

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 04:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 78209

District Court No. 98CR0516

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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

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- 36 1. Transcript of Proceedings – Status Hearing, *Vanisi v. State of Nevada*, Second Judicial District Court of Nevada, Case No. CR98-0516
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- 36 Suggestion of Incompetency and Motion for Evaluation, *State of Nevada v. Vanisi*, Second Judicial District Court of Nevada, Case No. CR98-0516
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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:

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1 THE COURT: Mr. Geach, I'll come back to you in
2 a little bit.

3 Anyone else?

4 Yes, ma'am. Miss Frankel.

5 A PROSPECTIVE JUROR: My husband is currently a
6 deputy sheriff.

7 A PROSPECTIVE JUROR: Anything about the fact
8 that he is a deputy sheriff that would cause you difficulty
9 in this case?

10 A PROSPECTIVE JUROR: No, ma'am.

11 THE COURT: Would you feel you had to justify
12 any particular verdict to him or anyone else that he works
13 with?

14 A PROSPECTIVE JUROR: No, ma'am.

15 THE COURT: Would you feel that you had to give
16 or that you would give any particular consideration to
17 police officers' testimony over and above anyone else's
18 testimony here in the courtroom?

19 A PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: Would you afford it the same
21 critical analysis as any other witness?

22 A PROSPECTIVE JUROR: Yes, ma'am.

23 THE COURT: Anyone else?

24 Yes, ma'am.

25 A PROSPECTIVE JUROR: My boyfriend is an ex-cop

1 for Salt Lake City PD, and I know a Terry Wilcox. I think
2 he is on search and rescue here.

3 THE COURT: Anything about your boyfriend's
4 prior employment that would cause you difficulty in this
5 case?

6 A PROSPECTIVE JUROR: In this case? He was an
7 ex-cop before all this happened, but I feel prejudiced.

8 THE COURT: I'm sorry. Are you Miss Thomas?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: Miss Thomas, are you saying that if
11 a police officer were to testify, you wouldn't be able to
12 weigh his testimony?

13 A PROSPECTIVE JUROR: I feel that I would be --
14 I also work at the hospital. So a few police officers have
15 been in there. I feel that I'd be against the defendant.

16 THE COURT: Yes. Miss Getz.

17 A PROSPECTIVE JUROR: My cousin is a sheriff.
18 Cousin is a sheriff in Salinas, California. His name is
19 Nelson D. Roy.

20 THE COURT: You also have several friends on
21 the Reno Police Department?

22 A PROSPECTIVE JUROR: Tim Avila.

23 THE COURT: Anything about your association
24 with your cousin or your friend with the Reno Police
25 Department that would cause you difficulty serving on this

1 case?

2 A PROSPECTIVE JUROR: I'm afraid I would be
3 biased.

4 THE COURT: When you say you would be biased,
5 does that mean that you would not be able to weigh the
6 testimony as it's presented here in the courtroom?

7 A PROSPECTIVE JUROR: Yes, ma'am.

8 THE COURT: Mr. LaFond.

9 A PROSPECTIVE JUROR: Yes. I work with
10 security, and I worked with a lot of officers that I don't
11 know their names because we 86 people out of the club there
12 and stuff, and we have one that is retired.

13 THE COURT: Would you be able to require the
14 same of all the witnesses, be they law enforcement or not,
15 of them as witnesses here in this courtroom?

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

17 THE COURT: You would not require the same
18 information from them? Or you would treat them all the
19 same? Which one?

20 A PROSPECTIVE JUROR: I would treat them all
21 the same.

22 THE COURT: If a police officer were to
23 testify, you would look at his testimony the same as any
24 other witness?

25 A PROSPECTIVE JUROR: Yes, ma'am.

1 THE COURT: And determine its credibility based
2 solely on the way it's presented here in the courtroom?

3 A PROSPECTIVE JUROR: Yes, ma'am.

4 THE COURT: Anyone else?

5 Now, I wanted to ask all of you even if you are
6 not related to a police officer, would you all be able to
7 judge the credibility of police officers based upon the way
8 their testimony is presented here in the courtroom, not give
9 it any more weight or less weight, mainly just because they
10 are police officers? Can you all do that? If you can't,
11 please answer outloud.

12 A PROSPECTIVE JUROR: What was the question?

13 THE COURT: Will you treat law enforcement
14 officers' testimony here in the courtroom the same as you
15 would any other witnesses' testimony, not give it any more
16 or less weight based solely on the fact that they are police
17 officers? Can you do that?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: Anyone who cannot do that? Did
20 everyone answer yes except for Miss Getz and Mr. Battaglia?

21 A PROSPECTIVE JUROR: I would tend to weigh a
22 police officer's testimony a little more heavily.

23 THE COURT: Are you related to any police
24 officers?

25 A PROSPECTIVE JUROR: No.

1 THE COURT: Now, your concern, Mr. Battaglia,
2 is that just solely because they are a police officer, if
3 they testified and it wasn't very credible, you'd still
4 believe them even though they were a police officer.

5 A PROSPECTIVE JUROR: I would just have a
6 tendency to believe them.

7 THE COURT: You wouldn't require them to give
8 good reasons for their testimony?

9 A PROSPECTIVE JUROR: Yes, I would like to hear
10 the whole testimony.

11 THE COURT: Well, let's say they testified and
12 it wasn't very credible and they didn't have good reasons
13 for their testimony and it didn't really make sense to you
14 or you didn't like the way --

15 A PROSPECTIVE JUROR: That would play a part in
16 my thinking.

17 THE COURT: You would be able to weigh all
18 that?

19 A PROSPECTIVE JUROR: Yes. I think I could
20 weigh that if it didn't seem credible to me. But on the
21 whole in general, I'm saying.

22 THE COURT: Well, you are not going to be
23 dealing with in general. If you are a juror in this case,
24 you will hear specific testimony from specific people about
25 specific facts. And that's what I'm asking you about now.

1 Will you be able to look at those facts and the
2 way the person presents themselves in the witness chair and
3 decide what you believe is the truth or not the truth based
4 upon the way they present themselves?

5 A PROSPECTIVE JUROR: Put that way, yes, I
6 think I could.

7 THE COURT: Does anyone have any personal
8 knowledge regarding the facts of this case? I'm not talking
9 about what you might have read in the newspaper. But anyone
10 have any personal knowledge of the facts regarding the case,
11 except for Mr. Sepahpour who you have heard something you
12 think from your wife?

13 Anyone else?

14 Miss Getz. Don't tell me what you have heard,
15 but what's the source of your information?

16 A PROSPECTIVE JUROR: I know Cathy Miller that
17 works here at the courthouse and Barbara Walker.

18 THE COURT: You think you have heard
19 information from them? _____

20 A PROSPECTIVE JUROR: Yes, I have.

21 THE COURT: Cathy Miller is Judge Kosach's
22 secretary. It has never been in Judge Kosach's courtroom,
23 so I don't know what Miss Miller has told you. Barbara
24 Walker is a court clerk here in the fourth floor.

25 Anyone else?

1 Yes, Miss Burke.

2 A PROSPECTIVE JUROR: I was working with
3 security people from UNR last January when this incident
4 occurred, and I had many discussions regarding it.

5 THE COURT: Regarding facts and circumstances
6 relating to the case? Do you know who you were talking
7 with?

8 A PROSPECTIVE JUROR: Mike at Exhibit Services.

9 THE COURT: Anyone else?

10 Yes, Mr. Judson.

11 A PROSPECTIVE JUROR: When these events
12 occurred, my office, as I said before, is on campus and the
13 campus was closed. And so I was aware that the campus was
14 closed, and when I returned to my office, I believe I could
15 tell that it had been searched.

16 THE COURT: Now, we asked you when you came and
17 filled out the personal questionnaire about any news media
18 accounts that you may have viewed regarding this case. You
19 all filled out the questionnaire.

20 Have any of you viewed, read, listened to in
21 any way any news media accounts since you filled out the
22 questionnaire?

23 Okay. So we have Miss Kenny. You raised your
24 hand?

25 A PROSPECTIVE JUROR: Yes. I can't help it.

1 I'm in the kitchen with my husband, and this gentleman was
2 on the television talking.

3 THE COURT: Mr. Stanton?

4 A PROSPECTIVE JUROR: Yeah.

5 THE COURT: Last night?

6 A PROSPECTIVE JUROR: Uh-huh.

7 THE COURT: He looks better in a suit. I saw
8 that, too.

9 A PROSPECTIVE JUROR: He got a tan.

10 MR. BOSLER: Objection, Your Honor.

11 THE COURT: Okay. Who else raised their hand?

12 Yes, Miss Getz. Don't tell me what you heard,
13 but when did you see news media accounts?

14 A PROSPECTIVE JUROR: Sunday.

15 THE COURT: Yesterday?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: Was that on the TV?

18 A PROSPECTIVE JUROR: Newspaper. I was looking
19 through the sale ads.

20 THE COURT: Felt like that article was hidden.
21 It was buried within another article.

22 Yes, Miss Guiler. I'm sorry, Aguirre.

23 A PROSPECTIVE JUROR: The same article she is
24 talking about. I did not read. I just saw the headline and
25 picture and kept going, but I did not read it. But the

1 headline kind of stood out.

2 THE COURT: I understand that. I know.

3 Now, we have a lot of people. If you all saw
4 that same headline but didn't read the article, raise your
5 hand. Leave them up because we have to make a record of
6 this.

7 Would you state your name in the back, ma'am?

8 A PROSPECTIVE JUROR: Kim Hill.

9 THE COURT: Sir?

10 A PROSPECTIVE JUROR: Mr. Sepahpour.

11 THE COURT: Your name?

12 A PROSPECTIVE JUROR: Gerbatz.

13 THE COURT: We'll go to the third row. Ma'am?

14 A PROSPECTIVE JUROR: Arlitz, Luisa.

15 THE COURT: Just state your name quickly.

16 A PROSPECTIVE JUROR: Susan Cadena.

17 A PROSPECTIVE JUROR: Helen Frandsen.

18 A PROSPECTIVE JUROR: Lawrence Jones.

19 A PROSPECTIVE JUROR: Mark Battaglia.

20 A PROSPECTIVE JUROR: Robert Furrie.

21 A PROSPECTIVE JUROR: Robert Estey.

22 A PROSPECTIVE JUROR: April Turnage.

23 A PROSPECTIVE JUROR: Jennifer Booth.

24 A PROSPECTIVE JUROR: Carole Burke.

25 A PROSPECTIVE JUROR: James Dunn.

1 THE COURT: Did any of you other than Miss Getz
2 actually read the article? I'll have an affirmative yes or
3 a negative no.

4 A PROSPECTIVE JUROR: No.

5 THE COURT: Anyone other than Miss Kenny who
6 actually watched the news, the television, who actually
7 listened to the whole thing or watched the whole thing or
8 even part of it really? Let me know what you saw.

9 Did you leave the TV on, Miss Burke, while the
10 article was going on?

11 A PROSPECTIVE JUROR: I couldn't get there to
12 turn it off.

13 A PROSPECTIVE JUROR: You go into the next room
14 and it is still on.

15 THE COURT: I know it is hard. So you did see
16 what was on the TV last night?

17 A PROSPECTIVE JUROR: And this morning.

18 THE COURT: And we'll go ahead and have
19 Mr. Adamson. What did you see?

20 A PROSPECTIVE JUROR: I just saw part of it
21 before I could change the channel.

22 THE COURT: When was that?

23 A PROSPECTIVE JUROR: Last night.

24 THE COURT: What channel?

25 A PROSPECTIVE JUROR: I think it was 4.

1 THE COURT: Anyone else in that row? Second
2 row? Who has not told me? Third row?

3 Yes, Mr. Battaglia.

4 A PROSPECTIVE JUROR: Over the week there was
5 about three times during the week when something came up. I
6 did turn it off. I heard something in the car, but I turned
7 it off.

8 THE COURT: Anyone in the fourth row?

9 Yes, ma'am.

10 A PROSPECTIVE JUROR: This morning the alarm
11 clock radio woke me up to a short blurb about it.

12 THE COURT: I know you turned that off quickly,
13 though.

14 A PROSPECTIVE JUROR: Oh, yeah, went back to
15 sleep.

16 THE COURT: Ma'am.

17 A PROSPECTIVE JUROR: Over the past week I have
18 heard three different radio accounts, and one was this
19 morning when the alarm went off.

20 THE COURT: You all listen to the same station?
21 Can you tell me what channel that was?

22 A PROSPECTIVE JUROR: Simulcast I think of
23 Channel 4.

24 THE COURT: And Miss Burke, was that what you
25 were listening to also?

1 A PROSPECTIVE JUROR: Turnage. And no. I
2 don't know what station it was.

3 THE COURT: Miss Burke?

4 A PROSPECTIVE JUROR: Channel 8.

5 THE COURT: Now, those of you who heard
6 something, either this week or what you told me about on
7 your questionnaires, do you all agree with me that what you
8 see and hear through the news media is not a hundred percent
9 accurate?

10 THE PROSPECTIVE JURORS: Yes.

11 THE COURT: Does anybody disagree with that?
12 Do you all understand that your responsibilities in this
13 case are to reach a verdict consistent with the evidence as
14 it's presented here in the courtroom and not from any other
15 source? Do you all understand that?

16 THE PROSPECTIVE JURORS: Yes.

17 THE COURT: Now, obviously you have heard bits
18 and pieces from the news media. But would you disregard
19 what you might have heard and base your decision based on
20 the evidence as it's presented here in the courtroom,
21 knowing full well that the reporter may not have been
22 talking firsthand with someone, may not know for themselves,
23 and also considering the problems with news media in
24 general? Can you all agree to do that?

25 A PROSPECTIVE JUROR: Yes.

1 THE COURT: Some people have problems with
2 that. Anybody in the 36 here seated? Anyone have a problem
3 with that?

4 Now, do you all understand that if you actually
5 sit on this jury, you will not be able to listen to the news
6 at all because I don't want to run the risk of this, so we
7 won't be using anything but music-only station, TV station,
8 radio stations; you won't be looking at the local news and
9 you won't be able to view the newspaper unless someone else
10 reads it ahead of time and cuts out what may be in it about
11 this case? Do you all understand that would be your
12 obligation?

13 THE PROSPECTIVE JURORS: Yes.

14 THE COURT: Anyone have a problem fulfilling
15 that obligation?

16 Has anyone currently seated in the jury box
17 formed or expressed any opinion thus far about the guilt or
18 innocence of the defendant?

19 A PROSPECTIVE JUROR: Could you repeat that
20 question?

21 THE COURT: Have you formed or expressed an
22 actual opinion regarding the guilt or innocence of the
23 defendant?

24 Miss Aguirre, have you expressed the opinion or
25 only formed it?

1 A PROSPECTIVE JUROR: I kind of already formed
2 it.

3 THE COURT: You kind of?

4 A PROSPECTIVE JUROR: Well, yes. I think -- do
5 you want me to continue with this?

6 THE COURT: No.

7 MR. BOSLER: Your Honor, may we approach?

8 THE COURT: Yes.

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

11 MR. BOSLER: Your Honor, what I'm going to
12 suggest is have her identify it at the side-bar.

13 THE COURT: This is what I'm going to do. I'm
14 going to keep track of who they are, as I have been. When
15 we recess for lunch, I'm going to not let them go. I have
16 got a list of about five people that we have individual
17 questions already to ask of. So we'll deal with it at
18 side-bar, but we won't have the courtroom full of people
19 waiting around. Is that all right?

20 MR. BOSLER: Yes.

21 (Whereupon, the following proceedings were held
22 in open court.)

23 THE COURT: We'll go forward now. Miss
24 Aguirre, I don't want you to tell me what your opinion is
25 one way or the other, but I want to get a record of who has

1 formed an opinion or they think they have. You sort of
2 formed an opinion?

3 A PROSPECTIVE JUROR: I think I formed it last
4 year with the media, yes, ma'am.

5 THE COURT: Because of the media?

6 A PROSPECTIVE JUROR: Yes, Your Honor.

7 THE COURT: And, Mr. Adamson, did you raise
8 your hand?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: What is your circumstance?

11 A PROSPECTIVE JUROR: Well, based on the media
12 and the people I talked to at the time. My wife's
13 ex-husband was in charge of parole board down in Carson
14 City, and we had conversations.

15 THE COURT: There wasn't anything -- he didn't
16 have anything to do with this case, though?

17 A PROSPECTIVE JUROR: No, just opinions.

18 THE COURT: Anyone else in that back row? I
19 try to do it in rows so I can keep track of everyone.

20 Yes, Miss Hill?

21 A PROSPECTIVE JUROR: I believe I have formed
22 my opinion.

23 THE COURT: And, Mr. Sepahpour.

24 A PROSPECTIVE JUROR: Yeah, I formed my
25 opinion.

1 THE COURT: Mr. Gerbatz.

2 A PROSPECTIVE JUROR: Yes. Without hearing any
3 evidence or facts, I do have a biased opinion.

4 THE COURT: Miss Getz, you raised your hand.
5 Miss Thomas.

6 A PROSPECTIVE JUROR: I have definitely formed
7 an opinion.

8 THE COURT: Anyone else in that row? Yes, I
9 have you, Miss Gertz. Thank you. Getz. I'm sorry.

10 Anyone in the third row? That is your row.
11 Miss Kenny.

12 A PROSPECTIVE JUROR: Yeah, I'm not able to
13 judge anybody. I can't. It is not in my nature. I just
14 can't judge.

15 THE COURT: You haven't formed an opinion one
16 way or the other?

17 A PROSPECTIVE JUROR: I haven't formed an
18 opinion, but I won't be able to live with myself if I form
19 an opinion. I just can't do it.

20 THE COURT: Okay. Miss Cadena.

21 A PROSPECTIVE JUROR: I definitely formed an
22 opinion.

23 THE COURT: Miss Frandsen?

24 A PROSPECTIVE JUROR: I taught in the
25 university system, and my husband taught in the university

1 system, and I think I'm biased.

2 THE COURT: But the question was --

3 A PROSPECTIVE JUROR: I understand.

4 THE COURT: -- if you formed an opinion about
5 the guilt or innocence.

6 A PROSPECTIVE JUROR: I don't have any facts.
7 So I'm -- in my heart I feel biased.

8 THE COURT: Okay, but you don't really have an
9 opinion yet about guilt or innocence?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: And Mr. Jones?

12 A PROSPECTIVE JUROR: Based on the news
13 reports, I haven't formed an opinion on the guilt or
14 innocence, but I tend to believe that the police --

15 THE COURT: Don't tell me what you believe.

16 A PROSPECTIVE JUROR: Well, it is an important
17 part of it.

18 THE COURT: You have a feeling based on the
19 news media?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: But you really haven't formed an
22 opinion about the guilt or innocence of this defendant?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Yes, Mr. Battaglia.

25 A PROSPECTIVE JUROR: From the media reports of

1 a year ago, I think I formed an opinion. I think I would
2 listen to the evidence, but I would tend to heed the things
3 I believe were proved or the things that I heard in the
4 media.

5 THE COURT: You mean if you heard it again,
6 then you think you'd believe it? If you heard it once from
7 the media and you heard it again here?

8 A PROSPECTIVE JUROR: Yeah.

9 THE COURT: Fourth row. Yes, ma'am.

10 A PROSPECTIVE JUROR: Yes, I formed an opinion.

11 THE COURT: Miss Kizis? Yes, Miss Turnage.

12 A PROSPECTIVE JUROR: I have also formed -- I
13 wouldn't be completely honest if I said I hadn't formed an
14 opinion. I would hope that I could somehow put that opinion
15 aside and listen to the evidence. I don't know if I could
16 do that.

17 THE COURT: Anyone else? And Mr. Geach?

18 A PROSPECTIVE JUROR: Yes, I formed an opinion
19 from the media over a year ago.

20 THE COURT: And the front row, Miss Burke?

21 A PROSPECTIVE JUROR: Well, based on knowledge
22 that I have that goes beyond the media, yes, I have formed
23 an opinion.

24 MR. GREGORY: I am sorry, I didn't hear the
25 last of what she said.

1 A PROSPECTIVE JUROR: I said I have formed an
2 opinion.

3 MR. GREGORY: Thank you, ma'am.

4 THE COURT: Now, those of you who said you
5 formed it based upon the media, we just got through talking
6 about the media and how you are not supposed to believe
7 everything you read.

8 Do you feel that you hold an opinion so
9 strongly based upon the media that you would vote today one
10 way or another if you heard no evidence? Any of you feel
11 that way, that strongly? Please raise your hand.

12 A PROSPECTIVE JUROR: It is not true for the
13 media. It is just kind of gut belief. I don't know how to
14 explain it to the Court.

15 THE COURT: Okay.

16 A PROSPECTIVE JUROR: Have any of you who have
17 indicated that you formed an opinion communicated this
18 opinion to anyone prior to today? And that's Mr. Adamson,
19 Miss Hill, Mr. Sepahpour, Mr. Gerbatz, Miss Getz, Miss
20 Cadena, you expressed it, and Miss Burke. Anyone else?

21 You have expressed the opinion, Miss Kizis?
22 Miss Turnage, you have expressed the opinion.

23 A PROSPECTIVE JUROR: I have.

24 THE COURT: And, Mr. Geach, you have expressed
25 the opinion?

1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: Miss Thomas, you have also?

3 Yes, Miss Kenny, you have. You are kind of in
4 a different category.

5 A PROSPECTIVE JUROR: That's me.

6 THE COURT: Now, do any of you have anything
7 other than a passing interest in the outcome of this case?
8 Anybody feel personally connected to the case, you want to
9 see a certain result or you have any particular feeling?

10 Does any juror entertain any bias or prejudice
11 for or against the State of Nevada just because it is the
12 State of Nevada? Is that a no?

13 THE PROSPECTIVE JURORS: No.

14 THE COURT: Does anyone harbor any bias for or
15 against the defendant just because he is Mr. Vanisi?

16 THE PROSPECTIVE JURORS: No.

17 THE COURT: At the conclusion of the evidence I
18 will state to you the law which applies to this case. I
19 will instruct you it is your duty to apply the law to the
20 facts that you find them to be.

21 Would any juror be reluctant to apply the
22 general principles of law which I instruct you regarding?
23 In other words, are you going to make up your own version of
24 the law, or will you follow the law as I give it to you? Is
25 anyone reluctant to follow the law?

1 THE PROSPECTIVE JURORS: No.

2 THE COURT: Some of you are kind of looking at
3 me puzzled. The role, if you are selected as a juror, is
4 that the jury determines the facts. You decide guilt or
5 innocence in this particular case. You decide the facts
6 that you are going to rely upon.

7 Then you apply the general principles of law
8 that I give you in instructions; and based upon the general
9 principles of law and the facts as you find them to be, you
10 reach a verdict consistent with both the facts and the law.

11 Now, the problem is I want to make sure nobody
12 sitting on this jury would decide that they could make up
13 their own version of the law. You are the exclusive
14 province for the jury to determine the facts, and it is my
15 exclusive province to determine the law.

16 Do you all agree with that premise?

17 THE PROSPECTIVE JURORS: Yes.

18 THE COURT: Anyone have a problem?

19 THE PROSPECTIVE JURORS: No.

20 THE COURT: Okay. Counsel, do you want to ask
21 your general questions before we begin to inquire separately
22 of some of these jurors?

23 MR. STANTON: No preference on behalf of the
24 State, Your Honor.

25 MR. BOSLER: Your Honor, could I suggest a

1 lunch break at this point?

2 THE COURT: Yes. I think we may.

3 MR. GREGORY: I'm sorry. I'm fairly old. I
4 have been at it since 9:00.

5 THE COURT: But the jury hasn't, Mr. Gregory.
6 I'm not giving you a break anyway. We worry about the jury.

7 Okay. This is what we're going to do. Ladies
8 and gentlemen here in the jury box, you are not going to go
9 anywhere. I'm going to go ahead and have you just sit for a
10 minute.

11 Ladies and gentlemen of the jury panel whose
12 names have not been called yet, at this time you are going
13 to go with the Jury Commissioner and the bailiff down to
14 another courtroom where there is a jury room and coffee I
15 think is made and some restrooms. I don't want you to go
16 outside that courtroom. We're going to get a lunch break,
17 but it will probably be -- I'm not going to let you go to
18 lunch probably for about 15 or 20 more minutes at least,
19 just because I'd like to see how many people we lose if we
20 lose any right now.

21 So I'm going to hold on to you for another half
22 hour or so. You cannot leave where I'm going to take you
23 now until you come back into this courtroom and are told to
24 come back at this particular time.

25 Now, while you are down the hall, you may not

1 form or express any opinion about the ultimate outcome of
2 this case. I don't want you discussing the case among
3 yourselves or with anyone else. I don't want you to talk
4 about the process, any of my questions. Don't talk about
5 what you might have answered to my questions.

6 Do not allow anyone to attempt to influence you
7 with regard to this case. And please be patient with me. I
8 want to be sure that I get this process finished today. So
9 I don't want to lose some of you for periods of time
10 because, we cannot do any business unless I have all of you
11 back here. So I will be calling roll. Make sure you stay
12 together; otherwise, your fellow jurors are going to be very
13 unhappy. Please go with the bailiff and the Jury
14 Commissioner staff now.

15 (Prospective jury panel not in jury box left
16 the courtroom.)

17 THE COURT: Ladies and gentlemen of the jury
18 panel, we have other -- we're using the whole courthouse
19 today. So we're going to move all of you down to a jury
20 room also down the hall but a different jury room. And
21 while you are in this jury room, you can use the facilities,
22 make yourself comfortable. There should be some coffee
23 around there, too.

24 And remain in that area at all times. Do not
25 leave that area. We're going to have someone stay with this

1 group of the panel.

2 And you may not form or express any opinion
3 about the ultimate outcome of this case. You may not
4 discuss the case among yourselves or with anyone else. You
5 may not allow anyone to attempt to influence you with regard
6 to it.

7 We are going to wait for these people to get
8 down there so that we don't lose or get you mixed up. We
9 want to make sure we keep you separate. And I think we'll
10 just start with Miss Aguirre.

11 Counsel have any problem with that?

12 MR. STANTON: Not that procedure, Your Honor.

13 MR. BOSLER: No, Your Honor.

14 THE COURT: The logistics of moving 130 of you
15 all around is causing us a little bit of delay, but we are
16 going to try to move this as quickly as possible. I still
17 see people in the hall. Is it safe to take the next group
18 down?

19 MS. LOPSHIRE: No.

20 THE COURT: Deputy Uptain, I'm going to have
21 you take them into the jury room for the short term; and as
22 soon as the hall is cleared, take them down to Department 9
23 jury room.

24 Go with the bailiff, please through that small
25 side door. Remain in that room.

1 Miss Aguirre, don't go anywhere.

2 (Prospective jury panel seated in the box was
3 temporarily excused.)

4 THE COURT: Miss Aguirre, go into the jury room
5 also.

6 Mr. Bosler.

7 MR. BOSLER: Thank you, Your Honor. I'm sure
8 everybody here is aware of the heightened scrutiny that is
9 involved in every capital case. I think if the Court -- we
10 have a supplemental affidavit from a psychologist who talks
11 about voir dire and voir dire behaviors.

12 I think what is happening here -- and I
13 basically make the general objection -- is that people when
14 they sit in the jury box, they look to you as a person in
15 authority. They don't want to say things that seem to
16 disagree with your viewpoint.

17 What we have is a lot of people be very candid
18 at the beginning of this process to say, I can't sit fairly,
19 I formed an opinion, I think he's guilty, I have talked to
20 my friends too much, I can't put that aside.

21 I know the Court has rehabilitated, quote,
22 unquote, or tried to rehabilitate some of those people; but
23 I think what's happening is that the Court, by the very
24 nature of being the person in the black robe who sits a
25 little bit higher in this courtroom than anybody else, who

1 obviously is an elected official, you by the process of
2 trying to rehabilitate these people, instead of letting the
3 State do it, you are essentially keeping these people from
4 expressing their true feelings.

5 And really it is the true feelings we need to
6 worry about because a lot of them already said, I formed an
7 opinion, I have expressed it, I have done this, I can't be
8 fair. Now is the time to tell those people, Well, you can
9 put that behind you and sit fairly, because they have
10 already made that decision. Now is the time to decide why
11 have they done that. If they can't sit fairly on this case,
12 maybe there is another trial they can sit fairly on.

13 I just have to raise a general objection to the
14 Court's attempts to rehabilitate these people because I
15 think you are doing the exact opposite. You are not
16 rehabilitating them. You are just kind of teaching
17 everybody else they can't express opinions or disagree with
18 the Court because that's -- the Court obviously is going to
19 show disapproval for that in the tone of your voice or the
20 questions that you ask.

21 I mean, when you say something like, You are
22 not going to let officers just because they are officers
23 control your opinion. You are going to require them to
24 provide the same amount of proof as any other witness. The
25 tone of your voice in fact can be the thing that tells these

1 people that, Well, if I say yes, she's already indicated by
2 the tone of her voice that that's not proper response to
3 give, so I'm going to say no. I'll give them the same
4 weight I'll give any other witness.

5 I think we're kind of indoctrinating the jury
6 at this point not to be candid, not to be honest about how
7 they feel about this case or about the death penalty. And
8 to that extent I think it is going to impair Mr. Vanisi's
9 right to a fair trial and fair cross-section of the
10 community. I think at that point we want to make an
11 objection.

12 We have -- I don't want to spring anything on
13 the prosecution, but if the Court wants to consider this, we
14 have a nice well-written affidavit from a professor in Chico
15 who has been a jury consultant for both the prosecution --

16 THE COURT: Wait, wait. I'm considering your
17 motion at this time. You are objecting to the jury
18 selection process. You have stated it. Now if you want to
19 go to something else, we're going to deal with it later.
20 Deal with your motion.

21 MR. BOSLER: This is actually related, if the
22 court is willing to entertain this. We have an affidavit --

23 THE COURT: Wait. You made a specific
24 objection to the way I'm conducting the voir dire. Some
25 affidavit from somebody who is not present in the courtroom

1 has no relation to that, Mr. Bosler. If you want to make
2 another motion how -- about how voir dire should be
3 conducted, we'll deal with that later. But right now let's
4 deal with one motion at a time.

5 MR. BOSLER: Will the Court allow me to file an
6 affidavit in support of my objection at this moment?

7 THE COURT: I won't let you file anything
8 outside of what you file currently with each motion, but you
9 may file anything you want if you have a new motion to make.
10 At any time, you may file anything. But you need to tell me
11 what your basis of your motion is when you make your motion
12 and argue it, and I decide it based on the status of the
13 case at that time. You can't retroactively give me more
14 evidence, because I have to rule on what you give me.

15 MR. BOSLER: I'll advise the Court we'll file
16 an affidavit in support of our motion. But we have to get
17 it from the office to file it.

18 THE COURT: Well, then I can't rule on your
19 motion; right?

20 MR. BOSLER: If the Court will give me five
21 minutes, I'll walk over to the public defender's office and
22 get the affidavit and make that part of the record.

23 THE COURT: Mr. Stanton.

24 MR. STANTON: I'd have no objection to
25 Mr. Bosler filing the document in open court now. I don't

1 know why we need to wait five minutes to have him go to some
2 other location. Your court clerk is here. You can file
3 documents with the court clerk.

4 THE COURT: Do you have the documents,
5 Mr. Bosler?

6 MR. BOSLER: That is what is in the public
7 defender's --

8 MR. STANTON: Well, we have never seen it. I'm
9 somewhat at a loss on how the State is going to respond to
10 something that's now going to be added to the record in five
11 minutes. I'll address the issues that Mr. Bosler has raised
12 directly to the Court based upon the evidence to date.

13 There is no authority that I'm aware of in
14 their initial motion for a change of venue or argued by
15 Mr. Bosler this morning that stands for the proposition if a
16 juror has heard about a case or expressed an opinion about a
17 case, prior to being selected in the voir dire process, that
18 that in and of itself renders them ineffective or unable to
19 be a juror in this case.

20 The critical inquiry, especially in the post
21 1970s in the litigation where media has covered a high
22 profile case, the courts have recognized that indeed jurors,
23 prospective jurors are going to have heard details through
24 the media about the particular case and even expressed an
25 opinion. That's not the critical inquiry.

1 The critical inquiry is whether or not, if they
2 have those opinions and if they have heard evidence, whether
3 or not they could put those aside, as the role of a juror is
4 and be fair and impartial in this case and hear the evidence
5 anew.

6 There is nothing that the State has heard from
7 the Court this morning that would violate that.

8 In addition, Your Honor, I guess what is being
9 argued, but once again I have difficulty addressing it, is
10 that there is some sort of implicit psychological coercion
11 that's occurring because of counsel's reference to
12 rehabilitating, the Court rehabilitating jurors. I don't
13 think the Court is rehabilitating jurors at all. It's
14 following the law of Nevada and the statutes that have
15 addressed pretrial publicity and expressions of opinions and
16 that is, as I stated before, whether or not they can put
17 those aside.

18 If there is some -- I'm presuming by the
19 representation by Mr. Bosler that there's some person who is
20 going to sign an affidavit saying that in their experience,
21 people will be less likely to be forthcoming in their
22 expressions because of the way certain words or questions
23 are posed to them. I'm sure you can get an affidavit from
24 any psychologist to say anything you want, in my past
25 experience.

1 The question is whether or not there is a legal
2 basis because of that dynamic that courts have recognized to
3 then change the method in which jurors are selected. And
4 unless counsel can cite to that evidence or he's arguing
5 that this is a case of first impression and that the
6 evidence that he has to support it is an affidavit that we
7 haven't even seen yet, then I just ask the Court to take it
8 under submission until the evidence has been presented.

9 THE COURT: At this time I'm going to deny your
10 motion. You have leave to renew your motion to modify the
11 jury selection process at any time. You have a right to
12 file any evidence or information you want to file with your
13 motion whenever you renew it.

14 At this time I find that your motion is not
15 timely, that we have had pretrial motions, discussions about
16 jury selection and determinations of how we were going to
17 select a jury many, many times throughout the course of this
18 trial before we get here. To argue now while we have jurors
19 waiting to proceed with the jury selection that we need to
20 change the method I think is not timely. But I'm not going
21 to preclude you from filing additional motions if you so
22 desire.

23 In addition, specifically the Court does not
24 agree with your analysis that the Court at any time is
25 rehabilitating anyone. In fact, I have written down names,

1 haven't inquired any further, and as discussed at the bar,
2 determined that we would call them in individually and let
3 them discuss their positions completely.

4 The general question of the entire panel,
5 whether or not they will afford any particular witness
6 including law enforcement some special credibility issues,
7 that is the general voir dire this Court participates in and
8 the law of Nevada and has been upheld on numerous occasions.

9 If there is any problem with the voir dire thus
10 far, we'll deal with it in appeal. I don't think there is.

11 I don't think I have expressed any opinion with
12 regard to what they should answer or not answer, except I
13 have expressed some reaction, albeit mostly neutral, to
14 their reading or viewing news media accounts after I
15 admonished them on the record a week ago not to. And the
16 purpose for that is to be sure that those people who are
17 selected for jurors understand that there is a reality with
18 regard to the Court's admonition.

19 I do not want to admonish them on a regular
20 basis not to view any news media accounts and act like it's
21 no big deal if they violate that rule. And that is the
22 Court's -- why the Court felt it essential that I react to
23 those people who violated the admonition that they got on
24 the record last week, so that we don't have a problem with
25 the jury not abiding by the rules and regulations of the

1 Court.

2 But the fact that they -- the other facts that
3 we have written down, the separate issues that must be
4 inquired were in fact not rehabilitated by the Court or
5 inquired any further with a view towards allowing counsel to
6 inquire further.

7 We'll bring Miss Aguirre in. First, did you
8 need a break, Mr. Gregory?

9 MR. GREGORY: I do indeed.

10 THE COURT: Do you need a restroom break? Is
11 that what you need?

12 MR. GREGORY: Your Honor, I'm a little
13 concerned. Last week we told this panel that we're going to
14 start at 10:00 and we're going to break at noon for lunch.

15 THE COURT: They were told this morning by the
16 Jury Commissioner they'd be held back a little bit longer.
17 If you need a restroom break, you can take it; otherwise I
18 would like to get a few of these individual inquiries done
19 so I can find out how many of these people we're going to
20 lose.

21 MR. GREGORY: May I inquire as to when we --

22 THE COURT: I told the jury panel a half hour,
23 which would be a quarter to 1:00, which is approximately 18
24 minutes from now.

25 MR. GREGORY: I will wait, Your Honor.

1 THE COURT: Thank you. Bring Miss Aguirre in.

2 MR. GREGORY: Or I will move very fast.

3 THE COURT: That's fine if you need to.

4 MR. SPECCHIO: Judge, do you have to bring them
5 all back in to admonish them before you cut them loose or
6 not?

7 THE COURT: I might go to them. But we'll talk
8 about it.

9 (Whereupon, Prospective Juror Aguirre entered
10 the courtroom.)

11 A PROSPECTIVE JUROR: I'm kind of nervous all
12 of a sudden.

13 THE COURT: Don't be. The reason I asked you
14 to come in by yourself is because you said some things that
15 made me just feel that they were things that you would feel
16 more comfortable saying without everybody else listening.

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: That is the only reason I asked you
19 to come in by yourself. And please feel comfortable telling
20 us whatever you want to tell us.

21 The first thing you mentioned was something
22 about Mr. Gammick and something about forming or expressing
23 an opinion. So why don't you go ahead and tell me what you
24 would have told me in front of everybody if I hadn't stopped
25 you.

1 A PROSPECTIVE JUROR: Well, Mr. Gammick was the
2 lead prosecutor for the Conner Harris matter, and I knew Ali
3 Shaw from the time she was nine. I know Linda. And I don't
4 know if everybody needs to know, but Mr. Beko that I work
5 with was married to Linda for a time, and I knew the girls.
6 And after that criminal matter there was an underlying civil
7 action. I don't quite understand it, but George Swainston
8 handled it.

9 I read some of the criminal transcripts for
10 Conner Harris, and where I think my bias might come in, with
11 all due respect, is that I think Mr. Gammick is an
12 exceptional lawyer, and I know it's not proper. I don't
13 want to upset the Court, but I'm trying to be honest.

14 THE COURT: You are not upsetting me.

15 A PROSPECTIVE JUROR: I think I would probably
16 weigh the defense's case maybe a little bit more than I
17 should. I think I would have bias for the prosecution. I'm
18 sorry.

19 THE COURT: Just because Mr. Gammick is here?

20 A PROSPECTIVE JUROR: Yeah. I mean, I took Ali
21 Shaw's case personally. He handled it magnificently. I
22 think, yeah.

23 THE COURT: And now what was your feeling with
24 regard to forming or expressing any opinion about the case?

25 A PROSPECTIVE JUROR: I think I have already --

1 I think -- do you want me to come right on out and say it?

2 THE COURT: Sure.

3 A PROSPECTIVE JUROR: I think the gentleman is
4 guilty.

5 THE COURT: The basis of that?

6 A PROSPECTIVE JUROR: The first -- when the
7 incident first started at UNR, I watched it in the morning
8 when they had it cordoned off. I believe I saw testimony --
9 not testimony -- a news report when they apprehended him. I
10 remember Phoenix. But that might be wrong. I know I'm not
11 supposed to do that, but --

12 THE COURT: No.

13 A PROSPECTIVE JUROR: I think he's guilty. I
14 think the burden is going to be shifted. I think
15 Mr. Specchio will have to convince me.

16 THE COURT: You understand that criminal
17 defendants are presumed innocent until the contrary is
18 proven?

19 A PROSPECTIVE JUROR: Yes, I know.

20 THE COURT: And you don't think you could
21 afford the defendant --

22 A PROSPECTIVE JUROR: Honestly, Your Honor, I
23 can't. I know I'm supposed to know the system because of
24 where I work, but honestly I don't think I could. I'm
25 coming in with a reverse presumption.

1 THE COURT: Mr. Stanton, do you have any
2 questions?

3 MR. STANTON: I do.

4 Miss Aguirre, relative to your experience in
5 the legal system, you would understand that if you sat in
6 this case, and the State came in there and you said, Wait a
7 second, unlike the Conner Harris case, I was expecting to
8 hear all this evidence that proved that he was guilty and
9 I'm not hearing it, could you still require the State to do
10 its job in this case and that is present evidence to you
11 that proves beyond a reasonable doubt that he committed
12 criminal acts?

13 A PROSPECTIVE JUROR: Would I still expect you
14 to prove it?

15 MR. STANTON: Yes.

16 A PROSPECTIVE JUROR: Oh, yeah.

17 MR. STANTON: In fact, if you came in here and
18 you didn't see it, contrary to what you may know of
19 Mr. Gammick in the past, you'd say, Well, maybe he fell down
20 on this one or they just don't have the evidence?

21 In other words, because of your feeling, would
22 you put it aside that the State had its burden in this case
23 as it does in every criminal case?

24 A PROSPECTIVE JUROR: No, I don't think I'd put
25 it aside. I mean, they came up with something that

1 convinced me he was innocent, I'd give it to him.

2 MR. STANTON: So you'd listen to the evidence
3 in this case?

4 A PROSPECTIVE JUROR: Yes.

5 MR. STANTON: Just like in the Conner Harris
6 case or in any criminal case, you would expect, and in fact
7 in a serious case like this, would require that indeed the
8 person that did it be convicted and not the wrong person?

9 A PROSPECTIVE JUROR: Yes.

10 MR. STANTON: And you would -- that would
11 concern you greatly if you sat on a jury to convict the
12 wrong person?

13 A PROSPECTIVE JUROR: Yes.

14 MR. STANTON: So what we're trying to do, what
15 I'm trying to develop with you, Miss Aguirre, is an
16 understanding that a lot of people may have opinions that --
17 strongly held opinions because of how they work or what they
18 know about other cases. The question is, can you perform
19 the unique function of being a juror and that is put that
20 aside and listen to the facts as presented to you here in
21 this courtroom and then decide from those facts?

22 You may have a preexisting opinion, strong or
23 weak or otherwise. But can you put that aside and say, They
24 have got to put their case on in front of me?

25 A PROSPECTIVE JUROR: I don't know. That's a

1 hard question. I don't know.

2 There was one question the Court asked about
3 the things that we heard during the media. And just so you
4 know something about me, if I remembered something from
5 those previous media blurbs that doesn't come across, I'm
6 going to want to know why. I'll be sending you notes.

7 So you need to understand that. I can't -- I
8 remember things that happened in third grade. I'm going to
9 want to know why I didn't hear that here when I heard it a
10 year ago. I don't know if that's important.

11 MR. STANTON: You know working in a law firm
12 that there are rules of evidence that wouldn't permit in
13 certain cases certain things from coming in.

14 A PROSPECTIVE JUROR: I understand that, but it
15 would bother me.

16 MR. STANTON: Would it bother you to the point
17 that where you couldn't put it aside?

18 A PROSPECTIVE JUROR: No, I would probably just
19 ask the Court why.

20 MR. STANTON: If the Court told you that you
21 must decide it on the facts before you, could you follow
22 that instruction?

23 A PROSPECTIVE JUROR: I would try very hard. I
24 can't tell you yes or no. I would try. That's all I can
25 tell you.

1 MR. STANTON: Thank you.

2 THE COURT: Mr. Bosler.

3 MR. BOSLER: Miss Aguirre, how long have you
4 worked at that law office?

5 A PROSPECTIVE JUROR: I have worked for
6 Erickson, Thorpe, it was ten years in November.

7 MR. BOSLER: Had you worked in other law
8 offices prior to that?

9 A PROSPECTIVE JUROR: Prior to that I worked
10 for -- it was a bankruptcy firm, Wiener, Haldeman & Goldman
11 for about eight months. I don't have a clue what I did for
12 eight months.

13 Prior to that I worked nine years for Bob
14 Heaney, personal injury, seven years for Bob Heaney,
15 personal injury. That was before he went to -- I forget
16 that guy.

17 THE COURT: David Allen.

18 A PROSPECTIVE JUROR: There you go.

19 MR. BOSLER: So there is what, 15 some odd
20 years?

21 A PROSPECTIVE JUROR: Longer than that. About
22 17, 18, a long time.

23 MR. BOSLER: And during that 18 years, have you
24 also had contact with criminal cases?

25 A PROSPECTIVE JUROR: No. Other than Conner

1 Harris, and that wasn't really my contact.

2 MR. BOSLER: In your experience in the legal
3 profession, you knew before you came in today that the State
4 has to prove the case beyond a reasonable doubt?

5 A PROSPECTIVE JUROR: Yes, I understand that.

6 MR. BOSLER: And you are familiar with that
7 concept obviously working in the law office. And even
8 though you are familiar with that concept, when you answered
9 the questions a few moments ago from the Court, you said,
10 I'm not going to follow the presumption of innocence because
11 for me it is a presumption of guilt.

12 A PROSPECTIVE JUROR: Yes.

13 MR. BOSLER: And you are fairly educated. Look
14 like a pretty bright person. Is there anything I can do or
15 the judge can do to change that presumption of guilt?

16 A PROSPECTIVE JUROR: I don't know. I can't
17 answer that. I mean, it's -- I haven't heard all the
18 evidence. I go a lot on my instinct, and my instinct tells
19 me that I think the gentleman is guilty, and I apologize to
20 the Court.

21 MR. BOSLER: Challenge for cause, Your Honor.

22 THE COURT: Counsel.

23 MR. STANTON: I don't believe it exists, Your
24 Honor. I think it is something that we may face with
25 several jurors here relative to the individual voir dire

1 that's going to occur with strongly held beliefs and
2 presumptions is different from the requirement that they
3 cannot put it aside.

4 A lot of jurors can't say for certain because
5 it hasn't happened to them. But I think the ultimate
6 question is, can they abide by their oath, and I think this
7 juror understands indeed what the legal requirements are as
8 a juror.

9 THE COURT: Mr. Bosler.

10 MR. BOSLER: And she hasn't said unequivocally
11 she can abide by the oath. She said, I don't know whether I
12 can. She's already made the expression that she won't be
13 fair. I think that meets the challenge.

14 THE COURT: Miss Aguirre, can you abide by the
15 oath?

16 You see, the issue for me to decide now is in
17 spite of the fact that you saw the news media accounts and
18 in spite of the fact that you feel pretty strongly about
19 what you saw in the news media, and in spite of the fact
20 that you think you have a great respect for the District
21 Attorney of this county, can you set all that aside and
22 follow the law as I instruct you it is, which is that you
23 must decide the case based on the evidence as it's presented
24 here? And if the State fails in their burden of proof, and
25 they have to prove it to you, could you return a verdict of

1 not guilty?

2 A PROSPECTIVE JUROR: Could I return a verdict?
3 I don't think I could, Your Honor. I'm sorry.

4 THE COURT: You wouldn't be able to do that?

5 A PROSPECTIVE JUROR: I don't think so. I
6 don't think so.

7 THE COURT: I'm going to excuse you for cause.

8 A PROSPECTIVE JUROR: I apologize to the Court.

9 THE COURT: That's fine. Thank you for being
10 so frank. Go ahead and go out the main doors and report to
11 the Jury Commissioner.

12 (Whereupon, Prospective Juror Aguirre was
13 excused from the courtroom.)

14 THE COURT: Would you bring Mr. Geach in?

15 While the bailiff is getting Mr. Geach, which
16 will probably be the only other person we can talk to before
17 I have to send the rest of the jury out, does Mr. Vanisi
18 waive his right to be present when I excuse the jury panel
19 that is currently in the audience, because I can go down to
20 the other courtroom and that way you all don't have to move?

21 MR. SPECCHIO: Just for the lunch hour, Judge,
22 you are going to admonish them?

23 THE COURT: Bring them back about a quarter to
24 2:00.

25 MR. SPECCHIO: We'll waive, Your Honor.

1 (Whereupon, Prospective Juror Geach entered
2 the courtroom.)

3 THE COURT: Go ahead and have a seat,
4 Mr. Geach. First I want to let you know that I don't want
5 you to feel uncomfortable being here by yourself. The
6 reason I had you come back by yourself is I got the
7 impression that there were some things that you wanted to
8 talk about or some feelings you had about your grandfather
9 and the circumstances of his death that would be better --
10 you'd feel more comfortable talking about it without
11 everybody else on the jury panel.

12 A PROSPECTIVE JUROR: Yes, exactly.

13 THE COURT: That is why I asked you to come
14 back by yourself. You feel more comfortable talking now?

15 A PROSPECTIVE JUROR: Right, yes, I do.

16 THE COURT: Can you tell us a little bit about
17 the nature -- you said you felt like you would be biased?

18 A PROSPECTIVE JUROR: Yes. My grandfather was
19 a captain on the Reno Police Department in the 1940s. And
20 he was murdered by a couple kids that came down from
21 Seattle, Washington, and went on a burglary run -- didn't
22 say that right, but anyway, they are burglars and robbing
23 stores.

24 They are holed up in a motel downtown Reno, and
25 he and a number of the policemen found out where they were,

1 and they went into the motel room. And one of the people,
2 one of the burglars was underneath the sheets in the room
3 with an automatic rifle right by his side, and my
4 grandfather went in first, and he took the covers off this
5 man, and this man opened up on him and killed him.

6 We in our family feel that we were robbed of
7 having a relationship with our grandfather. It's been a
8 very sore spot in the family for many, many years.

9 And I just don't think that I could sit on this
10 jury and not think about that while that was -- while this
11 trial was going on. I think I could serve jury duty in many
12 other capacities but not somebody that was a peace officer
13 killed in the line of duty.

14 THE COURT: Mr. Stanton.

15 MR. STANTON: I would have no objection if
16 defense counsel makes the motion for cause.

17 MR. BOSLER: Thank you, Mr. Geach.

18 THE COURT: Are you going to make the motion?

19 MR. BOSLER: Yes, no objection. Make the
20 motion.

21 THE COURT: It's not an objection.

22 MR. BOSLER: We'll make the motion for cause
23 challenge, Your Honor.

24 THE COURT: Mr. Geach, we all want to express
25 to you how sorry we are, both the defense and prosecution.

1 Appreciate your candor and appreciate your service thus far,
2 but you are going to be excused. You need to leave now and
3 go down and report to the Jury Commissioner.

4 A PROSPECTIVE JUROR: Thank you, Your Honor.

5 (Whereupon, Prospective Juror Geach was excused
6 from the courtroom.)

7 THE COURT: Counsel, at this time I will give
8 you a 15-minute break while we go down the hall and let the
9 other jurors go, the other big panel, and then we'll inquire
10 of some other of these individuals that we have, this small
11 group of people that we're holding.

12 Does anyone have any objection to that
13 procedure?

14 MR. GREGORY: Your Honor, how long do we intend
15 to do that?

16 THE COURT: Well, I'd like to let them go. My
17 concern is if we are going to have somebody who can be let
18 go in 30 seconds or a minute, I don't want to have them
19 waiting around and wasting two hours of their life waiting
20 on us. So I'm going to try to get through all of those
21 individuals who have a problem.

22 MR. SPECCHIO: And then are you going to take a
23 lunch hour?

24 THE COURT: Right. Well, we probably won't get
25 a whole lunch hour. Maybe half an hour, 45-minute break.

1 Is that all right?

2 MR. SPECCHIO: Yes.

3 THE COURT: The people we have is we had
4 Aguirre, Adamson, Hill. We have about 10 people here.

5 MR. SPECCHIO: My problem, Judge, is I'm a
6 diabetic, and I'm supposed to get something every 15
7 minutes. If we are going to break --

8 THE COURT: I can break now.

9 MR. SPECCHIO: I'm okay.

10 THE COURT: How much longer? Are you okay?

11 MR. SPECCHIO: 2:00, 2:30. That would be the
12 limits, though, probably. I have to get something in, and
13 then I'm all right again.

14 MR. GREGORY: And actually he's being generous.
15 That is his limit, Your Honor.

16 MR. SPECCHIO: What he is saying, Judge, if I'm
17 laying on the floor and my arms are going like this, it is
18 probably time.

19 THE COURT: Well, I don't want to cause you any
20 health problems. We better take a break. I'm going to go
21 ahead and go down to the two courtrooms and excuse all the
22 jurors for the lunch hour. I'll have them come back at
23 1:30.

24 No, I'll have them come back at a quarter til.
25 I think we better take an hour. We'll keep going with this

1 when they come back. I'll have them go to the other
2 courtrooms.

3 Will you waive Mr. Vanisi's presence when they
4 call the roll?

5 MR. GREGORY: Yes, Your Honor.

6 THE COURT: Any objection to that, Mr. Stanton?

7 MR. STANTON: No, Your Honor.

8 THE COURT: Then we'll have them go back to
9 their other separate courtrooms and call the roll and keep
10 proceeding. Court is in recess.

11 (Recess taken at 12:47 p.m.)

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1 RENO, NEVADA, MONDAY, JANUARY 11, 1998, 12:50 P.M.

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4 (The following proceedings were conducted in
5 Department 3's courtroom in open court in the
6 presence of the jury panel.)

7 THE COURT: Ladies and gentlemen of the jury
8 panel, we are still participating in the rest of the jury
9 selection. Rather than have you wait here for us, I'm going
10 to let you go to lunch and then require that you return.

11 When you return, the roll will be taken, and
12 I'm going to have you return to Department 9's courtroom.
13 You are in this courtroom now, which is in the middle of
14 this floor. They have hearings this afternoon, so I'm going
15 to have to move you to the courtroom at the far end of the
16 floor.

17 So just come back from lunch and find a home in
18 the courtroom, have a seat, and as soon as you are all here
19 or a quarter to 2:00, whichever comes first, which is a
20 little less than an hour from now, I'll come in with my
21 staff and we'll call the roll, and then you all can relax
22 for a few more minutes while we finish up with the rest of
23 the panel.

24 During this break, don't read the newspaper,
25 don't listen to any news media accounts regarding this case.

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1 Do not discuss this case among yourselves or with anyone
2 else. Do not form or express any opinion about the ultimate
3 outcome of this matter, and do not allow anyone to attempt
4 to influence you with regard to it.

5 I want to thank you for your patience. We are
6 going to get through this hopefully today. So please feel
7 free to leave now, go directly out of the building, and
8 remember to wear those juror badges so you don't run into
9 anybody.

10 And please remember to come directly to
11 Department 9's courtroom. I don't want to find you
12 wandering around. Remember, until I have all of you back,
13 we'll not be able to start. If you fail to come back on
14 time, everybody else will be waiting around for you.

15 Thank you. You may leave at this time. Court
16 is in recess.

17 (Recess taken at 12:54 p.m.)

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RENO, NEVADA, MONDAY, JANUARY 11, 1998, 12:57 P.M.

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(The following proceedings were conducted in Department 9's courtroom in open court in the presence of some of the jury panel.)

THE COURT: Ladies and gentlemen of the jury panel, we are going to let you go ahead and go to lunch now. It's getting kind of late, and I'm sure you all are getting hungry.

I'm going to have you come back this afternoon. It's going to be a little shorter lunch hour. I'm going to have you back here by a quarter to 2:00. That is 45 minutes from now.

And when you come back, you won't be coming into this courtroom because I'm having to move that whole group of people into this courtroom. But there is a small jury room in the middle of this floor in the middle area. It is called the Department 3 jury room. There will be someone from the Jury Commissioner's staff who will let you into that jury room, and you are going to have to stay in that.

It is much smaller, but the other courtroom is being used at 1:30. We can use the jury room, but we can't use the courtroom. It will be a little crowded, but I don't

1 think you will be there very long.

2 During this break, do not discuss this case
3 among yourselves or with anyone else. Do not form or
4 express any opinion about the ultimate outcome of this
5 matter and do not allow anyone to attempt to influence you
6 with regard to it. Don't read the newspaper, don't listen
7 to any news media accounts regarding this case.

8 Go ahead and have your lunch, come back to
9 Department 3 jury room, which is on this floor, fourth
10 floor. There will be someone standing outside the door to
11 assist you in finding the right door. Just walk on down the
12 hall as though you were coming here and you won't miss it.
13 We cannot start until you are all back.

14 We will call the roll. If you are all back
15 before a quarter to 2:00, we will be able to start right on
16 time. I appreciate your assistance. Thank you. Court is
17 in recess.

18 (Recess taken at 12:58 p.m.)
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1 RENO, NEVADA, MONDAY, JANUARY 11, 1998, 1:47 P.M.

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3 (The following proceedings were conducted in
4 Department 3's jury room in open court in the
5 presence of some of the jury panel.)

6 THE COURT: Let the record reflect that we're
7 convened in chambers in Department 3. Counsel has waived
8 their appearance. The clerk will call the roll now.

9 (Roll call conducted of prospective jurors in
10 the jury box and all were present.)

11 THE COURT: Thank you. Ladies and gentlemen,
12 just make yourself as comfortable as you can. I know this
13 is small quarters. As soon as we can open up another area
14 for you, we will. You will be called down -- a few of you
15 will be called down individually in just a few minutes.
16 Thank you.

17 (Recess taken at 1:50 p.m.)
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RENO, NEVADA, MONDAY, JANUARY 11, 1998, 1:51 P.M.

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(The following proceedings were conducted in Department 9's courtroom in open court in the presence of some of the jury panel.)

THE COURT: Those of you who thought you didn't have enough chairs in the courtroom that I serve in, you should look around and see how many more chairs we had at least in our courtroom.

As soon as I'm off the bench, you will be able to walk around in this courtroom as well as the jury room, and there will be enough seating for you as you wait for the remainder of the case to take place. So you won't have to be standing.

The clerk will now call the roll.

(Roll call conducted of prospective jury panel, and all were present except Patricia F. Meidell.)

THE CLERK: Patricia F. Meidell?

THE COURT: Does anyone know Patricia F. Meidell? Yes.

A PROSPECTIVE JUROR: I know her.

THE COURT: Did you see her this morning?

A PROSPECTIVE JUROR: Yes.

THE COURT: And you don't see her in the

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1 courtroom now?

2 A PROSPECTIVE JUROR: I do not.

3 THE COURT: Thank you.

4 Let the record reflect that the roll has been
5 called. We are missing one juror. Counsel has stipulated
6 to waive their appearance at these proceedings for purpose
7 of roll call.

8 Ladies and gentlemen, we will not be able to
9 proceed with your panel until we make a determination of
10 where the other juror is. But during this break you have to
11 remain here or in the jury room.

12 Be sure not to discuss the case among
13 yourselves or with anyone else. Do not form or express any
14 opinions about the ultimate outcome of this matter. And do
15 not allow anyone to attempt to influence you with regard to
16 this case.

17 Go ahead and make yourselves comfortable in
18 this courtroom but do not leave this courtroom or jury room.
19 You may use the facilities in the jury room attached to this
20 courtroom. We'll see what we can do, where this person has
21 gone.

22 Thank you. Court is in recess.

23 (Recess taken at 1:58 p.m.)

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RENO, NEVADA, MONDAY, JANUARY 11, 1998, 2:02 P.M.

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

THE COURT: Counsel, upon stipulation, we have called the roll of all the other jurors. All the jurors have returned. They are segregated on this floor except one which we are still trying to find. And she is in the main body. So before we bring that main body of jurors in, we'll decide what you want to do about it. Let's proceed with questioning.

MR. SPECCHIO: That is Miss Meidell, Your Honor?

THE COURT: Yes. Shall we proceed with the next person, Juror Thomas?

MR. BOSLER: We would inquire. Are you calling them in any particular order or the order you have them?

THE COURT: I'm calling them in the order that they said something that made me think we had to talk to them privately.

MR. BOSLER: Thank you, Your Honor.

MS. LOPSHIRE: Mrs. Meidell is now here.

THE COURT: Why don't you bring her in.

(Whereupon, Prospective Juror Thomas entered the courtroom.)

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1 THE COURT: Miss Thomas, go ahead and find a
2 seat. Anywhere is fine.

3 Miss Thomas, I asked that you come in by
4 yourself because you said something while we were asking
5 everyone questions that made me think that perhaps you would
6 be more comfortable expressing your concerns without
7 everyone else being around. Specifically you talked about
8 some biases that you might have regarding the defendant in
9 this case.

10 Is there anything further you'd like to say
11 about that?

12 A PROSPECTIVE JUROR: Just that if I was him, I
13 wouldn't want me on the jury because I feel like I'm
14 prejudiced.

15 THE COURT: And I don't mean to be overly
16 personal. It is just that I have to inquire. The basis of
17 your sense of prejudice?

18 A PROSPECTIVE JUROR: Well, being as I live
19 with an ex-cop, Salt Lake City cop, I have some friends that
20 are cops, I feel like I have already formed my opinion.

21 THE COURT: Okay. Counsel?

22 MR. STANTON: Ma'am, as an oath that you would
23 take if you were to sit on this jury to listen to the
24 evidence and then make a decision from the evidence, do you
25 think you can follow that oath in this case?

1 A PROSPECTIVE JUROR: I can make a decision,
2 but I can't say that it would be any different than what I
3 feel right now.

4 MR. STANTON: Well, it may be the same as you
5 feel now. That's not necessarily a bad thing.

6 The question really boils down to is can you
7 put aside your preexisting opinion; the facts that you may
8 know about it and any bias that you might have towards
9 police officers, put those aside and say, Look, I have got a
10 different role here. My role here is once I take that oath,
11 I have to sit down and listen to the witness very carefully,
12 look at all the evidence that is admitted and then make my
13 decision based upon the law that Judge Steinheimer gives?
14 Do you think you can abide by that oath.

15 A PROSPECTIVE JUROR: No, I don't.

16 MR. STANTON: Do you think your feelings are so
17 strong that you can't put them aside?

18 A PROSPECTIVE JUROR: Right.

19 MR. STANTON: I'm assuming that your feelings
20 are because of the connection with law enforcement?

21 A PROSPECTIVE JUROR: (Positive nod.)

22 THE COURT: You have to answer outloud.

23 A PROSPECTIVE JUROR: I'm sorry. Yes.

24 MR. STANTON: I have no further questions.

25 MR. BOSLER: I don't have any questions. We'll

1 make a for-cause challenge.

2 THE COURT: Mr. Stanton?

3 MR. STANTON: No objection, Your Honor.

4 THE COURT: Miss Thomas, you are excused from
5 further service at this particular case. Go ahead and
6 report downstairs to the Jury Commissioner's office.

7 A PROSPECTIVE JUROR: Is that where I was at
8 first?

9 THE COURT: The very first time down on the
10 first floor.

11 (Whereupon, Prospective Juror Thomas was
12 excused from the courtroom.)

13 THE COURT: Go ahead and have Miss Lopshire
14 bring in the other juror.
15 (Whereupon, prospective juror Meidell entered
the courtroom.)

16 THE COURT: The clerk will call the roll.

17 THE CLERK: Patricia Meidell.

18 THE COURT: Miss Meidell, I would ask that you
19 continue to wait the jury process in Department 9's
20 courtroom. You will remain in that courtroom. Do not leave
21 the courtroom.

22 Do not discuss the case with your other
23 prospective jurors. Do not form or express any opinion
24 about the ultimate outcome of this matter, and do not allow
25 anyone to attempt to influence you with regard to it.

1 Go ahead and go with Miss Lopshire, and she
2 will have you attend with the other jurors.

3 (Whereupon, Prospective Juror Meidell was
4 excused from the courtroom.)

5 THE COURT: That completes our jurors who
6 were -- that was the absent juror.

7 Would you bring Miss Burke? Miss Burke is the
8 one who had the personal knowledge regarding the facts and
9 circumstances of the offense.

10 (Whereupon, Prospective Juror Burke entered the
11 courtroom.)

12 THE COURT: Miss Burke, you can find a seat
13 anywhere. Appreciate you coming back in.

14 The reason I had you come in by yourself is you
15 indicated that you had some personal knowledge regarding the
16 offense or the circumstances, something to do with this
17 case. And rather than have you tell the attorneys what that
18 personal knowledge was in front of all the other jurors, I
19 wanted you to have an opportunity to tell the attorneys what
20 you learned outside the courtroom about the case.

21 A PROSPECTIVE JUROR: I was working with --
22 working a convention with some security gentlemen from UNR
23 and -- at the time that this happened, and we discussed some
24 details of finding the body and that sort of thing. I mean,
25 I don't know that -- anything specific.

1 THE COURT: Mr. Stanton, any questions?

2 MR. STANTON: None, Your Honor.

3 THE COURT: Mr. Bosler?

4 MR. BOSLER: Miss Burke, you indicated you had
5 formed an opinion about the case?

6 A PROSPECTIVE JUROR: Yes.

7 MR. BOSLER: What opinion is that?

8 THE COURT: Go ahead.

9 MR. BOSLER: You can talk freely.

10 A PROSPECTIVE JUROR: Guilty.

11 MR. BOSLER: And you have heard the judge
12 explain how the legal process works?

13 A PROSPECTIVE JUROR: Yes.

14 MR. BOSLER: People enjoy a presumption of
15 innocence, and the State has to prove the case beyond a
16 reasonable doubt? Do you remember those things?

17 What I understand from you today is even in
18 spite of those things, you have already formed that opinion
19 of guilt and no matter what the judge says, her
20 instructions --

21 A PROSPECTIVE JUROR: At this point in time
22 that is the way I feel. Something could change that, but
23 that's how I feel now.

24 MR. BOSLER: Well, would there be something
25 that could change your idea that Mr. Vanisi, as he sits

1 here, is guilty? Do we have to essentially prove his
2 innocence in order to convince you of that? Instead of
3 having the State prove guilt, you would require us to prove
4 his innocence?

5 A PROSPECTIVE JUROR: Yes, because of the
6 feeling that I have. That doesn't mean that I think that
7 there is anything wrong with the system. I just feel that
8 way from many discussions and many people I have talked to.
9 And it goes further than here, as far as I'm concerned.

10 MR. BOSLER: I don't think what you are saying
11 is wrong because you just have to be honest about your
12 feelings. So again, after having talked to you, it is my
13 understanding that despite what the Court would give you as
14 instructions, you -- this feeling in your mind, it doesn't
15 matter what the Court says, you think he is guilty?

16 A PROSPECTIVE JUROR: Yes.

17 MR. BOSLER: We make a for-cause challenge,
18 Your Honor.

19 THE COURT: Mr. Stanton?

20 MR. STANTON: May I traverse?

21 THE COURT: Yes, you may.

22 MR. STANTON: Miss Burke, you wrote some
23 comments in your second questionnaire that you came in and
24 wrote out about the judicial system. And you obviously have
25 some strong feelings about that and if the system were

1 changed, it would work better.

2 A PROSPECTIVE JUROR: I wouldn't mind serving
3 on a jury.

4 MR. STANTON: It is kind of that type of
5 framework that my next question is for you.

6 You understand that you can have an opinion,
7 especially in a case that has pretrial publicity as this one
8 has. The question boils down to is, can you put that
9 opinion aside and abide by what your oath would be as a
10 juror in this case?

11 In other words, I have a particular role as a
12 juror in this case, and that is to listen to the facts,
13 require the State to prove its case beyond a reasonable
14 doubt. It's our burden. You have to hold us to that
15 burden, listen to the facts and the evidence.

16 If we meet the burden, then you'd render your
17 verdict consistent with that. If we didn't, you'd render
18 your verdict consistent with that.

19 There are a lot of people that have opinions
20 about this case just like you are or the other side of the
21 fence. The question is, can you put that aside and take to
22 heart the oath you'd be given to be fair and impartial and
23 wait until you hear the evidence?

24 Now, once you hear the evidence, the evidence
25 may lead you to the same conclusion of the opinion that you

1 had before the trial. That's okay. The question is, can
2 you do your job as a juror? Do you think you can?

3 A PROSPECTIVE JUROR: It's hard for me to
4 answer that question. I don't know what I'm going to think
5 next week if I sit here.

6 MR. STANTON: You don't know because you don't
7 know the evidence.

8 A PROSPECTIVE JUROR: Right now I feel very
9 strongly.

10 MR. STANTON: That's okay. The question is --
11 and you may not know what you are thinking a week from now.
12 In fact, I hope you don't because you haven't heard any of
13 the evidence. But can you keep an open mind, listen to the
14 evidence, and then make your decision solely based on the
15 evidence?

16 A PROSPECTIVE JUROR: I suppose that's
17 something that I really can't honestly answer because I
18 don't know.

19 MR. STANTON: Well, if you had -- are you the
20 type of person if you were to take an oath such as you did
21 today to tell the truth, which I'm assuming you are doing
22 now, that if you took the oath as a juror, that is what you
23 would be doing, agreeing to listen to the evidence? Are you
24 the type of person that can abide by that?

25 A PROSPECTIVE JUROR: Probably have throughout

1 my life.

2 MR. STANTON: In this case the question more is
3 as I stated before, is that you may have very strong beliefs
4 about a number of things, to include the defendant's guilt
5 or innocence in this case. Can you listen to the evidence
6 and decide solely on the evidence?

7 A PROSPECTIVE JUROR: I suppose.

8 MR. STANTON: Your Honor, I believe you are
9 going to reach a ground here where people have strongly held
10 beliefs and you are asking them to make a decision that they
11 don't know. And I think this witness has stated, I don't
12 know what my decision is going to be a week down the road,
13 but that should be expected.

14 THE COURT: Mrs. Burke, would you follow the
15 law as I instruct you it is?

16 A PROSPECTIVE JUROR: I have to do that, don't
17 I?

18 THE COURT: You are required to do that as a
19 juror.

20 A PROSPECTIVE JUROR: I mean, if I'm telling
21 the truth, I have to follow the law?

22 THE COURT: Some people, however, are unable to
23 follow their oaths or unable to follow the law. You told
24 us, Mr. Stanton, you are one of those people. You believe
25 you can. I just want to make sure that is what you're

1 saying.

2 A PROSPECTIVE JUROR: I feel that everyone here
3 is putting me in an awkward position.

4 THE COURT: It is very awkward, and I
5 understand that. It is very hard to be a juror anyway.

6 A PROSPECTIVE JUROR: And I really don't have a
7 problem in most cases. I mean, I feel it's everyone's duty
8 to do this at one time in their life. This is just probably
9 not the time for me. That's how I feel.

10 THE COURT: Unfortunately --

11 A PROSPECTIVE JUROR: We don't have that
12 choice.

13 THE COURT: Right. I don't get to pick out
14 jurors who want to be fair. That wouldn't be fair to either
15 side. But I need to exclude those people who cannot abide
16 by the oath and keep those people who can abide by the oath.
17 And that's just -- it is awkward, and you are in the hot
18 seat, but you have to tell me, yes or no.

19 A PROSPECTIVE JUROR: I'm going to be perfectly
20 honest and tell you that I have -- I'm not a dishonest
21 person, so I'm going to do what I think is right. And I'm
22 going to, if I take an oath, contrary to the top person in
23 this country, if I'm going to take an oath, I'll uphold it.

24 THE COURT: You just won't enjoy doing it.

25 A PROSPECTIVE JUROR: No.

1 THE COURT: I appreciate your candor.

2 MR. BOSLER: Your Honor, I don't know if this
3 is the proper time to broach the subject, but we're also
4 going to have to deal with the issue of death and life
5 qualifications.

6 THE COURT: I know.

7 MR. BOSLER: I don't know if the Court wants to
8 do this in a timely manner.

9 THE COURT: We'll do it with the whole panel.

10 MR. BOSLER: Can I ask her one more question,
11 Your Honor?

12 THE COURT: Yes.

13 MR. BOSLER: Do you think you can be fair? I
14 don't want to put you on the hot seat. There is no right or
15 wrong answer.

16 Do you think you can be fair to Mr. Vanisi as
17 you sit here today?

18 A PROSPECTIVE JUROR: Today?

19 MR. BOSLER: Yes.

20 A PROSPECTIVE JUROR: Today, no.

21 MR. BOSLER: No further questions, Your Honor.

22 THE COURT: Thank you. You may go back into
23 the jury room with everybody else.

24 (Whereupon, Prospective Juror Burke was excused
25 from the courtroom.)

1 THE COURT: Miss Getz. Miss Getz is the one
2 that said she received specific information from court
3 personnel, and I want to inquire as to what she, they, she
4 might know.

5 MR. BOSLER: I did make a motion for challenge
6 for cause; and I assume since she is back in the jury pool,
7 it's denied?

8 THE COURT: It is denied at this time. We'll
9 see how she responds to the rest of the questions.

10 (Whereupon, Prospective Juror Getz entered the
11 courtroom.)

12 THE COURT: Hello, Miss Getz.

13 A PROSPECTIVE JUROR: Hello.

14 THE COURT: Thanks for coming back in. I asked
15 that you come back in by yourself because in response to one
16 of my questions, you indicated that you had some information
17 regarding this case that you received from not the news
18 media but from court staff.

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: I wanted to give you an opportunity
21 to tell the attorneys what you learned about this case
22 outside the courtroom so they could determine your
23 qualifications better. So can you tell us what you learned?

24 A PROSPECTIVE JUROR: Sure. I learned that
25 Mr. Vanisi used a hatchet to cut up Mr. Sullivan's face so

1 badly it looked like he had been shot in the face and cut
2 his fingers off.

3 THE COURT: Anything further?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: You indicated that you had already
6 formed an opinion?

7 A PROSPECTIVE JUROR: Yes. I feel he's guilty.

8 THE COURT: Just -- I think I have done this
9 with some of the jurors if not the whole panel, but you
10 understand that a criminal defendant is afforded the
11 presumption of innocence --

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: -- until the contrary is proven?

14 A PROSPECTIVE JUROR: Yes, I do, but I don't
15 believe that.

16 THE COURT: You don't believe in that concept?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: Okay. You understand that in this,
19 normally in the -- the process is that they are presumed
20 innocent until the State proves beyond a reasonable doubt
21 that they are in fact guilty of the offense? Is that the
22 process you don't believe in?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Is this a long-held opinion?

25 A PROSPECTIVE JUROR: Yes, ma'am.

1 THE COURT: And the basis of that opinion?

2 A PROSPECTIVE JUROR: Is I feel the court
3 system is messed up.

4 THE COURT: You would at least agree with the
5 process that that is the best one we have at least to
6 determine guilt or innocence? Would you agree with that?

7 A PROSPECTIVE JUROR: Yes.

8 MR. STANTON: Are you the type of person if you
9 took an oath, just like you did earlier this morning, to
10 tell the truth as you are doing now, if you take the oath to
11 sit as a juror in this case, that you will decide this case
12 not upon about what opinion you have before you came in here
13 this week, based upon what you hear in this courtroom as far
14 as evidence?

15 Now, it may be the same verdict as the opinion
16 that you have now. But the question more I guess where the
17 rubber meets the road for you here is, can you put aside
18 what you know and listen and follow your oath that you take
19 if you sit as a juror in this case to listen to the evidence
20 and require the State to meet its burden?

21 A PROSPECTIVE JUROR: No.

22 MR. STANTON: You don't think you can do that?

23 A PROSPECTIVE JUROR: No. I already formulated
24 an opinion about the murder.

25 MR. STANTON: There is nothing that can change

1 that about being able to listen to the facts before you
2 render your opinion as a juror?

3 A PROSPECTIVE JUROR: No.

4 MR. STANTON: No further questions, Your Honor.

5 MR. BOSLER: Thank you. Nothing further. We
6 make a for-cause challenge, Your Honor.

7 MR. STANTON: No objection, Your Honor.

8 THE COURT: You are going to be excused as a
9 potential juror in this case. Please report down to the
10 Jury Commissioner's office. Thank you.

11 (Whereupon, Prospective Juror Getz was excused
12 from the courtroom.)

13 THE COURT: Counsel, I propose bringing in the
14 rest of the panel who has not been excused.

15 MR. BOSLER: Your Honor, I have several other
16 people that indicated they had formed opinions.

17 THE COURT: Right. We do have. We have about
18 ten other people who formed opinions, but it wasn't based on
19 something that would contaminate the whole pool if they were
20 inquired of as a group.

21 MR. BOSLER: I just think we run a risk then if
22 you bring the whole pool in. I think for timeliness and
23 just to exercise a little bit of judicial economy, we should
24 bring these people in separately. That would be our
25 suggestion, Your Honor.

1 THE COURT: Mr. Stanton. It is Adamson, Hill,
2 Sepahpour, Gerbatz, Cadena, Bataglia, Kizis, Turnage, and
3 Kenny. Do you want to do those individually, or do you want
4 to bring them in as a group or with the rest of the panel?

5 MR. STANTON: Your Honor, I leave it to the
6 discretion of the Court. The State has no preference
7 because I believe those questions can be asked on an
8 individual basis down the road.

9 MR. SPECCHIO: The answer -- it is the answers
10 we're concerned with, Judge, not the questions.

11 THE COURT: I was concerned with that, too.
12 That is why I wanted to get those people who had an outside
13 basis for their opinion. These people are all media people.

14 MR. BOSLER: If we are going to do it sometime
15 outside the regular panel, we might as well do it now since
16 we have this system working.

17 MR. STANTON: That is fine, Your Honor.

18 THE COURT: Adamson.

19 (Whereupon, Prospective Juror Adamson entered
20 the courtroom.)

21 MR. BOSLER: Your Honor, you mentioned
22 Mr. Sepahpour, right, is one of the group?

23 THE COURT: Yes.

24 Come on in. Go ahead and have a seat pretty
25 close to the court reporter so he can hear what you have to

1 say. Thank you, Mr. Adamson.

2 A PROSPECTIVE JUROR: Son of Adam.

3 THE COURT: We asked that you come in because
4 you indicated that you had formed an opinion based upon the
5 media coverage that you had seen; is that correct?

6 A PROSPECTIVE JUROR: The media and discussion
7 with my wife's former husband who was in charge of the
8 parole board in Carson City.

9 THE COURT: Mr. Stanton, do you have any
10 questions?

11 MR. STANTON: Yes. Mr. Adamson, if you -- the
12 opinion that you have coming into this case, could you put
13 that aside if you were to understand that your role as a
14 juror, that you would take a separate and distinct oath
15 beyond what you have already sworn to, that you will fairly
16 and truthfully try this case based upon the evidence you
17 hear and the law that is given to you? Do you think you
18 could follow that oath?

19 A PROSPECTIVE JUROR: I think I could. Like I
20 said, I think I would have to have him proven innocent
21 rather than proven guilty. At this point I feel he is
22 guilty.

23 MR. STANTON: So your preexisting opinion is
24 one for guilt?

25 A PROSPECTIVE JUROR: Yes.

1 MR. STANTON: But if the judge tells you the
2 law is that the man is presumed innocent and that it is the
3 State's burden to prove beyond a reasonable doubt that he is
4 guilty, may be the same opinion that you have now as far as
5 what your verdict is, the question is, can you put aside
6 that strong opinion that you have and do your role as a
7 juror saying, I'll put that aside but listen to the facts
8 and evidence; and if the State doesn't prove its case, then
9 that's the verdict that I'd have to give in that case, too?
10 Do you think you could do that?

11 A PROSPECTIVE JUROR: Yes, I think I can do
12 that.

13 MR. STANTON: Thank you.

14 MR. BOSLER: Mr. Adamson, do you feel
15 uncomfortable? You are kind of being put on the spot right
16 now.

17 A PROSPECTIVE JUROR: I think anyone would be
18 uncomfortable.

19 MR. BOSLER: You had an opportunity to fill out
20 a questionnaire before last week; right?

21 A PROSPECTIVE JUROR: Uh-huh.

22 MR. BOSLER: And is it true that you wrote down
23 any responses, on the questionnaire you got to write down
24 how you truly felt about the case?

25 A PROSPECTIVE JUROR: Yes.

1 MR. BOSLER: Your answer to the questionnaire
2 is that you were not sure whether you could be fair.

3 A PROSPECTIVE JUROR: Pardon?

4 MR. BOSLER: You were not sure whether you
5 could be fair in this case.

6 A PROSPECTIVE JUROR: That is based upon the
7 bias in favor of guilt.

8 MR. BOSLER: You said you have had some
9 discussions about this opinion you have with your wife's
10 friend.

11 A PROSPECTIVE JUROR: Her ex-husband. He was
12 head of the parole board in Carson City.

13 MR. BOSLER: What kind of things have you
14 discussed about the case?

15 A PROSPECTIVE JUROR: Just what's in the media.
16 He doesn't know any more than I did really.

17 MR. BOSLER: You talk about things like crimes
18 and consequences and court procedures? Are those the types
19 of procedures you talked with this person, you discussed
20 with this person?

21 A PROSPECTIVE JUROR: Not in great deal, no.
22 Just in this particular thing we talked about a little bit
23 is all.

24 MR. BOSLER: Is he a person you look to for
25 maybe a little bit of expert inside knowledge as to how

1 things work?

2 A PROSPECTIVE JUROR: He is inside the law
3 system; so yes, I look to him as having a little expertise
4 in that field.

5 MR. BOSLER: You relied upon him and his
6 expertise that you kind of formed this opinion that
7 Mr. Vanisi is guilty as he sits here today?

8 A PROSPECTIVE JUROR: No. I based my opinion
9 on the media and then also talking with him and his opinions
10 back and forth.

11 MR. BOSLER: So based upon the media and your
12 discussions, your opinion today is that Mr. Vanisi is guilty
13 as he sits there?

14 A PROSPECTIVE JUROR: Yes.

15 MR. BOSLER: Even though you have already been
16 explained what the instructions of law are and things like
17 that?

18 A PROSPECTIVE JUROR: Yes, sir.

19 MR. BOSLER: And you have this opinion that
20 Mr. Vanisi is guilty even though the judge has told you
21 several times that people enjoy a presumption of innocence?

22 A PROSPECTIVE JUROR: Well, I would be willing
23 to listen to everything that came about in the trial. But I
24 just have a preconceived idea, like I said. And I think I'm
25 just biased in the case. So I didn't think I would qualify

1 to be a good juror in his behalf.

2 MR. BOSLER: I don't want you to think there is
3 any wrong answers. If that is the way you feel, that is the
4 way you feel. I just need to kind of conceptualize it for
5 me and for the Court.

6 So you formed these biases and these opinions;
7 and even though we have told you what the law is and the
8 instructions, presumption of innocence, burden of proof,
9 your opinion today is that Mr. Vanisi would have to prove
10 his innocence rather than have the State prove his guilt?

11 A PROSPECTIVE JUROR: Well, yes, I do feel that
12 way. And I would be willing to listen to any testimony or,
13 like I said, if I was picked as a juror, but that's my
14 opinion at this point. And that's why I think I didn't make
15 a good juror.

16 MR. BOSLER: We make a for-cause challenge,
17 Your Honor.

18 MR. STANTON: Your Honor, I think there is a
19 distinction. First of all, Mr. Bosler has asked the
20 question about the instructions of law. Mr. Adamson has not
21 been instructed. Specifically the panel individually has
22 not been asked the question of what the presumption of
23 innocence is. So I think it is somewhat unfair to be coming
24 in and asking questions of a juror saying, Can you put this
25 aside, and they don't even know what that is.

1 So I think the question Mr. Bosler -- at least
2 towards the tail end of his inquiry with Mr. Adamson is not
3 an accurate one, and the core questions or answers to the
4 questions Mr. Adamson gave is he has an opinion but can put
5 it aside and abide by his oath, which is what I think the
6 law requires.

7 THE COURT: Mr. Adamson, if I instruct you at
8 the conclusion of the case that a defendant in a criminal
9 action is presumed to be innocent until the contrary is
10 proven beyond a reasonable doubt, and in case of a
11 reasonable doubt as to whether the defendant's guilt is
12 satisfactorily shown, they are entitled to be acquitted,
13 would you accept and follow that instruction?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: And if I were to instruct you as to
16 what reasonable doubt is, will you follow the instruction as
17 I give it to you?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: You have a preconceived idea at
20 this time, but you will hold the State to their burden of
21 proving to you the case?

22 A PROSPECTIVE JUROR: Of course.

23 THE COURT: Thank you.

24 We'll see Miss Hill next.

25 Thank you, Mr. Adamson. Appreciate your

1 candor.

2 (Whereupon, Prospective Juror Adamson was
excused from the courtroom.)

3 (Whereupon, Prospective Juror Hill entered the
4 courtroom.)

5 MR. GAMMICK: Your Honor, while we're waiting
6 for the next juror, we had a real short matter to bring up
7 with the Court. Maybe this would be as good as time as any.

8 THE COURT: They are right there.

9 MR. GAMMICK: I'll bring it up next time.

10 THE COURT: Miss Hill, come on in. Just
11 anywhere really. Just so the court reporter can hear you.

12 I'm having you come in individually because you
13 indicated that you had formed an opinion based on news media
14 coverage.

15 A PROSPECTIVE JUROR: Not entirely, no.

16 THE COURT: I don't want to hear -- I don't
17 want everybody else on the jury panel to hear what you might
18 have heard in the case. They didn't hear what you heard.
19 So that is why I'm bringing you in individually.

20 A PROSPECTIVE JUROR: I didn't base it entirely
21 on news media. I just -- I had just felt that if they had
22 enough evidence to make an arrest and go this far, that he
23 was guilty.

24 THE COURT: Okay. I'm going to give you an
25 instruction that I didn't give you before, and ask you a

1 question about it. Okay? Do you feel comfortable?

2 A PROSPECTIVE JUROR: I'm really nervous.

3 THE COURT: All right.

4 A PROSPECTIVE JUROR: But yeah, fine.

5 THE COURT: If I were to instruct you at the
6 conclusion of this case that a defendant in a criminal
7 action is presumed to be innocent until the contrary is
8 proven beyond a reasonable doubt, and in a case where the
9 reasonable doubt as to -- there is a reasonable doubt as to
10 whether the defendant's guilt is satisfactorily shown, then
11 they are entitled to an acquittal, would you accept and
12 follow that instruction?

13 A PROSPECTIVE JUROR: Yeah. I would have to.

14 THE COURT: And if I were to instruct you that
15 a reasonable doubt is one based on reason, not mere possible
16 doubt but is such a doubt as would govern or control a
17 person in the more weighty affairs of life, if in the minds
18 of the jurors after the entire comparison and consideration
19 of all the evidence are in such condition that they can say
20 they feel an abiding conviction of the truth of the charge,
21 there is not a reasonable doubt; doubt to be reasonable must
22 be actual not mere possibility or speculation, would you
23 follow that? In other words, follow the instruction as to
24 what reasonable doubt is?

25 A PROSPECTIVE JUROR: Yeah.

1 THE COURT: Now, you have got an opinion
2 because -- and you told me because Mr. Vanisi was arrested.
3 But now I have told you what the law is with regard to the
4 presumption of innocence. You said you'd have to follow
5 that. Would you follow that?

6 A PROSPECTIVE JUROR: Yeah.

7 THE COURT: And not require him to make -- to
8 put on any proof of any kind, the burden is on the State to
9 prove their case?

10 A PROSPECTIVE JUROR: Yeah. It would have to
11 be proved, yeah.

12 THE COURT: You understand it has to be proof
13 from evidence here in the courtroom, not from any other
14 source?

15 A PROSPECTIVE JUROR: Yeah.

16 THE COURT: Counsel, Mr. Stanton?

17 MR. STANTON: Miss Hill, the one question I
18 have for you is that in this case, regardless of what you
19 have heard either from media or other sources, the judge has
20 asked you whether or not you would follow her instructions
21 of law. You are pretty comfortable you can do that;
22 correct?

23 A PROSPECTIVE JUROR: Yeah.

24 MR. STANTON: In a criminal case the burden of
25 proof is on the State, me and Mr. Gammick. Would you

1 require us to prove this case to you beyond a reasonable
2 doubt, if that is what you are instructed?

3 A PROSPECTIVE JUROR: If that is what I'm
4 instructed to do.

5 MR. STANTON: Thank you. No further questions.

6 THE COURT: Mr. Bosler.

7 MR. BOSLER: Miss Hill, you are obviously
8 nervous.

9 A PROSPECTIVE JUROR: Very. Can you tell?

10 MR. BOSLER: Is it okay if I sit down?

11 A PROSPECTIVE JUROR: That is fine.

12 MR. BOSLER: You stated you formed an opinion
13 about the case. What was that opinion, if you would share
14 that with us?

15 A PROSPECTIVE JUROR: I mean, myself, a little
16 bit in the news media, but I just have this feeling if they
17 had enough evidence to make an arrest, that he was guilty.

18 MR. BOSLER: Go ahead.

19 A PROSPECTIVE JUROR: My own opinion.

20 MR. BOSLER: So when you look at two parties
21 here as they sit, even considering what the judge has said,
22 as far as legal instruction, do you consider this a level
23 playing field for us, or do you want us to prove that
24 Mr. Vanisi is innocent?

25 A PROSPECTIVE JUROR: You would have to prove

1 that he was innocent.

2 MR. BOSLER: In light of the Court's earlier
3 explanation of the burden of proof and your still continuing
4 opinion that we'd have to prove Mr. Vanisi's innocence, we
5 make a for-cause challenge.

6 THE COURT: Mr. Stanton?

7 MR. STANTON: Well, my impression of Miss
8 Hill's answers to the questions are not that she won't abide
9 by the Court's instructions, as Mr. Bosler characterizes it,
10 but merely she has a strongly held opinion or at least an
11 opinion in this case but that she would follow the
12 instructions of the Court.

13 I think at this juncture we're asking a lot of
14 questions of jurors without the benefit of them being fully
15 instructed on the law. I think that's the gamble, that they
16 are not being able to answer knowing what we as lawyers know
17 what the law is.

18 Now, she indicated she would be willing to
19 follow the Court's instructions and hold the State to its
20 burden of proof. The Court may want to follow up if there
21 is any confusion in the Court's mind. I think she is pretty
22 confident about that, if there is any inconsistency with
23 Mr. Bosler's questions. It was fairly clear from the
24 State's that she would abide by it.

25 THE COURT: Who do you think has to prove the

1 case to you, Miss Hill? I'm a little confused.

2 You don't have to say prosecution or defense.
3 Just tell me which side of the room has to prove the case.
4 Do you know what I mean by proof?

5 A PROSPECTIVE JUROR: I would say the defense
6 would have to prove that he was innocent. Maybe I
7 misunderstood earlier.

8 THE COURT: That isn't the case. He does not
9 have to prove anything. He sits there cloaked with what
10 they call a presumption of innocence. And it's only after
11 the State proves every element of the offense beyond a
12 reasonable doubt can a jury even consider a decision of
13 guilt.

14 But I know these are all new words for everyone
15 on the jury. We use these words all the time, and I want to
16 make sure that you understand what we're asking you.

17 Do you have any questions about what all this
18 means?

19 A PROSPECTIVE JUROR: I don't know. I
20 wouldn't.

21 THE COURT: Would you follow the Court's
22 instructions as to who had to prove the case?

23 A PROSPECTIVE JUROR: Yeah. If I was told by
24 the Court to follow these instructions, I would.

25 THE COURT: Could you set aside this feeling

1 that you have going in that Mr. Vanisi is guilty and
2 actually -- and decide the case contrary to that feeling?

3 A PROSPECTIVE JUROR: I probably could, yeah.

4 THE COURT: Do you understand that it's a real
5 serious responsibility that the State has to do, they
6 actually have to prove every element? And I'll tell you
7 what those are.

8 A PROSPECTIVE JUROR: Yeah.

9 THE COURT: So let's say that when you were all
10 done and you went into the jury room and you were going
11 through the checklist that I give you about the elements and
12 everything was proved but one little thing and it was
13 something really, really small, but it was an element, would
14 you be able to vote not guilty because the State didn't
15 fulfill their obligation to meet the burden?

16 A PROSPECTIVE JUROR: Just one little thing?

17 THE COURT: If I say they have to meet every
18 one of these five elements, and one of them in your mind is
19 real little but that one they don't meet.

20 A PROSPECTIVE JUROR: I don't know. If we had
21 to have all of them, we couldn't. But I mean, I guess
22 depending on what all those other things were, that would
23 make a difference.

24 THE COURT: Okay.

25 MR. SPECCHIO: We would renew the challenge for

1 cause, Your Honor.

2 THE COURT: Miss Hill, I'm going to go ahead
3 and excuse you. Thank you.

4 A PROSPECTIVE JUROR: Thanks.

5 THE COURT: You go down to the first floor and
6 report to the Jury Commissioner.

7 (Whereupon, Prospective Juror Hill was excused
8 from the courtroom.)

9 (Whereupon, Prospective Juror Sepahpour entered
10 the courtroom.)

11 THE COURT: Thanks for coming in,
12 Mr. Sepahpour. Have a seat. Make sure you speak up so the
13 court reporter can hear you.

14 I asked that you come in separately because you
15 indicated that you had a strongly held opinion with regard
16 to the guilt or innocence of the defendant, and at least
17 part of it was based on news media accounts that you had
18 heard or read. And I don't want everybody else to know what
19 you read in case they didn't read that same thing. So I
20 want you to tell us what the basis of your opinion is.

21 A PROSPECTIVE JUROR: As far as in the media?

22 THE COURT: Right. What you have heard.

23 A PROSPECTIVE JUROR: I think he is the chief
24 of police of UNR, Kirk Shoner, knows my wife, and he had
25 conversation with my wife and just told me some of the
details about what happened in the case.

1 THE COURT: Why don't you tell us what you
2 remember.

3 A PROSPECTIVE JUROR: Just remember about the
4 defendant allegedly going to a store and getting a hatchet
5 and sneaking up on a car and striking the officer, Sullivan,
6 and basically beat him til he was dead. And then there was
7 an all out search for him, and I know he fled to Salt Lake,
8 and they found him in an apartment there; and that the Salt
9 Lake police had opportunity to take him into custody I guess
10 with a standoff for a while, and then they eventually got
11 him and brought him back here.

12 THE COURT: That's what you base your opinion
13 on?

14 A PROSPECTIVE JUROR: Yeah, plus what I had
15 read in the media.

16 THE COURT: Do you understand that a criminal
17 defendant is presumed innocent until the State proves him
18 guilty beyond a reasonable doubt?

19 A PROSPECTIVE JUROR: Yeah.

20 THE COURT: Are you able to afford him that
21 presumption?

22 A PROSPECTIVE JUROR: No. I just have this
23 feeling in my heart that he did it based upon what was told
24 to my wife and just my gut instinct feeling.

25 THE COURT: I understand that is your feeling

1 now. But will you hold the State to their burden of proving
2 it to you?

3 A PROSPECTIVE JUROR: Yeah, unless some
4 evidence, some great evidence is brought forth that would
5 just totally change my mind, but right now it's pretty well
6 standing on what I said.

7 THE COURT: So if you went in the jury room and
8 I asked to you vote on his guilt right now you'd vote him
9 guilty?

10 A PROSPECTIVE JUROR: Yeah.

11 THE COURT: Without ever hearing any evidence?

12 A PROSPECTIVE JUROR: Yeah.

13 THE COURT: And you understand that you'd be
14 violating the instructions I'm going to give you if you did
15 that? But you would have to do it anyway?

16 A PROSPECTIVE JUROR: Yeah.

17 THE COURT: Mr. Stanton.

18 MR. STANTON: Mr. Sepahpour; is that correctly
19 pronounced?

20 A PROSPECTIVE JUROR: Yes.

21 MR. STANTON: The question I'd like to ask you
22 is, coming in with the feelings and opinions -- because you
23 heard some facts as everybody has different amounts of
24 knowledge about this case, and that's okay. The question is
25 is that if you were to take the next step in this process,

1 that is sitting as a juror in this case, you'd take another
2 oath beyond what you have taken and that is you fairly try
3 the case, not by the opinions you had when you came in here,
4 but what you hear in this courtroom. Because we don't have
5 people convicted by what the newspaper thinks or writes
6 about but what happens in a court of law.

7 You would agree with that, that that is how
8 people should be convicted and not by what is in the
9 newspaper?

10 A PROSPECTIVE JUROR: Yeah.

11 MR. STANTON: Can you put that aside and take
12 the oath as a juror and listen to what happens in this
13 courtroom and make your verdict based upon that, not your
14 strong beliefs?

15 Having beliefs is okay. The question is, can
16 you put those strong beliefs aside?

17 For example, you might have very strong
18 opinions about the President of the United States. Until
19 you sit as a juror in that case, it may not be fair for you
20 to make the decision as to whether or not he is guilty or
21 not guilty. Same thing in this case.

22 You may have strong opinions about whether or
23 not Mr. Vanisi is guilty or innocent. The question is, can
24 you put those feelings aside and follow your oath that the
25 judge would give you to listen and make the decision solely

1 by what happens in this court of law?

2 A PROSPECTIVE JUROR: I don't know if I can do
3 that or not.

4 MR. STANTON: What do you think?

5 A PROSPECTIVE JUROR: I think my mind is made
6 up.

7 MR. STANTON: And there is no way that your
8 mind could --

9 A PROSPECTIVE JUROR: It is kind of like that
10 O.J. case. You bring me the killer and I'll look at the
11 evidence.

12 MR. STANTON: But in this case, since you
13 haven't heard any evidence, don't you think that that should
14 happen first, not what you hear in the media but what
15 happens here?

16 A PROSPECTIVE JUROR: But I haven't heard any
17 evidence ever brought forth that it was someone else..

18 MR. STANTON: So what's the answer about how
19 Mr. Sepahpour feels about this? Can you put that aside and
20 follow the oath, or do you think it's not going to happen
21 with you in this case?

22 A PROSPECTIVE JUROR: I don't think it is going
23 to happen with me in this case.

24 MR. STANTON: Thank you.

25 THE COURT: Mr. Bosler.

1 MR. BOSLER: Your Honor, I'll make a for-cause
2 challenge unless the Court wants me to bring out any more
3 information.

4 THE COURT: No. That's okay.

5 Mr. Sepahpour, I'm going to ask that you go
6 ahead down to the Jury Commissioner's office. I'm going to
7 excuse you for cause at this time. Thank you for your
8 candor.

9 A PROSPECTIVE JUROR: Okay. Thank you.

10 (Whereupon, Prospective Juror Sepahpour was
11 excused from the courtroom.)

12 (Whereupon, Prospective Juror Gerbatz entered
13 the courtroom.)

14 THE COURT: Come on in, Mr. Gerbatz. Go ahead
15 and have a seat anywhere, just so the court reporter can
16 hear you. You get your choice.

17 I asked that you come in by yourself because
18 you had indicated that you had a strongly held opinion based
19 at least mostly I think on the news media reports; and
20 rather than have you tell us what you know from the news
21 media and have everybody else hear, they may not have all
22 heard and seen what you did. I would like you to tell us in
23 this setting a little bit more private what it is that you
24 heard in the news media accounts that made you form an
25 opinion.

A PROSPECTIVE JUROR: Well, mainly the fact

1 that it was a brutal murder and that there was an arrest
2 made shortly after, and that's pretty much all I really
3 know. I know a few details that was out in the press
4 earlier in the year.

5 Basically that's how I formed my opinion was
6 the fact that there was an arrest made shortly after and
7 that talking with other people, and you know, passing in
8 conversation, there was no persuasion from anybody I ever
9 talked to or anything and the media that would suggest
10 contrary to my opinion.

11 THE COURT: I didn't get to the point of
12 instructing the jury on something called the presumption of
13 innocence when we broke at lunch. So I want to give you
14 that instruction to see if you can follow that instruction.

15 That is that a criminal -- a defendant in a
16 criminal action is presumed to be innocent until the
17 contrary is proven beyond a reasonable doubt by the State.
18 And if the State doesn't prove beyond a reasonable doubt
19 every element of the offense a defendant is charged with,
20 then they are entitled to acquittal.

21 Now, would you be able to follow that
22 instruction?

23 A PROSPECTIVE JUROR: Yes, I think -- you know,
24 in all honesty, I don't really want to do this, but I think
25 in all honesty, I could look at it open-mindedly. I just

1 had to get it off my chest and let you people know that I do
2 have a strong opinion about this case, and that's basically
3 all I wanted to do.

4 THE COURT: Now, in spite of your strong
5 opinion, if the State didn't prove the case beyond a
6 reasonable doubt to you as I instruct you, then you could
7 acquit?

8 A PROSPECTIVE JUROR: Yes, without reasonable
9 doubt, I think I could.

10 MR. BOSLER: Let the record reflect he paused
11 for about five seconds or so to answer.

12 THE COURT: Yes, as all jurors should think
13 about these answers. I appreciate the contemplation.

14 Mr. Stanton?

15 MR. STANTON: Thank you. What is the correct
16 pronunciation of your last name?

17 A PROSPECTIVE JUROR: Gerbatz.

18 MR. STANTON: Mr. Gerbatz, would you agree with
19 me that your feelings, strong feelings towards law
20 enforcement are positive feelings? Am I correct that you
21 have positive feelings about the police officers?

22 A PROSPECTIVE JUROR: Yes, I do.

23 MR. STANTON: And it would be important to you
24 in a case that, at least at this juncture, it is alleged the
25 defendant had killed a police officer, that the right person

1 be convicted of that crime and not the wrong person?

2 A PROSPECTIVE JUROR: Exactly.

3 MR. STANTON: And that's also a part of your
4 concern as a juror in this case, that you would hold the
5 State to this burden because of that reason as well as
6 others?

7 A PROSPECTIVE JUROR: You lost me there on the
8 last statement.

9 MR. STANTON: Is that part of the reason of
10 when you make your deliberations in this case, you said that
11 you could abide by the instructions of holding the State,
12 that's me and Mr. Gammick, in this case of proving this case
13 beyond a reasonable doubt, to make sure that the right
14 person is held accountable for the crime? Would you agree
15 with that proposition?

16 A PROSPECTIVE JUROR: Yes.

17 MR. STANTON: Even though your strong feelings
18 towards law enforcement, you think you could be fair to
19 Mr. Vanisi in this case?

20 A PROSPECTIVE JUROR: Yes, I could. I could be
21 open-minded.

22 MR. STANTON: Thank you, sir.

23 THE COURT: Mr. Bosler.

24 MR. BOSLER: Mr. Gerbatz, could you describe
25 for the record how many people you know in law enforcement?

1 I think you said you had some friends in law enforcement?

2 A PROSPECTIVE JUROR: Yes, I have a second
3 cousin. Do you need me to list them for you?

4 MR. BOSLER: Please.

5 A PROSPECTIVE JUROR: Kevin Cassanelli. His
6 sister's husbands are also police officers. Bunker,
7 Wiskerchen. And my acquaintances. Do you need to know them
8 too?

9 MR. BOSLER: Please.

10 A PROSPECTIVE JUROR: Jerry Tone, Dave
11 Zeissner, and Mark Caldwell; and Dennis Bradshaw who I
12 haven't been in contact with for years, but I did go to
13 school with him.

14 MR. BOSLER: And are these members of local law
15 enforcement mostly?

16 A PROSPECTIVE JUROR: Everybody except for Mark
17 Caldwell is Reno PD, and Mark is with Washoe County
18 Sheriff's office.

19 MR. BOSLER: And I get the impression that
20 these are people you talk to, they are either relatives by
21 blood or by legal ties or just friends?

22 A PROSPECTIVE JUROR: Good friends. Everybody
23 except for Dennis Bradshaw, I see them very occasionally.
24 Kevin Cassanelli is a cousin and a good friend of mine.

25 MR. BOSLER: These are people you talk with

1 generally then? I mean, you have social relationships with
2 them?

3 A PROSPECTIVE JUROR: Yes.

4 MR. BOSLER: Have you talked about this case
5 with them?

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

7 MR. BOSLER: Has the topic of Sergeant
8 Sullivan's death ever come up in conversation?

9 A PROSPECTIVE JUROR: Not that I can remember.

10 MR. BOSLER: You wrote a -- your -- do you
11 remember writing out a questionnaire?

12 A PROSPECTIVE JUROR: Uh-huh.

13 MR. BOSLER: In the questionnaire you said, "I
14 don't want to be a juror because I have too many friends in
15 law enforcement."

16 And I don't want to put words in your mouth. I
17 get the impression that means that because you have these
18 friends in law enforcement, it kind of exerts an influence
19 on you that you are not comfortable with?

20 A PROSPECTIVE JUROR: I know that was probably
21 contrary to what I filled out up above, but that was my
22 honest feelings to that question at that point of that
23 questionnaire, is that I didn't want to serve on this jury
24 because of it. I was afraid that -- at this point I think
25 I'm open-minded. The thing that I'm worried about is if I

1 have a -- and I'm being honest with you here. This is my
2 honest feelings.

3 If I have a police officer, or another person
4 and -- giving me the facts, I am going to be -- I am going
5 to believe a police officer hands down, no question
6 whatsoever on what the facts are.

7 MR. BOSLER: I appreciate your candor. You
8 have had the judge explain several times when the whole
9 panel was here that you are supposed to hold officers and
10 general citizens to the same credibility benchmark, water
11 mark. That is not something you can do because of your
12 relationship with law enforcement?

13 A PROSPECTIVE JUROR: That is probably the only
14 prejudicial feelings that I really have in this matter.

15 MR. BOSLER: And even though the Court may
16 instruct you otherwise, those are feelings you are going to
17 carry with you from today on into the jury room?

18 A PROSPECTIVE JUROR: That is how I feel.

19 MR. BOSLER: Nothing I can do can change your
20 opinion about that?

21 A PROSPECTIVE JUROR: I think I have an open
22 mind about this matter. But if it came down to a
23 circumstance where I wasn't really too sure, I think I
24 might -- my feelings would go with the police officer hands
25 down.

1 MR. BOSLER: And that's in spite of what the
2 judge may instruct you? What the judge instructs you that
3 you are supposed to judge everybody fairly, you will carry
4 to believe police officers more?

5 A PROSPECTIVE JUROR: If there was a question,
6 yes.

7 MR. BOSLER: How about a general concept? If
8 you were Mr. Vanisi and sitting in that chair, would you
9 want someone like you sitting in the chair you occupy right
10 now and judge this case fairly, knowing police officers are
11 going to testify?

12 A PROSPECTIVE JUROR: I don't think I'd have a
13 problem with it.

14 MR. BOSLER: I understand.

15 Your Honor, we'll make a for-cause challenge
16 based upon -- I think the witness has been pretty
17 unequivocal when he talked about credibility, that he is
18 going to hold officers to a lesser standard, and this is in
19 spite of what you said several times during the general
20 panel discussion. If that's his opinion, he is going to
21 carry it with him into the jury room, and that is what he
22 said on the record. I think this is a for-cause challenge.

23 THE COURT: Mr. Stanton.

24 MR. STANTON: Your Honor, I believe the precise
25 review of Mr. Gerbatz' comments regarding the police

1 officer's testimony is not in conflict with the law. What
2 he says is if it comes down to two witnesses that have
3 opposing views and one of them happens to be a police
4 officer, he would tend to believe that police officer. That
5 is not to say that he would believe the police officer in
6 exclusion to evidence that would be presented contrary to
7 his testimony. So I think that that is an incorrect reading
8 of what Mr. Gerbatz is saying.

9 He is saying that all things being equal, two
10 witnesses that are opposing on a particular evidentiary
11 item, he would tend to believe the police officer. I don't
12 think that is a violation of any rule of law or due process.
13 So I don't think the basis for a cause of challenge has been
14 met.

15 THE COURT: Is that what you are saying?

16 A PROSPECTIVE JUROR: Exactly. That is what I
17 was trying to say.

18 MR. BOSLER: Your Honor, I don't believe --
19 maybe there is a new instruction I haven't seen, but all
20 things being equal to decide with the police officer isn't
21 an instruction I have read.

22 MR. SPECCHIO: All things being equal, you have
23 to make a determination.

24 THE COURT: Mr. Specchio, Mr. Bosler is doing
25 the voir dire.

1 Jurors are called upon to decide which witness
2 they are going to believe. If the police officer said
3 something that you found incredible, could you disregard it?

4 A PROSPECTIVE JUROR: Yes, I could.

5 THE COURT: So when you are talking about if
6 you had two people, would you consider the reasons for the
7 police officer's testimony, or is it just because he is a
8 police officer that you'd believe him?

9 A PROSPECTIVE JUROR: No. What I was trying to
10 tell you, if there was a -- if there was a contrary decision
11 to be made between two people, and I could not weigh the
12 thing out, I would go with the police officer's word before
13 I would with anybody else's.

14 THE COURT: Thank you. Go ahead and go back
15 into the jury room. Appreciate all your assistance today.

16 (Whereupon, Prospective Juror Gerbatz was
17 excused from the courtroom.)

18 THE COURT: Motion denied.

19 MR. BOSLER: Thank you, Your Honor.

20 THE COURT: We should have Cadena next.

21 (Whereupon, Prospective Juror Cadena entered
22 the courtroom.)

23 THE COURT: Come in, Mrs. Cadena. Find a seat
24 anywhere just so the court reporter can hear you.

25 I asked that you come in by yourself not to

1 embarrass you, and I hope you don't find it too
2 uncomfortable. The reason I asked you to come in is because
3 you indicated you had a strongly held opinion based upon
4 news media accounts.

5 I wanted to find out what it was in the news
6 media that you had heard or read that caused you to form
7 this opinion, and I didn't want everybody else to hear what
8 you had seen in case they hadn't.

9 So could you tell us what the basis of this
10 opinion is?

11 A PROSPECTIVE JUROR: Well, I remember reading
12 a lot about this case when the murder happened last year.
13 And I guess I'd have to say we talked about it a lot at work
14 because one of the girls I work with is -- was in a
15 relationship with a policeman, so it was kind of close to
16 home for her.

17 It was like, even allowing for the fact that
18 everything you read is probably not true, there was so much
19 there that seemed to point toward that this person, the
20 defendant, was the person who had done the murder and that
21 he was guilty of this crime. Especially since the police
22 seemed to stop looking after that -- this, and they seemed
23 to feel like they had their man as well. That is what led
24 me to my opinions.

25 THE COURT: One of the things that I hadn't had

1 a chance to instruct you on is called the presumption of
2 innocence. And that is that every criminal defendant is
3 presumed to be innocent in a courtroom until the State
4 proves the contrary beyond a reasonable doubt. And that
5 means the State has to prove the case beyond a reasonable
6 doubt before a criminal defendant can be found guilty by a
7 jury.

8 Because we have this concept called the
9 presumption of innocence, a person's mere arrest does not
10 make them guilty. Do you understand that concept?

11 A PROSPECTIVE JUROR: I am familiar with it now
12 that you mention it, yes. I had heard of it before
13 certainly.

14 THE COURT: Now, if I were to instruct you that
15 that was the law and told you that you had to presume the
16 defendant innocent in this case until the State had proven
17 the contrary beyond a reasonable doubt, could you follow
18 that instruction?

19 A PROSPECTIVE JUROR: I would try. I think I
20 would have great difficulty with it. I mean, I would have
21 to try because you are telling me I have to, and I would be
22 swearing that I would try. But I have to be honest with you
23 and say I just don't know how far I would get with that.

24 THE COURT: Mr. Stanton.

25 MR. STANTON: Thank you.

1 Miss Cadena, there is nothing wrong with people
2 having strong opinions about any number of things. People
3 may have it about the President of the United States or
4 other things.

5 The question that we'd like to focus in on, I
6 know it is a difficult thing because it is asking you to
7 some extent tell us about something that hasn't occurred
8 yet, but you're the best person that knows about who Susan
9 Cadena is and how you will react under certain
10 circumstances.

11 Maybe what you have heard is the facts that are
12 proven before you and that your strong opinions now are the
13 same when you vote in this case.

14 MR. BOSLER: Question of him arguing his case,
15 Your Honor.

16 THE COURT: I'm sorry. I didn't think he was
17 really doing that. But what is the question?

18 MR. SPECCHIO: It is a long question, Judge.
19 It went on a for a long time.

20 MR. STANTON: Can you put what your opinions
21 are aside and to follow the oath requiring the State to
22 prove whatever evidence it is in this case before you in
23 this courtroom as opposed to what you hear in the media?

24 A PROSPECTIVE JUROR: As I said, I would have
25 to try.

1 MR. STANTON: What do you think that -- you
2 know yourself as a person and your character better than
3 anybody, obviously.

4 A PROSPECTIVE JUROR: I don't think I'd do a
5 very good job at it, if that is what you are asking.

6 MR. STANTON: That is what I'm asking. Whether
7 you can put that aside and listen to the evidence and make
8 your decision only on what you hear in this courtroom, not
9 what you hear in the newspapers, not what you have discussed
10 before, but to put all that aside and say, Look, I have a
11 different role now as a juror, and I need to listen to what
12 I hear in the courtroom and make my decision just from that,
13 not from public opinion or the newspapers.

14 Can you do that?

15 A PROSPECTIVE JUROR: I would try. I just
16 don't think I would do very well.

17 MR. STANTON: What makes you think that you
18 couldn't do it very well?

19 A PROSPECTIVE JUROR: I know myself too well.
20 I tend to be rather rigid in my opinions, and I guess I
21 would say we substantiate this by asking the people I live
22 with, and I don't tend to change.

23 MR. STANTON: How about consideration of oath;
24 do you take that seriously?

25 A PROSPECTIVE JUROR: Yes, I do, and that is

1 why I say yes, I would try.

2 MR. STANTON: You take that seriously, so that
3 if the judge did instruct you that you could not render an
4 opinion in this case until you had listened to all the facts
5 and only at that time when you had heard the facts render a
6 decision, do you think you could do that, whatever that
7 decision might be?

8 A PROSPECTIVE JUROR. And live with myself
9 afterwards?

10 MR. STANTON: Based upon what the evidence is
11 presented. First question is, do you think that you can
12 hold off on your opinion, if you are selected to sit in this
13 jury, that you could hold off on what your opinion is based
14 upon the instructions that the Court gives you; that is, do
15 not decide this case until all the evidence comes in? Do
16 you think you can do that?

17 A PROSPECTIVE JUROR: If I'm selected I will
18 try. That's all I can tell you. I don't know.

19 MR. STANTON: Well --

20 A PROSPECTIVE JUROR: Like you said, you are
21 asking for something that hasn't happened yet.

22 MR. STANTON: Are you the type of person that
23 you take an oath to follow the law, the law is --

24 A PROSPECTIVE JUROR: I would take it
25 seriously, yes.

1 MR. STANTON: If the law tells you you cannot
2 form or express an opinion about this case, Mr. Vanisi's
3 guilt or innocence, until the evidence, the matter is
4 submitted to you, could you do that?

5 A PROSPECTIVE JUROR: I guess I would have to,
6 yes.

7 MR. STANTON: Thank you.

8 THE COURT: Mr. Bosler.

9 MR. BOSLER: So your last answer is, I guess
10 I'd have to?

11 A PROSPECTIVE JUROR: Yes. I feel like I'm
12 backed into a corner. Yes.

13 MR. BOSLER: Do you feel like you are backed
14 into a corner right now?

15 A PROSPECTIVE JUROR: No, just that question.
16 I mean, I feel like I'd be going against myself. If that's
17 what the law requires, then that's what I have to do, then I
18 would do it.

19 MR. BOSLER: You said that when asked repeated
20 times if you could follow the oath, you said, I think I can;
21 is that correct?

22 A PROSPECTIVE JUROR: Yes.

23 MR. BOSLER: So even after being asked several
24 times if you could follow the oath, it is still something
25 you are reluctant to do?

1 A PROSPECTIVE JUROR: I guess I see it as
2 separate things. Following the oath, yes, I would take that
3 seriously. I would try to do what was asked of me.

4 But I can't promise you that I can put myself
5 aside and just listen to what's here. I'm just not sure I
6 can do that.

7 MR. BOSLER: I don't want you to think that you
8 have to. There is no right answer or wrong answer. If you
9 can't be fair, you need to admit that you can't be fair.

10 A PROSPECTIVE JUROR: That is what I'm saying
11 is I can't promise you I would be fair. That's all I can
12 say. I would try.

13 MR. BOSLER: You indicated -- do you remember
14 signing the questionnaire earlier in the week? You were
15 given the questionnaire and I guess put in a room to fill it
16 out.

17 A PROSPECTIVE JUROR: Uh-huh.

18 MR. BOSLER: Was there anybody asking you
19 questions about your answers at that time?

20 A PROSPECTIVE JUROR: No.

21 MR. BOSLER: Did you feel like you were kind of
22 free to state your opinions?

23 A PROSPECTIVE JUROR: And I did.

24 MR. BOSLER: You were being truthful when you
25 filled out the questionnaire?

1 A PROSPECTIVE JUROR: Yes.

2 MR. BOSLER: Your questionnaire indicated:
3 "From what I have heard, the guy is guilty, I would have
4 trouble if any evidence to the contrary. This case cries
5 out for penalty."

6 A PROSPECTIVE JUROR: That's me.

7 MR. BOSLER: You were being honest when you
8 said that; right?

9 A PROSPECTIVE JUROR: Yes.

10 MR. BOSLER: Despite what the judge has said
11 and prosecutor has said, is that the way you feel about this
12 case? There is no right or wrong answer.

13 A PROSPECTIVE JUROR: I feel like I have
14 already answered this. I would try to do my best. If I
15 have to be on this jury, I would try to do my best to be
16 fair. I just don't know that I can do that.

17 MR. STANTON: The basis has been established by
18 the defense. What I think you have is a juror that has a
19 strong opinion about the case. She says that she can listen
20 to the Court's instructions, and she's fairly confident that
21 she can abide by the Court's instructions.

22 I think one of the things that's critical here
23 is the two questions that Mr. Bosler said, and that is that
24 would you feel comfortable if the roles were switched. I
25 don't think that is a proper question, number one.

1 Number two, I don't think the answer to the
2 question is dispositive of anything in this case. The
3 question that's critical is, can she put her opinions aside
4 and follow the instructions of the Court, which I think she
5 said she could do.

6 It is a difficult task as it would be for
7 anybody that had a strongly held opinion and knows something
8 about the facts of this case. But I don't think there is a
9 basis that there is -- that they have established for cause
10 she should be excused.

11 MR. BOSLER: She said she couldn't be fair,
12 Your Honor. If the roles were switched, she wouldn't want
13 to be in that seat. That is a question you asked, as I
14 recall.

15 THE COURT: Not exactly that way, Mr. Bosler,
16 but close.

17 MR. BOSLER: It is the same subject matter, and
18 she said no.

19 THE COURT: Okay. We're talking about two
20 different things. She wouldn't want to be -- sure, I know
21 you don't want to be a juror, so we'll just be honest there.
22 I understand you don't want to be here. And she didn't
23 think that she would want someone like her on the jury.

24 But then the last part is, Could you be fair,
25 and I guess what I need to be sure is that you couldn't set

1 aside the strongly held opinion and require the State to
2 prove the case beyond a reasonable doubt.

3 And the way I would phrase the question is:
4 Would you vote for a finding of guilt no matter what
5 happened? Or would you follow the instructions which are
6 going to say that you can't do that?

7 A PROSPECTIVE JUROR: Would you repeat that
8 again?

9 THE COURT: The instructions are going to tell
10 you that you have to find beyond a reasonable doubt each and
11 every element regarding the guilt of the defendant before
12 you may vote as a juror as to guilt. If the State doesn't
13 meet that burden, if they don't put on that evidence, will
14 you be able to return a not-guilty verdict?

15 A PROSPECTIVE JUROR: I guess I would have to.
16 I don't know.

17 THE COURT: Could you do that? Not happily, I
18 understand, or not because you want to be on the jury.
19 That's very clear. But could you do it? Would you follow
20 my instructions?

21 A PROSPECTIVE JUROR: I would try to follow
22 your instructions.

23 THE COURT: Well, not to say that -- we have
24 got a long ways to go before we have this jury qualified for
25 cause, but for right now I deny your motion.

1 MR. BOSLER: Thank you, Your Honor.

2 THE COURT: Miss Cadena, you go ahead and go
3 with the rest of the group, and we'll have our next juror.

4 (Whereupon, Prospective Juror Cadena was
5 excused from the courtroom.)

6 MR. BOSLER: Your Honor, at this point I
7 interpose another objection. I think what we have going on
8 is people come in who have expressed opinions, the Court
9 tries to rehabilitate them, the District Attorney gets first
10 shot at them. By the time I get them, you guys have boxed
11 them in, as her words, I feel boxed in there.

12 And I would have to add she had paused about
13 ten seconds, "If they hadn't proved their case, I would vote
14 for acquittal." Maybe I'm not getting the chance to get to
15 the jurors on what their true opinions are, the way it's
16 being done right now.

17 THE COURT: Okay. I don't know exactly what
18 the motion was, but if it is to change the process, it's
19 denied. The Court is not acting as a rehabilitator. The
20 Court is simply asking the jurors legitimate questions. As
21 my role as the judge is, I'm the one who has to make the
22 decision as to whether or not they are qualified.

23 So I don't see any problem with what we're
24 doing. I don't know if you wanted to go first. That was
25 your motion?

1 MR. BOSLER: That would be one way to remedy
2 it, Your Honor.

3 THE COURT: I'm not recommending it. If you
4 have a specific motion, make it.

5 MR. BOSLER: Your Honor, may the Court at least
6 maybe trade off?

7 THE COURT: Sure, be glad to.

8 MR. BOSLER: Thank you, Your Honor.

9 THE COURT: Call the next person.

10 (Whereupon, Prospective Juror Battaglia entered
11 the courtroom.)

12 THE COURT: Anywhere. Make yourself
13 comfortable.

14 I asked that you come back in by yourself
15 because you indicated that you had learned some information
16 outside the presence of the courtroom through the media, and
17 based on that information, you sort of formed an opinion.
18 Rather than have the other jurors hear what you heard in the
19 media, I wanted to hear what you had learned about outside
20 so the attorneys could hear what that was.

21 A PROSPECTIVE JUROR: All I learned was
22 basically from last year was on my memory. I put a lot of
23 it down in the sheet that we filled out last week.

24 THE COURT: Is there anything other than what
25 you put on your sheet?

1 A PROSPECTIVE JUROR: Well, what I put there
2 was I put down two things or one thing on the sheet, and it
3 was like a choice between that or something else. There was
4 something about a gun being found and how the actual crime
5 was committed, was between that and something else that I
6 heard or read. But it was so long ago that I couldn't
7 really quite remember about that.

8 I did indicate I remember hearing or reading
9 something about the defendant having said that he was going
10 to do something like that earlier in the day. And let's
11 see. I do remember reading that he was caught in Salt Lake
12 with the gun of the officer.

13 THE COURT: Anything else?

14 A PROSPECTIVE JUROR: Nothing that comes to
15 mind.

16 THE COURT: Prior to our lunch break I was
17 unable to ask the jury panel a question. I want to ask you
18 this question now.

19 That is that at the conclusion of the trial, if
20 the Court were to instruct you that a defendant in a
21 criminal action is presumed to be innocent until the
22 contrary is proven beyond a reasonable doubt, and in the
23 case of a reasonable doubt as to whether the defendant's
24 guilt is satisfactorily shown, then the defendant is
25 entitled to an acquittal, would you be able to accept and

1 follow that instruction?

2 A PROSPECTIVE JUROR: It is hard for me to say
3 that right now. It's almost like predicting the future of
4 what I would hear if I was on the jury. And I'm really not
5 sure.

6 THE COURT: What I'm asking you is if you can
7 follow the Court's instruction which will be that you must
8 afford the defendant the presumption of innocence. And the
9 State has to -- I'm not telling you what the result would
10 be.

11 A PROSPECTIVE JUROR: I think I see what you're
12 saying now.

13 THE COURT: But the process is what I'm asking
14 you about. Can you afford the defendant the presumption of
15 innocence and require that the State prove their case in the
16 courtroom beyond a reasonable doubt and follow the other
17 instructions I give you in that regard?

18 A PROSPECTIVE JUROR: I would have to go with
19 my conscience on that, and I think there is a higher moral
20 law that I would have to go by which is how I would believe
21 at that time.

22 THE COURT: That you wouldn't necessarily
23 follow the Court's instruction?

24 A PROSPECTIVE JUROR: If the higher moral law
25 was different, I think I would go with that.

1 THE COURT: Where would you get the higher
2 moral law?

3 A PROSPECTIVE JUROR: My belief.

4 THE COURT: It would come from internal -- your
5 internal support system or belief system?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: Mr. Bosler.

8 MR. BOSLER: Thank you, Your Honor. Is it
9 Battaglia?

10 A PROSPECTIVE JUROR: Silent G, Battaglia.

11 MR. BOSLER: Mr. Battaglia, you indicated
12 earlier that you also would weigh police officers' testimony
13 a little bit more heavily than, say, the normal person off
14 the street --

15 A PROSPECTIVE JUROR: Yes.

16 MR. BOSLER: -- who gives testimony? Why is
17 that?

18 A PROSPECTIVE JUROR: I guess it's just a basic
19 trust in someone. An officer of the law is sworn to uphold
20 the law, and I would believe him over another person, I
21 would think.

22 MR. BOSLER: That's completely fair. So it is
23 your opinion that it is because they have taken a special
24 oath that they should be given a little extra credit.

25 A PROSPECTIVE JUROR: Not just the oath but

1 their life is dedicated to it.

2 MR. BOSLER: If you had two people in court and
3 no one else was a witness to this event and the officer
4 testified one way and the person off the street testified a
5 different way, and there was no other way to separate those
6 two, you would side with the officer?

7 A PROSPECTIVE JUROR: Correct.

8 MR. BOSLER: You indicated that you feel that
9 even though you may be instructed by the Court, there is a
10 higher moral code that you think you need to follow in spite
11 of the Court's instructions?

12 A PROSPECTIVE JUROR: Correct.

13 MR. BOSLER: Anything I can do to change your
14 opinion about that? Is there anything I could say that
15 would change your opinion about that?

16 A PROSPECTIVE JUROR: No, I don't think so.

17 MR. BOSLER: Is there anything the Court can
18 say that is going to change your opinion?

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

20 MR. BOSLER: If the Court gave you a list of
21 instructions and said, This is the law, Mr. Battaglia, you
22 have to follow this law, my understanding is even though
23 that may be given to you, you are not going to follow that
24 because you think there is a higher moral code that
25 controls?

1 A PROSPECTIVE JUROR: Correct.

2 MR. SPECCHIO: That is the way you feel today?

3 A PROSPECTIVE JUROR: Yes.

4 MR. BOSLER: Despite whatever the Court may
5 say, you would have a higher moral code you are going to
6 follow?

7 A PROSPECTIVE JUROR: Courts have made mistakes
8 in the past.

9 MR. BOSLER: Is that one of the reasons that
10 you are going to follow your own code?

11 A PROSPECTIVE JUROR: Not my own code. I would
12 go with my -- well, let me put it this way. If I believed
13 strongly, I would go against the instructions of the Court.
14 That moral belief that I have.

15 MR. BOSLER: Do you also say you intend to
16 believe the stuff you heard in the news? Is that about this
17 event or just in general?

18 A PROSPECTIVE JUROR: As the judge said
19 earlier, not everything in the news is a hundred percent
20 correct. I agree. I don't think the news is perfect.

21 MR. BOSLER: If you were to look at these two
22 tables, who do you think has the most to prove at this
23 trial?

24 THE COURT: What is that question?

25 MR. BOSLER: The most to prove? Who do you

1 think has the burden of proof?

2 A PROSPECTIVE JUROR: You do.

3 MR. BOSLER: The defense has the burden of
4 proof, to prove that Mr. Vanisi isn't the guilty party?

5 A PROSPECTIVE JUROR: That is what I believe it
6 is.

7 MR. BOSLER: And that is the way you feel
8 despite what the judge has said about this presumption of
9 innocence and the State having the burden of proof?

10 A PROSPECTIVE JUROR: Well, yeah.

11 MR. BOSLER: That is the way you feel? Nothing
12 the judge can say is going to change that idea inside you?

13 A PROSPECTIVE JUROR: No. My feeling of the
14 truth is my feeling of the truth. It's not something
15 that -- is that people change really. What else do you
16 have?

17 MR. BOSLER: I guess you have to have some type
18 of inner truth. But just to confirm, inner truth is that
19 despite what the Court says, your opinion is that the
20 defense has to prove that Mr. Vanisi is guilty?

21 A PROSPECTIVE JUROR: The things that I have
22 heard in the press from before that I still remember.

23 MR. BOSLER: Those things form your opinion
24 that Mr. Vanisi is guilty?

25 A PROSPECTIVE JUROR: They tend to look that

1 way.

2 MR. BOSLER: They tend to what?

3 A PROSPECTIVE JUROR: Look that way.

4 MR. BOSLER: Your Honor, we'll make a for-cause
5 challenge.

6 THE COURT: Mr. Stanton.

7 MR. STANTON: Thank you.

8 Mr. Battaglia, relative to your comments
9 regarding a code that goes beyond the instructions of law in
10 this case, can you give me an idea of where those might be
11 in conflict? Instead of talking about hypothetical, can you
12 tell me, one, where your moral code would trump what the law
13 is?

14 A PROSPECTIVE JUROR: No.

15 MR. STANTON: In this case or in all criminal
16 cases, one of the fundamental cornerstones is that
17 presumption of innocence, as Judge Steinheimer indicated.
18 Are you the type of person if she tells you as a matter of
19 law that you cannot form an opinion about this case, if you
20 are a juror in this case, until you have heard all the
21 evidence, do you think you could do that?

22 A PROSPECTIVE JUROR: I would wait til the end.

23 MR. STANTON: So you have enough discipline to
24 follow that oath and wait till the end and then make your
25 decision?

1 A PROSPECTIVE JUROR: Yes.

2 MR. STANTON: Relative to the presumption or
3 how you sit here and believe about Mr. Vanisi today, if the
4 judge were to tell you he's presumed innocent and that me
5 and Mr. Gammick have the burden of proof beyond a reasonable
6 doubt to you of his guilt, could you follow that
7 instruction?

8 A PROSPECTIVE JUROR: Yes.

9 MR. STANTON: Thank you. Nothing further. I
10 would oppose the objection based upon -- the motion based
11 upon those answers.

12 THE COURT: Mr. Battaglia, you don't know of
13 any rule or instruction of the Court that you think that
14 right now you know you couldn't follow?

15 A PROSPECTIVE JUROR: I could up til the -- can
16 follow that, yes. I don't know of any that I could not
17 follow.

18 THE COURT: You started to say up til the --

19 A PROSPECTIVE JUROR: Well, it's hard to
20 explain. I guess how I'm going to feel at that time, the
21 end of this trial, is a different thing than what I feel
22 now, I'm sure.

23 THE COURT: One of the things the Court will
24 tell you is that I won't be making the decisions about the
25 facts for you. That's the jury's determination.

1 A PROSPECTIVE JUROR: Right.

2 THE COURT: What I do is give you the law as it
3 is, and I tell you that you make a determination as to the
4 facts, and then you apply the facts to the law, and then you
5 reach a verdict consistent with the facts and the law.

6 Now, would you make up your own version of the
7 law to get to whatever result you think you want to get to,
8 or would you follow that instruction?

9 A PROSPECTIVE JUROR: You're asking me to
10 predict the future.

11 THE COURT: No, I'm asking if you will follow
12 the law.

13 A PROSPECTIVE JUROR: I will follow your
14 instructions.

15 THE COURT: As to what the law is?

16 A PROSPECTIVE JUROR: Right.

17 THE COURT: Motion is denied.

18 Go ahead and go on back with the jury. We'll
19 have you back in here in just a few minutes, I hope. Thank
20 you.

21 (Whereupon, Prospective Juror Battaglia enters
22 the courtroom.)

23 (Whereupon, Prospective Juror Kizis enters the
24 courtroom.)

25 THE COURT: Thank you, ma'am, for coming in. I
want to let you know, I didn't bring you in to make you

1 uncomfortable in the courtroom by yourself. But you had
2 indicated that you had a strongly held opinion based on
3 information that you had received outside the courtroom, and
4 so I wanted to find out what that information was that you
5 had received outside the courtroom. Is that the basis of
6 your --

7 A PROSPECTIVE JUROR: That was from the radio.

8 THE COURT: From the radio?

9 A PROSPECTIVE JUROR: Yeah.

10 THE COURT: What did you hear? Whatever you
11 remember.

12 See why we didn't want you to tell us in front
13 of everybody else?

14 A PROSPECTIVE JUROR: From the radio's point of
15 view, the whole story, I guess. That a hatchet was used;
16 that the defendant did not -- let's see. Bragged about the
17 crime. That he told his friends he was going to -- he
18 wanted to kill a policeman. That it was premeditated. Hid
19 in the bushes, killed the man.

20 Let me see what else. Tried to kill himself in
21 jail.

22 THE COURT: Anything else? I'm not saying that
23 that's all.

24 A PROSPECTIVE JUROR: I'm trying to think. I
25 think that's about it.

1 THE COURT: Now, one of the instructions, one
2 of the things I didn't get to ask the whole panel I want to
3 ask you now, and that is if I were to instruct you at the
4 conclusion of this case that a defendant in a criminal
5 action is presumed to be innocent until the contrary is
6 proved by competent evidence beyond a reasonable doubt, and
7 in a case where reasonable doubt -- where there is
8 reasonable doubt as to whether or not the defendant's guilt
9 has been satisfactorily shown, then the defendant is
10 entitled to an acquittal.

11 Do you understand that instruction?

12 A PROSPECTIVE JUROR: Uh-huh.

13 THE COURT: Would you accept that instruction?

14 A PROSPECTIVE JUROR: Yes. If it was beyond a
15 reasonable doubt, yes.

16 THE COURT: Yes.

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: Now, the beyond a reasonable doubt
19 is the burden, part of the burden that the State has. The
20 other part of that question calls for something called the
21 presumption of innocence. That means that the defendant in
22 any criminal case is presumed by the Court, by the jury,
23 everyone, to be innocent, by the court of law, until it is
24 proven to the contrary, until something is proven to the
25 contrary.

1 Now, even though you have this information from
2 the media that we have already talked about, whether or not
3 that's good information or not, even though you have some
4 information and kind of formed an opinion, are you able to
5 set aside that opinion and decide the case based solely on
6 the evidence?

7 A PROSPECTIVE JUROR: I think so.

8 THE COURT: And can you afford the defendant
9 the presumption of innocence?

10 A PROSPECTIVE JUROR: I can try.

11 THE COURT: Mr. Stanton.

12 MR. STANTON: I have no questions of this
13 juror.

14 THE COURT: Mr. Bosler.

15 MR. BOSLER: Miss Kizis, you say you have heard
16 a lot of things on the radio about the events?

17 A PROSPECTIVE JUROR: Uh-huh.

18 MR. BOSLER: But you can't remember them all
19 today if called upon to recite them?

20 A PROSPECTIVE JUROR: I think those were the
21 main ones, yeah. The main points.

22 MR. BOSLER: If there became a point where you
23 sat through the trial and didn't hear things in the trial
24 that you had heard with the media, would the things you
25 heard on the radio still play a part in your opinion, play a

1 part in your deliberations in this case?

2 A PROSPECTIVE JUROR: I guess I would be real
3 surprised if I didn't hear those things. I guess I would be
4 surprised to think, wow, that's pretty amazing. So if I
5 didn't hear it in court as evidence, and I would assume that
6 you had all the evidence in here, then I guess I would have
7 to set that aside, what I heard on the radio.

8 MR. BOSLER: Is that something you think you
9 can do?

10 A PROSPECTIVE JUROR: I can try to, yes.

11 MR. BOSLER: You are just not quite sure at
12 this point whether you can do it?

13 A PROSPECTIVE JUROR: To be honest, yeah, it's
14 hard for me to set it aside.

15 MR. BOSLER: Is there a chance that your
16 ability to deliberate would be impaired by the things you
17 have heard through the media?

18 A PROSPECTIVE JUROR: At this point, yes.

19 MR. BOSLER: If the Court instructed you you
20 are only supposed to hear what you hear in the courtroom, I
21 think that was part of the questionnaire you filled out.

22 A PROSPECTIVE JUROR: I would do my best to do
23 that.

24 MR. BOSLER: You would feel there is a little
25 bit of impairment from what you heard in the radio?

1 A PROSPECTIVE JUROR: Yes.

2 MR. BOSLER: I don't mean to pry or drag up
3 anything that is painful to you. You said something about
4 alcohol.

5 A PROSPECTIVE JUROR: Yes.

6 MR. BOSLER: How that would affect your
7 deliberations.

8 A PROSPECTIVE JUROR: Yes, definitely.

9 MR. BOSLER: Because you have had --

10 A PROSPECTIVE JUROR: Because my brother was
11 killed by a drunk driver.

12 MR. BOSLER: I guess you filled out the
13 questionnaire indicating you don't feel you can be objective
14 in a case that involves alcohol.

15 A PROSPECTIVE JUROR: Right.

16 MR. BOSLER: Again, I'm not trying to pry. If
17 you were to sit on a case where there was an indication of
18 alcohol consumption, is it your statement today in front of
19 the Court that you can't be objective in those
20 circumstances? You can't sit in judgment of someone if
21 there is alcohol involved?

22 A PROSPECTIVE JUROR: Right.

23 MR. BOSLER: Is there anything the Court can
24 say that if the Court said, I want you to disregard that and
25 you are supposed to treat this person or every situation,

1 whether it has alcohol in it or not, the same, do you
2 understand? Can you do that based upon your life
3 experiences?

4 A PROSPECTIVE JUROR: I don't think when it
5 comes to alcohol. Because the person that killed my brother
6 did it many times thereafter and was picked up for drunk
7 driving, and the key should have been thrown away, quite
8 frankly. He should have been put in jail. That is all
9 there is to it. He had a slap on the wrist. My brother is
10 dead, two little children and wife.

11 MR. BOSLER: I think obviously something close
12 to your heart. Is there anything the Court's instruction
13 could --

14 THE COURT: Wait a minute. I have a question.
15 Are we talking about just the mention of alcohol?

16 A PROSPECTIVE JUROR: No. I said that if there
17 was alcohol involved in this case, I didn't feel I could be
18 an objective juror.

19 THE COURT: You mean if -- I don't understand
20 what you mean by "involved in the case." Do you mean if it
21 was caused by alcohol?

22 A PROSPECTIVE JUROR: If the defendant had been
23 drinking.

24 THE COURT: Okay. Go ahead.

25 MR. BOSLER: And I guess you stand by that

1 thought?

2 A PROSPECTIVE JUROR: Yeah.

3 MR. BOSLER: Nothing further, Your Honor. We
4 make the for-cause challenge.

5 THE COURT: Mr. Stanton.

6 MR. STANTON: I'm not sure the basis of the
7 challenge. My gist of what I guess -- I'm assuming from
8 what counsel's motion is that the prospective juror said
9 that she at this point couldn't put some of her feelings
10 aside. But I think when she is making that term, she is
11 being very precise about it.

12 She is saying at this point, at this point in
13 the proceedings, not after she's been instructed and waiting
14 til the evidence has been presented to put aside her
15 feelings, which I think she responded directly to the
16 precise questions by the Court about following the Court's
17 instructions.

18 As far as the latter part, if indeed that is
19 part of the motion for cause, this isn't a drunk driving
20 case. The State is unaware of any alcohol that was involved
21 in this case relative to the offenses. So I'm not sure how
22 that is germane.

23 THE COURT: Motion is denied.

24 Thank you. Go ahead and wait for us in the
25 jury room. Okay?

1 (Whereupon, Prospective Juror Kizis was excused
2 from the courtroom.)

3 (Whereupon, Prospective Juror Turnage entered
4 the courtroom.)

5 THE COURT: Miss Turnage, I asked that you come
6 in by yourself because you had indicated that you had a
7 strongly held opinion with regard to something, and I
8 thought it was the basis -- the basis of that was the media
9 information that you had gotten before you came in here.
10 And so I wanted to find out what the media information was
11 that you were relying on. I wanted to do it in a way so
12 everybody else didn't hear it in case they didn't hear that
13 same media coverage.

14 A PROSPECTIVE JUROR: That makes sense.

15 THE COURT: So can you tell us what you --

16 A PROSPECTIVE JUROR: Well, one of the things I
17 heard is that the defendant, after having allegedly done the
18 crime, told friends of his that, yes, he had done it and he
19 was proud of it. And now, as you said, the media is
20 oftentimes wrong.

21 But I can't help but feel that there's good
22 chance that what I heard was true and that, I mean, I
23 wouldn't want to say that I have made a strong opinion that
24 he's guilty at this point, but I can't help but feeling a
25 little bit swayed by that.

1 THE COURT: Before we took our break I normally
2 would have asked everyone this question. I didn't get a
3 chance to ask you and everyone else. So I'll ask you now by
4 yourself.

5 And that is if the Court were to instruct you
6 at the conclusion of the case that a defendant in a criminal
7 action is presumed to be innocent until the contrary is
8 proven beyond a reasonable doubt, and in case of a
9 reasonable doubt as to whether the defendant's guilt is
10 satisfactorily shown, then the defendant is entitled to be
11 acquitted, would you follow and accept that instruction?

12 A PROSPECTIVE JUROR: I would try my best to do
13 that.

14 THE COURT: The instruction talks about
15 presuming the defendant innocent until the evidence is
16 presented here in the courtroom. Do you understand that?

17 A PROSPECTIVE JUROR: Right, I do understand
18 that. It's hard to shut off feelings and to just separate
19 that. I would do my best to do that, but I can't say that
20 for sure I would. I would try my best to separate that and
21 put that aside and to go ahead and make him innocent in my
22 mind. But I don't know that that would be the case.

23 THE COURT: Mr. Bosler.

24 MR. BOSLER: Miss Turnage, you were able to
25 fill out a questionnaire before you came to court today?

1 A PROSPECTIVE JUROR: Uh-huh.

2 MR. BOSLER: They gave you time to think about,
3 read the questions and think about your answers?

4 A PROSPECTIVE JUROR: Uh-huh.

5 MR. BOSLER: You were asked a question, do you
6 remember -- I don't know if you remember. You were asked a
7 question whether you could put aside your strongly held
8 opinions or opinions that you have about this case and
9 follow the Court's instruction if you were called to do so.
10 Do you remember what you responded?

11 A PROSPECTIVE JUROR: I believe I wrote no.

12 MR. BOSLER: You wrote no. You say that you
13 are not going to follow directions. I could not go against
14 my beliefs, unquote. Is that something you put on your
15 questionnaire?

16 A PROSPECTIVE JUROR: That is something I did
17 put on my questionnaire, yes.

18 MR. BOSLER: Does that fairly describe how you
19 feel today?

20 A PROSPECTIVE JUROR: Yeah, it does.

21 MR. BOSLER: So in spite of what the Court has
22 said, these are the presumptions, things like that you feel
23 if your beliefs are going to conflict with the instructions,
24 you are not going to follow the instructions?

25 I don't want you to think there is a right or

1 wrong answer. Whatever you give is your answer.

2 A PROSPECTIVE JUROR: I'm just saying that it
3 would be very difficult for me to follow the instructions
4 and go against what I believe, and I would try my best to do
5 that, but I can't say that I would.

6 MR. BOSLER: If you had -- I don't mean to put
7 you on the spot. If you had an instruction that was
8 different from your belief, which one would you follow?

9 A PROSPECTIVE JUROR: I would have to go with
10 my belief.

11 MR. BOSLER: You are honest about that?

12 A PROSPECTIVE JUROR: (Positive nod.)

13 MR. BOSLER: I think you said yes.

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: She nodded her head.

16 A PROSPECTIVE JUROR: I did say yes.

17 MR. BOSLER: If -- at these two tables, who do
18 you think has the burden of proof in this case?

19 A PROSPECTIVE JUROR: The burden of proof is on
20 the prosecution.

21 MR. BOSLER: And have you formed an opinion as
22 to whether Mr. Vanisi is guilty at this point?

23 A PROSPECTIVE JUROR: I have.

24 MR. BOSLER: And that opinion is what?

25 A PROSPECTIVE JUROR: That he is guilty.

1 MR. BOSLER: That's despite what the Court
2 said?

3 A PROSPECTIVE JUROR: Right, but I mean, I
4 would try, like I said, to put that aside. But it would be
5 difficult to do.

6 MR. BOSLER: You can't even promise that that
7 could happen?

8 A PROSPECTIVE JUROR: I can't promise that that
9 could happen.

10 MR. BOSLER: No further questions, Your Honor.
11 We make the challenge.

12 THE COURT: You make a motion?

13 MR. BOSLER: Yes.

14 THE COURT: We'll let Mr. Stanton inquire.

15 MR. STANTON: Miss Turnage, one of the things
16 that jurors have the sole province in a criminal case is you
17 will determine what are the facts in the case. So from that
18 perspective, and that is that there is no one going to be
19 giving you instructions about what the facts are as far as
20 how you determine them to be, is there any instructions of
21 law that you can think of that would go against your
22 personal beliefs and therefore you wouldn't follow? Can you
23 give me an example?

24 A PROSPECTIVE JUROR: Yeah, I can. Say that
25 something came up in the court case that we were admonished

1 by the judge to disregard, to forget we heard it. I
2 couldn't forget I heard anything, if I heard it.

3 MR. STANTON: If you were instructed to, as you
4 just said, disregard it and yet you heard it, when you went
5 back to deliberate to that and you said, Hey, look, this was
6 an important part of the case, I heard it, and then someone
7 said, Hey, but you were instructed by the judge to disregard
8 it, are you saying that you couldn't do that?

9 A PROSPECTIVE JUROR: That's what I'm saying.

10 MR. STANTON: Even if you had taken an oath to
11 follow the rules of the Court?

12 A PROSPECTIVE JUROR: It would still be
13 difficult to disregard the information, yes.

14 MR. STANTON: It may be difficult for the
15 average person to do that, to disregard something they have
16 heard. But the question is, are you the type of person that
17 will take the instructions and the oath to follow the law
18 serious enough that you will put it aside?

19 A PROSPECTIVE JUROR: I'm the type of person
20 that would do my best to do that.

21 MR. STANTON: You indicated on your
22 questionnaire, "My beliefs don't allow me to judge others."
23 Could you explain that to me?

24 A PROSPECTIVE JUROR: Well, God is the only
25 judge, and I know that may sound kind of ridiculous to you

1 people. But to me, I take it very seriously, and I wouldn't
2 want to have to be put in the position to judge anybody for
3 anything.

4 MR. STANTON: When you say judge somebody,
5 would that include finding whether or not they are guilty or
6 innocent of first-degree murder?

7 A PROSPECTIVE JUROR: That is correct.

8 MR. STANTON: How about making the decision
9 whether someone should die or not?

10 A PROSPECTIVE JUROR: I wouldn't want to have
11 to make that decision. I believe that the decision needs to
12 be made, obviously, by somebody.

13 MR. STANTON: But not by you?

14 A PROSPECTIVE JUROR: But I would feel very
15 uncomfortable having to make that decision.

16 MR. STANTON: No objection to counsel's motion.

17 THE COURT: You are excused for cause. Thank
18 you for all your candor. We appreciate your service here.

19 A PROSPECTIVE JUROR: Thank you.

20 THE COURT: Go ahead on down to the Jury
21 Commissioner's office and report to her that you were
22 excused.

23 A PROSPECTIVE JUROR: Where is that located?

24 THE COURT: The first floor where you first
25 went this morning.

1 (Whereupon, Prospective Juror Turnage was
2 excused from the courtroom.)

3 MR. GREGORY: Your Honor, I believe I have one
4 juror left, Miss Kenny.

5 (Whereupon, Prospective Juror Kenny enters the
6 courtroom.)

7 THE COURT: Yes, that is correct.

8 Go ahead and find a seat anywhere, Miss Kenny.

9 A PROSPECTIVE JUROR: Thank you.

10 THE COURT: Miss Kenny, I asked that you come
11 in by yourself because you had some feelings with regard to
12 forming -- judging a case, and you had some issues about the
13 pretrial publicity that you might have seen or heard, and
14 you said you had formed an opinion about the case. So I
15 wanted to hear what the basis of your pretrial publicity
16 that you have heard was. What had you heard?

17 A PROSPECTIVE JUROR: I heard everything,
18 everything. Because I read the paper every day, mostly
19 every day, except the last few weeks I didn't. But my
20 husband watches the news very carefully every night. That's
21 his thing.

22 But I know a lot about it, but I'm not here
23 to -- do you know what I mean? I can't judge anybody. I
24 know it was the most horrible crime committed in the town
25 here since I have been living here. And I am who I am and

1 the personality I do have, and I'm German, I cannot judge
2 and I will not judge.

3 MR. BOSLER: Your Honor, at this time we're
4 going to offer a stipulation to the Court to challenge her
5 for cause.

6 MR. STANTON: Yes, Your Honor. For the record,
7 Miss Kenny's responses on both questionnaires I believe
8 establishes a basis for cause.

9 THE COURT: Okay. Do you stipulate to that?

10 MR. SPECCHIO: We do, Your Honor.

11 THE COURT: Okay. Miss Kenny, they have read
12 your questionnaire, and on the basis of what you told us
13 just now, both sides agree you may be excused from the case.

14 A PROSPECTIVE JUROR: Thank you very much.

15 THE COURT: Thank you for your assistance. We
16 appreciate it.

17 A PROSPECTIVE JUROR: Thanks for the respect
18 you have given me.

19 THE COURT: We'll see you back -- go ahead down
20 to the Court Jury Commissioner on the first floor.

21 (Whereupon, Prospective Juror Kenny exited the
22 courtroom.)

23 THE COURT: Anybody else counsel wants to
24 stipulate to excluding before I call them in?

25 MR. GREGORY: I hate to do this because I know

1 it is going to make Mr. Stanton's day. But are we going to
2 take an afternoon break, a 15-minute break or something like
3 that?

4 MR. SPECCHIO: Judge, can I just ask one
5 question before you even make that call? I had Mr. Jones as
6 saying that he had some kind of an opinion, Lawrence Jones.

7 MR. BOSLER: He said he had an opinion who is
8 responsible for the crime.

9 MR. SPECCHIO: He is the only one that I had.

10 THE COURT: Whatever he said, it wasn't of such
11 a nature that I felt we had to talk to him individually.
12 You can certainly follow up with any questions you might
13 have for him.

14 MR. BOSLER: I also have Janet Frandsen saying
15 she was biased.

16 MR. SPECCHIO: The woman from UNR. Says she
17 taught at UNR or something.

18 THE COURT: Right. But I don't think there was
19 anything that would contaminate the whole panel if she told
20 us her feelings. My main concerns were the media issues,
21 what they might have known outside the courtroom that nobody
22 else would know about. I didn't really want them exploring
23 that. If it is just their personal beliefs.

24 MR. SPECCHIO: As long as she doesn't say
25 anything about UNR.

1 THE COURT: We'll watch it kind of carefully
2 and if we get to that point. That was Mrs. Frandsen?

3 MR. SPECCHIO: That was 23, Judge.

4 THE COURT: Now, the jury came back at a
5 quarter to 2:00. And it's now 20 to 4:00. They wanted a
6 smoke break. And as much as you all know how I feel about
7 cigarette smoke, so as much as my initial response was no
8 way, Mr. Gregory, that, no, I wouldn't let anybody have a
9 smoke break, I did let them go on a smoke break, and that
10 was about 10 minutes ago. Seven minutes ago. So that was
11 anticipating that we would take a short recess now while
12 we're waiting for them to come back. Because we have to let
13 them -- I mean, I don't want to hold them captive here.

14 MR. GREGORY: I think Mr. Bosler would thank
15 the Court for that courtesy.

16 THE COURT: Counsel, we're going to call the
17 other names to fill it. Would you like those names called
18 now so you can kind of during the break be looking at their
19 questionnaires?

20 MR. SPECCHIO: You were not going to have them
21 in there? You are going to call them from out of the room?

22 THE COURT: We can if you want to. We have got
23 quite a few to replace. So if you want to have a chance to
24 look at it, I thought that might be -- save you a little
25 time. I don't care how we do it.

1 MR. SPECCHIO: There are only eight, Judge.

2 THE COURT: Be back in 10 minutes. You may
3 bring the regular jury panel and the full panel back into
4 the courtroom as soon as our recess is over. I think about
5 10 more minutes should do it. Thank you. Court is in
6 recess.

7 (Recess taken at 3:41 p.m.)

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RENO, NEVADA, MONDAY, JANUARY 11, 1998, 4:04 P.M.

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

THE COURT: Those people who have been taking charge of the jury, Mrs. Davis, have any of the jurors left your presence?

THE CLERK: No, Your Honor, they have not.

THE COURT: Thank you. And, Miss Lopshire, the other group of people that you had, have any of those jurors left your presence since we took the roll?

MS. LOPSHIRE: No, they have not.

THE COURT: Thank you. Counsel, will you stipulate to the panel as it is now in the box -- we're missing some people -- to their being present?

MR. STANTON: State will stipulate.

MR. BOSLER: Based upon the responses we just heard, we stipulate.

THE COURT: Clerk will call the names of those to replace some of the jurors whom we have lost. As your name is called, please come forward and take the seat that the bailiff instructs you to take. We'll be filling the seats like we did before. We'll start in the back row and we'll fill the blanks and then we'll come forward.

SIERRA NEVADA REPORTERS (702) 329-6560

1 THE CLERK: Frank X. Sotero.

2 John W. Auld.

3 Bo H. Larsson.

4 Mary A. Schultz.

5 Grace B. Mills.

6 Randall A. McCargar.

7 Alan R. Golbov.

8 Stephen L. Sowers.

9 THE COURT: Go ahead and fill in those seats.

10 There should be a place for every juror by now.

11 Okay. Those of you who have joined us at this
12 break on our jury panel, as you remember, I asked you to
13 keep track of those questions that you would respond to if
14 you were called upon to replace someone, and now you have
15 been called upon to replace someone. So we will proceed
16 with asking you to tell me what those questions would be
17 that you would respond to.

18 And I think, Mr. Sotero, you were the first
19 person called back up. So far were there any of my
20 questions that you would have wanted to respond to if you
21 were sitting here in the jury box from the beginning?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: You aren't familiar with any of the
24 names on that witness list?

25 A PROSPECTIVE JUROR: None.

1 THE COURT: And you don't know anybody in law
2 enforcement?
3 A PROSPECTIVE JUROR: No.
4 THE COURT: You heard all my questions?
5 A PROSPECTIVE JUROR: Yes.
6 THE COURT: Mr. Auld.
7 A PROSPECTIVE JUROR: Hello.
8 THE COURT: Hello.
9 A PROSPECTIVE JUROR: No on the witness list.
10 THE COURT: I won't go through all my
11 questions. You just tell me.
12 A PROSPECTIVE JUROR: Go ahead.
13 THE COURT: You tell me which ones you would
14 want to respond to.
15 A PROSPECTIVE JUROR: The acquaintance with a
16 police officer.
17 THE COURT: Tell us about that, please.
18 A PROSPECTIVE JUROR: Friend who is a highway
19 patrolman and some cousins that are in Sparks police force.
20 THE COURT: What are your cousins' names?
21 A PROSPECTIVE JUROR: Zarubi.
22 THE COURT: Is there anything about your
23 association with those police officers that would cause you
24 a difficulty serving in this case?
25 A PROSPECTIVE JUROR: No.

1 THE COURT: Would you feel compelled to reach
2 any particular verdict based solely on your relationship
3 with the police officers?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: Is there anything about your
6 association with police officers that would require you to
7 justify any particular verdict --

8 A PROSPECTIVE JUROR: No.

9 THE COURT: -- to them or anyone else? Go
10 ahead.

11 A PROSPECTIVE JUROR: And then I have got down
12 articles in paper. I saw it as I was crumpling it up
13 putting it underneath the fire on Sunday.

14 THE COURT: So you just saw that headline?

15 A PROSPECTIVE JUROR: Just saw the headline.
16 Didn't read the article. As far as formed opinion, I have
17 formed an opinion.

18 THE COURT: Okay. And the basis of that
19 opinion?

20 A PROSPECTIVE JUROR: Just from media prior to
21 that.

22 THE COURT: No other questions would you have
23 responded to?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Mr. Larsson.

1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: Did you keep track of those
3 questions you would respond to?

4 A PROSPECTIVE JUROR: Yes, I did.

5 THE COURT: Which ones would you have responded
6 to?

7 A PROSPECTIVE JUROR: The one about the media.
8 I did form an opinion earlier, not this time when they wrote
9 about it but a long time ago. So I do have an opinion.

10 THE COURT: Based on the media accounts that
11 you observed?

12 A PROSPECTIVE JUROR: That is correct. I do
13 not know anybody on this list, Your Honor.

14 THE COURT: Thank you.

15 Mrs. Schultz? Did you keep track of what you
16 would have responded to?

17 A PROSPECTIVE JUROR: I didn't. I'm sorry.
18 But I heard all the questions that you asked everybody.

19 THE COURT: Okay. But I need to make sure
20 that -- I'll go kind of quick. If any of my questions, if
21 you have a question about it, just ask me. Okay?

22 A PROSPECTIVE JUROR: Okay.

23 THE COURT: Are you acquainted with or related
24 to the defendant in this case? Are you related or
25 acquainted with the attorneys on either side of this case?

1 You have to answer out loud.

2 A PROSPECTIVE JUROR: No.

3 THE COURT: Are you related to or acquainted
4 with any member of the District Attorney's Office?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Any member of Mr. Specchio's
7 office?

8 A PROSPECTIVE JUROR: No.

9 THE COURT: Are you related or acquainted with
10 any law enforcement officers?

11 A PROSPECTIVE JUROR: I know one law officer.

12 THE COURT: Who is that?

13 A PROSPECTIVE JUROR: Jim Stegmeier.

14 THE COURT: How do you know him?

15 A PROSPECTIVE JUROR: He is a good friend of
16 our family.

17 THE COURT: Is there anything about your
18 relationship with him that would cause you a problem serving
19 on this case?

20 A PROSPECTIVE JUROR: No. There is not.

21 THE COURT: Would you feel you had to justify
22 any particular verdict to him?

23 A PROSPECTIVE JUROR: I guess not.

24 THE COURT: It's very hard for me to hear you,
25 ma'am.

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Would it affect you? Yes, no.

3 A PROSPECTIVE JUROR: No.

4 THE COURT: I'm really sorry, Miss Schultz, but
5 there is a lot of people in here, and I just can't hear you.

6 A PROSPECTIVE JUROR: I said no.

7 THE COURT: Can you talk even louder?

8 A PROSPECTIVE JUROR: No.

9 THE COURT: Louder?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: That's better. Thank you. I know
12 you will feel like you are yelling, but we're going to have
13 to have you do that. All these bodies around you absorb the
14 sound. So that is what happens.

15 If any law enforcement officer were to testify
16 in this case, would you tend to give that testimony any more
17 or less weight simply because that person is a law
18 enforcement officer?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Do you know anything about this
21 case of your own personal knowledge?

22 A PROSPECTIVE JUROR: Just what I heard in the
23 past media, I guess.

24 THE COURT: You don't have any other knowledge
25 other than what you saw or read in the media accounts?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Now, you have indicated that you
3 have read some newspaper accounts?

4 A PROSPECTIVE JUROR: I didn't read the
5 newspaper. I just seen little spurts on TV.

6 THE COURT: Anything other than what you wrote
7 down on your questionnaire, when you were in here before?
8 You told us about what pretrial publicity you had seen.
9 Have you seen any since then?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Have you formed or expressed any
12 opinion as to the guilt or innocence of the defendant in
13 this case?

14 A PROSPECTIVE JUROR: Sort of. I guess.
15 Borderline. I don't know all the facts.

16 THE COURT: All right. Do you have anything
17 more than a passing interest in the outcome of the case?

18 A PROSPECTIVE JUROR: I don't understand that.

19 THE COURT: Do you feel committed to the case
20 in any way? Do you feel like you have some personal
21 connection to this case?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: As I go through these list of
24 questions, those of you who I have not asked these questions
25 of personally before, please feel free to raise your hand.

1 I didn't mean to exclude you. If any of you wanted to
2 respond to these questions.

3 Are you related to or acquainted with anyone on
4 the witness list?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: At the conclusion of the evidence I
7 will state the law that applies to this case to you. I will
8 tell you that it is your duty to apply that law to the facts
9 as you find them to be.

10 Would you be reluctant to apply these general
11 principles of law which are stated to you by the Court?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: In other words, would you realize
14 that you are not allowed to make up your own version of the
15 law?

16 A PROSPECTIVE JUROR: Yeah, I understand that.

17 THE COURT: Miss Mills, would you have
18 responded to any of those questions?

19 A PROSPECTIVE JUROR: Yes, I did. I don't know
20 how important it is to the Court, but as the former employee
21 of NJC on Reno campus in the '80s, I would just like to show
22 that for the record, and that has no bearing over my
23 decision on this Court or this case; only what does matter
24 would be what I hear in this courtroom.

25 THE COURT: By NJC, you mean the National

1 Judicial College?

2 A PROSPECTIVE JUROR: That's right.

3 THE COURT: Thank you, ma'am. Any other of my
4 questions that I have gone over just now or that I went over
5 earlier that you would respond to?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: Mr. McCargar.

8 A PROSPECTIVE JUROR: Yes.

9 THE COURT: Would you have responded to any of
10 my questions?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: As I went over them again, did any
13 of those that you wanted to raise your hand and respond to?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: Mr. Sowers.

16 A PROSPECTIVE JUROR: Yes. I sent a sympathy
17 card to Carolyn Sullivan. I was asked to do so by the
18 leaders of my fellowship group, Sparks Fellowship Church. I
19 was asked that on Tuesday night, not aware that I was a part
20 of this trial. And just keep her in my prayers.

21 So that might tend to jade things. I don't
22 think so, though. I have never met Carolyn, and I don't
23 know a whole lot about the case.

24 The only relationships with law enforcement
25 would be just casual acquaintances, no actual friendship.

1 Like I would go to their house or them to mine. As far as
2 being related to anybody, no.

3 I wouldn't make a judgment without hearing the
4 facts as far as the relationship to the police as well as
5 other witnesses. However, as far as personal knowledge of
6 the facts, this could be difficult because I am an employee
7 of Siddell Communications and on-air announcer for KBUL
8 Magic 95.5, The Hawk, Cat Country.

9 THE COURT: No commercials.

10 A PROSPECTIVE JUROR: As well as News Talk KOH.
11 So I might be privy to information that shouldn't be -- I
12 shouldn't be privy to.

13 THE COURT: Why don't you -- do you announce
14 for all those stations?

15 A PROSPECTIVE JUROR: Yes, I do.

16 THE COURT: And is that -- do you do the news,
17 or does it happen while you are doing a regular radio show?

18 A PROSPECTIVE JUROR: The job that I do is as a
19 floater. So one day I can be on one station, the next day
20 on the next. I don't know what my schedule is. It is a
21 fill-in part-time type position. But it is inside the media
22 center, and that makes it real difficult.

23 THE COURT: Do you remember things that you
24 learned in the past regarding publicity?

25 A PROSPECTIVE JUROR: I had heard some, but I

1 was out of town while a lot of it was going on. So I didn't
2 hear a whole lot.

3 THE COURT: If you were to serve as a juror in
4 this case, could you and your co-workers insulate you from
5 the news part?

6 A PROSPECTIVE JUROR: That would be very
7 difficult because, like I say, inside the building, you
8 know, it is going to be one of those cases where they are
9 going to drill me or they are going to maybe, Well, what's
10 going on? What's going on? So it would make it very
11 difficult. It is very hard to be isolated into any one area
12 of the building.

13 THE COURT: One of the things that will happen
14 is if you are on this jury, I will tell you that you can't
15 talk about the case or even the evidence as it is being
16 presented.

17 A PROSPECTIVE JUROR: I understand that.

18 THE COURT: And would that help with your
19 co-workers if you said, No, the judge will hold me in
20 contempt if I did something?

21 A PROSPECTIVE JUROR: Sure, absolutely.

22 THE COURT: Any of the other questions that I
23 have asked everyone that you'd want to respond to?

24 A PROSPECTIVE JUROR: No. The other questions
25 were okay, and that was it.

1 THE COURT: Counsel, I think that's all of our
2 new juror members. Did I miss someone?

3 I'm sorry, Mr. Golbov.

4 A PROSPECTIVE JUROR: Right. The only question
5 I would respond to is forming an opinion some months ago
6 when the incident first happened just based on the media.

7 THE COURT: That was the only basis for your
8 opinion?

9 A PROSPECTIVE JUROR: Yes, ma'am.

10 THE COURT: Ladies and gentlemen of the entire
11 panel, I have some more questions. We took our break a
12 little bit prematurely, and I didn't get to ask all my
13 questions. I'm going to finish all my questions with all of
14 you. Those of you who have been here all day, feel free to
15 raise your hand to these questions.

16 And some of you I may have asked this question
17 a little bit earlier. So if you have already been asked
18 these questions, you don't have to worry about responding
19 now.

20 If the Court were to instruct you at the
21 conclusion of this case that a defendant in a criminal
22 action is presumed to be innocent until the contrary is
23 proven beyond a reasonable doubt and in case of a reasonable
24 doubt as to whether the defendant's guilt is satisfactorily
25 shown, the defendant is entitled to be acquitted, would each

1 of you accept and follow that instruction? You can answer
2 yes or no outloud.

3 THE PROSPECTIVE JURORS: Yes.

4 THE COURT: Did anyone answer no?

5 If the Court were to instruct you that a
6 reasonable doubt is one based on reason, it is not mere
7 possible doubt but is such a doubt as would govern or
8 control a person in the more weighty affairs of life. If
9 the minds of the jurors after the entire comparison and
10 consideration of all the evidence are in such condition that
11 they can say they feel an abiding conviction of the truth of
12 the charge, there is not a reasonable doubt. Doubt to be
13 reasonable must be actual, not mere possibility or
14 speculation. Would each of you accept and follow that
15 instruction?

16 THE PROSPECTIVE JURORS: Yes.

17 THE COURT: Anyone feel they cannot?

18 Have any of you ever served on a jury before?
19 Raise your hands if you have.

20 Miss Schultz. No, I'm sorry, Miss Mills. You
21 have served before? Where did you serve?

22 A PROSPECTIVE JUROR: At the federal building
23 perhaps 12 years ago.

24 THE COURT: And was that a civil or criminal
25 case?

1 A PROSPECTIVE JUROR: It was a civil.

2 THE COURT: Now, the laws are different
3 between -- the federal laws and the state laws in civil
4 versus criminal. Plus times change.

5 Would you be able to set aside anything you
6 might have learned or believed was the law based on that
7 service and decide this case based solely on the law as I
8 tell you it is today?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: Is there anything about that prior
11 experience that would cause you a problem serving again?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Mr. Stephenson, did you raise your
14 hand also?

15 A PROSPECTIVE JUROR: Yes.

16 THE COURT: When did you serve?

17 A PROSPECTIVE JUROR: About four and a half
18 years ago.

19 THE COURT: And where?

20 A PROSPECTIVE JUROR: Right here. It was over
21 insurance problems or whatever.

22 THE COURT: A civil case?

23 A PROSPECTIVE JUROR: Yeah.

24 THE COURT: Anything about that service that
25 would cause you a problem serving again?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: And would you -- again it would
3 be -- this case is different than that would be and it has a
4 different burden of proof, et cetera. Would you be able to
5 set aside anything you learned in that other case and decide
6 this one based solely on the law as it is today?

7 A PROSPECTIVE JUROR: Yeah.

8 THE COURT: I had two other people. I had
9 Mrs. Kizis.

10 A PROSPECTIVE JUROR: Yes, it was here in a
11 criminal case.

12 THE COURT: How long ago?

13 A PROSPECTIVE JUROR: I don't remember the
14 exact year, but it was the early '80s.

15 THE COURT: And anything about that prior
16 service that would cause you a problem serving again?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: And would you be able to set aside
19 anything you might have learned in that other case and
20 decide the law as I instruct you it is today?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: Mrs. Imasaki, you served before;
23 right?

24 A PROSPECTIVE JUROR: Yes.

25 THE COURT: Where?

1 A PROSPECTIVE JUROR: Sparks Justice Court
2 about 15, 20 years ago.

3 THE COURT: A misdemeanor case?

4 A PROSPECTIVE JUROR: Yes, it was.

5 THE COURT: And is there anything about that
6 prior service that would cause you a problem serving again?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: Would you be able to set aside
9 anything you might have learned in that other service and
10 decide the case based solely on the law as I instruct you it
11 is?

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: Now, all four of you, without
14 telling me the verdict, were you each able to reach a
15 verdict in your prior service?

16 A PROSPECTIVE JUROR: They settled out of
17 court.

18 THE COURT: And Miss Mills -- or Miss Mills,
19 were you able to reach a verdict?

20 A PROSPECTIVE JUROR: Yes. I was an alternate.

21 THE COURT: So you didn't get to deliberate.
22 Anything about that circumstance that would cause you a
23 problem?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Thank you. Is there anyone sitting

1 in the jury box now that is acquainted with anyone else in
2 the jury box? You have been in a very small room for a
3 while.

4 Yes, Miss Arlitz.

5 A PROSPECTIVE JUROR: John Auld.

6 THE COURT: And is there anything about your
7 knowledge or your relationship with Mr. Auld that would
8 cause you a problem serving on the same jury?

9 A PROSPECTIVE JUROR: No.

10 THE COURT: How do you know each other?

11 A PROSPECTIVE JUROR: From business.

12 THE COURT: From work?

13 A PROSPECTIVE JUROR: We have a business
14 together.

15 THE COURT: Oh, okay. And if you were to
16 happen to be on a jury and you ended up disagreeing with
17 each other, would that cause you a problem?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: You could disagree with him?

20 Mr. Auld, would you have any problem serving on
21 the same jury as Miss Arlitz?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Would you have any problem if you
24 ended up disagreeing? Would that cause you any difficulty?

25 A PROSPECTIVE JUROR: No.

1 THE COURT: There was someone else. Yes, sir.

2 A PROSPECTIVE JUROR: I know Mr. Dick Adamson.

3 THE COURT: And how do you know him?

4 A PROSPECTIVE JUROR: He was my employer many
5 years ago.

6 THE COURT: He's not any longer; correct?

7 A PROSPECTIVE JUROR: Correct.

8 THE COURT: Is there anything about that prior
9 relationship that would cause you difficulty serving on the
10 same jury?

11 A PROSPECTIVE JUROR: No, ma'am.

12 THE COURT: Mr. Adamson, would you have any
13 problem serving on the same jury?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: You would be okay with that?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: You could disagree? That would be
18 all right? Could you disagree if you had to?

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: Have any of you ever been involved
21 personally in litigation, a lawsuit that went to trial?
22 Ever been a witness in a case?

23 Yes, Mr. Sotero.

24 A PROSPECTIVE JUROR: I was involved in a civil
25 suit here in Reno about two years ago, and civil suit in

1 small claims about eight years ago.

2 THE COURT: Anything about that prior
3 experience in court that would cause you a problem serving
4 in this case?

5 A PROSPECTIVE JUROR: No, not a problem. It
6 was quite an education.

7 THE COURT: Miss Guiler.

8 A PROSPECTIVE JUROR: Guiler, yes. Now that,
9 you are making me go back a lot of years. In the '70s, I
10 was in divorce court, and in the '70s, I was shot and had to
11 go to court as a witness for the State.

12 And then I have to stop and think. And then I
13 was in court as a witness for the State also for a stalker
14 that was stalking me.—I just went to court in Sparks as a
15 witness on a domestic abuse case. It was last month.

16 THE COURT: In all those experiences in the
17 court, were there anything about those experiences that
18 would cause you difficulty sitting through a jury trial?

19 A PROSPECTIVE JUROR: No, I don't think so.

20 THE COURT: Now, was it the District Attorney's
21 Office that called you as a witness in those cases?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: Do you hold any bias for or against
24 the District Attorney based upon those prior occasions?

25 A PROSPECTIVE JUROR: Yeah, a little bit.

1 THE COURT: By your reaction, I don't think
2 it's for the District Attorney's Office. You have mixed
3 feelings about that?

4 A PROSPECTIVE JUROR: Well, I did because it
5 was back in the '70s when women didn't really have rights,
6 and there was a lot of things that went on that now as I'm
7 not 20 anymore, I'm older, and I know how women should be
8 treated. It was -- it's difficult to be -- how can I say
9 it? -- in that situation where I can see the prejudice that
10 was there at that time which is now a whole different
11 situation.

12 THE COURT: So anything that went on in the
13 past you wouldn't hold against the particular District
14 Attorney who is here now?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: Yes, Miss Mueller.

17 A PROSPECTIVE JUROR: Back in 1981, I was also
18 a witness in a criminal case where I was shot, and I was
19 used as a witness for the prosecution.

20 THE COURT: Just the luck of the draw the two
21 of you are together. Is there anything about that prior
22 circumstance that would cause you difficulty in this case?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: And do you hold any bias for or
25 against either side based upon your experiences?

1 A PROSPECTIVE JUROR: No, none at all.

2 THE COURT: Was there anyone else in the back
3 row? Yes, Miss Mueller.

4 A PROSPECTIVE JUROR: Myself, personal. I went
5 through a trial with my daughter.

6 THE COURT: You were sort of her support?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: Was there anything about that
9 circumstance in going through the trial that would cause you
10 a problem serving as a juror?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Mr. LaFond.

13 A PROSPECTIVE JUROR: Yes. Going back to that
14 acquaintance, I know the lady down there because we worked
15 the same casino together.

16 THE COURT: Miss Mueller. Now that she's
17 talked, you recognize her.

18 A PROSPECTIVE JUROR: He tried getting your
19 attention earlier.

20 THE COURT: I missed it. Is there anything
21 about being on the same jury with Miss Mueller that would
22 cause you a problem?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Miss Mueller, would you have any
25 problem being on the same case with, the same jury as

1 Mr. LaFond?

2 A PROSPECTIVE JUROR: No.

3 THE COURT: Would you both be able to
4 deliberate with each other?

5 A PROSPECTIVE JUROR: Uh-huh.

6 THE COURT: Mr. LaFond?

7 A PROSPECTIVE JUROR: Uh-huh.

8 THE COURT: Anybody in the second row?

9 Yes, Mr. Judson.

10 A PROSPECTIVE JUROR: Your Honor, for the
11 record, in about 1992, I worked as a trial consultant for a
12 firm that did large civil cases nationwide.

13 THE COURT: Was that a jury trial consultant?

14 A PROSPECTIVE JUROR: Yes. It was a firm. I
15 specialized in jury selection.

16 THE COURT: Have you had fun today?

17 A PROSPECTIVE JUROR: Excuse me?

18 THE COURT: Have you had fun today?

19 A PROSPECTIVE JUROR: Tremendous amount of fun,
20 Your Honor.

21 THE COURT: I'm sure it feels different sitting
22 in that chair. I hope we're making good use of your time.

23 Anything about what you did in that with that
24 civil law firm that would cause you a problem serving as a
25 juror in this case?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Let's see. I think, Miss Mills,
3 did you raise your hand?

4 A PROSPECTIVE JUROR: Yes. I was involved in
5 small claims court.

6 THE COURT: How long ago?

7 A PROSPECTIVE JUROR: '86.

8 THE COURT: Anything about that prior
9 circumstance of you being in court that would cause you a
10 problem in this case?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Anyone else in that row?

13 Third row. Okay, yes, Mr. Jones.

14 A PROSPECTIVE JUROR: Jones, yes. I'm not sure
15 I understood the question, but I have been a witness, a
16 defendant and a plaintiff.

17 THE COURT: You have been it all.

18 A PROSPECTIVE JUROR: But I don't believe it
19 would affect me in any way.

20 THE COURT: Is there anything about your
21 experiences that you would -- that would cause you a problem
22 being a juror in a case?

23 A PROSPECTIVE JUROR: I don't believe so.

24 THE COURT: Anyone else in that row?

25 The fourth row? Miss Kizis.

1 A PROSPECTIVE JUROR: Small claims court in I
2 think the mid '80s. There wouldn't be anything that would
3 affect.

4 THE COURT: Mr. Furrie, did you raise your
5 hand?

6 A PROSPECTIVE JUROR: Yes, I did. About three
7 years ago I was a witness in a civil case of a wife beating
8 that was a couple minutes in court.

9 THE COURT: Anything about your experience as a
10 witness that would cause you a problem in this case?

11 A PROSPECTIVE JUROR: No, ma'am.

12 THE COURT: And there was someone on the other
13 side. Yes, Miss Imasaki.

14 A PROSPECTIVE JUROR: Yes. I have had to
15 attend various family court hearings.

16 THE COURT: And that's in relationship to your
17 employment?

18 A PROSPECTIVE JUROR: To my previous position,
19 yes.

20 THE COURT: Now, is there anything about those
21 court hearings and what went on in the court environment
22 that would cause you any problem serving as a juror?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Anyone else in that row? In the
25 front row?

1 Yes, ma'am.

2 A PROSPECTIVE JUROR: About a year ago I was a
3 witness in a civil trial.

4 THE COURT: In a civil trial. Anything about
5 that experience being a witness in a court that would cause
6 you a problem being a juror?

7 A PROSPECTIVE JUROR: No, ma'am.

8 THE COURT: We have heard about two individuals
9 that have indicated they were victims of a crime. Is there
10 anyone else that was a victim of a crime in the past that
11 you haven't already told me about?

12 Does any juror have any health reason why you
13 feel you should not serve in this case?

14 Anyone have any trouble hearing me or any back
15 problems that even if you could still serve, that I should
16 be aware of?

17 Yes, ma'am.

18 A PROSPECTIVE JUROR: Back.

19 THE COURT: Back problem?

20 A PROSPECTIVE JUROR: Arthritis.

21 THE COURT: The chairs that the jury will be
22 sitting in are more comfortable than the one you are in now.

23 A PROSPECTIVE JUROR: Aspirin.

24 THE COURT: That's what you take for it?

25 A PROSPECTIVE JUROR: Yeah.

1 THE COURT: Now, would you feel comfortable
2 telling me if you needed to stand during the course of the
3 trial? Would you do that?

4 A PROSPECTIVE JUROR: It comes and goes during
5 the years, 27 years.

6 THE COURT: How are you doing today?

7 A PROSPECTIVE JUROR: Better now than earlier.
8 Arthritis in the foot too.

9 THE COURT: You let me know if you are having
10 any difficulty. Just raise your hand.

11 A PROSPECTIVE JUROR: No, I'll put up with it.

12 THE COURT: You tell me if it is bothering you
13 too much.

14 A PROSPECTIVE JUROR: It is for lifetime, so I
15 have learned to accept it.

16 THE COURT: Anyone else? Yes, ma'am.

17 A PROSPECTIVE JUROR: I lost my husband June
18 1st, and I am under doctor's care and therapy.

19 THE COURT: Are you having difficulty following
20 what's happening?

21 A PROSPECTIVE JUROR: No, not at all.

22 THE COURT: Are you taking any medication?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: What kind of medication?

25 A PROSPECTIVE JUROR: Stuff for stress.

1 Zoltoc, Zoloff.

2 THE COURT: I have to get the name of it for
3 the record, but I have absolutely no idea what it is.

4 A PROSPECTIVE JUROR: It is like Valium, I
5 guess.

6 THE COURT: It is like Valium?

7 A PROSPECTIVE JUROR: Uh-huh.

8 THE COURT: I don't need the jury to tell me.

9 A PROSPECTIVE JUROR: It makes me very calm.

10 THE COURT: Does it make you sleepy at all?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Do you feel like you have any
13 problems processing information?

14 A PROSPECTIVE JUROR: Not yet.

15 THE COURT: Have you been able to understand
16 everything today?

17 A PROSPECTIVE JUROR: Yes, I have.

18 THE COURT: Thank you.

19 Yes, Mr. LaFond.

20 A PROSPECTIVE JUROR: I take blood pressure
21 medicine and water pills, and I have to go to the bathroom
22 quite often. I got high blood pressure.

23 THE COURT: Are you doing okay right now?

24 A PROSPECTIVE JUROR: I have been doing all
25 right today because we have been closed in the other room.

1 THE COURT: Well, if you have a problem, just
2 raise your hand, and the bailiff and I will take care of
3 you. We'll watch it.

4 Anybody else? Yes, ma'am.

5 A PROSPECTIVE JUROR: I take like antianxiety
6 pills.

7 THE COURT: And do you know what kind they are?

8 A PROSPECTIVE JUROR: I take Prozac and Buspar.

9 THE COURT: Is there anything -- do you have
10 any problems on that medication? Does it make you sleepy at
11 all?

12 A PROSPECTIVE JUROR: I get real jumpy like I
13 get nervous, but it's supposed to calm me, but I still get
14 really nervous.

15 THE COURT: How are you doing today?

16 A PROSPECTIVE JUROR: I feel really nervous.

17 THE COURT: Especially talking in front of
18 everyone; right?

19 A PROSPECTIVE JUROR: Yes.

20 MR. SPECCHIO: Your Honor, might we approach?

21 THE COURT: Yes.

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

24 MR. STANTON: I'll stipulate to excuse the
juror.

25 MR. BOSLER: She indicated she'd faint if she

1 got called.

2 THE COURT: You stipulate to it, Mr. Bosler?

3 MR. BOSLER: I stipulate, yes.

4 THE COURT: Okay.

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

7 THE COURT: Anybody else? Does anybody sitting
8 in the jury box know of any business or personal reason that
9 you have not already discussed with me why you should not or
10 why it would be hard for you to serve as a juror in this
11 case? Let me rephrase the question.

12 Do you have any business or personal reason
13 which you feel would interfere with your impartiality to
14 serve as a juror in this case? And I'm going to include in
15 that your ability to listen and pay attention to the
16 evidence? Okay.

17 Mr. Auld?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: What is your --

20 A PROSPECTIVE JUROR: Well, let's put it this
21 way. It's a small business, and when things -- I am not
22 there, things do not take place. As such, I'm sitting
23 making -- here making notes about what I got to do when I
24 get out of here instead of paying attention.

25 THE COURT: Do you feel like you would be doing

1 that throughout the course of the trial?

2 A PROSPECTIVE JUROR: I would hope not. But
3 it's a difficult situation to be in.

4 THE COURT: I understand that difficulty. But
5 if we took regular breaks -- I know today has been a little
6 strange; we have been trying to get through this -- would
7 that help you?

8 A PROSPECTIVE JUROR: I don't know if anybody
9 has read the little questionnaire, but I do have a business
10 trip the 15th through the 19th planned and paid for. Beyond
11 that, I actually thought it would be kind of interesting,
12 and the hours are not so bad that things could not get
13 accomplished.

14 THE COURT: The business trip you have to
15 take --

16 A PROSPECTIVE JUROR: It's a food show in San
17 Francisco, Moscone Center.

18 THE COURT: So you have plane tickets to San
19 Francisco?

20 A PROSPECTIVE JUROR: I drive, but I have a
21 hotel, and I paid for a booth and all that.

22 THE COURT: So you will be showing your foods?

23 A PROSPECTIVE JUROR: Uh-huh.

24 THE COURT: Mr. Auld, I know about the foods,
25 and I remember you and remember meeting you. So I know what

1 the circumstance is on that. But what was that, was that a
2 Friday?

3 A PROSPECTIVE JUROR: Yeah. It's the 15th I
4 leave, and the show is over on the 19th, and I will come
5 back on the 19th.

6 THE COURT: That's the Tuesday after the
7 holiday.

8 A PROSPECTIVE JUROR: The Tuesday.

9 THE COURT: What kind of a hardship would it
10 create for you if you had to shorten that up a little bit,
11 you could only be there Saturday, Sunday, Monday?

12 A PROSPECTIVE JUROR: You can't. The show runs
13 Sunday through Tuesday. I drive, I work the show from 10:00
14 to 5:00 Sunday, Monday, Tuesday, and it's actually 10:00 to
15 4:00 on Tuesday that I pack up and get out.

16 THE COURT: Okay. Thank you. Also raising her
17 hand I think was somebody over here.

18 Yes, Mr. Larsson.

19 A PROSPECTIVE JUROR: Yes. As I have stated
20 before, I don't have anybody to run my business. I was
21 flooded out in '97, and I had to let the employees go and
22 borrow a lot of money. I think I stated that also.

23 THE COURT: Yes, I remember.

24 A PROSPECTIVE JUROR: I don't have anybody
25 there to run it. I have a trainee right there and delivery

1 person, and they cannot run it. So while I'm sitting here,
2 I'm losing a lot of revenue that I cannot afford to lose.
3 Any other time I wouldn't have a problem serving at all on a
4 jury, Your Honor.

5 THE COURT: You mean like another month?

6 A PROSPECTIVE JUROR: When -- a time when I can
7 get back on my feet again. It is going to take another
8 couple years, I'm afraid.

9 Well, it was the will of God I guess that made
10 the flood, you know, flood my business. I had nothing to do
11 with it. But I'm trying to crawl back up on top again.
12 It's been pretty tough.

13 THE COURT: Thank you, Mr. Larsson. Getting
14 more hands here.

15 Mr. Sotero.

16 A PROSPECTIVE JUROR: Just want the Court to be
17 aware that I also am self-employed.

18 THE COURT: And I know how much trouble it is
19 for everyone who is self-employed, but would the breaks that
20 we are going to take help you a little bit?

21 A PROSPECTIVE JUROR: Well, I'm in the
22 construction business. If I'm not there, nothing gets done.

23 THE COURT: Miss Burkholder.

24 A PROSPECTIVE JUROR: You guys are all aware I
25 do have a three-month old infant that I do nurse. She is

1 not on my schedule. She demands her own schedule usually.
2 It is not like I can do anything about that.

3 THE COURT: I understand your husband has been
4 with us all day?

5 A PROSPECTIVE JUROR: Yes.

6 THE COURT: Appreciate your sticking with us
7 working so hard at making this work.

8 Yes, Miss --

9 A PROSPECTIVE JUROR: Saputo. My grandma had a
10 stroke Friday night, and I'm going to move out of where I'm
11 living and move in with my grandpa. With work and that,
12 it's going to be a strain. But I guess everyone has got
13 strains.

14 THE COURT: You think you really want to tell
15 me about this?

16 A PROSPECTIVE JUROR: I apologize, Your Honor.

17 THE COURT: No, it is fine.

18 Mr. Judson. You were sort of half holding your
19 hand up.

20 A PROSPECTIVE JUROR: There is nothing that
21 would affect my impartiality. However, my office is the
22 Nevada State Demographers office, and it works for the
23 Department of Taxation. The department has requested that I
24 request an excuse from you. They fax'd a memorandum to me
25 this morning to give to you, and this is the moment I guess

1 when it would be appropriate to bring that to your attention
2 for your judgment.

3 THE COURT: You're not legislatively exempt,
4 though, are you?

5 A PROSPECTIVE JUROR: Not to the best of my
6 knowledge.

7 MR. SPECCHIO: Your Honor, may we approach?

8 THE COURT: I kind of want to get everybody
9 done. Do you want me to do part?

10 MR. STANTON: We can wait until you go through
11 the whole panel.

12 THE COURT: We have quite a few more hands.
13 Then you can talk to me about them all at one time.

14 MR. SPECCHIO: You want a wholesale list?

15 THE COURT: I kind of do.

16 Mr. Battaglia.

17 A PROSPECTIVE JUROR: Yes, I have a
18 nine-year-old daughter who gets out of school at three, and
19 my wife gets off work at six, and we haven't solved the
20 child care problem yet.

21 THE COURT: What school does your child go to?

22 A PROSPECTIVE JUROR: Jerry Whitehead.

23 THE COURT: Do you have Latch Key?

24 A PROSPECTIVE JUROR: I don't know.

25 THE COURT: I'm looking at the Jury

1 Commissioner. She sometimes knows those answers off the top
2 of her head. It's my understanding that Jerry Whitehead
3 does have Latch Key. Hopefully your wife and you can work
4 that out.

5 A PROSPECTIVE JUROR: How late do they last?

6 THE COURT: They usually -- the Latch Key?
7 5:30, 5:45.

8 A PROSPECTIVE JUROR: I think 6:00 o'clock.

9 THE COURT: A lot of people use it. It's 6:00
10 o'clock. You will be out of here by then in time to go pick
11 up your child. If that was resolved, would that be okay?

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: Fourth row. No, we have got
14 someone else.

15 Miss Arlitz.

16 A PROSPECTIVE JUROR: I also have a business
17 and it's a two-person business. I'm in the office answering
18 the phones and the other person in the warehouse.

19 MR. GREGORY: I'm sorry, Your Honor. We didn't
20 hear that.

21 THE COURT: She is in the office answering
22 phones. The other person is in the warehouse.

23 Anyone else in that row? Okay.

24 And yes, Miss Timmerman.

25 A PROSPECTIVE JUROR: Your Honor, slightly

1 embarrassing. I graduated from high school 37 years ago,
2 and I don't understand that hard vocabulary anymore. I
3 don't have my Webster dictionary with me.

4 THE COURT: Are there some words I have used
5 today that have confused you?

6 A PROSPECTIVE JUROR: I was here last week.
7 There was a word or two I couldn't figure out. That's all.

8 THE COURT: On the questionnaire, on the
9 written questionnaire?

10 A PROSPECTIVE JUROR: Speaking. Speaking to
11 us, sitting out there where the jury is, wherever. That's
12 my -- but I got A's and B's in English. That was a long
13 time ago.

14 THE COURT: Well, I have a fourth grader, and
15 sometimes she comes home with stuff I have never even heard
16 of.

17 A PROSPECTIVE JUROR: I'm rusty.

18 THE COURT: We all get that way.

19 Mrs. Timmerman, if you are selected to serve on
20 this jury, and somebody uses a word that you don't
21 understand, I would require of you to tell the bailiff, and
22 then he'd tell me, and we'd have the word explained. Would
23 you do that?

24 A PROSPECTIVE JUROR: That's embarrassing.

25 THE COURT: You could do it in a note to the

1 bailiff. You wouldn't have to do it in front of everybody.
2 Would you do that if you were on the jury?

3 A PROSPECTIVE JUROR: I have a tablet in my
4 purse, yes.

5 THE COURT: You would pass that note to the
6 bailiff for me, and let me know that you wanted me to
7 explain it? I won't tell anybody that it is you.

8 A PROSPECTIVE JUROR: Do I just say the one
9 word if I could spell it correctly?

10 THE COURT: Or close. I'm a lousy speller. I
11 can guess real good.

12 A PROSPECTIVE JUROR: Okay. That was all it
13 was.

14 THE COURT: Thank you. Yes, Mr. Estey.

15 A PROSPECTIVE JUROR: It's my understanding
16 that after 30 days I don't get a paycheck. So if the trial
17 runs more than 30 days, I would be uncomfortable.

18 THE COURT: That won't happen. In spite of my
19 rotten guess about today. My guess for the whole trial is a
20 lot more accurate than today.

21 Yes, Miss Kizis.

22 A PROSPECTIVE JUROR: Child care problem. My
23 husband travels out of town quite a bit, and no family in
24 the area. So that's tough. Especially if he would get sick
25 during the day and have to be brought home or something like

1 that.

2 THE COURT: But your child is school age,
3 right?

4 A PROSPECTIVE JUROR: A second grader.

5 THE COURT: Miss Imasaki.

6 A PROSPECTIVE JUROR: I have a misdemeanor
7 hearing scheduled in Sparks Justice Court for the 21st of
8 this month, and that could be schedule -- rescheduled.

9 THE COURT: I'm sure we can work that out for
10 you. Is it with Judge Volk?

11 A PROSPECTIVE JUROR: I'm not sure which judge
12 will be sitting on that.

13 THE COURT: If we could arrange it for a time
14 when we're on a break so you could go both places, would
15 that work out for you? It wouldn't cause you any
16 difficulty?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: Okay. Mr. Sowers.

19 A PROSPECTIVE JUROR: My primary source of
20 income is production and Mobile Music Company run by myself.
21 I have some business booked up throughout the month on
22 Friday and Saturday evenings as well as booking business
23 during the week. It is real important to be there. It is
24 not an impartiality issue but more so being at those
25 engagements on Fridays.

1 THE COURT: Mr. Sowers, I usually try not to
2 keep anybody late, especially Friday night.

3 A PROSPECTIVE JUROR: One engagement in
4 particular is Clayton Middle School from 1:05 until 2:18, I
5 believe, next Friday. So it's right in the middle of the
6 day.

7 THE COURT: Actually it's lunchtime, so we
8 could probably work around that for you if that's the
9 daytime when we have it.

10 A PROSPECTIVE JUROR: There is some time
11 involved in take-down time.

12 THE COURT: Okay. And now, Miss Burke, did you
13 raise your hand?

14 A PROSPECTIVE JUROR: Yes, I did. I also own a
15 small business which has signed a contract with a very large
16 convention coming into Reno next week, and I have signed a
17 contract saying I will be there to do it.

18 THE COURT: What will you be doing?

19 A PROSPECTIVE JUROR: I handle all of their
20 transportation, their business affairs. It is a
21 25,000-person convention. I don't want to be the one to
22 tell them.

23 THE COURT: You handle the transportation for
24 them?

25 A PROSPECTIVE JUROR: Transportation, all of

1 their business needs that they have, all of their
2 entertainment needs.

3 THE COURT: What convention is it?

4 A PROSPECTIVE JUROR: Safari Club
5 International.

6 THE COURT: The big Safari?

7 A PROSPECTIVE JUROR: It goes from 6:30 in the
8 morning until midnight.

9 THE COURT: Counsel approach.
10 (Whereupon, a bench conference was held among
Court and counsel as follows:)

11 THE COURT: Okay. You all are going to
12 stipulate to Mrs. Schultz, correct?

13 MR. BOSLER: Correct.

14 MR. STANTON: Correct.

15 THE COURT: Auld you stipulate to?

16 MR. BOSLER: Correct.

17 THE COURT: Mr. Larsson is flooded out?

18 MR. STANTON: It is a tough one for us, but
19 Larsson and Auld I think is the basis if the Court agrees
20 with it.

21 THE COURT: Mr. Bosler.

22 MR. BOSLER: Yes. He's been flooded out.

23 MR. STANTON: I don't want to stipulate to Auld
24 and Larsson. If they make the motion and you do it, then we
25 will do it.

1 THE COURT: You make the motion?

2 MR. BOSLER: Yes, Your Honor.

3 MR. SPECCHIO: Timmerman and Burke.

4 THE COURT: Okay. I'm going to think about
5 those two. We have got Sotero.

6 MR. STANTON: No. I don't accept that.

7 THE COURT: Burkholder, the nursing mother?

8 MR. STANTON: I don't have any idea about
9 nursing, Judge.

10 THE COURT: What she's done today is her husband
11 has been here to hold on to the baby, and then whenever she
12 needed to nurse, he gave her the baby and she nursed. He's
13 told the Jury Commissioner he can't be here all day every
14 day.

15 MR. BOSLER: I'm also told the baby takes some
16 type of medication, something I couldn't understand in the
17 questionnaire.

18 MR. STANTON: I'll stipulate to Burkholder.

19 THE COURT: Saputo.

20 MR. STANTON: I'll stipulate to Saputo.

21 THE COURT: What do you want?

22 MR. BOSLER: I'll defer to you.

23 MR. SPECCHIO: We'll stipulate.

24 THE COURT: You stipulate to Saputo?

25 MR. BOSLER: Yes.

1 THE COURT: Okay. Burkholder?

2 MR. GREGORY: That is the nursing mom.

3 THE COURT: Okay. I'm sorry. Judson,
4 Department of Taxation?

5 MR. STANTON: I stip to that.

6 MR. SPECCHIO: Does he do franchise stuff?

7 THE COURT: He makes the topographical maps.
8 He just happens to be under that. He does the demographics.

9 MR. SPECCHIO: I don't care.

10 THE COURT: I'm not going to do it unless you
11 want to.

12 MR. STANTON: I'll stipulate to it.

13 MR. SPECCHIO: You will?

14 THE COURT: You want him off?

15 MR. STANTON: Stipulated.

16 MR. BOSLER: We'll stipulate.

17 THE COURT: Battaglia. Latch Key, we have
18 confirmed they do have Latch Key.

19 MR. BOSLER: No basis.

20 THE COURT: Hold him. Arlitz.

21 MR. SPECCHIO: Isn't Arlitz and Auld partners?
22 Do I have that wrong?

23 THE COURT: They were in the same business.
24 Auld is Mrs. Auld's Food. He's the owner of Mrs. Auld's
25 Food. They are products that are made.

1 MR. SPECCHIO: Didn't Arlitz say she was his
2 partner?

3 THE COURT: She just works in the business.
4 She does not have to go to San Francisco.

5 MR. SPECCHIO: I would say no with her.

6 MR. STANTON: I wouldn't stip to her.

7 THE COURT: Timmerman.

8 MR. SPECCHIO: Yes. We would stip.

9 THE COURT: Imasaki.

10 MR. STANTON: No, I think we can work around
11 that.

12 MR. SPECCHIO: What was her problem?

13 THE COURT: Misdemeanor in court.

14 MR. STANTON: We can bump that.

15 THE COURT: I'm not inclined to let her off.

16 Sowers, I'm not inclined to let him out for the
17 Clayton Middle School one to two hours on Friday. We can
18 work around that.

19 MR. STANTON: I don't have any problem stippling
20 to him. If they want to keep him.

21 THE COURT: Burke, Safari Club lady.
22 Continuing her. Sowers.

23 MR. SPECCHIO: You can do whatever you want on
24 Sowers and this one.

25 THE COURT: Stop. You guys talk amongst

1 yourselves.

2 MR. GREGORY: She has the business contract.

3 MR. STANTON: I'll stip to Burke and Sowers.

4 MR. SPECCHIO: We'll stipulate.

5 THE COURT: Is there a motion on Miss Sowers by
6 the defense?

7 MR. BOSLER: Yes, Your Honor.

8 THE COURT: And you are stipulating to it?

9 MR. STANTON: Yes.

10 THE COURT: Burke, is there a motion by the
11 defense?

12 MR. SPECCHIO: There is.

13 THE COURT: Stipulating to it, Mr. Stanton?

14 MR. STANTON: Yes.

15 MR. SPECCHIO: Who else did you want?

16 THE COURT: That's it.

17 MR. SPECCHIO: Do you want us to make a motion
18 on these two?

19 THE COURT: Right. Do you want to make a
20 motion on Auld or Larsson? Larsson is flooded out. Auld is
21 the guy who owns Mrs. Auld's.

22 MR. SPECCHIO: He probably needs the money more
23 than Auld does. So I figure if we are going to do one, we
24 should do the other. If nothing else, for humanitarian
25 reasons, I will make a motion as to both.

1 MR. STANTON: I won't stipulate to it, Your
2 Honor.

3 MR. GREGORY: Wait a minute, David. He's
4 already got his plane reservations.

5 MR. STANTON: I don't care. If the judge feels
6 that there is a basis to the motion, she'll grant it.

7 MR. GREGORY: Wait a minute now. This man has
8 set up his booths and stuff.

9 THE COURT: Not yet. He does that on Friday.

10 MR. GREGORY: He rents the space, Your Honor.

11 MR. BOSLER: If he is paid to be down there to
12 be part of his business.

13 MR. GREGORY: He rents the space. That is not
14 fair to him.

15 THE COURT: Okay. I'm going to do something
16 that I do, and I'm going to continue both Mr. Auld and Miss
17 Burke, so people don't think just because you have a
18 financial issue that you are going to get off.

19 MR. SPECCHIO: You can tell them all that.

20 (Whereupon, the following proceedings were held
21 in open court.)

22 THE COURT: As you could tell, your particular
23 circumstances we take very seriously, and I want to tell you
24 that I wish I could just excuse everyone who had any issue
25 and just keep going until we had a panel. But I really have

1 to have a legitimate legal reason to excuse you from
2 service, one that is recognized by counsel for both sides as
3 well as the Court generally.

4 So everyone that had an issue will not be
5 excused, and I want you to understand that it isn't that
6 we're not listening to you, because I am listening to you,
7 and I appreciate your concerns.

8 The following people, though, will be excused.
9 I thank you for your service here today, and you are to
10 report to the Jury Commissioner's office on the first floor.

11 Mary Schultz, Mr. Larsson, Miss Burkholder,
12 Miss Saputo.

13 Mr. Judson, you do have a statutory exception
14 we decided.

15 Miss Timmerman, Mr. Sowers, your service is
16 continued to a later time when you don't have a conflict.

17 A PROSPECTIVE JUROR: Excellent. Thank you.

18 THE COURT: So because you have this problem,
19 we might have problems with witnesses. So you are going to
20 have to serve again, though. You won't be excused because
21 of this.

22 A PROSPECTIVE JUROR: That's fine. I don't
23 mind serving. It was just the conflict with the schedules.

24 THE COURT: And, Miss Burke, you are in the
25 same boat. You are not going to be excused from service.

1 A PROSPECTIVE JUROR: I don't mind that.

2 THE COURT: But you will be required to serve
3 as soon as the Safari Club thing is over. If you have any
4 other booked conventions, you are notified now to notify the
5 Jury Commissioner so she can get you on the panel so that
6 you can be brought in, and then you can't fulfill that
7 window that we give you because I won't be able to excuse
8 you again.

9 A PROSPECTIVE JUROR: I appreciate it. Thank
10 you.

11 THE COURT: So your service is continued.

12 Mr. Auld, your service is continued, the same
13 circumstance.

14 A PROSPECTIVE JUROR: What does that mean?

15 THE COURT: That means you have to serve on a
16 jury, but because you have a prearranged business trip that
17 has already been booked, prior to the time that you were
18 called for this case, we're going to allow that you serve
19 your service on a different case. So you have to tell the
20 Jury Commissioner what business trips you have scheduled and
21 then --

22 A PROSPECTIVE JUROR: Right now?

23 THE COURT: Yes. Once we get that schedule,
24 she will call you for the next opening when you don't have a
25 business trip planned.

1 Anyone I missed, counsel?

2 MR. SPECCHIO: I think you have got them all,
3 Judge. You have eight people; is that right?

4 MR. GREGORY: May we have the names one more
5 time, Your Honor?

6 THE COURT: Nine people. We have lost
7 Mr. Auld, Mr. Larsson, Miss Burkholder, Miss Saputo,
8 Mr. Judson, Miss Timmerman, Mr. Sowers, and Miss Burke.

9 MR. GREGORY: Thank you, Your Honor.

10 THE COURT: Mr. Battaglia, we have confirmed
11 that there is an opening at Jerry Whitehead for your child
12 as long as you are signed up by 2:00 o'clock tomorrow
13 afternoon. The clerk will give you the information, or the
14 Jury Commissioner, at Latch Key.

15 I understand that there are some people that
16 have child care issues by 5:30. I still would like to
17 replace those jurors that we have lost before we leave so
18 counsel will be able to look at that during the evening
19 recess.

20 Will the clerk confirm with me we have an
21 opening in seat five? Just tell me if it is something
22 different. Seat nine --

23 THE CLERK: I'm behind you. I'm sorry.

24 MR. GREGORY: That is correct, Your Honor. We
25 show five and nine, Your Honor.

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THE COURT: We're trying not to get ahead of the clerk. Then we have seat 10, 11, 12, and 14 vacant.

MR. GREGORY: Yes, Your Honor.

THE COURT: And then we have seat 27 and 32 and 35. Is everyone stipulating those are the ones?

MR. SPECCHIO: Yes.

THE COURT: We'll draw the next jurors to replace in the order that we struck -- I don't know if I struck them in the exact order of their seats, but I'm going to replace them in the order of their seats. Does counsel stipulate to that procedure?

MR. SPECCHIO: That is fine.

MR. BOSLER: No objection, Your Honor.

MR. STANTON: No objection, Your Honor.

THE COURT: When your name is called, please come forward, and the bailiff will help you find the right seat.

THE CLERK: James G. Rumbaugh.

Preston E. O'Daye.

George A. Decker.

Rayetta Buckley.

Rebeka A. Hilliary.

John J. Giordano.

Doris E. Roberts.

Rhonda D. Pembroke.

1 Peter G. Thomas.

2 THE COURT: Those of you who have just been
3 seated in the jury box, would you please raise your hands
4 for me? Hold them up for me so I can see who you are.
5 Thank you.

6 Have you all been able to hear my questions
7 that I have asked of everyone else? I'd like an outloud
8 answer.

9 THE PROSPECTIVE JURORS: Yes.

10 A PROSPECTIVE JUROR: Some of them.

11 THE COURT: Some you could not hear? Okay.
12 You are Mr. McCargar?

13 A PROSPECTIVE JUROR: No. Giordano.

14 THE COURT: Mr. Giordano. Sorry.

15 And do you know, was it my questions or
16 counsel's questions you couldn't hear?

17 A PROSPECTIVE JUROR: I never heard the counsel
18 asking any questions. But it was some of your questions and
19 the responses I couldn't hear.

20 THE COURT: Okay. You couldn't hear what other
21 people said in response to my questions?

22 A PROSPECTIVE JUROR: Yes. Some of your
23 questions, I didn't understand the whole question. I
24 couldn't hear the whole question.

25 THE COURT: Now, I have asked my questions two

1 times through.

2 A PROSPECTIVE JUROR: I have a general idea of
3 what you were talking about.

4 THE COURT: But you don't know which ones that
5 you couldn't understand?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: And, Mr. Rumbaugh, did you raise
8 your hand, too?

9 A PROSPECTIVE JUROR: I just have a little
10 trouble hearing, too.

11 THE COURT: So you weren't able to hear all my
12 questions either?

13 A PROSPECTIVE JUROR: Not all the time.

14 THE COURT: Other than Mr. Giordano and
15 Mr. Rumbaugh, was everyone else able to hear my questions?
16 Yes or no?

17 THE PROSPECTIVE JURORS: Yes.

18 THE COURT: I'd like you to tell me which
19 questions you would have responded to affirmatively if you
20 were up here, and just raise your hand and we'll go through
21 it.

22 Mr. O'Daye?

23 A PROSPECTIVE JUROR: I have no questions.

24 THE COURT: You wouldn't have responded to any
25 of my questions?

1 A PROSPECTIVE JUROR: I mean I would have, yes.

2 THE COURT: Which ones? I'm confusing you.

3 A PROSPECTIVE JUROR: Yeah, you are.

4 THE COURT: It's probably just because it is
5 late. I know how everyone is tired. I think we'll stop
6 here. I don't know about you, but I'm tired. We're going
7 to stop here.

8 Ladies and gentlemen of the jury panel, those
9 of you seated outside the rail, I am going to require that
10 you return tomorrow morning. Ladies and gentlemen, I ask
11 that you return tomorrow. You are going to be coming back
12 at 9:30. Everyone is going to be coming back at 9:30 in the
13 morning.

14 Now, when you come back, you can come right on
15 back in here. I don't know at what point the courtroom will
16 be opened. I ask that you come --

17 Do you have room for them? No, you have jurors
18 coming in tomorrow.

19 You are going to have to come up here.

20 MR. GREGORY: May we approach, Your Honor?

21 THE COURT: Yes.

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

24 MR. SPECCHIO: Doesn't 250 require 10:00
o'clock starts?

25 MR. GREGORY: I think it does.

1 THE COURT: No, it doesn't. Where did you read
2 that?

3 MR. GREGORY: I think to accommodate the
4 reporters it is.

5 THE COURT: No.

6 MR. GREGORY: Well, your rule last week said
7 10:00 o'clock.

8 THE COURT: I want to get a jury. Courts
9 normally start at 10:00, but we got to spend a little time
10 in the morning. Do you have a problem?

11 MR. GAMMICK: While I'm here, we have people
12 subpoenaed for penalty phase, and so does defense, that are
13 being told cannot sit in the guilt phase of the trial, that
14 involves familial members for both sides. So we would
15 like -- we're both ready to waive any kind of a problem.

16 THE COURT: I think the reason that anybody was
17 excluded today was that we said we would find seats for the
18 jurors first, and anybody who wanted to come in couldn't
19 come in unless there was a seat. If there was a seat, they
20 could come in. You thought they were being excluded?

21 MR. GAMMICK: The bailiff was under the
22 impression if they were subpoenaed at all for the penalty
23 phase.

24 THE COURT: You both stipulate people who are
25 here for the penalty phase can -- as far as I know, have you

1 all instituted the rule of exclusion?

2 MR. SPECCHIO: Not yet. I usually do it after
3 the jury is selected.

4 THE COURT: Are you going to?

5 MR. SPECCHIO: Sure. We will. And I don't
6 have any problem with this. I just don't want
7 Mrs. Sullivan, who he is talking about, to let out a scream
8 or a screech or where somebody talks about doing violent
9 things to her dead husband or showing pictures or any of
10 that kind of stuff.

11 MR. GAMMICK: We have advised her on a couple
12 of occasions if she feels she is going to have any kind of
13 emotional difficulty, to leave the courtroom, and she has
14 also indicated a preference not to be here for some of the
15 testimony. So we don't expect any problems, and we'll talk
16 to her about that.

17 THE COURT: Why don't you all think about it.
18 Let me get rid of the jury, and while Mr. Vanisi is still
19 here, we will do the rule of exclusion and decide who can
20 come and go, who is subpoenaed.

21 MR. GAMMICK: I just want to bring the issue
22 up.

23 MR. GREGORY: We have two more problems. First
24 of all, getting Vanisi in the courtroom if you get these
25 jurors back in 9:30.

1 Secondly, I believe the Supreme Court required,
2 since they require 24-hour transcripts, that there are set
3 times to run these capital cases.

4 MR. STANTON: I don't remember.

5 THE COURT: I'll double check. If we can't
6 start before 10:00, we won't, but I don't remember anything
7 in the rule that requires that. We are starting later than
8 10:00 o'clock, by the way, on Wednesday. We're starting at
9 11:00. One of counsel has a doctor's appointment. So we're
10 going to go ahead and start then.

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

13 THE COURT: All right. As I was saying, you
14 will all come back at 9:30 in the morning. When you come
15 back, you will report directly to this courtroom. The
16 bailiff will assist you in finding your proper seat. Those
17 of you seated outside the rail can just find a chair, and as
18 you can see, you all will have a chair. We have made some
19 improvement from this morning.

20 Those of you seated here in the jury box look
21 at where you are seated, look at who you are sitting next to
22 and find your chair tomorrow morning. Have a seat. The
23 bailiff will check on you. I'll come in as soon as you are
24 all here and we'll start, we'll continue this process. But
25 we will call roll.

1 If when we call roll everybody isn't here,
2 we'll have to stop and wait until everyone gets here. We
3 can't do it with half the people here, and you have to
4 continue to keep track of the questions that you would
5 respond to.

6 So as you know, we're going -- it's important
7 that we don't have to repeat everything if you keep close
8 tabs to what you want to respond to if you are called to
9 replace someone. As those of you seated behind the rail
10 have seen today, it happens, and there may be more
11 replacements tomorrow. So please be here on time, and ready
12 to take note of what's happening.

13 Those of you in the jury box, just be back
14 here, and you will be responding to me as the questions are
15 asked.

16 Now, the bailiff will be collecting -- before
17 you leave the courtroom, the bailiff will be collecting your
18 pencils from you that he's given you. We're on a tight
19 budget here in the county. And we want to be able to give
20 them back to you tomorrow. So please be sure to follow the
21 instructions of the bailiff.

22 In addition, I'd ask that counsel remain until
23 the whole jury panel leaves because I want to go back on the
24 record after the jury has gone and discuss some of the
25 things we weren't able to quite do. So just wait for a few

1 minutes while everyone clears out.

2 Miss Guiler.

3 A PROSPECTIVE JUROR: Are we supposed to wear
4 these?

5 THE COURT: Wear your badges on your clothing
6 tomorrow morning when you come in so that no one
7 accidentally talks about the case in front of you.

8 Remember, just come in, get on the elevator,
9 and come directly to the department. Have a seat.

10 Now during this break you are all, because of
11 the oath that you took, obligated to fulfill the
12 requirements of that oath. Among those requirements is that
13 you must follow my directions, my lawful directions. And my
14 lawful directions to you are that you may not view any news
15 media accounts regarding this case. I do not want you to
16 come back in the morning having watched more news accounts
17 or read the newspaper. So do not watch the local news. Do
18 not listen to the radio and do not view the newspaper unless
19 someone sanitizes it for you.

20 In addition, you may not form or express any
21 opinion to somebody else about this case. You may not allow
22 anyone to attempt to influence you about it and don't be
23 talking about it among yourselves or with anyone else.

24 When you go home and your family members ask
25 you what was your day like, you can tell them how hot it was

1 in here, but I don't want you to talk about the questions
2 that were asked or your responses or your thoughts or what
3 anybody else's responses are. I want to find and get a jury
4 based on your thoughts and not your family members'
5 thoughts.

6 Does everyone understand these admonitions?

7 THE PROSPECTIVE JURORS: Yes.

8 THE COURT: Yes, Mr. LaFond.

9 A PROSPECTIVE JUROR: Yes. Can we get our
10 parking validated before we come up here?

11 THE COURT: Before you come up here? When do
12 you want them to validate?

13 MS. LOPSHIRE: It would probably be easier on
14 your lunch break. We will have a full house again in the
15 morning.

16 THE COURT: Can you come up here and validate
17 for them here?

18 MS. LOPSHIRE: Yes.

19 THE COURT: Just park, bring your tickets with
20 you, and you won't have to go down there to get validated.
21 Her staff will be up here and validating your tickets up
22 here.

23 Any other questions before we recess?

24 Please, we are going to hold a little court
25 after you all leave, so I would ask that you leave as

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quickly as you can when I call my recess.

See you tomorrow morning. Court is in recess.

(Recess taken at 5:15 p.m.)

RENO, NEVADA, MONDAY, JANUARY 11, 1998, 5:20 P.M.

-oOo-

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

THE COURT: Mr. Gammick, do you want to go ahead? Were you all able to stipulate to anything?

MR. GAMMICK: I believe, Your Honor, I believe Mr. Specchio is going to request the rule of exclusion, which I'll leave that up to him.

MR. SPECCHIO: We will, Your Honor.

MR. GAMMICK: And then based on that, Your Honor, both Mr. Specchio and I have subpoenaed people for the penalty phase who will not be witnesses during the guilt phase. And we both agreed I believe that we have no objection to those witnesses that are subpoenaed strictly for the penalty phase can come in for the guilt phase if they wish to watch a portion or all of the trial.

THE COURT: Specifically who are those people, Mr. Gammick? We don't have -- I don't think on the witness list we're providing to the jurors has -- I don't think that list has the witnesses for penalty phase on it, does it?

MR. STANTON: Some.

MR. GAMMICK: Yes, some of them are on there, Your Honor.

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1 THE COURT: I don't think the defense has
2 provided us with any names for penalty phase.

3 MR. SPECCHIO: We're not sure yet.

4 THE COURT: So who are we talking about?

5 MR. GAMMICK: To date, my understanding, that
6 means today, because Court is aware things are subject to
7 change, but we're talking about Carolyn Sullivan and Officer
8 Steve Sauter. And I believe the defense has the wife of the
9 defendant, his aunt, his mother, that are expected to appear
10 at penalty phase but won't be in the guilt phase.

11 MR. SPECCHIO: And his sister.

12 THE COURT: What are those names for the
13 bailiff?

14 MR. SPECCHIO: That would be Sela, S-E-L-A,
15 Vanisi; Deanne Vanisi. I'm going to have to spell this one,
16 Your Honor. T-O-E-U-M-U, Toeumu Tafuna.

17 THE COURT: And the last name is spelled how?

18 MR. SPECCHIO: T-A-F-U-N-A.

19 THE COURT: So those are the four individuals
20 for the defense?

21 MR. SPECCHIO: Actually three, Your Honor. It
22 is his aunt. Miss Tafuna is the aunt. Sela Vanisi is his
23 sister. Deanne Vanisi is his wife.

24 May I have the Court's indulgence?

25 THE COURT: Yes.

1 MR. SPECCHIO: That would be all the -- at
2 least at this point, Your Honor.

3 THE COURT: And you have the two, Mr. Gammick?

4 MR. GAMMICK: We have those two at this time.
5 There may also be Meghan Sullivan, who is the daughter of
6 George and Carolyn Sullivan, and then it's unknown at this
7 time if George Sullivan's sister will be here during the
8 guilt phase or not. But those are specific people we're
9 looking at that will not be called at guilt phase.

10 THE COURT: What is her name?

11 MR. STANTON: Susan Millard, M-I-L-L-A-R-D.

12 THE COURT: Now, Mr. Specchio, are you
13 stipulating that these people can be allowed in during the
14 guilt phase in lieu -- in light of the motion for the rule
15 of exclusion?

16 MR. SPECCHIO: Yes, Your Honor. And I do have
17 the cautionary portion of that that we're not going to have
18 outbursts from the family or the wife if photographs are
19 shown or statements are made. There is going to be a lot of
20 talk that is going to be upsetting to these people.

21 THE COURT: Okay. What I intend to do is I'll
22 grant the motion for exclusion with the caveat that those
23 individuals that you have each named will be allowed in.

24 Before you leave tonight, if you will confirm
25 with the bailiff that he has their names correctly so he can

1 continue. Either he or Deputy Uptain, one of them will have
2 to be working with this list. So please be sure that you
3 confirm with him those names.

4 Those individuals will be allowed during the
5 guilt phase as long as all of the people, from no matter
6 which side, that they can conduct themselves with the proper
7 decorum that is required by people in the courtroom.

8 If there is any display of emotion, outward
9 display of emotion that distracts the Court or the jury,
10 they will be excluded. And I advise counsel that it is your
11 responsibility to, one, advise your witnesses of what the
12 rule of exclusion is; two, see that everyone that you each
13 are presenting understand the rule and abide by the rules;
14 and three, that you make sure that those familial members
15 that you have in attendance at the trial abide by the proper
16 rules and you caution them.

17 I know both of you will do that or have done
18 that; is that correct?

19 MR. GAMMICK: Well, Your Honor, I only have one
20 problem with what the Court has just ordered. I don't see
21 how we are in a position to make them abide by the rule. We
22 have advised them that if they are going to get emotional or
23 there is a problem, they need to leave the courtroom.

24 THE COURT: Abide by the rule of exclusion,
25 what I mean. I want to make sure that you understand that

1 it's your responsibility to see that your two witnesses are
2 not talking to each other in front of your investigator, any
3 of those problems.

4 MR. GAMMICK: We have definitely advised them
5 of that, Your Honor. We don't expect there will be any
6 difficulties.

7 THE COURT: Thank you. Mr. Specchio, you will
8 advise Mr. Vanisi's family the same thing?

9 MR. SPECCHIO: Yes, Your Honor.

10 THE COURT: All right. Anything further for
11 tonight?

12 MR. GAMMICK: Your Honor, just one other thing
13 just to make sure the record is clear. We are also invoking
14 the rule of exclusion during the guilt phase for any defense
15 witnesses that may be brought in during the guilt phase.
16 That is with the understanding of the exceptions we have
17 talked about.

18 THE COURT: I understood that to be reciprocal.
19 Anything further?

20 We start at 9:30 tomorrow. We will try to
21 go -- I really will probably -- it depends on how much
22 moving around of people we have. We might go straight
23 through until noon or quarter til.

24 MR. STANTON: We had the jury report up to the
25 room. I'm sure the Court has made arrangements relative to

1 bringing Mr. Vanisi in. That was the one thing that caused
2 the State some pause relative to that issue.

3 THE COURT: I have the same problem. We will
4 be sure that Mr. Vanisi is here well in advance of the jury
5 coming in and/or Mr. Vanisi will be in the jury room with
6 his attorneys. I don't know exactly how they are going to
7 work it out.

8 The concern, we just don't have another place
9 for him to go.

10 MR. STANTON: I understand.

11 THE COURT: Some jury trials were continued
12 from today until tomorrow. So the Jury Commissioner has
13 full panels down there, and there is no other place to put
14 them. So I'd just as soon they were in the courtroom.

15 We might take the roll without Mr. Vanisi's
16 presence just so we're sure everybody is here, take a quick
17 break and have you come in. We will be sure that the jury
18 panel does not get the impression that Mr. Vanisi is in
19 custody.

20 Counsel, if you would check -- counsel for
21 Mr. Vanisi -- if you all would check with the security
22 people early in the morning to see what time they want to
23 move Mr. Vanisi so you can be with him, that would probably
24 be a good idea, or you can talk to him right now.

25 MR. SPECCHIO: They have been calling us,

1 Judge, when they get him to the top of the stairs, and we
2 have been walking with him.

3 THE COURT: They might want to come as early as
4 8:30, quarter to 9:00. I don't know what time they want to
5 come over. Maybe talk to them before you leave today.

6 MR. SPECCHIO: That is fine.

7 THE COURT: Yes, Mr. Gammick.

8 MR. GAMMICK: Your Honor, not being quite
9 certain when we're going to pick a jury, I do have one
10 exhibit I do intend to use during my opening, and I believe
11 we have a stipulation as to Exhibit No. 7, which is the
12 large blowup photograph of the UNR campus.

13 THE COURT: You are going to want to move for
14 the admission of Exhibit 7?

15 MR. GAMMICK: Yes, Your Honor.

16 THE COURT: Is it for demonstrative purposes or
17 will it be utilized in the jury room?

18 MR. GAMMICK: It will be an exhibit during the
19 trial.

20 THE COURT: Mr. Specchio.

21 MR. SPECCHIO: We don't have any objection.

22 THE COURT: You stipulate to its admission?

23 MR. SPECCHIO: I don't know if it is No. 7.

24 THE COURT: Let's make sure. Clerk is nodding
25 her head.

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MR. SPECCHIO: No problem, Your Honor.

MR. GAMMICK: It is the large photograph of the
UNR campus, Your Honor.

THE COURT: Exhibit 7 then is admitted upon
stipulation.

(Exhibit No. 7 admitted.)

THE COURT: Anything further?

MR. SPECCHIO: We can leave everything in the
courtroom, Judge?

THE COURT: Yes. The bailiff has made
arrangements. Have you talked to them, Deputy?

THE SHERIFF: I will.

THE COURT: He will find a safe home for them.
Court is in recess.

(Recess taken for day at 5:30 p.m.)

STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

I, ERIC V. NELSON, Certified Shorthand Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That I was present in Department No. 4 of the above-entitled Court and took stenotype notes of the proceedings entitled herein, and thereafter transcribed the same into typewriting as herein appears;

That the foregoing transcript is a full, true and correct transcription of my stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 11th day of January, 1999.

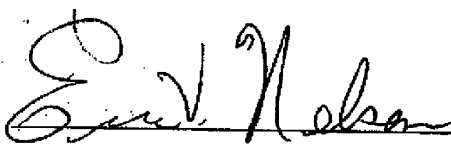

ERIC V. NELSON, CCR No. 57

EXHIBIT 160

EXHIBIT 160

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Case No. CR98-0516

Dept. No. 4

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,)	
)	TRIAL
Plaintiff,)	VOLUME 2
)	
vs.)	January 12, 1998
)	
SIAOSI VANISI,)	Reno, Nevada
)	
Defendant.)	
)	

APPEARANCES:

For the Plaintiff: RICHARD A. GAMMICK
District Attorney
DAVID L. STANTON
and THOMAS BARB
Chief Deputies District Attorney
75 Court Street
Reno, Nevada 89520

For the Defendant: MICHAEL R. SPECCHIO
Public Defender
STEPHEN GREGORY
and JEREMY BOSLER
Deputies Public Defender
One South Sierra Street
Reno, Nevada

The Defendant: SIAOSI VANISI

Reported by: ERIC V. NELSON, CCR No. 57

COPY

SIERRA NEVADA REPORTERS (702) 329-6560

1 RENO, NEVADA, TUESDAY, JANUARY 12, 1998, 9:36 A.M.

2 -oOo-

3
4 THE COURT: The first thing that we will be
5 doing today is calling the roll. The clerk will call the
6 roll. Those present please answer here or present out loud.

7 (A roll call was conducted.)

8 THE COURT: Counsel, the Court has heard from
9 Juanita Pierce's son.

10 MR. SPECCHIO: We'll stipulate to her being
11 excused, Your Honor.

12 THE COURT: I just need to make a record. She
13 is in the hospital, and we have confirmed she is in
14 intensive care.

15 Any objection, Mr. Stanton, to her being
16 excused?

17 MR. STANTON: No.

18 MR. BOSLER: No, Your Honor.

19 THE COURT: Miss Pierce is excused. The clerk
20 will call the names of the two individuals that weren't here
21 earlier.

22 THE CLERK: Luisa Arlitz?

23 A PROSPECTIVE JUROR: Here.

24 THE CLERK: Becky J. Ehly?

25 A PROSPECTIVE JUROR: Here.

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1 THE COURT: Counsel stipulate to the presence
2 of the entire panel?

3 MR. STANTON: Yes, Your Honor.

4 MR. BOSLER: Yes, Your Honor.

5 THE COURT: Counsel, please approach.

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

8 THE COURT: Miss Pembroke, who was called at
9 the end of the day yesterday, she's having a very difficult
10 time. She didn't want to come to the courtroom. She is
11 crying hysterically. We calmed her down enough to get her
12 into the courtroom, but she says she's been unable to sleep
13 all night, that she's had flashbacks to some other
14 circumstance you might want to review.

15 MR. BOSLER: Do you want to talk to her
16 individually then?

17 THE COURT: I think we should. We'll put on
18 the record what she's told my staff.

19 MR. SPECCHIO: Is that the cocktail waitress?

20 THE COURT: Yes.

21 MR. BOSLER: We'd like to do that one
22 individually.

23 THE COURT: I'm not going to do it
24 individually. I'm going to bring her here so she can leave
25 right away. Do you have the questionnaire on her? Have you

1 read it?

2 MR. BOSLER: Yes.

3 THE COURT: I think she mentioned something in
4 her questionnaire. Why don't you go get your questionnaire.

5 Miss Pembroke, will you come up, please.
6 (Prospective Juror Pembroke presented at bench
conference.)

7 THE COURT: Do you want me to wait for
8 Mr. Bosler, Mr. Specchio?

9 MR. GREGORY: Yes, ma'am.

10 THE COURT: Miss Pembroke, you told my staff
11 you were having a very tough time. Would you tell the
12 lawyers what you told my staff?

13 A PROSPECTIVE JUROR: All night flashing back
14 to -- I had something happen to me in the past, and it's
15 very traumatic for me to be in here.

16 THE COURT: In the courtroom?

17 A PROSPECTIVE JUROR: Uh-huh. I didn't think
18 it was going to have this effect.

19 THE COURT: And you started to point something
20 out? What is causing you the problem?

21 A PROSPECTIVE JUROR: Just seeing him, being
22 next to him and just being in here.

23 THE COURT: Can you tell us what happened?

24 A PROSPECTIVE JUROR: I was raped.

25 THE COURT: I see that you are crying, and I

1 understand how upset you are.

2 Counsel have any objection to excusing Miss
3 Pembroke?

4 MR. BOSLER: Under the circumstances, no, Your
5 Honor.

6 MR. STANTON: No, Your Honor.

7 THE COURT: Thank you, Miss Pembroke. You are
8 excused.

9 (Prospective Juror Pembroke excused from the
10 courtroom.)

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

13 THE COURT: The clerk will call the name of
14 another juror to replace Miss Pembroke.

15 THE CLERK: Jerome A. Moss.

16 THE COURT: Yesterday right before the break we
17 substituted many members on to the jury panel that had not
18 previously been here. Some of you indicated that you were
19 unable to hear all of my questions earlier. Therefore,
20 we're going to have to repeat the questions that I went
21 through.

22 These questions that I'm about to ask are
23 addressed to Mr. Rumbaugh, Mr. O'Daye, Mr. Decker, Miss
24 Buckley, Miss Hilliary, Mr. Giordano, Miss Roberts,
25 Mr. Thomas, and Mr. Moss.

Can you all hear me at this time?