

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

\* \* \* \* \*

SIAOSI VANISI,

Appellant,

vs.

WILLIAM GITTERE, WARDEN,  
and  
AARON FORD, ATTORNEY  
GENERAL FOR THE  
STATE OF NEVADA.

Respondents.

Electronically Filed  
Sep 26 2019 03:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court No. 78209  
District Court No. 98CR0516

Volume 5 of 38

**APPELLANT'S APPENDIX**

Appeal from Order Denying Petition for Writ of  
Habeas Corpus (Post-Conviction)  
Second Judicial District Court, Washoe County  
The Honorable Connie J. Steinheimer

RENE L. VALLADARES  
Federal Public Defender

RANDOLPH M. FIEDLER  
Assistant Federal Public Defender  
Nevada State Bar No. 12577  
411 E. Bonneville, Suite 250  
Las Vegas, Nevada 89101  
(702) 388-6577  
randolph\_fiedler@fd.org

Attorneys for Appellant

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
36	Addendum to Motion to Set Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 20, 2018.....	AA07685 – AA07688
<b>EXHIBIT</b>		
36	1. Handwritten note from Siao Si Vanisi to Jennifer Noble or Joe Plater August 13, 2018.....	AA07689 – AA07690
32	Answer to Petition for Writ of Habeas Corpus (Post-Conviction), July 15, 2011 .....	AA06756 – AA06758
35	Application for Order to Produce Prisoner, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 20, 2018.....	AA07321 – AA07323
35	Application for Order to Produce Prisoner, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 11, 2018 .....	AA07385 – AA07387
12	Application for Setting, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 11, 2001 .....	AA02529
35	Application for Setting, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 20, 2018.....	AA07324

14	Application for Writ of Mandamus and/or Writ of Prohibition, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Court, Case No.45061 April 13, 2005.....	AA02818 – AA02832
14-15	Case Appeal Statement, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 28, 2007.....	AA02852 – AA03030
39	Case Appeal Statement, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 25, 2019 .....	AA08295 – AA08301
35	Court Minutes of May 10, 2018 Conference Call Re: Motion for Reconsideration of the Order to Produce, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 17, 2018 .....	AA07390
35	Court Minutes of May 30, 2018 Oral Arguments on Motion for Discovery and Issuance of Subpoenas/Waiver of Petitioner’s Appearance at Evidentiary Hearing and All Other Hearings, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 June 4, 2018 .....	AA07447-AA07749
39	Court Minutes of September 25, 2018 Status Hearing on Petitioner’s Waiver of Evidentiary Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 28, 2018.....	AA08190 – AA08191

37	Court Ordered Evaluation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 ( <b>FILED UNDER SEAL</b> ) September 19, 2018.....	AA07791 – AA07829
3	Evaluation of Siao Si Vanisi by Frank Everts, Ph.D., June 10, 1999 .....	AA00554 – AA00555
34	Findings of Fact, Conclusions of Law and Judgment Dismissing Petition for Writ of Habeas Corpus, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 April 10, 2014 .....	AA07103 – AA07108
12	Judgment, Second Judicial District Court of Nevada, <i>State of Nevada v. Vanisi</i> , Case No. CR98-0516 November 22, 1999.....	AA02523 – AA02524
12	Motion for Appointment of Post-Conviction Counsel, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 18, 2002.....	AA02530 – AA02540
12	Motion for Extension of Time to File Supplemental Materials (Post-Conviction Petition for Writ of Habeas Corpus (Death Penalty Case), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 23, 2002.....	AA02556 – AA02559
38	Motion for Leave to File Supplement to Petition for Writ of Habeas Corpus, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 28, 2018.....	AA08083 – AA08090



## EXHIBIT

- 38        1.     Supplement to Petition for Writ of  
             Habeas Corpus (Post Conviction)  
             September 28, 2018..... AA08091 – AA08114
- 13        Motion for Order Appointing Co-Counsel, State of *Nevada*  
             *v. Vanisi*, Second Judicial District Court of Nevada,  
             Case No. CR98-0516  
             October 30, 2003..... AA02588 – AA02590
- 35        Motion for Reconsideration, *State of Nevada v. Vanisi*,  
             Second Judicial District Court of Nevada,  
             Case No. CR98-0516  
             April 2, 2018 ..... AA07327 – AA07330

## EXHIBITS

- 35        1.     *State of Nevada v. Vanisi*, Case No.  
             CR98-P0516, Petitioner’s Waiver of  
             Appearance,  
             January 24, 2012..... AA07332 – AA07336
- 35        2.     *State of Nevada v. Vanisi*, Case No.  
             CR98-P0516, Waiver of Petitioner’s  
             Presence,  
             November 15, 2013..... AA07337- AA07340
- 35        3.     *State of Nevada v. Vanisi*, Case No.  
             CR98-P0516, Order on Petitioner’s  
             Presence,  
             February 7, 2012 ..... AA07341 – AA07342
- 35        4.     *State of Nevada v. Vanisi*, Case No.  
             CR98-P0516, Order, ..... AA07343 – AA07346  
             February 7, 2014

13	Motion for Stay of Post-Conviction Habeas Corpus Proceedings and for Transfer of Petitioner to Lakes Crossing for Psychological Evaluation and Treatment (Hearing Requested), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 9, 2004.....	AA02594 – AA02608
14	Motion to Continue Evidentiary Hearing, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 April 26, 2005.....	AA02835 – AA02847
32	Motion to Dismiss Petition for Writ of Habeas Corpus (Post-Conviction), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 15, 2011 .....	AA06759 – AA06764
35	Motion to Disqualify the Washoe County District Attorney’s Office, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 June 29, 2018 .....	AA07450 – AA07468

## EXHIBITS

35	1. State Bar of Nevada, Standing Committee on Ethics and Professional Responsibility, Formal Opinion No. 41 June 24, 2009 .....	AA07469 – AA07476
35	2. American Bar Association, Standing Committee on Ethics and Professional Responsibility, Formal Opinion 10-456,	

	Disclosure of Information to Prosecutor When Lawyer's Former Client Brings Ineffective Assistance of Counsel Claim July 14, 2010 .....	AA07477 – AA07482
35-36	3. Response to Motion to Dismiss, or Alternatively, To Disqualify the Federal Public Defender, <i>Sheppard v. Gentry, et al.</i> , Second Judicial District Court of Nevada, Case No. CR03-502B December 22, 2016 .....	AA07483 – AA07545
36	4. Transcript of Proceedings – Conference Call Re: Motions, <i>Sheppard v. Gentry, et al.</i> , Second Judicial District Court of Nevada, Case No. CR03-502B December 29, 2016 .....	AA07546 – AA07568
36	5. Order (denying the State's Motion to Dismiss, or Alternatively, To Disqualify the Federal Public Defender), <i>Sheppard v. Gentry, et al.</i> , Second Judicial District Court of Nevada, Case No. CR03-502B January 5, 2017.....	AA07569 – AA07586
36	Motion to Set Hearing Regarding Vanisi's Request to Waive Evidentiary Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 25, 2018 .....	AA07607 – AA07610
12	Motion to Withdraw as Counsel of Record, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 18, 2002 .....	AA02564 – AA02567
36	Non-Opposition to Presence of Defendant, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 21, 2018.....	AA07691 – AA07694

12	Notice in Lieu of Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 34771 October 6, 1999.....	AA02413
14	Notice in Lieu of Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 45061 May 17, 2005 .....	AA02848
12	Notice of Appeal, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, Nevada Supreme Court Case No. (35249) November 30, 1999.....	AA02525 – AA02526
14	Notice of Appeal, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Court, Case No. 50607 November 28, 2007.....	AA02849 – AA02851
34	Notice of Appeal, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Court, Case No. 65774 May 23, 2014 .....	AA07117 – AA07293
38	Notice of Appeal, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, Nevada, Supreme Court Case No. (78209) February 25, 2019 .....	AA08181 – AA08184
34	Notice of Entry of Order, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 April 25, 2014 .....	AA07109 – AA07116
38	Notice of Entry of Order, (Order Denying Relief), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 6, 2019 .....	AA08167 – AA08173

38	Notice of Entry of Order (Order Denying Motion for Leave to File Supplement), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 22, 2019 .....	AA08174 – AA08180
34	Objections to Proposed Findings of Fact, Conclusions of Law and Judgment Dismissing Petition for Writ of Habeas Corpus, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 31, 2014.....	AA07097 – AA07102
36	Opinion (on ethical duties of capital post-conviction counsel), David M. Siegel, Professor of Law, August 23, 2018.....	AA07695 – AA07700
12	Opposition to Motion for Extension of Time to File Supplemental Materials (Post-Conviction Petition for Writ of Habeas Corpus) (Death Penalty Case), State of Nevada v. Vanisi, Second Judicial District Court of Nevada, Case No. CR98-0516 November 1, 2002.....	AA02560 – AA02563
32	Opposition to Motion to Dismiss, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 30, 2011.....	AA06765 – AA06840
38	Opposition to Motion for Leave to File Supplement to Petition for Writ of Habeas Corpus, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 8, 2018.....	AA08115 – AA08122

36	Opposition to Motion to Disqualify the Washoe County District Attorney's Office, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 9, 2018 .....	AA07587 – AA07594
----	--	-------------------

## EXHIBITS

36	1. State Bar of Nevada, Standing Committee on Ethics and Professional Responsibility, Formal Opinion No. 55 .....	AA07595 – AA07602
36	2. E-mail from Margaret "Margy" Ford to Joanne Diamond, Randolph Fiedler, Scott Wisniewski, re Nevada-Ethics-Opinion-re-ABA-Formal-Opinion-55 July 6, 2018 .....	AA07603 – AA07604
12	Opposition to Motion to Withdraw as Counsel of Record, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 23, 2002 .....	AA02568 – AA02571
3	Order (directing additional examination of Defendant), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 June 3, 1999 .....	AA00551 – AA00553
32	Order (to schedule a hearing on the motion to dismiss), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 21, 2012.....	AA06845 – AA06847
34-35	Order Affirming in Part, Reversing in Part and Remanding, <i>Vanisi v. State of Nevada</i> , Nevada Supreme Court, Case No. 65774 September 28, 2017.....	AA07294 – AA07318

38	Order Denying Motion for Leave to File Supplement, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 15, 2019 .....	AA08176 – AA08180
37	Order Denying Motion to Disqualify, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 17, 2018.....	AA07785 – AA07790
14	Order Denying Petition, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 45061 April 19, 2005.....	AA02833 – AA02834
3	Order Denying Petition for Writ of Certiorari or Mandamus, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 34771 September 10, 1999.....	AA00620 – AA00621
38	Order Denying Relief, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 6, 2019 .....	AA08169 – AA08173
37	Order for Expedited Psychiatric Evaluation, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 6, 2018.....	AA07782 – AA07784
13	Order (granting Motion to Appoint Co-Counsel), <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 23, 2003 .....	AA02591 – AA02593
38	Order Granting Waiver of Evidentiary Hearing, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 6, 2019 .....	AA08157– AA08166

35	Order to Produce Prisoner, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 23, 2018.....	AA07325 – AA07326
35	Order to Produce Prisoner, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 14, 2018 .....	AA07388 – AA07389
12	Order (relieving counsel and appointing new counsel), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 11, 2002.....	AA2553 – AA02555
3	Original Petition for Writ of Certiorari or Mandamus And Request for Emergency Stay of Trial Pending Resolution of the Issues Presented Herein, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 34771 September 3, 1999.....	AA00556 – AA00619
15-16	Petition for Writ of Habeas Corpus (Post-Conviction), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 4, 2011 .....	AA03033 – AA03269

## EXHIBITS

16	1. Criminal Complaint, <i>State of Nevada v. Vanisi, et al.</i> , Justice Court of Reno Township No. 89.820, January 14, 1998.....	AA03270 – AA03274
16	2. Amended Complaint, <i>State of Nevada v. Vanisi, et al.</i> , Justice Court of Reno Township No. 89.820, February 3, 1998 .....	AA03275 – AA3279



16	3.	Information, <i>State of Nevada v. Vanisi</i> , Second Judicial Circuit of Nevada, Case No. CR98-0516, February 26, 1998.....	AA03280 – AA03288
16	5.	Declaration of Mark J.S. Heath, M.D., (including attached exhibits), May 16, 2006 .....	AA03289 – AA03414
16	6.	Birth Certificate of Siaosi Vanisi, District of Tongatapu, June 26, 1970.....	AA03415 – AA03416
16	7.	Immigrant Visa and Alien Registration of Siaosi Vanisi, May 1976.....	AA03417 – AA03418
16-17	11.	Juror Instructions, Trial Phase, <i>State of Nevada v.</i> <i>Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, September 27, 1999.....	AA03419 – AA03458
17	12.	Juror Instructions, Penalty Phase, <i>State of Nevada v.</i> <i>Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, October 6, 1999.....	AA03459 – AA03478
17	16.	Motion to Dismiss Counsel and Motion to Appoint Counsel. <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, June 16, 1999 .....	AA03479 – AA03489
17	17.	Court Ordered Motion for Self Representation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 5, 1999 .....	AA03490 – AA03493
17	18.	Ex-Parte Order for Medical Treatment, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 12, 1999 .....	AA03494 – AA03496

17	19.	Order, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, August 11, 1999.....	AA03497 – AA03507
17	20.	<i>State of Nevada v. Vanisi</i> , Washoe County Second Judicial District Court Case No. CR98-0516, Transcript of Proceedings June 23, 1999 .....	AA03508 – AA03551
17	21.	Transcript of Proceedings <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 3, 1999 .....	AA03552 – AA03594
17-18	22.	Reporter’s Transcript of Motion for Self Representation <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 10, 1999.....	AA03595 – AA03681
18	23.	In Camera Hearing on Ex Parte Motion to Withdraw <i>State of Nevada v. Vanisi</i> , Second Judicial District Court, Case No. CR98-0516 August 26, 1999.....	AA03682 – AA03707
18	24.	Amended Notice of Intent to Seek Death Penalty, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 18, 1999.....	AA03708 – AA03716
18	25.	Mental Health Diagnosis, Phillip A. Rich, M.D., October 27, 1998.....	AA03717 – AA03720
18	26.	Various News Coverage Articles ...	AA03721 – AA03815

18	29.	Verdict, Guilt Phase, <i>State of Nevada v. Vanisi, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 27, 1999.....	AA03816 – AA03821
18	30.	Verdict, Penalty Phase, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 6, 1999.....	AA03822 – AA03829
18	31.	Photographs of Siaoisi Vanisi from youth .....	AA3830 – AA03834
18	32.	Ex Parte Motion to Reconsider Self-Representation, <i>State of Nevada v. Vanisi</i> , Case No. CR98-0516, Second Judicial District Court of Nevada, August 12, 1999.....	AA03835 – AA03839
18-19	33.	Defense Counsel Post-Trial Memorandum in Accordance with Supreme Court Rule 250, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 15, 1999.....	AA03840 – AA03931
19	34.	Petition for Writ of Habeas Corpus (Post-Conviction) <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 January 18, 2002.....	AA03932 – AA03943
19	35.	Ex Parte Motion to Withdraw, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 August 18, 1999.....	AA03944 – AA03952

19-20	36.	Supplemental Points and Authorities to Petition for Writ of Habeas Corpus (Post-Conviction), <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 February 22, 2005 ..... AA03953 – AA04146
20	37.	Reply to State’s Response to Motion for Protective Order, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, March 16, 2005..... AA04147 – AA04153
20	39.	Transcript of Proceedings - Post-Conviction Hearing <i>Vanisi v. State of Nevada et al.</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 May 2, 2005 ..... AA04154 – AA04255
20-21	40.	Transcript of Proceedings - Continued Post-Conviction Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 May 18, 2005 ..... AA04256 – AA04349
21	41.	Transcript of Proceedings, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 April 2, 2007 ..... AA04350 – AA04380
21	42.	Findings of Fact, Conclusions of Law and Judgment, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 November 8, 2007..... AA04381 – AA04396
21	43.	Appellant’s Opening Brief, Appeal from Denial of Post-Conviction Habeas Petition <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 50607, August 22, 2008..... AA04397 – AA04496

21-22	44.	Reply Brief, Appeal from Denial of Post-Conviction Habeas Petition, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Court, Case No. 50607 December 2, 2008.....	AA04497 – AA04554
22	45.	Order of Affirmance, Appeal from Denial of Post-Conviction Petition, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Case No. 50607 April 20, 2010.....	AA04555 – AA04566
22	46.	Petition for Rehearing Appeal from Denial of Post-Conviction Petition, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 50607 May 10, 2010 .....	AA04567 – AA04580
22	48.	Order for Competency Evaluation <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 27, 2004 .....	AA04581 – AA04584
22	49.	Forensic Psychiatric Assessment, Thomas E. Bittker, M.D., January 14, 2005.....	AA04585 – AA04593
22	50.	Competency Evaluation, A.M. Amezaga, Jr., Ph.D., February 15, 2005 .....	AA04594 – AA04609
22	56.	Order finding Petitioner Competent to Proceed, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court, Case No. CR98-0516 March 16, 2005.....	AA04610 – AA04614
22	59.	Sanity Evaluation, Thomas E. Bittker, M.D., June 9, 1999 .....	AA04615 – AA4622
22-23	60.	Preliminary Examination, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 20, 1998 .....	AA04623 – AA04856

- 23        61.    Arraignment, *State of Nevada v. Vanisi*,  
                  Second Judicial District Court of Nevada, Case No.  
                  CR98-0516  
                  March 10, 1998..... AA04857 – AA04867
- 23        62.    Status Hearing, *State of Nevada v. Vanisi*,  
                  Second Judicial District Court of Nevada,  
                  Case No. CR98-0516  
                  August 4, 1998 ..... AA04868 – AA04906
- 23        63.    Status Hearing *State of Nevada v. Vanisi*,  
                  Second Judicial District of Nevada,  
                  Case No. CR98-0516  
                  September 4, 1998..... AA04907 – AA04916
- 23        64.    Status Hearing, *State of Nevada v. Vanisi*,  
                  Second Judicial District Court of Nevada, Case No.  
                  CR98-0516  
                  September 28, 1998..... AA4917 – AA04926
- 23        65.    Report on Psychiatric Evaluations, *State of Nevada v.*  
                  *Vanisi*, Second Judicial District Court of Nevada,  
                  Case No. CR98-0516  
                  November 6, 1998..... AA04927 – AA04940
- 24        66.    Hearing Regarding Counsel, *State of Nevada v.*  
                  *Vanisi*, Second Judicial District Court of Nevada,  
                  Case No. CR98-0516  
                  November 10, 1998..... AA04941 – AA04948
- 24        67.    Pretrial Hearing, *State of Nevada v. Vanisi*,  
                  *et al.*, Second Judicial District Court of Nevada,  
                  Case No. CR98-0516  
                  December 10, 1998 ..... AA04949 – AA04965

24	69.	Hearing to Reset Trial Date, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court, Case No. CR98-0516 January 19, 1999.....	AA04966 – AA04992
24	70.	Transcript of Proceeding – Pretrial Motion Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 June 1, 1999 .....	AA04993 – AA05009
24	71.	Motion Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 11, 1999.....	AA05010 – AA05051
24	72.	Decision to Motion to Relieve Counsel, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 30, 1999.....	AA05052 – AA05060
24	73.	In Chambers Review, <i>State of Nevada v. Vanisi, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 12, 1999 .....	AA05061 – AA05080
24	81.	Transcript of Proceedings - Report on Psych Eval, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 6, 1998.....	AA5081 – AA05094
24	82.	Hearing Regarding Counsel, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 10, 1998.....	AA05095 – AA05102
24-25	89.	Transcript of Proceeding, Trial Volume 4, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516	

	January 14, 1999.....	AA05103 – AA05331
25	90. Order (granting Motion for Mistrial), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 15, 1999.....	AA05332 – AA05335
25	92. Declaration of Paulotu Palu January 24, 2011.....	AA05336 – AA05344
25	93. Declaration of Siaosi Vuki Mafileo February 28, 2011 .....	AA05345 – AA05359
25-26	94. Declaration of Sioeli Tuita Heleta January 20, 2011.....	AA05360 – AA05373
26	95. Declaration of Tufui Tafuna January 22, 2011.....	AA05374 – AA05377
26	96. Declaration of Toeumu Tafuna April 7, 2011 .....	AA05378 – AA05411
26	97. Declaration of Herbert Duzant’s Interview of Michael Finau April 18, 2011 .....	AA05412 – AA05419
26	98. Declaration of Edgar DeBruce April 7, 2011 .....	AA05420 – AA05422
26	99. Declaration of Herbert Duzant’s Interview of Bishop Nifai Tonga April 18, 2011 .....	AA05423 – AA05428
26	100. Declaration of Lita Tafuna April 2011.....	AA05429 – AA05431
26	101. Declaration of Sitiveni Tafuna April 7, 2011 .....	AA05432 – AA05541



26	102. Declaration of Interview with Alisi Peaua conducted by Michelle Blackwill April 18, 2011 .....	AA05442 – AA05444
26	103. Declaration of Tevita Vimahi April 6, 2011 .....	AA05445 – AA05469
26	104. Declaration of DeAnn Ogan April 11, 2011 .....	AA05470 – AA05478
26	105. Declaration of Greg Garner April 10, 2011 .....	AA05479 – AA05486
26	106. Declaration of Robert Kirts April 10, 2011 .....	AA05487 – AA05492
26	107. Declaration of Manamoui Peaua April 5, 2011 .....	AA05493 – AA05497
26	108. Declaration of Toa Vimahi April 6, 2011 .....	AA05498 – AA05521
26-27	109. Reports regarding Siaosi Vanisi at Washoe County Jail, Nevada State Prison and Ely State Prison, Various dates .....	AA05522 – AA05699
27	110. Declaration of Olisi Lui April 7, 2011 .....	AA05700 – AA05704
27	111. Declaration of Peter Finau April 5, 2011 .....	AA05705 – AA05709
27	112. Declaration of David Kinikini April 5, 2011 .....	AA05710 – AA05720
27	113. Declaration of Renee Peaua April 7, 2011 .....	AA05721 – AA05726

27	114. Declaration of Heidi Bailey-Aloi April 7, 2011.....	AA05727 – AA05730
27	115. Declaration of Herbert Duzant’s Interview of Tony Tafuna April 18, 2011.....	AA05731- AA05735
27	116. Declaration of Terry Williams April 10, 2011.....	AA05736 – AA05741
27	117. Declaration of Tim Williams April 10, 2011.....	AA05742 – AA05745
27	118. Declaration of Mele Maveni Vakapuna April 5, 2011.....	AA05746 – AA05748
27	119. Declaration of Priscilla Endemann April 6, 2011.....	AA05749 – AA05752
27	120. Declaration of Mapa Puloka January 24, 2011.....	AA05753 – AA05757
27	121. Declaration of Limu Havea January 24, 2011.....	AA05758 – AA05767
27	122. Declaration of Sione Pohahau January 22, 2011.....	AA05768 – AA05770
27	123. Declaration of Tavake Peaua January 21, 2011.....	AA05771 – AA05776
27	124. Declaration of Totoa Pohahau January 23, 2011.....	AA05777 – AA05799
27-28	125. Declaration of Vuki Mafileo February 11, 2011 .....	AA05800 – AA05814

28	127. Declaration of Crystal Calderon April 18, 2011.....	AA05815 – AA05820
28	128. Declaration of Laura Lui April 7, 2011.....	AA05821 – AA05824
28	129. Declaration of Le’o Kinkini-Tongi April 5, 2011.....	AA05825 – AA05828
28	130. Declaration of Sela Vanisi-DeBruce April 7, 2011.....	AA05829 – AA05844
28	131. Declaration of Vainga Kinikini April 12, 2011.....	AA05845 – AA05848
28	132. Declaration of David Hales April 10, 2011.....	AA05849 – AA05852
28	136. Correspondence to Stephen Gregory from Edward J. Lynn, M.D. July 8, 1999.....	AA05853 – AA05855
28	137. Memorandum to Vanisi File from MRS April 27, 1998.....	AA05856 – AA05858
28	143. Memorandum to Vanisi File From Mike Specchio July 31, 1998.....	AA05859 – AA05861
28	144. Correspondence to Michael R. Specchio from Michael Pescetta October 9, 1998.....	AA05862 – AA05863
28	145. Correspondence to Michael Pescetta from Michael R. Specchio October 9, 1998.....	AA05864 – AA05866

28	146. 3 DVD's containing video footage of Siaosi Vanisi in custody on various dates (MANUALLY FILED).....	AA05867
28	147. Various Memorandum to and from Michael R. Specchio 1998-1999 .....	AA05868 – AA05937
28	148. Memorandum to Vanisi file Crystal-Laura from MRS April 20, 1998.....	AA05938 – AA05940
28	149. Declaration of Steven Kelly April 6, 2011 .....	AA05941 – AA05943
28	150. Declaration of Scott Thomas April 6, 2011 .....	AA05944 – AA05946
28	151. Declaration of Josh Iveson April 6, 2011 .....	AA05947 – AA05949
28	152. Declaration of Luisa Finau April 7, 2011 .....	AA05950 – AA05955
28	153. Declaration of Leanna Morris April 7, 2011 .....	AA05956 – AA05960
28	155. Declaration of Maile (Miles) Kinikini April 7, 2011 .....	AA05961 – AA05966
28	156. Declaration of Nancy Chiladez April 11, 2011 .....	AA05967 – AA05969
28-29	159. Transcript of Proceedings, Trial Volume 1, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 11, 1999.....	AA05970 – AA06222

29-31	160. Transcript of Proceedings, Trial Volume 2, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 12, 1999.....	AA06223 – AA06498
31	163. Neuropsychological and Psychological Evaluation of Siaoosi Vanisi, Dr. Jonathan Mack April 18, 2011.....	AA06499 – AA06569
31-32	164. Independent Medical Examination in the Field of Psychiatry, Dr. Siale ‘Alo Foliaki April 18, 2011.....	AA06570 – AA06694
32	172. Motion for Change of Venue, <i>State of Nevada v.</i> <i>Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 15, 1998 .....	AA06695 – AA06700
32	173. Declaration of Herbert Duzant’s Interview with Tongan Solicitor General, ‘Aminiasi Kefu April 17, 2011 .....	AA06701 – AA06704
32	175. Order Denying Rehearing, Appeal from Denial of Post-Conviction Petition, <i>Vanisi vs. State of</i> <i>Nevada</i> , Nevada Supreme Court, Case No. 50607 June 22, 2010 .....	AA06705 – AA06706
32	178. Declaration of Thomas Qualls April 15, 2011.....	AA06707 – AA06708
32	179. Declaration of Walter Fey April 18, 2011.....	AA06709 – AA06711
32	180. Declaration of Stephen Gregory April 17, 2011.....	AA06712 – AA06714
32	181. Declaration of Jeremy Bosler April 17, 2011.....	AA06715 – AA06718

- 32        183. San Bruno Police Department Criminal  
Report No. 89-0030  
February 7, 1989 ..... AA06719 – AA06722
- 32        184. Manhattan Beach Police Department Police  
Report Dr. # 95-6108  
November 4, 1995..... AA06723 – AA06727
- 32        185. Manhattan Beach Police Department  
Crime Report  
August 23, 1997..... AA06728 – AA06730
- 32        186. Notice of Intent to Seek Death Penalty,  
*State of Nevada v. Vanisi*, Second Judicial  
District Court of Nevada, Case No. CR98-0516  
February 26, 1998 ..... AA06731 – AA06737
- 32        187. Judgment, *State of Nevada v. Vanisi*,  
Second Judicial District Court of Nevada,  
Case No. CR98-0516  
November 22, 1999..... AA06738 – AA06740
- 32        190. Correspondence to The Honorable Connie  
Steinheimer from Richard W. Lewis, Ph.D.  
October 10, 1998..... AA06741 – AA06743
- 32        195. Declaration of Herbert Duzant’s Interview of  
Juror Richard Tower  
April 18, 2011 ..... AA06744 – AA06746
- 32        196. Declaration of Herbert Duzant’s Interview of  
Juror Nettie Horner  
April 18, 2011 ..... AA06747 – AA06749
- 32        197. Declaration of Herbert Duzant’s Interview of  
Juror Bonnie James  
April 18, 2011 ..... AA06750 – AA06752

32	198. Declaration of Herbert Duzant’s Interview of Juror Robert Buck April 18, 2011.....	AA06753 – AA06755
12	Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 35249 November 27, 2001.....	AA02527 – AA02528
15	Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 50607 July 19, 2010 .....	AA03031 – AA03032
35	Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 65774 January 5, 2018.....	AA07319 – AA07320
12	Reply in Support of Motion to Withdraw as Counsel of Record, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 27, 2002 .....	AA02572 – AA02575
39	Reply to Opposition to Motion for Leave to File Supplement to Petition for Writ of Habeas Corpus, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 15, 2018.....	AA08232 – AA08244
36	Reply to Opposition to Motion to Disqualify the Washoe County District Attorney’s Office, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 27, 2018 .....	AA07615 – AA07639

## EXHIBITS

36	1. Response to Motion for a Protective Order, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court
----	---

	of Nevada, Case No. CR98-0516 March 9, 2005.....	AA07640 – AA07652
36	2. Letter from Scott W. Edwards to Steve Gregory re Vanisi post-conviction petition. March 19, 2002.....	AA07653 – AA07654
36	3. Supplemental Response to Motion for a Protective Order, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 16, 2005.....	AA07655 – AA07659
36	4. Appellant’s Appendix, Volume 1, Table of Contents, <i>Vanisi v. State of Nevada</i> , Nevada Supreme Court, Case No. 50607 August 22, 2008.....	AA07660 – AA07664
36	5. Facsimile from Scott W. Edwards to Jeremy Bosler April 5, 2002.....	AA07665 – AA07666
35	Reply to Opposition to Motion for Reconsideration and Objection to Petitioner’s Waiver of Attendance at Evidentiary Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 April 16, 2018.....	AA07356 – AA07365

## EXHIBIT

35	1. Petitioner’s Waiver of Appearance (and attached Declaration of Siaosi Vanisi), April 9, 2018.....	AA07366 – AA07371
13	Reply to Response to Motion for Stay of Post-Conviction Habeas Corpus Proceedings and for Transfer of Petitioner to Lakes Crossing for Psychological Evaluation and treatment (Hearing Requested), <i>State of Nevada v.</i> <i>Vanisi</i> , Second Judicial District Court of Nevada,	



Case No. CR98-0516  
November 17, 2004..... AA02609 – AA02613

36 Reply to State’s Response to Petitioner’s Suggestion  
of Incompetence and Motion for Evaluation, *Vanisi*  
*v. State of Nevada, et al.*, Second Judicial District  
Court of Nevada, Case No. CR98-0516  
August 6, 2018..... AA07671 – AA07681

### EXHIBIT

36 1. Declaration of Randolph M. Fiedler  
August 6, 2018 ..... AA07682 – AA07684

36 Request from Defendant, *State of Nevada v.*  
*Vanisi*, Second Judicial District Court of Nevada,  
Case No. CR98-0516  
July 24, 2018 ..... AA07605 – AA07606

32 Response to Opposition to Motion to Dismiss  
Petition for Writ of Habeas Corpus  
(Post-Conviction), *State of Nevada v. Vanisi*,  
Second Judicial District Court of Nevada,  
Case No. CR98-0516  
October 7, 2011..... AA06841 – AA06844

36 Response to Vanisi’s Suggestion of Incompetency  
and Motion for Evaluation, *State of Nevada v.*  
*Vanisi*, Second Judicial District Court of Nevada,  
Case No. CR98-0516  
July 30, 2018 ..... AA07667 – AA07670

35 State’s Opposition to Motion for Reconsideration  
and Objection to Petitioner’s Waiver of Attendance at  
Evidentiary Hearing, *State of Nevada v. Vanisi*, Second  
Judicial District Court of Nevada,  
Case No. CR98-0516  
April 11, 2018..... AA07347 – AA07352

## EXHIBIT

1. Declaration of Donald Southworth, *Vanisi v. State of Nevada, et al.*, Second Judicial District Court of Nevada, Case No. CR98-0516  
April 11, 2018..... AA07353 – AA07355
- 36 State’s Sur-Reply to Vanisi’s Motion to Disqualify the Washoe County District Attorney’s Office, *Vanisi v. State of Nevada, et al.*, Second Judicial District Court of Nevada, Case No. CR98-0516  
August 31, 2018..... AA07701 – AA07710

## EXHIBIT

- 36 1. Transcript of Proceedings – Status Hearing, *Vanisi v. State of Nevada*, Second Judicial District Court of Nevada, Case No. CR98-0516  
July 1, 2002 ..... AA07711 – AA07724
- 36 Suggestion of Incompetency and Motion for Evaluation, *State of Nevada v. Vanisi*, Second Judicial District Court of Nevada, Case No. CR98-0516  
July 25, 2018 ..... AA07611 – AA07614
- 37 Transcript of Proceedings – Competency for Petitioner to Waive Evidentiary Hearing, *State of Nevada v. Vanisi*, Second Judicial District Court of Nevada, Case No. CR98-0516  
September 24, 2018..... AA07830 – AA07924
- 37-38 Transcript of Proceedings – Report on Psychiatric Evaluation, *State of Nevada v. Vanisi*, Second Judicial District Court of Nevada, Case No. CR98-0516  
September 24, 2018..... AA07925 – AA08033

13	Transcript of Proceedings – Conference Call – In Chambers, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 5, 2003 .....	AA02583 – AA02587
35	Transcript of Proceedings – Conference Call, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 10, 2018 .....	AA07372 – AA07384
34	Transcript of Proceedings – Decision (Telephonic), <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 4, 2014.....	AA07089 – AA07096
12	Transcript of Proceedings – In Chambers Hearing & Hearing Setting Execution Date, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District of Nevada, Case No. CR98-0516 January 18, 2002.....	AA02541 – AA02552
13	Transcript of Proceedings – In Chambers Hearing, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District of Nevada, Case No. CR98-0516 January 19, 2005.....	AA02645 – AA02654
13	Transcript of Proceedings – In Chambers Hearing, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 24, 2005.....	AA02655 – AA02679
35	Transcript of Proceedings – Oral Arguments, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 30, 2018 .....	AA07391 – AA07446

38	Transcript of Proceedings – Oral Arguments, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 25, 2019.....	AA08136 – AA08156
32-33	Transcript of Proceedings - Petition for Post-Conviction (Day One), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 5, 2013 .....	AA06848 – AA06966

### **EXHIBITS**

Admitted December 5, 2013

33	199. Letter from Aminiask Kefu November 15, 2011.....	AA06967 – AA06969
33	201. Billing Records-Thomas Qualls, Esq. Various Dates.....	AA06970 – AA06992
33	214. Memorandum to File from MP March 22, 2002.....	AA06993 – AA07002
33	Transcript of Proceedings - Petition for Post-Conviction (Day Two), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 6, 2013 .....	AA07003 – AA07083

### **EXHIBITS**

Admitted December 6, 2013

33	200. Declaration of Scott Edwards, Esq. November 8, 2013.....	AA07084 – AA07086
33	224. Letter to Scott Edwards, Esq. from Michael Pescetta, Esq. January 30, 2003.....	AA07087 – AA07088

12-13	Transcript of Proceedings – Post-Conviction, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 28, 2003.....	AA02576 – AA02582
13	Transcript of Proceedings – Post-Conviction, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 22, 2004.....	AA02614 – AA02644
1	Transcript of Proceedings – Pre-Trial Motions, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 24, 1998.....	AA00001 – AA00127
13	Transcript of Proceedings – Report on Psychiatric Evaluation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 27, 2005.....	AA02680 – AA02716
37-38	Transcript of Proceedings – Report on Psychiatric Evaluation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 24, 2018.....	AA07925 – AA08033
13-14	Transcript of Proceedings – Report on Psychiatric Evaluation <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 18, 2005 .....	AA02717 – AA02817
38	Transcript of Proceedings – Report on Psychiatric Evaluation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 25, 2018.....	AA08034 – AA08080

36-37	Transcript of Proceedings – Status Conference, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 5, 2018.....	AA07725 – AA07781
3-5	Transcript of Proceedings – Trial Volume 1, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 20, 1999.....	AA00622 – AA00864
5-6	Transcript of Proceedings – Trial Volume 2, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 21, 1999.....	AA00865 – AA01112
1-2	Transcript of Proceedings – Trial Volume 3, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 13, 1999.....	AA00128 – AA00295
6-7	Transcript of Proceedings – Trial Volume 3, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 22, 1999.....	AA01113 – AA01299
2-3	Transcript of Proceedings – Trial Volume 4, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 14, 1999.....	AA00296 – AA00523
7	Transcript of Proceedings – Trial Volume 4, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 23, 1999.....	AA01300 – AA01433

3	Transcript of Proceedings, Trial Volume 5, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 15, 1999.....	AA00524 – AA0550
7-8	Transcript of Proceedings, Trial Volume 5, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 24, 1999.....	AA01434 – AA01545
8	Transcript of Proceedings – Trial Volume 6, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 27, 1999.....	AA01546 – AA01690
8-9	Transcript of Proceedings – Trial Volume 7, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 28, 1999.....	AA01691 – AA01706
9	Transcript of Proceedings – Trial Volume 8, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 30, 1999.....	AA01707 – AA01753
9-10	Transcript of Proceedings – Trial Volume 9, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 1, 1999.....	AA01754 – AA01984
10-11	Transcript of Proceedings – Trial Volume 10, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 4, 1999.....	AA01985 – AA02267

11-12	Transcript of Proceedings – Trial Volume 11, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 5, 1999.....	AA02268 – AA02412
12	Transcript of Proceedings – Trial Volume 12, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 6, 1999.....	AA2414 – AA02522



## **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 26th day of September, 2019.

Electronic Service of the foregoing Appellant's Appendix shall be made in accordance with the Master Service List as follows:

Jennifer P. Noble  
Appellate Deputy  
Nevada Bar No. 9446  
P.O. Box 11130  
Reno, NV 89520-0027  
[jnoble@da.washoecounty.us](mailto:jnoble@da.washoecounty.us)

Joseph R. Plater  
Appellate Deputy  
Nevada Bar No. 2771  
P.O. Box 11130  
Reno, NV 89520-0027  
[jplater@da.washoecounty.us](mailto:jplater@da.washoecounty.us)

---

Sara Jelenik  
An employee of the Federal  
Public Defender's Office

1 lunch hour to accommodate a doctor's appointment. From  
2 12:00 until 2:00.

3 MR. GAMMICK: That will give us some idea, Your  
4 Honor.

5 THE COURT: Then we'll go until 5:00. I think  
6 we're going to try to do pretty much the same schedule next  
7 week, too, if that helps you. Tuesday morning we'll start  
8 by 10:15, and Thursday morning is our bad morning where  
9 we'll hear most of the criminal cases.

10 MR. GAMMICK: Okay, good.

11 THE COURT: And I am still -- we're getting  
12 used to starting at 10:00 or we can start at 9:00 and not  
13 have early hearings on Wednesday, we're not sure where we're  
14 going to go. But for this trial, we'll keep it the way it  
15 is. Anything further?

16 MR. GREGORY: No, Your Honor.

17 MR. STANTON: Yes, Your Honor. The exercise of  
18 peremptory challenges, can you explain so that at least I'm  
19 confident of how you are going to do that and where the  
20 cutoff is for the panel? I have it as juror 28 would be 12  
21 and the rest would be alternates.

22 THE COURT: Okay. Now, I guess that's a  
23 compound question --

24 MR. STANTON: It is.

25 THE COURT: -- Mr. Stanton. I'll try to get

1 this straight. The way I utilize the 36 is I allow counsel  
2 to exercise their first eight anywhere they want. It is  
3 their choice.

4 Then what we will do is we'll count one through  
5 12 starting with juror No. 1, the first juror who is still  
6 sitting here, and count up to 12. Then you will exercise  
7 your next two peremptory challenges to the remaining. The  
8 alternates do not come from the backup. They would be -- if  
9 you never exercised an alternate challenge, they would be  
10 the 13th and 14th and 15th and 16th person. Does that make  
11 sense?

12 MR. STANTON: I think so. At the conclusion of  
13 exercising eight, and you can exercise eight anywhere  
14 through the 36, would then reorganize it one through 12  
15 based upon where they are seated, moving in this fashion?

16 THE COURT: Moving from seat number one,  
17 whoever is still left, we'll count 12 names.

18 MR. STANTON: After that?

19 THE COURT: You can exercise your alternates  
20 anywhere you want.

21 MR. STANTON: So the next --

22 THE COURT: The first, second, third and fourth  
23 alternates will be in that order right after the 12th juror.  
24 So it would be like you were picking 16 jurors in numerical  
25 order. So if you never exercised a challenge at all, the

1 alternates would be Jurors No. 13, 14, 15, 16, not 36, 35,  
2 34 and 33.

3 MR. STANTON: Okay. And finally, Your Honor,  
4 the method for exercising peremptory?

5 THE COURT: We played with this a couple  
6 different times, and frankly, I don't remember how you all  
7 did it last time.

8 MR. STANTON: We went to the podium and  
9 exercised the preempts, or I can't remember if we passed the  
10 form back and forth between counsel table.

11 THE COURT: I think you passed it back and  
12 forth. If that's the way you want to do it again, that's  
13 fine with me.

14 MR. STANTON: It's fine with the State. I  
15 think relative to exercising the peremptories, although I  
16 can't envision, I think that is the best method for *Batson*.  
17 And also, the only question is there was, for example, there  
18 was a problem with your staff as far as how you call the  
19 jurors that have been preempted, whether you do that at the  
20 end. There wasn't a problem last time.

21 THE COURT: I think we did it at the end,  
22 didn't we, last time? We just did them all at one time and  
23 said, Thank you very much, you are excused.

24 MR. STANTON: Yes.

25 THE COURT: That is fine. We'll be able to

1 work on that. And you both operated off of the exact same  
2 jury list?

3 MR. STANTON: Correct.

4 THE COURT: So you saw each other's challenge  
5 and what had already been challenged, and the original was  
6 saved to show who had exercised and where. And then the  
7 clerk brought it up to me, and before I let anyone go, that  
8 gives you an opportunity to make your *Batson* challenge, if  
9 you have one. We can resolve it outside the presence of the  
10 jury at the bench, and then either I will allow the  
11 challenge -- the peremptory challenge to stand or I won't,  
12 and that way we can count off the jurors and where you are  
13 at.

14 MR. STANTON: That's all the questions the  
15 State had.

16 THE COURT: Mr. Bosler, you are clear on that  
17 procedure and agree with it?

18 MR. BOSLER: Yes, Your Honor.

19 THE COURT: That is the way we'll do it. Thank  
20 you.

21 Court is in recess.

22 (Court recessed for day at 5:23 p.m.)  
23  
24  
25

21

**FILED**

Code 4185

SEP 22 1999

AMY HARVEY  
*Dr. M. Stone*  
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,  
Plaintiff,

vs.

SIAOSI VANISI,  
Defendant.

Case No. CR98-0516  
Dept. No. 4

**ORIGINAL**

TRIAL - VOLUME 2  
September 21, 1999  
Reno, Nevada

**APPEARANCES:**

For the Plaintiff:

RICHARD A. GAMMICK  
District Attorney  
DAVID L. STANTON  
Chief Deputy District Attorney  
75 Court Street  
Reno, Nevada

For the Defendant:

STEPHEN GREGORY  
and JEREMY BOSLER  
Deputies Public Defender  
One South Sierra Street  
Reno, Nevada

The Defendant:  
Reported by:

SIAOSI VANISI  
ERIC V. NELSON, CCR No. 57  
DENISE PHIPPS, CCR No. 234

SIERRA NEVADA REPORTERS (775) 329-6560

RENO, NEVADA, TUESDAY, SEPTEMBER 21, 1999, 10:32 A.M.

-o0o-

(Whereupon, the following proceedings were held in open court, in the presence of the jury panel.)

THE COURT: The clerk will call the roll of the prospective jurors.

(Roll call taken of prospective jury.)

THE COURT: Any objection to the jury panel as they are present here today?

MR. STANTON: No. The State is ready to move forward.

MR. BOSLER: None from us, Your Honor.

THE COURT: We are ready to start with Mr. Bosler again, but I'd like to speak with counsel at the bench. So if you would please approach.

(Whereupon, a bench conference was held among Court and counsel as follows:)

THE COURT: Okay. When we recessed yesterday, we left it that I was going to instruct the jury with regard to the potential penalties, and you all requested that I be pretty specific about how I instruct them. So I have come up with the Court's proposed special instruction B that I have given you all, and I thought I would just read this.

My clerk said there was a concern about the

1 first form of it, and I did change it a little bit.

2 Are you comfortable with this? Do you think  
3 this is an accurate statement of the law, and are you  
4 comfortable with me reading it?

5 MR. GAMMICK: The instruction looks fine as  
6 long as channels with *Sonner*. And I didn't get a chance to  
7 look to make sure we're dead on with the language. Aside  
8 from that, it looks good, so I'm not too concerned about it.

9 The only other thing I was kind of wondering if  
10 the Court would do is, even after giving this instruction,  
11 if the Court feels that maybe a little bit more people  
12 explanation, here is the steps, here is what this means type  
13 thing, so that they understand the process. That was the  
14 only concern during voir dire, they understand what they are  
15 going to be asked to do.

16 THE COURT: In terms of the fact that they  
17 first make a determination of guilt or innocence and then  
18 only after that determination has been made that they can  
19 consider penalty and these are the considerations.

20 MR. STANTON: Right. Even beyond that, Judge,  
21 once again if you want to, is the way I was going to do it  
22 in my -- because I'll be handling the penalty phase -- is  
23 discussing with them first they determine obviously guilt or  
24 innocence and then go into the penalty phase, if they find  
25 aggravating circumstances beyond a reasonable doubt. If



1 they don't find any, the death penalty is excluded.

2 Then once they find the aggravators, they  
3 listen to the mitigators, and then they determine whether or  
4 not the aggravators outweigh the mitigators. If they find  
5 the aggravators outweigh the mitigators, death is still an  
6 option, but it is not required, even if they find more  
7 aggravators than mitigators. Then they take all the  
8 evidence and determine what the punishment is.

9 THE COURT: I think I have covered that  
10 basically by saying that death is never mandatory, and I  
11 have basically taken the instructions that we would use at  
12 the end of the trial and that I have used in previous death  
13 penalty cases to come up with this instruction. I'm going  
14 to be a little careful how far we go. I think that  
15 explaining the process first and then reading the  
16 instruction would be appropriate.

17 MR. GAMMICK: What gave me some concern, the  
18 reason I brought this up is the exchange that was going on  
19 between Mr. Bosler and Miss Ziler. I don't think she  
20 understands the process. I think once it is explained to  
21 her, and she says, I'll give him death every time anyway,  
22 then we know where that is going. At this time it seemed  
23 like she was trying to use legalese without knowing what she  
24 was doing.

25 THE COURT: Mr. Bosler?

1 MR. BOSLER: My understanding after the last  
2 hearing is you were going to instruct the jurors on the  
3 alternative theories of first degree murder and lying in  
4 wait and felony murder. That was the last objection.

5 THE COURT: I wonder if we have a necessity to  
6 do that. I don't think it is necessary for the jury to  
7 decide at this stage in the proceedings what is first degree  
8 murder and what is second degree. I think the purpose here  
9 is to let them know that they are going to be given that job  
10 and if they do decide first degree.

11 Because we could get into many legal treatises  
12 on the different degrees of murder and when this defense  
13 applies or that defense applies. And I don't think that it  
14 is necessary for purposes here.

15 MR. BOSLER: How would I field an objection  
16 when someone comes in and says, on a first degree murder,  
17 they always impose death if it is premeditated? Same  
18 objection. I can't respond unless the jury is instructed.

19 THE COURT: I think if I instruct them this  
20 way, if they say, if it is premeditated, I'm going to give  
21 death no matter what, then you have got an objection because  
22 they won't consider mitigation. If they won't consider  
23 mitigation, they won't consider mitigation.

24 MR. GAMMICK: I think the objection came  
25 because it was more of this like any confusion on the juror.

1 Does she understand everything? This may very well rectify  
2 it. We agree with the instruction and would ask the Court  
3 to explain further if necessary.

4 THE COURT: If we still have a problem, come on  
5 up to the bench and we'll talk about it again.

6 So it is all right, Mr. Bosler?

7 MR. BOSLER: Not having a chance to look at  
8 Sonner, I'll read through the instruction right now. If I  
9 have a problem, I will inform the Court.

10 (Whereupon, the following proceedings were held  
11 in open court, in the presence of the jury.)

12 THE COURT: Good morning, ladies and gentlemen.  
13 Welcome back. We are going to begin our voir dire process  
14 again this morning, and if you remember, I had finished with  
15 my questions and the State had finished with their  
16 questions, and Mr. Bosler on behalf of the defense was  
17 proceeding to inquire of you.

18 Now, I want to give you a little bit more  
19 information than what you were given yesterday so far, just  
20 so you understand the process of what's going to happen in  
21 this case. The jury that we are selecting today will be  
22 hearing a case involving a charge of murder. In addition,  
23 there are some other additional charges. You remember there  
24 was that comment about those additional charges.

25 The statutes allow for a jury to determine the

1 penalty only in certain circumstances, only in certain kinds  
2 of cases, one being if the jury returns a verdict, the only  
3 case actually in the State of Nevada, of murder in the first  
4 degree.

5 Now, I will be instructing you as to what  
6 murder in the first degree is in terms of the law, and then  
7 after you have heard the evidence, you will decide the facts  
8 and decide if it is in fact murder in the first degree.

9 So I would ask that you not be particularly  
10 concerned about what kind of murders may be brought to your  
11 attention because I'm going to give you many instructions in  
12 that regard.

13 However, if in fact the jury finds beyond a  
14 reasonable doubt that murder in the first degree was  
15 committed by the defendant in this case, then the jury and  
16 only then will the jury consider the potential penalties. I  
17 will instruct you further as to those potential penalties  
18 that you may even consider.

19 Now, what first happens in the first part of  
20 the trial is the guilt phase. You make a determination as  
21 to guilt or innocence and degree of guilt. After that, only  
22 in certain circumstances as I just told you would you even  
23 get to the point of determining penalty. And then if you  
24 are in the kind of case and you do make the findings that  
25 would require you to sit for the penalty phase would you be

1 dealing with the issues that we're now talking about in the  
2 voir dire.

3 If the defendant is convicted of first degree  
4 murder, the possible penalties are: a prison term of 50  
5 years with eligibility for parole beginning when a minimum  
6 of 20 years has been served. This does not mean that the  
7 defendant would be paroled after 20 years, but only that he  
8 would be eligible for parole after that period of time; .

9 or life imprisonment with the possibility of  
10 parole is a sentence that is available. This sentence  
11 provides that the defendant would be eligible for parole  
12 after a period of 20 years. This does not mean that he  
13 would be paroled after 20 years but only that he would be  
14 eligible for parole after that period of time; .

15 or life imprisonment without the possibility of  
16 parole. This means exactly what it says, that the defendant  
17 shall not be eligible for parole; .

18 or death. If you sentence the defendant to  
19 death, you must assume that the sentence will be carried  
20 out.

21 The following factors are the only  
22 circumstances by which murder of the first degree may be  
23 aggravated in this case. If you find beyond a reasonable  
24 doubt that the murder was committed by the defendant in the  
25 commission or attempting to commit the crime of robbery with

1 the use of a deadly weapon; and/or the murder was committed  
2 by the defendant upon a peace officer; or the victim was  
3 killed while engaged in the performance of his official  
4 capacity, and the defendant knew or reasonably should have  
5 known the victim was a peace officer; and/or the murder  
6 involved torture or mutilation of the victim; and/or the  
7 murder was committed by the defendant because of the actual  
8 and perceived race, color or national origin of the victim.

9 The State has the burden of proving beyond a  
10 reasonable doubt that an aggravating circumstance or  
11 circumstances exist in this case. If you have a reasonable  
12 doubt as to the aggravating circumstance or circumstances in  
13 this case, or find a mitigating circumstance or  
14 circumstances are sufficient to outweigh the aggravating  
15 circumstances that you have found, or for any other reason  
16 decline to impose the death penalty, the defendant is  
17 entitled to a verdict of life imprisonment with or without  
18 the possibility of parole, or a term of 50 years in the  
19 Nevada State Prison. And you will be required to specify  
20 whether such life imprisonment will be with or without the  
21 possibility of parole.

22 Murder of the first degree may be mitigated by  
23 any circumstances, even though the mitigating circumstance  
24 is not sufficient to constitute a defense or reduce the  
25 degree of crime. The law never compels the imposition of

1 the death penalty.

2 Even if you find any or all of the aggravating  
3 circumstances have been proven beyond a reasonable doubt,  
4 and even if you also do not find that any mitigating  
5 circumstances exist, you are not required to return a  
6 verdict of the sentence of death as punishment, but may  
7 instead sentence the defendant to life in the Nevada State  
8 Prison with or without the possibility of parole or a term  
9 of 50 years in the Nevada State Prison.

10 Counsel, you may continue to inquire.

11 MR. BOSLER: Your Honor, I think we would need  
12 to approach the bench one more time.

13 THE COURT: Okay.

14 (Whereupon, a bench conference was held among  
15 Court and counsel as follows:)

16 MR. BOSLER: I guess this would be an  
17 appropriate time to also instruct them about the weapons  
18 enhancement, that all those penalties would be doubled if  
19 they were to find the use of a deadly weapon, and how that  
20 would affect their view of the years. The term of years is  
21 now 40 to a hundred instead of 50 to a hundred.

22 MR. STANTON: This is not the time to do it  
23 now, Your Honor.

24 THE COURT: We can handle that I think at the  
25 end. It is just whether or not you double a death penalty,  
you double the death penalty. It's not going to make a

1 difference.

2 MR. BOSLER: For people considering the term of  
3 years, it would make a difference.

4 MR. GREGORY: Judge, if we are going to  
5 instruct on the potential sentence, we would like them  
6 properly instructed so that they know that they find that a  
7 deadly weapon was used, which they will find in this case,  
8 that it is a doubling of the sentence.

9 And I apologize to the Court. The Court's  
10 secretary only gave one copy to us, and with Mr. Vanisi in  
11 between, and had I looked at it, I would have brought it up  
12 earlier. I'm sorry.

13 MR. GAMMICK: This is just voir dire, what is  
14 their opinion how they feel about the death penalty. That  
15 is all we are questioning them about. If we are going to do  
16 a full-blown penalty phase at this time, we will redo  
17 everything we have been trying to do.

18 MR. GREGORY: We have started it. Let's do it  
19 right.

20 MR. STANTON: It is not a question of doing it  
21 right or not. The issue we're addressing here is whether or  
22 not they are *Whitt* or *Witherspoon* death and life qualifying  
23 the jury. The issue of doubling up for weapons enhancement  
24 isn't going to answer the question.

25 MR. GREGORY: We got into the other penalties.



1 Since we did that, let's make it clear.

2 THE COURT: But I can't. I have to get into  
3 the other penalties. I can't tell them that death is the  
4 only option. I have to be accurate.

5 I don't think it's a problem not to instruct on  
6 the deadly weapon. And I don't think it's going to be  
7 error. So I'm going to deny your request.

8 MR. BOSLER: Your Honor, I think that my  
9 position is that their ability to consider other potential  
10 penalties, which would be penalties that are doubled for  
11 weapons enhancement, is also part of the analysis of  
12 *Witherspoon, Whitt*. So for that reason, we would ask you to  
13 instruct.

14 THE COURT: If somebody says, I don't think  
15 that 20 years is enough in prison, and therefore, I'm going  
16 to go with death, that may become relevant, but I don't see  
17 it.

18 MR. BOSLER: I don't know what they are  
19 thinking in their minds. We just note an objection for the  
20 record. That is fine.

21 MR. STANTON: Your Honor, the question is  
22 whether or not that life or death qualifying a jury, and  
23 what they are doing now is arguing what should be done at  
24 the penalty phase.

25 THE COURT: I'm going to deny the request.

1 (Whereupon, the following proceedings were held  
2 in open court, in the presence of the jury  
3 panel.)

4 THE COURT: Mr. Bosler, go ahead and inquire.

5 MR. BOSLER: Good morning, ladies and  
6 gentlemen.

7 THE PROSPECTIVE JURY: Good morning.

8 MR. BOSLER: Did everybody kind of understand  
9 what the judge said earlier about the instructions, how the  
10 system works?

11 Miss Ziler, we kind of left off yesterday with  
12 an issue still kind of pregnant. The way things work, the  
13 only time you would consider death is if you actually found  
14 a murder was a first degree murder. Are you comfortable  
15 with that concept?

16 A PROSPECTIVE JUROR: Yes.

17 MR. BOSLER: I understand from your answers  
18 yesterday that in that situation, where you found that first  
19 degree murder, for you, you feel that if it's first degree  
20 murder, the death penalty is warranted.

21 A PROSPECTIVE JUROR: Yes.

22 MR. BOSLER: And since we got a chance to talk  
23 about it for a little while now, I get the impression that  
24 is kind of a personal recent decision you have made?

25 A PROSPECTIVE JUROR: Not that recent, no.

1 MR. BOSLER: Is this decision that is personal  
2 to you based upon your moral stance on these type -- on this  
3 particular issue?

4 A PROSPECTIVE JUROR: Yes.

5 MR. BOSLER: That being said, is there anything  
6 that I could tell you about the defendant that would change  
7 that view? If you found that he was guilty of first degree  
8 murder or found a person was guilty of first degree murder,  
9 is there anything I could tell you about that person that  
10 would change your view?

11 A PROSPECTIVE JUROR: If you told me they were  
12 the victim of an assault and the deceased was the assaultee,  
13 that would be circumstances that put a different light on  
14 it.

15 MR. BOSLER: So if it was a self-defense  
16 situation, one person ended up dying --

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: Again, these are legal subtleties.

19 A PROSPECTIVE JUROR: Yes.

20 MR. BOSLER: If I told you that wouldn't be the  
21 type of case that would be a first degree murder case, and  
22 we went back to the first degree murder case, premeditated  
23 murder, not one having defense, self-defense, defense of  
24 another person, is there anything then that I could tell you  
25 about a person that you would say, Well, this person doesn't

1       deserve death?

2                   A PROSPECTIVE JUROR: I can't honestly say yes  
3       or no to that one.

4                   MR. BOSLER: You realize my problem.

5                   A PROSPECTIVE JUROR: You would have to tell  
6       me, and I would make a judgment at that time. But not  
7       knowing, I can't say.

8                   MR. BOSLER: That's fair. I appreciate your  
9       telling me that.

10                   What would you -- would it matter to you if  
11       there was a mental illness involved, the person who  
12       committed the crime was suffering from a mental illness?

13                   A PROSPECTIVE JUROR: Yes, but if they were  
14       suffering from mental illness, would they still be held --  
15       what is that? -- competent to stand trial?

16                   MR. BOSLER: Assume that they would, yes.

17                   A PROSPECTIVE JUROR: That would be a different  
18       light, yes.

19                   MR. BOSLER: Why is that important, in your  
20       analysis?

21                   A PROSPECTIVE JUROR: Because it might be  
22       premeditated, but maybe their logic is out of whack. A  
23       mental incapacity to make a rational judgment.

24                   MR. BOSLER: That's fair. Have you had any  
25       experience with people who were suffering from mental

1 illnesses or mental defects, in your own life?

2 A PROSPECTIVE JUROR: Yes.

3 MR. BOSLER: Does that affect the way you look  
4 at that issue, that mitigation?

5 A PROSPECTIVE JUROR: I don't think so. They  
6 weren't affected violently. They were not inflicting pain  
7 on themselves or anybody else.

8 MR. BOSLER: And if you could, I don't mean  
9 to --

10 A PROSPECTIVE JUROR: No, that's fine.

11 MR. BOSLER: -- intrude, if you could tell me  
12 these people that you knew. Family, friends?

13 A PROSPECTIVE JUROR: Yes, family.

14 MR. BOSLER: What about something like use of  
15 alcohol or drugs at the time the murder is committed? How  
16 would that weigh upon your view of a penalty?

17 A PROSPECTIVE JUROR: I don't think that that  
18 would affect anything, because it's a conscious choice to  
19 take drugs and alcohol.

20 MR. BOSLER: I agree with that.

21 A PROSPECTIVE JUROR: So I would still hold  
22 them accountable for whatever they did under the influence.

23 MR. BOSLER: Do you have any experience of  
24 whether you have had to, maybe not in your normal manner,  
25 under the influence of alcohol or known somebody who --

1 A PROSPECTIVE JUROR: Yeah, look at me when I'm  
2 not taking my hormones. It actually causes an imbalance,  
3 and I can be a little flaky. Don't injure anybody but --

4 MR. BOSLER: I appreciate you sharing that.  
5 How about somebody who maybe didn't have any experience with  
6 alcohol and drugs and the effect was a little bit stronger  
7 on them? Would that play into your analysis?

8 A PROSPECTIVE JUROR: Possibly.

9 MR. BOSLER: Can you tell me why it is a  
10 difference now?

11 A PROSPECTIVE JUROR: If it were like the first  
12 time getting drunk, it might, but there's so much  
13 information out there of the hazards of substance abuse,  
14 that's still a conscious choice on their part to do it  
15 anyway.

16 MR. BOSLER: So for someone who I think drank  
17 before, gets drunk before, to you that's not really a  
18 mitigating factor because they have had an experience with  
19 alcohol?

20 A PROSPECTIVE JUROR: No, and I'd probably  
21 still feel the same way if it were my son or daughter. They  
22 know the hazards. If they make the conscious choice, they  
23 need to pay the consequences, whatever that may be.

24 MR. BOSLER: What about something like a person  
25 who commits a first degree murder but has really no other

1 criminal history, has not been in trouble with the law? How  
2 does that weigh on your decision of what type of penalty  
3 they should face?

4 A PROSPECTIVE JUROR: If it still comes out  
5 that it is a first degree premeditated?

6 MR. BOSLER: That's what we're talking about.

7 A PROSPECTIVE JUROR: I don't think that would  
8 change my opinion.

9 MR. BOSLER: If you could, why would a lack of  
10 criminal history not be an important factor for you?

11 A PROSPECTIVE JUROR: Because chances are that  
12 there is a history, that it's just never shown up, never  
13 been caught before.

14 MR. BOSLER: It's a chance we have all done  
15 something, we have never been caught.

16 A PROSPECTIVE JUROR: This is correct. This  
17 may be the first time somebody has gotten caught for it.  
18 Wife beaters do it for years before they get caught. So  
19 there may be no criminal history, but that doesn't mean that  
20 there hasn't been a crime committed.

21 MR. BOSLER: Fair enough. I think we got those  
22 facts out in this little jury pool, sometimes those events  
23 happen and no one ever finds out about it. But if you were  
24 given something, instruction by the Court that you are not  
25 supposed to speculate on whether people have done things,

1 never got caught for it, but simply look at it like you have  
2 heard before, the evidence presented in court, and you don't  
3 find significant criminal history, are you still saying -  
4 and I know this is a long question - are you still saying  
5 that doesn't figure in your analysis? Because you know that  
6 they may have done something and have not been caught, you  
7 don't really care about that issue?

8 A PROSPECTIVE JUROR: The way I feel at the  
9 moment, no, it wouldn't make a difference. But I have never  
10 been in the situation, so I can't honestly tell you that I  
11 wouldn't change my mind.

12 MR. BOSLER: All right. So if I put you in  
13 that situation right now, what you're saying is that you'd  
14 have to wait and see what kind of evidence came forward  
15 before you'd decide?

16 A PROSPECTIVE JUROR: Yeah, I think I would.  
17 But the way I feel personally, it wouldn't weigh. Something  
18 may come out during the trial that maybe I might change my  
19 thinking a bit.

20 MR. BOSLER: You make things very difficult for  
21 the lawyers if you say that. Because it's really your  
22 personal feelings, everybody's personal feelings. That is  
23 all that matters. There is no right answer, wrong answer.

24 A PROSPECTIVE JUROR: Correct.

25 MR. BOSLER: If you have personal feelings that



1 maybe say that you know Miss Smith, Mr. Brown, they are not  
2 good jurors in a capital case, so be it. There is other  
3 jury trials, other things you can do. What I'm trying to  
4 get at is those personal feelings because I need to get some  
5 ideas.

6 A PROSPECTIVE JUROR: I'm pretty hard line.

7 MR. BOSLER: Miss Ziler, if you were given  
8 information as to lack of significant criminal history, the  
9 way you think --

10 A PROSPECTIVE JUROR: I'm sorry?

11 MR. BOSLER: If you are given information about  
12 a lack of a significant criminal history, as you sit now,  
13 with your personal makeup, everything that's happened to  
14 you, your life experiences, you don't think that's something  
15 you would consider as a mitigating factor?

16 A PROSPECTIVE JUROR: That would be difficult  
17 to do.

18 MR. BOSLER: And why?

19 A PROSPECTIVE JUROR: Well, you can't unlearn  
20 experience.

21 MR. BOSLER: I agree.

22 A PROSPECTIVE JUROR: So it would be difficult  
23 to not realize in the back of your mind that this is still  
24 possible. There is that little voice that is going to be  
25 talking to you. How well you can ignore it is a different

1 story.

2 MR. BOSLER: How well do you think you could  
3 ignore it, unlearn it?

4 A PROSPECTIVE JUROR: I don't honestly know.

5 MR. BOSLER: Well, if you could, think about  
6 it, and I got some other jurors to talk to. I would like to  
7 visit with you again about this issue if you don't mind.

8 A PROSPECTIVE JUROR: That's fine.

9 MR. BOSLER: Miss Patch, I see you back there.  
10 You worked for the Sheriff's Department for a little while?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Your husband is currently a deputy  
13 sheriff?

14 A PROSPECTIVE JUROR: Yes.

15 MR. BOSLER: I kind of fear, I have this  
16 feeling that in a case involving the death of a police  
17 officer, that that would affect your, not only view of the  
18 trial, but would affect your view of what penalty would be  
19 appropriate. What do you think about that?

20 A PROSPECTIVE JUROR: I disagree with you.

21 MR. BOSLER: And why do you disagree?

22 A PROSPECTIVE JUROR: Because I want to be able  
23 to look at the evidence and base it on the facts of the case  
24 and go from there, with law in mind.

25 MR. BOSLER: Hopefully --

1 A PROSPECTIVE JUROR: What's right and wrong.  
2 The whole case, all the evidence, not just -- I mean, my  
3 husband is not here. He's not telling me what to think. He  
4 never does. What else do you want to know?

5 MR. BOSLER: Well, you have heard another  
6 person say, this other person has a relation to the law  
7 enforcement, and that person said, you know, I can't put it  
8 out of my mind, that because my relation does this type of  
9 work, I see them in the same situation, and that is always  
10 going to be churning in my mind when I sit on this type of  
11 case. Do you feel the same way or different?

12 A PROSPECTIVE JUROR: Different. It could  
13 happen to anybody, but anything can happen to anybody at any  
14 given day. We don't know when --

15 MR. BOSLER: Unfortunately, that is true.

16 A PROSPECTIVE JUROR: -- we're going to go.

17 MR. BOSLER: So you don't share those feelings  
18 that that other person had?

19 A PROSPECTIVE JUROR: Not in that way, no.

20 MR. BOSLER: You wrote in your questionnaire  
21 that you have neutral -- your stance is neutral on the death  
22 penalty.

23 A PROSPECTIVE JUROR: Yes.

24 MR. BOSLER: Is that an accurate statement?

25 A PROSPECTIVE JUROR: Yes.

1 MR. BOSLER: What about an offense -- we're  
2 talking first degree murder now, a case where you found it  
3 was first degree murder, premeditated, and this person not  
4 only killed a police officer like we spoke about, but had  
5 done it in the commission of another crime? What type of  
6 punishment do you think would be appropriate under those  
7 circumstances?

8 A PROSPECTIVE JUROR: If he was involved in a  
9 crime and somebody -- I don't see it as being premeditated  
10 exactly. You would have to prove that it was, he knew he  
11 was going to also kill somebody at the time that he was  
12 committing that crime.

13 MR. BOSLER: Assume that the reason the person  
14 is killed is in order to complete the crime. So in that  
15 sense, there's a level of premeditation or design.

16 A PROSPECTIVE JUROR: It's a level. It's not  
17 quite the same, I don't think, as setting out to actually  
18 kill somebody and do the crime, you know, complete a  
19 different crime.

20 MR. BOSLER: So under those circumstances, am I  
21 correct in assuming you would think of other types of  
22 penalties other than death?

23 A PROSPECTIVE JUROR: Yes.

24 MR. BOSLER: If you could - and I apologize for  
25 kind of like a law school analysis; this is what they teach

1 us in law school - further assume that you have this offense  
2 when an officer is killed, allegedly in the commission of  
3 another crime, and that the officer was targeted for this  
4 event because of his perceived color or his perceived  
5 national origin. How does that affect your analysis?

6 MR. STANTON: Your Honor, I object to the form  
7 of the question. Counsel is now interjecting facts of the  
8 case, and I believe it is an improper question because he is  
9 asking for what this juror will decide in the penalty phase  
10 without hearing any of the evidence.

11 THE COURT: I'm going to sustain the objection.  
12 I don't think it is necessary to delve into her  
13 predisposition one way or another with regard to death.

14 MR. BOSLER: That is a pretty general  
15 statement, Your Honor.

16 THE COURT: Well, I don't want to get into a  
17 lot unless you want to approach the bench and we can have a  
18 discussion about it. But I don't think -- I'm going to  
19 sustain the objection. If you want more of a discussion,  
20 you can approach the bench.

21 MR. BOSLER: That is probably going to be  
22 necessary, Your Honor.

23 THE COURT: Okay. Approach.

24 (Whereupon, a bench conference was held among  
25 Court and counsel as follows:)

1 MR. BOSLER: Your Honor, I think we kind of  
2 had this discussion earlier, that the view of statutory  
3 aggravators and potential mitigators is clearly what *Morgan*  
4 *vs. Illinois* says is necessary for life-qualification of a  
5 jury. And we had this discussion where you asked me what  
6 type of aggravators I was going to talk about. I said the  
7 ones that are alleged, because otherwise it does not make  
8 any sense for me to talk about aggravators in general.

9 If someone tells me based upon the four  
10 aggravators, they would always vote for the death penalty,  
11 then they are *Morgan* excludable. I can't see how I reach  
12 that point without asking them about the four aggravators.

13 MR. STANTON: Well, first of all, that's --  
14 unless counsel can cite to a more specific portion of that  
15 case, that case doesn't stand for the proposition that he's  
16 stating. First of all, it has never been held that during a  
17 voir dire selection in a capital case, that counsel can ask  
18 whether or not all the aggravators that exist in the case,  
19 would you vote for the death penalty. Because the big  
20 question is nonsensical. Of course they could because that  
21 is what the law allows them to do.

22 In addition, the question that has not been put  
23 in context is whether a consideration of all the evidence,  
24 the mitigation and the aggravation of the evidence that's  
25 presented to them, then would they fairly consider death or

1 life, all the sentencing options. That's the appropriate  
2 question that the law allows to life and death qualify.

3 The form of the question is what's  
4 objectionable, Mr. Bosler, the way he's doing it. You can't  
5 ask them: In this case, if you found that he had killed a  
6 police officer, in the commission of a robbery, because he  
7 was white, would you vote for the death penalty? That's an  
8 unfair question.

9 THE COURT: I sustained it because of the form  
10 of the question.

11 (Whereupon, the following proceedings were held  
12 in open court, in the presence of the jury.)

13 MR. BOSLER: I apologize, Miss Patch. You have  
14 heard the Court instruct you earlier that death is never  
15 required under the law.

16 A PROSPECTIVE JUROR: Right.

17 MR. BOSLER: No matter how many aggravators you  
18 found, even if you found nothing that mitigated the offense,  
19 you can still say, I'm not going to vote for death. Do you  
20 understand that?

21 A PROSPECTIVE JUROR: Right.

22 MR. BOSLER: And when I pose these questions,  
23 do you understand that there is still the possibility of  
24 mitigation coming into evidence?

25 A PROSPECTIVE JUROR: Yes.

1 MR. BOSLER: Maybe I could pose a question a  
2 different way. Assume that everything I told you was true  
3 about the events of the murder. Is there things in your  
4 mind that would mitigate any potential sentence and put an  
5 idea in your mind, no, this person deserves a sentence of  
6 less than death?

7 A PROSPECTIVE JUROR: Can you repeat the  
8 question?

9 MR. BOSLER: We have already talked about a  
10 fact circumstance where murder is committed under -- certain  
11 other things happened during the murder. In your mind, can  
12 you think of facts that would be presented that would tell  
13 you even though all this stuff is happening, that the  
14 offense is mitigated, it is lessened, there is a reason for  
15 a lesser penalty? I talked to --

16 THE COURT: That's a question mark; right?

17 MR. BOSLER: Just to help her a little bit, I  
18 talked to Miss Ziler about that.

19 THE COURT: I'm getting confused. So if that's  
20 the question, let's give her a chance to answer it, and if  
21 she doesn't answer it, you can elaborate further.

22 Did you understand what his question was?

23 A PROSPECTIVE JUROR: I think I do. If there  
24 is other mitigating factors in the case and where he could  
25 be sentenced to one of the three sentences, would I consider



1 any of the others other than the death sentence? Yes.

2 MR. BOSLER: And my next question is --

3 THE COURT: Your answer was what?

4 A PROSPECTIVE JUROR: My answer is yes.

5 MR. BOSLER: What type of things would you want  
6 to hear?

7 A PROSPECTIVE JUROR: What type of things?

8 MR. STANTON: Objection, Your Honor. That is  
9 an improper question.

10 THE COURT: Sustained.

11 MR. BOSLER: Where we left off, a lack of  
12 significant criminal history, would that be something you'd  
13 consider?

14 A PROSPECTIVE JUROR: Yes.

15 MR. BOSLER: How about a person who is  
16 suffering from some mental illness, mental defect?

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: And why do you think those two  
19 things are important?

20 THE COURT: Mr. Bosler, I don't think -- if she  
21 answers negatively, I'll let you inquire, but she says  
22 she'll consider it. I think that is sufficient for your  
23 determination at this stage. Certainly sufficient for my  
24 determination.

25 MR. BOSLER: Your Honor, seeing as I'm going to

1 pick the people from the jury, I think that I'm asking  
2 really the basis for her opinion.

3 THE COURT: Mr. Bosler, you're gone.

4 MR. BOSLER: I'll note an objection for the  
5 record, not allowing me sufficient voir dire.

6 THE COURT: It is noted.

7 MR. BOSLER: You talked about I believe it was  
8 the mental illness, lack of criminal history, drug and  
9 alcohol usage. Is that something you'd consider as  
10 mitigating or aggravating in this type of event?

11 A PROSPECTIVE JUROR: Mitigating.

12 MR. BOSLER: And why? You seem to have some  
13 trouble with that issue.

14 MR. STANTON: Your Honor, I'm going to object  
15 again. The statutory definition of aggravating factors and  
16 mitigating factors is already determined by the Legislature  
17 of this state.

18 THE COURT: I don't want speaking objections.  
19 Counsel approach, please.

20 (Whereupon, a bench conference was held among  
21 Court and counsel as follows:)

22 MR. STANTON: Once again, Your Honor, I object  
23 to the form of the question. Counsel is attempting to  
24 indoctrinate this jury in making a commitment to what they  
25 believe are mitigating evidence, which is improper, number

1 one; number two, what would they consider to be mitigating  
2 evidence in this case. The objection is to the form of the  
3 question and attempting to indoctrinate the jury to some  
4 commitment in the case.

5 MR. BOSLER: And I totally disagree, Your  
6 Honor. I'm only asking if they would consider it, not that  
7 they are going to bind themselves one way or the other; and  
8 in fact, intoxication is a defense under Nevada law and  
9 should be considered as mitigation. If a juror says, I  
10 would always consider intoxication as an aggravator, I think  
11 I have a valid basis to try and exclude that juror. Unless  
12 I ask them how they feel about it, I'll never know that  
13 issue.

14 MR. STANTON: If I'm reading his statement  
15 correctly, intoxication is a defense under Nevada law and  
16 should be considered as mitigation. What is the legal basis  
17 for that statement?

18 MR. BOSLER: Well, something that is a defense  
19 shouldn't be considered as an aggravator. Common sense.

20 THE COURT: Okay. Mr. Bosler, I think we have  
21 a difference of opinion, a strong difference of opinion of  
22 what is appropriate questioning and what is not. I'm going  
23 to sustain the State's objection.

24 If a juror answers a question that I will not  
25 consider as mitigation, something that you want them to

1 consider, I will reconsider if you approach the bench and  
2 tell me why you think you should be allowed to inquire  
3 further. Otherwise I'll not allow the inquiry as it is  
4 going now.

5 I sustained two objections. You have argued  
6 with me at the bench, you have argued with me on the record,  
7 and I'm encouraging you not to argue with me on the record  
8 in front of the jury.

9 MR. BOSLER: All right.

10 THE COURT: If you want to approach, you have  
11 an opportunity to approach. We'll have every discussion on  
12 the record. But do not argue with me in front of the jury.  
13 It is not in your client's best interests.

14 MR. BOSLER: Your Honor, if I might. Will the  
15 Court give me some guidance then? Am I allowed to talk  
16 about aggravators and mitigators, or no?

17 THE COURT: The aggravators, the only  
18 aggravators that may be considered are the ones that I read.  
19 If you want to ask a question: Are you going to consider  
20 other things in aggravation, beyond what the Court has  
21 instructed you you can consider, you can ask that question.  
22 And then we'll see what goes.

23 But you are going way beyond what is  
24 appropriate. And the form of your question continually is  
25 inappropriate. It's very difficult for me to preguess, but

1 what you are doing is you are saying to me, Judge, tell me  
2 what I can say and can't say in vague terms, and then we  
3 tell you you can do it and then you form the question  
4 inappropriately.

5 You can't ask this jury to prejudge the case.  
6 You can't require them to make a determination without any  
7 facts as to what the potential penalty is that they are  
8 going to vote for. You may qualify them as jurors in this  
9 case in a manner that you may exclude people who will never  
10 consider mitigation of any kind and will always vote for the  
11 death penalty. That's the purpose of this inquiry. And you  
12 have to keep your questions in that regard.

13 MR. BOSLER: All right. And I'd like the  
14 record to reflect I have always used the word "consider"  
15 when I have asked jurors both about aggravation and  
16 mitigation. So I'm not asking them to commit.

17 MR. STANTON: Mr. Bosler, -- and I'm directing  
18 these comments to the Court -- the appropriate questions  
19 regarding mitigation, there are the ones that are  
20 specifically articulated in the statute. So counsel could  
21 ask a question, these are -- and you can even pick out which  
22 ones you think are relevant in this case -- these are  
23 mitigation evidence. Would you consider them as evidence in  
24 the sentencing phase?

25 Then the residual mitigation provision of the

1 statute, any other case, you can ask the question: Would  
2 you consider other things besides the ones I have just given  
3 you in mitigation in determining a sentence. That is the  
4 proper question. Not asking them: What do you consider  
5 mitigation?

6 THE COURT: I agree with Mr. Bosler.

7 MR. BOSLER: You agree with Mr. Stanton. You  
8 said "Mr. Bosler."

9 THE COURT: Mr. Stanton.

10 MR. BOSLER: I knew better.

11 THE COURT: I agree with you occasionally,  
12 Mr. Bosler.

13 (Whereupon, the following proceedings were held  
14 in open court, in the presence of the jury.)

15 THE COURT: Objection is sustained.

16 MR. BOSLER: Miss Patch, we have heard some  
17 discussion about aggravators, mitigators, mitigators like  
18 lack of criminal history, a mitigator by statute, someone  
19 suffering from a severe mental defect or illness.

20 Is there any other factors that you would  
21 consider as factors that would mitigate a first degree  
22 murder to the extent the death penalty wouldn't be  
23 warranted?

24 MR. STANTON: Objection for the reasons stated  
25 at side bar.

1 THE COURT: Sustained.

2 MR. BOSLER: Miss Patch, if you consider a  
3 first degree murder with the aggravators I listed - you have  
4 heard the Court mention them - a first degree murder that is  
5 committed in the course of a robbery; a first degree murder  
6 that is committed upon a police officer, upon someone who  
7 the other person should know is a peace officer; a first  
8 degree murder is committed upon a person because of their  
9 perceived race or national origin; and a first degree murder  
10 that allegedly involves mutilation of the dead person, under  
11 those circumstances, are you still willing to consider a  
12 penalty less than death?

13 A PROSPECTIVE JUROR: Weighing all the  
14 evidence, yes.

15 MR. BOSLER: Weighing all the evidence.

16 A PROSPECTIVE JUROR: Yes.

17 MR. BOSLER: Thank you very much, Miss Patch.

18 Mr. Kennedy, you say that you attended Officer  
19 Sullivan's funeral as part of the honor guard?

20 A PROSPECTIVE JUROR: Yes, sir.

21 MR. BOSLER: Were you invited or did you  
22 volunteer?

23 A PROSPECTIVE JUROR: I belong to the honor  
24 guard for the fire department, and we always as a group  
25 collectively attend funerals of police officers and the fire

1 department.

2 MR. BOSLER: When the call comes in, the honor  
3 guard reports to whatever event?

4 A PROSPECTIVE JUROR: Yes.

5 MR. BOSLER: How long have you belonged to that  
6 honor guard?

7 A PROSPECTIVE JUROR: Six years.

8 MR. BOSLER: Do you have friends who knew  
9 Officer Sullivan?

10 A PROSPECTIVE JUROR: Acquaintances, other fire  
11 fighters that knew him from one of the other fire  
12 departments.

13 MR. BOSLER: Is this something you guys kind of  
14 discussed on your way to the funeral as the honor guard?

15 A PROSPECTIVE JUROR: No. We try to -- I think  
16 there was some fire fighters that went on that particular  
17 call that day, but we have a duty not to relinquish  
18 information about the call and try to keep that code of  
19 silence amongst ourselves.

20 MR. BOSLER: I didn't know that. How do you  
21 feel about, with your relationship with police officers,  
22 because they are kind of involved in your daily work and you  
23 know friends who may have known Mr. Sullivan, how do you  
24 feel about judging a case where his death is the issue and  
25 someone else's life may ultimately be an issue?



1 A PROSPECTIVE JUROR: I feel comfortable with  
2 it.

3 MR. BOSLER: And why is that?

4 A PROSPECTIVE JUROR: You know, just in my  
5 profession, I have to deal with a lot of life and death  
6 situations as it is; and you know, it's just something I'm  
7 trying to do, and I just feel comfortable being put in that  
8 position.

9 MR. BOSLER: So you think you have a little bit  
10 more professional preparation for this type of thing?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Same question to you. In a type  
13 of case, a first degree murder case, where you find that the  
14 killing was done with those four statutory aggravators --  
15 I'll say them again if you need me to, otherwise I'll try to  
16 save some time -- you find those four statutory aggravators,  
17 can you consider -- would there be any information that  
18 would help you -- let me rephrase it some way that is not  
19 going to raise an objection.

20 Would you consider a sentence less than death  
21 even if you found those four aggravators?

22 A PROSPECTIVE JUROR: Yes.

23 MR. BOSLER: Would things like the mental state  
24 of the person who did the murder, would that be important?

25 A PROSPECTIVE JUROR: Yes, I think it's

1 critical information. I'd have to hear it, but again, I  
2 deal with people that are mentally ill quite a bit.

3 MR. BOSLER: Drug and alcohol usage?

4 A PROSPECTIVE JUROR: Everything you can  
5 imagine.

6 MR. BOSLER: So pretty much everything could be  
7 considered?

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: But you are willing to sort that  
10 stuff out to decide what role it plays?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Let's talk about your special  
13 experiences as a fire fighter. I guess you have occasion to  
14 deal with intoxicated people?

15 A PROSPECTIVE JUROR: Yes. Like I said,  
16 everything, intoxicated people, people taking drugs, violent  
17 crimes. 90 percent of our calls are medical emergencies.

18 MR. BOSLER: Does the fire department -- I  
19 imagine they give you some special training in like dealing  
20 with people who are on drugs or alcohol and learning how to  
21 recognize those symptoms?

22 A PROSPECTIVE JUROR: Yes.

23 MR. BOSLER: Do you think that kind of gives  
24 you a special life experience to draw from in this type of  
25 case?

1 A PROSPECTIVE JUROR: Yes.

2 MR. BOSLER: If I could, Shaylene, getting back  
3 to you, you have heard some of the earlier questions; right?  
4 I know that you especially have familial legal  
5 relationships, people involved in law enforcement. And you  
6 earlier expressed that I think the word was, I used it,  
7 pushed you towards death and kind of figured in your  
8 analysis.

9 In a case - and this is a first degree murder  
10 case - in a case where you found that it is not only first  
11 degree murder but it is the murder of a police officer, do  
12 you think the appropriate penalty is death?

13 A PROSPECTIVE JUROR: Yes.

14 MR. BOSLER: And why, if you could?

15 A PROSPECTIVE JUROR: Consequences for your  
16 actions.

17 MR. BOSLER: Is it an eye for an eye or just  
18 this is the first degree murder and police officer idea?

19 A PROSPECTIVE JUROR: All of it.

20 MR. BOSLER: And how long have you felt this  
21 way?

22 A PROSPECTIVE JUROR: Since I was an adult,  
23 since I was old enough to figure things out.

24 MR. BOSLER: And you are still pretty young, to  
25 me. If you tell me how long that's been.

1 A PROSPECTIVE JUROR: I don't know. Fifteen  
2 years, I guess.

3 MR. BOSLER: Fifteen years? Is this something  
4 you have given a certain amount of thought?

5 A PROSPECTIVE JUROR: Yeah.

6 MR. BOSLER: And a reasoned moral decision you  
7 have made, this is the way you look at life?

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: That being said, can you think of  
10 anything that I could tell you or that could be presented in  
11 a first degree murder of a police officer that would  
12 convince you to impose a sentence of less than death?

13 A PROSPECTIVE JUROR: No.

14 MR. BOSLER: This is also taking into  
15 consideration the Judge told you several times she is going  
16 to instruct you how you are supposed to analyze things, how  
17 you are supposed to weigh aggravators, mitigators, how you  
18 are supposed to debate a little, all those things being  
19 said, this is how you feel about first degree murder, police  
20 officer involved? There is no right or wrong.

21 A PROSPECTIVE JUROR: Yes.

22 MR. BOSLER: I appreciate your honesty. I make  
23 a challenge, Your Honor.

24 MR. STANTON: Counsel, can we have a side bar  
25 so I can make a speaking objection?

1 THE COURT: Okay.

2 (Whereupon, a bench conference was held among  
3 Court and counsel as follows:)

4 MR. STANTON: The State would traverse  
5 Mr. Bosler's motion for the following reasons. His question  
6 and the answer of the juror doesn't make her excludable.  
7 The basis of the juror finding that the death of a police  
8 officer in the performance of a duty is a statutory  
9 aggravator. She could find death penalty would be the  
10 verdict that she gives in this case is not in violation of  
11 the law and certainly doesn't make her excludable under any  
12 Supreme Court decision that I'm aware of.

13 MR. BOSLER: What she said, Your Honor, is  
14 under the circumstances she's not going to consider  
15 mitigation.

16 THE COURT: You didn't actually ask her if she  
17 would consider mitigation or if she would even look at  
18 mitigating factors and consider them. You asked her if she  
19 could think of anything that would change her mind. I think  
20 there is a difference. The jurors aren't responsible for  
21 putting on your client's case in voir dire.

22 MR. BOSLER: So can I now ask her about  
23 mitigation?

24 THE COURT: Well, there's never been a question  
25 that you couldn't ask. Would you consider? As Mr. Stanton

1 told you, and I agreed, you can go through mitigation that  
2 is allowed by statute. You can say, would you consider,  
3 would you look at this? It doesn't matter what the result  
4 is.

5 MR. STANTON: If it's okay with the Court, if  
6 the questioning goes where I think it's going, I'm going to  
7 ask to ask specific questions of this juror and I'll --

8 THE COURT: I'll let you do that right now  
9 because he made the motion and you are traversing it.

10 (Whereupon, the following proceedings were held  
11 in open court, in the presence of the jury  
12 panel.)

13 THE COURT: Mr. Stanton, you may inquire.

14 MR. STANTON: Thank you, Your Honor.

15 Miss Grate, counsel's question about an  
16 aggravator about killing a police officer, you all know now  
17 as a matter of law in the State of Nevada that is an  
18 aggravating circumstance that permits the death penalty as  
19 being an option. The question ultimately that I want to  
20 question you about is whether or not the fact this case  
21 involves the murder of Sergeant Sullivan, whether that would  
22 close your mind as a juror in this case when you deliberate  
23 the penalty phase of this trial, would it close your mind to  
24 any other options or evidence pursuant to the Court's  
25 instruction that you follow?

1 A PROSPECTIVE JUROR: Yeah, yeah. I mean, yes.

2 MR. STANTON: Yes, it would close your mind?

3 A PROSPECTIVE JUROR: Yeah.

4 MR. STANTON: Let me ask you this. The process  
5 in a penalty phase is that the State, like in the guilt  
6 phase, bears the burden of proof; and in a capital murder  
7 case, it is a proof beyond a reasonable doubt that  
8 aggravating circumstances, four in this particular case. If  
9 the jury doesn't find beyond a reasonable doubt the State  
10 has proven any of the aggravators, death is not an option.

11 So the first decision is for the jury to  
12 determine whether or not aggravating circumstances have been  
13 proven beyond a reasonable doubt, and if it has, then they  
14 can go to the next stage in the analysis, and that is to  
15 determine whether or not any mitigating evidence exists.  
16 Mr. Bosler has mentioned some of those.

17 After that, the jury must determine whether or  
18 not the aggravating factors outweigh the mitigating factors,  
19 if any, in this case. Only if the aggravating factors  
20 outweigh the mitigating is death an option.

21 The next stage is considering all that, you are  
22 now at the point, assuming this hypothetical, the jury has  
23 found aggravating circumstances, found them beyond a  
24 reasonable doubt and they outweigh the mitigating, the next  
25 analysis comes, and that is the jury can still decide any of

1 the punishments, four in this case, that are available.  
2 Death is never required to be found.

3 So the question now, Miss Grate, is knowing a  
4 little bit more how this process goes -- Mr. Bosler asked  
5 you the question about death of a police officer. Is it  
6 your opinion of your personality and character - and I  
7 understand that you have relations with law enforcement -  
8 that if you were a juror back in there, you'd say, I'm  
9 sorry, he killed a police officer, that's the end of the  
10 hunt and in my mind there is only one punishment and that is  
11 the death penalty, because, and for no other reason, he  
12 killed a police officer? Is that how you would deliberate?

13 A PROSPECTIVE JUROR: Well, if all the  
14 aggravating circumstances were more?

15 MR. STANTON: No, I want to focus strictly now  
16 on your view about law enforcement and the fact that a  
17 police officer was killed. Are you the type of person that,  
18 looking inside yourself, that if you were back in that jury  
19 room deliberating the punishment in this case, that you  
20 would sit there and say, Look, he killed a police officer,  
21 that is the end of the hunt, I'm not going to listen to any  
22 other evidence, I'm not going to listen to the instructions  
23 of law, that's it for me?

24 A PROSPECTIVE JUROR: Honestly, I have to say  
25 yeah, because of how I feel.



1 MR. STANTON: You would not consider or keep an  
2 open mind regarding other evidence, and more importantly,  
3 the instructions of law?

4 A PROSPECTIVE JUROR: Well, yeah, I would keep  
5 an open mind, the evidence and the instructions of law, but  
6 that's my nature to go towards the death penalty. That's  
7 just my --

8 MR. STANTON: I understand that. The one thing  
9 that counsel, myself and Mr. Bosler cannot do is try and get  
10 a commitment from you right now as to what you are going to  
11 do in this case. The question is: Can you keep an open  
12 mind?

13 A PROSPECTIVE JUROR: Yes.

14 MR. STANTON: Whether the fact that you may be  
15 leaning towards a particular punishment one way or another,  
16 the death penalty or life. Obviously, if the only  
17 aggravator was killing a police officer, that could be a  
18 death penalty case.

19 So in this case it's not whether it leans you  
20 towards it, but the more -- the crucial inquiry is whether  
21 or not you will shut your mind out to consider other  
22 evidence, and more importantly, whether or not you would  
23 shut your mind to the instructions of law, that is that  
24 requires you to consider other evidence.

25 A PROSPECTIVE JUROR: No, I wouldn't shut my

1 mind to the law, and I would definitely keep an open mind to  
2 the evidence.

3 MR. STANTON: Thank you. For those reasons, I  
4 would traverse Mr. Bosler's motion.

5 THE COURT: You may continue your inquiry. At  
6 this time, your motion is denied.

7 MR. BOSLER: Miss Grate, if you could, killing  
8 a police officer, what -- when would you think that the  
9 death penalty was inappropriate for killing a police  
10 officer?

11 A PROSPECTIVE JUROR: Was not appropriate?

12 MR. BOSLER: Yes.

13 A PROSPECTIVE JUROR: Never. I mean, that's of  
14 anyone really, not just a police officer. Of course, I  
15 don't have all the facts yet, you know.

16 MR. BOSLER: I appreciate you saying that you  
17 want to reserve your decision until you get those facts.  
18 But in a certain way, we need to have a little information  
19 before that happens. If I'm hearing you correctly, I  
20 thought that you had said that it's killing a police  
21 officer, for you it is a death penalty case.

22 A PROSPECTIVE JUROR: In this case.

23 MR. BOSLER: In this case? Why do you say  
24 that?

25 A PROSPECTIVE JUROR: Just from, like I said,

1 the limited information that I have. What he said about  
2 keeping your open mind, you know. Like I said, I don't have  
3 the big picture yet. But from what I know right at this  
4 moment, that's where I stand.

5 MR. BOSLER: All right. Fair enough. And  
6 maybe I'll get a chance to ask you about what you know in a  
7 little while.

8 It kind of brings me back to ground one. You  
9 have killing of a police officer, this case. Let's assume a  
10 hypothetical case.

11 A person kills a police officer. Later it is  
12 shown in this hypothetical case that the murder was  
13 committed in the course of a robbery, taking of property,  
14 and the murder was committed because of the murderer's  
15 perceived, the way he perceived the victim because of his  
16 race or national origin. We have another factor in this  
17 hypothetical case that the body of the deceased is damaged  
18 to the extent that it was torture or mutilation.

19 Those circumstances, is there a situation where  
20 you would consider a penalty of less than death?

21 A PROSPECTIVE JUROR: I'd have to say no.

22 MR. BOSLER: All right. And I know that you  
23 are trying to be open-minded as you sit here. You are  
24 trying to be fair. You are trying to be unbiased.

25 Knowing that those things are supposed to

1 happen, you are supposed to be open-minded, the Court is  
2 going to instruct you, do you honestly feel that you would  
3 actually consider a penalty of less than death under those  
4 circumstances?

5 A PROSPECTIVE JUROR: Under those, what you  
6 just gave me right now?

7 MR. BOSLER: Those four circumstances.

8 A PROSPECTIVE JUROR: No, I could not.

9 MR. BOSLER: Let me go to the next step. Is  
10 there information I could give you if you found this first  
11 degree murder, those four circumstances, is there  
12 information I could give you that would make you think,  
13 well, hold on, even though I find these four aggravating  
14 circumstances, there is something that lessens this offense  
15 and I can consider a different penalty?

16 A PROSPECTIVE JUROR: I don't know what that  
17 would be.

18 MR. BOSLER: Something like if there was a  
19 mental defect or mental illness.

20 MR. STANTON: Your Honor, I object for the  
21 reasons stated at side bar.

22 THE COURT: Sustained.

23 MR. BOSLER: If there was a statutory mitigator  
24 that said you can consider lack of criminal history of a  
25 person, in determining a punishment, is that something you'd

1 consider in this fact pattern with these four aggravators?

2 A PROSPECTIVE JUROR: But they still committed  
3 the murder.

4 MR. BOSLER: In this situation, yes.

5 A PROSPECTIVE JUROR: It still happened.

6 MR. BOSLER: In this situation, yes.

7 MR. STANTON: Your Honor, I object to the form  
8 of the question. Same reasons stated at side bar.

9 THE COURT: We use certain words differently  
10 than what people may put the common meaning to. So I don't  
11 know what the question is. The way the question was formed  
12 from a legal sense, we are asking if you will consider, look  
13 at, think about, this mitigator.

14 If you look at it as a common layperson might  
15 look at this question, the form of it seems to be implying  
16 what will you do, what will your decision be.

17 Mr. Bosler may not ask you what your decision  
18 will be. You may not make a decision. I tell you at every  
19 break, you may not form or express a decision, an ultimate  
20 opinion as to the decision that will be reached.

21 But his question is appropriate if it's  
22 understood that he's asking you: Will you look at this,  
23 will you consider it? Not what your decision will be, but  
24 will you look at it?

25 A PROSPECTIVE JUROR: Yes.

1 THE COURT: So if that's the way and meaning of  
2 the question, I will allow the juror to answer.

3 MR. BOSLER: Objection overruled?

4 THE COURT: It's sustained sort of and  
5 overruled sort of.

6 MR. BOSLER: Thank you, Your Honor.

7 THE COURT: You are welcome.

8 Did you understand the question?

9 A PROSPECTIVE JUROR: Yes, and yes, I would  
10 look at the information. It's not like I would close my  
11 mind and not look at anything. Obviously I need to make an  
12 informed decision when I do make a decision.

13 MR. BOSLER: Would you consider mental illness?  
14 I got to that question because of the objection.

15 A PROSPECTIVE JUROR: You said, would I look at  
16 it?

17 MR. BOSLER: Consider it, look at it.

18 A PROSPECTIVE JUROR: Yes.

19 MR. BOSLER: Would you consider whether -- what  
20 other factors? I can probably list 50 things that I would  
21 offer you. What other things would you consider?

22 MR. STANTON: Objection, improper question.

23 THE COURT: Sustained. You can ask her  
24 specific things you want to find out if she will look at.  
25 You can't inquire of the jury to come up with their own

1 ideas.

2 MR. BOSLER: Will the Court allow me then to  
3 pose things that would fall into nonstatutory mitigators?

4 THE COURT: If you have got something you think  
5 you want the jury to think about.

6 MR. BOSLER: I'll lead a little bit more about  
7 the law.

8 We have this statute, this law that says these  
9 things are aggravating circumstances. If you find first  
10 degree murder, you find one or more of these aggravating  
11 circumstances, it can be a death penalty case.

12 Same book, couple pages later, says these  
13 things are statutory mitigators. If you find, the jury  
14 would find these things, it is a lesser burden of proof,  
15 these things could be considered as reasons to impose a  
16 penalty less than death. They are mitigators.

17 Also on that page, the very bottom, there is a  
18 number that says any other factor the jury may consider. So  
19 the law allows you to look at anything, in the whole world,  
20 that you think is something about Siaso Vanisi, something  
21 about his childhood, his life, anything like that, that's  
22 something you can consider.

23 A PROSPECTIVE JUROR: Yes.

24 MR. BOSLER: So you understand now this  
25 weighing stuff. Something like whether Mr. Vanisi was or

1 what this person, hypothetical person, was strongly involved  
2 in the church. Is that something you would consider?

3 MR. STANTON: Objection. The proper question  
4 is whether or not they would consider other mitigating  
5 evidence, not getting the juror to commit what is a  
6 mitigating evidence. That is improper.

7 THE COURT: That's what we have said at all the  
8 side bars, Mr. Bosler. She said already she'll consider  
9 several mitigating --

10 MR. BOSLER: Statutory mitigators.

11 THE COURT: Yes. So I don't understand where  
12 you want to go here.

13 MR. BOSLER: I don't want to argue with the  
14 Court. Can we approach?

15 THE COURT: If you are going to repeat what you  
16 already told me, I will sustain the objection. If you have  
17 something new, we will approach.

18 MR. BOSLER: I was going to ask for guidance  
19 from the Court.

20 THE COURT: Approach.

21 (Whereupon, a bench conference was held among  
22 Court and counsel as follows:)

23 MR. BOSLER: As I understand it, I can't ask a  
24 vague question about, would you consider other things as  
25 mitigation, nonstatutory mitigators, and I'm not allowed to



1 pose to the juror things that I would believe would be  
2 nonstatutory mitigators. And I'm just at a loss if I can't  
3 pose the question: What would you consider, what things are  
4 important to you that aren't statutory mitigators? and I  
5 can't create them myself.

6 THE COURT: Mr. Bosler, you lost me.

7 MR. STANTON: I'd just like to say, Mr. Bosler,  
8 did you attend the National Judicial College? I think  
9 before we started this trial, you indicated that you  
10 attended the National Judicial College seminar on the death  
11 penalty; correct?

12 MR. BOSLER: Yes. Is this going to be an  
13 insult?

14 MR. GREGORY: Is this going to get ugly here?  
15 Quit cranking it up, David. Let me --

16 MR. STANTON: We are, because I'm getting  
17 pissed off because of him trying to indoctrinate the jury in  
18 this case.

19 You know, the law is clear. You cannot get  
20 jurors to commit what is mitigating evidence. So your  
21 question was, the last question you posed: What in your  
22 mind would be mitigating evidence? And then you say: Would  
23 going to church be mitigating evidence? You can't do that.

24 MR. BOSLER: If I can't ask them to speculate  
25 about what they would consider as mitigating evidence and

1 then I'm also not allowed to ask them about things they may  
2 consider as nonstatutory mitigators, what can I ask?

3 MR. STANTON: The question you can ask, just  
4 like the State can ask, is: Would you consider mitigating  
5 evidence that's presented?

6 You have already told them that there is a  
7 statute that provides anything else can be considered  
8 mitigating evidence. Anything under the sun. So you ask  
9 the jury: Would that, as an instruction of law, would you  
10 consider all types of evidence in mitigation?

11 MR. BOSLER: This is where it gets more detail  
12 oriented. If I offer a nonstatutory mitigator as my  
13 client's --

14 THE COURT: The problem here is you want to  
15 find out from each of the jurors whether or not they will  
16 consider the mitigators that you want to put on. And that's  
17 where I think you are going, and you can't do that.

18 MR. BOSLER: It is a little bit more refined  
19 than that, Your Honor. I think if I was to in my case offer  
20 a nonstatutory mitigator and if a juror said, No, I'm not  
21 going to consider that as a mitigator, it is not important  
22 to me, then that would provide a basis for Mr. Vanisi to at  
23 least more intelligently exercise his peremptory challenges.  
24 I'm not just talking about *Witherspoon*. These are facts he  
25 may want to know to use his peremptory challenges. Maybe

1 that is where we're kind of not crossing lines here.

2 MR. STANTON: But the law doesn't permit you in  
3 exercising your peremptory challenge to inquire into  
4 anything that you may want. You may want to ask someone his  
5 political philosophy. That doesn't mean that gives you a  
6 legal right in voir dire to ask some questions about what  
7 their political philosophy to render your peremptory as more  
8 intelligent.

9 The law permits certain questions to be asked  
10 relative to the death penalty, and committing jurors to what  
11 is mitigating evidence is not one of them.

12 THE COURT: I think there are other ways to  
13 find out if people consider church important. But church is  
14 a very ticklish question, and religion is not a proper area  
15 unless it's -- it's very unusual that we go into people's  
16 religious preferences or anything like that.

17 MR. BOSLER: I'm not asking them their  
18 religious preferences.

19 THE COURT: I understand. But I think that the  
20 form of your question and it's couched in terms of  
21 mitigation is asking for a predisposition from the jury as  
22 to how they will rule and how they will vote in a verdict,  
23 and I'm not going to allow that. The objection is going to  
24 be sustained.

25 MR. GREGORY: I want to understand. So the

1 Court has indicated that specific aggravators can be  
2 mentioned to the jury, but specific mitigators, even couched  
3 in the terms of hypothetical, cannot.

4 THE COURT: I said that you could ask the  
5 statutory mitigators. I already said that. I have allowed  
6 you to ask the statutory mitigators. I will also allow you  
7 to ask if they will consider any other mitigation evidence  
8 that you present.

9 I will not allow you to ask the jury specific  
10 questions as to things you want them to consider.

11 MR. BOSLER: Note my objection for the record.

12 MR. GREGORY: Thank you, Judge.

13 (Whereupon, the following proceedings were held  
14 in open court, in the presence of the jury  
15 panel.)

16 MR. BOSLER: Difficult process even for the  
17 lawyers.

18 Miss Grate, in your questionnaire, you wrote  
19 that you can't be fair, and I think that is the  
20 questionnaire you got after you were told what case you were  
21 going to be asked to be a juror on. You wrote that you  
22 couldn't be fair. Do you remember saying that?

23 A PROSPECTIVE JUROR: Not really but okay. I  
24 believe that I said it. Okay?

25 MR. BOSLER: What makes you think that you

1 could be fair now? What in your mind has changed? Because  
2 I know yesterday you said, Well, the more I sit here, the  
3 less biased I become or something.

4 A PROSPECTIVE JUROR: The more information I  
5 receive. I mean, the information I have is from what I have  
6 seen on TV and what was in the questionnaire. So from that  
7 information, obviously I'm going to have an opinion based on  
8 that information.

9 MR. BOSLER: And why do you think now that a  
10 week later you're more fair?

11 A PROSPECTIVE JUROR: I don't know that I am.  
12 I know that there's more information being revealed that I  
13 didn't know. And again, like I said, I can keep an open  
14 mind as to information. When someone tells me something, I  
15 can logically put it together and, you know, believe that  
16 information.

17 MR. BOSLER: I don't mean to imply that you are  
18 not going to be able to do that. If I could, I'll move on.

19 Miss Minassian, is that the correct  
20 pronunciation?

21 A PROSPECTIVE JUROR: Yes, it is.

22 MR. BOSLER: You said in your questionnaire  
23 that you strongly favor the death penalty.

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: And why is that?

1 A PROSPECTIVE JUROR: Well, in a rare instance.  
2 That is probably the hardest question to answer, to be  
3 honest with you. But I think in rare instances, yes.

4 MR. BOSLER: I couldn't hear.

5 A PROSPECTIVE JUROR: In a rare instance, yes.  
6 No remorse, something willfully done, absolutely.

7 MR. BOSLER: Remorse, and I'm sorry?

8 A PROSPECTIVE JUROR: Someone is found guilty  
9 of first degree murder, premeditated, preplanned, yes, I  
10 believe in it.

11 MR. BOSLER: You believe in the death penalty?

12 A PROSPECTIVE JUROR: Yes.

13 -- MR. BOSLER: Miss Minassian, you know we're  
14 talking about first degree murder.

15 A PROSPECTIVE JUROR: Correct.

16 MR. BOSLER: So we're not talking about  
17 self-defense, manslaughter, anything like that, drunken  
18 driving accident, nothing like that. Are you telling me --  
19 if this is your opinion, that's fine -- are you telling me  
20 that it's first degree murder, for you, you think the death  
21 penalty is the appropriate penalty?

22 A PROSPECTIVE JUROR: Well, I'd have to  
23 consider all the evidence. I feel I can be open-minded to  
24 evidence presented and follow the Court's instruction and  
25 law.

1 MR. BOSLER: Those are the magic words. What  
2 about a first degree murder where it's not only first degree  
3 murder, not only premeditated murder, it is the murder  
4 involving the killing of a police officer?

5 A PROSPECTIVE JUROR: I still feel the same  
6 way. I could weigh the evidence, follow the Court's  
7 instruction and try to consider those factors.

8 MR. BOSLER: Unfortunately, it is three steps  
9 further, the killing of a police officer, commission of a  
10 robbery, due to perceived nationality, a mutilation of the  
11 dead body. Does that change the way you feel about your  
12 view of first degree murder and penalty?

13 A PROSPECTIVE JUROR: No.

14 MR. BOSLER: Would you be willing to consider  
15 in a hypothetical situation - I'm not asking you to commit -  
16 in a hypothetical situation, will you consider evidence  
17 regarding the mental health or whether the person involved  
18 was suffering from mental illness?

19 A PROSPECTIVE JUROR: Yes, I could consider  
20 that.

21 MR. BOSLER: What about something like lack of  
22 a significant criminal history?

23 A PROSPECTIVE JUROR: I would consider that  
24 also.

25 MR. BOSLER: Something like the age of the

1 defendant, youthful person as opposed to an older person?

2 A PROSPECTIVE JUROR: I would consider that  
3 also.

4 MR. BOSLER: Use of alcohol, drugs, something  
5 you would be willing to consider?

6 A PROSPECTIVE JUROR: Yes, I'm willing to  
7 consider that.

8 MR. BOSLER: So you are at least willing to  
9 listen to other evidence?

10 A PROSPECTIVE JUROR: Absolutely.

11 MR. BOSLER: Before you decide what punishment  
12 is appropriate?

13 A PROSPECTIVE JUROR: Yes.

14 MR. BOSLER: The concept that even if you found  
15 all the aggravators and no mitigators, you would still have  
16 an opportunity to vote for a penalty of less than death, do  
17 you find that concept troubling?

18 A PROSPECTIVE JUROR: No.

19 MR. BOSLER: Why is that?

20 A PROSPECTIVE JUROR: Well, I would, like I  
21 say, I'd like to consider all the evidence and the way it is  
22 presented, following the Court's instruction, I feel I'm  
23 able to do that. Be open-minded and try to do the right  
24 thing.

25 MR. BOSLER: I appreciate you saying that.



1 Thank you for your candor.

2 Mr. Grider, you strongly favor the death  
3 penalty?

4 A PROSPECTIVE JUROR: If the facts show that,  
5 yes.

6 MR. BOSLER: You wrote some other information  
7 on your questionnaire, and I didn't see you raise your hand  
8 during a lot of the things that went on in court. You wrote  
9 on your questionnaire that you knew Officer Sullivan?

10 A PROSPECTIVE JUROR: I had met him on a few  
11 occasions, yes.

12 MR. BOSLER: If you could, what type of  
13 occasions were those?

14 A PROSPECTIVE JUROR: We do a lot of flooring  
15 work up at the university, did a lot of night work so we  
16 don't disturb classes during the day, and he comes around  
17 and checks on the buildings to make sure everything is okay.

18 MR. BOSLER: Have you actually had words with  
19 Mr. Sullivan?

20 A PROSPECTIVE JUROR: Yes.

21 MR. BOSLER: Is there a reason why you didn't  
22 raise your hand to let the judge know that you actually knew  
23 one of the parties involved?

24 A PROSPECTIVE JUROR: That question got  
25 bypassed past me.

1 MR. BOSLER: Well, having been involved at the  
2 university and having at least some words with Mr. Sullivan,  
3 how do you feel about sitting on a case where his death is  
4 an issue and someone's life may be an issue, too, someone  
5 else's life?

6 A PROSPECTIVE JUROR: I just -- I knew him as a  
7 person. It is not going to affect my decision on whether he  
8 was an officer or somebody else. I don't know a lot about  
9 him. I just talked to him job wise. I don't know his  
10 personal demeanor.

11 MR. BOSLER: All right. How long have you been  
12 strongly in favor of the death penalty?

13 A PROSPECTIVE JUROR: As long as I can  
14 remember. If the facts show that it's that way, I go that  
15 way. But I could consider a lesser charge also.

16 MR. BOSLER: I appreciate your honesty,  
17 Mr. Grider.

18 So what you are telling me is that even though  
19 you know Mr. Sullivan, and even in a case involving his  
20 death, you feel you could be fair?

21 A PROSPECTIVE JUROR: Yeah.

22 MR. BOSLER: You also wrote something else on  
23 your questionnaire that I have a concern about. You came  
24 out and said I'm prejudiced against minorities.

25 A PROSPECTIVE JUROR: Yes, I am.

1 MR. BOSLER: Do you remember saying that?

2 A PROSPECTIVE JUROR: Yes, I do.

3 MR. BOSLER: Anything that you have changed  
4 your mind about that statement?

5 A PROSPECTIVE JUROR: If you remember my  
6 explanation on that, it's because I feel like I'm a minority  
7 anymore because everything is favored towards minorities.

8 MR. BOSLER: And you had a certain physical  
9 altercation with a minor.

10 A PROSPECTIVE JUROR: Yes, I did.

11 MR. BOSLER: So you are saying that you still  
12 feel this prejudice in your mind against minorities?

13 A PROSPECTIVE JUROR: Yes, I do.

14 MR. BOSLER: Is there any particular minority  
15 or all minorities?

16 A PROSPECTIVE JUROR: Any particular. All of  
17 them.

18 MR. BOSLER: All of them. All minorities. So  
19 if I told you that Siaosi Vanisi is a minority, that he is a  
20 Tongan, very small minority, even in our own community, I  
21 guess it necessarily follows that you would be prejudiced.

22 A PROSPECTIVE JUROR: Not towards my decision  
23 based on the facts of the case.

24 MR. BOSLER: Can you explain that to me? You  
25 are prejudiced towards all minorities, why is your prejudice

1 less if he is charged with killing a white person?

2 A PROSPECTIVE JUROR: I'm prejudiced about how  
3 they are treated as to us, how they get all the breaks and  
4 all that. I mean, there's all black colonies, there is no  
5 white colonies.

6 That is how I'm prejudiced. I'm not prejudiced  
7 against each and every minority as a person.

8 MR. BOSLER: So it is classes you are  
9 prejudiced. What is your familiarity with Tongans?

10 A PROSPECTIVE JUROR: Never had any.

11 MR. BOSLER: Never known anybody like that?  
12 Nothing anything about their social history or cultural  
13 history?

14 A PROSPECTIVE JUROR: (Shakes head negatively.)

15 MR. BOSLER: Ever met any Tongans at the  
16 university?

17 A PROSPECTIVE JUROR: No, I haven't.

18 MR. BOSLER: Does it concern you that based  
19 upon your ideas -- I'm not saying they are wrong, we're all  
20 entitled to our own opinions. That is what the United  
21 States is about.

22 Does it concern you that after you wrote that,  
23 I'm prejudiced against minorities, the defendant being a  
24 minority, that the accused is someone you knew, at least  
25 talked with who was white, you're saying race, does it

1 concern you that all of those things are going to be played  
2 out in the next couple weeks?

3 A PROSPECTIVE JUROR: No, not at all. I would  
4 listen to the facts and make a decision from there.

5 MR. BOSLER: All right. Thank you, Mr. Grider.

6 Miss Bell, if I could, you also wrote in your  
7 questionnaire that you strongly favor the death penalty.

8 A PROSPECTIVE JUROR: Uh-huh.

9 MR. BOSLER: How long have you had that?

10 A PROSPECTIVE JUROR: As long as I can  
11 remember. Don't ask me my age.

12 MR. BOSLER: So safe to say it's more than five  
13 years?

14 A PROSPECTIVE JUROR: Yes, that would be a safe  
15 assumption.

16 MR. BOSLER: Have you discussed this with  
17 members of your family, or with other people?

18 A PROSPECTIVE JUROR: Through the years, yes.

19 MR. BOSLER: Has this always, since you can  
20 remember, this has always been your view towards capital  
21 punishment, you strongly favor it?

22 A PROSPECTIVE JUROR: As long as it's pretty  
23 well cut and dried, there's no questions, there's no gray  
24 area, there is no room for doubt, yes.

25 MR. BOSLER: And if you could explain gray

1 areas. In the law there is gray areas.

2 A PROSPECTIVE JUROR: I'm talking about like if  
3 somebody goes out, buys a gun, walks up, looks at you,  
4 doesn't like you and shoots you, just dead on the spot, and  
5 there's 50 witnesses that watched him do it.

6 MR. BOSLER: So in a case where there's no  
7 factual issues for you, I mean, if it was videotaped and  
8 things like that --

9 A PROSPECTIVE JUROR: I would have to listen to  
10 the evidence and come up with my own.

11 MR. BOSLER: Well, let's get back to your  
12 hypothetical. You said we're talking about death penalty.  
13 You said in a situation where it's cut and dried, black and  
14 white, is that the type of case that you think is  
15 appropriate for the death penalty?

16 A PROSPECTIVE JUROR: Yes.

17 MR. BOSLER: And I don't want to belabor this.  
18 We're talking about first degree murder. That's the first  
19 thing going on. If you found beyond a reasonable doubt that  
20 someone was guilty of a first degree murder, do you think  
21 that that's the type of case the death penalty is warranted?

22 A PROSPECTIVE JUROR: Yes. But that doesn't  
23 mean I'm not open to other ideas or other suggestions.  
24 Until I hear everything that's going on or until I know  
25 everything about the facts, I can't really make an opinion

1 or a statement.

2 MR. BOSLER: And I can't ask you a vague  
3 question. What if it is first degree murder involving again  
4 the death of a police officer?

5 A PROSPECTIVE JUROR: I would feel the same way  
6 if it was involving the death of a police officer or  
7 involving the death of you or involving the death of the  
8 gentleman next to me.

9 MR. BOSLER: And why is that?

10 A PROSPECTIVE JUROR: Because I feel life is  
11 precious, and I think if someone is goes out and  
12 deliberately murders somebody, they deserve the death  
13 penalty.

14 MR. BOSLER: That is what I'm trying to get at.

15 A PROSPECTIVE JUROR: I don't think it has to  
16 do with being a police officer or lawyer or judge or just  
17 grocery store clerk.

18 MR. BOSLER: Attorney?

19 A PROSPECTIVE JUROR: That, too. My boss, a  
20 teacher.

21 MR. BOSLER: I don't mean to make light of  
22 what's going on. I'm kind of at a loss because I hear you  
23 say that it is that intentional, deliberate, premeditated,  
24 you buy a gun, kill somebody type murder, it is a death  
25 penalty case. But then I hear you say, well, I'm not going

1 to stand by that because I want to say I can listen to other  
2 stuff. Do you see?

3 A PROSPECTIVE JUROR: No. If it's a first  
4 degree murder where the person deliberately goes out and  
5 does it, I believe it is a death penalty case. I'm not  
6 saying that I definitely would vote for the death penalty.  
7 I'm saying I would listen to the other options, weigh them  
8 against other circumstances that may or may not come out.

9 MR. BOSLER: Well, let's talk about a  
10 hypothetical situation. Hopefully the jurors can understand  
11 why I have to do this one person at a time.

12 Let's suppose this hypothetical situation, you  
13 have this premeditated, deliberate, willful, unlawful, first  
14 degree murder. You also have it is a murder committed upon  
15 a peace officer. You also have the officer was killed in  
16 the commission of a robbery. You also have that the officer  
17 was killed because of the defendant's perception about his  
18 race, origin, nationality. You also have this other thing  
19 about the body of the officer being damaged, mutilated in  
20 the killing. That type of case.

21 Is that not the type of case where you think  
22 that if all those things are happening, then automatically  
23 it is a death penalty case?

24 A PROSPECTIVE JUROR: You have to prove that  
25 all those things are happening. I have to honestly believe



1 that all those things did in fact happen.

2 MR. BOSLER: And I can't ask you to commit, but  
3 only to get your view of this. Putting in your mind those  
4 things are satisfied, they have been proven.

5 A PROSPECTIVE JUROR: Then I would listen to  
6 what the Judge instructed me to do.

7 MR. BOSLER: And follow the instructions?

8 A PROSPECTIVE JUROR: Uh-huh. Absolutely.

9 MR. BOSLER: Is there anything that I could  
10 tell you if you found those things, if I advised you that --  
11 or you have this situation, this murder, all those  
12 circumstances that I spoke of, if you heard evidence  
13 involving a mental illness, mental defect in the accused,  
14 would it be something you'd be willing to consider?

15 A PROSPECTIVE JUROR: Absolutely.

16 MR. BOSLER: Consider a penalty less than  
17 death?

18 A PROSPECTIVE JUROR: Yes.

19 MR. BOSLER: How about something like this  
20 accused has a lack of significant criminal history?

21 A PROSPECTIVE JUROR: It would be something  
22 that I would be open to listen to.

23 MR. BOSLER: Would it sway you one way or  
24 another?

25 A PROSPECTIVE JUROR: I can't say if it would

1       sway me one way or another. I can't answer that.

2               MR. BOSLER: How about use of alcohol or drugs?

3               A PROSPECTIVE JUROR: Once again, I would have  
4 an open mind and listen to what you presented to me and what  
5 she says.

6               MR. BOSLER: Can you think, without telling me,  
7 can you think of other things, other than the things I  
8 mentioned, that in your mind you might consider is a reason  
9 to judge somebody whether they live or die, that might be  
10 considered by you as mitigation, without mentioning  
11 anything?

12              A PROSPECTIVE JUROR: Yeah.

13              MR. BOSLER: That is as far as I can go.

14              A PROSPECTIVE JUROR: You didn't want to hear  
15 that one, did you?

16              MR. BOSLER: If you can think of things, you  
17 can consider them. That is what I want to know.

18              I'll move down.

19              Mr. Sheahan, you said that you knew one of the  
20 officers we saw on the list?

21              A PROSPECTIVE JUROR: No, I knew one of the  
22 witnesses.

23              MR. BOSLER: One of the witnesses. Was it a  
24 witness involved in law enforcement?

25              A PROSPECTIVE JUROR: No.

1 MR. BOSLER: I have taken a lot of notes. I  
2 apologize if I misquoted you. You said you knew some  
3 officers as part of your daily life?

4 A PROSPECTIVE JUROR: I knew some officers,  
5 yes.

6 MR. BOSLER: Still have a relation with them?

7 A PROSPECTIVE JUROR: Yes, I do.

8 MR. BOSLER: Or contact?

9 A PROSPECTIVE JUROR: Yes, I do.

10 MR. BOSLER: How well, how often?

11 A PROSPECTIVE JUROR: Oh, my ex-brother-in-law  
12 once or twice a year. My ex-wife's oldest sister's son I  
13 see at Christmas, Easter, all the holidays.

14 MR. BOSLER: He is a police officer?

15 A PROSPECTIVE JUROR: Yes, Sparks policeman.

16 MR. BOSLER: How long has he been a police  
17 officer?

18 A PROSPECTIVE JUROR: Approximately five years.

19 MR. BOSLER: And do you guys talk about police  
20 officer stuff when he comes to Christmas?

21 A PROSPECTIVE JUROR: A little bit. Not that  
22 much.

23 MR. BOSLER: You wrote in your questionnaire  
24 that you favor the death penalty.

25 A PROSPECTIVE JUROR: Yes, I do.

1 MR. BOSLER: And why?

2 A PROSPECTIVE JUROR: I figure if he committed  
3 the crime, he needs to serve.

4 MR. BOSLER: And I have to ask you to clarify  
5 that a little bit. If you find a person has committed a  
6 first degree murder, are you telling me that you believe  
7 it's an eye-for-an-eye situation?

8 A PROSPECTIVE JUROR: Yes, I do.

9 MR. BOSLER: How long have you felt this way?

10 A PROSPECTIVE JUROR: Probably 20 years, 25  
11 years.

12 MR. BOSLER: Have you discussed this opinion  
13 with other people?

14 A PROSPECTIVE JUROR: Family a little bit. Not  
15 a lot.

16 MR. BOSLER: So you have publicly announced  
17 this is the way you feel?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: I'm going to have you stop there  
20 for the lunch hour.

21 MR. BOSLER: This is good.

22 THE COURT: Ladies and gentlemen of the jury  
23 panel, I'm going to have you come back at 1:00 o'clock, and  
24 we'll continue the voir dire process. We will have to take  
25 roll again when you come back from lunch, so please be sure

1 that you are back here on time. As you remember yesterday,  
2 we could not start without your presence. So we have to  
3 have you here.

4 Remember the admonition that I have given you  
5 at all the breaks. Yes.

6 A PROSPECTIVE JUROR: Can we leave our stuff  
7 here?

8 THE COURT: You may leave everything right  
9 where you have it, if you wish. Okay.

10 I'm going to ask that everyone remember the  
11 admonition, but I am going to ask Miss Grate and Miss  
12 O'Keefe to remain when everyone else leaves.

13 Ladies and gentlemen of the jury panel, during  
14 this recess, remember the admonition. You may not form or  
15 express any opinion about the ultimate outcome of this case.  
16 You may not discuss the case among yourselves or with anyone  
17 else, or any matter having to do with this case.

18 You may not allow anyone to attempt to  
19 influence you with regard to it or speak to you about it.  
20 If anyone so does, you must report it to the bailiff  
21 immediately outside the presence of the other potential  
22 jurors.

23 The audience may go ahead and leave at this  
24 time for the lunch recess.

25 I'm going to ask you to all be seated for a

1 minute.

2 Counsel approach.

3 (Whereupon, a bench conference was held among  
4 Court and counsel as follows:)

5 THE COURT: Mr. Bosler asked my secretary to  
6 give me a note that said he wanted to inquire privately of  
7 Miss Grate and Miss O'Keefe regarding pretrial publicity.

8 MR. BOSLER: Yesterday she said give me the  
9 jurors we thought had that issue before 9:00 o'clock this  
10 morning. So I called.

11 MR. STANTON: Okay.

12 THE COURT: I'm just thinking -- I'm hungry,  
13 too, but we could do it now and get it out of the way while  
14 we get everyone out of here, if that's all right with you.

15 MR. STANTON: Fine with the State.

16 MR. GREGORY: Sounds like they want to eat.

17 MR. BOSLER: I object to that, Your Honor.  
18 That is fine.

19 THE COURT: I mean, I just think -- or you all  
20 can come back. But they would have to stay then even  
21 longer.

22 MR. BOSLER: This is probably the easiest way.

23 THE COURT: Are you going to ask a lot of  
24 questions?

25 MR. BOSLER: I'm going to ask them to tell me

1 what they know. It may take a lot of paper. I don't know.

2 THE COURT: I want to give -- everybody needs a  
3 little break. Let's at this time break and have them come  
4 back a few minutes early.

5 MR. BOSLER: Maybe you can take a longer  
6 afternoon recess and we can do it then.

7 THE COURT: We'll do it that way.

8 (Whereupon, the following proceedings were held  
9 in open court, in the presence of the jury  
panel.)

10 THE COURT: Okay. Miss Grate and Miss O'Keefe,  
11 you get to go to lunch with everyone else. We'll see you  
12 all back at 1:00 o'clock. Wait.

13 A PROSPECTIVE JUROR: I just wondered, I have  
14 to make a plan for tomorrow morning. What time are we  
15 starting tomorrow morning?

16 THE COURT: 10:00 a.m.

17 A PROSPECTIVE JUROR: Thank you.

18 THE COURT: Court is in recess.

19 (Recess taken at 12:00 p.m.)  
20  
21  
22  
23  
24  
25

RENO, NEVADA, TUESDAY, JANUARY SEPTEMBER 21, 1999, 1:12 P.M.

-o0o-

(Whereupon, the following proceedings were held in open court, in the presence of the jury panel.)

THE COURT: The clerk will call the roll of the jurors.

(Whereupon the roll call of the prospective jury was taken.)

THE COURT: Counsel stipulate to proceeding?

MR. STANTON: Yes, Your Honor.

MR. BOSLER: So stipulated, Your Honor.

THE COURT: Mr. Bosler.

MR. BOSLER: Thank you, Your Honor.

Good afternoon, ladies and gentlemen, again. I appreciate your patience. The patience of people out there. I think I left off with Mr. Sheahan.

Mr. Sheahan, you wrote in your questionnaire that you -- there's a question there whether you can be unbiased or impartial, and you said, "I can't be impartial in this case based upon the facts of the case." Do you remember saying that?

A PROSPECTIVE JUROR: I don't remember saying that.

MR. BOSLER: Let me see if I can find the exact



1 words.

2 THE COURT: Are you looking at the transcript?

3 MR. BOSLER: No. It's in his questionnaire. I  
4 have a questionnaire.

5 This question: I truly believe this man is  
6 guilty of a terrible crime for killing a person, and  
7 therefore, you didn't think you could be impartial. Does  
8 that sound familiar ?

9 A PROSPECTIVE JUROR: You're right.

10 MR. BOSLER: Has something changed in your mind  
11 from the time you wrote that questionnaire? Let me stop  
12 there. I guess you were given the questionnaire by the Jury  
13 Commissioner.

14 A PROSPECTIVE JUROR: Right.

15 MR. BOSLER: Did the Jury Commissioner provide  
16 you with a space to fill out the questionnaire or did you  
17 get to bring it home?

18 A PROSPECTIVE JUROR: No, I filled it out  
19 there. I was in a hurry and almost everybody was turning  
20 theirs in. I was trying to rush through.

21 MR. BOSLER: Did you feel like other people  
22 were kind of watching you or wondering what you were going  
23 to say?

24 A PROSPECTIVE JUROR: Sort of, yes.

25 MR. BOSLER: Do you feel like you didn't have

1 any privacy when you wrote that?

2 A PROSPECTIVE JUROR: No, I had privacy.

3 MR. BOSLER: What I'm asking is: How are you  
4 at public speaking?

5 A PROSPECTIVE JUROR: Not very well.

6 MR. BOSLER: It's kind of uncomfortable to  
7 speak in front of a crowd.

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: Many of your fellow jurors  
10 probably feel the same way. You said on you questionnaire  
11 when you had a chance to fill it out, you thought you could  
12 be impartial. I want to ask you if anything has changed. I  
13 want you to know, I'm cognizant you're in front of a group  
14 of strangers, too.

15 Has something changed in your mind that you now  
16 feel you can be impartial in this case?

17 A PROSPECTIVE JUROR: I think if all the facts  
18 are presented in front of me, I could go with that.

19 MR. BOSLER: When you wrote what you wrote on  
20 your questionnaire, did you think that maybe you wouldn't be  
21 presented facts or somehow you'd be kept in the dark?

22 A PROSPECTIVE JUROR: I was sort of confused a  
23 little bit, I think.

24 MR. BOSLER: You also wrote on you  
25 questionnaire that you had an opinion as to the guilt or

1 innocence in this case. Do you recall saying that?

2 A PROSPECTIVE JUROR: Vaguely, yes.

3 MR. BOSLER: Knowing that you once had said you  
4 couldn't be impartial, that you had an opinion as to  
5 Mr. Vanisi's guilt or innocence, you had already formed that  
6 opinion, do you think you're the type of person who could  
7 fairly sit in judgment of another person, not only for guilt  
8 but on the issue of life and death?

9 A PROSPECTIVE JUROR: I think I could,  
10 providing the evidence, everything was put in front of me  
11 that I could see.

12 MR. BOSLER: You're saying that's because  
13 you're going to get to consider the evidence?

14 A PROSPECTIVE JUROR: Right.

15 MR. BOSLER: I'll apologize to the Court. I  
16 don't know exactly where we left off.

17 Did we talk about aggravating circumstances,  
18 Mr. Sheahan?

19 A PROSPECTIVE JUROR: I don't think so.

20 MR. BOSLER: I don't think we did either.

21 Say you were a juror presented with a case, a  
22 first degree murder case, and in that case you were  
23 presented facts about premeditated killing of a person who  
24 happened to be a police officer. And the police officer was  
25 killed in the commission of a robbery, and you later learned

1 that the officer was killed due to his -- due to the  
2 killer's perceived view of him as he belonged to a certain  
3 race group or ethnic group, and that there was a mutilation  
4 or damage to the officer after he had died, that type of  
5 case.

6 As an honest person, you look at a case like  
7 that, do you think you can envision circumstances where you  
8 would impose the penalty of less than death?

9 A PROSPECTIVE JUROR: Yes.

10 MR. BOSLER: Things like whether the defendant  
11 had been suffering from some mental illness at the time,  
12 would that be something you would consider?

13 A PROSPECTIVE JUROR: Very much so.

14 MR. BOSLER: What about alcohol, drug use at  
15 the time?

16 A PROSPECTIVE JUROR: I would look at that.

17 MR. BOSLER: It wouldn't matter whether it was  
18 voluntary drug use, involuntary drug use, is that an issue  
19 for you?

20 A PROSPECTIVE JUROR: It would matter,  
21 definitely.

22 MR. BOSLER: How about if this person who had  
23 done this -- we'll try to speak hypothetically. This person  
24 who had done this thing caused the death of another person.  
25 Would you want to know whether they had any prior criminal

1 history?

2 A PROSPECTIVE JUROR: Definitely.

3 MR. BOSLER: Is that something you would  
4 consider in imposing the penalty?

5 A PROSPECTIVE JUROR: Yes.

6 MR. BOSLER: Would you agree, without  
7 committing yourself, when you sit and judge whether someone  
8 lives or someone dies, are there other factors other than  
9 the ones I've just talked to you about in this decision of  
10 whether someone lives or dies, are you willing to consider  
11 other factors?

12 A PROSPECTIVE JUROR: I'd want to weigh the  
13 factors that you and everybody else presented in front of me  
14 and go from there.

15 MR. BOSLER: I appreciate your honesty.

16 Mr. McMoran, you have some family in law  
17 enforcement.

18 A PROSPECTIVE JUROR: Yes, I do.

19 MR. BOSLER: If you could refresh my  
20 recollection.

21 A PROSPECTIVE JUROR: My brother is a deputy  
22 sheriff back in Colorado. I have two brother-in-laws  
23 correctional officers in California.

24 MR. BOSLER: They know you're sitting on this  
25 case?

1 A PROSPECTIVE JUROR: No.

2 MR. BOSLER: How do you feel knowing that you  
3 have family members involved in law enforcement, sitting on  
4 a case where a law enforcement officer has been allegedly  
5 killed?

6 A PROSPECTIVE JUROR: I don't think it really  
7 has an impact one way or the other.

8 MR. BOSLER: Why is that?

9 A PROSPECTIVE JUROR: I don't know what to tell  
10 you. I just don't.

11 MR. BOSLER: Just in your mind, it's not a  
12 significant issue for you?

13 A PROSPECTIVE JUROR: I don't think it's a  
14 significant issue. I think it's a very serious case that  
15 gives serious thought. I know one of the earlier questions  
16 was: Would you feel you had to justify it and all this sort  
17 of thing. I certainly don't think so.

18 MR. BOSLER: So for you, the fact that it's a  
19 first degree murder is really the primary issue regardless  
20 of who is actually killed -- for you?

21 A PROSPECTIVE JUROR: It's an important case,  
22 yes.

23 MR. BOSLER: I apologize. I don't mean to drag  
24 this on, but I need to ask you some specific questions.  
25 Again, hopefully everybody understands why this is

1 important.

2 A police officer is killed. I'd like to speak  
3 in a hypothetical situation. A police officer is killed.  
4 The same four factors I've explained to Mr. Sheahan exist,  
5 or you're given information about them, and I'll assume you  
6 find that they've existed. What type of penalty do you  
7 think is warranted under those circumstances?

8 A PROSPECTIVE JUROR: From what we said,  
9 there's several different potential penalties that I would  
10 have to weigh. I think the death penalty is obviously one  
11 of them.

12 MR. BOSLER: Obviously it would be something  
13 you would consider, right?

14 A PROSPECTIVE JUROR: Yes.

15 MR. BOSLER: Would you agree in this analysis  
16 that if contrary information that mitigated the events,  
17 nonaggravators, mitigators, if you were given information  
18 about the mental condition of the accused, is that something  
19 you would be willing to consider?

20 A PROSPECTIVE JUROR: It's a very serious  
21 penalty. I would certainly consider that.

22 MR. BOSLER: Based upon the nature of the  
23 penalty, you would consider the mental condition of the  
24 defendant?

25 A PROSPECTIVE JUROR: Yes.

1 MR. BOSLER: Something like his age, would that  
2 be something relevant to your consideration?

3 A PROSPECTIVE JUROR: I don't know. I suppose  
4 it would. I'm not sure how that would fit in, but --

5 MR. BOSLER: No line that you could think,  
6 after 25, before 25, something like that?

7 A PROSPECTIVE JUROR: Never really considered  
8 it.

9 MR. BOSLER: Would you be interested in knowing  
10 about whether the person had a prior criminal history or  
11 even a violent history before the event?

12 A PROSPECTIVE JUROR: I would like to be able  
13 to consider it.

14 MR. BOSLER: That would be something you'd be  
15 interested in knowing and considering?

16 A PROSPECTIVE JUROR: Yes.

17 MR. BOSLER: Drug use, alcohol use?

18 A PROSPECTIVE JUROR: I would consider that.

19 MR. BOSLER: Can you think in your mind as you  
20 sit here today, would there be other factors -- and I can't  
21 mention them -- other factors that when you make this  
22 life-death decision, you'd be willing to consider before you  
23 ultimately said someone should live or someone should die?

24 A PROSPECTIVE JUROR: It's a very severe  
25 penalty and I would consider whatever we had, instructions



1 we were allowed to consider. It's not taken lightly.

2 MR. BOSLER: I didn't mean to interrupt.

3 A PROSPECTIVE JUROR: I don't take it lightly.

4 MR. BOSLER: So you're at least willing to  
5 listen to everything that's presented?

6 A PROSPECTIVE JUROR: Yes.

7 MR. BOSLER: Mr. Ralston, if you could, I know  
8 that you earlier had said that you were involved in a case  
9 where there were gruesome photos given and that had some  
10 impact on you. Do you remember saying that?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Give me a little more idea.

13 A PROSPECTIVE JUROR: It was a child abuse  
14 case. The little boy had died and he was -- they had  
15 pictures of him before, during and after the autopsy. And I  
16 had nightmares about it.

17 MR. BOSLER: Had it been the first time that  
18 you'd been exposed to autopsy, forensic type?

19 A PROSPECTIVE JUROR: No, I also found an  
20 employee that was murdered in Houston, Texas and was a  
21 witness in that trial. But the little boy was the one that  
22 was hard to take.

23 MR. BOSLER: So you had actually been the  
24 person who discovered a dead body in a business?

25 A PROSPECTIVE JUROR: Uh-huh.

1 MR. BOSLER: Knowing what you've heard from the  
2 District Attorney, there is going to be photos. I would be  
3 untruthful to you if I didn't say that they're disturbing,  
4 gruesome type photos. How is that going to affect you when  
5 you sit as a juror knowing that it's going to conjure up  
6 these old memories? Do you feel uncomfortable about that?

7 A PROSPECTIVE JUROR: Yeah, I feel  
8 uncomfortable about it. But I think I'm probably better  
9 prepared for it than some people here.

10 MR. BOSLER: That could be true. How long ago  
11 was this, the child case?

12 A PROSPECTIVE JUROR: It was in '92.

13 MR. BOSLER: Roughly seven years, give or take  
14 a couple months.

15 You also put in your questionnaire that you  
16 consider yourself as favoring the death penalty.

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: Why is that?

19 A PROSPECTIVE JUROR: I believe that if someone  
20 takes another person's life and premeditates doing it, that  
21 that penalty is just.

22 MR. BOSLER: Is the fact that it's premeditated  
23 murder that makes you think about the death penalty?

24 A PROSPECTIVE JUROR: I think that and other  
25 circumstances can heighten that feeling that I have toward

1 it.

2 MR. BOSLER: The presence of aggravators?

3 A PROSPECTIVE JUROR: Yeah.

4 MR. BOSLER: You heard me discuss several times  
5 the type of aggravators that may be considered in this case.  
6 We'll wait and see whether they're proved.

7 In that type of case, you have a premeditated  
8 murder. That's a given. If in this hypothetical case you  
9 have a premeditated murder and you have the four  
10 aggravators -- do you remember the ones I've spoken of  
11 earlier? -- you have the killing of a police officer in the  
12 commission of a robbery, you have the officer supposedly  
13 being picked as a person because of race or national origin,  
14 ethnicity, and you have damage, mutilation of the body.

15 That type of case, that type of first degree  
16 murder case, in your mind is there a situation where you  
17 would consider a penalty of less than death?

18 A PROSPECTIVE JUROR: If I found that all of  
19 those or most of those were -- if I felt that they were  
20 true, I would have a hard time thinking of anything that  
21 would lessen my feeling about the death penalty.

22 MR. BOSLER: I appreciate your sharing that.

23 There may be other people that feel the same  
24 way.

25 If you were presented with those facts, is

1       there facts that you would consider as a reason to impose a  
2       penalty of less than death? Can you think in your mind --  
3       even though this crime has happened and these factors are  
4       there, either all of them or a majority of them, is there  
5       other things you would consider that would bring you away  
6       from that decision that, no, this other person deserves to  
7       die also?

8                   A PROSPECTIVE JUROR: Could you go through that  
9       again?

10                  MR. BOSLER: I can't repeat it verbatim, I'm  
11       sure.

12                  The situation where you find the four factors  
13       I've just said, in your mind, as you sit there, thinking of  
14       a crime, and you have to put yourself in the hypothetical  
15       situation. I'm not going to ask you to commit this -- in  
16       this hypothetical situation where you've found these four  
17       factors and you're sitting as a juror in a first degree  
18       murder case, can you think -- are there other things you  
19       would want to know that would take you away from that  
20       decision to impose death, or for you is it just if all those  
21       factors are there then, unfortunately, the sentence is  
22       death?

23                  A PROSPECTIVE JUROR: So you're saying they're  
24       not there and I have to find them or --

25                  MR. BOSLER: No. Could there be? Could there

1 be factors that would lead you away from this thought that  
2 deserves death?

3 MR. STANTON: I'm going to object. May counsel  
4 approach?

5 THE COURT: Yes.

6 (A bench conference was held among Court and  
7 counsel as follows:)

8 MR. STANTON: Your Honor, my objection here is  
9 the authority, the *Morgan* case that counsel relies on. My  
10 concern is that Mr. Bosler once again is asking improper  
11 question of this and several jurors. I'm now objecting in  
12 addition to an improper question of subject matter pursuant  
13 to his own authority, *Morgan v. Illinois*. I'm also  
14 objecting now for tactical reasons because of the State's  
15 continual necessity to object during his voir dire process.

16 For the record, when I stand up and objected  
17 this morning, I heard audible responses from prospective  
18 panel members in the back when I object. Tactically, I  
19 think the State's now in a position where we're constantly  
20 having to do that.

21 I don't know if Mr. Bosler is attempting and  
22 revisiting these same areas again for that reason or not.  
23 But I want to impose that as an objection as well. *Morgan*  
24 *v. Illinois* stands for the proposition that to exercise  
25 challenges for cause, not to intelligently exercise  
peremptory challenges, counsel may inquire as to whether

1 they would consider mitigating evidence.

2 The State has permitted them to go further than  
3 that to address in a hypothetical factor the four  
4 aggravators here, and now he's asking them not the operative  
5 question that I think *Morgan* allows and that is: After  
6 you've weighed aggravating versus mitigating, would you  
7 still consider other evidence? That's what they're  
8 permitted to do, not go into specifics that Mr. Bosler is  
9 telling.

10 MR. BOSLER: Just for clarification, are you  
11 saying I can't ask about, ask the jurors about specific  
12 mitigators?

13 MR. STANTON: Yes. You can't ask about what --  
14 the State's objection is that I do not believe that the law  
15 permits defense counsel to inquire into what is specific  
16 mitigation.

17 The presentation at the Judicial College  
18 indicated that in a relationship to mitigating evidence as  
19 jury instructions, it's the what-how test. You cannot  
20 instruct a jury about what mitigation is. You can instruct  
21 a jury how to consider mitigation evidence. If that's the  
22 rule regarding the law through jury instructions, it has to  
23 be the rule of law during voir dire.

24 THE COURT: Okay. So is it your position, now,  
25 Mr. Stanton, that he shouldn't even be asking questions

1 regarding the statutory indicated mitigators?

2 MR. STANTON: For the purposes of what the  
3 State has already permitted, the State's not making the  
4 objection now. It is absolutely the State's position that  
5 we have permitted voir dire examination by defense counsel  
6 beyond what *Morgan v. Illinois* permits. The only thing that  
7 *Morgan* permits them to do is: Can you consider mitigating  
8 evidence after the aggravating and mitigating evidence has  
9 been presented to them?

10 He's asked five jurors now the question, the  
11 hypothetical of the aggravators: Would you then consider  
12 the death penalty as the only possible punishment? That's  
13 an improper question.

14 If he makes any challenges for cause, it's not  
15 a basis to do it because he's not giving them the rest of  
16 the analysis. And that is a consideration of all the  
17 evidence. Aggravators and mitigators. That's what he  
18 should be restricted to.

19 And, Judge, I'm asking that the State not have  
20 to bounce up like a pogo stick every time he goes down this  
21 area. He's now done it with -- we're not even done through  
22 the second row of five rows and, tactically, the State's in  
23 a predicament of continually objecting to his voir dire.  
24 And for tactical reasons, we'd prefer not to have to  
25 constantly object to his improper inquiry.

1 THE COURT: Well, I keep sustaining the  
2 objections, so do you have a suggestion?

3 MR. STANTON: Yes. If Mr. Bosler can say on  
4 the record -- we can have some conclusive -- I don't know  
5 what Mr. Bosler is attempting to do, why he keeps on going  
6 down this road about actual mitigation evidence. Maybe he  
7 can cite to the Court and to me where in *Morgan* he believes  
8 it permits him to ask a hypothetical stating the aggravators  
9 and then what mitigators a potential juror has to articulate  
10 or whether defense counsel can ask that question. I don't  
11 see it in *Morgan*. My problem with it is -- I don't want to  
12 object every single time he goes down the same line.

13 MR. BOSLER: I thought you said you wanted it  
14 done as a hypothetical because it was less committal than  
15 assuming these things actually existed.

16 THE COURT: I don't think I ever used the word  
17 "hypothetical" today.

18 MR. STANTON: I don't believe you did either.

19 THE COURT: I don't remember ever using that  
20 word.

21 MR. BOSLER: I need to talk about specific  
22 aggravators and specific mitigators. I think what the  
23 District Attorney is saying is that he's objecting that I  
24 don't go through the aggravators and go through the  
25 mitigators before I ask the juror will he consider a penalty



1 less than death.

2 THE COURT: I think what I have to do and why I  
3 require the questions in writing in advance is because many  
4 of your questions are improper as to form. They may not be  
5 improper in totality in terms of content. But the form of  
6 your questions continually are improper. Now, I don't  
7 know -- I can't give you an indication of what's okay unless  
8 I do the voir dire for you or Mr. Stanton does it for you.  
9 And I don't think that's appropriate.

10 You keep asking me to tell you how to ask a  
11 question. And I can't do that. You have to know how to ask  
12 the question. If you want to write them down and submit  
13 them to me and let Mr. Stanton see it, the questions you  
14 want to ask in a general format, that's okay. That's why I  
15 offered it last week. But if you don't, you've gotta figure  
16 out the right way to ask the questions.

17 Now, I do keep sustaining the objection. And  
18 when I go back and read this transcript, I'm sure it's going  
19 to be very confusing because every time you come up here, I  
20 hear something different.

21 I don't know exactly what you're going for  
22 except for I get the sense that you think you're entitled to  
23 broader inquiry than the *Witherspoon* issues and *Morgan*,  
24 because you want to use the information to exercise  
25 peremptory challenges. And I think at the last meeting I

1 said no, you're going beyond what is permissible for even  
2 peremptory challenges.

3 So I think this inquiry has got to be curtailed  
4 to what's required under *Morgan*, *Witherspoon* and the rest of  
5 the case law. I'm not going to let you ask every juror what  
6 their whole life thought process is in order to make your  
7 peremptory challenges.

8 It's being very protracted at this point. So  
9 do you want to write down your questions? If you want me to  
10 say what the form is or do you understand what is okay and  
11 not okay?

12 MR. BOSLER: Will the Court allow me to ask  
13 people if they found a murder with these four aggravating  
14 factors, would they always consider death as the only  
15 possible punishment?

16 MR. STANTON: I don't have an objection to  
17 counsel asking the question in the form that he does, like  
18 he just did, but what counsel tends to do is he begins to  
19 slowly modify that question.

20 If he wants to ask the question as *Morgan*  
21 contemplates, what they call second weighing process, after  
22 the weighing of the aggravating and mitigating  
23 circumstances, would they still keep an open mind in  
24 sentencing alternatives, that's what *Morgan* says is proper.  
25 So if -- and I think that's what should be permitted as a

1 question.

2 THE COURT: So the question that you just asked  
3 is okay. The modifications of that question that you've  
4 made as you go through juror after juror is not okay.

5 MR. BOSLER: That question about the  
6 aggravators is okay. Is the question about statutory  
7 mitigators okay?

8 THE COURT: Why don't you repeat the question  
9 that you want to ask.

10 MR. BOSLER: Would you consider the presence of  
11 a particular statutory aggravator -- you could insert any of  
12 the ones I've spoken about -- would you consider that as a  
13 reason to impose the penalty of less than death?

14 THE COURT: The problem you get with that  
15 question, which I have to clarify with at least one juror,  
16 is that they don't understand that you are -- the difference  
17 between "consider" and whether or not it makes a difference  
18 in their determination.

19 The problem that we're getting into is jurors  
20 think you're asking them: What will the result be if I  
21 prove this mitigator to you? That's the way they're  
22 answering and that's the problem. And I interceded myself  
23 with regard to one of the jurors earlier this morning. And  
24 I explained that "consider" means, will you look at the  
25 evidence.

1           The question is confusing. It's confusing to  
2 the jury. It has a double meaning. And in that double  
3 meaning, you're having a lot of problems with the jurors'  
4 responses. So I guess no, I won't let you ask it in that  
5 format.

6           MR. BOSLER: So object to the word "consider"  
7 as being confusing?

8           THE COURT: The way you're using it when you  
9 ask them would they consider that in not imposing the death  
10 penalty, you're asking them, will that be a reason not to  
11 impose the death penalty for them. That isn't the way --  
12 that isn't telling them: Will you look at that evidence?  
13 You need to separate it out.

14           MR. BOSLER: Can I ask them if they would  
15 consider that as a part of their decision-making process?

16           MR. STANTON: What is proper is the judge has  
17 already instructed them about what the aggravators that have  
18 been noticed in this case. You can ask the juror what  
19 *Morgan* -- the authority you're relying on for those things  
20 is *Morgan* -- permits you to ask jurors whether or not they  
21 would consider all the evidence in the sentencing phase to  
22 include aggravating evidence and mitigating evidence, or any  
23 formulation of the question along those lines. That's what  
24 I believe, Your Honor, *Morgan* states is proper inquiry.

25           THE COURT: I haven't reviewed *Morgan* again,

1 but that's the way I've been ruling in terms of what I'll  
2 let you ask. And I'm not going to let you confuse the  
3 issue. I don't think you necessarily are doing that on  
4 purpose, but it is happening. And so we have to be very  
5 careful about the way you go about this.

6 So the point here is: Will the juror consider,  
7 in our definition of the term, evidence in making a  
8 determination as to what the appropriate penalty is? Or  
9 will they always vote a particular way in spite of evidence?  
10 It is not whether or not they'll consider particular pieces  
11 of evidence that you plan to put on. So the question is a  
12 broad question if they will consider things. You do not  
13 have a right to have a jury that will only consider as  
14 mitigation those things that you think are mitigating.  
15 That's not the point here.

16 MR. STANTON: Once again, counsel's questions  
17 about -- that you're posing about alcohol, about the ones  
18 that aren't statutory mitigating evidence is violating the  
19 rule that you cannot tell a jury what mitigating evidence  
20 is. I've permitted it so far, but I'm at the juncture now  
21 when they ask that question again outside of the statutory  
22 articulating mitigating evidence, I'm going to object.

23 THE COURT: Do you want a few minutes to  
24 collect your thoughts or are you ready to go?

25 MR. BOSLER: If you want to order me, I can't

1 talk about specific mitigators, and I know we need to talk  
2 about mitigation in general, will they consider that, then  
3 I'll follow that order.

4 THE COURT: Follow the *Morgan* case.

5 MR. BOSLER: We have a dispute about how *Morgan*  
6 reads.

7 THE COURT: Do you have a cite that you can  
8 give me? I have the case right here.

9 MR. BOSLER: If you'll give me time to look at  
10 it, I'll find it.

11 MR. BOSLER: Can you help him, Mr. Gregory? Do  
12 you know where it is that he thinks --

13 MR. GREGORY: I'm sorry, Your Honor?

14 THE COURT: Do you know where it is that he can  
15 do this in *Morgan*?

16 MR. GREGORY: No, Your Honor. I'd have to look  
17 at the case again.

18 THE COURT: Let's continue. I'm going to deny  
19 it. I just don't -- we've kind of beat this over and over  
20 and over. Curtail your inquiry into the permissible  
21 inquiry, which is whether or not they will look at other  
22 evidence in determining penalty.

23 MR. BOSLER: So don't talk about specific  
24 mitigators?

25 THE COURT: No.

1 MR. STANTON: Other than the ones that are  
2 listed in the statute.

3 THE COURT: That's right. Do you want the  
4 statute?

5 MR. BOSLER: No.

6 THE COURT: Sustained.

7 (Whereupon, the following proceedings were held  
8 in open court, in the presence of the jury.)

9 MR. BOSLER: Let me collect my thoughts.

10 I'll finish up with you, Mr. Ralston. You  
11 talked about aggravators, and I think you said you would  
12 consider other evidence as it related to your decision on  
13 guilt or penalty. And correct me if I'm wrong, you would  
14 consider use of alcohol as one of those things that helped  
15 you in your ultimate decision, use of alcohol or drugs.

16 A PROSPECTIVE JUROR: We didn't talk about  
17 that. I sort of look negatively upon that as an influence  
18 against capital punishment. I don't look at it as an excuse  
19 to commit that kind of a crime.

20 MR. BOSLER: I think the judge is going to  
21 instruct you that mitigators aren't offered as an excuse. I  
22 think that's part of what she read this morning. I don't  
23 want you to think that it's been offered as an excuse. You  
24 don't think that alcohol, drug use is a factor that  
25 lessens --

1 A PROSPECTIVE JUROR: No.

2 MR. BOSLER: Any particular reason or life  
3 experience why you say that?

4 A PROSPECTIVE JUROR: I just think that it's  
5 sort of a cumulative decision that you make. If you go down  
6 that road, people start somewhere making the wrong decision.

7 MR. BOSLER: So the voluntariness of it, kind  
8 of your own fault for drinking?

9 A PROSPECTIVE JUROR: I think so.

10 MR. BOSLER: Fair enough.

11 If I could, Ms. O'Keefe, you also wrote in your  
12 questionnaire that you strongly fear the death penalty.

13 A PROSPECTIVE JUROR: Yes.

14 MR. BOSLER: And why is that?

15 A PROSPECTIVE JUROR: It's just how I was  
16 raised.

17 MR. BOSLER: Could you give me a little bit  
18 more information as to how you were raised?

19 A PROSPECTIVE JUROR: My parents believe in  
20 that. They taught me to believe in that. It's something  
21 I've always believed in.

22 MR. BOSLER: You've felt this way for all your  
23 life, pretty much?

24 A PROSPECTIVE JUROR: Yeah.

25 MR. BOSLER: Talked about it with friends?



2 MR. BOSLER: Is this view that you strongly  
3 believe in the death penalty, is that view, does it come  
4 into play when you think of first degree murder?

6 MR. BOSLER: You know what we've been talking  
7 about, premeditated murder? We're not talking about  
8 self-defense, manslaughter, vehicle homicide, accidental  
9 death, anything like that.

14 A PROSPECTIVE JUROR: No.

17 A PROSPECTIVE JUROR: Right.

20 A PROSPECTIVE JUROR: Yes.

25 A PROSPECTIVE JUROR: Yes.

1 MR. BOSLER: Involving the four things I've  
2 spoken of earlier?

3 A PROSPECTIVE JUROR: Definitely.

4 MR. BOSLER: Does that sway you more towards  
5 the automatic imposition of death?

6 A PROSPECTIVE JUROR: Yes.

7 MR. BOSLER: You heard me talk about some other  
8 things that might be offered to lessen a penalty, not as an  
9 excuse. Does that have any weight with you, any of those  
10 things?

11 A PROSPECTIVE JUROR: No, I don't believe so.

12 MR. BOSLER: You don't believe so because why?

13 A PROSPECTIVE JUROR: Just what I believe in.  
14 If you kill somebody, then I believe the same punishment  
15 should be inflicted upon you.

16 MR. BOSLER: I appreciate your honesty.

17 If you heard evidence regarding intoxication at  
18 the time of the event, would that matter to you?

19 A PROSPECTIVE JUROR: No.

20 MR. BOSLER: Evidence of a mental distress,  
21 defect, illness?

22 A PROSPECTIVE JUROR: No.

23 MR. BOSLER: Is there anything that the judge,  
24 when it tells you you're supposed to follow her  
25 instructions, is that going to change your moral opinion

1 about this issue?

2 A PROSPECTIVE JUROR: No.

3 MR. BOSLER: Is there any evidence I can give  
4 you that would take you away from this position that if you  
5 found first degree murder and under these circumstances, you  
6 would always impose death?

7 A PROSPECTIVE JUROR: I don't think so.

8 MR. BOSLER: You don't think so or you know so?

9 A PROSPECTIVE JUROR: I would say I'm 90  
10 percent sure I would impose the death penalty.

11 MR. BOSLER: Which leads me to the next  
12 question. What's the 10 percent?

13 A PROSPECTIVE JUROR: If evidence suggests  
14 otherwise, then I would consider that. But I'm swayed  
15 towards the death penalty.

16 MR. BOSLER: But that 10 percent evidence  
17 wouldn't be mental illness, suffered by the person at the  
18 time of the crime?

19 A PROSPECTIVE JUROR: I really don't know. I  
20 would have to -- once the evidence is presented, I would  
21 make a decision at that time. It's hard to tell what I'm  
22 going to do before all the evidence is presented.

23 MR. BOSLER: Sure.

24 We're going to ask you to work in the  
25 hypothetical arena right now. So you're telling me that you

1 would consider if the person was suffering from mental  
2 illness at the time of the event, you would consider that in  
3 your ultimate decision of penalty.

4 A PROSPECTIVE JUROR: Not necessarily mental  
5 illness. I don't know what factors there are that would  
6 make me consider not imposing the death penalty. The  
7 factors that you've listed?

8 MR. BOSLER: Yes.

9 A PROSPECTIVE JUROR: I think the death penalty  
10 should be imposed. Whether alcohol, drugs, mental illness,  
11 any of that, I still think it should be imposed.

12 MR. BOSLER: All right.

13 I apologize for kind of being very specific  
14 about this. Are you saying that even if you were presented  
15 evidence as to those things I talked about, to you, you  
16 don't consider them mitigation?

17 A PROSPECTIVE JUROR: No.

18 MR. BOSLER: Thank you for your candor.

19 I make a *Morgan* challenge. Let the District  
20 Attorney traverse.

21 MR. STANTON: Your Honor, he hasn't -- I don't  
22 need to traverse at this juncture. He hasn't even satisfied  
23 *Morgan*, that is that -- I don't know if the Court wants me  
24 to --

25 THE COURT: I'll ask the question. Would you

1 automatically vote for the death penalty no matter what?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: You don't believe there's any  
4 evidence that you would ever consider?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Mr. Stanton, would you like to  
7 inquire?

8 MR. STANTON: Yes.

9 Ms. O'Keefe, I talked earlier this morning  
10 about a process that occurs in a death penalty case in the  
11 penalty phase. Do you remember kind of the two- or  
12 three-stage process?

13 A PROSPECTIVE JUROR: Yes.

14 MR. STANTON: Did anything about that process  
15 which are, in a quick summary, the instructions of law that  
16 the jury in this case will be given regarding how to  
17 consider the penalty phase, did anything about that process  
18 bother you so that you couldn't follow that process?

19 A PROSPECTIVE JUROR: No.

20 MR. STANTON: In this case, in this state, the  
21 process at a penalty phase is upon conviction of first  
22 degree murder, evidence is presented, presented aggravating  
23 circumstances. You've all heard that term now. Those are  
24 reasons why someone should be sentenced to death.  
25 Mitigating evidence is reasons why someone should not.

1                   Basically the law is going to instruct you that  
2                   you've got to consider both of those items of evidence,  
3                   aggravating and mitigating. And then make your decision.  
4                   No one can tell you or suggest to you what is or is not  
5                   mitigating evidence and how you're to consider it or whether  
6                   it will make a difference. Only you as an individual juror  
7                   and collectively as a jury can answer that question.

8                   With that kind of as a context, could you do  
9                   your sworn duty in this case and listen to aggravating and  
10                  mitigating evidence and make your decision from that?

11                  A PROSPECTIVE JUROR: No.

12                  MR. STANTON: I use an example with jurors  
13                  about doors being opened. Your mind, if you will, being  
14                  receptive to listening to evidence. I'll ask it just  
15                  straightforward. Are those doors going to be shut relative  
16                  to the consideration of mitigating evidence in this case?

17                  A PROSPECTIVE JUROR: Yes.

18                  MR. STANTON: We would not object to the  
19                  motion.

20                  THE COURT: Ms. O'Keefe, you're excused from  
21                  further service. The clerk will call the name of another  
22                  prospective juror.

23                  THE CLERK: Connie E. Ryan.

24                  THE COURT: Go ahead and take a moment,  
25                  Ms. Ryan, to read that list of names. Thank you.

1                   You've had a chance to review the list. Are  
2 you related to or familiar with anyone on that list?

3                   A PROSPECTIVE JUROR: No.

4                   THE COURT: Have you been able to hear all my  
5 questions yesterday and today?

6                   A PROSPECTIVE JUROR: Yes.

7                   THE COURT: Did you keep a list to those  
8 questions you would respond to?

9                   A PROSPECTIVE JUROR: Yes, I did.

10                  THE COURT: Would you please tell me which  
11 questions you would have responded to?

12                  A PROSPECTIVE JUROR: I have a brother who is  
13 in the military police.

14                  THE COURT: Is there anything about your  
15 brother's occupation that would cause you difficulty serving  
16 in this case?

17                  A PROSPECTIVE JUROR: Yeah. Because I mean,  
18 he's my brother and he's put in that kind of position every  
19 day of his life and everything. He does work with very -- I  
20 don't know how to put it -- in dangerous situations.

21                  THE COURT: Do you believe that it would impact  
22 your decision-making in this case?

23                  A PROSPECTIVE JUROR: Yeah, I think so.

24                  THE COURT: How?

25                  A PROSPECTIVE JUROR: I don't know. Kind of

1 going a little bit further on, but because he's in the  
2 police department and everything, per se. You know, if  
3 something happened to him, then I'd want justice served for  
4 the person who killed him.

5 THE COURT: Have you predecided this case or  
6 are you willing to decide and make a determination as to  
7 what the facts are after you hear the evidence?

8 A PROSPECTIVE JUROR: I've pretty much formed  
9 my own opinion.

10 THE COURT: You would not be swayed by the  
11 evidence that's presented?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: What else did you answer in that?

14 A PROSPECTIVE JUROR: That, yeah, I saw, like,  
15 news reports after the questionnaire last week.

16 THE COURT: Did you watch those news --

17 A PROSPECTIVE JUROR: No. Just like maybe  
18 hearing it on the radio. I have a radio at my work. It's  
19 listened to all the time and I'm too busy to change the  
20 channel, so it will be on. And I might hear a few passing  
21 words on that. Or just at home, you know, if the news is on  
22 and I'm in the other room, I'll hear a few passing words on  
23 that, too.

24 Another one was if a law enforcement officer  
25 was up here as a witness, I would take his word as credible



1 because he's sworn to his duty to tell the truth also. And,  
2 yes, I've been a witness and I've had my own case in court  
3 for family.

4 THE COURT: You've had a family court matter?

5 A PROSPECTIVE JUROR: I've been in family  
6 courts before.

7 THE COURT: Is there anything about your  
8 experience in family court that would cause you difficulty?

9 A PROSPECTIVE JUROR: Not on this case, no.  
10 It's something completely different.

11 A PROSPECTIVE JUROR: In the case that you were  
12 a witness where you actually -- did you testify in court?

13 A PROSPECTIVE JUROR: Yes.

14 THE COURT: Was that in your own case or a  
15 different case?

16 A PROSPECTIVE JUROR: Kind of in my own case.  
17 I was in a car accident and I had to testify with that.

18 THE COURT: Is there anything about the  
19 experience that you had as a witness that would cause you  
20 difficulty serving in this case?

21 A PROSPECTIVE JUROR: I don't think so, no.

22 THE COURT: Have you heard all Mr. Stanton's  
23 questions?

24 A PROSPECTIVE JUROR: I believe, if I can  
25 remember, yes.

1 THE COURT: Did you note anything that you  
2 wanted to respond to?

3 A PROSPECTIVE JUROR: If I can remember what he  
4 asked. I think one of them was if there was outside  
5 influence, if other people were talking about the case.  
6 Yeah, a lot of my family and in-laws have been talking about  
7 it. And they all know that I've been selected for a jury  
8 duty but not this particular one. They've brought it up  
9 before. I mean, they kind of guessed. It's big news in the  
10 paper.

11 THE COURT: Do you remember any specific  
12 questions that you want to respond to?

13 A PROSPECTIVE JUROR: Not that I know of, no.

14 THE COURT: Mr. Stanton, you may inquire.

15 MR. STANTON: Thank you, Your Honor.

16 Ms. Ryan, at the time that you filled out your  
17 questionnaire, your initial questionnaire, you indicated an  
18 employment. Has that employment changed since today?

19 A PROSPECTIVE JUROR: No.

20 MR. STANTON: In this case there, as I'm sure  
21 you've listened to in the back of the courtroom, charges of  
22 murder of a police officer. In addition, there's two  
23 charges that allege that Mr. Vanisi robbed two convenience  
24 stores, 7-Eleven and another mini-mart. Based upon your  
25 occupation, does that cause you any problem sitting on a

1 jury in this case?

2 A PROSPECTIVE JUROR: Yeah, because I have that  
3 kind of a fear every day that I work, that I can be robbed.  
4 My store has been robbed several times in the year since  
5 I've worked there.

6 MR. STANTON: Would that fear or that  
7 connection with your employment and the facts that are  
8 involved in this case, facts of people that work at the  
9 particular convenience stores, would that cause you to be  
10 something less than a fair and impartial juror?

11 A PROSPECTIVE JUROR: I think so, yes.

12 MR. STANTON: Do you think it would affect your  
13 ability to be a juror in this case for this defendant?

14 A PROSPECTIVE JUROR: Yes, if it was proven  
15 that he did actually rob those convenience stores, yes.

16 MR. STANTON: You indicated also a vacation  
17 that's occurring probably during the middle or a portion of  
18 this trial.

19 A PROSPECTIVE JUROR: The beginning of October.

20 MR. STANTON: Is that a prepaid vacation?

21 A PROSPECTIVE JUROR: Yes.

22 MR. STANTON: And, Ms. Ryan, did you hear my  
23 question relative to the process of selecting a foreperson  
24 in a jury?

25 A PROSPECTIVE JUROR: Yeah, I did.

1 MR. STANTON: If you were selected foreperson.  
2 of the jury in this case, and assuming that the facts and  
3 the law supported the imposition of the death penalty, could  
4 you sign a verdict form putting the defendant to death?

5 A PROSPECTIVE JUROR: No, I couldn't.

6 MR. STANTON: You couldn't under any  
7 circumstances?

8 A PROSPECTIVE JUROR: No.

9 MR. STANTON: No further questions.

10 THE COURT: Mr. Bosler?

11 MR. BOSLER: No questions.

12 MR. STANTON: I want to make a motion to excuse  
13 Ms. Ryan for several different reasons that she stated.

14 THE COURT: Any objection? You can inquire.  
15 You can object. You cannot object.

16 MR. BOSLER: What I'm going to do, and I  
17 appreciate that, Your Honor, is I'm going to concur partly  
18 with the DA's motion. I don't think the fact that she's not  
19 willing to be a foreperson and is unwilling to sign the  
20 death verdict in and of itself makes her a *Witherspoon*  
21 excludable.

22 However, I think she's honestly indicated some  
23 bias and I think that is a reason that the Court should  
24 exclude her. With that, I'll submit the matter to the  
25 Court. Thank you.

1 THE COURT: I find that Ms. Ryan should be  
2 excused for cause.

3 Ma'am, you're excused for cause.

4 MR. BOSLER: Would the Court articulate the  
5 reasons for cause?

6 THE COURT: We'll do that later.

7 MR. BOSLER: Thank you, Your Honor.

8 THE COURT: The clerk will call the name of  
9 another potential juror.

10 THE CLERK: Kevin M. Stevens.

11 MR. BOSLER: Kevin Stevens?

12 THE CLERK: Correct.

13 THE COURT: Go ahead and look at that list,  
14 Mr. Stevens.

15 Mr. Stevens, are you related to or acquainted  
16 with anyone on that list?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: Have you been able to hear all of  
19 my questions yesterday?

20 A PROSPECTIVE JUROR: Yes, I have.

21 THE COURT: Did you keep track of those  
22 questions you would have responded to?

23 A PROSPECTIVE JUROR: I have no questions or I  
24 have no responses.

25 THE COURT: You wouldn't have raised your hand?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Is there anything in particular  
3 that you remember that you would have responded to to  
4 Mr. Stanton?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Is there anything in particular  
7 that -- I know most of Mr. Bosler's questions have been  
8 individual, but any of his general questions that you would  
9 have responded to?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Mr. Stanton, you may inquire.

12 MR. STANTON: Thank you.

13 Mr. Stevens, you indicated an occupation during  
14 your general questionnaire, that you engage in the same form  
15 of occupation as you were when you filled out the  
16 questionnaire.

17 A PROSPECTIVE JUROR: Yes.

18 MR. STANTON: Now, you know the facts of this  
19 case. Does your occupation cause you any difficulty in  
20 being anything but a fair and impartial juror in this case?

21 A PROSPECTIVE JUROR: No.

22 MR. STANTON: Nothing involved with your  
23 employment that would cause you concern or Mr. Vanisi and  
24 his counsel concern to be a juror in this case?

25 A PROSPECTIVE JUROR: No.

1 MR. STANTON: Did you hear my question as being  
2 selected as a foreperson?

3 A PROSPECTIVE JUROR: Yes.

4 MR. STANTON: If you were selected as a  
5 foreperson and the facts and the law supported in your mind  
6 the decision that the death penalty would be appropriate,  
7 could you sign the verdict form putting Mr. Vanisi to death?

8 A PROSPECTIVE JUROR: Yes, I could.

9 MR. STANTON: Nothing further.

10 THE COURT: Mr. Bosler, you may continue your  
11 inquiry of the entire panel.

12 MR. BOSLER: I believe Mr. Stevens has the hot  
13 seat anyway.

14 Mr. Stevens, just so we know, you're a UNR  
15 professor?

16 A PROSPECTIVE JUROR: That's correct.

17 MR. BOSLER: How long have you been a UNR  
18 professor?

19 A PROSPECTIVE JUROR: Eight years.

20 MR. BOSLER: Can you tell me the subject?

21 A PROSPECTIVE JUROR: I teach history.

22 MR. BOSLER: In your job as a professor at UNR,  
23 do you have occasion to come in contact with the UNR Police  
24 Department?

25 A PROSPECTIVE JUROR: No.

1 MR. BOSLER: Do they ever patrol your building  
2 late at night when you were working?

3 A PROSPECTIVE JUROR: If I'm working there  
4 late, I might see a car, of course. But I haven't actually  
5 come in personal contact.

6 MR. BOSLER: No direct contact with UNR police  
7 officers?

8 A PROSPECTIVE JUROR: No.

9 MR. BOSLER: Have you, fellow professors, I  
10 guess students, teachers aides, people like that, have you  
11 discussed the killing of Mr. Sullivan?

12 A PROSPECTIVE JUROR: No.

13 MR. BOSLER: It wasn't something that  
14 happened -- obviously it happened during your tenure.

15 A PROSPECTIVE JUROR: It happened when I was  
16 away at Cambridge, so I kind of have a distance from this  
17 case anyway.

18 MR. BOSLER: When were you at Cambridge?

19 A PROSPECTIVE JUROR: Two years ago in  
20 December, early January.

21 MR. BOSLER: How long after the death of  
22 Mr. Sullivan did you return to UNR?

23 A PROSPECTIVE JUROR: I guess it was a week,  
24 two weeks.

25 MR. BOSLER: Did you go right back to work?



1 A PROSPECTIVE JUROR: Yeah.

2 MR. BOSLER: Never questioned by the UNR Police  
3 Department or anything like that?

4 A PROSPECTIVE JUROR: No.

5 MR. BOSLER: Mr. Stevens, you wrote in your  
6 questionnaire you strongly favor the death penalty.

7 A PROSPECTIVE JUROR: (Nodded head  
8 affirmatively).

9 MR. BOSLER: How long have you felt that way?

10 A PROSPECTIVE JUROR: I guess all of my adult  
11 life.

12 MR. BOSLER: Any particular reason you favor  
13 the death penalty?

14 A PROSPECTIVE JUROR: I think it's a proper  
15 punishment for a first degree murder.

16 MR. BOSLER: You're probably a pretty smart  
17 guy.

18 A PROSPECTIVE JUROR: Not necessarily.

19 MR. BOSLER: You heard what's been going on in  
20 the courtroom, right? We're only talking about first degree  
21 murder. We're not talking about self-defense, imperfect  
22 self-defense, any other variation of murder.

23 In a case where you found first degree murder,  
24 premeditated murder, do you believe that the death penalty  
25 is the only appropriate punishment?

1 A PROSPECTIVE JUROR: No.

2 MR. BOSLER: And why is that?

3 A PROSPECTIVE JUROR: I'd have to weigh the  
4 case. I think there are perhaps other circumstances that  
5 would -- mitigating circumstances that would call for  
6 another punishment.

7 MR. BOSLER: You've been paying attention  
8 today.

9 We'll talk about -- well, in that first degree  
10 murder case, assume -- you remember the four aggravators  
11 that have already been mentioned with the other jurors. We  
12 have killing of a police officer, the race issue, the  
13 commission of a robbery and the damage and mutilation of the  
14 corpse.

15 In that type of case, would you be willing to  
16 consider a penalty less than death?

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: Would you be willing to  
19 consider -- in your ultimate decision on what type of  
20 punishment should be imposed, would you be willing to  
21 consider something like the mental health or mental state of  
22 the defendant at the time of the offense?

23 A PROSPECTIVE JUROR: Yes.

24 MR. BOSLER: Something like alcohol or drug  
25 use?

1 A PROSPECTIVE JUROR: I would consider it, yes.

2 MR. BOSLER: A factor like lack of significant  
3 or even violent criminal history, lack of that?

4 A PROSPECTIVE JUROR: I would consider it, yes.

5 MR. BOSLER: I'm only asking if you would  
6 consider it.

7 Age, is that something you would consider?

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: You also noted on your  
10 questionnaire there would be a certain hardship for your  
11 students if you're called away from your employment. Does  
12 that still exist or is there a way for another history  
13 professor to cover your classes?

14 A PROSPECTIVE JUROR: Currently we don't have  
15 substitute teachers. This would be my only concern for this  
16 case. If it indeed lasted, say, three weeks, it would be a  
17 hardship for my students.

18 MR. BOSLER: Would there be anybody to teach  
19 the class?

20 A PROSPECTIVE JUROR: No.

21 MR. BOSLER: How many students are there that  
22 would be --

23 A PROSPECTIVE JUROR: Roughly 75.

24 MR. BOSLER: As a professor, I guess you don't  
25 want to see your students put in a hardship; would that be

1 correct?

2 A PROSPECTIVE JUROR: No.

3 MR. BOSLER: They pay money to go to your  
4 class?

5 A PROSPECTIVE JUROR: Exactly.

6 MR. BOSLER: Do you know some of these students  
7 from other classes? Are they working their way up through  
8 the 200, 300, 400 level classes?

9 A PROSPECTIVE JUROR: Sure.

10 MR. BOSLER: With that hardship in place, do  
11 you think that's going to affect your ability to sit here  
12 and think about just what happens on the stand and what the  
13 lawyers do?

14 A PROSPECTIVE JUROR: No.

15 MR. BOSLER: So you'll be able to put that  
16 aside?

17 A PROSPECTIVE JUROR: Absolutely.

18 MR. BOSLER: Any reason you can think of that I  
19 should be worried -- you're a UNR professor, we're talking  
20 about a killing involving a UNR employee, any reason I  
21 should be worried about you sitting as a juror?

22 A PROSPECTIVE JUROR: No.

23 MR. BOSLER: If you were to exchange places  
24 with Mr. Vanisi, any reason he should be worried if the  
25 spots were switched, would you be the type of person that

1 you think should be sitting in judgment on this type of  
2 case.

3 A PROSPECTIVE JUROR: No.

4 MR. BOSLER: No reason to worry?

5 A PROSPECTIVE JUROR: No.

6 MR. BOSLER: Ms. Kruse, you indicated during  
7 the initial questioning -- this happened a little yesterday,  
8 you kind of formed an opinion about this case.

9 A PROSPECTIVE JUROR: A little bit.

10 MR. BOSLER: I'm trying to keep track. I think  
11 you did. Would that be untrue?

12 A PROSPECTIVE JUROR: Uh-huh, as far as I did,  
13 did I say this yesterday?

14 MR. BOSLER: I don't know. Your issue about  
15 the prepaid vacation, has that been resolved?

16 A PROSPECTIVE JUROR: I guess I'll go Friday  
17 night.

18 MR. BOSLER: Not going to lose a lot of money  
19 or anything?

20 A PROSPECTIVE JUROR: No, it's driving down for  
21 baseball games.

22 MR. BOSLER: Give me a moment. You still work  
23 as an operating room nurse?

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: So if you were to see pictures of

1 a body, a dead body, is that something that would affect  
2 your ability to be fair?

3 A PROSPECTIVE JUROR: No.

4 MR. BOSLER: I'm sure it's something you would  
5 find disturbing, but is it going to disturb you in the sense  
6 that you couldn't sit fairly on this type of case?

7 A PROSPECTIVE JUROR: No, that doesn't bother  
8 me.

9 MR. BOSLER: That type of blood or depiction of  
10 the human body?

11 A PROSPECTIVE JUROR: No. It doesn't bother  
12 me.

13 MR. BOSLER: How long have you been an  
14 operating room nurse?

15 A PROSPECTIVE JUROR: For the last year. Then  
16 I was an oncology medical nurse.

17 MR. BOSLER: Any of this education take place  
18 at UNR?

19 A PROSPECTIVE JUROR: I did four years of  
20 elementary education at UNR before I switched over to  
21 Truckee Meadows.

22 MR. BOSLER: And correct me if I'm wrong, since  
23 I've already been wrong once, isn't the education building  
24 very close to the police station for UNR, right; on top of  
25 the hill?

1 A PROSPECTIVE JUROR: I think so.

2 MR. BOSLER: Is that accurate?

3 A PROSPECTIVE JUROR: Sure.

4 MR. BOSLER: How about in your schooling, did  
5 you ever have contact with UNR police officers?

6 A PROSPECTIVE JUROR: I had to go up there to  
7 pay a few parking tickets.

8 MR. BOSLER: Anything about that interaction,  
9 involuntary interaction with the police department, that  
10 makes you feel uncomfortable about sitting as a juror today?

11 A PROSPECTIVE JUROR: No.

12 MR. BOSLER: Any experience as a nurse or maybe  
13 even your education education, any experience with mental  
14 illness, studying people with mental illness, ADD, ADHD type  
15 things?

16 A PROSPECTIVE JUROR: Absolutely.

17 MR. BOSLER: What kind of stuff have you  
18 studied?

19 A PROSPECTIVE JUROR: We had to do about four  
20 weeks at the state institute with my nursing training. And  
21 then we had at Saint Mary's medical floor, we did receive a  
22 lot of alcohol and some mentally ill patients on that floor  
23 that I took care of.

24 MR. BOSLER: Were you like a primary caregiver  
25 or supervising nurse?

1 A PROSPECTIVE JUROR: Primary caregiver.

2 MR. BOSLER: You probably know where I'm going  
3 with this. Assume you had a first degree murder case  
4 involving the death of a police officer. Under the  
5 circumstances I've already explained to the professor next  
6 to you, when you sat down with your fellow jurors and you  
7 came to the point where that person being convicted of first  
8 degree murder, you had to choose whether they lived or  
9 whether they died, would you be willing in that general  
10 analysis, be willing to consider the use of alcohol, drugs,  
11 the time of the event?

12 A PROSPECTIVE JUROR: Yes.

13 MR. BOSLER: Would you be willing to consider  
14 the mental state --

15 A PROSPECTIVE JUROR: Yes.

16 MR. BOSLER: -- of the person?

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: How about something that is so  
19 seemingly innocuous as lack of a violent criminal history?

20 A PROSPECTIVE JUROR: Sure.

21 MR. BOSLER: That would be something you would  
22 consider?

23 A PROSPECTIVE JUROR: Uh-huh.

24 MR. BOSLER: Age?

25 A PROSPECTIVE JUROR: Sure.



1 MR. BOSLER: Would you be willing to abide by  
2 the law and at least consider this magical catchall  
3 exception that says whatever you as a person thinks is  
4 relevant, you may consider as a mitigating factor, are you  
5 willing to at least take part in that analysis?

6 A PROSPECTIVE JUROR: Yes.

7 MR. BOSLER: I appreciate your talking with me.  
8 Mr. Miller, you have a friend who is a district  
9 attorney?

10 A PROSPECTIVE JUROR: Yes.

11 MR. BOSLER: If you could, tell me what office,  
12 local or California?

13 A PROSPECTIVE JUROR: I can't even tell you.  
14 Dave Vial. He was in my fraternity in college. I've been  
15 over to his house.

16 MR. STANTON: Mr. Watts-Vial is a deputy  
17 district attorney in our office working within the civil  
18 division.

19 MR. BOSLER: Fraternity brother?

20 A PROSPECTIVE JUROR: Yes.

21 MR. BOSLER: You don't owe him your life or he  
22 owes you your life?

23 A PROSPECTIVE JUROR: No.

24 MR. BOSLER: How often do you see him, not very  
25 often since you graduated?

1 A PROSPECTIVE JUROR: I think I've been to his  
2 house three times in the past year.

3 MR. BOSLER: Two district attorneys sitting  
4 opposite me here in the courtroom, any reason I should be  
5 nervous considering your relationship to this person?

6 A PROSPECTIVE JUROR: No.

7 MR. BOSLER: Let's talk about your view that  
8 you strongly favor the death penalty. That's accurate?

9 A PROSPECTIVE JUROR: Yes.

10 MR. BOSLER: That's an accurate description of  
11 your current view?

12 A PROSPECTIVE JUROR: Yes.

13 MR. BOSLER: How long have you felt that way?

14 A PROSPECTIVE JUROR: Ever since I formed a  
15 political opinion or those kind of moral opinions.

16 MR. BOSLER: College? High school?

17 A PROSPECTIVE JUROR: I'd say college was when  
18 I really started thinking about that.

19 MR. BOSLER: And I guess that's probably been a  
20 good five, 10 years ago, right?

21 A PROSPECTIVE JUROR: At least.

22 MR. BOSLER: Is it an opinion you've discussed  
23 with, like, family members, your fraternity friend, your  
24 district attorney friend?

25 A PROSPECTIVE JUROR: No.

1 MR. BOSLER: Do you feel it's a pretty strongly  
2 held moral position?

3 A PROSPECTIVE JUROR: Yes.

4 MR. BOSLER: Let's talk about first degree  
5 murder. You've heard the litany of questions that I've  
6 posed, in a first degree murder?

7 A PROSPECTIVE JUROR: No.

8 MR. BOSLER: If you had a first degree murder,  
9 would you always think the death penalty as the only  
10 punishment that should be imposed?

11 A PROSPECTIVE JUROR: No.

12 MR. BOSLER: You can think of circumstances  
13 where it would be inappropriate?

14 A PROSPECTIVE JUROR: Yes.

15 MR. BOSLER: How about a first degree murder  
16 involving the four things, the death of a police officer --  
17 and I won't go through them.

18 A PROSPECTIVE JUROR: The aggravating causes  
19 that you've talked about, no, that is not an automatic.

20 MR. BOSLER: Okay. And it gets me to my next  
21 question.

22 A PROSPECTIVE JUROR: The mitigating ones,  
23 would I consider everything you talked about ad nauseam?

24 MR. BOSLER: That little magical thing, that  
25 nonstatutory.

1 A PROSPECTIVE JUROR: I would consider all  
2 mitigating circumstances.

3 MR. BOSLER: You would consider anything you  
4 might feel is appropriate in that ultimate decision?

5 A PROSPECTIVE JUROR: Yes.

6 MR. BOSLER: I appreciate your honesty, your  
7 insult.

8 (Laughter.)

9 MR. BOSLER: Brings me to Mr. Buck. You're an  
10 investigator?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Tell me how you became an  
13 investigator.

14 A PROSPECTIVE JUROR: Basically found out the  
15 job was open and I applied for it.

16 (Laughter.)

17 MR. BOSLER: Did you have to take any special  
18 law enforcement training?

19 A PROSPECTIVE JUROR: Not prior. We have a  
20 national certification. After you get hired you have to  
21 pass that.

22 MR. BOSLER: If you could explain to me a  
23 little bit about what that entails.

24 A PROSPECTIVE JUROR: It's a counseling  
25 licensure -- it's a CLER certification. CLER is counselor

1 on licensure enforcement and regulation, something like  
2 that. I'm not that familiar. I don't have them memorized.

3 MR. BOSLER: How long ago did this happen? Was  
4 it several years ago, the licensure, the certification?

5 A PROSPECTIVE JUROR: My certification is  
6 about, yeah, I got it about five years ago.

7 MR. BOSLER: As part of that certification  
8 program, did you have to do things with police officers, go  
9 to a crime lab, anything like that?

10 A PROSPECTIVE JUROR: No. Well, there were  
11 some police officers -- they're not -- they were formerly  
12 police officers that taught sections in a class.

13 MR. BOSLER: All right. And if you could give  
14 me an idea, were they the normal faculty or was it kind of  
15 an exceptional thing where they came and --

16 A PROSPECTIVE JUROR: They were -- I'm not sure  
17 I quite understand.

18 MR. BOSLER: Everyday teachers or just like  
19 special subjects?

20 A PROSPECTIVE JUROR: No, they taught that CLER  
21 program, they probably taught it four times a year.

22 MR. BOSLER: If you could, you say that you're  
23 a registered nurse also?

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: As an investigator, do you

1 investigate medical claims or issues? Give me an idea.

2 A PROSPECTIVE JUROR: Claims against nurses.  
3 You actually have to go out and interview people and take  
4 notes.

5 Most of our interviewing is done over the  
6 phone.

7 MR. BOSLER: Some people may say that's kind of  
8 a quasi law enforcement type thing.

9 A PROSPECTIVE JUROR: Yes.

10 MR. BOSLER: How do you feel about that? Do  
11 you consider yourself kind of quasi law enforcement?

12 A PROSPECTIVE JUROR: Not really.

13 MR. BOSLER: Any concern I should have about  
14 you in your position being involved in a case involving the  
15 death of a law enforcement officer?

16 A PROSPECTIVE JUROR: No.

17 MR. BOSLER: You wrote on your questionnaire  
18 you remembered very little about the incident involving this  
19 case. Were you in town at that time?

20 A PROSPECTIVE JUROR: I believe I was here.

21 MR. BOSLER: Do you not normally read the  
22 newspaper, watch TV, not that type of person?

23 A PROSPECTIVE JUROR: Yeah.

24 MR. BOSLER: The ad nauseam questions, I've  
25 previously asked the jurors, in your mind, if you find a

1 case where a killing is a first degree murder involving a  
2 police officer who is killed in the commission of a robbery  
3 due to perceived ethnic identity and that there's damage or  
4 mutilation to the corpse, in that type of case, do you feel  
5 the death penalty is always the appropriate penalty?

6 A PROSPECTIVE JUROR: No.

7 MR. BOSLER: In that type of case, when you  
8 were to decide the ultimate decision, should the accused  
9 live or should the accused be put to death, would you be  
10 willing to consider in that decision whether the person had  
11 a prior violent history, criminal history?

12 A PROSPECTIVE JUROR: Yes.

13 MR. BOSLER: Would you be willing to consider  
14 their mental condition at the time of the event?

15 A PROSPECTIVE JUROR: Yes.

16 MR. BOSLER: Whether the condition is  
17 treatable?

18 A PROSPECTIVE JUROR: Yes.

19 MR. BOSLER: Use of alcohol or other drugs?

20 A PROSPECTIVE JUROR: Yes.

21 MR. BOSLER: There's kind of a little magical  
22 number that says you can consider anything you want because  
23 the law says you never have to impose death. Is that an  
24 analysis you're willing to take part in as a juror?

25 A PROSPECTIVE JUROR: To consider?

1 MR. BOSLER: To consider that type of thing.

2 A PROSPECTIVE JUROR: I would be willing to  
3 consider it.

4 MR. BOSLER: Mr. Butler, you also wrote in your  
5 jury questionnaire that you strongly favor the death  
6 penalty.

7 A PROSPECTIVE JUROR: That's correct.

8 MR. BOSLER: In fact, you went so far as to  
9 say -- I'm quoting you so hopefully this is correct, "I am a  
10 strong believer in capital punishment. Our judicial system  
11 needs to be more aggressive and strong punishment for more."  
12 Is that a correct quotation?

13 A PROSPECTIVE JUROR: Yes.

14 MR. BOSLER: How long have you felt that way?

15 A PROSPECTIVE JUROR: 30 plus years, going back  
16 to high school.

17 MR. BOSLER: What happened in high school?

18 A PROSPECTIVE JUROR: Just the philosophy of my  
19 parents. Part of the culture I grew up in, what we've  
20 talked about, whenever there was a major crime of some sort.  
21 And it's a topic that got discussed frequently.

22 MR. BOSLER: Any time since your high school  
23 years that this has wavered, you've changed your mind? It's  
24 been constant?

25 A PROSPECTIVE JUROR: No, not at all.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. BOSLER: Children of your own?

A PROSPECTIVE JUROR: Yes.

MR. BOSLER: Are their views of capital punishment the same or have their views changed?

MR. STANTON: The prospective juror's children's view of the death penalty is irrelevant.

MR. BOSLER: I think it goes to depth of how strong that conviction is.

THE COURT: I'm going to sustain the objection.

MR. BOSLER: This view has never wavered?

A PROSPECTIVE JUROR: No.

MR. BOSLER: First degree murder. Can you think of a first degree murder in your mind that wouldn't be the type of case that you would automatically impose the death penalty?

A PROSPECTIVE JUROR: No, sir.

MR. BOSLER: We're talking about this premeditated. If you feel that way about a premeditated first degree murder, if you later were given information that the murder was, one, committed in the course of a robbery, upon a police officer, who was chosen because of perceived race or ethnicity, and that there was damage or mutilation to the body after the death, does that make your opinion stronger or weaker?

A PROSPECTIVE JUROR: No, it doesn't change it

1 at all.

2 MR. BOSLER: You just feel it's a first degree  
3 murder, death penalty should be imposed?

4 A PROSPECTIVE JUROR: Yes.

5 MR. BOSLER: I appreciate your candor.

6 That of course brings me to my next set of  
7 questions. I appreciate your patience.

8 If you have this opinion, is there anything  
9 that, if you were later given information about the mental  
10 condition of the accused at the time of the offense, is that  
11 something you would consider in your decision, whether it's  
12 an automatic death penalty or something else?

13 A PROSPECTIVE JUROR: No.

14 MR. BOSLER: That's something you would  
15 disregard?

16 A PROSPECTIVE JUROR: (Nodded head  
17 affirmatively).

18 MR. BOSLER: Things about alcohol, drug use  
19 during the event, disregard this?

20 A PROSPECTIVE JUROR: Yes.

21 MR. BOSLER: The age of the defendant at the  
22 time of the event?

23 A PROSPECTIVE JUROR: Disregard it.

24 MR. BOSLER: Lack of criminal history, violent  
25 or otherwise?

1 A PROSPECTIVE JUROR: Disregard it.

2 MR. BOSLER: So essentially you feel that first  
3 degree murder, death penalty?

4 A PROSPECTIVE JUROR: Yes, sir.

5 MR. BOSLER: Automatic situation?

6 A PROSPECTIVE JUROR: Yes, sir.

7 MR. BOSLER: Anything that the District  
8 Attorney or the judge can say that's going to make you  
9 waffle on that?

10 A PROSPECTIVE JUROR: I have problems with the  
11 lack of the victim's mitigating circumstances or there are  
12 no mitigating circumstances for the victim. That's why I  
13 have this feeling or this opinion, this belief.

14 MR. BOSLER: I don't know if it's proper to  
15 tell them there's potential for victim impact statements. I  
16 don't know whether the Court thinks that's fair. That's his  
17 concern, that the victim doesn't have mitigation evidence.  
18 Is it okay to discuss that?

19 THE COURT: Well, it's true, if we get there,  
20 that the people who are affected by the death are allowed to  
21 make statements and those statements are allowed to be  
22 considered by the sentencing authority. I don't know if  
23 Mr. Butler is saying that he has an automatic position in  
24 all cases of first degree murder or if that would make a  
25 difference.

1 MR. BOSLER: Does that fact make a difference  
2 to you?

3 A PROSPECTIVE JUROR: That --

4 MR. BOSLER: That there's a -- of course the  
5 victim can't speak, but the family, there's people who meet  
6 statutory definitions of people who can come to court and  
7 say this is the crime, this is how it's affected me as a  
8 person. Does that change your essentially automatic view  
9 that first degree murder is the death penalty?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: You have to answer out loud for the  
12 court reporter.

13 A PROSPECTIVE JUROR: No, it does not.

14 MR. BOSLER: I will make the challenge, Your  
15 Honor.

16 THE COURT: Would you like to inquire?

17 MR. STANTON: Yes.

18 THE COURT: You may do so.

19 MR. STANTON: Mr. Butler, there are several  
20 jurors who have talked about the concept of premeditated  
21 murder. And none of you at least in this panel, 36 of you,  
22 have indicated an occupation as an attorney. We  
23 collectively, the lawyers in this room, have a very precise  
24 and specific definition of premeditated murder. That's what  
25 I want to first want to talk to you about.

1           If you and me decide to rob a bank and I'm the  
2 driver, never go in the bank, never step foot in it, I don't  
3 have a gun. In fact, I tell you before you go in, don't  
4 hurt anybody, no weapons. In fact, unbeknownst to me, you  
5 go in with a weapon and someone is killed. I do not  
6 premeditate or believe or intend to kill, yet I'm guilty of  
7 first degree murder. Would that affect your thinking  
8 relative to all first degree murders deserve the death  
9 penalty?

10           A PROSPECTIVE JUROR: Yes, it would, because  
11 you were, in my opinion, based on what you've told me, not  
12 the one who perpetrated the murder.

13           MR. STANTON: But in the eyes of the law, my  
14 conduct in what we call the felony murder rule, legal  
15 doctrine, is that we are committing an inherently dangerous  
16 felony, such that if a consequence that is foreseeable --  
17 and robbing a bank and someone getting hurt or killed is  
18 foreseeable -- you and I are guilty of the same thing, even  
19 though I never touched the gun or never pulled the trigger.

20           Does that change your mind as far as your  
21 comment -- and I know this is your first time and experience  
22 in a situation like this, but that not all cases involving  
23 first degree murder may fit what I perceive your definition  
24 of premeditated murder means.

25           A PROSPECTIVE JUROR: That would be a correct

1 statement.

2 MR. STANTON: When you say premeditated, are  
3 you talking about someone who thinks about murder, plans  
4 murder and then goes out and commits it in a particular  
5 fashion; is that what you mean by premeditated?

6 A PROSPECTIVE JUROR: No. Premeditated to me  
7 would be the example you used, me being in that situation of  
8 going into the bank with a gun, being prepared to use it and  
9 to kill somebody.

10 MR. STANTON: In Nevada, not all murders are  
11 death penalty cases. In fact, very few are. Do you agree  
12 with that or disagree with that?

13 A PROSPECTIVE JUROR: Generally speaking, I  
14 would probably disagree with it.

15 MR. STANTON: In Nevada, the only way a case  
16 can be a death penalty case is if it is sought by the  
17 prosecution and they have evidence to support a list of  
18 aggravating factors that's defined by statute. If it  
19 doesn't have any of those, death penalty cannot legally be  
20 an option. Do you agree with that?

21 A PROSPECTIVE JUROR: With the information  
22 given me, yes.

23 MR. STANTON: So the process is that  
24 collectively the citizens of the State of Nevada determine  
25 through their Legislature what are capital cases. And by

1 that decision, they decide the negative, what cases are not.

2 MR. BOSLER: I object to that, Your Honor. The  
3 District Attorney decides that, not the citizens.

4 MR. STANTON: In the aggravating factors, last  
5 time I checked, the District Attorneys of the State of  
6 Nevada don't choose the aggravating circumstances.

7 THE COURT: Okay. Wait. Ladies and gentlemen  
8 of the jury panel, we're trying to be as precise as possible  
9 in our questioning, and sometimes things mean different  
10 things to lawyers than they do mean to the general  
11 layperson.

12 The Legislature enumerates what acts or facts  
13 can be considered aggravating circumstances.

14 The District Attorney of the County decides  
15 whether a particular case fits into those. A jury  
16 determines whether or not those aggravating circumstances  
17 exist.

18 MR. STANTON: Do you have any problem with that  
19 concept?

20 A PROSPECTIVE JUROR: No, I don't.

21 MR. STANTON: So in the case of this case  
22 before you as a prospective juror, if you were to find in  
23 the first portion of this trial, what we call the guilt  
24 phase, that Mr. Vanisi was guilty of murder in the first  
25 degree, would the only punishment you would consider be the

1 death penalty?

2 A PROSPECTIVE JUROR: Yes, sir.

3 MR. STANTON: If the judge instructed you that  
4 you cannot consider the death penalty in a vacuum or  
5 automatically, that you must as a obligation, duty as a  
6 juror to consider aggravating, mitigating evidence, could  
7 you follow that instruction?

8 A PROSPECTIVE JUROR: I truly won't know until  
9 I'm there, but I don't believe I could.

10 MR. STANTON: And that's kind of what  
11 Mr. Bosler and I are attempting to do is to reach in your  
12 mind and ask you what you think fairly is going to happen  
13 when you get to the deliberative process, no what -- not  
14 what you're going to do but would you agree with a mind that  
15 is open.

16 In this case, could you do that? Could you  
17 follow the Court's instruction?

18 A PROSPECTIVE JUROR: I don't believe so.

19 MR. STANTON: Thank you. I do not object to  
20 the motion.

21 THE COURT: Would you like to make the motion,  
22 Mr. Bosler?

23 MR. BOSLER: Please, Your Honor, a *Witherspoon*  
24 challenge.

25 THE COURT: Motion to disqualify Mr. Butler for



1 cause is granted.

2 Thank you, Mr. Butler, you're excused.

3 MR. BOSLER: Thank you, Your Honor.

4 THE COURT: The clerk will call another juror.

5 THE CLERK: Shawna L. Mefford.

6 THE COURT: Ma'am, please read that list of  
7 potential witnesses, please.

8 Have you had a chance to read it, ma'am?

9 A PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: Are you related to or acquainted  
11 with anyone on that list?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Have you had an opportunity to hear  
14 my questions yesterday and today?

15 A PROSPECTIVE JUROR: Uh-huh.

16 THE COURT: Did you keep a record of those  
17 questions you would respond to?

18 A PROSPECTIVE JUROR: Uh-huh.

19 THE COURT: Would you please respond to those?

20 A PROSPECTIVE JUROR: I have several family  
21 members involved in the police force, uncles in Sparks  
22 Police Department, and also I'm a very good friend with one  
23 of the psychics that work with the police department in  
24 solving crimes.

25 THE COURT: What's the name of -- what's your

1       uncle's name?

2                   A PROSPECTIVE JUROR:   Kenny McCone.

3                   THE COURT:   And now would you feel that you  
4       would have to justify any particular result to your uncle?

5                   A PROSPECTIVE JUROR:   No.

6                   THE COURT:   Go ahead and proceed.

7                   A PROSPECTIVE JUROR:   Alaina Prophet who works  
8       with the District Attorney's Office as a psychic, I'm very  
9       good friends with her.   And I did have a gallbladder attack  
10      last Monday so I'm going to the doctor on Thursday to see  
11      what happens with it.   I don't know if it will or will not  
12      be a problem.   And business reasons is that I own five  
13      businesses and it's very hard for me to be out for three to  
14      four weeks on a case like this.

15                   THE COURT:   It's two to three.   Does that make  
16      it any better?

17                   A PROSPECTIVE JUROR:   We hope.   Yeah.

18                   THE COURT:   The psychic works for the police  
19      department?

20                   A PROSPECTIVE JUROR:   Uh-huh.   Works with.

21                   THE COURT:   Have you discussed this case with  
22      her?

23                   A PROSPECTIVE JUROR:   Yes.

24                   THE COURT:   It is a her?

25                   A PROSPECTIVE JUROR:   Yes.

1 THE COURT: And when you discussed the case  
2 with her, did you tell us on your questionnaire the  
3 information that you were given?

4 A PROSPECTIVE JUROR: No, because I wasn't  
5 thinking about it at the time when I answered the  
6 questionnaire.

7 THE COURT: Do you feel you've gotten  
8 additional information from her?

9 A PROSPECTIVE JUROR: I wouldn't say additional  
10 information. But we did discuss it before when I did fill  
11 the questionnaire out. But I did not put that on my  
12 questionnaire at the time because I wasn't thinking of it.

13 THE COURT: But the information you put on the  
14 questionnaire, you don't know anything more than what you  
15 put on? Or do you want to look at it again to tell me the  
16 answer to that?

17 A PROSPECTIVE JUROR: No. I wouldn't say that  
18 I -- not facts, just hearsay.

19 THE COURT: Okay. Is there anything about your  
20 friend's employment that would cause you difficulty serving  
21 on this jury?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Anything else you would want to  
24 respond to my questions?

25 A PROSPECTIVE JUROR: No.

1 THE COURT: Were you able to hear Mr. Stanton's  
2 questions?

3 A PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: Are any of those questions specific  
5 questions you wrote down that you want to respond to?

6 A PROSPECTIVE JUROR: I absolutely do not  
7 believe in death penalty.

8 THE COURT: And any others?

9 A PROSPECTIVE JUROR: No.

10 THE COURT: Any specific questions that  
11 Mr. Bosler has asked so far that you would want to respond  
12 to?

13 A PROSPECTIVE JUROR: Hu-huh.

14 THE COURT: Yes or no?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: Thank you. Mr. Stanton, you may  
17 inquire.

18 MR. STANTON: Thank you, Your Honor.

19 Ma'am, tell me the correct pronunciation of  
20 your last name.

21 A PROSPECTIVE JUROR: Mefford.

22 MR. STANTON: You said you absolutely don't  
23 believe in the death penalty. I'd like to ask you a couple  
24 quick questions regarding that. Under no circumstances  
25 could you ever impose the death penalty?

1 A PROSPECTIVE JUROR: I think it's the worst  
2 punishment for them to have to wake up with every day and  
3 deal with it than to be put to death. I think that's a way  
4 out.

5 MR. STANTON: Assuming that it bothers them.

6 A PROSPECTIVE JUROR: Right.

7 (Laughter.)

8 MR. STANTON: I would move for cause for  
9 Ms. Mefford for the reasons stated.

10 THE COURT: Mr. Bosler, would you like to  
11 inquire?

12 MR. BOSLER: Please.

13 THE COURT: You may do so.

14 MR. BOSLER: Ms. Mefford, you said that in your  
15 mind, life imprisonment can be worse than death.

16 A PROSPECTIVE JUROR: Yes.

17 MR. BOSLER: Why is that?

18 A PROSPECTIVE JUROR: I think that no matter  
19 what you have ever done in your life, you have to wake up  
20 and think about it every single day. Even criminals I'm  
21 sure have to face that every single day, and I think that's  
22 far worse than taking the way out as death.

23 MR. BOSLER: Ever had any access to maximum  
24 security prison to see what living conditions these people  
25 live under?

1 A PROSPECTIVE JUROR: No.

2 MR. BOSLER: Some people go to visit with  
3 police officers or with school.

4 A PROSPECTIVE JUROR: I've been on a tour of  
5 Parr Boulevard but not in an actual prison.

6 MR. BOSLER: Never to a maximum security  
7 facility?

8 A PROSPECTIVE JUROR: No.

9 MR. BOSLER: Your impressions of Parr  
10 Boulevard?

11 A PROSPECTIVE JUROR: It was horrible.

12 THE COURT: There's a motion to excuse her for  
13 cause and I'm going to allow you to inquire as to the  
14 aspects of her cause, whether or not she has a predetermined  
15 situation that cannot waiver.

16 MR. BOSLER: Ms. Mefford, Mr. Stanton asked you  
17 if there's any case you would consider for the death  
18 penalty. Do you remember that question?

19 A PROSPECTIVE JUROR: Uh-huh.

20 MR. BOSLER: Do you understand that no matter  
21 how bad the case is, you never have to impose the death  
22 penalty?

23 A PROSPECTIVE JUROR: Yes.

24 MR. BOSLER: I think the issue you've heard us  
25 discuss is whether you'll consider if you're provided with

1 first degree murder and evidence is presented as to the  
2 aggravating factors. Is that something you'll consider?

3 A PROSPECTIVE JUROR: No, I would not.

4 MR. BOSLER: Not even consider mitigating  
5 evidence?

6 A PROSPECTIVE JUROR: No.

7 MR. BOSLER: Just automatically believe in your  
8 mind?

9 A PROSPECTIVE JUROR: Uh-huh.

10 MR. BOSLER: Even though the courts can tell  
11 you to follow the instructions?

12 A PROSPECTIVE JUROR: It's one of the three  
13 options that are available. I just don't feel like it's an  
14 option that I would choose no matter what circumstances they  
15 were.

16 MR. BOSLER: No one could ask you to choose it.  
17 No one can order that. The issue is, you can choose life or  
18 you can choose life with or without. But will you consider  
19 as an option what the other jurors are asked to consider  
20 which is death?

21 A PROSPECTIVE JUROR: No, I wouldn't consider  
22 it an option.

23 MR. BOSLER: You would automatically vote for  
24 life?

25 A PROSPECTIVE JUROR: Right.

1 MR. BOSLER: No circumstance could change your  
2 opinion?

3 A PROSPECTIVE JUROR: No.

4 MR. BOSLER: I'll submit the matter, Your  
5 Honor.

6 THE COURT: Ms. Mefford, you are excused for  
7 cause.

8 Call the name of another prospective juror.

9 THE CLERK: Mark W. Phillips.

10 THE COURT: We don't have Mr. Mark W. Phillips.

11 MR. GAMMICK: Your Honor, I have that  
12 individual listed as AWOL from last week. He hasn't been  
13 here at all.

14 THE COURT: It was accidentally included,  
15 counsel. Anyone have an objection to proceeding with the  
16 selection not with Mr. Phillips present?

17 MR. STANTON: No, Your Honor.

18 MR. BOSLER: Has any information changed since  
19 the Jury Commissioner--

20 THE COURT: We've still not heard from him.

21 MR. BOSLER: No objection.

22 THE COURT: Call the name of another  
23 prospective juror.

24 THE CLERK: Raul B. Frias.

25 A PROSPECTIVE JUROR: Are we going to be



1 breaking soon?

2 THE COURT: Yes.

3 Go ahead and review that list.

4 THE COURT: Have you had a chance to read the  
5 list of names? You have to answer out loud for the court  
6 reporter.

7 A PROSPECTIVE JUROR: Okay.

8 THE COURT: Are you acquainted with or related  
9 to anyone on that list?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Have you been able to hear my  
12 questions yesterday and today?

13 A PROSPECTIVE JUROR: Yes, your Honor.

14 THE COURT: And did you keep a record of which  
15 questions you would have responded to if you were sitting in  
16 the jury box the whole time?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: Did you --

19 A PROSPECTIVE JUROR: No, I don't have any  
20 questions.

21 THE COURT: You heard all my questions?

22 A PROSPECTIVE JUROR: I heard all your  
23 questions.

24 THE COURT: Are you telling me that after every  
25 question, you never would have raised your hand and said,

1 yes, that applies to me?

2 A PROSPECTIVE JUROR: No.

3 THE COURT: You're not acquainted with any law  
4 enforcement officers?

5 A PROSPECTIVE JUROR: No, Your Honor.

6 THE COURT: You're not related to any of them?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: You don't know either side, either  
9 the attorneys or the parties?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Were you able to hear Mr. Stanton's  
12 questions? He's the prosecutor over there. You were able  
13 to hear his questions?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: Would you have raised your hand and  
16 responded to any of his general questions?

17 A PROSPECTIVE JUROR: Pardon?

18 THE COURT: Would you have raised your hand and  
19 responded to any of his general questions?

20 A PROSPECTIVE JUROR: Yeah.

21 THE COURT: Which ones?

22 A PROSPECTIVE JUROR: No, I changed my mind.

23 MR. STANTON: Your Honor, may counsel approach?

24 THE COURT: Yes.

25 (Bench conference between Court and counsel as

1 follows:)

2 MR. STANTON: Judge, I believe I had a couple  
3 things that I might suggest that Mr. Frias has a language  
4 difficulty. Not only have his responses to your questions  
5 been inconsistent, but his initial juror questionnaire was  
6 primarily left blank.

7 In addition, his supplemental questionnaire  
8 appears, from at least the State's perspective, that he  
9 might have difficulty with the English language, both  
10 written and oral. His questions -- his response to your  
11 question about hearing my questions this morning was  
12 inconsistent with his ultimate answer, and I think he's --  
13 my impression of his demeanor is that he's somewhat  
14 concerned about his embarrassing himself about not knowing  
15 the language.

16 MR. BOSLER: Your Honor, he made it here. We  
17 had another juror who had a language problem who couldn't --  
18 appeared couldn't figure out how to contact the Jury  
19 Commissioner. He's here on time. He's checked the boxes in  
20 the jury questionnaire. That indicates he read it. If the  
21 State wants --

22 MR. GREGORY: I have no objections to the Court  
23 asking him if he has any difficulty with the English  
24 language.

25 THE COURT: I'm going to inquire as to his

1 ability to understand English. And then I might allow  
2 further questions without going further. But I'm reticent  
3 to release him if he can understand English, but if he  
4 can't, which does seem to be he's having a little bit of  
5 difficulty with my questions, then we will have to release  
6 him, but we'll ask him.

7 (Whereupon, the following proceedings were held  
8 in open court, in the presence of the jury  
panel.)

9 THE COURT: Ladies and gentlemen of the jury  
10 panel, remember, I try to go two hours and so if you are  
11 getting antsy, which I do sense just a little bit, you can  
12 watch the clock and we have a few more minutes. We will try  
13 to keep going until 3:00 before we take another recess.

14 Mr. Frias, have you been able to understand all  
15 the words everybody has been using all morning and  
16 afternoon?

17 A PROSPECTIVE JUROR: Most of them.

18 THE COURT: I don't want to embarrass you but  
19 it seemed like maybe you were a little confused about some  
20 of the things I was saying.

21 A PROSPECTIVE JUROR: There's one thing I want  
22 to say. I oppose the death penalty and nothing is going to  
23 change my decision.

24 THE COURT: Okay. Apart from that, I was  
25 really going to just ask you about how you were doing with

1 understanding my words in English. I was going to let the  
2 lawyers deal with whether or not you feel that way about it,  
3 but you feel that strongly about it, the death penalty?

4 A PROSPECTIVE JUROR: (Nodded head  
5 affirmatively).

6 THE COURT: How strongly do you feel about it?

7 A PROSPECTIVE JUROR: I oppose the death  
8 penalty.

9 THE COURT: I'm going to allow counsel to  
10 inquire further, but you're not having any trouble at all  
11 with the English language?

12 A PROSPECTIVE JUROR: Well, some of it.

13 THE COURT: Would you raise your hand --

14 A PROSPECTIVE JUROR: I would let them know if  
15 I wouldn't understand what they're saying.

16 THE COURT: You will let me know that?

17 A PROSPECTIVE JUROR: I will.

18 THE COURT: Mr. Bosler, you may inquire.

19 MR. BOSLER: Mr. Frias, you oppose the death  
20 penalty?

21 A PROSPECTIVE JUROR: Yes.

22 MR. BOSLER: How long have you held that view?

23 A PROSPECTIVE JUROR: Pardon me?

24 MR. BOSLER: How long have you held that view?  
25 How long have you felt that way?

1 A PROSPECTIVE JUROR: Since I was a kid.  
2 MR. BOSLER: And have you had a chance to  
3 listen to what's been going on this afternoon?  
4 A PROSPECTIVE JUROR: Yes.  
5 MR. BOSLER: You know what we're talking about,  
6 first degree murder, that's the type of case we're talking  
7 about?  
8 A PROSPECTIVE JUROR: (No audible response.)  
9 THE COURT: We can't record a nod of the head.  
10 A PROSPECTIVE JUROR: Okay.  
11 THE COURT: Yes or no?  
12 A PROSPECTIVE JUROR: Yes.  
13 MR. BOSLER: And in the context of first degree  
14 murder, there are certain things that jurors are supposed to  
15 do, which is namely consider all the evidence. Is that  
16 something you're willing to do is consider evidence?  
17 A PROSPECTIVE JUROR: Yes.  
18 MR. BOSLER: The law allows you to, in  
19 considering evidence, consider three types of punishments.  
20 Actually it's four. You can send someone to prison for a  
21 number of years. Do you understand that?  
22 A PROSPECTIVE JUROR: Yes.  
23 MR. BOSLER: You can send them to prison for  
24 life with a chance of being paroled. Do you understand  
25 that?

1 A PROSPECTIVE JUROR: Yes.

2 MR. BOSLER: You could sentence them to life  
3 without a chance of ever being paroled. Do you understand  
4 that?

5 A PROSPECTIVE JUROR: Yes.

6 MR. BOSLER: You could send someone to prison  
7 or to be put to death ?

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: You understand those are four  
10 options?

11 A PROSPECTIVE JUROR: I understand.

12 MR. BOSLER: Some people may feel strongly that  
13 the death penalty is always warranted. Other people may be  
14 opposed to the death penalty. The issue is whether they're  
15 willing to at least consider other possible punishments  
16 before they make that decision. Are you at least willing to  
17 consider other punishments?

18 A PROSPECTIVE JUROR: Yeah, I could consider  
19 other punishments.

20 MR. BOSLER: No further questions, Your Honor.

21 THE COURT: Mr. Stanton?

22 MR. STANTON: Thank you.

23 Mr. Frias, on April 8th of this year, you  
24 filled out the initial questionnaire in this case. Do you  
25 remember that?

1 A PROSPECTIVE JUROR: I do.

2 MR. STANTON: There was a lot of the  
3 questionnaire that you didn't fill out. Do you remember  
4 this questionnaire? Does it look familiar?

5 A PROSPECTIVE JUROR: I didn't --

6 MR. STANTON: Does that look familiar or do you  
7 want me to come a little closer to you?

8 A PROSPECTIVE JUROR: Sure.

9 MR. STANTON: May I approach, Your Honor?

10 THE COURT: You may.

11 A PROSPECTIVE JUROR: You want me to read it?  
12 I don't have my glasses.

13 MR. STANTON: I don't want you to read it but  
14 does it look familiar to you?

15 A PROSPECTIVE JUROR: Yes.

16 MR. STANTON: There's a lot -- in fact almost  
17 the entire form you didn't fill out. Can you tell me why  
18 you didn't fill it out?

19 A PROSPECTIVE JUROR: I forgot to bring my  
20 glasses with me.

21 MR. STANTON: So you couldn't read it?

22 A PROSPECTIVE JUROR: I couldn't read it.

23 MR. STANTON: There's a couple of things we  
24 haven't asked a lot of people because we already knew this  
25 information. But can you tell me how you're currently



1 employed?

2 A PROSPECTIVE JUROR: I used to be a bartender.  
3 When I inherited a little fortune, I decided to take a  
4 little rest.

5 MR. STANTON: So you retired, kind of?

6 A PROSPECTIVE JUROR: Same idea.

7 MR. STANTON: Are you married, sir?

8 A PROSPECTIVE JUROR: Yes, sir.

9 MR. BOSLER: I wish to note the objection.  
10 I'll let counsel continue but I don't know if this goes  
11 beyond the challenge as to the death penalty qualification.

12 THE COURT: Well, it probably does, but he gets  
13 to inquire first anyway.

14 MR. BOSLER: You're allowing general --

15 THE COURT: He can talk to him. These are  
16 questions that we do when we normally have them filled out.

17 MR. STANTON: You're married, sir?

18 A PROSPECTIVE JUROR: Yes, sir.

19 MR. STANTON: What does your wife do for a  
20 living?

21 A PROSPECTIVE JUROR: She's a cafeterian.

22 MR. STANTON: Are you related to any law  
23 enforcement officers?

24 A PROSPECTIVE JUROR: No, sir.

25 MR. STANTON: Have you ever served as a juror

1 before?

2 A PROSPECTIVE JUROR: No, sir.

3 MR. STANTON: Is there any reason about either  
4 the spoken English language or reading jury instructions  
5 that you think would cause you a problem sitting as a juror  
6 in this case?

7 A PROSPECTIVE JUROR: Not really.

8 MR. STANTON: You think you could follow all  
9 the evidence and read the instructions of law?

10 A PROSPECTIVE JUROR: Yes, sir.

11 MR. STANTON: And if there was a problem in  
12 that you couldn't understand a question or an answer that  
13 was given during the trial, are you comfortable enough in  
14 your personality --

15 A PROSPECTIVE JUROR: I would let them know.

16 MR. STANTON: You would raise your hand and let  
17 somebody know?

18 A PROSPECTIVE JUROR: Uh-huh.

19 MR. STANTON: I'd like to talk to you about  
20 your thoughts on the death penalty.

21 Is it your position, sir, that there is  
22 absolutely no case whatsoever that you could ever impose the  
23 death penalty.

24 A PROSPECTIVE JUROR: Well, I believe that  
25 prison, life in prison would be worse punishment.

1 MR. STANTON: That may be the worse punishment.  
2 My question is, could you ever impose the death penalty?

3 A PROSPECTIVE JUROR: No.

4 MR. STANTON: Absolutely not under any  
5 circumstances?

6 A PROSPECTIVE JUROR: No.

7 MR. STANTON: In this case, the instructions of  
8 law speak about consideration of all mitigating and  
9 aggravating circumstances. One of the options is the death  
10 penalty. You'd never consider that?

11 A PROSPECTIVE JUROR: No.

12 MR. STANTON: Never an option with you?

13 A PROSPECTIVE JUROR: No.

14 MR. STANTON: Thank you. I would challenge  
15 Mr. Frias for cause, Your Honor.

16 THE COURT: Mr. Bosler?

17 MR. BOSLER: Just briefly, Mr. Frias. I know  
18 you said life imprisonment to you is a greater punishment  
19 than death. And you can't think of a case where you would  
20 want to impose the death penalty; is that accurate? Would  
21 that be true?

22 A PROSPECTIVE JUROR: Uh-huh.

23 MR. BOSLER: I asked you earlier, we talked  
24 about the types of punishments that are available for first  
25 degree murder. And you said you're willing to at least

1 consider them, even if you don't want to impose death.

2 A PROSPECTIVE JUROR: I would consider the  
3 three, life imprisonment, life without parole, but not the  
4 death penalty.

5 MR. BOSLER: So you would consider the term,  
6 the years in prison, life without, life with?

7 A PROSPECTIVE JUROR: Uh-huh.

8 MR. BOSLER: Are you willing to at least read  
9 the Court's instructions about what cases may be eligible  
10 for the death penalty? Would you read the Court's  
11 instructions?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: How do you answer?

14 MR. BOSLER: You don't think you would be able  
15 to read the Court's instructions?

16 A PROSPECTIVE JUROR: I would, but it wouldn't  
17 change my position.

18 MR. BOSLER: If you read the Court's  
19 instructions and the Court said consider this, you don't  
20 have to ever impose death but you should at least consider  
21 these different types of punishments, are you willing to, at  
22 least to take part in that even if you don't arrive in to  
23 that penalty?

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: That's all I need to ask. I think

1 that's what the law requires. We'll oppose the challenge.

2 THE COURT: Mr. Frias, are you saying -- you  
3 and Mr. Bosler were talking over each other so I couldn't  
4 exactly hear what you were saying. You will consider as a  
5 potential penalty in this case the term of years and life in  
6 prison with or without the possibility of parole?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: Will you consider the death  
9 penalty?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: It would, under no circumstance at  
12 any time would you ever consider the death penalty?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: Motion for excusing for cause is  
15 granted.

16 Mr. Frias, you are excused. Thank you.

17 We'll call the name of another juror before we  
18 recess.

19 THE CLERK: Susan E. Johnson.

20 THE COURT: Ms. Johnson, go ahead and read the  
21 list of names.

22 You've read the list?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: Are you acquainted with or related  
25 to anyone on that list?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Were you able to hear my questions?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: Did you keep track of what you

5 would respond to?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: You may tell me what that list is.

8 A PROSPECTIVE JUROR: Did I hear any news and I

9 say yes to that?

10 THE COURT: After you filled out your

11 questionnaire?

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: And did you hear new information?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: So everything that you wrote down

16 on your questionnaire is an accurate reflection of what you

17 know about this case?

18 A PROSPECTIVE JUROR: Yes. And those are the

19 only questions from you.

20 THE COURT: Then you had questions you would

21 respond to for the other attorneys?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: Why don't you tell us what those

24 are now.

25 A PROSPECTIVE JUROR: From Mr. Stanton, the

1 only one was the being chosen as a foreperson. I wouldn't  
2 want to be chosen as that because I would not want to sign  
3 my name on there. And that was the only -- that's it.

4 THE COURT: I'm going to let everyone go on  
5 their recess now, and when you come back, I will allow the  
6 attorneys to inquire of you and then everyone else.

7 Now, ladies and gentlemen, we are going to do  
8 what we did yesterday. And that is, you, with the  
9 assistance of the bailiff, who do not smoke, will stay on  
10 this floor and this floor only. You will not leave the  
11 floor. You have a 15- or so minute recess. Walk around and  
12 then come back in the courtroom.

13 Those of you who do smoke will go with  
14 Mr. Anderson and my administrative assistant, Ms. Clements,  
15 who is waiting outside. They'll take you across the street.  
16 Try to get away from the entrance to do your smoking. But  
17 you stay together, too.

18 Now, remember, while you're all walking around  
19 and stretching, you are not to discuss this case among  
20 yourselves or with anyone else. You're not to form or  
21 express any opinion regarding the ultimate outcome of this  
22 case. You're not to allow anyone else to attempt to  
23 influence you in any manner regarding this matter. Do not  
24 view any news media accounts regarding this case should  
25 there be any.

1 Ladies and gentlemen of the jury, we will be in  
2 recess for 15 minutes. You must be back at that time.

3 (Recess taken.)

4 (Whereupon, the following proceedings were held  
5 in open court, outside the presence of the  
6 jury.)

7 THE COURT: You all don't have to move out of  
8 the way, but I understand that there is a request from  
9 Mr. Walker.

10 Mr. Walker.

11 MR. STANTON: It's on behalf of the State, Your  
12 Honor. Mr. Walker prepared the motion. Since we were in  
13 trial, it's a material witness warrant on behalf of the  
14 State due to the unavailability of a witness.

15 THE COURT: Do you want to proceed with it?

16 MR. GAMMICK: I can go ahead and handle this,  
17 Your Honor.

18 THE COURT: Thank you. I've had an opportunity  
19 to review the affidavit and the motion. I see no reason not  
20 to issue a bench warrant. I'd like to hear you with regard  
21 to the amount of bond.

22 MR. GAMMICK: Your Honor, we'd ask in this  
23 matter, since it is based on the fact she's out of state,  
24 we'd ask for a \$50,000 bail at this time, fully  
25 understanding that once this is executed then we can have a  
hearing once the person is returned to this jurisdiction.



1 THE COURT: No problem with the requested  
2 amount.

3 MR. GAMMICK: Thank you, Your Honor.

4 THE COURT: The order will issue in the amount  
5 of 50,000.

6 Any other issues that counsel has with regard  
7 to the case?

8 Mr. Bosler, you're back up. Anything else  
9 outside the presence of the jury before we continue with  
10 jury selection?

11 MR. BOSLER: I'll still defer to the Court. I  
12 think we have several people you wanted to talk to  
13 individually about information they gathered about the case  
14 from other than public sources. I'll leave that to the  
15 Court when the Court feels it's an opportune time to address  
16 that.

17 THE COURT: We seem to be doing pretty well.  
18 You had two people that you had requested. And --

19 MR. BOSLER: We have Ms. Mefford.

20 THE COURT: One of them is gone. I think  
21 Ms. Grate is the only person left and then Ms. Mefford. But  
22 what she said is that she didn't have any additional  
23 information over what was on her questionnaire.

24 MR. BOSLER: Your Honor, just for the sake of  
25 safety, if we're going to do it, I'd ask you bring her in,

1 too, Ms. Grate and Ms. Mefford.

2 MR. STANTON: Ms. Mefford has been excused.

3 MR. BOSLER: That's right. I think we're down  
4 to one.

5 THE COURT: Let's go ahead and bring the jury  
6 panel in and get everyone seated. We're ready to start back  
7 up. Court's in recess for a few minutes.

8 (Recess taken.)

9  
10 (Whereupon, the following proceedings were held  
11 in open court, in the presence of the jury.)

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

14 MR. STANTON: The State will, Your Honor.

15 MR. BOSLER: So stipulated, Your Honor.

16 THE COURT: And the bailiff has informed me he  
17 thinks everyone is in the audience that's been  
18 participating.

19 Are you stipulating that you may proceed with  
20 voir dire without calling the roll?

21 MR. BOSLER: Yes, Your Honor.

22 THE COURT: I'm sorry, is it your turn,  
23 Mr. Stanton.

24 MR. STANTON: It is, Your Honor.

25 THE COURT: Thank you. For a moment I just

1 could not remember.

2 MR. STANTON: Ms. Johnson, you indicated that  
3 you heard all my questions and you only had concerns about  
4 one; is that correct?

5 A PROSPECTIVE JUROR: Yes.

6 MR. STANTON: That was my question about being  
7 selected as a foreperson?

8 A PROSPECTIVE JUROR: Yes.

9 MR. STANTON: You indicated on your  
10 supplemental questionnaire your feelings about the death  
11 penalty, and that you're opposed to the death penalty?

12 A PROSPECTIVE JUROR: I said strongly. I  
13 didn't say I was totally opposed.

14 MR. STANTON: You're strongly opposed to it?

15 A PROSPECTIVE JUROR: Yes.

16 MR. STANTON: Is there any case where you  
17 believe the death penalty would be appropriate punishment?

18 A PROSPECTIVE JUROR: Yes.

19 MR. STANTON: You do?

20 A PROSPECTIVE JUROR: Yes.

21 MR. STANTON: And there's nothing about this  
22 case that would prohibit you from considering all the facts  
23 and the evidence and all the sentencing possibilities in  
24 this case; is that correct?

25 A PROSPECTIVE JUROR: I would consider all of

1 it.

2 MR. STANTON: Are there any other concerns that  
3 have been raised by any of the questions so far?

4 A PROSPECTIVE JUROR: No.

5 MR. STANTON: No further questions.

6 THE COURT: Mr. Bosler.

7 MR. BOSLER: Thank you, Your Honor.

8 If I could, thank you for joining us,  
9 Ms. Johnson.

10 Ms. Scolari, any relation to the grocery store  
11 chain?

12 A PROSPECTIVE JUROR: Probably.

13 MR. BOSLER: During the jury selection the  
14 Court asked anybody if there was any reason they thought  
15 that they may not be a fair person for the jury. Do you  
16 remember that?

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: And correct me if I'm wrong, I  
19 think I read from your questionnaire that you're on the  
20 committee to raise money for the Sullivan family?

21 A PROSPECTIVE JUROR: I was.

22 MR. BOSLER: Tell me how that came about.

23 A PROSPECTIVE JUROR: Actually through my  
24 boyfriend. He was on a committee to help raise, and I  
25 helped him.

1 MR. BOSLER: Tell me a little bit more about  
2 your involvement. Exactly how long were you on the  
3 committee?

4 A PROSPECTIVE JUROR: I just accepted the  
5 calls, mostly. I didn't do any of the work on it.

6 MR. BOSLER: Where did you accept calls; at  
7 your own home?

8 A PROSPECTIVE JUROR: At home. It was more  
9 calls for him than me. He belonged to the Reno Chamber of  
10 Commerce, and they were trying to do a musical fund-raiser  
11 for the family, which didn't happen.

12 MR. BOSLER: Pardon my ignorance. Did you like  
13 put out a phone number, then people would call you if they  
14 wanted to make donations?

15 A PROSPECTIVE JUROR: He would. And they would  
16 call him. Actually, he dealt more with just the Chamber at  
17 that time. And I had to answer the calls coming from them.

18 MR. BOSLER: Do you have any official position,  
19 were you considered like a co-chairperson or anything like  
20 that?

21 A PROSPECTIVE JUROR: No.

22 MR. BOSLER: How long did this committee work  
23 last?

24 A PROSPECTIVE JUROR: A couple months.

25 MR. BOSLER: Any reason why you didn't mention

1 that when the judge was asking general questions about  
2 things that might affect your fairness?

3 A PROSPECTIVE JUROR: I don't think it will.

4 MR. BOSLER: You stated on your jury  
5 questionnaire, I'll quote you, I think I'm correct, if the  
6 accused is guilty of such a crime, I feel he should be  
7 punished accordingly.

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: Something you remember writing  
10 down on your questionnaire?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: And then the questionnaires are  
13 given to you by the Jury Commissioner?

14 A PROSPECTIVE JUROR: Yes.

15 MR. BOSLER: You're told to fill them out, turn  
16 them in when you're done?

17 A PROSPECTIVE JUROR: Right.

18 MR. BOSLER: Did you feel a lot of pressure on  
19 you while you were filling out the questionnaire?

20 A PROSPECTIVE JUROR: Not really.

21 MR. BOSLER: How about today, do you kind of  
22 feel, speaking in front of a group, it's a little bit more  
23 pressure?

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: I want to talk to you about what

1 you mean, if a person commits such a crime they should be  
2 punished accordingly. You've heard the litany of questions  
3 ad nauseam that I've proposed or posed to jurors. Just to  
4 be clear, we're only talking about first degree murder. You  
5 understand that?

6 A PROSPECTIVE JUROR: Yes.

7 MR. BOSLER: Is that what you mean when you say  
8 that if a person commits this --

9 A PROSPECTIVE JUROR: Under all the  
10 circumstances that involve the case, if it comes to that  
11 point, I believe that he should be punished by death.

12 MR. BOSLER: And I just have to clarify this.  
13 You have a first degree murder. Is that what you mean if  
14 it's a first degree murder, you think the punishment should  
15 be death?

16 A PROSPECTIVE JUROR: Well, according to the  
17 circumstances, yes.

18 MR. BOSLER: A first degree murder involving a  
19 police officer who is killed in the commission of a robbery,  
20 who is killed due to some perceived ethnic group,  
21 nationality issue, and whose body is damaged or mutilated  
22 after death, that type of case, that's the type of case I  
23 want you to talk about.

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: And in that type of case do you

1 think the death penalty is always warranted?

2 A PROSPECTIVE JUROR: No.

3 MR. BOSLER: So you think under those  
4 circumstances there would be reason to consider other  
5 penalties?

6 A PROSPECTIVE JUROR: You'd have to weigh all  
7 the evidence and go from there.

8 MR. BOSLER: And if I could talk to you, do you  
9 remember what the District Attorney and the Court explained  
10 to you about mitigation and aggravation?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: You understand that no matter how  
13 much aggravation you find, the law says life is always an  
14 option?

15 A PROSPECTIVE JUROR: Right.

16 MR. BOSLER: Life imprisonment?

17 A PROSPECTIVE JUROR: Right.

18 MR. BOSLER: In the way you think, I just know  
19 your quotation from your questionnaire, when you make this  
20 profound, I don't know how to describe this, but when you  
21 make this decision whether someone lives or dies, are you  
22 willing to consider in your decision-making process things  
23 like whether the person who committed the offense suffered  
24 from a mental illness?

25 A PROSPECTIVE JUROR: Yes.



1 MR. BOSLER: When you decide how this scheme of  
2 life works, are you willing to consider lack of a prior  
3 criminal history?

4 A PROSPECTIVE JUROR: Yes.

5 MR. BOSLER: Would the use of alcohol or drugs  
6 near the time of the event be something you would consider  
7 in your decision-making process?

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: Something like the age of the  
10 accused, is that something you would consider?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Knowing that you are a member of,  
13 you at least participated in this committee to raise money  
14 for the Sullivan family, any reason I should be worried  
15 about your impartiality, your ability to sit through this  
16 trial?

17 A PROSPECTIVE JUROR: No.

18 MR. BOSLER: Nothing you can think of?

19 A PROSPECTIVE JUROR: No.

20 MR. BOSLER: Ms. Martin, you put in your  
21 questionnaire that you favor the death penalty?

22 A PROSPECTIVE JUROR: Yes.

23 MR. BOSLER: You didn't say strongly, you just  
24 said favorably?

25 A PROSPECTIVE JUROR: Yes.

1 MR. BOSLER: Why is that?

2 A PROSPECTIVE JUROR: If you kill a person and  
3 the evidence and everything says that you're guilty.

4 MR. BOSLER: You think death is the next step?

5 A PROSPECTIVE JUROR: If everything weighs out  
6 to that, yes. If it doesn't, then they might get something  
7 else for punishment.

8 MR. BOSLER: You also wrote some things on your  
9 questionnaire --

10 A PROSPECTIVE JUROR: Do you have to read it?

11 MR. BOSLER: If it makes you completely  
12 uncomfortable, we can approach the bench.

13 A PROSPECTIVE JUROR: Yes, at this time it  
14 would.

15 MR. BOSLER: That's exactly what's supposed to  
16 happen.

17 If we could approach, Your Honor.

18 THE COURT: Yes. Ms. Martin.

19 (Whereupon, a bench conference was held between  
20 Court and counsel, outside the presence of the  
21 jury.)

22 A PROSPECTIVE JUROR: I'm totally embarrassed.

23 MR. BOSLER: If you could, do you remember  
24 writing on your questionnaire "I think Vanisi is guilty"?

25 A PROSPECTIVE JUROR: Yes. Because what I've

1 read on TV, I've read every newspaper article up until this  
2 date, and that's the way I formed my decision.

3 MR. BOSLER: You also wrote that you couldn't  
4 follow the Court's instructions, and you said, quote, "If  
5 he's guilty, he should get the death penalty, which he is."  
6 Do you remember saying that?

7 A PROSPECTIVE JUROR: Yes. I did. But now  
8 that I've heard other stuff, it's that I don't really.

9 MR. BOSLER: You're uncomfortable about other  
10 things. I'm not going to mention these in front of the  
11 jury.

12 A PROSPECTIVE JUROR: No, I hope you don't.

13 THE COURT: But go ahead. What were you going  
14 to say? I couldn't hear what you were saying.

15 A PROSPECTIVE JUROR: It depends on the  
16 evidence, what else you guys have been saying, you have to  
17 weigh the evidence and hear the evidence and everything.  
18 But at the time when I filled this out it was like from what  
19 I read in the paper, watched on TV and everything, I  
20 thought, hey, he's guilty, he said he was going to kill a  
21 cop, so he's guilty.

22 THE COURT: Now that you've participated in the  
23 voir dire, do you believe that you would be able to wait and  
24 hear the evidence as it's presented in court?

25 A PROSPECTIVE JUROR: As it's presented in

1 court, yeah.

2 THE COURT: So this opinion is not one that you  
3 still hold?

4 A PROSPECTIVE JUROR: No.

5 MR. BOSLER: I just wanted to put that part on  
6 the record. I could question her. I'm not going to mention  
7 her statement, but I can ask her what she wrote without  
8 mentioning it. That's all I wanted to do.

9 THE COURT: Do you have any other questions  
10 with regard to this?

11 MR. STANTON: No, I don't have any questions.

12 THE COURT: Thank you. You can go and sit  
13 down.

14 A PROSPECTIVE JUROR: Can I go and hide first?

15 THE COURT: No.

16 (Whereupon, the following proceedings were held  
17 in open court, in the presence of the jury.)

18 MR. BOSLER: Now Ms. Martin, can you think, in  
19 the concept of first degree murder cases, first degree  
20 murder cases, you wouldn't impose death automatically?

21 A PROSPECTIVE JUROR: Yes.

22 MR. BOSLER: In the case where you have a first  
23 degree murder and there's four aggravating circumstances,  
24 the same four I've already mentioned, in a case like that,  
25 are you willing to consider a penalty of less than death?

1 A PROSPECTIVE JUROR: Yes.

2 MR. BOSLER: Just briefly, in the grand sense  
3 of the scheme, whether someone lives or dies and what  
4 happens in a penalty phase, would it be part of your general  
5 consideration -- I guess that's fine -- if you had evidence  
6 that the person was using alcohol or drugs at the time of  
7 the offense?

8 A PROSPECTIVE JUROR: I might weigh that into  
9 it. I'd weigh the other things into it. But alcohol,  
10 drugs, that would be iffy.

11 MR. BOSLER: Any particular reason that's iffy  
12 for you?

13 A PROSPECTIVE JUROR: Someone in my family is  
14 an abuser of alcohol.

15 MR. BOSLER: Have you noticed behavior changes  
16 in them based upon that?

17 MR. STANTON: Object to the question as being  
18 irrelevant.

19 THE COURT: Sustained.

20 MR. BOSLER: Just for the record, this is not  
21 the *Witherspoon/Whitt* analysis.

22 THE COURT: I understand. Thank you.

23 MR. BOSLER: In this general scheme of deciding  
24 this question, would you be able to consider evidence of  
25 lack of a criminal history, violent or otherwise?

1 A PROSPECTIVE JUROR: I'd consider it.

2 MR. BOSLER: The mental state of the person who  
3 committed the crime, would that be something you would  
4 consider?

5 A PROSPECTIVE JUROR: I'd consider it.

6 MR. BOSLER: Age of the accused a  
7 consideration?

8 A PROSPECTIVE JUROR: To some extent.

9 MR. BOSLER: There are no things you wouldn't  
10 consider at all, those are at least things you would put in  
11 your analysis?

12 A PROSPECTIVE JUROR: Yes, I'd consider them.

13 MR. BOSLER: You are a delivery driver at this  
14 point?

15 A PROSPECTIVE JUROR: Yes.

16 MR. BOSLER: Anything about that job that  
17 brings you into contact with law enforcement officers?

18 A PROSPECTIVE JUROR: No. If they're going to  
19 write me a ticket or something, I try and avoid it, or plead  
20 not for it.

21 MR. BOSLER: Don't run into them if you deliver  
22 early in the morning or anything like that?

23 A PROSPECTIVE JUROR: No, not really. I bypass  
24 them on the street.

25 MR. BOSLER: Nothing about any relationship

1 with police or relatives that should cause me concern?

2 A PROSPECTIVE JUROR: No.

3 MR. BOSLER: Ms. Petrilak; is that right?

4 A PROSPECTIVE JUROR: No. That's close.

5 MR. BOSLER: Good afternoon, Ms. Petrilak. You  
6 wrote in your jury questionnaire you strongly favor the  
7 death penalty?

8 A PROSPECTIVE JUROR: Yes, I do.

9 MR. BOSLER: Can you tell me a little bit about  
10 that? How long have you held that view?

11 A PROSPECTIVE JUROR: As long as I can remember  
12 learning about the law and things out there in life.

13 MR. BOSLER: Any particular reason you've  
14 reached that opinion in your life?

15 A PROSPECTIVE JUROR: Basically my family.

16 MR. BOSLER: Kind of like a family value passed  
17 down?

18 A PROSPECTIVE JUROR: Yes.

19 MR. BOSLER: Any particular reason you think  
20 why the death penalty is important or why you feel it's an  
21 appropriate punishment for murder?

22 A PROSPECTIVE JUROR: If it's a violent crime,  
23 then they shouldn't be able to live a life. They took what  
24 life away for their life to be taken away.

25 MR. BOSLER: Is it kind of an eye for an eye

1 type analysis for you?

2 A PROSPECTIVE JUROR: Yes.

3 MR. BOSLER: In the context of first degree  
4 murder -- I have to ask you these questions. In the context  
5 of first degree murders, do you feel that if someone commits  
6 a first degree murder, their punishment should be death?

7 A PROSPECTIVE JUROR: Uh-huh, yes.

8 MR. BOSLER: If you feel that way, that's an  
9 opinion you've had for quite some time, would that be safe  
10 to say?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Moral decision you've made about  
13 the way you feel about life?

14 A PROSPECTIVE JUROR: Uh-huh.

15 MR. BOSLER: If you had this first degree  
16 murder and you also had factors I've already explained to  
17 other jurors, the death of a police officer, you also have  
18 in the commission of a robbery, you have the perceived  
19 ethnicity of the deceased, and you have mutilation, damage  
20 to the body after death, does that make your position  
21 stronger that you think that's an automatic death penalty  
22 case?

23 A PROSPECTIVE JUROR: I don't think the  
24 nationality has anything to do with it. It's the nature of  
25 the crime.



1 MR. BOSLER: So even without the aggravating  
2 factors you feel that a first degree murder should be  
3 punished by death?

4 A PROSPECTIVE JUROR: Right.

5 MR. BOSLER: You heard the Court explain the  
6 way the jury instructions worked. There's other options  
7 available for consideration in a capital case. Do you  
8 remember that?

9 A PROSPECTIVE JUROR: Right.

10 MR. BOSLER: Am I correct in assuming that  
11 those considerations aren't going to enter into your mind  
12 because you think death is --

13 A PROSPECTIVE JUROR: No, they wouldn't.

14 MR. BOSLER: So you wouldn't consider the other  
15 options?

16 A PROSPECTIVE JUROR: No.

17 MR. BOSLER: Anything I can say, anybody else  
18 can say, that can change your view?

19 A PROSPECTIVE JUROR: No.

20 MR. BOSLER: I'd make a *Whitt* challenge, Your  
21 Honor.

22 THE COURT: Mr. Stanton.

23 MR. STANTON: Thank you, Your Honor.

24 Ms. Petrillak, I talked on a couple of  
25 occasions, I'm sure you were listening, about the doors

1 being opened and the consideration of evidence, not to  
2 commit to you what you're going to do as far as the  
3 aggravators Mr. Bosler was talking about, but whether or not  
4 you would keep an open mind to listen to the evidence and  
5 consider it. Could you do that?

6 A PROSPECTIVE JUROR: I don't think I could.

7 MR. STANTON: You don't think you could?

8 A PROSPECTIVE JUROR: No. I know I couldn't.

9 MR. STANTON: You know you couldn't?

10 A PROSPECTIVE JUROR: No.

11 MR. STANTON: No further questions. I would  
12 not object to the motion.

13 THE COURT: Ma'am, at the possibility of  
14 mispronouncing your name, I'm not going to go there.

15 Thank you for your service. You're excused.

16 The clerk will call the name of another  
17 potential juror.

18 THE CLERK: Kerry L. Humphries.

19 THE COURT: Ma'am, go ahead and have a seat and  
20 review the witness list, please.

21 A PROSPECTIVE JUROR: I've read it.

22 THE COURT: Have you had a chance to read it?

23 A PROSPECTIVE JUROR: I don't know anybody.

24 THE COURT: You're not related to anybody on  
25 that list?

1 A PROSPECTIVE JUROR: No, ma'am.

2 THE COURT: Have you been able to hear all my  
3 questions thus far?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: And would you have responded to any  
6 of my questions had you been sitting up here the whole time?

7 A PROSPECTIVE JUROR: The only one would be  
8 that I do know Sergeant Dennis Syfers. That's it.

9 THE COURT: And is there anything about your  
10 relationship with the retired sergeant that would cause you  
11 difficulty serving as a fair and impartial juror in this  
12 case?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: Were you able to hear Mr. Stanton's  
15 questions?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: Would you have responded to any of  
18 those, the general questions?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Mr. Bosler's general questions?

21 A PROSPECTIVE JUROR: Well, the only thing is  
22 that I am totally for the death penalty.

23 THE COURT: So you think someone should explore  
24 that with you?

25 A PROSPECTIVE JUROR: I guess it would be --

1       yeah, go with Stanton, that I am for the death penalty.

2               THE COURT: Well, I'll allow whoever wants to  
3       inquire. Mr. Stanton, do you want to proceed?

4               MR. STANTON: Yes. Thank you.

5               Ms. Humphries, the questionnaire that you  
6       filled out in April indicated employment that may have  
7       changed since today. Has it changed since you filled it out  
8       in April?

9               A PROSPECTIVE JUROR: Probably not. I don't  
10       work.

11              MR. STANTON: Prior to that were you employed  
12       in what kind of occupation?

13              A PROSPECTIVE JUROR: Delivery driver.

14              MR. STANTON: For what kind of company?

15              A PROSPECTIVE JUROR: Auto paint store.

16              MR. STANTON: And Ms. Humphries, you indicated  
17       in your questionnaire that a relative of yours had had some  
18       legal problems here in Reno relatively recently, an uncle?

19              A PROSPECTIVE JUROR: Yes.

20              MR. STANTON: Is there anything about that  
21       experience as you know it that causes you a problem with law  
22       enforcement?

23              A PROSPECTIVE JUROR: No.

24              MR. STANTON: Did you think your uncle was  
25       treated fairly?

1 A PROSPECTIVE JUROR: Yeah, I guess, with what  
2 the law is.

3 MR. STANTON: Was that here in Washoe County?

4 A PROSPECTIVE JUROR: Yes.

5 MR. STANTON: Do you know what prosecuting  
6 agency prosecuted him?

7 A PROSPECTIVE JUROR: He hasn't gone to trial  
8 yet. He's still incarcerated in Carson City.

9 MR. STANTON: It would be through the Washoe  
10 County District Attorney's Office as the prosecuting agency  
11 and it hasn't formally been disposed of?

12 A PROSPECTIVE JUROR: No.

13 MR. STANTON: Are you close to your uncle?

14 A PROSPECTIVE JUROR: Yes.

15 MR. STANTON: Do you discuss or have you  
16 discussed his case, his legal problems with him?

17 A PROSPECTIVE JUROR: No.

18 MR. STANTON: You indicated a question  
19 initially by the judge relative to your position on the  
20 death penalty. Could you tell me what that is?

21 A PROSPECTIVE JUROR: I'm for it. I totally  
22 believe in it.

23 MR. STANTON: Do you remember filling out the  
24 supplemental questionnaire when you came in last week?

25 A PROSPECTIVE JUROR: Yes.

1 MR. STANTON: Do you remember what your  
2 response was to question number ten, the question about the  
3 death penalty?

4 A PROSPECTIVE JUROR: I'm pretty sure I put I  
5 believe in it.

6 MR. STANTON: Can I show it to you to refresh  
7 your memory?

8 A PROSPECTIVE JUROR: Sure.

9 MR. STANTON: May I approach?

10 THE COURT: Yes.

11 MR. STANTON: I'll show you page four, line  
12 seven, question number ten.

13 A PROSPECTIVE JUROR: I didn't read it  
14 correctly.

15 MR. STANTON: Can you tell me which one you  
16 would have answered out of those five options?

17 A PROSPECTIVE JUROR: I am in favor of capital  
18 punishment. I'm strongly in favor of it as an  
19 appropriate -- the last one.

20 MR. STANTON: The last one down here?

21 A PROSPECTIVE JUROR: Yes.

22 MR. STANTON: No further questions.

23 THE COURT: Mr. Bosler.

24 MR. BOSLER: Thank you, Your Honor.

25 Ms. Humphries, how long have you strongly been

1 in favor of the death penalty?

2 A PROSPECTIVE JUROR: Ever since I can remember  
3 it being an option. Since I was old enough to understand.

4 MR. BOSLER: Your view is strong enough that  
5 you actually wanted to make sure we knew about that before  
6 we started our questioning?

7 A PROSPECTIVE JUROR: Yeah.

8 MR. BOSLER: I guess you may know what the  
9 questions are going to be. Strongly in favor of the death  
10 penalty. First degree murder, that's all we're talking  
11 about today. We're not talking about other types of murder.  
12 Do you feel in a first degree murder case death, the death  
13 penalty is the only proper punishment?

14 A PROSPECTIVE JUROR: Absolutely.

15 MR. BOSLER: If you found that this first  
16 degree murder was aggravated by other factors, would that  
17 make you feel stronger about automatically imposing the  
18 death penalty? -----

19 A PROSPECTIVE JUROR: Yes.

20 MR. BOSLER: Is there anything that I could,  
21 any information I could give you that would make you  
22 consider the penalty of less than death for someone who is  
23 convicted of first degree murder?

24 A PROSPECTIVE JUROR: No.

25 MR. BOSLER: None of the things you've heard me

1 mention to any of the other jurors?

2 A PROSPECTIVE JUROR: No.

3 MR. BOSLER: It's just a moral decision you've  
4 made?

5 A PROSPECTIVE JUROR: I just feel that that's  
6 something that -- there's gotta be something wrong for you  
7 to do an awful crime like that. I just don't think there's  
8 any other way except for them to be put to death.

9 MR. BOSLER: Anything I can say that's going to  
10 change that?

11 A PROSPECTIVE JUROR: No.

12 MR. BOSLER: You wouldn't consider any other  
13 information?

14 A PROSPECTIVE JUROR: No.

15 MR. BOSLER: I appreciate your candor. I  
16 believe it's a *Whitt* challenge, Your Honor.

17 MR. STANTON: The State would not traverse the  
18 motion.

19 THE COURT: Ms. Johnson, you are excused. I  
20 mean Ms. Humphries.

21 Sorry, Ms. Johnson. Don't try to go.

22 (Laughter.)

23 THE COURT: The clerk will call the name of  
24 another prospective juror.

25 THE CLERK: Holly R. Jenkins.



1 THE COURT: Go ahead and review the list,  
2 Ms. Jenkins.

3 Did you get a chance to review it?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: You're not related to anybody?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: Have you been able to hear all my  
8 questions yesterday and today?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: Did you keep track of those  
11 questions you would have responded to if you had been  
12 sitting here the whole time?

13 A PROSPECTIVE JUROR: If I've attended jury  
14 duty before, yes, I have, here in this court about three  
15 years ago. It was a civil case. What was your other  
16 question? If we came to a verdict? Yes. And I am familiar  
17 with some of the people on the jury.

18 THE COURT: Who else do you know?

19 A PROSPECTIVE JUROR: Just a couple girls I  
20 used to go to school with. I'm familiar with Judy Kruse and  
21 Shaylene up at the top. I think it's Grate now. It used to  
22 be Springer.

23 THE COURT: Shaylene?

24 A PROSPECTIVE JUROR: Shaylene.

25 It's been a while.

1 THE COURT: Who is the other person?  
2 A PROSPECTIVE JUROR: Pat Grider.  
3 THE COURT: Anyone else?  
4 A PROSPECTIVE JUROR: No.  
5 THE COURT: Anything about sitting on the same  
6 juror with these people that would cause you a problem?  
7 A PROSPECTIVE JUROR: No.  
8 THE COURT: Ms. Kruse, Ms. Grate, Mr. Grider,  
9 do any of you have difficulty sitting on the same jury with  
10 Ms. Jenkins?  
11 A PROSPECTIVE JUROR: No.  
12 A PROSPECTIVE JUROR: No.  
13 A PROSPECTIVE JUROR: No.  
14 THE COURT: Ms. Jenkins, any other questions?  
15 A PROSPECTIVE JUROR: No, those are the only  
16 ones.  
17 THE COURT: Mr. Stanton, you may inquire.  
18 MR. STANTON: Ms. Jenkins, you indicated on  
19 your initial questionnaire back in April an employment that  
20 didn't catch my eyes, if I understood what that is. Could  
21 you explain that to me a little bit what you do for a  
22 living.  
23 A PROSPECTIVE JUROR: It's actually a sales  
24 consulting firm. We go into big organizations, Fortune 500  
25 companies, and teach them a sales process that they use

1 internationally throughout their organization.

2 MR. STANTON: You work primarily here out of  
3 Reno?

4 A PROSPECTIVE JUROR: Yes.

5 MR. STANTON: Were you able to hear all my  
6 questions?

7 A PROSPECTIVE JUROR: Yes.

8 MR. STANTON: Is there any problems or concerns  
9 with any of the questions I asked?

10 A PROSPECTIVE JUROR: Not that I recall.

11 MR. STANTON: Ms. Jenkins, if you were selected  
12 the foreperson of this jury and you believed under the facts  
13 and the law the death penalty was the appropriate  
14 punishment, could you fill it out as the foreperson and  
15 sentence that man to death?

16 A PROSPECTIVE JUROR: Yes.

17 MR. STANTON: Thank you. Nothing further.

18 THE COURT: Mr. Bosler.

19 MR. BOSLER: Thank you, Your Honor.

20 Ms. Jenkins, you also put in your questionnaire  
21 that you didn't recall many of the specifics about the case.  
22 What's your access to public media?

23 A PROSPECTIVE JUROR: I never watch TV, to be  
24 perfectly honest with you. I never read the paper or watch  
25 TV. I've heard a little here or there on the news when I'm

1 getting ready for work, but I don't have a radio at work.  
2 So very limited.

3 MR. BOSLER: Does your work call you away from  
4 Reno also as part of your training?

5 A PROSPECTIVE JUROR: Once in a great while but  
6 it's not something that's normal. Just gave two weeks  
7 notice at that location anyway, so they're not going to call  
8 me to do anything.

9 MR. BOSLER: You're still going to work with  
10 the same company but a different location?

11 A PROSPECTIVE JUROR: No, I'm moving to a  
12 different organization here in Reno.

13 MR. BOSLER: Same type of work?

14 A PROSPECTIVE JUROR: Same type of work.

15 MR. BOSLER: How long were you at Miller  
16 Heiman?

17 A PROSPECTIVE JUROR: Five years.

18 MR. BOSLER: Is that correct?

19 A PROSPECTIVE JUROR: Miller Heiman.

20 MR. BOSLER: You said in your questionnaire you  
21 favor the death penalty?

22 A PROSPECTIVE JUROR: Not strongly; but yes, I  
23 do. I believe in it.

24 MR. BOSLER: How long have you felt that way?

25 A PROSPECTIVE JUROR: Since I understood -- I

1 mean since I could rationalize that it's an option.

2 MR. BOSLER: In view of some of the other  
3 questions I've asked jurors about whether they would believe  
4 in first degree murder, death is always the appropriate  
5 punishment, is that something you feel?

6 A PROSPECTIVE JUROR: I wouldn't say it's  
7 always true, no.

8 MR. BOSLER: In a case involving, do you  
9 remember the four things we've talked about, in a first  
10 degree murder case like that, do you feel that death is  
11 always the appropriate punishment?

12 A PROSPECTIVE JUROR: If that's all there was  
13 to it, yes; but if there's the mitigating circumstances,  
14 I'll consider them.

15 MR. BOSLER: If you found all those  
16 aggravators, you think death is the proper punishment?

17 A PROSPECTIVE JUROR: Possibly, yes.

18 MR. BOSLER: Would that mean that you would the  
19 other side to prove up some mitigation in order for you to  
20 consider a penalty of less than death?

21 A PROSPECTIVE JUROR: No. I guess I should  
22 take that back. I don't know all the evidence to say -- I  
23 mean if they prove that he did all four of those things,  
24 then yes, I need proof that there's other reasons why or  
25 something. I would also consider the other options.

1 MR. BOSLER: If I could kind of split hairs  
2 here; if you have a case where you find those four  
3 aggravators, you realize the law is going to instruct you  
4 that no matter how many aggravators, four or 40, you always  
5 have the option for life; is that an instruction you would  
6 consider and follow?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: Mr. Bosler, I'm going to stop you  
9 for a minute.

10 Go ahead.

11 MR. BOSLER: In the case where we have a first  
12 degree murder, there's evidence of these four aggravators,  
13 are you willing to consider, in your ultimate decision  
14 whether someone lives or dies, evidence of mental illness?

15 A PROSPECTIVE JUROR: Yes.

16 MR. BOSLER: Will you consider evidence of  
17 intoxication or drug usage on or about the time the crime is  
18 committed?

19 A PROSPECTIVE JUROR: Would I consider it, yes.

20 MR. BOSLER: We can only ask you if you would  
21 consider it.

22 How about something like a lack of a violent  
23 criminal history, another character act?

24 A PROSPECTIVE JUROR: I would consider it.  
25 I'll be honest. I don't know how much weight I would give

1 to it.

2 MR. BOSLER: It would be something you would  
3 think about?

4 A PROSPECTIVE JUROR: Uh-huh.

5 MR. BOSLER: I guess what it comes down to is  
6 the law allows you as a citizen, an individual, to say I  
7 don't care how many aggravators. There is this thing in the  
8 law that says any other circumstance, any other circumstance  
9 that I feel is appropriate. So the law allows you to  
10 essentially say it may be some other thing he did in his  
11 childhood, that's enough for me to say that he doesn't  
12 deserve to die. Are you going to at least engage in that  
13 analysis before you decide what type of punishment should be  
14 imposed?

15 A PROSPECTIVE JUROR: Yes.

16 MR. BOSLER: Ms. Knight, I think we talked a  
17 little bit -- I heard you say yesterday that the process is  
18 not difficult because you don't feel like you're judging  
19 anybody as part of the process; would I be accurate in that?

20 A PROSPECTIVE JUROR: No.

21 MR. BOSLER: Could you explain to me what  
22 you're trying to say?

23 A PROSPECTIVE JUROR: Are you talking about my  
24 original statement?

25 MR. BOSLER: I think you actually said it while

1 you were sitting down here in court yesterday.

2 A PROSPECTIVE JUROR: Say what I said again.  
3 Because I don't think I said that.

4 MR. BOSLER: You didn't feel that you're  
5 actually really judging anything; you're just comparing the  
6 facts to the law.

7 A PROSPECTIVE JUROR: I said that there was a  
8 problem in semantics. So I went home and looked up "judge"  
9 in the dictionary. And then I realized that, yes, in fact  
10 you were correct, or somebody was correct that, no, that  
11 "judge" does mean that you look at evidence and that you  
12 justly and wisely, unbiasedly and fairly look at the evidence  
13 and you make a decision.

14 Originally when I said "judge," that was a hard  
15 word for me, because I'm in education. What I teach my  
16 little ones is that we -- it's not good or bad. I'm not  
17 talking about big things. When I wrote that down, I was  
18 just immediately thinking about what I tell my kids. Let's  
19 not look at it as good or bad; let's look at -- because when  
20 you constantly tell kids if they're not good, they  
21 automatically think they're bad. So I teach them not to  
22 look in terms of good and bad or judge it, let's just look  
23 at it and let's look at the consequences. And the word kind  
24 of bothered me. But then when I looked at it, what it  
25 really meant, then I knew that I could justly, unbiasedly,



1 wisely, fairly look at the evidence. And it probably didn't  
2 sound like that yesterday. But that's what -- I really did.  
3 I went home and I thought about it, what do these words  
4 mean. Because it's important. But it was a matter of  
5 semantics, I really believe.

6 MR. BOSLER: So you think you used the word  
7 correctly but it may have been taken out of context?

8 A PROSPECTIVE JUROR: Yes, I think it was a  
9 semantic miscommunication.

10 MR. BOSLER: Profound decision the jury makes  
11 in a capital case?

12 A PROSPECTIVE JUROR: It's a very profound  
13 decision. It's not one we do easily.

14 MR. BOSLER: You've heard me talk about the  
15 death penalty, options, life imprisonment versus death  
16 penalty. Is there any case -- if you had a first degree  
17 murder case where you would find a person guilty of first  
18 degree murder, find the four aggravating circumstances  
19 alleged by the State did in fact exist, are you still  
20 willing to consider penalties less than death?

21 A PROSPECTIVE JUROR: Absolutely.

22 MR. BOSLER: You heard me mention things that  
23 are mitigating factors, things like that are things-- would  
24 they operate in your consideration of whether someone lives  
25 or dies?

1 A PROSPECTIVE JUROR: Absolutely.

2 MR. BOSLER: As I stand here, I don't know a  
3 lot about any of the jurors, anything that I should be  
4 concerned about having you sit here and you belong to any  
5 organization that is going to influence your opinion or you  
6 have pressure from your close friends or relatives, anything  
7 like that that I need to know about?

8 A PROSPECTIVE JUROR: No, I don't believe so.  
9 No.

10 MR. BOSLER: You think the way the word "judge"  
11 is defined, that's something you could do?

12 A PROSPECTIVE JUROR: Yes, absolutely.

13 MR. BOSLER: Mr. Carmichael, good afternoon.  
14 You're in favor of the death penalty also,  
15 right?

16 A PROSPECTIVE JUROR: Yes.

17 MR. BOSLER: Held that opinion very long?

18 A PROSPECTIVE JUROR: As long as I can  
19 remember, yes.

20 MR. BOSLER: Any particular reason you've come  
21 to that conclusion that life imprisonment, the death penalty  
22 is better or worse than life imprisonment?

23 A PROSPECTIVE JUROR: It's not necessarily  
24 better. That's not what I mean by it. Just as far as the  
25 consequences and the facts come to in a first degree murder

1 with the evidence, then I would agree to it.

2 MR. BOSLER: In a first degree murder case, are  
3 you saying that you always think death is the automatic  
4 punishment?

5 A PROSPECTIVE JUROR: No.

6 MR. BOSLER: So you could find a first degree  
7 murder case where death isn't an automatic punishment?

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: How about a first degree murder  
10 case where it has the four circumstances I've spoken about,  
11 that I've posed to other jurors, that type of first degree  
12 murder case?

13 A PROSPECTIVE JUROR: Yes.

14 MR. BOSLER: Automatic death penalty?

15 A PROSPECTIVE JUROR: Not necessarily  
16 automatic, because there's always other factors, too.

17 MR. BOSLER: In this factoring, this decision  
18 whether someone lives or dies, are you willing to consider,  
19 put in your consideration things like mental illness?

20 A PROSPECTIVE JUROR: Yes.

21 MR. BOSLER: Use of alcohol or drugs?

22 A PROSPECTIVE JUROR: Yes.

23 MR. BOSLER: Lack of criminal history?

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: Something as innocuous as the age

1 of the accused?

2 A PROSPECTIVE JUROR: Yeah.

3 MR. BOSLER: What about this separate issue  
4 that there's always in your province, in your power as a  
5 juror, when you judge someone's life, is to look beyond what  
6 the statute says and say, well, there's this other factor  
7 there, I think it's important, I'm willing to consider  
8 things that aren't listed in the statute and make that part  
9 of my consideration of the penalty, whether it's some  
10 childhood act or whatever it is, are you at least willing to  
11 engage in that type of decision making?

12 A PROSPECTIVE JUROR: Yes.

13 MR. BOSLER: Can you think of any reason -- I  
14 know that you were asked whether you knew any Tongans, I  
15 think. I think you said you had gone to school with a  
16 couple of them?

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: In fact, you thought you knew one  
19 of the people listed on the witness list?

20 A PROSPECTIVE JUROR: Maybe the first name  
21 wasn't so familiar but the last name was familiar?

22 MR. BOSLER: Mr. Taukieuvea, does that sound  
23 familiar?

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: If I'm pronouncing it correctly.

1 A PROSPECTIVE JUROR: It's just the  
2 pronunciation.

3 MR. BOSLER: What you said -- I think you were  
4 asked do you still have contact with him or other Tongans.  
5 You said that you went to school with some of them and you  
6 don't have any contact with them anymore. I'm concerned  
7 about the word "them", that you're kind of --

8 A PROSPECTIVE JUROR: That race. A Tongan,  
9 just as being around them in school, that's all. There's no  
10 socializing really, nothing against them, no nothing.

11 MR. BOSLER: It's not an us versus them type?

12 A PROSPECTIVE JUROR: No, not at all.

13 MR. BOSLER: All right.

14 A PROSPECTIVE JUROR: I didn't mean it that way at all.

15 MR. BOSLER: I just wanted to clarify that.

16 Mr. Tower, strongly favor the death penalty?

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: Work for the Gazette-Journal?

19 A PROSPECTIVE JUROR: Yes.

20 MR. BOSLER: Interestingly, you say in your  
21 questionnaire you don't believe everything that's put in  
22 print. Is that accurate?

23 A PROSPECTIVE JUROR: Yes.

24 MR. BOSLER: How long have you held this  
25 opinion about the death penalty?

1 A PROSPECTIVE JUROR: Since high school.

2 MR. BOSLER: Anything in high school that  
3 happened that brought this about or just something that you  
4 kind of formulated in the natural course of the time?

5 A PROSPECTIVE JUROR: Becoming a young adult,  
6 yes.

7 MR. BOSLER: Have you discussed it with  
8 relatives, family, something you publicly admit this is your  
9 position on the death penalty?

10 A PROSPECTIVE JUROR: Yes.

11 MR. BOSLER: If you could, give me a little bit  
12 more information. You said you were involved in a  
13 merchandise reclamation, I don't know what the proper  
14 terminology is, that you were involved in the arrest of  
15 someone who had taken property from a store and were shot  
16 at?

17 A PROSPECTIVE JUROR: Right. I was a store  
18 manager for Sav-On Drugs.

19 MR. BOSLER: You were the manager. How long  
20 had you done that work?

21 A PROSPECTIVE JUROR: I did it for six months.

22 MR. BOSLER: Ever have any closer call with law  
23 enforcement or was that your one thing that you did to try  
24 to break up a crime? Were you ever involved in law  
25 enforcement, work with an agency involved in law

1 enforcement?

2 A PROSPECTIVE JUROR: No.

3 MR. BOSLER: In terms of strongly favoring the  
4 death penalty, and again assuming a first degree murder  
5 case, do you believe as you sit as a juror that if it's a  
6 first degree murder case automatically the penalty should be  
7 death for the other person?

8 A PROSPECTIVE JUROR: Not automatically, no.  
9 But I'm happy that it's a choice I can make.

10 MR. BOSLER: Why? Why is that?

11 A PROSPECTIVE JUROR: Because I think it's  
12 appropriate in certain instances.

13 MR. BOSLER: Let's talk about that a little  
14 bit.

15 Assume an instance that involves the killing of  
16 a police officer, the reasons I've previously stated, is  
17 that one of the times you'd be happy to impose the death  
18 penalty?

19 A PROSPECTIVE JUROR: Yes.

20 MR. BOSLER: Although you're happy to impose  
21 the death penalty in that situation, will you be willing to  
22 consider penalties less than death?

23 A PROSPECTIVE JUROR:- Absolutely.

24 MR. BOSLER: Things like mental condition of  
25 the accused at the time of the offense?

1                   A PROSPECTIVE JUROR: Certainly. You're  
2 talking about taking someone else's life. You have to  
3 consider everything. It's probably the most important  
4 decision another human can make about a human being. It's  
5 certainly not something you're just going to -- a knee-jerk  
6 reaction to the circumstances.

7                   MR. BOSLER: Right. Not everybody feels that  
8 way. That's why I'm asking these questions.

9                   Anything as I stand here in my position I  
10 should be worried about as a juror?

11                  A PROSPECTIVE JUROR: I don't think so.

12                  MR. BOSLER: I'm sure everybody will be happy  
13 to know I'm almost done, Your Honor.

14                  Mr. Estes, you are still an engineer?

15                  A PROSPECTIVE JUROR: Yes, I am.

16                  MR. BOSLER: Mechanical engineering?

17                  A PROSPECTIVE JUROR: Mechanical engineering.

18                  MR. BOSLER: Your Honor, if I could approach  
19 the bench, there may be a sensitive matter.

20                  THE COURT: You may approach.

21

22                         (Whereupon there was bench conference between  
23 court and counsel, outside the presence of the  
24 jury.)

24

25                  MR. BOSLER: Mr. Estes put on his questionnaire



1 that he knew the PD was trying to be removed from the case.  
 2 I'd rather not get into how he feels about that and our  
 3 representation in front of the rest of the jury if they  
 4 don't have that information. So he's like one of those  
 5 people I want to include with Ms. Grate, if the Court's  
 6 willing to let me talk to him about that issue outside the  
 7 presence of the rest of the jury.

8 THE COURT: Why don't you finish up with  
 9 everybody else first.

10 MR. BOSLER: Will the Court allow me to do  
 11 that?

12 THE COURT: What questions do you want to ask  
 13 him?

14 MR. BOSLER: He put in his questionnaire that  
 15 he knew the PD wanted to withdraw. What else does he know  
 16 about that, how does that affect the way he views us as  
 17 attorneys in this case, if he knows we're Public Defenders,  
 18 and we're trying to withdraw from the case.

19 THE COURT: Yeah, but I don't know if we'll do  
 20 it -- we might do it here at the bench.

21 MR. STANTON: Want to bring him up right now?

22 THE COURT: We can.

23 MR. STANTON: That would be fine.

24 THE COURT: Mr. Estes, would you please come  
 25 forward. Go ahead and have a seat.

1                   Everybody will get nice and close and personal  
2 here.

3                   MR. BOSLER: Mr. Estes, you put in your  
4 questionnaire that you had read that the Public Defender's  
5 Office had tried to withdraw from this case?

6                   A PROSPECTIVE JUROR: Did I?

7                   MR. BOSLER: Yes. Do you have information  
8 about that?

9                   A PROSPECTIVE JUROR: No.

10                  MR. BOSLER: Did you read that in the paper?

11                  A PROSPECTIVE JUROR: Repeat what you said. I  
12 guess I missed something here.

13                  MR. BOSLER: On the questionnaire, the  
14 questionnaire that you gave to the commissioner, you shared  
15 information that the Public Defender's Office was trying to  
16 withdraw from representing the defendant.

17                  A PROSPECTIVE JUROR: Yes, I remember that now.

18                  MR. BOSLER: Now, the reason I want to bring  
19 this up is because not everybody knows that. How does that  
20 affect the way you perceive us as attorneys?

21                  A PROSPECTIVE JUROR: That wouldn't bother me.  
22 That doesn't affect me one way or another. I just had heard  
23 it on the news and that was all.

24                  MR. BOSLER: What information do you have as to  
25 why that was occurring?

1 A PROSPECTIVE JUROR: I'm not sure I know. I  
2 just had heard on the news.

3 That it happened. It seems to me the best I  
4 can recall is there was some disagreement between you and  
5 the defendant, something legal.

6 MR. BOSLER: And that doesn't cause you any  
7 uncomfortableness sitting as a juror in this case?

8 A PROSPECTIVE JUROR: No.

9 MR. BOSLER: That's all I need, Your Honor.

10 THE COURT: Thank you, Mr. Estes. You have to  
11 go back to the hard chair.

12

13 (Whereupon, the following proceedings were held  
14 in open court, in the presence of the jury.)

15 MR. BOSLER: You put in the questionnaire you  
16 didn't recall a lot about the circumstances involving  
17 Mr. Sullivan's death?

18 A PROSPECTIVE JUROR: No. And that's because I  
19 thought about it, why I didn't, and I realize that I was  
20 working long hours at that time. And I really didn't read  
21 any newspapers or listen to any television. I didn't at  
22 work. When I came home, I was so tired I usually fell  
23 asleep. It's unusual for me because I usually try to keep  
24 up on the news but in this particular incident it's just the  
25 way it happened.

1 MR. BOSLER: In a first degree murder case, in  
2 your opinion do you think that every person that's convicted  
3 of first degree murder automatically deserves to die?

4 A PROSPECTIVE JUROR: Not automatically.

5 MR. BOSLER: Even in a murder such as the one  
6 we've been talking about over the last two days, day and a  
7 half, is that a case you think automatically deserves the  
8 death penalty?

9 A PROSPECTIVE JUROR: No, I don't think it's  
10 automatic in any case.

11 MR. BOSLER: Would you be willing to consider,  
12 in this profound decision-making process who lives or dies,  
13 would you be willing to put in your consideration things  
14 about the defendant like if he was suffering from a mental  
15 illness at the time of the event?

16 A PROSPECTIVE JUROR: Yeah.

17 MR. BOSLER: Use of alcohol?

18 A PROSPECTIVE JUROR: I would consider all the  
19 evidence.

20 MR. BOSLER: All the things I've talked about?

21 A PROSPECTIVE JUROR: Yes.

22 MR. BOSLER: That little mystery, little number  
23 that says anything else you think is important, whether it's  
24 a childhood act or anything, you can consider that as part  
25 of your decision-making process; is that something you're

1 willing to do?

2 A PROSPECTIVE JUROR: Yes. I would say I would  
3 consider all the evidence in my decision making.

4 MR. BOSLER: Thank you, Mr. Estes.

5 Ms. Frazer, you said you knew quite a few  
6 police officers?

7 A PROSPECTIVE JUROR: Yes.

8 MR. BOSLER: You indicated that you had no  
9 really strong held opinions about this case, I guess, is  
10 what you put in your questionnaire?

11 A PROSPECTIVE JUROR: Right.

12 MR. BOSLER: Is that accurate?

13 A PROSPECTIVE JUROR: About this case? Right.  
14 I mean I was out of town when it happened so I don't recall  
15 a bunch about it then. I have read things since, but I  
16 don't --

17 MR. BOSLER: In the course of your working in  
18 an attorney's office have you had -- you're an escrow agent?

19 A PROSPECTIVE JUROR: But it didn't occur to me  
20 to mention yesterday, but my attorney that just handled my  
21 divorce just quit private practice and went to work for the  
22 District Attorney's Office. I didn't think about that  
23 yesterday.

24 MR. BOSLER: His name?

25 A PROSPECTIVE JUROR: It's JoLee Wickes. She

1 works in the juvenile division.

2 MR. GAMMICK: Your Honor, I would indicate that  
3 she was just recently hired by our office and she is in the  
4 juvenile division. It has nothing to do with the  
5 prosecution of criminal cases.

6 THE COURT: Thank you.

7 MR. GAMMICK: Excuse me, criminal adult cases.

8 MR. BOSLER: And she is your private attorney,  
9 was your private attorney?

10 A PROSPECTIVE JUROR: Yes.

11 MR. BOSLER: For how long was she your private  
12 attorney?

13 A PROSPECTIVE JUROR: A year and a half.

14 MR. BOSLER: Consider her a close friend?

15 A PROSPECTIVE JUROR: I did go to high school  
16 with her. I hadn't seen her for several years. And I  
17 needed an attorney. I ran into her. And she represented me  
18 in my divorce.

19 MR. BOSLER: So there's not a bias against all  
20 attorneys?

21 A PROSPECTIVE JUROR: She was fine. It was my  
22 husband's attorney I didn't care for.

23 MR. BOSLER: He's not on the witness list or  
24 anything like that?

25 A PROSPECTIVE JUROR: No.

1 MR. BOSLER: Knowing that this person who you  
2 kind of know from back in high school, is an attorney works  
3 for the District Attorney's Office, anything I should be  
4 concerned about that you look towards them as being the  
5 bread winner or putting money or food in your friend's mouth  
6 or anything like that?

7 A PROSPECTIVE JUROR: It has no effect on my  
8 opinion of this case.

9 MR. BOSLER: You say you favor the death  
10 penalty?

11 A PROSPECTIVE JUROR: In some cases, yes.

12 MR. BOSLER: I'll try to be brief. In the case  
13 such as the one we were discussing the last day and a half,  
14 killing of a police officer during the commission of a  
15 robbery, you know, that evidence presented that the officer  
16 was chosen because of ethnicity or some perceived  
17 nationality, mutilation, damage to the corpse after death,  
18 is that the type of case you think in the murder spectrum  
19 always deserves the death penalty?

20 A PROSPECTIVE JUROR: Not always.

21 MR. BOSLER: So under the circumstances you  
22 would be willing to consider a penalty less than death? I  
23 can only ask you to be honest.

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: When you sat down, if you were

1 chosen for the jury, sat down with your fellow jurors and  
2 decided, if you got to the penalty phase, and decided this  
3 huge, profound decision whether someone lives or dies, would  
4 you be willing to make part of your analysis, make part of  
5 your consideration something like whether the accused was  
6 suffering from mental illness?

7 A PROSPECTIVE JUROR: Yes.

8 MR. BOSLER: Or sickness at the time of the  
9 death?

10 A PROSPECTIVE JUROR: Yes.

11 MR. BOSLER: Drug use, alcohol use?

12 A PROSPECTIVE JUROR: I think it would have to  
13 be coupled with something. I don't think just alcohol use  
14 alone would be a good enough excuse for me.

15 MR. BOSLER: All right. Something you --

16 A PROSPECTIVE JUROR: A lot of people do a lot  
17 of stupid things. And murder isn't -- a lot of people have  
18 done a lot of drinking and haven't gone and murdered  
19 somebody. So I think it would have to be more than just  
20 that they had too much to drink or were under the influence  
21 of drugs.

22 MR. BOSLER: How about something like lack of a  
23 violent criminal history or any criminal history, is --

24 A PROSPECTIVE JUROR: I would consider that.

25 MR. BOSLER: Age?