up. It wasn't  
2 as though she was a brand new customer. It was obvious  
3 that Deborah Panos had been bringing the children there  
4 regularly for some period of time, but curiously and by  
5 sinister coincidence, on this particular early afternoon,  
6 she called and really asked a meaningless, stupid question,  
7 "When am I supposed to pick the kids up," and Sherry Smith  
8 has explained that she was obviously upset and she was  
9 crying and she was scared and she heard someone in the  
10 background, a man, and she also heard, and this is the  
11 significant point on this part of my argument, she heard  
12 Deborah Panos say to this man, "I don't have any money."

13 Well, isn't that consistent with the purpose  
14 of his entry and isn't this the same guy who said from the  
15 witness stand he was broke when he walked down Bonanza  
16 Boulevard, when he went to the Vera Johnson Projects and  
17 hung out for a half hour. She was broke then. He entered  
18 intending to steal. His need for money is obvious from the  
19 statement made by Deborah Panos during her telephone  
20 conversation to Sherry Smith. She said to someone,  
21 naturally Sherry doesn't know who. We all know she was  
22 talking to James Chappell and telling him, "I don't have  
23 any money."

24 Further evidence is the fact that he stole  
25 the car keys and the car and he went back to the projects

PATSY K. SMITH, OFFICIAL COURT REPORTER

JChappel1-8JDC1743

1 and, at some point that night, he is selling shrimp and pie  
2 and he sold that and rented Debbie Panos' car, his homicide  
3 victim, to Johnson and Turner, the two young black ladies  
4 for 15 bucks, the car, and the pie, and the shrimp because  
5 he needed money. Now doesn't that reflect back on what his  
6 intention was when he went in to this mobile home? He's a  
7 man with cocaine dependence. Dr. Etcoff explained that and  
8 the defendant also explained from the witness stand later  
9 on that night, he got high on crack and as stupid as it is  
10 in all probability, his need for money stemmed from his  
11 desire to get high on crack.

12 Well, the following day, when he was  
13 arrested, what was he doing? Stealing booze and candy bars  
14 from a Lucky Food Store. Now if he had that frame of mind  
15 at about noon at Lucky's, isn't it reasonable to conclude  
16 the man who walked to the scene of the crime, who entered  
17 through a window, who ransacked the mobile home, who was  
18 asking for money entered with the intention on August the  
19 31st, 1995 of stealing and if he did, he's guilty of  
20 burglary.

21 Instruction No. 9 I submit is helpful. It  
22 begins, "You are further instructed that an unlawful entry  
23 is one that is ordinarily done without the authority,  
24 permission or consent of the owner or one in lawful  
25 possession of the building. However, consent to enter is

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JChappel11-8JDC1744

1 not a defense to the crime of burglary nor need there be a  
2 breaking into or forced entry so long as it is shown that  
3 entry was made with a specific intent to commit larceny or  
4 assault or battery or robbery or murder.

5 At line seven, the authority to enter a  
6 building extends only to those who enter with the purpose  
7 consistent with the reason the residence or mobile home or  
8 building is opened to them. Now I'm making this argument  
9 simply to explain that even if we accept the really rather  
10 incredible assertion of this defendant that she met him at  
11 the window and she was happy that he was there, despite the  
12 history, despite the letters, that she would greet him with  
13 open arms and contrary to the whole tone of her telephone  
14 conversation with Sherry Smith, even if we look at this  
15 evidence in a light most favorable to the defendant and she  
16 did help him in, if, because she couldn't read his mind, if  
17 he entered with the intention to do any of those things  
18 alleged, he's a burglar. It doesn't matter how many times  
19 he had been in there before. We're talking about one day,  
20 August the 31st, 1995.

21 Now the State in Count II has alleged  
22 robbery. Robbery, like burglary, is not a complicated  
23 concept, but it's very different. Burglary is a crime  
24 against property. It's a crime of entry and robbery is a  
25 crime against the person and it involves the taking of

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JChappel1-8JDC1745

1 money or property by means of force or violence or fear of  
2 injury. The Court explains that in Instruction 11. He  
3 says something very significant in Instruction 12, which is  
4 the value of property or money taken is not an element of  
5 the crime of robbery and it's only necessary that the State  
6 prove the taking of some property or money.

7 Now, that makes sense because robbery is a  
8 crime against the person. It does not matter if the  
9 property stolen by means of force or violence or fear of  
10 injury was worth six cents or six million dollars. It does  
11 not matter. Value is irrelevant because this personal  
12 crime involves the forceful taking of property of any kind  
13 from the person or presence of the victim.

14 Now you may think, well, in this case  
15 Deborah Panos was rendered unconscious. She may have been  
16 totally unaware that after he got in there, he took the  
17 keys and he took the car and he took out of this black  
18 folder certain personal items; the social security cards.  
19 Well, ladies and gentlemen, the Court answers that concern,  
20 if any of you were considering it, in the last paragraph of  
21 Instruction 11. The Court continues beginning at line  
22 nine. "The degree of force used is immaterial if it is  
23 used to compel, acquiesces to the taking of or escaping  
24 with the property," and the last sentence, a taking  
25 constitutes robbery whenever it appears that, although the

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JChappel11-8JDC1746

1 taking was fully completed without the knowledge of the  
2 person from whom taken, such knowledge was prevented by the  
3 use of force or fear."

4 Homicide victims can certainly also be  
5 robbery victims and there is no greater force, no greater  
6 violence than to kill and then complete the crime of  
7 robbery. She certainly was helpless to object to his  
8 taking the car, the keys, the social security cards, or  
9 anything else once she was dead and I believe that's the  
10 point being made by the Court in the last paragraph of  
11 Instruction No. 11.

12 The State submits that it has proven beyond  
13 a reasonable doubt that in addition to being a burglar,  
14 this defendant is also a robber. The Court has instructed  
15 you on a lesser related offense, that of grand larceny  
16 auto. He didn't just commit a grand larceny. Grand  
17 larceny doesn't involve force, does not involve injury. A  
18 grand larceny would be if, when she went into the bathroom,  
19 he then took the keys and sneaked off in the car without  
20 her permission. This man killed her and then he took her  
21 car and that's the reason it's robbery and it's robbery  
22 with use of a deadly weapon and not grand larceny auto.

23 In Count III, the prosecution charges this  
24 defendant with murder. There are three possibilities and I  
25 might mention, in terms of the verdicts, when you look at

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JChappel1-8JDC1747

1    them, you are going to find that there are various verdicts  
2    for each count. They are really rather a simple process,  
3    but it's one that you must engage in very conscientiously  
4    and very carefully. You are to consider the evidence and  
5    the Instructions and then select one appropriate verdict  
6    for each count. You are going to find there are  
7    substantially more than three verdicts submitted, but you  
8    must examine the evidence and return with one verdict for  
9    each of the three counts.

10                   The possibilities for Count III are first of  
11    the degree murder, second degree murder, and voluntary  
12    manslaughter. Ladies and gentlemen, a second degree murder  
13    is distinguished from first degree murder because it  
14    doesn't have the element of premeditation and in terms of  
15    murder, if it isn't first, it's second. So it's pretty  
16    easy to keep that in a proper perspective.

17                   The other possibility of a crime called  
18    voluntary manslaughter and, as I recall, Mr. Brooks, in his  
19    opening statement, suggests that the defendant was guilty  
20    not of first or second degree murder, but of voluntary  
21    manslaughter and so I'm going to address that first and  
22    then I will move on up to a discussion of murder of the  
23    first degree.

24                   Voluntary manslaughter is defined in  
25    Instruction 32. "Voluntary manslaughter is the unlawful

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JChappe11-8JDC1748

1 killing of a human being without malice, express or  
2 implied, and without any admixture of deliberation." Now  
3 as you remember a moment ago before I told you the  
4 difference between first and second degree murder is that  
5 in first, you have premeditation and in second degree  
6 murder, that isn't required, but in second degree murder  
7 there must be malice and if you find in this case that the  
8 man who repeatedly stabbed this young woman with a deadly  
9 weapon in her chest and neck and then who apparently  
10 elected to stab her near her naval and also near her pubic  
11 area, if you conclude he was acting maliciously, then this  
12 isn't voluntary manslaughter because voluntary manslaughter  
13 is the killing unlawfully of a human being without malice,  
14 either express or implied. And if he had malice and there  
15 is any element of deliberation, any vengeance involved, it  
16 isn't voluntary manslaughter.

17 The Court goes on to say in the second line,  
18 "It must be voluntary upon a sudden heat of passion caused  
19 by a provocation apparently sufficient to make the passion  
20 irresistible." In cases of voluntary manslaughter, there  
21 must be a serious and highly provoking injury inflicted  
22 upon the person killing sufficient to excite an  
23 irresistible passion and if a reasonable person or if there  
24 isn't a serious and highly provoking injury inflicted upon  
25 the person killing, well, who is that? That's talking

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JChappell-8JDC1749

1 about the killer, Mr. Chappell. What this is contemplating  
2 and in the last sentence, the Court does explain at line  
3 12, "A serious and highly provoking injury need not be a  
4 direct physical assault on the accused," but what this  
5 whole crime contemplates is that the aggressor is the  
6 victim and she attacked him and either tried to kill him or  
7 inflicted in some manner, whether it was a direct physical  
8 attack or in some other way, inflicted a serious and highly  
9 provoking injury upon him. There's no evidence of that in  
10 this case. Where is the provocation? Who provoked whom?  
11 He's the guy who was released, he sought her out. She  
12 didn't come looking for him. And then he had the audacity,  
13 when he went in through her window, and he had his way with  
14 her. He has the audacity to say, "When I entered her, she  
15 was all loose and wet and smelly. It wasn't nothing like  
16 it use to be." Well, excuse Deborah Panos if she wasn't  
17 expecting company; maybe had she known that he was going to  
18 be there that day and sneak in through the window, she  
19 would have showered.

20 Where's the provocation? He's talking about  
21 beer cans outside the mobile home. Anybody could have put  
22 the beer cans there. He's talking about the condition of  
23 her car. Not his car, her car. And he's claiming a letter  
24 inside the console triggers what he did. That's his  
25 excuse, that's his explanation. Did Deborah Panos do

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JChappell-8JDC1750

1 anything to provoke him? Even if we accept his story,  
2 after he got in there and he is accusing her, he is  
3 confronting her, she wants to know if he will continue with  
4 the sexual act and let her get on top and then, according  
5 to him, she gives him oral sex. Is there any testimony in  
6 this record that she flaunted her infidelity that  
7 afternoon? Even by the account of Mr. Chappell, when he  
8 confronted her, when he says he jumped up because of what  
9 he sensed about her body and he asks has she been with  
10 other men, she denied it and according to him, when they  
11 went into the bedroom, she was still denying it and he's  
12 the one who says -- threw the letters around that he sent  
13 her and said, "These don't mean anything to you?"

14 Well, this letter from Devin or whoever the  
15 man is could have been anywhere. Only the defendant, the  
16 person with the primary interest in how this case turns out  
17 says that it is out in the console. Wherever it was, is  
18 there any evidence that she said, well, yeah, that's  
19 right. You caught me now. I have been unfaithful. There  
20 isn't any evidence she ever acknowledged doing anything.  
21 She did not provoke him and this is not a case of voluntary  
22 manslaughter.

23 It's a case of murder. It's a case that  
24 involves malice and it also involves premeditation. And  
25 the Court in Instruction 21 discusses murder of the first

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JChappell-8JDC1751

1 degree and there are three possible ways, under the State's  
2 theories alleged in this case, to get to murder of the  
3 first degree and if we satisfy those allegations, it  
4 obviously isn't second degree murder, because second is  
5 only everything which isn't first. So if it's first, we  
6 stop there.

7 Murder of the first degree is murder which  
8 is, A, perpetrated by any kind of willful, deliberate, and  
9 premeditated killer and/or, B, committed in the  
10 perpetration of burglary or attempted burglary and/or, C,  
11 committed in the perpetration of robbery or attempted  
12 robbery and what B and C represent is a policy judgment by  
13 our legislature that certain crimes are inherently  
14 dangerous and the legislature wanted to discourage the  
15 commission of burglaries and robberies. Legislature wanted  
16 to discourage people like James Chappell from walking miles  
17 to a crime scene and then breaking and entering through a  
18 window and the legislature wanted to discourage the Mr.  
19 Chappells of this state from taking money or cars or keys  
20 or social security cards by means of force or violence or  
21 fear of injury. And so the legislature set up a rule. We  
22 know it as the Felony Murder Rule and it means quite  
23 simply, when you commit a burglary or a robbery, you do so  
24 at your risk because if during the perpetration of those  
25 crimes an intended victim dies, you are guilty of murder of

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1 the first degree.

2 The Court explains in the second paragraph  
3 of Instruction 21, "A killing which is committed in the  
4 perpetration or attempted perpetration of burglary and/or  
5 robbery is deemed to be murder of the first degree.  
6 Whether the killing was intentional, unintentional or  
7 accidental, this is called the Felony Murder Rule." The  
8 Felony Murder Rule is applicable to this case only if you  
9 find that the defendant possessed a specific intent to  
10 commit burglary and/or robbery. For the reason I've  
11 already explained, I submit the State has established that  
12 this defendant committed burglary and robbery on August the  
13 31st, 1995 and if he committed those crimes, either of them  
14 or both and if, as we know he killed Deborah Panos while he  
15 was committing the offenses, it's deemed to be first degree  
16 murder, not second degree, not voluntary manslaughter.  
17 Murder one.

18 Subheading A involved a willful, deliberate,  
19 and premeditated killing and the State has also alleged  
20 that that happened in this case. The Court defines  
21 premeditation in Instruction 22. "Premeditation is a  
22 design, a determination to kill distinctly formed in the  
23 mind at any moment before or at the time of the killing."  
24 Some laypersons come to a court of law with the mistaken  
25 notion about premeditation. Some people think for it to be

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JChappell-8JDC1753

1 premeditated, you necessarily had to plan it for a day or a  
2 week or some particular time interval before the killing  
3 occurred. And Judge Maupin dispels that notion with  
4 Instruction 22 in the second paragraph. It reads,  
5 "Premeditation need not be for a day, an hour, or even a  
6 minute. It may be as instantaneous as successive thoughts  
7 of the mind," and all that is required is that the  
8 defendant formed in his mind either at the moment of the  
9 killing or immediately before it the clear design to kill  
10 and if that is satisfied, it is deliberate and premeditated  
11 murder.

12 What is the evidence in this case to  
13 establish that this was a premeditated killing? Let me  
14 start with evidence of prior threats. It's not uncommon  
15 for people who, at least have murder on their mind, to talk  
16 about it. Now it's apparent that this defendant  
17 substantially before August the 31st had thought about  
18 killing. That was not a strange thought to James  
19 Chappell. Dina Freeman, the 12 year dispatcher from the  
20 Tucson Police Department has testified -- I haven't  
21 forgotten the defendant denies that he said anything like  
22 this to Deborah Panos. However, in addition to calling  
23 Dina Freeman a liar, he suggested that several members of  
24 the Metropolitan Police Department were at least testifying  
25 inaccurately. Everybody testifies as inaccurately but Mr.

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JChappell-8JDC1754  
1 Chappell and, yet, he's the one with the primary interest  
2 in how this case turns out.

3 Dina Freeman testified that between February  
4 and September in 1994, the defendant, she was aware, had  
5 gone to Detroit for several months. He came back and  
6 became embroiled in an argument with Deborah Panos and one  
7 can easily surmise what they were arguing about. If he had  
8 been gone for two months, this guy was going to come back  
9 and give her the third degree and he was in the process of  
10 doing that when she called Dina Freeman and Dina says she  
11 was upset and crying and she said that her and James were  
12 fighting and Dina Freeman heard the defendant's voice in  
13 the background. So they were fighting and she was crying  
14 and he was obviously in a confrontational mode and up close  
15 to her and Dina heard him say, "I don't care what you do,  
16 but you don't F-U-C-K around in front of my kids because I  
17 will kill your ass." Other people will say, well, you  
18 know, individuals say things like that all the time in the  
19 heat of anger, they don't mean it, but somehow it has a  
20 more sinister ring when we appreciate he said it in 1994  
21 and on September the 1st, she is lying cold and stiff on a  
22 slab at the Clark County Morgue.

23 And there was another telephone call  
24 described by Dina Freeman. She said it was August or  
25 September 1994, just before the move to Las Vegas from

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JChappel1-8JDC1755

1 Tucson, and again she called crying and upset and she heard  
2 the defendant's argumentative voice in the background and  
3 according to Freeman, he wanted the car, he told her to  
4 give him the car or he was going to do an OJ Simpson on her  
5 ass and around Thanksgiving of the same year from Las  
6 Vegas, Deborah Panos called crying and Dina Freeman heard  
7 the defendant say that he was going to do an OJ Simpson on  
8 her ass and he wanted the keys to the car.

9 Lisa Duran, a good friend of Deborah Panos,  
10 they were co-workers at G.E. Capital, a financial  
11 collections business. Lisa Duran had worked there for  
12 about two years, said that in the two months approximately  
13 after Memorial Day weekend 1995, she talked with the  
14 defendant on about five separate occasions. He would call  
15 either to the mobile home on North Lamb and talk to her in  
16 Deborah's absence or he would call to her apartment and on  
17 two occasions, he left messages on the answering machine.

18 Lisa Duran was then asked if there were  
19 occasions when the defendant uttered threats during that  
20 time frame and she acknowledged that they were and talked  
21 about a particular conversation, which was at about 8:00 in  
22 the evening. "Question: What do you remember about that  
23 particular conversation? The conversation -- he asked  
24 where Deborah was and I told him that she had gone out  
25 and he asked where his children were and I told him

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JChappell-8JDC1756

1           that his children were with me and that's when he made  
2           the comment to me that he wanted to know what other  
3           nigger she was laying up underneath and I told him  
4           that was none of my business to tell him and he said,  
5           well, what kind of friend are you and I said the kind  
6           of friend who minds her own business and he told me,  
7           well, you tell Debbie that I called and that when I  
8           get out of here, she's not going to have any friends,  
9           she's not going to have any life and that includes  
10          you."

11                       Now does that sound like a threat? Does  
12          that sound sinister? Does that sound serious in view of  
13          what happened? And doesn't it make the assertions of the  
14          well meaning expert, who doesn't actually know anything  
15          about this case, sound pretty ridiculous?

16                       There was another telephone call described  
17          by Duran. "Question: Tell us what you remember. Answer:  
18          That he would sit there and talk about how he was  
19          upset and she hadn't been answering his phone calls  
20          and she hadn't been writing him and he was upset that  
21          she hadn't brought the children to see him.  
22          Question: To see him in jail? Answer: Yes, sir.  
23          Question: Or to write him while he was in custody?  
24          Answer: Yes, sir. Question: What else did he say?  
25          Answer: He just told me that he was angry and that

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JChappell-8JDC1757

1           when he got out, she wasn't going to have any friends  
2           and that if he couldn't have her, nobody could."

3                   The timing of the release in this case is  
4   certainly consistent with the follow through by this  
5   defendant of those threats. He didn't wait a week after he  
6   was released, he didn't wait 24 hours. This guy was  
7   released at 10:45 in the morning and within three hours,  
8   Deborah Panos was dead. His steps made a beeline east on  
9   Bonanza Boulevard, as he stalked his prey.

10                   Choices. Nobody forced Mr. Chappell to do  
11   this. Nobody forced him to seek her out. He had no claim  
12   on her. He hadn't married her. She was free to go  
13   wherever she wanted and, as long as it was legal, to do  
14   whatever she wanted with other people, men or women. He  
15   had no moral or legal claim upon her. He didn't own her,  
16   but he wanted to control her and he wanted to own her and  
17   he had decided that day would be vengeance day and the  
18   unfortunate release of James Chappell resulted in the  
19   murder of a Clark County citizen.

20                   I've already discussed the manner of entry.  
21   It's also consistent with the premeditated act. The use of  
22   a deadly weapon. Ladies and gentlemen, any one of those  
23   little kids he sired out of wedlock with this woman, James  
24   or Anthony or even Chantell, would know you don't take a  
25   steak knife and plunge it repeatedly into the chest and

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1 neck of another human being. When you do that, you must  
2 intend to kill.

3 Instruction 23, by the Court, "The intention  
4 to kill may be ascertained or deduced from the facts and  
5 circumstances of the killing, such as the use of a weapon  
6 calculated to produce death, the manner of its use, and the  
7 attendant circumstances characterizing the act." The  
8 location and number of stab wounds, 13, 10 in the neck and  
9 chest area, one to the right side of the neck, one to the  
10 right of the naval, and one to the right of the pubic area  
11 and essentially in this case, despite the emotion shown by  
12 the defendant on the witness stand, self-serving on his  
13 behalf and despite his description of a woman who welcomed  
14 him into her home through the bedroom window, her state of  
15 mind is forever established through the testimony of Sherry  
16 LaTronna Smith. The woman who called Miss Smith and used,  
17 as a pretext, "When do I pick up the kids," was not a happy  
18 person. She was a person who was afraid, she was a person  
19 who was upset and crying. She was a person trying to deal  
20 with the defendant in the background and she was the person  
21 who on two separate occasions -- and it's pathetic to think  
22 about it now; do you remember the tears by Sherry Smith?  
23 Can you appreciate the guilt she must feel, the pleas twice  
24 by this woman in a whisper, "Help me." And the question,  
25 "Can you get away from him? Can you come by yourself to

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JChapell-8JDC1759

1 the day care center? No."

2 The flight of this defendant is consistent  
3 with murder of the first degree, his failure to render  
4 medical assistance, or his failure to summon medical  
5 assistance. He claims he didn't know she was dead. Did he  
6 go to the telephone, did he call 911, did he go over and  
7 try to resuscitate this woman he claims he loved? Did he  
8 report it to the police? He probably recognized Lisa Duran  
9 as he drove away from the scene of the crime. Did he flag  
10 her down and say, "There's been a horrible thing that  
11 happened and I just lost it and I've killed or seriously  
12 injured Deborah." He didn't do any of those things.

13 Did he show remorse that evening when he was  
14 consistent with his Hip Hop nickname? When, as the  
15 witnesses Turner and Jackson said, "He was just James,"  
16 dancing with his radio, selling shrimp and pie and renting  
17 the car, getting high on crack cocaine? Did he show  
18 remorse the next day in stealing booze and candy bars?

19 There is evidence of concealment of the  
20 crime as a consciousness of guilt. He didn't want to be  
21 caught. He used an alias. He told these security guards  
22 he was Ivri Morrell and he got real fidgety when Osuch of  
23 the police department confronted him and Osuch didn't know  
24 this was the suspect, but he just, because it was in close  
25 proximity to the crime scene, he just threw it out at him.

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JChappel1-8JDC1760

1 "What do you know about the homicide of this woman over at  
2 the Ballerina Mobile Home Park yesterday," and he said the  
3 defendant immediately became real fidgety and wouldn't make  
4 eye contact with him and then Osuch left the room. What  
5 did the defendant do immediately? He continued to fidget  
6 and Kimberly Sempson was aware that he was about to dump  
7 something and so she watched him and he did drop this  
8 plastic card holder and she went over to pick it up and he  
9 put his shoe on it and tried to hide it. Did he want to  
10 get caught? No. Does he want to be convicted now? No.

11 Ladies and gentlemen, when Ms. Silver stood  
12 before you and offered the opening statement of the  
13 prosecution. She promised that the State of Nevada would  
14 prove these charges, burglary, robbery with use of a deadly  
15 weapon, and murder of the first degree beyond a reasonable  
16 doubt. When you were selected as jurors, by implication,  
17 every one of you, when you raised your right arms and took  
18 the juror oath, promised that if the prosecution met its  
19 burden, you would render equal and exact justice. You  
20 impliedly promised if the State proved its case, you would  
21 find the defendant guilty and in all sincerity I am telling  
22 you that we kept our promise. I'm asking you now to keep  
23 yours.

24 I conclude with the words of William Blake  
25 which are appropriate to this case, "Cruelty has a human

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JChappell-8JDC1761

1 heart. Jealousy a human face." The jealous face is the  
2 face of James Chappell and the cruel heart in this  
3 courtroom in this case is the heart of James Chappell.

4 THE COURT: Thank you, Mr. Harmon.

5 At this time we will take a brief recess at  
6 this time, ladies and gentlemen. During the recess, I  
7 would remind you it is your duty not to converse among  
8 yourselves or with anyone else on any subject connected  
9 with this trial or to read, watch, or listen to any report  
10 of or commentary on this trial or any person connected with  
11 this trial by any medium of information, including, without  
12 limitation, newspapers, television, or radio, and you are  
13 not to form or express an opinion on any subject connected  
14 with this case until it is finally submitted to you.

15 We will reconvene at about 10 minutes after

16 4:00.

17 Lisa.

18 (Off the record discussion not reported.)

19 THE COURT: At this time, I ask that you  
20 remain on the upper deck and and, sir, if you could remain  
21 for just a moment and I'll the rest of the jurors can go on  
22 break. We will be at ease while the jury departs the  
23 confines of the courtroom.

24

25 (At this time the jury left the courtroom.)

PATSY K. SMITH, OFFICIAL COURT REPORTER

JChappell-8JDC1762

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THE COURT: If you could please approach the bench with the attorneys, sir, on the record, please.

(Off the record discussion not reported.)

(Off the record at 4 p.m. and back on the record at 4:18 p.m.)

THE COURT: Counsel stipulate to the presence of the jury?

MR. HARMON: Yes, your Honor.

MR. BROOKS: Defense will, your Honor.

THE COURT: All right, the defense may make its closing argument.

MR. BROOKS: Thank you, Judge.

May it please the Court, counsel, ladies and gentlemen of the jury, this is our opportunity to address the evidence. Mr. Harmon has just given the State's opening closing statement. I will now give our statement and Ms. Silver I understand will follow me. This is our only opportunity to talk with you about the evidence for the defense.

Back when this case started, roughly a week ago, we told you in opening statement that this case is about the tragic love relationship between James Chappell

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JChappell-8JDC1763

1 and Deborah Panos. We told you that their relationship was  
2 like a mixture of air and gasoline, an absolutely explosive  
3 mixture. James was the gasoline we said and that mixture  
4 was dangerous waiting for a spark, waiting for something to  
5 set it off unless somebody diffused that situation.

6 Well, you have now heard the evidence in  
7 this case. You heard that nobody diffused the situation  
8 and you heard of the death, the tragic death of Deborah  
9 Panos. As we talk about this evidence, ladies and  
10 gentlemen, please keep in mind the following. This case is  
11 not about who killed Deborah Panos. My client has taken  
12 full responsibility for that. This case is about what  
13 degree of responsibility my client must have, must accept  
14 for having killed Deborah Panos, the mother of his three  
15 children, the woman that he loved.

16 We've said it before and we'll say it  
17 again. James Panos takes full responsibility and we are  
18 not offering any excuses for what happened in this case.  
19 This is important because the State may very well say,  
20 well, the defense is trying to offer some type of excuse.  
21 Well, an excuse is a justification and a justification  
22 leads to your saying this is justifiable homicide or a not  
23 guilty verdict. This case is not like that at all. My  
24 client committed a crime, he accepts full responsibility  
25 for his crime, and he is going to accept responsibility in

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JChappell-8JDC1764

1 the criminal system for what he did, but the question  
2 remains what level of legal responsibility exist for what  
3 he did and how do we resolve that question?

4 We know how the State of Nevada would try to  
5 resolve that question. You have watched the State of  
6 Nevada put witnesses on the stand here, you have heard them  
7 question these witnesses, you have seen how they approach  
8 the evidence, and I submit to you their approach is  
9 entirely flawed because they ignore what's obvious. They  
10 distort facts and presume guilt and they feed us character  
11 evidence rather than hard evidence of premeditation,  
12 deliberation, and intent.

13 And, finally, they overwhelm us with  
14 evidence of obvious facts, evidence of things that just  
15 don't matter in this case. Let's look at ignoring the  
16 obvious first. They have tried to prove premeditated,  
17 deliberate murder in this case by ignoring the single most  
18 obvious and most powerful fact that came out in any of this  
19 testimony. Ladies and gentlemen, they can try to ignore it  
20 or scare it away or whatever, but the fact remains this man  
21 loved Deborah Panos and Deborah Panos loved this man and  
22 that is the single most powerful fact in this entire case.  
23 He may have treated her poorly, he may have been a complete  
24 SOB, he may have been worthless, but for whatever it was  
25 worth, they loved each other.

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JChappell-8JDC1765

1 Did this relationship have problems? God  
2 bless America it had problems. She was white, he was  
3 black. She worked, he seldom did. He used drugs and  
4 alcohol, she was sober. Have you noticed how the State  
5 tried to get around this obstacle, they tried to tell you  
6 that this relationship was over. They told you that James  
7 followed Deborah to Las Vegas suggesting, of course, that  
8 she was trying to get away from him, suggesting the  
9 relationship was dead. They said James would not let go.  
10 They even suggested that she got a temporary restraining  
11 order to keep him away.

12 Well, what did the evidence show? Was it  
13 over? Lisa Duran said she never heard Deborah Panos tell  
14 James Chappell this relationship was over nor did anybody  
15 else. When police came to Deborah Panos' trailer the day  
16 she died, Lisa Duran told them they were  
17 boyfriend/girlfriend and in the weeks and months before she  
18 died, Deborah Panos continued to take James' calls from the  
19 jail. He would call many times each week. She continued  
20 to tell him she loved him and she continued to tell him she  
21 cared for him. When she saw him on August 30th, the day  
22 before she died in Municipal Court, there was not a single  
23 word about this relationship being over.

24 Did James follow her to Las Vegas like the  
25 State suggested? Absolutely not. You heard the

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JChappell-8JDC1766

1 testimony. They came here together. They spent a week at  
2 Circus Circus. The next door neighbor testified they moved  
3 in together and they would have you believe this love  
4 relationship, this 10 year love relationship was somehow  
5 over. Well, it wasn't.

6 They said that the Court issued a temporary  
7 restraining order telling James to stay away from their  
8 home. They forgot to tell you the temporary restraining  
9 order was in effect for less than 40 hours. It expired  
10 eight months before the killing in this case and when  
11 Deborah Panos had a choice, on January 11th, whether to go  
12 to a hearing to get that order extended, she didn't go and  
13 to use the terminology of the State, that was a choice she  
14 made.

15 Ladies and gentlemen, the State of Nevada  
16 wants you to ignore one of the greatest truths of all  
17 time. Love is strange, love can be bazaar. These two  
18 people had a ten year relationship that began when they  
19 were 16 years old in Lansing, Michigan. They were  
20 sweethearts, they were lovers, they brought three children  
21 into this world. They persevered despite the fact that she  
22 was white and he was black. They persevered even though  
23 Deborah's parents wanted to crush this relationship and  
24 they persevered even though they were often separated by  
25 the distance between Michigan and Arizona. They even

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JChappel11-8JDC1767

1 persevered as their lives took separate paths.

2 Deborah was responsible, she worked, she had  
3 jobs. He was shiftless. He couldn't keep work. He seldom  
4 had money, but the relationship endured. We know that  
5 Deborah brought James to Tucson when her parents weren't  
6 there so that they could be together. He lived in her  
7 house, in her parents' house when they weren't home. We  
8 know that she put him up in an apartment. We know that  
9 James left her twice and both times she brought him back  
10 and the State of Nevada, the government wants you to ignore  
11 that, ignore all of it, but I'll tell you something,  
12 folks. It's evidence, it's real and it's true.

13 What they have done in this case, ladies and  
14 gentlemen, is raise the red flag of character after  
15 ignoring the most obvious facts of this case, the  
16 government has showered this defense with character  
17 allegations. You have heard testimony that James could not  
18 hold a job. Lisa Duran and Dina Freeman both testified to  
19 that. You heard that James was a drug addict, a crack  
20 head. You heard he was a lousy father, you heard he was no  
21 good at providing for his girlfriend or his kids. You  
22 heard insinuations about his not marrying Deborah and  
23 giving those children his name. You heard he's a chronic  
24 shoplifter, he steals to buy drugs. You heard he steals to  
25 buy things for his children. You heard how he calls his

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JChappel1-8JDC1768

1 girlfriend a slut and whore and you heard he's a girlfriend  
2 beater, a chronic abuser, and I submit to you that that is  
3 the great majority of their case and it is made because  
4 they want to push your buttons, they want to make you mad,  
5 they want you to be angry, and they want you to convict my  
6 client of first degree murder.

7                   If you think about character in this case,  
8 ladies and gentlemen, you will remember that the State has  
9 a burden of proving beyond a reasonable doubt every element  
10 in this case. Being a bad father does not make you a  
11 burglar, being a bad husband or boyfriend doesn't make you  
12 a killer and the State knows that and they've done what  
13 they've done because they haven't got premeditation or  
14 deliberation in this case.

15                   Let's look at how they've distorted the  
16 facts and presumed guilt. There is an old saying that  
17 money will make you do things you don't want to do and  
18 sometimes one can wonder if a desire to get a conviction  
19 doesn't do the same thing. Let's look at some of their  
20 distortions. When Ms. Silver opened, she told us the State  
21 was going to prove that when the police went to Deborah  
22 Panos' trailer on August 31st in response to the call in  
23 this case, the police knew he was a bad guy. He was such a  
24 bad guy they called backup units. Is that what the  
25 evidence said? Absolutely not. The officer testified that

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JChappell-8JDC1769

1 domestic situations are inherently dangerous. The standard  
2 procedure is to call backup. He didn't say anything about  
3 some special situation involving James Chappell.

4 By taking the facts, as the State did, and  
5 interpreting in the way they did, they started a process  
6 which we will call the presumption of guilt and I submit to  
7 you if you want to know how to apply the presumption of  
8 innocence in this case, watch how the State took the  
9 evidence and twisted it to form their presumption of  
10 guilt. Do the opposite and you will be there.

11 You may recall that during one of the  
12 domestic battery testimonies, Ms. Silver showed a picture  
13 of poor dead Deborah Panos stabbed 13 times lying in a pool  
14 of blood to the police officer on the stand who answered  
15 the domestic violence call and she asked him, "Is this how  
16 Deborah Panos appeared on that day?" Now you would hope  
17 the State's witness would have the integrity to say, well,  
18 she had more blood on her face because her nose was broken,  
19 but she wasn't lying there unconscious, she wasn't dead,  
20 she didn't have 13 stab wounds and she wasn't lying in a  
21 pool of blood, but the officer followed the State's lead,  
22 yes, that's how she looked only more blood. That, ladies  
23 and gentlemen, is the type of effort being made to cloud  
24 this case with inflammatory evidence.

25 Ransacking. The State's entire case really

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JChappell-8JDC1770

1 comes down to the idea that James Chappell goes to that  
2 trailer with the intent to commit a crime. He enters the  
3 trailer to commit the crime and he commits the crime and,  
4 of course, he does in fact kill his girlfriend. He  
5 explained why and he explained how, but they also contend  
6 that he ransacked the trailer and this, of course, would  
7 support their claim that he was going there to steal or  
8 take something.

9 You will have to look at these pictures very  
10 carefully back in the back because I submit to you these  
11 pictures, these are State's Exhibits 6 through 8 or 5  
12 through 8. They don't show a ransacked trailer. They show  
13 a messy trailer. Mr. Harmon, I just disagree with what he  
14 said a little bit earlier. He claims that Officer Perkins  
15 said it was ransacked. I recall hearing a different  
16 answer. I think officer Perkins was quite equivocal about  
17 whether this trailer was ransacked.

18 The fact of the matter is the drawers are in  
19 their place, the top of a roll top desk is still there,  
20 it's not even rolled back. Clothes are piled on the  
21 ground, which is consistent with a single mother with three  
22 kids who's in the process of moving. There was no  
23 ransacking of that, no ransacking at all, but I'll tell you  
24 what really shows there's no ransacking. The State perhaps  
25 believes that James must have killed Deborah and then

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JChappel11-8JDC1771

1 ransacked. Well, take a look at this folks. He kills her  
2 here in the living room. That's where her body is found,  
3 that's where the pool of blood is. He has blood on his  
4 shoe and he has blood on his hands from the cuts. They  
5 testify that there is blood found by her body and on the  
6 toilet and the sink, I believe.

7 Not a bit of evidence, not one bit of any  
8 blood being found in the master bedroom and I might add  
9 this B, B, B right here is letters, not blood on this  
10 diagram. Absolutely no blood in that room and the reason  
11 why is because there was no ransacking afterwards. This  
12 man had blood on him. If he was ransacking, there would be  
13 blood found elsewhere in that trailer.

14 Well, let's look at the alternative. Let's  
15 assume that the State could say that he ransacked and then  
16 killed her. He gets released from custody at 10:45. He  
17 walks roughly three miles, which is roughly an hour's walk  
18 to that place, the trailer. He gets there at roughly  
19 noon. She goes to work at 9:00 and gets off work at 10.  
20 Now we don't know for sure, but she most likely went home,  
21 which suggests she was home before he was and she greeted  
22 him when he arrived home. There's no evidence of  
23 ransacking in this case, but if you want to take the  
24 evidence and twist it in the way most damaging to my  
25 client, as the State of Nevada has done, you might be able

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JChappel1-8JDC1772

1 to get there, but it's not right and it's not fair.

2 What really takes the cake in the  
3 presumption of guilt is how the State presented to you the  
4 evidence regarding the so-called temporary protective  
5 order. Do you recall -- I think it was Tonya Hopkins  
6 (sic). She said Deborah Panos applied for a temporary  
7 protective order on January 9th, when she suffered her  
8 broken nose. This was when she went to the hospital and  
9 the State would have been perfectly happy if you believed  
10 that that TPO, that order keeping him away from his woman  
11 was still in effect eight months later in August of 1995.  
12 That was what they said in their opening and that was the  
13 evidence you would believe when you listened to the direct  
14 examination from that stand.

15 Absolutely untrue. Absolutely untrue. The  
16 fact is they did call in the order, a judge set a hearing  
17 date two days later. Deborah Panos did not go to that  
18 hearing and that order was vacated, but if you want to take  
19 the evidence and twist it, as the State has done, to  
20 somehow create this case, this overwhelming case of first  
21 degree murder, perhaps you can use that too.

22 And there's more. What about Mr. Harmon's  
23 questioning of my client on the stand and Mr. Harmon's  
24 questioning of Dr. Etcoff. Do you recall where his  
25 reasoning was going? It goes sort of like this. Mr.

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JChappell-8JDC1773

1 Chappell, you want to minimize what happens to you, don't  
2 you? Therefore, you are going to not tell the truth here  
3 today. Now think about where that inference takes us. Is  
4 the State of Nevada contending that every time they charge  
5 somebody with a crime, that anything a person says not  
6 consistent with their idea of what happened must be  
7 untrue? That's a heck of a presumption for a criminal  
8 defendant to face. You've probably heard of this type of  
9 stuff before. The I.R.S. does it all the time.

10 They say my client burglarized his own  
11 home. They can run from this evidence, ladies and  
12 gentlemen, but the fact remains in Las Vegas, Nevada, when  
13 my client wasn't in jail, that trailer was his home.  
14 That's where his three kids lived, that's where the woman  
15 he loved lived. He told you he went there. He didn't have  
16 a key. He had called twice before and no one answered and  
17 he went to a window and he gained entry.

18 Mr. Harmon characterized it as  
19 surreptitious. Is it surreptitious to enter the most  
20 obvious window on a trailer, the one facing the street at  
21 12:00 noon on a bright sunny August day? Is that a  
22 surreptitious entry? Is that an entry on a man with a  
23 guilty mind and intent to murder? No, it's a man who just  
24 got released from jail who doesn't have a key in his  
25 pocket, who wants to go home and he starts going in the

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JChappell-8JDC1774

1 window, the one facing the street, the one that is least  
2 protected from view. He could have tried to go into  
3 another window if he wanted, if he wanted that  
4 surreptitious element, but he didn't and the reason he  
5 didn't seek a more protected entry way was because James  
6 Chappell was not committing a burglary.

7 We know he had sex with Deborah and we know  
8 it was consensual. The State of Nevada can huff and puff  
9 all day long, ladies and gentlemen, but the fact remains  
10 they haven't got any evidence suggesting it was not  
11 consensual. This man had made love with this woman a  
12 thousand times before, 10 years of love making between  
13 them, three children, and they want to say, oh, it couldn't  
14 have been consensual. Well, it was consensual.

15 They both took their clothes off and I  
16 submit to you that if James Chappell had gone there  
17 intending to rape and kill her, which is what the State is  
18 really saying, if he had done that, why in the world would  
19 he have dressed the body up after the crime? Wouldn't he  
20 have left the dead body raped there in the bedroom? She  
21 got dressed after that sex and she got dressed after that  
22 sex because that was consensual sex between two consensual  
23 -- two consenting adults.

24 The State claims he waited for her. This is  
25 where their premeditation, deliberation comes in perhaps.

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JChappel11-8JDC1775

1 They want you to believe he went in that trailer and  
2 perhaps waited for her. Nothing supports that. Nothing at  
3 all. The State says he showed his criminal intent by  
4 taking her car. Well, ladies and gentlemen, I think you  
5 heard quite a bit of testimony here that he had used her  
6 car before. He had lived with this woman and taken her car  
7 many times, which is not unusual when you have two people  
8 living together. Now that does not make it right that he  
9 takes her car after he kills her. However, think about it,  
10 you've just killed somebody, you don't know what to do.  
11 You leave and he took her car. It does not show any intent  
12 prior to the killing that he took the car afterwards.  
13 That, again, is the presumption of guilt coming from the  
14 State of Nevada.

15 They say no remorse. He didn't show any  
16 remorse after he killed her. Well, quite frankly, this man  
17 did not behave in the way one would hope someone would  
18 behave after killing somebody who you love. Ideally, you  
19 would call 911, you would become suddenly very, very  
20 contrite. He was scared, he didn't know what to do. He  
21 left. He went and got high and he told you what happens  
22 when he gets high. He gets high to escape. That's clearly  
23 not an appropriate response, but it's explainable  
24 response. It's something that could be understood. It's  
25 something that can be understood by the evidence.

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1 And then there's the shoplifting the next  
2 day. They want you to believe that the intent he showed in  
3 going in to a Lucky Supermarket and shoplifting on  
4 September 1st is somehow supportive of the idea that he  
5 went into her trailer to kill him -- to kill her. How in  
6 the world can the State make this stretch? How in the  
7 world can they suggest that entering a store to shoplift is  
8 the same as entering a trailer to kill somebody? Are those  
9 not entirely separate events? Absolutely.

10 And, oh, yes, there's the OJ Simpson  
11 remark. We have the woman from Tucson, Dina Freeman,  
12 stating that my client said something to the effect of you  
13 are not going over to Dina's for nothing. I'm going to do  
14 an OJ Simpson on your ass. Well, frankly, these remarks  
15 were made anywhere from a year to a year and a half before  
16 this thing happened. They were certainly not close in time  
17 and as such, their evidentiary value to you is highly  
18 suspect.

19 But since the State brings up this, I ask  
20 you what in the world do the remarks mean? What does it  
21 mean to do an OJ Simpson on your ass? After all, the man  
22 was found not guilty, though many may disagree with that.  
23 Well, I submit to you, ladies and gentlemen, that's perhaps  
24 you can take some instruction from that remark because this  
25 is not a murder in this case where a man goes to another

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JChappe11-8JDC1777  
1 home or another business or whatever with a knife. He does  
2 not lye in wait for the victim and he does not, in a very  
3 sophisticated way, fly off to another state after the  
4 killing. That case even had gloves.

5 My client went to this trailer, the kitchen  
6 knife was something found inside the trailer. He didn't  
7 bring it there. That right there shows he didn't enter  
8 with any intent to hurt her or kill her and the fact is,  
9 and the State may not like acknowledging this, the fact is  
10 this man, when he fled, he didn't flee to some other state,  
11 he went a quarter mile away and I might add, he had a car.  
12 He could have gone somewhere had he really wanted to get  
13 away, but he went one quarter mile away and there's a  
14 reason why he only went a quarter mile away and that's  
15 because, as much as the State may want to ignore this,  
16 there was a bond between these two people and that bond was  
17 there even after she was dead.

18 Finally, I want to mention what I call the  
19 prosecutors Muzak. You have heard in this case an  
20 overwhelming amount of evidence regarding things which are  
21 absolutely unimportant to the resolution of this case.  
22 During the opening by Ms. Silver, she said the State would  
23 use DNA evidence to prove that the blood beside the dead  
24 woman, who was stabbed 13 times, actually came from the  
25 dead woman. Do you see the utter absurdity of this? We

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1 don't need DNA evidence to prove that a woman lying dead  
2 with 13 stab wounds that the blood lying beside her come  
3 from her body. We don't need DNA evidence.

4 We stipulated from the very beginning that  
5 my client killed this woman. We stipulated it was not an  
6 accident. We've taken that responsibility, but you have  
7 heard an incredible amount of evidence that is absolutely  
8 unnecessary and the reason it's there, the reason this  
9 meaningless background noise is there from the State is  
10 because that's what they have. They can prove my client  
11 killed her, but that does not resolve the issues in the  
12 case.

13 What happened here, ladies and gentlemen, my  
14 client's account of things remains virtually  
15 uncontradicted. The relationship was tragic, but it was  
16 real. This man and Deborah Panos loved each other. He was  
17 jealous as could be. He was obsessed with this woman. He  
18 was obsessed with the idea she was seeing other men and she  
19 probably was seeing other men. Lisa Duran testified that  
20 she had lots of friends. The letter that was found right  
21 here beside the body is from another man in New Jersey.  
22 You can examine that in evidence.

23 Lisa Duran also told us that JR was her  
24 boyfriend of three months here in Las Vegas and we know  
25 from James, he would call the trailer and strange people

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JChappel11-8JDC1779

1 would answer the telephone. He didn't know who these  
2 people were around his kids. He was in jail a long time  
3 and while there, he called Deborah regularly and they  
4 talked. She may not have visited him at the jail, she may  
5 not have put money on the books, but let's face it, she  
6 didn't have much time with those three kids and she didn't  
7 have much money, but when he got out of jail, he went to  
8 the only place he could go, that being his home and that,  
9 friends, is something we all do.

10 He entered that trailer through the window  
11 and he's told you why. Nothing contradicts his account.  
12 Deborah was there and she helped him inside. Nothing  
13 contradicts that statement. They talked and they had sex  
14 just as they had had many times before and he became  
15 upset. Mr. Harmon has described to you the reasons why.  
16 He got mad and he accused her of seeing other men. She did  
17 become scared and during that time while she was scared,  
18 she called the day care center and she may well have been  
19 crying. He was in the bathroom. Nothing contradicts that,  
20 but we do know from LaTronna Smith, also known as Sherry  
21 Smith, we do know that she called back a few minutes later  
22 and everything seemed fine.

23 These two people were about to go pick up  
24 their children and they go out to that car and get in the  
25 car and start to drive and he's looking for his tape and he

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JChappell-8JDC1780

1 finds this letter. I'm going to refer here, ladies and  
2 gentlemen, to State's Exhibit 72. This letter is found not  
3 only in this exhibit, it's found in other exhibits also  
4 because it's found in a bunch of different pieces. When he  
5 found this letter, he read it or tried to read it and she  
6 pulled it from his hands and this letter confirmed his  
7 worst fears. The letter was evidence to him that  
8 everything he suspected was true and that set him off.

9 What did he do? Within a minute, he had  
10 taken this woman, taken her back in the trailer and he  
11 killed her. The State wants to say, well, what about that  
12 kitchen knife, how would he go in the kitchen to get that  
13 knife? This lady was in the process of moving. When you  
14 are in the process of moving, you often use knives to cut  
15 tape, possibly to open boxes or close boxes. You use a  
16 knife and there's no reason at all to believe that when he  
17 went inside that trailer, he was in such a rage, he grabbed  
18 something, he saw maybe it was in the chair, maybe it was  
19 on the floor, he picked up that knife and he stabbed her  
20 over and over again. He killed her. He committed a  
21 crime. He's guilty of that, but this was a crime committed  
22 in a fit of rage brought on from that letter confirming his  
23 worse fears. Nothing contradicts this. Nothing.

24 Look at the placement of that body. Right  
25 there by the door where he enters with her and look where

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JChappell-8JDC1781

1 the letter is found, X - torn letter right there beside her  
2 body. In fact, I think they testified that some of the  
3 parts of the letter were found outside to which would also  
4 suggest that they brought the letter from outside  
5 supporting Mr. Chappell's testimony and contradicting the  
6 State's claim that nothing supports his idea they found the  
7 letter in the car. Two pieces of that letter were found  
8 outside. Mr. Perkins, I believe, testified to that.

9 What is his mind thinking of? The State  
10 wants you to believe his mind is thinking about the intent  
11 to kill, killing, the desire to hurt her. His mind is  
12 thinking about what she had been doing with him a little  
13 while before. His mind is thinking about this woman he  
14 loved making love, having sex other people. Now I ask you,  
15 in the course of human history, is that not a provoking  
16 idea? It is the ultimate provoking idea.

17 He doesn't know how many times he stabbed  
18 her. Perhaps, as Dr. Etcoff testified, he had the ability  
19 to remember, but you can certainly understand why he would  
20 not want to remember. He felt low -- he feels lower than  
21 dirt for what he did. He feels horrible for what he did.  
22 He finishes, he washes his hands off, and he leaves and  
23 didn't go far. He goes a quarter mile away.

24 Now that story is uncontradicted. Nothing  
25 they have got contradicts his story. He is accused of a

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1 crime and every criminal defendant using the State's theory  
2 has a motive to lie, but what can he do? He can only tell  
3 you the truth. He's taken full responsibility here and the  
4 only thing we're asking, ladies and gentlemen, is that you  
5 consider these facts and apply the law to them.

6 Did he commit a burglary? A burglary is an  
7 entry with an intent to commit a crime. He entered the  
8 trailer because he was going home. He had no intent to  
9 hurt that woman. He is not guilty of burglary.

10 Did he commit a robbery? He took the car as  
11 an afterthought and because of that, he is guilty of grand  
12 larceny auto, a felony, but he never used force on her to  
13 take something from her. He used force on her in a fit of  
14 rage and, as an afterthought, took the four social security  
15 cards belonging to his three kids and her and her car.  
16 There is no connection between the killing in this case and  
17 the stealing that occurred.

18 Does he commit first degree murder? First  
19 degree murder is premeditated, deliberate killing. Mr.  
20 Harmon is quite correct that that premeditation and that  
21 deliberation can arise in as little as successive thoughts  
22 of the mind, but it need not. That does not mean every  
23 time a person kills somebody and their mind processes that  
24 information, that that's a first degree murder. We have a  
25 second degree murder in this state. We also have voluntary

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JChappel1-8JDC1783

1 manslaughter. This was not a first degree murder. This  
2 was absolutely unpremeditated. It was absolutely  
3 undeliberate and the absolute uncontroverted evidence of  
4 the lack of premeditation is this New Jersey letter. That  
5 is what set this man off. That is what turned this mixture  
6 of air and gasoline into an explosion.

7 Does their alternative theory of felony  
8 murder work? No, it doesn't work. They would like you to  
9 believe that he was in the process of committing a crime  
10 and he goes in there and does all this stuff and she  
11 happens to die during the course of committing a crime.  
12 Well, that would work if, in fact, he had committed a  
13 burglary from the beginning. If he had gone in that  
14 trailer intending to rob her or steal from her and/or  
15 whatever and he ended up killing her in the course of it,  
16 that's felony murder, first degree. No questions asked,  
17 but the State's case is flawed because he didn't enter with  
18 that intent. The intent to kill her never even arose in  
19 any type of deliberate way in this case. The man went into  
20 a rage and he killed her and then, then he does what he has  
21 to do and leaves and we're here.

22 Did he commit second degree murder? He did  
23 not commit second degree murder because there's no malice  
24 in this case. The State would have you believe that the  
25 knife wounds, the use of the kitchen knife is itself

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JChappel1-8JDC1784

1 evidence of the malice, his intent to harm this woman.  
2 Think about it. He was in a complete fit of rage. Dr.  
3 Green testified these were deep wounds and they were  
4 inflicted fast, they were inflicted hard, and I submit to  
5 you this was done in a rage, it was done in a rage of  
6 passion, it was done in a rage of jealousy. There was no  
7 second degree murder because there was no malice.

8           What this man did and what fits the facts of  
9 this case is what we told you in the beginning. That being  
10 voluntary manslaughter with use of a deadly weapon. He is  
11 guilty of a crime. We've never contested that. Don't let  
12 anyone say we are saying this is an excuse. No excuses  
13 here. He's guilty of a crime. The question is what was  
14 his state of mind? That relationship was a dangerous  
15 relationship. It had been a dangerous relationship for  
16 years. Deborah knew it. She had been a victim of this  
17 relationship. So why didn't someone end it. Look at  
18 James. He's got a low IQ, poor verbal skills, learning  
19 disability, borderline personality, he is crack head, and  
20 he is, quite frankly, extremely dependent on Deborah  
21 Panos. You think he is going to end this relationship?  
22 Well, going by the State's strategy, he could have. He  
23 certainly had free will as a human being to end that  
24 relationship, but realistically he's not going to do it.  
25 If you were going to bet your money on it, he was not going

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1 to end that relationship.

2 Could Deborah have left the relationship?

3 The State of Nevada will say and they have said no. He  
4 controlled her. He was the one calling the shots, he was  
5 telling her what to do. Whatever happened to free choice?

6 Whatever happened to the idea we make decisions and take  
7 responsibility? Ms. Panos suffered a terrible death, a  
8 death that no one deserves to suffer, but the fact is she  
9 stayed in this relationship because she loved this man and,  
10 ladies and gentlemen, that was risky, dangerous behavior.

11 You take that risky, dangerous situation and  
12 you add to that the spark and something is going to  
13 happen. When he found that letter in the car, the letter  
14 said -- and, by the way, you'll have to look at the letter  
15 because parts of it are incomprehensible and, quite  
16 frankly, you have to look around to find these things  
17 because it's all torn up, but it says in various parts,  
18 "You really teased me bad the night before I flew back to  
19 Jersey. When I come back, we're going to spend hours so I  
20 can do it right." Those something pants I love to see you  
21 in. I'm saving up for my trip to Las Vegas.

22 Remember, this is a person in New Jersey who  
23 is writing this. We also have a boyfriend in Las Vegas,  
24 JR, who Lisa Duran told us about. Now, she had a right to  
25 date these people. She wasn't his slave. She had an

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1 absolute right to engage in risky, dangerous behavior, but  
2 you tell me if you are in a situation with an extremely  
3 jealous man, he's extremely attached to you and he let's  
4 you know he doesn't want you around any other guys, are you  
5 taking a risk when you mess around? Yes, you are taking a  
6 risk and you have that right to take a risk, but if  
7 somebody gets mad because of this risk in a situation where  
8 they are provoked, why he is certainly responsible for the  
9 crime. It's not the same thing as first degree murder.  
10 It's not the same thing as hanging out and waiting to kill  
11 somebody or planning a killing.

12 I hope you won't be offended by this  
13 example, but if I walk outside this courthouse right now,  
14 walked up to somebody and said to them, assuming it was a  
15 black person, I said, "Nigger, I like sleeping with your  
16 woman," that man might kill me. Now what I have done is  
17 stupid, it's rude, and if I did that, he might kill me and  
18 when he killed me, it's a crime that he killed me.

19 However, is he in the same position as  
20 somebody who plans a killing, someone who lies in wait,  
21 someone who deliberates and premeditate? Absolutely not.  
22 Now going by the State's theory, there may very well have  
23 been successive thoughts in the mind, in his mind. How can  
24 you avoid it, but this State says there is such a thing as  
25 second degree murder and this State says that a provoked

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JChappel1-8JDC1787  
1 killing is voluntary manslaughter and that's the law.

2 That letter from New Jersey in and of itself  
3 may not have meant very much, but that letter confirmed  
4 things to James. It implied actions, it implied she was  
5 cheating on him, and, ladies and gentlemen, the State can  
6 talk forever and I submit to you that the letter and  
7 Deborah Panos' dangerous behavior was a provocation. It  
8 was a provocation and my client reacted in a provoked way,  
9 in a stupid way, in a criminal way, but it's not first  
10 degree murder.

11 This case is about a tragic relationship, a  
12 horrible, tragic relationship. My client killed probably  
13 the person who means more to him than anybody else in the  
14 world and he is going to pay for it, but he's not a first  
15 degree murderer. He committed voluntary manslaughter with  
16 use of a deadly weapon and grand larceny auto and, ladies  
17 and gentlemen, that's what the evidence says.

18 Thank you.

19 THE COURT: Ms. Silver, on behalf of the  
20 State of Nevada.

21 Everybody comfortable?

22 MS. SILVER: A tragic relationship. For  
23 whom was it a tragic relationship? It was a tragic  
24 relationship for Deborah Panos. This was a relationship  
25 about power and control, domestic violence. The definition

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JChappell-8JDC1788

1 of domestic violence is James Chappell, the defendant. Any  
2 time that he felt he was losing that control, he used force  
3 to remind her, to remind her that she was his woman, as he  
4 said so many times as he was sitting up on the stand, but  
5 you know, ladies and gentlemen, the ultimate act of power  
6 and control came on August 31st of 1995, when he murdered  
7 Deborah Panos. That's what their relationship was about,  
8 not what the defense would have you believe. It was tragic  
9 for Deborah.

10 This isn't a case like manslaughter. This  
11 is not a manslaughter case. This is a first degree murder  
12 case. A manslaughter case, well, that would probably be a  
13 case, for example, where you have a husband and wife of say  
14 20 years, he works everyday real hard, goes out to make a  
15 living for his wife and his kids, and, as he is busting his  
16 back everyday, he comes home one night after 20 years of  
17 marriage and he actually finds his wife and his best friend  
18 in bed and in the heat of passion, before the voice of  
19 reason can come into his mind, he grabs the nearest object  
20 and he kills them. That is a voluntary manslaughter case.  
21 That's a voluntary manslaughter case. It's certainly not  
22 the facts of this case now, is it?

23 This defendant treated her like his  
24 possession. He didn't treat her the way I've just  
25 described in a voluntary manslaughter case. He didn't

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1 treat her like a boyfriend, he didn't take her out to eat,  
2 he didn't take her dancing, he didn't take her to a  
3 restaurant, he didn't take her out like the defense tried  
4 to claim he did during their questions to witnesses.  
5 That's not the way he treated her.

6 Look at the way he treated her. This  
7 defendant sits here and cries in front of you and he cries  
8 up on the stand and he tells you that he loves her, but you  
9 do not treat someone that you love like this. You do not  
10 treat them with violence. He treated her like his  
11 possession, like his woman. That's called power and  
12 control, ladies and gentlemen, and as much as the defense  
13 can scream and yell and point their fingers at you and  
14 point their fingers at the State, that's what this case is  
15 about.

16 Facts are a stubborn, stubborn thing. If he  
17 loved her so much, he would have married her after she had  
18 asked for that ring over and over again and given her  
19 children his name if he really loved her and if he really  
20 loved her, he would have been there for the birth of all  
21 three of his children and not just the one child who he  
22 happen to be in town for that day. And if he really loved  
23 her, he wouldn't make her work two jobs as he went over to  
24 the projects and hung out all day Hip Hopping and smoking  
25 crack and going over to Bridget's house and leaving his

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1 shoes over at Sue's apartment. If he really loved her, he  
2 wouldn't have done that.

3 If he really loved her, he wouldn't have  
4 made her or forced her to put her children, their children  
5 into day care because he would be too busy hanging out  
6 being the Regulator and being Hip Hop and not providing for  
7 his girlfriend and his three children. If he really loved  
8 her, he wouldn't have sold the furniture that she went and  
9 busted her butt so hard to buy for her children and if he  
10 really loved her, he wouldn't have kicked her when she was  
11 down on the ground and watched her flee in fear with her  
12 children if he really loved her.

13 Was it love that he was feeling as he busted  
14 her in the nose? Was that the love he was feeling? A man  
15 that loves his woman does not bust her nose, does not send  
16 her to UMC Trauma Center in a stretcher in an ambulance. A  
17 man that loves a woman doesn't call her a slut and a bitch  
18 and a whore and tell her that he hopes that she gets aids  
19 and dies.

20 Read the letters and I'm going to go over  
21 some of these letters because it rebuts everything the  
22 defendant just sits here and claims or the defense claims  
23 to you. This isn't someone he loved, it is someone he  
24 abused. This was his punching bag. It was the carpet he  
25 walked on on a daily basis. It was the woman who he ripped

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JChappell-8JDC1791

1 her heart out on a daily basis by degrading her and being  
2 violent towards her.

3 This wasn't his home, ladies and gentlemen.  
4 This was a war field. This wasn't his girlfriend and  
5 children. These were little prisoners of war and this  
6 defendant, James Chappell, was commander in chief.  
7 Domestic and tranquility? That's what the defense attorney  
8 said in opening statements, domestic and tranquility. Is  
9 that a pretty way for explaining how the defendant busted  
10 her nose and was violent with her so many times and is  
11 voluntary manslaughter another pretty term for murder in  
12 the first degree for what he did to Deborah Panos? I  
13 submit to you it is.

14 What did she do to deserve this? She had  
15 every right, every legal right to see whoever she wants and  
16 this defense waves this letter. She had every right to see  
17 whoever she wanted and she shouldn't have to be paraded  
18 around in this courtroom like she is some kind of slut.  
19 She was a person and she loved this defendant for whatever  
20 reason because she felt some kind of loyalty to him, she  
21 felt sorry for him, and look what he did to her. Where did  
22 it get her? This isn't State of Nevada versus Deborah  
23 Panos, ladies and gentlemen. This is State of Nevada  
24 versus James Chappell.

25 Let's talk about the consciousness of guilt

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JChappel1-8JDC1792

1 in this case. Let's talk about how remorseful he was. How  
2 remorseful was he? Well, he sat up here too and the tears  
3 just flowed, didn't it? And he seemed very pitiful,  
4 probably the same tears that flowed in Dr. Etcoff's office,  
5 very convenient tears, but I submit to you who were those  
6 tears for? They were for himself, they were not for  
7 Deborah Panos. Where were the tears and it is said that  
8 actions speak louder than words; where were the tears,  
9 ladies and gentlemen, where was the remorse when he beat  
10 her after he sold the children's furniture and he kicked  
11 her and he beat her about her body and the police came and  
12 he sat on that easy chair and they described him -- Officer  
13 Earnst described him as cocky. Where were the tears then?  
14 He wasn't acting like he did on the witness stand. Where  
15 were the tears? How remorseful was he?

16 And when the police arrested him again in  
17 January of 1995, when they again were dispatched on a 911  
18 call and she lied there on a stretcher and she was bloody  
19 and the defense may want to down it play, but the officer,  
20 Officer Gierdorf was being honest. There was more blood  
21 because her nose was busted opened than perhaps in this  
22 picture. He wasn't being untruthful to you. Apparently,  
23 there was even more blood. He had made her even look worse  
24 than this on a prior occasion. If that isn't pitiful, but,  
25 in any event, as she lied there and she's gurgling on her

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1 blood and she can't even tell him what happened because her  
2 nose is busted in two and she is lying on this stretcher,  
3 where were the tears? Was he holding her hand? Was he in  
4 the stretcher? Was he telling her, gee, I have made a  
5 terrible, horrible accident, a mistake here? I'm sorry.  
6 Where were the tears? No, he was sitting there in an easy  
7 chair again watching television, as his children just  
8 observed what he did to the woman he loves so very much.

9 His little three year old, his little five  
10 year old, and little seven year old just watched mommy get  
11 her nose broken. How horrific for little children to see,  
12 but that's this defendant who sits up here and tells you  
13 how much he loves his children on the stand. Where were  
14 the tears? Where was the remorse? If he loved her so much  
15 and I ask you was he remorseful or was he the cold,  
16 calculated murderer and the cold calculated person that he  
17 always was the day he drove over to the projects after he  
18 murdered her? Were there tears? We asked all the  
19 witnesses, Deborah Turner, Ladonna Jackson, was he crying?  
20 No. Did he seem sad? No. Did he seem upset? No. Did he  
21 seem like anything in the world was wrong? No. He seemed  
22 like James. Why? Because violence was a part of James'  
23 life. Doing these types of things to Debbie was part of  
24 his life. He wasn't doing anything different that day  
25 except this is the day he made her heart stop, made her

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1 stop breathing forever.

2 The rage, the rage was no different than  
3 every other time he did this to her. It wasn't a sudden  
4 rage. This is the same rage, which she had seen time and  
5 time again and lived with. Where were the tears? How  
6 remorseful was he and we know presumably, at some point,  
7 because he's the regulator and he wants to get crack for  
8 his habit, he had to have probably -- you can infer by  
9 going over to Lucky's and, ladies and gentlemen, as he is  
10 perusing that frozen food section looking for the right  
11 package of shrimp that he can sell over to the apartment  
12 complex to the highest bidders, where were the tears for  
13 what he did to Deborah Panos? Where were the tears that he  
14 shed up on this stand? And where were the tears when he  
15 picked and selected what pie he was going to steal? And  
16 where were the tears, ladies and gentlemen, as he knocked  
17 door to door asking each one of the occupants, "You want to  
18 buy a pie? You want to buy a bag of shrimp?" Where were  
19 the tears? Wasn't acting like he did on the stand.

20 How remorseful was he and when he gave  
21 Deborah Turner this deal, \$15 for the shrimp, for the car  
22 rental, for the pie and he tells her, "Make sure to park  
23 the car behind the complex," how remorseful was he or is  
24 that consciousness of guilt because he knows that what he  
25 did was wrong? That's called consciousness of guilt,

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JChappe11-8JDC1795

1 ladies and gentlemen. That's called a cold, calculated  
2 murderer. A heartless person sits here before us today.  
3 He wasn't crying when he said, "Bring back the keys," as  
4 he's getting ready to get stoned on his crack. Wasn't  
5 thinking about Debbie then.

6 And a fourth of a mile away, the defense  
7 makes a big deal that this is a fourth of a mile away. He  
8 wanted his crack cocaine and we know he's not the brightest  
9 person in the world from his IQ. I suppose that's where  
10 the relevance of the IQ testing may lie is that he didn't  
11 take off and go somewhere else, but, ladies and gentlemen,  
12 the State would submit to you that he didn't think he was  
13 going to get caught and I'll go into why very shortly.

14 He was so upset he told you he spent the  
15 night at Bridget's. He was so upset or was it Sue that he  
16 kept his shoes at? Did he cry to them about what he did?

17 The next day, when he went to Lucky's and he  
18 had a box cutter and he was ripping the security labels off  
19 the liquor, was he envisioning again the knife that he  
20 plunged into Debbie's throat or could he think of one thing  
21 and that was to make sure he could get items so he could be  
22 the regulator across at the projects so he could sell it  
23 for more crack. Was he shedding tears as he was cutting  
24 into those security labels? No, he wasn't. No, he wasn't  
25 and we know from the police he was laid back, he was cool

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JChappell-8JDC1796

1 because, ladies and gentlemen, you heard generally all  
2 people get is a citation. This is one criminally, slick  
3 individual. He's not as stupid as Dr. Etcoff would make  
4 you believe. We certainly know he is no stronger to  
5 shoplifting and how it works. And so what does he do? He  
6 gives a false name because he if gives a false name, he  
7 knows he gets a citation and think about it. He's not  
8 arrested for it. It's not James Chappell that will be  
9 arrested for that and that shows consciousness of guilt and  
10 did he shed a tear? Was he remorseful? No.

11 And when he was trying to get rid of the  
12 evidence and threw it back behind him and put his foot over  
13 it even, was he remorseful or was he showing consciousness  
14 of guilt that he did not want to get caught because what he  
15 did, he knew was a first degree murder, ladies and  
16 gentlemen. I submit to you do not give this cold,  
17 calculated, selfish murderer a manslaughter.

18 The defense tries to claim that he thought  
19 everything was okay. You heard the defendant. He sat up  
20 on the stand and he told you -- recall the testimony  
21 yesterday, I thought everything was okay. He thought  
22 everything was okay in their relationship while he was in  
23 jail and he said he was -- it's in quotes in my notes and  
24 hopefully you'll recall this. "I was shocked to find the  
25 note." Shocked, amazed that she was cheating on me; that

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JChappel1-8JDC1797

1 provoked him into this rage that killed her. Remember,  
2 shocked? He said he thought everything was okay. He knows  
3 that in order for you to buy into the voluntary  
4 manslaughter defense, you've got to believe somehow he was  
5 shocked and provoked into this, but let's look at the  
6 evidence in this case here.

7 We know that he stated, at least on the  
8 stand, he thought there were parties and men answering the  
9 phone when he would call over. He even believed at some  
10 point there was something different about her during sex  
11 and then, again, he claims it's not until he finds the  
12 letter that the heat of passion occurs, but let's look at  
13 his letters, ladies and gentlemen. Let's just look at his  
14 letters for a moment, shall we, because on Sunday, July 30,  
15 1995, he writes, "I have been in here 35 days. Where are  
16 you?" She wasn't coming around. She wasn't visiting him  
17 like she usually did, like she did when he was in jail for  
18 domestic violence. No, she wasn't doing any of these  
19 things recall? Because she was afraid of him and this is  
20 his words and these are in the letters that you will see  
21 and you will take back before you. These are just some of  
22 the tidbits that are important in this case to rebut any  
23 kind of voluntary manslaughter because he knew during this  
24 time period she was seeing other men.

25 "I have been in here 35 days. Where are

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1     you? You must be terrified to visit me, huh?" Why  
2     shouldn't she be terrified? The last time she saw you, you  
3     had a knife at her throat and the police were called on a  
4     domestic call on June 1st, 1995. And, perhaps, he was  
5     threatening her again that he was going to be doing an OJ  
6     on her when the police arrived or when Claire knocked at  
7     the door, but, in any event, he says, "You know, they can't  
8     put you on the witness stand, huh. One day soon I'll be  
9     at that front door and what in God's name will you do,  
10    huh?"

11                 I submit to you, ladies and gentlemen, he  
12    knows right there, he knows right here what he's going to  
13    do. He also states here on July 30th, "Why is it so hard  
14    for you to talk to me? Why is it so hard for you to let me  
15    know about him. You must have someone real special," and  
16    I'm going to go back to this, but he also states here July  
17    31st, 1995, "It's 36 days now and I haven't received  
18    anything from my woman." She wasn't making contact with  
19    him. She was terrified of this man. He wasn't going home  
20    to greet her to have this great consensual sex. She was  
21    terrified.

22                 "Well, it hurts a lot, but inside I know  
23    you don't owe me anything." Even the defendant recognizes  
24    that she's got no responsibility to him. She can see  
25    whoever she wants because he recognizes she doesn't belong

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JChappell-8JDC1799

1 to him. She's fed up, as we can see, I believe, it's right  
2 here. " I know you were afraid, scared, hurt, fed up and  
3 worried. What is going to happen next? I know I was  
4 holding you down. I guess I just wanted the kind of  
5 control," not a word that the State made up, ladies and  
6 gentlemen. This is the defendant's own words. "I just  
7 couldn't have." It wasn't our words. The defense was  
8 right, we were going to come up here and say this. It  
9 wasn't our words, that's his because that's his state of  
10 mind while he's in jail. And I'm going to go back to  
11 this.

12 So when was it that he wanted to kill her?  
13 When was that intent formed? Was it, ladies and gentlemen,  
14 when he told her in 1994 he said, "If you ever F'd around  
15 on me, I'll kill your ass?" Well, it may have been. Was  
16 that a coincidence because we know right here, he states,  
17 "One day soon I will be at that front door and what in  
18 God's name will you do," and in the same breath, he talks  
19 about someone special. So he knows what he is going to do  
20 and so does Deborah. She wants to get out of there and  
21 move before he gets out.

22 He tells Dina Freeman or, excuse me, he  
23 tells Deborah on the phone in 1994, he says, "I'm going to  
24 do an OJ on your ass," or, "I'm going to do an OJ Simpson  
25 on you." Wow, what a coincidence? What a prophecy. You

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JChappel1-8JDC1800

1 know, when he went into this rage, he didn't choke her to  
2 death, he didn't take the phone and smash her skull in with  
3 it, he didn't take the shoe that was lying by her and smash  
4 her skull in. He didn't beat her up to death. He did an  
5 OJ Simpson on her. Was he planning on it then? Was it  
6 something that he was considering back then in jail? The  
7 State submits he was because he did exactly what he  
8 promised he would do to her and she knew it and she was  
9 scared and she was terrified because she knew what he would  
10 do to her.

11 When he became angry with her on January  
12 9th, 1995, sure everyone is a liar in this case, as the  
13 defendant said, but read the medical records because he can  
14 feel his control slipping away and I submit to you that in  
15 January, she most likely was trying to separate and get  
16 away from this defendant. Recall Lisa Duran was over there  
17 all the time from February to May and there was no hiding  
18 or air of the defendant. Of course, we know he was  
19 incarcerated, but even at this time, we know that she was  
20 trying to break away. Why? Because she states to the  
21 doctor he's beating her so badly before, but he's never  
22 beat her like this. This is the time he broke her nose.  
23 You can see that escalation of violence towards her because  
24 he was losing the control over her and he was recognizing  
25 that loss. It wasn't that he lost control that day in a

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JChappe11-8JDC1801  
1 rage. This was something he had been recognizing.

2 Did he intend to kill her on January 1st of  
3 1995 when he became angry with her? Recall she hadn't been  
4 home. Perhaps out of fear for him, she hadn't been home  
5 and when she got home, he made sure. He took her in the  
6 bedroom, he threw her down. He put her out on the bed like  
7 this and he got up on her elbows and he took a knife,  
8 probably close to this, and he put it at her throat and  
9 recall what the defendant said on the stand. "I just  
10 wanted to get information from her." Really? Well, what  
11 type of information, Mr. Harmon asked? What type of  
12 information would you need? We know he's threatening to do  
13 an OJ on her. We know if she is ever caught cheating, he  
14 is going to kill her ass. What kind of information? Do  
15 you think maybe he was suspecting she was seeing someone  
16 else? Do you think maybe he was losing control at that  
17 time, control of her? And at least in that case, the  
18 police were called or Claire knocked on the door, but there  
19 was a witness, so he didn't do it. There was no witnesses  
20 on August 31st of 1995, ladies and gentlemen.

21 Did he want to kill her then? Probably, but  
22 you see then he went to jail and he went to jail for about  
23 seven days. Recall he was in custody until about June 7th  
24 of 1995. You know, sure even though he had a prior  
25 domestic violence where he broke her nose, he gets out

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JChappel1-8JDC1802

1 within seven days and, all of a sudden, we hear that she's  
2 gone a lot. Suddenly, it's the poor defendant. He's home  
3 as the victim. She's out, ladies and gentlemen, because  
4 he's out and she's staying at Motel 7 because he's out.  
5 It's not because she's a slut or a bitch or a whore, it's  
6 because of this, ladies and gentlemen. It's because, you  
7 know, he's just trying to get information from her. And so  
8 she isn't staying home during that time period. She didn't  
9 go home again apparently until June 26th of 1996, when he  
10 is picked up again on another shoplifting charge.

11 I submit to you, ladies and gentlemen, that  
12 at a very minimum the intent to kill her was formed by  
13 Sunday, July 30th of 1995 if not sooner and you can see it  
14 by the letters and you know if everything was okay and if  
15 he was so shocked when he came home that day and found that  
16 letter, why does he say, "Debbie, do I have any more  
17 chances?" If everything is so great, why does he say  
18 that? And why does he say, "If you are teaching me a  
19 lesson, believe me it's surely working." Why does he say,  
20 "If you want me to stop, I'll set you free." Oh, he is  
21 going to set his little prisoner of war free? No, he's  
22 not. He's got no intention of setting her free. He is  
23 going to cry to her and he is going to try make you feel  
24 bad and tried to make Dr. Etcoff feel bad with his promises  
25 of changing. That prisoner of war, I'll set you free.

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JChappel1-8JDC1803

1 Free of lies because he's a liar and he recognizes he's a  
2 liar. Free of being scared, just tell me what's up and, of  
3 course, don't forget that money on my books because we know  
4 what is most important to that defendant and that's money.  
5 Certainly isn't his relationship with the woman he loves or  
6 his children. By July 31st of 1995, the next day, he says,  
7 "Well, it's 36 days now. I haven't received anything from  
8 my woman." She's not talking to him. She's not -- where  
9 is the communication do you see in any of these letters?  
10 It's pretty painfully obvious that he has lost contact with  
11 her and that inferiorities him, that makes him angry. How  
12 dare she.

13 "Don't end it like this." There's the  
14 topper. He recognizes it was the end here -- well, here  
15 July 31st, one month before. Everything wasn't okay and he  
16 wasn't shocked. When he got out on that day, he was out  
17 for revenge because you know what, she didn't contact him.  
18 See, will you please write me, visit me. When he comes in  
19 the house and he throws up the letters and screams to her,  
20 "Didn't this mean anything to you?" It was because he was  
21 angry and he was mad and he had lost control and he wanted  
22 to kill her for it. And he had all that time to sit in  
23 there and think about how he was going to do the OJ on  
24 her.

25 And then, finally, "What's up slut? Are you

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JChappel1-8JDC1804

1 easy, Debbie? You are going to hell slut, whore, stupid  
2 bitch." And then at some point, "I will find more  
3 patience." He's begging her back again through his  
4 manipulation and he says, "I'll find more patience, learn  
5 to understand, trust more, stop resulting to violence. I  
6 never wanted or meant to scare her. I finally noticed that  
7 she is very scared of me like I'm an animal or something."

8 I submit to you that he was planning to  
9 murder her then.

10 When he would call Lisa Duran while he was  
11 in jail because he couldn't get through to Deborah and he  
12 said, "If I can't have her, nobody else can," he wanted to  
13 kill her then and when he said to Lisa Duran, "When I get  
14 out, I'm going to make sure she won't have any friends, she  
15 won't be able to go anywhere," ladies and gentlemen, he  
16 fulfilled his promise to Lisa Duran.

17 On August 31st, the day before his release  
18 from jail, that is a significant date, ladies and  
19 gentlemen. Why? Because she wasn't bringing the kids, she  
20 wasn't visiting him, she wasn't bringing him money, she  
21 wasn't communicating and he gets the ultimate slap in his  
22 face. She shows up at his battery trial. How dare she  
23 unlike the TRO and unlike what the defense claims we didn't  
24 want you to know how long the TRO lasted. We are the ones  
25 who entered it in evidence. It clearly says how long it

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JChappel1-8JDC1805

1 last, but recall he got out of jail on the January case and  
2 you recall my question to the TPO -- the lady that prepared  
3 it, you don't know whether or not the defendant was out to  
4 control her to prevent her from showing up to court, to  
5 scare her and you recall what he said. He said, "I started  
6 crying to her." He started crying like he was crying in  
7 court to manipulate her, to make her feel sorry for him,  
8 but it wasn't working this time because, ladies and  
9 gentlemen, she showed up and what happened, he pled guilty  
10 to battery domestic violence. The first time this  
11 defendant ever had to be accountable for his actions was  
12 the day before he murdered her. That is the first time she  
13 made him accountable and he wanted revenge and if he wasn't  
14 planning on killing her then, he was certainly going to do  
15 it then. How dare she. How dare she.

16 On August 31st of 1995, what did he do when  
17 he got released? He may have gone and got a bicycle.  
18 Maybe he went to go see if he could score a rock and  
19 couldn't and realized he needed money and knew he better go  
20 to his meal ticket, but he was on his way. Make no  
21 mistake, he was on his way. He was on his way to Debbie's  
22 and you know the defense makes a deal of the fact he went  
23 through, what, a conspicuous window, the front window?  
24 Well, recall what the police said. It was the only window  
25 they could get opened. They couldn't get anything else

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JChappell-8JDC1806

1 opened. It was all locked. So he picked the window that  
2 he could get into not because it was conspicuous, but  
3 because he could get into the trailer that way.

4 He went to the window and when he bashed --  
5 when he opened it up and came in, he bashed that screen in  
6 and that's why you see a footprint and that's why this is  
7 as well a burglary case. And he wanted to get in there not  
8 only for money, but he wanted to take the car and he was  
9 going to wait for Deborah and I submit to you we don't know  
10 when Deborah came home. We have no idea and I submit to  
11 you that he surprised her. He waited for that car because  
12 recall he can rent that car out and he did. He rented it  
13 out on several occasions. That car is a moneymaker to him,  
14 as he is off there being the regulator at Lucky's. He can  
15 also make money by renting her car.

16 And so he waited for her to get home and she  
17 probably got home pretty soon after. And she was  
18 surprised. Why? Because just as Lisa Duran said no one  
19 had any idea that he was getting let out of jail. Our  
20 system. What was she supposed to do? This defense counsel  
21 stands here and says she was playing risky. What, like she  
22 deserved it? What more could she have done? She filed  
23 police reports, she filed a restraining order, she finally  
24 went to court and said, "I'm not going to be a victim any  
25 more of domestic violence," and look where it got her.

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1 What kind of message does that send out?

2 She did what we all expected her to finally  
3 do and that was to break it off from this defendant and she  
4 finally did and he did confront her and he asked her about  
5 the letters, his letters and why wasn't she answering him  
6 and he did ransack, as much as the defense wants to scream,  
7 take a look at the pictures, common sense will show you  
8 that the house was ransacked. She was messy, but it was  
9 ransacked as well and he beat her and he took his fists and  
10 he beat her like he had in the past and you look at those  
11 pictures because it's unfortunate of how badly he beat  
12 her. He beat her so bad that she had to put her hands up  
13 and there is bruises all over her hands and arms and most  
14 of the parts of her body.

15 There is a severe, severe bruise around her  
16 ear, on her forehead, there's like a gash in her head. He  
17 beat her up and I submit to you that at some point, when he  
18 felt like it, he committed the ultimate act of violence  
19 upon a woman besides murder and that's called rape, ladies  
20 and gentlemen. That is an act of violence. It is not an  
21 act of sex. So that when they found her bloodied dead  
22 body, he left his mark on her. That was his woman. And  
23 the defense says, oh, yeah, we have said from the very  
24 beginning that he had intercourse with her. Well, this  
25 stipulation was entered into on October 10th of 1996 --

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JChappe11-8JDC1808

1 MR. BROOKS: Objection, your Honor. We  
2 filed this in September and she knows it.

3 THE COURT: Mr. --

4 MS. SILVER: Let me move back anyway.

5 THE COURT: Just a minute. If you are going  
6 to make a legal argument, make them as lawyers.

7 MS. SILVER: I will disregard that.

8 THE COURT: Now do you have an objection to  
9 make to that statement, Mr. Brooks?

10 MR. BROOKS: I do, your Honor. It's  
11 absolutely not in evidence. It's also misleading the  
12 jury.

13 MS. SILVER: He read that stipulation.

14 MR. BROOKS: I submit she admits to  
15 contradicting it.

16 MS. SILVER: He argued it to the jury as if  
17 it were so.

18 THE COURT: Your objection is overruled.

19 MS. SILVER: Thank you.

20 This stipulation wasn't entered into until  
21 the beginning of trial, not of the beginning when he was  
22 arrested for this case, ladies and gentlemen, and the fact  
23 remains that this defendant has no other alternative but to  
24 claim heat of passion, rage.

25 Think about it. Her body, her dead body had

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JChappell-8JDC1809

1 his semen. One in 14 billion people have the same type of  
2 blood and DNA and semen as this defendant conclusively this  
3 defendant. He can't claim the OJ. He did an OJ on her,  
4 but he can't claim the OJ because he's stuck. He left the  
5 evidence in her and he can't claim that anyone planted this  
6 evidence. So he's stuck.

7 So what else is he going to tell you? Well,  
8 he's got to make up some convenient facts to fit this case  
9 and you heard, ladies and gentlemen, wasn't it interesting  
10 the property report that was testified to with the RFLP  
11 from Cellmark came back in March of 1996. It wasn't until  
12 June 1996 when this defendant made his trip to Dr. Etcoff's  
13 office for that rage defense. Isn't that interesting? The  
14 defense would have you believe that he, from the very  
15 beginning, never contested that this defendant did this  
16 that we are supposed to know.

17 MR. BROOKS: I'm going to object, your  
18 Honor. This is presuming a burden on a defendant to say  
19 something prior to trial, which does not exist.

20 THE COURT: Well, you have made that  
21 statement and I guess it's correct, but this is simply  
22 argument about the motivation behind the statements having  
23 been made. So I'm going to overrule the objection.

24 MS. SILVER: The defense wants you to hold  
25 it against us because we did DNA testing. If we didn't

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JChappe11-8JDC1810  
1 cover every aspect of this case, ladies and gentlemen, we  
2 wouldn't be diligent in our jobs as prosecutors. We don't  
3 know when a defendant is going to stipulate that he did the  
4 crime and come up with a different defense. We don't know  
5 that. So, yes, we did test it and don't hold that against  
6 us. We are just doing our jobs.

7 Can anyone believe that this woman would  
8 want to have sex with this defendant after he was arrested  
9 for domestic violence on June the 1st, when he puts a knife  
10 to her and then she goes to court the day before she's  
11 murdered against him as a witness, can anyone believe that  
12 someone who is writing letters don't end it like this, that  
13 when he's coming through that window, she's in open arms  
14 and she's just ripping off her clothes to be with him? How  
15 absurd is that? It's a mockery, absolute mockery, and  
16 degrades that victim just one more time.

17 So she does put her clothes on and she's  
18 beaten up and she's raped and she's scared and she's  
19 terrified and maybe, at some point, she knows it's going to  
20 get worse and she's scared and she makes an excuse about  
21 the children and she calls and she pleads for her life and,  
22 unfortunately, those pleas for help were never answered  
23 unfortunately for Miss Panos.

24 And, at some point, he does find a letter  
25 perhaps and he rips it up. Obviously, the letter is

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JChappe11-8JDC1811

1 found. There is no dispute, we never claimed that she  
2 wasn't dating anyone else. We even asked was she seeing  
3 someone? Yeah, JR. So what. She did what she had a right  
4 to do. She finally found someone who was maybe good and  
5 kind to her and her children and treated her with a little  
6 human dignity, which she deserved.

7 And what does he do? He continues to beat  
8 her and we know he holds her neck, as well because he is  
9 getting really mad by this point and I submit to you,  
10 ladies and gentlemen, that possibly at some point Deborah  
11 may have run for the phone. She may have run for the phone  
12 to call 911 for help. We know that she keeps this right by  
13 her side, the information for victims of domestic  
14 violence. We know she keeps this at hand, you know, in  
15 case she has a problem, but you can see here that the phone  
16 is off the hook and, you know, coincidentally and  
17 ironically, there is a book lying right here and that book  
18 is titled A Time to Kill and I submit to you, ladies and  
19 gentlemen, that it's ironic because it was the time to  
20 kill, because beating her bloodied and bruised wasn't  
21 enough for this defendant because you see, he wanted  
22 ultimate control and he wasn't getting it. There was  
23 nothing he could do to get her back and I submit to you,  
24 ladies and gentlemen, that it's called premeditation and as  
25 much as the defense doesn't want you to look at Instruction

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JChappe11-8JDC1812

1 No. 22, it's premeditation. It's a design, a determination  
2 to kill distinctly formed in the mind at any moment before  
3 or at the time of the killing. Any moment before the time  
4 of the killing. It didn't have to be a day, an hour or a  
5 minute. If I walked up to any one of you and I had a gun  
6 and I drew down and shot any one of you, there is no doubt  
7 that that's first degree murder. That is a simple act of  
8 drawing down and shooting someone is premeditation.

9 All premeditation is successive thoughts in  
10 the mind. It's not like TV. Successive thoughts in the  
11 mind. She didn't keep a knife laying out with three  
12 children and when he was done beating her, he went to the  
13 kitchen where Lisa Duran said she kept the knives and, you  
14 know, he wasn't in a rage, he wasn't in a rage because he  
15 didn't pick up a spoon and he didn't pick up a fork and he  
16 didn't pick up soup ladle and he didn't pick up a spatula.  
17 No, he picked up an instrument calculated at producing  
18 death and maybe she ran towards the door and that's why her  
19 body lies by the door, but she never made it to the door,  
20 ladies and gentlemen, because I submit to you he grabbed  
21 her and he threw her down just like he did on June 1st. He  
22 grabbed her and threw her down and she lied there just like  
23 this, just like this, just like she had before looking at  
24 that same angered face she had before. Not a face that  
25 cried to you on the stand, but this face, an angry face, a

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JChappel1-8JDC1813

1 face that wanted to control her and I submit to you, that  
2 he premeditated this murder, this murder 13 times over,  
3 each time as he stabbed into her body as he stabbed her  
4 throat.

5 Why was she lying like that? Because Dr.  
6 Green told you that most stabbing victims have defensive  
7 wounds. They try to stop the knife from coming at them,  
8 sometimes they even grab the knife. You generally see  
9 defensive wounds in the arms and the hands. It's a natural  
10 reaction just like when she was getting beaten to put her  
11 hands up, but, ladies and gentlemen, she was helpless. She  
12 was lying there and all she could look at is the man who  
13 supposedly loved her and she watched him as he took that  
14 knife and she watched that blade come down into her throat  
15 and she watched her own blood spurt up onto the side of  
16 that recliner and she watched him, this person who sits up  
17 here and cries and tells you that he loved her, stabbed  
18 every last breath out of her.

19 He premeditated this murder just like the  
20 Time to Kill. It was the time to kill her. He told you up  
21 on the stand he was so scared. Recall? He was so scared  
22 he didn't know what to do, so he ran out of the house he  
23 said. Recall that testimony. He said he fled the  
24 residence. He didn't flee the residence because we know  
25 from the pictures, we know from the pictures that he washed

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JChappel1-8JDC1814

1 his hands off. There is blood on the sink. And whose  
2 blood is on it with that DNA we shouldn't have done? It's  
3 Deborah's blood. It's Deborah's blood. He didn't flee the  
4 way he claimed. A mad person in a rage who just killed  
5 their girlfriend, the woman they loved of 10 years, the  
6 mother of their children would have ran out in the street  
7 in a frenzy, oh, my gosh, help, help! I have just killed  
8 the woman I love. I didn't mean to do it. I'm sorry. Did  
9 he do that? Oh, no. The cold calculated murder, he washed  
10 his hands of her blood. He could not wash his hands of her  
11 blood. He cannot buy a voluntary manslaughter verdict.

12 He's cold and he's calculated and this is a  
13 murder in the first degree and he lied to you on the stand,  
14 but you know facts are a stubborn thing and maybe his IQ  
15 came into place and he couldn't get all the facts  
16 straight. He said he fled. He didn't -- and we know he  
17 took the keys and we know he locked the door, locked the  
18 door too. He had enough presence of mind to lock the door  
19 and lock everyone out. And we know during some time he  
20 took the social security cards.

21 And we know that he even has enough presence  
22 of mind not to leave his bicycle there, because, see, that  
23 too could be sold for a price for a cocaine rock and he  
24 even takes that. No need to leave anything valuable and he  
25 goes right to the projects.

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JChappe11-8JDC1815

1 Ladies and gentlemen, when this defendant  
2 walked into this courtroom, he was presumed innocent, but  
3 with every piece of innocence here, with each piece, a  
4 layer of that presumption has been lifted and I submit to  
5 you he sits there before you in all of his naked guilt.  
6 There's one instruction I want to go over before I end,  
7 ladies and gentlemen, and conclude and that is instruction  
8 No. 36 and that is the reasonable doubt instruction.

9 A reasonable doubt is one which is based on  
10 reason. It's a reasonable doubt. It's not mere possible  
11 doubt. So it's not possibilities, it's not speculation  
12 because it says, "Doubt to be reasonable must be actual,  
13 not mere possibility or speculation," okay. It's got to be  
14 something based on reason, okay. It's not an impossible  
15 burden, ladies and gentlemen. Prosecutors across the  
16 country everyday meet this burden. It's not an impossible  
17 burden. It's a doubt which is based on reason.

18 It's a type of doubt that would control a  
19 person in the weighty affairs of life. What is a weighty  
20 affair of life? Well, for some people it could be the  
21 decision to get married. For some people it could be the  
22 decision to have a child or switch occupations or perhaps  
23 -- let me put it to you this way. You have all made  
24 reasonable doubt or, excuse me, you have all made weighty  
25 affair of life decisions. You have all made them. You

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JChappell-8JDC1816

1 have all probably, at some time, bought a home. So what  
2 are some of the things you look for when you buy a home?  
3 You look at maybe the purchase price, what's the mortgage  
4 on the house, what is your interest rate going to be. You  
5 look around the area, you look at the schools, is my house  
6 going to appreciate, depreciate; you look at all those  
7 factors and then you make that weighty affairs of life  
8 decision. It's usually a very big decision in all of our  
9 lives and you buy that house and, you know, after you buy  
10 the house, you may think to yourself and think, well, I  
11 really wish I had a bay window in the kitchen. I wish my  
12 closet was a little bit bigger, but did it prevent you have  
13 from buying that house that you loved?

14 The type of doubt that you must have in this  
15 case is a doubt which would -- it's a doubt which is based  
16 on reason. It's a doubt that would prevent you from making  
17 that weighty affairs of life decision, prevent you from  
18 buying that house, in order to find him not guilty, it must  
19 be that type of doubt. If in the mind of the jurors it  
20 says here after the entire comparison and consideration of  
21 all of the evidence, you are in such a condition that they  
22 can say they feel an abiding conviction for the truth of  
23 the charge against this defendant, then you do not have a  
24 reasonable doubt.

25 Ladies and gentlemen, the defendant stated

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JChappel1-8JDC1817

1 in his opening that this defendant takes absolute, total,  
2 and complete responsibility for her death. Yet, he sits up  
3 here in court throughout this trial and he cries not for  
4 what he did, but for himself. If our criminal justice  
5 system means anything, it means that when brutal, heinous,  
6 violent offenses like this murder, like this robbery occur,  
7 that the murderer be held accountable. Absolute total and  
8 complete accountability, that's the words of this defendant  
9 and the only way to achieve this is through a murder in the  
10 first degree conviction.

11 The defendant stated in opening that he just  
12 wanted justice. You've all probably seen the statute of  
13 justice -- Statue of Justice. It's a lady and she's got a  
14 scale in one hand and the sword in the other. You've all  
15 probably seen it and she wears a blindfold around her  
16 eyes. Ladies and gentlemen, that blindfold is a shield  
17 from impartiality and not from reality. Do not be blind to  
18 the realities of this case and find the defendant guilty of  
19 what he is guilty of and that is burglary, robbery with use  
20 of a deadly weapon, and murder in the first degree with use  
21 of a deadly weapon under both the Felony Murder Rule and  
22 because he premeditated this murder.

23 Thank you.

24 THE COURT: Thank you, Ms. Silver.

25 That concludes the presentation to the jury

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JChappel1-8JDC1818

1 in this matter and it will now be your task to decide this  
2 case.

3 The alternates picked by lot at the  
4 beginning of these proceedings before peremptory challenges  
5 are Celestina Cecilia Lucido, David John Mesnard, Michael  
6 Joseph Swartz, Lois J. Ochoa. The alternates are going to  
7 be released, not from jury service, but will be released  
8 with the understanding that you can be brought back to the  
9 courthouse at any time to serve during deliberations. We  
10 will advise you when the time comes for the verdict to come  
11 in. So you will have to behave as if you were on an  
12 extended recess until further notice.

13 During this time that you are not in the  
14 courthouse, I would remind you it is your duty not to  
15 converse among yourselves or with anyone else on any  
16 subject connected with this trial or to read, watch, or  
17 listen to any report of or commentary on this trial or any  
18 person connected with this trial by any medium of  
19 information, including, without limitation, newspapers,  
20 television, or radio, and you are not to form or express an  
21 opinion on any subject connected with this case until it is  
22 finally submitted to you.

23 The ladies and gentlemen that I have listed  
24 as the alternates, again I say to you, you must honor this  
25 admonition until you are advised otherwise. You will be

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1 notified on a day-to-day basis on the status of the matters  
2 by this Department.

3 At this time I would ask that the clerk  
4 swear the officers to take charge the jury.

5 (Off the record discussion not reported.)

6 Ma'am, our list is all mixed up here because  
7 every has moved around.

8 A VOICE: I was number one. We switched.

9 THE COURT: I understand. What is your  
10 name?

11 MS. PARR: Denise Parr.

12 THE COURT: Denise Parr.

13 Ms. Parr, yes, you are juror number two  
14 officially.

15 A Oh, okay.

16 THE COURT: You have indicated that you may  
17 have known or your children may have seen Dr. Etcoff?

18 A No.

19 THE BAILIFF: I'm sorry. Wrong seat.

20 THE COURT: All right, what is your name  
21 ma'am?

22 MS. WELLS: Cheryl Wells.

23 THE COURT: All right, we'll discuss this  
24 with you for just a few moments. Will the clerk swear the  
25 officer to take charge of the jury.

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2

(At this time the officer was duly sworn by  
the clerk.)

3

4

5

THE COURT: All right, at this time Ms.

6

Lucido, Mr. Mesnard, Mr. Swartz, and Ms. Ochoa, I guess

7

what you will have to do is accompany the bailiff and we'll

8

make a decision very quickly on whether Ms. Lucido who is

9

the first alternate would take the place of this juror.

10

All right, if you will all please rise

11

except for Ms. Wells and accompany the bailiff back to the

12

place of deliberations.

13

A VOICE: Do we stay with her or go out?

14

THE COURT: Everybody has to stay with her

15

given this situation.

16

17

(At this time the jury left the courtroom.)

18

THE COURT: All right, Ms. Wells, if you

19

would just take a seat for a moment.

20

A Okay.

21

THE COURT: Ms. Wells, did you recognize Dr.

22

Etcoff to be a person that you have actually consulted one

23

of your children?

24

A That actually consulted what?

25

THE COURT: Yeah, with one of your children?

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1 A Yes, both of them. I have taken both  
2 of them -- two children to him and had them tested.

3 THE COURT: Is there anything about your  
4 interaction with him that would effect your ability to  
5 assess his credibility in this case?

6 A No.

7 THE COURT: Is there anything about your  
8 children's interaction with him or your interaction with  
9 him that leaves you with any preconceived notions about  
10 whether he is a witness to be believed in this context,  
11 that is in this trial or not?

12 A Both my children were tested with  
13 learning disabilities. They both have learning  
14 disabilities and --

15 THE COURT: This isn't something necessarily  
16 I wanted you to discuss.

17 A No, I'm not sure what you need from me.

18 THE COURT: Well, my question is did he just  
19 perform tests?

20 A Right.

21 THE COURT: You did not do any counseling?

22 A No.

23 THE COURT: So you weren't in a position to  
24 judge his credibility or derive any preconceived notions  
25 about his credibility before coming to court today?

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1 A No.

2 THE COURT: Or before the trial I mean?

3 A No.

4 THE COURT: Any questions by the parties?

5 MR. BROOKS: Not from the defense, your

6 Honor.

7 MR. HARMON: Not from the State.

8 THE COURT: Is there any problem with her  
9 sitting on the jury?

10 You have to answer out loud.

11 MR. BROOKS: Not from the defense, your

12 Honor.

13 MR. HARMON: The State does not have a  
14 problem.

15 THE COURT: And the Court finds that there  
16 is no reason why Ms. Wells cannot sit on the jury. The  
17 alternates are released under their admonition to be  
18 advised of the status of the proceedings on an ongoing  
19 basis and to remain under the admonition until such time as  
20 they are advised to the contrary.

21 Ms. Wells, thank you very much. You can now  
22 go back to the jury room with the rest of the jurors.

23 A Okay.

24 THE COURT: We are in recess.

25 (Off the record at 6:09 p.m.)

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\* \* \* \* \*

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ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

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PATSY K. SMITH, C.C.R. #190

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[Chapel] - 8JDC1823

# EXHIBIT 143

81

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DISTRICT COURT

2

CLARK COUNTY, NEVADA

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ORIGINAL

\* \* \* \* \*

FILED IN OPEN COURT

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THE STATE OF NEVADA,

OCT 17 1996 19  
LORETTA BOWMAN, CLERK  
BY *Lora Hurd*  
Deputy

5

Plaintiff,

CASE NO. C131341

6

Vs

DEPT. NO. VII

7

JAMES MONTELL CHAPPELL,

DOCKET P

8

Defendant.

9

10

11

12

BEFORE THE HONORABLE:

13

HEARD BY LEE A. GATES DISTRICT JUDGE

14

WEDNESDAY, OCTOBER 16, 1996, 3:35 P.M.

15

16

VOLUME VII

17

APPEARANCES:

18

FOR THE STATE:

MELVYN T. HARMON  
Chief Deputy District Attorney

19

20

FOR THE DEFENDANT:

HOWARD S. BROOKS &  
WILLARD N. EWING  
Deputies Public Defender

21

22

23

24

25

REPORTED BY:

PATSY K. SMITH, C.C.R. #190

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CE

1 WEDNESDAY, OCTOBER 16, 1996, 3:35 P.M.

2 THE COURT: All right, let the record  
3 reflect that we are in open court now. Present is Mr.  
4 Harmon from the DA's office.

5 Counsel, what is your name? I've forgot.

6 MR. BROOKS: Howard Brooks, your Honor, and  
7 Mr. Ewing, Wil Ewing.

8 THE COURT: Pardon me.

9 Mr. Brooks and Mr. Ewing, as well as the  
10 defendant.

11 The Court has been informed that the jury  
12 has reached a verdict; is that correct?

13 THE JURY: (In Unison) Yes.

14 THE COURT: Who is the foreman?

15 You are, okay.

16 All right, at this time, we'll have the  
17 clerk read the verdicts out loud.

18 THE CLERK: "District Court, Clark County,  
19 Nevada, the State of Nevada, plaintiff, versus James  
20 Montell Chappell, defendant. Case number," --

21 (Off the record discussion not reported.)

22 THE CLERK: "C131341, Department No. VII,  
23 Docket P.

24 Verdict: We the jury in the above entitled  
25 case find the defendant, James Montell Chappell, guilty of

PATSY K. SMITH, OFFICIAL COURT REPORTER

JChappell-8JDC1904

1 Count I, burglary. Dated this 16 day of October, 1996.

2 Wendy L. Hill, foreperson.

3 District Court, Clark County, Nevada, the  
4 State of Nevada, plaintiff, versus James Montell Chappell,  
5 defendant. Case number C131341, Department No. VII, Docket  
6 P.

7 Verdict: We the jury in the above entitled  
8 case find the defendant, James Montell Chappell, guilty of  
9 Count II, robbery with use of a deadly weapon. Dated this  
10 16 day of October, 1996. Wendy L. Hill, foreperson.

11 District Court, Clark County, Nevada, the  
12 State of Nevada, plaintiff, versus James Montell Chappell,  
13 defendant. Case number C131341, Department No. VII, Docket  
14 P.

15 Verdict: We the jury in the above entitled  
16 case find the defendant, James Montell Chappell, guilty of  
17 Count III, murder of the first degree with use of a deadly  
18 weapon. Dated this 16 day of October, 1996. Wendy L.  
19 Hill, foreperson."

20 Ladies and gentlemen of the jury, are those  
21 your verdicts as read, so say you one, so say you all?

22 THE JURY: (In Unison) Yes.

23 THE COURT: All right, Ms. Clerk, poll the  
24 jury.

25 THE CLERK: Denise Wright Parr, are those

PATSY K. SMITH, OFFICIAL COURT REPORTER

JChappell-8JDC1906

1 your verdicts as read?

2 A Yes, they are.

3 Q Kenneth Edward Gritis, are those your  
4 verdicts as read?

5 A Yes, they are.

6 Q Jerry Wayne Ewell, are those your  
7 verdicts as read?

8 A Yes.

9 Q Cheryl Lynn Wells, are those your  
10 verdicts as read?

11 A Yes.

12 Q Jim Blake Tripp, are those your  
13 verdicts as read?

14 A Yes.

15 Q Kellyane Bentley Taylor, are those your  
16 verdicts as read?

17 A Yes.

18 Q Bruce Todd Larsen, are those your  
19 verdicts as read?

20 A Yes, they are.

21 Q Mark Gregory Massar, are those your  
22 verdicts as read?

23 A Yes.

24 Q Danna Terry Yates, are those your  
25 verdicts as read?

PATSY K. SMITH, OFFICIAL COURT REPORTER

JChappell-8JDC1907

1 A Yes.

2 Q Glenn Eugene Fittro, are those your  
3 verdicts as read?

4 A Yes.

5 Q Kenneth Roy Fitzgerald, are those your  
6 verdicts as read?

7 A Yes.

8 Q Wendy Lynn Hill, are those your  
9 verdicts as read?

10 A Yes.

11 THE COURT: All right, enter the verdict in  
12 the minutes of the Court.

13 All right, folks, this necessitates a  
14 penalty phase. What date do you want?

15 MR. HARMON: Monday, the 21st, your Honor.

16 MR. BROOKS: That's correct, your Honor.

17 THE COURT: Is that all right for Judge  
18 Maupin?

19 THE CLERK: Yes, Judge.

20 THE COURT: All right, we will set this  
21 matter for Monday, the 21st, at 10 a.m.?

22 (Off the record discussion not reported.)

23 THE COURT: All right, 11 a.m.

24 All right, at this time, the Court is going  
25 to excuse the jury. However, the case is not over with, so

PATSY K. SMITH, OFFICIAL COURT REPORTER



JChappell-8JDC1908

1 the Court is going to admonish you it is your duty not to  
2 converse among yourselves or with anyone else on any  
3 subject connected with this trial or to read, watch, or  
4 listen to any report of or commentary on this trial or any  
5 person connected with this trial by any medium of  
6 information, including whatsoever newspapers, television,  
7 or radio, and you are not to form or express an opinion on  
8 any subject connected with this case until it is finally  
9 submitted to you and you reach your decision on the  
10 penalty.

11 All right, we will be in recess until 11  
12 a.m. Monday morning. The jury is excused.

13  
14 (At this time the jury left the courtroom.)

15  
16 THE COURT: Was there any bail in this  
17 case?

18 MR. BROOKS: Not that I'm aware of, Judge.

19 THE COURT: Pardon me?

20 MR. BROOKS: Not that I'm aware of.

21 THE COURT: All right. If there was, there  
22 is no bail. He is remanded to the custody of the sheriff  
23 without bail.

24 All right, we are in recess.

25 . . .

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 (Off the record at 3:40 p.m.)

2

3

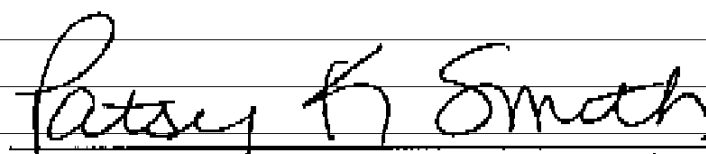
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4

5 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

6

7

  
PATSY K. SMITH, C.C.R. #190

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PATSY K. SMITH, OFFICIAL COURT REPORTER

# EXHIBIT 144

JChappell CORA010964

CITY OF LAS VEGAS  
MUNICIPAL COURT DEPT 3  
CITY HALL  
400 EAST STEWART  
LAS VEGAS, NV 89101



U.S. POSTAGE

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METER 000000

JAMES MONTEL CHAPPELL  
839 N LAMB #125  
LAS VEGAS, NV 89110

CASE #: C 0264625 A  
DATE OF OFFENSE: 05/29/95  
CHARGE: PETIT LARCENY

COURT DATE: 06/30/95  
COURT TIME: 10:30 AM

CASE #: C 0264625 B  
DATE OF OFFENSE: 05/29/95  
CHARGE: UNLAWFUL POSSESSION OF DRUG

COURT DATE: 06/30/95  
COURT TIME: 10:30 AM

CASE #: C 0267095 A  
DATE OF OFFENSE: 06/26/95  
CHARGE: PETIT LARCENY

COURT DATE: 06/30/95  
COURT TIME: 10:30 AM

750801-1351  
FRONT OF  
ITEM #3  
M4725W

GREETINGS,

OUR RECORDS INDICATE THAT YOUR CASE IS SCHEDULED FOR  
A DATE WHEN THE COURT IS NOT IN SESSION.

YOUR CASE HAS, THEREFORE, BEEN RESET TO THE DATE AND  
TIME ON THE FRONT OF THIS POSTCARD. YOU MUST COMPLETE  
YOUR COURT OBLIGATION ON THE DATE INDICATED AS FAILURE  
TO DO SO COULD RESULT IN A WARRANT FOR YOUR ARREST.

BACK OF  
ITEM #3  
M4725W  
950831-1351

# EXHIBIT 145

JChappell CORA005439

CHRISTOPHER R. ORAM, LTD.  
520 SOUTH 4TH STREET | SECOND FLOOR  
LAS VEGAS, NEVADA 89101  
TEL 702.384-5563 | FAX 702.974-0623

1 0001  
2 CHRISTOPHER R. ORAM, ESQ.  
3 Nevada State Bar #004349  
4 520 S. Fourth Street, 2nd Floor  
5 Las Vegas, Nevada 89101  
6 (702) 384-5563  
7  
8 Attorney for Defendant  
9 JAMES CHAPPELL

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

FEB 15 2 55 PM '12

*[Signature]*  
CLERK OF THE COURT

\*\*\*\*\*

9 THE STATE OF NEVADA,  
10 Plaintiff,  
11 vs.  
12 JAMES CHAPPELL,  
13 Defendant.

CASE NO. C131341  
DEPT. NO. XXV

MOTION FOR AUTHORIZATION TO OBTAIN EXPERT SERVICES AND FOR  
PAYMENT OF FEES INCURRED HEREIN.

16 COMES NOW, Defendant, JAMES CHAPPELL, by and through his attorney,  
17 CHRISTOPHER R. ORAM, ESQ., hereby requests this Honorable Court to issue an order  
18 appointing an expert for Mr. Chappell. Defendant also requests on Order authorizing payment  
19 in excess of the statutory maximum three hundred dollars (\$300.00), not to exceed three thousand  
20 dollars (\$3,000.00) per expert unless prior Court approval is granted.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

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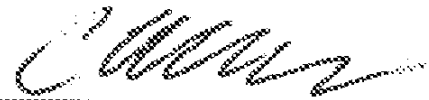
28

CHRISTOPHER R. ORAM, LTD.  
520 SOUTH 4TH STREET | SECOND FLOOR  
LAS VEGAS, NEVADA 89101  
TEL. 702.384-5563 | FAX. 702.974-0623

This motion is made and based pleadings and papers on file herein, the affidavit of counsel attached hereto, as well as any oral arguments of counsel adduced at the time of hearing.

DATED this 14<sup>th</sup> day of February, 2012.

Respectfully submitted



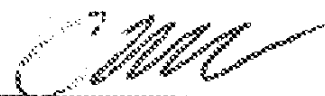
CHRISTOPHER R. ORAM, ESQ.  
Nevada Bar #004349  
520 S. Fourth Street, 2nd Floor  
Las Vegas, Nevada, 89101

Attorney for Defendant  
JAMES CHAPPELL

NOTICE OF MOTION

YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the foregoing MOTION FOR AUTHORIZATION TO OBTAIN EXPERT SERVICES AND FOR PAYMENT OF FEES INCURRED HEREIN on for hearing on the 28 day of February, 2012, at the Clark County Courthouse, 200 Lewis Avenue in District Court, Department XXV at the hour of 9.m. or as soon thereafter as counsel may be heard.

Respectfully submitted



CHRISTOPHER R. ORAM, ESQ.  
Nevada Bar # 004349  
520 S. Fourth Street, 2nd Floor  
Las Vegas, NV 89101

Attorney for Defendant  
JAMES CHAPPELL



## POINTS AND AUTHORITIES

Nevada Revised Statute 7.135 states:

Reimbursement for expenses; employment of investigative, expert or other services: The attorney appointed by a magistrate or district court to represent a defendant is entitled, in addition to the fee provided by N.R.S. 7.125 for his services to be reimbursed for expenses reasonably incurred by him in representing the defendant and may employ, subject to the prior approval of the magistrate or the district court in an ex parte application, such investigative, expert or other services as may be necessary for an adequate defense. Compensation to any person furnishing such investigative, expert or other services must not exceed \$300.00, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is:

1. Certified by the trial judge of the court, or by the magistrate if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation of services of an unusual character or duration; and
2. Approved by the presiding judge of the judicial district in which the attorney was appointed . . .

In the instant case, Mr. Chappell is currently in his post-conviction proceedings on charges of murder. In light of the seriousness of the capital conviction of Mr. Chappell, and the tasks that need to be completed in order to properly raise issues on behalf of Mr. Chappell, I believe it is necessary that experts be permitted to act in the capacity for Mr. Chappell through his post-conviction proceedings.

First, an expert is needed to perform a P.E.T. scan. In the instant case, the defense presented evidence in mitigation regarding the defendant's environment. However, the defense never had the defendant's brain properly analyzed. It was incumbent upon the defense to have the defendant properly analyzed.

A Positron Emission Tomography Scan (PET Scan) is a nuclear medicine imaging technique which produces a three dimensional picture of the functional process in the body. PET Neuroimaging is based on an assumption that areas of high radioactivity are associated with brain activity. What is actually measured indirectly is the flow of blood to different parts of the brain, which is generally believed to be correlated, and has been measured using the tracer oxygen. It can also assist in examining links between specific psychological processes or disorders in brain activity ("A Close look into the Brain," Julich Research Center, 29 April 2009.)

In the instant case, the defense should have investigated in an effort to determine whether Mr.

1 Chappell suffered from internal difficulties within the brain. A review of the file fails to reveal that  
2 counsel attempted to obtain an analysis of Mr. Chappell's brain. Mr. Chappell is currently requesting  
3 funding to conduct this testing.

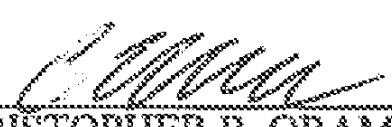
4 A second expert is needed to perform a full neurological exam on Mr. Chappell in order  
5 to determine any additional issues that may be raised on his behalf. Over ten years had passed  
6 since Mr. Chappell had been tested prior to his third penalty phase.

7 Additionally, a third expert is needed to determine the possible effects of Fetal Alcohol  
8 Spectrum Disorder on Mr. Chappell. Fetal Alcohol Spectrum Disorders are a group of disorders that  
9 can occur in a person who's mother drank alcohol during pregnancy. The effects can include physical  
10 problems and problems with behavior and learning. There was evidence that Mr. Chappell's mother  
11 may have been addicted to drugs and alcohol. A proper investigation should have been conducted to  
12 determine whether James was born to a mother who was ingesting narcotics and/or alcohol during  
13 her pregnancy. There is no indication in the voluminous file that counsel investigated the possibility  
14 of fetal alcohol syndrome.

15 WHEREFORE, for the foregoing reasons, Mr. Chappell requests this court to authorize an  
16 order granting the services of experts to perform a P.E.T. Scan, a neurological exam, and testing for  
17 Fetal Alcohol Syndrome. Additionally, for this Court to allow payment for his/her fees in excess of  
18 the statutory maximum three hundred dollars (\$300.00), not to exceed three thousand dollars  
19 (\$3,000.00) per expert unless prior Court approval is granted.

20 DATED this 14<sup>th</sup> day of February, 2012.

21 Respectfully submitted:

22   
23 CHRISTOPHER R. ORAM, ESQ.  
24 Nevada State Bar #004349  
25 520 S. Fourth Street, 2nd Floor  
26 Las Vegas, Nevada 89101

27 Attorney for Defendant  
28 JAMES CHAPPELL

Jr.  
JChappell CORA005443

CHRISTOPHER R. ORAM, LTD.  
520 SOUTH 4TH STREET | SECOND FLOOR  
LAS VEGAS, NEVADA 89101  
TEL. 702.384-5563 | FAX. 702.974-0623

AFFIDAVIT OF CHRISTOPHER R. ORAM, ESQ.  
IN SUPPORT OF MOTION FOR AUTHORIZATION TO OBTAIN EXPERT SERVICES  
AND FOR PAYMENT OF FEES INCURRED HEREIN

STATE OF NEVADA        )  
                                  )ss:  
COUNTY OF CLARK        )

CHRISTOPHER R. ORAM, ESQ., having been duly sworn, deposes and says:

1. Your Affiant is an attorney duly licensed to practice law in the State of Nevada.

2. James Chappell by and through his attorney, CHRISTOPHER R. ORAM, ESQ., hereby requests this Honorable Court to issue an order appointing an expert for Mr. Chappell Defendant also requests on Order authorizing payment in excess of the statutory maximum three hundred dollars (\$300.00), not to exceed three thousand dollars (\$3,000.00) per expert unless prior Court approval is granted.

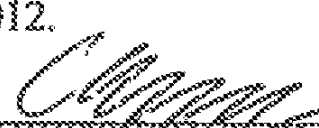
3. In the instant case, Mr. Chappell is currently in his post-conviction proceedings on charges of murder. In light of the seriousness of the capital conviction of Mr. Chappell, and the tasks that need to be completed in order to properly raise issues on behalf of Mr. Chappell, I believe it is necessary that experts be permitted to act in the capacity for Mr. Chappell through his post-conviction proceedings.

4. Mr. Chappell requests this court to authorize an order granting the services of an expert to perform a P.E.T. Scan, a neurological exam, and testing for Fetal Alcohol Syndrome. Additionally, for this Court to allow payment for his/her fees in excess of the statutory maximum three hundred dollars (\$300.00), not to exceed three thousand dollars (\$3,000.00) per expert unless prior Court approval is granted.

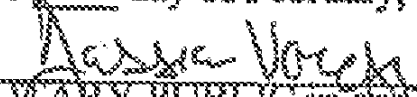
5. That this motion is being made in good faith and not for purposes of delay.

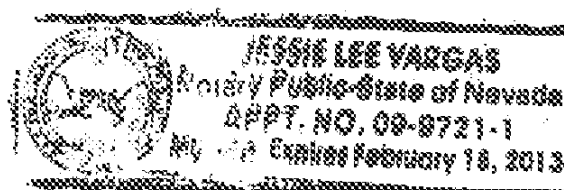
6. Further your affiant sayeth naught.

DATED this 14<sup>th</sup> day of February, 2012.

  
CHRISTOPHER R. ORAM, ESQ.

SUBSCRIBED AND SWORN to before me  
this 14<sup>th</sup> day of February, 2012.

  
NOTARY PUBLIC in and for said  
County and State



JChappell CORA005444

CHRISTOPHER R. ORAM, LTD.  
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LAS VEGAS, NEVADA 89101  
TEL 702.384-5563 | FAX 702.974-0623

1 ROC  
2 CHRISTOPHER R. ORAM, ESQ.  
3 Nevada State Bar #004349  
4 520 S. Fourth Street, 2nd Floor  
5 Las Vegas, Nevada 89101  
6 (702) 384-5563  
7  
8 Attorney for Defendant  
9 JAMES CHAPPELL

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

CASE NO. C131341  
DEPT. NO. XXV

11 vs.

12 JAMES CHAPPELL,  
13  
14 Defendant.

RECEIPT OF COPY

16 The above MOTION FOR AUTHORIZATION TO OBTAIN EXPERT SERVICES  
17 AND FOR PAYMENT OF FEES INCURRED HEREIN is hereby acknowledged this 5 day  
18 of February, 2012.

Clark County District Attorney

By

200 Lewis Avenue  
Las Vegas, Nevada 89155

# EXHIBIT 146

## DISTRICT COURT

CLARK COUNTY, NEVADA

FILED IN OPEN COURT

ORIGINAL

\*\*\*\*\*

OCT 24 1996 19

LORETTA BOWMAN, CLERK

BY

Deputy

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C131341

Vs

DEPT. NO. VII

JAMES MONTELL CHAPPELL,

DOCKET P

Defendant.

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

THURSDAY, OCTOBER 24, 1996, 10:15 A.M.

PENALTY PHASE - VOLUME IV

## 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

PATSY K. SMITH, OFFICIAL COURT REPORTER

CE

1 THURSDAY, OCTOBER 24, 1996, 10:15 A.M.

2 THE COURT: We are on the record outside the  
3 presence of the jury. The presence of the defendant is  
4 waived by both parties?

5 MR. BROOKS: Defense does, your Honor.

6 MR. HARMON: Yes, your Honor.

7 THE COURT: The jury has presented a written  
8 question, which has been marked as Court's Jury Exhibit No.  
9 1. The question is as follows, "Please come in and explain  
10 to us what exactly our responsibility is as a jury. Are we  
11 supposed to be investigators? Are we here to judge the  
12 victim or the State's cause? What do we do about a juror  
13 who insists on being an investigator?" Signed Wendy Hill,  
14 foreperson, October 24th, 1996.

15 The parties have agreed that the Court may  
16 read to the jury a Supplemental Instruction and leave it  
17 with the jury, which will state the following.

18 "As jurors, your obligation is to find the  
19 facts pursuant to the Court's Jury Instructions. Your  
20 findings must be based on your analysis of the evidence  
21 introduced into court. You are not investigators.

22 As to your question as to whether you are to  
23 judge the victim or the State's cause, your  
24 responsibilities are to follow the Court's Instructions and  
25 apply them to the facts presented."

PATSY K. SMITH, OFFICIAL COURT REPORTER

1                   At this time, I will return the Court's  
2   Supplemental Jury Instruction, which will be entitled No.  
3   1, Supplemental Instruction No. 1 and simply read it to the  
4   jury off the record and supply it to the -- and leave this  
5   Instruction with the jury.

6                   MR. HARMON: That's fine with the State,  
7   your Honor.

8                   MR. BROOKS: That's fine with the defense,  
9   your Honor.

10                  THE COURT: All right.

11                  MR. BROOKS: Judge, is it possible at some  
12   point today a copy of both those will be made available to  
13   us?

14                  THE COURT: We will make them right now.

15                  MR. BROOKS: Okay, great.

16

17                  (Off the record at 10:17 a.m. and back on  
18   the record at 2:27 p.m.)

19

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

22                  MR. HARMON: Yes, your Honor.

23                  MR. BROOKS: Defense does, your Honor.

24                  THE COURT: Ladies and gentlemen of the  
25   jury, I understand that you have reached a verdict; is that

PATSY K. SMITH, OFFICIAL COURT REPORTER



1 correct?

2 THE JURY: (In Unison) Yes.

3 THE COURT: I will now read the verdicts of  
4 the jury into the record.

5 "District Court, Clark County, Nevada,  
6 State of Nevada, plaintiff, versus James Montell Chappell,  
7 defendant. Case No. C131341, Department No. VII, Docket  
8 P.

9 Special verdict: We the jury in the above  
10 entitled case having found the defendant, James Montell  
11 Chappell, guilty of Count III, murder of the first degree,  
12 designate that the mitigating circumstance or  
13 circumstances, which have been checked below, have been  
14 established.

15 The murder was committed while the defendant  
16 was under the influence of extreme mental or emotional  
17 disturbance and any other mitigating circumstances."

18 Those two blocks have been checked by the  
19 jury.

20 "Special verdict: State of Nevada,  
21 plaintiff, versus James Montell Chappell, defendant.  
22 District Court, Clark County, Nevada, Case No. C131341,  
23 Department VII, Docket P.

24 Special verdict: We the jury in the above  
25 entitled case having found the defendant, James Montell

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Chappell, guilty of Count III, murder of the first degree,  
2 designate the aggravating circumstance or circumstances,  
3 which have been checked below, have been established beyond  
4 a reasonable doubt.

5 The murder was committed while the person  
6 was engaged in the commission of or an attempt to commit  
7 any burglary and/or home invasion.

8 The murder was committed while the person  
9 was engaged in the commission of or an attempt to commit  
10 any robbery.

11 The murder was committed while the person  
12 was engaged in the commission of or an attempt to commit  
13 any sexual assault.

14 District Court, Clark County, Nevada, State  
15 of Nevada, plaintiff, versus James Monte Chappell,  
16 defendant. Case No. C131341, Department VII, Docket P.

17 We the jury in the above entitled case  
18 having found the defendant, James Montell Chappell, guilty  
19 of Count III, murder of the first degree and having found  
20 that the aggravating circumstance or circumstances outweigh  
21 any mitigating circumstance or circumstances impose a  
22 sentence of death.

23 Dated at Las Vegas, Nevada, this 24th day of  
24 October, 1996, Wendy L. Hill, foreperson."

25 The two special verdicts that have been read

PATSY K. SMITH, OFFICIAL COURT REPORTER

JChappell-8JDC2467

1 into the record have also been signed this 24th day of  
2 October, 1996, by Wendy L. Hill, foreperson.

3 Ladies and gentlemen of the jury, are these  
4 your verdicts, so say you one, so say you all?

5 THE JURY: (In Unison) Yes.

6 THE COURT: Either of the parties wish to  
7 have the jury polled?

8 MR. BROOKS: Defense will, your Honor.

9 THE COURT: All right. The clerk will now  
10 pole the jury.

11 THE CLERK: Denise Wright Parr, are those  
12 your verdicts as read?

13 A Yes, they are.

14 Q Kenneth Edward Gritis, are those your  
15 verdicts as read?

16 A Yes, they are.

17 Q Jerry Wayne Ewell, are those your  
18 verdicts as read?

19 A Yes.

20 Q Cheryl Lynn Wells, are those your  
21 verdicts as read?

22 A Yes.

23 Q Jim Blake Tripp, are those your  
24 verdicts as read?

25 A Yes.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Kellyanne Bentley Taylor, are those  
2 your verdicts?

3 A No.

4 A VOICE: He missed the second page of the  
5 aggravator.

6 THE COURT: Oh.

7 The murder involved torture or depravity of  
8 mind. Excuse me. That blank has been checked. The jury  
9 is correct.

10 (Off the record discussion not reported.)

11 THE COURT: Go ahead and start over.

12 THE CLERK: Denise Wright Parr, are those  
13 your verdicts as read?

14 A Yes, they are.

15 Q Kenneth Edward Gritis, are those your  
16 verdicts as read?

17 A Yes, they are.

18 Q Jerry Wayne Ewell, are those your  
19 verdicts as read?

20 A Yes.

21 Q Cheryl Lynn Wells, are those your  
22 verdicts as read?

23 A Yes, they are.

24 Q Jim Blake Tripp, are those your  
25 verdicts as read?

PATSY K. SMITH, OFFICIAL COURT REPORTER

JChappell-8JDC2469

1 A Yes, they are.

2 Q Kellyanne Bentley Taylor, are those

3 your verdicts as read?

4 A Yes.

5 Q Bruce Todd Larsen, are those your

6 verdicts as read?

7 A Yes.

8 Q Mark Gregory Massar, are those your

9 verdicts as read?

10 A Yes.

11 Q Danna Terry Yates, are those your

12 verdicts as read?

13 A Yes.

14 Q Glenn Eugene Fittro, are those your

15 verdicts as read?

16 A Yes.

17 Q Kenneth Roy Fitzgerald, are those your

18 verdicts as read?

19 A Yes.

20 Q Wendy Lynn Hill, are those your

21 verdicts as read?

22 A Yes.

23 THE COURT: Is there anything further from

24 the parties at this time?

25 MR. HARMON: No, your Honor.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 MR. BROOKS: Not from the defense, your  
2 Honor.

3 THE COURT: Ladies and gentlemen of the  
4 jury, you are here by discharged from jury service in this  
5 rotation with the thanks of the Court and Clark County. I  
6 know this has been a difficult process for you and a  
7 lengthy one, but your commitment to this process was  
8 essential to the resolution of this matter.

9 You are hereby released from your  
10 admonishment not to discuss this case with anyone,  
11 yourselves or any third parties. You are also under no  
12 obligation to speak to anyone about the verdicts that you  
13 have rendered in this case. I would, however, request that  
14 if the representatives of the parties would wish to talk to  
15 you or representatives of the press want to interview with  
16 you about this matter, you are free to do so. I would  
17 encourage you to do so. It does assist the process if you  
18 do provide that information, but you don't have to. If  
19 anyone wishes to or seeks to or insists upon discussing  
20 these verdicts with you over your protestations or your  
21 objections, please report that fact to me.

22 Ladies and gentlemen, you are now  
23 discharged. I would ask that you remain behind in the jury  
24 room for a few moments so that I can talk to you, not  
25 necessarily about the deliberations, but about anything you

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 might have that would be of assistance to us in improving  
2 this process. It is a process that is run and involved by  
3 human beings. It is fraught, but it is the best system we  
4 have and, in our opinion, the best system in the world for  
5 resolving these kinds of disputes, but if you would be so  
6 kind to remain behind a few moments, you don't have to of  
7 course, but I would appreciate it and we will be at ease  
8 while the bailiff conducts you from the courtroom.

9  
10 (At this time the jury left the courtroom.)

11  
12 THE COURT: Anything further from the  
13 parties at this time outside the presence of the jury?

14 MR. BROOKS: We need a sentencing date, your  
15 Honor.

16 THE COURT: Okay.

17 THE CLERK: December 11 at 9:00 a.m.

18 THE COURT: All right, the verdicts of the  
19 jury will now be a part of the Court record. This matter  
20 is adjourned, but before I do that, I would like at this  
21 point to indicate my thanks to the attorneys in this matter  
22 for a very well tried case. It was a difficult case for  
23 everyone obviously, but the Court's view is that the  
24 attorneys in this case acquitted themselves in the highest  
25 tradition of our profession.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 MR. HARMON: Thank you, Judge.

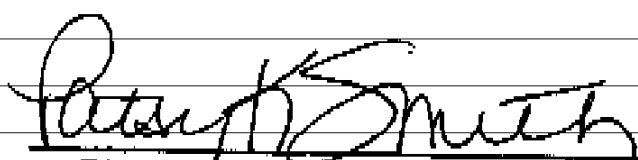
2 MS. SILVER: Thank you.

3 THE COURT: With that, the Court will  
4 adjourn.

5  
6 (Off the record at 2:35 p.m.)

7  
8 \* \* \* \* \*

9  
10 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

11  
12   
13 PATSY K. SMITH, C.C.R. #190

14  
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25

PATSY K. SMITH, OFFICIAL COURT REPORTER



# EXHIBIT 147

JChappell CORA006863

FILED

JAN 17 9 18 AM '97

*Lucia L...*  
CLERK

1 NOAS  
2 MORGAN D. HARRIS  
3 CLARK COUNTY PUBLIC DEFENDER  
4 Nevada Bar #1879  
5 309 South Third Street, Suite #226  
6 Las Vegas, Nevada 89155  
7 (702) 455-4685  
8 Attorney for Defendant  
9

DISTRICT COURT  
CLARK COUNTY, NEVADA

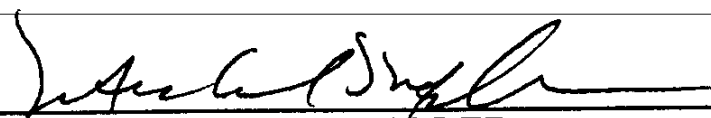
10	THE STATE OF NEVADA,	)	Case No. C131341
11	Plaintiff,	)	Dept. No. VII
12	vs.	)	<b>NOTICE OF APPEAL</b>
13	JAMES MONTELL CHAPPELL,	)	
14	Defendant.	)	

15  
16 TO: THE STATE OF NEVADA  
17 STEWART BELL, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA and  
18 DEPARTMENT VII OF THE EIGHTH JUDICIAL DISTRICT COURT OF  
19 THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.  
20 NOTICE is hereby given that JAMES MONTELL CHAPPELL,  
21 presently incarcerated in the Nevada State Prison, appeals to the  
22 Supreme Court of the State of Nevada from the judgment entered  
23 against said Defendant on the 30<sup>th</sup> day of December, 1996, whereby he  
24 was convicted of count I - burglary and sentenced to a minimum of  
25 forty-eight (48) months to a maximum of one hundred-twenty (120)  
26 months in the Nevada State Prison; count II - robbery with use of a  
27 deadly weapon and sentenced to a minimum of seventy-two (72) months  
28 to a maximum of one hundred-eighty (180) months on the robbery  
charge plus a consecutive minimum of seventy-two (72) months to a

1 maximum of one hundred-eighty (180) months for use of a deadly  
2 weapon to run consecutive to count I; count III - first degree  
3 murder with use of a deadly weapon and sentenced to death to be  
4 served consecutively to counts I and II; credit for time served in  
5 the amount of 192 days..

6 DATED this 16<sup>th</sup> day of January, 1997.

7 MORGAN D. HARRIS  
8 CLARK COUNTY PUBLIC DEFENDER

9  
10 By   
11 MICHAEL L. MILLER  
12 NEVADA BAR #0836  
13 DEPUTY PUBLIC DEFENDER  
14 309 SOUTH THIRD STREET, SUITE #226  
15 LAS VEGAS, NEVADA 89155-2610  
16 (702) 455-4685

17  
18  
19  
20  
21  
22  
23 RECEIPT OF A COPY of the foregoing Notice of Appeal is  
24 hereby acknowledged this 16<sup>th</sup> day of January, 1997.

25 STEWART L. BELL  
26 CLARK COUNTY DISTRICT ATTORNEY

27 MARGIE ENGLISH

28 By \_\_\_\_\_

# EXHIBIT 148

Chappell 8JDC-EVVAULT243

## DISTRICT OFFICES

1901 CORCORAN AVENUE  
RENO, NEVADA 89502  
(702) 688-1000

A. A. CAMPOS BUILDING  
215 E. BONANZA ROAD  
LAS VEGAS, NEVADA 89158  
(702) 486-3001

3920 E. MAIN STREET  
ELKO, NEVADA 89801  
(702) 738-4088

119 E. LONG STREET  
CARSON CITY, NEVADA 89710  
(702) 887-5045

## STATE OF NEVADA



DEPARTMENT OF  
MOTOR VEHICLES AND PUBLIC SAFETY  
DIVISION OF PAROLE AND PROBATION

BOB MILLER  
GOVERNOR

JAMES P. WELLER  
DIRECTOR

RICHARD E. WYETT, CHIEF  
CAPITOL COMPLEX  
1445 HOT SPRINGS ROAD, NO. 104  
CARSON CITY, NEVADA 89710  
(702) 887-6040

RECEIVED

APR 24 1995

NAME: JAMES CHAPPELL

DATE: 4-18-95

SS#: 373-80-██████

R/NR: R DEPT: XV

CC#: 0126882

SENTENCE DATE: 4-27-95

THE HON: SALLY L. LOEHRER

OFFSE DATE: 2-18-95

J/DIS: 8TH DEPT: XV COUNTY: CLARK

ARREST DATE: 2-18-95

COUNSEL: DAVID GRAUMAN, DPD

INFORMATION DATE: 3-22-95

DIST ATTY: GERALD J. GARDNER, DDA

CONVICTED: 3-28-95, BY  
GUILTY PLEA

CO-DEF: NONE

OFFENSE/NRS: POSSESSION OF BURGLARY TOOLS (GM); NRS 205.080, 193.140: Not more than 1 year in the county jail or by a fine of not more than \$2,000, or by both fine and imprisonment.

PLEA NEGOTIATION: The State reserves the right to argue at rendition of sentence. The State will agree to dismiss charges of Burglary and Under the Influence of Controlled Substance after rendition of sentence.

ADD: 839 North Lamb #125, Las Vegas, Nevada  
89110

FBI#: 248 918 JA6

DOB: 12-27-██████

AGE: 25

SID#: None listed

LVMPD#: 1212860

POB: Lansing, Michigan

RACE/SEX: BMA

HT/WT: 5'11"/200

HAIR/EYES: Black/Brown

ALIEN: N/A

TATTOOS/SCARS: None listed

ILLEGAL: N/A

REG#: N/A

COUNTRY: N/A

CUSTODY STATUS: In Custody,  
CCDC

THIS REPORT NOT TO BE REPRODUCED OR  
RELEASED WITHOUT THE APPROVAL OF  
ST. OF NV. DEPT. OF PUBLIC SAFETY  
RELEASE 7/1

34/

IDENTIFICATION  
EXHIBIT

PRE-SENTENCE REPORT  
JAMES CHAPPELL  
CC#C126882

PAGE 2

AKA's: James Montel Chappell, James M. Chappell.

JAIL CREDIT: 68 Days Total 2-18-95 through 4-27-95 (CCDC)

---

PRIOR RECORD AS DETERMINED BY DIVISION OF PAROLE AND PROBATION

ARRESTS: 11

OUTSTANDING WARRANTS: 4

STATES: Nevada

CONVICTIONS:	FEL: 0	MISD: 5	
	JAIL: 3	PRISON: 0	
PROBATION:	COMPL: 0	FAIL: 0	ACTIVE: 0
PAROLES:	COMPL: 0	FAIL: 0	ACTIVE: 0

CRIMINAL HISTORY:

Records of the Las Vegas Metropolitan Police Department and the National Crime Information Center reflect the following information:

ADULT:

ARREST DATE	OFFENSE	DISPOSITION
5-15-88 (Lansing, Michigan Police Department)	Motor Vehicle/Unlawful Driving Away (F)	11-12-88, Pled guilty to Motor Vehicle/Unlawful Use (M), 6 months jail.
1-20-95 (LVMPD)	Citation-Petty Larceny (M) FTA: 2-24-95	5 Days jail.
2-18-95 (LVMPD)	1. Burglary (F) 2. Under the Influence of Controlled Substance (F) 3. Possession of Burglary Tools (GM)	Instant offense CC#C126882, 3-28-95, pled guilty to Possession of Burglary Tools (GM), sentencing 4-27-95 in Department XV.

Mr. Chappell currently has outstanding warrants from the City of Las Vegas for Battery Domestic Violence, Non Resident Privilege Suspended, Operate Unregistered Vehicle and No Proof of Insurance. The total bail on the warrants is \$4,420. The defendant has been convicted of the following misdemeanor offenses which were satisfied with small fines or short jail sentences: Domestic Violence/Assault (Reported by defendant), Narcotic Paraphernalia and Assault or Assault and Battery.

The defendant has also been arrested on the following charges for which no

JChappell 8JDC-EVVAULT245

**PRE-SENTENCE REPORT**  
**JAMES CHAPPELL**  
**CC#C126882**

PAGE 3

prosecution was pursued or no disposition is noted: Possession of Narcotic Drug (2), Possession of Marijuana, Criminal Trespass (FTA), Possession of Narcotics For Sale, Under the Influence of Controlled Substance (FTA-1-9-95) and Failure to Use Seatbelt.

**OFFENSE REPORT:** Records of the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office reflect that the instant offense occurred substantially as follows:

On February 18, 1995 an officer of the Las Vegas Metropolitan Police Department responded to the K-Mart Store at 5050 Charleston regarding a suspect in custody for Petty Larceny. The officers spoke to the store security officers who reported that the defendant had been observed removing security packaging from items with pliers then putting cassette tapes and clothes under his own clothing. He then attempted to leave the store, walking past open cash registers without paying for the items. The security officers apprehended the defendant and placed him in custody while awaiting police officers. A search of the defendant recovered the cassettes, clothes, two pair of pliers, three screw drivers and a broken glass pipe commonly used for smoking cocaine. The store clerk reported that the pliers discovered in the defendant's possession were the same ones he had been observed using to remove packaging from the cassette tapes.

The officer asked the defendant if he entered the store with the intent of stealing the items and he responded "ya, something like that". While interviewing the defendant the officer observed that he was sweating profusely, clenching his teeth, slurring his speech, that his eyes were bloodshot and his eyelids were droopy. Based on these observations the officer asked the defendant when he had smoked cocaine last. The defendant responded "yesterday".

The defendant was placed under arrest, transported to the Clark County Detention Center and booked for Burglary, Under the Influence of Controlled Substance and Possession of Burglary Tools. While at the Clark County Detention Center the defendant consented to have blood drawn by the nurse on duty.

**DEFENDANT STATEMENT:** James Chappell was interviewed by the Division of Parole and Probation at the Clark County Detention Center and provided the attached written statement for the court's consideration. He said that he was "high" on cocaine and did not have any money to obtain more cocaine. An associate suggested he commit the instant offense in return for the drug. He said he went into the store and was placing the merchandise under his clothes when he was observed and then caught on the way out of the store. He said he only wants to get things resolved so he can get back to his girlfriend and their children. He said he now understands that his family is the most important thing to him and he cannot commit crime and be with his family.

**VICTIM INFORMATION:** All merchandise taken from the victim's store was returned to them at the time of the incident so no loss was suffered.

**SOCIAL HISTORY:**

The following social history is as related by the defendant and is unverified

JChappell 8JDC-EVVAULT246

**PRE-SENTENCE REPORT**  
**JAMES CHAPPELL**  
**CC/C126882**

PAGE 4

unless otherwise noted.

**Significant Family Information: (Yes)** The defendant reported that his father abandoned the family while he was an infant and his mother was shot and killed by a police officer when he was about 2 years old. He was then raised by his maternal grandmother who provided a good family life. He was unable to provide any details as to the death of his mother.

**Marital Status:** The defendant has been living in a common-law relationship with the same woman for 9 years now.

**Number of Children:** 3

**Child Support: (No)**                      **Amount:** 0                      **Current:** N/A

**Significant Health Information: (No)**

**Significant Mental Health Information: (No)**

**Alcohol Abuse: (Yes)** The defendant reported he was arrested when he was 17 for Minor in Possession of Alcohol. He reported that he now consumes alcohol in moderation; drinking one 40 ounce beer 3 times per week.

**Controlled Substance Use: (Yes)** Mr. Chappell has been arrested several times for drug related offenses and admits he was under the influence of controlled substances at the time of the instant offense. He said he is not addicted to any drug and plans to remain drug free when released from custody. He has never been involved in any form of substance abuse counseling.

**Education:** The defendant left high school after completing the 10th grade in 1987 at Sexton High School in Lansing, Michigan. He has not completed any formal educational or vocational programs since that time.

**Military: (No)**                      **Branch/Discharge:** N/A

**Residential: (STABLE)**                      **Time in Community:** 4 months.

**Present Employer: (UNEMPLOYED)**

**Previous Employment:** Mr. Chappell reported that he was employed by Ethel M Chocolates from November 1994 through January 1995. Before that he was employed by Pizza Hut in Tucson, Arizona for 5 or 6 months and by Bob's Big Boy for 6 or 7 months.

**Income:** 0                      **Additional Sources:** The defendant is supported primarily by his girlfriend.

**Financial Assets:** None listed.                      **Debts:** None listed.

**Community Supervision Plan:** Mr. Chappell reported that if he is granted the privilege of probation he will continue to reside at 839 North Lamb #125, Las Vegas, Nevada with his girlfriend and their 3 children. He plans to seek full-time employment so he can afford to get married, purchase a home and get a car. He said he plans to stay drug free, get his life together and take



JChappell 8JDC-EVVAULT247

**PRE-SENTENCE REPORT  
JAMES CHAPPELL  
CC/C126882**

PAGE 5

care of his family.

**EVALUATION:** Before the Court for rendition of sentence is the defendant, JAMES CHAPPELL, who has entered a plea of guilty to the gross misdemeanor offense of Possession of Burglary Tools.

Mr. Chappell has been arrested 11 times in the past, sustaining at least 5 misdemeanor convictions. The instant offense is the defendant's most serious involvement with law enforcement to date. His criminal history is primarily made up of theft, battery, and drug related offenses with the conviction in the instant offense resulting from his attempting to steal merchandise to procure cocaine. He admits that he was under the influence of cocaine at the time of the instant offense but claims he does not have a substance abuse problem.

Mr. Chappell was raised in Michigan by his maternal grandmother when his father abandoned the family after the death of the defendant's mother. He failed to complete high school and has not received any educational or vocational training since that time. His work history is sporadic; he has only held three jobs in the last 2 years with the longest term of employment lasting 6 months. Mr. Chappell is unmarried but has been living in a common-law relationship with the same woman for 9 years. He has fathered 3 children from that union.

The defendant appears to be a borderline candidate for successful completion of a period of community supervision, however the added structure imposed upon his life by the conditions of probation could permit the defendant to become a productive member of the community. Therefore, the following recommendation is respectfully submitted for the Court's consideration.

JChappell 8JDC-EVVAULT248

**PRE-SENTENCE REPORT**  
**JAMES CHAPPELL**  
**CC/C126882**

PAGE 6

**RECOMMENDATION:** In addition to the \$25 administrative assessment, it is recommended by the Division of Parole and Probation that the defendant, JAMES CHAPPELL, be sentenced to a term of NINE (9) months in the Clark County Detention Center, such sentence be suspended and the defendant placed on an indeterminate period of probation not to exceed TWO (2) years, under the following special conditions:

1. That the defendant submit to a search of person, residence, vehicle or any property under the defendant's control, at any time deemed necessary by any probation officer for the detection of controlled substances and stolen property.
2. That the defendant enter and complete a substance abuse counseling program, as deemed necessary by the Division of Parole and Probation.
3. That the defendant participate in an adult education program, for a GED, as deemed necessary by the Division of Parole and Probation.
4. That the defendant complete 40 hours of community service work within the first 12 months of probation.
5. That the defendant participate in vocational programming, as deemed necessary by the Division of Parole and Probation.

6. *Fullerton*

Respectfully submitted,

RICHARD E. WYETT, CHIEF

By *[Signature]*  
 Bruce C. Snell, Officer  
 Division of Parole and Probation  
 District IV, Las Vegas, Nevada

APPROVED:

*[Signature]*  
 Amy H. Wright, Unit Manager  
 Court Services Unit I

BCS/rh  
 FY95-3820

## DEFENDANT'S STATEMENT

J. J. J.

Write in your own words the circumstances of your offense. Why you committed the offense, your present feelings about your situation and why you may be suitable for probation. A copy of this statement will be sent to the judge. Write or print clearly. If using a pencil, please write as dark as possible.

I am pleading guilty to burglary tools (am)

I was charged with Burglary, under the influence, & burglary tools, the

Burglary is false, the U.C.S. is false and this burglary tools is false too. But I took the plea, because the other two charges were felonies.

I have "never" been convicted of a felony and never will be.

I'm not a bad person, and never was. I'm a brand new resident of

Las Vegas and I feel real bad about myself. I haven't been in jail

this long, in about 6 years, the longest I've been in jail is 6 months

and I won't ever commit another crime in my life. I can't deal with

this type of life. I stole 4 cassette tapes and a \$10 shirt & \$10 pants. it only

added up to no more than \$60 dollars. I committed petty larceny. But I

ran into the wrong metro officer. She treated me very bad. I'm in

the best city in the world and look at me now! I know now that

Las Vegas is not putting up with any broken laws. And I can honestly

assure you I won't do nothing wrong again. I've only been here

4 months. I'm gonna get a job and stay out of "any" troubles.

I promise...

Signature

James Chappell

Date

Mar. 30, 1995

JChappell 8JDC-EVVAULT250

**DIVISION OF PAROLE AND PROBATION  
VIOLATION REPORT**

TO THE HONORABLE SALLY L. LOEHRER  
EIGHTH JUDICIAL DISTRICT COURT  
DEPARTMENT XV  
CLARK COUNTY, NEVADA

September 6, 1995

NAME: CHAPPELL, James  
DOB: 12-27-  
RACE/SEX: BMA  
TERM: NTE 2 YEARS

FILE#: V94/95-1909  
CC#: C126882  
SUPERVISION GRANT: 4-27-95  
EXPIRATION: 4-27-97

CRIME: POSSESSION OF BURGLARY TOOLS (GM)  
SENTENCE: 1 YEAR CLARK COUNTY DETENTION CENTER, SUSPENDED  
=====

**I. VIOLATION: Rule #8 - Laws and Conduct and #11 - Special Condition (2) Enter/complete substance abuse counseling**

On September 1, 1995, James Chappell was arrested by the Las Vegas Metropolitan Police Department and charged with Murder (F) and Grand Larceny Auto (F). The subject was placed in custody in the Clark County Detention Center and bail has not as yet been set. He appeared for arraignment on September 5, 1995.

On August 31, 1995, Mr. Chappell was referred to E.O.B. for an eligibility interview for admission into their inpatient drug counseling program and to return to the offices of Parole and Probation for referral to the Salvation Army's inpatient drug treatment program. Mr. Chappell failed to report as directed.

Staffing Reviews (Dates) 6-27-95, 9-1-95

Last reported on 6-15-95

Residence transient

Employment/Program unemployed

Fees paid through 3-95 with an outstanding balance of \$120

Current gang activity none verified

**II. WHEREABOUTS AND AVAILABILITY:**

A Hold was placed on September 2, 1995. The subject is in custody in the Clark County Detention Center.

JChappell 8JDC-EVVAULT251

CHAPPELL, James  
V94/95-1909

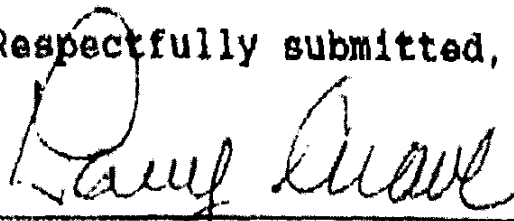
Page 2

**III. RECOMMENDATION:**

It is recommended that the subject's probation be revoked.

Respectfully submitted,

Approved:



Larry E. Arave, Officer  
District IV, Las Vegas, NV



William C. Duffey, Jr.  
Unit Manager

LEA/bas

JChappell 8JDC-EVVAULT252

## ARREST STAFFING SUMMARY

NAME Chappell James OFFENDER CATEGORY C FILE# V94/95-1909  
 IS# 373-80- [REDACTED] DISTRICT 4

## VIOLATION BEHAVIOR

NEW ARREST: LC 1  
 (Refer to Matrix)

CASE HISTORY: Since grant of probation, E has refused to participate in his probation, 4/27/95. E has had numerous contacts with law enforcement as well as a probation violation action.

REASON FOR STAFFING: E has been arrested by LUMPD for murder of his girlfriend and is in custody.

## SANCTIONS

☒ HOLD ORDER ☐ WALK-IN VIOLATION REPORT ☐ INCIDENT REPORT

## PROFESSIONAL OVERRIDE

MITIGATING CIRCUMSTANCES (+) \_\_\_\_\_

AGGRAVATING CIRCUMSTANCES (+) \_\_\_\_\_

OFFICER'S NAME Larry Arave CID# 687 DATE: 9/6/95  
 SUPERVISOR'S NAME Paul L. P.H. Ellis CID# 539 DATE: 9/6/95

JChappell 8JDC-EVVAULT253

STATE OF NEVADA  
DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY  
DIVISION OF PAROLE AND PROBATION

## NOTICE OF PRELIMINARY INQUIRY HEARING

You James Chappell Number VA195-1909

are advised that an informal Preliminary Inquiry Hearing pertaining to the following alleged violation(s) of your Parole/Probation condition(s) shall be conducted to determine if you shall be held to answer said allegation(s) before the Court/Board at a formal Revocation Hearing:

Rule No.	Alleged Violation
8	Laws and Conduct
11(2)	Special Condition; Inpatient substance abuse counseling.

Your Preliminary Inquiry Hearing is scheduled for 9-15-95 1:30 pm  
CEDC  
Date Time Location

At this Hearing, you have these due process rights: to speak in your own behalf; retain counsel; present letters, documents, or persons who can present relevant information, and; question any person giving adverse information against you, unless in the opinion of the hearing officer the individual would be subjected to risk of harm by disclosure of his/her identity.

You may waive this Preliminary Inquiry Hearing if you desire. Should you waive, your action shall in no way be considered an admission of guilt.

Please initial the appropriate response:

..... I desire to have a Preliminary Inquiry Hearing at the date, time, and location indicated above.

..... I will retain.....  
Name  
..... to represent me.  
Address

..... I wish to present the following witness(es) at my own expense:

Name	Address
Name	Address
Name	Address

WTC I waive my right to a Preliminary Inquiry Hearing and request to present my case directly to the Court/Board.

WTC I have received a copy of the alleged violation(s) of Parole/Probation, and this, my Notice of Rights.

James Chappell 9-8-95  
Signature of Person Number Date  
Harry Alvar Officer 9-8-95  
Signature of Witness Address Date

ORIGINAL (White) - Court/Board  
WHITE - Compact Extra  
YELLOW - Defendant  
BLUE - Counsel  
PINK - District

Chappell 8JDC-EVVAULT254

Judy Loehrer

P. Nevada  
8/1DIVISION OF PAROLE AND PROBATION  
VIOLATION REPORTTO THE HONORABLE SALLY L. LOEHRER  
EIGHTH JUDICIAL DISTRICT COURT  
DEPARTMENT XV  
CLARK COUNTY, NEVADA

June 30, 1995

NAME: CHAPPELL, James  
DOB: 12-27-  
RACE/SEX: BMA  
TERM: NTE 2 YEARSFILE#: V94/95-1909  
CC#: C126882  
SUPERVISION GRANT: 4-27-95  
EXPIRATION: 4-27-97CRIME: POSSESSION OF BURGLARY TOOLS  
SENTENCE: 1 YEAR CLARK COUNTY DETENTION CENTER, SUSPENDED  
=====I. VIOLATION: Rule #8 - Laws and Conduct

On May 29, 1995 Mr. Chappell was cited for Petty Larceny and Possession of Narcotic Paraphernalia. The subject was again cited on June 11, 1995 for Petty Larceny, an incident separate from the above Petty Larceny citation. Dispositions or future Court dates for those incidents are unknown.

On June 1, 1995, Mr. Chappell was arrested by the Las Vegas Metropolitan Police Department for Battery/Domestic Violence (M). The subject was placed in custody in the Clark County Detention Center. He was released on his own recognizance on June 7, 1995. Future Court dates or disposition for that incident are unknown.

Additionally, on June 26, 1995 Mr. Chappell was arrested by the Las Vegas Metropolitan Police Department and charged with Under The Influence Of Controlled Substance (95F03944X), (a Bench Warrant). The subject was placed into the Clark County Detention Center and bail was set at \$3,000. The above Bench Warrant stemming from an incident that originated November 14, 1994, for which he was also remanded to custody for Failure To Appear on February 24, 1995. Mr. Chappell is scheduled to appear in Department 3 Justice Court on July 11, 1995 for a preliminary hearing for this offense.

Staffing Reviews (Dates) 6-27-95Last reported neverResidence unknownEmployment/Program unknownFees paid through N/A with an outstanding balance of \$60



JChappell 8JDC-EVVAULT255

CHAPPELL, James  
V94/95-1909

Page 2

Counseling with unavailable for referralGED/Vocational Program unavailable for referralCourt Ordered Fees/Fines Total: \$25 Balance: \$25Current gang activity none verified

Mr. Chappell was granted probation on April 27, 1995. However, he was not released from Clark County Detention Center until May 10, 1995 due to several Failure To Appear traffic violations. Prior to his release, on May 8, 1995, the undersigned officer attempted a home visit at the subject's last listed address, 839 North Lamb, #125, Las Vegas, Nevada. At that time a resident of that location was given Officer C. Smith's business card with instructions for Mr. Chappell to attend Orientation and to report to that officer. Additionally, the subject contacted C. Smith via telephone at which time he was again given instructions to attend Orientation and to report. On June 12, 1995, the subject's girlfriend related that Mr. Chappell had stated that he did not intend to report to this Division and that individual also advised that he frequented 839 North Lamb, #125 but that he did not reside there.

**II. WHEREABOUTS AND AVAILABILITY:**


Effective June 26, 1995, the subject is in custody in the Clark County Detention Center. A Probation Hold was placed on June 27, 1995.


**III. RECOMMENDATION:**

It is recommended that the subject's probation be revoked.

Respectfully submitted,

Approved:

  
Charmaine M. Smith, Officer  
District IV, Las Vegas, NV

  
William C. Duffey, Jr.  
District IV, Las Vegas, NV

CMS/bas

## DIVISION OF PAROLE AND PROBATION

**STAFFING SUMMARY REPORT**

Offender Name Drappell, James CC No. 126282 File No. V94/951964  
 District 4 DOB 12-27 NDOP No. N/A Sex: ☒ M ☐ F Race W H I A ☒ B  
 Conviction NYS Code 265.080, 193.140  
 Sentence 1 year CUDC, Suspended prob NTE 2 years 305 Program  
 Parole/Probation Date 4/27/95 Expiration Date 4/27/97  
 Violation Category A ☒ B ☐ Risk Category: A ☒ B ☐  
 Case History S has been reported to Division since release from custody in 5-16-95 & attended orientation. S has been advised by P.C. how to proceed above.  
 Total Number of Prior Staffing Summary Reports 0  
 Reason for Staffing Arrest in 5-16-95 until arrest in 4-16-95 by P.C. for VCS (E).

## Recommendation—Circle One:

(1) No Further Action Necessary (2) Intervention Interview (3) Incident Report ☒ (4) Violation Report

Justification Arrest in 5-16-95 until arrest in 4-16-95 by P.C. for VCS (E).

Supervising Officer [Signature] CID No. 445 Date 6/27/95

## If (4)—Must Circle ONE:

(A) Absconder (B) New Charge (C) Rescind Diversion Program (D) Rule Violations 1, 2, 3, 16

Operations Supervisor P.H. Ellis CID No. 539 Date 6/30/95

ONLY CONTINUE IF GOING TO INTERVENTION INTERVIEW

**INTERVENTION INTERVIEW**

## Intervention Action—Circle Applicable Letter(s):

(E) Incident Report (J) Raise Level of Supervision (L) Court PB Intervention Necessary  
 (F) Violation Report (J) Drug Testing (M) Change Add Special Conditions  
 (G) Outpatient Counseling (K) Failed to Appear for Intervention Interview (N) Ordered Back to Nevada Supervision  
 (H) Inpatient Counseling (O) House Arrest

Unit Manager [Signature] CID No. [Blank] Date [Blank]

## NOTICE OF PRELIMINARY INQUIRY HEARING

are advised that an Informal Preliminary Inquiry Hearing pertaining to the following alleged violation(s) of your Parole/ Probation condition(s) shall be conducted to determine if you shall be held to answer said allegation(s) before the Court/ Board at a formal Revocation Hearing:

Rule No.	Alleged Violation
Rule 8	Laws and Context

Your Preliminary Inquiry Hearing is scheduled for 7-7-95 / 1:30 PM  
Date Time  
COOC

At this Hearing, you have these due process rights: to speak in your own behalf; retain counsel, present letters, documents, or persons who can present relevant information, and; question any person giving adverse information against you, unless in the opinion of the hearing officer the individual would be subjected to risk of harm by disclosure of his/her identity.

**You may waive this Preliminary Inquiry Hearing if you desire. Should you waive, your action shall in no way be considered an admission of guilt.**

**Please initial the appropriate response:**

☒ I desire to have a Preliminary Inquiry Hearing at the date, time, and location indicated above.

I will retain. \_\_\_\_\_  
Name \_\_\_\_\_  
\_\_\_\_\_ to represent me.  
Add \_\_\_\_\_

..... I wish to present the following witness(es) at my own expense:

Name	Address
Name	Address
Name	Address
Name	Address

8-12 I waive my right to a Preliminary Inquiry Hearing and request to present my case directly to the Court/Board.

X TL I have received a copy of the alleged violation(s) of Parole/Probation, and this, my Notice of Rights.

*[Signature]* \_\_\_\_\_  
Member

*[Signature]* \_\_\_\_\_  
Witness

6-30-95  
Date

POTI  
Position

6/30/95  
Date

ORIGINAL (White) - Court/Board  
WHITE - Compact Extra  
YELLOW - Deludon  
BLUE - Control  
PINK - Mistral

EXHIBIT 161

EXHIBIT 161

JChappell CORA007942

Jim Gibbons  
Governor  
  
Philip A. Galeoto  
Director  
  
John Allan Gonska  
Chief



455-6273  
SOUTHERN COMMAND

- ☐ 215 E. Bonanza Rd.  
Las Vegas, NV 89101
- ☐ 620 Belrose St.  
Las Vegas, NV 89107
- ☐ 810 Belrose St.  
Las Vegas, NV 89107
- ☐ 4806 E. Tropicana Ave.  
Las Vegas, NV 89121

## Division of Parole and Probation

### Amended Presentence Investigation Report

May 02, 2007

The Honorable Douglas W. Herndon  
Department III, Clark County  
Eighth Judicial District

Prosecutor: Christopher J. Owens, Chief DDA and Pamela C. Weckerly, DDA  
Defense Attorney: David M Schieck, and Clark W. Patrick, Appt.

PSI: 250520

### I. CASE INFORMATION

Defendant: James Montell Chappell

Date of Birth: 12-27-1969

Age: 37

SSN: 373-80-2907

Address: NDOC

City/State/Zip: Las Vegas, NV

Months/Years: 10 years

Phone: None

Driver's License: None

State: N/A

Status: N/A

POB: Lansing, MI

US Citizen: Yes

Notification Required Per NRS 630.307: No

Case: C131341

ID: 1212860

PCN: 07250016

P&P Bin: 1000808273

FBI: 284 918 JA6

SID: NV01780406

Resident: Yes

Offense Date: 08-31-1995

Arrest Date: 09-01-1995

Jury Verdict Date: 10-16-1996

Penalty Decision Count III: 03-21-2007

Sentencing Date: 05-10-2007

### II. CHARGE INFORMATION

Offense: Count I - Burglary(F)

NRS: 205.060

NOC: 00299

Penalty: By imprisonment in the NDOC for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

Previously sentenced on 12-30-1996

THIS REPORT NOT TO BE REPRODUCED OR  
RELEASED WITHOUT THE AUTHORIZATION OF  
ST. OF NV DEPT. OF PAROLE AND PROBATION  
Category: B RELEASED TO: \_\_\_\_\_

JChappell

**PRESENTENCE INVESTIGATION REPORT**

**JAMES MONTELL CHAPPELL**

**C131341**

**PAGE 2**

**Offense: Count II - Robbery With Use Of A Deadly Weapon (F)**

**NRS: 200.380, 193.165:**

**Category: B**

**NOC: 00118**

**Penalty: By imprisonment in the NDOC for a minimum term of not less than 2 years and a maximum term of not more than 15 years, plus an equal and consecutive minimum term of not less than 2 years and a maximum term of not more than 15 years for Use of a Deadly Weapon. Previously sentenced on 12-30-1996**

**Offense: Count III - Murder of the First Degree With Use of a Deadly Weapon (F)**

**NRS: 200.010, 200.030, 193.165**

**Category: A**

**NOC: 00095**

**Penalty: By Death, only if one or more aggravating circumstances are found and if any mitigating circumstances which are found do not outweigh the aggravating circumstances. Otherwise, by imprisonment in the NDOC for Life With or Without the Possibility of Parole. If the penalty is fixed at Life With the Possibility of Parole, eligibility for parole begins when a minimum of 20 years have been served or a definite term of 50 years with eligibility for parole after 20 years has been served, plus an equal and consecutive sentence for Use of a Deadly Weapon.**

**III. PLEA NEGOTIATIONS**

**MA- Found guilty by Jury Verdict**

**IV. DEFENDANT INFORMATION**

**Physical Identifiers:**

**Sex: M**

**Race: B**

**Height: 5'11**

**Weight: 180**

**Hair: Black**

**Eyes: Brown**

**Scars: None**

**Tattoos : None**

**Aliases: James M. Montell**

**Additional SSNs: None**

**Additional DOBs: None**

**Social History: The defendant refused to be interviewed on May 02, 2007. Therefore the following social history was obtained from the original Presentence Report that was prepared on December 05, 1996.**

**Childhood: His father abandoned the family while he was an infant and his mother was killed by a police officer when he was two years old. He was then raised by his maternal grandmother who provided a good family life.**

**Immediate Family Members- Names and Addresses:**

**Unknown**

**Marital Status: Single**

**Prior Marriages/Long Term Relationships: He was involved in a long term relationship with the victim in the instant offense.**

**PRESENTENCE INVESTIGATION REPORT**

**JAMES MONTELL CHAPPELL**

**C131341**

**Children :** Three, age nineteen (son), seventeen (son) and fifteen (daughter)

**Custody Status of Children:** They have all been raised by their maternal grandmother.

**Monthly Child Support Obligation:** None

**Employment Status:** N/A

**Number of Months Employed In The 12 Months Prior To Instant Offense:** 0

**Income:** None

**Other Sources:** None

**Assets:** None

**Debts:** None

**Education:** He completed high school through the tenth grade.

**Military:** No

**Health and Medical History:** He had no health concerns

**Mental Health History:** He attended domestic violence counseling in 1992.

**Gambling History:** Unknown

**Substance Abuse History:** He began consuming alcohol at age thirteen and drank three times per week. He began using marijuana at twelve or thirteen and started using cocaine at age eighteen. He became heavily involved in cocaine use in subsequent years. He had a drug problem at the time of the instant offense. He was not high at the time he committed the offense but smoked cocaine later that day. He had never been involved in any substance abuse counseling.

**Gang Activity/Affiliation:** None

**V. CRIMINAL RECORD**

As of March 27, 2007, records of the Las Vegas Metropolitan Police Department (SCOPE), the Federal Bureau of Investigation (FBI), the Nevada Criminal Justice Information System (NCJIS) and the National Crime Information Center (NCIC) reflect the following information:

**CONVICTIONS:**            **FEL:** 2            **GM:** 1            **MISD:** 6

**INCARCERATIONS:**    **PRISON:** 1            **JAIL:** 5

**OUTSTANDING WARRANTS AND LEVEL OF OFFENSE :** 0

**-WARRANT NUMBER AND JURISDICTION:** N/A

**-EXTRADITABLE:** N/A

**PRESENTENCE INVESTIGATION REPORT**  
**JAMES MONTELL CHAPPELL**  
**CC# C131341**

PAGE 4

**SUPERVISION HISTORY:****CURRENT:** Probation Terms: 0

Parole Terms: 0

**PRIOR TERMS:**

<b>Probation:</b>	<b>Revoked: 1</b>	<b>Discharged:</b>	<b>Honorable: 1</b>	<b>Other: 0</b>
<b>Parole:</b>	<b>Revoked: 0</b>	<b>Discharged:</b>	<b>Honorable: 0</b>	<b>Other: 0</b>

**Adult:**

<b>Arrest Date:</b>	<b>Offense:</b>	<b>Disposition:</b>
05-15-1988 (Lansing, MI)	Felony Stolen Vehicle (F)	11-12-1988; Convicted Motor Vehicle/Unlawful Use (M) 6 months jail.
08-18-1988 (Lansing, MI)	Assault Excluding Sexual (F)	09-20-1988; Convicted Assault or Assault and Battery (M) \$150 fine, 15 days jail.
06-15-1993 (Tucson, AZ)	Disorderly Conduct (M)	10-12-1993; Convicted (M) community service, restitution.
02-23-1994 (Tucson, AZ)	Domestic Violence/Assault (M)	03-04-1994; Convicted (M) \$2,500 fine, 180 days jail, 12 months probation.
02-18-1995 (LVMPD)	1. Burglary (F) 2. Under the Influence of Controlled Substance (F) 3. Possession of Burglary Tools (GM) RMD: 02-27-1995	1. Dismissed. 2. Convicted ITS Drugs (M) \$500 fine. 3. CC#C126882, 04-27-1995 Convicted Possession of Burglary Tools (GM) 1 years CCDC, suspended, probation NTE 2 years. 06-27-1995; Probation violation. 08-01-1995; Probation reinstated. 09-02-1995; Probation violation. 10-26-1995; Probation Revoked. 06-20-1996; Expired sentence.
09-01-1995 (LVMPD)	1. Murder (F) 2. Grand Larceny Auto (F) RMD: 10-04-1995 1. Burglary (F) 2. Robbery With Deadly Weapon (F)	<b>Instant Offense; CC#C131341</b> 12-30-1996 sentenced on Count I - 120/48 months NDOC, Count II - 180/72 months months NDOC plus an equal and consecutive 180/72 months NDOC for the deadly Weapon enhancement, consecutive to Count I.

In addition to the above the defendant was convicted of the following misdemeanor offense of Petty Larceny that was satisfied by a short jail term.



## PRESENTENCE INVESTIGATION REPORT

PAGE 5

JAMES MONTELL CHAPPELL

CC# C131341

Additionally, the defendant was arrested or cited in Arizona and Nevada between May 15, 1988 and August 1, 1995 for the following offenses for which no disposition is noted, prosecution was not pursued or charges were dismissed: Obstruct Judicial, Congressional, Legis., Possession of Narcotic, Possession of Marijuana, Sell Narcotics, Possession of Drug Paraphernalia (2), Trespassing, Failure to Appear, Under the Influence of Controlled Substance, FTA - (24), Battery Domestic Violence (2), Petty Larceny (3), Possession of Narcotic Paraphernalia.

**Institutional/Supervision Adjustment:** On April 27, 1996 the defendant was placed on probation in CC#C126882. He was charged with probation violation after he was cited for Possession of Narcotic Paraphernalia and Battery Domestic Violence. He was reinstated to probation and ordered to complete an in-patient substance abuse counseling program. On August 31, 1995 he was released from custody and on September 01, 1995 he was arrested for the instant offense. His probation was subsequently revoked.

**Supplemental Information:** N/A

VI. OFFENSE SYNOPSIS

Records of the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office reflect that the instant offense occurred substantially as follows:

August 31, 1995, a friend of the victim contacted the police and advised them that she believed something was wrong with the victim, Deborah Panof. She stated she arrived at the victim's house and observed the defendant, James Montell Chappell, driving from the area in the victim's car. She was concerned because the victim had a Protective Order stopping the defendant from coming to her house. She also stated that she knew the victim had forbidden the defendant from driving her car.

Efforts to contact the victim were unsuccessful either by telephone or by knocking on the door so an officer entered the victim's house through a window to conduct a welfare check. He found the victim on the floor in the living room, apparently deceased. The officer then called the Fire Rescue Unit and Homicide Detectives.

Detectives observed that the point of entry into the mobile home appeared to be the master bedroom window as all the other doors were locked and all the windows were closed. The body of the victim was found laying on her back on the floor of the living room. There was a large amount of blood around her upper chest and face and numerous abrasions and contusions on her chin and around her eyes and cheekbones. She had multiple stab wounds to the neck, upper chest and pelvis area. Near the body, the officer found a steak knife believed to have been used to stab the victim. An autopsy later revealed that the victim had received thirteen stab wounds, two to the pelvis and abdomen, and eleven to the chest and neck. The cause of death was listed as multiple stab wounds and considered to be a homicide.

On September 11, 1995, an officer was dispatched to a local supermarket regarding a shoplifting incident. Upon arrival, he observed the defendant, who had been detained after attempting to shoplift several items. He identified himself as Ivri Marrell. It was later learned he was in fact Mr. Chappell who was wanted regarding the above murder. Two puncture wounds were observed on his hand. The store security officers advised the defendant had a set of keys, one of which belonged to a Toyota. When asked where the vehicle was he defendant replied "I parked it in back of the apartments across the street". The detectives subsequently found the victim's vehicle parked behind an apartment complex. Witnesses stated that they had observed the defendant parked the vehicle at that location on August 31, 1995. The defendant was then placed under arrest and transported to the Clark County Detention Center where he was booked accordingly.

**PRESENTENCE INVESTIGATION REPORT**

PAGE 6

**ES MONTELL CHAPPELL****CC# C131341****VII. CO-DEFENDANT'S/OFFENDER'S INFORMATION****VIII. DEFENDANT'S STATEMENT**

On May 02, 2007, an attempt was made to interview the defendant at the High Desert State Prison. He refused to be interviewed.

**IX. VICTIM INFORMATION/STATEMENT**

The victim, Deborah Panos, was a twenty-six year old female, leaving behind three children. Her mother was interviewed in 1996 when the first Presentence Report was prepared and stated there was no way to express her grief stating it is a "grief you live with every day". She lost her only child and has been raising her three grandchildren. She stated when the victim "finally got up the nerve after years and years of abuse", he was released and committed the instant offense. "The SOB does not deserve to live" she related. Living with the loss is a "very, very hard thing and her voice is in our mind all the time". It was difficult hearing her grandchildren, especially the youngest, talk about "Mommy being in heaven". She further related the defendant didn't have to commit the crime but could have gone back to stealing and using drugs. She stated he was arrested many times, even in Tucson, Az, for violence to victim and the Court slapped his hand and told him to go to counseling. The defendant just laughed and did what he wanted to do. When asked about financial costs, she stated the cost was \$11,434.90 to transport the body to Michigan for the funeral. (VC2167293)

An attempt was made to call the victim's mother on April 30, 2007 but the phone was busy all day. Additionally, she did not respond to a Victim Impact letter mailed to her. However, contact was made with the Aunt of the victim who indicated her sister was extremely ill and that they do not plan to attend sentencing.

**X. CONCLUSION**

The defendant's prior criminal history consists of domestic violence, theft and drug related offenses. During the instant offense he violently killed his girlfriend and the mother of his children by stabbing her thirteen times during a domestic dispute less than one day after he was released from custody after being arrested for a previous domestic battery. He was previously sentenced to prison on Counts I and II, and the jury has determined he should be sentenced to death for Count III.

**XI. CUSTODY STATUS/CREDIT FOR TIME SERVED**

Custody Status: In Custody, High Desert State Prison

CTS: 3,976 DAYS: 09-01-1995 to 05-10-2007 (CCDC/NDOC) 4,269 Days  
(293 days credited to CC#C126882)

JChappell CORA007948

**PRESENTENCE INVESTIGATION REPORT**  
**JAMES MONTELL CHAPPELL**  
**#: C131341**

**PAGE 7**

**XII. RECOMMENDATIONS**

**190 Day Regimental Discipline Program: N/A**      **Deferred Sentence Per NRS 453.3363: N/A**

**FEES**

**Administrative Assessment: \$25**      **Chemical/Drug Analysis N/A**      **DNA: \$150 and submit to testing**

**Domestic Violence: N/A**      **Extradition: N/A**

**SENTENCE**

**COUNT I: BURGLARY**-Sentenced on December 30, 1996 to a maximum term of 120 months with minimum parole eligibility of 48 months.

**COUNT II: ROBBERY WITH USE OF A DEADLY WEAPON**-Sentenced on December 30, 1996 to a maximum term of 180 months with minimum parole eligibility of 72 months, plus an equal and consecutive maximum term of 180 months with minimum parole eligibility of 72 months for the Use of a Deadly Weapon, consecutive to Count I

**COUNT III: MURDER IN THE FIRST DEGREE WITH USE OF A DEADLY WEAPON:**

**Minimum Term: N/A**

**Maximum Term: Death as imposed by Jury on 03-21-2007**

**Location: NDOC**

**Concurrent With: Count I**

**Probation Recommended: N/A**

**Probation Term: N/A**

**Fine: N/A**

**Restitution: \$11,434.90**

\_\_\_\_ Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

  X   Pursuant to NRS 239B.030, the undersigned hereby affirms this document contains the social security number of a person as required by NRS 176.145.

Respectfully Submitted,

**JOHN ALLAN GONSKA, CHIEF**

**PREPARED AND APPROVED BY:**



Charles C. Combs for Kathleen Houlihan  
Parole and Probation Specialist IV  
Unit VII  
Southern Command, Las Vegas, Nevada

# EXHIBIT 149

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IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \*

JAMES CHAPPELL,  
v.  
STATE OF NEVADA,  
Appellant,  
Respondent.

CASE NO. 49478  
Electronically Filed  
Mar 01 2010 03:02 p.m.  
Tracie K. Lindeman

NOTICE OF FILING OF PETITION FOR A WRIT OF CERTIORARI

PLEASE TAKE NOTICE that the Petition for a Writ of Certiorari was mailed/filed on  
February 23, 2010 in the Supreme Court of the United States.

DATED: March 1, 2010

*/s/ JONELL THOMAS*

BY \_\_\_\_\_  
JONELL THOMAS, ESQ.  
Nevada Bar No.4771  
330 S. Third St., Ste. 800  
Las Vegas, Nevada 89155  
(702)455-6265

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 1<sup>st</sup> day of March, 2010 a copy of the  
foregoing Notice of Filing of Petition for Writ of Certiorari was served as follows:

**BY ELECTRONIC FILING TO**

District Attorney's Office  
200 Lewis Ave., 3<sup>rd</sup> Floor  
Las Vegas, NV 89155

*/s/ JONELL THOMAS*

\_\_\_\_\_  
JONELL THOMAS

# EXHIBIT 150

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 29884

**FILED**

**OCT 26 1999**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

O R D E R

On April 2, 1999, this court stayed the issuance of the remittitur in this matter pending final disposition of appellant's petition for a writ of certiorari in the Supreme Court of the United States. The Supreme Court denied appellant's petition on October 4, 1999. Accordingly, we direct the clerk of this court to issue the remittitur in this matter, forthwith.

It is so ORDERED.

*[Signature]*, C.J.

cc: Attorney General  
Clark County District Attorney  
Clark County Public Defender  
Federal Public Defender

# EXHIBIT 155



1

FILED

# ORIGINAL

CLERK OF THE COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

Plaintiff,

REPORTER'S TRANSCRIPT  
OF  
PENALTY HEARING

VS.

JAMES CHAPPELL,

Defendant.

BEFORE THE HONORABLE DOUGLAS HERNDON  
DISTRICT COURT JUDGE

DATED: MONDAY, MARCH 12, 2007

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

**CLERK OF THE COURT**

JUL 16 2007

RECEIVED

**\$20**

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

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4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 \* \* \* \* \*

9 STATE OF NEVADA,

10 Plaintiff,

12 vs.

13 JAMES CHAPPELL,

14 Defendant.

REPORTER'S TRANSCRIPT  
OF  
PENALTY HEARING

17 BEFORE THE HONORABLE DOUGLAS HERNDON  
18 DISTRICT COURT JUDGE

19 DATED: MONDAY, MARCH 12, 2007

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

1

1 APPEARANCES:

2 For the State:

CHRIS OWENS, ESQ.

PAMELA WECKERLY, ESQ.

5 For the Defendant:

DAVID SCHIECK, ESQ.

CLARK PATRICK, ESQ.

13 \* \* \* \* \*

2

1 LAS VEGAS, NEVADA; MONDAY, MARCH 12, 2007

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

3 \* \* \* \* \*

5 THE COURT: On the record in C-131341

6 State of Nevada versus James Chappell.

7 The record will reflect that Mr. Chappell is outside  
8 right now. We're outside the presence of our jury.

9 There was the issue of prejudice brought up about  
10 waist restraints on Mr. Chappell. You didn't want him to  
11 come in in waist restraints.

12 MR. PATRICK: That's correct.

13 MR. SCHIECK: It's our position that waist  
14 restraints aren't necessary in this matter, your Honor.  
15 He hasn't been a problem. And I don't believe we had  
16 waist restraints at the first proceeding some years ago.  
17 And it would, in our opinion, be prejudicial to have the  
18 jury see him in restraints. Especially at this stage  
19 where we have jurors behind us walking past us while he's  
20 sitting at the table. It's pretty clear they're going to  
21 see those restraints.

22 I'm not sure what they mean by waist restraints.  
23 He's back there and he has something on his hands now.  
24 Whether it's just the belly chains or whatever restrains  
25 his hands, the jury is going to be able to see. We'd ask

3

1 that he not be so restrained.

2 THE COURT: All right. Anything from the  
3 State?

4 MR. OWENS: Your Honor, I always leave  
5 this matter to the personnel who are in charge of his  
6 custody. I don't -- we really don't take a position. We  
7 support whatever they think is needed.

8 THE COURT: I'll go ahead and order that  
9 you take off the restraints for now. Obviously, if we  
10 have any problems -- I'm sure his attorneys have spoken  
11 with him about that. We won't hesitate to put them back  
12 on whenever we think it's necessary to maintain order.  
13 But I'll order they be taken off for now.

14 THE OFFICER: Thank you, your Honor.

15 THE COURT: Thank you.

16 Anything outside the presence before we get the  
17 jurors up here?

18 MR. SCHIECK: No, your Honor.

19 MR. OWENS: No, your Honor. Court's  
20 indulgence. No.

21 (Brief recess taken.)

22 THE COURT: On the record in C-131341,  
23 we're outside the presence of the jury. The record will  
24 reflect the presence of the Defendant, Mr. Chappell, with  
25 his attorneys. The State's attorney is present as well.

4

1 Mr. Owens.

2 MR. OWENS: At some point before the jury  
3 gets sworn we wanted some kind of affirmation or something  
4 if there was any additional witnesses, or if they have  
5 been unable to get ahold of these witnesses. This thing  
6 was reversed because I believe five witnesses were not  
7 called at the prior hearing. At least one of them was  
8 contacted, but wasn't called.

9 So we just wanted to protect the record as  
10 much as we are able to at some point.

11 THE COURT: Mr. Schieck.

12 MR. SCHIECK: As much as I can, without  
13 revealing any confidential information, your Honor, I can  
14 represent to the court that, in fact, we have been in  
15 contact with everyone that we wanted to contact and speak  
16 to and/or bring in from Michigan and Arizona.

17 I would note that due to the passage of time there is  
18 a number of witnesses that are no longer able to testify  
19 either due to incapacity or due to passing away. So  
20 obviously those are situations we'll deal with as we move  
21 along.

22 Additionally, no additional -- I think we  
23 can represent that we have contacted and have on board  
24 everybody we wanted to call for the penalty hearing.

25 THE COURT: All right. Thank you.

5

1 Anything from the State?

2 MS. WECKERLY: No. Thank you.

3 THE COURT: We'll be in recess until we  
4 get our jury in here.

5 (Prospective jurors escorted into the courtroom.)

6 THE COURT: Good morning, Ladies and  
7 gentlemen.

8 We will be on the record in C-131341, State of Nevada  
9 versus James Chappell. The record will reflect the  
10 presence of Mr. Chappell with his attorneys, the State's  
11 attorneys.

12 Welcome Ladies and Gentlemen to Department 3, of the  
13 Eighth Judicial District Court. My name is Douglas  
14 Herndon. I am the presiding judge in this department.  
15 And you all have been summoned here as potential jurors in  
16 a criminal proceeding.

17 What we're going to do momentarily is move into the  
18 jury selection process, which will probably take us the  
19 better part of today, if not a little bit of tomorrow as  
20 well. Then we move into the evidentiary phase of the  
21 criminal proceeding.

22 Before we get to actual questioning of prospective  
23 jurors, let me tell you a few things about what going to  
24 be happening and introduce you to some of my staff.

25 Seated right in front of me is Sharon. Sharon is my

6

1 court reporter. Everything that I say, or the attorneys  
2 say, or you say is going to be recorded -- or reported  
3 during the course of the proceedings. It's going to be  
4 very important that if you have something you need to tell  
5 me, if I call on you, or if the attorneys ask you a  
6 question make sure that you speak loud enough so that  
7 Sharon can hear. She'll let you know if she can't hear  
8 you, and she'll ask you to repeat yourself.

9 But also try not to say Uh-huh or Huh-uh, if you're  
10 answering "yes" or "no." That's hard to report, and we  
11 want to make sure we get it right.

12 Also nodding your head or shaking your head, we are  
13 not going to be able to get that down either. Make sure  
14 you answer out loud.

15 Additionally, if I'm calling on you to answer a  
16 question, or if the attorneys are calling on you and we  
17 fail to ask you by name and badge number, i.e., if I have  
18 a questions for Mr. Madison -- that's you on top, right?

19 MR. MADISON: Yes.

20 THE COURT: A lot of times I'll say Mr.  
21 Madison, badge number 102 -- the last three numbers on  
22 your badge -- so that we make sure that the person that's  
23 speaking, for the record, is clearly identified in the  
24 reporter's transcript. If we fail to do that, please,  
25 make sure before you answer that you identify yourself by

7

1 your name and badge number.

2 Seated next to me is Carol. Carol is my court clerk.  
3 Carol is going to administer the oath to you all in a  
4 moment. Because all the jury questioning is done under  
5 oath. She administers the oath to witnesses before they  
6 testify, keeps track of all the exhibits, all the court  
7 minutes, and a great many things I can't keep track of, to  
8 be quite honest.

9 Seated to her left is Steve. Steve is my law clerk.  
10 He'll come in and out of court during time to help me with  
11 a variety of legal issues that come in during the course of  
12 the proceedings -- instructions to the jury, legal  
13 instructions we give later on.

14 Leslie is my bailiff. You met Leslie. She helped  
15 you kind of get up and down stairs. What you're going to  
16 come to find out is other than this process, the selection  
17 process, where we can all kind of talk to the jurors and  
18 ask you questions, and so forth, other than that, most of  
19 the court personnel and all the attorneys are prohibited  
20 by ethical obligations and the law from conversing with  
21 the jurors. So when you're sitting in the hall, none of  
22 the attorneys can come up and make small talk. They're  
23 not going to talk to you if you see them in the cafeteria  
24 or elevators.

25 As far as even opening the door for you, they're not

8

1 going to say thank you, you're welcome, things like that.  
 2 They're not being rude or antisocial. It's not that they  
 3 dislike you in any fashion. It's just that the law and  
 4 ethical obligations prohibit the attorneys and most of the  
 5 court staff from conversing with the jurors during the  
 6 course of the proceedings, so as to not have anyone think  
 7 that the verdict should be contaminated if anybody is  
 8 talking to the jurors. Please understand that.

9 That being said, Leslie doesn't have those same  
 10 obligations. She has ethical obligations, but she's not  
 11 under the same prohibitions that we are. So you'll always  
 12 be able to talk with Leslie.

13 If there is something that comes up during the course  
 14 of the proceedings today or tomorrow or here on out, you  
 15 can always bring it to Leslie's attention if you need to  
 16 get something to the court's attention, we'll take care of  
 17 it as we need to. But you can always talk to Leslie.

18 In fact, once we get to the point of having fourteen  
 19 of you selected a jurors, we'll get some phone numbers  
 20 from you, and Leslie will give you some phone numbers for  
 21 my executive assistant, Molly, to make sure we're able to  
 22 get ahold of you. If we're ready to start tomorrow and  
 23 somebody is running late -- I also ask the same thing of  
 24 you all -- if you're running late to call us and let us  
 25 know so that we know you're on your way.

9

1 So that's pretty much most of the court personnel  
 2 you'll come in contact with throughout the course of the  
 3 trial.

4 What I'm going to do now is ask the attorneys to  
 5 introduce themselves, introduce their client, who they  
 6 represent. They're going to tell you a real short  
 7 synopsis, maybe, of some of the stuff that this case is  
 8 about. I know you got a little bit of it from reading the  
 9 questionnaire.

10 They'll also list to you or speak to you about the  
 11 witnesses they believe may be called to testify in this  
 12 case. Probably won't call every witness that they talk to  
 13 you about, but nonetheless, the names may come up and they  
 14 may have played a role somehow in what takes place during  
 15 this hearing. So you need to be aware of ones that might  
 16 not even be called, even though they may be mentioned as  
 17 well.

18 Please listen very closely as the  
 19 attorneys speak to you with their names and the nature of  
 20 the case and the witnesses that may be called, because I'm  
 21 going to ask you a couple of questions in a minute as to  
 22 whether you think you know any of these folks, the  
 23 attorneys, Mr. Chappell, any potential witnesses, anything  
 24 like that.

25 On behalf of the State.

10

1 MR. OWENS: Thank you, your Honor.

2 Good morning. My name is Chris Owens. And I work  
 3 for the District Attorney's office. I'm a prosecutor  
 4 there with Pam Weckerly, who is co-counsel in this case.  
 5 We are prosecuting this case against James Chappell. This  
 6 is a case that was tried to a jury back in 1996. At that  
 7 time Mr. Chappell was convicted of the crimes of burglary,  
 8 robbery with use of a deadly weapon, and first degree  
 9 murder with use of a deadly weapon.

10 The purpose of this proceeding, at this  
 11 point in time, is for sentencing. The determination of  
 12 punishment. As you are told in the questionnaire that you  
 13 fill out, there are four options that will be available to  
 14 this jury making that decision. So guilt or innocence is  
 15 not going to be a consideration as to those charges, just  
 16 punishment.

17 And the potential punishments are the  
 18 death penalty, life without the possibility of parole,  
 19 life with the possibility of parole after 40 years, and a  
 20 term of 100 years, with the possibility of parole after 40  
 21 years. That's the only thing this jury is going to be  
 22 focusing on in this proceedings.

23 We anticipate and are hopeful that we are  
 24 going to accomplish this in the next five days or so.  
 25 There's every possibility we'll be done this week. It

11

1 could spill over to next week, but hopefully we'll be able  
 2 to do it this week.

3 The areas, geographically, that you are  
 4 going to be hearing testimony about -- the information in  
 5 this case -- the area is just a little bit to the east of  
 6 here down Bonanza, called the Ballerina Mobile Home Park.  
 7 That's at 839 East Lamb. And the particular space number,  
 8 125, is where the murder occurred.

9 There's also some other areas you'll hear  
 10 about associated with the downtown here, the jail, parole  
 11 and probation was on Bonanza. Also GE Capital is a  
 12 business operating back at that time. And that was a  
 13 business where the victim worked. So you are going to  
 14 hear some information about that particular entity as  
 15 well. And you'll hear from some people that worked  
 16 there.

17 The witnesses that the State may call --  
 18 I'll read their names -- include Luanna Aires, Lisa Duran,  
 19 Tanya Hobson, LaDonna Jackson, Claire McGuire, Mike  
 20 Pollard, Kimberly Simpson, Sherry Smith, and Debra Turner,  
 21 Laura Burfield, Jerry Urnst, Dina Freeman, Michelle  
 22 Moncha, Carol Munson, Norma Penfield, and Paul Widner.  
 23 From the Clark County Coroner's office -- a retired  
 24 coroner now -- a Dr. Green. And then police department  
 25 officers, Daniel Dersdorff, Darren Heiner, Officer Art

12

1 Lee, Paul Osuch, Mike Perkins, James McCarroll, Allen  
2 Williams, and Cal Winchells.  
3 From Parole and Probation, Larry Arabe  
4 (ph) Mike Compton, William Duffy, Ed Henderson, Chermaine  
5 Smith.

6 And one other witness, potentially might  
7 be called, is a psychiatrist, Thomas Bickert, from the  
8 Reno area.

9 This is going to be something that will  
10 take a little bit of time, as the judge indicated. We ask  
11 you to bear with us in questioning. It's obviously a very  
12 serious matter. And we appreciate your time and attention  
13 and patience with us.

14 Thank you.

15 THE COURT: On behalf of the defendant.

16 MR. SCHIECK: Thank you, your Honor.

17 Good afternoon, ladies and gentlemen. My name is  
18 David Schieck. I'm with the special public defender's  
19 office here in Clark County. Assisting me is Clark  
20 Patrick, who's also with the special public defender's  
21 office. This is our client who's been charged in this  
22 case, James Chappell.

23 The list of witnesses from which we may  
24 call during these proceedings are as follows: James Ford,  
25 Ivory Morrell, Ben Dean, Charles Dean, Fred Dean, Willy

13

1 Chappell, Mira Chappell-King, Kisha Axiom, Dennis Reffer,  
2 Marabel Rosales, and Howard Brooks.

3 Additionally, Dr. Lewis Etkoff, Dr. Tod  
4 Grey, and Dr. William Danton from Reno Nevada.

5 Thank you.

6 THE COURT: Thank you.

7 Ladies and gentlemen, obviously you all  
8 came in and filled out the questionnaire, which is  
9 designed to expedite this process. And even though the  
10 process is going to seem somewhat lengthy at time, the  
11 questionnaire does expedite the process.

12 I have a few questions I'm going to ask  
13 you about before we get started with the attorney's  
14 questions. And as you go through my questions, just raise  
15 your hand if you want to answer a question. And I'll  
16 generally start in the back row and move to the middle row  
17 and to the front row, and then go over first row, second  
18 row, third row, et cetera.

19 You don't have to keep your hand up in the  
20 air the full time, obviously. Just make sure as I move  
21 through you get your hand up and get it up high if you  
22 would, please, so I can see you.

23 One of the things I can assure you of is  
24 it is the desire of the court, as well as all the  
25 attorneys, that we find fourteen people who are as fair,

14

1 open-minded, and neutral as possible to decide this case.  
2 That's the reason you have this big questionnaire, to find  
3 out the information about your lives, professional  
4 background, personal background, so that everybody can  
5 learn a little about you and make appropriate decisions.

6 It's very important therefore, just as  
7 when you filled out the questionnaire, that you give as  
8 full, complete, and honest answers to any questions put  
9 forth to you today as possible. If you think there is  
10 something there that might be important to bring out, then  
11 trust your instinct and bring it out.

12 If you don't tell us about something and  
13 that fact is later discovered, and you're actually seated  
14 as a juror in this case, that fact alone could tend to  
15 contaminate your verdict. So it's very important that you  
16 provide everything with as much information as possible,  
17 pursuant to the questions asked of you today.

18 As many types of cases as you can imagine  
19 in the criminal justice system and the civil justice  
20 system I guarantee you there's more. And some of you may  
21 be great jurors for a different type of case than this  
22 case. Others of you might be great jurors for this type  
23 of case. But the questioning process is designed to  
24 filter through that and see what is going on in your  
25 professional and personal lives to might effect your

15

1 ability to be the best juror.

2 It doesn't mean you are not a great  
3 person. It doesn't mean you are not intelligent, have a  
4 high degree of integrity and so forth, it's just that if,  
5 for instance, this was a civil case and it was dealing  
6 with some land transaction gone bad and you were in the  
7 process of going through something like that, obviously,  
8 this might not be the best case to sit on. That's just a  
9 real basic example. But you can kind of understand where  
10 we're going in terms of the questions that are asked  
11 here.

12 What I want to do first is ask to  
13 everybody as a whole -- what I'm going to ask first is for  
14 my clerk to swear you in. I'll have everybody stand up  
15 and raise your right hand.

16 THE CLERK: You do solemnly swear you will  
17 well and truly answer such questions that may be put to  
18 you, touching upon your qualifications to act as jurors in  
19 the case at issue, so help you God.

20 PROSPECTIVE JURORS: (Choir of I do.)

21 THE CLERK: Thank you.

22 THE COURT: Thank you, ladies and  
23 gentlemen.

24 Is there anybody here who has been  
25 convicted of a felon? Mr. Madison.

16

1 MR. MADISON: Yes.  
 2 THE COURT: What was it, sir?  
 3 MR. MADISON: My records are sealed back  
 4 in New York.  
 5 THE COURT: Was it expunged later on?  
 6 MR. MADISON: I was on probation for five  
 7 years.  
 8 THE COURT: What was the charge?  
 9 MR. MADISON: First degree assault.  
 10 THE COURT: Okay. How long ago was it?  
 11 MR. MADISON: I was 17.  
 12 THE COURT: So was it treated as a  
 13 juvenile offence, then got sealed?  
 14 MR. MADISON: Yes. The reason was I was  
 15 under 18, so the records are sealed after that.  
 16 THE COURT: Thank you. Anybody else? No  
 17 more hands. Thank you, very much.  
 18 Is there anybody here who is not a U.S.  
 19 citizen? No. Thank you, very much.  
 20 Carol, if you would, please, call the roll  
 21 of the jurors to make sure we have everybody that we  
 22 believe we do. Answer present or here.  
 23 THE CLERK: Frederick Madison.  
 24 PROSPECTIVE JUROR: Here.  
 25 THE CLERK: Victor Perez.

17

1 PROSPECTIVE JUROR: Here.  
 2 THE CLERK: Neil Sackmary.  
 3 PROSPECTIVE JUROR: Here.  
 4 THE CLERK: Mark Brady.  
 5 PROSPECTIVE JUROR: Here.  
 6 THE CLERK: Deborah Kaleikni-Johnson.  
 7 PROSPECTIVE JUROR: Here.  
 8 THE CLERK: Jerry Taylor.  
 9 PROSPECTIVE JUROR: Here.  
 10 THE CLERK: Bobbie Hibbard.  
 11 PROSPECTIVE JUROR: Here.  
 12 THE CLERK: Nichole Haupt.  
 13 THE COURT: Jury services indicated she's  
 14 not in today.  
 15 THE CLERK: Lisa Bailey.  
 16 PROSPECTIVE JUROR: Here.  
 17 THE CLERK: Lisa Mills.  
 18 PROSPECTIVE JUROR: Here.  
 19 THE CLERK: Charles O'Hartz.  
 20 THE COURT: Badge 018, jury services  
 21 indicated that Mr. O'Hartz did not come in today.  
 22 THE CLERK: Lisa Labbranch.  
 23 PROSPECTIVE JUROR: Here.  
 24 THE CLERK: Larry Henck.  
 25 PROSPECTIVE JUROR: Here.

18

1 THE CLERK: Brent Petit.  
 2 PROSPECTIVE JUROR: Here.  
 3 THE CLERK: George Smith.  
 4 PROSPECTIVE JUROR: Here.  
 5 THE CLERK: Christa Meyrick.  
 6 PROSPECTIVE JUROR: Here.  
 7 THE CLERK: Karalee Squires.  
 8 PROSPECTIVE JUROR: Here.  
 9 THE CLERK: Cheryl Cardillo.  
 10 PROSPECTIVE JUROR: Here.  
 11 THE CLERK: Paige Rosehill.  
 12 PROSPECTIVE JUROR: Here.  
 13 THE CLERK: Alex Morales.  
 14 PROSPECTIVE JUROR: Here.  
 15 THE CLERK: Lusila Pinon.  
 16 PROSPECTIVE JUROR: Here.  
 17 THE CLERK: Michael McKown.  
 18 PROSPECTIVE JUROR: Here.  
 19 THE CLERK: Esuebio Ramirez.  
 20 PROSPECTIVE JUROR: Here.  
 21 THE CLERK: Annette Theus.  
 22 PROSPECTIVE JUROR: Here.  
 23 THE CLERK: Davy Ann Noahr.  
 24 PROSPECTIVE JUROR: Here.  
 25 THE CLERK: Sharon Martino.

19

1 PROSPECTIVE JUROR: Here.  
 2 THE CLERK: Christine Bundren.  
 3 PROSPECTIVE JUROR: Here.  
 4 THE CLERK: Amy Anaro.  
 5 THE COURT: The record will indicate 040  
 6 is not in today.  
 7 THE CLERK: Lori Smith.  
 8 PROSPECTIVE JUROR: Here.  
 9 THE CLERK: Lisa French.  
 10 PROSPECTIVE JUROR: Here.  
 11 THE CLERK: Jamie Carvelli.  
 12 PROSPECTIVE JUROR: Here.  
 13 THE CLERK: Angelo Morin.  
 14 PROSPECTIVE JUROR: Here.  
 15 THE CLERK: Angel Garcia.  
 16 PROSPECTIVE JUROR: Here.  
 17 THE CLERK: Michael Carr.  
 18 PROSPECTIVE JUROR: Here.  
 19 THE CLERK: James Grindstaff.  
 20 PROSPECTIVE JUROR: Here.  
 21 THE CLERK: Benjamin Salak.  
 22 PROSPECTIVE JUROR: Here.  
 23 THE CLERK: Laura Johnson.  
 24 PROSPECTIVE JUROR: Here.  
 25 THE CLERK: Blayne White.

20

1 PROSPECTIVE JUROR: Here.  
 2 THE CLERK: Luke Davie.  
 3 PROSPECTIVE JUROR: Here.  
 4 THE CLERK: Cassandra Ware.  
 5 PROSPECTIVE JUROR: Here.  
 6 THE CLERK: Gene Nakanushi.  
 7 PROSPECTIVE JUROR: Here.  
 8 THE CLERK: Darlene Washington.  
 9 PROSPECTIVE JUROR: Present.  
 10 THE CLERK: Nancy Lee.  
 11 PROSPECTIVE JUROR: Here.  
 12 THE CLERK: Doreen Matts.  
 13 PROSPECTIVE JUROR: Here.  
 14 THE CLERK: Wendelina Sunga.  
 15 PROSPECTIVE JUROR: Here.  
 16 THE CLERK: Duane Feuerhammer.  
 17 PROSPECTIVE JUROR: Here.  
 18 THE CLERK: David Forbes.  
 19 PROSPECTIVE JUROR: Here.  
 20 THE CLERK: Donald Scott.  
 21 THE COURT: 075, jury services indicates  
 22 he's not in today.  
 23 THE CLERK: Michael Sprosty .  
 24 PROSPECTIVE JUROR: Here.  
 25 THE CLERK: Robert Templeton.

21

1 PROSPECTIVE JUROR: Here.  
 2 THE CLERK: Brinnon Scott.  
 3 PROSPECTIVE JUROR: Here.  
 4 THE CLERK: James Wroblewski.  
 5 PROSPECTIVE JUROR: Here.  
 6 THE CLERK: Tamar Jackson.  
 7 THE COURT: Badge 080, jury services  
 8 indicates she did not come in today.  
 9 THE CLERK: Candice Rius.  
 10 PROSPECTIVE JUROR: Here.  
 11 THE CLERK: Davita Curtis.  
 12 PROSPECTIVE JUROR: Here.  
 13 THE CLERK: That's it.  
 14 THE COURT: Anybody present whose name was  
 15 not called? All right. Ms. Haupt, Mr. O'Hartz,  
 16 Ms. Noahr, Mr. Scott, and Ms. Jackson I'll refer to the  
 17 chief judge as non-appearing on jury calendar.  
 18 Is there anybody here who believes they're  
 19 acquainted with or knows Mr. Owens or Ms. Weckerly present  
 20 from the district attorney's office?  
 21 PROSPECTIVE JUROR: I know Mr. Owens.  
 22 THE COURT: What's your badge number?  
 23 PROSPECTIVE JUROR: 025.  
 24 THE COURT: Ms. Squires, who do you know?  
 25 PROSPECTIVE JUROR: Chris Owens.

22

1 THE COURT: How do you know him.  
 2 PROSPECTIVE JUROR: Family friends.  
 3 THE COURT: Socialize with him with your  
 4 family together?  
 5 PROSPECTIVE JUROR: Absolutely.  
 6 THE COURT: Okay. Thank you. Anybody  
 7 else? Anybody that believes they know Mr. Schieck or Mr.  
 8 Patrick or are acquainted with them, the defense  
 9 attorneys?  
 10 PROSPECTIVE JUROR: I do.  
 11 THE COURT: Mr. Rosehill, badge number  
 12 027. Who do you know, sir?  
 13 PROSPECTIVE JUROR: Mr. Schieck.  
 14 THE COURT: How do you know Mr. Schieck?  
 15 PROSPECTIVE JUROR: From working in the  
 16 legal field in the past. And associating with him  
 17 personally. I know his legal assistant as well.  
 18 THE COURT: Thank you, sir. Anybody else?  
 19 Yes, sir.  
 20 PROSPECTIVE JUROR: 062.  
 21 THE COURT: Thank you.  
 22 PROSPECTIVE JUROR: Clark Patrick.  
 23 THE COURT: Mr. Nakanishi?  
 24 PROSPECTIVE JUROR: Correct.  
 25 THE COURT: How do you know Mr. Patrick?

23

1 PROSPECTIVE JUROR: His dad was close  
 2 friends with mine. They used to teach together.  
 3 THE COURT: So you socialized together in  
 4 the past?  
 5 PROSPECTIVE JUROR: Yeah.  
 6 THE COURT: Thank you. Anybody else?  
 7 No.  
 8 Is there anybody that believes they're  
 9 acquainted or knows Mr. Chappell, the defendant? I see no  
 10 hands. Thank you.  
 11 Anybody believe they're acquainted with or  
 12 knows any of the witnesses spoken to you about by Mr.  
 13 Owens or Mr. Schieck? I see no hands. Thank you.  
 14 Is there anybody that believes they're  
 15 somehow acquainted with the facts of this case or know  
 16 anything about the case other than what's been spoken to  
 17 you about by the attorneys or what was in the jury  
 18 questionnaire?  
 19 Yes, ma'am.  
 20 PROSPECTIVE JUROR: 082, I remember  
 21 hearing about it and reading about it on the news at the  
 22 time.  
 23 THE COURT: Okay. Other than what you  
 24 believe you may have seen in the newspaper and on the TV,  
 25 do you know anything about it?

24

1 PROSPECTIVE JUROR: No, sir.  
 2 THE COURT: Your sole source of  
 3 information is what you may have seen in the media?  
 4 PROSPECTIVE JUROR: Yes, sir.  
 5 THE COURT: Thank you.  
 6 A couple other questions I want to ask you all about.  
 7 I know in the jury questionnaire there was a question  
 8 about prior jury service. Some of you had indicated you  
 9 had been jurors before. Have any of you that have been  
 10 jurors before ever been a foreperson of a jury? No.  
 11 Thank you.  
 12 I believe their are questions in the  
 13 questionnaire as to whether you have ever been victimized  
 14 by crime. I don't recall -- and I apologize if it was  
 15 there -- whether there was any questions of any of you or  
 16 close family members had been accused of a crime. To the  
 17 extent that question wasn't there, have any of you or  
 18 close family members ever been accused of a crime?  
 19 Ma'am.  
 20 PROSPECTIVE JUROR: My brother has been in  
 21 lots of trouble.  
 22 THE COURT: What's your name?  
 23 PROSPECTIVE JUROR: Labbranch.  
 24 THE COURT: Badge number 019. Locally?  
 25 PROSPECTIVE JUROR: No. He's in

25

1 Arizona.  
 2 THE COURT: What type of things has be  
 3 been arrested for or accused of?  
 4 PROSPECTIVE JUROR: Drugs.  
 5 THE COURT: Okay. Thank you. Next to  
 6 you. Is it Mr. Henck?  
 7 PROSPECTIVE JUROR: Yes, sir.  
 8 THE COURT: 020.  
 9 PROSPECTIVE JUROR: Yes. I have two  
 10 cousins who were both convicted of trafficking narcotics  
 11 in school zones in Pennsylvania.  
 12 THE COURT: Thank you. Anybody else on  
 13 that row? Yes, sir.  
 14 PROSPECTIVE JUROR: Smith, 022. Grand  
 15 children drug scene primarily.  
 16 THE COURT: Okay. Locally or somewhere  
 17 else?  
 18 PROSPECTIVE JUROR: California.  
 19 THE COURT: Anybody else on that row? No.  
 20 Yes, ma'am. Ms. Mills, badge number 016.  
 21 PROSPECTIVE JUROR: I have a cousin  
 22 convicted of attempted murder.  
 23 THE COURT: Was that locally or somewhere  
 24 else?  
 25 PROSPECTIVE JUROR: Locally.

26

1 THE COURT: Thank you. Anybody else on  
 2 that row? Bottom row here? No. How about the first row,  
 3 there?  
 4 PROSPECTIVE JUROR: Annette Theus, 035.  
 5 Brother, nephew, husband, son.  
 6 THE COURT: What types of things are we  
 7 talking about?  
 8 PROSPECTIVE JUROR: Burglary, assault. I  
 9 think that's about it.  
 10 THE COURT: All right. Were any of them  
 11 convicted of those crimes?  
 12 PROSPECTIVE JUROR: Yes.  
 13 THE COURT: Were those locally? Or  
 14 somewhere else? Or both?  
 15 PROSPECTIVE JUROR: Both.  
 16 THE COURT: Okay. Anybody else on that  
 17 row? I saw some more hands. Yes.  
 18 PROSPECTIVE JUROR: 039, Christina  
 19 Bundren. My uncle was convicted of first degree murder of  
 20 my aunt here locally.  
 21 THE COURT: How long ago was that?  
 22 PROSPECTIVE JUROR: 1990 -- November  
 23 1990.  
 24 THE COURT: Thank you. Next to her, is  
 25 that Ms. Smith?

27

1 PROSPECTIVE JUROR: Yes.  
 2 THE COURT: 045.  
 3 PROSPECTIVE JUROR: My son, drugs and  
 4 check forgery in Wyoming and locally.  
 5 THE COURT: Thank you. Did you have your  
 6 hand up Ms. French?  
 7 PROSPECTIVE JUROR: No.  
 8 THE COURT: Thank you. Second row? On  
 9 the end, is that Carvelli, 048?  
 10 PROSPECTIVE JUROR: Yes. My cousin mail  
 11 fraud and theft.  
 12 THE COURT: Where was that?  
 13 PROSPECTIVE JUROR: Here.  
 14 THE COURT: Thank you. Mr. Morin, 050.  
 15 PROSPECTIVE JUROR: My brother, attempt  
 16 murder. Locally.  
 17 THE COURT: Thank you. Did you have your  
 18 hand up, Mr. Garcia? Badge number 051.  
 19 PROSPECTIVE JUROR: My son, drugs,  
 20 locally.  
 21 THE COURT: Thank you. Next, you had your  
 22 hand up over there, Mr. Grindstaff.  
 23 PROSPECTIVE JUROR: My nephew as to gang  
 24 activity.  
 25 THE COURT: Thank you. Who is next over

28



1 there, Ms. Johnson.

2 PROSPECTIVE JUROR: My daughter's father,  
3 ongoing domestic violence. He's waiting to be tried for  
4 first degree murder, locally.

5 THE COURT: Your daughter's father.

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Does that involve you as a  
8 victim?

9 PROSPECTIVE JUROR: No. Yeah. I take that  
10 back, yes. Yes.

11 THE COURT: Thank you. Did you have your  
12 hand up? Is that Mr. White.

13 PROSPECTIVE JUROR: Yes. I was arrested  
14 like 20 years ago for domestic violence. I had a fight  
15 with my older sister.

16 THE COURT: How old were you at the time?

17 PROSPECTIVE JUROR: I believe I was 19 or  
18 20.

19 THE COURT: Was that locally?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Thank you. How about the  
22 third row, Mr. Davie.

23 PROSPECTIVE JUROR: 059, my brother  
24 domestic abuse in Philadelphia, Pennsylvania.

25 THE COURT: Thank you. What's your badge

29

1 number?

2 PROSPECTIVE JUROR: 069.

3 THE COURT: Thank you. Is it Matts?

4 PROSPECTIVE JUROR: Matts. Both brothers,  
5 drugs in Hawaii.

6 THE COURT: Thank you. Anybody else in  
7 that row. Yes, on the end.

8 PROSPECTIVE JUROR: 074, brother, burglary  
9 robbery, locally.

10 THE COURT: Thank you. Ms. Sunga.

11 PROSPECTIVE JUROR: 072, my son with gang  
12 activity elsewhere.

13 THE COURT: Thank you. Any of you all  
14 over here? Yes, ma'am.

15 PROSPECTIVE JUROR: 082, my two  
16 brothers-in-law and sister-in-law are convicted in an  
17 offence. My sister in-law was prosecuted for drugs. One  
18 brother-in-law was a DUI. And one brother-in-law is in  
19 prison now for molesting his step daughter.

20 THE COURT: And were any or all of those  
21 locally?

22 PROSPECTIVE JUROR: Locally.

23 THE COURT: Thank you very much.

24 All right, folks. Thank you.

25 Are there any of you -- I know the

30

1 questionnaire asked whether or not you have ever yourself  
2 or a family member worked in law enforcement. Let me ask  
3 another question along those lines. Is there anything who  
4 feels they would give more weight or less weight to the  
5 testimony of a police officers simply because they're  
6 police officers? Anybody? No hands. Thank you, very  
7 much.

8 Does everybody here believe that they  
9 would be able to follow all of the instructions on the law  
10 that will be given by the court, even if the instructions  
11 differ from your personal beliefs as to what the law ought  
12 to be?

13 Do you understand what I'm asking there?

14 I don't write the questions. I do  
15 interpret them and try and make them a little more  
16 understandable for you.

17 Essentially, before we get started, after  
18 we seat a jury, I'll kind of tell you a little about how  
19 the case will proceed and how you'll receive evidence, how  
20 witnesses will be called and so forth. And they'll be  
21 some real preliminary instructions in there on some legal  
22 issues. But at the end of the case, after you have  
23 received all of the evidence and heard all of the  
24 testimony, but before the attorneys give their closing  
25 arguments, I'll read you a little more lengthy

31

1 instructions on what the law is in the State of Nevada.

2 You're the fact finders. Your job is to  
3 figure out what the facts are of this proceeding. And you  
4 apply the law to those facts and you come up with a result  
5 that you believe is appropriate. What I'm asking now is  
6 you've got to be willing, as jurors, to accept that the  
7 laws is as I tell you it is. And even though you may  
8 think there is something else that should be the law, you  
9 have to accept and apply the law as I tell you the law  
10 exists. What I want to know is if there is anybody that  
11 could not do that. Okay? See any hands? No. All  
12 right.

13 Thank you.

14 All right. There are certain principles  
15 of law that apply in criminal cases. In particular, to  
16 this proceeding, the principle I want to ask you about is  
17 the State has the burden of proving certain things beyond  
18 a reasonable doubt. Okay. Does everybody understand that  
19 principle? Does everybody agree to that principle? Does  
20 everybody think they can hold the State to their burden of  
21 proof? Anybody could not do that? Let's see your hands.  
22 No.

23 All right. Thank you, very much.

24 All right. I'm going to ask, in a minute,  
25 whether it's going to be an undue burden to serve. And I

32

1 say I'm going to ask, because I anticipate that some of  
2 you will raise your hands. And I don't want them shooting  
3 up in the air right away. I wanted to tell you beforehand  
4 that, obviously, we've all got your questionnaires. We've  
5 read through your questionnaires. I know you have  
6 expressed some things in there about difficulty serving.  
7 I will tell you that I realize this is an inconvenience.  
8 Trust me. I very much realize that. As an attorney I  
9 went through the jury selection process, not only  
10 selecting a jury but seated just like you all.

11 Went down to jury services a few times  
12 through the day. Went up to panels and so forth. I know  
13 it takes a lot of time out of your lives to come down  
14 here, whether it's one day or four or five days. Like  
15 this case. Well, let me say five or six days, since  
16 there's a possibility it spills over into next week.

17 That being said, I can tell you, however,  
18 that the average trial anymore lasts about six days. So  
19 this is right at, if not maybe a littler less than  
20 average. And that's important, because if I excuse you  
21 today and say all right, Mr. Madison, you raise this  
22 reason for me -- and I'm not trying to pick on you,  
23 Mr. Madison. You raised a reason to me, and I think it's  
24 a decent reason. And I'm going to excuse you from jury  
25 service. It's not that I'm giving the blessing to go

33

1 home. You've got to go back to jury services. Jury  
2 services decides whether to send you out on another  
3 panel.  
4 They can send you out own another panel today. Ask  
5 you to come back tomorrow. Whatever they want to do. We  
6 have construction defect cases that take six months.  
7 Medical malpractice cases that take a month or more. Try  
8 a lot of those as well. As well as cases that take a day  
9 or two. So you take the chance if you leave here that  
10 you're going to get sent out to another panel. And that  
11 judge may not like your reasoning for not being able to  
12 serve, like I do. So it's not always that you look at a  
13 case and think it's going to be five for six days that  
14 it's that bad.

15 And I tell you all of this, I'm not  
16 telling you not to answer the question, whether it's going  
17 to be a burden. I just tell you so you'll have all the  
18 information as to how we process jurors here so that when  
19 you answer the question you'll have a little better  
20 idea.

21 Obviously you all are intelligent folks.  
22 You realize how important these proceedings are. They're  
23 very serious proceedings. And we can't do these type  
24 things without having folks willing to come in and serve  
25 as a juror.

34

1 I don't know if any of you have been  
2 involved in the justice system before. Some of you have  
3 raised that individually you were accused of crimes. Or  
4 some of you in your questionnaire that I recall have been  
5 alleged to have been victims of crime. I'm sure if I  
6 asked if anybody has ever been involved in the civil  
7 justice system, some of you might have your hands up. I  
8 got sued. I had to sue. I was in a car accident.  
9 Whatever it may be.

10 Those of you that have been involved in  
11 the justice system, you have a little bit of a better  
12 understanding as to how the process works. And you may  
13 have been through jury trials, so you know how important  
14 this is. If you haven't ever been in the justice system,  
15 odds are, before your time on this planet expires, you'll  
16 probably come into contact with it in some fashion. Be it  
17 civil or criminal. And it may give you a greater  
18 appreciation.

19 But nonetheless, it is a very important  
20 process. I thank you all for being here. I know it's  
21 difficult. It's inconvenient. But to the extent you can  
22 take part in the process and give us some of your time for  
23 a few days, I know that everybody appreciates it.

24 So that being said, I will ask, is it  
25 going to be an undo burden upon anybody to serve on this

35

1 jury for the next five to six days?

2 I'll start with Mr. Madison, badge number  
3 102. What do you have, sir?

4 PROSPECTIVE JUROR: I'm a small business  
5 owner. I'm in wedding photography. Last Wednesday I  
6 almost missed a wedding due to the questionnaire that I  
7 had to go shoot. I don't have a large staff of  
8 photographers. It's a husband and wife team. They  
9 requested our type of photography. I also do event  
10 photography. I have a very full plate. I really just  
11 don't have this kind of time. Whether it's the editing  
12 process, designing photo albums, I have clients backed up  
13 from last year, yet.

14 THE COURT: Thank you. Anybody else on  
15 that top row. Yes, sir -- Mr. Sackmary, 003.

16 PROSPECTIVE JUROR: I'm a search engine  
17 expert. And the livelihood of thousands of people depend  
18 upon me doing my search engine work at a specified time  
19 everyday. The companies which I'm under confidentiality  
20 that I've been working for for the past eight years, if I  
21 do not submit their sites at this specified time every  
22 single day, the work that I've worked for for eight years  
23 will go null and void.

24 THE COURT: Thank you. Anybody else on  
25 that top row? No.

36

1 Middle row. You had you hand up, ma'am.  
 2 PROSPECTIVE JUROR: Yeah, I don't have a  
 3 car and there is no bus where I'm at.  
 4 THE COURT: Let me get your name. Is that  
 5 Ms. Labranch, badge number 019?  
 6 PROSPECTIVE JUROR: Yes.  
 7 THE COURT: All right.  
 8 How did you get down here today?  
 9 PROSPECTIVE JUROR: I had to take my  
 10 husband's car. And he's stuck until midnight with a Jeep  
 11 with a broken tranny (ph), leaking all over the place.  
 12 So I hope he don't blow up.  
 13 THE COURT: Thank you. Anybody else in  
 14 the middle row? Yes, sir.  
 15 PROSPECTIVE JUROR: I just had surgery.  
 16 THE COURT: This is Mr. Petit.  
 17 PROSPECTIVE JUROR: 021 -- the incision is  
 18 right on the belt line. It's pretty difficult for me to  
 19 sit for a long period of time.  
 20 THE COURT: How long ago was that?  
 21 PROSPECTIVE JUROR: Two weeks ago.  
 22 THE COURT: Anybody else on that row?  
 23 Bottom row? Yes, sir.  
 24 PROSPECTIVE JUROR: I have community  
 25 service time I need to turn in by March 14th.

37

1 THE COURT: I'm sorry, is this Mr. McKown,  
 2 033.  
 3 PROSPECTIVE JUROR: Yes, sir. I need to  
 4 turn it in March 14th.  
 5 THE COURT: What is that for?  
 6 PROSPECTIVE JUROR: Possession of  
 7 paraphernalia.  
 8 THE COURT: How much time do you have left  
 9 to do?  
 10 PROSPECTIVE JUROR: I've done it all. I  
 11 have to turn it in and pay the rest of my fees.  
 12 THE COURT: That's down in municipal  
 13 court?  
 14 PROSPECTIVE JUROR: Yes.  
 15 THE COURT: You have a court date?  
 16 PROSPECTIVE JUROR: March 14th.  
 17 THE COURT: 7:30, 8:00 o'clock in the  
 18 morning?  
 19 PROSPECTIVE JUROR: I'm not sure.  
 20 THE COURT: One reason I bring that up  
 21 with this gentleman -- I probably should have told you  
 22 about how scheduling issues so that you can factor that in  
 23 to whatever you talk to me about right now. I have  
 24 morning calendars Monday through Thursday, which means  
 25 other cases that need motions decided that are on the

38

1 morning calendar. Generally that means that on Mondays we  
 2 get started by about 10:00 o'clock.  
 3 Tuesdays and Thursdays are a little  
 4 longer. Wednesday will probably be about 10:00 o'clock.  
 5 But Tuesdays and Thursdays 10:30, maybe 11:00.  
 6 In terms of how we go throughout the day,  
 7 we take a lunch break of an hour to an hour-and-a-half,  
 8 depending on how we do and what's going on. It's kind of  
 9 fluid. We don't always stop right at noon and take off.  
 10 We may have a witness on the stand and we'll finish that  
 11 witness up and so forth.  
 12 We break about 5:00 o'clock every night.  
 13 I'm not going to keep you later than that, unless maybe  
 14 you have somebody on the stand and we're trying to finish  
 15 that person up. Or if it's the end of the case and you  
 16 all are deliberating and you want to stay later, by all  
 17 means, I'll stay here as well. But I know you have things  
 18 you need to get done in the evenings as well.  
 19 That's kind of how we schedule things when we're in  
 20 court. We take a break about every ninety minutes or so,  
 21 use the restroom. We'll come back into court and you may  
 22 bring a bottle of water, soda in a Styrofoam cup, that's  
 23 fine as well.  
 24 So thank you, Mr. McKown. How about the  
 25 front row. Sorry, what do you have?

39

1 PROSPECTIVE JUROR: 029 -- I work for a  
 2 small business and the business is -- I'm one of four  
 3 people. So I'm a single employee of the owners. The  
 4 others are owners of the business. With me not being  
 5 there it hinders them to work that much more. They have  
 6 to drop work in order for me to come here. I'm only  
 7 working six days a week for them. As well as this case, I  
 8 have a big morale (sic) towards this case.  
 9 THE COURT: We'll get into those issues  
 10 later on. Thank you. And is it Ms. Pinon?  
 11 PROSPECTIVE JUROR: Yeah, uh-huh.  
 12 THE COURT: Badge 031.  
 13 PROSPECTIVE JUROR: I've had two brothers  
 14 killed in two separate incidents. And the first time he  
 15 forgot to call me as a witness. They had to a subpoena.  
 16 I'm very, very angry about that.  
 17 And the second -- my second brother that  
 18 was killed, we're in the trial process right now.  
 19 THE COURT: Did this happen locally?  
 20 PROSPECTIVE JUROR: Yeah, here in Las  
 21 Vegas.  
 22 THE COURT: There's a trial going on  
 23 because of your brothers' death?  
 24 PROSPECTIVE JUROR: Yes.  
 25 THE COURT: Thank you. First row over

40

1 here. Yes, Ms. French.

2 PROSPECTIVE JUROR: 046 -- I'm a single  
3 mother.

4 THE COURT: Thank you. Second row on the  
5 end. Is that Ms. Carvelli?

6 PROSPECTIVE JUROR: Yes. I have a surgery  
7 scheduled March 14th.

8 THE COURT: Thank you. Anybody else in  
9 that row?

10 PROSPECTIVE JUROR: 052 -- I'm scheduled  
11 to be in Los Angeles Thursday and New York all of next  
12 week.

13 THE COURT: Business or pleasure?

14 PROSPECTIVE JUROR: Business.

15 THE COURT: Thank you. Anybody else on  
16 that row? Yes, sir.

17 PROSPECTIVE JUROR: I have a flight that  
18 was scheduled for LA today. I also have one tentatively  
19 scheduled for Vancouver for business for a commercial  
20 developer. I'm the only person in my position, so if I  
21 don't make those flights it doesn't get done.

22 THE COURT: When are you supposed to leave  
23 to Vancouver?

24 PROSPECTIVE JUROR: Tentatively Wednesday  
25 morning. I don't have a firm date on that, pending the

41

1 outcome of this.

2 THE COURT: Thank you. Anybody else in  
3 that row? Yes.

4 PROSPECTIVE JUROR: 056 -- I'm a single  
5 parent. I have no family here. So being here makes it  
6 very difficult to find someone to watch my son.

7 THE COURT: How old is your son?

8 PROSPECTIVE JUROR: Eight.

9 THE COURT: Thank you. Back row, yes.

10 PROSPECTIVE JUROR: 072 -- I have no  
11 transportation. My husband dropped me off today because  
12 he's off. I can only come Monday, Tuesday, Wednesday.

13 THE COURT: Thank you. Anybody else on  
14 that row? How about over here? No. Thank you, very  
15 much.

16 THE COURT: Sorry. Yes, sir?

17 PROSPECTIVE JUROR: 076 -- I'm a single  
18 parent. My son just moved out here recently. I have no  
19 family here. I have no daycare during the day.

20 THE COURT: How old is he?

21 PROSPECTIVE JUROR: Six.

22 THE COURT: Okay. Tell you what we're  
23 going to do. Let's take a recess here. I'll talk to the  
24 attorneys about some of the issues that have been brought  
25 up. You all go ahead and get up and stretch, use the

42

1 restroom, get something to drink, if you wish. Then we'll  
2 get into questions by the attorneys.

3 I need to tell you something every time we  
4 take a recess.

5 JURY ADMONITION

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

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

19 (Brief recess taken.)

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

22 I had a question. Maybe you can help out  
23 on this. When I got to the point where I was telling them  
24 about the principles of law involved in the trial, it's  
25 not a guilt or innocence, presumed innocent, and so forth.

43

1 I think the only principle I really needed to discuss with  
2 them was the State's burden.

3 If there is anything else that the defense  
4 thinks I need to have brought up in that admonition, let  
5 me know.

6 MR. SCHIECK: I don't think so, your  
7 Honor.

8 THE COURT: All right. Let's look real  
9 quick at everybody that raised some issues we can consider  
10 right now.

11 First was Mr. Madison -- first guy, badge  
12 number 102. Said he's a small business owner. Owns a  
13 photography business. I mean, generally there is a lot of  
14 slippery slopes involved in letting folks go for a  
15 financial reason, which really isn't a good reason to get  
16 off. Even though I have sympathy for them. We'd have to  
17 let a lot of people go. I don't generally do that. But  
18 if you all stipulate to release him, I'll do that.

19 MR. OWENS: Your Honor, we didn't think  
20 there were that many of them with problems. We don't have  
21 an objection to just pass them.

22 THE COURT: The ones that raised the  
23 issues?

24 MR. OWENS: Right.

25 THE COURT: Twelve folks.

44

1 MR. OWENS: Right.

2 THE COURT: Mr. Schieck.

3 MR. OWENS: I was also going to suggest if

4 they want to stipulate real quick to the three individuals

5 that say they know us personally.

6 THE COURT: Okay.

7 MR. OWENS: I know that's a separate

8 issue.

9 THE COURT: I guess it's thirteen that

10 raised issues of reasons they couldn't be here, or other

11 reasons. It was Ms. Squires that indicated she knew

12 Mr. Owens. Mr. Nakanishi that knew Mr. Patrick. And

13 Mr. Rosehill that knew Mr. Schieck.

14 What is the defense position as to those

15 16 folks?

16 MR. SCHIECK: We have no objection to the

17 three that were acquainted with the attorneys, your Honor.

18 I didn't break down my list separating out the ones that

19 had financial hardship or other matters. Are we including

20 within the hardship list the lady that has the ongoing

21 murder case?

22 THE COURT: I have her in mind, yes. I've

23 got a nod from Mr. Owens and Ms. Weckerly as well.

24 MR. SCHIECK: If I can have the court's

25 indulgence for a minute.

45

1 THE COURT: Sure.

2 MR. SCHIECK: Not including Mr. McKown,

3 who just needs to check in for his community service.

4 THE COURT: I have him on my list, because

5 he raised a reason as to undue burden. I don't think

6 that's a reason, to be quite honest.

7 MR. OWENS: You know, we are proposing

8 that we kick him and go through them one at a time and

9 look at the reasons.

10 THE COURT: Okay.

11 MR. OWENS: Technically, some of these we

12 can work around, obviously. But in the interest of

13 expediting things --

14 THE COURT: There are a couple of issues.

15 Sometimes people want to go through it one at a time. A

16 lot of times the attorney's do that, kick in mass, because

17 they raise a reason indicating I don't want to be here

18 anyway, as opposed to the folks willing to serve. So six

19 of one, half a dozen of the other. If you want to kick

20 them in mass, fine. If you want to go through each of them

21 individually, we can do that as well.

22 MR. SCHIECK: Court's indulgence,

23 please.

24 THE COURT: Okay.

25 MR. SCHIECK: Your Honor, I don't have a

46

1 problem. We don't have problem with doing it. I

2 just -- I guess I'm too conservative. But if the next

3 panel has the same sort of list I see us losing jurors --

4 a lot of jurors. I don't want to run out. I would like

5 to get a jury in place. I have no problem agreeing to

6 stipulate to this stack.

7 MR. OWENS: We are not going to run out.

8 THE COURT: Well, I mean, I agree with Mr.

9 Owens. I don't think we are going to run out. We may

10 prolong things a bit, but that's okay. And sometimes

11 maybe we learn from the first panel as to where we are

12 going with things. But, I'll go ahead and excuse the

13 sixteen folks, which is going to be Mr. Madison 102, Mr.

14 Sackmary, 003, Ms. Labranch 019, Mr. Petit 021,

15 Ms. Squires 025, Ms. Rosehill 027, Mr. Morales 029,

16 Ms. Pinon 031, Mr. McKown 033, Ms. French 046, Carvelli

17 048, Carr 052, Grindstaff 054, Johnson 056, Nakanishi 062,

18 Sunga 072, and Sprosty 076.

19 That's actually seventeen. I'm sorry.

20 Instead of sixteen 16.

21 If you all wish me to get more people up

22 here to fill in those spots now, before my questioning

23 with them before you all start.

24 MR. OWENS: Yes.

25 MS. WECKERLY: That's easier.

47

1 THE COURT: You don't think we'll get this

2 all done with the remaining thirty-three people?

3 MR. SCHIECK: Especially now they learn

4 all they have to do is raise their hands. I've

5 reconsidered.

6 THE COURT: Leslie, go ahead and go back

7 downstairs and get another seventeen of the group and

8 bring them up.

9 THE BAILIFF: Also the gentleman that has

10 his own computer business, the search engine guy, he's all

11 of a sudden remembering that maybe he saw something about

12 this case.

13 THE COURT: We're excusing him.

14 Back on the record in C-131341, State of

15 Nevada versus James Chappell. The record will reflect the

16 presence of Mr. Chappell with his attorneys, the State's

17 attorneys, in the presence of our prospective jurors.

18 All right, ladies and gentlemen, based

19 upon a combination of things, the jury questionnaires as

20 well as some of the answers today, I'll thank and excuse a

21 number of you. Let me get through all the names and you

22 all can get up and report back down to jury services.

23 I'll think and excuse Mr. Madison, badge

24 number 102, Mr. Sackmary 003, Ms. Labranch 019, Mr. Petit

25 021, Ms. Squires 025, Mr. Rosehill 027, Mr. Morales 029,

48

1 Ms. Pinon badge 031, McKown 033, French 046, Carvelli 048,  
2 Carr 052, Grindstaff 054, Johnson 056, Nakanishi 062,  
3 Sunga 072, and Mr. Sprosty 076.

4 I appreciate you all coming in and filling  
5 out the questionnaire and coming and being patient with me  
6 today. You all can report back to the Jury Commissioner's  
7 office on the third floor.

8 We've got to get a few more folks to move  
9 in from downstairs. In the mean time, what I need is  
10 everybody to move down, please.

11 To my new folks, welcome. Thank you, very  
12 much. My name is Douglas Herndon. I'm the presiding  
13 judge here in Department 3, of the Eighth Judicial  
14 District Court. You all have been summoned here to take  
15 part in a criminal proceedings as prospective jurors.  
16 It's the State of Nevada versus James Chappell.

17 I know you came in and filled out the  
18 questionnaire. We're going to get into questions in a  
19 minute. I'll have questions for you and the attorneys may  
20 have questions as we get further in the proceedings.

21 Let me tell you a couple of things. Seated  
22 in front of me is Sharon. Sharon is my court reporter.  
23 So everything that is said, including what you say is  
24 reported. So it's important that you speak up enough that  
25 we can hear. Don't nod your head or shake your head.

49

1 Please don't use uh-huh or huh-uh. It's hard to type that  
2 down correctly. Make sure you speak "yes" or "no."

3 If I don't ask you by name your badge  
4 number, if I don't call on you by saying Mr. Smith, badge  
5 number 100, please, identify yourself by name and badge  
6 number so we know who it is that's speaking.

7 Additionally, seated to my left is Carol.  
8 Carol is my court clerk. She's going to swear an oath to  
9 you all in a minute, to make sure you're under oath when  
10 you answer questions. She keeps track of court exhibits,  
11 court minutes, everything that's going on in court.

12 Seated to her left is my law clerk, Steve.  
13 Steve, who is present to help advise me with a lot of  
14 legal issues that come up during the course of the  
15 proceedings.

16 You have already met Leslie. Leslie is my  
17 bailiff. What you're going to find out is everybody else  
18 in the courtroom, attorneys, most of the court personnel  
19 works under certain ethical obligations not to converse  
20 with the jurors, other than the jury questioning  
21 process.

22 Leslie doesn't have that obligation. So  
23 to the extent you're outside and need to get information  
24 to somebody, you can always talk to Leslie.

25 What I'm going to do now is ask the

50

1 attorneys to tell you quickly a little about the case.  
2 They're going to introduce themselves, who they represent.  
3 They'll speak to you about the witnesses, prospective  
4 witnesses that may be called to testify here, so listen  
5 closely as they do all that. Because some of the  
6 questions will be designed to see if you know any of the  
7 people, be it the attorneys, Mr. Chappell, any of the  
8 witnesses. Or whether you've heard anything about the  
9 case.

10 Mr. Owens, if you would please, again.

11 MR. OWENS: Thank you, your Honor.

12 Good morning. Again, some of you it's  
13 going to be like de-ja-vue, so have some patience with us.  
14 For the rest of you, my name is Chris Owens. This is Pam  
15 Weckerly. We're from the district attorney's office.  
16 We're prosecutors prosecuting this case.

17 This case involves a number of charges  
18 against James Chappell, for which he has already been  
19 convicted in 1996, from a jury trial of that date. Those  
20 include burglary, robbery with use of a deadly weapon,  
21 first degree murder with use of a deadly weapon.

22 The purpose of this jury that we're  
23 selecting now is to determine punishment for the charge of  
24 first degree murder from that conviction. So the  
25 Defendant already stands convicted of that charge.

51

1 The range of punishments that will be  
2 available to this jury to select for that charge include;  
3 the death penalty, life without the possibility of parole,  
4 life with the possibility of parole after 40 years has  
5 been served, and a term of 100 years with parole after 40  
6 years.

7 This is an incident that involves a victim  
8 Debra Panos. It occurred back in August 31, 1995 at the  
9 Ballerina Mobile Home Park. It's a little east of  
10 downtown, maybe about 3 miles east of this area, 839 East  
11 Lamb.

12 It will also include some testimony about  
13 some areas in the downtown, here, the jail, and Parole and  
14 Probation. And the business at the time G.E. Capital,  
15 where some of the witnesses worked.

16 Luanna Aires, Lisa Duran, Tanya Hobson,  
17 LaDonna Jackson, Claire McGuire, Mike Pollard, Kimberly  
18 Simpson, Sherry Smith, and Debra Turner, Laura Burfield,  
19 Jerry Urnst, Dina Freeman, Michelle Moncha, Carol Munson,  
20 Norma Penfield, and Paul Widner. From the Clark County  
21 Coroner's office -- a retired coroner now -- a Dr. Green.  
22 And then police department officers, Daniel Dersdorff,  
23 Darren Heiner, Officer Art Lee, Paul Osuch, Mike Perkins,  
24 James McCarroll, Allen Williams, and Cal Winchells.

25 From Parole and Probation, Larry Arabe

52

1 (ph) Mike Compton, William Duffy, Ed Henderson, Chermaine  
2 Smith.

3 And one other witness, potentially might  
4 be called, is a psychiatrist, Thomas Bickert, from the  
5 Reno area.

6 Appreciate your time and attention and  
7 patience with us, and your candor after we address the  
8 questions to you in a little bit.

9 Thank you.

10 THE COURT: Thank you, again, sir. Mr.  
11 Schieck.

12 MR. SCHIECK: Thank you, your Honor.

13 Good morning, ladies and gentlemen. My  
14 name is David Schieck. I'm with the special public  
15 defender's office here in Clark County. Assisting me is  
16 Clark Patrick, who's also with the special public  
17 defender's office. This is our client who's been charged  
18 in this case, James Chappell.

19 The list of witnesses from which we may  
20 call during these proceedings are as follows: James Ford,  
21 Ivory Morrell, Ben Dean, Charles Dean, Fred Dean, Willy  
22 Chappell, Mira Chappell-King, Kisha Axiom, Dennis Reffer,  
23 Marabel Rosales, and Howard Brooks.

24 Additionally, Dr. Lewis Etcoff, Dr. Tod  
25 Grey, and Dr. William Danton from Reno Nevada.

53

1 Thank you.

2 THE COURT: Thank you, Mr. Schick,  
3 again.

4 To my new folks, as you can guess we have  
5 gone through this process with your fellow jurors here. I  
6 was explaining to them, as you all where on your way up, I  
7 wish the court was big enough that we could bring in  
8 enough people that filled in the questionnaire, which is  
9 about 125 people, so that the attoreny's only have to  
10 repeat this once, in terms of introducing themselves,  
11 telling what the case is about, naming witnesses to you,  
12 then we can work through the process. But unfortunately  
13 the courtroom is not big enough to do that. I apologize  
14 to you in advance, if we have same thing that we had  
15 earlier, where we excused some people and we kind of need  
16 to get more in here before we move to the second part of  
17 what we're trying to do. But nonetheless, we're trying to  
18 do it in the most efficient way we can.

19 I'll ask for Carol to call the roll of the  
20 jurors -- those of you that just arrived. Please listen  
21 for your name and answer present or here when you hear  
22 your name.

23 THE CLERK: Tamar Jackson.

24 PROSPECTIVE JUROR: Present.

25 THE CLERK: Judy Norris.

54

1 PROSPECTIVE JUROR: Present.

2 THE CLERK: Albert Parramore.

3 PROSPECTIVE JUROR: Here.

4 THE CLERK: Brianne Gernot.

5 PROSPECTIVE JUROR: Here.

6 THE CLERK: Donna Byrd.

7 PROSPECTIVE JUROR: Here.

8 THE CLERK: Joseph Schechter.

9 PROSPECTIVE JUROR: Here.

10 THE CLERK: Linda Duran.

11 PROSPECTIVE JUROR: Here.

12 THE CLERK: Laura Staley.

13 PROSPECTIVE JUROR: Here.

14 THE CLERK: Sharon Larsen.

15 PROSPECTIVE JUROR: Here.

16 THE CLERK: Mary Stio.

17 PROSPECTIVE JUROR: Here.

18 THE CLERK: Heather Cohen.

19 PROSPECTIVE JUROR: Here.

20 THE CLERK: John Wells.

21 PROSPECTIVE JUROR: Here.

22 THE CLERK: James Engelbrecht.

23 PROSPECTIVE JUROR: Here.

24 THE CLERK: Kary Kitchen.

25 PROSPECTIVE JUROR: Here.

55

1 THE CLERK: Brenda Berry.

2 PROSPECTIVE JUROR: Here.

3 THE CLERK: Bobby Franks.

4 PROSPECTIVE JUROR: Here.

5 THE CLERK: Terry Tetonis.

6 PROSPECTIVE JUROR: Here.

7 THE COURT: Is there anybody that just  
8 came in whose name was not called? No. All right. Thank  
9 you, very much.

10 Let me ask the seventeen or so of you that  
11 just got here to stand and raise your hand for me please  
12 so I can have Carol administer the oath to you all.

13 THE CLERK: You do solemnly swear that you  
14 will well and truly answer such questions that may be put  
15 to you, touching upon your qualifications to act as jurors  
16 in the case at issue, so help you God.

17 PROSPECTIVE JUROR: (Choir of I do.)

18 THE CLERK: Be seated.

19 THE COURT: Let me tell you up front, you  
20 answered the questionnaire. You came in and filled that  
21 out. But there are still questions that need to be asked  
22 by myself and by the attorneys as well. It's everyone's  
23 desire that we get as fair, open-minded, impartial group of  
24 people as we can to decide the issues in this case. So  
25 there's going to be some questions, which, obviously, you

56



1 can tell from the questionnaire the questioning is  
2 somewhat personal at times. It's not intended to  
3 unnecessarily pry into your lives, but nonetheless, there  
4 are issues that the attorneys need to learn about as they  
5 go about the process of selecting a jury in this case.

6 So I have to tell you strenuously, please,  
7 make sure that you give as full, complete, and honest  
8 answers to any of the questions that are put forth to you.  
9 If you try and hide or withhold something, that fact alone  
10 can tend to contaminate your verdict if you're ultimately  
11 chosen as a juror in this case.

12 So if your instinct tells you, you know  
13 what, I wonder if they really need to know about this or  
14 not, tell us about it, please. Every fact has some  
15 bearing on your personal and professional life somehow  
16 relates to your ability to hear this case is important for  
17 the attorneys to know. So make sure you tell us about  
18 it.

19 I have some general questions I'll ask of  
20 the seventeen of you real quick. If you want to answer a  
21 question, raise your hand and I'll work through everybody.

22 Have any of you been convicted of a  
23 felony? No. Thank you.

24 Anybody who is not a U.S. citizens? No.  
25 Thank you.

57

1 Do any of you believe you know or are  
2 acquainted with Mr. Owens or Ms. Weckerly? No. Thank  
3 you.

4 Anybody believe you know or are acquainted  
5 with Mr. Schieck or Mr. Patrick, the defense attorneys?  
6 No hands. Thank you.

7 Any of you all believe you know or are  
8 acquainted with Mr. Chappell, the defendant. All right.

9 Anybody believe they are acquainted with  
10 or know any of the witnesses spoken to you about, by  
11 either Mr. Owens or Mr. Schieck? No hands. Thank you.

12 Anybody think they know anything about  
13 this case, other than what the attorneys have stated to  
14 you or from the jury questionnaire? I see no hands.  
15 Thank you, very much.

16 Some of you mentioned in your  
17 questionnaires, when you were asked about prior jury  
18 service, that you had been jurors before. Were any of you  
19 a foreperson of any of those juries? I see no hands.  
20 Thank you.

21 Have any of you all or close family  
22 members ever been accused of a crime? Yes, sir.

23 PROSPECTIVE JUROR: 094 -- my uncle was  
24 accused of murder.

25 THE COURT: Okay. Was that -- how long

58

1 ago was that?

2 PROSPECTIVE JUROR: In '93 or '94.

3 THE COURT: Locally or somewhere else?

4 PROSPECTIVE JUROR: In California.

5 THE COURT: Thank you, sir. Next, is that

6 Ms. Cohen.

7 PROSPECTIVE JUROR: Never mind.

8 THE COURT: If you've got something, let  
9 me know.

10 PROSPECTIVE JUROR: No.

11 THE COURT: Anybody over here I missed?

12 PROSPECTIVE JUROR: Ms. Jackson, 080, my  
13 nephew, robbery.

14 THE COURT: Was that here?

15 PROSPECTIVE JUROR: In California.

16 THE COURT: Thank you. Anybody else over  
17 there. Yes, badge number --

18 PROSPECTIVE JUROR: 88, myself, felony  
19 1997.

20 THE COURT: All right. What was it?

21 PROSPECTIVE JUROR: Stolen property --  
22 buying stolen property. It was reduced to a  
23 misdemeanor.

24 THE COURT: Where was that?

25 PROSPECTIVE JUROR: Here in las Vegas.

59

1 THE COURT: Thank you. Anybody else?

2 Yes.

3 PROSPECTIVE JUROR: 86 -- my sister in  
4 California, shoplifting, receiving stolen goods, and drug  
5 paraphernalia.

6 THE COURT: Anybody else?

7 PROSPECTIVE JUROR: Parking tickets and  
8 stuff don't count?

9 THE COURT: Not unless you got a whole lot  
10 of them. Then you probably don't want to tell me  
11 anyway.

12 THE COURT: Thank you. Is there anybody  
13 here of the seventeen of you all that just came in who  
14 would tend to give more weight or less weight or credence  
15 to the testimony of a police officer because they were a  
16 police officers? I see no hands.

17 Does everybody believe they will be able  
18 to follow the instructions on the law that I give you that  
19 pertain to this case, rather than -- or I should say, if  
20 those instructions differ from what your personal belief  
21 is, as to what the law ought to be?

22 Essentially I'll give you legal  
23 instructions on the case. A little at the beginning, a  
24 lot at the end before the attorneys make their closing  
25 arguments. What I need to know now is you are going to

60



1 agree to follow the law as I tell you the law exists in  
2 the State of Nevada.

3 Your job is to find out what the facts  
4 are. You apply the facts to the law as I tell you the law  
5 exists. Is there anybody that cannot follow the law as I  
6 tell you the law exists? I see no hands. Thank you, very  
7 much.

8 And finally, there are certain principles  
9 of law that apply to any criminal proceeding, and one of  
10 those principles is that the State of Nevada has the  
11 burden of proving all the elements necessary in this  
12 proceeding beyond a reasonable doubt. Does everybody  
13 understand that?

14 Anybody not understand that?

15 Does everybody agree that they could hold  
16 the State to their burden in this case of proving the  
17 things that are necessary to prove beyond a reasonable  
18 doubt? Anyone who could not do that? I see no hands.  
19 Thank you, very much.

20 Final question I have is about -- I'm  
21 going to ask you whether it would be an undo burden upon  
22 you to serve in this case for the next -- we anticipate  
23 the case will last through Friday, maybe spills over into  
24 Monday of next week. So I'll ask you if it would be an  
25 undo burden upon anybody to serve that amount of time as

61

1 jurors in this case.

2 And before I ask the question, let me give  
3 you a little bit of information.

4 Average trial in this building lasts about  
5 six days. This is about average. Hopefully a little less  
6 than average. If I excuse you today, base upon whatever  
7 reason you give to me, you don't just get to leave and go  
8 home. You got to go back to jury services and they decide  
9 whether to send you out on another panel today or tell you  
10 to come back next week. Whatever their pleasure is.

11 If you go to another panel, that judge may  
12 not like your excuse. It's independent to each judge  
13 whether he excuses a juror or not. We have medical  
14 malpractice cases, including a couple of them starting  
15 today, or a couple later days this week, that last six  
16 months or more. We have medical malpractice cases that  
17 last a couple of months. There's a variety of cases that  
18 last a lot longer than this case is what I'm trying to  
19 tell you.

20 So there's also cases that last a day or  
21 two. Don't get me wrong. I'm not trying to tell you not  
22 to answer the question. I'm trying to give you a little  
23 information as to how the process works so you understand  
24 when you tell me what the reasons are why you can't  
25 serve.

62

1 And I understand it's inconvenient for  
2 you. Trust me. I realize that you have things in your  
3 life you'd rather be doing. It's a very important process  
4 that we have here, and to not have jurors willing to serve  
5 would mean you can't go forward this type of judicial  
6 process that we have in this country. It's the best in  
7 the world. A lot of judges come over from other counties  
8 that wish they had this process.

9 I wish you would give strong consideration  
10 to giving us a little bit of your time and serve in this  
11 case.

12 That being said, is there anybody who it  
13 would be an undo burden upon to serve for five or six days  
14 here. All right. Yes, sir.

15 PROSPECTIVE JUROR: I own my own  
16 company.

17 THE COURT: Your badge number, sir?

18 PROSPECTIVE JUROR: John Wells, badge  
19 number 94. I have a small IT service that out-sources  
20 services to several companies in Las Vegas valley. I have  
21 taken nearly forty calls this morning I'm not able to  
22 attend to, because of the daylight savings change. I have  
23 one guy that works for my. We support 40 companies in the  
24 valley. I'd go out of business if I couldn't attend to my  
25 clients.

63

1 THE COURT: Anybody else? Yes, sir.

2 PROSPECTIVE JUROR: Badge 95. I'm  
3 self-employed. I'm a house painter. Presently working  
4 with my brothers, of which there are two. And if I don't  
5 work, sir, I don't make money.

6 THE COURT: Thank you. Anybody else?  
7 Yes, Ms. Jackson.

8 PROSPECTIVE JUROR: 80 -- I'm in retail.  
9 My husband is a loan officer. He just started out. It's  
10 just a burden for me to come due to financial situation.

11 THE COURT: Thank you. Anybody else over  
12 there?

13 PROSPECTIVE JUROR: 86 -- I work graveyard  
14 for starters. I'm a sole income and care giver to my  
15 brother who lives with me. He's 80 years old. He  
16 requires resources.

17 THE COURT: Anybody else?

18 PROSPECTIVE JUROR: 102 -- I'm currently  
19 working graveyard. I'm the only source of income in my  
20 house. My wife is going to school. And I'm supporting  
21 five kids.

22 MR. OWENS: What is that number?

23 THE COURT: That's Mr. Tetonis, 102.

24 PROSPECTIVE JUROR: 102.

25 THE COURT: All right. Anybody else? No.

64

1 Thank you.  
 2 Counsel approach the bench real quick, please.  
 3 (Discussion held at the bench.)  
 4 THE COURT: At this time I'm going to  
 5 thank and excuse, Ms. Byrd 086, Mr. Wells 094, Mr.  
 6 Engelbrecht 095. I thank you all for coming down and  
 7 answering the questionnaire and coming up here today.  
 8 Please report back to the Jury Commissioner's before you  
 9 leave today, okay.  
 10 Ladies and gentlemen, we're going to move  
 11 on now with questions from the attorneys. We'll get into  
 12 this a little bit before we take our lunch break.  
 13 The most efficient and affective way for  
 14 the attorneys to do this is to go one by one with people.  
 15 The State's attorneys ask questions and the defense  
 16 attorneys ask some questions, and we'll move onto the next  
 17 juror.  
 18 It may be between each attorney, Mr. Owens  
 19 may have question for the first juror, Ms. Weckerly may  
 20 have questions for the second juror. The same thing with  
 21 Mr. Schieck and Mr. Patrick as they move back and forth  
 22 with you all.  
 23 What you'll find, especially you folks in  
 24 the audience right now, to the extent somebody gets  
 25 challenged and excused for cause and somebody else has to

65

1 move up, as you listen to the questions over and over  
 2 you'll be a lot quicker to answer things because you'll  
 3 able to understand what it is the attorneys are really  
 4 interested in trying to question you about. So kind of  
 5 pay attention as we're moving on, if you would, please.  
 6 All right. Mr. Owens, Ms. Weckerly.  
 7 MR. OWENS: If I could request, it might  
 8 be helpful to us to get a role call. I don't know if we  
 9 maintained -- I'm not sure if we know who is in which  
 10 seats at this point.  
 11 THE COURT: Seat number one is Mr. Perez  
 12 001, Mr. Brady 004, Ms. Kaleikini-Johnson 007, Mr. Taylor  
 13 009, Mr. Hibbard 010, Ms. Bailey 015, Ms. Mills 016,  
 14 Mr. Henck 020. My far right, Mr. Smith 022, Ms. Meyrick  
 15 023, Ms. Cardillo 026, Ms. Ramirez 034, Ms. Theus 035, Ms.  
 16 Noahr 036, Mr. Martino 038, Bundren 039, Ms. Smith 045,  
 17 Morin 050, Garcia 051, Salak 055. Correct?  
 18 PROSPECTIVE JUROR: Yes.  
 19 THE COURT: Do you want me to keep going?  
 20 MR. OWENS: That's plenty for now.  
 21 THE COURT: All right. Mr. Owens.  
 22 MR. OWENS: Court's indulgence a moment.  
 23 THE COURT: Okay.  
 24 MR. OWENS: Mr. Perez, how are you doing?  
 25 PROSPECTIVE JUROR: Fine.

66

1 MR. OWENS: You had answered a number of  
 2 questions -- you can have a seat. You don't have to stand  
 3 up. It's uncomfortable enough giving us questions like  
 4 this.  
 5 You were asked a number of questions about the death  
 6 penalty. Have you had an opportunity to think about that  
 7 since you filled out the questionnaire? Do you understand  
 8 what I mean?  
 9 PROSPECTIVE JUROR: I speak Spanish.  
 10 MR. OWENS: Do you have a problem with the  
 11 language?  
 12 PROSPECTIVE JUROR: Yes.  
 13 MR. OWENS: You have a hard time  
 14 understanding English?  
 15 PROSPECTIVE JUROR: Yes.  
 16 MR. OWENS: So it would be hard for you to  
 17 understand what the witnesses are saying as they come up  
 18 to the stand?  
 19 PROSPECTIVE JUROR: Yes. It's hard.  
 20 MR. OWENS: Approach briefly.  
 21 THE COURT: Sure.  
 22 (Discussion held at the bench.)  
 23 THE COURT: Why don't we go ahead and move  
 24 to Mr. Brady. I'll contact the court interpreter's office  
 25 for Mr. Perez. Thank you, Mr. Perez. Stay for right now,

67

1 okay.  
 2 PROSPECTIVE JUROR: I can interpret,  
 3 Judge.  
 4 THE COURT: I appreciate that, but by rule  
 5 I need to have a certified court interpreter from the  
 6 interpreter's office.  
 7 MS. WECKERLY: May I proceed.  
 8 THE COURT: You may.  
 9 MS. WECKERLY: I guess it's not quite  
 10 morning anymore. Last week when you filled out your  
 11 questionnaire, you were asked several questions about the  
 12 death penalty. Do you recall that?  
 13 PROSPECTIVE JUROR: Sure.  
 14 MS. WECKERLY: One of the questions that  
 15 was asked, sort of alluded to, or asked you would you  
 16 automatically impose the death penalty if someone were  
 17 convicted of first degree murder. Do you recall a question  
 18 of that nature?  
 19 PROSPECTIVE JUROR: Sure.  
 20 MS. WECKERLY: As you know from Mr. Owens  
 21 this morning and probably you got that from the  
 22 questionnaire as well, we're sitting here and the  
 23 Defendant is convicted of first degree murder with use of  
 24 a deadly weapon. You understand that?  
 25 PROSPECTIVE JUROR: Correct.

68

1 MS. WECKERLY: Judge Herndon explained  
2 that at the end of the case you'll be provided with the  
3 law in the State of Nevada as to when jurors can consider  
4 the death penalty, because it's not an automatic thing in  
5 every case of first degree murder in the State of Nevada.  
6 There are certain requirements that have to be met before  
7 the jury can even consider the death penalty.

8 Would you be able to follow those instructions  
9 provided by Judge Herndon and hold the State to those  
10 legal requirements before you would consider the death  
11 penalty as a potential punishment?

12 PROSPECTIVE JUROR: I guess the question  
13 back -- is it going to be one of the options no matter  
14 what, or is that what this is going to be determining to  
15 see if that's even on the table?

16 MS. WECKERLY: Exactly.

17 PROSPECTIVE JUROR: If it's not on the  
18 table.

19 MS. WECKERLY: The Judge will tell you  
20 these are the requirements that must be met before a jury  
21 can consider imposition of the death penalty. And you  
22 wouldn't have any trouble following those instructions?

23 PROSPECTIVE JUROR: If he says it wasn't  
24 an option, then it's not an option.

25 MS. WECKERLY: Another part of that

69

1 process is you'll be given information, obviously, about  
2 the crime itself, but also information about the Defendant  
3 and his background, that sort of thing. And the law is  
4 that you are to consider all of that information in making  
5 your decision with your fellow jurors. And I assume you  
6 would have no trouble following that law as well,  
7 considering all the information before you make a  
8 decision?

9 PROSPECTIVE JUROR: I have to say  
10 personally I don't feel that anybody's background is  
11 justification for a crime that they commit.

12 MS. WECKERLY: Well, and we're not  
13 necessarily talking about, in this situation,  
14 justification for a crime. Because he's convicted of  
15 first degree murder, and so the what you're to consider it  
16 for in this case is what would be an appropriate  
17 punishment. And the law doesn't tell you what weight you  
18 must give certain factors. You must hear that information  
19 and consider it before you make a sentencing decision  
20 collectively in a group. Would you be able to do that?

21 PROSPECTIVE JUROR: Sure.

22 MS. WECKERLY: Do you have any other  
23 concerns about your ability to following the judge's  
24 instruction and make a decision about punishment that is  
25 appropriate in this case?

70

1 PROSPECTIVE JUROR: Um --

2 MS. WECKERLY: You are put on the spot.

3 PROSPECTIVE JUROR: I guess, I definitely  
4 lien toward the death penalty in any type of murder case,  
5 or something like that. But it depends on the judge's  
6 instructions. I could take that into account.

7 MS. WECKERLY: Thank you, sir.

8 THE COURT: Thank you. Pass for cause?

9 MR. OWENS: Yes. Sorry, your Honor.

10 THE COURT: Mr. Patrick.

11 MR. PATRICK: Mr. Brady, you indicated in  
12 your questionnaire that you have a history of domestic  
13 violence in your family.

14 PROSPECTIVE JUROR: Correct.

15 MR. PATRICK: If you come to find out  
16 something about this case involves domestic violence,  
17 would that color your opinion of the case?

18 PROSPECTIVE JUROR: Possibly.

19 MR. PATRICK: How do you feel about  
20 domestic violence.

21 PROSPECTIVE JUROR: It's unacceptable.

22 MR. PATRICK: It was shown that Mr.  
23 Chappell had a history of domestic violence would that  
24 change your opinion about what penalty he should be given?

25 MR. OWENS: Objection, your Honor.

71

1 THE COURT: Well, I'll sustain the  
2 objection. Ask specifically if he's going to do a certain  
3 thing based upon a certain piece of evidence. I'll allow  
4 you to explore the issue of domestic violence,  
5 obviously.

6 MR. PATRICK: Who in your family had the  
7 history of domestic violence?

8 PROSPECTIVE JUROR: My father and  
9 mother.

10 MR. PATRICK: Who was the abuser?

11 PROSPECTIVE JUROR: My father.

12 MR. PATRICK: So how do you feel about --  
13 again, how do you feel about domestic violence?

14 PROSPECTIVE JUROR: Unacceptable. I don't  
15 know why my mother didn't put him in jail.

16 MR. PATRICK: Now, Ms. Weckerly talked to  
17 you about if the death wasn't an option you'd consider  
18 other forms of penalty?

19 PROSPECTIVE JUROR: If it wasn't an  
20 option, yes.

21 MR. PATRICK: It's going to be an option.  
22 The judge is not going to tell you you cannot impose the  
23 death penalty.

24 PROSPECTIVE JUROR: Okay. Knowing that he  
25 is convicted of murder, that would be the route that I

72

1 would choose to go, unequivocally.

2 MR. PATRICK: If you learned things about  
3 Mr. Chappell's past, childhood, would any of that matter  
4 to you?

5 PROSPECTIVE JUROR: Not at all.

6 MR. PATRICK: We'd ask to strike for  
7 cause.

8 THE COURT: Let me say this to the panel,  
9 and Mr. Brady as well. The death penalty is a sentencing  
10 option, a sentencing possibility as you enter this  
11 hearing. You have to discover certain facts, which you'll  
12 find in the legal instruction is what you find the facts  
13 to be will be what determines whether you can consider  
14 that as a possible punishment in your deliberation, okay.  
15 The instructions layout how you go through that process.  
16 Right now it's a possibility. It's certainly not  
17 something that you absolutely have to give. You don't  
18 have to give the most lenient sentence either. You have  
19 to determine what the facts are and if certain facts are  
20 met, then you can consider the death penalty as a possible  
21 punishment in your deliberation.

22 So are you saying, Mr. Brady, you are automatically  
23 going to impose the death penalty if it's a possibility  
24 for you when you go back there, without knowing anything?  
25 Or are you going to consider everything and work with the

73

1 instructions and evidence, then decide what the  
2 appropriate sentence is?

3 PROSPECTIVE JUROR: Well, I mean, I would  
4 have to say the very limited things I know about the case  
5 that he was convicted of first degree murder and abuse,  
6 yeah.

7 THE COURT: Without any regard to what  
8 other evidence comes out?

9 PROSPECTIVE JUROR: Whatever happened,  
10 drugs, whatever else was involved, wouldn't be a  
11 mitigating factor for me.

12 THE COURT: Okay. I will take that issue  
13 under advisement right now.

14 Approach the bench, counsel.

15 (Discussion held at the bench.)

16 THE COURT: Any other questions for  
17 Mr. Brady?

18 MR. PATRICK: No.

19 THE COURT: Mr. Owens or Ms. Weckerly as  
20 to Ms. Johnson.

21 MR. OWENS: How are you?

22 PROSPECTIVE JUROR: Good.

23 MR. OWENS: How are you feeling about  
24 being here today?

25 PROSPECTIVE JUROR: Truthfully, I wish I

74

1 wasn't. But I'm here. I'm supposed to be here.

2 MR. OWENS: Are you nervous?

3 PROSPECTIVE JUROR: A little bit.

4 MR. OWENS: Just the context of being  
5 here, being on the spot?

6 PROSPECTIVE JUROR: That's it.

7 MR. OWENS: Something about the nature of  
8 the charge, murder, or the punishment that makes you feel  
9 uncomfortable?

10 PROSPECTIVE JUROR: No.

11 MR. OWENS: When we are asking the  
12 question about an eye for an eye, you said you didn't  
13 necessarily believe in that principle. It said, I don't  
14 feel I have the right to decide that. What did you mean  
15 by that?

16 PROSPECTIVE JUROR: Basically, I don't  
17 think that I personally, myself, have a right to decide  
18 that. I can't say you did that to me, I'll do it back to  
19 you. In my own life. I know in this situation it's  
20 dependent upon circumstances.

21 MR. OWENS: You don't have a problem of  
22 applying whatever standard you feel is appropriate here?

23 PROSPECTIVE JUROR: No.

24 MR. OWENS: We are looking for people  
25 outside of the situation, obviously, to be as fair and

75

1 impartial as they can be. We talked about the four  
2 options. Do you have any questions about the four options  
3 that are available?

4 PROSPECTIVE JUROR: No.

5 MR. OWENS: Obviously, if there was only  
6 one option on the table we wouldn't need a jury, right?

7 PROSPECTIVE JUROR: Right.

8 MR. OWENS: We're looking for people that  
9 can say that they're willing to keep an open mind and wait  
10 until they have heard the evidence to make a decision.  
11 Are you okay with that principle?

12 PROSPECTIVE JUROR: Yes.

13 MR. OWENS: So you don't feel you would  
14 jump the gun and say do this or do that without having  
15 heard anything about this?

16 PROSPECTIVE JUROR: No.

17 MR. OWENS: Do you think it's important to  
18 keep an open mind?

19 PROSPECTIVE JUROR: Yes.

20 MR. OWENS: How do you feel about the idea  
21 of deliberation, discussing these issues and keeping an  
22 open mind through that discussion?

23 PROSPECTIVE JUROR: As long as everyone  
24 involved is willing to listen, and not jump to conclusions  
25 and not -- be willing to listen to everybody else, it's

76

1 fine.

2 MR. OWENS: You're okay with the idea of  
3 sharing your opinions and ideas?

4 PROSPECTIVE JUROR: Yes.

5 MR. OWENS: Listening to other people?

6 PROSPECTIVE JUROR: Yes.

7 MR. OWENS: Are you willing to adjust your  
8 ideas to correspond to what you feel is appropriate as  
9 that discussion progresses?

10 PROSPECTIVE JUROR: If somebody makes a  
11 good point, yes.

12 MR. OWENS: You don't have any  
13 philosophical problems with the death penalty itself?

14 PROSPECTIVE JUROR: No.

15 MR. OWENS: Do you feel that it's  
16 important to have a range of punishments for a crime such  
17 as this?

18 PROSPECTIVE JUROR: Yes.

19 MR. OWENS: Do you feel you could consider  
20 all those forms of punishment before selecting the one  
21 that is the most appropriate?

22 PROSPECTIVE JUROR: Yes.

23 MR. OWENS: We're not asking you to  
24 prejudge what you do here. You don't know anything about  
25 the case. But after you hear all the factors in

77

1 mitigation and aggravation, you're free, you're free to  
2 accept what you want to accept and reject what you don't  
3 want to accept, and come up with what you feel is  
4 appropriate in the end. Does that seem like a fair  
5 system?

6 PROSPECTIVE JUROR: Yes.

7 MR. OWENS: And if after hearing all the  
8 evidence in the case, both pro and con, you thought about  
9 all the range of punishment, if you are convinced of what  
10 the appropriate punishment and fair punishment was the  
11 death penalty, would you be able to come back with that  
12 verdict?

13 PROSPECTIVE JUROR: Yes.

14 MR. OWENS: How do you feel about the idea  
15 of sitting in judgment on another person?

16 PROSPECTIVE JUROR: I personally don't  
17 like it, but the way the system is set up here this is the  
18 way it is done. I got the luck of the draw.

19 MR. OWENS: I think most people feel  
20 uncomfortable judging other people, especially in the  
21 context like this. You appreciate the need to have  
22 judgments made from time to time in our society?

23 PROSPECTIVE JUROR: Yes.

24 MR. OWENS: You believe in the jury  
25 system?

78

1 PROSPECTIVE JUROR: Yes.

2 MR. OWENS: If you felt that that was the  
3 appropriate punishment is that a judgment you could make  
4 on another human being?

5 PROSPECTIVE JUROR: Unfortunately, yes.

6 MR. OWENS: You say unfortunately.

7 PROSPECTIVE JUROR: I don't relish having  
8 to do this, but it's part of living here.

9 MR. OWENS: You feel that's something you  
10 could do?

11 PROSPECTIVE JUROR: Yes.

12 MR. OWENS: You haven't heard everything  
13 or anything right now.

14 PROSPECTIVE JUROR: Right.

15 MR. OWENS: What we're trying to find out  
16 is if people have problems judging other people, we want  
17 to find out now rather than the end of the next four or  
18 five days and they say, I can take this responsibility.

19 You're okay, you feel you could hold up and do that?

20 PROSPECTIVE JUROR: Yes.

21 MR. OWENS: Thank you. I'll pass for  
22 cause.

23 THE COURT: Thank you. Mr. Schieck.

24 MR. SCHIECK: Thank you. Ms. Johnson, you  
25 indicated in your questionnaire that you'd never really

79

1 been exposed to someone who's got a history of substance  
2 abuse or domestic violence; is that correct?

3 PROSPECTIVE JUROR: Correct.

4 MR. SCHIECK: You've probably heard from  
5 the questioning may hear things about those two topics  
6 during the course of this hearing. Is that going to cause  
7 you to be less than fair and impartial to both sides of  
8 the case?

9 PROSPECTIVE JUROR: No.

10 MR. SCHIECK: Is that something you would  
11 want to hear about in this case, whether or not substance  
12 abuse might have been involved or alcohol abuse might have  
13 been involved?

14 PROSPECTIVE JUROR: If it has bearing on  
15 the case, yes.

16 MR. SCHIECK: When you say bearing on the  
17 case, we're just here to determine the penalty, so as it  
18 has a bearing on the potential penalty in the case?

19 PROSPECTIVE JUROR: Yes.

20 MR. SCHIECK: That's something you'd want  
21 to hear?

22 PROSPECTIVE JUROR: Yes.

23 MR. SCHIECK: One of your other questions,  
24 you were asked about friends that work in the justice  
25 system. You don't have any friends that work in law

80

1 enforcement whatsoever or the justice system?  
 2 PROSPECTIVE JUROR: No.  
 3 MR. SCHIECK: You do however have an  
 4 opinion that sometimes the justice system can be a little  
 5 to lenient. Did you have something in mind when you wrote  
 6 that answer?  
 7 PROSPECTIVE JUROR: No.  
 8 MR. SCHIECK: Nothing that caused you to  
 9 have that opinion?  
 10 PROSPECTIVE JUROR: No.  
 11 MR. SCHIECK: Is that still an opinion  
 12 that you have that our system is too lenient?  
 13 PROSPECTIVE JUROR: No. I guess there are  
 14 some cases where there's been so much wrong done, it just  
 15 doesn't fit what they were. But it's also outside looking  
 16 in and listening to what the news puts out. I'm not  
 17 getting everything. We're getting what they want us to  
 18 have.  
 19 MR. SCHIECK: Any cases where you can  
 20 think of where perhaps the judge imposed a sentence and  
 21 you thought to yourself that guy got off or lady got off  
 22 too easy?  
 23 PROSPECTIVE JUROR: No, because I don't  
 24 like to listen to the news because it's depressing.  
 25 MR. SCHIECK: We've had a lot of cases in

81

1 the news involving politicians. Sometimes it seems like  
 2 they got a slap on the wrist, and sometimes they got a lot  
 3 of time in prison. Any of those cases that caught your  
 4 attention and you thought it was too lenient?  
 5 MR. OWENS: Objection. Unless he's  
 6 talking about specific cases.  
 7 THE COURT: I'll sustained the objection  
 8 as to a specific case in that regard.  
 9 MR. SCHIECK: I just asked "yes" or "no."  
 10 Did any of those cases catch your attention?  
 11 PROSPECTIVE JUROR: No.  
 12 MR. SCHIECK: You indicated with respect  
 13 to the death penalty that you feel that it's used  
 14 appropriately, as opposed to too often or not enough.  
 15 Have you followed death penalty case or paid attention to  
 16 how often it's imposed?  
 17 PROSPECTIVE JUROR: No.  
 18 MR. SCHIECK: Just a general impression,  
 19 it's imposed appropriately.  
 20 PROSPECTIVE JUROR: Yes.  
 21 MR. SCHIECK: Thank you. We'd pass for  
 22 cause, your Honor.  
 23 THE COURT: Thank you. Ms. Weckerly, Mr.  
 24 Owens.  
 25 MR. OWENS: Thank you, your Honor.

82

1 Mr. Taylor.  
 2 PROSPECTIVE JUROR: Yes.  
 3 MR. OWENS: You had indicated that you  
 4 knew some people that had some problem, was drugs, drug  
 5 situations?  
 6 PROSPECTIVE JUROR: A brother-in-law.  
 7 MR. OWENS: One came out good and one not  
 8 too good. I think you said one died or something.  
 9 PROSPECTIVE JUROR: I can't remember  
 10 now.  
 11 MR. OWENS: You can't remember?  
 12 PROSPECTIVE JUROR: No.  
 13 MR. OWENS: Substance abuse, you said one  
 14 died and the other recovered.  
 15 PROSPECTIVE JUROR: It was my ex-wife.  
 16 MR. OWENS: Was it because of substance  
 17 abuse -- the death?  
 18 PROSPECTIVE JUROR: Yes, it was.  
 19 MR. OWENS: So you are kind of close to  
 20 these situations?  
 21 PROSPECTIVE JUROR: Yes.  
 22 MR. OWENS: Anything about those that  
 23 would make it difficult for you to sit in this particular  
 24 case?  
 25 PROSPECTIVE JUROR: No.

83

1 MR. OWENS: You weren't so close that you  
 2 got prejudiced about drugs to get in the way of being  
 3 fair?  
 4 PROSPECTIVE JUROR: Well, I have prejudice  
 5 against drugs.  
 6 MR. OWENS: By prejudice, what I mean is  
 7 that it would interfere with your ability to be fair. Of  
 8 course you can consider these things and give weight to  
 9 whatever you want.  
 10 PROSPECTIVE JUROR: I need to consider it,  
 11 absolutely. That's what -- you have to feed us  
 12 information on both sides.  
 13 MR. OWENS: Right. Now you said you  
 14 thought you might have heard some media on this?  
 15 PROSPECTIVE JUROR: I don't know if it was  
 16 this case or not. It sounded familiar. I wasn't in  
 17 here -- I didn't live here in '95. If it occurred in '93,  
 18 it's not the same one.  
 19 MR. OWENS: I'm reading Question 21, and  
 20 your answer was it would be a different case.  
 21 PROSPECTIVE JUROR: Right.  
 22 MR. OWENS: Other than this one you don't  
 23 remember another case?  
 24 PROSPECTIVE JUROR: Nothing at all.  
 25 MR. OWENS: You have a son involved in law

84

1 enforcement?  
2 PROSPECTIVE JUROR: He's an ex-police  
3 officer in Santa Monica. He was undercover.  
4 MR. OWENS: Retired now?  
5 PROSPECTIVE JUROR: Yes.  
6 MR. OWENS: Did you have a lot of talk  
7 about his job?  
8 PROSPECTIVE JUROR: Yes.  
9 MR. OWENS: You'll probably hear from  
10 police officers in this case, as we do in many cases. The  
11 question is would you want to give more credibility to  
12 them because they're police officers?  
13 PROSPECTIVE JUROR: None whatsoever.  
14 MR. OWENS: You'd weigh their testimony  
15 like you would anybody else?  
16 PROSPECTIVE JUROR: Absolutely.  
17 MR. OWENS: You had experience on a jury  
18 previously?  
19 PROSPECTIVE JUROR: A long time ago.  
20 MR. OWENS: So long ago you can't remember  
21 when.  
22 PROSPECTIVE JUROR: I can remember.  
23 MR. OWENS: So you can't remember if it  
24 was criminal or civil?  
25 PROSPECTIVE JUROR: Civil.

85

1 MR. OWENS: Let me --  
2 PROSPECTIVE JUROR: It was an insurance  
3 claim.  
4 MR. OWENS: Was it an okay experience for  
5 you?  
6 PROSPECTIVE JUROR: Yeah.  
7 MR. OWENS: Nothing that was bad or left a  
8 bad taste in your mouth.  
9 PROSPECTIVE JUROR: No.  
10 MR. OWENS: As far as discussion in the  
11 back here about punishments, you talked -- there was that  
12 question about an eye for an eye, tooth for a tooth, that  
13 maxim we've heard before. You said you had -- when you  
14 were asked about the death penalty, you said an eye for an  
15 eye. Are you meaning that the punishment should fit the  
16 crime. Or are you meaning literally you have to have quid  
17 pro quo?  
18 PROSPECTIVE JUROR: I was thinking that  
19 there should be a punishment set out. And in this  
20 situation we have four punishments set up. Again, it's up  
21 to the prosecution and defense to provide us with the  
22 facts to make that decision.  
23 MR. OWENS: You are right. And after  
24 hearing the information that you get, do you have any  
25 problem with the idea of passing judgment on another human

86

1 being?  
2 PROSPECTIVE JUROR: To some degree we all  
3 probably do. We're all God's children. You have to make  
4 that kind of decision. But what is set out that has to be  
5 done has got to be done. Again, we have to figure out  
6 which one of the four that has to be -- collectively.  
7 MR. OWENS: You feel that is something  
8 you'd be able to do?  
9 PROSPECTIVE JUROR: Sure.  
10 MR. OWENS: Would you be able to consider  
11 the full range of punishment before coming to a  
12 conclusion?  
13 PROSPECTIVE JUROR: Absolutely. That's  
14 only fair.  
15 MR. OWENS: You're not going to jump the  
16 gun and say I'm doing this automatically?  
17 PROSPECTIVE JUROR: I've got to hear  
18 everything first.  
19 MR. OWENS: You said that you felt the  
20 death penalty depends on the crime.  
21 PROSPECTIVE JUROR: Right.  
22 MR. OWENS: And you were concerned that it  
23 would have to be shown that the person was basically a  
24 hundred percent guilty?  
25 PROSPECTIVE JUROR: Correct.

87

1 MR. OWENS: You know that's where we're  
2 at?  
3 PROSPECTIVE JUROR: Right.  
4 MR. OWENS: We are not going to -- this  
5 man has been convicted. You were asked questions about  
6 factors that you might be told were factors in mitigation,  
7 and the defense hinted at some of those. Nobody is asking  
8 you if you would reject them, if you would consider them,  
9 or how much weight you'd give to them necessarily. But  
10 would you be willing to listen and keep an open mind?  
11 PROSPECTIVE JUROR: You have to.  
12 MR. OWENS: They said would you be willing  
13 to consider them, and you said, not sure. The law  
14 requires that you, at least, consider all the evidence  
15 here. You can't say I'm not going to listen to this. But  
16 after having heard it, it's up to you to determine how  
17 much weight you want to give it.  
18 PROSPECTIVE JUROR: It goes back to how  
19 well it's presented and whether I feel personally that  
20 that's the truth, in fact, coming from that person.  
21 MR. OWENS: Then you could decide how  
22 important that is and set -- or maybe it doesn't have any  
23 importance at all. But you'll wait to make that decision?  
24 PROSPECTIVE JUROR: Right.  
25 MR. OWENS: But you'd be willing to

88



1 consider it all?

2 PROSPECTIVE JUROR: Yes.

3 MR. OWENS: You are concerned about the  
4 time line here. We're going to do our best.

5 PROSPECTIVE JUROR: Yes.

6 MR. OWENS: If we run a little bit late,  
7 you're not going to take it out on one of the parties  
8 here?

9 PROSPECTIVE JUROR: The judge.

10 MR. OWENS: Everybody likes the judges.  
11 It's the attorneys that have to worry about that. If you  
12 felt after hearing all the evidence the death penalty was  
13 the right sentence, appropriate sentence, could you return  
14 that verdict?

15 PROSPECTIVE JUROR: If that's the verdict,  
16 we have to pass that verdict.

17 MR. OWENS: Thanks. I'll pass for  
18 cause.

19 THE COURT: Mr. Schieck.

20 MR. SCHIECK: Thank you, your Honor.

21 Mr. Taylor, you understand that when we're  
22 talking about the death penalty, it's never required that  
23 a jury impose the death penalty?

24 PROSPECTIVE JUROR: Correct.

25 MR. SCHIECK: There's always that element

89

1 of discretion that factors into it?

2 PROSPECTIVE JUROR: Sure.

3 MR. SCHIECK: I made a comment about some  
4 of the factors that you would consider, you said it  
5 depends on how well it's presented. Are you going to be  
6 looking at if Mr. Owens presented his case smoothly and  
7 well, but the defense is kind of shoddy in some of their  
8 addresses or something, you're not going to take that into  
9 account in deciding the appropriate punishment?

10 PROSPECTIVE JUROR: I'm not going to look  
11 at your suit and how much it cost. It's how it's  
12 presented, the factual information and how that can be  
13 backed up to be truth in fact.

14 MR. SCHIECK: Okay. From both sides you  
15 want to consider that?

16 PROSPECTIVE JUROR: Yes.

17 MR. SCHIECK: And you would hold the State  
18 to that same standard of how well their evidence was  
19 backed up on certain allegations?

20 PROSPECTIVE JUROR: That is correct.

21 MR. SCHIECK: Now you attended General  
22 Motors Institute?

23 PROSPECTIVE JUROR: Yes.

24 MR. SCHIECK: Is that your area of  
25 occupation?

90

1 PROSPECTIVE JUROR: My Dad was in the car  
2 business. That's where I grew up, in the car business.  
3 Then went into the insurance business and retired from  
4 that.

5 MR. SCHIECK: We did this questionnaire  
6 and nowhere does it ask for your occupation. You were in  
7 the insurance business.

8 PROSPECTIVE JUROR: Yes.

9 MR. SCHIECK: And is there anything you've  
10 heard so far in just the few hours we've been here that  
11 you've got any questions about that cause you some  
12 concern?

13 PROSPECTIVE JUROR: No. No. Pretty open  
14 to what is all discussed so far.

15 MR. SCHIECK: You indicated you thought  
16 you heard something about a girl getting killed over a  
17 drug deal.

18 PROSPECTIVE JUROR: Right.

19 MR. SCHIECK: There's no evidence that  
20 that was the facts of this case.

21 PROSPECTIVE JUROR: That was just  
22 something I heard on the news. That been when we first  
23 moved here. As I told the other counsel that I'm sure it  
24 was the wrong case, but --

25 MR. SCHIECK: If you were sitting here

91

1 going through a penalty hearing as the Defendant is, would  
2 you want twelve people in your same state of mind severing  
3 on the jury?

4 PROSPECTIVE JUROR: Absolutely.

5 Open-minded and be able to discuss the options and what  
6 facts were presented to you that all weigh towards the  
7 final goal.

8 MR. SCHIECK: Do you have any problem with  
9 the concept of all four of the possible punishments for  
10 first degree murder are in and of themselves harsh  
11 punishments?

12 PROSPECTIVE JUROR: No.

13 MR. SCHIECK: You wouldn't feel that by  
14 choosing one other than the death penalty you're giving a  
15 lenient sentence as opposed to a hash sentence?

16 MR. OWENS: You're asking him to project  
17 what he might do.

18 THE COURT: I'll sustain the objection as  
19 to the question. I don't have a problem if you rephrase  
20 the question.

21 PROSPECTIVE JUROR: Restate it.

22 MR. SCHIECK: Do you think any of the  
23 sentences are lenient?

24 PROSPECTIVE JUROR: I don't believe so.  
25 They're all pretty hash sentences.

92



1 MR. SCHIECK: Thank you. I'll pass for  
2 cause, your Honor.  
3 THE COURT: Thank you. Ms. Weckerly.  
4 MS. WECKERLY: Mr. Hibbard, as Mr. Schieck  
5 just said, we neglected to ask people about occupation on  
6 the questionnaire.  
7 PROSPECTIVE JUROR: I'm a chief financial  
8 officer for a construction company.  
9 MS. WECKERLY: How long have you worked  
10 that job?  
11 PROSPECTIVE JUROR: Thirty years.  
12 MR. OWENS: I read in your questionnaire  
13 that you had an experience where someone close to you was  
14 involved in some kind of substance abuse?  
15 PROSPECTIVE JUROR: My son.  
16 MR. OWENS: And was it a situation where  
17 you and your family dealt with it kind of among  
18 yourselves, or did it spill over where law enforcement was  
19 involved?  
20 PROSPECTIVE JUROR: We've just gone  
21 through it. Just went through a period of time.  
22 MS. WECKERLY: Was it a situation where it  
23 was significant enough where he needed treatment?  
24 PROSPECTIVE JUROR: No.  
25 MS. WECKERLY: It's sounds experimental.

93

1 It sounds like he grew out of it.  
2 PROSPECTIVE JUROR: Almost.  
3 MS. WECKERLY: Sound good. You have a  
4 son-in-law that's maybe in law enforcement?  
5 PROSPECTIVE JUROR: Yes. He works for the  
6 City of Henderson.  
7 MS. WECKERLY: Is he an officer?  
8 PROSPECTIVE JUROR: He is.  
9 MS. WECKERLY: His association or work  
10 wouldn't affect your ability to be fair?  
11 PROSPECTIVE JUROR: My son is also in the  
12 criminal justice system in Arizona with the state prison  
13 system.  
14 MS. WECKERLY: The fact that your son  
15 works in the prison system, that wouldn't influence your  
16 assessment of police officer's testimony or corrections  
17 officer's testimony?  
18 PROSPECTIVE JUROR: I don't think so.  
19 MS. WECKERLY: You can evaluate that like  
20 any other witness that you hear from?  
21 PROSPECTIVE JUROR: I think so.  
22 MS. WECKERLY: Would -- what are your  
23 thoughts about the death penalty? If you could design the  
24 laws in this state, would that be a punishment that was  
25 available in some circumstances?

94

1 PROSPECTIVE JUROR: Yes.  
2 MS. WECKERLY: You feel it serves some  
3 purpose?  
4 PROSPECTIVE JUROR: If the penalty fit the  
5 crime.  
6 MS. WECKERLY: In some instances I assume  
7 from your answer you think that could be an appropriate  
8 punishment?  
9 PROSPECTIVE JUROR: Yes.  
10 MS. WECKERLY: And you, of course,  
11 understand sitting here a few hours there are four  
12 possible punishments for someone convicted of first degree  
13 murder?  
14 PROSPECTIVE JUROR: Yes.  
15 MS. WECKERLY: And you're going to be  
16 hearing all kinds of information and you can take in that  
17 information and decide whether to give it or not give it?  
18 PROSPECTIVE JUROR: Yes.  
19 MS. WECKERLY: Okay. And if it was  
20 appropriate to you after hearing all of the information,  
21 would you be able to vote to impose a sentence of death?  
22 PROSPECTIVE JUROR: Yes.  
23 MS. WECKERLY: Do you have any concerns at  
24 all about you ability to be fair to the State of Nevada or  
25 the defense in this case?

95

1 PROSPECTIVE JUROR: No.  
2 MS. WECKERLY: Thank you, sir. Pass for  
3 cause.  
4 THE COURT: Mr. Patrick.  
5 MR. PATRICK: Mr. Hibbard, you are a CFO  
6 for a construction firm?  
7 PROSPECTIVE JUROR: Yes.  
8 MR. PATRICK: Does this involve firing and  
9 hiring people?  
10 PROSPECTIVE JUROR: Yes.  
11 MR. PATRICK: Discipline employees?  
12 PROSPECTIVE JUROR: Yes.  
13 MR. PATRICK: Now, when you discipline an  
14 employee or you've had to fire him, do you listen to both  
15 sides, maybe, the employees side versus the employee's  
16 manager's side before you make a decision?  
17 PROSPECTIVE JUROR: Yes. Get the facts.  
18 MR. PATRICK: You keep an open mind about  
19 it?  
20 PROSPECTIVE JUROR: Try.  
21 MR. PATRICK: Listen to everything before  
22 you make a decision?  
23 PROSPECTIVE JUROR: Yes.  
24 MR. PATRICK: Would you say you're  
25 unlikely to make snap decisions off the top of your head?

96

1 PROSPECTIVE JUROR: I make snap decisions  
2 too.

3 MR. PATRICK: Would you make a snap  
4 decision in something as important as an employees job?

5 PROSPECTIVE JUROR: No. It has to be  
6 something based on facts.

7 MR. PATRICK: You mention that your son  
8 was a corrections officer in Arizona?

9 PROSPECTIVE JUROR: Yes.

10 MR. PATRICK: Do you have occasion to talk  
11 about his job a great deal?

12 PROSPECTIVE JUROR: Yes.

13 MR. PATRICK: Anything that you learned  
14 from him about his job, does that give you a different  
15 idea of people in prison versus people not in prison?

16 PROSPECTIVE JUROR: He's got the worst job  
17 in the world.

18 MR. PATRICK: Just because somebody had  
19 the chance to be incarcerated would you tend to be more or  
20 less lenient with them?

21 PROSPECTIVE JUROR: I don't understand the  
22 question.

23 MR. OWENS: Same objection. Trying to  
24 predict what he'll do.

25 THE COURT: I didn't understand that

97

1 question.

2 MR. PATRICK: I didn't either, your  
3 Honor.

4 THE COURT: With the objection in mind, go  
5 ahead and rephrase it, if you would.

6 MR. PATRICK: As you know, out of the four  
7 possibilities three of them include prison time. Just  
8 because somebody is eligible for prison, would you look at  
9 them less favorably?

10 PROSPECTIVE JUROR: No.

11 MR. PATRICK: And, again, because your son  
12 is a corrections officer -- I know the judge asked those  
13 questions -- would you give any more weight to the  
14 testimony of somebody just because they were a corrections  
15 officer or a police officer?

16 PROSPECTIVE JUROR: No.

17 MR. PATRICK: And, let's see, your  
18 son-in-law is a clerk for Henderson.

19 PROSPECTIVE JUROR: Yes.

20 MR. PATRICK: Does he work in a courtroom?  
21 Is he out at the front desk?

22 PROSPECTIVE JUROR: I'm not sure. He runs  
23 the clerk's office. He sets up cases.

24 MR. PATRICK: Do you have occasion to talk  
25 to him about his job frequently?

98

1 PROSPECTIVE JUROR: Not often. But we do  
2 visit.

3 MR. PATRICK: Is there anything about his  
4 job that would make you think less highly of somebody --  
5 you'd still be able to keep an open mind?

6 PROSPECTIVE JUROR: Yes.

7 MR. PATRICK: Now you mentioned that your  
8 son had some drug problems. I believe the answer to  
9 Ms. Weckerly's question was it was never -- the system was  
10 never involved. He was never arrested?

11 PROSPECTIVE JUROR: No.

12 MR. PATRICK: Is was just kind of a  
13 experimental thing as teenagers do?

14 PROSPECTIVE JUROR: Pretty much.

15 MR. PATRICK: His drug experimentation, if  
16 somebody was on drugs would that make you more or less  
17 likely to believe what they had to say?

18 PROSPECTIVE JUROR: He was never on hard  
19 drugs. I don't think I can answer that fairly.

20 MR. PATRICK: Just because somebody was on  
21 drugs, would you still be able to keep an open mind about  
22 things they had to say?

23 PROSPECTIVE JUROR: If you're asking if it  
24 mitigates what they do, no it doesn't. They have to  
25 control their actions and make decisions. They've got to

99

1 be accountable for those decisions.

2 MR. PATRICK: In your questionnaire when  
3 they asked you what your feelings were about the death  
4 penalty, you put, good.

5 PROSPECTIVE JUROR: If the penalty meets  
6 the crime. That's what I'm trying to say, the penalty  
7 should fit the crime.

8 MR. PATRICK: Again, on the mitigation,  
9 you were asked there's mitigating circumstances and  
10 aggravating circumstances. You wrote that you could  
11 somewhat listen to both sides of that?

12 PROSPECTIVE JUROR: Yeah. Mitigation seems  
13 to be a broad spectrum now a days to justify a lot of  
14 things. I don't believe that mitigating circumstances for  
15 death penalty murder. I would have a hard time accepting  
16 mitigating circumstances for murder.

17 MR. PATRICK: So anything in a person's  
18 background or any drug activity, doesn't make any  
19 difference to you?

20 PROSPECTIVE JUROR: No.

21 MR. PATRICK: At all?

22 PROSPECTIVE JUROR: Not at all.

23 MR. PATRICK: Would you say you'd vote  
24 automatically for the death penalty?

25 PROSPECTIVE JUROR: I would have to hear

100

1 the facts. Murder is a pretty severe action. Unless  
2 there's insanity at the time of committing it, I don't  
3 know how you justify that.

4 MR. PATRICK: So besides insanity, you  
5 wouldn't be able to find any mitigating circumstances?

6 PROSPECTIVE JUROR: It would be  
7 difficult.

8 MR. PATRICK: Court's indulgence.

9 THE COURT: Okay.

10 MR. PATRICK: I'll challenge at this  
11 time.

12 THE COURT: Let me ask you a question, Mr.  
13 Hibbard. The question isn't so much whether you think  
14 there are mitigating circumstances for the murder that  
15 justify a crime. The question here is sentence,  
16 punishment. Are there things out there in your mind that  
17 you would be able to consider that you think would be  
18 appropriate consideration as to mitigate what sentence  
19 somebody receives?

20 PROSPECTIVE JUROR: I think pretty hard  
21 about the victim, not so much the person. The victim  
22 doesn't have a lot of choices left.

23 THE COURT: I understand. But the  
24 question in terms of how he gets punished, both sides  
25 might be able to present evidence that they think --

101

1 PROSPECTIVE JUROR: The victim didn't  
2 choose his or her punishment.

3 THE COURT: I realize that. Would you be  
4 able to consider things that the defense brings up that  
5 they argue in mitigation of what sentence somebody should  
6 receive, or are you saying you wouldn't consider those at  
7 all?

8 PROSPECTIVE JUROR: I'm saying that I  
9 think that bringing up a cover for justifying committing  
10 murder is very difficult for me to understand.

11 THE COURT: All right. Thank you.

12 Mr. Owens, as to Ms. Bailey.

13 MR. OWENS: Ms. Bailey, we talked about  
14 the idea of an eye for an eye that we talked about a  
15 little bit. And you said that you have been listening --  
16 and we're trying to get people that won't prejudge the  
17 case. There is nothing known about the facts, correct.  
18 That's what 22 is. It says have you already formed an  
19 opinion about the case, and you checked, yes. Then it  
20 says what is the opinion, or what you described is an eye  
21 for an eye. That was the answer you gave.

22 PROSPECTIVE JUROR: Right.

23 MR. OWENS: Then later on when you're  
24 actually asked about the penalty you said you would be  
25 able to keep an open mind about what the penalty should

102

1 be.

2 PROSPECTIVE JUROR: I believe that if  
3 someone can take a life, then they should be willing to  
4 give theirs. I try to be open as much as I can. I am  
5 human though. I will have an opinion formed eventually.  
6 I don't know how it would be possible to not judge. I  
7 think I would try to see the facts and be open-minded as  
8 possible, but I have to be honest. I have looked over and  
9 seen him smirk and smile, or look at the questionnaire  
10 that someone filled out and it kind of makes me form an  
11 opinion about him already. I don't know the facts.

12 MR. OWENS: Okay. Well, you understand  
13 that there's going to be a lot of things that happen in  
14 the courtroom that are fair in considering your opinion.  
15 The question is will you wait in forming that opinion  
16 until you've heard everything?

17 PROSPECTIVE JUROR: I will try.

18 MR. OWENS: It says that in the death  
19 penalty here, would you say you were generally in favor of  
20 it or opposed to it? You'll consider it -- you didn't  
21 select one end of the spectrum or the other. You said you  
22 would consider it in certain circumstances. And you  
23 actually said not all sentences should be death. It's a  
24 case by case basis.

25 PROSPECTIVE JUROR: Yes.

103

1 MR. OWENS: Is that how you feel?

2 PROSPECTIVE JUROR: I feel that is open to  
3 hearing, was there a struggle, was there -- was it  
4 cold-blooded, were there other instances involved in  
5 that.

6 MR. OWENS: We're not asking you to try to  
7 come up with the scenario of what you would do.

8 PROSPECTIVE JUROR: It would just make me  
9 have a changed opinion about how I think his fate should  
10 be, as much as I don't want to be a part of someone's  
11 fate.

12 MR. OWENS: Everyone has certain opinions  
13 about things as to how important they are, the factors.  
14 Some factors may have huge importance for you. The other  
15 factors you listen to, and you say, well, I don't think  
16 that's important at all. The question is would you be  
17 willing to at least listen and weigh before you decide you  
18 are going to throw them out?

19 PROSPECTIVE JUROR: Yes.

20 MR. OWENS: Things that are important,  
21 would you be willing to listen?

22 PROSPECTIVE JUROR: I would be willing to  
23 listen.

24 MR. OWENS: And you indicated that you had  
25 been a victim on some occasion and you didn't like the way

104

1 it was handled. Didn't come out quite right.  
 2 PROSPECTIVE JUROR: Basically being  
 3 robbed, my home, my vehicle. Nothing ever came back to me  
 4 in a positive way.  
 5 MR. OWENS: Positive way meaning caught  
 6 the guy?  
 7 PROSPECTIVE JUROR: Right. I never did  
 8 get anything back or any justice or anything.  
 9 MR. OWENS: How many times has this happen  
 10 to you?  
 11 PROSPECTIVE JUROR: I have been robbed  
 12 four times.  
 13 MR. OWENS: That is amazing.  
 14 PROSPECTIVE JUROR: Houston, New  
 15 Orleans.  
 16 MR. OWENS: So it wasn't here?  
 17 PROSPECTIVE JUROR: No, not here.  
 18 MR. OWENS: By robbed, you mean they stole  
 19 something from your home or car?  
 20 PROSPECTIVE JUROR: From myself, my  
 21 vehicle, and my garage.  
 22 MR. OWENS: Nothing was taken forcibly  
 23 from you?  
 24 PROSPECTIVE JUROR: Just my billfold.  
 25 MR. OWENS: So was that a one on one?

105

1 PROSPECTIVE JUROR: Right.  
 2 MR. OWENS: Was there a weapon used?  
 3 PROSPECTIVE JUROR: I believe it was like  
 4 hands in his pocket type thing.  
 5 MR. OWENS: Like a pick-pocket?  
 6 PROSPECTIVE JUROR: No. He had his hands  
 7 in his pocket, so I don't know if there was or was not.  
 8 MR. OWENS: You didn't want to take the  
 9 chance.  
 10 PROSPECTIVE JUROR: No.  
 11 MR. OWENS: How long ago was that?  
 12 PROSPECTIVE JUROR: About four years  
 13 ago.  
 14 MR. OWENS: It wasn't in this community?  
 15 PROSPECTIVE JUROR: No.  
 16 MR. OWENS: Do you feel like the police  
 17 let you down on each one of these incidents?  
 18 PROSPECTIVE JUROR: There are so many of  
 19 those instances in New Orleans. The crime rate was  
 20 ridiculous. And in downtown Houston, not much better.  
 21 THE COURT: I'm from Houston. Hold on a  
 22 second.  
 23 PROSPECTIVE JUROR: There were so many  
 24 little things like that that they just didn't have time to  
 25 really -- you know, what can they do.

106

1 MR. OWENS: Did you feel like they could  
 2 have done more than they did?  
 3 PROSPECTIVE JUROR: You hope, wish. I  
 4 don't know if there could have been anything.  
 5 MR. OWENS: Well, your dissatisfaction  
 6 about those experiences, is that something you'd take out  
 7 on the police in this case?  
 8 PROSPECTIVE JUROR: No.  
 9 MR. OWENS: Take out on the defendant?  
 10 PROSPECTIVE JUROR: No. He didn't rob  
 11 me.  
 12 MR. OWENS: You can determine his  
 13 punishment based upon the factors that you hear, and you  
 14 realize that that's a separate thing?  
 15 PROSPECTIVE JUROR: Yes.  
 16 MR. OWENS: You feel you can be fair and  
 17 impartial to both the State and the defendant?  
 18 PROSPECTIVE JUROR: Yes.  
 19 MR. OWENS: If after hearing all the  
 20 evidence in the case, you can keep an open mind and  
 21 balancing it and giving it whatever attention you feel  
 22 appropriate, if you felt the correct punishment and fair  
 23 punishment and appropriate punishment was the death  
 24 penalty, you could come back with that judgment?  
 25 PROSPECTIVE JUROR: Yes.

107

1 MR. OWENS: You said something about  
 2 judgment and you didn't feel comfortable in that position,  
 3 is that something you could do?  
 4 PROSPECTIVE JUROR: Yes. Its' human  
 5 nature. I'm judged and I judge.  
 6 MR. OWENS: Thank you. Pass for cause.  
 7 THE COURT: Thank you. Mr. Schieck.  
 8 MR. SCHIECK: Thank you.  
 9 Mrs. Bailey, we thank you for your candor.  
 10 This is a very different thing to have attorneys ask you  
 11 questions about things of a personal nature in a case  
 12 that's going to be emotional in some points.  
 13 In your questionnaire you were asked  
 14 concerning the fact that Mr. Chappell was an  
 15 African-American male, if that would effect your ability to  
 16 be fair and impartial. You didn't answer that question.  
 17 Then the next question was whether or not  
 18 the fact that the victim was of a different racial  
 19 background then the defendant, would that effect your  
 20 ability to be fair and impartial, and you said possibly.  
 21 Could you explain what you were thinking  
 22 when you didn't answer the one question.  
 23 PROSPECTIVE JUROR: I'm not sure why I  
 24 didn't answer the first one. It could have been an  
 25 accident. I just felt like I could possibly think -- I

108

1 mean, not necessarily -- I don't think I focused on a  
2 specific race, but I thought maybe it could be a  
3 possibility.

4 MR. SCHIECK: You had some negative  
5 brushes with criminal contact in your life. Is there  
6 anything about those that would factor into the racial  
7 issue?

8 PROSPECTIVE JUROR: No.

9 MR. SCHIECK: With regard to public  
10 defenders -- and Mr. Patrick and I are with the special  
11 public defender's office -- you wondered how they sleep at  
12 night. It was kind of a curious answer.

13 PROSPECTIVE JUROR: It's a rough job. I  
14 couldn't do it. Whether you are defending someone you  
15 don't believe in, or if you completely do and they're  
16 guilty, I couldn't do it. I commend you.

17 MR. SCHIECK: You don't think the death  
18 penalty is used enough?

19 PROSPECTIVE JUROR: I think that we  
20 probably pay less in taxes, less people waiting for death  
21 with the death penalty.

22 MR. SCHIECK: Is that something that's  
23 going to factor into your decision?

24 PROSPECTIVE JUROR: No.

25 MR. SCHIECK: But you did indicate that if  
109

1 someone takes a life they should forfeit their life.

2 PROSPECTIVE JUROR: I feel that if they  
3 are so willing to take they should be so willing to  
4 give.

5 MR. SCHIECK: That's just your personal  
6 belief.

7 PROSPECTIVE JUROR: Yes.

8 MR. SCHIECK: There is no wrong answer to  
9 those questions. So knowing that Mr. Chappell has been  
10 convicted of first degree murder, which is an intentional  
11 killing, that's what the jury is told before they consider  
12 punishment. You're already thinking that the death  
13 penalty is an appropriate punishment because it's an  
14 intentional killing.

15 PROSPECTIVE JUROR: It's an option. I  
16 think you're assuming that I feel that it's appropriate in  
17 this case. I think it's a strong option. But, again, I  
18 would need the facts before I made my decision in what I  
19 think punishment should be.

20 MR. SCHIECK: When you say a strong  
21 option, as opposed to the other three, why aren't they  
22 strong options?

23 MR. OWENS: I object to the question  
24 because there's no requirement that you put a weight on  
25 any or it has to be equal.  
110

1 THE COURT: I agree. But in light of her  
2 answer, I'm going to allow her to answer this question.

3 PROSPECTIVE JUROR: Because I'm very open  
4 to the death penalty. The fact I say if you can take a  
5 life you can give it.

6 MR. SCHIECK: We pass for cause, your  
7 Honor.

8 THE COURT: Thank you. Ms. Weckerly.  
9 We'll get through the top row of folks, then we'll take  
10 our lunch break.

11 Bear with me a few more minutes.

12 MS. WECKERLY: Ms. Mills, ma'am, you  
13 indicated on your questionnaire that someone close to you,  
14 similar to some of the other prospective jurors, had an  
15 issue with substance abuse. Do you recall that?

16 PROSPECTIVE JUROR: Yes.

17 MS. WECKERLY: Who was that that we're  
18 talking about?

19 PROSPECTIVE JUROR: My husband.

20 MS. WECKERLY: Was it a situation where  
21 law enforcement or counseling or anything like that was  
22 sought?

23 PROSPECTIVE JUROR: Counseling.

24 MS. WECKERLY: As someone -- were you  
25 living with him at the time he had that problem?  
111

1 PROSPECTIVE JUROR: Yes.

2 MS. WECKERLY: I know this is hard and  
3 these are personal questions. I apologize. On your  
4 questionnaire you said that your feelings about it were  
5 negative and angry.

6 PROSPECTIVE JUROR: Yes.

7 MS. WECKERLY: Can you plain that a little  
8 bit.

9 PROSPECTIVE JUROR: Well, I was negative  
10 about it because it effected me and kind of ran my life.

11 MS. WECKERLY: How did it kind of run  
12 your life?

13 PROSPECTIVE JUROR: I was a target. I was  
14 the one that was abused.

15 MS. WECKERLY: Okay. And so sometimes, I  
16 assume then, when he was under the influence you suffered  
17 abuse.

18 PROSPECTIVE JUROR: Yes.

19 MS. WECKERLY: Did you have children at  
20 the time that the substance abuse was occurring?

21 PROSPECTIVE JUROR: Yes.

22 MS. WECKERLY: Again, I know this is sure  
23 not what you want to talk about in a group of people. Did  
24 they witness any of the abuse?

25 PROSPECTIVE JUROR: Yes.  
112

1 MS. WECKERLY: Having that experience, I  
2 know you've been given a very brief description of the  
3 facts in this case, but some of those issues -- those  
4 kinds of circumstances are similar to the facts of this  
5 case. Are your feelings about that experience and having  
6 gone through all that, such that you don't feel you can be  
7 a fair juror in this case, or are you able to kind of  
8 separate your own experience and evaluate what you hear in  
9 this courtroom on its own?

10 PROSPECTIVE JUROR: I can separate it.

11 MR. OWENS: You can separate it. And the  
12 fact that you've gone through all that, would that cause  
13 you to be in favor or less fair to one side or the other?

14 PROSPECTIVE JUROR: No.

15 MS. WECKERLY: In your experience, were  
16 the police ever involved in the domestic violence?

17 PROSPECTIVE JUROR: Yes.

18 MS. WECKERLY: Were you the one who called  
19 the police?

20 PROSPECTIVE JUROR: Yes.

21 MS. WECKERLY: Did you feel that their  
22 treatment of you and your husband was appropriate?

23 PROSPECTIVE JUROR: Yes.

24 MS. WECKERLY: And did any of the cases go  
25 through the criminal justice system?

113

1 PROSPECTIVE JUROR: Yes.

2 MS. WECKERLY: Were you called upon to  
3 come in and testify?

4 PROSPECTIVE JUROR: No.

5 MS. WECKERLY: Were you ever subpoenaed or  
6 anything like that?

7 PROSPECTIVE JUROR: No.

8 MS. WECKERLY: Anything about that  
9 experience that would make it hard for you to be a fair  
10 juror?

11 PROSPECTIVE JUROR: No.

12 MS. WECKERLY: Those issues with your  
13 husband, did they -- how did they resolve themselves?

14 PROSPECTIVE JUROR: Time, counseling.

15 MS. WECKERLY: That worked in this case?

16 PROSPECTIVE JUROR: Yes.

17 MS. WECKERLY: So he obviously sort of  
18 turned his behavior around?

19 PROSPECTIVE JUROR: Yes.

20 MS. WECKERLY: You are also asked  
21 questions about the death penalty, like every other  
22 prospective juror. As you sit here now, do you think that  
23 the death penalty can be an appropriate punishment in some  
24 cases?

25 PROSPECTIVE JUROR: Yes.

114

1 MS. WECKERLY: I think Mr. Owens and  
2 Mr. Schieck touch on this. You realize, as a prospective  
3 juror, you are going to be hearing information about this  
4 crime, obviously, and you'll probably here information  
5 about the defendant's background. All you're asked is to  
6 sort of listen to the information, listen to both sides,  
7 then give your best judgment or assessment of what you  
8 think the appropriate punishment is. You wouldn't have  
9 any problem with that?

10 PROSPECTIVE JUROR: No.

11 MS. WECKERLY: And I assume you wouldn't  
12 have any problem expressing your opinion with other  
13 members of the jury because collectively you are going to  
14 be discussing the case.

15 PROSPECTIVE JUROR: No.

16 MS. WECKERLY: No problem with that?

17 PROSPECTIVE JUROR: No.

18 MS. WECKERLY: If your opinion is -- after  
19 hearing all of the evidence -- is the death penalty is  
20 appropriate, would you be able to actually mark that box  
21 as the punishment in this case?

22 PROSPECTIVE JUROR: Yes. After the facts,  
23 yes.

24 MS. WECKERLY: You mentioned in your  
25 questionnaire that your son was a medical malpractice

115

1 victim and was that something that you and your family  
2 pursued in terms of civil litigation?

3 PROSPECTIVE JUROR: Yes.

4 MS. WECKERLY: Anything about that --  
5 obviously this is a total different situation -- but was  
6 there anything about that experience, in terms of dealing  
7 with lawyers or doctors, that would affect your ability to  
8 be fair here?

9 PROSPECTIVE JUROR: Uh, it could. You know  
10 I was angry at first with the lawyers and the judge.

11 MS. WECKERLY: Everybody. So I assume  
12 then the lawsuit moved -- it didn't settle, it went at  
13 some point to the court system?

14 PROSPECTIVE JUROR: Yes.

15 MS. WECKERLY: You're indicating you  
16 weren't happy with the lawyer who was representing you or  
17 the other side?

18 PROSPECTIVE JUROR: The other side.

19 MS. WECKERLY: Also you mentioned that you  
20 weren't happy with the judge.

21 PROSPECTIVE JUROR: Yes.

22 MS. WECKERLY: Is your experience such  
23 that that sort of left a taste in your mouth where you  
24 don't have a lot of faith in the legal system in general?

25 PROSPECTIVE JUROR: Yes. I thought at the

116

1 time, around the beginning of the hike in the insurance  
2 rates, so I think that was the bad time.

3 MS. WECKERLY: You mentioned a second ago  
4 that you thought it might effect your ability to be fair  
5 in this case. Can you explain that a little.

6 PROSPECTIVE JUROR: Well, not so much not  
7 being able to make a decision. I wanted to see the facts  
8 and see how strong it is and how it happened.

9 MS. WECKERLY: Okay. And as you've sort  
10 of explained, as we sit here, this man is convict of first  
11 degree murder with use of a deadly weapon. That's the  
12 starting point. So he's convict of an intentional murder  
13 of another person. And as jurors, what you'll be asked to  
14 do is determine the appropriate punishment.

15 Now are you someone who can sort of accept our  
16 starting point where we're at here?

17 PROSPECTIVE JUROR: Yes.

18 MS. WECKERLY: And we've discussed, you're  
19 open to listening to all of the potential punishments?

20 PROSPECTIVE JUROR: Yes.

21 MS. WECKERLY: I think you have indicated  
22 that you don't -- you can be impartial, fair to both sides  
23 in terms of what information is presented to you?

24 PROSPECTIVE JUROR: Yes.

25 MR. OWENS: Thank you. Your Honor, pass  
117

1 for cause.

2 THE COURT: Thank you. Mr. Patrick.

3 MR. PATRICK: Thank you.

4 One of the questions you answered on your  
5 questionnaire, you said you don't like to talk much. I  
6 can see that. Would that -- because of that, do you think  
7 that you don't have a voice on the jury if you were  
8 picked?

9 PROSPECTIVE JUROR: Most likely not.

10 MR. PATRICK: You have a strong  
11 personality, you don't like to talk?

12 PROSPECTIVE JUROR: Yes.

13 MR. PATRICK: If you have something  
14 important to say, you'd make sure they heard it?

15 PROSPECTIVE JUROR: Yes, absolutely.

16 MR. PATRICK: Now you were saying that  
17 your husband had a drug problem and domestic violence  
18 problem also?

19 PROSPECTIVE JUROR: Yes.

20 MR. PATRICK: You think the two were  
21 related?

22 PROSPECTIVE JUROR: Yes.

23 MR. PATRICK: Then you said that he was  
24 able to turn his behavior around through counseling and  
25 time.

118

1 PROSPECTIVE JUROR: Yes.

2 MR. PATRICK: And during the time he was  
3 in counseling, as he got his life turned around, did you  
4 stick by him?

5 PROSPECTIVE JUROR: Yes.

6 MR. PATRICK: Now, if you were to hear  
7 circumstances similar to yours, drug abuse, domestic  
8 violence, would that make you tend more or less to believe  
9 what somebody is saying?

10 PROSPECTIVE JUROR: No.

11 MR. PATRICK: Would you tend to be less --  
12 so you wouldn't be less believing of somebody because they  
13 went through what your husband went through?

14 PROSPECTIVE JUROR: No.

15 MR. PATRICK: You'd still keep an open  
16 mind through the process?

17 PROSPECTIVE JUROR: Yes.

18 MR. PATRICK: That's all we're asking,  
19 that you listen to both sides. Listen to all of the  
20 evidence. They're going to be putting on evidence. We're  
21 going to be putting on evidence. You'll listen to all of  
22 it and then decide?

23 PROSPECTIVE JUROR: Yes.

24 MR. PATRICK: Would you be able to look at  
25 things like drug abuse and domestic violence as mitigating

119

1 circumstances?

2 PROSPECTIVE JUROR: Yes.

3 MR. PATRICK: Now, also there was a  
4 question that asked something about if the victim was of a  
5 different racial background, if you'd think difficultly of  
6 the case, and you responded, probably so.

7 PROSPECTIVE JUROR: I don't recall that.

8 MR. PATRICK: So if the victim was of a  
9 different racial background than Mr. Chappell, you  
10 wouldn't have a problem with that?

11 PROSPECTIVE JUROR: No.

12 MR. PATRICK: It wouldn't make you  
13 automatically think that he was more or less guilty than  
14 he actually is?

15 PROSPECTIVE JUROR: No.

16 MR. PATRICK: As far as -- everybody has  
17 talked about the four penalties that can be given out.  
18 And you could look at all four of them, before you make a  
19 decision? You're not going in there with any one of them  
20 in mind, saying this is what has to happen?

21 PROSPECTIVE JUROR: No.

22 MR. PATRICK: That's all I have. I'll  
23 pass for cause.

24 THE COURT: Thank you. Ms. Weckerly, as  
25 to Mr. Henck.

120

1 MS. WECKERLY: Good afternoon, sir.  
 2 PROSPECTIVE JUROR: How are you doing  
 3 today?  
 4 MS. WECKERLY: Good. How are you?  
 5 PROSPECTIVE JUROR: I'm all right.  
 6 MS. WECKERLY: Is that a book or did you  
 7 bring work with you?  
 8 PROSPECTIVE JUROR: Just a book.  
 9 MS. WECKERLY: You mentioned when Judge  
 10 Herndon was questioning the entire panel that you had two  
 11 cousins that had some drug related arrests?  
 12 PROSPECTIVE JUROR: Both were convicted  
 13 for selling drugs in school zones.  
 14 MS. WECKERLY: Was that -- I missed it.  
 15 I'm sure you said it. Was that here in Nevada?  
 16 PROSPECTIVE JUROR: That was  
 17 in Pennsylvania.  
 18 MS. WECKERLY: Are you particularly close  
 19 to these cousins?  
 20 PROSPECTIVE JUROR: Yeah, actually. One,  
 21 when he was arrested, was living with me. And the other  
 22 was arrested shortly before that. He lived a mile from  
 23 me. We all hung out together.  
 24 MS. WECKERLY: And the fact that you're  
 25 close relatives were arrest for pretty serious crimes --

121

1 PROSPECTIVE JUROR: No, I was not involved  
 2 in that.  
 3 MS. WECKERLY: That's not my question.  
 4 But I'm glad you volunteered that. Did you feel they were  
 5 treated fairly by law enforcement?  
 6 PROSPECTIVE JUROR: Yes. They presented  
 7 evidence and the jury found them guilty of what they were  
 8 accused of.  
 9 MS. WECKERLY: Did you attend the trial?  
 10 PROSPECTIVE JUROR: NO. By the time they  
 11 got to trial I had my first son, and I was busy making a  
 12 living.  
 13 MS. WECKERLY: Very busy with a new baby.  
 14 Are they -- I mean, have you talked to them since they  
 15 were convicted?  
 16 PROSPECTIVE JUROR: Yeah. One of my  
 17 cousins is released. He's doing well. And other one got  
 18 a little longer sentence. He's still in state prison in  
 19 Pennsylvania.  
 20 MS. WECKERLY: So the one that was  
 21 released, sounds like he kind of got his life on track.  
 22 PROSPECTIVE JUROR: Yeah.  
 23 MS. WECKERLY: He's doing okay.  
 24 PROSPECTIVE JUROR: Yes.  
 25 MS. WECKERLY: And the other one,

122

1 hopefully the same thing will happen.  
 2 PROSPECTIVE JUROR: I hope so.  
 3 MS. WECKERLY: You also wrote on your  
 4 questionnaire that you have a close family member, maybe  
 5 yourself who was a victim of a crime.  
 6 PROSPECTIVE JUROR: Well, we just recently  
 7 had the car broken into. Some guy decided he wanted to  
 8 break into our car and try and steal things. He didn't  
 9 leave anything or evidence. There's wasn't nothing that  
 10 could be done. No big deal.  
 11 MS. WECKERLY: Did you call the police?  
 12 PROSPECTIVE JUROR: Yeah. The police come  
 13 out and did a report. There was no way to find this guy.  
 14 He was long gone. My car wasn't damaged.  
 15 MS. WECKERLY: So in your case, not a lot  
 16 of follow up.  
 17 PROSPECTIVE JUROR: I mean, I couldn't go  
 18 around the neighborhood stopping everyone.  
 19 MS. WECKERLY: Did you feel like they  
 20 treated you fairly?  
 21 PROSPECTIVE JUROR: Absolutely.  
 22 MS. WECKERLY: Your answers on your  
 23 questionnaire regarding the death penalty sort of  
 24 indicates that you are open to considering that as a  
 25 potential punishment?

123

1 PROSPECTIVE JUROR: Right.  
 2 MS. WECKERLY: You don't necessarily  
 3 automatically feel like it would be appropriate in every  
 4 case, but it could be in some cases?  
 5 PROSPECTIVE JUROR: Right.  
 6 MS. WECKERLY: And you're open to hearing  
 7 all the information presented in this hearing or  
 8 proceeding?  
 9 PROSPECTIVE JUROR: Right. I want to make  
 10 sure that I get this out and say it the right way. Both  
 11 sides are going to give factors that were involved in  
 12 this. And the judge will give instructions on what -- if  
 13 we feel a certain way about the evidence they produce, and  
 14 the way we are supposed to interpret the law.  
 15 MS. WECKERLY: Right.  
 16 PROSPECTIVE JUROR: I don't think there's  
 17 nothing hard about that. You know, I don't understand  
 18 what would be hard about that.  
 19 MS. WECKERLY: You understand you are  
 20 going to hear --  
 21 PROSPECTIVE JUROR: There are four  
 22 different punishments. Which ever is appropriate for the  
 23 circumstances of what the crime he committed.  
 24 MS. WECKERLY: I don't think it's easy for  
 25 anybody, but are you someone who can make a judgment about

124



1 someone's life?

2 PROSPECTIVE JUROR: If that's what is  
3 appropriate, yes.

4 MS. WECKERLY: Well, you're going to make  
5 a judgment, regardless of what you decide. You're going  
6 to be imposing a punishment, regardless of which --

7 PROSPECTIVE JUROR: Whichever is  
8 appropriate, that's what I will choose to deem  
9 appropriate.

10 MS. WECKERLY: You'll make that decision  
11 collectively?

12 PROSPECTIVE JUROR: Right, right, right.  
13 Yes. Absolutely.

14 MS. WECKERLY: You're someone that can do  
15 that.

16 PROSPECTIVE JUROR: Absolutely.

17 MS. WECKERLY: If you feel that the death  
18 penalty is the appropriate punishment, after you've heard  
19 everything there is to hear about this situation, you  
20 could impose that punishment.

21 PROSPECTIVE JUROR: Absolutely.

22 MS. WECKERLY: Thank you.

23 THE COURT: Thank you. Mr. Patrick.

24 MR. PATRICK: Thank you, Judge. Mr.  
25 Henck.

125

1 PROSPECTIVE JUROR: How are you doing.

2 MR. PATRICK: I'll be quick so we can get  
3 you to lunch.

4 Now the fact that your cousins were  
5 prosecuted for trafficking drugs --

6 PROSPECTIVE JUROR: Right.

7 MR. PATRICK: -- if there was drug  
8 involvement in this case, would that change your --

9 PROSPECTIVE JUROR: No.

10 MR. SCHIECK: No. Okay. And your car  
11 broken into. They haven't found anybody, yet, no arrests  
12 have been made?

13 PROSPECTIVE JUROR: They found a guy  
14 sleeping in another car that was broken into two days  
15 later. He fell asleep while he was breaking into the car.  
16 They can't tie them together, but, I mean, he did have  
17 thirty dollars worth of damage to the car. Not like, you  
18 know, he went out -- he didn't steal my car.

19 MR. PATRICK: Anything about that  
20 experience that makes you feel that a policeman would be  
21 more or less believable on the stand?

22 PROSPECTIVE JUROR: Not at all.

23 MR. PATRICK: Now, you were asked if you  
24 could consider all the four types of punishment available  
25 in this case. Your answer, every person deserves a fair

126

1 trial where evidence can be presented in a proper verdict.

2 You understand that part of the trial is already done.

3 PROSPECTIVE JUROR: Right. But we're  
4 going to decide what punishment in general he should get  
5 given with what factors you give us and what factors they  
6 give us, correct?

7 MR. PATRICK: Correct. Your answer is the  
8 same even though it's not--

9 PROSPECTIVE JUROR: It's what's  
10 appropriate. What's appropriate after you give me your  
11 facts, they give me their facts, and the judge tells me  
12 what the law is. Where does he fall in that range of  
13 those four.

14 MR. SCHIECK: So the basic answer is the  
15 same just a different phase of the trial?

16 PROSPECTIVE JUROR: Yes.

17 MR. PATRICK: You'll listen to  
18 everything, consider everything. Give whatever weight you  
19 decide it needs and make an informed decision from that?

20 PROSPECTIVE JUROR: Correct.

21 MR. PATRICK: Your Honor, I'll pass for  
22 cause.

23 THE COURT: All right. Thank you.

24 Ladies and gentlemen, we're going to take  
25 a lunch recess now. It's about 1:20. So try and be back

127

1 here and get started back up at 2:30.

2 When you get back you don't have to go to  
3 jury services. Just come straight up here to the  
4 sixteenth floor and grab a seat. It's wishful thinking  
5 that the elevators will be prompt.

6 JURY ADMONITION

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

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

20 Thank you. See you back here at 2:30.

21 (Lunch recess taken.)

22 THE COURT: Just for the record, that was  
23 Mr. Tetonis that walked up to the bench before our recess,  
24 who is the last guy we have right now. He was asking if  
25 he could be excused because he is a police officer. I

128

1 told him he could not. He would need to call to his work,  
2 if he had something coming up at work in the afternoon.  
3 He's Badge No. 102.

4 Does anybody have anything outside the  
5 presence?

6 MR. SCHIECK: We want to do Mr. Perez  
7 now.

8 THE COURT: I need to get somebody from  
9 the court interpreter's office, unless you want to  
10 stipulate to excuse him. I'll call somebody from the  
11 court interpreter's office.

12 MR. OWENS: You know, it's sad that they  
13 don't have an opportunity to partake in the system. I  
14 can't picture having a bunch of interpret's. Maybe it  
15 will come to that some day. I'll stipulate to that. It's  
16 up to him.

17 MR. SCHIECK: It's fine with us.

18 THE COURT: We'll go ahead and excuse Mr.  
19 Perez. That's Badge No. 001. Leslie, make a note when we  
20 comes back from lunch, tell Mr. Perez he can go downstairs  
21 to jury services. Do you all want to talk about Mr. Brady  
22 and Mr. Hibbard right now?

23 MR. SCHIECK: That would be fine, your  
24 Honor.

25 THE COURT: Okay. I know the defense

129

1 challenged Mr. Brady and Mr. Hibbard for cause. Does the  
2 State have any remarks as to Mr. Brady?

3 MS. WECKERLY: Well, yes. Your Honor,  
4 when I was first questioning him, at least my recollection  
5 is he indicate that he'd follow the instructions of the  
6 court, which are, of course, that he would have to find --  
7 we don't get that specific -- but you have to find  
8 aggravating circumstance beyond a reasonable doubt. And  
9 also you have to consider some mitigation evidence,  
10 regardless of how much weight the prospective juror  
11 decides to give it or not. And I think he indicated he  
12 would be able to follow the court's instructions.

13 So I don't know if he got confused or just  
14 said his natural inclination would be to vote for the  
15 death penalty. But in light of the fact he said he would  
16 follow the court's instructions, and also in terms of what  
17 we have to prove, I think that he hasn't met the standard  
18 for challenge for cause.

19 THE COURT: Patrick.

20 MR. PATRICK: Yes. Judge, I think he  
21 perfectly understood what we were talking about. And as  
22 you go through his questionnaire, there's no doubt he  
23 believes in a murder case one should have the death  
24 penalty. I think it's very clear how he feels and that no  
25 matter what he says -- and he was not confused. I think

130

1 this guy, no matter what, has already made up his mind.  
2 I think it's very clear what his decision is. And I don't  
3 think he's going to follow any instructions, except his  
4 own that he's made very clear, both in questioning and on  
5 his questionnaire.

6 THE COURT: Well, I will note in the  
7 questionnaire one of individuals that said, in terms of  
8 the question about, since he's been convicted beyond a  
9 reasonable doubt, would you say that -- colon -- then he  
10 said, yes, to the question, your beliefs about the death  
11 penalty, such that you'd automatically vote for the death  
12 penalty, regardless of the facts and circumstances. He  
13 answered, yes, to that question.

14 I do think during the initial questioning,  
15 Ms. Weckerly, he'd indicated he'd follow the instructions  
16 of the court. But towards the end there, when you  
17 indicated to him that the death penalty would be a  
18 possible punishment that he could consider, he then seemed  
19 to say that, you know what, then I would give the death  
20 penalty.

21 Earlier he said he'd follow the  
22 instructions of the court and it would appear to me now  
23 that basically he was saying I wouldn't give the death  
24 penalty if the court instructed me that it wasn't a  
25 possible punishment. That's why I asked the follow-up

131

1 question with him that I did. He's still got to find  
2 certain facts. But after those last series of questions  
3 he seemed to be indicating that if the death penalty was a  
4 possible form of punishment, he was going to give the  
5 death penalty. So I will sustain the challenge for cause  
6 as to Mr. Brady.

7 THE COURT: How about has to Mr. Hibbard.  
8 Any remarks by the State as to Mr. Hibbard?

9 MS. WECKERLY: Yes, your Honor I think  
10 that Mr. Hibbard indicated that he could consider all four  
11 possible punishments. He said he would be open to  
12 listening to all the information presented in the case.

13 He did make a remark that it would be  
14 difficult to impose what's sort of regarded as the most  
15 lenient sentence. But I don't think there is a  
16 requirement that they give any particular weight to any of  
17 the possible punishments, as long as he said he'd consider  
18 all four, which he did. And he did say he could consider  
19 the mitigation evidence. There is no reason -- or legally  
20 justifiable reason to accuse him for cause.

21 THE COURT: All right. Mr. Patrick.

22 MR. PATRICK: Yes, Judge.

23 He said he would look at the mitigating  
24 evidence. But he said, nothing sort of insanity would  
25 count as mitigation evidence. So therefore, no matter

132

1 what else we put on, he's automatically going to throw out  
2 on a murder case.

3 Maybe if this is something besides murder  
4 he may think about drug abuse or domestic violence as  
5 mitigation, but he was very clear that in a murder case,  
6 let alone first degree murder case, the only mitigation he  
7 would consider is insanity. We don't have that here. So  
8 therefore, he's basically flat-out telling us that none of  
9 the mitigation that we could possibly put on would be  
10 considered by him.

11 THE COURT: Well, I'm going to deny the  
12 challenge as to Mr. Hibbard. There's a difference --  
13 there's several levels of what they need to be able to do  
14 here. Number one is can they consider -- do they  
15 recognize and consider all four forms of punishment. And  
16 he indicated he could.

17 Two, will you follow the instructions of  
18 the court. He indicated he would. And will you consider  
19 all the evidence. He indicate he would. Whether somebody  
20 agrees or disagrees with whether or not they think, you  
21 know, prospectively some type of mitigation is a good or  
22 bad thing they're going to give weight to is really kind  
23 of a little lower down because you can't tell them the  
24 evidence yet. So they're kind of having to guess, well,  
25 do I think there's mitigation for a murder or not, without

133

1 having heard any facts of the case.

2 I don't think the jurors need to say your  
3 mitigation is going to be good or bad to make them  
4 eligible to sit on the case. It's important that they  
5 indicate they will consider all the evidence, consider all  
6 forms of punishment and are not foreclosed to imposing  
7 just one penalty or another. So I think that he  
8 sufficiently answered things, so I'll deny the challenge  
9 for cause as to Mr. Hibbard.

10 Anything further before we take our lunch  
11 break.

12 MS. WECKERLY: Not on behalf of the  
13 State.

14 THE COURT: When we get back we'll excuse  
15 Mr. Brady and get somebody in his spot and start there at  
16 the top and go to the bottom row -- or Mr. Perez and Mr.  
17 Brady.

18 Thank you folks.

19 (Lunch recess taken.)

20 THE COURT: Back on the record in C131341,  
21 State of Nevada versus James Chappell. The record will  
22 reflect the presence of Mr. Chappell, with his attorneys,  
23 the State's attorneys, in the presence of our prospective  
24 jurors.

25 I need to get some folks to fill up the

134

1 two seats, since we excused Mr. Perez and Mr. Brady. I  
2 would like, Candice Ruis to come up here, please, Badge 81  
3 and Davita Curtis, Badge 82.

4 We'll start with Ms. Ruis. So Mr.  
5 Owens.

6 MR. OWENS: Okay. We're with Ms. Ruis.

7 THE COURT: Yes.

8 MR. OWENS: Hello.

9 PROSPECTIVE JUROR: Hello.

10 MR. OWENS: How are you doing?

11 PROSPECTIVE JUROR: Good.

12 MR. OWENS: Were you able to keep up with  
13 everything this morning?

14 PROSPECTIVE JUROR: Yes.

15 MR. OWENS: In your questionnaire, you  
16 indicated you like to watch Court TV and some of those  
17 kinds of shows?

18 PROSPECTIVE JUROR: Yes.

19 MR. OWENS: You're a hobbyist or fan of  
20 courtroom drama?

21 PROSPECTIVE JUROR: Yes.

22 MR. OWENS: That is a very popular thing.  
23 A lot of people are into that. Do you have a problem  
24 understanding there is a difference between real life and  
25 TV when it comes to those kinds of shows?

135

1 PROSPECTIVE JUROR: No.

2 MR. OWENS: CSI, they do some futuristic  
3 things with evidence and things like that. You are not  
4 going to hold us to that kind of standard?

5 PROSPECTIVE JUROR: No.

6 MR. OWENS: And so you can try this based  
7 on what you see in this courtroom, and what's presented  
8 from the jury stand and analyze it in light of what is  
9 going on here. Does that sounds fair to you?

10 PROSPECTIVE JUROR: Yes.

11 MR. OWENS: Now, you had indicated that  
12 you had some relatives or a relative that was involved in  
13 law enforcement?

14 PROSPECTIVE JUROR: Not law enforcement.  
15 I have three cousins that are lawyers. One is an assist  
16 DA -- it's out in California. I didn't specify that or  
17 put it down.

18 MR. OWENS: One is in California.

19 PROSPECTIVE JUROR: All three are in  
20 California.

21 MR. OWENS: One is an assistant DA?

22 PROSPECTIVE JUROR: One is an assistant  
23 DA in San Mateo County, and a cousin and a brother, I'm  
24 not sure exactly.

25 MR. OWENS: Do you see them often.

136

1 PROSPECTIVE JUROR: I see the girl cousin  
2 who is married to the assist DA often, because her aunt  
3 lives here. My aunt lives here -- her mom.

4 MR. OWENS: Do you talk about cases and  
5 things like that?

6 PROSPECTIVE JUROR: No.

7 MR. OWENS: So kind of like a TV thing.  
8 We need to make sure you'll try this case and make your  
9 decision on what you hear from the courtroom here, rather  
10 then something you might have heard from somebody else?

11 PROSPECTIVE JUROR: Yes.

12 MR. OWENS: You're involved in property  
13 protection. That's not your thing?

14 PROSPECTIVE JUROR: No.

15 MR. OWENS: You indicated I think -- let  
16 me see here -- something about shoplifters.

17 PROSPECTIVE JUROR: On a daily occasion.

18 MR. OWENS: That is just from working in  
19 retail.

20 PROSPECTIVE JUROR: Yes.

21 MR. OWENS: You indicate that there is  
22 nothing based upon your experience that would make you --  
23 make it difficult for you to be fair and impartial to both  
24 parties in this case. You could be fair?

25 PROSPECTIVE JUROR: Yes.

137

1 MR. OWENS: There weren't any issues race  
2 or racial bias that would cause a problem here?

3 PROSPECTIVE JUROR: No.

4 MR. OWENS: And as far as the death  
5 penalty goes, there are four options available to the  
6 jury. Do you have a problem with the idea that there are  
7 four choice a jury can choose from?

8 PROSPECTIVE JUROR: No problem.

9 MR. OWENS: Is it important to have  
10 options, not all murders are the same.

11 PROSPECTIVE JUROR: Yes, it's important.

12 MR. OWENS: You feel you can wait and keep  
13 an open mind until you've heard all the facts and  
14 circumstances before you decide what should happen?

15 PROSPECTIVE JUROR: Yes.

16 MR. OWENS: You have no problem with the  
17 idea of discussing your feelings with other members of the  
18 jury?

19 PROSPECTIVE JUROR: In deliberation?

20 MR. OWENS: Yes.

21 PROSPECTIVE JUROR: No problem.

22 MR. OWENS: And you think it's important  
23 to have that kind of process where there's a discussion of  
24 facts and circumstances?

25 PROSPECTIVE JUROR: Yes.

138

1 MR. OWENS: We've got twelve instead of  
2 one person, right. Are you willing to keep an open mind  
3 until you've heard all the evidence and mitigation and  
4 evidence in aggravation before you decide what is  
5 appropriate?

6 PROSPECTIVE JUROR: Yes.

7 MR. OWENS: Can you consider all four  
8 forms of punishment before you decide which one is the  
9 right one?

10 PROSPECTIVE JUROR: I can consider it, but  
11 I'm for the death penalty.

12 MR. OWENS: When you say you are for the  
13 death penalty, you don't have a problem with that as one  
14 of the options?

15 PROSPECTIVE JUROR: No.

16 MR. OWENS: And you don't -- you might be  
17 leaning one way or the other already, that's okay. As  
18 long as at this point you don't just say I'm not going to  
19 consider everything, you know. You can't exclude things  
20 and keep an open mind about all four at this point. You  
21 understand that?

22 PROSPECTIVE JUROR: Yes.

23 MR. OWENS: At some point, after you have  
24 heard the facts and circumstances, you are free to say,  
25 I'm excluding those. You may decide that the death

139

1 penalty feels appropriate, but you need to be able to say  
2 you'll consider all four, correct?

3 PROSPECTIVE JUROR: Yes.

4 MR. OWENS: Do you feel that you can come  
5 back with the appropriate judgment in this case?

6 PROSPECTIVE JUROR: Yes.

7 MR. OWENS: Do you have a problem with the  
8 idea of sitting in judgment of another person?

9 PROSPECTIVE JUROR: No.

10 MR. OWENS: If after hearing all of the  
11 evidence in this case you felt that the death penalty was  
12 the appropriate sentence, would you be able to do that?

13 PROSPECTIVE JUROR: Yes.

14 MR. OWENS: There was one question in here  
15 where you were asked -- well, there were several about the  
16 death penalty. And you were asked if you would  
17 automatically vote for the death penalty or automatically  
18 vote against the death penalty. On one of these  
19 questions -- I think it's 49 -- you said you'd  
20 automatically vote for the death penalty.

21 You may not have understood the question.  
22 What that means, when you said I'd automatically vote for  
23 it, that means you'd vote for it without hearing anything  
24 or considering everything else.

25 PROSPECTIVE JUROR: No. I'd take into

140

1 consideration all of the evidence.

2 MR. OWENS: And, in fact, on the next  
3 question you said just that, would consider but lien and  
4 choose death penalty. That means you're leaning against  
5 the death penalty, but would consider all four forms of  
6 punishment?

7 PROSPECTIVE JUROR: Yes.

8 MR. OWENS: If you felt, after hearing all  
9 of the evidence in the case, there were some things that  
10 made you feel like the death penalty wasn't the  
11 appropriate punishment, you would be able to return that  
12 verdict as well?

13 PROSPECTIVE JUROR: Yes.

14 MR. OWENS: Now on question 54, you said  
15 why would you not be able to serve on the jury, and you  
16 said something about the race of the Defendant. You said  
17 you already had some opinions. Are your opinions about  
18 race such that it would make you unable to be fair to both  
19 the Defendant and the State in this case?

20 PROSPECTIVE JUROR: No.

21 MR. OWENS: Because you were suggesting in  
22 here that you might be might -- it make you biased. As  
23 you sit here right now, do you think race is an issue for  
24 you in the trial you hear?

25 PROSPECTIVE JUROR: No.

141

1 MR. OWENS: As you sit there now, you feel  
2 you could be fair to both sides and judge this case on the  
3 evidence?

4 PROSPECTIVE JUROR: Yes.

5 MR. OWENS: Thank you. Pass for cause,  
6 your Honor.

7 THE COURT: Mr. Schieck.

8 MR. SCHIECK: Ms. Ruis, I just have a few  
9 questions for you. Perhaps I'm confused by some of your  
10 answers. But let me read this one answer to you and tell  
11 me if this is correct. This is what you wrote when you  
12 came in for your questionnaire.

13 Because of the race of the Defendant, I  
14 already have opinions about them, based on appearance, and  
15 it's not fair to the Defendant.

16 Okay. Was that your opinion when you  
17 wrote your questionnaire?

18 PROSPECTIVE JUROR: At the time when I read  
19 the questionnaire. This is my first time I have ever  
20 severed on a jury, so I didn't -- I don't -- I didn't  
21 understand the process.

22 MR. SCHIECK: What did you mean by because  
23 of the race of the Defendant.

24 PROSPECTIVE JUROR: Where I work I have to  
25 deal with a lot of different ethnic people and a specific

142

1 race tends to either come in and try to do some kind of a  
2 con or some kind of shoplifting or threaten in some way  
3 where I've already had my own opinions of them.

4 MR. SCHIECK: You talked about that in  
5 your questionnaire also. You said I work in retail. In  
6 90 to 95 percent of the time, they are shoplifters. Who  
7 are you talking about.

8 PROSPECTIVE JUROR: Unfortunately,  
9 African-American or Hispanic mainly.

10 MR. SCHIECK: I have been in retail for  
11 over ten years and plainly do not trust them.

12 PROSPECTIVE JUROR: When it comes to  
13 work.

14 MR. SCHIECK: Well -- and so in your  
15 opinion 90 to 95 percent of the people that are minorities  
16 that come in your shop are shoplifters?

17 PROSPECTIVE JUROR: Unfortunately, yes,  
18 sir.

19 MR. SCHIECK: You haven't changed that  
20 opinion when you got here? You still believe that?

21 PROSPECTIVE JUROR: When it comes to work,  
22 yes.

23 MR. SCHIECK: You're saying you plainly do  
24 not trust them?

25 PROSPECTIVE JUROR: Yes.

143

1 MR. SCHIECK: Okay.

2 PROSPECTIVE JUROR: When it comes to work.  
3 Like I said, I didn't understand how this worked.

4 MR. SCHIECK: Well, you're talking about  
5 people stealing from your work, correct?

6 PROSPECTIVE JUROR: Yes.

7 MR. SCHIECK: You don't trust them, and  
8 you believe they are going to steal?

9 PROSPECTIVE JUROR: Yes.

10 MR. SCHIECK: And, again, in your other  
11 question you indicated that it's not fair to the Defendant  
12 because of his race. Do you think you can be a fair  
13 juror, given what you told us?

14 PROSPECTIVE JUROR: With the -- if I have  
15 to put work the work perspective. But with -- now that  
16 I've seen and understand and heard different questions and  
17 opinions I can be fair.

18 MR. SCHIECK: Now, you also, with respect  
19 to the death penalty, said you would consider all forms of  
20 punishment, but lean and choose the death penalty. Is  
21 that what you wrote?

22 PROSPECTIVE JUROR: Yes.

23 MR. SCHIECK: So you already decided that  
24 the death penalty was appropriate in this case?

25 PROSPECTIVE JUROR: Well -- well, I'm for

144

1 the death penalty. I didn't chose that that's what should  
2 happen. I want to be able to hear all of the facts  
3 first.

4 MR. SCHIECK: You said if someone is  
5 convicted -- this is an eye for an eye question -- you  
6 said the convict should receive the same crime as  
7 punishment. So if someone commits murder you believe they  
8 should lose their life as punishment?

9 PROSPECTIVE JUROR: Yes.

10 MR. SCHIECK: That's your brief?

11 PROSPECTIVE JUROR: Yes.

12 MR. SCHIECK: In this case you have  
13 already been told Mr. Chappell has been convicted of  
14 murder, so basically you made up your mind that the death  
15 penalty is the appropriate punishment based on that?

16 PROSPECTIVE JUROR: Basically.

17 MR. SCHIECK: So with all of the factors  
18 we've discussed, you pretty much said what your opinion  
19 is?

20 PROSPECTIVE JUROR: My opinion --

21 MR. SCHIECK: Your opinion of punishment  
22 in this case.

23 PROSPECTIVE JUROR: Yes.

24 MR. SCHIECK: We would challenge for  
25 cause, your Honor.

145

1 THE COURT: Thank you. As to Ms. Curtis.  
2 Ms. Weckerly.

3 MS. WECKERLY: Ma'am, I read that you work  
4 as a court clerk. Where is that?

5 PROSPECTIVE JUROR: North Las Vegas  
6 municipal Court.

7 MS. WECKERLY: Are you in the courtroom or  
8 in the records area?

9 PROSPECTIVE JUROR: The courtroom.

10 MS. WECKERLY: So you see a lot of  
11 misdemeanor trials?

12 PROSPECTIVE JUROR: Yes.

13 MS. WECKERLY: Anything about -- I'm sure  
14 you have a lot of experience seeing victims of domestic  
15 violence come in and testify, or maybe not testify in some  
16 situations. Anything about that that would make it hard  
17 for you to be an impartial juror in this case?

18 PROSPECTIVE JUROR: No.

19 MS. WECKERLY: You can be impartial?

20 PROSPECTIVE JUROR: I don't think my  
21 experience will make me not be impartial.

22 MS. WECKERLY: Well, I mean, you would  
23 assume you've kind of seen the range of domestic violence  
24 victims, some maybe have an agenda, some may be scared,  
25 some may be coming in and testifying, all sorts of things,

146

1 all different people?

2 PROSPECTIVE JUROR: Yes.

3 MS. WECKERLY: So there's nothing about  
4 that that would make you prejudge the facts of this case  
5 or have an opinion about it already?

6 PROSPECTIVE JUROR: No.

7 MS. WECKERLY: You also mentioned, I think  
8 it was in your questionnaire, that your husband's father  
9 was abusive?

10 PROSPECTIVE JUROR: Yes.

11 MR. OWENS: Was that to his wife or your  
12 mother-in-law?

13 PROSPECTIVE JUROR: Yes.

14 MS. WECKERLY: Was that something that you  
15 experienced or something your husband grew up with?

16 PROSPECTIVE JUROR: No, just when he was a  
17 child. They divorced when he was 8. I think just what he  
18 told me.

19 MS. WECKERLY: Do you have contact with  
20 your mother-in-law?

21 PROSPECTIVE JUROR: They are both deceased  
22 now.

23 MS. WECKERLY: Did you ever have contact?

24 PROSPECTIVE JUROR: Yes.

25 MS. WECKERLY: When you were in contact

147

1 with her was the abusive guy out of the picture at that  
2 point?

3 PROSPECTIVE JUROR: Yes.

4 MS. WECKERLY: So nothing about that would  
5 influence you in any way?

6 PROSPECTIVE JUROR: No.

7 MS. WECKERLY: You mentioned on the death  
8 penalty that you could consider it in some circumstances?

9 PROSPECTIVE JUROR: I could consider it,  
10 but frankly under the circumstances I would be leaning  
11 against it.

12 MS. WECKERLY: Why is that?

13 PROSPECTIVE JUROR: It should be reserved  
14 for the most heinous of circumstances, like Jeffery  
15 Dahmer.

16 MS. WECKERLY: So serial killers?

17 PROSPECTIVE JUROR: Yes.

18 MS. WECKERLY: You understand in the State  
19 of Nevada there are certain requirements that have to be  
20 met before you can consider the death penalty. And it's a  
21 potential punishment for more than serial killers?

22 PROSPECTIVE JUROR: Yes.

23 MS. WECKERLY: That's just the law. There  
24 are certain factors that have to be present, but it's not  
25 reserved for people that kill several people. Do you

148

1 accept that as -- is that how you would structure the law,  
2 if you could, or more limiting than that?

3 PROSPECTIVE JUROR: If I was a  
4 legislature, I might want to make it more limiting. But I  
5 understand that it's not how it currently is.

6 MS. WECKERLY: And because you have these  
7 feelings -- and you know their really aren't any right or  
8 wrong answers here. But because you hold that opinion, do  
9 you think you could consider it in a case like this?

10 PROSPECTIVE JUROR: I could consider it.  
11 But the State would have to present a lot of evidence of a  
12 lot of aggravating factors for me to think it was  
13 appropriate before I could consider it. Yes.

14 MS. WECKERLY: And you are going to hear,  
15 because of the nature of this hearing, that you'll hear  
16 about the crime itself, obviously. And you'll hear some  
17 background, I would assume, about the defendant. And other  
18 factors related to the case. Are you someone who can take  
19 in all that information and make a decision on what you  
20 think is the appropriate punishment?

21 PROSPECTIVE JUROR: Based on the evidence  
22 I hear, yes.

23 MS. WECKERLY: You said a moment ago --  
24 maybe I misheard you. The State would have to present  
25 several aggravating circumstances?

149

1 PROSPECTIVE JUROR: Well, not necessarily  
2 several different things, but that -- I mean to show that  
3 the aggravating circumstances were aggravating enough, you  
4 know, to warrant the death penalty.

5 MS. WECKERLY: And you'll get a definition  
6 of what those are from the judge, what the law is on that.  
7 Would you be able to follow that, or maybe you have your  
8 own standard of, this is what I consider aggravating,  
9 versus what the law might be?

10 PROSPECTIVE JUROR: I believe I can follow  
11 instructions.

12 MS. WECKERLY: If you believe the  
13 aggravating circumstances have been proven beyond a  
14 reasonable doubt that's when you start considering the  
15 death penalty with your fellow juror members. And at that  
16 point, do you think you could be the person that actually  
17 marks the verdict form that says death penalty?

18 PROSPECTIVE JUROR: I would be  
19 uncomfortable with it.

20 MS. WECKERLY: Sure. I don't think that  
21 that's something everyone would ever take lightly. And  
22 certainly it wouldn't be an easy decision for somebody. If  
23 you believe that that's the appropriate punishment, could  
24 you do that?

25 PROSPECTIVE JUROR: I believe I could,

150

1 yes.

2 MS. WECKERLY: Do you have concerns at all  
3 about your ability to sit on a case like this, where it's  
4 kind of a strange setting, I'm sure. You're not going to  
5 hear a whole trial when you get picked for jury duty, but  
6 it's a very narrow question we're asking here.

7 PROSPECTIVE JUROR: My main concern is  
8 hearing evidence about the crime. And if it gets detailed  
9 about violence, and I have a hard time processing that --

10 MS. WECKERLY: Can you talk more about  
11 that. What do you mean a problem processing that?

12 PROSPECTIVE JUROR: I just, as someone  
13 else mentioned, I don't like watching the news, especially  
14 talking about violent crimes and things. I tend to  
15 internalize and empathize with the victim. I just get  
16 very depressed.

17 MS. WECKERLY: Well, you'll be -- in  
18 presenting this situation to you, you'll be asked to look  
19 at crime scene photographs, which are pretty graphic. And  
20 also photographs from the autopsy. And they will be  
21 displayed for you as part of the evidence in this case,  
22 part of what the information you have to be evaluating.  
23 Is that going to be too hard for you, or do you think  
24 you're going to be able to do that?

25 PROSPECTIVE JUROR: It would be

151

1 disturbing.

2 MS. WECKERLY: It's kind of a hard  
3 process, because we kind of have to ask you up front are  
4 you going to be able to do it, and you kind of don't know  
5 what you're going to see. But that's sort of the only way  
6 to do it.

7 PROSPECTIVE JUROR: I would rather not.

8 MS. WECKERLY: I need to know if you can.

9 PROSPECTIVE JUROR: It would probably not  
10 get sick seeing them.

11 MS. WECKERLY: Okay. Anything better than  
12 not getting sick. Can you take in the information.

13 PROSPECTIVE JUROR: I think I could  
14 separate logically how that pertains, how it would pertain  
15 to this case and the decision we have to make. Separate  
16 from my emotions about it.

17 MS. WECKERLY: You think you'd be able to  
18 do that?

19 PROSPECTIVE JUROR: I think so.

20 MS. WECKERLY: You also mentioned -- I  
21 don't want you to tell me what you remember, but you have  
22 some memory of this case?

23 PROSPECTIVE JUROR: Yes.

24 MS. WECKERLY: Would that have been --  
25 without saying what it was you remember about it --

152



1 through a news account?  
2 PROSPECTIVE JUROR: Yes.  
3 MS. WECKERLY: And you are able to  
4 separate whatever you may have heard and make your  
5 decision solely on what you hear in the courtroom?  
6 PROSPECTIVE JUROR: Yes.  
7 MS. WECKERLY: Knowing about what you  
8 heard about in the back of your mind.  
9 PROSPECTIVE JUROR: No -- for the verdict,  
10 no.  
11 MS. WECKERLY: You'll be able to make a  
12 verdict based on what you hear here?  
13 PROSPECTIVE JUROR: Yes.  
14 MS. WECKERLY: Earlier this morning you  
15 said you've had some family members who have had contact  
16 with law enforcement. Was that right?  
17 PROSPECTIVE JUROR: I have family members  
18 that have been convict of crimes, yes.  
19 MS. WECKERLY: Are those situations such  
20 that you think they were treated fairly?  
21 PROSPECTIVE JUROR: Yes.  
22 MS. WECKERLY: No bad feelings about what  
23 happened to some of those family members?  
24 PROSPECTIVE JUROR: No. Their treatment  
25 was appropriate.

153

1 MS. WECKERLY: And they're still under  
2 sentences and in custody?  
3 PROSPECTIVE JUROR: One is.  
4 MS. WECKERLY: Were they prosecuted by the  
5 DA's office?  
6 PROSPECTIVE JUROR: Actually the one, I  
7 think, is a felony and was actually in Utah. But he had  
8 had prior misdemeanors here. My sister-in-law lives here.  
9 We didn't have contact with her. I don't know -- she's  
10 actually deceased.  
11 MS. WECKERLY: But nothing about that  
12 causes you any concern about your ability to be fair?  
13 PROSPECTIVE JUROR: No.  
14 MS. WECKERLY: You wrote on your  
15 questionnaire that nobody is beyond redemption. Do you  
16 recall that?  
17 PROSPECTIVE JUROR: Yes. I would like to  
18 believe that nobody is beyond redemption.  
19 MS. WECKERLY: This is prying into your  
20 personal belief system. In this case it's important. Is  
21 that like a religious belief that you have?  
22 PROSPECTIVE JUROR: I think so, yes.  
23 MS. WECKERLY: Because you have that  
24 belief, is that something important that you would --  
25 would that make you unable to impose a death sentence?

154

1 PROSPECTIVE JUROR: I think it would have  
2 bearing on it. I don't know that I would be -- I wouldn't  
3 think I would become completely unable to do it. It's  
4 something I would be strongly considering.  
5 MS. WECKERLY: Even though you have that  
6 belief, you're telling us you'd still consider it?  
7 PROSPECTIVE JUROR: Yes.  
8 MS. WECKERLY: Thank you. Pass for cause,  
9 your Honor.  
10 THE COURT: Thank you. Mr. Patrick.  
11 MR. PATRICK: Thank you, your Honor.  
12 Ms. Curtis, I'd like to ask you a little  
13 more about what Ms. Weckerly was talking about, the photos  
14 that may be shown that may not be pretty to look at.  
15 Then you mentioned that you may you have a  
16 tendency to empathize with the victim.  
17 Do you think seeing those types of  
18 pictures and knowing that that's something you have a  
19 tendency to do, do you think that would stop you from  
20 making a fair decision and looking at all of the evidence?  
21 PROSPECTIVE JUROR: No, I don't think  
22 so.  
23 MR. PATRICK: Now, one of your family  
24 members you said was still under sentencing for a  
25 molestation charge?

155

1 PROSPECTIVE JUROR: Yes, sir.  
2 MR. PATRICK: If something like that were  
3 to come up would that make you think one way or the other  
4 about what penalty you should be imposing?  
5 PROSPECTIVE JUROR: No. That would be up  
6 to the crime.  
7 MR. PATRICK: Now, you say that your  
8 sister had the drug abuse problem, and when she was high  
9 she would act differently then when she wasn't high.  
10 PROSPECTIVE JUROR: Yes.  
11 MR. PATRICK: And you could attribute that  
12 to the drug use.  
13 PROSPECTIVE JUROR: Yeah, I think so.  
14 MR. PATRICK: Was she nicer, calmer,  
15 better when she wasn't high?  
16 PROSPECTIVE JUROR: She was usually more  
17 aggressive when she was high.  
18 MR. PATRICK: Then I think Ms. Weckerly  
19 touched upon this, about your husband's father was an  
20 abusive man?  
21 PROSPECTIVE JUROR: Yes.  
22 MR. PATRICK: You never had contact with  
23 him?  
24 PROSPECTIVE JUROR: No.  
25 MR. PATRICK: Have you ever had in depth

156



1 conversations with your husband about what he witnessed a  
2 far as his father's abuse?

3 PROSPECTIVE JUROR: Not in detail, no. I  
4 just -- actually I don't know that I have heard from him.  
5 Maybe just my mother-in-law mention that her husband had  
6 been abusive.

7 MR. PATRICK: Did you have detailed  
8 conversations with her about that?

9 PROSPECTIVE JUROR: Not more than when he  
10 was drunk he hit her. And once he took some possessions  
11 she had and took them outside and burned them.

12 MR. PATRICK: Nothing about any of those  
13 conversations would make you more or less likely to  
14 believe somebody or more or less likely to give a certain  
15 punishment?

16 PROSPECTIVE JUROR: No.

17 MR. PATRICK: You work in North Las Vegas  
18 municipal Court?

19 PROSPECTIVE JUROR: Yes.

20 MR. PATRICK: So you hear the judge talk  
21 about laws, and the judge is going to give you laws that  
22 you are supposed to follow if you are on this jury.

23 PROSPECTIVE JUROR: Yes.

24 MR. PATRICK: And you'd be able to listen  
25 to what he says and follow whatever he says, as far as

157

1 what the law would tell you to do as a juror?

2 PROSPECTIVE JUROR: Yes.

3 MR. PATRICK: You think that even though  
4 you have some reservations on the death penalty, if that's  
5 what the law requires and that's what you thought was  
6 appropriate, you would be able to make that choice out of  
7 those four choices if that's what you had to do?

8 PROSPECTIVE JUROR: Yes.

9 MR. PATRICK: Do you think you would be a  
10 fair and impartial juror on this?

11 PROSPECTIVE JUROR: Unfortunately, yes.

12 MR. PATRICK: Unfortunately, yes?

13 PROSPECTIVE JUROR: Because I really don't  
14 want to do it.

15 MR. PATRICK: You don't want to be on the  
16 jury?

17 PROSPECTIVE JUROR: No.

18 MR. PATRICK: Can you sit in judgment of  
19 Mr. Chappell with twelve people of your like mind and be  
20 on this jury?

21 PROSPECTIVE JUROR: Probably, yes.

22 MR. PATRICK: Pass for cause.

23 THE COURT: Ms. Weckerly, George Smith,  
24 Badge 22.

25 MS. WECKERLY: Good afternoon, sir. How

158

1 are you?

2 PROSPECTIVE JUROR: Fine.

3 MS. WECKERLY: Good. You were coughing  
4 earlier, are you okay now?

5 PROSPECTIVE JUROR: I have allergies to  
6 dirt.

7 MS. WECKERLY: You mentioned on your  
8 questionnaire that -- I think it was a step-daughter had  
9 some drug problems?

10 PROSPECTIVE JUROR: Yes.

11 MS. WECKERLY: Was she living with you at  
12 the time these problems were going on?

13 PROSPECTIVE JUROR: No. But as a result  
14 of her drug use, we ended up raising her two children.

15 MS. WECKERLY: So I assume that was sort  
16 of a long term problem, if you ended up raising her  
17 children?

18 PROSPECTIVE JUROR: Not after we were  
19 given custody of her children. I have not seen her  
20 since.

21 MS. WECKERLY: But you and your wife had  
22 to take responsibility for the children?

23 PROSPECTIVE JUROR: Yes.

24 MS. WECKERLY: Do you have contact with  
25 her now?

159

1 PROSPECTIVE JUROR: No.

2 MS. WECKERLY: You mentioned also a  
3 grandson with problems with law enforcement.

4 PROSPECTIVE JUROR: One of the boys was in  
5 the drug scene in California. He ended up doing time in  
6 juvenile detention. He's out now, seeming doing fine.

7 MS. WECKERLY: A little more on track?

8 PROSPECTIVE JUROR: Absolutely.

9 MS. WECKERLY: Do you think he was treated  
10 fairly?

11 PROSPECTIVE JUROR: Yes.

12 MS. WECKERLY: How about when your step  
13 daughter -- was law enforcement ever involved with her?

14 PROSPECTIVE JUROR: No. She was in the  
15 court system, but for negligent. That was the basis of  
16 the charges.

17 MS. WECKERLY: So they never had any drug  
18 charges against her even though that was the problem?

19 PROSPECTIVE JUROR: Not specifically,  
20 no.

21 MS. WECKERLY: You wrote on your  
22 questionnaire that you're someone that can consider the  
23 death penalty as a potential punishment?

24 PROSPECTIVE JUROR: Yes.

25 MS. WECKERLY: You still feel that way

160

1 after sitting here during jury selection?  
 2 PROSPECTIVE JUROR: Yes.  
 3 MS. WECKERLY: And I assume, as I  
 4 discussed with some of the jurors, that you can listen to  
 5 what is present by both sides?  
 6 PROSPECTIVE JUROR: Yes.  
 7 MS. WECKERLY: Then make a decision?  
 8 PROSPECTIVE JUROR: Yes.  
 9 MS. WECKERLY: You're not someone who will  
 10 automatically vote for the death penalty?  
 11 PROSPECTIVE JUROR: Depends on the  
 12 circumstances.  
 13 MS. WECKERLY: You are able to evaluate  
 14 those fairly?  
 15 PROSPECTIVE JUROR: Yes.  
 16 MS. WECKERLY: Thank you, sir. Pass for  
 17 cause.  
 18 THE COURT: Mr. Patrick.  
 19 MR. PATRICK: Thank you, judge. Good  
 20 afternoon, Mr. Smith.  
 21 PROSPECTIVE JUROR: Good afternoon.  
 22 MR. PATRICK: In your questionnaire you  
 23 mentioned you worked in justice court?  
 24 PROSPECTIVE JUROR: I do.  
 25 MR. PATRICK: What do you do there?

161

1 PROSPECTIVE JUROR: Part-time legal  
 2 assistant in the office.  
 3 MR. PATRICK: Do you ever go in court and  
 4 watch the proceedings?  
 5 PROSPECTIVE JUROR: Yes.  
 6 MR. PATRICK: Also I believe you are part  
 7 of Metro volunteers?  
 8 PROSPECTIVE JUROR: Yes.  
 9 MR. PATRICK: What do you do with that?  
 10 PROSPECTIVE JUROR: Well, Metro volunteers  
 11 do a lot of things. We help direct traffic. River runs  
 12 coming up. I'm exited about that. Just a lot of  
 13 community activities that funnel through Metro, I come  
 14 down to volunteer.  
 15 MR. PATRICK: As a volunteer for Metro, do  
 16 you carry a firearm?  
 17 PROSPECTIVE JUROR: I'm not allow to.  
 18 MR. PATRICK: Do you have authorization to  
 19 make arrests.  
 20 PROSPECTIVE JUROR: No.  
 21 MR. PATRICK: Do you think with all of  
 22 this involvement in law enforcement, you can be fair and  
 23 impartial on this jury?  
 24 PROSPECTIVE JUROR: I believe so, yes.  
 25 MR. PATRICK: And let's say that you are

162

1 on this jury and for whatever reason the jury comes back  
 2 with something besides the death penalty. Would you feel  
 3 that you would have to explain those actions to members of  
 4 Metro that you work with why you did that?  
 5 PROSPECTIVE JUROR: No.  
 6 MR. PATRICK: Okay.  
 7 PROSPECTIVE JUROR: I might add that I was  
 8 with the Flagstaff PD to get through college. That's why  
 9 I went into that area, to do public service.  
 10 MR. PATRICK: But none of that would make  
 11 you feel strongly one way or the other whether or not the  
 12 death penalty is imposed?  
 13 PROSPECTIVE JUROR: Absolutely not.  
 14 MR. PATRICK: You believe you could still  
 15 be fair?  
 16 PROSPECTIVE JUROR: Yes, sir.  
 17 MR. PATRICK: Listen to all the evidence?  
 18 PROSPECTIVE JUROR: Yes.  
 19 MR. PATRICK: I'm sure as a police officer  
 20 there was a lot of times where you were sent to calls and  
 21 there were two sides?  
 22 PROSPECTIVE JUROR: Yes.  
 23 MR. PATRICK: Both side have a story?  
 24 PROSPECTIVE JUROR: Yes.  
 25 MR. PATRICK: Neither would tell the same

163

1 story?  
 2 PROSPECTIVE JUROR: True.  
 3 MR. PATRICK: It would be your job to  
 4 figure out who is lying and who is telling the truth, who  
 5 to believe?  
 6 PROSPECTIVE JUROR: Yes.  
 7 MR. PATRICK: Would you be impartial in  
 8 bringing that experience to this case and do the same  
 9 thing here?  
 10 PROSPECTIVE JUROR: Absolutely.  
 11 MR. PATRICK: Now, the fact that your  
 12 step-daughter and grandson have involvement with drugs, is  
 13 that -- if it was to show in this case there was drug  
 14 involvement, would that change your opinion as to what  
 15 punishment should be given out?  
 16 MR. OWENS: I would object. That's asking  
 17 for a prediction.  
 18 THE COURT: Why don't you rephrase what  
 19 you're asking about.  
 20 MR. PATRICK: If drugs -- if it's shown  
 21 that drugs are a part of this case, would you give more or  
 22 less weight to somebody's testimony regarding that because  
 23 of the drug use?  
 24 PROSPECTIVE JUROR: Possibly.  
 25 MR. PATRICK: Which way do you think you

164

1 would tend to believe --

2 PROSPECTIVE JUROR: Depends on the  
3 circumstances.

4 MR. OWENS: Same objection, your Honor.

5 THE COURT: I'll allow the answer. He got  
6 halfway through the answer, anyway.

7 MR. PATRICK: So even though there was  
8 some drug involvement, you'd still listen to both sides?

9 PROSPECTIVE JUROR: Absolutely.

10 MR. PATRICK: You wouldn't make a  
11 determination until you heard all the evidence?

12 PROSPECTIVE JUROR: That's correct.

13 MR. PATRICK: Thank you. Pass for cause,  
14 your Honor.

15 THE COURT: Thank you, very much.

16 Mr. Owens or Ms. Weckerly, Ms. Meyrick, 23.

17 MR. OWENS: How do you feel about the idea  
18 of sitting in judgment on another person in this kind of  
19 situation?

20 PROSPECTIVE JUROR: Judgment,  
21 uncomfortable.

22 MR. OWENS: Do you feel it's necessary  
23 from time to time?

24 PROSPECTIVE JUROR: Yes.

25 MR. OWENS: Do you feel comfortable

165

1 personally that you could do this?

2 PROSPECTIVE JUROR: Yes.

3 MR. OWENS: When you were answering  
4 questions about the death penalty, you had inserted a word  
5 in one of the questions. Do you remember that?

6 What are your feelings about the death  
7 penalty. You said it depends on the case. I would be  
8 preferable with the death sentence, then you put in,  
9 "not", and underlined it and added it. Do you know what  
10 that means. Do you want to take a look at that?

11 PROSPECTIVE JUROR: If I may.

12 MR. OWENS: May, I your Honor?

13 THE COURT: All right. Yes.

14 MR. OWENS: At the bottom right there.

15 PROSPECTIVE JUROR: It's uncomfortable not  
16 comfortable with the death sentence.

17 MR. OWENS: What do you mean by that?

18 PROSPECTIVE JUROR: I don't like to pass  
19 judgment on anyone.

20 MR. OWENS: Do you feel that that is  
21 something you couldn't do under any circumstance in the  
22 case?

23 PROSPECTIVE JUROR: I don't like to do it.  
24 But I could do it.

25 MR. OWENS: So you're saying you wouldn't

166

1 be comfortable with it, but you feel like you could come  
2 back with a death penalty if it's appropriate?

3 PROSPECTIVE JUROR: If the facts were  
4 there.

5 MR. OWENS: And you indicated that you  
6 would consider it with certain circumstances. In your  
7 explanation you said a person who killed, I would consider  
8 a death penalty.

9 PROSPECTIVE JUROR: Yes.

10 MR. OWENS: Is that what you're thinking  
11 about, that's one situation?

12 PROSPECTIVE JUROR: Yes.

13 MR. OWENS: But there may be other  
14 situations where it's appropriate also?

15 PROSPECTIVE JUROR: Based on the law.

16 MR. OWENS: You just have to look and see  
17 what the law is about that.

18 PROSPECTIVE JUROR: Correct.

19 MR. OWENS: You indicated that you felt  
20 that it was appropriate to consider all the facts and  
21 circumstances before coming to a decision?

22 PROSPECTIVE JUROR: That's correct.

23 MR. OWENS: What does that mean to you.

24 PROSPECTIVE JUROR: Based on the evidence,  
25 understanding the situation, make a decision based on

167

1 facts.

2 MR. OWENS: You had had some experience  
3 with somebody that had some problems with violence or  
4 drugs or something?

5 PROSPECTIVE JUROR: Yes.

6 MR. OWENS: Were you kind of close to that  
7 situation at the time?

8 PROSPECTIVE JUROR: Yes.

9 MR. OWENS: How long was that?

10 PROSPECTIVE JUROR: My sister ran away at  
11 16. I'm two years older than her. I'm 23.

12 MR. OWENS: So sometime ago.

13 PROSPECTIVE JUROR: Yes.

14 MR. OWENS: Do you harbor bad feelings  
15 about what happened there?

16 PROSPECTIVE JUROR: Absolutely.

17 MR. OWENS: Are those feelings such that  
18 it might surface and you'd take it out on one side or the  
19 other maybe?

20 PROSPECTIVE JUROR: I would have to say, I  
21 don't know.

22 MR. OWENS: So it might be possible you  
23 are hearing facts and circumstances that triggers  
24 something in you, that you think, well, I can't be fair to  
25 both sides because of the feeling that I have?

168

1 PROSPECTIVE JUROR: No. I would be able  
2 to separate it.  
3 MR. OWENS: Okay. So you feel you could  
4 be fair?  
5 PROSPECTIVE JUROR: Yes.  
6 MR. OWENS: Regardless of the feelings  
7 that you have that arose from that circumstance?  
8 PROSPECTIVE JUROR: Yes.  
9 MR. OWENS: Okay. And if after hearing  
10 all of the evidence in the case if you felt the death  
11 penalty was the appropriate punishment, you feel that you  
12 could come back with that judgment?  
13 PROSPECTIVE JUROR: Base on the law,  
14 yes.  
15 MR. OWENS: That's something you feel -- I  
16 don't mean you'd feel comfortable, do you feel like you  
17 could do that if appropriate?  
18 PROSPECTIVE JUROR: Yes.  
19 MR. OWENS: Thank you. Pass for cause.  
20 THE COURT: Thank you. Mr. Schieck.  
21 MR. SCHIECK: Thank you.  
22 Ms. Meyrick, a little information that we  
23 have on occupation says manager. What type of business do  
24 you manage?  
25 PROSPECTIVE JUROR: I'm a production

169

1 manager for an advertising department.  
2 MR. SCHIECK: So you have a number of  
3 people that work under you?  
4 PROSPECTIVE JUROR: Correct.  
5 MR. SCHIECK: I take it in that position  
6 you have to make decisions on a daily basis?  
7 PROSPECTIVE JUROR: Correct.  
8 MR. SCHIECK: And you're looking for as  
9 much information as you can before you make a decision?  
10 PROSPECTIVE JUROR: Have to.  
11 MR. SCHIECK: In fact, one of your answers  
12 states it pretty well. Deciding the appropriate  
13 punishment, you said you would be able to decide, but want  
14 to know the how, the when, the where, and the who.  
15 PROSPECTIVE JUROR: Yes.  
16 MR. SCHIECK: So you want all the  
17 information you can get before you decide what's  
18 appropriate.  
19 PROSPECTIVE JUROR: That's correct.  
20 MR. SCHIECK: As you sit here right now  
21 you have an open mind to hearing everything and making a  
22 decision based on the facts and not emotion?  
23 PROSPECTIVE JUROR: Correct.  
24 MR. SCHIECK: Thank you. Pass for cause,  
25 your Honor.

170

1 THE COURT: Thank you. Ms. Weckerly, as  
2 to Ms. Cardillo.  
3 MS. WECKERLY: How are you doing.  
4 PROSPECTIVE JUROR: Good.  
5 MS. WECKERLY: You wrote on your  
6 questionnaire sort of an interesting answer. You were  
7 asked -- the question was, what are your feelings about  
8 the criminal justice system. And you wrote, I believe a  
9 person is innocent until proven guilty. Which is, of  
10 course, a precept that we all accept. But you know now  
11 from sitting here we are not at that point in this  
12 proceedings. And you are comfortable with that?  
13 PROSPECTIVE JUROR: Yes.  
14 MS. WECKERLY: Your answer on whether or  
15 not you can consider the death penalty, you wrote another  
16 sort of interesting answer to me. The question about if  
17 you believe in an eye for an eye, you wrote that those  
18 statements are too broad. You feel like that?  
19 PROSPECTIVE JUROR: Well, I believe each  
20 case is specific.  
21 MS. WECKERLY: Not every case of first  
22 degree murder is the same?  
23 PROSPECTIVE JUROR: Right.  
24 MS. WECKERLY: So you're not someone who  
25 is going to automatically vote one way or another in this

171

1 case?  
2 PROSPECTIVE JUROR: No.  
3 MS. WECKERLY: And from reading your  
4 questionnaire you're someone who would want to hear all of  
5 the information, then once you've heard it, you would be  
6 able to consider all four possible punishments and make a  
7 decision?  
8 PROSPECTIVE JUROR: Yes.  
9 MS. WECKERLY: Is there anything about the  
10 prospect of considering the death penalty as a potential  
11 punishment -- I don't want to say that makes you  
12 uncomfortable, certainly that's not an easy decision. But  
13 are you someone who can consider that as a punishment?  
14 PROSPECTIVE JUROR: Yes.  
15 MS. WECKERLY: Do you think the death  
16 penalty serves a purpose?  
17 PROSPECTIVE JUROR: Yes.  
18 MS. WECKERLY: If you could be the sole  
19 legislator, would you have that as a potential punishment?  
20 PROSPECTIVE JUROR: Yes.  
21 MS. WECKERLY: You are willing as a juror  
22 to listen to both sides in this proceedings?  
23 PROSPECTIVE JUROR: Yes.  
24 MS. WECKERLY: I'm sure you could  
25 communicate with your fellow jurors and make a decision?

172

1 PROSPECTIVE JUROR: Yes.  
 2 MS. WECKERLY: Thank you. Pass for  
 3 cause.  
 4 THE COURT: Thank you. Mr. Patrick.  
 5 MR. PATRICK: Good afternoon.  
 6 PROSPECTIVE JUROR: Hi.  
 7 MR. PATRICK: On the innocent until proven  
 8 guilty, Ms. Weckerly said we're not at that point. You  
 9 can apply the same principles here that we're basically  
 10 starting with a clean slate and listen to all the  
 11 evidence and make your decision?  
 12 PROSPECTIVE JUROR: Yes.  
 13 MR. PATRICK: And that you'd have an open  
 14 mind, listen to everything before you decide on  
 15 punishment?  
 16 PROSPECTIVE JUROR: Yes.  
 17 MR. PATRICK: And if you were sitting  
 18 where Mr. Chappell was would you like twelve people that  
 19 thought like you on the jury?  
 20 PROSPECTIVE JUROR: Yes.  
 21 MR. PATRICK: Pass for cause, your  
 22 Honor.  
 23 THE COURT: Thank you, very much.  
 24 Ms. Weckerly as to Mr. Ramirez.  
 25 MS. WECKERLY: Mr. Ramirez, on your

173

1 questionnaire you wrote that one of your daughters is a  
 2 doctor and one is a mortgage banker?  
 3 PROSPECTIVE JUROR: Yes.  
 4 MS. WECKERLY: Do they live here locally?  
 5 PROSPECTIVE JUROR: No. The mortgage  
 6 broker does.  
 7 MS. WECKERLY: Where does your other  
 8 daughter live?  
 9 PROSPECTIVE JUROR: Chicago. She works  
 10 for Resident Medical.  
 11 MS. WECKERLY: She's just completing her  
 12 residency?  
 13 PROSPECTIVE JUROR: This is her fifth  
 14 year. She'll be done in May.  
 15 MS. WECKERLY: Okay. You wrote on your  
 16 questionnaire that you're someone who can consider the  
 17 death penalty as a potential punishment?  
 18 PROSPECTIVE JUROR: Yes.  
 19 MS. WECKERLY: I'm sure you've listen all  
 20 morning and part of the afternoon. It's not something  
 21 that you would automatically vote for without hearing all  
 22 the information in this case, is it?  
 23 PROSPECTIVE JUROR: It's hard to say for  
 24 me.  
 25 MS. WECKERLY: Why is that?

174

1 PROSPECTIVE JUROR: Because I think that  
 2 sometimes they don't enforce it enough.  
 3 MS. WECKERLY: I think we have explained  
 4 sort of the process. It's a little artificial asking you  
 5 to commit now. But the judge is going to give you  
 6 instructions at the end of the case. And those  
 7 instructions will kind of tell you if you can consider the  
 8 death penalty.  
 9 PROSPECTIVE JUROR: It's a murder case, is  
 10 it not?  
 11 MS. WECKERLY: It is. But in the State  
 12 of Nevada there are certain factors that have to be  
 13 present before a jury can even consider a death sentence  
 14 as a possible verdict.  
 15 PROSPECTIVE JUROR: That's new to me. I'm  
 16 not used to that.  
 17 MS. WECKERLY: I don't think that -- I'm  
 18 sure most people that come in for jury duty don't realize  
 19 that not every case of first degree murder has that as a  
 20 potential punishment. But this one does.  
 21 PROSPECTIVE JUROR: Well, I come from the  
 22 State that does.  
 23 MS. WECKERLY: What state is that?  
 24 THE COURT: Texas.  
 25 MS. WECKERLY: I was going to guess that.

175

1 Will you be able to follow the judge's instructions and  
 2 hold the State to its burden?  
 3 PROSPECTIVE JUROR: Hard to say.  
 4 MS. WECKERLY: Like I talked to this other  
 5 lady. I know it's hard to say what you're feelings are  
 6 now, but we sort of need you to commit up front that  
 7 you'll follow the law.  
 8 PROSPECTIVE JUROR: I'll try to.  
 9 MS. WECKERLY: Can you convince us more  
 10 than that that you will follow the law?  
 11 PROSPECTIVE JUROR: Well, I'm just giving  
 12 you my opinion.  
 13 MS. WECKERLY: Sure.  
 14 PROSPECTIVE JUROR: I can say that I can  
 15 try to.  
 16 MS. WECKERLY: I mean, it's sort of an  
 17 unfair question at this point, because I think people have  
 18 a general sense of if they're for or against the death  
 19 penalty. But in this setting, you know very little about  
 20 the facts of the case and you --  
 21 PROSPECTIVE JUROR: I do know that there  
 22 has been a conviction already.  
 23 MS. WECKERLY: That's right. And you will  
 24 assume that. And that is the case. But in terms of  
 25 punishment, there are four punishments available for first

176

1 degree murder.  
 2 PROSPECTIVE JUROR: Like I said, that's  
 3 new to me.  
 4 MS. WECKERLY: Are you telling us that you  
 5 wouldn't be able to follow the judge's instructions?  
 6 PROSPECTIVE JUROR: I could try.  
 7 MS. WECKERLY: You'll be able to  
 8 deliberate?  
 9 PROSPECTIVE JUROR: I can try, ma'am.  
 10 That's all I can say.  
 11 MS. WECKERLY: Are you someone that can  
 12 listen to all the information presented?  
 13 PROSPECTIVE JUROR: I will try to do that,  
 14 yes.  
 15 MS. WECKERLY: You'll listen to the  
 16 information presented from both sides?  
 17 PROSPECTIVE JUROR: Yes, ma'am.  
 18 MS. WECKERLY: Then I assume after that  
 19 you'll make what you believe to be a fair decision?  
 20 PROSPECTIVE JUROR: Yes, I can do that.  
 21 MS. WECKERLY: And applying the law that  
 22 the judge gives you?  
 23 PROSPECTIVE JUROR: Yes.  
 24 MS. WECKERLY: Thank you. Pass for  
 25 cause.

177

1 THE COURT: Thank you. Mr. Patrick.  
 2 MR. PATRICK: Good afternoon,  
 3 Mr. Ramirez.  
 4 PROSPECTIVE JUROR: Hello.  
 5 MR. PATRICK: Do you have any prior  
 6 military service?  
 7 PROSPECTIVE JUROR: Yes.  
 8 MR. PATRICK: What branch?  
 9 PROSPECTIVE JUROR: Air force.  
 10 MR. PATRICK: Tell me about what you  
 11 did.  
 12 PROSPECTIVE JUROR: I was assigned to a  
 13 search and rescue squad.  
 14 MR. PATRICK: Would that be considered  
 15 something along the lines of special forces?  
 16 PROSPECTIVE JUROR: Yes.  
 17 MR. PATRICK: You've had a lot of extra  
 18 training?  
 19 PROSPECTIVE JUROR: Yes, sir.  
 20 MR. PATRICK: What rank did you hold?  
 21 PROSPECTIVE JUROR: Staff sergeant.  
 22 MR. PATRICK: How long were you in?  
 23 PROSPECTIVE JUROR: Six years.  
 24 MR. PATRICK: That's impressive. In your  
 25 questionnaire you said you were both strongly opposed to

178

1 drugs and domestic violence.  
 2 PROSPECTIVE JUROR: Yes.  
 3 MR. PATRICK: Have you known anybody that  
 4 had a drug problem or domestic violence problems?  
 5 PROSPECTIVE JUROR: I have known, where I  
 6 used to work at, I used to have a lot of people reporting  
 7 to me. And it seems to me it became very prevalent as I  
 8 progressed up the chain of command.  
 9 MR. PATRICK: Both drugs and domestic  
 10 violence?  
 11 PROSPECTIVE JUROR: Yeah. Some of the  
 12 employees would have kids mixed up with drugs and violence  
 13 and anger.  
 14 MR. PATRICK: Did you ever talk to the  
 15 employees about the problems they were having?  
 16 PROSPECTIVE JUROR: Yes.  
 17 MR. PATRICK: And would you -- if you  
 18 learned that somebody was on drugs or had a history or  
 19 domestic violence, would that make you tend to believe  
 20 them more or less?  
 21 PROSPECTIVE JUROR: They -- it probably  
 22 colored my thinking on them.  
 23 MR. PATRICK: Colored how?  
 24 PROSPECTIVE JUROR: Negative.  
 25 MR. PATRICK: You also mentioned in your

179

1 questionnaire the system is too soft.  
 2 PROSPECTIVE JUROR: Yes.  
 3 MR. PATRICK: And that punishment should  
 4 be tougher down the line.  
 5 PROSPECTIVE JUROR: Correct.  
 6 MR. PATRICK: Could you expand on that?  
 7 PROSPECTIVE JUROR: That little girl  
 8 that's dead in Florida, that man that killed her. She  
 9 would be alive today. Talking about that John Van Que  
 10 case.  
 11 MR. PATRICK: Was he tried for that?  
 12 PROSPECTIVE JUROR: Yes.  
 13 MR. PATRICK: Do you know what punishment  
 14 he received?  
 15 PROSPECTIVE JUROR: The death penalty.  
 16 MR. PATRICK: Did you think that that was  
 17 appropriate?  
 18 PROSPECTIVE JUROR: Yes, sir.  
 19 MR. PATRICK: If you were sitting on that  
 20 jury you would have voted for that?  
 21 PROSPECTIVE JUROR: Yes, sir.  
 22 MR. PATRICK: So you say that you believe  
 23 in the statement an eye for an eye. Strongly believe in  
 24 that statement?  
 25 PROSPECTIVE JUROR: Yes, I do.

180

1 MR. PATRICK: Your wife works for an  
2 attorney?  
3 PROSPECTIVE JUROR: Yes.  
4 MR. PATRICK: Don't mention the attorneys  
5 name. Do you know what kind of law the attorney  
6 practices?  
7 PROSPECTIVE JUROR: The lady is a medical  
8 malpractice lawyer. And she is an insurance lawyer.  
9 MR. PATRICK: So nothing to do with  
10 criminal law?  
11 PROSPECTIVE JUROR: No.  
12 MR. PATRICK: Now, again, they were  
13 talking about -- Ms. Weckerly was talking about four  
14 punishments, you said that was new to you?  
15 PROSPECTIVE JUROR: Yes.  
16 MR. PATRICK: What did you mean by that?  
17 PROSPECTIVE JUROR: Well, in Texas if  
18 convicted of murder, they enforce the death penalty.  
19 MR. PATRICK: You don't have four choice,  
20 you have one choice?  
21 PROSPECTIVE JUROR: Correct.  
22 MR. PATRICK: Do you agree with that?  
23 PROSPECTIVE JUROR: Yes, I do.  
24 MR. PATRICK: If you were sitting where  
25 Mr. Chappell was, would you want twelve people like you

181

1 sitting where you're at?  
2 PROSPECTIVE JUROR: I doubt it.  
3 MR. PATRICK: We challenge for cause.  
4 THE COURT: Mr. Owens, as to Ms. Theus.  
5 MR. OWENS: How are you?  
6 PROSPECTIVE JUROR: Tired.  
7 MR. OWENS: Seems like you are kind of  
8 tired.  
9 PROSPECTIVE JUROR: I work graveyard. I'm  
10 good staying up. I work two jobs.  
11 MR. OWENS: There's people that are sort  
12 of conscientious objectors of the death penalty. They  
13 don't think it's appropriate under any circumstances.  
14 Seems from what you're writing that you're one of those  
15 kinds of people. That you're opposed to the death  
16 penalty.  
17 PROSPECTIVE JUROR: I don't believe anybody  
18 has the right to take somebody's life, period. And just  
19 because you take a life doesn't mean you take theirs. I  
20 don't believe that, but under certain circumstances, if I  
21 have to vote for that, I have to see without a reasonable  
22 doubt. But if I have a reasonable doubt, I could not vote  
23 for a death penalty.  
24 MR. OWENS: Now, you know in this case the  
25 Defendant has committed a murder. And he has been found

182

1 guilty of first degree murder. Right?  
2 PROSPECTIVE JUROR: Yes.  
3 MR. OWENS: And I think you said in here  
4 that thou shalt not kill is the law, man or jury. That's  
5 kind of what you said a minute ago.  
6 PROSPECTIVE JUROR: Right.  
7 MR. OWENS: Is that based on religious  
8 beliefs?  
9 PROSPECTIVE JURORS: Religious and  
10 morals.  
11 MR. OWENS: Are you a religious person?  
12 PROSPECTIVE JUROR: Yes.  
13 MR. OWENS: You consider yourself a moral  
14 person?  
15 PROSPECTIVE JUROR: Yes.  
16 MR. OWENS: So you're an individual that  
17 tries to live according to your religious principles and  
18 morals on a daily basis?  
19 PROSPECTIVE JUROR: Yes. But I also  
20 believe if you do the crime you should do the time. But  
21 I'm one of those strong opinionated person. I believe in  
22 doing what is right, no matter what.  
23 MR. OWENS: You do the crime, you do the  
24 time, that's not a death penalty thing?  
25 PROSPECTIVE JUROR: Right.

183

1 MR. OWENS: When you say that thou shalt  
2 not kill, man or jury. You're saying juries should not be  
3 able to impose the death penalty?  
4 PROSPECTIVE JUROR: Once again, I don't  
5 like the idea of passing judgment. We all shouldn't pass  
6 judgment. But on a certain circumstances, I can pass if I  
7 have to.  
8 MR. OWENS: Well, you put a couple of  
9 exclamation points at the end to emphasize that?  
10 PROSPECTIVE JUROR: Right.  
11 MR. OWENS: You said you can't be  
12 judgmental, but the kind of judgment you're talking about  
13 would not include the death penalty?  
14 PROSPECTIVE JUROR: You said --  
15 MR. OWENS: You said if you had to you  
16 could render a judgment, but it wouldn't include the death  
17 penalty?  
18 PROSPECTIVE JUROR: Under the law, I  
19 could.  
20 MR. OWENS: Other than the death penalty?  
21 PROSPECTIVE JUROR: I can go for all of  
22 them, except the death penalty. But, like what I'm saying  
23 is if that's what the law says I have the choice of the  
24 death penalty, I can. That's what I'm saying.  
25 MR. OWENS: Well, the law doesn't say you

184

1 have to give the death penalty. It's just a choice. If  
2 you have a choice, what you are saying is you can't  
3 consider the death penalty.

4 PROSPECTIVE JUROR: I didn't say I  
5 couldn't consider it. I said I wouldn't like to. I don't  
6 think we should. But I could.

7 MR. OWENS: On the section here where  
8 you're asked about attitudes regarding the death penalty,  
9 you didn't have to circle them, some did. But you circled  
10 three of them.

11 PROSPECTIVE JUROR: All except the death  
12 penalty.

13 MR. OWENS: You left the death penalty  
14 off, right?

15 PROSPECTIVE JUROR: Yes.

16 MR. OWENS: And then down below that you  
17 said B and C is okay, but thou shalt not kill. B and C  
18 would not include the death penalty, correct?

19 PROSPECTIVE JUROR: All of it is strong  
20 and harsh. I think 40 years, 100 hundred years. That's  
21 all tough.

22 MR. OWENS: B and C would be okay, but not  
23 the death penalty?

24 PROSPECTIVE JUROR: Correct.

25 MR. OWENS: And then where it talked about  
185

1 strong moral and religious views about the death penalty,  
2 and you said, is it right to say anybody should take life  
3 from another person. What did you mean by that?

4 PROSPECTIVE JUROR: The same thing I have  
5 been saying. That another human being doesn't have the  
6 right to take somebody else's life.

7 MR. OWENS: And you feel that that would  
8 include the jurors coming back with a judgment of death.

9 PROSPECTIVE JUROR: Yes.

10 MR. OWENS: They shouldn't be allowed to  
11 do that?

12 PROSPECTIVE JUROR: They shouldn't be.

13 MR. OWENS: If you heard all of the  
14 evidence in this case and you felt that death was the  
15 appropriate verdict, would you be able to come back with  
16 that judgment?

17 PROSPECTIVE JUROR: I would be, yes.

18 MR. OWENS: So even though religiously you  
19 feel like the death penalty shouldn't be allowed, you feel  
20 that that's something you could still do?

21 PROSPECTIVE JUROR: Correct.

22 MR. OWENS: You said that you had a number  
23 of individuals close to you that had been involved in the  
24 criminal justice system.

25 PROSPECTIVE JUROR: Yes.  
186

1 MR. OWENS: I think -- did you say there  
2 were four, a brother, a nephew, a husband, and a son?

3 PROSPECTIVE JUROR: Correct. If I keep  
4 thinking, there might be more than that. In-laws, that  
5 counts to, right, cousins, nephews.

6 MR. OWENS: Have you been close to these  
7 people?

8 PROSPECTIVE JUROR: Definitely.

9 MR. OWENS: Now, some of these instances  
10 occurred out of state, or are they all here in this area?

11 PROSPECTIVE JUROR: Most of them is right  
12 here. A majority I would say is right here.

13 MR. OWENS: Did some of these go to trial?

14 PROSPECTIVE JUROR: All of them -- no, my  
15 son hasn't been to trial yet. He's waiting for a trial.

16 MR. OWENS: In this jurisdiction,  
17 awaiting trial?

18 PROSPECTIVE JUROR: Correct.

19 MR. OWENS: How old is your son?

20 PROSPECTIVE JUROR: 22.

21 MR. OWENS: When is that trial date coming  
22 up?

23 PROSPECTIVE JUROR: I have no idea.

24 MR. OWENS: What's the charge there?

25 PROSPECTIVE JUROR: Assault, domestic  
187

1 assault.

2 MR. OWENS: Domestic assault. Is he  
3 currently in custody?

4 PROSPECTIVE JUROR: He's in prison.

5 MR. OWENS: He must have had a trial.

6 Unless he's in for something else.

7 PROSPECTIVE JUROR: He was on parole,  
8 yeah.

9 MR. OWENS: They revoked him?

10 PROSPECTIVE JUROR: Yeah.

11 MR. OWENS: How often do you see him?

12 PROSPECTIVE JUROR: I just saw him  
13 recently. I try every week. It's a recent case. When he  
14 was a juvenile he had been in trouble off and on. I am  
15 the one that asked the judge to lock him up and put him  
16 away.

17 MR. OWENS: That didn't work for him back  
18 then?

19 PROSPECTIVE JUROR: They didn't have a  
20 work farm. But just in and out of what's that Spring  
21 Mountain thing.

22 MR. OWENS: Youth camp. And your husband,  
23 what was the situation with him?

24 PROSPECTIVE JUROR: In and out of jail  
25 more than half of his life -- burglary, robbery.  
188



1 MR. OWENS: Is he in our out.  
2 PROSPECTIVE JUROR: He's out now.  
3 MR. OWENS: When was the last time he had  
4 difficulty with the law?  
5 PROSPECTIVE JUROR: With him?  
6 MR. OWENS: Yeah.  
7 PROSPECTIVE JUROR: Since he got out he's  
8 been pretty good. He hasn't went back.  
9 MR. OWENS: Since he got out of prison.  
10 PROSPECTIVE JUROR: Right, in '98.  
11 MR. OWENS: That's pretty good. That's  
12 awhile ago. What sort of charges were those back then?  
13 PROSPECTIVE JUROR: Burglary, robbery.  
14 MR. OWENS: Anything violent, assault on  
15 anybody?  
16 PROSPECTIVE JUROR: No. I think they just  
17 passed that law at the time that had to do with senior  
18 citizens, so he got a lot of time for that.  
19 MR. OWENS: Then you said there was a  
20 nephew.  
21 PROSPECTIVE JUROR: My nephew is still in  
22 prison.  
23 MR. OWENS: Was that here in Clark County?  
24 PROSPECTIVE JUROR: Yes.  
25 MR. OWENS: What kind of charge was that?

189

1 PROSPECTIVE JUROR: That one was kind of  
2 messed up. I think he was accused of robbery, I believe.  
3 I don't know all the charges, but it was robbery. He was  
4 by himself and five Mexicans, he got accused of  
5 everything. So he was beaten up real bad. It was a bad  
6 case, a biased case.  
7 MR. OWENS: Well on question 32, when you  
8 were asked if you felt like the person was treated fairly  
9 you said yes on some members, not fair on some.  
10 PROSPECTIVE JUROR: That's one of them. I  
11 have been talking about his case. It was at an early age.  
12 He got a lot of time.  
13 MR. OWENS: Then you mentioned a  
14 brother.  
15 PROSPECTIVE JUROR: Yes, my brother.  
16 MR. OWENS: Was that here in town also?  
17 PROSPECTIVE JUROR: Yes.  
18 MR. OWENS: He actually went to prison,  
19 but it was something he didn't do. But because we was  
20 affiliate at the time with gang members, so that's what  
21 happen to him. But back in that situation he went to  
22 prison for my ex-boyfriend and my sister confessed doing  
23 it at the time -- sister boyfriend doing that crime that  
24 he spent the time for in jail.  
25 MR. OWENS: How long ago was that?

190

1 PROSPECTIVE JUROR: Years ago.  
2 MR. OWENS: How is he doing now.  
3 PROSPECTIVE JUROR: Staying out of jail.  
4 MR. OWENS: You said there was some other  
5 ones in your family. Any that are currently pending  
6 trial, other than maybe your son?  
7 PROSPECTIVE JUROR: That's the only one  
8 pending trial.  
9 MR. OWENS: As far as you know.  
10 PROSPECTIVE JUROR: Well, when he was in  
11 the county jail he said he had an assault case. He said  
12 it was self defense, that's why they gave him more time  
13 here. He's got to go back on that and get more time. He  
14 wanted me to check on that. He's not sure how it's  
15 going.  
16 MR. OWENS: That was an incident that  
17 happen in the jail?  
18 PROSPECTIVE JUROR: Yes, in the jail.  
19 MR. OWENS: And some of these had a trial,  
20 pleas of guilt or something. Did you appear in court with  
21 him at any time?  
22 PROSPECTIVE JUROR: Yes.  
23 MR. OWENS: Do you go to court? Did you  
24 ever testify?  
25 PROSPECTIVE JUROR: No. I haven't

191

1 testified for any of them. I was personally a victim one  
2 time and I went to court to testify. Then I was subpoena  
3 again because they did something else and I testified.  
4 MR. OWENS: The only time you've testified  
5 was in your own case?  
6 PROSPECTIVE JUROR: Right.  
7 MR. OWENS: How long ago was that one?  
8 PROSPECTIVE JUROR: That was in like  
9 the -- probably in late 80s, 90s.  
10 MR. OWENS: The other times you would go  
11 to court for family, relatives, sort of like moral  
12 support?  
13 PROSPECTIVE JUROR: Definitely.  
14 MR. OWENS: And the prosecutions against  
15 these people would have been in these courts in this  
16 building or the other building down the street before we  
17 moved?  
18 PROSPECTIVE JUROR: Right.  
19 MR. OWENS: The prosecutor on that case  
20 would have been prosecutors from our office, the DA's  
21 office?  
22 PROSPECTIVE JUROR: Right.  
23 MR. OWENS: It wasn't anything that  
24 Ms. Weckerly or I were involved in?  
25 PROSPECTIVE JUROR: I don't think so.

192

1 MR. OWENS: And you feel after hearing all  
2 the facts and circumstances in the case if you thought  
3 that the death was the right punishment that that's  
4 something you could do?

5 PROSPECTIVE JUROR: Yeah. I know I could.  
6 I can.

7 MR. OWENS: That's all I have, your  
8 Honor.

9 THE COURT: Pass for cause?

10 MR. OWENS: Yes.

11 THE COURT: Thank you. Mr. Schieck.

12 MR. SCHIECK: Thank you, your Honor.

13 Ms. Theus, just a couple of questions,  
14 just to be sure. I mean in the questionnaire you said you  
15 would consider the death penalty under certain  
16 circumstances.

17 PROSPECTIVE JUROR: Right.

18 MR. SCHIECK: And that's after you had  
19 time to read everything that was in here and understood  
20 what the questions are about. You want to hear all of the  
21 evidence in the case?

22 PROSPECTIVE JUROR: Yes. I want to,  
23 yes.

24 MR. SCHIECK: You would follow the law and  
25 the instructions?

193

1 PROSPECTIVE JUROR: Definitely.

2 MR. SCHIECK: Thank you. We pass for  
3 cause, your Honor.

4 THE COURT: Thank you. Ms. Noahr.

5 MS. WECKERLY: Ma'am, you wrote on your  
6 questionnaire that there was experiences in your childhood  
7 with your mother and substance abuse with alcohol.

8 PROSPECTIVE JUROR: My Mother, yeah.

9 MS. WECKERLY: Was she the one who was  
10 abusing alcohol, or she was the victim of abuse?

11 PROSPECTIVE JUROR: Both my parents  
12 were.

13 MS. WECKERLY: And was this something that  
14 you were present for as a child, you'd see some of this?

15 PROSPECTIVE JUROR: I was eight years old.  
16 My mother divorced my father at that point.

17 MS. WECKERLY: Did you go with your mom?

18 PROSPECTIVE JUROR: Yes.

19 MS. WECKERLY: This is kind of a hard  
20 question, do you remember it. You said you were eight  
21 years old or younger. Do you remember seeing that?

22 PROSPECTIVE JUROR: Yes. I had two  
23 younger sibling that I took care of.

24 MS. WECKERLY: You were the protector?

25 PROSPECTIVE JUROR: Correct.

194

1 MS. WECKERLY: Because you grew up in that  
2 setting or had that experience at kind of a young age or  
3 very young age, do you think you can still be fair and  
4 impartial in a case like this?

5 PROSPECTIVE JUROR: Yes.

6 MS. WECKERLY: I read in your  
7 questionnaire that I think your son and your ex-husband or  
8 both in law enforcement?

9 PROSPECTIVE JUROR: Correct.

10 MS. WECKERLY: Both in North Las Vegas.

11 PROSPECTIVE JUROR: Correct.

12 MS. WECKERLY: Your son is the  
13 correction's officer.

14 PROSPECTIVE JUROR: Yes.

15 MS. WECKERLY: And the ex-husband, is he a  
16 correction's officer?

17 PROSPECTIVE JUROR: No. He's captain over  
18 the correction's officers right now. Temporary.

19 MS. WECKERLY: Okay. But the fact that  
20 you have these two -- your ex-husband, obviously, your son  
21 working in a law enforcement capacity, you can still be  
22 fair to both sides?

23 PROSPECTIVE JUROR: I believe I can,  
24 yes.

25 MS. WECKERLY: You indicated on your

195

1 questionnaire that you could consider the death penalty as  
2 a potential punishment?

3 PROSPECTIVE JUROR: Correct.

4 MS. WECKERLY: You also said you are  
5 someone that's pretty open-minded?

6 PROSPECTIVE JUROR: Correct.

7 MS. WECKERLY: As we've discussed with  
8 several of the other prospective jurors, you don't have  
9 any problem with listening to both sides and formulating  
10 your opinion?

11 PROSPECTIVE JUROR: I have no problem.

12 MS. WECKERLY: Someone who wants to hear  
13 all the evidence?

14 PROSPECTIVE JUROR: Most definitely.

15 MS. WECKERLY: Thank you. Pass for  
16 cause.

17 THE COURT: Mr. Patrick.

18 MR. PATRICK: Ms. Noahr, is that correct?

19 PROSPECTIVE JUROR: Yes.

20 MR. PATRICK: Now the abuse that your  
21 father did on your mother, you were old enough to remember  
22 that?

23 PROSPECTIVE JUROR: Yes.

24 MR. PATRICK: Do you think that that was  
25 any reason why your mother abused alcohol?

196

1 PROSPECTIVE JUROR: They both were  
2 alcoholics. They both drank together.  
3 MR. PATRICK: Do you think that that whole  
4 history in any way would color the way you look at any of  
5 the testimony you heard?  
6 PROSPECTIVE JUROR: No. I don't believe  
7 so.  
8 MR. PATRICK: You'll remain open-minded.  
9 PROSPECTIVE JUROR: Yes.  
10 MR. PATRICK: Even if some of the  
11 testimony you heard made you think back to when you were 8  
12 years old?  
13 PROSPECTIVE JUROR: It's not a problem.  
14 MR. PATRICK: And you said you had two  
15 younger siblings at this time?  
16 PROSPECTIVE JUROR: Correct.  
17 MR. PATRICK: And you were their care  
18 giver?  
19 PROSPECTIVE JUROR: Right.  
20 MR. PATRICK: If there was something like  
21 that, would that color your impressions of this case?  
22 PROSPECTIVE JUROR: What do you mean?  
23 MR. PATRICK: You were an older sibling  
24 that had to take care of two younger siblings, basically  
25 your situation, would that change your feelings?

197

1 PROSPECTIVE JUROR: I don't believe it  
2 would.  
3 MR. PATRICK: You could still keep and  
4 open-mind?  
5 PROSPECTIVE JUROR: Yes.  
6 MR. PATRICK: You'd look at all of the  
7 evidence and listen to everybody and make up your mind?  
8 PROSPECTIVE JUROR: Most definitely.  
9 MR. PATRICK: The fact that your son and  
10 ex-husband are both in law enforcement -- and I know the  
11 judge asked this -- would you tend to give more weight to  
12 their testimony to a law enforcement officer, then to  
13 somebody else?  
14 PROSPECTIVE JUROR: No. They're just like  
15 us.  
16 MR. PATRICK: You can still be fair and  
17 take their testimony for whatever it's worth, and give it  
18 as much weight you thought necessary. It has nothing to  
19 do with the fact they're police officers?  
20 PROSPECTIVE JUROR: Correct.  
21 MR. PATRICK: So basically you keep an  
22 open mind. That's the best we can hope for, right?  
23 PROSPECTIVE JUROR: Yes.  
24 MR. PATRICK: Thank you. Pass for cause,  
25 your Honor.

198

1 THE COURT: Thank you. Ms. Weckerly, as  
2 to Ms. Martino.  
3 MS. WECKERLY: Ma'am, you also mentioned  
4 on your questionnaire that you grew up with some abuse?  
5 PROSPECTIVE JUROR: Yes.  
6 MS. WECKERLY: I think the way you put it  
7 your dad beat your brother, your sister, and your mom, but  
8 not you?  
9 PROSPECTIVE JUROR: Right.  
10 MS. WECKERLY: How did you escape that?  
11 PROSPECTIVE JUROR: I was a coward. I ran  
12 to the corner. I didn't talk back, they did.  
13 MS. WECKERLY: How old were you when this  
14 happened?  
15 PROSPECTIVE JUROR: When it started, what  
16 I remember, maybe five or six.  
17 MS. WECKERLY: So you remember it?  
18 PROSPECTIVE JUROR: I remember most of it.  
19 MS. WECKERLY: So from what you are  
20 describing, I assume at that age, it was sort of a fearful  
21 place being in the home?  
22 PROSPECTIVE JUROR: Yes.  
23 MS. WECKERLY: To say the least.  
24 PROSPECTIVE JUROR: Yes.  
25 MS. WECKERLY: The fact that you have had

199

1 that experience and grew up in that setting, do you think  
2 that you can put that out of your mind and make your  
3 decision in this case on the information you hear in this  
4 courtroom?  
5 PROSPECTIVE JUROR: I think that as an  
6 adult I can forget. But there's still that child in your  
7 brain that remembers that.  
8 MS. WECKERLY: Sure. And I don't think  
9 that we can realistically expect anyone to forget, or --  
10 that's not part of who I am anymore. Because that's such  
11 a significant event. But what we need from you now is a  
12 commitment that you can make a decision in this courtroom  
13 and be fair to both sides.  
14 PROSPECTIVE JUROR: I would like to think  
15 so.  
16 MS. WECKERLY: Okay. And you're someone,  
17 I assume, who can follow the law in the judge's  
18 instructions?  
19 PROSPECTIVE JUROR: Yes.  
20 MS. WECKERLY: And you can communicate and  
21 give your opinion to your fellow jurors?  
22 PROSPECTIVE JUROR: Yes.  
23 MS. WECKERLY: Are you someone who can --  
24 wants to hear all the information before you make a  
25 decision?

200

1 PROSPECTIVE JUROR: Yes.  
 2 MS. WECKERLY: As we've talked about with  
 3 some of the other prospective jurors, you're not someone  
 4 who has made up their mind as to going to sit here now and  
 5 says I'm automatically giving this punishment rather than  
 6 another one?  
 7 PROSPECTIVE JUROR: No. But I lean toward  
 8 the death penalty.  
 9 MS. WECKERLY: There is no -- there is no  
 10 issue with that, so long as you can tell us that you can  
 11 consider, or be open to hearing information then consider  
 12 all possible punishments.  
 13 PROSPECTIVE JUROR: I could.  
 14 MR. PATRICK: And you can consider what  
 15 information is presented to you and take heed of what you  
 16 think is important and disregard what you think doesn't  
 17 have a whole lot of bearing?  
 18 PROSPECTIVE JUROR: Yes.  
 19 MR. PATRICK: Then make a decision.  
 20 PROSPECTIVE JUROR: Yes.  
 21 MS. WECKERLY: And I assume from your  
 22 comments if you think the death penalty is appropriate in  
 23 this case, you wouldn't have any trouble voting for that?  
 24 PROSPECTIVE JUROR: Not at all.  
 25 MS. WECKERLY: And likewise if you hear

201

1 something that makes you think that this should not be an  
 2 appropriate sentence, you can pick another sentence from  
 3 the remaining?  
 4 PROSPECTIVE JUROR: See, I can't imagine  
 5 any justification for murdering someone -- intentionally  
 6 murdering someone.  
 7 MS. WECKERLY: I mean, as we have  
 8 discussed with some of the other jurors, not all cases of  
 9 first degree murder are even eligible for the death  
 10 penalty. There are certain legal requirements that have  
 11 to be met before a jury can consider it as a potential  
 12 punishment. Those requirements will be explained to you  
 13 by Judge Herndon. He will give you the law on that. I  
 14 assume you'll be able to follow that?  
 15 PROSPECTIVE JUROR: Yes.  
 16 MS. WECKERLY: Then once, assuming that  
 17 those requirements are met, and I assume you'll hold us to  
 18 our burden -- because that's what's required by law -- you  
 19 will be able to follow that rule?  
 20 PROSPECTIVE JUROR: Yes.  
 21 MS. WECKERLY: Then you just, with your  
 22 fellow jurors, make a determination what you think is  
 23 appropriate. At that point you'll be able to do that?  
 24 PROSPECTIVE JUROR: Yes.  
 25 MS. WECKERLY: Thank you. Pass for

202

1 cause.  
 2 THE COURT: Mr. Patrick.  
 3 MR. PATRICK: Good afternoon, Ms. Martino.  
 4 PROSPECTIVE JUROR: Hi.  
 5 MR. PATRICK: Talking about your father  
 6 and domestic violence, would that cover your opinion as to  
 7 what would go on in this case if somebody had a history of  
 8 domestic violence?  
 9 PROSPECTIVE JUROR: It might.  
 10 MR. PATRICK: Do you feel strongly about  
 11 that?  
 12 PROSPECTIVE JUROR: Yes.  
 13 MR. PATRICK: Now, you were asked if you  
 14 already formed an opinion about this case, and you checked  
 15 the box mark, yes, correct?  
 16 PROSPECTIVE JUROR: Yes.  
 17 MR. PATRICK: And do you remember what you  
 18 wrote underneath that?  
 19 PROSPECTIVE JUROR: No. But what I would  
 20 say now is he was convicted.  
 21 MR. PATRICK: And therefore?  
 22 PROSPECTIVE JUROR: And therefore --  
 23 MR. PATRICK: Well, he was convicted and  
 24 therefore is there any more to that sentence?  
 25 PROSPECTIVE JUROR: No.

203

1 MR. PATRICK: Do you remember writing he  
 2 should be put to death the same way he killed his  
 3 girlfriend?  
 4 PROSPECTIVE JUROR: Yes.  
 5 MR. PATRICK: Do you believe that?  
 6 PROSPECTIVE JUROR: Yes.  
 7 MR. PATRICK: So that means if his  
 8 girlfriend was shot, he should be taken out back and shot?  
 9 PROSPECTIVE JUROR: Yes.  
 10 MR. PATRICK: And if his girlfriend was  
 11 strangled, he should be taken out back and strangled?  
 12 PROSPECTIVE JUROR: Yes.  
 13 MR. PATRICK: No questions asked?  
 14 PROSPECTIVE JUROR: Nope.  
 15 MR. PATRICK: Also the question, it talked  
 16 about Mr. Chappell being an African-American male. You  
 17 were asked if that would affect your ability to be fair  
 18 and impartial? Do you remember what you wrote?  
 19 PROSPECTIVE JUROR: It might.  
 20 MR. PATRICK: Do you remember writing,  
 21 yes, that it was programmed from childhood. Could you  
 22 explain that?  
 23 PROSPECTIVE JUROR: Yes. I come from a  
 24 very small town in Ohio. I was born quite some time ago  
 25 and things were different then.

204

1 MR. PATRICK: Then, again, on the question  
2 what are your feelings about the death penalty, you wrote  
3 a person should be put to death the same way he killed his  
4 victim.

5 PROSPECTIVE JUROR: Yes.

6 MR. PATRICK: Another question where you  
7 were asked if there was anything that would prevent you  
8 from sitting as a fair and impartial juror. And you  
9 checked, yes. I believe underneath it you said you would  
10 be prone to go along with the group to avoid ridicule.

11 PROSPECTIVE JUROR: I would what? Yes,  
12 sometimes I am.

13 MR. PATRICK: So you consider yourself a  
14 follower than?

15 PROSPECTIVE JUROR: Yes.

16 MR. PATRICK: If your opinion was  
17 unpopular with the rest of the jury you'd go along with  
18 them so they wouldn't badger you or ridicule you?

19 PROSPECTIVE JUROR: I might.

20 MR. PATRICK: Then again on the question  
21 where it said your beliefs about the death penalty, would  
22 you vote automatically for it and you wrote, yes.  
23 Remember that?

24 PROSPECTIVE JUROR: No.

25 MR. PATRICK: The last question was, do  
205

1 you want to serve on this jury. Do you remember what you  
2 wrote?

3 PROSPECTIVE JUROR: No.

4 MR. PATRICK: Did you write, no. I'm set  
5 in my beliefs about killers, child and animal abusers.

6 PROSPECTIVE JUROR: Yes.

7 MR. PATRICK: So if you were sitting where  
8 Mr. Chappell was, would you want twelve people like you on  
9 this jury?

10 MR. OWENS: I'll object to that question.

11 THE COURT: I'll sustain the objection.

12 MR. PATRICK: Your Honor, we'd strike for  
13 cause please.

14 THE COURT: Mr. Owens, as to Ms. Bundren.

15 MR. OWENS: How are you.

16 PROSPECTIVE JUROR: Fine.

17 MR. OWENS: You were a victim at some  
18 point. What was that about?

19 PROSPECTIVE JUROR: As I stated earlier,  
20 my uncle murdered my aunt.

21 MR. OWENS: Same case, same situation.

22 PROSPECTIVE JUROR: Correct.

23 MR. OWENS: How long was that.

24 PROSPECTIVE JUROR: I believe it was  
25 November of 1990 I believe.  
206

1 MR. OWENS: So about 16 years ago.

2 PROSPECTIVE JUROR: Yes.

3 MR. OWENS: Were you a witness? Were you  
4 involved in that?

5 PROSPECTIVE JUROR: None, whatsoever.

6 MR. OWENS: Where did that occur?

7 PROSPECTIVE JUROR: It occurred at the  
8 Lady Luck Hotel.

9 MR. OWENS: Were you living in town at the  
10 time?

11 PROSPECTIVE JUROR: I was going to  
12 graduate school in San Diego.

13 MR. OWENS: You're from the area, just  
14 gone at the time it happened?

15 PROSPECTIVE JUROR: Correct.

16 MR. OWENS: Were you involved in the court  
17 process at all?

18 PROSPECTIVE JUROR: I sat there and  
19 observed and supported the family. Then when it came to a  
20 point where the family had talked to the jurors to  
21 convince the jurors why he shouldn't get the death  
22 penalty, I chose not to participate in that.

23 MR. OWENS: So the decision was made not  
24 the call you to testify?

25 PROSPECTIVE JUROR: That is correct.  
207

1 MR. OWENS: Why was that?

2 PROSPECTIVE JUROR: In that particular  
3 case I believed he should have received the death  
4 penalty.

5 MR. OWENS: Was that something that you  
6 felt from the beginning, or something that you came to as  
7 you watched the process?

8 PROSPECTIVE JUROR: It was the result of  
9 something I found that never made it to trial.

10 MR. OWENS: Some additional evidence?

11 PROSPECTIVE JUROR: Correct.

12 MR. OWENS: That you were aware of?

13 PROSPECTIVE JUROR: Correct.

14 MR. OWENS: That kind of may the  
15 difference in your mind?

16 PROSPECTIVE JUROR: Correct.

17 MR. OWENS: What point did you discover  
18 that?

19 PROSPECTIVE JUROR: I believe it was  
20 approximately the 2 to 3 weeks after Doreen was killed.

21 MR. OWENS: Were other family members  
22 aware of that?

23 PROSPECTIVE JUROR: They were.

24 MR. OWENS: But they were supportive of  
25 him?  
208

1 PROSPECTIVE JUROR: Correct.  
 2 MR. OWENS: And you were there to be a  
 3 support for the family, but you didn't --  
 4 PROSPECTIVE JUROR: Absolutely.  
 5 MR. OWENS: Would you say that that was a  
 6 traumatic experience for you?  
 7 PROSPECTIVE JUROR: Not traumatic,  
 8 baffling.  
 9 MR. OWENS: Baffling. You still find it  
 10 that way?  
 11 PROSPECTIVE JUROR: Yes. It reminds me of  
 12 how your love and affection for somebody can be blinded by  
 13 the facts, and it's hard to separate that -- your brother  
 14 or cousin or someone close to you.  
 15 MR. OWENS: So you found it sort of a  
 16 curious thing that occurred?  
 17 PROSPECTIVE JUROR: Well, I think because  
 18 families -- the family members I was talking to are very  
 19 educated people. And yet despite the education, they  
 20 weren't able to step out of the box and look at the facts  
 21 and kind of string all of the pearls together.  
 22 MR. OWENS: You felt that you were able to  
 23 do that?  
 24 PROSPECTIVE JUROR: I felt based on the  
 25 information I had, that I was very comfortable in my

209

1 conclusion about it. However, like I said, I took time  
 2 off from graduate school to go down and listen in hopes  
 3 that things would be different. And the conclusion was  
 4 that was not the case for me.  
 5 MR. OWENS: So it didn't make it any  
 6 better by being there?  
 7 PROSPECTIVE JUROR: Not for me. It didn't  
 8 change my decision. I was there to support the family.  
 9 MR. OWENS: You feel good you were there  
 10 to be supportive?  
 11 PROSPECTIVE JUROR: Absolutely.  
 12 MR. OWENS: Is there anything about that  
 13 experience that is still with you in a sense that might  
 14 come out in an unfair manner in this proceedings?  
 15 PROSPECTIVE JUROR: No. I have to say  
 16 given everything I was pretty impressed with how fair and  
 17 balanced everything was. And that if it started to sway  
 18 one way there was somebody in the courtroom to make sure  
 19 it got back on track.  
 20 MR. OWENS: And your uncle did receive the  
 21 death penalty?  
 22 PROSPECTIVE JUROR: He received life in  
 23 prison. The family was able to convince the jurors that  
 24 he should not get the death penalty. So the decision was  
 25 to give him life in prison, without the possibility of

210

1 parole.  
 2 MR. OWENS: Okay. Was there any  
 3 repercussions toward you from other family members?  
 4 PROSPECTIVE JUROR: None, whatsoever.  
 5 MR. OWENS: Do you discuss it with him  
 6 very much?  
 7 PROSPECTIVE JUROR: Do I discuss it with  
 8 him being --  
 9 MR. OWENS: No. Does it come up from time  
 10 to time?  
 11 PROSPECTIVE JUROR: It does. My mom is  
 12 pretty religious about going out to prison, and we've just  
 13 sort of taken a stance at this point being a sounding  
 14 board. He believes what he believes. Nothing is going to  
 15 change him. We just act as a sounding board, try to talk  
 16 about other things with him.  
 17 MR. OWENS: What is your feeling about the  
 18 death penalty, generally?  
 19 PROSPECTIVE JUROR: I don't believe in  
 20 being cookie cutter about anything in my life. I think  
 21 partly because of what I do for a living. I believe that  
 22 anytime there's new information you have to run it through  
 23 the equation so you may get a different outcome. I  
 24 respect the process. I think that after listening to  
 25 everything and weighing it, then listening to what the

211

1 judge said, if death penalty is appropriate, then okay.  
 2 MR. OWENS: What you're describing is the  
 3 process we talked about here?  
 4 PROSPECTIVE JUROR: I wish I wasn't here,  
 5 but it's what it is. And I'll always respect the process  
 6 and follow the instructions.  
 7 MR. OWENS: Okay. It's important to keep  
 8 an open mind until you've heard all the facts and  
 9 circumstances?  
 10 PROSPECTIVE JUROR: Absolutely. Again,  
 11 because I have administrative decisions on a daily base  
 12 that affect people's livelihoods I understand the  
 13 importance of listening to people and not making any  
 14 decisions until I've heard everything. And treat people  
 15 the way I want to be treated.  
 16 MR. OWENS: There was one question here  
 17 where you didn't want to give an explanation. Remember  
 18 that?  
 19 PROSPECTIVE JUROR: If you could tell me  
 20 the question.  
 21 MR. PATRICK: So -- all right with the  
 22 court.  
 23 THE COURT: Sure.  
 24 MR. OWENS: You said you wouldn't  
 25 automatically vote for either choice. And saying explain,

212

1 I don't know that required an explanation. You said you  
2 didn't want to give one.

3 PROSPECTIVE JUROR: I guess because in my  
4 mind my answer was longer than the space would allow. I  
5 guess, again, if the circumstances and the fact support,  
6 and the instruction was given -- in other words, if the  
7 judge said to me if these four things are met you have no  
8 choice but to find for the death penalty. That's what  
9 I'll do. I'll respect the process. I wish I didn't have  
10 to make that decision, but that's what I've been asked to  
11 do. And I'm the kind of person who, again, when I make  
12 decisions on my job I have to be able to look at that  
13 person and feel confident in what I'm saying. I have to  
14 live with myself.

15 MR. OWENS: You feel you can do that?

16 PROSPECTIVE JUROR: Yes. The only thing  
17 that I think I hadn't thought about it until one of the  
18 other jurors bought it up. I had never considered the  
19 pictures. And I'll be honest with you, that might be  
20 difficult. But again, I'll step out of that box and do  
21 what I have to do.

22 MR. OWENS: All right. The process, at  
23 some point you're going to learn the process isn't some  
24 sort of if this and this and now you're on to the death  
25 penalty. No matter what you do in following the law the

213

1 death penalty is always going to be an option. You  
2 understand that?

3 PROSPECTIVE JUROR: Yes.

4 MR. OWENS: It's never compelled. Even if  
5 you found everything you need to impose the death penalty,  
6 you never have to do it. So in the end it's going to be a  
7 judgment call. It's not like you're going to be able to  
8 say, well, all these things are met so I have to impose  
9 the death penalty. It's never going to happen.

10 More likely what's going to be, you'll look at it,  
11 and based on all the facts and circumstances, this  
12 particular crime it's appropriate. You understand that?

13 PROSPECTIVE JUROR: I do.

14 MR. OWENS: Given that full range that you  
15 have, if after hearing all the facts and circumstances, if  
16 you felt that the death penalty was the fair and  
17 appropriate punishment, would you be able to come back  
18 with that decision?

19 PROSPECTIVE JUROR: Yes.

20 MR. OWENS: You wouldn't be inclined to  
21 settle for something less than that because you felt like  
22 it was an easier choice?

23 PROSPECTIVE JUROR: No. Again, there are  
24 a lot of times my job where I believe somebody has been  
25 discriminated against, but the facts and circumstances

214

1 dictate that I cannot find in favor, that's what I need to  
2 do.

3 MR. OWENS: You feel you can do what is  
4 fair and appropriate to your mind and the rest of the  
5 jurors at the end of the case?

6 PROSPECTIVE JUROR: Yes.

7 MR. OWENS: Thanks. Pass for cause.

8 THE COURT: Mr. Schieck.

9 MR. SCHIECK: Thank you, your Honor.

10 PROSPECTIVE JUROR: Correct.

11 MR. SCHIECK: On your court generated  
12 information sheet it says investigator, but I see here  
13 you're masters is in public administration.

14 PROSPECTIVE JUROR: Correct.

15 MR. SCHIECK: Are you in administration  
16 here an investigator or whatever?

17 PROSPECTIVE JUROR: I'm an EOC  
18 investigator and mediator.

19 MR. SCHIECK: You work for the Nevada  
20 Equal Rights Commission?

21 PROSPECTIVE JUROR: Correct.

22 MR. SCHIECK: So a complaint comes in  
23 about discrimination and the complaining employee follows  
24 the proper steps and you're assigned to investigate  
25 whether or not there has been discrimination in a

215

1 particular work place or environment?

2 PROSPECTIVE JUROR: I'm there to determine  
3 whether or not there's been a violation of law based on  
4 the facts presented, then I'm also a mediator.

5 MR. SCHIECK: A mediator between the  
6 parties to the allegation?

7 PROSPECTIVE JUROR: We'd be a separate  
8 case because of the fact you can't be a fact finder and  
9 mediator for a different case.

10 MR. SCHIECK: You try to reach a  
11 reasonable resolution?

12 PROSPECTIVE JUROR: My job is to help --  
13 my job is to not make the decision, but to help both  
14 parties better communicate and come to a conclusion or  
15 settlement themselves.

16 MR. SCHIECK: And there was an unfortunate  
17 case where your uncle was convicted of killing your aunt;  
18 is that correct.

19 PROSPECTIVE JUROR: Correct.

20 MR. SCHIECK: You said that happened at  
21 the Lady Luck?

22 PROSPECTIVE JUROR: It happened in the  
23 parking lot of the Lady Luck as she was leaving work.

24 MR. SCHIECK: And you indicate that your  
25 mother still goes out to see your uncle?

216

1 PROSPECTIVE JUROR: Correct.  
 2 MR. SCHIECK: That would be, I assume, her  
 3 brother?  
 4 PROSPECTIVE JUROR: That's correct.  
 5 MR. SCHIECK: So she goes out to visit her  
 6 brother out in prison, correct?  
 7 PROSPECTIVE JUROR: Correct.  
 8 MR. SCHIECK: Do you ever go out?  
 9 PROSPECTIVE JUROR: No. I went when he  
 10 was in Elko. And just that whole scene and regurgitation  
 11 of the whole trial, he just was relentless. I asked him  
 12 I'd be happy to come out here to be moral support, but  
 13 these are the ground rules and he wasn't willing to abide  
 14 by those, so we just made the decision it would be best  
 15 for me to no longer go out there to visit him.  
 16 MR. SCHIECK: Is it a situation where he's  
 17 indicating that he's not guilty of the charges?  
 18 PROSPECTIVE JUROR: Correct.  
 19 MR. SCHIECK: So he still hasn't accepted  
 20 responsibility, in your mind, for having committed the  
 21 homicide?  
 22 PROSPECTIVE JUROR: It's his belief that  
 23 he did not do it.  
 24 MR. SCHIECK: Okay. Now, with your  
 25 educational background and being a long-time resident

217

1 here, I assume you're familiar with other cases of  
 2 homicide that happened in Clark County. Do you pay any  
 3 attention to those?  
 4 PROSPECTIVE JUROR: Just so I'm clear.  
 5 From 1987 to 1993 I wasn't a resident here. And since  
 6 then, I occasionally catch sort of glimpses on the news.  
 7 But I don't follow anything per se.  
 8 MR. SCHIECK: Would it be fair to say that  
 9 you don't believe the death penalty is appropriate in  
 10 every first degree murder case?  
 11 PROSPECTIVE JUROR: That is correct.  
 12 MR. SCHIECK: In a particular case that  
 13 you had some personal knowledge of, you thought it was  
 14 appropriate, but you don't necessarily think it's  
 15 appropriate in every other case?  
 16 PROSPECTIVE JUROR: Correct.  
 17 MR. SCHIECK: You would have an open mind  
 18 in wanting to hear all of the evidence before you made  
 19 that decision?  
 20 PROSPECTIVE JUROR: Absolutely.  
 21 MR. SCHIECK: Thank you. We would pass  
 22 for cause, your Honor.  
 23 THE COURT: Thank you. Mr. Owens, as to  
 24 Ms. Smith.  
 25 MR. OWENS: Ms. Lori Smith?

218

1 PROSPECTIVE JUROR: Yes.  
 2 MR. OWENS: You had some experience where  
 3 you were a witness or something to a violent crime?  
 4 PROSPECTIVE JUROR: Yes.  
 5 MR. OWENS: How long ago was that?  
 6 PROSPECTIVE JUROR: It was late '89 or  
 7 early '90.  
 8 MR. OWENS: You were actually a witness?  
 9 PROSPECTIVE JUROR: Basically, yeah.  
 10 MR. OWENS: Is that in this community?  
 11 PROSPECTIVE JUROR: Yes.  
 12 MR. OWENS: What was involved in that?  
 13 PROSPECTIVE JUROR: It was a murder.  
 14 MR. OWENS: What happened?  
 15 PROSPECTIVE JUROR: A murder was committed  
 16 in the same house I was in. I didn't see it with my own  
 17 eyes, but I was there for the rest of it.  
 18 MR. OWENS: Was that a traumatic thing for  
 19 you?  
 20 PROSPECTIVE JUROR: Yes, sir.  
 21 MR. OWENS: Did you testify in a court  
 22 case?  
 23 PROSPECTIVE JUROR: Only in the  
 24 preliminary.  
 25 MR. OWENS: Preliminary hearing?

219

1 PROSPECTIVE JUROR: Yes.  
 2 MR. OWENS: Was there a resolution after  
 3 that?  
 4 PROSPECTIVE JUROR: They didn't call me any  
 5 more.  
 6 MR. OWENS: Do you know what happen with  
 7 the case?  
 8 PROSPECTIVE JUROR: I believe he might  
 9 have been let go for self-defense, maybe.  
 10 MR. OWENS: Well, they didn't have a  
 11 trial on it though?  
 12 PROSPECTIVE JUROR: I think they did.  
 13 MR. OWENS: But you weren't called?  
 14 PROSPECTIVE JUROR: No.  
 15 MR. OWENS: That's because you didn't  
 16 actually see what happened?  
 17 PROSPECTIVE JUROR: Right.  
 18 MR. OWENS: Anything about that experience  
 19 that gave you feelings that are so strong that they might  
 20 spill over into this case in an unfair manner?  
 21 PROSPECTIVE JUROR: No.  
 22 MR. OWENS: You're not harboring any  
 23 resentment about anything?  
 24 PROSPECTIVE JUROR: No.  
 25 MR. OWENS: Did you know the victim?

220



1 PROSPECTIVE JUROR: Yes.  
 2 MR. OWENS: Were you close with the  
 3 victim?  
 4 PROSPECTIVE JUROR: No.  
 5 MR. OWENS: You were asked a number of  
 6 questions about the death penalty. You indicated that you  
 7 don't have any problem with the death penalty as an  
 8 option?  
 9 PROSPECTIVE JUROR: Right.  
 10 MR. OWENS: Do you understand that it's  
 11 one of the four potential options that are available to  
 12 the jury?  
 13 PROSPECTIVE JUROR: Right.  
 14 MR. OWENS: Are you okay with that?  
 15 PROSPECTIVE JUROR: That there being other  
 16 options?  
 17 MR. OWENS: That there are four options.  
 18 PROSPECTIVE JUROR: Yeah.  
 19 MR. OWENS: That is something you can  
 20 abide by?  
 21 PROSPECTIVE JUROR: Yeah.  
 22 MR. OWENS: Then one place in here, you  
 23 were asked if you formed an opinion about the case. And  
 24 you indicated, yes, that you already formed an opinion.  
 25 Is that based upon the factual statement that he'd already

221

1 been convicted?  
 2 PROSPECTIVE JUROR: Yes.  
 3 MR. OWENS: Of the crime?  
 4 PROSPECTIVE JUROR: Yes.  
 5 MR. OWENS: Now you understand that of the  
 6 four options, not every first degree murder is  
 7 automatically a death penalty. You understand that?  
 8 PROSPECTIVE JUROR: I understand that.  
 9 That's not my opinion.  
 10 MR. OWENS: Your opinion is that first  
 11 degree murder should be a death penalty?  
 12 PROSPECTIVE JUROR: Yes, sir.  
 13 MR. OWENS: So if you are a legislator,  
 14 you might want to change the law to be more like Texas,  
 15 that's what they got in Texas, where it's automatic?  
 16 PROSPECTIVE JUROR: Yes.  
 17 MR. OWENS: But you're not the legislator.  
 18 And we are living by the rules of Nevada here.  
 19 PROSPECTIVE JUROR: Right.  
 20 MR. OWENS: And do you feel you can apply  
 21 the procedure that we have in Nevada in this case, if you  
 22 are selected for the jury?  
 23 PROSPECTIVE JUROR: No.  
 24 MR. OWENS: So even though you feel like  
 25 it should be something different, and even though you

222

1 understand that Nevada has a different set of rules, what  
 2 you're saying is you don't think you can abide by those  
 3 rules?

4 PROSPECTIVE JUROR: No, sir.  
 5 MR. OWENS: You would want to give the  
 6 death penalty automatically?  
 7 PROSPECTIVE JUROR: Yes, sir.  
 8 MR. OWENS: You think it's important to  
 9 hear all the facts and circumstances surrounding the  
 10 murder before you decide which penalty should be  
 11 appropriate?  
 12 PROSPECTIVE JUROR: Yeah, it's important.  
 13 But I'm not one of the people to do it. I have a very set  
 14 thought, and what -- by the way the questioning is on the  
 15 questionnaire, I have already formed the opinion.  
 16 MR. OWENS: So even though you haven't  
 17 heard all the facts and circumstances, you feel the death  
 18 penalty was always appropriate and that's what you would  
 19 do?  
 20 PROSPECTIVE JUROR: Yes.  
 21 MR. OWENS: No further questions, your  
 22 Honor.  
 23 THE COURT: Mr. Schieck.  
 24 MR. SCHIECK: Challenge for cause, your  
 25 Honor.

223

1 THE COURT: All right. Let's take a  
 2 recess for a few minutes, ladies and gentlemen.  
 3 JURY ADMONITION  
 4 During the recess, ladies and gentlemen,  
 5 you are admonished not to converse among yourselves or  
 6 with anyone else, including, without limitation, the  
 7 lawyers, parties and witnesses, on any subject connected  
 8 with this trial, or any other case referred to during it,  
 9 or read, watch, or listen to any report of or commentary  
 10 on the trial, or any person connected with this trial, or  
 11 any such other case by any medium of information  
 12 including, without limitation, newspapers, television,  
 13 internet or radio.  
 14 You are further admonished not to form or  
 15 express any opinion on any subject connected with this  
 16 trial until the case is finally submitted to you.  
 17 (Brief recess taken.)  
 18 THE COURT: You want to talk real quick  
 19 about the challenges for cause?  
 20 MR. OWENS: Okay.  
 21 THE COURT: The State have any remarks to  
 22 make as to the first, Ms. Ruis.  
 23 MR. OWENS: Which are we looking at, your  
 24 Honor?  
 25 THE COURT: Ms. Ruis is up in seat number

224

1 one -- Badge 81. The next one that was challenged for  
2 cause was Mr. Ramirez -- Badge 034. Then Ms. Martino --  
3 038. She's in the chair closest to you on the side of the  
4 jury box. The last one is Ms. Smith -- 045.

5 MR. OWENS: Well, I don't have anything to  
6 add on Ms. Ruis, I don't think.

7 THE COURT: Okay.

8 MR. OWENS: On Ms. Martino, there's a  
9 disparity to what she's saying in court and in her  
10 questionnaire. But people are free to expound and explain  
11 their answers. She -- I think the way it was left was she  
12 could consider the options, and that she may be a person  
13 that tends to be a follower. But that's not a reason to  
14 kick somebody for cause.

15 In regard to Mr. Ramirez -- number 24, you  
16 know, he's not any different than Mr. Theus, I don't think  
17 in the sense we didn't challenge that person for cause.  
18 But it's the same thing. Basically what they were saying  
19 was that they were looking at the way they would want to  
20 have it, versus the way it is. And all through her  
21 questionnaire she was saying she couldn't do it. And she  
22 didn't believe in the death penalty and that kind of  
23 thing. That was a 180 degree turn around. If you kick  
24 Ramirez, in fairness in proportional responses, you have  
25 to kick Ms. Theus as well. So I think that's the sum of

225

1 it, your Honor.

2 THE COURT: All right. What about  
3 anything at to Ms. Smith, the last lady.

4 MR. OWENS: Nothing on that.

5 THE COURT: All right.

6 MR. OWENS: She's clear.

7 THE COURT: Mr. Schieck or Mr. Patrick any  
8 of those folks. I'm going to excuse Ms. Ruis and  
9 Ms. Smith.

10 The question in my mind is kind of I  
11 excuse them now and put people there, or just ask if we  
12 pass a little more than thirty-two for cause and let them  
13 all go. I don't want people to continue to kind of figure  
14 out this is a good reason to bring up. My intent, as I  
15 sit here thinking, is to leave them there. Telling you  
16 they're going to be excused for cause so you know. But  
17 leave them there for now as we continue on with the  
18 questioning.

19 How about as to Mr. Ramirez and Ms.  
20 Martino?

21 MR. PATRICK: Yes, Judge. Ms. Martino, I  
22 don't think there was really any question. Not only is  
23 she going to automatically vote for the death penalty, but  
24 she made it very clear that anybody that kills anybody  
25 should be taken out and shot, stabbed, hung, whatever they

226

1 did to the victim.

2 I don't think there's any question as to  
3 what her feelings are and to how she would vote. She's  
4 certainly not going to look at anything but the fact that  
5 Mr. Chappell was convicted of murder. And as far as she's  
6 concern he should be taken out today and stabbed to  
7 death.

8 Also whether or not -- that is a very  
9 compelling reason, but even putting that aside, she's a  
10 definite follower. She's not going to make up her own  
11 mind. Whatever the group says, she's going to go with.  
12 And I think something this important, we need to have  
13 somebody that makes some semblance of having their own  
14 mind in making up their own mind.

15 As far as Mr. Ramirez, well, I mean, he's  
16 from Texas. He likes the way Texas does things. He  
17 thinks that we should not even be here because  
18 Mr. Chappell was found guilty of first degree murder.  
19 According to him there is no option. The death penalty is  
20 it, and that's it.

21 The other thing about him, not only is he  
22 ex-military, but he's ex-special forces. His mind is made  
23 up. There's nobody on that jury that's ever going to  
24 change his mind. I mean, being ex-military myself, I know  
25 his type. He's not going to change his mind. He's not

227

1 going to look at anything. He's by the book. He's very  
2 rigid. He has his mind made up that first degree murder  
3 only requires one sentence, nothing will ever -- if we  
4 could sit here until next week and talk to him, he'll  
5 never change his mind on that. He will absolutely vote  
6 for the death penalty, no matter what we put on.

7 So I would say that both of those are  
8 beyond redemption.

9 MR. OWENS: Your Honor, if I could comment  
10 on a couple of things he mentioned.

11 THE COURT: As to who?

12 MR. OWENS: Well, first -- last gentleman,  
13 Mr. Ramirez. Being military is not a reason to challenge  
14 for cause. On Ms. Martino, her comment about him  
15 suffering the same kind of death by stabbing or shooting,  
16 I didn't take that to mean that the death penalty should  
17 be automatic, but if they receive the death penalty it  
18 should be administered in the same way they killed their  
19 victim.

20 THE COURT: I agree. I had more problems  
21 with Ms. Martino than I did with Mr. Ramirez, to be quite  
22 honest. I'll grant the challenge to Ms. Martino.

23 I had a variety of problems with her questionnaire  
24 and in questioning in court along racial lines, as well as  
25 some of things she was saying. I don't think it's

228

1 appropriate to excuse somebody because they're a follower,  
2 but to the extent they kind of indicate not only are they  
3 are follower, they may not even vote their own belief in  
4 the evidence is a little different.

5 But more than that there was an indication  
6 in the questionnaire that she would automatically vote for  
7 the death penalty. Meaning that she not only believed  
8 that an eye for an eye, for a person who kills should be  
9 put to death in the same way, but that she should impose  
10 that penalty without question. I believe she readily  
11 agreed to Mr. Patrick in questioning in that regard.

12 A lot of times we are balancing between  
13 somebody asks a question and the questions were kind of  
14 leading by nature and get one answer and get another  
15 answer, but I think the answers from Ms. Martino where  
16 enough to justify her being excused.

17 I'm going to deny as it pertains to Mr.  
18 Ramirez. I agree that his personality would appear to be  
19 what you would consider somebody with a hardcore military  
20 veteran. But we can't kind of look at people and excuse  
21 them because our personal opinions as to their type of  
22 personality is such that we believe they'll never change  
23 their minds.

24 His questionnaire was one which he  
25 indicated he'd consider all forms of punishment. He did

229

1 not indicate that he would vote automatically one way or  
2 the other. I think he's wrong about Texas. There are a  
3 few forms of punishment that are available there. But  
4 nonetheless, somebody that thinks the death penalty is an  
5 appropriate form of punishment for first degree murder and  
6 thinks that maybe or legislature should change things,  
7 that's separate and apart from saying I realize that this  
8 is what the law is and I'll consider them all before I  
9 make any decision.

10 So I think he answered the questions  
11 sufficiently in term of being able to consider everything  
12 to not justify him being excused for cause. So I'll deny  
13 as pertains to Mr. Ramirez.

14 But again, I'm going to leave Ms. Martino,  
15 Ms. Smith and Ms. Theus for now in their places. We'll  
16 continue on with the next in order, which is going to be  
17 Mr. Morin when we get back.

18 Now, it's about coming up on 4:30 already.  
19 I generally don't like to keep everybody after 5:00  
20 o'clock the first day they're here because they don't  
21 necessarily know how much longer we have.

22 Do you plan going until 5:00? I can go  
23 longer if we want to.

24 MR. OWENS: Whatever the court wants.

25 MR. SCHIECK: I don't know if there's any

230

1 problems. They're all from High Desert. They've been  
2 here all day, if they have staffing problems or not.

3 THE COURT: Well, Mr. Chappell is staying  
4 here now, right?

5 MR. SCHIECK: He's still in their  
6 custody.

7 THE COURT: All right. Can you all stay  
8 until 5:30?

9 THE OFFICERS: Yes, sir.

10 THE COURT: Okay. We'll play it by ear.  
11 But we won't go any later than 5:30.

12 We'll see if we can move through a few more people so  
13 we can try and get -- tomorrow, at least, we can get the  
14 jury finished up and you all can do openings, if nothing  
15 else.

16 MR. PATRICK: I would like, if we could,  
17 spend a second clarifying Mr. Owens' objection to my  
18 asking whether or not the jury members would want to be on  
19 a jury if they were sitting here.

20 THE COURT: I recall a case coming out  
21 that indicated that was an improper question. I can't  
22 think of the name.

23 MR. OWENS: I don't know if there is a  
24 case. Since I have had judges correct this, but to say if  
25 one side only would be comfortable having you as a juror

231

1 is not fair. It would have to be both sides, two sides,  
2 because doth sides have different interests.

3 Frankly we want a jury of police officers if we have  
4 a choice. He'd probably rather have a jury of jail  
5 individuals. So you ask that question, it really isn't a  
6 fair question if you are in the position of the State or  
7 the Defendant, would you be comfortable. It's basically  
8 like saying can you be fair to both sides.

9 But to say if you were in the position of the  
10 Defendant, would you want somebody in your frame of mind  
11 sitting on the jury is not a fair question. They can say,  
12 yeah, I would vote his way every time, sure he would want  
13 me.

14 THE COURT: I understand the argument  
15 being made. That's why I seem to believe there's a case  
16 that has come out talking about that issue, as to not  
17 placing the jurors in a position of a certain party in the  
18 litigation.

19 MR. SCHIECK: Well, your Honor, if I may,  
20 I would think that that cuts to the heart of the whole  
21 thing. If I only had one question to ask each and every  
22 juror that's probably one of the most fair questions and  
23 one of the most truthful questions they would answer. I  
24 think it is probably very proper.

25 I mean, look at the way the death penalty

232

1 is administered in this state, and we're looking for  
2 whether or not it's arbitrary and capricious. I think  
3 that's a very direct, very good, very poignant question to  
4 being asking the jury.

5 THE COURT: Let me look on the break and  
6 see if I can find the case I'm thinking of that I think  
7 spoke to the issue a little bit. And I'll let you know  
8 when I get back out here.

9 We'll be in recess for ten minutes. Okay.  
10 Thank you.

11 (Brief recess taken.)

12 THE COURT: Back on the record in  
13 C-131341, State of Nevada versus James Chappell. The  
14 record will reflect the presence of Mr. Chappell with his  
15 attorneys, the State's attorneys. Outside the presence of  
16 panel the jury.

17 I can't find the case right now that I'm  
18 thinking of, so I'll allow you to ask the questions.  
19 We'll only get through a couple more people this evening.  
20 I'll see if I can find it this evening on Lexus.

21 MR. SCHIECK: We'll rephrase it to say  
22 either party, as opposed to just the Defendant.

23 THE COURT: That's I think what Mr. Owens  
24 was objecting to and that's my belief as to what I gleaned  
25 from the case I was thinking of was you cannot ask them if

233

1 they can be fair to one side, it has to be fair to both  
2 sides in terms of if you were on this jury.

3 Let's get going.

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

9 Ms. Weckerly, as to Mr. Morin.

10 MS. WECKERLY: How are you employed?

11 PROSPECTIVE JUROR: Carpenter.

12 MS. WECKERLY: And you're the father of  
13 three young girls?

14 PROSPECTIVE JUROR: Correct.

15 MS. WECKERLY: What does your wife do?

16 PROSPECTIVE JUROR: She's a janitor for  
17 the school district.

18 MS. WECKERLY: When we were speaking this  
19 morning you indicated that a family member had negative  
20 contact with the police and the criminal justice system.

21 PROSPECTIVE JUROR: Correct.

22 MS. WECKERLY: Was it your brother?

23 PROSPECTIVE JUROR: My brother.

24 MS. WECKERLY: Was that locally?

25 PROSPECTIVE JUROR: Yes.

234

1 MS. WECKERLY: Were you close to your  
2 brother -- or close to him at the time that happened?

3 PROSPECTIVE JUROR: Yes. Kind of, because  
4 we kind of having a fallen out because of -- he was on  
5 drugs and stuff, just stayed away.

6 MS. WECKERLY: And you think the charge  
7 was attempt murder?

8 PROSPECTIVE JUROR: Yes.

9 MS. WECKERLY: Is that charge resolved or  
10 was he --

11 PROSPECTIVE JUROR: He's in prison right  
12 now.

13 MS. WECKERLY: Prison. Are you still in  
14 contact with him? You visit and write, that sort of  
15 thing.

16 PROSPECTIVE JUROR: Yes.

17 MS. WECKERLY: Do you feel that he was  
18 treated fairly?

19 PROSPECTIVE JUROR: He himself also feels  
20 like he was treated fairly. He takes responsibility for  
21 what he did.

22 MS. WECKERLY: So I assume your family is  
23 probably hoping he does his time and out he comes and  
24 straightens out his live and is productive?

25 PROSPECTIVE JUROR: Yes.

235

1 MS. WECKERLY: Did you feel like that the  
2 police handled the case fairly or the State prosecutors  
3 did?

4 PROSPECTIVE JUROR: Yes.

5 MS. WECKERLY: You indicated on your  
6 questionnaire that you are someone that can consider the  
7 death penalty as a potential punishment?

8 PROSPECTIVE JUROR: Yes.

9 MS. WECKERLY: You wrote if it fits it  
10 must be given?

11 PROSPECTIVE JUROR: Yes.

12 MS. WECKERLY: And Mr. Owens, I think said  
13 to our last juror, that the death penalty is never  
14 automatic. It's -- there are certain requirements that  
15 have to be met before it is a possible punishment or one  
16 you can consider. But you are never obligate to impose  
17 it.

18 But if I'm reading your questionnaire correctly, you  
19 can consider it in some circumstances?

20 PROSPECTIVE JUROR: Yes.

21 MS. WECKERLY: We've spoken to a lot of  
22 the prospective jurors about this, and you also indicate  
23 this on your questionnaire, you're not someone that is  
24 obligated to vote for it or against it. It sounded like  
25 you would want to hear information before you made a

236

1 decision.  
 2 MS. WECKERLY: Correct.  
 3 MS. WECKERLY: So you don't have any  
 4 preconceived idea about what you're going to do because  
 5 you haven't heard anything?  
 6 PROSPECTIVE JUROR: Yes.  
 7 MS. WECKERLY: And you could be fair to  
 8 both sides.  
 9 PROSPECTIVE JUROR: Yes.  
 10 MS. WECKERLY: Thank you, sir. Pass for  
 11 cause.  
 12 THE COURT: Mr. Patrick.  
 13 MR. PATRICK: Good afternoon, Mr. Morin.  
 14 PROSPECTIVE JUROR: How are you doing.  
 15 MR. PATRICK: Your brother was convicted  
 16 of attempted murder?  
 17 PROSPECTIVE JUROR: Correct.  
 18 MR. PATRICK: Is the person that he was  
 19 convict of trying to kill was it somebody he knew?  
 20 PROSPECTIVE JUROR: No.  
 21 MR. PATRICK: You answered yes, you knew  
 22 somebody that had a drug abuse problems?  
 23 PROSPECTIVE JUROR: Correct.  
 24 MR. PATRICK: Was that your brother?  
 25 PROSPECTIVE JUROR: I have a few other

237

1 family members, as well.  
 2 MR. PATRICK: Does their drug abuse, would  
 3 that make you give anymore or any less weight to testimony  
 4 given by somebody that used drugs?  
 5 PROSPECTIVE JUROR: No.  
 6 MR. PATRICK: So you'd keep an open mind?  
 7 PROSPECTIVE JUROR: Correct.  
 8 MR. PATRICK: You mentioned that the  
 9 system was fair, but had lots of loop holes. Can you  
 10 expand on that for me.  
 11 PROSPECTIVE JUROR: You see some cases get  
 12 dismissed over the slightest things, it just doesn't seem  
 13 fair.  
 14 MR. PATRICK: The slightest thing.  
 15 PROSPECTIVE JUROR: A drug trafficker gets  
 16 caught and they didn't have the proper document to check  
 17 his car.  
 18 MR. PATRICK: So you believe that if they  
 19 search his car and find these drugs, that those should be  
 20 able to be used in trial, whether or not the search was  
 21 lawful?  
 22 PROSPECTIVE JUROR: Correct.  
 23 MR. PATRICK: You mentioned you a cousin  
 24 in law enforcement?  
 25 PROSPECTIVE JUROR: Yes.

238

1 MR. PATRICK: What does he do?  
 2 PROSPECTIVE JUROR: He's a SWAT member in  
 3 San Bernardino.  
 4 MR. PATRICK: You talk to him a lot?  
 5 PROSPECTIVE JUROR: I spoke with him this  
 6 weekend.  
 7 MR. PATRICK: You're close?  
 8 PROSPECTIVE JUROR: Somewhat. He lives in  
 9 another state, so every time we go out there we talk.  
 10 MR. PATRICK: Him being a police officer,  
 11 would that cause you to give greater weight to the  
 12 testimony given by a police officer?  
 13 PROSPECTIVE JUROR: No. They're just as  
 14 human as I am.  
 15 MR. PATRICK: So you would be able to  
 16 listen to both sides?  
 17 PROSPECTIVE JUROR: Yes.  
 18 MR. PATRICK: If you were on the jury and  
 19 you decided not to impose the death penalty, is that  
 20 something you'd have to explain to your cousin why you  
 21 won't do that?  
 22 PROSPECTIVE JUROR: Yes.  
 23 MR. PATRICK: He's understand?  
 24 PROSPECTIVE JUROR: He'd understand.  
 25 MR. PATRICK: He'd know you listened to

239

1 both sides and felt it didn't fit and that's how you made  
 2 your decision -- either way?  
 3 PROSPECTIVE JUROR: Correct.  
 4 MR. PATRICK: Again, like Ms. Weckerly  
 5 said, you wrote down if it fits regarding the death  
 6 penalty, if it fits it must be given. She explained  
 7 there's never a time when it must be given. So if we  
 8 changed that statement to if it fits, it may be given,  
 9 could you explain if it fits, what makes it fit?  
 10 PROSPECTIVE JUROR: The laws. It's an  
 11 option and all options should be explored before giving.  
 12 I think if it's an option, if it fit to be given, like if  
 13 the crime were heinous enough, if the person was sane when  
 14 they did it, or premeditated, I believe it should be  
 15 given.  
 16 MR. PATRICK: But you'd listen to  
 17 everything before you make that decision?  
 18 PROSPECTIVE JUROR: Sure.  
 19 MR. PATRICK: Pass for cause, your  
 20 Honor.  
 21 THE COURT: Mr. Owens, as to Mr. Garcia.  
 22 MR. OWENS: Thank you. Mr. Garcia, how  
 23 are you.  
 24 PROSPECTIVE JUROR: Fine.  
 25 MR. OWENS: How long have you lived her in

240

1 Las Vegas?  
2 PROSPECTIVE JUROR: Thirteen years.  
3 MR. OWENS: You ever live off Oakey or  
4 MLK?  
5 PROSPECTIVE JUROR: No.  
6 MR. OWENS: You had some unfortunate  
7 situation with your son that you talked about in the  
8 questionnaire.  
9 PROSPECTIVE JUROR: Yes.  
10 MR. OWENS: How long ago did this thing  
11 happen, he went through?  
12 PROSPECTIVE JUROR: In high school is when  
13 he got caught, pot and stuff like that.  
14 MR. OWENS: How long ago would that have  
15 been?  
16 PROSPECTIVE JUROR: He's 23 now.  
17 MR. OWENS: Is this something he's still  
18 working with?  
19 PROSPECTIVE JUROR: He's still working on  
20 it.  
21 MR. OWENS: There was also an assault he  
22 was a victim of with this thing with the drugs?  
23 PROSPECTIVE JUROR: Yeah. Several years  
24 ago he got hit over the head by one of his drug friends.  
25 MR. OWENS: What were the consequences of

241

1 that?  
2 PROSPECTIVE JUROR: The police said they  
3 both got what they deserved, so they let them go.  
4 MR. OWENS: Nothing happen?  
5 PROSPECTIVE JUROR: To either one.  
6 MR. OWENS: Was there permanent damage to  
7 him?  
8 PROSPECTIVE JUROR: No. But he got hit  
9 pretty hard.  
10 MR. OWENS: Is he okay now?  
11 PROSPECTIVE JUROR: Yeah.  
12 MR. OWENS: Has he turned a corner on his  
13 drug use or is it still a problem that he wrestles with?  
14 PROSPECTIVE JUROR: He wrestles with it.  
15 But he's starting to turn.  
16 MR. OWENS: He's doing better?  
17 PROSPECTIVE JUROR: Yeah.  
18 MR. OWENS: Anything about that experience  
19 that kind of left a bad taste in your mouth that would  
20 make it difficult for you to be fair here?  
21 PROSPECTIVE JUROR: I wouldn't say a bad  
22 taste, but it would make me more aware of the other  
23 culture.  
24 MR. OWENS: Other culture, you mean the  
25 drug culture?

242

1 PROSPECTIVE JUROR: Yeah.  
2 MR. OWENS: If you hear things about drugs  
3 in this case would it make you want to punish one side or  
4 the other a little bit or to use this case to even out  
5 what happen with your son?  
6 PROSPECTIVE JUROR: No.  
7 MR. OWENS: You feel you'd try this case  
8 on the facts of the case?  
9 PROSPECTIVE JUROR: Yes.  
10 MR. OWENS: You like to watch courtroom  
11 dramas -- Boston Legal. Did you put that down here?  
12 PROSPECTIVE JUROR: My wife likes that  
13 stuff.  
14 MR. OWENS: Maybe that's why you put that  
15 down here. Might be the next one. All right. You say  
16 you had a chance to be on a jury before. How long ago was  
17 that?  
18 PROSPECTIVE JUROR: Twenty-five year ago.  
19 MR. OWENS: Was that in this community?  
20 PROSPECTIVE JUROR: Yes.  
21 MR. OWENS: Was that a good experience for  
22 you?  
23 PROSPECTIVE JUROR: The mechanics of it  
24 was fine. Just hard to put somebody away that wasn't the  
25 primary person that did the crime.

243

1 MR. OWENS: Nothing about that that would  
2 interfere with your ability to be fair in this case?  
3 PROSPECTIVE JUROR: No.  
4 MR. OWENS: The process worked okay?  
5 PROSPECTIVE JUROR: Everything was fine,  
6 yeah.  
7 MR. OWENS: You talked about your feelings  
8 on the death penalty. Can you share those with us a  
9 little bit.  
10 PROSPECTIVE JUROR: There's a time when  
11 it's an appropriate sentence. I believe in people being  
12 redeemed. If a person is not repentant, or if the  
13 person -- if the case is really that horrible, there's no  
14 mercy, if you tell him to stop it and they don't stop  
15 it -- so that's the situation. They deserve to die. They  
16 have to die. If there's any way to salvage the person,  
17 that's another situation.  
18 MR. OWENS: Murder, you know, you kill  
19 once and you don't stop it, there might be another murder.  
20 Do you feel like they need to have a chance to see if they  
21 are going to kill two before it's appropriate, or is the  
22 first time appropriate?  
23 PROSPECTIVE JUROR: In a murder situation,  
24 99 out of 100, they should be allowed to come out of  
25 prison. Evil has to be stopped. If it was an accident,

244

1 but for the grace of God any of us can go down the same  
2 path.

3 MR. OWENS: You don't know what factors  
4 the court is going to tell you about.

5 PROSPECTIVE JUROR: No idea.

6 MR. OWENS: You can appreciate that there  
7 are factors you are going to hear about?

8 PROSPECTIVE JUROR: Yes.

9 MR. OWENS: If you feel after hearing the  
10 facts the death penalty was appropriate, would you be able  
11 to do that?

12 PROSPECTIVE JUROR: That would be my  
13 responsibility.

14 MR. OWENS: Could you do that?

15 PROSPECTIVE JUROR: I would have to do  
16 it.

17 MR. OWENS: Do you feel like you could  
18 judge another person in that manner?

19 PROSPECTIVE JUROR: Yes.

20 MR. OWENS: Thank you. Pass for cause,  
21 your Honor.

22 THE COURT: Thank you. Mr. Schieck.

23 MR. SCHIECK: Thank you, your Honor.

24 Mr. Garcia, you talked a lot about your  
25 son in your questionnaire. You have done what you could

245

1 to try to help him, I take it, without being an enabler?

2 PROSPECTIVE JUROR: Correct.

3 MR. SCHIECK: You talked with him,  
4 counseled with him, tried to guide him?

5 PROSPECTIVE JUROR: We forced him into the  
6 drug program.

7 MR. SCHIECK: And you feel as a parent  
8 that is a very important proper role to assume with your  
9 son?

10 PROSPECTIVE JUROR: Absolutely.

11 MR. SCHIECK: You indicated that you hate  
12 the death penalty, but at times it's required.

13 PROSPECTIVE JUROR: Yes, sir.

14 MR. SCHIECK: What is it about that you  
15 hate with respect to the death penalty?

16 PROSPECTIVE JUROR: I think life is  
17 precious, including the Defendant in this case. If there  
18 is anyway possible to save him, I would appreciate it.  
19 But if there's no saving him, then not much choice. But  
20 it depends on the case.

21 MR. SCHIECK: You go on to explain that, I  
22 guess. If you murder someone you've forfeited your right  
23 to live. But then you qualify that but only mercy and  
24 circumstances can redeem their life. That's the qualities  
25 you are looking for?

246

1 PROSPECTIVE JUROR: I'm looking for is not  
2 only what he has done but what he potentially doing in the  
3 further.

4 MR. SCHIECK: The circumstances that lead  
5 up to where he was at at that time?

6 PROSPECTIVE JUROR: Yes.

7 MR. SCHIECK: Your son's drug use was that  
8 just marijuana or did he get involved with any serious  
9 drugs?

10 PROSPECTIVE JUROR: He got into pill and  
11 stuff like that.

12 MR. SCHIECK: Thank you. Pass for cause,  
13 your Honor.

14 THE COURT: Thank you. Mr. Owens, as to  
15 Mr. Salak.

16 MR. OWENS: Mr. Salak, you're the Boston  
17 Legal fan.

18 PROSPECTIVE JUROR: Yes.

19 MR. OWENS: Law and Order?

20 PROSPECTIVE JUROR: Yeah.

21 MR. OWENS: You indicate that you don't  
22 have any problem with the death penalty as an option?

23 PROSPECTIVE JUROR: No. I do feel I have  
24 reservations.

25 MR. OWENS: You say you have reservations,

247

1 what do you mean?

2 PROSPECTIVE JUROR: Depends on the case.

3 MR. OWENS: Do you feel it's important to  
4 keep an open mind?

5 PROSPECTIVE JUROR: Yes.

6 MR. OWENS: How do you feel about the idea  
7 of being in judgment of another person?

8 PROSPECTIVE JUROR: Really uncomfortable in  
9 passing judgment. I'll follow the law.

10 MR. OWENS: Do you feel that that is  
11 something you could do?

12 PROSPECTIVE JUROR: Yes.

13 MR. OWENS: If you felt that the death  
14 penalty was proper punishment for this case and these  
15 facts, could you personally come back and announce that  
16 verdict?

17 PROSPECTIVE JUROR: Once I hear the facts  
18 and how it happened and why it happen, probably will.

19 MR. OWENS: If you thought the death  
20 penalty was right, could you do that?

21 PROSPECTIVE JUROR: Yes.

22 MR. OWENS: You'd be able to live with  
23 that decision?

24 PROSPECTIVE JUROR: Yes, I could.

25 MR. OWENS: You've been involved in the

248

1 court process before. Have you ever sued somebody or been  
2 sued?

3 PROSPECTIVE JUROR: No.

4 MR. OWENS: You have never been a victim  
5 of a crime?

6 PROSPECTIVE JUROR: No.

7 MR. OWENS: You have never had an  
8 opportunity to serve as a juror before?

9 PROSPECTIVE JUROR: No.

10 MR. OWENS: You've never had a family  
11 member or someone close to you charged with a crime?

12 PROSPECTIVE JUROR: No.

13 MR. OWENS: Question 42, you were asked  
14 about your feelings about the death penalty. You start to  
15 write something. I guess, I should have let us use a  
16 pencil on these. In pen you crossed it out.  
17 Unfortunately we notice things like that. If I can show  
18 this to him, your Honor.

19 THE COURT: Sure.

20 MR. OWENS: Says the punishment, what were  
21 you trying to say?

22 PROSPECTIVE JUROR: The punishment should  
23 be appropriate for the crime itself.

24 MR. OWENS: Okay.

25 PROSPECTIVE JUROR: The death penalty only  
249

1 I could get a house here.

2 MR. SCHIECK: The steamship company you  
3 worked for, was that in Hawaii?

4 PROSPECTIVE JUROR: No. It was  
5 headquarters in Oakland, California.

6 MR. SCHIECK: Okay. You retired here from  
7 Oakland.

8 PROSPECTIVE JUROR: Yes.

9 MR. SCHIECK: One of your questions on the  
10 questionnaire you might not have understood to question.

11 It says are you beliefs about the death penalty such that  
12 you would automatically vote against the death penalty

13 regardless of the facts and circumstances. You say, no.  
14 Perhaps I'm confused. You would consider all the  
15 circumstances.

16 PROSPECTIVE JUROR: Yes, I would.

17 MR. SCHIECK: You haven't prejudged in  
18 your mind any possible punishments?

19 PROSPECTIVE JUROR: No.

20 MR. SCHIECK: I'll pass for cause, your  
21 Honor.

22 THE COURT: Ms. Weckerly, as to Blayne  
23 White.

24 MS. WECKERLY: You mention you had an  
25 experience with your sister, I think, 20 year ago.

251

1 in severe cases.

2 MR. OWENS: But you felt that the  
3 punishment should fit the crime. That's the same thing as  
4 in severe cases?

5 PROSPECTIVE JUROR: Right.

6 MR. OWENS: All right. I'll pass.

7 THE COURT: Thank you. Mr. Schieck.

8 MR. SCHIECK: Thank you, your Honor.  
9 Mr. Salak, you are retired?

10 PROSPECTIVE JUROR: Yes, sir.

11 MR. SCHIECK: What was your occupation  
12 before you retired?

13 PROSPECTIVE JUROR: I was a billing clerk  
14 and became a billing supervisor up until my retirement.

15 MR. SCHIECK: Type of business?

16 PROSPECTIVE JUROR: Steamship company.

17 MR. SCHIECK: Steamship.

18 PROSPECTIVE JUROR: Moving cargo to  
19 Hawaii.

20 MR. SCHIECK: What caused you to come out  
21 here to Las Vegas? You've been here two-and-a-half years?

22 PROSPECTIVE JUROR: In Clark County.

23 MR. SCHIECK: Why did you come out here to  
24 retire?

25 PROSPECTIVE JUROR: Nothing, just thought  
250

1 PROSPECTIVE JUROR: There was an argument.

2 I pushed her she fell and hit her head. It caused a  
3 bruise and a black eye. She called the police. I was  
4 arrested. I went to jail. My father got me out.

5 MS. WECKERLY: I would imagine you were  
6 pretty young when this happened?

7 PROSPECTIVE JUROR: Yes. I was 19.

8 MS. WECKERLY: That technically falls into  
9 a domestic violence. Usually when we speak of it it's  
10 kind of a boyfriend girlfriend.

11 PROSPECTIVE JUROR: I was charged under  
12 that.

13 MS. WECKERLY: I guess because it was a  
14 family relationship.

15 PROSPECTIVE JUROR: Family things.

16 MS. WECKERLY: You ended up spending a  
17 night in jail?

18 PROSPECTIVE JUROR: Yes.

19 MS. WECKERLY: I'm sure that wasn't  
20 pleasant.

21 PROSPECTIVE JUROR: Not at all.

22 MS. WECKERLY: The fact you had that  
23 experience, does that cause you ill feelings toward law  
24 enforcement?

25 PROSPECTIVE JUROR: Not at all.

252



1 MS. WECKERLY: And you also wrote in your  
2 questionnaire you and your sister obviously have gotten  
3 past this incident?

4 PROSPECTIVE JUROR: Yes.

5 MS. WECKERLY: You wrote on your  
6 questionnaire that the death penalty, if needed, basically  
7 should be used.

8 PROSPECTIVE JUROR: Absolutely.

9 MS. WECKERLY: I take it from your answer  
10 you can conceive of circumstances where that is an  
11 appropriate punishment?

12 PROSPECTIVE JUROR: Absolutely.

13 MS. WECKERLY: But you also wrote that you  
14 could consider the Defendant's background or other factors  
15 in making a decision?

16 PROSPECTIVE JUROR: Yes.

17 MS. WECKERLY: You're not someone to rush  
18 to judgment?

19 PROSPECTIVE JUROR: No.

20 MS. WECKERLY: You'd consider all the  
21 information you hear in this courtroom and make a  
22 decision?

23 PROSPECTIVE JUROR: Yes.

24 MS. WECKERLY: You can be fair to both  
25 sides?

253

1 PROSPECTIVE JUROR: Yes.

2 MS. WECKERLY: Thank you, sir. Pass for  
3 cause.

4 THE COURT: Mr. Patrick.

5 MR. PATRICK: Good afternoon, Mr. White.  
6 You mentioned your uncle was a cop.

7 PROSPECTIVE JUROR: Yes.

8 MR. PATRICK: In Long beach.

9 PROSPECTIVE JUROR: Yes, sir.

10 MR. PATRICK: Are you close to him?

11 PROSPECTIVE JUROR: We visit a couple  
12 times a year.

13 MR. PATRICK: You don't talk on a regular  
14 basis?

15 PROSPECTIVE JUROR: No.

16 MR. PATRICK: Like I've asked several  
17 people, the fact that he's a cop would that make you give  
18 more weight to the testimony given by another police  
19 officer on the stand?

20 PROSPECTIVE JUROR: No.

21 MR. PATRICK: As Ms. Weckerly said, you  
22 made it pretty clear that you wouldn't automatically pick  
23 any special penalty in this case. You'd wait until all  
24 the evidence was in.

25 PROSPECTIVE JUROR: Absolutely.

254

1 MR. PATRICK: And weigh both sides and  
2 make the appropriate determination.

3 PROSPECTIVE JUROR: Yes.

4 MR. PATRICK: So if you were sitting where  
5 I'm sitting or sitting where Mr. Owens and Ms. Weckerly  
6 are, either side, would you want someone like you on this  
7 jury?

8 PROSPECTIVE JUROR: Absolutely.

9 MR. PATRICK: Thank you. Pass for cause.

10 THE COURT: Mr. Owens, as to Mr. Davie,  
11 059.

12 MR. OWENS: How are you doing. Your  
13 mother has been a victim or you've been a victim --

14 PROSPECTIVE JUROR: My mother.

15 MR. OWENS: It was your mother that had  
16 identity theft?

17 PROSPECTIVE JUROR: Right.

18 MR. OWENS: How long ago was that?

19 PROSPECTIVE JUROR: Six months ago.

20 MR. OWENS: And you've never been a  
21 victim?

22 PROSPECTIVE JUROR: No.

23 MR. OWENS: You felt like they should have  
24 done more for her case?

25 PROSPECTIVE JUROR: I wish they could. I

255

1 don't know what else you can do. She didn't have to pay  
2 any money, so I don't know what else they could do.

3 MR. OWENS: Did she live in town here?

4 PROSPECTIVE JUROR: No.

5 MR. OWENS: So where does she live?

6 PROSPECTIVE JUROR: Pennsylvania.

7 MR. OWENS: So you feel that justice was  
8 not served, but it wasn't necessarily the police involved?

9 PROSPECTIVE JUROR: True.

10 MR. OWENS: We have a very different type  
11 of facts in this case. You understand that?

12 PROSPECTIVE JUROR: Yes.

13 MR. OWENS: So there's nothing about that  
14 experience that could spill over into this case in a bad  
15 way?

16 PROSPECTIVE JUROR: No.

17 MR. OWENS: You never had a chance to  
18 serve as a juror before?

19 PROSPECTIVE JUROR: No.

20 MR. OWENS: Have you ever been involved in  
21 the court process, been sued or sued somebody else?

22 PROSPECTIVE JUROR: No.

23 MR. OWENS: You said you liked to consider  
24 everything. You feel it's important to get all the facts  
25 before you make a decision in this process.

256

1 PROSPECTIVE JUROR: That's true.  
 2 MR. OWENS: How do you feel about the idea  
 3 of being on a jury?  
 4 PROSPECTIVE JUROR: I really don't want to  
 5 be on the jury. I don't want to pass judgment on someone.  
 6 What I know about this case, I see the death penalty and I  
 7 see life in prison, that's it. Parole is a second chance,  
 8 even to someone who is a victim in this case, doesn't get  
 9 a second chance. So I see two options myself.  
 10 MR. OWENS: How do you feel about the idea  
 11 of sitting in judgment on another person?  
 12 PROSPECTIVE JUROR: I don't like it, but if  
 13 I'm called to do it, I'll do it.  
 14 MR. OWENS: Could you do that?  
 15 PROSPECTIVE JUROR: Yes.  
 16 MR. OWENS: Now, it sounds like you are  
 17 leaning toward the death penalty or life without parole,  
 18 based on what you just said. Is that fair?  
 19 PROSPECTIVE JUROR: Those are the only two  
 20 options I see.  
 21 MR. OWENS: Down at question 54, you are  
 22 asked if you wanted to serve on the jury, and you said I  
 23 don't care what he gets. They all seem fair.  
 24 PROSPECTIVE JUROR: I only think the first  
 25 is fair.

257

1 MR. OWENS: You have a different opinion  
 2 then a week ago when you were filling this out?  
 3 PROSPECTIVE JUROR: Yes, I do.  
 4 MR. OWENS: Last week you thought they  
 5 all seemed fair.  
 6 PROSPECTIVE JUROR: More I think about it  
 7 I don't think he deserves a second chance to be out in  
 8 public. If he did do it again, I would feel horrible.  
 9 MR. OWENS: Last week you said you doesn't  
 10 care what he does. What did you mean by that?  
 11 PROSPECTIVE JUROR: I kind of -- I guess I  
 12 was kind of hoping I wouldn't get picked.  
 13 MR. OWENS: You started figuring that the  
 14 answers last week were going to do that for you?  
 15 PROSPECTIVE JUROR: I answered them  
 16 honestly. But if I have to do it, I will do it.  
 17 MR. OWENS: But the way you answered last  
 18 week that was kind of to get picked. But today you don't  
 19 want to be picked?  
 20 PROSPECTIVE JUROR: I'm being honest.  
 21 MR. OWENS: All right. Back then you say  
 22 you liked to consider everything. So you don't feel that  
 23 way today?  
 24 PROSPECTIVE JUROR: I'll would be more  
 25 interested in hearing whether or not he's guilty, as

258

1 opposed to what punishment he gets.  
 2 MR. OWENS: Why is that?  
 3 PROSPECTIVE JUROR: Because I think that  
 4 it's more interesting to me.  
 5 MR. OWENS: Okay. You know the jury is  
 6 going to start out knowing that he's been found guilty?  
 7 PROSPECTIVE JUROR: Exactly.  
 8 MR. OWENS: Last week you said you could  
 9 consider all four forms of punishment, depending on the  
 10 facts of the case. Now you're feeling you can't consider  
 11 all four forms of punishment.  
 12 PROSPECTIVE JUROR: I don't think I can. I  
 13 like to keep an open mind. I really don't think I can.  
 14 MR. OWENS: Are you willing to wait until  
 15 you hear the evidence before you make that decision?  
 16 PROSPECTIVE JUROR: Yes.  
 17 MR. OWENS: So you think that you could  
 18 wait on deciding which one of the four until you've heard  
 19 all the facts and circumstances?  
 20 PROSPECTIVE JUROR: I think I owe that to  
 21 everyone involved. So at least -- I'm feeling it would be  
 22 very hard for me to pick the other two.  
 23 MR. OWENS: The difference between saying  
 24 you couldn't do it, or wouldn't do it, or it would be hard  
 25 to do it, you know what I'm saying?

259

1 PROSPECTIVE JUROR: Exactly. I don't know  
 2 yet. I don't know the facts.  
 3 MR. OWENS: It's a serious matter  
 4 obviously.  
 5 PROSPECTIVE JUROR: Exactly.  
 6 MR. OWENS: It's important, isn't it, that  
 7 you hear the facts and circumstances before you come to a  
 8 decision?  
 9 PROSPECTIVE JUROR: Yes.  
 10 MR. OWENS: Right now you're saying you  
 11 don't know if you can wait to do that or not.  
 12 PROSPECTIVE JUROR: Sorry?  
 13 MR. OWENS: Right now you're saying you  
 14 don't know if you can wait to hear the facts and  
 15 circumstances or not.  
 16 PROSPECTIVE JUROR: I will wait. But in  
 17 my mind I feel there's only two options, in my mind. But  
 18 based on what I know right now.  
 19 MR. OWENS: So there's a possibility that  
 20 there might be -- one of the other options may become  
 21 attractive to you, if you hear more facts and  
 22 circumstances.  
 23 PROSPECTIVE JUROR: Possibly.  
 24 MR. OWENS: Okay. I don't have anything  
 25 further, your Honor.

260

1 THE COURT: Mr. Schieck.  
 2 MR. SCHIECK: Thank you, your Honor.  
 3 Mr. Davie, in the questionnaire it's probably a  
 4 little unfair to ask you to tell us how you think without  
 5 enough information to give us full answers.  
 6 PROSPECTIVE JUROR: Yes.  
 7 MR. SCHIECK: And the question that you  
 8 indicated you really don't care was the last question on  
 9 the questionnaire. You think that might have factored in  
 10 your answer, that you just wanted to give that answer to  
 11 be done?  
 12 PROSPECTIVE JUROR: Yes, it may have.  
 13 MR. SCHIECK: Everything else in your  
 14 questionnaire indicates that you're a person that likes to  
 15 have the information before giving an answer. In fact,  
 16 one of the questions concerning whether the death penalty  
 17 is given too much, not enough, you wrote I'd like to see  
 18 the statistics.  
 19 PROSPECTIVE JUROR: Correct. I wouldn't  
 20 know whether it is or isn't.  
 21 MR. SCHIECK: Would it be fair to say that  
 22 you would be at least willing to listen to all the facts  
 23 before you decided what the appropriate punishment would  
 24 be in the case?  
 25 PROSPECTIVE JUROR: I think I would have

261

1 to.  
 2 MR. SCHIECK: With just the limited  
 3 information you have, you perhaps would foreclosed the two  
 4 possibilities and allow for parole after at least 40  
 5 years, because you don't have all the information  
 6 available to you?  
 7 PROSPECTIVE JUROR: Correct. But I do  
 8 know that someone was murdered.  
 9 MR. SCHIECK: Correct. And there are four  
 10 possible forms of punishment that the law says you need to  
 11 be able to consider.  
 12 PROSPECTIVE JUROR: That's what I'm having  
 13 a hard time with. I can do that. I'll try to listen to  
 14 everything. But in my head it's one or the other.  
 15 MR. SCHIECK: In another place in the  
 16 questionnaire you were asked about knowing someone close  
 17 to you that has a substance abuse problem. You indicated  
 18 that you're sympathetic. I take that to mean you're  
 19 sympathetic to those types of problems that individuals  
 20 might have. Is that a fair statement?  
 21 PROSPECTIVE JUROR: Well, it's my Dad, so  
 22 it's different. My Dad an alcoholic. And, yeah, I'm  
 23 sympathetic to that.  
 24 MR. SCHIECK: You also indicated you think  
 25 police abuse their power frequently. Is there something

262

1 in your past that causes you to form that opinion?  
 2 PROSPECTIVE JUROR: My problem with the  
 3 police is it's like a couple of bad apples that ruin the  
 4 whole bunch. I think they use force when it's not  
 5 necessary a lot, and that really bothers me. I mean,  
 6 there's more good police than bad police. Thank God for  
 7 keeping us safe, but I don't like it when I see that.  
 8 MR. SCHIECK: Was that situation here or  
 9 back in Philadelphia?  
 10 PROSPECTIVE JUROR: I've seen it here.  
 11 MR. SCHIECK: Thank you. Pass for cause,  
 12 your Honor.  
 13 MR. OWENS: May we approach, your Honor.  
 14 THE COURT: Yes.  
 15 (Discussion held at the bench.)  
 16 THE COURT: We'll take our evening recess.  
 17 It's 5:25. Here's what we're going to do. We're going to  
 18 come back tomorrow -- well, first off, Ms. Johnson,  
 19 Mr. Taylor, Ms. Bailey, Ms. Mills, Mr. Henck, Mr. Hibbard,  
 20 Ms. Curtis, Mr. Smith, Ms. Meyrick, Ms. Cardillo,  
 21 Ms. Theus, Ms. Noahr, Ms. Bundren, Mr. Ramirez, Mr. Morin,  
 22 Mr. Garcia, Mr. Salak, Mr. Davie, I'm going to tell you  
 23 all -- excuse me Mr. White, I'm going to tell you all to  
 24 come back tomorrow at 1:30, rather than coming back in the  
 25 morning. Since you have been questioned, there's no need

263

1 for you all to come in in the morning when we finish up  
 2 with everybody else and have to sit around.  
 3 So you all can come back at 1:30.  
 4 Everybody else I'm going to need to come back at 10:30  
 5 tomorrow so we can finish with the attorneys' questioning  
 6 of you all.  
 7 Then once that's finished, I'm hopeful in  
 8 the early afternoon, we'll be to the point we have enough  
 9 jurors to begin the final part of the process where the  
 10 attorneys are involved in seating actually 14 people and  
 11 move forward from there.  
 12 JURY ADMONITION  
 13 During the recess, ladies and gentlemen,  
 14 you are admonished not to converse among yourselves or  
 15 with anyone else, including, without limitation, the  
 16 lawyers, parties and witnesses, on any subject connected  
 17 with this trial, or any other case referred to during it,  
 18 or read, watch, or listen to any report of or commentary  
 19 on the trial, or any person connected with this trial, or  
 20 any such other case by any medium of information  
 21 including, without limitation, newspapers, television,  
 22 internet or radio.  
 23 You are further admonished not to form or  
 24 express any opinion on any subject connected with this  
 25 trial until the case is finally submitted to you.

264

1 THE COURT: Outside the presence of the  
2 jury. Still on the record. Mr. Owens, you wanted to make  
3 a representation as to Mr. Davie.

4 MR. OWENS: Well, Mr. Davie, I don't know  
5 if he just wants to get off the jury or what it is. His  
6 answers to questioning was 180 degrees from what they were  
7 a week ago. I think he's a flake. I think he's bad news  
8 if he gets on the jury. It's going to cause problems.

9 I don't think we got a good record now for keeping  
10 him absent some tactical reason by the defense attorneys.  
11 But we're challenging him for cause, based upon the fact  
12 that he said several times there is only two options for  
13 him.

14 I got him to kind of say he'd think about the other  
15 ones. But then he, when pushed on it, he kept going back  
16 saying there's two, death or life without. That was it  
17 for him. So based upon that, we would challenge him for  
18 cause.

19 THE COURT: Mr. Schieck.

20 MR. SCHIECK: We'll submit it, your Honor.

21 THE COURT: Well, I don't think he is 180  
22 degrees. I feel where he was last week, 120 is not a bad  
23 ballpark estimate. He indicated in his questionnaire he  
24 likes to consider everything, that he would consider the  
25 death penalty under certain circumstances. He would not

265

1 vote automatically for or against it. It depends on the  
2 facts of the case. They all seem to be very appropriate  
3 answers.

4 I agree that he was a little more rigid  
5 today in saying that, you know what, to me it's either  
6 death or life without the possibly of parole, and I don't  
7 think I would want to give somebody a second chance.  
8 Nonetheless, he also seemed to indicate during the  
9 questioning that he could consider the other forms of  
10 punishment.

11 And it seems to the court that it was  
12 clear, to me at least, he was kind of just thinking that  
13 this case probably has certain facts about it that would  
14 make those two appropriate, as opposed to anything else.  
15 Which means you're kind of speculating in your own mind as  
16 to what the facts are. I can see some reasons, I don't  
17 want to get too far into things, but I can see reasons why  
18 the defense would not want to challenge him for cause  
19 based upon his statements about being fairly considerate  
20 and about certain things, wanting to look at statistics  
21 about death penalty cases. They were very thoughtful  
22 answers about things.

23 If you're looking at a case in terms of we  
24 know what our client's background is, we know what his  
25 criminal history is, we know what is realistic in terms of

266

1 what we're asking for, that kind of gentleman may be the  
2 type of person that the defense would want on the jury as  
3 well. In addition to having some views on the police  
4 department that might be in line with some defense  
5 theories. I don't know.

6 Over all, I think that there is enough in  
7 his answers to deny the challenge for cause. I'm going to  
8 go ahead and let him stay.

9 MR. OWENS: Can I point out one thing for  
10 the benefit of the record. The fact that this is a  
11 tactical decision by the defense. Over on question 51 --  
12 do you feel you would consider mitigating factors. And he  
13 says not at all.

14 THE COURT: Mr. Schieck, anything.

15 MR. SCHIECK: No. Nothing else, your  
16 Honor.

17 THE COURT: You still maintain your  
18 position that you are not challenging him for cause,  
19 correct?

20 MR. SCHIECK: Correct.

21 THE COURT: All right. 10:30 tomorrow  
22 morning.


25 CERTIFICATE

267

1 OF  
2 CERTIFIED COURT REPORTER  
3 \* \* \* \* \*

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

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

21   
22 Sharon Howard  
23 C.C.R. #745

268

< Dates >	47:15,	47:17,	196:20,	24:15, 45:17,	233:1.
August 31, 1995	48:25.	49:2.	199:4,	58:2, 58:4,	administers
52:8.	026 66:15.	069 30:2.	237:22,	58:8, 58:9.	8:5.
MARCH 12, 2007	027 47:15,	072 30:11,	238:2,	act 16:18,	administration
1:30, 3:1.	48:25.	42:10, 47:18,	262:17,	56:15, 156:9,	215:13,
March 14th	027. 23:12.	49:3.	262:25.	211:15.	215:15.
37:25, 38:4,	029 40:1,	074 30:8.	abused 112:14,	action 101:1.	administrative
38:16,	47:15,	075 21:21.	196:25.	actions 99:25,	212:11.
41:7.	48:25.	076 42:17,	abuser 72:10.	163:3.	admonished
November 1990	031 40:12,	47:18,	abusers	activities	43:7, 43:16,
27:22.	47:16,	49:3.	206:5.	162:13.	128:8,
#745 1:42,	49:1.	080 22:7,	abusing	activity 28:24,	128:17,
268:26.	033 38:2,	59:12.	194:10.	30:12,	224:5,
'89 219:6.	47:16,	082 24:20,	abusive 147:9,	100:18.	224:14,
'90 219:7.	49:1.	30:15.	148:1,	actual 6:22.	264:14,
'93 59:2,	034 66:15.	086 65:5.	156:20,	Actually 15:13,	264:23.
84:17.	034. 225:2.	094 58:23,	157:6.	47:19,	ADMONITION
'94 59:2.	035 66:15.	65:5.	accept 32:6,	102:24,	43:5, 44:4,
'95. 84:17.	035. 27:4.	095. 65:6.	32:9, 78:2,	103:23,	128:6, 224:3,
'98 189:10.	036 66:16.	Owens 206:14.	78:3, 117:15,	115:20,	264:12.
-i'm 42:4.	038 66:16.		149:1,	120:14,	adult 200:6.
.	038. 225:3.		171:10.	121:20,	advance
< 0 >.	039 27:18,	< 1 >.	accepted	150:16,	54:14.
001 66:12.	66:16.	100 11:20,	217:19.	154:6, 154:7,	advertising
001. 129:19.	040 20:5.	50:5, 52:5,	accepting	154:10,	170:1.
003 36:15,	045 28:2,	185:20,	100:15.	157:4,	advise 50:13.
47:14,	66:16,	244:24.	accident 35:8,	190:18,	advisement
48:24.	225:4.	102 7:21,	108:25,	219:8,	74:13.
004 66:12.	046 41:2,	47:13, 48:24,	244:25.	220:16,	affect 94:10,
007 66:12.	47:16,	64:18, 64:23,	accomplish	264:10.	116:7,
009 66:13.	49:1.	64:24.	11:24.	add 163:7,	204:17,
010 66:13.	048 28:9,	102. 36:3,	According	225:6.	212:12.
015 66:13.	47:17,	44:12,	183:17,	added 166:9.	affection
016 26:20,	49:1.	129:3.	227:19.	addition	209:12.
66:13.	050 66:17.	10:00 39:2,	account 71:6,	267:3.	affektive
018 18:20.	050. 28:14.	39:4.	90:9,	additional 5:4,	65:13.
019 37:5,	051 28:18,	10:30 39:5,	153:1.	5:22,	affiliate
47:14,	66:17.	264:4,	accountable	208:10.	190:20.
48:24.	052 41:10,	267:21.	100:1.	Additionally	affirmation
019. 25:24.	47:17,	11:00 39:5.	accuse	5:22, 7:15,	5:3.
020 26:8.	49:2.	120 265:22.	132:20.	14:3, 50:7,	African-american
020. 66:14.	054 47:17,	125 12:8,	accused 25:16,	53:24.	108:15.
021 37:17,	49:2.	54:9.	25:18, 26:3,	address 53:7.	African-america
47:14,	055. 66:17.	14 264:10.	35:3, 58:22,	addresses	n 143:9,
48:25.	056 42:4,	16 45:15,	58:24, 122:8,	90:8.	204:16.
022 66:14.	47:17,	47:20,	190:2,	adjust 77:7.	afternoon
022. 26:14.	49:2.	207:1.	190:4.	administer 8:3,	13:17, 121:1,
023 66:15.	059 29:23,	16. 168:11.	acquainted	56:12.	129:2,
025 22:23,	255:11.	17 17:11.	22:19, 23:8,	administered	158:25,
	062 23:20,	18 17:15.	24:9, 24:11,	228:18,	161:20,

269

271

180 225:23,		ability 16:1,	161:21,	albums 36:12.	203:14,
265:6,		57:16, 70:23,	173:5,	alcohol 80:12,	221:24,
265:21.	< 5 >.	84:7, 94:10,	174:20,	194:7,	221:25,
19 29:17,	51 267:11.	95:24,	178:2, 203:3,	194:10,	223:15,
252:7.	54 141:14,	108:15,	237:13,	196:25.	230:18.
1987 218:5.	257:21.	108:20,	254:5,	alcoholic	Amazo 20:4.
1990 27:22,	5:00 39:12,	116:7, 117:4,	264:8.	262:22.	amazing
206:25.	230:19,	151:3,	age 190:11,	alcoholics	105:13.
1993 218:5.	230:22.	154:12,	195:2, 195:3,	197:2.	among 43:7,
1996 51:19.	5:25. 263:17.	204:17,	199:20.	Alex 19:13.	93:17, 128:8,
1996. 11:6.	5:30 231:8.	244:2.	agenda	alive 180:9.	224:5,
1997 59:19.	5:30. 231:11.	absent	146:24.	allegation	264:14.
1:20. 127:25.		265:10.	aggravating	216:6.	amount 61:25.
1:30 263:24.		Absolutely	100:10,	allegations	Amv 20:4.
1:30. 264:3.	< 7 >.	23:5, 73:17,	130:8,	90:19.	analyze
	7:30 38:17.	84:11, 85:16,	149:12,	alleged 35:5.	136:8.
< 2 >.		87:13, 92:4,	149:25,	Allen 13:1,	and/or 5:16.
2 208:20.	< 8 >.	118:15,	150:3, 150:8,	52:24.	Angel 20:15.
20 29:14,	8 197:11.	123:21,	150:13.	allergies	Angeles
29:18,	8. 147:17.	125:13,	aggravation	159:5.	41:11.
251:25.	80 64:8,	125:16,	78:1,	allow 72:3,	Angelo 20:13.
21 84:19.	64:15.	125:21,	139:4.	111:2,	anger 179:13.
22 102:18,	80s 192:9.	160:8,	aggressive	162:17,	angry 40:16,
158:24,	81 135:2.	163:13,	156:17.	165:5, 213:4,	112:5,
187:20.	81. 225:1.	164:10,	agree 32:19,	233:18,	116:10.
23 165:16,	82. 135:3.	165:9,	47:8, 61:1,	262:4.	animal 206:5.
241:16.	839 12:7,	168:16,	61:15, 111:1,	allowed 186:10,	Ann 19:23.
23. 168:11.	52:10.	209:4,	181:22,	186:19,	Annette
24 225:15.	86 60:3,	210:11,	228:20,	244:24.	19:21.
2:30 128:1,	64:13.	212:10,	229:18,	alluded	Annette
128:20.	88 59:18.	218:20,	266:4.	68:15.	27:4.
	8:00 38:17.	228:5,	agreed	Almost 36:6,	announce
< 3 >.		246:10,	229:11.	94:2.	248:15.
3 1:3, 6:12,	< 9 >.	253:8,	agreeing	alone 15:14,	answered 56:20,
49:13, 52:10,	90 143:6,	253:12,	47:5.	57:9,	67:1, 118:4,
208:20.	90 143:15.	254:25,	agrees	133:6.	131:13,
32 190:7.	90s 192:9.	255:8.	133:20.	already 50:16,	134:8,
	94. 63:19.	abuse 29:24,	ahead 4:8,	51:18, 51:25,	230:10,
	95 143:6,	74:5, 80:2,	42:25, 47:12,	102:18,	237:21,
< 4 >.	143:15.	80:12, 83:13,	48:6, 67:23,	103:11,	258:15,
40 11:19,	95. 64:2.	83:17, 93:14,	98:5, 129:18,	110:12,	258:17.
11:20, 52:4,	99 244:24.	111:15,	267:8.	127:2, 131:1,	answering 7:10,
52:5, 63:23,		112:17,	ahold 5:5,	139:17,	65:7,
185:20,	< A >.	112:20,	9:22.	141:17,	166:3.
262:4.	abide 217:13,	112:24,	Air 14:20,	142:14,	answers 15:8,
42 249:13.	221:20,	119:7,	33:3,	143:3,	48:20, 57:8,
49 140:19.	223:2.	119:25,	178:9.	144:23,	123:22,
4:30 230:18.		133:4, 156:8,	Aires 12:18,	145:13,	142:10,
		157:2, 194:7,	52:16.	147:5,	149:8,
		194:10,	Albert 55:2.	176:22,	170:11,

270

272

225:11,  
229:15,  
258:14,  
261:5, 265:6,  
266:3,  
266:22,  
267:7.  
anticipate  
11:23, 33:1,  
61:22.  
antisocial  
9:2.  
anytime  
211:22.  
anyway 46:18,  
60:11, 165:6,  
246:18.  
apart 230:7.  
apologize  
25:14, 54:13,  
112:3.  
appear 131:22,  
191:20,  
229:18.  
appearance  
142:14.  
APPEARANCES  
2:1.  
apples 263:3.  
apply 32:4,  
32:9, 32:15,  
61:4, 61:9,  
173:9,  
222:20.  
applying 75:22,  
177:21.  
Appreciate  
13:12, 49:4,  
53:6, 68:4,  
78:21, 245:6,  
246:18.  
appreciates  
35:23.  
appreciation  
35:18.  
Approach 65:2,  
67:20, 74:14,  
263:13.  
appropriately  
82:14,  
82:19.  
approximately  
208:20.  
Arabe 13:3,  
52:25.  
arbitrary  
233:2.  
area 12:5,  
13:8, 52:10,  
53:5, 90:24,  
146:8, 163:9,  
187:10,  
207:13.  
areas 12:3,  
12:9,  
52:13.  
argue 102:5.  
argument  
232:14,  
252:1.  
arguments  
31:25,  
60:25.  
Arizona 5:16,  
26:1, 94:12,  
97:8.  
arose 169:7.  
around 46:12,  
114:18,  
117:1,  
118:24,  
119:3,  
123:18,  
225:23,  
264:2.  
arrest  
121:25.  
arrested 26:3,  
29:13, 99:10,  
121:21,  
121:22,  
252:4.  
arrests 121:11,  
126:11,  
162:19.  
arrived  
54:20.  
Art 12:25,  
52:23.  
artificial

175:4.  
aside 227:9.  
asks 229:13.  
asleep  
126:15.  
Assault 17:9,  
27:8, 187:25,  
188:1, 188:2,  
189:14,  
191:11,  
241:21.  
assessment  
94:16,  
115:7.  
assigned  
178:12,  
215:24.  
assist 136:15,  
137:2.  
assistant 9:21,  
23:17,  
136:21,  
136:22,  
162:2.  
Assisting  
13:19,  
53:15.  
associated  
12:10.  
associating  
23:16.  
association  
94:9.  
assume 70:5,  
95:6, 112:16,  
115:11,  
116:11,  
146:23,  
149:17,  
159:15,  
161:3,  
176:24,  
177:18,  
199:20,  
200:17,  
201:21,  
202:14,  
202:17,  
217:2, 218:1,  
235:22,

273

229:12.  
Ballerina 12:6,  
52:9.  
ballpark  
265:23.  
banker 174:2.  
Base 62:6,  
169:13,  
212:11.  
Based 48:18,  
72:3, 97:6,  
107:13,  
136:6,  
137:22,  
142:14,  
145:15,  
149:21,  
153:12,  
167:15,  
167:24,  
167:25,  
170:22,  
183:7,  
209:24,  
214:11,  
216:3,  
221:25,  
257:18,  
260:18,  
265:11,  
265:17,  
266:19.  
basic 16:9,  
127:14.  
Basically  
75:16, 87:23,  
105:2,  
131:23,  
133:8,  
145:14,  
145:16,  
173:9,  
197:24,  
198:21,  
219:9,  
225:18,  
232:7,  
253:6.  
basis 103:24,  
160:15,  
170:6,  
183:18,  
254:14.  
beach 254:8.  
Bear 13:11,  
111:11.  
bearing 57:15,  
80:14, 80:16,  
80:18, 155:2,  
201:17.  
beat 199:7.  
beaten 190:5.  
became 179:7,  
250:14.  
become 155:3,  
260:20.  
beforehand  
33:3.  
begin 264:9.  
beginning  
60:23, 117:1,  
208:6.  
behalf 10:25,  
13:15,  
134:12.  
behavior  
114:18,  
118:24.  
behind 3:19.  
belief 60:20,  
110:6,  
154:20,  
154:21,  
154:24,  
155:6,  
217:22,  
229:3,  
233:24.  
beliefs 31:11,  
131:10,  
183:8,  
205:21,  
206:5,  
251:11.  
believable  
126:21.  
believed 208:3,  
229:7.  
believes 22:18,  
23:7, 24:8,

24:14,  
130:23,  
211:14.  
believing  
119:12.  
belly 3:24.  
below 185:16.  
belt 37:18.  
Ben 13:25,  
53:21.  
bench 65:2,  
74:14,  
128:23.  
bench. 65:3,  
67:22, 74:15,  
263:15.  
benefit  
267:10.  
Benjamin  
20:21.  
Bernardino  
239:3.  
Berry 56:1.  
besides 101:4,  
133:3,  
163:2.  
best 16:1,  
16:8, 63:6,  
89:4, 115:7,  
198:22,  
217:14.  
better 6:19,  
34:19, 35:11,  
106:20,  
152:11,  
156:15,  
210:6,  
216:14,  
242:16.  
beyond 32:17,  
61:12, 61:17,  
130:8, 131:8,  
150:13,  
154:15,  
154:18,  
228:8.  
bias 138:2.  
biased 141:22,  
190:6.  
Rickert 13:7,

275

246:8.  
assuming  
110:16,  
202:16.  
assure 14:23.  
attempt 28:15,  
235:7.  
attempted  
26:22,  
237:16.  
attend 63:22,  
63:24,  
122:9.  
attended  
90:21.  
attention 9:15,  
9:16, 13:12,  
53:6, 66:5,  
82:4, 82:10,  
82:15,  
107:21,  
218:3.  
attitudes  
185:8.  
attorneys  
54:9.  
Attorney 4:25,  
11:3, 14:13,  
22:20, 33:8,  
46:16, 51:15,  
65:18, 181:2,  
181:5.  
attractive  
260:21.  
attribute  
156:11.  
audience  
65:24.  
aunt 27:20,  
137:2, 137:3,  
206:20,  
216:17.  
authorization  
162:18.  
automatic 69:4,  
222:15,  
228:17,  
236:14.  
automatically  
68:16, 73:22,  
87:16,  
100:24,  
120:13,  
124:3,  
131:11,  
133:1,  
140:17,  
140:20,  
140:22,  
161:10,  
171:25,  
174:21,  
201:5,  
205:22,  
212:25,  
222:7, 223:6,  
226:23,  
229:6, 230:1,  
251:12,  
254:22,  
266:1.  
autopsy  
151:20.  
available  
11:13, 52:2,  
76:3, 94:25,  
126:24,  
138:5,  
176:25,  
221:11,  
230:3,  
262:6.  
Average 33:18,  
33:20, 62:4,  
62:5, 62:6.  
avoid 205:10.  
awaiting  
187:17.  
aware 10:15,  
208:12,  
208:22,  
242:22.  
away 5:19,  
33:3, 168:10,  
188:16,  
235:5,  
243:24.  
awhile  
189:12.  
Axiom 14:1,

53:22.  
< B >.  
baby 122:13.  
backed 36:12,  
90:13,  
90:19.  
background  
15:4, 70:3,  
70:10,  
100:18,  
108:19,  
115:5, 120:5,  
120:9,  
149:17,  
217:25,  
253:14,  
266:24.  
bad 16:6,  
34:14, 86:7,  
86:8, 117:2,  
133:22,  
134:3,  
153:22,  
168:14,  
190:5,  
242:19,  
242:21,  
256:14,  
263:3, 263:6,  
265:7,  
265:22.  
badger  
205:18.  
Baffling 209:8,  
209:9.  
Bailey 18:15,  
66:13,  
102:12,  
102:13,  
108:9,  
263:19.  
BAILIFF 8:14,  
48:9,  
50:17.  
balanced  
210:17.  
balancing  
107:21,

274

53:4.  
big 15:2, 40:8,  
54:7, 54:13,  
123:10.  
baby 122:13.  
billfold  
105:24.  
billing 250:13,  
250:14.  
bit 6:19, 10:8,  
12:5, 13:10,  
35:11, 47:10,  
53:8, 62:3,  
63:10, 65:12,  
75:3, 89:6,  
102:15,  
112:8, 233:7,  
243:4,  
244:9.  
black 252:3.  
Blayne 20:25,  
251:22.  
blessing  
33:25.  
blinded  
209:12.  
blow 37:12.  
board 5:23,  
211:14,  
211:15.  
Bobbie 18:10.  
Bobby 56:3.  
Bonanza 12:6,  
12:11.  
book 121:6,  
121:8,  
228:1.  
born 204:24.  
Boston 243:11,  
247:16.  
bothers  
263:5.  
bottle 39:22.  
Bottom 27:2,  
37:23,  
134:16,  
166:14.  
bought  
213:18.  
box 115:20,  
203:15,  
209:20,  
213:20,  
225:4.  
boyfriend  
190:23,  
252:10.  
boys 160:4.  
Brady 18:4,  
66:12, 67:24,  
71:11, 73:9,  
73:22, 74:17,  
129:21,  
130:1, 130:2,  
132:6,  
134:15,  
134:17,  
135:1.  
brain 200:7.  
branch 178:8.  
break 39:7,  
39:12, 39:20,  
45:18, 65:12,  
111:10,  
123:8,  
134:11,  
233:5.  
breaking  
126:15.  
Brenda 56:1.  
Brent 19:1.  
Brianne 55:4.  
Brief 4:21,  
43:19, 113:2,  
145:10,  
224:17,  
233:11.  
briefly  
67:20.  
bring 5:16,  
9:15, 15:10,  
15:11, 38:20,  
39:22, 48:8,  
54:7, 121:7,  
226:14.  
bringing 102:9,  
164:8.  
brings 102:4.  
Brinnon 22:2.  
broad 100:13,  
171:18.

broken 37:11,  
123:7,  
126:11,  
126:14.  
broker 174:6.  
Brooks 14:2,  
53:23.  
Brother 25:20,  
27:5, 28:15,  
29:23, 30:8,  
40:17, 64:15,  
136:23,  
187:2,  
190:14,  
190:15,  
199:7,  
209:13,  
217:3, 217:6,  
234:22,  
234:23,  
235:2,  
237:15,  
237:24.  
brother-in-law  
30:18,  
83:6.  
brothers 30:4,  
40:13, 40:23,  
64:4.  
brothers-in-law  
30:16.  
brought 3:9,  
42:24,  
44:4.  
bruise 252:3.  
brushes  
109:5.  
Btu 130:15.  
building 62:4,  
192:16.  
bunch 129:14,  
263:4.  
Bundren 20:2,  
27:19, 66:16,  
206:14,  
263:21.  
burden 32:17,  
32:20, 32:25,  
34:17, 35:25,  
44:2, 46:5,

276

61:11, 61:16,  
61:21, 61:25,  
63:13, 64:10,  
176:2,  
202:18.  
Burfield 12:21,  
52:18.  
Burglary 11:7,  
27:8, 30:8,  
51:20,  
188:25,  
189:13.  
burned  
157:11.  
bus 37:3.  
Business 12:12,  
12:13, 36:4,  
40:2, 40:4,  
41:13, 41:14,  
41:19, 44:12,  
44:13, 48:10,  
52:14, 63:24,  
91:2, 91:3,  
91:7, 169:23,  
250:15.  
busy 122:11,  
122:13.  
buying 59:22.  
Byrd 55:6,  
65:5.  
.  
< C >.  
C-131341 1:2,  
3:5, 4:22,  
6:8, 48:14,  
233:13,  
234:5.  
C131341  
134:20.  
cafeteria  
8:23.  
Cal 13:2,  
52:24.  
calendar 22:17,  
39:1.  
calendars  
38:24.  
California  
26:18, 59:4,  
59:15, 60:4,  
136:16,  
136:18,  
136:20,  
160:5,  
251:5.  
call 5:24, 7:5,  
9:24, 10:12,  
12:17, 13:24,  
17:20, 40:15,  
50:4, 53:20,  
54:19, 66:8,  
123:11,  
129:1,  
129:10,  
207:24,  
214:7,  
220:4.  
called 5:7,  
5:8, 10:11,  
10:16, 10:20,  
12:6, 13:7,  
22:15, 31:20,  
51:4, 53:4,  
56:8, 113:18,  
114:2,  
220:13,  
252:3,  
257:13.  
calling 7:15,  
7:16.  
calls 63:21,  
163:20.  
calmer  
156:14.  
camp 188:22.  
Candice 22:9,  
135:2.  
candor 53:7,  
108:9.  
capacity  
195:21.  
Capital 12:11,  
52:14.  
capricious  
233:2.  
captain  
195:17.  
car 35:8, 37:3,  
37:10, 91:1,  
91:2, 105:19,  
123:7, 123:8,  
123:14,  
126:10,  
126:14,  
126:15,  
126:17,  
126:18,  
238:17,  
238:19.  
Cardillo 19:9,  
66:15, 171:2,  
263:20.  
care 9:16,  
64:14,  
194:23,  
197:17,  
197:24,  
257:23,  
258:10,  
261:8.  
cargo 250:18.  
Carol 8:2, 8:3,  
12:22, 17:20,  
50:7, 50:8,  
52:19, 54:19,  
56:12.  
Carpenter  
234:11.  
Carr 20:17,  
47:17,  
49:2.  
carry 162:16.  
Carvelli 20:11,  
28:9, 41:5,  
47:16,  
49:1.  
cases 15:18,  
32:15, 34:6,  
34:7, 34:8,  
38:25, 62:14,  
62:16, 62:17,  
62:20, 81:14,  
81:19, 81:25,  
82:3, 82:6,  
82:10, 85:10,  
98:23,  
113:24,  
114:24,  
124:4, 137:4,

277

87:3, 112:19,  
159:14,  
159:17,  
159:19,  
159:22.  
choice 138:7,  
158:6,  
181:19,  
181:20,  
184:23,  
185:1, 185:2,  
212:25,  
213:8,  
214:22,  
232:4,  
246:19.  
choices 101:22,  
158:7.  
Choir 16:20,  
56:17.  
choose 73:1,  
102:2, 125:8,  
138:7, 141:4,  
144:20.  
choosing  
92:14.  
chose 145:1,  
207:22.  
chosen 57:11.  
Chris 2:2,  
11:2, 22:25,  
51:14.  
Christa 19:5.  
Christina  
27:18.  
Christine  
20:2.  
circle 185:9.  
circled  
185:9.  
circumstance  
130:8,  
166:21,  
169:7.  
citizen  
17:19.  
citizens 57:24,  
189:18.  
City 94:6.  
Civil 15:19,  
16:5, 35:6,  
35:17, 85:24,  
85:25,  
116:2.  
claim 86:3.  
Claire 12:19,  
52:17.  
clarifying  
231:17.  
Clark 1:7, 2:6,  
12:23, 13:19,  
23:22, 52:20,  
53:15, 53:16,  
189:23,  
218:2,  
250:22.  
clean 173:10.  
clear 3:20,  
130:24,  
131:2, 131:4,  
133:5, 218:4,  
226:6,  
226:24,  
254:22,  
266:12.  
clearly 7:23.  
client 10:5,  
13:21, 53:17,  
266:24.  
clients 36:12,  
63:25.  
close 24:1,  
25:16, 25:18,  
58:21, 83:19,  
84:1, 93:13,  
111:13,  
121:18,  
121:25,  
123:4, 168:6,  
186:23,  
187:6,  
209:14,  
221:2, 235:1,  
235:2, 239:7,  
249:11,  
254:10,  
262:16.  
closely 10:18,  
51:5.  
closest

225:3.  
closing 31:24,  
60:24.  
co-counsel  
11:4.  
Cohen 55:18,  
59:6.  
cold-blooded  
104:4.  
collectively  
70:20, 87:6,  
115:13,  
125:11.  
college  
163:8.  
colon 131:9.  
color 71:17,  
197:4,  
197:21.  
Colored 179:22,  
179:23.  
combination  
48:19.  
comes 9:13,  
74:8, 129:20,  
135:25,  
143:12,  
143:21,  
144:2, 163:1,  
215:22,  
235:23.  
comfortable  
108:2,  
165:25,  
166:16,  
167:1,  
169:16,  
171:12,  
209:25,  
231:25,  
232:7.  
coming 49:4,  
49:5, 65:6,  
65:7, 87:11,  
88:20, 129:2,  
146:25,  
162:12,  
167:21,  
186:8,  
187:21,

279

202:8, 218:1,  
238:11,  
250:1, 250:4,  
266:21.  
Cassandra  
21:4.  
catch 82:10,  
218:6.  
caught 82:3,  
105:5,  
238:16,  
241:13.  
caused 81:8,  
250:20,  
252:2.  
causes 154:12,  
263:1.  
certain 32:14,  
32:17, 50:19,  
61:8, 69:6,  
70:18, 72:2,  
72:3, 73:11,  
73:19, 90:19,  
103:22,  
104:12,  
124:13,  
132:2,  
148:19,  
148:24,  
157:14,  
167:6,  
175:12,  
182:20,  
184:6,  
193:15,  
202:10,  
232:17,  
236:14,  
265:25,  
266:13,  
266:20.  
certainly  
73:16,  
150:22,  
172:12,  
227:4.  
CERTIFICATE  
267:25.  
CERTIFIED 68:5,  
268:2,  
268:7.  
certify  
268:8.  
cetera 14:18.  
CFO 96:5.  
chain 179:8.  
chains 3:24.  
chair 225:3.  
Challenge  
101:10,  
130:18,  
132:5,  
133:12,  
134:8,  
145:24,  
182:3,  
223:24,  
225:17,  
228:13,  
228:22,  
265:17,  
266:18,  
267:7.  
challenged  
65:25, 130:1,  
225:1.  
challenges  
224:19.  
challenging  
265:11,  
267:18.  
chance 34:9,  
97:19, 106:9,  
243:16,  
244:20,  
256:17,  
257:7, 257:9,  
258:7,  
266:7.  
change 63:22,  
71:24, 126:8,  
164:14,  
197:25,  
210:8,  
211:15,  
222:14,  
227:24,  
227:25,  
228:5,  
229:22,  
230:6.  
changed 104:9,  
143:19,  
240:8.  
Chappell-king  
14:1,  
53:22.  
charge 4:5,  
17:8, 51:23,  
51:25, 52:2,  
75:8, 155:25,  
187:24,  
189:25,  
235:6,  
235:9.  
charged 13:21,  
53:17,  
249:11,  
252:11.  
charges 11:15,  
51:17,  
160:16,  
160:18,  
189:12,  
190:3,  
217:17.  
Charles 13:25,  
18:19,  
53:21.  
check 28:4,  
46:3, 191:14,  
238:16.  
checked 102:19,  
203:14,  
205:9.  
Chermaine 13:4,  
53:1.  
Cheryl 19:9.  
Chicago  
174:9.  
chief 22:17,  
93:7.  
child 147:17,  
194:14,  
200:6,  
206:5.  
childhood 73:3,  
194:6,  
204:21.  
children 26:15,

278

230:18,  
231:20,  
263:24.  
command  
179:8.  
command  
109:16.  
comment 90:3,  
228:9,  
228:14.  
commentary  
43:11,  
128:12,  
224:9,  
264:18.  
comments  
201:22.  
commercial  
41:19.  
Commission  
215:20.  
Commissioner  
49:6, 65:8.  
commit 70:11,  
175:5,  
176:6.  
commitment  
200:12.  
commits  
145:7.  
committed  
124:23,  
182:25,  
217:20,  
219:15.  
committing  
101:2,  
102:9.  
communicate  
172:25,  
200:20,  
216:14.  
community  
37:24, 46:3,  
106:14,  
162:13,  
219:10,  
243:19.  
companies  
36:19, 63:20,  
63:23.  
company 63:16,  
93:8, 250:16,  
251:2.  
compelled  
214:4.  
compelling  
227:9.  
complaining  
215:23.  
complaint  
215:22.  
complete 15:8,  
57:7.  
completely  
109:15,  
155:3.  
completing  
174:11.  
Compton 13:4,  
53:1.  
computer  
48:10.  
con 78:8,  
143:2.  
conceive  
253:10.  
concept 92:9.  
concern 91:12,  
151:7,  
154:12,  
227:6.  
concerned  
87:22,  
89:3.  
concerning  
108:14,  
261:16.  
concerns 70:23,  
95:23,  
151:2.  
conclusion  
87:12, 210:1,  
210:3,  
216:14.  
conclusions  
76:24.  
confessed  
190:22.  
confident  
213:13.  
confidential  
5:13.  
confidentiality  
36:19.  
confused  
130:13,  
130:25,  
142:9,  
251:14.  
connected 43:9,  
43:12, 43:17,  
128:10,  
128:13,  
128:18,  
224:7,  
224:10,  
224:15,  
264:16,  
264:19,  
264:24.  
conscientious  
182:12.  
consequences  
241:25.  
conservative  
47:2.  
considerate  
266:19.  
consideration  
11:15, 63:9,  
101:18,  
141:1.  
considered  
133:10,  
178:14,  
213:18.  
considering  
70:7, 103:14,  
123:24,  
140:24,  
150:14,  
155:4,  
172:10.  
considers  
202:11.  
construction  
34:6, 93:8,  
96:6.  
contact 5:15,

280