



DEBORAH PANOS  
Graduation photo

## Chappell

From 1B

the jurors were leaning toward a death sentence from the beginning of their deliberations. She included herself in that category.

"Once I saw those pictures and started hearing the evidence, no, I don't think I ever thought of anything less than the death penalty," she said.

Panos died in her North Lamb Boulevard residence after Chappell stabbed her 13 times with a kitchen knife. Chappell then fled the scene in her car.

Police had arrested Chappell three times since February 1994 on domestic violence charges involving Panos. He was released from jail in an unrelated case less than three hours before the killing.

Hill said Chappell's history of abusing Panos, coupled with the brutality of the slaying, made the death penalty warranted in this case.

Prosecutors argued that Panos had ended her relationship with Chappell, but Chappell refused to let her go.

APPENDIX "M"

PETITION QUESTION 23. (i) Ground Nine - Supporting Facts

(i) Ground Nine:

1       Petitioner's conviction and sentenced impossd for the  
2 crime (s) of Burglary; Robbery; and Murder is unlawful and  
3 unconstitutional because the defense in this case did not  
4 have affective assistance of counsel as required by law.

5                   Supporting Facts:

6       The record in this case (see transcripts) shows that  
7 questioning of witnesses by counsel [Howard S. Brooks] was  
8 inconsistent with [his] duties and/or without the input of  
9 the defendant.

10       The defendant, James M. Chappell, directly gave counsel  
11 [Howard S. Brooks] information concerning said witnesses.

12       Counsel failed to act on said information that may have  
13 been helpful to defense. Counsel further ignored information  
14 given [him] concerning said witnesses.

15       ///

16       ///

17       ///

APPENDIX "N"

PETITION QUESTION 23. (j) Ground Ten - Supporting Facts

(j) Ground Ten:

Petitioner's conviction and sentence imposed for the crime (s) of Burglary; Robbery; and Murder is unlawful and unconstitutional because the court erred in allowing witnesses to testify as to the state of mind of the victim.

By court allowing said testimony court allowed hearsay testimony without evidence and/or supporting evidence.

Supporting Facts:

See court transcripts.

///

///

///

CERTIFICATE OF SERVICE

1 I, JAMES M. CHAPPELL, hereby certify that on the  
2 date of October 17, 1999, I served a true and correct  
3 copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS  
4 (POST-CONVICTION) by mailing a copy thereof to:  
5

6 E. K. McDANIEL, WARDEN  
7 ELW STATE PRISON  
8 P. O. BOX 1989  
9 ELY, NEVADA 89301

10 STEWART L. BELL  
11 CLARK COUNTY DISTRICT ATTORNEY  
12 200 SOUTH THIRD STREET, SUITE 701  
13 LAS VEGAS, NEVADA 89155

14 FRANKIE SUE DEL PAPA  
15 NEVADA ATTORNEY GENERAL  
16 100 NORTH CARSON STREET  
17 CARSON CITY, NEVADA 89701

  
JAMES M. CHAPPELL  
PETITIONER

# EXHIBIT 263

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,  
Appellant/Cross-Respondent,  
vs.  
THE STATE OF NEVADA,  
Respondent/Cross-Appellant.

Supreme Court No. 43493

District Court Case No. C131341

REMITTITUR

TO: Shirley Parraguirre, Clark County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

**FILED**

MAY 10 2006

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY J. Richards  
CHIEF DEPUTY CLERK

DATE: May 2, 2006

Janette M. Bloom, Clerk of Court

By: J. Richards  
Chief Deputy Clerk

cc: Eighth Judicial District Court Dept. 11, District Judge  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Special Public Defender David M. Schieck

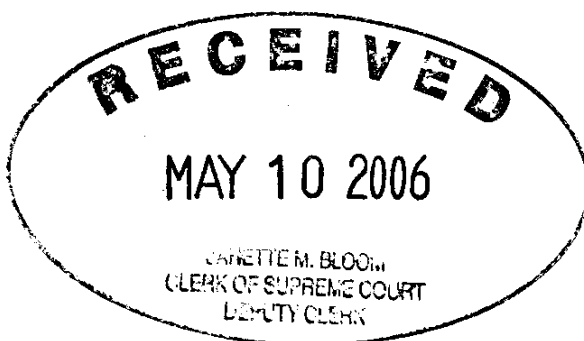
**RECEIPT FOR REMITTITUR**

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on

May 4, 2006

Brandi J. Wendy  
Deputy County Clerk



RECEIVED

MAY 04 2006

COUNTY CLERK



IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,  
Appellant/Cross-Respondent,  
vs.  
THE STATE OF NEVADA,  
Respondent/Cross-Appellant.

Supreme Court No. 43493

District Court Case No. C131341

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 7th day of April, 2006.

IN WITNESS WHEREOF, I have subscribed my name and affixed  
the seal of the Supreme Court at my Office in Carson City,  
Nevada, this 2nd day of May, 2006.

Janette M. Bloom, Supreme Court Clerk

By: \_\_\_\_\_

*J. Richards*  
Chief Deputy Clerk

# EXHIBIT 264

JChappell CORA008581

1 NOTC  
 2 DAVID ROGER  
 Clark County District Attorney  
 Nevada Bar #002781  
 3 CHRIS J. OWENS  
 Chief Deputy District Attorney  
 4 Nevada Bar #001190  
 200 Lewis Avenue  
 5 Las Vegas, Nevada 89155-2212  
 (702) 671-2500  
 6 Attorney for Plaintiff

DISTRICT COURT  
 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
 10 Plaintiff,

11 -vs-

12 JAMES MONTELL CHAPPELL,  
 #1212860  
 13 Defendant.

CASE NO: C131341

DEPT NO: III

NOTICE OF WITNESSES  
 [NRS 174.234(1)(a)]

17 TO: JAMES MONTELL CHAPPELL, Defendant; and

18 TO: SPECIAL PUBLIC DEFENDER, Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF  
 20 NEVADA intends to call the following witnesses in its case in chief:

21	<u>NAME</u>	<u>ADDRESS</u>
22	ADAMS, NORM	NEV. DEPT. OF PAROLE & PROB.
23	ARAVE, LARRY	NEV. DEPT. OF PAROLE & PROB.
24	AUSSERNS, P.O.	TUCSON POLICE DEPT., AZ
25	AYERS, LUANA	311 CRANE ST., PARK HILLS, MO
26	BERFIELD, LAURA	UNKNOWN ADDRESS, TUCSON, AZ
27	BURTON, M.	LVMPD #4961
28	COMPTON, MIKE	NEV. DEPT. OF PAROLE & PROB.

JChappell CORA008582

1	CONNELL, D.	LVMPD #298
2	COOK, TERRY	LVMPD #2545
3	COR	CCDC
4	COR	CITY OF NLV
5	COR	UMC
6	COTTON, ROBIN	CELLMARK, GERMANTOWN, MD
7	DICKENS, C.	LVMPD #4008
8	DUFFY, WILLIAM	NEV. DEPT. OF PAROLE & PROB.
9	DURAN, JOHN	251 ROCHELLE, HEND., NV
10	DURAN, LISA	251 ROCHELLE, HEND., NV
11	EARNST, J.	TUCSON POLICE DEPT., AZ
12	FOREMAN, LISA	CELLMARK, GERMANTOWN, MD
13	FREEMAN, DINA	TUCSON POLICE DEPT., AZ
14	GAY, KENNETH	5025 LANSING RD., CHARLOTTE, MI
15	GIERSDORF, D.	LVMPD #4521
16	GRANGER, AL	UNKNOWN ADDRESS
17	GREEN, DR. SHELDON	CORONER'S OFFICE
18	GROVE, WANDA	CP#253
19	HAGGERTY, P.O.	TUCSON POLICE DEPT., AZ
20	HANNERS, A.	LVMPD #4920
21	HEINER, DARREN	LVMPD #2609
22	HENDERSON, ED	NEV. DEPT. OF PAROLE & PROB.
23	HOBSON, TANYA	P.O. BOX 43264, LVN
24	JACKSON, LADONNA	2643 DONNA ST. #C, NLV, NV
25	KERNS, E.	LVMPD #4331
26	KLEIN, D.	LVMPD #3997
27	KNAPP, J.	LVMPD #3928
28	LATRONA, SHERELLE	4776 CESSNA #3, LVN

JChappell CORA008583


1	LEAVER, W.	LVMPD #759
2	LEE, R.	LVMPD #3290
3	MANCHA, MICHELLE	6615 NAVIO DR., LVN
4	MARTINEZ, LAWRENCE	1048 N. BENSON, ONTARIO, CA
5	MASTON, M.	LVMPD #2112
6	McCOURT, DR. JOHN	UMC
7	McGUIRE, CLAIR	UNKNOWN ADDRESS
8	McNITT, L.	TUCSON POLICE DEPT., AZ
9	MUNSON, CAROL	11880 PAJARO VERDE, TUCSON, AZ
10	NEIDKOWSKI, EDWARD	TUCSON POLICE DEPT., AZ
11	ORTIZ	LVFD
12	OSUCH, P.	LVMPD #2141
13	PENFIELD, NORMA	2041 DIAMON BAR LN., TUCSON, AZ
14	PERKINS, M.	LVMPD #4242
15	PETERSON, D.	LVMPD #4034
16	POLLARD, MIKE	4416 CHARNETA CT., LVN
17	PRIEBE, JON	LANSING POLICE DEPT., MI
18	RAMOS, P.	LVMPD #799
19	REES, ROBERT	LVMPD #2332
20	SEMPSON, KIMBERLY	2210 CARLISLE CIR., LA HABRA, CA
21	SMITH, CHERMAINE	NEV. DEPT. OF PAROLE & PROB.
22	SPOOR, M.	LVMPD #3856
23	STALLINGS, JOHN	CORONER'S OFFICE
24	STANSBURY, D.	LVMPD #3515
25	STONER, MATTHEW	TUCSON POLICE DEPT., AZ
26	SZELES, M.	LVMPD #3526
27	TURNER, DEBORAH	507 N. LAMB #6, LVN
28	VACCARO, J.	LVMPD #1480

JChappell CORA008584

1 VERNON, OFFICER TUCSON POLICE DEPT., AZ  
2 WASHINGTON, M. LVMPD #4725  
3 WIDNER, PAUL LANSING POLICE DEPT., MI  
4 WILDERSON, WENDY CLARK COUNTY FAMILY COURT  
5 WILLIAMS, A. LVMPD #4083  
6 WILTZ, WILLIE 1245 PACIFIC TERRACE, LVN  
7 WINCHELLS, CAL 314 PINNACLE CT., HEND., NV  
8 YADA, WILLIAM LVMPD #2612  
9 YATES, PAULA CELLMARK, GERMANTOWN, MD

10 These witnesses are in addition to those witnesses endorsed on the Information and  
11 any other witness for which a separate Notice has been filed.  
12  
13  
14


BY

  
DAVID ROGER  
DISTRICT ATTORNEY  
Nevada Bar #002781

## CERTIFICATE OF FACSIMILE TRANSMISSION

19  
20 I hereby certify that service of the above and forgoing, was made this 28 day of  
21 February, 2007, by facsimile transmission to:

22  
23 SPECIAL PUBLIC DEFENDER  
FAX#455-6273  
24

25  
26 BY   
Employee of the District Attorney's Office  
27

28 mb

# EXHIBIT 265

Lewis M. Etcoff, Ph.D., ABPN  
Diplomate, American Board of  
Professional Neuropsychology

3885 So. Decatur Blvd., #1060  
Las Vegas, Nevada 89103  
(702) 876-1977

### LIFE HISTORY QUESTIONNAIRE

DIRECTIONS: This is a lengthy questionnaire that will take about an hour to fill out. It is vitally important to your defense that you complete this questionnaire as accurately and as thoroughly as possible because the information you provide is essential for your defense. You may not be able to understand some of the questions, but do the best you can. Your defense team will review the information.

Thank you very much.

*Lewis Etcoff Ph.D.*

Lewis M. Etcoff, Ph.D., ABPN  
Diplomate, American Board of  
Professional Neuropsychology

THIS QUESTIONNAIRE COMPLETED BY HOWARD BROOKS  
WHO INTERVIEWED JAMES CHAPPELL AT 9:30 PM  
6/10/90 AT CLARK CO DETENTION CENTER.

*Howard S. Brooks*



31011-100  
2nd WHEN  
MOM DIED

BIRTH HISTORY

1. To your knowledge, did your mother drink alcohol or use drugs while she was pregnant with you? Yes \_\_\_\_\_ No \_\_\_\_\_  
Unsure, but possibly X SHARON OXAM NO YES KNOWN

2. Did your mother suffer any significant medical problems while she was pregnant with you? Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, do you know what illness (es) she suffered? NOT KNOWN

3. Were you a "wanted pregnancy" or did your mother become pregnant without really wanting a baby? ?

4. Were you born early \_\_\_\_\_ about on time \_\_\_\_\_ late \_\_\_\_\_  
don't know ✓?

5. Did you have a birth weight: under 5 lbs. \_\_\_\_\_ over 5 lbs. X don't know \_\_\_\_\_?

6. When you were born did you breath right away \_\_\_\_\_ or have breathing problems \_\_\_\_\_? ?

7. Did you require oxygen at birth: Yes \_\_\_\_\_ No \_\_\_\_\_ don't know \_\_\_\_\_? ?

8. At birth, did you have any significant medical problems? Yes \_\_\_\_\_ No X don't know \_\_\_\_\_

9. If you did have a significant medical problem at birth, do you recall the name of the problem and the type of treatment you received?

10. Below are a list of possible medical problems which may complicate birth. Please check any problem you think you had:

- a. \_\_\_\_\_ very low birth weight
- b. \_\_\_\_\_ very premature birth
- c. \_\_\_\_\_ lack of oxygen (baby born blue)
- d. \_\_\_\_\_ emergency c-section: baby in distress
- e. \_\_\_\_\_ jaundice (baby placed under light)
- f. \_\_\_\_\_ head disfigured
- g. \_\_\_\_\_ respiratory problems (breathing) first week of life
- h. \_\_\_\_\_ seizures (epilepsy)
- i. \_\_\_\_\_ heart abnormality
- j. \_\_\_\_\_ fetal alcohol syndrome

# EXHIBIT 266

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EX                       
ITS                       
JChappell  
COR 010703

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
OFFICER'S REPORT

Event #: 950831-1351

MURDER WITH A DEADLY WEAPON/GRAND LARCENY AUTO/BURGLARY

Subject

Division Reporting: ISD

Division of Occurrence: PD

Date and Time Occurred: 08/31/95, 1315 HRS.

Location of Occurrence: BALLERINA MOBILE  
HOME PARK, 839 NO.  
LAMB BLVD., SP. 125,  
LVN 89110

DICTATING OFFICER:

DETECTIVE J. VACCARO, P#1480

VICTIM:

PANOS, DEBORAH ANN  
DOB 05/04/61  
SS# 364-74-1  
WFA, 5'5", 130 LBS., BROWN/BROWN  
ADDRESS: BALLERINA MOBILE HOME PARK  
839 NO. LAMB BLVD., SP. 125, LVN 89110  
RES. PHONE: 459-2721

SUSPECT:

CHAPPELL, JAMES MONTELL  
DOB 12/27/61  
SS# 373-80-2  
BMA, 5'11", 180 LBS., BLACK/BROWN  
ADDRESS: BALLERINA MOBILE HOME PARK  
839 NO. LAMB BLVD., SP. 125, LVN 89110  
RES. PHONE: 459-2721  
LVMPD ID# 1212860

VEHICLE INVOLVED:

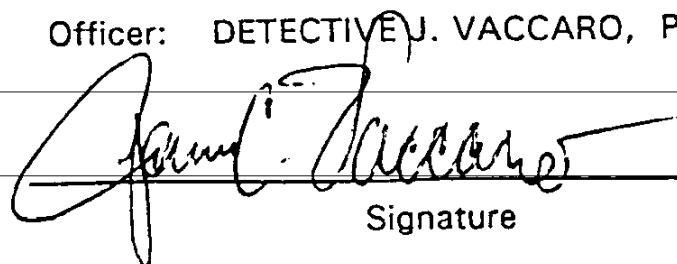
1984 SILVER TOYOTA COROLLA FOUR DOOR  
MISSING THE RIGHT FRONT HUB CAB  
NO LICENSE PLATE  
VIN JT2AE83E9E3040331  
REGISTERED TO: PEISTROP, PAMELA  
P.O. BOX 2559, NELLIS AIR FORCE BASE  
LAS VEGAS, NV  
NO CURRENT NEVADA REGISTRATION

Date and Time of Report:

Officer: DETECTIVE J. VACCARO, P# 1480

Approved: \_\_\_\_\_

Signature

  
Signature

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CONTINUATION REPORT**

JChappell  
COR010704I. SYNOPSIS:

On 08/31/95, at approximately 1541 hours, Deborah Ann Panos was found dead of multiple stab wounds inside her mobile home located at the Ballerina Mobile Home Park, 839 No. Lamb Blvd., Space 125, Las Vegas, NV 89110. Initial information indicated James Chappell, the live-in boyfriend of the victim, as the suspect in the murder and the theft of the victim's vehicle. As a result of these findings, uniform officers at the scene contacted Homicide Detail detectives to begin an investigation.

During that investigation, James Chappell was developed as the suspect in the murder and was subsequently arrested while shoplifting at a near-by supermarket on 09/01/95. James Chappell was taken to the Clark Co. Detention Center and charged with Murder With a Deadly Weapon and Grand Larceny Auto.

II. PERSONS AT THE SCENE:

## A. PATROL DIVISION

1. Lt. M. Maston, P#2112
2. Sgt. W. Yada, P#2612
3. Officer R. Lee, P#3290
4. Officer D. Heiner, P#2609
5. Officer C. Dickens, P#4008
6. Officer E. Kerns, P#4331
7. Officer A. Hanners, P#4920
8. Officer P. Osuch, P#2141

## B. HOMICIDE DETAIL

1. Detective Lt. G. Jolley, P#475
2. Detective Sgt. W. Keeton, P#505
3. Detective J. Vaccaro, P#1480
4. Detective P. Ramos, P#799

## C. CRIMINALISTICS OFFICERS

1. CSA M. Perkins, P#4242
2. CSA M. Washington, P#4725
3. Nevada Division of Investigation Officer K. Townsend, P#259

JChappell CORA010705

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CONTINUATION REPORT**

## D. CORONER

1. Deputy Coroner J. Stallings  
(Time of Death: 1955 hours)

## E. BUNKER BROTHERS MORTUARY ATTENDANTS

1. C. Grabowski
2. M. Shadler

## F. LAS VEGAS RESCUE 8 PARAMEDICS

1. Paramedic Ortiz

III. WITNESSES INTERVIEWED:

See Detective Ramos' Officer's Report.

IV. DETAILS:

On 08/31/95, at approximately 1330 hours, Lisa Ann Duran arrived at the Ballerina Mobile Home Park at 839 No. Lamb, Space 125, to visit with her girlfriend, Deborah Ann Panos, and pick up a few items. Upon arriving, Lisa Ann Duran observed the suspect, James Chappell, whom she knows is the live-in boyfriend of Deborah Ann Panos and currently the subject of a protective order filed by Deborah Ann Panos, leaving the area. Lisa Ann Duran knew of the discord between Panos and Chappell, and that there had been numerous domestic violence situations between the two, and that Panos was in fear of her life when Chappell was near her.

Lisa Ann Duran saw Chappell driving Panos' unlicensed 1984 silver Toyota Corolla four-door away from the mobile home as she arrived, and observed a bicycle commonly used for transportation by Chappell in the back of the vehicle. Lisa Ann Duran knew that Deborah Ann Panos forbid Chappell from ever driving her vehicle, and believed something may have happened of a violent nature between Panos and Chappell.

Lisa Ann Duran attempted to make contact with Deborah Ann Panos inside the mobile home by knocking on the door and attempting to peer into the windows; however, upon receiving no response, Lisa Ann Duran left the mobile home park to contact other family members of hers to return and again attempt to make contact with Deborah Ann Panos.

JChappell  
CORAO10706LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CONTINUATION REPORT**

After returning sometime later and still being unable to get a response at the mobile home, Lisa Ann Duran responded to the intersection of Bonanza and Lamb and met an LVMPD patrol officer, D. Heiner, who was conducting a vehicle stop at that location. Lisa Ann Duran told Officer Heiner of the situation and advised she was going to a nearby child care facility at that intersection, called the Angel Care, to learn whether Deborah Ann Panos had picked up her three children, who are cared for at the Angel Care child care center during the day. Lisa Ann Duran was aware that these children of Deborah Ann Panos were fathered by James Chappell.

After learning that the children were still at the Angel Care facility, Lisa Ann Duran returned again to Officer Heiner, who was completing his car stop, and requested he respond to the Ballerina Mobile Home Park, Space 125, with her to check the welfare of Deborah Ann Panos. Officer Heiner completed his car stop and was assisted by Officer R. Lee, P#3290, who arrived at the trailer park.

After attempting to gain entry into the mobile home, and being unable to do so, Officer Lee observed on the south side or front of the mobile home a window that was ajar. Officer Lee pried the window open the rest of the way and crawled into what was determined to be the master bedroom of the residence. Upon entering the residence, Officer Lee found the door from the master bedroom to the living room area closed, and upon opening that door, observed the body of Deborah Ann Panos lying dead on the floor in the living room with a large amount of a red blood-like substance about her upper chest and face.

At the time Officer Lee made entry, Las Vegas City Fire Department Rescue 8 paramedic Ortiz also entered with Officer Lee due to the nature of the call. Both individuals made a similar observation and believed Deborah Ann Panos was deceased, and uniform supervisors Sgt. W. Yada and Lt. M. Matson were requested to respond to the scene. These officers taped off the crime scene area and began to obtain information from Lisa Ann Duran about the suspect, James Chappell, while Homicide Detail detectives were notified to respond to begin an investigation.

**V. CRIME SCENE INVESTIGATION:****A. NOTIFICATION OF HOMICIDE SECTION**

On 08/31/95, at approximately 1615 hours, Detective Vaccaro was contacted by Detective Sgt. W. Keeton of the LVMPD Homicide Section and requested to respond to an apparent homicide at the Ballerina Mobile

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CONTINUATION REPORT**

JChappell  
CORAA010707

Home Park, 839 No. Lamb, Space 125, Las Vegas, Nevada 89110. Detective Vaccaro arrived at that location and was met by Detective P. Ramos, P#799. It was determined that Detective Vaccaro would conduct an investigation of the crime scene and Detective Ramos would contact any persons with information about the situation.

**B. DESCRIPTION OF THE SCENE**

The scene is located at a double-wide white with blue trim mobile home located inside the Ballerina Mobile Home Park, 839 No. Lamb Blvd., Space 125, Las Vegas, Nevada 89110. This mobile home is determined to be rented by Deborah Ann Panos and is situated on the north side of the street inside the mobile home park.

The mobile home runs in a north and south direction, with a driveway and aluminum awning covering the carport on the east side. There is a small staircase to a doorway to enter the trailer on the southeast corner, and there is an additional staircase and landing at the front door of the residence on the west side of the mobile home.

There are signs of activity around the windows of the mobile home on the exterior with regard to a screen being removed from one of the windows on the northwest corner, and also smudge marks on the exterior of the windows. Some of this is explained by uniform officers and Lisa Ann Duran, who advised they were attempting to push open a window to gain access to check on the welfare of Deborah Ann Panos. These individuals do indicate, however, that they did not remove any screens from any windows, and it is believed the removal of the screen on the west side of the mobile home, as well as on the south where Officer Lee entered and found the screen inside the master bedroom, was done by the suspect, James Chappell.

After the over-all condition of the exterior of the mobile home and the surrounding area was investigated by Detective Vaccaro, entry was made into the mobile home by means of the main door on the west side of the mobile home at the top of the staircase landing. At this location, Detective Vaccaro observed a woman's white sandal laying just outside the door of the mobile home, and observed this door to be in an unlocked position. Detective Vaccaro was advised by Officer Lee that after making entry into the mobile home through the master bedroom window on the south side of the mobile home, he made his observations of the victim and exited the mobile home by unlocking the dead bolt and

JChappell CORA010708

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
CONTINUATION REPORT**

doorknob lock on the west door, allowing Detective Vaccaro to make entry by that door.

Officer Lee, as well as Lisa Ann Duran, advised that they and numerous subjects handled the doorknob of that particular door, and this information was brought to the attention of the crime scene analysts who were arriving at the scene to begin collecting evidence and taking photographs.

It was learned that Deborah Ann Panos was residing at the mobile home for several months, however the mobile home was sparsely furnished and appeared to have been ransacked in the master bedroom area. The actual crime scene is isolated primarily to the living room, which is immediately inside the west door of the mobile home, and the master bedroom and bathroom on the southeast corner and front of the mobile home.

There are two additional bedrooms on the northwest end of the mobile home, as well as a family room and dining room on the east side of the mobile home. These areas and the kitchen appear to be out of play and the crime scene analysts and Detective Vaccaro concentrated on the aforementioned family room and master bedroom and bathroom areas.

**C. LOCATION AND DESCRIPTION OF THE BODY:**

The body of Deborah Ann Panos is observed lying on the floor on her back with her arms out to her sides and the right arm extending underneath a chair near the front door on the west side of the trailer. The victim is observed with her head pointing in a northeast direction and her feet in a southwest direction just inside the front door to the mobile home.

The victim is observed to be a white female wearing a blue and white striped shirt, blue stretch pants, and having no shoes or socks on. She is later observed to be wearing two rings on her right ring finger and a black bra and black and multi-colored underpants.

Initial observations are that there is a large amount of a red blood-like substance about her upper chest and face, and there also appear to be numerous abrasions and contusions about her chin and around the areas of both eyes and cheek bones. There is a woman's white sandal appearing to match the one out on the landing outside the west door,



JChappell CORA010709

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CONTINUATION REPORT**

and an additional pair of woman's black heeled dress shoes lying next to the victim's right thigh.

A few feet north and east of the victim's head Detective Vaccaro observes a brown wooden-handled steak knife with a large amount of red blood-like substance on it. This knife is believed to have been the weapon used to commit the murder.

There are several pieces of a torn note on the floor near the victim's body, as well as a piece on the landing outside the west door. These items are pointed out to crime scene analysts, who collect these items and the knife. Additionally, a small black plastic hair comb is observed next to the left chest of the victim on the carpet, and this item is also collected as evidence.

**D. VISIBLE EVIDENCE AT THE SCENE**

After initial evidence collecting and photographs were taken, the Clark Co. Coroner's office was requested to respond, and at approximately 1940 hours Investigator J. Stallings arrived and observed the victim, pronouncing time of death at 1955 hours.

While there, the deputy coroner and crime scene analysts assisted Detectives Vaccaro and Ramos in making observations of the wounds to the victim, and observed multiple stab wounds to the neck, upper chest and pelvis area. These wounds appeared consistent with those capable of being sustained by the use of the previously-mentioned steak knife located near the victim.

On the floor in the family room area, by a couch, Detective Vaccaro observed a telephone which was off hook and the dial appeared to be lighted as if it was still active. Detective Vaccaro could not hear any tones or sounds coming from the phone, and it appeared to have been dropped or thrown to its current location on the floor. Detective Vaccaro requested crime scene analysts impound the telephone to determine numbers dialed by any persons prior to the phone being thrown to its current location.

As previously mentioned, it appeared the suspect made entry into the mobile home by means of the south master bedroom window, as this was the only window open and had a bent exterior screen on the floor inside next to a nightstand. Officer Lee advised he left by means of the west door of the mobile home so as not to disturb the point of entry any

JChappell  
COR010710LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CONTINUATION REPORT**

more than he had done upon crawling through the window himself. Officer Lee said he unlocked the door to leave, and left it that way.

It is significant that all of the other windows and doors to the mobile home were locked and dead bolted, and it is later learned through Detective Ramos that the victim, Deborah Ann Panos, was in a telephone conversation with an employee at the Angel Care child care facility at the time that the suspect, James Chappell, was attempting to break into the mobile home. Detective Ramos made contact with that individual at the child care facility and did conduct an interview about her contact with the victim.

The master bedroom area appeared to have been ransacked, as numerous handwritten letters were strewn about the floor. It appeared to Detective Vaccaro that the suspect was looking for something in the master bedroom, and the condition of the room was photographed by the crime scene analysts.

In the master bedroom bathroom area the sink appeared to have a small amount of what appeared to be blood, and the crime scene analysts were requested to attempt to find out if blood was washed off in the sink basin, and also to recover any blood located there. It was believed the suspect may have washed himself in the sink in the master bathroom, and also that he may have injured himself during the attack on the victim.

During the inspection of the kitchen area, Detective Vaccaro observed numerous photographs on a breakfast bar, and one photograph depicted the back end of an automobile which is believed to be the automobile owned by Deborah Ann Panos. Although this vehicle is unlicensed, and had been recently obtained by Deborah Ann Panos, this vehicle is believed to be the one driven away from the mobile home by James Chappell.

The vehicle appears to be a silver four-door Toyota Corolla, early 1980s model, and matches the description given by Lisa Ann Duran as the vehicle being driven away by James Chappell. Upon showing this photograph to Lisa Ann Duran, it is learned that is in fact the vehicle.

During the course of the investigation, the name of the suspect, James Chappell, and the description of the vehicle he was seen leaving the area in, were broadcast to all officers in the area of the mobile home park.

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**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
CONTINUATION REPORT**

The photograph of this vehicle was taken by Detective Vaccaro and will be maintained in the Homicide file.

At approximately 1950 hours, Bunker Mortuary attendants C. Grabowski and M. Shadler arrived at the mobile home and removed the victim to the Clark Co. Medical Examiner's office. At that time, crime scene analysts focused on the area where the victim was laying and sections of the carpet were removed and impounded. Additionally, crime scene analysts began to search for latent fingerprints on the exterior of the trailer windows and hand railings near the landings, as well as inspection of the interior of the mobile home, concentrating on the living room and master bedroom/bathroom area. Although it is believed James Chappell has frequented the trailer on numerous occasions, latent prints were still sought as evidence in the areas of the master bath and living room, where the victim was found and where it appears the suspect cleaned up after the murder.

At approximately 2020 hours, Detective Vaccaro made contact with Parole and Probation Officer Mike Compton, who was the on-call officer that evening. Officer Compton advised Detective Vaccaro that his office had limited information about the suspect, however it was learned the suspect was released from the City Detention Center on 08/30/95 at approximately 1900 hours and was under the control of Officer Arave at this time. Officer Compton did make contact with Officer Arave and related to Detective Vaccaro that the suspect's whereabouts was unknown to them, and they had no information about known associates of the suspect at that time.

**VI. INTERVIEW OF WITNESSES:**

See Detective Ramos' Officer's Report.

**VII. AUTOPSY:**

On 09/01/95, at approximately 1030 hours, an autopsy was performed on Deborah Ann Panos at the Clark Co. Medical Examiner's office.

**PERSONS IN ATTENDANCE**

1. Dr. S. Green
2. Attendant K. Morris
3. Detective J. Vaccaro, P#1480, LVMPD Homicide
4. CSA D. Peterson, P#4034

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**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
CONTINUATION REPORT**

During the preliminary observations of the victim at the Clark Co. Coroner's office, photographs and fingerprints were taken by Crime Scene Analyst Peterson. Additionally, the fingernails of the victim were trimmed and saved by CSA Peterson for any evidence that may be under those fingernails from the struggle the victim had with her attacker. A sexual assault kit was also obtained by CSA Peterson and impounded, as well as body fluids and hair being collected during that examination.

During the exterior examination of the victim's face, she is observed to have multiple contusions to the back of her right hand, upper right arm and shoulder. These appear to be defensive-type contusions that reacted prior to her death in very dark bruising. Additionally, there are abrasions noted to the under side of the victim's chin and above the left eyebrow on the forehead. There are dark contusions observed surrounding both eyes of the victim, and the victim's right ear has very heavy bruising, indicating a violent beating occurred prior to the victim's death. There is a small abrasion observed on the victim's left knee, and all of these items are photographed by the crime scene analyst.

Dr. Green makes an over-all observation and 13 individual stab wounds are observed on the victim's body. There are two stab wounds located in the pelvis and abdomen area, and 11 additional stab wounds in the victim's neck and upper chest area. These stab wounds are concentrated in the front of the neck area, and upon later conducting an internal examination, Dr. Green observes the carotid artery severed on both sides of the victim's neck, as well as the jugular vein on the right side of the victim. Dr. Green also observes other vital damage, as well as a puncture wound to the victim's left lung.

For complete details of the medical examiner's assessment, see the coroner's report.

Upon completion of the autopsy, Dr. Green advises the cause of death is multiple stab wounds, and the manner of death is a homicide.

**VIII. INVESTIGATIVE FOLLOW-UP:****A. PERSONS CONTACTED**

1. Wiltz, Willie Joseph  
DOB 06/08/■■■ SS# 453-27-■■■  
Address: 1245 Pacific Terrace Dr., LVN 89128  
Phone: 243-8740

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**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
CONTINUATION REPORT**

2. Jackson, Ladonna  
DOB 10/08/ [REDACTED] SS# 530-70-[REDACTED]  
Address: 507 No. Lamb, #6 - Vera Johnson Lamb housing project  
Las Vegas, NV 89110
3. Turner, Deborah Ann  
DOB 07/01/ [REDACTED] SS# 530-60-[REDACTED]  
Address: 507 No. Lamb, #6 - Vera Johnson Lamb housing project  
Las Vegas, NV 89110

**DETAILS:**

During the investigation at the mobile home park, Detective Vaccaro was advised by Metro Dispatch that an individual had called inquiring about the Panos children at the Angel Care child care facility at Bonanza and Lamb. The Angel Care had contacted Metro and stated their caller ID indicated the phone number the caller was calling from was 243-8740, and that it was a black male voice on the line. Detective Vaccaro took this information, and at 1720 hours called 243-8740 and was forwarded to a message machine with a black male voice leaving the message. Detective Vaccaro instructed the person obtaining the message to contact him on his cellular telephone.

A short time later Detective Vaccaro received a telephone call from an individual who identified himself as Willie Joseph Wiltz. Mr. Wiltz told Detective Vaccaro he was an acquaintance of Deborah Ann Panos and had learned about her death from John Duran, the brother of Lisa Ann Duran. Detective Vaccaro learned that Willie Wiltz had contacted the Angel Care to check about the welfare of the children as he had been involved in a boyfriend/girlfriend relationship with Deborah Ann Panos over the past three months. Mr. Wiltz informed Detective Vaccaro that on Wednesday evening Deborah Panos had been at his residence and was telling him about her concerns for her welfare regarding her relationship with James Chappell.

After completing the crime scene investigation and interviewing witnesses at the scene, Detectives Vaccaro and Ramos secured from that immediate area on the late evening hours of 08/31/95.

During the course of the day on 09/01/95, at approximately 1200 hours, Detective Vaccaro was contacted by LVMPD Dispatch. Detective Vaccaro learned that uniform Officer P. Osuch, P#2141, operating as a patrol unit in the area of Bonanza and Lamb, had been requested to the Lucky supermarket at that intersection about a shoplifting incident. Upon arriving, uniform Officer

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
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Osuch made contact with a black male adult in the security office who had been detained after attempting to shoplift several items, including alcohol and candy bars.

During his interview with the individual, Officer Osuch prepared an LVMPD Misdemeanor Citation for the black male, who identified himself as Ivri Marrell. He spelled Ivri I-v-r-i. Officer Osuch began to doubt this individual's story about his identity and made contact with his patrol supervisor, Sgt. W. Yada, requesting a description of the murder suspect that Officer Osuch was aware of from the previous date because this individual matched the over-all appearance of the murder suspect that had been broadcast numerous times on the patrol channel. At this time Homicide detectives Vaccaro and Ramos were requested to respond to the Lucky supermarket.

Upon arrival, Detective Ramos made contact with the black male, and both Detective Ramos and Detective Vaccaro observed him to be in fact James Chappell, whom Detective Vaccaro and Detective Ramos had become familiar with from his LVMPD mug shot. At that point Detective Ramos conducted an interview with James Chappell and Crime Scene Analyst M. Spoor was requested to respond to photograph the overall condition of James Chappell, and also two puncture wounds that Detective Vaccaro observed on the pinkie of James Chappell's hand. This puncture wound, located in two locations on the small finger of James Chappell's hand, appeared to be similar to slices and consistent with the appearance of puncture wounds on the victim, Deborah Ann Panos. Detective Vaccaro believed these could be vital evidence of the struggle between the victim and James Chappell.

After Detective Ramos had a brief conversation with James Chappell, CSA Spoor took photographs of his condition and the condition of his hands, as well as snipping the fingernails of James Chappell and collecting the fingernails and the substance underneath the fingernails as evidence. These fingernail clippings could possibly contain evidence from a struggle with the victim, Deborah Ann Panos.

Lucky store security officers who were present and contacted by Detective Ramos advised that a set of keys were in the possession of James Chappell at the time he was detained. Detective Vaccaro observed one of the keys to be a Toyota automobile key, and Detective Vaccaro asked James Chappell about the location of the vehicle. James Chappell nodded towards the front of the store, saying to Detective Vaccaro, "I parked it in the back of the apartments across the street." James Chappell said no further to Detective Vaccaro, and Detective Vaccaro took possession of those keys after they were photographed by the crime scene analyst.

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**CONTINUATION REPORT**

After James Chappell was removed by Detective Ramos to the Clark Co. Detention Center, Detective Vaccaro attempted to locate Deborah Ann Panos' vehicle and was able to find the vehicle parked on the grass behind the apartment complex at 507 No. Lamb, the Vera Johnson Lamb housing project. Detective Vaccaro observed the vehicle for the first time to match that of the photograph seen inside Deborah Ann Panos' mobile home. Detective Vaccaro observed the vehicle to have no license plate, and that it was a 1984 Toyota Corolla, silver with four doors.

Detective Vaccaro made contact with two individuals who were in the area of the vehicle, that being Ladonna Jackson and Deborah Turner. These two black females indicated that they knew James Chappell, and that they had observed him park the vehicle at that location on the previous evening, that being 08/31/95. Ladonna Jackson stated she had been a passenger in the vehicle at one time while James Chappell was driving it, and Deborah Turner indicated that she had borrowed the vehicle to go to the store. She said she obtained the keys for the vehicle from James Chappell. Both Ladonna Jackson and Deborah Turner were amazed to hear that the vehicle was involved in the murder situation and offered to cooperate however they could.

Detective Vaccaro contacted Crime Scene Analyst M. Washington and requested he respond to the rear of Bldg. 507 North Lamb in the Vera Johnson Lamb housing project to photograph the vehicle at its present location and prepare it to be sealed for transportation to the crime lab. Detective Vaccaro also requested a tow truck from Ewing Brothers be dispatched to that location.

At approximately 1540 hours on 09/01/95, Crime Scene Analyst Washington arrived, photographed the vehicle, and using the keys provided by Detective Vaccaro, drove the vehicle from the grass area behind Bldg. 507 out to the parking lot, where CSA Washington drove the vehicle up onto the Ewing Brothers flat bed tow truck. CSA Washington then sealed all of the vehicle doors and followed the vehicle on the tow truck to the crime lab for processing.

**IX. SUMMARY:**

It appears from the investigation at the mobile home park, as well as the recovery of the vehicle and the apprehension of suspect James Chappell, that a violent domestic dispute between Deborah Ann Panos and James Chappell resulted in her death after she was stabbed numerous times.

Detectives were able to learn of the fact that Deborah Ann Panos had testified against James Chappell and his violent behavior in a court proceeding only one

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
CONTINUATION REPORT

day before her death and his subsequent release from jail. This situation may have precipitated James Chappell immediately returning to the mobile home of Deborah Ann Panos, where she had obtained a Protective Order preventing him from returning to.

The investigation also revealed that James Chappell had violated the Protective Order on a prior occasion, coming to Deborah Ann Panos' mobile home, entering the mobile home, and beating her and threatening her with a knife, which was documented in an LVMPD Crime Report on 06/01/95. It appears again James Chappell violated that Protective Order and again returned, however on this occasion took the life of Deborah Ann Panos.

For further information about the Protective Order and previous encounters between Deborah Ann Panos and James Chappell, and the documenting of those incidents by means of LVMPD Crime Reports, see Detective Ramos' Officer's Report and summary of witnesses interviewed.

For any further information, see any and all reports under Event #950831-1351. Investigation continuing.

JV:alf  
95D4507

A handwritten signature in black ink, appearing to read "Paul J. Ramos 1480". The signature is written in a cursive, flowing style.



# EXHIBIT 267

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DISTRICT COURT

CLARK COUNTY, NEVADA FILED IN OPEN COURT

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LORETTA BOWMAN, CLERK  
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THE STATE OF NEVADA,  
Plaintiff,  
Vs  
JAMES MONTELL CHAPPELL,  
Defendant.

CASE NO. C131341  
DEPT. NO. VII  
DOCKET P

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

WEDNESDAY, OCTOBER 23, 1996, 11:25 A.M.

PENALTY PHASE - VOLUME III

APPEARANCES:

FOR THE STATE: MELVYN T. HARMON &  
ABBI SILVER  
Deputies District Attorney

FOR THE DEFENDANT: HOWARD S. BROOKS &  
WILLARD N. EWING  
Deputies Public Defender

REPORTED BY: PATSY K. SMITH, C.C.R. #190

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CE

1 WEDNESDAY, OCTOBER 23, 1996, 11:25 A.M.

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

4 MR. HARMON: Yes, your Honor.

5 MR. EWING: Yes, your Honor.

6 THE COURT: All right.

7 I have excused Ms. Lucido from jury service  
8 for one of the alternates. The reason is that we were  
9 advised, most unhappily this morning, she sustained a death  
10 in her family this morning and she wished to go back to the  
11 Philippines to attend the funeral. I didn't think the  
12 parties would mind that decision. So I went ahead and  
13 excused her.

14 Do both the parties agree with that  
15 decision?

16 MR. HARMON: The State does.

17 MR. EWING: Yes, your Honor.

18 THE COURT: The defense may continue with  
19 its closing statement to the jury.

20 MR. EWING: Thank you, your Honor.

21 Good morning, your Honor, counsel, ladies  
22 and gentlemen of the jury, I'd like to thank you in advance  
23 for the time and attention you are willing to pay to my  
24 closing argument. I would like to request that you bear  
25 with me and pay close attention. This is the only

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1 opportunity I will get to speak to you and I will try to  
2 state our position plainly and simply so that there will be  
3 no confusion about where we stand on these very important  
4 issues.

5 Now, we sat over her during the course of  
6 the trial and we listened to the same witnesses that you  
7 listened to and we heard about this terrible tragedy. We  
8 heard about Deborah Panos and her life and we felt for her  
9 just as you did. We felt sorrow, we felt pain. We saw the  
10 pain on the faces of her family, as they came in to  
11 testify, and we are not asking you to forget her. I want  
12 you to remember that. We have never, ever asked you to  
13 forget her.

14 James told you that if he could exchange his  
15 life for hers, he would, but nothing we do today is going  
16 to bring her back and that's not what can be accomplished  
17 by a penalty phase in this case. The penalty phase is not  
18 about vengeance. In a few minutes, the case will be yours  
19 and you will have to make some difficult decisions, but you  
20 can look at the bright side. This case is so far removed  
21 from any case which would warrant death penalty  
22 consideration, that you can summarily dismiss that as an  
23 option and let's talk about why that's the case.

24 Penalty phases, as the Judge instructed you,  
25 are about aggravating and mitigating circumstances.

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1 Generally, the aggravating circumstances apply to the facts  
2 of the case, how the murder was committed. I say generally  
3 because there is exceptions. Generally, the mitigating  
4 circumstances apply to the history of the defendant and  
5 circumstances surrounding him.

6 The Court, in the Jury Instructions, told  
7 you that the penalty phase is about aggravating and  
8 mitigating circumstances, which means that the penalty  
9 phase is about James Chappell. We don't say that to be  
10 insensitive, we say that because that's true. The penalty  
11 phase in this case, the State did not present one shred of  
12 evidence to assist you in the validity of the aggravating  
13 circumstances.

14 During the guilt phase, the State presented  
15 that James Chappell was not always a nice person, that he  
16 was a cocaine addict, that he was a petty thief, that, on  
17 occasion, he abused Deborah Panos, that she was afraid of  
18 him, and that she wanted out of the relationship.

19 In the penalty phase of the trial, after the  
20 guilt phase, the State presented evidence that James  
21 Chappell was not always a nice person, that he was a  
22 cocaine addict, that he was a petty thief, that he  
23 sometimes abused Deborah Panos, that she was afraid of him,  
24 and that she wanted out of the relationship. They gave you  
25 no assistance in determining the existence of these alleged

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1     aggravating circumstances. They didn't because they  
2     couldn't. They brought in character evidence through  
3     hearsay and innuendo so that they could conceal the fact  
4     that they could not prove the alleged allegations of  
5     aggravating circumstances. They could not do what the law  
6     requires them to do.

7                     Let's talk about these alleged aggravating  
8     circumstances for a few minutes. During the guilt phase,  
9     you found beyond a reasonable doubt the existence of a  
10    robbery and a burglary. We can't, at this juncture,  
11    dispute that and those are the alleged aggravators. The  
12    law allows you to consider those as two aggravators. My  
13    argument to you is that these two incidents occurred at the  
14    same time. I don't know, I can't speculate about what  
15    occurred during your deliberation, but I assume that you  
16    determined that James entered with the intent to steal  
17    something and he stole something. They are the same course  
18    of conduct and for purposes of this hearing and your  
19    deliberation, our argument is you should consider that as  
20    one aggravating circumstance.

21                    The State alleged sexual assault as an  
22    aggravating circumstance. Never once in the penalty phase  
23    was the word sexual assault even mentioned. Never once in  
24    the guilt phase was the word sexual assault mentioned. It  
25    wasn't mentioned until closing argument and in this closing

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1 argument, the State asks you to speculate that there was a  
2 sexual assault with absolutely no corroborating evidence.

3 What do we actually know about this case?

4 We know James and Deborah had a ten year relationship. We  
5 know that they had a sexual relationship for 10 years. We  
6 know that they had three children together. We know that  
7 Debbie's friends told you that she loved James. We know  
8 that James admitted that they had consensual sex. We know  
9 that Deborah was found dead right next to the front door  
10 fully clothed. We know there was no evidence presented  
11 from any experts indicating any injuries consistent with  
12 sexual assault. We know there was no evidence presented by  
13 any expert, including bodily fluids on the carpeting where  
14 she was lying, indicating that there was a sexual assault.

15 The State asks you to speculate and our  
16 argument is, our contention is that to make an arbitrary  
17 decision about a sexual assault without any evidence is  
18 wrong and it would be improper for you to do so in this  
19 case.

20 The prosecutor went into quite a dialogue  
21 about no means no. Where was there any evidence that  
22 Deborah ever said no or ever wanted to say no? I wish I  
23 could count the number of times in counsel's closing  
24 argument that she used the word maybe or perhaps or might  
25 have been. She used these to describe her unsubstantiated

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1 theories about what might have occurred.

2 The Court instructed you that aggravating  
3 circumstances have to be proven beyond a reasonable doubt  
4 and in the instruction, it says you cannot speculate and  
5 that's exactly what she asked you to do. She asked you not  
6 to follow the law and I'm asking you to follow the law. In  
7 voir dire, we asked each and every one of you, "Are you the  
8 kind of a person who can be fair to James Chappell? Are  
9 the kind of a person, if you were a defendant, that you  
10 would want you to be on your jury," and each one of you  
11 responded in the affirmative.

12 Our position is that that type of juror  
13 would have looked at yesterday's closing argument as a pile  
14 of speculation and innuendo and looked at that closing  
15 argument as an attempt to outrage, to cause you to hate,  
16 and to cause you to seek vengeance and that's not why you  
17 are here.

18 Let's talk about the aggravating  
19 circumstance of torture for a few minutes. Never once in  
20 the penalty phase did the State mention the word torture.  
21 Never once in the guilt phase did the State mention the  
22 word torture, not until closing argument. Initially, they  
23 wanted you to look at the alleged punches that were  
24 thrown. Now, James admitted to you that he caused the  
25 injuries that Deborah Panos suffered on that day. To stand

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1 here and speculate about the number of blows without any  
2 corroborating evidence is wrong and, also, the legal  
3 interpretation was wrong and I'm going to try and explain  
4 that to you.

5 The Instruction No. 20, which defines  
6 torture, generally states that the act or acts which caused  
7 the death -- I'm paraphrasing here, but look at the  
8 instruction -- the act or acts which caused the death must  
9 involve a high degree of probability of death. Let me do  
10 it this way. Let me just read you the Instruction. That  
11 way I'm not paraphrasing and you can understand. "The  
12 essential elements of murder by means of torture are, one,  
13 the act or acts which caused the death must involve a high  
14 degree of probability of death." Those punches did not  
15 have a high degree of probability of death.

16 Number two, "The defendant must commit such  
17 act or acts," same acts that caused a high degree of  
18 probability of death, "with the intent to cause cruel pain  
19 and suffering for the purpose of revenge, persuasion or for  
20 any other sadistic purpose." Those punches could not cause  
21 death, therefore, they are not torture.

22 But, more importantly, referring to the  
23 punctures and stab wounds, the only evidence we had was Dr.  
24 Green. Dr. Green said they were all contemporaneous, they  
25 all happened at the same time. There was no attempt to

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1     prolong anything and they were all rapid. We don't know  
2     which wound caused the death. We don't know what the order  
3     of the wounds were, but they were all contemporaneous.  
4     James, as Instruction 21 states, James did nothing, did  
5     nothing beyond the act of killing itself. There is no  
6     torture and there is no depravity of mind.

7                     The only aggravator you can find in this  
8     case is the robbery and burglary and I say the word  
9     aggravator in a singular sense because, based on the facts  
10    of the case, in all fairness, you should consider that as  
11    one aggravator. There are many, many other aggravating  
12    circumstances under our system of justice which can cause a  
13    first degree murder to be subjected to the possibility of a  
14    death sentence and I want to talk to you about what this  
15    case isn't for a few minutes.

16                    The only circumstances by which murder of  
17    the first degree may be an aggravated are, number one, and  
18    I want you to keep in mind this is our legislature's  
19    attempt to compile an inclusive list. These are the only  
20    circumstances which can aggravate a first degree murder.  
21    Number one, "The murder was committed by a person under a  
22    sentence of imprisonment." Mr. Chappell never has been  
23    under a sentence of imprisonment. He wasn't at the time.  
24    He's never been convicted of a felony and during voir dire,  
25    that was important to you, was he an ex-felon, had he

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1 committed murders in the past.

2 That's the next one, "The murder was  
3 committed by a person who had previously been convicted of  
4 another murder or of a felony involving the use or threat  
5 of violence to the person of another." The State did not  
6 allege that because that's not James. He didn't commit  
7 that aggravating circumstance.

8 Number three, "The murder was committed by a  
9 person who knowingly created a great risk of death to more  
10 than one person by means of a weapon, device or course of  
11 action which would normally be hazardous to the lives of  
12 more than one person." The primary example is someone who  
13 sits in a garage, meticulously makes a bomb, takes it to a  
14 building where a lot of people are going to be, and set it  
15 off. A cold and malignant heart.

16 Number four is the one and only circumstance  
17 that applies to James Chappell. "The murder was committed  
18 while the person was engaged in the commission of or an  
19 attempt to commit or flight after committing or attempting  
20 to commit any robbery, sexual assault, arson, burglary,  
21 invasion of the home or kidnapping." That is the one and  
22 only circumstance that applies to James Chappell.

23 Number five, "The murder was committed to  
24 avoid or prevent a lawful arrest or to effect an escape  
25 from custody."

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JChapelle11-8JDC2352

1                   Again, insinuating somebody plans a cold and  
2     calculated act, "The murder was committed by a person to  
3     receive money or any other thing of monetary value." The  
4     primary example of that would be murder for hire or killing  
5     someone for an inheritance. Again, does not apply to  
6     James.

7                   "The murder was committed upon a peace  
8     officer or a fireman who was killed while engaged in the  
9     performance of his official duty or because of an act  
10    performed in his official capacity and the defendant knew  
11    he was a police officer or a fireman." Doesn't apply to  
12    James.

13                  "The murder involved torture or the  
14    mutilation of the victim." As I have already argued to  
15    you, that does not apply to James.

16                  "The murder was committed upon one or more  
17    persons at random and without apparent motive." Again,  
18    indicating a cold blooded, heartless-type of killing that  
19    does not apply in this case.

20                  "The murder was committed upon a person  
21    less than 14 years of age." Doesn't apply to James.

22                  "The murder was committed upon a person  
23    because of the actual or perceived race, color, religion,  
24    national origin, physical or mental disability or sexual  
25    orientation of that person." A hate crime. Doesn't apply

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1 to James.

2 And the last one, number 12 states, "The  
3 defendant has, in the immediate proceeding, been convicted  
4 of more than one offense of murder." The case of a  
5 multiple murder situation, which again doesn't apply to  
6 James.

7 These cases are the statutory aggravators.  
8 I think it gives you a good indication, I think, on what  
9 the legislature was looking for in terms of people who  
10 would commit premeditated, preplanned acts that are not the  
11 case in this case and you keep in mind the only aggravating  
12 circumstance basically alleged is that James went in there  
13 to commit a crime and, during the course of the crime,  
14 killed Deborah. Completely different.

15 I want to introduce to you a term of art I'd  
16 like to call the worst of the worst and I'm going to use a  
17 little chart to give you a visual aid of about what I'm  
18 talking about. If I could have the Court's indulgence.

19 I think we can all accept, first of all, we  
20 know James has been convicted of first degree murder with  
21 use of a deadly weapon and this is the worst kind of a  
22 case. I think we can all accept the proposition, though,  
23 that all killings are bad, but some killings are worse and  
24 I think we can accept the proposition that all killers are  
25 bad, but some killers are worse.

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1                   This is not the case of a mass murderer,  
2    which some of you mentioned in voir dire that you thought  
3    was important. This is not the case of someone who sits in  
4    their garage and puts together a bomb so they can blow up a  
5    building full of people. This is not the case where an  
6    individual kidnaps and tortures and murders small  
7    children. This is a case where a man got into a  
8    relationship and relationships are difficult. He got into  
9    a relationship he couldn't handle. With his emotional and  
10   psychological problems, he couldn't handle the relationship  
11   and he killed Deborah. This is not a case where the death  
12   penalty is appropriate. It is not a case of the worst of  
13   the worst.

14                  The Court instructed you during your  
15   deliberation to consider both aggravating and mitigating  
16   circumstances. They are both important and that's the  
17   law. This is part of this slow, careful, well thought out  
18   decision that Mr. Brooks asked you to make yesterday. The  
19   prosecutor stood up yesterday and told you to ignore the  
20   mitigating circumstances. They are all excuses, they don't  
21   matter. Again, she asked you to not follow the law. We're  
22   going to talk a few minutes about the mitigating  
23   circumstances.

24                  Instruction No. 7, and I'm just going to  
25   focus on the part that deals with mitigation because

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1 Instruction 7 also deals with aggravation and if you have  
2 any questions about that, make sure you refer to that  
3 Instruction. A mitigating circumstance itself need not be  
4 unanimous. That is if only one juror can find a mitigating  
5 circumstance without the agreement of the other jurors,  
6 then that juror can consider that and that's important as  
7 we consider these mitigating circumstances, as I'm going to  
8 list them. I'm going to talk about seven mitigating  
9 circumstances and my list isn't all inclusive either. You  
10 have the liberty and the right to consider anything you  
11 want to be mitigating.

12 First thing I want to talk about is the  
13 youth of Mr. Chappell. He was born December 27th, 1969.  
14 At the time he committed the offense, he was 26 years old.  
15 At the time of the offense, Deborah Panos, who was born on  
16 May 4th, 1969, was also 26 years old. She was a few months  
17 older than James. The State, in its closing argument,  
18 referred to her as young Deborah Panos inferring Deborah  
19 Panos was still young in her life and we will concede  
20 that's true and so was James. The State later argued that  
21 James was not young, he was older and experienced. This is  
22 not consistent arguments. The truth of that is both were  
23 young. Both of them were probably in their first serious  
24 relationship. They had gotten together when they were 16.  
25 Therefore, they were probably both experiencing their first

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1 breakup.

2 In terms of dealing with relationships, they  
3 were both very young. I want you to remember Dr. Etcoff's  
4 testimony because it's important to realize that James had  
5 some problems and, in actuality, emotionally and  
6 intellectually he was probably younger than his  
7 chronological years. The youth of the defendant, James  
8 Chappell, is a mitigating circumstance and it's something  
9 that you should consider.

10 Next, I want to talk about the lack of  
11 significant criminal history. When James was 14 years old,  
12 he was arrested in Michigan for petty thefts and petty  
13 crimes. His probation officer came in here to talk to  
14 you. He was arrested, he was put under community  
15 supervision, and he did very well. He thrived under that  
16 support and that authority. He did what he was asked and I  
17 think it is pretty obvious his probation officer liked him,  
18 took an interest in him, and liked the way that he was  
19 treated as his probation officer.

20 As an adult, he had some problems. He had  
21 an addiction to crack cocaine. He had incidents of  
22 domestic abuse and he was a petty thief. And he's admitted  
23 all this to you from the beginning. The system never  
24 intervened and the State made a big deal about how the  
25 system failed Deborah Panos. James has no felony

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1 convictions. He has never been to prison. The question to  
2 ask yourself is, does James' history warrant the death  
3 penalty? Do you execute people because they are petty  
4 thieves? Do you execute people because they are cocaine  
5 addicts? Do you execute people because they have emotional  
6 problems and commit domestic violence? That's the issue.

7           The phrase is significant criminal history  
8 and the operative word is the word significant. When I was  
9 discussing the aggravating circumstances with you a few  
10 minutes ago, we talked about different types of criminal  
11 history which can aggravate a first degree murder and James  
12 didn't fall into any of those categories because his  
13 criminal history is not substantial and it should not be a  
14 aggravating fact. It should be considered mitigating.  
15 This is not again -- I mean I have said this before and I'm  
16 going to say it again, this is not the case of the ultimate  
17 murder situation, a murder for hire, this was not the case  
18 of a bombing or the torture and killing of children. James  
19 does not have a significant criminal history warranting the  
20 consideration of the death penalty.

21           I found it very ironic that the State of  
22 Nevada would stand up and say that because the system, the  
23 very system that they are a part of, failed Deborah Panos.  
24 The result is that you should kill James Chappell. I think  
25 that was incredibly ironic. The system failed a lot of

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1 people in this case and vengeance and hate is not the  
2 solution.

3 The murder was committed while James was  
4 under the influence of extreme mental and emotional  
5 disturbance. You may ask why did we put Dr. Etcoff on the  
6 stand? Did we put him on the stand to show you what James  
7 did was okay? Absolutely not. We put him on the stand so  
8 you could understand James, understand how he functions,  
9 how he thought, and some of his deficiencies and always  
10 keep in mind that James didn't ask for these deficiencies,  
11 he didn't choose to have these problems he had. There was  
12 a lot in his life.

13 We have all been involved in relationships  
14 that have ended, at least I assume we all have and we know  
15 how that feels. The knot you get in your stomach, the fact  
16 you can't concentrate, you can't see the words on the page  
17 in the book in front of you. Now I can accept the fact  
18 that none of us killed the person that the relationship was  
19 with that was ending, but you see, we have abilities to  
20 choose and channel that James does not have. We have  
21 control mechanisms that James does not have. We have  
22 communication skills and emotional stability that James  
23 does not have. I want to refer to a couple things that Dr.  
24 Etcoff said in his examination, during the guilt phase of  
25 the trial, and this is going to be brief and I realize that

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1 it's only a part of what he said. I'm trying not to take  
2 it out of context and I want you to understand that I'm  
3 aware that I'm just pulling a few excerpts out of this  
4 testimony.

5 He was referring to the low verbal IQ that  
6 put him in the seventh percentile nationally. Out of a  
7 hundred people, 93 had better verbal skills than James  
8 did. He said, "The important aspect of Mr. Chappell's  
9 language deficits is that if you place someone like Mr.  
10 Chappell in a stressful situation, he's already learning  
11 disabled, he can't think well in words, if he has to make a  
12 snap decision or filters through the problems of solving  
13 complex information rapidly," -- excuse me -- "filter  
14 through and problem solve complex information rapidly, you  
15 will not find someone of his intellectual capacities  
16 verbally doing a very good job and making the best choices  
17 as a result of these language problems that are thought to  
18 be genetically caused at this point."

19 And he went onto refer to how people who  
20 have this deficiency tend to be aggressive and tend to be  
21 over represented in the population of prisons.

22 And in regards to the personality test, he  
23 stated, "The personality test suggests strongly that he is  
24 very socially awkward, introverted, a man who is  
25 distrustful of others, who wants to be liked and accepted,

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1 but is frightened of rejection and humiliation because he  
2 expects that to occur, if he gets to know someone very  
3 well, he'll be hurt."

4 Then he refers to horrible personality  
5 borderline characteristics. He refers to those people who  
6 have absolutely no sense of identity, they have no sense of  
7 self.

8 Again, James didn't ask for these  
9 deficiencies, he didn't request them. They were given to  
10 him. There is a lot of things he's done in his life. He  
11 is responsible for his crimes. There's no question, but he  
12 is responsible for his action.

13 Remorse. Number four, remorse. James came  
14 to you in court and cried. I would submit to you his tears  
15 were genuine and they were the same tears Dr. Etcoff  
16 testified he saw and he is trained to view people. And he  
17 was remorseful to you. I will say that I expect some of  
18 the remorse was towards James. He is in a very difficult  
19 position. How can you argue that the vast majority of that  
20 wasn't addressed to Deborah Panos? He killed the woman he  
21 loved and he feels terrible about it. He told you he would  
22 trade places if he could, but he can't. His remorse is  
23 genuine. It's mitigating because it demonstrates he  
24 doesn't have that cold and malignant heart that I talked  
25 about before.

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1 James accepts responsibility for his  
2 actions. That's mitigating circumstance number five. He  
3 told you whatever you do, he will accept. He told you he  
4 killed her, he knew it was criminal. Now his lawyers  
5 presented a defense of voluntary manslaughter because we  
6 listened to his story and we thought that's what he was  
7 telling us. It's difficult for him to understand the  
8 differences between the two. He stood up there and told  
9 you he committed the crime and he also told you whatever  
10 you do, he will accept. This again strongly demonstrates  
11 that he doesn't have that cold, malignant heart of someone  
12 who is worthy of the death penalty consideration.

13 I want you to consider his family's love for  
14 him. They came in here yesterday and briefly told you a  
15 little bit about him and it was difficult for them and they  
16 asked you to allow him to remain a part of their lives.

17 I want to talk to you for a few minutes  
18 about his obvious willingness to adapt to a prison  
19 environment, to a prison setting. It's mitigating.  
20 There's been no evidence that he had a problem in jail.  
21 He's been in jail since the crime was committed a year and  
22 a couple months ago. No evidence he's had any problems.  
23 Bill Moore told you, when he was under his supervision, he  
24 responded well to authority, he was respectful, he liked  
25 the structure, he listened. There is no evidence presented

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1     that he would be a problem in prison and you are in a  
2     position where you can severely punish him, where you can  
3     protect society, where you can rest assure that the inmates  
4     aren't in danger and you can do that with a life sentence.

5                     The last mitigator I want to discuss is  
6     James' childhood. There was particular individual  
7     tragedies which he had to endure to shape his life. The  
8     loss of his mother, when he was two and a half, which  
9     interestingly resulted in his inability to speak for at  
10    least a year. His grandma said a year. Bill Moore said  
11    two years. That had to have been a substantial trauma. He  
12    grew up in a neighborhood where there was drug, violence,  
13    and theft. These things he saw all the time. Bill Moore  
14    said it would have taken an exceptional youth to be able to  
15    rise out of that situation and not have problems and he  
16    said James wasn't that exceptional youth.

17                    Now did James choose to be born where he was  
18    born in the neighborhood he was forced to live in? He  
19    didn't make those choices. He was forced and he is  
20    suffering the consequences because of that. Is that an  
21    excuse? No, but it's a reason and it's mitigating. It's  
22    clear in this case that the mitigators vastly and  
23    drastically outweigh the existence of any aggravators.

24                    I want to talk to you now about the fact  
25    that our law, which you've all sworn to uphold and which

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1     you talked about during voir dire being important to you,  
2     the law favors life. The law we live under favors life.  
3     There is lots of kinds of criminal homicide, as I listed in  
4     my chart, criminal homicide where there is a death and it's  
5     a crime and I've listed those. Involuntary manslaughter is  
6     punishable up to one to six years in prison. It's  
7     probationable.

8                     Voluntary manslaughter is punishable up to  
9     one to 20 years.

10                    Second degree murder, which is the  
11     intentional, malicious killing, 25 years or life with  
12     parole eligibility after 10 years.

13                    First degree murder, premeditated and  
14     deliberate or a felony murder, punishable by 50 years or  
15     life with or without the possibility of parole. If there  
16     is parole eligibility, it will be after 20 years and only  
17     in this last area here, the point of this triangle is the  
18     death penalty even as an option and that's where there is  
19     murder in the first degree with aggravating circumstances.

20                    Now, if you conclude that there is  
21     aggravating circumstances, then you are asked to weigh them  
22     against the mitigating circumstances and if the mitigating  
23     circumstances outweigh the aggravators, then you must vote  
24     life. If you compare them and the aggravators outweigh the  
25     mitigators, but you determine that life -- that death isn't

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1 appropriate, then you must vote life. Only when the  
2 aggravators outweigh the mitigators and you conclude that  
3 death is appropriate, then you have the option of  
4 considering it and you may. You may impose a death  
5 penalty, but even then it's not required. You have the  
6 right to say no. You have the right to say it's not  
7 appropriate.

8 The prosecutors would have you believe that  
9 if you don't vote death, you are somehow giving James a  
10 free ride. I would submit to you that is absolutely  
11 ridiculous to say that a life sentence is a free ride.  
12 Remember that first degree murder with use of a deadly  
13 weapon with the possibility of parole would mean that James  
14 would not even be parole eligible for 40 years until he is  
15 66 years old. If you give him life without the possibility  
16 of parole, he'll never get out and what is prison like?  
17 What's it like? Is it a walk in the park? You know, when  
18 I'm sitting over her preparing for court everyday, I know  
19 when James is coming down the hall because I can hear the  
20 chains rattling. He is in chains when he comes and goes.  
21 When he gets to jail, he is behind bars. He eats when they  
22 tell him to eat. He sleeps when they tell him to sleep.  
23 He has visitors when they tell him he can have visitors.  
24 He never gets to go to the park and he never gets to go  
25 anywhere. And I acknowledge the fact that Deborah Panos

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1 doesn't either. That's true. We are not asking you to  
2 forget her. We are asking you to accept the fact that  
3 prison is harsh and it's a severe punishment.

4                   Prosecutor made a real valid point in her  
5 argument yesterday. She said that mercy can never rob  
6 justice and she is absolutely true. She's absolutely  
7 correct. Being merciful and showing mercy will never rob  
8 justice. Justice and mercy are intertwined, they are a  
9 part of each other. Mercy is not part of hate. Mercy is  
10 not part of vengeance, but neither is justice.

11                   The State wants you to hate, they want you  
12 to seek vengeance, and that's why the closing argument was  
13 presented yesterday the way it was. That's why the case  
14 has been presented the way that it was. They want you to  
15 hate and they want you to seek vengeance. They asked you  
16 to stoop way down to the level of someone who would commit  
17 first degree murder and show him that same kind of mercy.  
18 That's scary, that's very scary.

19                   The State also wanted to talk about winning  
20 and losing. Nobody wins here. Everybody loses. If James  
21 gets a life sentence with the possibility of parole, he  
22 will probably die in prison. I'm confident that you are  
23 going back to the jury room and make a reasoned, thought  
24 out decision based upon the evidence, that you are going to  
25 put aside the emotion, that you are going to remember

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1 Deborah Panos, you are going to remember James Chappell,  
2 you are going to remember the evidence, and you are going  
3 to make a conclusion what this case deserves, and you are  
4 going to send James to prison for life. That's obvious.  
5 You are going to send him to prison for life, but you  
6 should do that with the possibility of parole for one  
7 simple reason.

8                   Number one, there is very little difference  
9 between the two. He'll be 66 years old when he even has  
10 the eligibility of being released, but what it will do is  
11 provide for James some type of motivation to make prison a  
12 positive experience in the event that some day he has a  
13 chance of getting out. It provides him more motivation to  
14 continue to do, as he has done before, to be cooperative,  
15 to be helpful, to respect authority, and to respond well to  
16 that type of a situation.

17                   That's what justice deserves in this case  
18 and that's what we're asking for. Please don't hate,  
19 please don't seek vengeance. Look at the facts in a  
20 reasoned and calculated manner and return a verdict of life  
21 with the possibility of parole.

22                   Thank you.

23                   THE COURT: Thank you.

24                   Mr. Harmon, for the State of Nevada.

25                   MR. HARMON: May it please the Court,

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1 co-counsel, gentlemen for the defense, good morning, ladies  
2 and gentlemen. I want to congratulate a number of people  
3 in this case. The Court, as usual, Judge Maupin has been  
4 very thoughtful, very fair, and objective and professional  
5 in conducting these proceedings. He's a gentleman and a  
6 true credit to the judiciary.

7 I congratulate my co-counselor, Abbi  
8 Silver. She's been a great assistance on this case and has  
9 done what I submit the citizens expect of a prosecutor and  
10 that is to prosecute as vigorously as she is capable of  
11 doing and to strike hard blows, but not foul ones.

12 I also congratulate the esteemed defense  
13 counselors. Mr. Brooks and Mr. Ewing are fine gentlemen,  
14 but very capable lawyers and although there isn't a person  
15 in this courtroom who would want to exchange places with  
16 Mr. Chappell, having said that and with that understanding,  
17 he is a very lucky man. He's lucky to live in America.  
18 He's lucky to be someone who, having committed a heinous  
19 crime, is provided under our system due process of law.  
20 He's lucky that he has two bright, skilled, very fluent  
21 attorneys to state his position in this courtroom and  
22 they've done so very ably and I congratulate them for their  
23 effort.

24 This is an adversary system and surely, as  
25 intelligent men and women, you didn't come to the courtroom

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1     thinking that the prosecuting attorneys and the defense  
2     attorneys were going to agree about all the issues in this  
3     case. It doesn't work that way in an adversary system and  
4     we each have our roles to be performed. Without appearing  
5     to try to curry favor because I want to assure you that the  
6     decision in this case, as it has been from the time it was  
7     submitted to you at the conclusion of the guilt phase, the  
8     decision is yours. You are the triers of fact and you are  
9     now judges in the sense that you have the awesome  
10    responsibility of passing judgment upon a fellow human  
11    being and you must do that without submitting to any type  
12    of temptation to do it based upon prejudice, based upon  
13    gender or race.

14                   Ms. Silver and I are confident that you can  
15    do that and we congratulate you, as a juror, for your  
16    willingness to serve on this case and for the fact that you  
17    were obviously conscientious, you are fair minded, decent  
18    human beings, and what I say to you now is just an  
19    expression of some thoughts about the evidence in this  
20    case, but it's with full realization that the persons who  
21    must wrestle with the decision after the attorney rhetoric  
22    is done will be you, as the members of the jury, and we are  
23    fully confident that you will do your very best to give Mr.  
24    Chappell what you believe he is due given the facts and  
25    circumstances of this case.

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1                   There are a number of comments by the  
2     defense attorneys that I wish to reply to. It's been at  
3     least inferred by Mr. Ewing that the aggravating  
4     circumstances become inferior at the penalty phase if there  
5     wasn't additional evidence presented concerning them and  
6     with that inference in mind, I want to direct your  
7     attention to penalty hearing Instruction No. 25. It reads,  
8     "The jury is instructed that in determining the  
9     appropriate penalty to be imposed in this case, that it may  
10    consider all evidence," those are the operative words, "all  
11    evidence introduced and the Instructions given both at the  
12    penalty hearing phase of these proceedings and at the trial  
13    of this matter." We have different phases, but it's all  
14    one trial and when you retire to deliberate and to  
15    determine the judgment to be imposed upon Mr. Chappell, you  
16    aren't limited to the circumstances that were described at  
17    the penalty hearing. You may consider all the evidence.

18                  So with due respect to Mr. Ewing, it's  
19    somewhat slightly misleading to suggest that a  
20    circumstance, an aggravator somehow carries less weight  
21    because the prosecution didn't supplement it at the penalty  
22    hearing with additional evidence. Many aggravating  
23    circumstances, as you can tell from the list of 12,  
24    described to you by Mr. Ewing and he accurately did so;  
25    those are the legislative enactments regarding mitigation,

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1 but many of them relate to the facts and circumstances of  
2 the murder because in some cases, and this is one of those  
3 cases, there are factors about this case that aggravate it,  
4 they make it worse, they arguably make it among the worst  
5 of the worst. And, actually, when you consider the  
6 significance of the statement premeditated murder, then  
7 it's surely not far off the mark to argue that any  
8 premeditated murder falls into the category of the worst of  
9 the worst, as we look at various crimes which can occur.

10 Now, Mr. Ewing has characterized the  
11 prosecution arguments and I assume has referred to my  
12 partner, since I hadn't stood up yet, the argument as a  
13 pile of speculation and innuendo. Mr. Ewing and Mr.  
14 Brooks, of course, are entitled to whatever opinions they  
15 choose to form. The statement, as it implies that you  
16 should not guess or should not speculate by Mr. Ewing is  
17 accurate, but I don't concede for a moment that the  
18 position of the prosecution is based upon a pile of  
19 speculation and innuendo.

20 You may draw just and reasonable inferences  
21 from the evidence presented and that doesn't amount to  
22 innuendo or speculation. In Instruction 28, if I might  
23 command your attention to another Instruction, the Court  
24 points out, and I'm reading in part from the Instruction  
25 beginning at line four, "You may draw reasonable inferences

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1 from the evidence which you feel are justified in the light  
2 of common experience."

3 Now contrary to the notion of some persons,  
4 trials such as this are based upon the rule of reason and  
5 nobody asked you to leave your common sense, your good  
6 judgment, your ability to be thoughtful and reasonable and  
7 to draw appropriate inferences from the evidence outside of  
8 the courtroom. We want you to bring that with you and we  
9 want you to draw just and reasonable inferences from the  
10 evidence during the deliberation process. And so if Mr.  
11 Ewing meant to imply that you aren't to draw reasonable  
12 inferences, I simply wanted to remind him and you of the  
13 Court's Instruction No. 28.

14 This is World Series time. I'm a baseball  
15 fan and somehow, as I heard the argument of Mr. Ewing this  
16 morning and the short but very direct remarks of Mr. Brooks  
17 yesterday afternoon, I thought of an interview that the  
18 great home run hitter Hank Aaron had with the media a  
19 number of years ago after he had succeeded in breaking the  
20 home run record of Babe Ruth and Hammering Hank was asked  
21 by the journalists if he would explain how he had managed  
22 to hit so many home runs. There was a very short pause and  
23 then Hank Aaron responded, "I did it this way. I did it by  
24 always keeping my eyes on the ball."

25 What that suggests to me is, in addition to

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1 the literal application to baseball, Mr. Aaron was saying  
2 if you want to succeed, stay focused. Don't lose sight of  
3 what is important in your experience and, as it applies to  
4 this case, I'm suggesting that many things are a matter of  
5 perspective. The defense says one perspective, the  
6 prosecution another, and, as the jury, you are in the  
7 middle and you would have a somewhat different perspective,  
8 but it is important, as the triers of fact, to stay focused  
9 on the things which are truly important about this case,  
10 not to become distracted, not to lose your concentration or  
11 your resolve to do what is proper.

12 Well, despite the disclaimer of Mr. Ewing  
13 this morning and he said we're not asking you to forget  
14 her, we have never, never asked you to forget Deborah  
15 Panos. Mr. Ewing said later, in his argument this morning,  
16 he said it twice during his opening statement commencing  
17 the penalty hearing proceedings, "The penalty phase is  
18 about James Chappell." I said he mentioned that twice as  
19 though he wanted to make the point. A little later, he  
20 said, and I quote, "The penalty hearing is no longer about  
21 Deborah Panos. It is about James Chappell." Well, in  
22 part, it's about James Chappell, but if Mr. Ewing meant to  
23 say that you eliminate during this sentencing phase all  
24 consideration of the person whose life was taken, that is  
25 ridiculous, with due respect, Mr. Ewing.

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JChapelle11-8JDC2373

1 I recall from this evidence a mother and  
2 grandmother testifying about an event occurring in her life  
3 that forever changed her mortal life on August the 31st,  
4 1995. I remember the testimony of Norma Penfield that she  
5 got a fateful telephone call and a strange man's voice came  
6 on the telephone and he uttered the words no mother ever  
7 wants to hear, "Debbie is dead."

8 Now, when you fix a punishment for the worst  
9 of the worst, a premeditated killer, someone who has been  
10 convicted of murder of the first degree, surely, it is of  
11 paramount importance to try to determine the degree, the  
12 scope of moral culpability. You must determine what the  
13 loss is, what the impact has been upon the friends and  
14 family of this person whose life was prematurely taken.  
15 That's part of the calculus of imposing sentence, to  
16 determine the degree of evil. Just how bad is this? Just  
17 how much has it damaged not only the life of the victim,  
18 who was taken from her little children, but how much has it  
19 effected those who loved her, those who respected her,  
20 those who knew she was intelligent, she was hard working,  
21 she was generous, she made many friends, she was a devoted  
22 mother of three children, she loved to be with her parents,  
23 her aunts, her uncles, her nieces, and nephews on special  
24 occasions. She was a very nice lady, a good person, a  
25 loving, decent human being. Now, there's no requirement in

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1     this state that this had to be a mass murder to make it  
2     appropriate for a death sentence. It's important to  
3     consider this was a good, decent human being and it is a  
4     terrible injustice, it is a hideous evil that she has been  
5     murdered.

6                     Now I recall the testimony of the aunt,  
7     Carol Monson, and the words were echoed also by Debbie's  
8     mother, Norma Penfield. They were talking about the impact  
9     upon the children of tender years when they lose their  
10    mother and little Chantell, only three years old when this  
11    happened, four years old now, made the statement, " I want  
12    to die and go to heaven so I can see my mommy," and the  
13    defense tells you that the penalty hearing is only about  
14    James Chappell.

15                    Defense, and I refer now to my esteemed  
16    colleague, Mr. Brooks, tells you to be thoughtful, well  
17    reasoned, conscientious, and objective and, yet, he chose,  
18    in his brief remarks yesterday afternoon, to ignore all  
19    semblance of respect and instead, he chose to indulge in  
20    attacking personalities by accusing the State of a, "rabid  
21    dog style of prosecution." Well, I hadn't spoken yet. He  
22    isn't a mind reader. So I must conclude, by inference, Mr.  
23    Brooks was saying my colleague, Abbi Silver, is a rabid  
24    dog. That's offensive. She is a dedicated, skillful  
25    professional, who articulated tremendously well the

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1 legitimate position of the prosecution in this case and  
2 while Mr. Brooks says that he wants you to be thoughtful  
3 and well reasoned, what Mr. Brooks really wants you to do  
4 is to lose your focus, to take your eyes off of the ball  
5 and become distracted, when he accuses the prosecution of  
6 having an ulterior motive.

7                   The philosopher Goethe is quoted as saying,  
8 and I adopt his remarks for the remainder of my argument,  
9 "I can promise you to be sincere, but not impartial." Ms.  
10 Silver and myself are not impartial on the subject of  
11 murder of the first degree. The murder of this young woman  
12 was hideous. There weren't any eyewitnesses left, so no  
13 one knows for sure the exact sequence of events. You heard  
14 the account of the defendant, but he surely has an interest  
15 when this case occurs. When he cries, we must all wonder  
16 why does he cry? When he is tearful and convinces a  
17 clinical psychologist, Dr. Etcoff, months after he's been  
18 arrested, after the preliminary hearing, after he's heard  
19 witnesses testify about the State's case, when he does this  
20 after he's been bound over, after the Information charging  
21 him with murder and robbery and burglary have been filed,  
22 and after the State's filing of its Notice of Intent to  
23 Seek the Death Penalty, and after all this, the defendant  
24 speaks with a psychologist. He surely must know the intent  
25 to call to the witness stand if he makes the right

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1 impression. Now are those remarks inherently suspect? Is  
2 there an attitude, something to be gained by the defendant  
3 and Dr. Etcoff acknowledged if he was being given  
4 inaccurate information, his whole premise fails because if  
5 the defendant was being untruthful, if he wasn't explaining  
6 this how it happened, then his opinions are invalid.

7 Was the defendant credible in June when he  
8 was interviewed by the doctor? Is he credible now on the  
9 witness stand? Debbie Panos is beyond our jurisdiction.  
10 We can't subpoena her. She is not subject to service of  
11 process. She can't be brought into the courtroom to  
12 explain how this occurred from her perspective. So the  
13 defendant tells us he got there after she arrived.

14 Well, having said, as I did, that no one  
15 knows, can know for sure because there are no surviving eye  
16 witnesses except the killer, who has an interest in what  
17 happens to him in this case. Let me refer you to a couple  
18 of things the defendant said on the witness stand and a  
19 number of other factors about the case that offer a rather  
20 convincing argument that she didn't get there first, he got  
21 there first, and that he got there and, of course, that's  
22 when he could ransack the trailer, look for anything he  
23 wanted. That's when he could locate the knife and have  
24 that ready. That's when he could lay in wait for her.

25 What did he say he did from the witness

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JChappell-8JDC2377

1 stand when he was excused by the law enforcement officer we  
2 now know to be Bill Duffy of Parole & Probation? He said  
3 he took a hike down Bonanza to Nellis and Lamb and he said  
4 he went to the projects, said he stayed there for awhile,  
5 borrowed a bicycle. He claims he watched a couple of other  
6 people drink a couple of beers and then he went over to 839  
7 North Lamb, space 125 and he says he didn't knock; didn't  
8 do the logical thing, didn't knock, didn't even go up and  
9 try the door. That's what he claims. That is what he is  
10 asking you to accept to see if the door was opened.  
11 Instead, he went directly to a window and he gave a  
12 justification for that. Mr. Chappell said, "I had just  
13 called two times." Didn't he say that from the witness  
14 stand? "I had just called two times and nobody answered  
15 the phone." Just called and where are the projects? Where  
16 is this Vera Johnson apartment complex from the crime  
17 scene? A couple of blocks away. How long did it take to  
18 get there? Minutes.

19 Then a little later, he was asked, "Why  
20 didn't you knock? I didn't knock because nobody answered  
21 the phone when I called." Well, if she had just been  
22 called and she wasn't there to answer and that's his  
23 testimony, why are we to accept that she was there when he  
24 got over after he had ridden the bicycle the several blocks  
25 to her place? Well, ladies and gentlemen, I submit the far

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JChapell-8JDC2378

1 more reasonable inference in this case is that he did knock  
2 to make she wasn't there, but he was real sure she wasn't  
3 anyway because he had just barely telephoned. He  
4 telephoned her from Duffy's office and she wasn't there and  
5 he telephoned again from the projects and she wasn't there  
6 and he went over and knocked and she didn't answer because  
7 she wasn't there and he went in through the window because  
8 he wanted to get in and he went in through the window he  
9 did that goes through the master bedroom because he  
10 couldn't without more effort that he wanted to employ get  
11 the others opened and we know that to be true because the  
12 officers tried from the Metropolitan Police Department and  
13 they ended up going in through the same window he went in  
14 through.

15 Now, there's another reason. He had to  
16 remove the screen, didn't he. There are photographs that  
17 show that it was inside. Well, if this was all something  
18 that was reasonable, if there was no malice involved, why  
19 did he put the screen inside? This is the window right out  
20 next to the driveway. When she would pull up, she'd have  
21 to see it, but if he puts the screen inside instead of  
22 outside the house, Debbie, when she arrives, has no way of  
23 knowing he is inside the house. And so he put it inside  
24 and he put his foot on it and he bent it in going to the  
25 house and then he prepared for murder, for premeditated

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JChappell-8JDC2379

1 murder of the first degree.

2 We know that for months he had indulged in  
3 thoughts of murder. You heard Dina Freeman testify. I'm  
4 not going to repeat the threats that she described. Lisa  
5 Duran testified about threats that she heard and most  
6 recently and something which is truly significant in this  
7 case is what happened the day before Debbie was murdered.  
8 She had been given something by the City of Las Vegas.  
9 That something was a subpoena and that subpoena didn't just  
10 invite her to go somewhere. It commanded her to appear at  
11 the Municipal Court on August the 30th for the purpose of  
12 giving testimony in the matter of the City of Las Vegas  
13 versus James Chappell and the charge was domestic violence  
14 and the woman who hadn't bothered in January, 1995 to  
15 follow-up on the temporary protective order and so it  
16 expired, elected to follow-up this time. And the woman the  
17 defendant had already been calling vile names in his letter  
18 I supposed to him added insult to injury because she  
19 responded to the subpoena, she came to court, and was there  
20 prepared to testify against him and Michelle Mancha and  
21 Lisa Duran both mentioned that they had seen the subpoena  
22 at work, they both said that Debbie left work early that  
23 day, and Michelle Mancha said she talked with Debbie over  
24 the telephone. She estimated at perhaps 2 or 2:30 in the  
25 afternoon still on the same day and Debbie said she had

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1     been to court, explained that the judge assured her that  
2     the defendant was going to an in-patient drug program, that  
3     he wouldn't be released for three months, and remember how  
4     Michelle said that made everyone feel a lot better. We  
5     felt a safety zone and then Debbie explained that she had  
6     talked with the defendant and, although Michelle got the  
7     idea it was right in court; it wasn't clear to her whether  
8     it was during the time that she was at the courthouse, the  
9     municipal courthouse or whether it was after and it was a  
10    visit with the defendant at the jail, but words were  
11    exchanged and according to what the victim related to  
12    Michelle Mancha, she had told the defendant that it was  
13    over.

14                   Now, the defense said there wasn't any  
15    evidence at all that bears on the aggravating  
16    circumstances, but I submit if, in fact, the victim in this  
17    case, within 24 hours of her murder, number one, appeared  
18    in court to testify against the defendant and that resulted  
19    in his guilty plea to domestic battery of her, and if she  
20    had the occasion and, in fact, used it to tell him that the  
21    relationship was finished, does that have a bearing on  
22    whether a burglary occurred? Does that have a bearing on  
23    whether he committed robbery and does that have a bearing,  
24    despite their prior acts through the years of consensual  
25    sex, does that have a bearing on whether she said yes or no

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JChapell-8JDC2381

1 or whether she had any choice to respond at all to sexual  
2 penetration? Did the defendant have a response to the  
3 statement by the victim that their relationship was done,  
4 finished, over? Michelle Mancha testifies that her  
5 co-worker and friend Deborah Panos told her that the  
6 defendant then said that he was going to kill her. Well,  
7 that's a statement that certainly has sinister implications  
8 when we realize it was made less than 24 hours before he did  
9 kill her. Those types of statements are self prophecies  
10 and they can be self-fulfilled, as indeed that one was by  
11 the defendant.

12 The defense refers to a rabid dog style of  
13 prosecution, and, yet, Mr. Brooks yesterday conceded, as  
14 did Mr. Ewing this morning, that the defendant is a  
15 worthless SOB, a thief, and a wife beater. Those were Mr.  
16 Brooks' words yesterday afternoon. Of course, Mr. Brooks,  
17 he is isn't a wife beater, now is he? He never married the  
18 woman. We made that point already. She never wore a  
19 wedding band around her finger. He didn't beat a wife. He  
20 beat someone who was a free woman, free to go anywhere and  
21 be with anyone she chose and, perhaps, inadvertently in  
22 listing the negative descriptions of the defendant, Mr.  
23 Brooks forgot to mention in addition to being a worthless  
24 SOB and a thief and a woman beater, he's a murderer.

25 The defense said -- Mr. Brooks said that

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1 James Chappell will never be reasoned. Well, is murder  
2 reasoned? Any murder? Is anyone ever justified in  
3 committing premeditated murder of the first degree? The  
4 fact is murder, by its definition, is unreasonable. So  
5 that doesn't somehow distinguish Mr. Chappell because he  
6 will never be well reasoned. Murder is irrational, it's  
7 illogical, it is stupid. It doesn't make sense and, yet,  
8 fortunately, we don't have a defense either during the  
9 guilt or at sentencing in this state called felony stupid.

10 Now, the defense says James Chappell will  
11 never be deliberate in what he does. Wrong. Wrong. He  
12 said on August the 30th he was going to kill her and, as  
13 soon as he was released, even though he had promised,  
14 begged for the opportunity to go to EOB to personally  
15 petition to get admitted to their drug rehabilitation  
16 program, he didn't go to EOB, he didn't go to D Street and  
17 Washington. He went in the opposite direction. Now was  
18 that deliberate? Was he making choices? You know the  
19 psychologist comes in to this courtroom and it is months  
20 after the crime has occurred. He doesn't know the  
21 principles in this case. He spent two hours with this guy  
22 and he reads his books and he gives his tests and then he  
23 forms certain conclusions. Was this defendant being a free  
24 agent when he walked out of Duffy's office and turned  
25 right, not left? Was he being deliberate when he went to

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1 the trailer and he broke in and then he ransacked and then  
2 he confronted her?

3 I want to talk about something called shared  
4 responsibility. My partner, Ms. Silver, very ably has  
5 discussed in her argument the primary purposes for the  
6 imposition of penalty for first degree murder. Punishment  
7 is a primary purpose. It is legitimate for society, in  
8 some way, to vent its sentience of moral outrage, at  
9 conduct which is unconscionable, which is totally  
10 unacceptable.

11 My partner also mentioned deterrence.  
12 There's nothing illegitimate about deterrence as a factor  
13 to be considered. You have it in this case, as the ladies  
14 and gentlemen of this jury, within your power to guarantee  
15 by the punishment you impose that Mr. Chappell never makes  
16 another woman a corpse. You can certainly deter him and  
17 you have it within your power to send a message today out  
18 into this community, which is we do not tolerate those who  
19 have a history of domestic violence, who will let it  
20 accelerate and become a murderer and you can tell the other  
21 would be James Chappells what the consequence is when you  
22 engage in that type of action. That's a legitimate  
23 position to take and, yet, the defense says the prosecution  
24 wants you to hate. They want you to stoop way down and Mr.  
25 Brooks yesterday said the State asks you to act in the way

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1 he acted. Asinine.

2 Mr. Brooks, with due respect, sir, imposing  
3 a death sentence within the criminal justice system is not  
4 the equivalent of battering a woman into submission and of  
5 murdering her with a knife, but Mr. Brooks continues, "You  
6 are not cocaine addicts, you are not thieves, you are not  
7 to descend to the level of James Chappell," in what  
8 basically he is saying, once again, is forget about the  
9 ball, don't focus and Mr. Brooks wants on your shoulders,  
10 each of you, guilt. He wants you to feel guilty and  
11 invites you to go on that trip and so I want to talk for  
12 just a moment about shared responsibility.

13 Long before you were summoned by the jury  
14 commissioner to come to the courthouse, long before you  
15 were selected on this case certain decisions were made  
16 about the criminal justice system and a legislature decided  
17 that we would have capital punishment in this state. The  
18 legislature made a policy judgment and we all elect our  
19 legislators and, hopefully, what they decide represents the  
20 consensus of a society and there are aggravating  
21 circumstances that apply to this case and you weren't  
22 involved in the statute making process. So if there is  
23 guilt, at least let it be shared by the legislature, which  
24 adopted the statutory scheme which applies to the case of  
25 State of Nevada versus James Chappell.

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1 Well, long before you got involved, long  
2 before the office of the district attorney got involved,  
3 the Las Vegas Metropolitan Police Department investigated  
4 this case, and the primary officers who were assisted by  
5 crime lab specialists, patrol officers, and many other  
6 people, were the homicide detectives, Detectives Ramos and  
7 Vaccaro, and, surely, they have some responsibility in what  
8 occurs here. They interviewed the witnesses, they  
9 investigated the case, they submitted the case to the  
10 Office of the District Attorney, and then the D.A.'s office  
11 made certain choices. A public agency and the police  
12 department and the legislature and the Office of the  
13 District Attorney all share in the responsibility that this  
14 is before you today. All share in the responsibility of  
15 imposing a severe punishment.

16 When you retire to deliberate and you select  
17 whatever punishment you deem to be appropriate, it's not  
18 going to be an individual thing, it's going to be an  
19 experience, a decision, a judgment shared by 12. It is  
20 ridiculous, however, to attempt to equate what you will do  
21 under the Court's legal Instructions, having been drafted  
22 into jury service, not having any axe to grind, no interest  
23 in this case to suggest that somehow the blood this man has  
24 on his hands is the equivalent of what you will do. Mr.  
25 Brooks, Mr. Ewing is not thoughtful, that argument is not

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1 objective, it's not reasoned.

2 Now the State, as you know, has alleged a  
3 total of four aggravating circumstances. As my partner  
4 expressed yesterday, murder is the ultimate act of  
5 selfishness. Mr. Chappell, as he had said to Lisa Duran,  
6 within that several month time span after Memorial Day  
7 Weekend, "If I can't have her, nobody can," was simply  
8 lived out in all of its brutal details August the 31st.  
9 Harry Emerson Fosdick once said, "The person completely  
10 wrapped up in himself makes a small package," and a  
11 murderer, a thief, someone who would steal not only from  
12 his girlfriend, but from his children food, shoes, jackets,  
13 diapers, toys is a selfish person. He is a small package,  
14 he is someone who has forfeited the right to live because  
15 his conduct cannot, will not be condoned not by decent  
16 minded persons.

17 This is a case where a burglary occurred in  
18 connection with the murder. You may ask rhetorically,  
19 well, why does burglary aggravate? Perhaps you haven't  
20 asked that rhetoric. My thought is the legislature made a  
21 judgment because things are worse when they happen in  
22 somebody's home. Debbie Panos had worked hard for this  
23 trailer where she lived, 839 North Lamb, space 125, and her  
24 mother, who came up with the down payment to get her into  
25 the trailer, made a sacrifice, but she had been there for

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JChapelle11-8JDC2387

1 six or eight or nine months; it would have apparently been  
2 a year in early October and this defendant invaded her  
3 home, her refuge, her sanctuary, her special place where,  
4 except for his repeated intrusions, she should have found  
5 safety.

6 Well, in the view of this evidence and from  
7 the perspective of the prosecution and I submit the  
8 legislature, when you do that, when you commit a burglary,  
9 particularly when you kill someone in their home, you have  
10 made it one of the worst of the worst. Now to add insult  
11 to injury, he also stole from her after he killed her, he  
12 stole from her and the legislature made a judgment about  
13 robbery because robbery is an inherently dangerous crime  
14 because it very often involves force and violence and fear  
15 of injury and so the legislature said you have a strict  
16 liability if you commit that crime and someone dies, then  
17 you must know, first, you are guilty of murder of the first  
18 degree and, second, you must know we say that aggravates  
19 the murder.

20 Well, there are certainly two aggravating  
21 circumstances already found by you in your previous  
22 deliberation. The third circumstance is rape, murder.  
23 Instruction 18 defines sexual penetration. It says,  
24 "Sexual penetration means cunnilingus, fellatio or any  
25 intrusion, however slight, of any part of a person's body

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JChappell-8JDC2388

1 or any object manipulated or inserted by a person into the  
2 genital or anal openings of the body of another including  
3 sexual intercourse," and then the Court says," Sexual  
4 intercourse is the placing of the penis of the perpetrator  
5 into the vagina of the victim."

6 Mr. Ewing says the State asks you to  
7 speculate with absolutely no corroboration and, ladies and  
8 gentlemen, I say to the contrary, agreeing wholeheartedly  
9 with the remarks already made by my co-counsel, this case  
10 to almost an absolute certainty, when just and reasonable  
11 inferences are drawn from the totality of the evidence,  
12 proves that this had to have been a sexual assault. For  
13 the victim told her friend Michelle Mancha, during the  
14 telephone conversation the day before, that she had told  
15 him no and if she said no, it's over, it's finished on the  
16 30th, why is it reasonable that she would suddenly have  
17 done a hundred eighty degree turn and helped him into her  
18 trailer? It's just absurd when you put it in the  
19 chronology of what was happening because this is the woman  
20 who was accompanied from work on the 31st, the day she was  
21 to be killed, Michael Pollard. She went to his residence,  
22 dropped him off, and then went on home and to his surprise,  
23 she showed back up just a few minutes later. This is the  
24 woman who apparently had already received the telephone  
25 message that Mr. Chappell made from Bill Duffy's office and

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1 she had learned, to her surprise, that he was going to be  
2 released.

3 So how did Pollard describe her when she got  
4 back to his residence? He said she was curled up like a  
5 ball on the sofa crying and shivering and shaking. She was  
6 so afraid of this defendant and the defense is saying that  
7 it's speculation in view of the fact that she told a friend  
8 the day before that it was over and that he replied he was  
9 going to kill her and when you understand that after his  
10 release, within two hours, he had killed her. Well, surely  
11 if she was saying no on the 30th, she was saying no, if it  
12 was within her physical capacity to do so. She was saying  
13 no on the 31st.

14 The Court in Instruction 19 explains  
15 something helpful, "Physical force is not a necessary  
16 element in the commission of sexual assault. The issue is  
17 not whether the victim was physically forced to engage in a  
18 sexual assault, but whether the act was committed without  
19 her consent. A victim of a sexual assault is not required  
20 to do more than her age, strength, surrounding facts and  
21 attending circumstances make it reasonable for her to do to  
22 manifest her opposition."

23 Well, ladies and gentlemen, this is a woman  
24 who was battered, been, by the concession of the defendant,  
25 a woman that he grabbed around the throat with his right

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1 hand. This is a woman he used a knife on. This is a woman  
2 whose residence he ransacked. This is a crime scene where,  
3 as the point of entry, he didn't use the door, neither the  
4 front door or the back door. He came in through the window  
5 forcing his way inside and the defense says there's no  
6 evidence that he sexually assaulted her. Well, he said he  
7 never ejaculated, but that is rebutted by the DNA  
8 evidence. One in 14 billion in describing the genetic  
9 profile. I submit to you that the State has proven beyond  
10 a reasonable doubt that he not only murdered her, he raped  
11 her. He not only murdered her, he robbed her. He not only  
12 committed murder, he broke and entered and he committed  
13 burglary and the defense says it's all the same course of  
14 conduct. If the legislature wanted to make those types of  
15 distinctions, they would have done so and your obligation,  
16 as objectively and as dispassionately as you can, is to  
17 apply the law to the evidence in this case. That's all we  
18 can ask.

19 The State's fourth aggravating circumstance  
20 is that this murder involved torture or depravity of mind.  
21 Instruction No. 20 describes torture. My partner ably  
22 explained to you the elements of murder by torture  
23 yesterday. I'm not going to repeat what she said.  
24 Instead, I want to emphasize depravity of mind. This  
25 aggravating circumstance is couched in disjunctive

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1 language. It doesn't necessarily require torture. It says  
2 murder involving torture or depravity of mind. Now, you  
3 think back about the circumstances of this case, is this a  
4 depraved murder? Is this depravity when the individual who  
5 kills is writing letters hurling defamatory adjectives at  
6 the woman who was supposedly the love of his life?

7                   The Court defines depravity of mind in  
8 Instruction 21 and I commend that to your attention when  
9 you deliberate. "The condition of mind described as  
10 depravity of mind is characterized by an inherent  
11 deficiency of moral sense and rectitude. It consists of  
12 evil, corrupt, and perverted intent which is devoid of  
13 regard for human dignity and which is indifferent to human  
14 life." Weren't the actions of Mr. Chappell on the day of  
15 this murder devoid of regard for human dignity? Didn't he  
16 act in a way totally indifferent to the sanctity of human  
17 life?

18                   The Court concludes at line six and seven,  
19 "To find an aggravating circumstance based on depravity of  
20 mind, you must additionally find that there was torture,"  
21 that's one of the ways to get there or there's the  
22 disjunctive again, "torture or other serious and depraved  
23 physical abuse beyond the act of killing itself." Now the  
24 defense says the only evidence we have in this case is the  
25 testimony of Dr. Green. Of course, they were focusing

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1 primarily upon the torture argument and it's quite true Dr.  
2 Green, the Chief Medical Examiner in Clark County,  
3 explained that, in his opinion, all of the wounds inflicted  
4 on this victim were contemporaneous. Well, Dr. Green  
5 didn't tell us what contemporaneous means except to say  
6 they all happened at about the same time. He doesn't know  
7 what the sequence of these lethal blows happened to be any  
8 more than Dr. Etkoff. Dr. Green is not an eye witness. He  
9 didn't see this as it happened and what he's, basically,  
10 saying is that the knife wounds happened at about the same  
11 time. He wouldn't know if there was a five minute  
12 interval. He couldn't tell that from his medical  
13 findings. He wouldn't know if there was a fifteen minute  
14 interval. He can say from the evidence of the battering,  
15 the pommeling to the head and face and body and arms of  
16 this victim, that those acts were before she died. The  
17 fact that she has defensive wounds, the bruises on her arms  
18 suggests that she was trying to cover herself up.

19 Well, that's Dr. Green, the expert that he  
20 is, is sill subject to limitations. What he did say is  
21 that this woman died of multiple stab wounds and that's the  
22 point I wish to make regarding depravity of mind because  
23 the requirement is if the action is depraved, that in order  
24 to find it, you must additionally find that there was  
25 torture or other serious and depraved physical abuse beyond

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1 the act of killing herself. Now, as horrendous as 13 stab  
2 wounds are, they didn't all kill her. My partner yesterday  
3 referred to the wound close to the naval. It was  
4 gratuitous, that was depraved. There's a stab wound down  
5 near her pubic area. Why does he stab her there? Do we  
6 get some insight from the fact that a few weeks ago, he had  
7 been writing from the jail, "You're going to hell, you are  
8 a slut, you are a whore, you are a stupid bitch," and he  
9 stabs her near her pubic area. That didn't kill her.

10 So are those acts of serious and depraved  
11 physical abuse beyond the act of killing itself and when  
12 the defendant says that things weren't right, he says when  
13 they were having consensual sex and the prosecution alleges  
14 when he was raping her, he says he jumped up and she was  
15 still laying down and he grabbed her with his right hand  
16 around the neck. He says, "No, I wasn't cutting off her  
17 air supply, I wasn't choking her. No, it wasn't anything  
18 like that," but he demonstrated how he grabbed her. Is  
19 that a serious and depraved act of physical abuse beyond  
20 the act of killing itself and he battered her. My partner  
21 counted 12. I don't know if it was six or 10 or 12 or 30  
22 times. She bears the scrapes and bruises which show the  
23 number of times the fists of this defendant impacted her  
24 body. That didn't kill her, though. She died of stab  
25 wounds and so those are serious and depraved acts of

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1 physical abuse beyond the act of killing itself and this  
2 was a depraved murder.

3 The defense has talked about mitigation.

4 Ladies and gentlemen, to say that somebody who is now 26  
5 going on 27 and when he committed these depraved acts was  
6 25 years, going on 26, that somehow because of his youth,  
7 that is a mitigating circumstance that outweighs his  
8 heinous violent acts is an absurd position to take.

9 The defense says that he has a lack of  
10 significant criminal history. Ladies and gentlemen, the  
11 guy that got hit in the back with his brick, Mr. Gay, from  
12 Lansing, Michigan might have something to say about that  
13 defense argument. The stores who have been repeatedly  
14 victimized by his efforts to satisfy his cocaine habit  
15 might disagree. The Tucson Police Department that had to  
16 respond repeatedly to the allegations of domestic violence  
17 might disagree and certainly the woman whose nose was  
18 broken, who was threatened with a knife to her throat on  
19 June the 1st, Debbie Panos might beg to disagree and in all  
20 likelihood, these persons would allege that the man who was  
21 being supervised on probation when he committed this crime  
22 for a gross misdemeanor, in fact, was the person who had a  
23 very significant criminal history.

24 Because the defendant takes the witness  
25 stand and cries, because he's tearful when interviewed by

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1 the defense psychologist, does that mean he's remorseful?  
2 Well, even Dr. Etcoff said this is a very angry person and  
3 when he began to explain what happened, I could see how  
4 close to the surface the anger was and the prosecution  
5 submits the remorse is phony. It's all an effort simply to  
6 mitigate the punishment. It's an effort to diffuse his  
7 responsibility. The defense says he fully accepts  
8 responsibility. Not if he lies about what he did. Not if  
9 he was there, laid around and waited, not if he raped her.  
10 They say it's mitigation that he can adapt to prison life  
11 and then they talk about his childhood.

12 Well, ladies and gentlemen, you'll be  
13 thankful to know I'm almost done. There are two operative  
14 words at this stage of the proceedings and in view of the  
15 position taken by Dr. Etcoff, whose opinions are valid only  
16 if what the defendant told him is valid, and in view of the  
17 arguments made by the defense, these words are particularly  
18 appropriate. The words are accountability and commitment.  
19 Shakespeare in the play Julius Caesar has one of his  
20 characters make a statement that I'm very fond of. The  
21 statement is, "The fault, dear Brutus, is not in our stars,  
22 it is in ourselves." Mr. James Chappell, the fault does  
23 not lie in your stars nor, to borrow a phrase from Flip  
24 Wilson, "Did the devil make you do it?" Ralph Waldo  
25 Emerson said, "Things are in the saddle and ride mankind,"

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1 and crack cocaine rides hard and with a heavy spur and he  
2 was an addict, that's for sure, and he had a problem, but  
3 it is not an excuse, even though criminals repeatedly try  
4 to make it an excuse, because nobody made him use crack  
5 cocaine. Crack didn't make you do it, Mr. Chappell. Drugs  
6 don't kill, people kill.

7 It wasn't the fault of Debbie Panos. She  
8 didn't make James Chappell do it. He sought her out, he  
9 came to her home, he was the aggressor, she denied his  
10 accusations, she did nothing to provoke him into burglary  
11 and robbery and rape and murder. It isn't even the fault  
12 of the knife, 68-A-1. Without Mr. Chappell, the knife  
13 could never have got outside of the drawer in the kitchen.  
14 It is an aminate object, it was the instrument used by him  
15 to destroy her life, but he is the one who picked it up.  
16 He made the series of choices. His hand grasped the knife,  
17 his hand, his arm plunged the cold steel of the knife  
18 repeatedly into her neck and her chest and other parts of  
19 her body.

20 It isn't the fault of EOB. When they  
21 interviewed him the first time, he didn't have the attitude  
22 of someone who was ready to change his life-style, to give  
23 up dope. It's not the fault of William Moore, the  
24 probation officer from Michigan, who did his best with this  
25 defendant and with his family and it isn't the fault of

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1 grandmother Clara Axam. She undoubtedly did her best under  
2 the circumstances with the defendant James Chappell. It's  
3 not the fault of his Aunt Sharon Axam. This defendant made  
4 the choice. He was the free agent who turned right down  
5 Bonanza and didn't go over to EOB. It isn't the fault of  
6 the absentee father. It's not the fault of the police in  
7 this case. It isn't the fault of the witnesses, not the  
8 fault of the Office of the District Attorney, it's not the  
9 fault of Judge Maupin. He has a hefty case calendar. He  
10 didn't need the Chappell case. No one made James Chappell  
11 do what he did.

12 Mr. James Chappell, the fault lies in you  
13 and if the criminal justice system means anything, it means  
14 that when persons commit serious crimes of violence, they  
15 must be held personally accountable. And you've already  
16 held him accountable to some extent, but now it's judgment  
17 day for James Chappell and the issue now becomes whether  
18 you, as the ladies and gentlemen of this jury, possess the  
19 resolve, the determination, the courage, the conviction,  
20 the intestinal fortitude, the sense of commitment to do  
21 your legal duty.

22 What about punishment? How does Mr.  
23 Chappell feel? He testified about life with the  
24 possibility of parole. "I would be honored," the murderer  
25 would be honored to have life with parole. "I would be

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1 honored to be able to get out some time in my life." Don't  
2 honor him, don't honor the depraved killer of Deborah  
3 Panos. Don't honor someone who batters the head and face  
4 and arms of a helpless mother of three children, who simply  
5 lays on the floor and covers her face inside her home.  
6 Don't honor someone who then culminates his murder, his  
7 assault by repeatedly plunging a knife into his victim's  
8 neck and chest and abdomen and pubic area. Those actions  
9 make James Chappell an object of derision, not someone  
10 worthy of the badge of honor of life with the possibility  
11 of parole.

12 The grandmother quoted JP, the oldest child,  
13 as saying about his father, "He's mean and he's in jail,"  
14 and she also described why she -- I'm talking about Norma  
15 Jean Penfield, her greatest fear, that after she dies, this  
16 defendant gets out to further torment her grandchildren and  
17 I'm asking you, I'm imploring you, as the ladies and  
18 gentlemen of this jury, to grant a grandmother peace of  
19 mind.

20 Remember the words of the defendant, Exhibit  
21 75, the words of someone who is filled with the spirit of  
22 vengeance and hatred, adding insult to injury. Well, a  
23 wise man many years ago said, "The world once in a broad  
24 flies irrevocably." A fist, a steak knife, these  
25 instruments once sent abroad flied irrevocably. Ask the

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1 loved ones and friends of Deborah Panos if these aren't  
2 irrevocable. Ladies and gentlemen, I ask you, on behalf of  
3 the State of Nevada, specifically on behalf of my partner  
4 Abbi Silver, in this case to impose a sentence which is  
5 just as severe, just as deadly, just as final, just as  
6 irrevocable as the fists and knife of James Chappell.

7 Deborah Panos had no due process of law, no  
8 fine lawyers urging the defendant to back off, no right of  
9 allocution, no jury, no safety net, no domestic violence  
10 hotline. With the most profound disrespect for one who  
11 would steal food and clothes and toys from his children and  
12 from the so-called love of his life for crack cocaine, who  
13 then stole from these children their mother and prematurely  
14 sent her to heaven, I add my words to the words of Debbie's  
15 aunt, Carol Monson, "Give James what he gave Debbie." I  
16 mean by that death.

17 THE COURT: Does this matter now stand  
18 submitted?

19 MR. HARMON: Yes, your Honor.

20 MR. EWING: Yes.

21 THE COURT: At this time we will leave this  
22 case with the jury. I will ask the clerk to swear the  
23 officers to take charge of the jury and the alternates.

24

25 (At this time the officers were duly sworn

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1 by the clerk.)

2

3 THE COURT: Ladies and gentlemen of the  
4 jury, if you will now accompany the officers to  
5 deliberation. First order of business is that they will  
6 take you to lunch.

7 We will be at ease while the jury departs  
8 the confines of the courtroom.

9

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

11

12 THE COURT: Mr. Ewing, you have something  
13 you wish to bring to the Court's attention at this time.

14 MR. EWING: Your Honor, yes.

15 Yesterday afternoon, I made a motion for  
16 mistrial. The Court made a ruling, but the Court allowed  
17 me an opportunity to present the Court with a case for the  
18 Court's file relating to the motion and the validity of a  
19 mistrial.

20 THE COURT: You rely upon this case in  
21 support of your argument?

22 MR. EWING: Yes, that's correct. It's  
23 pretty much on point and I provided a copy to the  
24 prosecution.

25 Does the Court wish to hear any more

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1 argument on the subject?

2 THE COURT: The Court believes that each  
3 accusation of misconduct and argument has to be considered  
4 on its special facts. The case of Lesko versus Lehman, 925  
5 F.2d 1527, in the Court's view, apply to the discrete facts  
6 of that case and is distinguishable and, therefore, makes  
7 the case part of this record and incorporates it as part of  
8 the defense's argument for mistrial.

9 Anything further at this time?

10 MR. HARMON: Not from the State, your  
11 Honor.

12 MR. EWING: Not from the defense.

13 THE COURT: All right, we're in recess.

14

15 (Off the record at 1:26 p.m.)

16

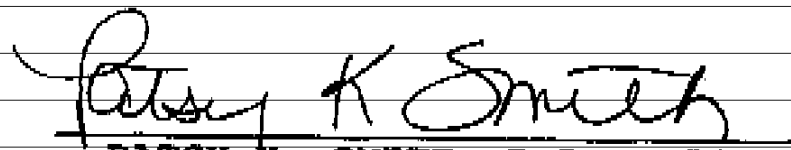
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19 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

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

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# EXHIBIT 268

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BY [Signature]  
Deputy

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL

Defendant.

Case No. C131341  
Dept. No. VII  
Docket P

INSTRUCTIONS TO THE JURY  
(INSTRUCTION NO. 1)

MEMBERS OF THE JURY:

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

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

CLERK

INSTRUCTION NO. 2

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



INSTRUCTION NO. 3

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

The jury shall fix the punishment at:

- (1) A definite term of 50 years imprisonment, with eligibility for parole beginning when a minimum of 20 years has served,
- (2) Life imprisonment with the possibility of parole,
- (3) Life imprisonment without the possibility of parole, or
- (4) Death.

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

Life imprisonment without the possibility of parole means exactly what it says, that a defendant shall not be eligible for parole.

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

Furthermore, any person who uses a deadly weapon in the commission of a crime shall be punished by imprisonment in the state prison for a term equal to and in addition to the term of imprisonment prescribed for the primary offense. The deadly weapon enhancement runs consecutively with the sentence imposed for the primary offense.

Therefore, any punishment the jury imposes will be doubled at the time of formal sentencing because of the deadly weapon enhancement.

INSTRUCTION NO. 6

In the penalty hearing, evidence may be presented concerning aggravating and mitigating circumstances relative to the offense, and any other evidence that bears on the defendant's character.

Hearsay is admissible in a penalty hearing.

The State has alleged that aggravating circumstances are present in this case.

The defendants have alleged that certain mitigating circumstances are present in this case.

It shall be your duty to determine:

(a) Whether an aggravating circumstance or circumstances are found to exist; and

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

(c) Based upon these findings, whether a defendant should be sentenced to a definite term of 50 years imprisonment, life imprisonment or death.

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

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

Otherwise, the punishment shall be imprisonment in the State Prison for a definite term of 50 years imprisonment, with eligibility for parole beginning when a minimum of 20 years has been served or life with or without the possibility of parole.

INSTRUCTION NO. 8

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2       You are instructed that it is not necessary for the Defendant to present any mitigating  
3 circumstances. Even if the State establishes one or more aggravating circumstances beyond a reasonable  
4 doubt and the Defendant presents no evidence in mitigation you should not automatically sentence the  
5 Defendant to death. The law never requires that a sentence of death be imposed; the jury however, may  
6 only consider the option of sentencing the Defendant to death where the State has established beyond a  
7 reasonable doubt that an aggravating circumstance or circumstances exist and the mitigating evidence  
8 is not sufficient to outweigh the aggravating circumstance.  
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You are instructed that the following factors are circumstances by which Murder of the First Degree may be aggravated:

1. The murder was committed while the Defendant was engaged in the commission of or an attempt to commit any Burglary and/or Home Invasion.

2. The murder was committed while the Defendant was engaged in the commission of or an attempt to commit any Robbery.

3. The murder was committed while the Defendant was engaged in the commission of or an attempt to commit any Sexual Assault.

4. The murder involved torture or depravity of mind.

INSTRUCTION NO. 10

Any person who by day or night, enters any residence or mobile home or building with intent to commit larceny and/or assault and/or battery and/or robbery and/or murder or any felony, is guilty of Burglary.



INSTRUCTION NO. 11

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You are instructed that the offense of Burglary is complete if you find that entry was made into a residence or mobile home or building with the intent to commit larceny and/or assault and/or battery and/or robbery and/or murder therein.

An entry is deemed to be complete when any portion of an intruder's body, however slight, penetrates the space within the building.

Any person who, in the commission of a burglary, commits any other crime, may be prosecuted for each crime separately.

INSTRUCTION NO. 12

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You are further instructed that an unlawful entry is one ordinarily done without the authority, permission or consent of the owner or one in lawful possession of the building. However, consent to enter is not a defense to the crime of burglary nor need there be a breaking into or a forced entry so long as it is shown that entry was made with the specific intent to commit larceny and/or assault and/or battery and/or robbery and/or murder or any felony therein.

The authority to enter a building extends only to those who enter with a purpose consistent with the reason the residence or mobile home or building is open to them. An entry with intent to commit larceny and/or assault and/or battery and/or robbery and/or murder or any felony cannot be said to be within the authority granted someone who has permission to enter.

INSTRUCTION NO. 13

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Any person who, by day or night, forcibly enters an inhabited dwelling without permission of the owner, resident or lawful occupant, whether or not a person is present at the time of the entry, is guilty of invasion of the home.

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"Forcibly enters" means the entry of an inhabited dwelling involving any act of physical force resulting in damage to the structure.

"Inhabited dwelling" means any structure, building, house, apartment, or mobile home in which the owner or other lawful occupant resides.

Robbery is the unlawful taking of personal property from the person of another, or in her presence, against her will, by means of force or violence or fear of injury, immediate or future, to her person or property, or the person or property of a member of her family, or of anyone in her company at the time of the robbery. A taking is by means of force or fear if force or fear is used to:

(a) Obtain or retain possession of the property;

(b) Prevent or overcome resistance to the taking; or

(c) Facilitate escape.

The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property. A taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

INSTRUCTION NO. 16

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

INSTRUCTION NO. 17

Any person who subjects another person to sexual penetration, against the victim's will or under conditions in which the perpetrator knows or should know the victim is mentally and emotionally incapable of resisting is guilty of sexual assault.

INSTRUCTION NO. 18

1  
2 Sexual penetration means cunnilingus, fellatio, or any intrusion, however slight, of any part of a  
3 person's body or any object manipulated or inserted by a person into the genital or anal openings of the  
4 body of another, including sexual intercourse.

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

Electronically Filed  
May 02 2019 09:09 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

APPELLANT'S APPENDIX

Volume 25 of 31

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

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## **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 2nd day of May, 2019. Electronic Service of the foregoing Appellant's Appendix shall be made in accordance with the Master Service List as follows:

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/s/ Sara Jelinek  
An Employee of the  
Federal Public Defender  
District of Nevada

high-quality legal representation in accordance with the Nevada Indigent Defense Standards of Performance.

(c) Monitoring; Removal

1. The appointing authority should monitor the performance of all defense counsel to ensure that the client is receiving high-quality legal representation. Where there is evidence that an attorney is not providing high-quality legal representation, the responsible agency should take appropriate action to protect the interests of the attorney's current and potential clients.
2. The appointing authority should establish and publicize a regular procedure for investigating and resolving any complaints made by judges, clients, attorneys, or others that defense counsel failed to provide high-quality legal representation.
3. The appointing authority should periodically review the rosters of attorneys who have been certified to accept appointments in capital cases to ensure that those attorneys remain capable of providing high-quality legal representation. Where there is evidence that an attorney has failed to provide high-quality legal representation, the attorney should not receive additional appointments and should be removed from the roster. Where there is evidence that a systemic defect in a defender office has caused the office to fail to provide high-quality legal representation, the office should not receive additional appointments.
4. Before taking final action making an attorney or a defender office ineligible to receive additional appointments, the appointing authority should provide written notice that such action is being contemplated and give the attorney or defender office an opportunity to respond in writing.
5. An attorney or defender office sanctioned pursuant to this Standard should be restored to the roster only in exceptional circumstances.
6. The appointing authority should ensure that this standard is implemented consistently with standard 2, so that an attorney's zealous representation of a client cannot be cause for the imposition or threatened imposition of sanctions pursuant to this guideline.

### Standard 3: Training

- (a) Funds should be made available for the effective training, professional development, and continuing education of all members of the defense team, whether the members are employed by an institutional defender or are employed or retained by counsel appointed by the court.
- (b) Attorneys seeking to qualify to receive appointments should be required to satisfactorily complete a comprehensive training program in the defense of capital cases. Such a program should include, but not be limited to, presentations and training in the following areas:
  - 1. relevant state, federal, and international law;
  - 2. pleading and motion practice;
  - 3. pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;
  - 4. jury selection;
  - 5. trial preparation and presentation, including the use of experts;
  - 6. ethical considerations particular to capital defense representation;
  - 7. preservation of the record and of issues for post-conviction review;
  - 8. counsel's relationship with the client and his family;
  - 9. post-conviction litigation in state and federal courts; and
  - 10. the presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science.
- (c) Attorneys seeking to remain on the appointment roster should be required to attend and successfully complete, at least once every 2 years, a specialized training program that focuses on the defense of death penalty cases.

### Standard 4: Funding and Compensation

- (a) The appointing authority must ensure funding for the full cost of high-quality legal representation by the defense team and outside experts selected by counsel, as defined by these guidelines.

- (b) Counsel in death penalty cases should be fully compensated at a rate that is commensurate with the provision of high-quality legal representation and reflects the extraordinary responsibilities inherent in death penalty representation.
1. Flat fees, caps on compensation, and lump-sum contracts are improper in death penalty cases.
  2. Attorneys employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.
  3. Appointed counsel should be fully compensated for actual time and service performed at an hourly rate commensurate with the prevailing rates for similar services performed by retained counsel in the jurisdiction, with no distinction between rates for services performed in or out of court. Periodic billing and payment should be available.
- (c) Non-attorney members of the defense team should be fully compensated at a rate that is commensurate with the provision of legal representation and reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.
1. Investigators employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.
  2. Mitigation specialists and experts employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale for comparable expert services in the private sector.
  3. Members of the defense team assisting private counsel should be fully compensated for actual time and service performed at an hourly rate commensurate with prevailing rates paid by retained counsel in the jurisdiction for similar services, with no distinction between rates for services performed in or out of court. Periodic billing and payment should be available.
- (d) Additional compensation should be provided in unusually protracted or extraordinary cases.

- (e) Counsel and members of the defense team should be fully reimbursed for reasonable incidental expenses.

#### Standard 5: Obligations of Counsel Respecting Workload

Counsel representing clients in death penalty cases should limit their caseloads to the level needed to provide each client with high-quality legal representation in compliance with the Nevada Indigent Defense Standards of Performance.

#### Standard 6: Role of the Defense Team

As soon as possible after appointment, counsel should assemble a defense team by selecting and making any appropriate contractual agreements with non-attorney team members in such a way that the team includes:

- (a) at least one mitigation specialist and one fact investigator;
- (b) at least one member qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments;
- (c) any other members needed to provide high-quality legal representation; and
- (d) at all stages demanding on behalf of the client all resources necessary to provide high-quality legal representation. If such resources are denied, counsel should make an adequate record to preserve the issue for further review.

#### Standard 7: Relationship With the Client

- (a) Counsel at all stages of the case should:
  - 1. make every appropriate effort to establish a relationship of trust with the client and should maintain close contact with the client;
  - 2. conduct an interview of the client within 24 hours of initial counsel's entry into the case, barring exceptional circumstances;
  - 3. promptly communicate in an appropriate manner with both the client and the prosecution regarding the protection of the client's rights

3. promptly communicate in an appropriate manner with both the client and the prosecution regarding the protection of the client's rights against self-incrimination, to the effective assistance of counsel, and to preservation of the attorney-client privilege and similar safeguards; and
  4. at all stages of the case, re-advise the client and the prosecution regarding these matters as appropriate.
- (b) Counsel at all stages of the case should engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case, such as:
1. the progress of and prospects for the factual investigation, and what assistance the client might provide to it;
  2. current or potential legal issues;
  3. the development of a defense theory;
  4. presentation of the defense case;
  5. potential agreed-upon dispositions of the case;
  6. litigation deadlines and the projected schedule of case-related events; and
  7. relevant aspects of the client's relationship with correctional, parole, or other governmental agents (e.g., prison medical providers or state psychiatrists).

Standard 8: Additional Obligations of Counsel Representing a Foreign National

- (a) Counsel at every stage of the case should make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals.
- (b) Unless predecessor counsel has already done so, counsel representing a foreign national should:
1. immediately advise the client of his or her right to communicate with the relevant consular office; and

2. obtain the consent of the client to contact the consular office. After obtaining consent, counsel should immediately contact the client's consular office and inform it of the client's detention or arrest.

#### Standard 9: Investigation

- (a) Counsel at every stage has an obligation to conduct a thorough and independent investigation relating to the issues of both guilt and penalty.
  1. The investigation regarding guilt should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement by the client that evidence bearing upon guilt is not to be collected or presented.
  2. The investigation regarding penalty should be conducted regardless of any statement by the client that evidence bearing upon penalty is not to be collected or presented.
- (b) Post-conviction counsel has an obligation to conduct a full examination of the defense provided to the client at all prior phases of the case. This obligation includes at minimum interviewing prior counsel and members of the defense team and examining the files of prior counsel.
- (c) Counsel at every stage has an obligation to assure that the official record of the proceedings is complete and to supplement the record as appropriate.

#### Standard 10: Duty to Assert Legal Claims

- (a) Counsel at every stage of the case, exercising professional judgment in accordance with these standards, should:
  1. consider all legal claims potentially available;
  2. thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted; and
  3. evaluate each potential claim in light of:
    - (A) the unique characteristics of death penalty law and practice; and

- (B) the near certainty that all available avenues of post-conviction relief will be pursued in the event of conviction and imposition of a death sentence;
  - (C) the importance of protecting the client's rights against later contentions by the government that the claim has been waived, defaulted, not exhausted, or otherwise forfeited; and
  - (D) any other professionally appropriate risks and benefits to the assertion of the claim.
- (b) Counsel who decide to assert a particular legal claim should:
1. present the claim as forcefully as possible, tailoring the presentation to the particular facts and circumstances in the client's case and the applicable law in the particular jurisdiction; and
  2. ensure that a full record is made of all legal proceedings in connection with the claim.

**Standard 11: Duty to Seek an Agreed-Upon Disposition**

- (a) Counsel at every stage of the case has an obligation to take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition.
- (b) Counsel at every stage of the case should explore with the client the possibility and desirability of reaching an agreed-upon disposition. In so doing, counsel should fully explain the rights that would be waived, the possible collateral consequences, and the legal, factual, and contextual considerations that bear upon the decision. Specifically, counsel should know and fully explain to the client:
1. the maximum penalty that may be imposed for the charged offense(s) and any possible lesser-included or alternative offenses;
  2. any collateral consequences of potential penalties less than death, such as forfeiture of assets, deportation, civil liabilities, and the use of the disposition adversely to the client in penalty phase proceedings of other prosecutions of the client as well as any direct consequences of



- potential penalties less than death, such as the possibility and likelihood of parole, place of confinement, and good-time credits;
3. the general range of sentences for similar offenses committed by defendants with similar backgrounds and the impact of any applicable sentencing guidelines or mandatory sentencing requirements;
  4. the governing legal regime, including, but not limited to, whatever choices the client may have as to the fact-finder and/or sentencer;
  5. the types of pleas that may be agreed to, such as a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere, or other plea that does not require the client to personally acknowledge guilt, along with the advantages and disadvantages of each;
  6. whether any agreement negotiated can be made binding on the court, penal/parole authorities, and any others who may be involved;
  7. the practices, policies, and concerns of the particular jurisdiction, the judge and prosecuting authority, the family of the victim, and any other persons or entities that may affect the content and likely results of plea negotiations;
  8. Concessions that the client might offer, such as:
    - (A) an agreement to waive trial and to plead guilty to particular charges;
    - (B) an agreement to permit a judge to perform functions relative to guilt or sentence that would otherwise be performed by a jury or vice versa;
    - (C) an agreement regarding future custodial status, such as one to be confined in a more onerous category of institution than would otherwise be the case;
    - (D) an agreement to forgo in whole or part legal remedies such as appeals, motions for post-conviction relief, and/or parole or clemency applications;
    - (E) an agreement to provide the prosecution with assistance in investigating or prosecuting the present case or other alleged criminal activity;

- (F) an agreement to engage in or refrain from any particular conduct, as appropriate to the case;
  - (G) an agreement with the victim's family, which may include matters such as a meeting between the victim's family and the client, a promise not to publicize or profit from the offense, the issuance or delivery of a public statement of remorse by the client, or restitution; and
  - (H) agreements such as those described in the foregoing subsections respecting actual or potential charges in another jurisdiction.
9. Benefits the client might obtain from a negotiated settlement, including:
- (A) a guarantee that the death penalty will not be imposed;
  - (B) an agreement that the defendant will receive a specified sentence;
  - (C) an agreement that the prosecutor will not advocate a certain sentence, will not present certain information to the court, or will engage in or refrain from engaging in other actions with regard to sentencing;
  - (D) an agreement that one or more of multiple charges will be reduced or dismissed;
  - (E) an agreement that the client will not be subject to further investigation or prosecution for uncharged alleged or suspected criminal conduct;
  - (F) an agreement that the client may enter a conditional plea to preserve the right to further contest certain legal issues;
  - (G) an agreement that the court or prosecutor will make specific recommendations to correctional or parole authorities regarding the terms of the client's confinement; and
  - (H) agreements such as those described in the foregoing subsections respecting actual or potential charges in another jurisdiction.
- (c) Counsel should keep the client fully informed of any negotiations for a disposition, convey to the client any offers made by the prosecution, and discuss with the client possible negotiation strategies.

- (d) Counsel should inform the client of any tentative negotiated agreement reached with the prosecution and explain to the client the full content of the agreement along with the advantages, disadvantages, and potential consequences of the agreement.
- (e) If a negotiated disposition would be in the best interest of the client, initial refusals by the prosecutor to negotiate should not prevent counsel from making further efforts to negotiate. Similarly, a client's initial opposition should not prevent counsel from engaging in an ongoing effort to persuade the client to accept an offer of resolution that is in the client's best interest.
- (f) Counsel should not accept any agreed-upon disposition without the client's express authorization.
- (g) The existence of ongoing negotiations with the prosecution does not in any way diminish the obligations of defense counsel respecting litigation.

Standard 12: Entry of a Plea of Guilty

- (a) The informed decision whether to enter a plea of guilty lies with the client.
- (b) In the event the client determines to enter a plea of guilty, prior to the entry of the plea, counsel should:
  - 1. make certain that the client understands the rights to be waived by entering the plea and that the client's decision to waive those rights is knowing, voluntary, and intelligent;
  - 2. ensure that the client understands the conditions and limits of the plea agreement and the maximum punishment, sanctions, and other consequences to which he or she will be exposed by entering the plea; and
  - 3. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions in court, and providing a statement concerning the offense.
- (c) During entry of the plea, counsel should make sure that the full content and conditions of any agreements with the government are placed on the record.

### Standard 13: Trial Preparation Overall

As the investigations mandated by Standard 7 produce information, trial counsel should formulate a defense theory. Counsel should seek a theory that will be effective in connection with both guilt and penalty, and should seek to minimize any inconsistencies.

### Standard 14: Voir Dire and Jury Selection

- (a) Counsel should consider, along with potential legal challenges to the procedures for selecting the jury that would be available in any criminal case (particularly those relating to bias on the basis of race or gender), whether any procedures have been instituted for selection of juries in capital cases that present particular legal bases for challenge. Such challenges may include challenges to the selection of the grand jury and grand jury forepersons, as well as to the selection of the petit jury venire.
- (b) Counsel should be familiar with the precedents relating to questioning and challenging of potential jurors, including the procedures surrounding "death qualification" concerning any potential juror's beliefs about the death penalty. Counsel should be familiar with techniques:
  - 1. for exposing those prospective jurors who would automatically impose the death penalty following a murder conviction or finding that the defendant is death-eligible, regardless of the individual circumstances of the case;
  - 2. for uncovering those prospective jurors who are unable to give meaningful consideration to mitigating evidence; and
  - 3. for rehabilitating potential jurors whose initial indications of opposition to the death penalty make them possibly excludable.
- (c) Counsel should consider seeking expert assistance in the jury selection process.

Standard 15: Defense Case Concerning Penalty

- (a) As set out in Standard 7, counsel at every stage of the case has a continuing duty to investigate issues bearing upon penalty and to seek information that supports mitigation or rebuts the prosecution's case in aggravation.
- (b) Counsel should discuss with the client early in the case the sentencing alternatives available and the relationship between the strategy for the sentencing phase and for the guilt/innocence phase.
- (c) Prior to the sentencing phase, trial counsel should discuss with the client the specific sentencing phase procedures of the jurisdiction and advise the client of steps being taken in preparation for sentencing.
- (d) Counsel at every stage of the case should discuss with the client the content and purpose of the information concerning penalty that they intend to present to the sentencing or reviewing body or individual, means by which the mitigation presentation might be strengthened, and the strategy for meeting the prosecution's case in aggravation.
- (e) Counsel should consider, and discuss with the client, the possible consequences of having the client testify or make a statement to the sentencing or reviewing body or individual.
- (f) In deciding which witnesses and evidence to prepare concerning penalty, the areas counsel should consider include the following:
  - 1. witnesses familiar with and evidence relating to the client's life and development, from conception to the time of sentencing, that would be explanatory of the offense(s) for which the client is being sentenced, would rebut or explain evidence presented by the prosecutor, would present positive aspects of the client's life, or would otherwise support a sentence less than death;
  - 2. expert and lay witnesses along with supporting documentation (e.g., school records, military records) to provide medical, psychological, sociological, cultural, or other insights into the client's mental and/or emotional state and life history that may explain or lessen the client's culpability for the underlying offense(s); to give a favorable opinion as to the client's capacity for rehabilitation or adaptation to prison; to

explain possible treatment programs; or otherwise support a sentence less than death; and/or to rebut or explain evidence presented by the prosecutor;

3. witnesses who can testify about the applicable alternative to a death sentence and/or the conditions under which the alternative sentence would be served;
4. witnesses who can testify about the adverse impact of the client's execution on the client's family and loved ones; and
5. demonstrative evidence, such as photos, videos, and physical objects (e.g., trophies, artwork, military medals), and documents that humanize the client or portray him positively, such as certificates of earned awards, favorable press accounts, and letters of praise or reference.

- (g) In determining what presentation to make concerning penalty, counsel should consider whether any portion of the defense case will open the door to the prosecution's presentation of otherwise inadmissible aggravating evidence. Counsel should pursue all appropriate means (e.g., motions in limine) to ensure that the defense case concerning penalty is constricted as little as possible by this consideration and should make a full record in order to support any subsequent challenges.
- (h) Trial counsel should determine at the earliest possible time what aggravating factors the prosecution will rely upon in seeking the death penalty and what evidence will be offered in support thereof. If the jurisdiction has rules regarding notification of these factors, counsel at all stages of the case should object to any noncompliance, and if such rules are inadequate, counsel at all stages of the case should challenge the adequacy of the rules.
- (i) Counsel at all stages of the case should carefully consider whether all or part of the aggravating evidence may appropriately be challenged as improper, inaccurate, misleading, or not legally admissible.
- (j) If the prosecution is granted leave at any stage of the case to have the client interviewed by witnesses associated with the government, defense counsel should:

1. consider what legal challenges may appropriately be made to the interview or the conditions surrounding it;
  2. consider the legal and strategic issues implicated by the client's cooperation or noncooperation;
  3. ensure that the client understands the significance of any statements made during such an interview; and
  4. attend the interview.
- (k) Trial counsel should request jury instructions and verdict forms that ensure that jurors will be able to consider and give effect to all relevant mitigating evidence. Trial counsel should object to instructions or verdict forms that are constitutionally flawed, inaccurate, or confusing and should offer alternative instructions. Post-conviction counsel should pursue these issues through factual investigation and legal argument.
- (l) Counsel at every stage of the case should take advantage of all appropriate opportunities to argue why death is not suitable punishment for their particular client.

#### Standard 16: Official Presentence Report

If an official presentence report or similar document may or will be presented to the court at any time, counsel should become familiar with the procedures governing preparation, submission, and verification of the report. In addition, counsel should:

- (a) where preparation of the report is optional, consider the strategic implications of requesting that a report be prepared;
- (b) provide to the report preparer information favorable to the client. In this regard, counsel should consider whether the client should speak with the person preparing the report; if the determination is made to do so, counsel should discuss the interview in advance with the client and attend it;
- (c) review the completed report;
- (d) take appropriate steps to ensure that improper, incorrect, or misleading information that may harm the client is deleted from the report; and

- (e) take steps to preserve and protect the client's interests where the defense considers information in the presentence report to be improper, inaccurate, or misleading.

#### Standard 17: Duty to Facilitate the Work of Successor Counsel

In accordance with professional norms, all persons who are or have been members of the defense team have a continuing duty to safeguard the interests of the client and should cooperate fully with successor counsel. This duty includes, but is not limited to:

- (a) maintaining the records of the case in a manner that will inform successor counsel of all significant developments relevant to the litigation;
- (b) providing the client's files, as well as information regarding all aspects of the representation, to successor counsel;
- (c) sharing potential further areas of legal and factual research with successor counsel; and
- (d) cooperating with such professionally appropriate legal strategies as may be chosen by successor counsel.

#### Standard 18: Duties of Trial Counsel After Conviction

Trial counsel should:

- (a) be familiar with all state and federal post-conviction options available to the client. Trial counsel should discuss with the client the post-conviction procedures that will or may follow imposition of the death sentence;
- (b) take whatever action(s), such as filing a notice of appeal and/or motion for a new trial, will maximize the client's ability to obtain post-conviction relief;
- (c) not cease acting on the client's behalf until successor counsel has entered the case or trial counsel's representation has been formally terminated. Until that time, Standard 17 applies in its entirety; and
- (d) take all appropriate action to ensure that the client obtains successor counsel as soon as possible.



#### Standard 19: Duties of Post-Conviction Counsel

- (a) Counsel representing a capital client at any point after conviction should be familiar with the jurisdiction's procedures for setting execution dates and providing notice of them. Post-conviction counsel should also be thoroughly familiar with all available procedures for seeking a stay of execution.
- (b) If an execution date is set, post-conviction counsel should immediately take all appropriate steps to secure a stay of execution and pursue those efforts through all available forms.
- (c) Post-conviction counsel should seek to litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high-quality capital defense representation, including challenges to any overly restrictive procedural rules. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review.
- (d) The duties of the counsel representing the client on direct appeal should include filing a petition for certiorari in the Supreme Court of the United States. If appellate counsel does not intend to file such a petition, he or she should immediately notify successor counsel if known and the responsible agency.
- (e) Post-conviction counsel should fully discharge the ongoing obligations imposed by these standards, including the obligations to:
  - 1. maintain close contact with the client regarding litigation developments;
  - 2. continually monitor the client's mental, physical, and emotional condition for effects on the client's legal position;
  - 3. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments; and
  - 4. continue an aggressive investigation of all aspects of the case.

#### Standard 20: Duties of Clemency Counsel

Clemency counsel should:

1. be familiar with the procedures for and permissible substantive content of a request for clemency;
2. conduct an investigation in accordance with Standard 7;
3. ensure that clemency is sought in as timely and persuasive a manner as possible, tailoring the presentation to the characteristics of the particular client, case, and jurisdiction; and
4. ensure that the process governing consideration of the client's application is substantively and procedurally just, and if not, should seek appropriate redress.

## APPELLATE AND POST-CONVICTION REPRESENTATION

### Standard 1: Role of Appellate Defense Counsel

The paramount obligation of appellate criminal defense counsel is to provide zealous and quality representation to their clients at all stages of the appellate process. Attorneys also have an obligation to abide by ethical norms and act in accordance with the rules of the court. Trial counsel must advise the client of his or her right to appeal and any limits on that right. If the client chooses to proceed with an appeal, even if the attorney believes that the appeal is without merit or is not cognizable, trial counsel will assure that a Notice of Appeal is filed. If the client wishes to proceed with the appeal, against the advice of counsel, counsel should present the case, so long as such advocacy does not involve deception of the court.

### Standard 2: Identification of issues on appeal

In selecting issues to be presented on appeal, counsel should:

- (a) conduct a thorough review of the trial transcript, the pleadings, and docket entries in the case;
- (b) investigate potentially meritorious claims of error not reflected in the trial record when he or she is informed or has reason to believe that facts in support of such claims exist;
- (c) assert claims of error that are supported by facts of record that will benefit the defendant if successful, that possess arguable legal merit, and that should be recognizable by a practitioner familiar with criminal law and procedure who engages in diligent legal research;
- (d) not hesitate to assert claims that may be complex, unique, or controversial in nature, such as issues of first impression or arguments for change in the existing law;
- (e) inform the client when counsel has decided not to raise issues that the client desires to be raised and the reasons why the issues were not raised; and
- (f) consider whether there are federal constitutional claims that, in the event that relief is denied in the state appellate court, would form the basis for a

writ of habeas corpus in federal district court. Such claims should raise and argue the federal constitutional claims, unless counsel concludes that there is a tactical basis for not including such claims and the client assents.

### Standard 3: Diligence and Accuracy

In presenting the appeal, counsel should:

- (a) be diligent in perfecting appeals and expediting prompt submission to the appellate court;
- (b) be accurate in referring to the record and the authorities upon which counsel relies in the presentation to the court of briefs and oral argument; and
- (c) not intentionally refer to or argue on the basis of facts outside the record on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice.

### Standard 4: Duty to Meet With Trial Lawyers

In preparing the appeal, counsel should consult trial counsel in order to assist appellate counsel in understanding and presenting the client's issues on appeal.

### Standard 5: Duty to Confer and Communicate With Client

In preparing and processing the appeal, counsel should:

- (a) assure that the client is able to contact appellate counsel telephonically during the pendency of the appeal including arrangements for the acceptance of collect telephone calls. Promptly after appointment or assignment to the appeal, counsel shall provide advice to the client, in writing, as to the method(s) which the client can employ to discuss the appeal with counsel;
- (b) discuss the merits, strategy, and ramifications of the proposed appeal with each client prior to the perfection and completion thereof. When possible, appellate counsel should meet in person with the client, and in all instances, counsel should provide a written summary of the merits and strategy to be

employed in the appeal along with a statement of the reasons certain issues will not be raised, if any. It is the obligation of the appellate counsel to provide the client with his or her best professional judgment as to whether the appeal should be pursued in view of the possible consequences and strategic considerations;

- (c) inform the client of the status of the case at each step in the appellate process, explain any delays, and provide general information to the client regarding the process and procedures that will be taken in the matter, and the anticipated timeframe for such processing;
- (d) provide the client with a copy of each substantive document filed in the case by both the prosecution and defense;
- (e) respond in a timely manner to all correspondence from clients, provided that the client correspondence is of a reasonable number and at a reasonable interval; and
- (f) promptly and accurately inform the client of the courses of action that may be pursued as a result of any disposition of the appeal and the scope of any further representation counsel will provide.

#### Standard 6: Duty to Seek Release during Appeal

Appellate counsel should file appropriate motions seeking release pending appeal when the granting of such motions is reasonably possible.

#### Standard 7: Responsibilities in "Fast Track" Appeals

If the conviction qualifies for "fast track" treatment under NRAP 3C, counsel shall fulfill the responsibilities set forth in the rule. In preparing the "fast track" statement, counsel should:

- (a) order a rough draft of those portions of the transcript provided for in NRAP 3C(d) in all cases in which trial counsel is not handling the appeal and in all other cases in which information from the proceedings is necessary for a fair determination of the issues to be raised on appeal;

- (b) thoroughly research the issues in the case and shall set forth all viable issues in the "fast track" statement provided for by NRAP 3C(e); and
- (c) consult with the client as to which issues should be presented in the statement.

#### Standard 8: Post-Decision Responsibilities

If the decision of the appellate court is adverse to the client, appellate counsel should:

- (a) promptly inform the client of the decision and confer with the client with regard to the availability of rehearing or en banc reconsideration and the benefits or disadvantages of filing such a motion;
- (b) file a Motion for Rehearing and/or Request for en banc reconsideration if grounds for such a motion and/or request exist;
- (c) advise the client whether a petition for writ of certiorari to the United States Supreme Court is warranted and determine whether such a petition will be filed;
- (d) promptly advise the client of any remedies that are available in state or federal court for post-conviction review and shall advise the client of the applicable statute of limitations for filing for such relief;
- (e) advise the client of any claims such as ineffective assistance of counsel that may be available to the client but that will not be pursued by appellate counsel;
- (f) provide the client with any available forms for post-conviction relief and appointment of counsel; and
- (g) cooperate with the client and with post-conviction counsel in securing the trial and appellate record and investigation of potential claims for post-conviction relief.

#### Standard 9: Post-Conviction Representation

Counsel appointed to represent a defendant in post-conviction proceedings should:

- (a) assure that the client is able to contact post-conviction counsel telephonically during the pendency of the appeal including arrangements for the acceptance of collect telephone calls. Promptly after appointment or assignment to the post-conviction case, counsel shall provide advice to the client, in writing, as to the method(s) that the client can employ to discuss the post-conviction proceeding with counsel;
- (b) consult with trial/appellate counsel and secure the entire trial and appeal file;
- (c) seek to litigate all issues, whether or not previously presented, that are arguably meritorious;
- (d) maintain close contact with the client and consult with the client on all decisions with regard to the content of any pleadings seeking collateral or post-conviction relief prior to the filing of any petition for post-conviction relief. When possible, post-conviction counsel should meet in person with the client and in all instances, counsel should provide a written summary of the merits and strategy to be employed in the post-conviction proceeding along with a statement of the reasons certain issues will not be raised, if any;
- (e) investigate all potentially meritorious claims that require factual support;
- (f) secure the services of investigators or experts where necessary to develop claims to be raised in the post-conviction petition;
- (g) raise all federal constitutional claims, along with appropriate citations, that are arguably meritorious; and
- (h) advise the client of remedies that may be available should post-conviction relief not be granted, including appeal from the denial and federal habeas corpus along with any applicable time limits for seeking such relief. Post-conviction counsel shall advise the client in writing if counsel will not be representing the client in any subsequent proceedings and shall provide advice on the steps that must be taken and the time limits that are applicable to appeals or the seeking of relief in the federal courts.

## FELONY AND MISDEMEANOR TRIAL CASES

### Standard 1: Role of Defense Counsel

The paramount obligation of criminal defense counsel is to provide zealous and quality representation to their clients at all stages of the criminal process. Attorneys also have an obligation to abide by ethical norms and act in accordance with the rules of the court.

### Standard 2: Education, Training, and Experience of Defense Counsel

- (a) To provide quality representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the courts of Nevada. Counsel has a continuing obligation to stay abreast of changes and developments in the law. Where appropriate, counsel should also be informed of the practice of the specific judge before whom a case is pending.
- (b) Prior to handling a criminal matter, counsel should have sufficient experience or training to provide quality representation and should move to be relieved as counsel should determine at a later point that he or she does not possess sufficient experience or training to handle the case assigned.

### Standard 3: Adequate Time and Resources

Counsel has an obligation to make available sufficient time, resources, knowledge, and experience to afford competent representation of a client in a particular matter before agreeing to act as counsel or accepting appointment. Counsel must maintain an appropriate, professional office in which to consult with clients and witnesses, and must maintain a system for receiving collect telephone calls from incarcerated clients.



#### Standard 4: Initial Client Interview

- (a) Preparing for Initial Interview: Prior to conducting the initial interview, the attorney should:
1. be familiar with the elements of each offense charged and the potential punishment;
  2. obtain copies of relevant documents that are available, including copies of any charging documents, recommendations, and reports made by agencies concerning pretrial release, and law enforcement reports;
  3. be familiar with legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;
  4. be familiar with the different types of pretrial release conditions the court may set; and
  5. be familiar with any procedures available for reviewing the judge's setting of bail.
- (b) Timing of the Initial Interview: Counsel should conduct the initial interview with the client as soon as practicable and sufficiently before any court proceeding so as to be prepared for that proceeding. When the client is in custody, counsel should attempt to conduct the interview within 48 hours of appointment to the case. The initial interview should be conducted in a confidential setting.
- (c) Contents of the Initial Interview: The purpose of the initial interview is both to inform the client of the charges/penalties and to acquire information from the client concerning pretrial release. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy are overcome. Information that counsel should consider acquiring from the client includes, but is not limited to:
1. the client's ties to the community, including the length of time in the community, family relationships, immigration status, and employment record and history;
  2. the client's physical and mental health, education, and armed services record;

3. the client's immediate medical needs;
  4. the client's criminal history and a determination of whether the client has other pending charges or is on supervision;
  5. the ability of the client to meet any financial conditions of release; and
  6. sources of verification (counsel should obtain permission from the client before contacting such sources).
- (d) The following information should be provided to the client in the initial interview:
1. an explanation of the procedures that will be followed in setting the conditions of pretrial release;
  2. an explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and an explanation that the client should not make any statements regarding the offense;
  3. an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the attorney;
  4. the charges and the potential penalties;
  5. a general procedural overview of the progression of the case;
  6. how and when counsel can be reached;
  7. when counsel will see the client next;
  8. realistic answers, where possible, to the client's most urgent questions; and
  9. what arrangements will be made or attempted for the satisfaction of the client's most pressing needs, e.g., medical or mental health attention, contact with family or employers.

#### Standard 5: Pretrial Release Proceedings

When a client is in custody, counsel should explore with the client the pretrial release of the client under the conditions most favorable to the client and attempt to secure that release. Counsel should:

- (a) present to the appropriate judicial officer information about the client's circumstances and the legal criteria supporting release. Where appropriate, counsel should make a proposal concerning conditions of release that are least restrictive with regard to the client. Counsel should arrange for contact with or the appearance of parents, spouse, relatives, or other persons who may take custody of the client or provide third-party surety;
- (b) consider pursuing modification of the conditions of release under available procedures when the client is not able to obtain release under the conditions set by the court; and
- (c) explain to the client and any third party the available options, procedures, and risks in posting security if the court sets conditions of release.

Standard 6: Preliminary Hearings/Grand Jury Representation

- (a) Where the client is entitled to a preliminary hearing, the attorney should take steps to see that the hearing is conducted timely unless there are strategic reasons for not doing so.
- (b) In preparing for the preliminary hearing, the attorney should consider:
  - 1. the elements of each offense charged;
  - 2. the law for establishing probable cause;
  - 3. the factual information that is available concerning probable cause;
  - 4. the tactics of calling witnesses or calling the defendant as a witness and the potential for later use of the testimony; and
  - 5. the tactics of proceeding without full discovery.
- (c) Counsel should meet with the client prior to the preliminary hearing. The client has the sole right to waive a preliminary hearing. Counsel must evaluate and advise the client regarding the consequences of such waiver and the tactics of full or partial cross-examination.
- (d) Where counsel becomes aware that his or her client is the subject of a grand jury investigation, appointed counsel should consult with the client to discuss the grand jury process, including the advisability and ramifications of the client testifying. Counsel should examine the facts in the case and determine whether the prosecution has fulfilled its obligation under Nevada law to

present exculpatory evidence and should make an appropriate record in that regard. Upon return of an indictment, counsel should determine if proper notice of the proceedings was provided and should obtain the record of the proceeding to determine if procedural irregularities or errors occurred that might warrant a challenge to the proceedings such as a writ of habeas corpus or a motion to quash the indictment.

Standard 7: Case Preparation and Investigation

- (a) Counsel should conduct, or secure the resources to conduct, a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty.
- (b) Counsel should:
  - 1. obtain and examine all charging documents, pleadings, and discovery;
  - 2. research and review the relevant statutes and caselaw to identify elements of the charged offense(s); defects in the prosecution such as statute of limitations or double jeopardy; and available defenses and required notices of those defenses;
  - 3. conduct an in-depth interview of the client to assist in shaping the investigation;
  - 4. attempt to locate all potential witnesses and have them interviewed. (If counsel conducts a witness interview, counsel should do so in the presence of a third person who can be called as a witness);
  - 5. request and secure discovery including exculpatory/impeaching information; names and addresses of prosecution witnesses and their prior statements and criminal records; the prior statements of the client and his or her criminal history; all papers, tapes, or electronic recordings relevant to the case; expert reports and data upon which they are based, statements of co-defendants, an inspection of physical evidence, all documents relevant to any searches conducted, 911 tapes

and dispatch reports, mental health, drug treatment, or other records of the client, victim, or witnesses and records of police officers as appropriate;

6. inspect the scene of the offense as appropriate; and
7. obtain the assistance of such experts as are appropriate to the facts of the case.

#### Standard 8: Pretrial Motions and Writs

- (a) Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the applicable law may entitle the defendant to relief, which the court has discretion to grant.
- (b) The decision to file pretrial motions should be made after thorough investigation and after considering the applicable law in light of the circumstances of the case. Among the issues that counsel should consider addressing in a pretrial motion are:
  1. the pretrial custody of the client;
  2. the constitutionality of the implicated statute(s);
  3. any defects in the charging process or the charging document;
  4. severance of charges or defendants;
  5. discovery issues;
  6. suppression of evidence or statements;
  7. speedy trial issues; and
  8. evidentiary issues.
- (c) Counsel should determine whether a pretrial writ should be filed challenging the determination that probable cause exists. The decision whether to file a pretrial writ should be made based upon an examination of the preliminary hearing or grand jury transcripts. If transcripts are not available at the time of arraignment, appropriate steps should be taken to secure an extension of time to prepare the writ after the transcripts are received pursuant to NRS 34.700. Counsel shall advise the client as to the effect of filing a pretrial writ on his speedy trial rights and provide an evaluation of the likelihood of

success to assist in the decision, which rests with the client, after consultation with counsel.

- (d) Counsel should only withdraw or decide not to file a motion after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the defendant's rights against later claims of waiver or procedural default.
- (e) Motions should be filed in a timely manner and with an awareness of the effect of filing the motion on the defendant's speedy trial rights. When an evidentiary hearing is scheduled on a motion, counsel's preparation for the hearing should include:
  - 1. investigation, discovery, and research relevant to the claim advanced;
  - 2. subpoenaing of all helpful evidence and witnesses; and
  - 3. full understanding of the burdens of proof, evidentiary principles, and trial court procedures applying to the hearing, including the benefits and costs of having the client testify.
- (f) Requests or agreements to continue a trial date shall not be made without consultation with the client.
- (g) Motions and writs should include citation to applicable state and federal law in order to protect the record for collateral review in federal courts.

### Standard 9: Plea Negotiations

- (a) Under no circumstances should defense counsel recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced at trial.
- (b) Counsel should:
  - 1. with the consent of the client explore diversion and other informal and formal admission or disposition agreements with regard to the allegations;
  - 2. fully explain to the client the rights that would be waived by a decision to enter into any admission or disposition agreement;
  - 3. keep the client fully informed of the progress of the negotiations;

4. convey to the client any offers made by the prosecution and the advantages and disadvantages of accepting the offers;
  5. continue to preserve the client's rights and prepare the defense notwithstanding ongoing negotiations; and
  6. not enter into any admission or disposition agreement on behalf of the client without the client's authorization.
- (c) In developing a negotiation strategy, counsel must be completely familiar with:
1. Concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to: not to proceed to trial on the merits of the charges; to decline from asserting or litigating any particular pretrial motions; an agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs; and providing the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity.
  2. Benefits the client might obtain from a negotiated settlement, including, but not limited to, an agreement: that the prosecution will not oppose the client's release on bail pending sentencing or appeal; that the defendant may enter a conditional plea to preserve the right to litigate and contest certain issues affecting the validity of the conviction; to dismiss or reduce one or more of the charged offenses either immediately or upon completion of a deferred prosecution agreement; that the defendant will not be subject to further investigation or prosecution for uncharged alleged criminal conduct; that the defendant will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range; that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the Division of Parole and Probation, a specified position with respect to the sanction to be imposed on the client by the court; and that the defendant will receive, or the prosecution will recommend, specific

benefits concerning the accused's place and/or manner of confinement and/or release on parole.

- (d) In the decision-making process, counsel should:
  - 1. inform the client of any tentative negotiated agreement reached with the prosecution, explain to the client the full content of the agreement, and explain advantages, disadvantages, and potential consequences of the agreement; and
  - 2. not attempt to unduly influence the decision, as the decision to enter a plea of guilty rests solely with the client. Where counsel reasonably believes that acceptance of a plea offer is in the best interest of the client, counsel should advise the client of the benefits of this course of action.
- (e) Prior to the entry of the plea, counsel should meet with the client in a confidential setting that fosters full communication and:
  - 1. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary, and intelligent;
  - 2. make certain that the client fully and completely understands the conditions and limits of the plea agreement and the maximum punishment, sanctions, and other consequences the client will be exposed to by entering the plea; and
  - 3. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense.
- (f) After entry of the plea, counsel should:
  - 1. be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for the client's release on bail pending sentencing; and



2. make every effort to review and explain the plea proceedings with the client and to respond to any client questions and concerns.

**Standard 10: Trial Preparation**

- (a) The decision to proceed to trial with or without a jury rests solely with the client. Counsel should discuss the relevant strategic considerations of this decision with the client.
- (b) Where appropriate, counsel should have the following materials available at the time of trial:
  1. copies of all relevant documents filed in the case;
  2. relevant documents prepared by investigators;
  3. voir dire questions;
  4. outline or draft of opening statement;
  5. cross-examination plans for all prospective prosecution witnesses;
  6. direct examination plans for all prospective defense witnesses;
  7. copies of defense subpoenas;
  8. prior statements of all prosecution witnesses (e.g., preliminary hearing/grand jury transcripts, police reports/statements);
  9. prior statements of all defense witnesses;
  10. reports from all experts;
  11. a list and copies or originals of defense and prosecution exhibits;
  12. proposed jury instructions with supporting authority;
  13. copies of all relevant statutes or cases; and
  14. outline or draft of closing argument.
- (c) Counsel should be fully informed as to the rules of evidence and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.
- (d) Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., admissibility of evidence, use of prior convictions of defendant) and, where appropriate, counsel should prepare motions and memoranda in support of the defendant's position.

- (e) Throughout the trial process, counsel should endeavor to establish a proper record for appellate review. As part of this effort, counsel should request, whenever necessary, that all discussions and rulings be made on the record.
- (f) Counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated or is not able to secure appropriate clothing for trial, counsel shall arrange for the provision of appropriate clothing for the client to wear in the courtroom.
- (g) Counsel should plan with the client the most convenient system for conferring throughout the trial. Where necessary, counsel should seek an order to facilitate conferences with the client.
- (h) If, during the trial, it appears to counsel that concessions to facts or offenses are strategically indicated, such concessions may only be made in consultation with, and with the consent of, the client.
- (i) Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

#### Standard 11: Voir Dire and Jury Selection

In preparing for and conducting jury selection, counsel should:

- (a) be familiar with the law governing selection of the jury venire. Counsel should also be alert to any potential legal challenges to the composition or selection of the venire;
- (b) be familiar with the local practices and the individual trial judge's procedures for selecting a jury and should be alert to any potential legal challenges to these procedures;
- (c) seek access to any jury questionnaires that have been completed by jurors and should petition the court to use a special questionnaire when appropriate due to unique issues in the case;
- (d) should seek attorney-conducted voir dire and should develop, support, and file written voir dire questions if the court restricts attorney-conducted voir dire;

- (e) consider whether additional peremptory challenges should be requested due to the circumstances present in the case;
- (f) consider whether sensitive or unusual facts or circumstances of the case support sequestered voir dire of jurors;
- (g) consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client; and
- (h) object to and preserve all issues relating to the unconstitutional exclusion of jurors by the prosecutor.

#### Standard 12: Defense Strategy

Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt.

#### Standard 13: Trial

- (a) Counsel should anticipate weaknesses in the prosecution's proof and consider appropriate motions for judgment of acquittal at all appropriate stages of the litigation.
- (b) Counsel should consider the strategic advantages and disadvantages of entering into any stipulations.
- (c) In preparing for cross-examination, counsel should:
  - 1. be prepared to question witnesses as to the existence of prior statements that they may have made or adopted;
  - 2. consider the need to integrate cross-examination, theory, and theme of the defense;
  - 3. avoid asking unnecessary questions that may hurt the defense case;
  - 4. anticipate witnesses that the prosecution may call in its case-in-chief and on rebuttal;

5. create a cross-examination plan for all anticipated witnesses;
6. review all prior statements and testimony of the witnesses in order to be aware of all inconsistencies or variances;
7. review relevant statutes, regulations, and policies applicable to police witnesses; and
8. consider a pretrial motion or voir dire examination of prosecution experts to determine qualifications of the expert or reliability of the anticipated opinion.

Standard 14: Presenting the Defendant's Case

- (a) Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt.
- (b) Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should maintain a record of the advice provided to the client and the client's decision concerning whether to testify.
- (c) Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.
- (d) In preparing for presentation of a defense case, counsel should, where appropriate, do the following:
  1. develop a plan for direct examination of each potential defense witness;
  2. determine the implications that the order of witnesses may have on the defense case;
  3. determine which facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
  4. consider the possible use of character witnesses;

5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
  6. review all documentary evidence that must be presented; and,
  7. review all tangible evidence that must be presented.
- (e) In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.
- (f) Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.
- (g) Counsel should conduct redirect examination as appropriate.
- (h) At the close of the defense case, counsel should seek an advisory instruction directing the jury to acquit when appropriate.

#### Standard 15: Jury Instructions

- (a) Counsel should be familiar with the appropriate rules of the court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of instructions typically given, and preserving objections to the instructions.
- (b) Counsel should always submit proposed jury instructions in writing.
- (c) Where appropriate, counsel should submit modifications to instructions proposed by the State or the court in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser-included offense. Counsel should provide citations to appropriate law in support of the proposed instructions.
- (d) Where appropriate, counsel should object to and argue against improper instructions proposed by the prosecution.
- (e) If the court refuses to adopt instructions requested by counsel, or gives instructions over counsel's objection, counsel should take all steps necessary to preserve the record, including ensuring that a written copy of proposed instructions is included in the record along with counsel's objection.

- (f) During delivery of the charge, counsel should be alert to any deviations from the judge's planned instruction, object to deviations unfavorable to the client, and if necessary, request additional or curative instructions.
- (g) If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge state the proposed charge to counsel before it is delivered to the jury. Counsel should renew or make new objections to any additional instructions given to the jurors after the jurors have begun their deliberations.

#### Standard 16: Obligations of Counsel in Final Sentencing Hearings

Among counsel's obligations in the sentencing process are:

- (a) To correct inaccurate information that is potentially detrimental to the client and to object to information that is not properly before the Court in determining sentence. Counsel should further correct or move to strike any improper and harmful information from the text of the presentence report.
- (b) To present to the court all known and reasonably available mitigating and favorable information, including relevant expert testimony or reports.
- (c) To develop a plan that seeks to achieve the least restrictive and burdensome sentencing alternative that is most favorable to the client and that can reasonably be obtained based on the facts and circumstances of the offense, the client's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision.

#### Standard 17: Preparation for Sentencing

In preparing for sentencing, counsel shall:

- (a) inform the client of the applicable sentencing requirements, options, alternatives, and the discretionary nature of sentencing guidelines including the rules concerning parole eligibility;
- (b) maintain contact with the client prior to the sentencing hearing and inform the client of the steps being taken in preparation for sentencing;

- (c) obtain from the client relevant information concerning his or her background and personal history, prior criminal record, employment history, skills, education, medical history and condition, and financial status and obtain from the client sources that can corroborate the information provided by the client;
- (d) request any necessary and appropriate client evaluations, including those for mental health and substance abuse;
- (e) ensure the client has an opportunity to examine the presentence report;
- (f) inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to deliver to the court;
- (g) inform the client of the effects that admissions and other statements may have upon an appeal, retrial, or other judicial proceedings, such as forfeiture or restitution proceedings;
- (h) inform the client of the sentence or range of sentences counsel will ask the court to consider;
- (i) where appropriate, collect affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence;
- (j) prepare to address victim participation either through the victim impact statements or by direct testimony at sentencing; and
- (k) advise the client of the difference between testimony and allocution. If the client elects to testify, counsel should prepare the client for possible cross-examination by the prosecution where applicable.

Standard 18: Official Presentence Report

- (a) Counsel should prepare the client for the interview with the official preparing the presentence report.
- (b) Counsel has a duty to become familiar with the procedures concerning the preparation, submission, and verification of the presentence investigation report. In addition, counsel shall:

1. determine whether a presentence report will be prepared and submitted to the court prior to sentencing; where preparation of the report is optional, counsel should consider the strategic implications of waiving the report;
2. provide to the official preparing the report relevant information favorable to the client, including, where appropriate, the client's version of the offense;
3. attend any interview of the client by an agency presentence investigator where appropriate;
4. review the completed report prior to sentencing;
5. take appropriate steps to ensure that erroneous or misleading information that may harm the client is deleted from the report;
6. take appropriate steps to preserve and protect the client's interests where the defense challenges information in the presentence report as being erroneous or misleading; and
7. make sure that, if there is a significant change in the information contained in the report by the judge at the sentencing hearing, counsel takes reasonable steps to ensure that a corrected copy is sent to corrections officials.

Standard 19: Sentencing Hearing

- (a) At the sentencing proceeding, counsel shall take steps necessary to advocate fully for the requested sentence and to protect the client's interest.
- (b) Counsel shall endeavor to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the client.
- (c) Where appropriate, counsel shall request specific orders or recommendations from the court concerning alternative sentences and forms of incarceration.
- (d) Counsel should obtain a copy of the judgment and review it promptly to determine that it is accurate or to take steps to correct any errors.



## Standard 20: Post-Disposition Responsibilities

Counsel should be familiar with the procedures available to the client after disposition. Counsel should:

- (a) be familiar with the procedures to request a new trial, including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised;
- (b) inform the client of his or her right to appeal a conviction after trial, after a conditional plea or after a guilty plea that was not entered in a knowing, intelligent, and voluntary manner. Counsel should also advise the client of the legal effect of filing or waiving an appeal, and counsel should document the client's decision. If the client wishes to appeal after consultation with counsel, even if counsel believes that an appeal will not be successful or is not cognizable, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the client's right to appeal;
- (c) fulfill the responsibilities set forth in NRAP 3C if the conviction qualifies for "fast track" treatment under the rule. Counsel shall order a rough draft of those portions of the transcript provided for in NRAP 3C(d) in all cases in which trial counsel is not handling the appeal and in all other cases in which information from the proceedings is necessary for a fair determination of the issues to be raised on appeal. Counsel shall thoroughly research the issues in the case and shall set forth all viable issues in the "fast track" statement provided for by NRAP 3C(e);
- (d) timely respond to requests from appellate counsel for information about or documents from the case, when appellate counsel was not trial counsel;
- (e) inform the client of any right that may exist to be released pending disposition of the appeal;
- (f) consider requesting a stay of execution of the judgment to permit the client to report directly to the place of confinement, if a custodial sentence is imposed;
- (g) include in the advice to the client an explanation of the limited nature of the relief available on direct appeal and, where appropriate, an explanation of the remedies available to him or her in post-conviction proceedings. Counsel

should provide a pro se habeas packet to any client who needs assistance in preparing his or her pro se habeas corpus petition. Counsel should advise the client of the relevant time frames for filing state and federal habeas corpus petitions and provide information and advice necessary to protect a client's right to post-conviction relief; and

- (h) inform the client of any procedures available for requesting that the record of conviction be expunged or sealed.

## JUVENILE DELINQUENCY CASES

Counsel for juveniles in delinquency proceedings should abide by the Nevada Indigent Defense Standards of Performance applicable to felony and misdemeanor cases where applicable. The performance standards set forth below recognize the need to meet some concerns particular to representation of juveniles in delinquency proceedings.

### Standard 1: The Role of Defense Counsel

(a) The role of counsel in delinquency cases is to be an advocate for the child. Counsel should:

1. Ensure that the interests and rights of the client are fully protected and advanced irrespective of counsel's opinion of the client's culpability;
2. fully explain to the juvenile the nature and purpose of the proceedings and the general consequences of the proceeding, seeking all possible aid from the juvenile on decisions regarding court proceedings;
3. make sure the juvenile fully understands all court proceedings, as well as all his or her rights and defenses;
4. upon appointment, counsel should first seek to meet separately with the juvenile out of the presence of the parent;<sup>1</sup>
5. not discuss any attorney-client privileged communications with the parent, or any other person, without the express permission of the juvenile;
6. fully inform both the juvenile and juvenile's parents about counsel's role, especially clarifying the lawyer's obligation regarding confidential communications;

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<sup>1</sup>The use of the word "parent" in these Standards refers to parent, guardian, custodial adult, or person assuming legal responsibility for the child.

7. present the juvenile with comprehensible choices, help the juvenile reach his or her own decisions, and advocate the juvenile's viewpoint and wishes to the court; and
  8. refrain from waiving substantial rights or substituting counsel's own view, or the parents' wishes, for the position of the juvenile.
- (b) Counsel may request the appointment of a guardian ad litem, or may elect not to oppose such an appointment, only when very unusual circumstances warrant such an appointment. Every effort should be made to limit the role of the guardian ad litem to the minimum required for him/her to accomplish the purpose for which the appointment was made. In most cases, both the guardian and the client should be instructed not to discuss the facts of the case as this discussion may not be privileged.

Standard 2: Education, Training, and Experience of Defense Counsel

- (a) Counsel who undertake the representation of a client in a juvenile delinquency proceeding shall have the knowledge and experience necessary to represent a child diligently and effectively.
- (b) Counsel should consider working with an experienced juvenile delinquency practitioner as a mentor when beginning to represent clients in delinquency cases.
- (c) At a minimum, counsel should attend 4 hours of CLE relevant to juvenile defense annually.
- (d) Counsel shall familiarize themselves with Nevada statutes relating to delinquency proceedings, as well as the Nevada Rules of Criminal Procedure, Nevada Rules of Evidence, Nevada Rules of Appellate Procedure, relevant caselaw, and any relevant local court rules. Counsel should be knowledgeable about and seek ongoing formal and informal training in the following areas:
  1. Competency and Developmental Issues:
    - (A) Child and adolescent development;
    - (B) Brain development;

- (C) Mental health issues, common childhood diagnoses, and other disabilities; and
  - (D) Competency issues and the filing and processing of motion for competency evaluations.
2. Attorney/Client Interaction:
- (A) Interviewing and communication techniques for interviewing and communicating with children, including police interrogations and Miranda considerations;
  - (B) Ethical issues surrounding the representation of children and awareness of the role of the attorney; and
  - (C) Awareness of the role of the attorney versus the role of the guardian ad litem, including knowledge of how to work with a guardian ad litem
3. Department of Juvenile Justice Services/Other State and Local Programs:
- (A) Diversion services available through the court and probation;
  - (B) The child welfare system and services offered by the child welfare system;
  - (C) Nevada Department of Child and Family Services facility operations, release authority, and parole policies;
  - (D) Community resources and service providers for children and all alternatives to incarceration available in the community for children;
  - (E) Intake, programming, and education policies of local detention facility;
  - (F) Probation department policies and practices; and
  - (G) Gender specific programming available in the community.
4. Specific Areas of Concern:
- (A) Police interrogation techniques and Miranda consideration, as well as other Fourth, Fifth, and Sixth Amendment issues as they relate to children and adolescents;
  - (B) Substance abuse issues in children and adolescents;
  - (C) Special education laws, rights, and remedies;

- (D) Cultural diversity;
- (E) Immigration issues regarding children;
- (F) Gang involvement and activity;
- (G) School-related conduct and zero tolerance policies ("school to prison pipeline" research, search and seizure issues in the school setting);
- (H) What factors lead children to delinquent behaviors;
- (I) Signs of abuse and/or neglect;
- (J) Issues pertaining to status offenders; and
- (K) Scientific technologies and evidence collection.

### Standard 3: Adequate Time and Resources

Counsel should not carry a workload that by reason of its excessive size or representation requirements interfere with the rendering of quality legal service, endangers the juvenile's interest in the speedy disposition of charges, or risks breach of professional obligations. Before agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that he or she has sufficient time, knowledge, and experience and will pursue adequate resources to offer quality legal services in a particular matter. If, after accepting an appointment, counsel finds he or she is unable to continue effective representation, counsel should consider appropriate caselaw and ethical standards in deciding whether to move to withdraw or take other appropriate action. Counsel must maintain an appropriate, professional office in which to consult with clients and witnesses and must maintain a system for receiving collect telephone calls from incarcerated clients.

### Standard 4: Initial Client Interview

- (a) Preparing for the Initial Interview: Prior to conducting the initial interview, the attorney should:
  - 1. be familiar with the elements of the offense and the potential punishment;

2. obtain copies of relevant documents that are available, including copies of any charging documents, recommendations, and reports made by the Department of Juvenile Justice and law enforcement;
  3. be familiar with detention alternatives and the procedures that will be followed in setting those conditions;
  4. consider all possible defenses and affirmative defenses and any lesser-included offenses that may be available;
  5. consider the collateral consequences attaching to any possible sentencing, for example parole or probation revocation, immigration consequences, sex offender registration and reporting provisions, loss of driving privileges, DNA collection, school suspension or expulsion, consequences relating to public housing, etc.; and
  6. review the petition for any defects.
- (b) Counsel shall make every effort to conduct a face-to-face interview with the client as soon as practicable and sufficiently in advance of any court proceedings. In cases where the client is detained or in custody, counsel should make efforts to visit with the client within 24-48 hours after receiving the appointment. Counsel should:
1. interview the client in a setting that is conducive to maintaining the confidentiality of communications between attorney and client;
  2. maintain ongoing communications and/or meetings with the client, which are essential to establishing a relationship of trust between the attorney and client;
  3. provide the client with a method to contact the attorney, including information on calling collect from detention facilities;
  4. utilize the assistance of an interpreter as necessary and seek funding for such interpreting services from the court;
  5. work cooperatively with the parents, guardian, and/or other person with custody of the child to the extent possible without jeopardizing the legal interests of the child;
  6. consider the client's age, developmental stage, mental retardation, and mental health diagnoses in all cases, understand the nature and

consequences of a competency proceeding, and resolve issues of raising or not raising competency in consultation with the client; and

7. be alert to issues that may impede effective communication between counsel and client and ensure that communication issues such as language, literacy, mental or physical disability, or impairment are effectively addressed to enable the client to fully participate in all interviews and proceedings. Appropriate accommodations should be provided during all interviews, preparation, and proceedings, which might include the use of interpreters, mechanical or technological supports, or expert assistance.

#### Standard 5: Detention Hearing

- (a) When appropriate, counsel shall attempt to obtain the pretrial release of any client. Counsel shall advocate for the use of alternatives to detention for the youth at the detention hearing. Such alternatives might include electronic home monitoring, day or evening reporting centers, utilization of other community-based services such as after school programming, etc. If counsel is appointed after the initial detention hearing or if the youth remains detained after the initial detention hearing, counsel shall consider the filing of a motion to review the detention decision.
- (b) If the youth's release from secure detention is ordered by the court, counsel shall carefully explain to the juvenile the conditions of release from detention and any obligations of reporting or participation in programming. Counsel should take steps to secure appointment of counsel to juveniles prior to the detention hearing.

#### Standard 6: Informal Supervision/Diversion

Counsel shall be familiar with all available alternatives offered by the court or available in the community. Such programs may include diversion, mediation, or other informal programming that could result in a juvenile's case being dismissed, handled informally, or referred to other community programming. When appropriate



and available, counsel shall advocate for the use of informal mechanisms that could steer the juvenile's case away from the formal court process.

Standard 7: Case Preparation and Investigation

A thorough investigation by defense counsel is essential for competent representation of youth in delinquency proceedings. The duty to investigate exists regardless of the youth's admissions or statements to defense counsel of facts or the youth's stated desire to plead guilty. Counsel should:

- (a) obtain and examine all charging documents, pleadings, and discovery;
- (b) request and secure discovery, including exculpatory/impeaching information;
- (c) request the names and addresses of prosecution witnesses, their prior statements, and criminal records;
- (d) obtain the prior statements of the client and his or her delinquency history; all papers, tapes, or electronic recordings relevant to the case; expert reports and data upon which they are based, statements of co-defendants, an inspection of physical evidence, all documents relevant to any searches conducted, 911 tapes and dispatch reports, records of the client, including, but not limited to, educational, psychological, psychiatric, substance abuse treatment, children services records, court files, and prior delinquency records and be prepared to execute any needed releases of information or obtain any necessary court orders to obtain these records;
- (e) research and review the relevant statutes and caselaw to identify elements of the charged offense(s), defects in the prosecution, and available defenses;
- (f) conduct an in-depth interview of the client to assist in shaping the investigation;
- (g) consider seeking the assistance of an investigator when necessary and consider moving the court for funding to pay for the use of an investigator;
- (h) attempt to locate all potential witnesses and have them interviewed (if counsel conducts a witness interview, counsel should do so in the presence of a third person who can be called as a witness);

- (i) obtain the assistance of such experts as are appropriate to the facts of the case;
- (j) consider going to the scene of the alleged offense or offenses in a timely manner;
- (k) consider the preservation of evidence and document such by using photographs, measurements, and other means; and
- (l) be mindful of all requirements for reciprocal discovery and be sure to provide such in a timely manner.

#### Standard 8: Pretrial Motions

Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the applicable law may entitle the client to relief that the court has discretion to grant. Counsel shall review all statements, reports, and other evidence and interview the client to determine whether any motions are appropriate. Counsel should timely file all appropriate pretrial motions and participate in all pretrial proceedings.

- (a) The decision to file pretrial motions should be made after thorough investigation and after considering the applicable law in light of the circumstances of the case. Among the issues that counsel should consider addressing in a pretrial motion are:
  - 1. the pretrial detention of the client;
  - 2. the constitutionality of the implicated statute(s);
  - 3. defects in the charging process or the charging document;
  - 4. severance of charges or defendants;
  - 5. discovery issues;
  - 6. suppression of evidence or statements;
  - 7. speedy trial issues; and
  - 8. evidentiary issues.
- (b) Counsel should only withdraw or decide not to file a motion after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the client's rights against later claims of waiver or procedural default.

- (c) Motions should be filed in a timely manner and with an awareness of the effect of filing the motion on the client's speedy trial rights. When an evidentiary hearing is scheduled on a motion, counsel's preparation for the hearing should include:
1. investigation, discovery, and research relevant to the claim advanced;
  2. subpoenaing of all helpful evidence and witnesses; and
  3. full understanding of the burdens of proof, evidentiary principles, and trial court procedures applying to that hearing, including the benefits and costs of having the client testify.
- (d) Requests or agreements to continue a contested hearing date shall not be made without consultation with the client. Counsel shall diligently work to complete the investigation and preparation in order to be fully prepared for all court proceedings. In the event that counsel finds it necessary to seek additional time to adequately prepare for a proceeding, counsel should consult with the client and discuss seeking a continuance of the upcoming proceeding. Whenever possible, written motions for continuance made in advance of the proceeding are preferable to oral requests for continuance. All requests for a continuance should be supported by well-articulated reasons on the record in the event it becomes an appealable issue.

#### Standard 9: Plea Negotiations

- (a) Under no circumstances should defense counsel recommend to a client acceptance of a plea unless appropriate investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced at trial.
- (b) Counsel should:
1. with the consent of the client, explore diversion and other informal and formal admission of disposition agreements with regard to the allegations;
  2. fully explain to the client the rights that would be waived by a decision to enter into any admission or disposition agreement;
  3. keep the client fully informed of the progress of the negotiations;

4. convey to the client any offers made by the prosecution and the advantages and disadvantages of accepting the offers;
  5. continue to preserve the client's rights and prepare the defense notwithstanding ongoing negotiations; and
  6. not enter into any admission or disposition agreement on behalf of the client without the client's authorization.
- (c) In developing a negotiation strategy, counsel must be completely familiar with:
1. concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to:
    - (A) not to proceed to trial on the merits of the charges;
    - (B) to decline from asserting or litigating particular pretrial motions;
    - (C) an agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs; and
    - (D) providing the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal/delinquent activity.
  2. benefits the client might obtain from a negotiated settlement, including, but not limited to:
    - (A) that the prosecution will not oppose the client's release pending disposition or appeal;
    - (B) that the client may enter a conditional plea to preserve the right to litigate and contest certain issues affecting the validity of the conviction;
    - (C) that one or more of the charged offenses may be dismissed or reduced either immediately or upon completion of a deferred prosecution agreement;
    - (D) that the client will not be subject to further investigation or prosecution for uncharged alleged delinquent conduct;
    - (E) that the client will receive, with the agreement of the court, a specified sentence or sanction;

- (F) that the prosecution will take, or refrain from taking, at the time of disposition and/or in communications with the probation department a specified position with respect to the sanction to be imposed on the client by the court; and
  - (G) that the client will receive, or the prosecution will recommend, specific benefits concerning the client's place and /or manner of confinement and/or release on probation.
- (d) In the decision-making process, counsel should:
1. inform the client of any tentative negotiated agreement reached with the prosecution, explain to the client the full content of the agreement, and explain advantages, disadvantages, and potential consequences of the agreement; and
  2. not attempt to unduly influence the decision, as the decision to enter a plea of guilty rests solely with the client; where counsel reasonably believes that acceptance of a plea offer is in the best interest of the client, counsel should advise the client of the benefits of this course of action.
- (e) Prior to the entry of the plea, counsel should meet with the client in a confidential setting that fosters full communication and:
1. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary, and intelligently made;
  2. make certain that the client fully and completely understands the conditions and limits of the plea agreement and the maximum punishment, sanctions, and other consequences the client will be exposed to by entering the plea; and
  3. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge, and providing a statement concerning the offense.
- (f) After entry of the plea, counsel should:
1. be prepared to address the issue of release pending disposition hearing. Where the client has been released, counsel should be

prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for the client's release pending disposition; and

2. make every effort to review and explain the plea proceedings with the client and to respond to any client questions and concerns.

#### Standard 10: Adjudicatory Hearing

(a) Counsel should develop a theory of the case in advance of the adjudicatory hearing. Counsel shall issue subpoenas and obtain court orders for all necessary evidence to ensure the evidence's availability at the adjudicatory hearing. Sufficiently in advance of the hearing, counsel shall subpoena all potential witnesses. Where appropriate, counsel should have the following materials available at the time of the contested hearing:

1. copies of all relevant documents filed in the case;
2. relevant documents prepared by investigators;
3. outline or draft of opening statement;
4. cross-examination plans for all prospective prosecution witnesses;
5. direct examination plans for all prospective defense witnesses;
6. copies of defense subpoenas;
7. prior statements of all prosecution witnesses;
8. prior statements of all defense witnesses;
9. reports from all experts;
10. a list and copies of originals of defense and prosecution exhibits;
11. copies of all relevant statutes or cases; and
12. outline or draft of closing argument.

(b) Counsel should be fully informed as to the rules of evidence and the law relating to all stages of the trial process and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

(c) Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., admissibility of evidence), and where appropriate,

counsel should prepare motions and memoranda in support of the client's position.

- (d) Throughout the adjudicatory process, counsel should endeavor to establish a proper record for appellate review. As part of this effort, counsel should request, whenever necessary, that all discussions and rulings be made on the record.
- (e) Counsel should advise the client as to suitable courtroom dress and demeanor.
- (f) Counsel should plan with the client the most convenient system for conferring throughout the contested hearing.
- (g) During the adjudicatory hearing, counsel shall raise objections on the record to any evidentiary issues; in order to best preserve a client's appellate rights, counsel shall object on the record and state the grounds for such objection following the courts denial of any defense motion.
- (h) Counsel shall ensure that an official court record is made and preserved of any pretrial hearings and the adjudicatory hearing.
- (i) Counsel shall utilize expert services when appropriate and petition the court for assistance in obtaining expert services when necessary.
- (j) Counsel should anticipate weaknesses in the prosecution's proof and consider appropriate motions for judgment of acquittal at all appropriate stages of the litigation.
- (k) Counsel should consider the strategic advantages and disadvantages of entering into any stipulations.
- (l) In preparing for cross-examination, counsel should:
  - 1. be prepared to question witnesses as to the existence of prior statements that they may have made or adopted;
  - 2. consider the need to integrate cross-examination, theory, and theme of the defense;
  - 3. avoid asking unnecessary questions that may hurt the defense case;
  - 4. anticipate evidence that the prosecution may call in its case-in-chief and on rebuttal;
  - 5. create a cross-examination plan for all anticipated witnesses;

6. review all prior statements and testimony of the witnesses in order to be aware of all inconsistencies or variances; and
7. review relevant statutes, regulations, and policies applicable to police witnesses and consider a pretrial motion or voir dire examination of prosecution experts to determine qualifications of experts or reliability of the anticipated opinion.

Standard 11: Presenting the Client's Case

- (a) Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt.
- (b) Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should maintain a record of the advice provided to the client and the client's decision concerning whether to testify.
- (c) Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.
- (d) In preparing for presentation of a defense case, counsel should, where appropriate, do the following:
  1. develop a plan for direct examination of each potential witness;
  2. determine the implications that the order of witnesses may have on the defense case;
  3. determine which facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
  4. consider the possible use of character witnesses;
  5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
  6. review all documentary evidence that must be presented; and



7. review all tangible evidence that must be presented.
- (e) In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.
- (f) Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.
- (g) Counsel should conduct redirect examination as appropriate.

#### Standard 12: Objections to the Hearing Master's Recommendations

Counsel shall advise client of the role of the Hearing Master and the procedure and purpose of filing objections to the Hearing Master's findings and recommendations. Counsel shall review the Hearing Master's decision for possible meritorious grounds for objection. If the Hearing Master's decision does not contain findings of facts and conclusions of law, counsel shall request in writing such findings of facts and conclusions of law in accordance with NRS 62B.030(3). Counsel shall ensure that the transcript of the proceeding is timely obtained and objections are timely filed in accordance with NRS 62B.030(4). Counsel shall draft and file objections and supplemental points and authorities with specificity and particularity and participate in the oral argument if scheduled.

#### Standard 13: Preparation for the Disposition Hearing

Preparation for disposition should begin upon appointment. Counsel should:

- (a) be knowledgeable of available dispositional alternatives both locally and outside of the community;
- (b) review, in advance of the dispositional hearing, the recommendations of the probation department or other court department responsible for making dispositional recommendations to the court;
- (c) inform their client of these recommendations and other available dispositional alternatives; and

- (d) be familiar with potential support systems of the client such as school, family, and community programs and consider whether such supportive services could be part of a dispositional plan.

#### Standard 14: The Disposition Process

During the disposition process, counsel should:

- (a) correct inaccurate information that may be detrimental to the client and object to information that is not properly before the court in determining the disposition;
- (b) present to the Court all known and reasonably available mitigating and favorable information, including relevant expert testimony or reports;
- (c) develop a plan that seeks to achieve the least restrictive and burdensome disposition alternative and that can reasonably be obtained based on the facts and circumstances of the offense, the client's background, the applicable disposition and alternatives, and other information pertinent to the disposition decision;
- (d) consider filing a memorandum setting forth the defense position with the court prior to the dispositional hearing;
- (e) maintain contact with the client prior to the disposition hearing and inform the client of the steps being taken in preparation for sentencing;
- (f) obtain from the client and/or the client's family relevant information concerning his or her background and personal history, prior delinquency record, employment history, education, and medical history and condition and obtain from the client sources that can corroborate the information provided;
- (g) request any necessary and appropriate client evaluations, including those for mental health and substance abuse;
- (h) ensure the client has an opportunity to examine the disposition report;
- (i) inform the client of his or her right to speak at the disposition hearing and assist the client in preparing the statement, if any, to deliver to the court;

- (j) inform the client of the effects that admissions and other statements may have upon an appeal, retrial, or other judicial proceedings;
- (k) collect affidavits to support the defense position when appropriate and prepare witnesses to testify at the sentencing hearing and request the opportunity to present tangible and testimonial evidence;
- (l) prepare to address victim participation either through the victim impact statement or by direct testimony at the disposition hearing; and
- (m) ensure that an official court record is made and preserved of any disposition hearing.

#### Standard 15: The Disposition Report

Counsel should:

- (a) become familiar with the procedures concerning the preparation, submission, and verification of the disposition report;
- (b) prepare the client for the interview with the official preparing the disposition report;
- (c) determine whether a written disposition report will be prepared and submitted to the court prior to the disposition hearing; where preparation of the report is optional, counsel should consider the strategic implications of requesting report;
- (d) provide to the official preparing the report relevant information favorable to the client, including, where appropriate, the client's version of the offense;
- (e) attend any interview of the client by an agency disposition investigator where appropriate; review the completed report prior to sentencing;
- (f) take appropriate steps to ensure that erroneous or misleading information that may harm the client is deleted from the report; and
- (g) take reasonable steps to ensure that a corrected copy of the report is sent to corrections officials if there are any amendments made to the report by the court.

Standard 16: Post-Disposition Responsibilities/Advocacy

Following the disposition hearing, counsel should:

- (a) review the disposition order to ensure that the sentence is clearly and accurately recorded and take steps to correct any errors and ensure that it includes language regarding detention credits and plea agreements;
- (b) be aware of sex offender registration requirements and other requirements, both state and federal, imposed on sex offenders and communicate those requirements to the client;
- (c) be familiar with the procedure for sealing and expunging records, advise the client of those procedures, and utilize those procedures when available;
- (d) be familiar with the procedures to request a new contested hearing, including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised and advise the client of his or her rights with regard to those procedures;
- (e) inform the client of his or her rights to representation and to appeal an adjudication after a contested hearing, after a conditional plea or after an admission that was not entered in a knowing, intelligent, and voluntary manner and document the client's decision regarding appeal;
- (f) ensure that the notice of appeal and request for appointment of counsel is filed, or that the client has obtained or the court has appointed, appellate counsel in a timely manner even if counsel believes that an appeal will not be successful or is not cognizable;
- (g) timely respond to requests from appellate counsel for information about or documents from the case, when appellate counsel was not trial counsel;
- (h) inform the client of any right that may exist to be released pending disposition of the appeal;
- (i) consider requesting a stay of execution of the judgment to permit the client to report directly to the place of confinement, if a custodial sentence is imposed; and

- (j) include in the advice to the client, an explanation of the limited nature of the relief available on direct appeal and, where appropriate, an explanation of the remedies available to him or her in post-adjudication proceedings.

Standard 17: Transfer Proceedings to Adult Court

- (a) Transfer proceedings require special knowledge and skill due to the severity of the consequence of the proceedings. Counsel shall not undertake representation of children in these areas without sufficient experience, knowledge, and training in these unique areas. It is recommended that counsel representing children in transfer proceedings have litigated at least 2 criminal jury trials or be assisted by co-counsel with the requisite experience.
- (b) Counsel representing juveniles in transfer proceedings should:
  - 1. be fully knowledgeable of adult criminal procedures and sentencing;
  - 2. be fully knowledgeable of the legal issues regarding probable cause hearings and transfer proceedings;
  - 3. investigate the social, psychological, and educational history of the child;
  - 4. retain or employ experts including psychologists, social workers, and investigators in order to provide the court with a comprehensive analysis of the child's strengths and weaknesses in support of retention of juvenile jurisdiction;
  - 5. be knowledgeable of the statutory findings the court must make before transferring jurisdiction to the criminal court and any caselaw affecting the decision;
  - 6. be prepared to present evidence and testimony to prevent transfer, including testimony from teachers, counselors, psychologists, community members, probation officers, religious associates, employers, or other persons who can assist the court in determining that juvenile jurisdiction should be retained;
  - 7. ensure that all transfer hearing proceedings are recorded;
  - 8. preserve all issues for appeal; and

9. investigate possible placements for the client if the case remains in juvenile court.

# EXHIBIT 252

*Nevada Licensed Psychologist No. 129*  
Diplomate, American Board of Professional Neuropsychology #257  
Fellow, National Academy of Neuropsychology  
Fellow, The American College of Professional Neuropsychology

pd in  
full

ATTORNEY, ADDRESS &amp; TELEPHONE #

CLARK PATRICK, ESQ.  
SPECIAL PUBLIC DEFENDER  
P.O. BOX 552316  
LAS VEGAS, NV 89155-2316  
OFFICE# 455-0213 FAX# 455-6273

[illegible]

1/2 DAY-TRIAL=\$1,750.00

MINUS RETAINER=\$0

**BALANCE DUE: \$3037.00**

James M. Eckoff Ph.D.

8475 S. Eastern Avenue • Suite 205 • Las Vegas, NV 89123  
(702) 876-1977 • FAX (702) 876-0238

[www.dretcoff.com](http://www.dretcoff.com)



# EXHIBIT 253

1000										CERTIFICATE OF DEATH										Michigan Department of Public Health									
DECEASED - NAME										SEX										DATE OF DEATH									
Shirley										L. Chappell										Female									
RACE										AGE										PLACE OF DEATH									
Negro										24										Mar. 14, 1973									
CITY, TOWN OR VILLAGE OF DEATH										COUNTY OF DEATH										CITY, TOWN OR VILLAGE OF DEATH									
Lansing										Yes										1-496 & Dunckel Rd.									
STATE OF BIRTH										CITY OF BIRTH										CITY OF BIRTH									
Mich.										U.S.A.										Married									
DECEASED'S RESIDENCE										DECEASED'S RESIDENCE										DECEASED'S RESIDENCE									
Unknown										Housewife										Home									
CITY, TOWN OR VILLAGE OF DEATH										CITY, TOWN OR VILLAGE OF DEATH										CITY, TOWN OR VILLAGE OF DEATH									
Mich.										Ingham										Lansing									
CITY, TOWN OR VILLAGE OF DEATH										CITY, TOWN OR VILLAGE OF DEATH										CITY, TOWN OR VILLAGE OF DEATH									
Yes										Yes										Pondow Brook Trace Apt									
DECEASED'S NAME										DECEASED'S NAME										DECEASED'S NAME									
Arthur										Axam										Clara Underwood									
DECEASED'S NAME										DECEASED'S NAME										DECEASED'S NAME									
Arthur Axam										3811 Hillborn Ln.										Lansing, Mich.									
DEATH WAS CAUSED BY										DEATH WAS CAUSED BY										DEATH WAS CAUSED BY									
Acute Traumatic Encephalopathy										Sudden																			
DEATH WAS CAUSED BY										DEATH WAS CAUSED BY										DEATH WAS CAUSED BY									
Auto Accident																													
OTHER SIGNIFICANT CONDITIONS										OTHER SIGNIFICANT CONDITIONS										OTHER SIGNIFICANT CONDITIONS									
Accident																													
PLACE OF DEATH										PLACE OF DEATH										PLACE OF DEATH									
Lansing										Lansing										Lansing									
DATE OF DEATH										DATE OF DEATH										DATE OF DEATH									
August 23, 1973										August 23, 1973										August 23, 1973									
DECEASED'S NAME										DECEASED'S NAME										DECEASED'S NAME									
Otto W. Graesser, D.O.										August 23, 1973										August 23, 1973									
DECEASED'S NAME										DECEASED'S NAME										DECEASED'S NAME									
1827 N. M. Hope Avenue										Lansing, Michigan										4810									
DECEASED'S NAME										DECEASED'S NAME										DECEASED'S NAME									
Burial										Evergreen Cemetery										Lansing, Mich.									
DECEASED'S NAME										DECEASED'S NAME										DECEASED'S NAME									
B-27-73										Riley Funeral Home, 426 W. St. Joseph St., Lansing, Mich.																			
DECEASED'S NAME										DECEASED'S NAME										DECEASED'S NAME									
James R. Riley										August 24, 1973																			

I hereby certify that the above is a true and correct copy of the certificate of Death on file in the City Clerk's Office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city, this  
29th day of August, A. D. 1973

REGISTRAR - CITY OF LANSING

# EXHIBIT 254

1 TRAN

ORIGINAL

FILED

JUL 23 8 25 AM '04

3 CLARK COUNTY  
4 DISTRICT COURT

*Shirley E. Rungius*  
CLERK

6 THE STATE OF NEVADA,

7 PLAINTIFF,

8 VS.

9 JAMES MONTELL CHAPPELL,

10 DEFENDANT.

CASE NO. C131341

DEPT. NO. XI

12 BEFORE THE HONORABLE MICHAEL L. DOUGLAS, DISTRICT JUDGE

13 FRIDAY, APRIL 2, 2004; 9:00 A.M.

15 RECORDER'S TRANSCRIPT RE:  
16 DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

17 APPEARANCES:

18 FOR THE STATE:

CLARK PETERSON, ESQ.  
Deputy District Attorney

19 FOR THE DEFENDANT:

DAVID SCHIECK, ESQ.

RECEIVED

JUL 23 2004

COUNTY CLERK

25 RECORDED BY: RICHARD KANGAS, COURT RECORDER

1 FRIDAY, APRIL 2, 2004; 9:00 A.M.

2  
3 THE COURT: Mr. Schieck, Mr. Peterson. This is on Chappell, Page 2,  
4 C131341. It's labeled as hearing: defendant's petition for writ of habeas corpus, but  
5 it's more of a status check. Where are we at?

6 MR. SCHIECK: Well, your Honor, with your appointment and you being the  
7 judge that heard the evidentiary hearing, we've agreed to go ahead and argue the  
8 matter today so that your Honor can decide it before you leave because if you leave,  
9 we're going to have a judge that didn't hear the evidentiary hearing and have to try  
10 to decide the case. And Mr. Peterson has been tied up in a trial for three weeks and  
11 hasn't been able to get his proposed hearing brief in.

12 The proposed hearing brief really only focused on the evidence that  
13 came in during that evidentiary hearing from the testimony of Mr. Brooks and the  
14 affidavits of the witnesses that we found in Michigan and in Arizona on what they  
15 would have said if Mr. Brooks had called them at the penalty hearing. And that's  
16 really the only issue that your Honor had left open to us when you granted the  
17 evidentiary hearing. We had raised a number of other factual and legal issues, but  
18 your Honor only wanted to hear from the attorneys concerning those penalty hearing  
19 witnesses and possibly whether those witnesses could have been used during the  
20 guilt phase to rebut some of the evidence on the other bad acts and the relationship  
21 between Debra Panos and Mr. Chappell.

22 We've submitted those affidavits. The witnesses included his girl friend  
23 that knew both he and Debra – that would be Shirley Sorrelli, Barbara Jean, who  
24 was sort of a second mother to him, David Green, Chris Bardow and then his three

1 best friends from Mr. Michigan, Mr. Merrell, Mr. Dean and Mr. Ford. Mr. Brooks  
2 testified that he did go to Michigan, but his focus was only on getting school records  
3 and looking into that type of information and not in talking to his friends. Mr. Brooks  
4 was quite candid in saying he should have done more, he should have found these  
5 friends, he should have called them as witnesses. And I think the issue is really  
6 going to come down to your Honor deciding whether or not if Mr. Brooks had done  
7 this it would have made a difference at the penalty hearing, which is really what any  
8 ineffective claim comes to is if he had done it the way – we're second guessing him  
9 now and saying he should have done it – would the result have been different either  
10 at the trial or the penalty hearing. And based on Mr. Brooks' testimony, I believe he  
11 feels that it would have made a difference and that he should have done it. But that  
12 question is ultimately up to your Honor to decide.

13 MR. PETERSON: And, Judge, I essentially agree that the issue is focused on  
14 that one point. And our position is somewhat as Mr. Schieck summarizes. If you  
15 refer to the written opinion in this case and to the State's brief, what becomes clear  
16 is that there is overwhelming evidence of guilt in this case. The defendant himself,  
17 Mr. Chappell, conceded that he had killed Ms. Panos, basically dragging her back  
18 into the trailer, stabbing her numerous times with a kitchen knife, and, in fact, leaving  
19 that knife impaled essentially in her chest. In my review of the photographs and of  
20 other cases, I have to say that was a – it was a horrific manner of death and it was  
21 coupled with a sexual assault of that same victim. And the aggravator of sexual  
22 assault was found by the jury as well as during the course of robbery and burglary.

23 It's our position that because the killing was established, these other  
24 witnesses went to sort of the scope of their relationship and domestic violence

1 issues. I just can't see – and I'll submit it to the Court – that you could parade as  
2 many witnesses in when you've got a defendant who admits he's the killer. When  
3 you see those photos and you hear that she was raped by the same killer, bringing  
4 in a witness or two or three or four about trying to mitigate their prior domestic  
5 violence issues is just simply not going to rise to the level of the Strickland standard.

6 I spoke with Mr. Schieck. I believe he and I are both comfortable  
7 submitting on this brief argument. The issue is relatively focused, and it's the State's  
8 opinion that we just can't find prejudice here by any perceived failure by defense  
9 counsel. I think defense counsel correctly focused on mitigation evidence. When  
10 you have a case where essentially guilt is pretty clear and while it was certainly  
11 counsel's hope to shoot for a voluntary by taking a "I was in a jealous rage" type of  
12 defense, clearly the issue here was trying to avoid the death penalty and that  
13 investigation and that action counsel did take. What he's saying was not undertaken  
14 was an attempt to sort of minimize some of the other bad act/domestic violence  
15 evidence that was admitted during guilt phase for its case-in-chief in its – in primary.  
16 And I'm comfortable submitting it on that, Judge, and leaving it to the Court to issue  
17 a written opinion when the Court's comfortable.

18 MR. SCHIECK: Just one last thing, your Honor. I talked primarily about the  
19 penalty hearing evidence; however, Mr. Brooks' strategy at the guilt phase was to  
20 admit that James committed the homicide but to try to get a lesser offense than first  
21 degree murder. That is why those witnesses were so important to show their  
22 relationship at the guilt phase also between Debra and James. And so I'm not  
23 conceding that there wasn't ineffectiveness at the guilt also for not calling those  
24 same witnesses. If that's going to be your theory of defense, you better put

25

1 somebody on to justify that theory of defense. And those people from Michigan that  
2 knew James, knew Debbie, knew her family, knew how he was treated by her family,  
3 all would have been extremely relevant, in my opinion, to the jury considering less  
4 than first degree murder under the horrendous facts of this case.

5 THE COURT: The Court would note as to this matter that previously when the  
6 Supreme Court had denied rehearing in this matter back on March 17<sup>th</sup> of 1999, they  
7 noted that the jury returned a verdict of death after finding two mitigating  
8 circumstances: the murder was committed while under the influence of extreme  
9 mental or emotional disturbance and any other mitigating circumstances did not  
10 outweigh four aggravating factors. The murder was committed during the  
11 commission of a robbery, burglary and sexual assault, and the murder involved  
12 torture or depravity of mind.

13 On appeal, the Court affirmed Chappell's conviction of sentence of  
14 death but concluded that the torture aggravating factor was not supported by  
15 sufficient evidence. After reweighing the remaining aggravating factors against the  
16 mitigating circumstance, the Court concluded that the death sentence was not  
17 improper.

18 This Court likewise is going to state that based upon the record, the  
19 underlying verdict of guilty is appropriate and there is no ineffective assistance of  
20 counsel as to find that Mr. Chappell is guilty of the crime so charged; however, it is  
21 different as to the issue of penalty. Defense counsel does have an obligation to  
22 present evidence. The Supreme Court recently has looked at that, and in that light,  
23 it would be appropriate even though, Mr. Peterson, that some points may be correct  
24 that there was overwhelming evidence. Still the Supreme Court has opined that it's

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1 necessary that counsel do the things that he's required to do to make sure that the  
2 jury has that in front of them when they are considering the issue of death. That was  
3 not done in this case. For that reason, it would be appropriate to order that a new  
4 penalty hearing be held in this matter. And if counsel wish to – Mr. Schieck, if you  
5 would draft an order to that, run it by Mr. Peterson.

6 MR. SCHIECK: I'll include findings concerning your ruling on the guilt phase  
7 also and Mr. Peterson will probably want to supplement what I say about that.

8 THE COURT: And as always, if there's a dispute, each side give me what they  
9 think is appropriate and the Court will make the determination.

10 (Whereupon, proceedings were concluded.)

11 \* \* \* \* \*

12 ATTEST: I do hereby certify that the foregoing is a true and accurate transcript from  
13 the electronic sound recording of the proceedings in the above-entitled matter.

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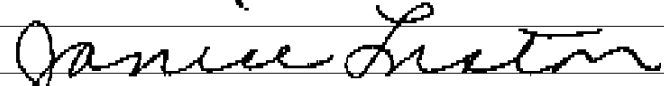
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JANICE R. LISTON  
Court Recorder

# EXHIBIT 255

State vs. Chappell  
EXHIBITS

CASE NO. C/3/34/

			OFFERED DATE	OBJ	ADMITTED DATE
	PENALTY HEARING - 3/12/07				
95	TRANSCRIPT OF TESTIMONY OF MIKE POLLARD				
96	TRANSCRIPT OF TESTIMONY OF DEBORAH TURNER				
97	TRANSCRIPT OF TESTIMONY OF LADONNA JACKSON				
98	TRANSCRIPT OF TESTIMONY OF PAUL WEIDNER				
99	Color photograph of trailer		3/16	✓ NO	✓ 3/16
100	" "		3/16	✓ NO	✓ 3/16
101	" "			✓	✓
102	" "			✓	✓
103	" "			✓	✓
104	" "			✓	✓
105	" "			✓	✓
106	" " of interior			✓	✓
107	" "			✓	✓
108	" "			✓	✓
109	" "			✓	✓
110	" "			✓	✓
111	" "			✓	✓
112	" "			✓	✓
113	" "			✓	✓
114	" "			✓	✓
115	Victim at crime scene			✓	✓
116	" "		3/16	✓ NO	✓ 3/16

State vs Chappell

JChappell 11-8JDC-EVVAULT468

States

EXHIBITS

CASE NO. C131341

			OFFERED DATE	OBJ	ADMITTED DATE
116	Color Photograph of Window		3/16	✓ no	✓ 3/16
117	" " of Victim at crime scene			✓	✓
118	" "			✓	✓
119	" " of Chair			✓	✓
120	" "			✓	✓
121	" " of Car			✓	✓
122	" "			✓	✓
123	" "			✓	✓
124	" "			✓	✓
125	" "			✓	✓
126	" " of Victim			✓	✓
127	Map			✓	✓
128	Map			✓	✓
129	Certified Reports of Incidents		3/16	✓ no	✓ 3/16
130	Judgment of Conviction		3/16	✓ no	✓ 3/16
75A	Letter from Exhibit 75 Evidence Bag		3/16	✓ no	✓ 3/16
75B	Letter from Exhibit 75 Evidence Bag		3/16	✓ no	✓ 3/16
75C	Bag from Exhibit 75 Evidence Bag		3/16	✓ no	✓ 3/16
75D	Bag from Exhibit 75 Evidence Bag		3/16	✓ no	✓ 3/16
31	Transcript of Testimony James Chappell				
32	Transcript of Jerry Earnest				
33	Transcript of Allen Williams				



# EXHIBIT 256

# CELLMARK

## DIAGNOSTICS

20271 Goldenrod Lane · Germantown, Maryland 20876

Telephone: (301) 428-4980 (800) USA-LABS

Facsimile: (301) 423-1877

## REPORT OF LABORATORY EXAMINATION

June 28, 1996

JUL 02 1996

Ms. Linda T. Errichetto, Director  
 Forensic Laboratory  
 Las Vegas Metropolitan Police Department  
 6761 W. Charleston Boulevard  
 Las Vegas, NV 89102-9003

Re: Your Event No. 950831-1351  
 Cellmark Case No. F951594

EXHIBITS:

Items of evidence were received for analysis for the above-referenced case on December 15, 1995. Restriction fragment length polymorphism (RFLP) testing was performed on the items listed below:

ID#	DESCRIPTION
TLC 1, item 4	One swab labelled "...vaginal swab of Panos"
TLC #3	One swab labelled "...blood swabbed from knife"
-	Stain card labelled "...Panos, Deborah"
-	Stain card labelled "...Chappell, James"

RESULTS:

DNA was extracted and DNA banding patterns were obtained from the items listed above using the restriction enzyme HinfI and the five single-locus probes MS1 (D1S7), MS31 (D7S21), MS43 (D12S11), g3 (D7S22) and YWH24 (D2S44).

The DNA banding pattern obtained from the swab labelled blood swabbed from knife (item TLC #3) contains nine bands which match nine of the ten bands contained in the DNA banding pattern obtained from the stain card labelled Deborah Panos. The inability to visualize other bands in the DNA banding pattern obtained from the swab labelled blood swabbed from knife may be due to the small amount of DNA obtained from this item.

The DNA banding pattern obtained from the vaginal swab contains a DNA banding pattern which matches the DNA banding pattern obtained from the stain card labelled Deborah Panos and a second DNA banding pattern. This second DNA banding pattern matches the DNA banding pattern obtained from the stain card labelled James Chappell.

Report for Case No. F951594  
 June 28, 1996  
 Page Two

### CONCLUSIONS:

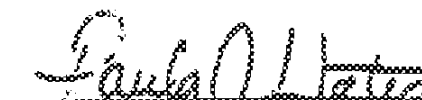
Using the five single-locus probes sequentially, the approximate frequencies in the Caucasian, African American, and Western Hispanic populations of the nine bands in the DNA banding pattern common to the stain card labelled Deborah Pance and the swab labelled blood swabbed from knife are as follows:

<u>Population Database</u>	<u>Frequency</u>
Caucasian	1 in 76 million
African American	1 in 4.5 billion
Western Hispanic	1 in 230 million

Using the five single-locus probes sequentially, the approximate frequencies in the Caucasian, African American, and Western Hispanic populations of the DNA banding pattern obtained from the vaginal swab and the stain card labelled James Chappell are as follows:

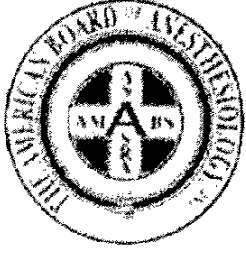
<u>Population Database</u>	<u>Frequency</u>
Caucasian	1 in 1.0 billion
African American	1 in 14 billion
Western Hispanic	1 in 310 million

  
 Lisa Forman, Ph.D.  
 Population Geneticist

  
 Paula J. Yates  
 Senior Molecular Biologist



# EXHIBIT 258



## THE AMERICAN BOARD OF ANESTHESIOLOGY, INC.

A Member Board of the American Board of Medical Specialties

4208 Six Forks Road, Suite 900, Raleigh, North Carolina 27609-5753  
Phone: (866) 999-7501 Fax: (866) 999-7503 Website: [www.theABA.org](http://www.theABA.org)

### Commentary (4/2/10)

#### Anesthesiologists and Capital Punishment

The majority of states in the United States authorize capital punishment, and nearly all states utilize lethal injection as the means of execution. However, this method of execution is not always straightforward (1), and, therefore, some states have sought the assistance of anesthesiologists (2).

This puts anesthesiologists in an untenable position. They can assuredly provide effective anesthesia, but doing so in order to cause a patient's death is a violation of their fundamental duty as physicians to do no harm.

For decades the American Medical Association (AMA) has been opposed to physician involvement in capital punishment on the grounds that physicians are members of a profession dedicated to preserving life when there is hope of doing so (3). Effective February 15, 2010, the American Board of Anesthesiology (ABA) has incorporated the AMA's position on capital punishment into its professional standing requirements for all anesthesiologists who are candidates for or diplomates of the ABA (4). Thus, anesthesiologists may not participate in capital punishment if they wish to be certified by the ABA. What constitutes participation is clearly defined by the AMA's policy.

The ABA has not taken this action because of any position regarding the appropriateness of the death penalty. Anesthesiologists, like all physicians and all citizens, have different personal opinions about capital punishment. Nonetheless, the ABA, like the AMA, believes strongly that physicians should not be involved in capital punishment. The American Society of Anesthesiologists has also supported the AMA's position in this regard (5), as have others (6). Patients should never confuse the practice of anesthesiology with the injection of drugs to cause death. Physicians should not be expected to act in ways that violate the ethics of medical practice, even if these acts are legal.

In conclusion, the ABA's policy on capital punishment is intended to uphold the highest standards of medical practice and encourage anesthesiologists and other physicians to honor their professional obligations to patients and society.

Mark A. Rockoff, MD  
Secretary, ABA

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Rochester, MN

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Executive Director,  
Administrative Affairs

## References

1. Black L, Sade RM. Lethal injection and physicians: State law vs. medical ethics. JAMA. 2007; 298(23):2779-81.
2. Gawande A. When law and ethics collide: Why physicians participate in executions. N Engl J Med. 2006;354(12):1221-9.
3. American Medical Association Code of Medical Ethics, Opinion E-2.06 - Capital Punishment (June 2000). (Accessed March 9, 2010, at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion206.shtml>)
4. American Board of Anesthesiology professional standing policy: Anesthesiologists and capital punishment. (Accessed February 15, 2010, at <http://www.theABA.org/Home/notices#punishment>) and Newsletter of the American Society of Anesthesiologists 2010; 74(3): 49 (ASA Newsletter will be available online after April 1, 2010 at: <http://www.asahq.org/Newsletters/NL%20Portal/march10.html>)
5. Guidry OF. Message from the President: Observations regarding lethal injection. Newsletter of the American Society of Anesthesiologists. August, 2006. (Accessed March 9, 2010, at <http://www.asahq.org/Newsletters/2006/08-06/guidry08-06.html>)
6. Truog RD, Brennan TA. Participation of physicians in capital punishment. N Engl J Med 1993; 329: 1346-1350.



## **AMA Policy E-2.06 Capital Punishment**

An individual's opinion on capital punishment is the personal moral decision of the individual. A physician, as a member of a profession dedicated to preserving life when there is hope of doing so, should not be a participant in a legally authorized execution. Physician participation in execution is defined generally as actions which would fall into one or more of the following categories: (1) an action which would directly cause the death of the condemned; (2) an action which would assist, supervise, or contribute to the ability of another individual to directly cause the death of the condemned; (3) an action which could automatically cause an execution to be carried out on a condemned prisoner.

Physician participation in an execution includes, but is not limited to, the following actions: prescribing or administering tranquilizers and other psychotropic agents and medications that are part of the execution procedure; monitoring vital signs on site or remotely (including monitoring electrocardiograms); attending or observing an execution as a physician; and rendering of technical advice regarding execution.

In the case where the method of execution is lethal injection, the following actions by the physician would also constitute physician participation in execution: selecting injection sites; starting intravenous lines as a port for a lethal injection device; prescribing, preparing, administering, or supervising injection drugs or their doses or types; inspecting, testing, or maintaining lethal injection devices; and consulting with or supervising lethal injection personnel.

The following actions do not constitute physician participation in execution: (1) testifying as to medical history and diagnoses or mental state as they relate to competence to stand trial, testifying as to relevant medical evidence during trial, testifying as to medical aspects of aggravating or mitigating circumstances during the penalty phase of a capital case, or testifying as to medical diagnoses as they relate to the legal assessment of competence for execution; (2) certifying death, provided that the condemned has been declared dead by another person; (3) witnessing an execution in a totally nonprofessional capacity; (4) witnessing an execution at the specific voluntary request of the condemned person, provided that the physician observes the execution in a nonprofessional capacity; and (5) relieving the acute suffering of a condemned person while awaiting execution, including providing tranquilizers at the specific voluntary request of the condemned person to help relieve pain or anxiety in anticipation of the execution.

Physicians should not determine legal competence to be executed. A physician's medical opinion should be merely one aspect of the information taken into account by a legal decision maker such as a judge or hearing officer. When a condemned prisoner has been declared incompetent to be executed, physicians should not treat the prisoner for the purpose of restoring competence unless a commutation order is issued before treatment begins. The task of re-evaluating the prisoner should be performed by an independent physician examiner. If the incompetent prisoner is undergoing extreme suffering as a result of psychosis or any other illness, medical intervention intended to mitigate the level of suffering is ethically permissible. No physician should be compelled to participate in the process of establishing a prisoner's competence or be involved with treatment of an incompetent, condemned prisoner if such activity is contrary to the physician's personal beliefs. Under those circumstances, physicians should be permitted to transfer care of the prisoner to another physician.

Organ donation by condemned prisoners is permissible only if (1) the decision to donate was made before the prisoner's conviction, (2) the donated tissue is harvested after the prisoner has been pronounced dead and the body removed from the death chamber, and (3) physicians do not provide advice on modifying the method of execution for any individual to facilitate donation. (I)

Issued July 1980. Updated June 1994 based on the report "Physician Participation in Capital Punishment," adopted December 1992, (JAMA. 1993; 270: 365-368); updated June 1996 based on the report "Physician Participation in Capital Punishment: Evaluations of Prisoner Competence to be Executed; Treatment to Restore Competence to be Executed," adopted in June 1995; Updated December 1999; and Updated June 2000 based on the report "Defining Physician Participation in State Executions," adopted June 1998.

# EXHIBIT 262

Case No. C-131341

Dept. No. 011

Docket No. Oct 19 4 40 PM '99

Oct 19 4 40 PM '99

*James M. Chappell*  
CLERK

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK

JAMES MONTELL CHAPPELL, PETITIONER,

v.

E. K. McDANIEL, WARDEN, RESPONDENT,

FROM A JUDGMENT OF CONVICTION AND SENTENCE OF DEATH  
EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY,  
LAS VEGAS, NEVADA

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

JAMES M. CHAPPELL  
PETITIONER

By: *James M. Chappell*

JAMES M. CHAPPELL  
In Propria Persona  
Inmate No. 52338  
ELY STATE PRISON  
P. O. BOX 1989  
ELY, NEVADA 89301

RECEIVED

OCT 19 1999

COUNTY CLERK

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PARTIES TO THE PROCEEDINGS

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PETITIONER

JAMES MONTELL CHAPPELL  
In Propria Persona  
Inmate No. 52338  
ELY STATE PRISON  
P. O. BOX 1989  
ELY, NEVADA 89301

RESPONDENT

E. K. McDANIEL, WARDEN  
ELY STATE PRISON  
P. O. BOX 1989  
ELY, NEVADA 89301

STEWART L. BELL  
CLARK COUNTY DISTRICT ATTORNEY  
200 SOUTH THIRD STREET, SUITE 701  
LAS VEGAS, NEVADA 89155

FRANKIE SUE DEL PAPA  
NEVADA ATTORNEY GENERAL  
100 NORTH CARSON STREET  
CARSON CITY, NEVADA 89701



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APPENDIX "A"

OPINION, SUPREME COURT OF NEVADA  
DATED DECEMBER 30, 1998

APPENDIX "B"

PETITION QUESTION 16. (a), (3) Grounds Raised:

APPENDIX "C"

SUPREME COURT OF NEVADA ORDER DENYING REHEARING  
DATED MARCH 17, 1999

APPENDIX "D"

PETITION QUESTION 16. (b), (3) Grounds raised:

APPENDIX "E"

PETITION QUESTION 23. (a) Ground One - Supporting Facts

APPENDIX "F"

PETITION QUESTION 23. (b) Ground Two - Supporting Facts

APPENDIX "G"

PETITION QUESTION 23. (c) Ground Three - Supporting Facts

APPENDIX "H"

PETITION QUESTION 23. (d) Ground Four - Supporting Facts

APPENDIX "I"

PETITION QUESTION 23. (e) Ground Five - Supporting Facts

APPENDIX "J"

PETITION QUESTION 23. (f) Ground Six - Supporting Facts

APPENDIX "K"

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APPENDIX "L"

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United States Constitution

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Fourteenth Amendment.....APPENDIX "J" PAGE 1

Case No. C-131-1

Dept. No. \_\_\_\_\_

FILED

OCT 19 1999

SHIRLEY B. PARRAGUIRRE, CLERK  
*Walt*  
DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK

JAMES M. CHAPPELL,

Petitioner,

v.

E. K. McDANIEL, WARDEN,

Respondent.

PETITION FOR WRIT  
OF HABEAS CORPUS  
(POST-CONVICTION)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or type-written, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of prisons.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence.

MC

CE42 CE52

1 Failure to raise all grounds in this petition may preclude you  
2 from filing future petitions challenging your conviction and  
sentence.

3 (6) You must allege specific facts supporting the claims  
4 in the petition you file seeking relief from any conviction or  
5 sentence. Failure to allege specific facts rather than just  
6 conclusions may cause your petition to be dismissed. If your  
petition contains a claim of ineffective assistance of counsel,  
that claim will operate to waive the attorney-client privilege  
for the proceeding in which you claim your counsel was  
ineffective.

7 (7) If your petition challenges the validity of your  
8 conviction or sentence, the original and one copy must be filed  
9 with the clerk of the district court for the county in which  
the conviction occurred. Petitions raising any other claims  
10 must be filed with the clerk of the district court for the  
county in which you are incarcerated. One copy must be mailed  
11 to the respondent, one copy to the attorney general's office,  
and one copy to the district attorney of the county in which  
12 you were convicted or to the original prosecutor if you are  
challenging your original conviction or sentence. Copies must  
13 conform in all particulars to the original submitted for  
filing.

#### 14 PETITION

15 1. Name of institution and county in which you are  
16 presently imprisoned or where and how you are presently  
17 restrained of your liberty:

18 ELY STATE PRISON, WHITE PINE COUNTY, ELY, NEVADA.

19 2. Name and location of court which entered the judgment  
20 of conviction under attack: Eighth Judicial District Court Of

21 The State Of Nevada, Clark County, Las Vegas, Nevada

22 3. Date of judgment of conviction: December 31, 1996

23 4. Case number: C-131341

24 5. (a) Length of sentence: DEATH

25 (b) If sentence is death, state any date upon which  
26 execution is scheduled: N/A.

27 6. Are you presently serving a sentence for a conviction  
28 other than the conviction under attack in this motion:

1 Yes \_\_\_\_\_ No XXXXXX. If "yes," list crime, case number and  
2 sentence being served at this time: N/A.  
3 \_\_\_\_\_  
4 \_\_\_\_\_

5 7. Nature of offense involved in conviction being  
6 challenged: MURDER (FELONY - NRS 200.010, 200.030); BURGLARY  
7 (FELONY - NRS 205.060); and ROBBERY (FELONY - NRS 200.380).

8 8. What was your plea? (check one)

9 (a) Not guilty XXXXXXXX

10 (b) Guilty \_\_\_\_\_

11 (c) Nolo contendere \_\_\_\_\_

12 9. If you entered a guilty plea to one count of an  
13 indictment or information, and a not guilty plea to another  
14 count of an indictment or information, or if a guilty plea was  
15 negotiated, give details: N/A.  
16 \_\_\_\_\_  
17 \_\_\_\_\_

18 10. If you were found guilty after a plea of not guilty,  
19 was the finding made by: (check one)

20 (a) Jury XXXXXXXX

21 (b) Judge without a jury: N/A.

22 11. Did you testify at the trial? Yes XXXXX No \_\_\_\_\_

23 12. Did you appeal from the judgment of conviction?

24 Yes XXXXX No \_\_\_\_\_

25 13. If you did appeal, answer the following:

26 (a) Name of court: Nevada Supreme Court

27 (b) Case number or citation: 29884  
28

1 (c) Result: Denied

2 (d) Date of Result: December 30, 1998.

3 (Attach copy of order or decision, if available).

4 (SEE APPENDIX "A"

14. If you did not appeal, explain briefly why you did  
5 not: N/A.

6  
7 15. Other than a direct appeal from the judgment of  
8 conviction and sentence, have you previously filed any  
9 petitions, applications or motions with respect to this  
10 judgment in any court, state or federal? Yes XXXXX No \_\_\_\_\_.

11 16. If your answer to No. 15 was "yes," give the  
12 following information:

13 (a) (1) Name of Court: Nevada Supreme Court

14 (2) Nature of proceeding: Petition For Rehearing

15  
16  
17 (3) Grounds raised: SEE APPENDIX "B"

18  
19  
20 (4) Did you receive an evidentiary hearing on  
21 your petition, application or motion? Yes \_\_\_\_\_ No XXXXX

22 (5) Result: Denied

23 (6) Date of Result: March 17, 1999.

24 (7) If known, citations of any written opinion or  
25 date of orders entered pursuant to each result: SEE APPENDIX "C"

1 (b) As to any second petition, application or motion,  
2 give the same information:

3 (1) Name of Court: United States Supreme Court

4 (2) Nature of proceeding: Petition Writ Of Certiorari

5 (3) Grounds raised: SEE APPENDIX "D"

6 (4) Did you receive an evidentiary hearing on  
7 your petition, application or motion? Yes        No XXXXX

8 (5) Result: Denied

9 (6) Date of Result: October 6, 1999

10 (7) If known, citations or any written opinion or  
11 date of orders entered pursuant to each result: N/A.

12  
13 (c) As to any third or subsequent additional  
14 applications or motions, give the same information as above,  
15 list them on a separate sheet and attach. N/A.

16 (d) Did you appeal to the highest state or federal  
17 court having jurisdiction, the result or action taken on any  
18 petition, application or motion? YES.

19 (1) First petition, application or motion?

20 Yes XXXXX No       

21 Citation or date of decision: December 30, 1998.

22 (2) Second petition, application or motion?

23 Yes XXXXX No       

24 Citation or date of decision: March 17, 1999.

25 (3) Third or subsequent petitions, applications  
26 or motions? Yes XXXXX No       

27 Citation or date of decision:



1 e. If you did not appeal from the adverse action on  
2 any petition, application or motion, explain briefly why you  
3 did not. (You must relate specific facts in response to this  
4 question. Your response may be included on paper which is  
5 8 1/2 x 11 inches attached to the petition. Your response may  
6 not exceed five handwritten or typewritten pages in length.)

7 N/A.

8  
9 17. Has any ground being raised in this petition been  
10 previously presented to this or any other court by way of  
11 petition for habeas corpus, motion or application or any other  
12 post-conviction proceeding? If so, identify: identify: NO.

13 a. Which of the grounds is the same: N/A.

14  
15 b. The proceedings in which these grounds were raised:

16 N/A.

17 c. Briefly explain why you are again raising these  
18 grounds. (You must relate specific facts in response to this  
19 question. Your response may be included on paper which is  
20 8 1/2 x 11 inches attached to the petition. Your response may  
21 not exceed five handwritten or typewritten pages in length.)

22 N/A.

23 18. If any of the grounds listed in Nos. 23(a), (b), (c)  
24 and (d), or listed on any additional pages you have attached,  
25 were not previously presented in any other court, state or  
26 federal, list briefly what grounds were not so presented, and  
27 give your reasons for not presenting them. (You must relate

specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A.

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) NO.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes \_\_\_\_\_ No XXXXX.

If yes, state what court and the case number: N/A.

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Howard S. Brooks, Michael L. Miller, Morgan D. Harris, Kedric A. Bassett, Willard N. Ewing.

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack?

Yes \_\_\_\_\_ No XXXXX. If yes, specify where and when it is to be served, if you know: N/A.

1 23. State concisely every ground on which you claim that  
2 you are being held unlawfully. Summarize briefly the facts  
3 supporting each ground. If necessary you may attach pages  
4 stating additional grounds and facts supporting same.

5 (a) Ground one: SEE APPENDIX "E"

6  
7 Supporting FACTS (Tell your story briefly without citing cases  
8 or law): SEE APPENDIX "E"

9  
10 (b) Ground two: SEE APPENDIX "F"

11  
12 Supporting FACTS (Tell your story briefly without citing cases  
13 or law): SEE APPENDIX "F"

14  
15 (c) Ground three: SEE APPENDIX "G"

16  
17 Supporting FACTS (Tell your story briefly without citing cases  
18 or law): SEE APPENDIX "G"

19  
20 (d) Ground four: SEE APPENDIX "H"

21  
22 Supporting FACTS (Tell your story briefly without citing cases  
23 or law): SEE APPENDIX "H"


24  
25 ADDITIONAL GROUNDS:

26 SEE APPENDICES: "J"; "K"; "L"; "M"; "N"

1 WHEREFORE, Petitioner prays that the court grant  
2 petitioner relief to which he may be entitled in this  
3 proceeding.

4 EXECUTED at ELY STATE PRISON, WHITE PINE COUNTY, ELY,  
5 NEVADA on this 17 day of OCTOBER, 1999.

6   
7 JAMES M. CHAPPELL  
8 PETITIONER

9 By:   
10 JAMES M. CHAPPELL  
11 In Propria Persona  
12 Inmate No. 52338  
13 ELY STATE PRISON  
14 P. O. BOX 1989  
15 ELY, NEVADA 89301

16 VERIFICATION

17 Under penalty of perjury, the undersigned declares that he  
18 is the petitioner named in the foregoing petition and knows the  
19 contents thereof; that the pleading is true of his own  
20 knowledge, except as to those matters stated on information and  
21 belief, and as to such matters he believes them to be true.

22   
23 JAMES M. CHAPPELL  
24 PETITIONER  
25  
26  
27  
28

APPENDIX "A"

OPINION, SUPREME COURT OF NEVADA  
DATED DECEMBER 30, 1998

## IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 29894

JAMES MONTELL CHAPPELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 30 1998

JANET M. BROWN  
CLERK OF THE COURT  
By *J. Richards*

Appeal from a judgment of conviction pursuant to a jury verdict of one count each of burglary, robbery with the use of a deadly weapon, and first-degree murder with the use of a deadly weapon, and from a sentence of death. Eighth Judicial District Court, Clark County; A. William Maupin, Judge.

Affirmed.

Morgan D. Harris, Public Defender, Michael L. Miller, Deputy Public Defender, Howard S. Brooks, Deputy Public Defender, Clark County, for Appellant.

Frankie Sue Del Papa, Attorney General, Carson City; Stewart L. Bell, District Attorney, James Tufteland, Chief Deputy District Attorney, Abbi Silver, Deputy District Attorney, Clark County, for Respondent.

O P I N I O N

## PER CURIAM:

On the morning of August 31, 1995, James Montell Chappell was mistakenly released from prison in Las Vegas where he had been serving time since June 1995 for domestic battery. Upon his release, Chappell went to the Ballerina Mobile Home Park in Las Vegas where his ex-girlfriend, Deborah Panos, lived with their three children. Chappell entered Panos' trailer by climbing through the window. Panos was home alone, and she and Chappell engaged in sexual intercourse. Sometime later that morning, Chappell repeatedly stabbed Panos with a kitchen knife, killing her. Chappell then left the

trailer park in Panos' car and drove to a nearby housing complex.

The State filed an information on October 11, 1995, charging Chappell with one count of burglary, one count of robbery with the use of a deadly weapon, and one count of murder with the use of a deadly weapon. On November 8, 1995, the State filed a notice of intent to seek the death penalty. The notice listed four aggravating circumstances: (1) the murder was committed during the commission of or an attempt to commit any robbery; (2) the murder was committed during the commission of or an attempt to commit any burglary and/or home invasion; (3) the murder was committed during the commission of or an attempt to commit any sexual assault; and (4) the murder involved torture or depravity of mind.

Prior to trial, Chappell offered to stipulate that he (1) entered Panos' trailer home through a window, (2) engaged in sexual intercourse with Panos, (3) caused Panos' death by stabbing her with a kitchen knife, and (4) was jealous of Panos giving and receiving attention from other men. The State accepted the stipulations, and the case proceeded to trial on October 7, 1996.

Chappell took the witness stand on his own behalf and testified that he considered the trailer to be his home and that he had entered through the trailer's window because he had lost his key and did not know that Panos was at home. He testified that Panos greeted him as he entered the trailer and that they had consensual sexual intercourse. Chappell testified that he left with Panos to pick up their children from day care and discovered in the car a love letter addressed to Panos. Chappell, enraged, dragged Panos back into the trailer where he stabbed her to death. Chappell argued that his actions were the result of a jealous rage.

The jury convicted Chappell of all charges. Following a penalty hearing, the jury returned a sentence of death on the murder charge, finding two mitigating circumstances -- murder committed while Chappell was under the influence of extreme mental or emotional disturbance and "any other mitigating circumstances" -- and all four alleged aggravating circumstances. The district court sentenced Chappell to a minimum of forty-eight months and a maximum of 120 months for the burglary; a minimum of seventy-two months and a maximum of 180 months for robbery, plus an equal and consecutive sentence for the use of a deadly weapon; and death for the count of murder in the first degree with the use of a deadly weapon. The district court ordered all counts to run consecutively. Chappell timely appealed his conviction and sentence of death.

#### DISCUSSION

##### Admission of evidence of prior bad acts

Chappell contends that the district court abused its discretion by admitting evidence of prior acts of theft without holding a Petrocelli<sup>1</sup> hearing. During the State's case-in-chief, LaDonna Jackson testified that Chappell was known as a "regulator"<sup>2</sup> and that, on one occasion, he sold his children's diapers for drug money.

Ordinarily, in order for this court to review a district court's decision to admit evidence of prior bad acts, a Petrocelli hearing must have been conducted on the record. Armstrong v. State, 110 Nev. 1322, 1324, 885 P.2d 600, 600-01

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<sup>1</sup>See Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

<sup>2</sup>Jackson testified that a "regulator" is a person who steals items from a store and then resells those items for money or drugs.



(1994). However, where the district court fails to hold a proper hearing on the record, automatic reversal is not mandated where "(1) the record is sufficient for this court to determine that the evidence is admissible under the test for admissibility of bad acts evidence . . . ; or (2) where the results would have been the same if the trial court had not admitted the evidence." *Qualls v. State*, 114 Nev. \_\_\_, \_\_\_, 961 P.2d 765, 767 (1998).

The district court in the instant case did not hold a Petrocelli hearing either on or off the record. Under the circumstances, we conclude that the record is not sufficient for this court to determine whether the evidence was admissible under the test for admissibility of prior bad acts evidence. In light of the overwhelming evidence of guilt in this case, however, we conclude that had the district court not admitted the evidence, the results would have been the same. See *Big Pond v. State*, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985) (when deciding whether an error is harmless or prejudicial, the following considerations are relevant: "whether the issue of innocence or guilt is close, the quantity and character of the error, and the gravity of the crime charged"); see also *Bradley v. State*, 109 Nev. 1090, 1093, 864 P.2d 1272, 1274 (1993). Accordingly, we hold that the district court's failure to conduct a Petrocelli hearing before admitting this evidence amounted to harmless error, and does not, therefore, require reversal.

#### Issues arising out of alleged aggravating circumstances

Chappell argues that insufficient evidence exists to support the jury's finding of the four alleged aggravating circumstances. The first three aggravating circumstances depend on whether Chappell killed Panos during the commission

of or an attempt to commit robbery, burglary and/or home invasion, and sexual assault. Chappell's challenge to each of these aggravators comes down to a challenge of the sufficiency of the evidence supporting each of the "aggravating" offenses.

On appeal, the standard of review for sufficiency of the evidence is "whether the jury, acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt." *Katalyn v. State*, 103 Nev. 67, 71, 825 P.2d 578, 581 (1992). Where there is sufficient evidence in the record to support the verdict, it will not be overturned on appeal. *Id.* We conclude that there is sufficient evidence to support the aggravating circumstances for robbery, burglary and sexual assault. We further conclude that the evidence does not support the aggravating circumstance of torture or depravity of mind.

#### Robbery

Chappell contends that the evidence shows that he took Panos' car as an afterthought and, therefore, cannot be guilty of robbery. The State argues that a rational trier of fact could find that Chappell took Panos' social security card and car through the use of actual violence or the threat of violence. Under Nevada's criminal law, robbery is defined as

the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property . . . . A taking is by means of force or fear if force or fear is used to:

- (a) Obtain or retain possession of the property;
- (b) Prevent or overcome resistance to the taking; or
- (c) Facilitate escape.

The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property. A taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of

the person from whom taken, such knowledge was prevented by the use of force or fear.

The statute does not require that the force or violence be committed with the specific intent to commit robbery.

This court has held that in robbery cases it is irrelevant when the intent to steal the property is formed. In *Norman v. Sheriff*, 92 Nev. 695, 697, 558 P.2d 541, 542 (1976), this court stated:

(A)lthough the acts of violence and intimidation preceded the actual taking of the property and may have been primarily intended for another purpose, it is enough, to support the charges in the indictment, that appellants, taking advantage of the terrifying situation they created, fled with [the victim's] property.

This position was affirmed in *Sheriff v. Jefferson*, 93 Nev. 392, 394, 649 P.2d 1365, 1366-67 (1982), and *Patterson v. Sheriff*, 93 Nev. 238, 239, 562 P.2d 1134, 1135 (1977). See also *State v. Myers*, 640 P.2d 1245 (Kan. 1982) (holding that where aggravated robbery requires taking by force or threat of force while armed, it is sufficient that defendant shot victim and then returned three hours later to take victim's wallet, as there was a continuous chain of events and the prior force made it possible to take the property without resistance); *State v. Mason*, 403 So. 2d 701 (La. 1981) (holding that acts of violence need not be for the purpose of taking property and that it is sufficient that the taking of a purse was accomplished as a result of earlier acts of pushing victim onto bed and pulling her clothes).

Accordingly, we hold that there is sufficient evidence to support the conviction of robbery and the finding of robbery as an aggravating circumstance.

#### Burglary

Chappell argues that the State adduced insufficient evidence to prove that he committed a burglary. We disagree. NRS 208.060(1) provides that a person is guilty of burglary when he "by day or night, enters any . . . semitrailer or house trailer . . . with the intent to commit grand or petit larceny, assault or battery on any person or any felony." At trial, the State introduced evidence that Panos wanted to end her relationship with Chappell, that Chappell had threatened and abused Panos in the past, and that Panos did not communicate with Chappell while he was in jail. Moreover, there was testimony that the trailer appeared ransacked, and that Panos' social security card and car keys were found in Chappell's possession. Accordingly, we conclude that there is sufficient evidence to support the conviction of burglary and the finding by the jury of burglary as an aggravator.

#### Sexual assault

Chappell argues that the State failed to prove beyond a reasonable doubt that the sexual encounter between Chappell and Panos was nonconsensual. We do not agree. The jury was instructed to find sexual assault if Chappell engaged in sexual intercourse with Panos "against [her] will" or under conditions in which Chappell knew or should have known that Panos was "mentally and emotionally incapable of resisting." The evidence at trial and during the penalty hearing showed that Panos and Chappell had an abusive relationship, that Panos had ended her relationship with Chappell, that Chappell was extremely jealous of Panos' relationships with other men, and that Panos was involved with another man at the time of the killing. We conclude that a rational trier of fact could have concluded that either Panos would not have consented to

sexual intercourse under these circumstances or was mentally or emotionally incapable of resisting Chappell's advances, and that Chappell therefore committed sexual assault. Consequently, the evidence supports the jury's finding of sexual assault as an aggravating circumstance.

Torture or depravity of mind

Chappell argues that the circumstances of Panos' death do not rise to the level necessary to establish torture or depravity of mind. We agree. The depravity of mind aggravator applies in capital cases if "torture, mutilation or other serious and depraved physical abuse beyond the act of killing itself" is shown. *Robins v. State*, 106 Nev. 611, 629, 798 P.2d 533, 570 (1990); NRS 200.033(8).<sup>3</sup> In the present case, the jury was instructed that the elements of murder by torture are that "(1) the act or acts which caused the death must involve a high degree of probability of death, and (2) the defendant must commit such act or acts with the intent to cause cruel pain and suffering for the purpose of revenge, persuasion or for any other sadistic purpose."<sup>4</sup> Panos died as a result of multiple stab wounds; thus, the first element is satisfied. The second element is not as easily met under the facts of this case.

The State argues that evidence of torture may be found in the following: Panos was severely beaten by

---

<sup>3</sup>NRS 200.033(8) was amended in 1995 deleting the language of "depravity of mind." 1995 Nev. Stat., ch. 467, §§ 1-3, at 1490-91. In the present case, the murder was committed before October 1, 1995, thus, the previous version of NRS 200.033(8) applies. Id.

<sup>4</sup>These instructions were approved by this court in *Deutscher v. State*, 95 Nev. 669, 677 n.5, 601 P.2d 407, 413 n.5 (1979); see NRS 200.030(1)(a) (defining first-degree murder by torture as murder "[p]erpetrated by means of . . . torture").

Chappell, there were numerous bruises and abrasions on Panos' face, Panos was stabbed in the groin area and chest. Panos was stabbed thirteen times, and four of the stabs were of such force as to have penetrated the spinal cord in Panos' neck. We conclude that there is no evidence that Chappell stabbed Panos with any intention other than to deprive her of life. No evidence exists that Chappell intended to cause Panos cruel suffering for the purposes of revenge, persuasion, or other sadistic pleasure. Nor does Chappell's act of stabbing Panos thirteen times rise to the level of torture. Accordingly, we hold that the record does not contain sufficient evidence to support the aggravating circumstance of depravity of mind and torture.

Invalidating an aggravating circumstance

Invalidating an aggravating circumstance does not automatically require this court to vacate a death sentence and remand for new proceedings before a jury. See *Witter v. State*, 112 Nev. 908, 929, 921 P.2d 886, 900 (1996); see also *Canape v. State*, 109 Nev. 864, 881-83, 859 P.2d 1023, 1034-35 (1993). Where at least one other aggravating circumstance exists, this court may either reweigh the aggravating circumstances against the mitigating evidence or conduct a harmless error analysis. Witter, 112 Nev. at 929-30, 921 P.2d at 900. In the present case, the jury designated as mitigating circumstances (1) that the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance, and (2) any other mitigating circumstances. We conclude that the remaining three aggravators, robbery, burglary and sexual assault, clearly outweigh the mitigating evidence presented by Chappell. We therefore conclude that Chappell's death sentence was proper.

Mandatory review of propriety of death penalty

NRS 177.055(2)<sup>5</sup> requires this court to review every death penalty sentence. Pursuant to the statutory requirement, and in addition to the contentions raised by Chappell and addressed above, we have determined that the aggravating circumstances of robbery, burglary and sexual assault, found by the jury, are supported by sufficient evidence. Moreover, there is no evidence in the record indicating that Chappell's death sentence was imposed under the influence of passion, prejudice or any arbitrary factor. Lastly, we have concluded that the death sentence Chappell received was not excessive considering the seriousness of his crimes and Chappell as a person.

Additional issues raised on appeal

Chappell further contends that: (1) the State's use of peremptory challenges to excuse two African-American jurors from the jury pool was discriminatory; (2) the district court erred in admitting hearsay statements; (3) the district court erred by denying Chappell's motion to strike the notice of intent to seek the death penalty; (4) the State improperly

---

<sup>5</sup> NRS 177.055(2) provides:

2. Whether or not the defendant or his counsel affirmatively waives the appeal, the sentence must be reviewed on the record by the supreme court, which shall consider, in a single proceeding if an appeal is taken:

(a) Any error enumerated by way of appeal;

(b) Whether the evidence supports the finding of an aggravating circumstance or circumstances;

(c) Whether the sentence of death was imposed under the influence of passion, prejudice or any arbitrary factor; and


(d) Whether the sentence of death is excessive, considering both the crime and the defendant.


appealed to the jury for vengeance during the penalty phase; (5) cumulative error denied Chappell a fair hearing; and (6) victim impact testimony denied Chappell a fair penalty hearing. We have reviewed each of these issues and conclude that they lack merit.

#### CONCLUSION

For the foregoing reasons, we affirm the judgment of conviction for robbery, burglary and first-degree murder and the sentence of death.<sup>6</sup> <sup>7</sup>

  
Shearing J.

  
Rose J.

  
Young J.

---

<sup>6</sup>The Honorable Charles E. Springer, Chief Justice, voluntarily recused himself from participation in the decision of this appeal.

<sup>7</sup>The Honorable A. William Maupin, Justice, voluntarily recused himself from participation in the decision of this appeal.



APPENDIX "B"

PETITION QUESTION 16. (a), (3) Grounds raised:

NEVADA SUPREME COURT  
PETITION FOR REHEARING

Grounds raised:

1. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT OPINION DID NOT ADDRESS OR CONSIDER THE ATTACK ON CHAPPELL'S CHARACTER WHICH DENIED CHAPPELL A FAIR TRIAL IN VIOLATION OF STATE AND FEDERAL CONSTITUTIONAL GUARANTEES.
2. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION NEVER ACKNOWLEDGES THE STATE ATTACKED CHAPPELL'S CHARACTER PRIOR TO HIS DECIDING WHETHER TO TESTIFY.
3. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION NEVER ACKNOWLEDGES THAT WHEN CHAPPELL DID TESTIFY, THE STATE USED CROSS EXAMINATION TO EXPAND THE CHARACTER ATTACK.
4. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION NEVER DISCUSSES THE TRIAL COURT'S ABUSE OF DISCRETION IN ALLOWING EVIDENCE OF PRIOR DOMESTIC BATTERIES WHEN THOSE PRIOR BATTERIES WERE NOT RELEVANT.
5. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION NEVER ACKNOWLEDGES THE LANGUAGE FROM A JUST RELEASE OPINION THAT PRIOR EVIDENCE OF PHYSICAL ABUSE IS HIGHLY PREJUDICIAL TO A DEFENDANT CHARGED WITH MURDER.
6. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION FAILS TO DISCUSS OR ACKNOWLEDGE THE SUBSTANTIAL CASE LAW REQUIRING RECOGNITION OF CUMULATIVE ERROR.
7. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION NEVER ACKNOWLEDGES THAT THIS CASE WAS ABOUT DEGREES OF

LIABILITY, NOT GUILT.

1 8. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION  
2 IGNORES THE STATE'S WILLFUL REMOVAL OF BLACK JURORS,  
3 RESULTING IN AN ALL WHITE JURY IN A CASE WHERE A BLACK MAN  
4 KILLED A WHITE WOMAN.

5 9. DID THE SUPREME COURT OVERLOOK OR MISAPPREHEND THE  
6 FUNDAMENTAL PRINCIPLE THAT A DECISION TO KILL A CONVICTED  
7 MURDERER IS NEVER MANDATORY, EVEN WHEN AGGRAVATING  
8 CIRCUMSTANCES OUTWEIGH MITIGATING CIRCUMSTANCES?

9 10. THE SUPREME COURT'S FAILURE TO CONSIDER THE MATTERS PRESENTED  
10 BY THE APPELLANT IN THIS APPEAL DENIED THE APPELLANT HIS  
11 FEDERAL AND STATE CONSTITUTIONAL RIGHTS TO MEANINGFUL  
12 APPELLATE REVIEW.

13 ///

14 ///

15 ///

APPENDIX "C"

SUPREME COURT OF NEVADA  
ORDER DENYING REHEARING  
DATED MARCH 17, 1999

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,

No. 29884

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

MAR 17 1999

JAMETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
COURT REPORTER

ORDER DENYING REHEARING

This is a petition for rehearing of Chappell v. State, 114 Nev. \_\_, \_\_ P.2d \_\_ (Adv. Op. No. 148, December 30, 1998). Appellant James Montell Chappell was convicted, pursuant to a jury verdict, of one count each of first degree murder with the use of a deadly weapon, robbery with the use of a deadly weapon, and burglary for the murder of his ex-girlfriend, Deborah Panos, by multiple stab wounds. The jury returned a verdict of death after finding that two mitigating circumstances (the murder was committed while under the influence of extreme mental or emotional disturbance and any other mitigating circumstances) did not outweigh four aggravating factors (the murder was committed during the commission of a robbery, burglary, and sexual assault, and the murder involved torture or depravity of mind). On appeal, this court affirmed Chappell's conviction and sentence of death, but concluded that the torture aggravating factor was not supported by sufficient evidence. After reweighing the remaining aggravating factors against the mitigating circumstances, this court concluded that the death sentence was not improper. Subsequently, Chappell filed the instant petition for rehearing, and the state filed an opposition.


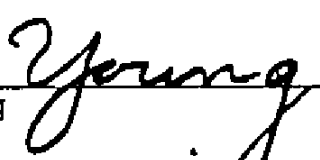
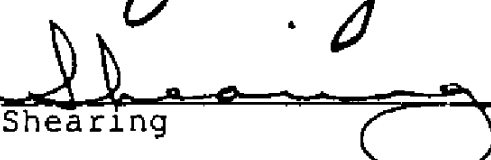
When petitioning for rehearing, a petitioner may not reargue a point already raised, nor raise a point for the first time. NRAP 40(c)(1). This court may consider rehearing when the court has overlooked or misapprehended a material fact or material question of law or when the court has overlooked,

misapplied, or failed to consider any legal authority directly controlling a dispositive issue. NRAP 40(c)(2).

Chappell correctly indicates that this court did not address two issues in the opinion: whether the district court erroneously admitted evidence of Chappell's prior acts of domestic violence upon Panos, and whether the district court erroneously admitted evidence that Chappell was unemployed. Although these issues were not specifically discussed in the opinion, prior to filing the opinion we had carefully and fully reviewed these issues and determined that they did not require reversal.

The remaining contentions Chappell raises in this petition are either rearguments in violation of NRAP 40(c)(1) or do not warrant rehearing under the standards enumerated in NRAP 40(c)(2). Accordingly, we deny rehearing.

It is so ORDERED.<sup>1</sup>

 \_\_\_\_\_, C.J.  
Rose  
 \_\_\_\_\_, J.  
Young  
 \_\_\_\_\_, J.  
Shearing

cc: Hon. Mark W. Gibbons, District Judge  
Hon. Frankie Sue Del Papa, Attorney General  
Hon. Stewart L. Bell, District Attorney  
Morgan D. Harris, Public Defender  
Shirley Parraguirre, Clerk

<sup>1</sup>This petition challenges an opinion that was issued prior to the expansion of the court from five to seven justices on January 4, 1999. Only those justices remaining on the court who previously heard this matter participated in this decision. The Honorable A. William Maupin, Justice, voluntarily recused himself from the decision of this matter.

APPENDIX "D"

PETITION QUESTION 16, (b), (3) Grounds raised:

UNITED STATES SUPREME COURT  
PETITION FOR WRIT OF CERTIORARI  
TO THE NEVADA SUPREME COURT

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Grounds raised:

1. THE STATE DISCRIMINATED AGAINST PETITIONER BY  
USING PEREMPTORY CHALLENGES TO SELECTIVELY  
EXCLUDE THE ONLY TWO BLACK PERSONS QUALIFIED  
FOR THE JURY POOL.



APPENDIX "E"

PETITION QUESTION 23. (a) Ground One - Supporting Facts

(a) Ground One:

1 All issues raised on direct appeal, because petitioner  
2 was prevented from successfully pursuing them due to erroneous  
3 court rulings.

Supporting Facts:

4  
5 See, Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994)  
6 (erroneous court rulings constitute impediment external to  
7 the defense which justifies re-litigation of same issues in  
8 subsequent court proceedings).

9 ///

10 ///

11 ///

APPENDIX "F"

PETITION QUESTION 23. (b) Ground Two - Supporting Facts

(b) Ground Two:

All issues raised in the petition for certiorari to the  
United States Supreme Court.

Supporting Facts:

No supporting facts available.

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APPENDIX "G"

PETITION QUESTION 23. (c) Ground Three - Supporting Facts

(c) Ground Three:

Any and all cognizable issues not raised on direct appeal but which become known to effective post-conviction counsel after both a comprehensive investigation of the facts surrounding this case and thorough and exhaustive search of the record.

Supporting Facts:

No supporting facts available.

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APPENDIX "H"

PETITION QUESTION 23. (d) Ground Four - Supporting Facts

(d) Ground Four:

Any and all cognizable issues not contained in the record that shall become known to effective post-conviction counsel after a comprehensive investigation of the facts surrounding this case.

Supporting Facts:

No supporting facts available.

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APPENDIX "I"

PETITION QUESTION 23. (e) Ground Five - Supporting Facts

(e) Ground Five:

1           Petitioner's sentence of death; imposed for the crime  
2 of Murder (Felony - NRS 200.010, 200.030); is unlawful and  
3 unconstitutional because the Nevada Death Penalty Scheme,  
4 as it stands, is unlawful and unconstitutional because it  
5 is applied by prosecutor's discriminately based on the gender  
6 of the defendant.

Supporting Facts:

7  
8           The petitioner was sentenced to death for the crime of  
9 murder. The petitioner is male. It is alleged and believed  
10 throughout the criminal community in the state of Nevada that  
11 if you are female you can get away with murder because  
12 prosecutor's are unable and/or reluctant to seek the death  
13 penalty against a female.

14           Currently in the state of Nevada Department Of Prisons  
15 there is only (1) one female person sentenced to death, and  
16 over (80) eighty male persons sentenced to death. This is  
17 believed and alleged to be because prosecutor's in the state  
18 of Nevada more vigorously seek and prosecute male persons to  
19 death.

20           It is further alleged had the defendant been female [he]  
21 would have been offered an acceptable and/or favorable plea  
22 bargain.

23       ///

24       ///

25       ///

APPENDIX "J"

PETITION QUESTION 23. (f) Ground Six - Supporting Facts

(f) Ground Six:

Petitioner's conviction and sentenced imposed for the crime (s) of Burglary; Robbery; and Murder is unlawful and unconstitutional because [he] was not indicted be a Grand Jury for the crime (s) of Burglary; Robbery; and Murder as provided by the Fifth and Fourteenth Amendments to the United States Constitution.

Supporting Facts:

The petitioner, James M. Chappell, was charged, convicted and sentenced for the crime (s) of Burglary; Robbery; and Murder without first being indicted by a Grand Jury as provided by the Fifth and Fourteenth Amendments to the United States Constitution.

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CONSTITUTION OF THE UNITED STATES  
AMENDMENT V. provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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The petitioner is a citizen of the United States, and as such is protected by the Fourteenth Amendment to the United States Constitution. All persons born or naturalized in the

1 United States are subject and protected by the Constitution  
2 of the United States. No state shall make or enforce any law  
3 which shall abridge the privileges or immunities of citizens  
4 of the United States; nor shall any state deprive any person  
5 of life, liberty, or property, without first due process of  
6 law.

7 The petitioner is sentenced to death and was not first  
8 indicted by a Grand Jury. The petitioner did not waive [his]  
9 right to be indicted by a Grand Jury. By the state of Nevada  
10 not first obtaining a indictment from a Grand Jury raises a  
11 constitutional claim that the petitioner believes that [he]  
12 is entitled to redress for.

13 ///

14 ///

15 ///

(g) Ground Seven:

Petitioner's conviction and sentence imposed for the crime (s) of Burglary; Robbery; and Murder is unlawful and unconstitutional because the court erred in giving jury instructions to the jury.

Supporting Facts:

See court transcripts for court instructions to jury.

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APPENDIX "L"

PETITION QUESTION 23. (h) Ground Eight - Supporting Facts

(h) Ground Eight:

1           Petitioner's conviction and sentence imposed for the  
2 crime (s) of Burglary; Robbery; and Murder is unlawful and  
3 unconstitutional because and/or due to jury misconduct.  
4

Supporting Facts:

5           Jury foreperson Wendy Lee Hill #474 was a 911 operator  
6 for the Las Vegas Metropolitan Police Department. The victim  
7 Deborah Panos was also a 911 operator for the Tucson Police  
8 Department. This was told to the jury before they were selected  
9 and it is alleged that this in of itself prejudice the jury  
10 and/or jury foreperson Wendy Lee Hill #474 directly against  
11 the defense.

12           Jury foreperson Wendy Lee Hill #474 stated in [her] voir  
13 dire questions from both the state and defense that she did  
14 not think have police personal testify would make her prejudice  
15 toward the defense. Nor would such witnesses cause her to  
16 and/or adversely affect her judgment.

17           Jury foreperson Wendy Lee Hill #474 stated in the Las Vegas  
18 Review Journal on the last day of penalty phase that she  
19 could not think of anything but death after reviewing  
20 photograph shown jury during trial and penalty phase. It is  
21 further alleged that said photographs of victim prejudice jury  
22 against defense.

23           By jury foreperson Wendy Lee Hill #474 giving a interview  
24 to the Las Vegas Review Journal (see attached) shows in and/or  
25 by [her] statements that she was prejudice against defense.  
26 Furthermore, Wendy Lee Hill stated directly, "There was no way  
27



APPENDIX "K"

PETITIONER QUESTION 23. (g) Ground Seven - Supporting Facts

we could give him anything less than what he got."

That statement to the Las Vegas Review Journal in and of itself shows that Ms. Lee's mind was made up about the defendant without considering mitigating facts.

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Clint Karlson/Review-Journal

Deputy Public Defender Howard Brooks, left, talks with James Chappell after jurors Thursday sentenced Chappell

to death for fatally stabbing the mother of his three children. He was convicted of first-degree murder last week.

## Las Vegas sentenced to death

□ James Chappell, 26, admitted killing the mother of his children, and jurors say he has to be executed.

By Carri Geer  
Review-Journal

A Las Vegas man was sentenced to death Thursday for fatally stabbing the mother of his three children last year after entering her residence through a window.

"There was no way we could give him anything less than what he got," jury forewoman Wendy Hill said.

Jurors convicted James Chappell, 26, last week of first-degree murder with a deadly weapon, robbery with a deadly weapon and burglary in connection with the Aug. 31, 1995, slaying.

Chappell testified during his trial and said he killed 26-year-old Deborah Panos after he found a love letter she had received from another man.

He sat with his head slightly bowed Thursday as District Judge Bill Maupin announced the jury's decision.

Prosecutors alleged the following aggravating circumstances as their basis for seeking the death penalty against Chappell: The murder occurred during the commission of a robbery; the murder occurred during the commission of a burglary; the murder occurred during the commission of a sexual assault; the murder involved torture or depravity of mind.

Jurors found that prosecutors proved all four aggravating factors. Although Chappell never faced a formal sexual assault charge,

prosecutors claimed he raped Panos before killing her.

DNA tests showed semen in the victim's body matched Chappell. The defendant claimed he and Panos had consensual sex before he discovered the letter.

The seven-man, five-woman jury deliberated about seven hours Wednesday and Thursday before deciding on Chappell's sentence. Hill said the panel spent most of that time determining which aggravating and mitigating circumstances existed in the case.

In order to impose a death sentence, jurors must find that aggravating factors outweigh any mitigating factors.

Hill, a 911 operator, said most of

Please see CHAPPELL/3B