

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 83796

DONTE JOHNSON,
Petitioner,

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Elizabeth A. Brown
Clerk of Supreme Court

v.

STATE OF NEVADA, *et al.*,
Respondent.

Appeal From Clark County District Court
Eighth Judicial District, Clark County
The Honorable Jacqueline M. Bluth, District Judge
(Dist. Ct. No. A-19-789336-W)

APPELLANT'S APPENDIX

Volume 14 of 50

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197. Voluntary Statement of Luis Cabrera (August 14, 1998)	02/13/2019	46	11506–11507
198. Voluntary Statement of Jeff Bates (handwritten)_Redacted (Aug. 14, 1998)	02/13/2019	46	11508–11510
199. Voluntary Statement of Jeff Bates_Redacted (Aug. 14, 1998)	02/13/2019	46	11511–11517
200. Presentence Investigation Report, State’s Exhibit 236, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461_Redacted (Sep. 15, 1999)	02/13/2019	46	11518–11531
201. Presentence Investigation Report, State’s Exhibit 184, <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624_Redacted (Sep. 18, 1998)	02/13/2019	46	11532–11540
202. School Record of Sikia Smith, Defendant’s Exhibit J, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11541–11542
203. School Record of Sikia Smith, Defendant’s Exhibit K, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11543–11544

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204. School Record of Sikia Smith, Defendant's Exhibit L, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11545–11546
205. Competency Evaluation of Terrell Young by Greg Harder, Psy.D., Court's Exhibit 2, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461 (May 3, 2006)	02/13/2019	46	11547–11550
206. Competency Evaluation of Terrell Young by C. Philip Colosimo, Ph.D., Court's Exhibit 3, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461 (May 3, 2006)	02/13/2019	46	11551–11555
207. Motion and Notice of Motion in Limine to Preclude Evidence of Other Guns Weapons and Ammunition Not Used in the Crime, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Oct. 19, 1999)	02/13/2019	46	11556–11570
208. Declaration of Cassondrus Ragsdale (Dec. 19, 2018)	02/13/2019	46	11571–11575
209. Post –Evidentiary Hearing Supplemental Points and Authorities, Exhibit A: Affidavit of Theresa Knight, <i>State v. Johnson</i> ,	02/13/2019	46	11576–11577

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210. Post –Evidentiary Hearing Supplemental Points and Authorities, Exhibit B: Affidavit of Wilfredo Mercado, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154, June 22, 2005	02/13/2019	46	11578–11579
211. Genogram of Johnson Family Tree	02/13/2019	46	11580–11581
212. Motion in Limine Regarding Referring to Victims as “Boys”, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154	02/13/2019	46	11582–11585
213. Declaration of Schaumetta Minor, (Dec. 18, 2018)	02/13/2019	46	11586–11589
214. Declaration of Alzora Jackson (Feb. 11, 2019)	02/13/2019	46	11590–11593
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216. <i>Holloway v. Baldonado</i> , No. A498609, Opposition to Motion for Summary Judgment Filed by Defendants Stewart Bell, David Roger, and Clark County, District Court of Clark County, filed Jan. 16, 2008	12/13/2019	48–49	11868–12111
217. Letter from Charla Severs, dated Sep. 27, 1998	12/13/2019	49	12112–12113
218. Decision and Order, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 18, 2000	12/13/2019	49	12114–12120
219. State's Motion to Disqualify the Honorable Lee Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 4, 2005	12/13/2019	49	12121–12135
220. Affidavit of the Honorable Lee A. Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District	12/13/2019	49	12136–12138

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223. Declaration of Dayvid J. Figler, dated Feb. 10, 2020	02/11/2019	49	12245-12247
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¹ This transcript was not filed with the District Court nor is it under seal.

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2022, I electronically filed the foregoing Appendix with the Nevada Supreme Court by using the appellate electronic filing system. The following participants in the case will be served by the electronic filing system:

Alexander G. Chen
Chief Deputy District Attorney
Clark County District Attorney's Office

/s/ Celina Moore

Celina Moore
An employee of the Federal
Public Defender's Office

1 pathology in this case, and I'm sure for the reasons
2 that you can probably understand that area. Is
3 there any difficulty in you listening to that
4 testimony, having extensive training and experience
5 and all that?

6 A I have a lot of training in pathology but
7 very little training in forensic pathology.

8 Q There's nothing about your training in
9 pathology that you think would be an inhibitor in
10 absorbing and listening fairly and accurately to the
11 testimony in that field and that science in this
12 case?

13 A No.

14 Q You had previous military service in the
15 Air Force; is that correct?

16 A Correct.

17 Q Where were you duty assigned?

18 A Eglin Air Force Base in Fort Walton Beach,
19 Florida.

20 Q Your family members that are attorneys,
21 you indicate that one is an estate planning and
22 taxation attorney in San Francisco?

23 A Correct.

24 Q Always has been, as far as the type of
25 practice?

1 A Since he's been an attorney, which has
2 been for about five years.

3 Q The two in-laws which were litigators,
4 besides the question the Judge asked about the
5 attorney general, was any of that in the field of
6 criminal law?

7 A My son-in-law who is married to the estate
8 planning attorney was with the Nevada Attorney
9 General's Office, and he was involved with
10 securities and litigation. Whether that was
11 criminal or not, I don't know.

12 Q And any other -- I guess that would be,
13 then, your ex-son-in-law that would be the litigator
14 as well -- any criminal experience in that regard?

15 A He was involved in the State Attorney
16 General's Office, but I don't know.

17 **THE COURT:** He did mostly criminal
18 prosecution, Matthew Dushoff.

19 **BY MR. STANTON:**

20 Q You stated that as far as your interaction
21 with them, there wasn't any significant interaction
22 relative to legal matters?

23 A Correct.

24 Q The point in all of this is that the
25 instructions of law will be given to you from Judge

1 Gates, and the concern regarding family ties with
2 attorneys is whether or not you can put aside what
3 you may have learned from someone or some person
4 outside the context of this courtroom to focus
5 strictly on and abide by the rules of law instructed
6 by Judge Gates in this case.

7 Could you do that?

8 A Yes, I could.

9 Q The other thing is the potential
10 punishments. As the Judge indicates, Mr. Johnson
11 stands dually convicted by a jury of four counts of
12 first-degree murder, and the Judge asked you about
13 the four potential punishments, one being the death
14 penalty, and three -- what I will refer to as "life
15 options." Is it a fair assessment, sir, that you
16 can and would consider all four of those options
17 until the case is finally submitted to you for
18 deliberations?

19 A Yes.

20 Q Is there anything in your -- that you
21 would have difficulty in determining in this case
22 that you would have to deliberate and determine the
23 appropriate and just punishment as it relates to
24 each victim in this case?

25 Could you do that?

1 A Could you ask that question again?

2 Q Certainly.

3 Four counts of murder -- there were four
4 separate individual victims in this case, four human
5 beings, and your duty as a juror in this case would
6 be to select the just and appropriate verdict as it
7 relates to each victim.

8 Could you do that?

9 A Yes, I could.

10 **MR. STANTON:** Thank you, Judge.

11 Pass the perspective juror.

12 **MR. WHIPPLE:** Thank you, your Honor.

13

14 EXAMINATION BY THE DEFENSE

15 **BY MR. WHIPPLE:**

16 Q My name is Bret Whipple. Thank you for
17 being with us here today.

18 I want to inquire a bit with regard to
19 your position at APL.

20 You're a pathologist?

21 A Yes.

22 Q What exactly did you do at APL?

23 A For a period of time, I was the laboratory
24 director. I spent my time looking at microscopic
25 slides, making diagnoses and interacting with

1 physicians as a consultant when they needed help
2 interpreting laboratory tests.

3 Q You basically looked at the slides and
4 made interpretations from that?

5 A Yes.

6 Q Now, APL we all know is widely -- in fact,
7 I know the State of Nevada uses them a lot on a lot
8 of these cases and, in fact, you could have
9 information in this case that came through APL. I
10 don't know one way or the other.

11 The fact that you had a relationship with
12 the State of Nevada -- do you feel there's a
13 relationship with the State of Nevada as the
14 director of the laboratory?

15 A I've never had any interaction with the
16 State of Nevada.

17 Q Kind of an asset to us would be to ask
18 you -- you know how lawyers work. We advocate for
19 different positions. Only you know your frame of
20 mind. I represent Mr. Johnson who has been
21 convicted of first-degree, premeditated, deliberate
22 murder, four of them.

23 Do you -- knowing what you know, do you
24 sense that you would be concerned if you were in my
25 shoes representing Mr. Johnson or for the State? Do

1 you understand? Knowing what you know, what you're
2 insight is, what could happen over the next few
3 days, would you feel reluctant if you were in my
4 shoes or the State's shoes?

5 A You're asking me could I just as easily
6 represent one side or the other?

7 Q Yeah.

8 A No; I would suspect that if I were in the
9 legal profession, I probably would have a problem
10 representing an accused criminal.

11 Q Okay.

12 If you were in my shoes knowing what you
13 think, would you have a concern knowing what you
14 think?

15 A Would I have a concern for what you are
16 doing or what I'm doing?

17 Q For what I'm doing if you were in my
18 shoes.

19 A I would have a problem with it, but I
20 would have no concern about you doing it.

21 Q So, you wouldn't hold it against me?

22 A No.

23 Q Do you think you can be fair to both
24 sides?

25 A Yes, I think I can.

1 Q Why do you say that?

2 A Because I think I can be objective, and to
3 be perfectly frank, I wouldn't be very excited about
4 spending the next two weeks here, but I feel I have
5 a civil responsibility that I think I can honestly
6 fulfill.

7 Q I want to ask you some questions about the
8 death penalty.

9 Do you have an opinion about the death
10 penalty?

11 A I would favor the death penalty in cases
12 in which it's deserved.

13 Q How long have you had this opinion?

14 A I think most of my life.

15 Q Is this something that you've talked to
16 other people about? Is this something that you
17 discuss with other people from time to time?

18 A On rare occasion I would think, but it
19 isn't something that is in the forethought of my
20 mind.

21 Q I think you said you would advocate or you
22 favor the death penalty in those cases in which it's
23 deserved.

24 What do you mean by "in which it's
25 deserved"?

1 A I think there are a lot of reasons for
2 murder ranging from one end where I pay you \$10,000
3 and ask you to kill somebody, you go out and you do
4 that. I think that deserves the death penalty. If,
5 however, somebody killed your brother, and you ran
6 across him six months later or nine months later and
7 ended up killing him, I don't put that in the same
8 category. I think that's a mitigating circumstance,
9 so no, I am not against the death penalty. I'm not
10 against mitigating circumstances.

11 Q We've touched on this with other potential
12 jurors. In this case, there is no excuse. You will
13 never hear us justify, excuse or try to make amends
14 to say what Mr. Johnson did was ever right. We
15 would all agree, it was a terrible wrong. The only
16 issue is what is the appropriate punishment. So, in
17 this case, there are four individuals who were
18 executed, who were tied up with tape, taped with
19 their hands behind their back, laid on the ground
20 and summarily executed, one bullet in the head of
21 each individual, one after another.

22 Now, in a situation like that, would you
23 be able to consider a life --

24 **MR. STANTON:** Your Honor, once again, I
25 would object. That's an improper statement of the

1 proceeding. There is going to be mitigating
2 evidence, and Counsel is asking it in a very
3 unilateral and improper format as to what this juror
4 would hear and to make that ultimate decision.

5 **MR. WHIPPLE:** My next question, your
6 Honor, is to ask after you deliberate. Right now
7 I'm going to see if he can consider a life sentence
8 knowing nothing more.

9 **MR. STANTON:** That's the problem with the
10 question, your Honor. They're breaking it up and
11 saying "knowing nothing more," and that's not the
12 procedure.

13 **MR. WHIPPLE:** Of course it is. I have a
14 right to ask an individual if he can consider life
15 with --

16 **THE COURT:** Go on.
17 Overruled.

18 **MR. WHIPPLE:** Thank you, your Honor.

19 **BY MR. WHIPPLE:**

20 Q Dr. Anes, my question to you was if an
21 individual committed first-degree, cold-blooded,
22 premeditated, deliberate murder execution style with
23 four individuals, could you consider a life
24 sentence?

25 A I might consider it, but if there were no

1 mitigating circumstances, if the circumstances were
2 as you propose, I think it would be very unlikely
3 that I would seriously consider anything else.

4 Q Other than the death penalty?

5 A Other than the death penalty.

6 Q What was brought up by the State is you
7 will have an opportunity to hear mitigating
8 circumstances, and you will have an opportunity to
9 hear other information. At the conclusion of that,
10 if you felt that a life sentence was appropriate, I
11 assume you would have no problem giving a life
12 sentence?

13 A Absolutely.

14 Q There's an old adage, an eye for an eye.
15 Have you ever contemplated that or what do
16 you think about when people say "an eye for an eye"?

17 A You respond to the same depth of violence
18 or horror that is perpetrated on you or someone very
19 close to you.

20 Q Do you think that's appropriate,
21 inappropriate?

22 A I think it's, basically, inappropriate.
23 We have laws, and you can't take the law into your
24 own hands, but again, that's a mitigating
25 circumstance, and as I mentioned, if you were

1 responding to the murder of somebody in your own
2 family, that's wrong as a mitigating circumstance
3 and wouldn't necessarily deserve the death penalty.

4 Q So, obviously, there's facts and
5 circumstances that you will take into consideration?

6 A Yes.

7 Q I know there's a Hippocratic Oath, and I
8 know nothing more than that.

9 Is that something that you would have to
10 address at all in your serving on this jury?

11 A No. Hippocratic Oath pertains to medical
12 care and medical situations, not to legal
13 proceedings outside of the medical environment.

14 Q We touched on the issue of mitigating
15 circumstance, and you're going to get proper
16 instructions at the proper time from this Court that
17 will instruct you that the death penalty is never
18 required, and mitigating circumstances is simply a
19 reason to give life. In fact, there were some
20 questions that pretty much address that issue, and I
21 know one is No. 38. It said, "In reaching a verdict
22 in this penalty phase you must consider the
23 defendant's background. Do you feel you would
24 consider those types of factors?" and you said,
25 "Very much."

1 A Again, it depends on the background. If
2 you say he committed the crime because he came from
3 a slum area and had a broken family, that would not
4 carry all that much weight with me, because I was
5 brought up in a slum from a broken family, so I
6 don't know what I was thinking when I answered that
7 question specifically, but I'm not sure what I would
8 consider a strong mitigating circumstance and a weak
9 mitigating circumstance.

10 Q I understand.

11 A I think there's a broad spectrum, and I
12 would tend to not necessarily be all that flexible
13 if you're giving stuff that I don't think is
14 necessarily mitigating.

15 Q What I want -- this is important to be
16 open and honest. There's no right answers, there's
17 no wrong answers. Nevada law requires you to
18 consider these different options, you need to be
19 able to consider mitigating circumstances?

20 A Correct.

21 Q Okay.

22 I can tell you that some of those
23 mitigating circumstances will be exactly what you've
24 raised -- the background, the way a person was
25 raised and their family. You need to be able to

1 consider those, and if you feel -- to be honest, if
2 you don't think you can consider those, those are
3 things that I need to know now.

4 A I can consider those. The point I think I
5 was trying to convey is how much weight would I give
6 to something, and there are some things that I think
7 have significant weight and there are some things
8 that I think would have minimal weight, and being
9 perfectly frank, being brought up in a bad
10 neighborhood from a broken family -- since I and a
11 lot of people I know were brought up under
12 circumstances and have not done such terrible
13 things, then I might not give that as much weight as
14 somebody who has not experienced that and been in
15 that type of background.

16 Q Just sitting here -- and if you can think
17 of any -- what mitigating circumstances are a reason
18 to choose life? What would you give great weight
19 to?

20 **MR. STANTON:** Your Honor, I apologize.
21 I'm going to have to object to that. I think that's
22 an improper question getting into the deliberative
23 process and asking for a precommitment from a
24 potential juror in this case.

25 **MR. WHIPPLE:** If I can respond, your

1 Honor, we list those factors here on No. 38, mental
2 status, age, childhood, education -- that he
3 responded to. If you like, I can go through them
4 unilaterally, but I was trying to save time.

5 **MR. STANTON:** He's, I believe, already
6 asked the question. I don't need an objection if he
7 goes to those questions, but I think he's answered
8 some of those already, but if he's going to focus on
9 the ones --

10 **THE COURT:** I think so, Counsel. I think
11 you're trying to solicit the kind of stuff that you
12 would probably come up with as a juror as mitigating
13 circumstances which I think is improper to ask them
14 how they're going to rule.

15 **MR. WHIPPLE:** I understand, your Honor.

16 **THE COURT:** If you limit it to what's
17 already on here, that's fine.

18 **MR. WHIPPLE:** I'll do so, your Honor.
19 Thank you.

20 **BY MR. WHIPPLE:**

21 Q Dr. Anes, on Question No. 38, it listed a
22 number of mitigating circumstances, and I'm going to
23 ask you -- we already touched on childhood
24 experiences. There's several others here -- mental
25 status, age, education.

1 Are those issues or things that you would
2 consider mitigating circumstance?

3 A I think there would be mitigating
4 circumstances, but I think if somebody only has a
5 high school education or maybe dropped out of school
6 in the tenth grade, that would not carry the same
7 type of weight as he had been abused by these people
8 and finally something snapped and he responded that
9 these people had done something to seriously hurt
10 somebody whom he loved or cared for. Again, they
11 would be mitigating circumstances, but if you had to
12 give them a one, which is very light consideration
13 to something that was very, very heavy, I might give
14 something like not having a high school education a
15 one, whereas his brother had been repeatedly abused
16 by these guys --

17 Q Sure.

18 A -- as maybe a seven or an eight.

19 Q Okay. That makes sense.

20 Mitigating circumstance, a reason to
21 choose life, sometimes this doesn't need to be
22 described, it's just what we call a gut feeling,
23 mercy or just something that you feel.

24 If there were other individuals who
25 differed from you with regard to their belief that a

1 mitigating circumstances exist and you didn't see
2 it, would you be able to respect other people's
3 opinions with regard to that?

4 A Yeah. I wouldn't necessarily agree with
5 them, but I would not hold it against somebody else
6 if he or she disagreed with me.

7 Q Why not?

8 A Well, my wife is probably my biggest
9 advocate and disagrees with me all the time, and
10 most of the time we disagree, she's right.

11 Q Reasonable minds differ. I understand.
12 Your relationship with Mr. Dushoff --
13 actually, I think most all of us know him -- is that
14 something that we should be concerned about?

15 A No. He is an ex-son-in-law. We still
16 maintain a relationship with him because we have a
17 granddaughter, and we probably see him or speak to
18 him once a month, and we stay very, very pleasant
19 because it's to our granddaughter's benefit for us
20 to always be on talking terms.

21 Q So, you wouldn't hold it for or against us
22 if some of us knew him or worked in the same type of
23 businesses that he did?

24 A No.

25 **MR. WHIPPLE:** Doctor, thank you for your

1 time.

2 And pass for cause, your Honor.

3 **THE COURT:** Doctor, we're going to let you
4 know on Friday about 10:00 o'clock. You'll either
5 report downstairs to the jury commissioner at
6 10:00 o'clock on Friday.

7 **PROSPECTIVE JUROR 39:** In the jury room at
8 10:00 o'clock on Friday?

9 **THE COURT:** Right.

10 **PROSPECTIVE JUROR 39:** Thank you.

11 **THE COURT:** Counsel, come up here. I want
12 to chat for a minute.

13 (Sidebar conference outside the presence
14 of the court reporter.)

15 **THE COURT:** Does the State want to
16 exercise their first peremptory challenge now?

17 **MR. DASKAS:** We haven't thought about it.

18 **THE COURT:** Take a few minutes.

19 (Brief pause.)

20 **THE COURT:** Who is your first peremptory
21 challenge?

22 **MR. DASKAS:** Your Honor, I just want to
23 clarify, we're not going to waive the first one. If
24 and when we do waive, we don't waive the subsequent
25 challenges.

1 **THE COURT:** You only waive the individual
2 one at that time.

3 **MR. DASKAS:** We would exercise our first
4 peremptory on prospective No. 11-0034, Miss Yaskin.

5 **THE COURT:** All right. We'll call up
6 another one to replace Miss Yaskin.

7 Who is that?

8 **THE BAILIFF:** That would be Beverley
9 Jensen.

10

11 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 40

12 **THE COURT:** Miss Jensen, how are you
13 doing?

14 **PROSPECTIVE JUROR 40:** Fine.

15 **THE COURT:** You were born in LA and
16 married.

17 How long have you been in Las Vegas?

18 **PROSPECTIVE JUROR:** Twenty-seven years.

19 **THE COURT:** What kind of work do you do?

20 **PROSPECTIVE JUROR:** I'm a housekeeper.

21 **THE COURT:** What hotel do you work in?

22 **PROSPECTIVE JUROR:** I work for Westbrook
23 Homes. I'm a private housekeeper at the owner's
24 house.

25 **THE COURT:** You're a private housekeeper

1 now. Okay.

2 Has anyone in your family ever been

3 charged with a crime?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** Who?

6 **PROSPECTIVE JUROR:** My husband.

7 **THE COURT:** What was he charged with?

8 **PROSPECTIVE JUROR:** Something petty when

9 he was young.

10 **THE COURT:** A long time ago. Nothing

11 recent?

12 **PROSPECTIVE JUROR:** (Inaudible response.)

13 **THE COURT:** Is that "No"?

14 **PROSPECTIVE JUROR:** Yes.

15 **THE COURT:** You have to speak up, because

16 she has to take down everything.

17 Have you or anyone in your family ever

18 been the victim of a crime?

19 **PROSPECTIVE JUROR:** Almost.

20 **THE COURT:** Who?

21 **PROSPECTIVE JUROR:** A couple years ago my

22 husband and I were almost murdered on Thanksgiving

23 when my friend was murdered.

24 **THE COURT:** Tell me what happened.

25 **PROSPECTIVE JUROR:** We were invited over

1 for Thanksgiving, and that day, my friend's son
2 murdered him and his friend just minutes before we
3 showed up.

4 **THE COURT:** Wait a minute. You were
5 invited over to your friend's house?

6 **PROSPECTIVE JUROR:** For Thanksgiving.

7 **THE COURT:** This is last Thanksgiving?

8 **PROSPECTIVE JUROR:** Two years ago.

9 **THE COURT:** Two years ago -- 2003.

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** Before you guys got there, the
12 son killed --

13 **PROSPECTIVE JUROR:** Both men.

14 **THE COURT:** Your friend?

15 **PROSPECTIVE JUROR:** And his friend.

16 **THE COURT:** You guys were on your way over
17 there or were supposed to be there?

18 **PROSPECTIVE JUROR:** We were there just as
19 the police started taping up the yard. It was just
20 a matter of minutes.

21 **THE COURT:** Do you know why he killed
22 them?

23 **PROSPECTIVE JUROR:** I didn't attend the
24 trial; I just heard different things.

25 **THE COURT:** What happened at the trial?

1 **PROSPECTIVE JUROR:** I think he got 40
2 years on each count -- no, 20 years on each count.
3 **THE COURT:** Did you know the son?
4 **PROSPECTIVE JUROR:** Yeah.
5 **THE COURT:** Did he have any kind of
6 problems? Did he have mental problems or anything?
7 **PROSPECTIVE JUROR:** I always thought so.
8 **THE COURT:** You did?
9 **PROSPECTIVE JUROR:** Yeah.
10 **THE COURT:** Would that affect your ability
11 to be fair in this case?
12 **PROSPECTIVE JUROR:** I don't know.
13 **THE COURT:** We're going to have to get
14 past "I don't know," because we need to know before
15 you're allowed to serve on the jury whether or not
16 you can be fair.
17 Now, you know the defendant here has been
18 charged with or convicted of four counts of murder,
19 so you'll have to decide the punishment.
20 Do you understand that?
21 **PROSPECTIVE JUROR:** Yeah.
22 **THE COURT:** Do you think you can do that?
23 **PROSPECTIVE JUROR:** I really don't think
24 so.
25 **THE COURT:** Why not?

1 **PROSPECTIVE JUROR:** Because I couldn't
2 judge my friend's son. I leave it in God's hands.
3 **THE COURT:** Are you a religious person?
4 **PROSPECTIVE JUROR:** To life and death I
5 think I am.
6 **THE COURT:** Are there any circumstances in
7 which you could impose the death penalty?
8 **PROSPECTIVE JUROR:** If somebody killed one
9 of mine.
10 **THE COURT:** All right.
11 You can see some circumstances where you
12 can impose it; is that right?
13 **PROSPECTIVE JUROR:** I guess so.
14 **THE COURT:** You said you're in favor of
15 the death penalty; is that true?
16 **PROSPECTIVE JUROR:** Yes.
17 **THE COURT:** Would you be able to consider
18 life in prison with or without parole?
19 **PROSPECTIVE JUROR:** I guess I could
20 consider it.
21 **THE COURT:** And you could consider a
22 definite term of 50 years. Of course, let me tell
23 you, this is for each count, plus, the penalties are
24 doubled because a deadly weapon was used; so,
25 really, 50 years is really a hundred years and

1 parole after 40 years.

2 Do you understand that?

3 You have to speak up.

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** Could you consider that as a

6 punishment?

7 **PROSPECTIVE JUROR:** That would be awful

8 lightweight.

9 **THE COURT:** What now?

10 **PROSPECTIVE JUROR:** He killed four people.

11 **THE COURT:** This is for each person.

12 **PROSPECTIVE JUROR:** Oh.

13 **THE COURT:** Do you understand what I'm

14 saying?

15 **PROSPECTIVE JUROR:** So, he would never be

16 able to get out of jail is what you're saying?

17 **THE COURT:** I don't know that. It depends

18 on what the sentence is.

19 Do you understand what I'm saying?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** What I want to know is could

22 you consider all four? You have to decide which one

23 to impose, you and your fellow jurors.

24 Do you understand that?

25 **PROSPECTIVE JUROR:** Yes.

1 **THE COURT:** But you would have to be able
2 to consider all of them and pick the one that's most
3 appropriate based upon the facts and the evidence in
4 the case.

5 Do you understand that?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** Do you think you can do that?

8 **PROSPECTIVE JUROR:** I could only try.

9 **THE COURT:** Well, is there any one of
10 these penalties that you don't think you can impose
11 or that you would not consider?

12 **PROSPECTIVE JUROR:** Freedom.

13 **THE COURT:** So, you don't think you can
14 consider life with parole or for a definite term?

15 **PROSPECTIVE JUROR:** No; I don't think he
16 should ever get paroled.

17 **THE COURT:** So, those two you couldn't
18 consider under any circumstances?

19 **PROSPECTIVE JUROR:** Right.

20 **THE COURT:** State?

21 **MR. DASKAS:** Thank you, Judge.

22

23 EXAMINATION BY THE STATE

24 **BY MR. DASKAS:**

25 Q Let me give you a slightly different

1 factual scenario, and you tell me what you think.
2 Let's just imagine a case where someone has been
3 convicted of first-degree murder but you learn that
4 the reason the defendant killed the victim was
5 because the victim had maybe hurt the defendant's
6 daughter, raped his daughter, and months later the
7 defendant -- the dad goes out and finds the guy who
8 raped his daughter and kills him, so it's legally
9 first-degree murder.

10 How about that situation, might you
11 consider parole in a situation like that?

12 A Yeah.

13 Q So, you don't automatically exclude that
14 in a first-degree murder conviction?

15 A No.

16 Q You might give it in a situation like
17 that?

18 A Right.

19 Q And you can imagine a situation, not
20 necessarily this case, but where death would be
21 appropriate?

22 A Right.

23 Q So, you would consider that as well?

24 A Yes.

25 Q And can you imagine situations in between

1 where maybe someone shouldn't get death, maybe they
2 didn't get parole, but at least they should get life
3 in prison with no chance of getting out?

4 Can you imagine a situation like that?

5 A Yeah, but it's a waste of our money.

6 Q All right.

7 Regardless of the economic impact, you can
8 imagine that might be an appropriate punishment; is
9 that true?

10 A Yes.

11 Q As you sit here today as a potential juror
12 on a murder case, you can consider all the possible
13 punishments depending on the facts and circumstances
14 of the case; is that true?

15 A Yes.

16 **MR. DASKAS:** Thank you, ma'am.

17 We'll pass for cause, Judge.

18

19 EXAMINATION BY THE DEFENSE

20 **BY MS. JACKSON:**

21 Q Hi, Miss Jensen. You said it's a waste of
22 our money when Mr. Daskas asked you about the life
23 sentence.

24 Why do you think that?

25 A All these people are in prison, and

1 they're never going to get out, and they've done
2 horrible crimes, and they're living, some of them
3 better than some of us out on the street.

4 Q That's why you said in your Answer No. 4
5 "If you said if they're guilty without question, put
6 them to sleep."

7 In your mind, put them to sleep is better?

8 A Yeah.

9 Q Because it saves money?

10 A Well -- plus --

11 Q One of the reasons?

12 A There's no benefit out of their life
13 anymore. They've ruined their lives.

14 Q Are you saying that you believe that --
15 like you say, when they're guilty without
16 question -- that would be Mr. Johnson, he's guilty
17 without question times four, brutal murder, horrible
18 murder, tied up, bound with duct tape, shot in the
19 back of the head -- you're going to have to look at
20 pictures of that.

21 That certainly would be guilty without
22 question -- yes?

23 A Yes.

24 Q The only punishment in your mind would be
25 to put him to sleep?

1 A Yes.

2 Q You certainly wouldn't consider anything
3 else?

4 A No.

5 **MS. JACKSON:** Your Honor, I challenge for
6 cause.

7 **MR. DASKAS:** She left out the most
8 important part of the question, and that would be
9 mitigation.

10 **THE COURT:** Traverse her. Go on.

11

12 EXAMINATION BY THE STATE

13 **BY MR. DASKAS:**

14 Q Understand in the death penalty hearing,
15 the defense can, and the prosecution can, for that
16 matter, present what we call mitigation, good
17 things, if you will, about the defendant, reasons
18 you might consider giving a sentence of life with or
19 without parole. That could be any number of things.
20 I'm not talking about this defendant, but in
21 general -- maybe the defendants were abused sexually
22 or physically or mentally or emotionally, maybe they
23 weren't fed growing up, maybe they witnessed dad
24 beating mom on a regular basis, maybe they witnessed
25 a murder.

1 Can you imagine a situation where someone
2 kills more than one person if you heard enough bad
3 things about that person's life, tragic things,
4 awful things, maybe you would consider parole?

5 A No.

6 Q Not in any situation?

7 A No.

8 **MR. DASKAS:** I'll submit it, Judge.

9 **THE COURT:** All right. She's excused.
10 You can go.

11 **THE COURT:** Who's the next one, Pursley?

12

13 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 41

14 **THE COURT:** Mr. Pursley, I read that you
15 said you were a single father.

16 **PROSPECTIVE JUROR 41:** Yes, sir.

17 **THE COURT:** You have custody of your
18 daughter?

19 **PROSPECTIVE JUROR:** Yes, I do.

20 **THE COURT:** What kind of work do you do?

21 **PROSPECTIVE JUROR:** Sunstar Optical. I'm
22 an optical technician.

23 **THE COURT:** You said you don't have any
24 money in the bank and they don't pay you for being
25 on the jury?

1 **PROSPECTIVE JUROR:** No. I asked that this
2 morning, and he won't do it, but the simple fact --
3 like I said, no welfare or anything, I could barely
4 pay for baby-sitting yesterday.

5 **THE COURT:** We're going to excuse you on
6 the basis of hardship.

7 **PROSPECTIVE JUROR:** Thank you very much,
8 your Honor. I appreciate that.

9 **THE COURT:** Guys, let's come back tomorrow
10 at 10:00. We're going to be in recess until
11 tomorrow at 10:00.

12 (Evening recess taken at 4:45 p.m.)

13 (WHEREUPON, THE PROCEEDINGS WERE
14 CONCLUDED.)

15 * * * * *

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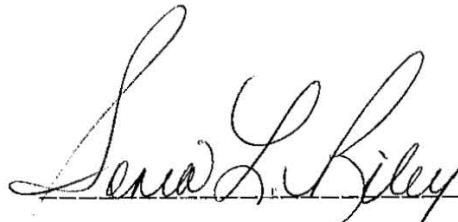
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REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, SONIA L. RILEY, CERTIFIED COURT
REPORTER, DO HEREBY CERTIFY THAT I TOOK DOWN IN
STENOTYPE ALL OF THE PROCEEDINGS HAD IN THE
BEFORE-ENTITLED MATTER AT THE TIME AND PLACE
INDICATED, AND THAT THEREAFTER SAID STENOTYPE NOTES
WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY
DIRECTION AND SUPERVISION AND THE FOREGOING
TRANSCRIPT CONSTITUTES A FULL, TRUE AND ACCURATE
RECORD TO THE BEST OF MY ABILITY OF THE PROCEEDINGS
HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO
SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF
CLARK, STATE OF NEVADA.



SONIA L. RILEY, CCR 727

THE STATE OF NEVADA v. JOHNSON

DISTRICT COURT
CLARK COUNTY, NEVADA

2005 APR 22 10:13
ORIGINAL

THE STATE OF NEVADA,)

Plaintiff,)

-vs-)

DONTE JOHNSON,)

Defendant.)

Case No. C153154

Dept No. VIII

Docket H

VOLUME III-A

PENALTY PHASE

BEFORE THE HONORABLE LEE A. GATES

THURSDAY, APRIL 21, 10:23 A.M.

APPEARANCES:

For the State:

ROBERT J. DASKAS, ESQ.

DAVID STANTON, ESQ.

Deputies District Attorney

For the Defendant:

ALZORA JACKSON, ESQ.

BRETT WHIPPLE, ESQ.

Deputies Public Defender

REPORTER: KRISTINE MOORE, CCR 273

S12

COUNTY CLERK

APR 22 2005

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THE STATE OF NEVADA v. JOHNSON

I N D E X

* * * * *

VOIR DIRE EXAMINATION

NO.	PROSPECTIVE JUROR	COURT	STATE	DEFENSE
0042	LAWRENCE EPTER	3	/	/
0043	MATTIE HOOVER	5	/	/
0046	BARBARA FINN	6	11	14
0050	ANDREW MILBERG	21	/	23
0051	ARTHUR RILEY	24	/	/
0055	KRISTEE WATSON	26	/	/
0057	ELIZABETH CORWIN	28	33	/
0059	BARBARA GRANT	34	38	39
0077	DORIS MCLAUGHLIN	49	/	/
0084	CHRISTOPHER BLONK	52	57	60

* * * * *

CHALLENGES FOR CAUSE

NO.	PROSPECTIVE JUROR	PARTY	PAGE
0050	ANDREW MILBERG	STATE	24
0049	GLENN PRATT	STATE	49

* * * * *

PEREMPTORY CHALLENGES

PARTY	NO.	BADGE NO.	NAME	SEAT	PAGE
DEFENSE	1	0026	CAROL SALCIDO	8	21
STATE	2	0014	FRANCES MCCLAIN	4	47
DEFENSE	2	0025	JANET ROBINSON	7	66

THE STATE OF NEVADA v. JOHNSON

1 LAS VEGAS, NEVADA, THURSDAY, APRIL 21, 10:23 A.M.

2 * * * * *

3 THE COURT: Good morning, Counsel.

4 THE CLERK: Lawrence Epter, seat number 11.

5

6 VOIR DIRE EXAMINATION (Resumed)

7

8 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 42

9 THE COURT: Where are you working now?

10 PROSPECTIVE JUROR NO. 42: I have my own

11 business.

12 THE COURT: What kind?

13 PROSPECTIVE JUROR NO. 42: I have an

14 internet business selling nutritional products. I have

15 no employees. I am the only one operating the business.

16 That's what I referred to in the questionnaire.

17 THE COURT: You do it during the day, at

18 night, any time?

19 PROSPECTIVE JUROR NO. 42: During all day.

20 I handle customer service issues, shipping issues coming

21 up. I have 50 to 75 e-mails a day to be returned.

22 THE COURT: We will excuse you.

23 PROSPECTIVE JUROR NO. 42: Thank you.

24 THE COURT: We will excuse you.

25 PROSPECTIVE JUROR NO. 42: I was warring

THE STATE OF NEVADA v. JOHNSON

1 about this, but I feel it's the right thing to do. There
2 are several jurors I know that have knowledge about the
3 case.

4 THE COURT: Who are they?

5 PROSPECTIVE JUROR NO. 42: 262, 205, 207
6 and Aaron Stamm. Aaron was the fellow that raised his
7 hand when you all asked if he knew anybody. Do you want
8 me to tell you what happened? If I could, it will just
9 take a minute.

10 THE COURT: Go on.

11 PROSPECTIVE JUROR NO. 42: 262 is a female,
12 blond, about 50, was sitting in the hallway. Next to her
13 was 205, 207, an Asian woman and across from them was
14 205; 207, gentleman about 60, Aaron was across from them.
15 I was next to him.

16 262 said she had seen the news that
17 morning and seen that the Defendant had already been
18 given the death sentence by a three judge appellate
19 panel, and this was to impanel a jury because there was a
20 Constitutional issue as to whether the Judge could give
21 the death penalty, as opposed to jurors. That was all
22 she said.

23 I don't think she did it to be
24 malicious or anything like that. Quite frankly, had she
25 continued to speak, I would have stopped her, but that

THE STATE OF NEVADA v. JOHNSON

1 was it. It was clear that, that group of people heard
2 that. I felt you should know because my concern would be
3 to go through the whole thing, and if it came out later,
4 that would be prejudicial, I assume, and you would have
5 to do it again.

6 THE COURT: We appreciate that. You did
7 the right thing.

8 MS. JACKSON: Thank you very much, sir.

9 Your Honor, may I inquire, what
10 number is Aaron Stamm?

11 MR. STANTON: 164.

12 MS. JACKSON: Thank you, Counsel.

13 THE COURT: Who is next?

14 THE CLERK: Mattie Hoover, 43.

15 THE COURT: That's the reason we are doing
16 it this way, to keep them from talking about the case.
17 Gee.

18
19 VOIR DIRE EXAMINATION (Resumed)

20
21 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 43

22 THE COURT: Good morning, Ms. Hoover, where
23 did you grow up?

24 PROSPECTIVE JUROR NO. 43: San Louis
25 Opisbo, California.

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1 THE COURT: You grew up there?

2 PROSPECTIVE JUROR NO. 43: Yes.

3 THE COURT: Are you in college?

4 PROSPECTIVE JUROR NO. 43: Yes, I am a full

5 time student at UNLV.

6 THE COURT: What days do you go?

7 PROSPECTIVE JUROR NO. 43: Tuesday and

8 Thursday.

9 THE COURT: Would that cause a problem,

10 serving on this jury?

11 PROSPECTIVE JUROR NO. 43: Finals are in a

12 week and a half, to two weeks.

13 THE COURT: You are excused.

14 PROSPECTIVE JUROR NO. 43: Thank you very

15 much.

16 THE COURT: What are you studying?

17 PROSPECTIVE JUROR NO. 43: Nursing.

18 THE COURT: That's a good area.

19 PROSPECTIVE JUROR NO. 43: Very good, very

20 respected.

21 THE COURT: Who is next?

22 THE CLERK: Barbara Finn, 46.

23

24 VOIR DIRE EXAMINATION (Resumed)

25

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1 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 46

2 THE COURT: Okay. Ms. Finn, how are you

3 this morning?

4 PROSPECTIVE JUROR NO. 46: Fine.

5 THE COURT: Pretty good this morning.

6 Okay. How long have you lived in Nevada, ma'am?

7 PROSPECTIVE JUROR NO. 46: For 19 years.

8 THE COURT: Where are you from originally?

9 PROSPECTIVE JUROR NO. 46: LA County.

10 THE COURT: Are you married?

11 PROSPECTIVE JUROR NO. 46: Yes, sir.

12 THE COURT: Now, is your husband still in

13 prison?

14 PROSPECTIVE JUROR NO. 46: Yes, sir.

15 THE COURT: You went to Cal State Poly

16 Tech?

17 PROSPECTIVE JUROR NO. 46: Yes, sir.

18 THE COURT: Which one?

19 PROSPECTIVE JUROR NO. 46: Pomona.

20 THE COURT: What was your degree in?

21 PROSPECTIVE JUROR NO. 46: Social sciences.

22 THE COURT: Not psychology, sociology?

23 PROSPECTIVE JUROR NO. 46: No. It was an

24 option in social science.

25 THE COURT: What kind of work do you do?

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1 PROSPECTIVE JUROR NO. 46: I am in
2 accounting.
3 THE COURT: I you think you said you
4 remembered a name about the case; is that right?
5 PROSPECTIVE JUROR NO. 46: The name was
6 familiar, but I didn't remember anything about it.
7 THE COURT: You don't remember any details?
8 PROSPECTIVE JUROR NO. 46: No.
9 THE COURT: Now, where is your husband
10 serving time, what State?
11 PROSPECTIVE JUROR NO. 46: Arizona. They
12 just transferred him to Texas.
13 THE COURT: Where was he convicted?
14 PROSPECTIVE JUROR NO. 46: Arizona.
15 THE COURT: What was he convicted of?
16 PROSPECTIVE JUROR NO. 46: Aggravated
17 assault, attempted sexual assault.
18 THE COURT: How long ago did this happen?
19 PROSPECTIVE JUROR NO. 46: Oh, 25 years
20 ago.
21 THE COURT: He is still in prison?
22 PROSPECTIVE JUROR NO. 46: He took off and
23 was gone for 20 years.
24 THE COURT: Let's explore this a little
25 bit. Twenty-five years ago he was charged with

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1 aggravated assault and sexual assault?

2 PROSPECTIVE JUROR NO. 46: Yes, sir.

3 THE COURT: He went to trial and got

4 convicted?

5 PROSPECTIVE JUROR NO. 46: Yes, sir.

6 THE COURT: After he was convicted, he

7 absconded, jumped bail, and was gone for 20 years?

8 PROSPECTIVE JUROR NO. 46: Right, sir.

9 THE COURT: Then they caught him and put

10 him in prison?

11 PROSPECTIVE JUROR NO. 46: Yes, sir.

12 THE COURT: How long was his sentence?

13 PROSPECTIVE JUROR NO. 46: It's

14 complicated, like, 7 to 21 years, and it's consecutive.

15 THE COURT: To what?

16 PROSPECTIVE JUROR NO. 46: Well, he had a

17 couple of Counts against him.

18 THE COURT: They ran them all consecutive?

19 PROSPECTIVE JUROR NO. 46: Right.

20 THE COURT: Does he know when he will be

21 getting out?

22 PROSPECTIVE JUROR NO. 46: No, sir.

23 THE COURT: How do you feel about that?

24 PROSPECTIVE JUROR NO. 46: I am upset about

25 it. I just take it day by day and --

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1 THE COURT: No. What I mean is, do you
 2 feel he was unjustly convicted? Did you watch the trial?
 3 PROSPECTIVE JUROR NO. 46: I feel he was
 4 unjustly convicted. His attorney was incompetent, and he
 5 has an appeals attorney now that's filed several motions
 6 and is working on it.
 7 THE COURT: Okay. Would that affect your
 8 ability to be fair in this case?
 9 PROSPECTIVE JUROR NO. 46: No, sir.
 10 THE COURT: Can you follow the Court's
 11 instructions on the law?
 12 PROSPECTIVE JUROR NO. 46: Yes, sir.
 13 THE COURT: You understand if you are
 14 picked to serve on the jury, you will have to decide on a
 15 penalty. You read the questionnaire. You understand the
 16 jury will have four options: The death penalty; life in
 17 prison, without the possibility of parole; life in
 18 prison, with the possibility of parole; or a definite
 19 term of 50 years, with the possibility of parole, after
 20 20. Those penalties would be doubled if a weapon was
 21 used.
 22 Could you consider all of those
 23 options?
 24 PROSPECTIVE JUROR NO. 46: Yes, sir.
 25 THE COURT: Do you have any objections,

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1 religious or moral, to the death penalty?

2 PROSPECTIVE JUROR NO. 46: No, sir.

3 THE COURT: You can listen to all the
4 evidence, the Court's instructions on the law, and make a
5 decision to what punishment you think is appropriate?

6 Can you do that?

7 PROSPECTIVE JUROR NO. 46: Yes, your Honor.

8 THE COURT: You don't have your mind made
9 up already, do you?

10 PROSPECTIVE JUROR NO. 46: No.

11 THE COURT: Have you or anyone in your
12 family ever been the victim of a crime?

13 PROSPECTIVE JUROR NO. 46: No, sir.

14 THE COURT: State.

15

16 EXAMINATION BY THE STATE

17 BY MR. DASKAS:

18 Q Good morning. There is a question 27. You
19 wrote, "The criminal justice system can be manipulated by
20 police, DA, lawyers, depends on their integrity." I am
21 not here to challenge that opinion. Tell me why you hold
22 that opinion.

23 A Relation to my husband.

24 Q You feel like the police and DA in that
25 circumstance railroaded him, for lack of a better word?

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1 A In a way, yes.

2 Q You can appreciate what our concern is --

3 A Right.

4 Q -- that you might somehow consciously or

5 subconsciously hold that against us, as the DA's in this

6 case?

7 A Right.

8 Q Should that be a concern of mine?

9 A No.

10 Q Obviously, this is a completely different

11 proceeding?

12 A Right.

13 Q Here's the other concern I have. As you

14 now know, based on the questionnaire, the Defendant is

15 already convicted of four Counts of First Degree Murder.

16 You realize that?

17 A Yes.

18 Q In other words, you have to accept someone

19 else's verdict in this case?

20 A Yes.

21 Q What I read into this, is you might be a

22 little cynical about the system. Should we be concerned

23 you would not accept the verdict already reached in the

24 case?

25 A No.

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1 Q Will you accept that verdict?

2 A Yes.

3 Q You understand it's four Counts of First

4 Degree Murder with a deadly weapon?

5 A Yes.

6 Q Obviously, you know about the presumption

7 of innocence in criminal cases. We have to prove someone

8 is guilty beyond a reasonable doubt.

9 A Yes.

10 Q You understand in this case that

11 presumption is gone?

12 A Right.

13 Q This is obviously a very big decision we

14 are asking you to make, and we appreciate that. Can you

15 envision a situation where, if you believe death is the

16 appropriate punishment, you are convinced of that, can

17 you actually meet out that punishment?

18 A Yes.

19 Q Let me ask you to -- let's assume you are

20 on the jury, selected as the foreperson, you have the

21 same vote as everyone else -- it takes 12 of you to

22 decide the punishment -- as foreperson, you have to sign

23 the verdict form that essentially puts this Defendant to

24 death.

25 Do you think you could sign that, if

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1 **you were the foreperson?**

2 A Assuming so.

3 Q Understanding it's a big responsibility, if

4 **you are convinced he is guilty, can you sign the verdict**

5 **form?**

6 A No.

7 Q We shouldn't have concerns about you, based

8 **on your experience with your husband's case?**

9 A No.

10 MR. DASKAS: Judge, we pass for cause.

11

12 EXAMINATION BY THE DEFENSE

13 BY MS. JACKSON:

14 Q You indicated you had children. What are

15 **their ages?**

16 A Thirteen and nineteen.

17 Q This case, the young men that were killed

18 **were all around 19. You have a child that age and one**

19 **younger, will that affect your ability to listen to the**

20 **evidence as it comes in, and evaluate the testimony, or**

21 **will you think too much about your own children?**

22 A I wouldn't think so, but to be perfectly

23 **honest, I wouldn't know until it happened.**

24 Q I want you to process that wee bit, while I

25 **continue with the question, we indicated they were young,**

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1 but they are exactly the same age as your child.

2 You are also going to have to look at
3 some pictures. That's what will have to happen in this
4 case, and look at the place where they were executed.
5 Think about that. I will come back to that. Okay?

6 A Okay.

7 Q I share Mr. Daskas's concern. I know in
8 our society a lot of people are not crazy about the
9 profession I work in. Lots of people don't like lawyers.
10 You indicate here that it depends upon their integrity.
11 You may find yourself liking or disliking -- there is
12 four attorneys involved in this case.

13 Do you think you can focus on the
14 issue at hand, regardless of the attorneys, and that
15 would be the fate of Donte Johnson?

16 A I don't know any of you. I would have to
17 go on the evidence.

18 Q Do you have any particular bias about
19 female attorneys?

20 A No.

21 Q How do you feel about that?

22 A I give them all the credit they deserve
23 for going through what used to be a man's occupation.

24 Q Do you have any strong feelings or strong
25 bias against Public Defenders? I work for the Public

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1 **Defender's office?**

2 A I think you do a lot of work for little
3 pay, compared to the others.

4 Q Nothing that would affect your ability or
5 interfere with your ability to look at Donte Johnson and
6 listen to what we have to say about him?

7 A No.

8 Q Okay. Do you feel that life
9 imprisonment -- the Judge instructed you there is four
10 possible punishments for this heinous crime, four.

11 Of the four, do you think life in
12 prison, do you think of that as a serious or severe
13 punishment?

14 A Yes. Yes.

15 Q You hesitated.

16 A I have to think. It depends on the age of
17 the person. If the person is 75 years old, they have
18 less life expectancy.

19 Q The fact you mentioned, it depends upon
20 that, that's exactly what we want you to do.

21 On question 34 of the questionnaire,
22 you said, first, you circled A. Then crossed that out.
23 You were in favor and circled C, you would consider it in
24 certain circumstances.

25 You wrote in, "Depending on

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1 circumstances. I don't think everyone who has killed
2 someone deserves the death penalty." That's exactly what
3 the Judge is asking you to do.

4 Can you consider all four
5 possibilities?

6 A Yes.

7 Q You said, someone that killed someone,
8 however, knowing now my client stands convicted of four
9 homicides, not just one. You will hear mitigating
10 information about his childhood, things of that nature.

11 Just the fact there are four victims
12 in this case, would that fact alone preclude you from
13 keeping the same open mind you indicated on your
14 questionnaire here you had.

15 A I was thinking --

16 Q We appreciate that. We really do.

17 A -- I would look at it a lot closer than if
18 it was just one person.

19 Q Of course, and that's appropriate.

20 A You know, knowing nothing about it, I can't
21 say, yes or no.

22 Q You are not saying that, automatically,
23 because we are talking about four people, that
24 automatically you can only consider death?

25 A Not automatically.

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1 Q That's all we are asking. That's all. We
2 always try to be open-minded, and we can certainly see
3 that from your efforts here this morning. We appreciate
4 that.

5 You may find yourself, if you are on
6 the jury in the jury room, and you are going to
7 deliberate, the Judge will instruct you, that's what you
8 are going to do --

9 What would you do, if you found at
10 the deliberation, everybody else wanted to vote for
11 death, and you felt that was not the appropriate vote,
12 what would you do?

13 A I would listen to their reasons --

14 Q Of course.

15 A -- and I would make up my mind.

16 Q If after listening to their reasons and
17 comparing them with yours, you still were not convinced,
18 you still felt what you believed was the correct verdict,
19 could you hold to that?

20 A I would try.

21 Q Could you?

22 A I would try.

23 Q One of the -- when they ask you to explain
24 your position, and you explain it to the best of your
25 ability, if someone said, it doesn't make any sense, for

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1 **example, could you respect their views?**

2 A Yes, ma'am.

3 Q **Would you demand they respect yours?**

4 A Yes.

5 Q **Whether it made sense to them or not?**

6 A I would ask them, what parts didn't make

7 sense.

8 Q **You understand, you don't have to**

9 **necessarily justify that, a true verdict, to anyone? You**

10 **have the right to hold to the courage of your own**

11 **conviction?**

12 A Yes, I do.

13 Q **The law indicates in a case like this, that**

14 **you must consider what the law defines as mitigation:**

15 **Background; education; status; things of that nature.**

16 **You indicated you would consider those things very much.**

17 In other words, would you like to

18 **know as much as humanly possible about Donte Johnson,**

19 **before making a decision of this magnitude?**

20 A I would like to know both sides.

21 Q **You understand the law says you must**

22 **consider mitigation?**

23 A Right.

24 Q **And that's, where he grew up, whether or**

25 **not he had enough to eat, whether or not his mother used**

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1 drugs, things of that nature. Are those factors you
 2 would like to know about before making that decision?
 3 Among other things, are those some
 4 of the things you would like to hear about?
 5 A I suppose so.
 6 Q What does that mean?
 7 A Depends on how much detail it got into.
 8 Q I don't understand that. How much in
 9 detail they got?
 10 A Right.
 11 Q Well, the examples you gave me --
 12 A Examples you gave me, yes.
 13 Q What was that?
 14 A I was going to say, I don't think it's
 15 necessary to go every single year of the person's life,
 16 but the main factors of the person's life, yes.
 17 Q Would you consider getting enough food to
 18 eat as a child an important factor?
 19 A Right.
 20 Q Would you consider, having a parent or
 21 caregiver there, versus being abandoned, would you
 22 consider that an important factor?
 23 A Yes.
 24 MS. JACKSON: Thank you. We will pass for
 25 cause.

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1 MR. DASKAS: Judge, I apologize. May I ask
2 a follow-up question, just about her husband's situation,
3 Judge?

4 THE COURT: No.

5 Ma'am, we will have you come back
6 tomorrow at 10:00 o'clock. Okay. Be there in the jury
7 lounge downstairs.

8 Okay. What's next? Defendant's
9 first peremptory challenge.

10 MS. JACKSON: Thank you, your Honor. We
11 would preempt 0026, Carol Salcido.

12 THE COURT: Seat 8?

13 MS. JACKSON: Yes, sir.

14 THE COURT: Who is next?

15 THE CLERK: Andrew Milberg, 50.

16

17 VOIR DIRE EXAMINATION (Resumed)

18

19 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 50

20 THE COURT: Mr. Milberg, you have a B.A.
21 from Tulane?

22 PROSPECTIVE JUROR NO. 50: Tulane
23 University.

24 THE COURT: New Orleans?

25 PROSPECTIVE JUROR NO. 50: Yes.

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1 THE COURT: Did you grow up in New York,
2 and you went to college in New Orleans?

3 PROSPECTIVE JUROR NO. 50: I grew up in
4 Puerto Rico, eight years in New York, and ten years in
5 Puerto Rico.

6 THE COURT: Where did you go to law school
7 for that year?

8 PROSPECTIVE JUROR NO. 50: University of
9 Miami.

10 THE COURT: What work do you do now?

11 PROSPECTIVE JUROR NO. 50: I teach
12 transformational change.

13 THE COURT: What kind?

14 PROSPECTIVE JUROR NO. 50: I teach seminars
15 to help people change.

16 THE COURT: Okay. You have a friend that's
17 a lawyer in Miami; is that right?

18 PROSPECTIVE JUROR NO. 50: My best friend.

19 THE COURT: What kind of lawyer is he?

20 PROSPECTIVE JUROR NO. 50: Personal injury.

21 THE COURT: Now, you stated you or a member
22 of your family had been a victim of a crime. Who was
23 that?

24 PROSPECTIVE JUROR NO. 50: My house was
25 robbed in New Orleans.

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1 THE COURT: They didn't catch the people
2 who did it.

3 PROSPECTIVE JUROR NO. 50: No. My car was
4 also broken into in New York.

5 THE COURT: Also, you said you are opposed
6 to the death penalty under any circumstances?

7 PROSPECTIVE JUROR NO. 50: Yes, I am.

8 THE COURT: Is that absolute?

9 PROSPECTIVE JUROR NO. 50: It is absolute.

10 MR. DASKAS: Challenge for cause, your
11 Honor.

12 THE COURT: You want to traverse?

13 MS. JACKSON: Briefly, your Honor.

14

15 EXAMINATION BY THE DEFENSE

16 BY MS. JACKSON:

17 Q Good morning, sir. You, from Florida?

18 A No.

19 Q Did you go to school at the University of
20 Florida?

21 A For a semester.

22 Q That's where I received my undergraduate
23 work.

24 A Good old, Gainesville.

25 Q How long have you held the belief that the

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1 death penalty is just not appropriate for any one?

2 A Since I started doing my work.

3 Q How long is that?

4 A Fifteen years now.

5 Q Can you envision any situation, for

6 example, if you were convinced in your own mind that

7 someone was responsible for blowing up the Twin Towers,

8 could you consider it for something like that?

9 A No.

10 Q Thank you for your candor.

11 MS. JACKSON: We submit it.

12 THE COURT: Mr. Milberg, the law requires

13 you have to be open to imposing the death penalty on a

14 case like this. Since you are not, we will excuse you,

15 sir. Thank you very much. We appreciate it.

16 Who is next?

17 THE CLERK: Arthur Riley, badge 51.

18

19 VOIR DIRE EXAMINATION (Resumed)

20

21 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 51

22 THE COURT: What kind of work do you do?

23 PROSPECTIVE JUROR NO. 51: Floor person at

24 the Westward Hoe Casino.

25 THE COURT: Is that the one on Fremont

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1 Street?

2 PROSPECTIVE JUROR NO. 51: On Las Vegas
3 Boulevard. Lots of people get those mixed up.

4 THE COURT: In the narrative it said you
5 have to work. Doesn't the hotel pay you?

6 PROSPECTIVE JUROR NO. 51: No, most don't.

7 THE COURT: You said you feel bitter; you
8 were charged with a crime?

9 PROSPECTIVE JUROR NO. 51: Yeah, on a
10 garage door.

11 THE COURT: City or --

12 PROSPECTIVE JUROR NO. 51: County. It was
13 the DA's.

14 THE COURT: DA's Office did it?

15 PROSPECTIVE JUROR NO. 51: Yes.

16 THE COURT: What happened to the case?

17 PROSPECTIVE JUROR NO. 51: It's still
18 pending. They had a court date in January. We had six
19 months to bring the doors down or bring them to code in
20 our complex. We all got nailed for the same thing.

21 THE COURT: You don't feel you could be
22 fair?

23 PROSPECTIVE JUROR NO. 51: Not right now,
24 no.

25 THE COURT: You are excused.

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1 Who is next?

2 (OFF THE RECORD.)

3 THE CLERK: Stephanie Bowman, 53.

4 THE BAILIFF: Stephanie Bowman was excused.

5 This is Kristee Watson.

6 MR. WHIPPLE: What was the basis of her

7 excusal?

8 THE BAILIFF: Her child is sick.

9 THE COURT: Is that the one in the

10 hospital?

11 THE BAILIFF: Child is in the hospital.

12 THE COURT: Yes.

13 MR. WHIPPLE: Thank you.

14 THE CLERK: Kristee Watson, badge 55.

15

16 VOIR DIRE EXAMINATION (Resumed)

17

18 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 55

19 THE COURT: What are you doing these days

20 Ms. Watson?

21 PROSPECTIVE JUROR NO. 55: I have been here

22 lately.

23 THE COURT: That's not what I was talking

24 about. What kind of work do you do?

25 PROSPECTIVE JUROR NO. 55: Administrative

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1 assistant, as well as a waitress.

2 THE COURT: How who do you work for.

3 PROSPECTIVE JUROR NO. 55: Magic Magazine,

4 and waitress at The Old Spaghetti Factory.

5 THE COURT: You said you already bought

6 tickets to Boston.

7 PROSPECTIVE JUROR NO. 55: Yes.

8 THE COURT: 27th, when is that?

9 PROSPECTIVE JUROR NO. 55: Next Wednesday.

10 THE COURT: What are you going to Boston

11 for?

12 PROSPECTIVE JUROR NO. 55: Celebrate my one

13 year anniversary.

14 THE COURT: Of what?

15 PROSPECTIVE JUROR NO. 55: Marriage.

16 THE COURT: You already paid for the

17 tickets?

18 PROSPECTIVE JUROR NO. 55: And my hotel.

19 THE COURT: All right. You have a

20 Bachelors in associate church ministry.

21 PROSPECTIVE JUROR NO. 55: My husband does.

22 THE COURT: He is a preacher?

23 PROSPECTIVE JUROR NO. 55: Yes.

24 THE COURT: What's the name of the church?

25 PROSPECTIVE JUROR NO. 55: Central

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1 Christian Church.

2 THE COURT: On Rancho?

3 PROSPECTIVE JUROR NO. 55: On Russell, off

4 the 95 in Henderson.

5 THE COURT: Since you have prepaid tickets,

6 hotel, all that stuff, we will excuse you.

7 PROSPECTIVE JUROR NO. 55: Thank you.

8 THE COURT: You can go.

9 PROSPECTIVE JUROR NO. 55: Okay.

10 THE COURT: Next.

11 THE CLERK: Elizabeth Corwin, badge 57.

12

13 VOIR DIRE EXAMINATION (Resumed)

14

15 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 57

16 THE COURT: Okay. Ms. Corwin; is that

17 correct?

18 PROSPECTIVE JUROR NO. 57: Yes.

19 THE COURT: Where is Mesa Community

20 College?

21 PROSPECTIVE JUROR NO. 57: Arizona.

22 THE COURT: How long did you live in

23 Arizona?

24 PROSPECTIVE JUROR NO. 57: Four years.

25 THE COURT: Did you grow up in the Chicago

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1 area?

2 PROSPECTIVE JUROR NO. 57: Yes.

3 THE COURT: What kind of work does your

4 husband do?

5 PROSPECTIVE JUROR NO. 57: He works for

6 Federal Express.

7 THE COURT: Do you work outside the home?

8 PROSPECTIVE JUROR NO. 57: Secretary for

9 the medical department of the Labor Union.

10 THE COURT: I think you said you remember

11 talking about the case; is that right?

12 PROSPECTIVE JUROR NO. 57: Vaguely. It's

13 been a while.

14 THE COURT: What do you remember?

15 PROSPECTIVE JUROR NO. 57: It's vague, very

16 vague. I just remember hearing and reading about bits

17 and pieces of it in the media. I remember it was a

18 single family home, if it was the same one I am thinking

19 of. That's, basically, all I remember.

20 THE COURT: Now, in this question here, 30,

21 it says, "Donte Johnson is an African American male. Is

22 there anything about that fact that would affect your

23 ability to be fair in this case?"

24 You said, "Unsure."

25 PROSPECTIVE JUROR NO. 57: Unsure how to

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1 answer it.

2 THE COURT: How do you feel, though?
3 Basically, we want to know from the question, because he
4 is a young Black man here, we want to know if you are
5 going to be prejudiced or biased against him because of
6 his race. He is convicted of killing four white males.

7 Are you going to be bias or
8 prejudiced against him? That's what we want to find out.

9 PROSPECTIVE JUROR NO. 57: I think so.

10 THE COURT: We want somebody who is going
11 to judge him solely on the facts, not based on race or
12 religion.

13 PROSPECTIVE JUROR NO. 57: Only issue I
14 would have with it is my stepfather was shot and killed
15 in Florida.

16 THE COURT: When was that?

17 PROSPECTIVE JUROR NO. 57: It was seven or
18 eight years ago.

19 THE COURT: Some cases people shouldn't be
20 sitting on because of their past experience. This is
21 similar to something that happened to someone in your
22 family. Can you listen to the evidence in this case and
23 not be biased or affected by what happened to your
24 father?

25 PROSPECTIVE JUROR NO. 57: I am not sure.

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1 I can't say yes.

2 THE COURT: Seems like you are emotional

3 just thinking about it.

4 PROSPECTIVE JUROR NO. 57: I am.

5 THE COURT: This is the same situation,

6 except we have four dead people. You will be looking at

7 pictures of them and hearing about the crime.

8 PROSPECTIVE JUROR NO. 57: It would be

9 hard. It would definitely be hard.

10 THE COURT: Tell me this here, what do you

11 think about the death penalty?

12 PROSPECTIVE JUROR NO. 57: I am against

13 it -- I am not against it.

14 THE COURT: You are for the death penalty;

15 you are not opposed to it?

16 PROSPECTIVE JUROR NO. 57: No.

17 THE COURT: And what about the question is

18 going to be -- specifically, the Defendant has been

19 convicted of First Degree Murder, four Counts, four

20 victims. You are going to have to decide the punishment.

21 The four punishments are: The death

22 penalty; life imprisonment, without the possibility of

23 parole; life in prison, with the possibility of parole,

24 or a definite term of 50 years with the possibility of

25 parole after 20 years, and those are doubled because a

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1 firearm or deadly weapon was used.

2 Can you consider all four
3 punishments?

4 PROSPECTIVE JUROR NO. 57: I would have to
5 listen to everything first.

6 THE COURT: We know that. We are assuming,
7 after you hear the evidence. Some people think if you
8 kill someone, the only punishment you can impose is the
9 death penalty. Nothing else.

10 Some people think they could never
11 impose life imprisonment for the rest of their life, and
12 the taxpayers have to take care of them and support them.
13 Some people think some people should receive prison term,
14 have a possibility of parole after so many years.

15 The law in Nevada requires you
16 consider all four of them and apply one that's
17 appropriate, given the facts and circumstances of the
18 case.

19 My question to you is: Can you
20 consider all four, or are there some punishments you
21 wouldn't consider under any circumstances?

22 PROSPECTIVE JUROR NO. 57: I wouldn't be
23 able to consider parole at all.

24 THE COURT: Traverse.
25

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EXAMINATION BY THE STATE

BY MR. STANTON:

Q Let's say there was extenuating circumstances presented by the Defense or Prosecution, giving you a frame of reference what the person was like, and where they came from?

In this case the Defendant has already been convicted by another jury of killing four separate people. In and of itself that sounds serious, and it is, but there is still evidence that could be presented to you, telling you who he was, Donte Johnson, and the circumstances surrounding that.

The question is: Could you keep an open mind about all the potential punishments under all the evidence and instructions of law given you, or would you sit and say, look, if he is convicted of four First Degree Murders, parole is out of the question?

A The latter.

THE COURT: You are excused, ma'am.

THE BAILIFF: Eugene VanderHoof never answered. I will try it with the next group.

THE COURT: We will see.

THE CLERK: Barbara Grant, badge 59.

VOIR DIRE EXAMINATION (Resumed)

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1 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 59

2 THE COURT: Good morning. According to the
3 questionnaire you filled out, Ms. Grant -- we were going
4 through it, you attend church -- your home is near a
5 church?

6 PROSPECTIVE JUROR NO. 59: Yes.

7 THE COURT: What church is that?

8 PROSPECTIVE JUROR NO. 59: It's a
9 non-denominational church.

10 THE COURT: Never been on a jury before?

11 PROSPECTIVE JUROR NO. 59: No, sir.

12 THE COURT: Have you or anyone in your
13 family ever been charged with a crime?

14 PROSPECTIVE JUROR NO. 59: No, sir.

15 THE COURT: Have you or anyone in your
16 family been a victim of a crime?

17 PROSPECTIVE JUROR NO. 59: No, sir.

18 THE COURT: You don't recall hearing
19 anything about the case; is that correct?

20 PROSPECTIVE JUROR NO. 59: No, sir.

21 THE COURT: You believe you can be fair and
22 impartial in this case?

23 PROSPECTIVE JUROR NO. 59: Yes.

24 THE COURT: Can you follow the Court's
25 instructions on the law?

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1 PROSPECTIVE JUROR NO. 59: Yes, I can.

2 THE COURT: How long have you lived in Las

3 Vegas?

4 PROSPECTIVE JUROR NO. 59: Now, 27 years.

5 THE COURT: Where before that?

6 PROSPECTIVE JUROR NO. 59: Southern

7 California.

8 THE COURT: Did you spend any time in

9 Southern Minnesota?

10 PROSPECTIVE JUROR NO. 59: I was born

11 there.

12 THE COURT: How did you do that?

13 PROSPECTIVE JUROR NO. 59: I was 15 months

14 old when my parents moved.

15 THE COURT: Now, you understand this trial

16 will be about the penalty; the jury will have to decide

17 on the penalty to impose in this case? Do you understand

18 that?

19 PROSPECTIVE JUROR NO. 59: Yes.

20 THE COURT: You understand the Defendant

21 has been convicted of four Counts of First Degree Murder?

22 PROSPECTIVE JUROR NO. 59: Yes.

23 THE COURT: Our legislature states the

24 possible punishment you can impose is any of the

25 following: Death penalty; life imprisonment, without the

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1 possibility of parole; life, with the possibility of
2 parole; or for a definite term of 50 years, with parole
3 after 20 years, and these terms are doubled because a
4 deadly weapon was used.

5 Do you understand that?

6 PROSPECTIVE JUROR NO. 59: I do.

7 THE COURT: Could you consider all four
8 forms of punishment?

9 PROSPECTIVE JUROR NO. 59: Yes.

10 THE COURT: You can listen to the evidence,
11 listen to the law, as the Court gives it to you, and pick
12 the appropriate punishment based on the facts and the law
13 in this case?

14 PROSPECTIVE JUROR NO. 59: I believe I can.

15 THE COURT: Here you say you are in favor
16 of the death penalty. I take it, you are not opposed to
17 it.

18 PROSPECTIVE JUROR NO. 59: Yes.

19 THE COURT: Here in question 36, they ask
20 your beliefs about the death penalty. If they are such
21 you would automatically vote for the death penalty,
22 regardless of the facts and circumstances of the case.
23 You said, yes.

24 Did you understand that question?

25 PROSPECTIVE JUROR NO. 59: Probably not.

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1 THE COURT: You are saying if someone is
2 convicted of First Degree Murder, you would --

3 PROSPECTIVE JUROR NO. 59: Automatically
4 impose the death penalty.

5 THE COURT: Without listening to any
6 mitigation or what happened, what background about the
7 case.

8 PROSPECTIVE JUROR NO. 59: No, I would
9 listen.

10 THE COURT: You would consider everything?

11 PROSPECTIVE JUROR NO. 59: Yes.

12 THE COURT: State.

13
14 EXAMINATION BY THE STATE

15 BY MR. STANTON:

16 Q In this case, as you have found out from
17 the questionnaire, another jury has returned verdicts of
18 First Degree Murder, four Counts of them, against the
19 Defendant, Donte Johnson. Towards that end, jury service
20 in this case does not involve finding guilt or innocence,
21 but you will be starting from that point, going forward.

22 Now, knowing that is what your role
23 would be, strictly determining appropriate, just
24 punishment in this case, do you think you can do that
25 under these circumstances?

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1 A I believe I could.

2 Q Abiding by the other jurors's verdict?

3 A Yes.

4 Q The fair and impartial juror in this case
5 is someone who can listen to all the facts presented by
6 both sides in this case to determine the four punishments
7 Judge Gates just mentioned to you.

8 Are those types of facts that involve
9 knowing more about the murder, each of the victims, and
10 the Defendant, important to you in making that
11 determination?

12 A Yes.

13 Q Everyone in the rooms understands it's a
14 very important decision, a decision not to be taken
15 lightly. Do you understand and agree with that?

16 A I agree.

17 Q In this case, if you were to determine
18 that, based upon the facts you heard in the courtroom
19 from both the State and from the Defense, and after the
20 instructions of law that Judge Gates would give you, you
21 are of the mind that the appropriate punishment was the
22 death penalty, and you were selected as foreperson in
23 this case, could you sign the verdict forms that would
24 put the Defendant, Donte Johnson, to death?

25 A I believe I could.

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1 MR. STANTON: Pass the juror, your Honor.

2 THE COURT: Defense.

3 MR. WHIPPLE: Thank you, your Honor.

4

5 EXAMINATION BY THE DEFENSE

6 BY MR. WHIPPLE:

7 Q I am curious. While waiting in the halls,
8 have you had a chance to talk about the case at all, or
9 overhear anyone speaking about the case?

10 A One thing they are talking about is how
11 long it seems it takes before somebody is called in here.

12 Q I understand. It is a time-consuming
13 process. We appreciate your pains.

14 Can I ask your occupation?

15 A Blackjack dealer.

16 Q How long have you been doing that?

17 A I have been in the business for 21, 22
18 years now.

19 Q Okay. I think, as we mentioned a couple
20 times, there is no right or wrong answer. We are trying
21 to find people that -- if you are opposed to the death
22 penalty, if you are for the death penalty -- we want
23 people in the middle.

24 We want you to speak freely, from the
25 heart. I want to ask you questions about the death

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1 penalty, in general. What is your opinion with regard to
2 the death penalty?

3 A I believe in the death penalty.

4 Q Do you think it's used too much, not
5 enough?

6 A I don't think it's used enough. You never
7 really hear about anybody being executed.

8 Q What do you think about that?

9 A That's with the court system, appeals, and
10 those things.

11 Q When you say you believe or acknowledge the
12 death penalty, is that something you have thought about
13 or considered in the past? Do you know how long you had
14 that opinion?

15 A No.

16 Q Do you know where you got that opinion
17 from? Did your parents influence you or other people
18 influence you?

19 A No. I don't know. I really can't answer.

20 Q Is it something you have discussed with
21 other people, whether it should be used more or less?

22 A No. No. Most of the people I hang around
23 with seem to want to talk about sports, other things.

24 Q That's a lot more enjoyable than the death
25 penalty. I will give you that.

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1 Have you heard the adage, an eye for
2 an eye?

3 A Yes.

4 Q What do you think of that?

5 A Sometimes I believe the punishment should
6 fit whatever the crime was.

7 Q What times would you consider it
8 appropriate, and what times would you consider it not
9 appropriate?

10 A I am the kind of person that I would like
11 to listen to everything. I like to weigh everything in
12 before I finally make a decision. I am a Libra, the
13 scales; I like to balance everything out.

14 Q I notice that you elaborated on that. You
15 want to hear as much as possible?

16 A I do.

17 Q And I want to hear about that. In this
18 situation, it's a little unusual you have not been a
19 juror before.

20 A Before I was a single parent. Back in the
21 old days, you called in, single parent, tip earner, you
22 got excused. This is my first time going through the
23 process.

24 Q Those days are over?

25 A I am single. My son is 27.

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1 Q Do you have other children?

2 A No, he is my only one.

3 Q In this case, it's not truth, or innocence,

4 or guilt. Mr. Donte Johnson, my client, has been and is

5 convicted. He killed four individuals. He premeditated

6 and deliberately put a bullet to the back of the

7 victims's heads.

8 I want to ask you some questions. If

9 a person committed First Degree Murder, cold blooded

10 murder, could you consider a potential life sentence?

11 A Yes.

12 Q If an individual killed four separate young

13 adults, premeditated, deliberate or cold blooded murder,

14 bullet in the back of the head, could you consider a life

15 sentence?

16 A Yes.

17 Q You hesitate a little bit. I realize there

18 is a difference between one and four. What's going

19 through your mind?

20 A It's the reason why. What caused him to

21 want to do something like that?

22 Q He has been convicted of First Degree

23 Murder. We are not here to justify or excuse it. We are

24 not offering excuses or solutions. You are here to

25 determine the future of Mr. Johnson.

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1 There is no justification. There is
2 no excuse for doing these things. It's First Degree,
3 premeditated, deliberate taking the life of another
4 person. Would you consider life in that situation?

5 A Probably not.

6 Q Why is that?

7 A Probably, if what you said is true, it's
8 premeditated, I would have to strongly favor the death
9 penalty.

10 Q In this situation, all you have to do is be
11 able to consider it.

12 A Uh-huh.

13 Q You will hear a lot of information. You
14 are going to hear what we call, mitigators. Mitigators
15 are reasons to give somebody a life sentence, is how I
16 explain it. You will hear reasons I think you should
17 give a life sentence.

18 I need to know, you have already told
19 me, if a person committed first degree, premeditated,
20 deliberate homicide of four innocent young adults, you
21 could not consider a life sentence.

22 Do you still feel that way, or can
23 you think and wait and look at the mitigators? I don't
24 want to put words in your mouth. Be up front and honest.

25 A I could consider life in prison with no

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1 possibility of parole.

2 Q The law says that one needs to not only
3 consider life in prison, but life with the possibility of
4 parole. That's when the Court mentioned, can you
5 consider them all equally; that's what he mentioned.

6 Not only the fact -- our legislature,
7 says a person can commit First Degree Murder, cold
8 blooded, premeditated murder, and have the right to have
9 the possibility of parole considered.

10 I am not forcing you or putting words
11 in your mouth. That's something you have to say, that
12 you can do that; you would consider it.

13 A How many years would he serve?

14 Q In this situation it's with the use of a
15 deadly weapon, 40 years would be minimum?

16 A I could consider that.

17 Q Why could you consider it at 40 years?

18 A At least 40 years, he has put time in,
19 served time for the crimes committed and not get out in
20 ten years.

21 Q I understand that. You are a good person.
22 When it comes to all the other factors, why is that
23 important to you? Several times you pointed out, I want
24 to hear everything. Why?

25 A Just my nature. I try to be an honest,

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1 fair person. I listen to people and try not to make snap
2 judgments.

3 Q Nothing happens in a vacuum. You want to
4 see the facts and circumstances surrounding the
5 situation?

6 A Yes.

7 Q At some point, if you are selected to be a
8 juror, you will receive instructions from the Court that
9 the law never requires in a death penalty, that sometimes
10 it's a gut feeling, or simply mercy is, basically, reason
11 enough to choose life over death.

12 What do you think of that?

13 A Well, being a woman, sometimes, yes.
14 Sometimes us women go by gut reactions.

15 Q Because that's a little different from
16 facts and circumstances. Sometimes it's hard to decide a
17 reason why you are choosing a certain way.

18 If you heard all the facts and
19 circumstances, you know my client killed four
20 individuals, First Degree Murder, premeditated, cold
21 blooded, murder. You listened to the facts and
22 circumstances and felt he deserved it, could you return a
23 life sentence?

24 A Yes, if that's what my conscience said.

25 Q If you are the person elected to be in

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1 charge of the jury, could you sign off, saying, even
2 though he took the lives of four other individuals, I
3 believe he could still get life?

4 A Yes.

5 Q Or life with the possibility of parole?

6 A Yes.

7 Q If a number of individuals differed from
8 you, and you perhaps felt life in prison was the
9 appropriate decision and the other people wanted the
10 death penalty, how would you handle that?

11 A You have to speak your mind amongst the
12 other jurors. Hopefully, we can all agree on one fair
13 judgement.

14 Q Fair to say, sometimes people just don't
15 agree on everything?

16 A Sure.

17 Q Do you consider yourself a leader or a
18 follower? Where do you put yourself from one to ten?
19 Follower is a one; person never listens to anybody else
20 is a ten?

21 A I guess at times I am a follower, unless I
22 really feel strongly about something. Being a redhead,
23 once my mind is made up -- I am a follower, but I pretty
24 much have set ideas. I have a tendency to follow.

25 Q If people had an opinion different from

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1 you, could you respect that opinion, and not make them
2 believe what you believe?

3 A I can respect it, but I want my two cents
4 in.

5 Q Vice versa. Would you be able, willing, to
6 stand up and say, this is what I believe?

7 A Yes.

8 Q Court asked you one question where it said
9 you automatically would choose the death penalty. Do you
10 remember what you were thinking when you wrote down, yes?

11 A No.

12 Q I am just curious.

13 A I have no clue.

14 MR. WHIPPLE: Thank you for your time.

15 I pass for cause.

16 THE COURT: All right. Ma'am, we will have
17 you come back tomorrow ten o'clock. We will let you
18 know. Okay. It's the State's opportunity to exercise
19 their second peremptory challenge. I'll give you a few
20 minutes.

21 (BREAK IN PROCEEDINGS

22 11:29 TO 11:40 A.M.)

23 THE COURT: State may exercise its second
24 peremptory challenge.

25 MR. DASKAS: We would excuse 0014, Ms.

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1 McClain, position 4.

2 THE COURT: All right.

3 Who came back today?

4 I was thinking of letting them go
5 until tomorrow.

6 THE BAILIFF: I was letting them go. If
7 they challenge them, after they get challenged, we will
8 call them on the phone, let them know.

9 MS. JACKSON: That works.

10 THE COURT: You know what, tell them to
11 come back tomorrow at 10:00. If we don't need them,
12 we will call them.

13 We have Glenn Pratt.

14 THE BAILIFF: No answer. He didn't show
15 up.

16 THE COURT: What do you want to do with
17 him?

18 MR. DASKAS: Obviously, we submit a
19 challenge for cause. Whether his answer changes, remains
20 to be seen. I think it's sufficient to let him go.

21 THE COURT: He seems to have a hardship
22 with his wife and kids.

23 MS. JACKSON: I will submit it, Judge.

24 THE COURT: What about Eugene VanderHoof
25 that wasn't here?

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1 THE BAILIFF: We are waiting to see if he
2 shows up.

3 THE CLERK: Doris McLaughlin, badge 77.

4

5 VOIR DIRE EXAMINATION (Resumed)

6

7 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 77

8 THE COURT: Good morning, ma'am. How long
9 have you lived in Las Vegas, 17 years?

10 PROSPECTIVE JUROR NO. 77: Since '88.

11 THE COURT: What kind of work do you do?

12 PROSPECTIVE JUROR NO. 77: I am a waitress.
13 I work on tips.

14 THE COURT: Who do you work for?

15 PROSPECTIVE JUROR NO. 77: Palace Station.

16 THE COURT: Are you married?

17 PROSPECTIVE JUROR NO. 77: Yes.

18 THE COURT: What does your husband do?

19 PROSPECTIVE JUROR NO. 77: He works for
20 Weststar Credit Union.

21 THE COURT: You said your daughter was
22 arrested for writing a forged check?

23 PROSPECTIVE JUROR NO. 77: Yes. She was on
24 drugs.

25 THE COURT: What happened to her case?

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1 PROSPECTIVE JUROR NO. 77: It was
2 dismissed.
3 THE COURT: How long ago was that?
4 PROSPECTIVE JUROR NO. 77: Couple years
5 ago.
6 THE COURT: Is she still having a substance
7 abuse problem?
8 PROSPECTIVE JUROR NO. 77: No. She's
9 clean. She got her children back.
10 THE COURT: How many kids does she have?
11 PROSPECTIVE JUROR NO. 77: She has four.
12 THE COURT: You said, Black folks put your
13 daughter on drugs?
14 PROSPECTIVE JUROR NO. 77: She was going
15 with Black guys, and we never been raised around where I
16 am from -- I wasn't raised around Black people, Spanish,
17 nothing but whites.
18 We come to Vegas, that's when she
19 ended up getting put on drugs, kids taken away. We
20 supported one child for a year.
21 THE COURT: So how old was your daughter
22 when she came here, hanging out with Black guys?
23 PROSPECTIVE JUROR NO. 77: She is 33 now.
24 THE COURT: How old was she?
25 PROSPECTIVE JUROR NO. 77: She was 20 some

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1 years old.

2 THE COURT: She never went out with white

3 guys?

4 PROSPECTIVE JUROR NO. 77: No.

5 THE COURT: Her kids, are they mixed race?

6 PROSPECTIVE JUROR NO. 77: They are all

7 white. She went out with white guys. All the kids are

8 white. There are no mixtures in them.

9 THE COURT: So?

10 PROSPECTIVE JUROR NO. 77: After her fourth

11 one, I made her tie her tubes.

12 THE COURT: You blame her problems on Black

13 folks. Seems she already had problems with four kids, no

14 husband.

15 PROSPECTIVE JUROR NO. 77: Yeah.

16 THE COURT: You blame it still on Black

17 people? I don't think you can be fair. You don't trust

18 Black people.

19 PROSPECTIVE JUROR NO. 77: I don't trust

20 anybody that hurts my family.

21 THE COURT: Okay. You are excused, ma'am.

22 MR. STANTON: You weren't going to let me

23 traverse, your Honor?

24 THE COURT: I don't think there is anything

25 you can say to that one. I think that kid already had a

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1 few problems.

2 MR. DASKAS: You think?

3 MS. JACKSON: I think.

4 THE CLERK: Christopher Blonk, badge 84.

5

6 VOIR DIRE EXAMINATION (Resumed)

7

8 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 84

9 THE COURT: Mr. Blonk, you were in the

10 Marine Corps. for two years?

11 PROSPECTIVE JUROR NO. 84: Yes, sir.

12 THE COURT: Roommates, you have two of

13 them?

14 PROSPECTIVE JUROR NO. 84: Yes.

15 THE COURT: One is a Las Vegas Metropolitan

16 Police Department officer?

17 PROSPECTIVE JUROR NO. 84: Yes.

18 THE COURT: He or she?

19 PROSPECTIVE JUROR NO. 84: He, sir.

20 THE COURT: The other one works there.

21 What kind of work do you do, sir?

22 PROSPECTIVE JUROR NO. 84: I was an

23 insurance adjustor until Tuesday. I got laid off.

24 THE COURT: You were an insurance rep?

25 PROSPECTIVE JUROR NO. 84: Yes, sir, I was.

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1 THE COURT: You were a security officer at
2 a hotel for two and a half years?

3 PROSPECTIVE JUROR NO. 84: Yes, sir, the
4 Luxor.

5 THE COURT: This says you might recall
6 having discussed this case with some police officers?

7 PROSPECTIVE JUROR NO. 84: I thought so
8 when I filled it out. When I heard the brief on Tuesday,
9 I recognize the Defendant's name, one of the victim's
10 names, and Sutton's case. I don't know if I read about
11 it in the past or heard it on the news.

12 THE COURT: Detective Sutton?

13 PROSPECTIVE JUROR NO. 84: I remember his
14 name.

15 THE COURT: Is he a witness in this case?

16 MR. DASKAS: His name will be mentioned.
17 He will not hit the witness stand. It's Randy Sutton, if
18 that's the right person.

19 THE COURT: You know him, personally?

20 PROSPECTIVE JUROR NO. 84: No, just
21 recognize the name.

22 THE COURT: You recognize the victim's
23 names?

24 PROSPECTIVE JUROR NO. 84: Mowen.

25 THE COURT: Where from?

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1 PROSPECTIVE JUROR NO. 84: I remember the
2 case when it first came out. I recognize the last name
3 for that one, as soon as I saw Defendant's name. I
4 recognized that a long time ago.

5 THE COURT: Will that have any effect on
6 your ability to be fair and impartial in this case?

7 PROSPECTIVE JUROR NO. 84: No, sir.

8 THE COURT: Can you follow the Court's
9 instructions on the law?

10 PROSPECTIVE JUROR NO. 84: Yes.

11 THE COURT: Can you be fair and impartial?

12 PROSPECTIVE JUROR NO. 84: I believe I can.

13 THE COURT: You are considered for jury
14 duty in the penalty phase of the case. We are having a
15 trial on the penalty. We will have evidence, and you
16 will find from the State and Defense, and you will decide
17 on the appropriate punishment to impose, based upon the
18 facts and the law.

19 You have four possible punishments.
20 One, is the death penalty. One, is life imprisonment,
21 without parole. One is life imprisonment, with the
22 possibility of parole, or a definite period of time of 50
23 years, with the possibility of parole after 20 years.
24 This applies to each Count.

25 Each of the penalties are doubled

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1 because of the deadly weapon being used. Fifty is really
2 one hundred, and parole eligibility starts at forty
3 years.

4 Would you be able to consider all
5 four forms of punishment?

6 PROSPECTIVE JUROR NO. 84: I prefer not to.

7 THE COURT: What now?

8 PROSPECTIVE JUROR NO. 84: The capital
9 part, I don't know. The death penalty part, that would
10 be kind of a touchy subject in a way.

11 THE COURT: Why?

12 PROSPECTIVE JUROR NO. 84: I feel
13 uncomfortable making that decision.

14 THE COURT: I understand that. Nobody
15 feels comfortable, and most people don't want to, but
16 it's the law. You have to consider it. You never have
17 to impose it. The law never requires you to impose the
18 death penalty, but you can't be opposed to it to the
19 point you can't consider it.

20 The law envisions you will receive
21 all the information about the case, facts of the case,
22 the Defendant's background, and after you listen to the
23 facts of the case, listen to the State and Defense and
24 listen to the law, as I give it to you, to arrive at the
25 appropriate verdict, what you feel is appropriate,

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1 whether that be the death penalty, life in prison with or
2 without parole, or a set term of 50 years, eligibility
3 for parole after 20 years, plus doubling it because of
4 the deadly weapon.

5 The question is, are you morally,
6 religiously opposed to the death penalty, so you could
7 not under any circumstances impose it?

8 PROSPECTIVE JUROR NO. 84: In that case,
9 no.

10 THE COURT: Could you under some
11 circumstances impose a definite term of 50 years with
12 parole after 20, and/or life with or without the
13 possibility of parole?

14 PROSPECTIVE JUROR NO. 84: Yes, sir.

15 THE COURT: You may examine.

16
17 EXAMINATION BY THE STATE

18 BY MR. DASKAS:

19 Q Mr. Blonk, in your questionnaire, number 34
20 question asks your feelings about the death penalty. You
21 circled, a week or so ago, that you are generally in
22 favor of the deadly weapon.

23 Do you recall circling that?

24 A Yes.

25 Q What I hear you saying is something is a

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1 **little different. Would you explain it?**

2 A I think when it was, I didn't know it was
3 for the penalty phase. I figured once I was given all
4 the exact facts, I could make that decision. If I would
5 be given every exact fact to make that decision, as the
6 Judge clarified, if I were given those, then yes, I
7 could.

8 Q **As the Judge also said, a jury already**
9 **found this man guilty of four Counts of First Degree**
10 **Murder. Do you appreciate that?**

11 A (No audible response).

12 Q **We have heard about the presumption of**
13 **innocence, how the State has to prove the case beyond a**
14 **reasonable doubt. You understand in this case, that is**
15 **gone?**

16 A Yes.

17 Q **Are you comfortable under the facts that a**
18 **different jury convicted the Defendant? Can you accept**
19 **that?**

20 A To a point. I don't know if I could do it
21 to make it as the death penalty, itself. I would have to
22 know the facts myself and make my own decision and with
23 my own mind find beyond a reasonable doubt in my own mind
24 to proceed on the case.

25 Q **Let me put it this way. We will present**

THE STATE OF NEVADA v. JOHNSON

1 some of the facts of the quadruple homicide itself to the
2 jury. You would be instructed you would have to accept
3 the other jury's verdict. Are you more comfortable with
4 that?

5 A If I have been instructed to do so, yes.

6 Q I will stand over here. Let me ask you a
7 few more questions about the death penalty. You
8 understand there are no right or wrong answers here.

9 What we need are people who can
10 consider all the possible punishments. It wouldn't be
11 fair to the Defendant, if someone walked in,
12 automatically voted yes; it wouldn't be fair to us or the
13 victims of the family, if someone walked in, and
14 automatically voted for parole. Do you understand that?

15 A Yes.

16 Q Let's assume you are on the jury, provided
17 with all the facts of the case, bunch of the information
18 about the Defendant from State and Defense, in your mind
19 you feel it warrants the death penalty, can you -- do you
20 feel in your mind you can do that?

21 A If my mind warrants it, yes.

22 Q You are the foreperson of the jury, you
23 have the same vote. The difference is, as foreperson,
24 you have to sign the verdict form that puts this man to
25 death.

THE STATE OF NEVADA v. JOHNSON

1 If you are the foreperson, and if you
2 believe the State proved this case, could you sign the
3 verdict form?

4 A Yes, I could, if the rest of the jury
5 agreed.

6 Q One final item, as the Judge mentioned,
7 there are four First Degree Murder victims and
8 convictions in this case. You will impose punishment for
9 each murder case. You can impose a different penalty for
10 each murder.

11 Do you understand that?

12 A Will you repeat it?

13 Q Absolutely. Judge mentioned four possible
14 forms of punishment in this case. We have four victims
15 in this case. You don't have to impose the same
16 punishment for each victim. Do you understand that?

17 A Yes.

18 Q If the facts warrant, could you consider
19 different punishments for the different murder victims
20 and conditions?

21 A Yes.

22 MS. JACKSON: I, too, will stand over here.
23 I can sympathize with the Court Reporter.

24 ///
25 //

THE STATE OF NEVADA v. JOHNSON

1 EXAMINATION BY THE DEFENSE

2 BY MS. JACKSON:

3 Q You indicate you attended UNLV and have

4 some training in criminal justice. How much training do

5 you have?

6 A Two years, two and a half years.

7 Q Is that an undergraduate or graduate

8 degree?

9 A That's undergraduate.

10 Q This criminal justice degree you have --

11 A Don't have. I don't have it yet.

12 Q You are working on it?

13 A Working on it.

14 Q How many years of college have you had?

15 Let me back up a little bit.

16 A Five years. Okay.

17 Q The criminal justice study you have engaged

18 in gives you a better understanding about how the process

19 works.

20 Have you studied courses involving

21 the United States Constitution?

22 A I believe the last class I took was May

23 '99. So it's possible I did study something on the

24 Constitution.

25 Q Do you recall any of the information?

THE STATE OF NEVADA v. JOHNSON

1 A I do not.

2 Q Is there anything about your training, do
3 you remember anything, as you were going through the
4 courses, that made you biased or prejudiced one way or
5 another, for either side?

6 For example, if you were studying
7 criminal justice and you thought, I think defendants in
8 this country have too many rights, anything like that
9 ever formulate as an opinion of yours?

10 A I believe you are not guilty, until you
11 are -- innocent until proven guilty, may be you have
12 rights after being proven guilty -- maybe they have too
13 many rights then.

14 Q That's where we are in this case. You read
15 the synopsis?

16 A Yes.

17 Q We are telling you, even at this juncture,
18 you have to consider four possible forms of punishment.
19 He still has certain rights, thank God, and we will ask
20 you to respect those.

21 Are you saying you can do that?

22 A Yes, I can.

23 Q What rights -- you said a minute ago after
24 they are convicted, they have too many rights. Give me
25 an example what you mean by that.

THE STATE OF NEVADA v. JOHNSON

1 A Maybe some of the freedoms they have while
2 they are in jail, being able to study, being able to earn
3 an education in there, certain things like that.

4 I might be looking at it totally
5 wrong. Way I see things, taxpayers's money going toward
6 that could be used toward the -- could be used toward the
7 outside world.

8 Q We appreciate your speaking freely, and we
9 respect your opinions. They are yours. You have every
10 right to them. We appreciate your willingness to come in
11 and express them. You will not be criticized for that.

12 "Why should tax dollars be used to
13 keep someone alive, who has been found guilty of a
14 capital crime?" Do you remember writing that?

15 A Yes.

16 Q Right before you write that, you circle you
17 are in favor of the death penalty.

18 Your answer suggests that you feel
19 anyone convicted of murder should be convicted of death.
20 Doesn't that -- isn't that what your answer tends to
21 suggest?

22 A I guess it sounds like that. It was a
23 quick answer. I have had more time to think about it
24 since then. Maybe that's why I am thinking differently.

25 Q Fair enough. You live with a police

THE STATE OF NEVADA v. JOHNSON

1 officer, and you have a roommate studying criminal
2 justice. Roommate one has a B.A. in criminal justice.

3 Is that the person who is a police
4 officer?

5 A Yes.

6 Q How long has he been a police officer?

7 A Five years, sir.

8 Q Has he been your roommate the entire time?

9 A Four years.

10 Q Are you friends with your roommate?

11 A Friends for nearly six years now.

12 Q He is someone you like?

13 A Very good friend of mine.

14 Q This person puts his life on the line for
15 our safety?

16 A Correct.

17 Q What if you found, Mr. Blonk, after due
18 consideration of all the evidence that comes in,
19 in the case, in your heart, your firm opinion was, this
20 is not a case where death was warranted?

21 What would you say to your roommate
22 when you got home that evening?

23 A I wouldn't have to say anything to him. If
24 he didn't like my decision, that's too bad. I am the one
25 who had to make it, not him.

THE STATE OF NEVADA v. JOHNSON

1 Q Your roommate, the officer, do you talk
2 about his work with him?
3 A Yes, I do.
4 Q Is he involved on patrol? Do you know what
5 type of area?
6 A I know exactly where he is at.
7 Q He is street level?
8 A He is a field training officer now, back in
9 the Williams area, around F and Jackson, towards the
10 Downtown area.
11 Q Over towards the area of West Las Vegas?
12 A Correct. Just west of the I-15 and the 95,
13 MLK.
14 Q Do you discuss the types of cases he is
15 involved in, arresting suspects?
16 A All the time.
17 Q Does that include a high number of the
18 people involved in the drug trade or world?
19 A Anything he comes upon he thinks I will
20 find interesting, helpful in the future, because I want
21 to be on the police department, he tells me. I have done
22 plenty of ride-alongs with him.
23 Q You aspire to be an officer?
24 A Correct.
25 Q Don't you think that makes you a little

THE STATE OF NEVADA v. JOHNSON

1 **prone to lean towards law enforcement?**

2 A I knew that was coming. I am trying very
3 hard to maintain center balance and not lean to either
4 side that way.

5 I know what I am striving for in my
6 life, but I want to know if I get on the jury, I have
7 made the right decision.

8 **Q You have put on the questionnaire you were**
9 **a combat engineer in the Marines.**

10 A Heavy equipment operator.

11 **Q How long were you in the Marine Corps.?**

12 A On active duty, just over two years, and
13 put on the injury retirement list for another three,
14 until I was discharged.

15 **Q I have never been in the military. Most**
16 **people I have met who are Marines are very disciplined**
17 **and intolerant of people who are unable to control their**
18 **emotions, things like that.**

19 **Are you like that.**

20 A Yeah, I have to say that.

21 **Q Will that interfere with your ability to**
22 **listen to the evidence in this case?**

23 A I don't think so.

24 **Q Do you think that will affect your ability**
25 **to listen to mitigating childhood experiences?**

THE STATE OF NEVADA v. JOHNSON

1 Mitigation, legally, briefly, is
2 anything that would be a reason to give life, in this
3 case, a child who was abused, didn't have enough to eat,
4 was abandoned, anything of have nature.

5 I understand Marines are very
6 straight laced and tough, upright individuals. You think
7 you would be able to give those factors consideration
8 that the law requires you to?

9 A I believe. I am not in the Marine Corps.
10 anymore, and I have become much more civil.

11 MS. JACKSON: Mr. Blonk, thank you, sir.
12 It's a pleasure speaking with you.

13 THE COURT: Pass for cause.

14 MS. JACKSON: Yes, your Honor. Thank you.

15 THE COURT: Report back tomorrow at 10:00.
16 Thank you. We will let you know.

17 It is the Defense's turn for
18 peremptory challenge.

19 MS. JACKSON: We have determined to excuse
20 Juror 0025, Janet Robinson. She is in position 7, I
21 believe, your Honor.

22 THE COURT: You want to take a lunch break
23 now?

24 ///

25 //

THE STATE OF NEVADA v. JOHNSON

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MR. DASKAS: I think so.

THE COURT: Come back at 1:15.

* * * * *

(END OF MORNING

PROCEEDINGS, 12:11 A.M.)

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



KRISTINE MOORE, CCR 273

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DISTRICT COURT

CLARK COUNTY, NEVADA 2005 APR 22 A 8:41

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THE STATE OF NEVADA,)
)
 PLAINTIFF,)
)
 VS.) CASE NO.: C153154
)
 DONTÉ JOHNSON,)
)
 DEFENDANT.)

REPORTER'S TRANSCRIPT

OF

TRIAL BY JURY

(VOLUME III - P.M.)

BEFORE THE HONORABLE JUDGE LEE A. GATES
DISTRICT COURT JUDGE
DEPARTMENT VIII

DATED THURSDAY, APRIL 21, 2005

FOR THE PLAINTIFF: ROBERT J. DASKAS, ESQ.
DAVID STANTON, ESQ.
FOR THE DEFENDANT: ALZORA B. JACKSON, ESQ.
BRET WHIPPLE, ESQ.

REPORTED BY: SONIA L. RILEY, CCR NO. 727

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CLERK OF DISTRICT COURT

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

512

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I N D E X

PAGE

VOIR DIRE (RESUMED)

4

1 VOIR DIRE EXAMINATION (RESUMED)

2
3 **THE BAILIFF:** Be seated, come to order.
4 Court is again in session.

5 **THE COURT:** Who is next?
6 Shriver, Vanessa Shriver.

7
8 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR No. 95

9 **THE COURT:** Miss Shriver, you're from
10 California originally?

11 **PROSPECTIVE JUROR 95:** Yes.

12 **THE COURT:** How long have you been here --
13 approximately nine years?

14 **PROSPECTIVE JUROR:** Yes.

15 **THE COURT:** Are you married?

16 **PROSPECTIVE JUROR:** No.

17 **THE COURT:** Divorced?

18 **PROSPECTIVE JUROR:** No.

19 **THE COURT:** Never been married?

20 **PROSPECTIVE JUROR:** No.

21 **THE COURT:** But you have an adult
22 daughter?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** Where does she go to college?

25 **PROSPECTIVE JUROR:** Fullerton.

1 **THE COURT:** Pardon?
2 **PROSPECTIVE JUROR:** Fullerton.
3 **THE COURT:** Cal State Fullerton.
4 You don't remember hearing anything about
5 this case?
6 **PROSPECTIVE JUROR:** No.
7 **THE COURT:** What kind of work do you do,
8 ma'am?
9 **PROSPECTIVE JUROR:** Transportation, Levi
10 Strauss.
11 **THE COURT:** Are you a truck driver?
12 **PROSPECTIVE JUROR:** No. I work in the
13 office.
14 **THE COURT:** Have you ever served on a jury
15 before?
16 **PROSPECTIVE JUROR:** No.
17 **THE COURT:** Have you or anyone in your
18 family ever been charged with a crime before?
19 **PROSPECTIVE JUROR:** No.
20 **THE COURT:** Have you or anyone in your
21 family ever been the victim of a crime?
22 **PROSPECTIVE JUROR:** No.
23 **THE COURT:** Have you had any friends or
24 neighbors who have been the victim of a violent
25 crime?

1 **PROSPECTIVE JUROR:** No.

2 **THE COURT:** Now, you're being considered
3 for service on this jury here to consider the
4 penalty for the defendant Mr. Johnson there.

5 Do you understand that?

6 **PROSPECTIVE JUROR:** Yeah.

7 **THE COURT:** He's been convicted of four
8 counts of first-degree murder, so you'll have to
9 decide the appropriate punishment. The four choices
10 you will have are the death penalty, life
11 imprisonment without parole, life imprisonment with
12 the possibility of parole or for a definite term of
13 50 years with the possibility of parole after 20
14 years, and those are double if a deadly weapon is
15 used.

16 Do you understand that?

17 **PROSPECTIVE JUROR:** Sort of.

18 **THE COURT:** What do you mean "sort of"?
19 What do you have a question about?

20 **PROSPECTIVE JUROR:** To be honest with you,
21 I have a very weak stomach, and I can't really
22 listen or see any really graphic thing, because I
23 might just pass out. I just can't do it. I don't
24 really understand all the --

25 **THE COURT:** You don't think you understand

1 what now -- all the --

2 **PROSPECTIVE JUROR:** All the penalties.

3 **THE COURT:** There's four.

4 **PROSPECTIVE JUROR:** Yeah.

5 **THE COURT:** I just told you. You can
6 sentence a person to death, you and the fellow
7 jurors -- you can sentence him to life in prison
8 without the possibility of parole, you can sentence
9 him to life in prison with the possibility of
10 parole, and that would be after 40 years plus
11 another 40 years -- excuse me -- it will be after 40
12 years, because it's 20 years, and then it's double
13 for the use of a deadly weapon.

14 Do you understand that?

15 **PROSPECTIVE JUROR:** Okay.

16 **THE COURT:** Or you can sentence him to 50
17 years plus an additional 50 years for the use of a
18 deadly weapon, and he would be eligible for parole
19 after 40 years.

20 Do you understand that?

21 **PROSPECTIVE JUROR:** Yeah.

22 **THE COURT:** Are we clear? All right.

23 Now, are you opposed to the death penalty?

24 **PROSPECTIVE JUROR:** In a way I am, because
25 I don't know if I can sit through and hear

1 everything. I probably wouldn't pay attention
2 because I wouldn't want to hear it.

3 **THE COURT:** All right. You're excused.

4
5 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 97

6 **THE COURT:** Mr. Larson, how long have you
7 been in Las Vegas?

8 **PROSPECTIVE JUROR 97:** Seventeen years.

9 **THE COURT:** Seventeen years.

10 What part of the country did you grow up
11 in?

12 **PROSPECTIVE JUROR:** Southern California.

13 **THE COURT:** What kind of work do you do?

14 **PROSPECTIVE JUROR:** I'm an Exxon retailer.

15 **THE COURT:** What kind?

16 **PROSPECTIVE JUROR:** Exxon.

17 **THE COURT:** Oh, retailer.

18 **PROSPECTIVE JUROR:** Gas service and
19 automotive service center.

20 **THE COURT:** You've never been on a jury
21 before?

22 **PROSPECTIVE JUROR:** No.

23 **THE COURT:** You never worked for law
24 enforcement before?

25 **PROSPECTIVE JUROR:** No.

1 **THE COURT:** Do you recall hearing anything
2 about this case?

3 **PROSPECTIVE JUROR:** My daughter went to
4 school with one of the kids that was killed.

5 **THE COURT:** Okay.

6 Would that affect your ability to be fair
7 and impartial in this case?

8 **PROSPECTIVE JUROR:** I don't think so.

9 **THE COURT:** The fact that your daughter
10 knew the victim, that wouldn't cause you to be
11 biased or prejudiced against the defendant?

12 **PROSPECTIVE JUROR:** No.

13 **THE COURT:** What are your views on the
14 death penalty?

15 **PROSPECTIVE JUROR:** Well, that's a good
16 question. It would depend on the facts and
17 circumstances behind what was done. I'm not saying
18 I'm for it or really against it.

19 **THE COURT:** Well, first of all, the law
20 requires that you be able to consider all four forms
21 of punishment.

22 So, are you opposed to the death penalty?

23 **PROSPECTIVE JUROR:** No.

24 **THE COURT:** Do you think under some
25 circumstances you could impose the death penalty?

1 **PROSPECTIVE JUROR:** I think so, yes.

2 **THE COURT:** Now, for a person that's been
3 convicted of four counts of first-degree murder with
4 a deadly weapon, could you consider life in prison
5 without the possibility of parole?

6 **PROSPECTIVE JUROR:** Yes, I could.

7 **THE COURT:** Could you consider life in
8 prison with the possibility of parole?

9 **PROSPECTIVE JUROR:** Yes, sir.

10 **THE COURT:** Could you consider a definite
11 term of 50 years plus 50 years and parole
12 eligibility after 40 years? Of course, this is for
13 each count.

14 Do you understand that?

15 **PROSPECTIVE JUROR:** Yeah, depending on the
16 facts.

17 **THE COURT:** Right, right, right. Of
18 course, that's what you'll hear. You'll hear
19 testimony from the State, you'll hear testimony from
20 the defendant and his lawyers, witnesses and other
21 evidence and evidence in mitigation of punishment,
22 and you have to listen to all that evidence and
23 decide which is the appropriate verdict according to
24 the facts and the law.

25 Do you think you can do that?

1 **PROSPECTIVE JUROR:** Sure.

2 **THE COURT:** What we don't want is people
3 to come in -- it's all right to think it, but the
4 law requires that you have to be open to consider
5 all four forms of punishment. Some people think for
6 first-degree murder, there's only one punishment,
7 and that is the death penalty, an eye for an eye.

8 Of course, you understand that's not the
9 law?

10 **PROSPECTIVE JUROR:** Right.

11 **THE COURT:** And of course, some people
12 think that some people shouldn't -- life in prison
13 without parole is the worst punishment, and that's
14 the one that's most befitting, and they won't
15 consider life with the possibility of parole or the
16 death penalty. Some people think that a person
17 should not be in prison forever at the taxpayer's
18 expense, so they either think you should get the
19 death penalty or life with the possibility of
20 parole.

21 Do you have any of those views?

22 **PROSPECTIVE JUROR:** No, I'm not for either
23 one of them.

24 **THE COURT:** You can to listen to the
25 evidence and the facts and the circumstances before

1 you make a decision?

2 **PROSPECTIVE JUROR:** Right.

3 **THE COURT:** Okay.

4 State?

5 **MR. STANTON:** Thank you, your Honor.

6

7 EXAMINATION BY THE STATE

8 **BY MR. STANTON:**

9 Q Good afternoon, Mr. Larson.

10 A Hi.

11 Q The questionnaire that you filled out
12 about a week ago -- do you remember that?

13 A Yes.

14 Q There's a couple of questions that you
15 didn't answer, and I would like to raise them with
16 you briefly here.

17 One of the questions, No. 24, was what
18 your feelings about the criminal justice system are.

19 Do you have any strong feelings or
20 feelings about the system that we deal with in
21 criminal matters?

22 A No, I don't have any strong feelings.

23 Q Do you think it works well, poorly?

24 A I think it works well.

25 Q And you mentioned, I think to the Judge's

1 questions, no one either in your business or close
2 family members or friends have ever been a victim of
3 a crime.

4 A What do you mean "a victim of a crime"?
5 I've been burglarized.

6 Q That's precisely --

7 A My business has been broke into.

8 Q Was that here in Las Vegas?

9 A Yes.

10 Q As a result of those experiences, did
11 you -- being the victim of a crime, do you harbor
12 any resentment either for the State or for the
13 defense in this matter?

14 A No.

15 Q They're unrelated to that?

16 **THE COURT:** Have you ever been the victim
17 of a robbery, an armed robbery, your business?

18 **PROSPECTIVE JUROR:** No, never armed
19 robbery.

20 **THE COURT:** Okay.

21 **BY MR. STANTON:**

22 Q You said that as the Judge gave you the
23 four options that are potential punishments in this
24 case, your mind is open, as you sit here today, as
25 to those potential punishments possibly being

1 appropriate in this case?

2 A Um-hmm, yes.

3 Q What will happen in a penalty phase is
4 that evidence will be presented to you from the
5 State about the underlying murders and also will be
6 presented evidence by the defense in this case
7 before the matter is ultimately submitted to the
8 jury.

9 Do you understand how that process works
10 now, having heard a little bit more about what this
11 case is?

12 A Yes.

13 Q In this case, there is no guilt phase to
14 determine whether or not the defendant was guilty
15 beyond a reasonable doubt. He stands convicted by
16 another jury of four counts of first-degree murder.

17 Are you comfortable with that, being
18 instructed by the Court, that you have to respect
19 that other verdict? Are you comfortable in doing
20 that?

21 A Yes.

22 Q In this case, there are four victims, and
23 the punishment, as the jury has to find in this
24 case, is the appropriate and just punishment for
25 each one of the victims, that is, it can be

1 different as it relates to each victim depending on
2 the facts and circumstances.

3 Does that principle or idea bother you in
4 any way?

5 A No, it doesn't.

6 Q Now, there's no real direction or law that
7 gives direction to how a foreperson of the jury is
8 selected. That's up for the entire jury to
9 determine.

10 If, in this case, you're selected as the
11 foreperson, and after due deliberation to all the
12 facts and the law as Judge Gates will instruct you
13 in this matter, you and your fellow jurors believe
14 that the death penalty is the appropriate punishment
15 in this case, could you, sir, sign your name as the
16 foreperson to that verdict form that puts that man,
17 Donte Johnson, to death?

18 A Yes, I could.

19 **MR. STANTON:** Thank you.

20 Pass the prospective juror.

21 **MR. WHIPPLE:** Thank you, your Honor.

22

23 EXAMINATION BY THE DEFENSE

24 **BY MR. WHIPPLE:**

25 Q Good afternoon, Mr. Larson. My name is

1 Bret Whipple, and I want to visit with you for a few
2 moments, if I can. Again, I represent Mr. Johnson.
3 There are no right or wrong answers. I think that
4 was mentioned to you when you were in here a little
5 earlier; we just want to get a little background
6 about yourself.

7 How do you feel about sitting in judgment
8 of another human being?

9 A It's difficult. It's not an easy job.

10 Q Do you have children?

11 A Yes, I do.

12 Q How old are your children?

13 A My daughter is 25, and my son is 29.

14 Q And you've lived here 17 years.

15 Where are you from originally, if I might
16 ask?

17 A Southern California.

18 Q Vegas is obviously for you to do well.

19 A Yes.

20 Q When you say you're an Exxon retailer, you
21 own your own gas station?

22 A Right.

23 Q You obviously deal with the people.

24 Are you still in a situation where you
25 deal with the public yourself on a daily basis, or

1 are you kind of management at this point?

2 A I deal with them on a daily basis.

3 Q Okay.

4 Can I ask what side of town or what areas
5 of town?

6 A It's in Henderson.

7 Q Okay. Okay.

8 I want to ask you some questions to kind
9 of get to know a little bit more about yourself.

10 What kind of hobbies do you have, or if
11 you have free time, what type of things would you
12 like to do?

13 **MR. STANTON:** Your Honor, I'm going to
14 object to that question.

15 **THE COURT:** What was the question again?

16 **MR. STANTON:** He asked him what his
17 hobbies were.

18 **THE COURT:** Why would you object to that?

19 **MR. STANTON:** Because I don't know what
20 relevance it has to whether or not he can be a fair
21 and impartial juror, and we object on the grounds of
22 relevance.

23 **THE COURT:** It all depends. If he had a
24 hobby of sniping on people --

25 **MR. STANTON:** I don't know if that's a

1 hobby, your Honor.

2 **THE COURT:** For some people it might be a
3 hobby.

4 **MR. STANTON:** I think it's a little
5 overbroad and irrelevant.

6 **THE COURT:** Go on.

7 **MR. WHIPPLE:** Thank you, your Honor.

8 **BY MR. WHIPPLE:**

9 Q Mr. Larson, I'm trying to know a little
10 bit about your background and know where your coming
11 from a little bit. I don't mean to be prying or
12 invasive; I'm just kind of curious of what you do in
13 your free time if you have a hobby.

14 A Basically, my business is my hobby. Right
15 now it takes a lot of my time. There's not too much
16 free time.

17 Q I understand that.

18 Do you have an opinion with regard to the
19 death penalty?

20 A No.

21 Q Have you ever discussed it with anybody,
22 with, like, family members or other friends just
23 with regard to conversation?

24 A Well, I've talked to my wife about it.

25 Q In what context?

1 A What context? Just matters on the news.

2 Q Does your opinion seem to be different

3 from other people, or do you just kind of feel yours

4 is mainstream?

5 A Well, probably mainstream, neither for nor

6 against it.

7 Q Okay.

8 You know I've often heard that adage, "An

9 eye for an eye." It's kind of like asking the same

10 question twice. I'm curious about your position

11 with regard to the adage, "An eye for an eye."

12 A I'm not really for "an eye for an eye."

13 Like I said, it depends on the circumstances.

14 Q I understand.

15 I notice here -- did you attend or did you

16 go to college or the type of things you studied in

17 school?

18 A Yeah. I went to Owens School College. I

19 went there a year.

20 Q It's a community college, is it?

21 A Yeah, it's a community college.

22 Q You took general ed type classes?

23 A No; civil engineering.

24 Q Okay.

25 What stopped you from becoming a civil

1 engineer and choosing this other route?

2 A Well, I didn't have any money when I went
3 to college. It was difficult to go to college and
4 pay for it, and I've grown up around the automotive
5 business.

6 Q How is that?

7 A Well, my brother had a service station in
8 Newport Beach, California, and I've been around it
9 all my life, and I like it.

10 Q Now, you mentioned you would like to know
11 all the facts and circumstances. Can you tell me
12 what you mean by the "facts and circumstances" --
13 and let me just follow up on that, because in this
14 situation, it's not like watching TV where you have
15 a jury trial; this is an unusual situation compared
16 to what the general experience or expectation would
17 be. Mr. Johnson is convicted. He's not -- there's
18 no presumption of innocence. He is a convicted
19 killer. He has killed, and he's convicted of
20 killing four individuals of first-degree,
21 premeditated, deliberate murder. So, we have to now
22 have the opportunity to sit and make a decision as
23 to society and as to his future, and I need to be
24 able to ask these questions of you because it is
25 such a serious matter.

1 Knowing that he has been convicted of
2 killing four young adults who also happened to be
3 Caucasian, Hispanic, of first-degree, premeditated,
4 deliberate murder, could you consider a potential
5 life sentence?

6 A I don't know anything about the case,
7 where or how it was done or anything like that. All
8 I know is my daughter went to school with one of the
9 people. I couldn't even tell you the name of the
10 person, because she didn't tell me.

11 Q What school was it that they attended, do
12 you know?

13 A Green Valley High.

14 Q Do you know how close she was to this
15 individual?

16 A I don't know.

17 Q Did she ever sit down and talk to you
18 about this case at all?

19 A No.

20 Q Or is it something you learned in passing?

21 A No. I only learned of it a few days ago
22 when I told them I'm in jury service.

23 Q Oh, I see.

24 So, she never even mentioned it to you
25 prior to that?

1 A No, not to me.

2 Q While you've been waiting over the last
3 day or two, have you had a chance to visit with
4 anybody about this case or have there been any
5 discussions about what's going on in here?

6 A No.

7 Q You never heard anybody discussing what
8 their expectations are?

9 A No.

10 Q Your brother who owns a service station in
11 California, has he ever been victimized by an armed
12 robbery, do you know?

13 A No.

14 Q If, after going through all the facts and
15 circumstances that you would hear over a few days
16 and deliberating, knowing that Mr. Johnson has been
17 convicted of first-degree, premeditated, deliberate
18 murder -- and again, it's almost an execution type
19 style -- would you be able to, if you felt convinced
20 in your heart of hearts that he should deserve life
21 in prison or life with parole, could you do that?
22 Could you give him a life sentence?

23 A I think so.

24 Q When you say you think so --

25 A Well, if I believed in my heart, yes.

1 Q Do you think it would be difficult to
2 believe in your heart just knowing the facts as we
3 give them to you?

4 A Like I said, I don't know the facts, so
5 it's hard for me to answer that question.

6 Q Sure.

7 This is a hypothetical. I'm not talking
8 about this case right now, just talking if an
9 individual were convicted -- if we know for a fact
10 that a person killed four individuals, premeditated,
11 deliberate and cold-blooded, and they were
12 essentially tied up with their hands behind their
13 back and bound about their feet and laid in a room
14 and had a bullet put through the back of each one of
15 their head -- just knowing that, would it be
16 possible for you to consider a life sentence?

17 A It would be pretty hard. I don't think
18 so.

19 Q Okay. I need to follow through on that.
20 Why is that?

21 A Premeditated, planned out in advance
22 killing of four individuals -- I don't know what
23 these individuals did to this person, but that's
24 pretty bad.

25 Q Bound at the feet, bound behind the backs,

1 shot in the back of the head, bullet for each one of
2 them -- because of the number of them, it seems to
3 be more difficult to consider a potential life
4 sentence in that situation?

5 A Yes, it would be more difficult.

6 Q Do you think you could consider a life
7 sentence as you sit here today?

8 A I don't know.

9 **THE COURT:** I didn't hear that, sir.

10 **PROSPECTIVE JUROR:** I don't know if I
11 could or not.

12 **BY MR. WHIPPLE:**

13 Q I appreciate your honesty. There's no
14 trickery involved. We're not trying to put words in
15 your mouth; I just need to know, because this is a
16 difficult job, and it's not for everybody. We
17 deserve to know what you feel as much as you should
18 have an expectation as to what's going forward.

19 A I've never been under that having to make
20 a decision like that.

21 Q It's a very rare circumstance, it truly
22 is.

23 I want to talk with regard to some of the
24 facts and circumstances. Though you have mentioned
25 several times you would like to know the facts and

1 circumstances, there is no justification. There is
2 no excuse for murder.

3 A Right.

4 Q We're not offering any -- we're not trying
5 to say he's justified, we're not trying to say
6 what's right, but when it comes to the penalty and
7 trying to save the future of another human being,
8 Nevada law says that that person has a right to
9 present information about themselves, and if that
10 information is a reason for giving a life sentence
11 instead of death, that's known as "mitigation." If
12 you're asked to sit on this jury, you'll hear that
13 term, "mitigation." In fact, it was asked on
14 No. 38, and the question was, "In reaching a verdict
15 in this penalty phase, you must consider the
16 defendant's background, that is, mitigating
17 circumstances such as the defendant's health, mental
18 status, age, childhood experiences, education."

19 "Do you feel you would consider those
20 types of factors?" And you put, "Not sure."

21 I don't want to have to push you, but we
22 need to be able to know, because Nevada law requires
23 a person who would sit on this type of
24 decision-making process -- that they could consider
25 those types of factors. I can't go into it much

1 more than that.

2 Do you think that's something you could
3 consider? We've had a few minutes to talk. You've
4 mentioned facts and circumstances. What do you feel
5 about me asking you to be able to consider that type
6 of information?

7 A Sure, I could consider it.

8 Q Do you think it's important?

9 A Oh, yeah.

10 Q Do you think it's appropriate that I would
11 ask you to consider that type of information?

12 A Yes.

13 Q Why?

14 A Well, I would have to know the facts
15 behind what happened, you know. Like I said, I
16 don't know what happened. I don't know what the
17 whole story is.

18 Q Again, I don't want to belabor it, but the
19 fact -- there is no excuse. There is no
20 justification --

21 A I understand.

22 Q -- for first-degree, premeditated,
23 deliberate homicide. There's no justification or
24 excuse. All you're going to have an opportunity to
25 do is learn a little bit about the victims in this

1 case, some of their families and my client's
2 families and some of his background.

3 Do you think that's appropriate and can
4 you do that?

5 A Yeah.

6 Q Knowing these questions that I've asked
7 you, if you were sitting where I am now -- and you
8 know your state of mind -- do you think you would
9 favor the State over myself, or do you think that
10 you would be more prone to favor me over the State?
11 Only you know what you're thinking.

12 Should one of us be worried or nervous
13 about how you're thinking?

14 A I don't think so. I don't favor either
15 one.

16 Q Okay.

17 This is my last question, and I appreciate
18 your time. If, after viewing all of the mitigating
19 circumstances, the facts and circumstances, knowing
20 that Mr. Johnson is guilty of first-degree,
21 premeditated, deliberate murder on four young,
22 innocent lives -- if you felt it was appropriate to
23 give a life sentence, would you be able to stand up
24 and say and vote for life?

25 A Yes, if I felt it was appropriate.

1 **MR. WHIPPLE:** That's as much as I can ask.
2 I appreciate your time, sir.
3 Pass for cause, your Honor.
4 **THE COURT:** Okay.
5 Sir, we're going to have you come back
6 tomorrow at 10:00 a.m. Okay?
7 **PROSPECTIVE JUROR 97:** Sure.
8 **THE COURT:** We'll let you know tomorrow.
9 The State's third peremptory challenge.
10 **MR. DASKAS:** Judge, the State would
11 exercise its third peremptory challenge on Juror
12 No. 0007, Miss Austin in position No. 3.
13 **THE COURT:** Miss Austin. Okay.
14 What do you guys want to do with Rubin?
15 She's not here and she didn't show up. I don't know
16 if you want her anyway.
17 **MR. STANTON:** She didn't show up, your
18 Honor?
19 **THE COURT:** Well, she was here yesterday,
20 but --
21 **THE BAILIFF:** She was here the first day.
22 She had an anxiety attack.
23 **MR. STANTON:** Oh, she did?
24 **THE BAILIFF:** She had an anxiety attack
25 and ran down the hallway.

1 **MR. WHIPPLE:** I think we got out of this
2 lucky, your Honor.

3 **THE COURT:** She says she belongs to the
4 Paul Revere Society. What is that?

5 **MR. STANTON:** It's a group that believes
6 in kind of a mantra. It borders language, and she
7 wrote it. Actually, she uses the mantra in her
8 comments.

9 **THE COURT:** All it says is for borders,
10 language and culture, but what does that mean?

11 **MR. STANTON:** I can't say that it's
12 liberal or conservative; it's just a group that
13 believes in --

14 **THE COURT:** Not letting any immigrants in
15 and making sure they speak English or something?

16 **MR. STANTON:** Yeah, but they're not an
17 absolute close the borders off to everybody but much
18 more controlled. I would consider it probably
19 libertarian than I would consider it liberal or
20 conservative.

21 **THE COURT:** In No. 24 she says, "I'm
22 beyond unsatisfied with the system since the murder
23 of Terri Schiavo. I have no respect for the legal
24 system."

25 **MR. STANTON:** I would submit it to the

1 Court.

2 **MR. DASKAS:** Maybe she ran to close the
3 border.

4 **THE BAILIFF:** She came here with her
5 mother. Her mother was out there. I don't know why
6 she brought her.

7 **MR. STANTON:** I figure if she ran out of
8 the courtroom with an anxiety attack, this probably
9 isn't the case for her to deliberate on.

10 **THE COURT:** We'll just excuse her. It
11 says, "Terri Schiavo's murder makes me sick. I
12 cannot believe the court's have more power than
13 George W. Bush. I am also tired of the courts
14 trying to ban God left and right."

15 She seems like an angry young woman. she
16 probably wants to go to the Laughlin River Run like
17 that one guy.

18 **MR. DASKAS:** Yeah.

19 **THE COURT:** I don't know why you told me
20 that afterwards.

21 **MR. DASKAS:** "I got a meeting," he said.

22

23 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR 108

24 **THE COURT:** Mr. Estes (sic)?

25 **MR. STANTON:** It's Michael Krispli.

1 **THE COURT:** Krispli. I'm sorry. I got
2 you mixed up there.

3 How long have you been in Las Vegas, sir?

4 **PROSPECTIVE JUROR 108:** Almost two years.
5 It will be two years in July.

6 **THE COURT:** Where did you live before?

7 **PROSPECTIVE JUROR:** Youngstown, Ohio.

8 **THE COURT:** There are a lot of people in
9 gaming from Youngstown, Ohio. Why is that?

10 **PROSPECTIVE JUROR:** Have you ever been to
11 Youngstown, Ohio?

12 **THE COURT:** You said you had no friends in
13 the justice system.

14 What is your degree in?

15 **PROSPECTIVE JUROR:** Speech communications.

16 **THE COURT:** What's your job now?

17 **PROSPECTIVE JUROR:** Right now, I'm an
18 assistant shift manager at the Tropicana in the slot
19 department.

20 **THE COURT:** All right.

21 You said you were the victim of a robbery;
22 is that right?

23 **PROSPECTIVE JUROR:** In college, I was the
24 victim of a couple of robberies. I stayed off
25 campus.

1 **THE COURT:** This was in Kentucky?

2 **PROSPECTIVE JUROR:** At the time, I was in
3 Cincinnati, and I went to school at The University
4 of Cincinnati and I finished up at Northern Kentucky
5 which is right across the border.

6 **THE COURT:** Did they have a gun when they
7 robbed you or was it a strong arm robbery?

8 **PROSPECTIVE JUROR:** I wasn't home.

9 **THE COURT:** Huh?

10 **PROSPECTIVE JUROR:** I wasn't actually
11 home.

12 **THE COURT:** They broke into your house?

13 **PROSPECTIVE JUROR:** They broke into my
14 house.

15 **THE COURT:** A burglary. Robbery is when
16 they take something from you personally with the use
17 of a weapon or violent force from your person or in
18 your presence; so, you can remember that in the
19 future.

20 Can you follow the Court's instructions on
21 the law?

22 **PROSPECTIVE JUROR:** Yes, sir.

23 **THE COURT:** This is how this is going to
24 proceed. The parties will present evidence, and
25 after they present the evidence, I'll instruct you

1 on what the law is, and the jury will make their
2 decision.

3 As you know from reading the
4 questionnaire, the defendant has been convicted of
5 four counts of first-degree murder. The jury will
6 have to decide the penalty for each of those counts,
7 and the possible penalties are the death penalty,
8 life in prison without the possibility of parole,
9 life in prison with the possibility of parole or for
10 a definite term of 50 years with the possibility of
11 parole after 20 years. Now, these sentences are
12 doubled because a deadly weapon was used. So, it
13 would be 50 years plus a consecutive 50 years, which
14 means that if the jury gave him a definite term of
15 50 years, it would be for each of those counts. It
16 would be a hundred years for each count, and then he
17 would be eligible for parole after serving 40 years,
18 and it would be up to the Court whether or not they
19 would run concurrently or consecutively.

20 Do you understand?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** Could you consider all four
23 forms of punishment?

24 **PROSPECTIVE JUROR:** Yes, I believe so.

25 **THE COURT:** Do you have any moral or

1 religious objection to the death penalty?

2 **PROSPECTIVE JUROR:** No, sir.

3 **THE COURT:** State.

4 **MR. DASKAS:** Thank you, Judge.

5

6 EXAMINATION BY THE STATE

7 **BY MR. DASKAS:**

8 Q Mr. Krispli, the Judge mentioned the
9 defendant has already been convicted. Another jury
10 heard the evidence, listened to the questions and
11 arguments and decided beyond a reasonable doubt that
12 he was guilty of four counts of murder. If you're
13 selected as a juror, you have to accept that other
14 jury's verdict.

15 Do you feel like you can accept that other
16 jury's verdict?

17 A Yes.

18 Q Of course, your responsibility would be to
19 determine the appropriate punishment in this case.
20 Both sides will present evidence, as the Judge said.
21 What I want to talk to you about is I'm sure you,
22 like most people, may have had discussions about the
23 death penalty, but what we're talking about now is
24 the prospect of having to make that decision, and
25 it's a big decision. We appreciate that.

1 My question is this: If, after hearing
2 all the evidence and everything presented about this
3 man over here, the defendant, if you believe that
4 the death penalty is appropriate, do you think you
5 can impose that punishment?

6 A I think it would be difficult, but I think
7 I could.

8 Q And it should be difficult. We appreciate
9 that. It should be a very difficult decision.

10 The other thing I want to ask you this is
11 this: One among you of the 12 jurors will be
12 selected as the foreperson, and the foreperson has
13 the same vote as every other juror. You all have to
14 agree on the decision, but the foreperson has to
15 sign the verdict form that will put the defendant to
16 death.

17 If you're the foreperson, do you think you
18 could accept that additional responsibility to sign
19 the document that sentences somebody to death?

20 A If that's my role, I can do it.

21 Q Again, I'm assuming that you've heard the
22 evidence and you believe in your heart of hearts
23 that's the appropriate punishment?

24 A Absolutely, and if that's what I have to
25 do, then I have to do that.

1 Q The final area is as the Judge mentioned,
2 we're talking about four different murder
3 convictions in this case, and one of your roles is
4 to assign punishment to each of those murder
5 convictions. It may be that you and the other
6 jurors decide the punishment should be the same for
7 each murder, it may be that you should decide there
8 should be different punishments for each murder.

9 Do you think you can accept that
10 punishment as well?

11 A Yes, sir.

12 **MR. DASKAS:** Thank you, sir.

13 Judge, we pass the juror for cause.

14 **THE COURT:** Okay.

15 Defense.

16

17 EXAMINATION BY THE DEFENSE

18 **BY MS. JACKSON:**

19 Q Mr. Krispli, good afternoon, sir.

20 A Hi.

21 Q Knowing that this is a case where you're
22 going to have four victims, young men, you're going
23 to -- you're definitely going to see photographs --
24 they were executed -- bound and executed, and it's
25 going to be required of you to see pictures of that,

1 somewhat shocking pictures probably, times four. Of
2 course, you're also going to hear quite a bit about
3 my client, Donte Johnson, and it's difficult,
4 because you don't know what those things are yet,
5 but just knowing that alone, can you consider life
6 in this case?

7 A Yes.

8 Q In your estimation, sir, is life
9 imprisonment -- is that significant punishment?

10 A I've never spent any time in prison. I
11 think that life in prison is, in any sense, a
12 significant punishment.

13 Q Do you think it's a severe punishment?

14 A Yes, I do.

15 Q You will be instructed at the appropriate
16 time that you're to deliberate with your fellow
17 jurors, and after that deliberation, what if you
18 find yourself the only person who felt that, in your
19 heart of hearts, that life was the appropriate
20 verdict and you were asked to explain yourself to
21 the other 11, what would you say?

22 A If I believe that, I would stand by that
23 even if I was the only one. I mean, that's my duty.
24 If I'm selected, that's my role. If you have a
25 belief, you should at least share it with somebody

1 else, because everybody else has their beliefs, but
2 I want them to know what my opinion is. Whether
3 they agree with it or not, my opinion is my opinion.
4 I'm entitled to that.

5 Q You would respect their opinion, of
6 course?

7 A Absolutely.

8 Q And you would demand that they respect
9 yours?

10 A I would hope that they respect mine, but I
11 mean when you're dealing with somebody's life, I
12 think that everybody should hear somebody else's
13 opinion and be open to it.

14 Q Would you surrender your opinion just for
15 the sake of reaching a unanimous verdict, sir?

16 A No, sir -- no, ma'am. I'm sorry.

17 Q How would you feel if you deliberated over
18 a period of time and every juror has done their
19 best, deliberated, and just can't seem to reach a
20 verdict? How would you feel about that?

21 A I'm a little bit confused. If my opinion
22 was different from everybody else's --

23 Q That's a different question.

24 In order for my client to be killed, this
25 entire jury has to agree, all 12.

1 A Right.

2 Q One juror can give life and stop the
3 killing, but if the other 11 disagreed, that's
4 what's called a "Hung jury." What if that happened
5 to you if you were selected to sit on this jury, how
6 would you feel about that?

7 A I'd understand it. I mean, if you can't
8 come to a mutual agreement on it -- if somebody --
9 it would be difficult, because I realize how much
10 time it would take, but that's just the way it is.

11 Q If you were the sole holdout, would that
12 be a sufficient basis for you to surrender your
13 honest conviction --

14 A No.

15 Q -- just for the sake of reaching a
16 verdict?

17 A No.

18 Q Would you consider sentencing someone in
19 this situation for multiple first-degree,
20 cold-blooded homicides without considering any of
21 that person's background information?

22 A I think I would consider everything.

23 Q Do you have any thoughts about the
24 benefits of imposing a sentence of life in this
25 case? If you don't, that's fine.

1 A I don't know. No.

2 Q Do you have any thoughts about the
3 benefits of imposing a death sentence in this case?
4 If you don't have any thoughts, that's fine, sir.

5 A No, I don't.

6 **MS. JACKSON:** Thank you, Mr. Krispli.
7 Your Honor, we would pass Mr. Krispli for
8 cause.

9 **THE COURT:** Mr. Krispli -- that's an
10 unusual name. I haven't seen that one before,
11 K-R-I-S-P-L-I, right?

12 **PROSPECTIVE JUROR 108:** It's like the
13 adverb.

14 **THE COURT:** We're going to have you come
15 back tomorrow at 10:00 o'clock, and we'll let you
16 know.

17 **PROSPECTIVE JUROR 108:** Okay.

18 **THE COURT:** The defense may exercise their
19 third peremptory challenge.

20 **MS. JACKSON:** Thank you, your Honor. We
21 would thank and excuse Dr. Allen Anes, A-N-E-S.
22 That's number three for us, correct,
23 Judge?

24 **THE COURT:** Right. He's seated in No. --
25 Seat 12. His number is 039.

1 The next one is Estes, but the bailiff
2 informed me that Mr. Estes is not outside.
3 When were these two supposed to come in?
4 **THE BAILIFF:** This is the morning group.
5 The afternoon group is who we had at 1:30.
6 **THE COURT:** What about Estes?
7 **THE BAILIFF:** He didn't answer yesterday;
8 he didn't answer this morning.
9 **THE COURT:** He wasn't here the last two
10 days?
11 **THE BAILIFF:** He didn't answer in the last
12 couple of days. I'll call his name out and see if
13 he's there.
14 **THE COURT:** Who is next?
15 **THE BAILIFF:** Cynthia Armistead.
16
17 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 111
18 **THE COURT:** Armistead?
19 **PROSPECTIVE JUROR 111:** Armistead.
20 **THE COURT:** All right, Miss Armistead.
21 How long have you lived in Las Vegas,
22 ma'am?
23 **PROSPECTIVE JUROR:** Five years.
24 **THE COURT:** Are you a nurse?
25 **PROSPECTIVE JUROR:** Yes.

1 **THE COURT:** Where do you work?
2 **PROSPECTIVE JUROR:** Mountain View
3 Emergency Room."
4 **THE COURT:** You need to speak up louder.
5 **PROSPECTIVE JUROR:** Mountain View
6 Emergency Room.
7 **THE COURT:** Okay.
8 Are you married?
9 **PROSPECTIVE JUROR:** I am.
10 **THE COURT:** How is your husband employed?
11 **PROSPECTIVE JUROR:** He's a driver for a
12 limousine company.
13 **THE COURT:** You have one child?
14 **PROSPECTIVE JUROR:** One.
15 **THE COURT:** Have you or anyone in your
16 family ever been arrested for a crime or charged
17 with a crime?
18 **PROSPECTIVE JUROR:** Yes.
19 **THE COURT:** Who was that?
20 **PROSPECTIVE JUROR:** Relatives on my
21 father's side of the family.
22 **THE COURT:** Are they in Chicago?
23 **PROSPECTIVE JUROR:** Yes.
24 **THE COURT:** Were any of them charged with
25 a violent crime, like murder or anything like

1 that -- robbery?

2 **PROSPECTIVE JUROR:** I'm not sure what they
3 were charged with.

4 **THE COURT:** Are any of them in prison?

5 **PROSPECTIVE JUROR:** I think so.

6 **THE COURT:** Would that affect your ability
7 to be fair in this case?

8 **PROSPECTIVE JUROR:** No.

9 **THE COURT:** You're being considered for
10 jury duty in this case, and you're going to have to
11 decide the punishment.

12 Do you understand that?

13 **PROSPECTIVE JUROR:** I do.

14 **THE COURT:** The defendant has been
15 convicted of four counts of first-degree murder, and
16 there are four possible sentences. One is the death
17 penalty, one is life imprisonment without the
18 possibility of parole, one is life imprisonment with
19 the possibility of parole or for a definite term of
20 50 years with the possibility of parole after 20
21 years. Now, because a deadly weapon was used, these
22 sentences will be doubled.

23 Do you understand that?

24 **PROSPECTIVE JUROR:** I do.

25 **THE COURT:** The 50 years becomes a hundred

1 years -- 50 plus 50, and he will be eligible for
2 parole after 40 years, and this applies to each
3 count.

4 Do you understand that?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** Now, can you consider all four
7 forms of punishment?

8 **PROSPECTIVE JUROR:** Can I consider them?

9 **THE COURT:** Right.

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** Do you know what I mean by
12 that?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** You'll have to listen to the
15 evidence and the law and decide which punishment is
16 most appropriate for these crimes.

17 Do you think you can do that?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** What I want to know is -- some
20 people come in and they say, "I am opposed to the
21 death penalty. I can't impose it under any
22 circumstance."

23 Do you have that feeling?

24 **PROSPECTIVE JUROR:** No.

25 **THE COURT:** Some people say, "I can never

1 give life with the possibility of parole."

2 Do you have that feeling?

3 **PROSPECTIVE JUROR:** No.

4 **THE COURT:** You can consider them all and
5 decide which is the most appropriate, correct?

6 **PROSPECTIVE JUROR:** Right.

7 **THE COURT:** Looking at Question No. -- I
8 guess Question No. 33, it asks, "To what extent
9 should the mental status of a criminal defendant be
10 considered in a sentencing decision between life and
11 death?" I guess you said, "If a person has a
12 documented history of mental illness and not
13 substance abuse but mental illness."

14 Are you talking about the kind where a
15 person would be found not guilty by reason of
16 insanity?

17 **PROSPECTIVE JUROR:** Yes. I'm talking
18 about no substance abuse would play a part in.

19 **THE COURT:** First of all, the defendant --
20 there was no mental illness to the degree that would
21 render him not guilty because of insanity.

22 Do you understand that?

23 **PROSPECTIVE JUROR:** I do.

24 **THE COURT:** He was convicted of
25 first-degree murder, and if he was insane under the

1 law, he wouldn't have been convicted of first-degree
2 murder.

3 **PROSPECTIVE JUROR:** Yes.

4 **THE COURT:** They're allowed to present
5 evidence of mitigation which is the mental
6 condition, status, childhood background,
7 education -- all of that stuff for you to consider,
8 and you have to decide which are mitigators and
9 whether or not it outweighs the aggravators.

10 Do you understand?

11 **PROSPECTIVE JUROR:** I do.

12 **THE COURT:** In Question No. 38, you said
13 the only one you would consider is mental status.
14 You don't think that a person's childhood,
15 upbringing -- not in every situation, but depending
16 on the facts -- education, experience -- all of that
17 stuff should be considered?

18 **PROSPECTIVE JUROR:** I don't.

19 **THE COURT:** So, you would not consider any
20 other mitigation but mental status?

21 **PROSPECTIVE JUROR:** That's correct.

22 **THE COURT:** All right.

23 State.

24 **MR. STANTON:** Briefly, your Honor.

25 /////

1 EXAMINATION BY THE STATE

2 **BY MR. STANTON:**

3 Q This procedure involves mitigation
4 evidence, what we lawyers call as a "proceeding of
5 death," and that is the background, who the
6 defendant Donte Johnson is, where did he come from,
7 hearing from family members and other evidence
8 regarding that side.

9 Would you consider that important in
10 making a decision about whether or not -- what
11 punishment should be imposed by a jury in a case as
12 severe as this?

13 A No.

14 Q You don't think so?

15 A No.

16 Q I believe you said -- I believe you said
17 nothing other than mental status would be something
18 that you would consider at all?

19 A Correct.

20 **MR. STANTON:** I would submit it, your
21 Honor.

22 **MS. JACKSON:** Your Honor, may we inquire?

23 **THE COURT:** Yes.

24 //

25 //

1 EXAMINATION BY THE DEFENSE

2 **BY MS. JACKSON:**

3 Q Good day, Miss Armistead.

4 A Hi.

5 Q You're a nurse?

6 A Yes.

7 Q You're an RN?

8 A I am.

9 Q How long have you been an RN?

10 A Thirteen years.

11 Q Thirteen years.

12 It says here that you've had quite a few
13 courses that prepared you for your training
14 including psych courses, sociology courses and
15 things of that nature.

16 A Correct.

17 Q How long have you been over at Mountain
18 View?

19 A A year and a half.

20 Q I'm sorry?

21 A One-and-a-half years.

22 **THE COURT:** Approach the bench.

23 (Sidebar conference outside the presence
24 of the court reporter.)

25 / / / / /

1 **BY MS. JACKSON:**

2 Q Have you had any cases brought into the
3 emergency room with child abuse?

4 A Yes.

5 Q You've seen children who had not been
6 given enough to eat?

7 A Yes.

8 Q You believe that that affects a child's
9 development?

10 A I do.

11 Q And as a nurse, you recognize that could
12 affect their brain in their development?

13 A That's correct.

14 Q Those are the kinds of things that would
15 be considered mitigation.

16 Are you saying that you would not consider
17 someone as a child, perhaps the first five years of
18 their life, wouldn't receive adequate food, would
19 not, as a nurse, consider that?

20 A I'm not understanding you.

21 Q If someone -- we could show you that a
22 child from ages, say, zero to five didn't, say, have
23 enough food to eat --

24 A Okay.

25 Q -- you don't think you would want to

1 consider that before you decide if you want to kill
2 that person?

3 A What happened after -- you said zero to
4 five years?

5 Q Um-hmm. This is an example.

6 A Right. I understand that, but I'd need to
7 see what happened after the five years.

8 Q We will show you that.

9 A Okay.

10 Q Can you consider --

11 A I can consider anything.

12 Q -- that factor?

13 You said you can consider anything. Are
14 you going to give it a serious consideration?

15 A That's correct.

16 Q What other things would be important to
17 you in the way of mitigation?

18 A Such as --

19 Q You tell me. What would you like to know
20 about -- in this situation, you're being asked to
21 judge someone and decide if they're going to live or
22 die. Before you made that decision, what, if
23 anything, would you like to know about that person?

24 A The evidence that found the person guilty.

25 Q Well, that's already been determined,

1 because he's guilty times four. You're going to
2 decide if he lives or dies.

3 A How do I know what circumstances got them
4 to the guilty verdict? I know nothing. I'm just
5 going to come into a room and decide if a person --
6 am I correct in saying that I'm going to come into a
7 room and decide what the penalty is going to be
8 without knowing anything? I was under the
9 impression that we were going to be told some
10 things --

11 Q You will be.

12 A -- about the case.

13 **MS. JACKSON:** We would submit it, your
14 Honor.

15 **THE COURT:** Submit it? I have no motion
16 before me.

17 **MS. JACKSON:** The State submitted it, we
18 submit it. The challenge for cause regarding
19 mitigation -- we don't think she can consider
20 mitigation.

21 **THE COURT:** You need to say the magic
22 word.

23 Granted.

24 You're excused, ma'am.

25 **PROSPECTIVE JUROR 111:** Thank you.

1 **MR. DASKAS:** Can we state, just for the
2 record before we bring in the next juror, that I
3 don't know precisely what ethnicity this woman was?

4 **THE COURT:** She was black. What do you
5 mean you don't know what ethnicity she was?

6 **MR. DASKAS:** I don't know if she was
7 Puerto Rican or Cuban or Hispanic.

8 **THE COURT:** She was not Puerto Rican or
9 Hispanic.

10 **MR. DASKAS:** Well then, that's the record
11 we want to make, Judge. The defense challenged.

12 **THE COURT:** And then not only that, you
13 can be Puerto Rican and Hispanic and still be black.

14 **MR. DASKAS:** I understand, Judge. Nobody
15 made that inquiry. It was apparent to us she was a
16 minority and we submitted it, and then the defense
17 challenged for cause.

18 **THE COURT:** You were afraid to say she was
19 a black woman and excused by Miss Jackson?

20 **MR. DASKAS:** That's right, in anticipation
21 of some challenge down the road, Judge.

22
23 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 112

24 **THE COURT:** You're Miss Nesbit?

25 **PROSPECTIVE JUROR 112:** Yes, I am.

1 **THE COURT:** Good afternoon, Miss Nesbit.
2 **PROSPECTIVE JUROR:** Good afternoon.
3 **THE COURT:** You're from Albion, Michigan.
4 Where is Albion Michigan?
5 **PROSPECTIVE JUROR:** It's up by Battle
6 Creek, Michigan where Kelloggs and General Mills is.
7 **THE COURT:** I thought Kelloggs was in
8 Battle Creek.
9 **PROSPECTIVE JUROR:** General Motors is in
10 Kalamazoo -- in the same basic area.
11 **THE COURT:** And you went to Ferris State
12 up in Big Rapids?
13 **PROSPECTIVE JUROR:** That's correct.
14 **THE COURT:** What were you studying?
15 **PROSPECTIVE JUROR:** At that time, I was
16 studying to be the education teacher.
17 **THE COURT:** Then you took criminal justice
18 at one point?
19 **PROSPECTIVE JUROR:** Yes, because I was in
20 the Air Force for 20 years, and my job in the Air
21 Force, I was an investigator.
22 **THE COURT:** So, exactly what kind of stuff
23 did you have to investigate?
24 **PROSPECTIVE JUROR:** Rapes, child abuse,
25 drugs.

1 **THE COURT:** Okay.
2 You were stationed all over the United
3 States.
4 Did you go outside the country also?
5 **PROSPECTIVE JUROR:** Yes, I was outside.
6 Do you want to know where I was?
7 **THE COURT:** No, no.
8 **PROSPECTIVE JUROR:** Yes, I was overseas
9 also.
10 **THE COURT:** Your husband was also an
11 investigator?
12 **PROSPECTIVE JUROR:** Yes, he was.
13 **THE COURT:** Are you working now?
14 **PROSPECTIVE JUROR:** Yes. I work part-time
15 for an electrical contractor.
16 **THE COURT:** Okay.
17 Did you ever investigate any cases like
18 having to do with murder or any kind of battery or
19 assault?
20 **PROSPECTIVE JUROR:** I've investigated
21 child abuse cases and mostly unattended deaths to
22 determine whether they were suicide or not.
23 **THE COURT:** You testified in
24 court-martials and that sort of thing?
25 **PROSPECTIVE JUROR:** Yes, I have.

1 **THE COURT:** Now, you understand that
2 you're being considered for service on this jury
3 which will have to decide the penalty. Now, the
4 defendant has already been convicted of four counts
5 of first-degree murder.

6 Do you understand that?

7 **PROSPECTIVE JUROR:** Yes, I do.

8 **THE COURT:** What I want to know is can you
9 consider the four possible punishments that the
10 State of Nevada allows in this case, that is, the
11 death penalty, life in prison without the
12 possibility of parole, life in prison with the
13 possibility of parole or for a definite term of 50
14 years with the possibility of parole after 20 years
15 plus a consecutive 50 years with the possibility of
16 parole after 20 years because a deadly weapon was
17 used? What that means is because a deadly weapon
18 was used, these punishments are doubled, and these
19 are punishments for each count.

20 Do you understand that?

21 Could you consider all four punishments
22 and after listening to the evidence and the law and
23 the facts of the case, pick the most appropriate
24 one?

25 **PROSPECTIVE JUROR:** I believe so, yes.

1 **THE COURT:** Are there any here that you're
2 opposed to that you could not impose?

3 **PROSPECTIVE JUROR:** Not at this time
4 because I don't know the facts -- yeah, right now,
5 no.

6 **THE COURT:** There are four people who have
7 been killed.

8 **PROSPECTIVE JUROR:** Yes, I understand.

9 **THE COURT:** He's been convicted of four
10 counts of first-degree murder, and of course,
11 evidently, there was no self-defense or whatever,
12 because if it had been self-defense, he wouldn't
13 have been convicted of first-degree murder.

14 Do you understand? There's probably
15 nothing to justify it, so what you have to listen to
16 is the background information about the parties, the
17 people involved. You will also get the facts of
18 what happened in the case too, and you will hear
19 from both sides.

20 What I want to know is -- I'm not asking
21 you which one you would give, but some people think
22 for a murder, the only penalty that they could ever
23 impose would be the death penalty. Some people
24 believe that they could never impose life in prison
25 without parole, because they said it's costing

1 taxpayers money, and they don't believe in it, so
2 they would either give the death penalty or life
3 imprisonment with the possibility of parole, and
4 then there are some people who say they don't
5 believe people should even be considered for parole
6 no matter what their background is or whatever.

7 Do you hold any of those views?

8 **PROSPECTIVE JUROR:** I believe in the death
9 penalty, but I also believe the person should get
10 the penalty that's appropriate for whatever he's
11 done.

12 **THE COURT:** So, you can consider all four
13 of them --

14 **PROSPECTIVE JUROR:** Yes, I can.

15 **THE COURT:** -- based on the facts? All
16 right.

17 You can follow the Court's instructions on
18 the law?

19 **PROSPECTIVE JUROR:** I'm sorry?

20 **THE COURT:** You can follow the Court's
21 instructions on the law?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** And you can be fair and
24 impartial?

25 **PROSPECTIVE JUROR:** I believe so, yes.

1 **THE COURT:** State.

2 **MR. DASKAS:** Thank you, Judge.

3

4 EXAMINATION BY THE STATE

5 **BY MR. DASKAS:**

6 Q Mrs. Nesbit, good afternoon.

7 A Good afternoon.

8 Q Thank you for your patience.

9 You have obviously an extensive
10 investigative background. In this case if you're
11 selected, you would have -- you will be instructed
12 you will have to accept a previous jury's verdict.
13 You see my concern with your background? You would
14 want to know about the instruction itself.

15 Do you think you can follow the Court's
16 instruction when you -- the Judge says you have to
17 accept that verdict that's already been rendered?

18 A I believe so, yes.

19 Q We will give you the underlying facts in
20 the quadruple homicide.

21 Are you comfortable with that?

22 A Yes.

23 Q As you know, the Judge said this case is
24 now about punishment.

25 A Right.

1 Q You mentioned it's the appropriate answer.
2 You can't really tell us what you're going to
3 decide, because you don't know enough information
4 yet. That's true?

5 A That's true.

6 Q You want to know as much information about
7 the homicides themselves and the defendant himself
8 before you make that decision?

9 A That's correct.

10 Q You realize how important that is?

11 A Yes.

12 Q Let's assume that you've heard all that
13 evidence and that you're convinced after absorbing
14 all that information that this is the appropriate
15 punishment for the death penalty, can you impose
16 that punishment?

17 A I believe I can, yes.

18 **MR. DASKAS:** Thank you, ma'am.

19 Judge, we'll pass the prospective juror
20 for cause.

21 **THE COURT:** Defense Counsel.

22 **MS. JACKSON:** Thank you, your Honor.

23 /////

24 /////

25 /////

1 EXAMINATION BY THE DEFENSE

2 **BY MS. JACKSON:**

3 Q Good afternoon, Miss Nesbit.

4 A Good afternoon.

5 Q Ma'am, in your capacity as an investigator
6 for the United States Air Force, was that pretty
7 much law enforcement type work?

8 A No.

9 Q I'm sorry?

10 A You mean law -- the way for me to explain
11 to you what we do --

12 Q Please.

13 A In a sense, if you look at the local
14 police --

15 Q Yes, ma'am.

16 A -- then you have the federal, the FBI.

17 Q Yes, ma'am.

18 A On the base, you have your security
19 police, then you have the Air Force office, and Air
20 Force special agents are like the FBI, so that would
21 be kind of -- we would investigate the more serious
22 cases versus traffic. We don't do traffic
23 accidents, stuff like that.

24 Q Okay.

25 So, your findings were then brought back

1 to an agency that had the authority to court-martial
2 someone?

3 A We worked with the JAGs office, yes, but
4 we were the ones who prepared the reports and give
5 the report to the Staff Judge Advocate or to the US
6 Attorney if it was a joint investigation with the
7 Bureau.

8 Q So, on page 4, Question 19, it says, "Have
9 you ever been involved in a military court-martial?"
10 You indicate that, "Yes. I have testified as one of
11 the agents investigating the case and cases."

12 So, this would have been on the
13 prosecution end?

14 A Yes, that's correct.

15 Q All right.

16 That's a lot of years, and your husband
17 also did the same general type of work?

18 A Um-hmm.

19 Q That's a lot of years and combined
20 experience working in law enforcement.

21 Wouldn't you say that that would cause you
22 to identify more with the prosecution than the
23 defense in any type of court proceeding?

24 A That would be a fair statement, yes.

25 Q Should I be concerned about that? This is

1 a situation where we're going to be asking you -- as
2 a matter of fact, the law demands that you consider
3 all four possible forms of punishment.

4 Can you say in your heart of hearts that
5 you can fairly do that?

6 A I can, because when I investigate a case,
7 I investigate it. I didn't go looking for the
8 person to be guilty when I investigated it; I tried
9 to bring up the facts together and be as independent
10 as I could, and I would present the facts of the
11 case.

12 Q Did any of your investigations ever clear
13 anybody?

14 A Yes, they have.

15 Q Did you have to testify in that situation
16 or were charges not brought because of the
17 investigation?

18 A Charges were brought because of the
19 investigation.

20 Q How many times did it happen that you
21 think?

22 A Not that many times. It's really hard
23 because I have 17-and-a-half years. I can't
24 remember all the cases that I've worked.

25 Q How long has it been since you stopped

1 doing that?

2 A Nine years.

3 Q Nine years. Okay.

4 No. 24, when asked about your feelings of
5 the criminal justice system, you thought it worked
6 very well some of the time, but you thought high
7 profile cases may be an exception.

8 What did you mean by that?

9 A To me, the O.J. Simpson case I thought was
10 very high profile, and I thought the verdict should
11 have been guilty, personally, and I think if it's
12 high profile, a lot of -- what's the right word for
13 it -- I just think that they probably get a better
14 deal than other people do, maybe.

15 Q What about Scott Peterson? Wasn't that
16 high profile?

17 A I didn't want to follow that because I got
18 kind of bored with it.

19 Q Well, me too. O.J. really bored me, but
20 in terms of high profile.

21 A I think some people might have done it
22 because they had such a smart defense team they got
23 them out. That's what I'm saying; they were lucky
24 enough to afford someone to get them off.

25 Q So, it's economics really?

1 A Yeah.

2 Q I got you. Okay.

3 Donte Johnson has a Public Defender and a
4 former Public Defender. What do you think his
5 chances of getting a good defense are?

6 A I think he has a great chance.

7 Q You don't have any particular bias against
8 lawyers?

9 A No, I don't.

10 Q Certainly not female lawyers?

11 A Of course not.

12 Q Can you help me understand in No. 33 --
13 actually, I'm going to take 33 in tandem with 38,
14 because they basically kind of ask about the same
15 thing. Thirty-three asks you, "To what extent, if
16 any, mental status should be determined?" and your
17 answer was, "If the person is competent, it should
18 not be an issue."

19 Again, maybe before chatting with the
20 Judge and Mr. Stanton you didn't understand that
21 this is not a case where competency is an issue,
22 because we're already past that. He's been
23 convicted times four. What we're trying to ask you
24 centers more on question 38. In reaching a verdict
25 in this case, the law says that you need to consider

1 what we call "mitigators" -- if a child was abused,
2 if a person's parents used drugs -- things of that
3 nature -- things that our legislature has recognized
4 that maybe there are things that maybe we haven't
5 listed. Anything that you feel is a reason to give
6 life is, by law, mitigation. You may hear from the
7 defendant's mother and decide that you want her to
8 have a chance to visit with her son, and in your
9 estimation, that may be a reason to give life.

10 Now, are you open to considering those
11 things, because you checked on your questionnaire
12 "somewhat"? And the law says in the language that's
13 mandatory, that you must consider those things.

14 Can you do that?

15 A Yes, I can.

16 Q You think you have a pretty good
17 understanding of what mitigators are?

18 A Um-hmm.

19 Q I'll bet you do being an investigator for
20 all those years.

21 Have you ever heard the phrase, "The abuse
22 excuse" when it comes to why people commit certain
23 crimes?

24 A Um-hmm.

25 Q What does that mean to you?

1 A To me, it's an excuse, exactly what it
2 says.

3 Q And you recognize that Mr. Johnson stands
4 convicted here, so we're not offering any excuses?

5 A Right.

6 Q That this is different when you're asking
7 a juror to consider mitigation before deciding
8 someone's punishment.

9 A I agree with that.

10 Q Do you think that's probably a good idea,
11 to get to know all you can about a person before you
12 decide if they live or if they die?

13 A Of course.

14 Q And of course, you're going to hear a lot
15 about the State's case as well.

16 One final area. No. 13 says here, "Have
17 you had any courses or special training?" and you
18 indicated that you had basic investigation, crime
19 scene interrogations and advanced courses on serial
20 killers and sex deviants.

21 Can you share with me a wee bit about the
22 area on serial killers? What was that about?

23 A That was a program done by the FBI when
24 they told you as far as how to do profiling into
25 serial killers. It was the seminar that we went to.

1 Q Were you ever involved in the actual
2 profiling and assisting agencies?

3 A We sat down, and they showed us case
4 studies of what they've done with various serial
5 killers.

6 Q Were you ever personally involved in
7 helping to track down or profile a serial killer?

8 A No.

9 **MS. JACKSON:** Court's indulgence.

10 **BY MS. JACKSON:**

11 Q You mentioned the O.J. Simpson case.

12 A Um-hmm.

13 Q Do you think O.J. Simpson should have
14 received the death penalty?

15 A Not necessarily. I just think he should
16 have been found guilty. I didn't think anything
17 past that as far as what his sentence should be.

18 Q What do you think of the Old Testament
19 saying "An eye for an eye"?

20 A Tough question. Not literally an eye for
21 an eye.

22 Q Do you think the death penalty is used too
23 often, not enough, or do you have any opinion on
24 that in this country?

25 A I don't have an opinion whether it's used

1 too much or not enough.

2 Q You don't have an opinion either way?

3 A No, I do not.

4 Q Okay.

5 I don't think I have to ask you if you had
6 an opinion that differed from the other 11 jurors,
7 would you be able to stand by your own convictions.
8 I don't think anybody in the court would have a
9 question about that.

10 Thank you for your time, Miss Nesbit.

11 **MS. JACKSON:** We would pass for cause,
12 your Honor.

13 **THE COURT:** All right.

14 Ma'am, we're going to let you go now, but
15 you're going to have to come back tomorrow morning
16 at 10:00 o'clock, and we'll let you know.

17 **PROSPECTIVE JUROR 112:** Okay. Very good.

18 **THE COURT:** Thank you.

19 **PROSPECTIVE JUROR:** Thank you.

20 **THE COURT:** The State may exercise its
21 fourth peremptory challenge.

22 **MR. DASKAS:** Judge, the State will waive
23 its fourth peremptory challenge.

24 **THE COURT:** The defense may exercise its
25 fourth peremptory challenge.

1 **MS. JACKSON:** We will preempt Mr. Blonk,
2 084.

3 **THE COURT:** All right. He's in seat
4 No. 4.

5
6 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 113

7 **THE COURT:** Miss Miller.

8 **PROSPECTIVE JUROR 113:** Yes.

9 **THE COURT:** Where are you from originally?

10 **PROSPECTIVE JUROR:** Phoenix.

11 **THE COURT:** Phoenix?

12 **PROSPECTIVE JUROR:** Um-hmm.

13 **THE COURT:** What kind of work do you do?

14 **PROSPECTIVE JUROR:** I'm a staff
15 accountant.

16 **THE COURT:** For whom?

17 **PROSPECTIVE JUROR:** On Stage
18 Entertainment.

19 **THE COURT:** What kind of company is that?

20 **PROSPECTIVE JUROR:** They produce the
21 Legends in Concert's show at Imperial Palace.

22 **THE COURT:** Oh, okay.

23 Now, you went to -- let me know if I'm
24 pronouncing this correctly, Yav-va-pie (phonetic).

25 **PROSPECTIVE JUROR:** Yavapai.

1 **THE COURT:** That's not too far from here.
2 What's that that start with a P?
3 **PROSPECTIVE JUROR:** It's in Prescott.
4 **THE COURT:** Are you married, ma'am?
5 **PROSPECTIVE JUROR:** Yes, I am.
6 **THE COURT:** What kind of work does your
7 husband do?
8 **PROSPECTIVE JUROR:** He's a construction
9 drywaller.
10 **THE COURT:** You don't have any kids?
11 **PROSPECTIVE JUROR:** No.
12 **THE COURT:** Have you or anyone in your
13 family ever been charged with a crime? I think you
14 said yes -- no -- been convicted.
15 **PROSPECTIVE JUROR:** No.
16 **THE COURT:** Been the victim of a crime?
17 **PROSPECTIVE JUROR:** No.
18 **THE COURT:** You or your friends or family
19 never been the victim of a crime?
20 **PROSPECTIVE JUROR:** Oh, oh, I'm sorry, a
21 victim. I thought you said "convicted." Yes. My
22 car was stolen last year.
23 **THE COURT:** Any relatives or friends that
24 have been the victim of a violent crime, assault,
25 sexual assault, battery, attempt murder or anything

1 like that?

2 **PROSPECTIVE JUROR:** No.

3 **THE COURT:** How long have you been in
4 Las Vegas?

5 **PROSPECTIVE JUROR:** That is my eighth
6 year. It will be eight years in October.

7 **THE COURT:** Eight years. Okay.

8 Now, you understand that you're being
9 considered for possible jury duty in this trial
10 which is going to determine the penalty to be
11 imposed.

12 Do you understand that?

13 **PROSPECTIVE JUROR:** Right.

14 **THE COURT:** Do you understand that the
15 defendant has already been convicted of four counts
16 of first-degree murder?

17 **PROSPECTIVE JUROR:** Um-hmm.

18 **THE COURT:** You will have to decide the
19 punishment.

20 Do you understand there are four possible
21 punishments that you can impose -- the death
22 penalty, life in prison without parole, life in
23 prison with the possibility of parole or for a
24 definite term of 50 years plus a consecutive term of
25 50 years for the use of a deadly weapon and parole

1 possible after 40 years. This would apply to each
2 count these sentences range.

3 **PROSPECTIVE JUROR:** All right.

4 **THE COURT:** Could you consider all four
5 forms of punishment?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** Do you have any moral or
8 religious objection to the death penalty?

9 **PROSPECTIVE JUROR:** No.

10 **THE COURT:** Do you have any objection to
11 life imprisonment with the possibility of parole or
12 without parole?

13 **PROSPECTIVE JUROR:** No, I don't.

14 **THE COURT:** Could you consider a term of
15 50 years plus an additional term of 50 years for the
16 use of a deadly weapon?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** Of course, the State is going
19 to present evidence, the defense is going to present
20 evidence. You will have to look at the evidence,
21 the facts of the case and the law as I give it to
22 you and decide on the appropriate punishment.

23 Do you think you can do that?

24 **PROSPECTIVE JUROR:** Yes.

25 **THE COURT:** You can be fair to both sides?

1 **PROSPECTIVE JUROR:** Yes.

2 **THE COURT:** You're not biased or
3 prejudiced against the lawyers or anybody in this
4 case, are you?

5 **PROSPECTIVE JUROR:** No, I'm not.

6 **THE COURT:** You don't have your mind made
7 up, do you?

8 **PROSPECTIVE JUROR:** No, I don't.

9 **THE COURT:** If I remember right, you don't
10 know any facts about this case.

11 **PROSPECTIVE JUROR:** No. I remember when
12 that occurred. It was shortly after I moved here.

13 **THE COURT:** Like in '98 or something?

14 **PROSPECTIVE JUROR:** Yes.

15 **THE COURT:** Do you live out in that area?

16 **PROSPECTIVE JUROR:** No, I don't. I live
17 Sahara and Decatur.

18 **THE COURT:** Are you sure it's this case?

19 **PROSPECTIVE JUROR:** Pardon me?

20 **THE COURT:** Are you sure this is the case
21 you heard about?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** What makes you think that?

24 **PROSPECTIVE JUROR:** The street. When we
25 were in here the other day and you mentioned the

1 name of the street, and it tied it all together.

2 **THE COURT:** All right.

3 State.

4 **MR. STANTON:** Thank you, your Honor.

5

6 EXAMINATION BY THE STATE

7 **BY MR. STANTON:**

8 Q Thank you, Miss Miller, and thank you for
9 your patience.

10 Part of this process involves the fact
11 that another jury has determined the guilt in this
12 case and that the verdict that you know now by the
13 questions and questionnaire was that the defendant
14 was found guilty of four counts of first-degree
15 murder.

16 A Yes.

17 Q Are you comfortable knowing that you will
18 be instructed in this case that you have to abide
19 and respect that jury verdict as it relates to guilt
20 or innocence?

21 A Yes.

22 Q Strictly here now, what is the appropriate
23 and just punishment for Donte Johnson? That's what
24 the jury is being selected for.

25 Are you comfortable with that?

1 A Um-hmm.

2 Q The most crucial aspect that we want to
3 find as jurors is that they can be fair and
4 impartial and that they have no preconceived notions
5 about either the case or what they would select as
6 punishment.

7 My understanding from Judge Gates'
8 questions to you, all the sentencing options that
9 are required by law in a case such as this, you will
10 have an open mind as to all those?

11 A Yes, sir.

12 Q Would it be a fair statement, ma'am, that
13 you would wait until all the evidence has been
14 presented, the evidence presented by the State and
15 Mr. Johnson's counsel before you would make that
16 decision?

17 A Yes.

18 Q In this case, you will be provided with
19 facts and evidence regarding the initial quadruple
20 murders in this case. Some of that evidence will be
21 very graphic in nature. Knowing yourself, your
22 personality, your character, is that something that
23 you can do? While it may be uncomfortable, it is
24 still part of the job of a juror to look at it as
25 evidence.

1 Do you think you can do that?

2 A Yes, sir.

3 Q The indication in your questionnaire about
4 victims of crime, you said your car was stolen.

5 Was that here in Las Vegas?

6 A Yes.

7 Q As a result of that incident, do you
8 harbor any resentment either to law enforcement
9 authorities that investigated it or the District
10 Attorney's office in a negative way?

11 A No.

12 Q And the same thing as to Mr. Johnson's
13 defense team over there, as a result of that, you
14 wouldn't hold anything against them for that?

15 A No.

16 Q In this case, there are four victims, and
17 your duty and obligation as a juror is to determine
18 the just punishment as it relates to each one of
19 those victims, and it may be in your collective
20 judgment individually and with other jurors that the
21 punishment would be different for each victim. I'm
22 not saying that it is or will be, but that's a
23 possibility that you could do.

24 Are you comfortable with that concept?

25 A Um-hmm. Yes, sir.

1 Q The fact that in this case the death
2 penalty and life options are available to the jury,
3 there is a series of legal instructions that Judge
4 Gates would give you regarding mitigation evidence,
5 that which would suggest some punishment potentially
6 of less than death or less than the more severe life
7 alternatives.

8 Do you feel that you can comfortably
9 address that information and either accept or reject
10 it and then render a verdict?

11 A Yes.

12 Q Ma'am, there is a process which has little
13 or no instructions by the Court, and that is how a
14 foreperson is selected in a jury. That's totally up
15 to the jury themselves.

16 If you were selected the foreperson in
17 this case and after deliberate, careful -- careful
18 deliberation of all the facts and the instructions
19 involved, you yourself with your fellow jurors
20 conclude that the death penalty is appropriate and
21 you're the foreperson, ma'am, could you affix your
22 name to those verdict forms that puts the defendant
23 Donte Johnson to death?

24 A Yes, sir.

25 **MR. STANTON:** Thank you.

1 Pass the prospective juror.

2 **THE COURT:** Defense counsel.

3 **MR. WHIPPLE:** Thank you, your Honor.

4

5 EXAMINATION BY THE DEFENSE

6 **BY MR. WHIPPLE:**

7 Q Hi, Miss Miller, how are you?

8 A Fine.

9 Q Thanks for being here today.

10 I just want to follow up on some of the
11 questions Mr. Stanton has asked.

12 First of all, you know there are no right
13 or wrong answers, because we're just trying to find
14 a group of individuals that we think can sit fairly
15 here today, so we appreciate you speaking from your
16 heart.

17 Knowing what you know, do you have an
18 opinion at this point for the proper punishment for
19 Mr. Johnson?

20 A No, sir.

21 Q Why is that?

22 A Because I don't know the facts of the
23 case. I don't know the evidence.

24 Q Have you sat in judgment of another human
25 being before?

1 A No, I have not.

2 Q How do you feel about that, doing stuff
3 like that?

4 A It's something that -- I don't know; I'm
5 sort of anxious about -- anxiety.

6 Q Sure.

7 A But something that I know I can use a
8 level head on and be there.

9 Q In your employment, are you in a situation
10 where you pass judgment on other person's work
11 performance or their product or pass judgment on the
12 work that they performed?

13 A I have a person I supervise, but -- in
14 that sense, yes.

15 Q Do you have any problems with that type of
16 interaction?

17 A No.

18 Q I know you've been waiting patiently for a
19 couple of days.

20 Have you had a chance to talk about this
21 case at all to other persons out there?

22 A No, I haven't.

23 Q So, you have no expectations at this
24 point?

25 A Right.

1 Q It's going to be a very challenging
2 situation. You know when you watch TV, you always
3 get to see the guilt or innocence, and we have such
4 wonderful constitutional protection -- the
5 presumption of innocence. That's not going to apply
6 here. Mr. Johnson, my client, is a cold-blooded
7 killer. He's already been convicted by another
8 group of individuals.

9 A Right.

10 Q How do you feel about that?

11 A Well, I think it's wrong to be a
12 cold-blooded killer.

13 Q You're not going to find anybody that will
14 ever disagree with that, and we are not going to say
15 he was ever justified or excused or any type of
16 attempt to try to suggest that what he did was
17 right. We're here only to determine what the future
18 holds for Mr. Johnson. I need to ask you some
19 questions concerning, like, the death penalty.

20 Do you have an opinion with regard to the
21 death penalty?

22 A I'm in favor of it for certain situations,
23 yes.

24 Q Is that something you thought about?

25 A Yes.

1 Q When have you thought about it?

2 A Oh, for many years depending, you know,
3 like when you watch a trial or something.

4 Q Sure.

5 Who have you had these discussions with?

6 A My husband, usually.

7 Q And does he have the same opinion as you
8 or do yours differ from his?

9 A We're about the same, yes.

10 Q You said that it's appropriate in certain
11 circumstances.

12 What are those certain circumstances?

13 A I would say premeditated maybe or
14 something along that line that someone knows the
15 outcome before the situation arises.

16 Q Somebody that kind of lays and waits and
17 takes another person's life in anticipation?

18 A Yes.

19 Q Do you think that the death penalty should
20 always be in that situation or --

21 A No. Like I say, it's the evidence and
22 just the situation, the facts.

23 Q From my point of view, I will be asking
24 for a life sentence for Mr. Johnson, and there are
25 three separate life sentences that you have to be

1 able to consider. He's already been convicted of
2 killing four individuals. I need to know if you can
3 still be objective coming into this situation.

4 In this case, you're going to learn that
5 Mr. Johnson committed murder, four murders,
6 premeditated, deliberate, cold-blooded. Four
7 individuals were tied up with their hands behind
8 their back, with their face down in the carpet, with
9 their feet taped together, and each individual shot
10 through the back of the head, one by one. Knowing
11 nothing more, is it possible to consider a life
12 sentence in that situation?

13 **MR. STANTON:** Your Honor, I would object
14 to the form of the question, because it presupposes,
15 with nothing more, and that's not the process that
16 occurs here, and that's not the decision for any
17 juror in this case. So, the question is irrelevant,
18 and I would object to its form.

19 **THE COURT:** You'll have the chance to
20 question her and inform her of the facts that you
21 want to.

22 **PROSPECTIVE JUROR:** I would definitely
23 consider that.

24 **BY MR. WHIPPLE:**

25 Q I understand that. When you say you can

1 consider the death penalty or you could consider a
2 life sentence --

3 A Just from what you told me, I would be
4 leaning towards the death penalty.

5 Q I appreciate your honesty.

6 Could you consider a life sentence in that
7 situation?

8 A I'd have to hear everything.

9 Q I do appreciate that, because you're going
10 to hear -- if you're selected as a potential juror
11 in this case, you're going to hear -- you said, "I
12 would like to hear," and you will hear a lot. In
13 fact, Miss Jackson and I will be presenting
14 information to you that we call "mitigators." It's
15 a legal term. Another way to describe it is a
16 reason to give life over death.

17 A Okay.

18 Q In fact, there was a specific question
19 that addressed that. It was Question No. 38 that
20 basically just paraphrased what I just asked you,
21 and it says, are you willing to consider all
22 forms -- in fact, there's another one here that
23 says, "Do you feel you would consider these types of
24 factors?" You said, "Based on evidence and facts
25 and also the defendant's history."

1 What do you mean? Can you expand on that
2 just a little bit?

3 A I guess if they had maybe a previous -- I
4 don't know -- a previous conviction, maybe a
5 manslaughter or something -- you know, something
6 along the same line, but not the severity.

7 Q That wouldn't be mitigating; that would be
8 more reasons to probably give a more serious
9 penalty, wouldn't it?

10 A Um-hmm.

11 Q Have you ever heard of the term "Abuse
12 excuse"? Have you ever heard that?

13 A No, not really.

14 Q It's where people blame their problems on
15 their history.

16 A Okay.

17 Q And again, we're not doing that here,
18 because there is no justification, no excuse, but
19 just that term, "abuse excuse" and trying to blame
20 your problems on your past, do you have any feelings
21 on that?

22 A I think it might be justified in some
23 cases.

24 Q You might be willing to listen to that
25 type information?

1 A I would listen to it, sure.

2 Q Would you be able to consider it?

3 A Yes.

4 Q Why?

5 A Because it might be a factor.

6 Q Let me interrupt you for a second. One

7 reason is you have to -- under Nevada law, you do

8 have to be able to consider it.

9 A Okay.

10 Q What I want to know personally, why do you

11 think it's a factor? Why do you think it's worth

12 considering?

13 A It could be an explanation of a certain

14 behavior.

15 Q Again, not trying to justify or excuse,

16 but just talking about the future of an individual

17 where he will spend the rest of his life.

18 A Um-hmm.

19 Q You also received instructions from the

20 Court at some point that the death penalty is never

21 required. It's never required. In fact, those

22 issues that we call "mitigating circumstances" can

23 be something you can even explain. It could be

24 mercy, it could be something you just feel from the

25 heart. If you got in a situation where you had a

1 different opinion with regard to the future of
2 Mr. Johnson from other individual jurors that sit
3 with you, how would you handle that?

4 A I would explain where I'm coming from with
5 my -- what I believe and whatever -- let them know.

6 Q Do you consider yourself, like, a leader
7 or follower? If you were to graph yourself from one
8 end to the other, where would you put yourself on a
9 scale of one to ten?

10 A I would say eight towards leadership.

11 Q What happens if somebody disagreed with
12 you and they couldn't explain why they wanted to
13 give a life sentence over a death sentence, how
14 would you handle that?

15 A I'd have to -- I don't know. I would
16 probably maybe go into -- not an argument but a
17 point-versus-point type of thing.

18 Q Sure.

19 Do you understand in some situations it
20 may be just to respect a person's opinion why they
21 can't justify it, it's just a feeling that they
22 have?

23 A Um-hmm.

24 Q What do you think of that, just accept a
25 person and respect their opinion?

1 A I think they would have to review the
2 facts. I don't know.

3 Q If a person were just to verbalize --
4 couldn't verbalize it and said, "I just have this
5 feeling, it comes from my heart," could you respect
6 that?

7 A Oh, yes, I would respect it.

8 Q Why?

9 A Because it's their individual feelings.

10 Q Vice versa, if yours were different from,
11 say, 11 other individuals and you felt convinced
12 this was the right decision --

13 A I'd verbalize it.

14 Q -- you'd verbalize it?

15 A Sure.

16 Q Would you stand your ground?

17 A I would -- that's difficult to say.

18 **MR. WHIPPLE:** I understand. I thank you
19 for your time.

20 Your Honor, I pass for cause.

21 **THE COURT:** All right.

22 Ma'am, we're going to let you go for now.
23 Come back tomorrow at 10:00 a.m. All right?

24 **PROSPECTIVE JUROR 113:** Ten a.m.?

25 **THE COURT:** Right, downstairs.

1 The State may exercise their fifth
2 peremptory challenge.

3 **MR. DASKAS:** Judge, the State would waive
4 its fifth peremptory challenge.

5 **THE COURT:** All right.
6 The defense may exercise their fifth.
7 Do you guys want a few minutes to talk it
8 over?

9 **MS. JACKSON:** Yes, your Honor.

10 **THE COURT:** All right.

11 **MR. STANTON:** Your Honor, how long a
12 recess?

13 **THE COURT:** Five minutes.

14 **MR. STANTON:** Five minutes?

15 **THE COURT:** Yes.

16 **THE BAILIFF:** All rise.
17 (Recess taken.)

18 **THE COURT:** Who is next?

19 **MS. JACKSON:** We were going to exercise
20 what I believe would be our fifth challenge, Judge.

21 **THE COURT:** Who?

22 **MS. JACKSON:** It's going to be 004,
23 Mr. Parsons.

24 **THE COURT:** Okay, Seat No. 2, Juror No.
25 004. All right. Mr. Parsons, he's out.

1 Bring in the next one.

2

3 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 123

4 **THE COURT:** Mr. Acklin, you had to take
5 off and go to the doctor yesterday or the day
6 before?

7 **PROSPECTIVE JUROR 123:** Yes, sir. I
8 brought an excuse with me.

9 **THE COURT:** What's your problem?

10 **PROSPECTIVE JUROR:** I'm a disabled
11 veteran, and got a lot of medical problems. I'm
12 taking a lot of drugs.

13 **THE COURT:** You're on a lot of drugs now?

14 **PROSPECTIVE JUROR:** Yes, sir.

15 **THE COURT:** Do any of them alter your mind
16 or cause you not to be able to concentrate or stay
17 awake?

18 **PROSPECTIVE JUROR:** Yes, sir.

19 **THE COURT:** We'll excuse you. You can go.
20 Mr. George Story. Mr. Story said he don't
21 believe in the execution system.

22 Is he out there?

23 **THE BAILIFF:** No.

24 **THE COURT:** Issue an order to show cause
25 for Mr. Story.

1 Next is Mr. Love.

2

3 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 125

4 **THE COURT:** Mr. Love, David J. Love -- you
5 have to answer out loud.

6 **PROSPECTIVE JUROR 125:** Yes.

7 **THE COURT:** You've been in Las Vegas how
8 long?

9 **PROSPECTIVE JUROR:** Twenty-seven years.

10 **THE COURT:** So, born here?

11 **PROSPECTIVE JUROR:** Born and raised.

12 **THE COURT:** All right.

13 What kind of work do you do?

14 **PROSPECTIVE JUROR:** Craps dealer.

15 **THE COURT:** All right.

16 Are you married?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** What does your wife do?

19 **PROSPECTIVE JUROR:** Cocktails.

20 **THE COURT:** Is she going to school?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** She is.

23 What school is she going to?

24 **PROSPECTIVE JUROR:** UNLV.

25 **THE COURT:** Do you know what he's

1 studying?

2 **PROSPECTIVE JUROR:** Biology.

3 **THE COURT:** Biology.

4 What is she planning on doing with that?

5 **PROSPECTIVE JUROR:** Dental.

6 **THE COURT:** Dental hygienist or dental
7 school?

8 **PROSPECTIVE JUROR:** I'm not sure. She
9 hasn't finished all that yet.

10 **THE COURT:** You were in the U.S. Army?

11 **PROSPECTIVE JUROR:** Yes.

12 **THE COURT:** How long?

13 **PROSPECTIVE JUROR:** Four years.

14 **THE COURT:** Have you ever served on a jury
15 before?

16 **PROSPECTIVE JUROR:** No.

17 **THE COURT:** Did you ever work in security
18 in the Army or as an armored police?

19 **PROSPECTIVE JUROR:** Yes, military police
20 one year while I was stationed in Korea.

21 **THE COURT:** Now, you said you have a
22 sister that works in the justice system?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** What does she do?

25 **PROSPECTIVE JUROR:** She used to be a

1 homicide detective for Metro; now she's on the
2 street, just a sergeant patrol officer.

3 **THE COURT:** What's her name?

4 **PROSPECTIVE JUROR:** Debbie Love.

5 **THE COURT:** Debbie Love.

6 Who was arrested for domestic violence?

7 **PROSPECTIVE JUROR:** When? I was once.

8 **THE COURT:** How long ago?

9 **PROSPECTIVE JUROR:** Two years ago -- 2001.

10 **THE COURT:** Here, you said you have
11 friends of all different races and creeds.

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** And it wouldn't affect -- that
14 the defendant is black wouldn't have anything to do
15 with his race, but then you go and say "if the
16 victim was white and the defendant was black, it was
17 reverse discrimination."

18 **PROSPECTIVE JUROR:** By that I meant a few
19 years ago I had a friend that was in an incident and
20 he shot and killed a black man. He was a white
21 male, and fortunately couldn't live with the
22 consequences, and killed himself. And the paper
23 said "White Supremist kills black football star,"
24 and I just feel it was reverse discrimination. If
25 he was a white male and killed four black people, I

1 think it would be looked at differently.

2 **THE COURT:** You lost me here. You said
3 you had a friend, and he shot and killed -- is that
4 the guy who shot the black football player who was
5 with the Asian woman out at Drink?

6 **PROSPECTIVE JUROR:** Correct -- actually,
7 it was, yes.

8 **THE COURT:** Okay. Now, what were you
9 saying about that?

10 **PROSPECTIVE JUROR:** Just the way that the
11 press and things viewed that. I feel it's in my
12 opinion of what I refer to as reverse
13 discrimination.

14 **THE COURT:** How did the press handle that?

15 **PROSPECTIVE JUROR:** The headline was
16 "White Supremist killed a black football star." It
17 was nothing like that, he just happened to be a
18 white male that killed a black male.

19 **THE COURT:** I thought he killed her
20 because he was dating a -- was it a white or Asian
21 girl and he got mad?

22 **PROSPECTIVE JUROR:** No; that was the
23 media. I know the guy in person.

24 **THE COURT:** Why did they kill the guy?

25 **PROSPECTIVE JUROR:** From my understanding

1 it was a scuffle, he attempted to get his handgun,
2 and he grabbed the case from the guy, and it was a
3 shooting involved.

4 **THE COURT:** That's totally contrary to the
5 way the press and everybody and the police reported
6 it.

7 What's the reverse discrimination? What's
8 the other part you're talking about? I don't
9 understand.

10 **PROSPECTIVE JUROR:** I just feel things are
11 looked at the other way, it's not looked at it is an
12 issue like that. It's wrong. It's just how things
13 like that are viewed.

14 **THE COURT:** So, you don't think people
15 kill each other because of race?

16 **PROSPECTIVE JUROR:** I do, but it's not
17 always the case.

18 **THE COURT:** Okay.

19 **PROSPECTIVE JUROR:** I think if it's a
20 white male that kills a black male, it's
21 automatically first looked at in a racial point of
22 view, and unfortunately, that's the way I view
23 things.

24 **THE COURT:** You have this defendant here
25 who has been convicted of killing some white guys.

1 How do you look at it?

2 **PROSPECTIVE JUROR:** I don't know. An eye
3 for two eyes is how I was raised.

4 **MS. JACKSON:** I'm sorry, your Honor. What
5 was the last thing he said?

6 (The record was read.)

7 **PROSPECTIVE JUROR:** Oh, yeah.

8 **THE COURT:** Could you be fair in this
9 case?

10 **PROSPECTIVE JUROR:** I don't think so.

11 **THE COURT:** You're excused.

12 **MR. WHIPPLE:** Thank you, your Honor.

13

14 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 127

15 **THE COURT:** Miss Ritchie.

16 **PROSPECTIVE JUROR 127:** Yes.

17 **THE COURT:** From Evanston, Wyoming.
18 You've been here 16 years?

19 **PROSPECTIVE JUROR:** Yes.

20 **THE COURT:** You left Las Vegas to go to
21 school up in Utah?

22 **PROSPECTIVE JUROR:** Right.

23 **THE COURT:** Why did you do that?

24 **PROSPECTIVE JUROR:** I went to study civil
25 engineering. They had a good water program up

1 there.

2 **THE COURT:** Are you LDS?

3 **PROSPECTIVE JUROR:** Yes, I am.

4 **THE COURT:** So, did that have anything to
5 do with it?

6 **PROSPECTIVE JUROR:** No.

7 **THE COURT:** Were you still in school now?

8 **PROSPECTIVE JUROR:** I took a year -- I'm
9 taking a year off and working.

10 **THE COURT:** So, you're working on your
11 master's. Okay.

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** Are you working here?

14 **PROSPECTIVE JUROR:** Yes, I am.

15 **THE COURT:** Where are you working?

16 **PROSPECTIVE JUROR:** I work for a civil
17 engineering firm.

18 **THE COURT:** Which one?

19 **PROSPECTIVE JUROR:** G.C. Wallace.

20 **THE COURT:** G.C. Wallace. Okay.

21 Your husband -- what does he do?

22 **PROSPECTIVE JUROR:** He's a student right
23 now at UNLV.

24 **THE COURT:** What is he studying?

25 **PROSPECTIVE JUROR:** He's studying romantic

1 languages.

2 **THE COURT:** What is he going to do, get a
3 Ph.D. in that?

4 **PROSPECTIVE JUROR:** Actually, he's
5 planning to go work for the NSA.

6 **THE COURT:** The what now?

7 **PROSPECTIVE JUROR:** The National Security
8 Agency.

9 **THE COURT:** He wants to be a spy, huh?
10 Did he go to Utah State?

11 **PROSPECTIVE JUROR:** He did.

12 **THE COURT:** And he got his bachelor's in
13 what, computer science or something?

14 **PROSPECTIVE JUROR:** Actually, he didn't
15 finish his bachelor's, but he was studying computer
16 science, and he came to UNLV and he changed.

17 **THE COURT:** He's still working on his
18 bachelor's now?

19 **PROSPECTIVE JUROR:** Yes, he is.

20 **THE COURT:** Romantic language. Is he
21 taking Spanish or Latin?

22 **PROSPECTIVE JUROR:** He's taking Spanish,
23 Italian, French, Latin.

24 **THE COURT:** Did he ever go on a mission?

25 **PROSPECTIVE JUROR:** He did.

1 **THE COURT:** What country?
2 **PROSPECTIVE JUROR:** To Brazil.
3 **THE COURT:** He speaks Portuguese?
4 **PROSPECTIVE JUROR:** He does.
5 **THE COURT:** What foreign language do you
6 speak?
7 **PROSPECTIVE JUROR:** I know a little bit of
8 Spanish.
9 **THE COURT:** A little bit of Spanish?
10 **PROSPECTIVE JUROR:** Nothing fluent.
11 **THE COURT:** Okay.
12 You never had any courses in criminal
13 justice or anything like that?
14 **PROSPECTIVE JUROR:** No, I have not.
15 **THE COURT:** Now, on this Question No. 25,
16 you said you had family members who had been charged
17 with a crime.
18 **PROSPECTIVE JUROR:** Yes.
19 **THE COURT:** Who was that?
20 **PROSPECTIVE JUROR:** My uncle. He lives in
21 Idaho.
22 **THE COURT:** What was he charged with?
23 **PROSPECTIVE JUROR:** He robbed a church.
24 **THE COURT:** Robbed a church?
25 **PROSPECTIVE JUROR:** Yeah. He stole some

1 speakers and stereo equipment.

2 **THE COURT:** What kind of church was it?

3 It wasn't an LDS church, was it?

4 **PROSPECTIVE JUROR:** It was an LDS church.

5 **THE COURT:** Well, you know, that happens.

6 **PROSPECTIVE JUROR:** It does, it does.

7 **THE COURT:** And your house has been

8 burglarized; is that right?

9 **PROSPECTIVE JUROR:** Yes, it has.

10 **THE COURT:** Now, as you know from reading
11 the questionnaire, we're trying to pick a jury who
12 can hear this case and decide upon a penalty. Now,
13 the defendant has already been convicted of
14 first-degree murder with the use of a deadly weapon,
15 and you will have to decide the punishment according
16 to the laws of the State of Nevada, and the State of
17 Nevada law provides that you will decide from four
18 different forms, that is, the death penalty, life in
19 prison without the possibility of parole, life in
20 prison with the possibility of parole or for a
21 definite term of 50 years plus a consecutive term of
22 50 years for the use of a deadly weapon for a total
23 of a hundred years, and parole possible after 40
24 years has been served, and this applies for each
25 count.

1 Do you understand that so far?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** What I want to know is can you
4 consider all four forms of punishment?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** What I mean by that is -- like
7 some people, they only believe -- they believe in an
8 eye for an eye, and the only punishment that they
9 would consider would be the death penalty. Some
10 people don't believe that a person should ever be
11 sentenced to life without parole, because they said
12 it's cruel, plus, it cost the taxpayers a lot of
13 money. Some people say they could never consider
14 life with the possibility of parole.

15 Could you look at all four of them and
16 pick out the one that's most appropriate considering
17 the facts of the case, the background of the people
18 involved and the law and decide upon the most
19 appropriate one?

20 **PROSPECTIVE JUROR:** Yes, I could.

21 **THE COURT:** You never served on a jury
22 before?

23 **PROSPECTIVE JUROR:** No.

24 **THE COURT:** Do you have any relatives that
25 work in the legal profession or law enforcement?

1 **PROSPECTIVE JUROR:** No, I don't.
2 **THE COURT:** Can you be fair to both sides?
3 **PROSPECTIVE JUROR:** Yes.
4 **THE COURT:** Can you follow the Court's
5 instructions on the law?
6 **PROSPECTIVE JUROR:** Yes.
7 **THE COURT:** Can you be impartial and
8 unbiased?
9 **PROSPECTIVE JUROR:** Yes.
10 **THE COURT:** State.
11 **MR. STANTON:** Thank you, your Honor.
12
13 EXAMINATION BY THE STATE
14 **BY MR. STANTON:**
15 Q Good afternoon, Miss Ritchie.
16 A Good afternoon.
17 Q Thank you for your patience today.
18 A A series of questions I'm going to ask you
19 this afternoon is your ability to be fair and
20 impartial in this case. Basically, what we're
21 looking for is jurors who come in with no
22 preconceived notions about what the punishment
23 should be and will wait until all the evidence comes
24 in in rendering a just and fair verdict in this
25 case.

1 The first of that deals with your role in
2 this case, and that is the penalty phase only.
3 There's nothing about this case or our role as a
4 potential juror in this case that deals with the
5 determination of guilt or innocence. That's
6 previously been done by another jury.

7 The defendant, Donte Johnson, has been
8 convicted of four counts of first-degree murder.
9 The Judge will instruct you that you have to abide
10 by that previous jury's verdict.

11 Can you do that?

12 A Yes.

13 Q Even looking at what your role would be in
14 determining punishment?

15 A Yes.

16 Q Part of what you will hear from the
17 State's presentation of the facts in this case is
18 some of the underlying facts and circumstances
19 regarding the underlying quadruple murder in this
20 case. As part of that evidence, that evidence is
21 rather graphic in nature, very brutal. Your role as
22 a juror, while emotional and probably for most
23 compassionate people is distasteful, it's important
24 that you view that evidence with an eye as a juror,
25 that is, you look at that and determine as evidence

1 ultimately the issue that's before you, the just
2 punishment.

3 I don't know anything about you, but based
4 upon your knowledge of your own character, can you
5 look at that type of information and abide by your
6 function as a juror in this case to review it as
7 evidence?

8 A Yes, I would.

9 Q In addition, there are four different
10 victims that were killed in this case, and that your
11 job as a juror would be to determine the appropriate
12 and just punishment as it relates to each one of
13 those victims. It may be that your decision as it
14 relates to each one is the same or it might be that
15 it's different.

16 Does that cause you any problems, that
17 process?

18 A No.

19 Q You indicated that your family member that
20 was involved in the criminal justice system -- as a
21 result of it, have you formed any opinion both
22 either positive or negative about the system? What
23 I mean by that is do you harbor any feelings of
24 resentment towards either the police or the
25 prosecution about how they handled your uncle's

1 case?

2 A No.

3 Q Do you think he was treated fairly?

4 A I think he was.

5 Q And that was not here in Las Vegas?

6 A No; that was in Idaho.

7 Q Have you had much discussion about that
8 case or what occurred and the punishment with your
9 family?

10 A No. I mean, we talked about it at the
11 time, which was several years ago, so this was when
12 I was young.

13 Q Was he incarcerated as a result of this?

14 A He was.

15 Q Is he still serving time?

16 A No.

17 Q Do you have much contact with that uncle?

18 A Not too much.

19 Q Would your participation in this
20 proceeding cause you any difficulty in looking your
21 uncle in the eye at some time and telling him about
22 this case and telling him that you were involved in
23 the jury? Would that cause you any discomfort?

24 A No.

25 Q The questions in your answers about the

1 death penalty in the questionnaire -- I believe you
2 filled it out approximately a week or so ago -- you
3 indicated that you would consider the death penalty
4 in certain circumstances --

5 A Um-hmm.

6 Q -- is that correct?

7 A Yes.

8 Q Is that a feeling that you've had for a
9 period of time about the death penalty? Have you
10 thought about it for a while?

11 A It's something that I've thought about
12 whenever you hear cases about whenever the death
13 penalty is imposed.

14 Q Knowing that in this particular case the
15 defendant has been convicted of four counts of
16 first-degree murder, while that fact alone is a
17 basis to aggravate a case and you can use it as a
18 basis, you would keep your mind open for other
19 sentencing options and to listen to all the evidence
20 until it was formally given to you for deliberation?

21 A Yes, I would.

22 **MR. STANTON:** No further questions, your
23 Honor.

24 **THE COURT:** All right.

25 **MR. STANTON:** Pass the prospective juror.

1 **THE COURT:** Defense Counsel.

2 **MR. WHIPPLE:** Thank you, your Honor.

3

4 EXAMINATION BY THE DEFENSE

5 **BY MR. WHIPPLE:**

6 Q Hi Miss Ritchie. How are you?

7 A I'm doing all right.

8 Q Thank you for your time.

9 Miss Ritchie, when you received this jury
10 questionnaire about a week ago and you read through
11 it, what thoughts passed through your mind?

12 A Well, obviously, I thought, wow, that's a
13 murder case, and since I've taken that, a lot of
14 thoughts about how I feel about murder and what
15 should happen, because I know that there were the
16 four in the questionnaire -- it talks about the four
17 different penalties that are applied to that and
18 just how I felt about those.

19 Q Take me, if you would, just a little
20 farther through your thought process. I'm very
21 impressed. This really seems to be the genesis of a
22 lot of your thoughts.

23 What have you been thinking about since
24 that time?

25 A I just felt like I don't really know much

1 about what happened, so I couldn't make a decision
2 which way, but I know that if I did hear what
3 happened, that I would be able to make a decision in
4 that direction, whichever way it should go.

5 Q How do you feel about sitting in judgment
6 of another human being?

7 A I think it's a big responsibility.

8 Q Have you ever been in a situation where
9 you've done that before?

10 A No.

11 Q Have you had an opportunity to talk to any
12 of the folks, other jurors out there in the hall
13 about this particular case or what to expect or some
14 of the things you might be expecting?

15 A Not really. I try to kind of stay out of
16 that.

17 Q Is it fair to say there's some talking
18 about what this case is and what's going on?

19 A I don't think anybody really knows, but
20 just talking about it, just speculation.

21 Q Sure.

22 It asks -- one of the questions is media.
23 You left it blank.

24 I assume you're not familiar with this
25 case at all?

1 A No. I haven't heard anything about it,
2 and I watch the news a lot, that's why I was
3 surprised.

4 Q How long have you been here in Las Vegas?

5 A I think I put 16 years. I've lived here
6 since I was in elementary school.

7 Q What school did you go to, which high
8 school?

9 A I went through Basic High School.

10 Q I'm kind of surprised, because this did
11 catch a lot of media when this occurred.

12 You don't remember anything about that?

13 A No, I don't.

14 **THE COURT:** I have a question for you.

15 Were you out at Basic when I gave a speech
16 out there one day?

17 **PROSPECTIVE JUROR:** I don't know. I don't
18 recall. Maybe I wasn't there.

19 **MR. DASKAS:** Maybe she ditched that day.

20 **MS. JACKSON:** They knew you were coming.

21 **BY MR. WHIPPLE:**

22 Q There were some questions on the jury
23 questionnaire, and you actually scribbled some out.

24 A Because I misread it. I misread the
25 question, and my answer didn't make sense, because I

1 filled out the questionnaire, and I wanted to make
2 sure my answers were legit and correct, and I went
3 through and it didn't answer the question, so I
4 wanted to make sure that it was correct.

5 Q So, you double-checked your work?

6 A Yes, I did.

7 Q We really appreciate that.

8 The death penalty -- you spoke about it
9 briefly.

10 Do you have a decision with regard to the
11 death penalty, if it's used too much or not enough,
12 do you have any type of opinions that way?

13 A My opinion is I'm not against the death
14 penalty, but in order to be for it, I think there
15 has to be compelling evidence.

16 Q How about the old adage, "An eye for an
17 eye" -- do you agree with that old adage? Do you
18 agree with that eye for an eye?

19 A No, I don't agree with an eye for an eye.

20 Q Why not?

21 A It's Mosaic. It's guess it's Mosaic law.
22 It's old.

23 Q This is not like one of those TV shows
24 where -- you know, Perry Mason. This is not a
25 trial. My client, Mr. Johnson, is a cold-blooded

1 killer, and you are going to be asked to determine
2 what will the future entail for my client, so I need
3 to ask you some questions about that.

4 If a person has been convicted of
5 first-degree, cold-blooded, premeditated, deliberate
6 murder, could you consider a potential life
7 sentence?

8 A Yes, I could.

9 Q And in this particular case, we have an
10 individual who has been convicted. We're not trying
11 to justify, we're not here to excuse. It was a
12 terrible, terrible thing. There would be nobody
13 that disagrees with that, but he had four innocent
14 individuals who were bound with tape on their hands,
15 and their feet were bound together, and they were
16 laid on the floor, and they were shot through the
17 back of the head one by one. Knowing nothing more,
18 is it possible that you could consider a life
19 sentence in that situation?

20 A Yes.

21 Q You're going to hear at some point from
22 this Court -- he will give you instructions, and
23 some of those instructions will give you the fact
24 that a death penalty is never required, and other
25 instructions will talk about mitigation, and I'm

1 sure the State will talk to you about aggravation;
2 we'll talk to you about mitigation. Mitigation is
3 essentially any reason to choose life over death.
4 We, in fact, had some questions that were put in
5 here about mitigation, and you answered that -- I'm
6 going to paraphrase it. It says, "In reaching a
7 verdict in this penalty phase, you must consider the
8 defendant's background."

9 A Correct.

10 Q It is a must. The Nevada law requires
11 people in the penalty phase -- not the trial phase
12 but in the penalty phase -- individuals are willing
13 to look at all the facts and circumstances, and it
14 says, "that is, mitigating circumstances such as
15 defendant's health, mental status, age, childhood
16 experience," et cetera. And then it asked, "Do you
17 feel you would consider those types of factors?" and
18 you struck, "Very much."

19 Why did you strike "very much"? There
20 were four different options there.

21 A Well, I think your background has a lot to
22 do with how you act and conduct yourself throughout
23 your life, so you would have to consider maybe what
24 drove you to do something, to commit a heinous
25 crime.

1 Q There's that term "abuse excuse."

2 A That their parents abused them so they
3 continue that abuse cycle.

4 Q That could be the term, but people try to
5 blame their problems on the past.

6 A Okay.

7 Q They're refusing to accept accountability,
8 and we accept full accountability, I want to make
9 clear, but the term "abuse excuse" exists, and I'm
10 just curious if you've heard about it and if you
11 have any comments on it?

12 A I guess the way you explained it more
13 generalized, I have heard that people with their
14 background, they would blame it on something else or
15 someone caused them to do something.

16 Q How do you feel about that?

17 A Well, I think you have to be responsible
18 for the things that you do.

19 Q We would all agree with that.

20 Miss Ritchie, if you found yourself in a
21 situation where your opinion was different from
22 other individuals, how would you handle that in
23 general? Before you answer that, I'm going to ask a
24 second question, so consider it a compound question.

25 Do you consider yourself a leader or

1 follower, so it kind of mesh together?

2 A I think it always depends on the
3 situation. If you feel that your opinion is valid
4 and important, then you should make sure that you're
5 a leader with your opinion, but sometimes someone
6 else will have a better opinion, and in that case,
7 you should be the follower.

8 Q How do you make the determination if you
9 should be a leader or follower?

10 A You just have to decide how strong your
11 opinion is.

12 Q And I understand that.

13 One of the things I anticipate you need to
14 do is -- mitigation does not always have to be
15 verbalized. Simple things like mercy or a gut
16 feeling of choosing life over death is a mitigator.
17 Maybe sometimes one wouldn't be able to verbalize a
18 reason why she chose life over death.

19 How do you feel about that?

20 A Well, I feel you should respect everyone's
21 opinion.

22 Q What if others had a different opinion
23 than you on that issue?

24 A On respecting others' opinions?

25 Q Yes.

1 A I just think that's how it is sometimes,
2 people just may not agree with you.

3 Q Could you stand your ground and hold your
4 opinion if you felt convinced?

5 A Definitely, I would stand my ground.

6 **MR. WHIPPLE:** Miss Ritchie, I thank you
7 for your time. I have no further questions, and I
8 pass for cause, your Honor.

9 **THE COURT:** Thank you very much, ma'am.
10 We're going to have you come back tomorrow morning
11 at 10:00 a.m., and we'll let you know.

12 **PROSPECTIVE JUROR 127:** Ten a.m.?

13 **THE COURT:** Yes, downstairs.

14 At this time the State may exercise their
15 sixth peremptory challenge.

16 **MR. STANTON:** Can we have the Court's
17 indulgence for just a moment?

18 **THE COURT:** Yeah, I'll give you a few
19 minutes.

20 (Recess taken.)

21 **THE BAILIFF:** Remain seated, come to
22 order. Court is again in session.

23 **THE COURT:** State, have you decided on
24 your sixth peremptory challenge?

25 **MR. DASKAS:** Judge, we have. We would

1 exercise our sixth peremptory challenge on Juror
2 No. 046, Miss Finn seated in position No. 11, Judge.

3 **THE COURT:** All right, Miss Finn.

4 Who is next?

5

6 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 132

7 **THE COURT:** Mr. Gray?

8 **PROSPECTIVE JUROR 132:** Yes, sir.

9 **THE COURT:** I think you said you know
10 Miss Jackson?

11 **PROSPECTIVE JUROR:** Yes, sir.

12 **THE COURT:** Where do you know Miss Jackson
13 from?

14 **PROSPECTIVE JUROR:** Out of the triple
15 three right down the street.

16 **THE COURT:** Out of the what?

17 **PROSPECTIVE JUROR:** The 333 building. We
18 have a maintenance office on the bottom, she's up on
19 top.

20 **THE COURT:** Okay. You're down there now?

21 **PROSPECTIVE JUROR:** No. I'm down at
22 juvenile now.

23 **THE COURT:** How long have you -- which one
24 is 333?

25 **MS. JACKSON:** That's our building, your

1 Honor. It's right on the corner.

2 **THE COURT:** Is it a County building?

3 **MS. JACKSON:** It is, your Honor.

4 **THE COURT:** You work for the County?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** You work for the County

7 maintenance?

8 **PROSPECTIVE JUROR:** Yes.

9 **THE COURT:** So, now you work at the

10 juvenile facility?

11 **PROSPECTIVE JUROR:** Yes.

12 **THE COURT:** Okay.

13 So, you would see Miss Jackson when you

14 were at work?

15 **PROSPECTIVE JUROR:** Yes.

16 **THE COURT:** Is that going to cause you to

17 be biased towards her or against her?

18 **PROSPECTIVE JUROR:** No.

19 **THE COURT:** Now, you've been in Las Vegas

20 how long?

21 **PROSPECTIVE JUROR:** Thirty-two years.

22 **THE COURT:** Thirty-two years. Okay.

23 You went to high school here?

24 **PROSPECTIVE JUROR:** Yes.

25 **THE COURT:** How long have you been

1 employed with the County?

2 **PROSPECTIVE JUROR:** Sixteen years.

3 **THE COURT:** Are you married?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** Does your wife work outside

6 the home?

7 **PROSPECTIVE JUROR:** Yes.

8 **THE COURT:** What kind of work does she do?

9 **PROSPECTIVE JUROR:** She's with a financial

10 company.

11 **THE COURT:** Now, I believe in Question

12 No. 21, you said you have a brother who works in law

13 enforcement.

14 **PROSPECTIVE JUROR:** Yes. He works for the

15 school district.

16 **THE COURT:** What does he do for them?

17 **PROSPECTIVE JUROR:** Police officer.

18 **THE COURT:** School district policeman.

19 Okay.

20 And you were a juror about a year ago?

21 **PROSPECTIVE JUROR:** It's been several

22 years ago.

23 **THE COURT:** What kind of case was it?

24 **PROSPECTIVE JUROR:** It's been so long, I

25 don't even remember.

1 **THE COURT:** Was it in this building or the
2 federal building?

3 **PROSPECTIVE JUROR:** It was in this
4 building.

5 **THE COURT:** You don't remember who the
6 Judge was?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** Do you know if it was a
9 criminal case or civil?

10 **PROSPECTIVE JUROR:** I think it was
11 criminal.

12 **THE COURT:** The guy committed some kind of
13 crime?

14 **PROSPECTIVE JUROR:** Yes.

15 **THE COURT:** You don't remember what the
16 crime was?

17 **PROSPECTIVE JUROR:** No.

18 **THE COURT:** Were you the foreman of the
19 jury?

20 **PROSPECTIVE JUROR:** No.

21 **THE COURT:** Without telling us what your
22 verdict was, did you all reach a verdict?

23 **PROSPECTIVE JUROR:** Yes, we did.

24 **THE COURT:** Here in Question No. 24, the
25 question is, "What are your opinions and feelings

1 about how the criminal justice system works?" and
2 you stated, "It's okay but needs a little more
3 work."

4 What kind of more work does it need?

5 **PROSPECTIVE JUROR:** Well, some people get
6 off with the same crime and some people don't get
7 off with it. I mean, if you should do something and
8 I do the same thing and you get off and I don't, how
9 fair can that be?

10 **THE COURT:** You think there's a
11 discrepancy in how some people are treated?

12 **PROSPECTIVE JUROR:** Yeah.

13 **THE COURT:** What do you think needs to be
14 done?

15 **PROSPECTIVE JUROR:** Everybody need to be
16 treated fairly, equal, straight across the board.

17 **THE COURT:** Why do you think that happens,
18 that some people get off, some get punished?

19 **PROSPECTIVE JUROR:** I don't know. I've
20 been asking myself that for a long time.

21 **THE COURT:** Have you had any family
22 members or close friends who have been charged with
23 a crime?

24 **PROSPECTIVE JUROR:** Yes, but he's
25 deceased.

1 **THE COURT:** Who is that?

2 **PROSPECTIVE JUROR:** He's deceased now.

3 **THE COURT:** What was he, a cousin or

4 something?

5 **PROSPECTIVE JUROR:** He was a cousin.

6 **THE COURT:** Cousin.

7 Did he die of natural causes or was he

8 killed or what?

9 **PROSPECTIVE JUROR:** Natural causes.

10 **THE COURT:** What kind of crime was he

11 charged with?

12 **PROSPECTIVE JUROR:** Drugs and bail bonds.

13 **THE COURT:** Bail bonds?

14 **PROSPECTIVE JUROR:** Yeah. He was a bail

15 bondsman.

16 **THE COURT:** Are you related to Mr. Gray,

17 the electrician?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** What's your relationship to

20 Mr. Gray?

21 **PROSPECTIVE JUROR:** That's my uncle.

22 **THE COURT:** Now, Mr. Gray's son, is he in

23 jail?

24 **PROSPECTIVE JUROR:** No, he's -- well, I'm

25 not for sure. He was, but I'm not sure if he's

1 still in there.

2 **THE COURT:** Now, the one -- what was the
3 one's name that was the bail bondsman?

4 **PROSPECTIVE JUROR:** Gregory Gray.

5 **THE COURT:** Gregory.

6 How did he die?

7 **PROSPECTIVE JUROR:** He had a heart attack.

8 **THE COURT:** Heart attack.

9 Had he moved back to Las Vegas?

10 **PROSPECTIVE JUROR:** Yeah.

11 **THE COURT:** Tell me this here: Now, you
12 understand that this trial will be to decide on the
13 punishment. The defendant has already been
14 convicted of four counts of first-degree murder.

15 Do you understand that?

16 **PROSPECTIVE JUROR:** Um-hmm.

17 **THE COURT:** Is that a "yes"?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** So, the jury will have to
20 decide on the punishment. They will have four
21 choices -- the death penalty, life in prison without
22 parole, life in prison with the possibility of
23 parole or for a definite term of 50 years and parole
24 after 20 years. Of course, those punishments are
25 doubled because a deadly weapon was used. So, it

1 would be 50 years plus an additional consecutive 50
2 years for a total of a hundred years, and you would
3 be eligible for parole after 40 years.

4 Do you understand that that's the way it
5 operates?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** Would you be able to consider
8 all four forms of punishment?

9 **PROSPECTIVE JUROR:** Yes.

10 **THE COURT:** Do you have any objections,
11 moral or otherwise, to the death penalty?

12 **PROSPECTIVE JUROR:** No.

13 **THE COURT:** Could you impose a sentence of
14 life in prison with the possibility of parole if you
15 thought it was appropriate after you heard the facts
16 and the law?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** So, you're open to all four of
19 them?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** Can you be fair to both sides?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** Can you be fair to the State?

24 **PROSPECTIVE JUROR:** Yes.

25 **THE COURT:** You can be fair to the

1 defense?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** State.

4 **MR. DASKAS:** Thank you, Judge.

5

6 EXAMINATION BY THE STATE

7 **BY MR. DASKAS:**

8 Q Mr. Gray, thank you for your patience,
9 number one.

10 Secondly, as the Judge just alluded to, a
11 jury has already convicted this defendant of four
12 counts of first-degree murder.

13 You realize that?

14 A Um-hmm.

15 Q Would you have any problems accepting the
16 fact that another jury found him guilty, that that
17 would not be your decision?

18 A No.

19 Q You would accept that verdict?

20 A Yes.

21 Q One of your answers, you wrote -- it's
22 asking about the different racial backgrounds of the
23 defendants and the victim. You wrote, "It doesn't
24 matter, committed the crime, do the time."

25 A Yes.

1 Q Tell me why you wrote that.

2 A That's what it is, if you do the crime,
3 you do the time.

4 Q Regardless of the color of your skin?

5 A It don't matter.

6 Q There was another question that asked
7 whether you would consider the mental status, the
8 mental state of the defendant, whether that's
9 important to you in deciding punishment, and you
10 wrote, "there shouldn't be."

11 You don't think that's important in a
12 criminal case?

13 A No.

14 Q What about in deciding?

15 **THE COURT:** You got to answer out loud,
16 sir, because she has to take down what you said.

17 **PROSPECTIVE JUROR:** Okay.

18 **MR. DASKAS:** I heard him say no.

19 **BY MR. DASKAS:**

20 Q Did you say no?

21 A No.

22 Q How about in deciding punishment? In this
23 case, we're talking about possibly imposing the
24 death penalty.

25 Do you think it might be important to

1 consider someone's mental status in deciding
2 punishment?

3 A No.

4 Q One of your other answers -- it asks you
5 in the questionnaire about the different forms of
6 punishment, and you wrote, "It depends on the case."

7 What I understand that to mean is any one
8 of those might be appropriate depending on what you
9 hear?

10 A Right.

11 Q Is that how you feel?

12 A Right.

13 Q Could you base your decision on punishment
14 on both the facts of the case -- because we're going
15 to talk to you about how he committed these four
16 homicides -- and could you also base your decision
17 on that man's background?

18 A Yes.

19 Q Or do you think it's even important to
20 consider his background?

21 A Yes and no.

22 Q Tell me what you mean by that.

23 A It depends on how much evidence there is
24 against him. He might have a good background, he
25 might not have a good background, so it could go

1 either way.

2 Q I don't want to put words in your mouth,
3 but is it more important for you to base your
4 decision on punishment on the facts of the quadruple
5 homicide or on this man's background?

6 A On the homicide.

7 Q You know that he's already been convicted
8 of that homicide. He's already been found guilty
9 four times, four first-degree murders.

10 Does that mean you would automatically
11 vote for death?

12 A No.

13 Q What else would you want to consider?

14 A I probably would have to hear a little bit
15 more about it.

16 Q About the case itself?

17 A About the case itself to make that
18 determination.

19 Q That's fair.

20 You volunteered on day one that you know
21 Miss Jackson.

22 How often do you see Alzora?

23 A I used to see her a lot when I worked down
24 there.

25 Q Almost every day?

1 A Pretty much, once or twice a week.

2 Q Did you and Miss Jackson ever talk about
3 her cases or her clients that she represented?

4 A No.

5 Q Let's say for the sake of our discussion
6 that you're selected as a juror, okay, and you
7 listen to all the evidence and you listen to all the
8 information about this defendant's background and
9 that you believe this is the appropriate case where
10 the death penalty should be handed down.

11 Can you actually impose that punishment?
12 Can you vote for it?

13 A Yes.

14 Q Kind of a follow-up question to that.
15 Let's say that the other members of the jury want
16 you to be the foreperson. Okay? You have the same
17 vote as everybody else. You all have to agree on
18 the punishment, but the one thing you would have to
19 do as the foreperson is sign the verdict form that
20 sentences the defendant to death.

21 Do you feel like if you believe that's the
22 punishment that he deserves, you can sign that form
23 and sentence him to death?

24 A Yes.

25 **MR. DASKAS:** I appreciate it. Thank you.

1 Judge, we'll pass this juror for cause.

2 **THE COURT:** All right.

3 Counsel.

4 **MS. JACKSON:** Thank you.

5

6 EXAMINATION BY THE DEFENSE

7 **BY MS. JACKSON:**

8 Q Good afternoon, Mr. Gray. As a matter of
9 fact, have we ever had a conversation except to say
10 good morning, how are you doing?

11 A No.

12 Q I don't remember one either.

13 A No.

14 Q Is it fair to say we were just people who
15 worked in the same building?

16 A That's it.

17 Q That wouldn't impact your decision one way
18 or another in this case?

19 A Right.

20 Q The only area that concerns me a little
21 bit, Mr. Gray -- maybe the question is somewhat
22 overbroad.

23 No. 33 -- "To what extent should the
24 mental status of a criminal defendant be considered
25 in a sentencing decision between life and death?"

1 You were very emphatic with Mr. Daskas, "Not at
2 all."

3 Question No. 38, "In reaching a verdict,
4 you must consider the defendant's background,
5 mitigating circumstances such as the defendant's
6 health, mental status, age, childhood experience,
7 education." And then it says, "Do you feel you
8 would consider those types of factors?" and you say,
9 "very much." So, I don't know where you -- Question
10 34 probably -- 33, excuse me, is probably not a very
11 good question. We'll probably delete that one next
12 time, but did you realize it's kind of asking you
13 almost the same thing? As a matter of fact, they
14 put in No. 38, one of the factors as mitigation
15 could be mental status.

16 A I probably didn't really understand it.

17 Q It's not the best question in the world.

18 You still believe, as you sit here today,
19 just like you wanted to know more about the case --
20 you told Mr. Daskas that --

21 A Yes.

22 Q -- if you're going to decide if someone
23 lives or dies, it would also be important to you,
24 sir, to know as much as you could about that
25 person --

1 A Right.

2 Q -- before you decide if they live or die?

3 The law says that you must consider
4 mitigation, and mitigation could be any reason under
5 the sun to give life. As Mr. Daskas said, we're
6 here because we know that four innocent lives were
7 taken, and that's an aggravator.

8 Have you ever heard the phrase the "abuse
9 excuse"?

10 A Um-hmm, yes.

11 Q What does that mean in your understanding?

12 A Somebody is being abused and taking
13 advantage of and harassed. I don't use it.

14 Q In my line of work sometimes when people
15 are convicted of doing things, they will come to
16 court and they will say, "Well, I was abused as a
17 child, so that may explain why we're here." That's
18 the context I was referring to.

19 Have you ever heard it used in that
20 context?

21 A Yes.

22 Q What do you think about that, Mr. Gray?

23 A It would depend on who is abusing who. If
24 it's an adult abusing a child or kid or whatever --
25 basically, anybody that's being abused for no

1 apparent reason, they're not right.

2 Q That could affect a person's upbringing,
3 especially a child?

4 A Yeah, it could.

5 Q You are willing to consider those types of
6 factors?

7 A Yes.

8 Q Your jury experience before was so long
9 ago you don't remember anything about it. I
10 imagine, though -- I've been told by some jurors
11 that it can get rough in a jury room sometimes, that
12 people sometimes may disagree.

13 Is there anything about that experience
14 that you can remember that was unpleasant?

15 A No. We had a -- I was with a, pretty
16 much, older group. I was kind of young at the time.

17 Q I see.

18 A I didn't have no problems with no adults.

19 Q All right. Okay.

20 This is a very serious matter, life and
21 death. It just doesn't get any more serious with
22 that.

23 Would you agree with me?

24 A Yes.

25 Q If you were in the jury room, Mr. Gray,

1 and you heard the State's case and you feel
2 comfortable enough that you know enough about what
3 happened and then you hear what we have to say about
4 Mr. Johnson's background and you deliberated with
5 your fellow jurors, they all want to kill my client,
6 and after due deliberation, you feel that you, as a
7 juror, can give life, because one juror can do
8 that -- you will be instructed at the right time
9 that death is never required -- what would you do if
10 they insisted on you explaining or justifying your
11 position to them?

12 A I think we would have a long discussion,
13 because -- I mean, like you say, it would depend on
14 the case.

15 Q In my hypothetical, you've already
16 deliberated, you've heard their side, you've heard
17 our side. You've spoken with your other jurors,
18 you've fulfilled your duty as a citizen, and now you
19 come to the place in your own heart and your own
20 mind where you are convinced after everything that
21 this is a case for life but everybody else wants
22 death, would you change your vote just to get a
23 verdict?

24 A No.

25 Q What if they painted you into a corner and

1 insisted that you justify your verdict?

2 A No.

3 Q What would you do?

4 A Once my mind is set, it's set. Nothing is
5 going to change it.

6 Q You probably don't have much trouble with
7 people trying to push you around anyway.

8 A No.

9 **MS. JACKSON:** Thank you, sir.

10 We pass Mr. Gray for cause, your Honor.

11 **THE COURT:** Mr. Gray, we'll let you know
12 tomorrow at 10:00 o'clock. Report downstairs in the
13 jury room.

14 **PROSPECTIVE JUROR 132:** All right.

15 **THE COURT:** Ten o'clock in the morning.

16 Laura Kaplan is in the military and has a
17 temporary duty assignment, I believe -- something
18 like that.

19 **MS. JACKSON:** She says she's TDY in
20 Oklahoma.

21 **THE COURT:** We'll excuse her.

22 Who is next, Jimerson?

23 **THE BAILIFF:** Jimerson.

24 **MR. STANTON:** Judge, did you want to
25 exercise a challenge before we go with the next one?

1 **THE COURT:** Getting ahead of myself.
2 The defense may exercise its sixth
3 peremptory challenge.
4 **MS. JACKSON:** That would be Juror 112,
5 Robin Nesbit, and her position is No. 12.
6 **THE COURT:** No. 12?
7 **MS. JACKSON:** Yes, sir.
8
9 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 135
10 **THE COURT:** Miss Jimerson, how long have
11 you lived in Las Vegas?
12 **PROSPECTIVE JUROR 135:** All my life.
13 **THE COURT:** You came here -- I thought you
14 were born in Monroe?
15 **PROSPECTIVE JUROR:** Yeah, well I was a
16 baby when I came here.
17 **THE COURT:** Oh, were you?
18 **PROSPECTIVE JUROR:** Yeah.
19 **THE COURT:** Are you married?
20 **PROSPECTIVE JUROR:** Um-hmm.
21 **THE COURT:** How is your husband employed?
22 **PROSPECTIVE JUROR:** City of Las Vegas.
23 **THE COURT:** What does he do for them?
24 **PROSPECTIVE JUROR:** Maintenance worker.
25 **THE COURT:** What kind of work do you do,

1 ma'am?

2 **PROSPECTIVE JUROR:** Houseman porter at the

3 Riviera.

4 **THE COURT:** And you have one daughter?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** She's 12?

7 **PROSPECTIVE JUROR:** She's what?

8 **THE COURT:** She's an adult?

9 **PROSPECTIVE JUROR:** Yeah, she's an adult.

10 **THE COURT:** Where does she work?

11 **PROSPECTIVE JUROR:** She works for Bank of

12 America.

13 **THE COURT:** You've never been on a jury

14 before?

15 **PROSPECTIVE JUROR:** Yes.

16 **THE COURT:** You have been?

17 **PROSPECTIVE JUROR:** Um-hmm.

18 **THE COURT:** You weren't supposed to put

19 the verdict down that you reached.

20 How long ago was this?

21 **PROSPECTIVE JUROR:** I think it was three

22 years ago.

23 **THE COURT:** What kind of case was it?

24 **PROSPECTIVE JUROR:** Murder.

25 **THE COURT:** A murder case?

1 **PROSPECTIVE JUROR:** Um-hmm.

2 **THE COURT:** Mr. Daskas and Mr. Stanton

3 didn't try the case, did they, those D.A.s?

4 **PROSPECTIVE JUROR:** No.

5 **THE COURT:** Was Miss Jackson or

6 Mr. Whipple on the case?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** Were you the foreman of the

9 jury?

10 **PROSPECTIVE JUROR:** No.

11 **THE COURT:** Tell me this here: Was that a

12 death penalty case?

13 **PROSPECTIVE JUROR:** I don't remember.

14 **THE COURT:** You don't remember.

15 Did the jury sentence the defendant?

16 **PROSPECTIVE JUROR:** Excuse me?

17 **THE COURT:** Did you guys pronounce

18 sentence?

19 **PROSPECTIVE JUROR:** Yes.

20 **THE COURT:** This is a -- I understand the

21 jury in this case has already convicted the

22 defendant of four counts of first-degree murder.

23 Do you understand that?

24 **PROSPECTIVE JUROR:** Um-hmm.

25 **THE COURT:** Is that a "Yes"? You have to

1 answer "Yes."

2 **PROSPECTIVE JUROR:** Oh, yes.

3 **THE COURT:** This jury's job is you're
4 going to need to decide punishment. You understand
5 that you have four choices, the death penalty, life
6 in prison without parole, life in prison with the
7 possibility of parole or for a definite term of 50
8 years with the possibility of parole after 20, and
9 because a deadly weapon was used, these sentences
10 are doubled, so it would be a hundred years and
11 parole after 40.

12 Do you understand that?

13 **PROSPECTIVE JUROR:** I don't quite
14 understand what you're saying.

15 **THE COURT:** Okay.

16 There are four possible punishments for
17 first-degree murder.

18 Do you understand is that?

19 **PROSPECTIVE JUROR:** Um-hmm, yes.

20 **THE COURT:** One of them is the death
21 penalty. The jury can sentence the defendant to
22 death. The jury can sentence him to life in prison
23 without parole or they can sentence him to prison
24 with the possibility of parole or they can sentence
25 him to a definite term of 50 years. Now, because a

1 deadly weapon was used, the penalty is doubled.

2 Do you understand that?

3 **PROSPECTIVE JUROR:** Yes.

4 **THE COURT:** So, it would be -- you can
5 sentence him to death, you can sentence him to life
6 in prison without parole, life in prison with the
7 possibility of parole or for a hundred years and
8 parole after 40 years.

9 Do you understand that?

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** Now, what I want to know is,
12 do you have any objections, moral or religious or
13 otherwise to the death penalty?

14 **PROSPECTIVE JUROR:** No.

15 **THE COURT:** And could you consider in this
16 case the punishment of life in prison without
17 parole, life in prison with the possibility of
18 parole or for a definite term of a hundred years?

19 **PROSPECTIVE JUROR:** Yes.

20 **THE COURT:** You can consider that along
21 with the death penalty; is that right?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** You can listen to the
24 evidence, the facts of the case, listen to
25 background information about the people involved and

1 decide -- and of course, listen to the Court's
2 instructions on the law and decide on what's the
3 most appropriate punishment?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** You don't have any problems in
6 following the Court's instructions on the law?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** Are you biased or prejudiced
9 against either side for any reason?

10 **PROSPECTIVE JUROR:** No.

11 **THE COURT:** You could be fair and
12 impartial?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** Had you heard anything about
15 this case?

16 **PROSPECTIVE JUROR:** No.

17 **THE COURT:** State.

18 **MR. STANTON:** Thank you, your Honor.

19

20 EXAMINATION BY THE STATE

21 **BY MR. STANTON:**

22 Q Good afternoon, Miss Jimerson. Is it
23 correct to pronounce your name Jim-er-son
24 (phonetic)?

25 A Jim-er-son (phonetic).

1 Q Thank you for your patience today. I have
2 a couple of questions I'd like to ask you about the
3 questionnaire you filled out about a week ago.

4 A Yes.

5 Q There is a section in here or Question
6 No. 32 that said, "To what extent should the mental
7 status of a criminal defendant be considered in a
8 sentencing decision between life and death," and you
9 left that blank.

10 Can you give me an answer of what your
11 thoughts are to that question as you sit here today?

12 A No.

13 Q You don't know?

14 A Not really.

15 Q Do you consider -- would it be important
16 to you to know something about the mental status of
17 someone in determining punishment?

18 A Yes.

19 Q How important is that among the things
20 that you can think about as you sit here today? I
21 know you haven't heard the facts and you haven't
22 been instructed on the law, but how important is
23 that to you?

24 A It can be very important to the case.

25 Q Your answer about the death penalty is

1 that you've never thought about it?

2 A No, never thought about it.

3 Q You've never seen cases and didn't discuss
4 it, just never come up in conversation?

5 A No.

6 Q There was a Question No. 36, and it says,
7 "If you were convinced beyond a reasonable doubt
8 that the defendant was guilty of first-degree
9 murder, would you say that" -- and it gave you two
10 options or two questions underneath that. Your
11 first -- the first question was, "Your beliefs about
12 the death penalty are such that you would
13 automatically vote against the death penalty
14 regardless of the facts and circumstances of the
15 case," and you answered "Yes."

16 A Yes.

17 Q Is that your feeling as you sit here
18 today?

19 A Yes.

20 Q So, regardless of what was presented to
21 you, your vote would be against the death penalty?

22 A Yes.

23 Q And there's nothing that could change your
24 mind under any circumstances?

25 A No.

1 **MR. STANTON:** Your Honor.

2 **THE COURT:** Ma'am, I thought you just told
3 me that you weren't opposed to the death penalty?

4 **PROSPECTIVE JUROR:** I'm probably getting
5 confused.

6 **THE COURT:** What question was that,
7 counsel?

8 **MR. STANTON:** Your Honor, it was No. 36 on
9 page 7.

10 **THE COURT:** This is what I want to know
11 without regard to the question, because I can see
12 how you can get confused with that.

13 Are you against the death penalty?

14 **PROSPECTIVE JUROR:** Yes.

15 **THE COURT:** Are you against the death
16 penalty?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** So, you would not impose the
19 death penalty?

20 **PROSPECTIVE JUROR:** Yes -- well, no,
21 right? I'm so nervous.

22 **THE COURT:** There's nothing to being
23 nervous. I don't know. If you thought someone had
24 killed someone -- I can't put it like that.

25 Could you sentence someone to death?

1 **PROSPECTIVE JUROR:** No.
2 **THE COURT:** You could not?
3 **PROSPECTIVE JUROR:** No.
4 **THE COURT:** Under any circumstances?
5 **PROSPECTIVE JUROR:** No.
6 **THE COURT:** Counsel, you want to talk?
7 **MS. JACKSON:** Just a wee bit, if I may,
8 Judge.

9 **THE COURT:** Go on.

10

11 EXAMINATION BY THE DEFENSE

12 **BY MS. JACKSON:**

13 Q Hi, Miss Jimerson.

14 A Hello.

15 Q I know you're here, we're all looking at
16 you, you don't work here; we do. Just try to relax,
17 and there are no right or wrong answers, this really
18 is about how you feel, and all we need to know is
19 what you did on your questionnaire. You said that
20 if your beliefs are such that no matter what, that
21 you would always vote against the death penalty
22 which means that you cannot imagine no situation
23 that you could ever, ever, ever consider the death
24 penalty, but think about it, think about it.
25 Timothy McVeigh, he blew up all of those people in

1 Oklahoma, all of those babies, all of those innocent
2 people.

3 If you had been on that jury, wouldn't you
4 have voted along with those people to kill him?

5 A I don't know.

6 **MS. JACKSON:** I think that's my best shot,
7 your Honor.

8 **BY MS. JACKSON:**

9 Q You couldn't consider it?

10 **THE COURT:** You're excused. You can go.

11 **MS. JACKSON:** If she couldn't consider it
12 with Timmy, that's my best shot.

13 Thank you for coming in, ma'am.

14 **MR. STANTON:** Your Honor, for the record,
15 I believe it was the State's motion to excuse that
16 one.

17 **THE COURT:** Yes, it was.

18 Bring in the next one, Ana Lopez.

19 Issue an order to show cause.

20 **MR. WHIPPLE:** Judge, the next one, one of
21 the individuals -- Mr. Stam is one of those
22 individuals who was talking out in the hall about
23 the case. I don't know if there should be some
24 separate precautions or how this Court wants to
25 address it, but I was bringing it to your attention

1 that the one juror that spoke of people talking --
2 this was one of the individuals that was talking
3 about the case.

4 **THE COURT:** I thought he was one of the
5 ones that was doing the leading of the talking. He
6 said he was one of the ones who had heard about the
7 case.

8 **MR. WHIPPLE:** That's correct.

9 **THE COURT:** We'll bring him in and see.

10

11 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 164

12 **THE COURT:** Mr. Stam?

13 **PROSPECTIVE JUROR 164:** Yes.

14 **THE COURT:** A couple of things. Now, you
15 said that -- I understand that you had heard
16 something about this case?

17 **PROSPECTIVE JUROR:** That I had heard
18 something about it?

19 **THE COURT:** Yes.

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** What did you hear about this
22 case?

23 **PROSPECTIVE JUROR:** Well, my chief was one
24 of the homicide detectives on this case when he was
25 on the Metro Police Department, and I can't remember

1 an exact date, but I had saw something on the news
2 about it, and I had asked him because I knew he was
3 on homicide -- asked him about it, and he kind of
4 summarized a little bit about it.

5 **THE COURT:** Okay.

6 I understand there were some people out
7 there who were talking about this case?

8 **PROSPECTIVE JUROR:** Yeah. One of -- I was
9 sitting with Larry Parry, I guess is his last
10 name -- one of the ladies across -- I don't know her
11 name -- I know her badge number -- she was talking
12 about what she saw on the news the night before or
13 something like that or the day of when we were
14 sitting there, and she kind of summarized what she
15 saw on the news, and I turned to Larry, and I told
16 him that she need to keep her fat mouth shut or
17 something to that effect, because we don't have this
18 kind of time to just sit here for nothing,
19 especially if we all get dismissed because of this.
20 Somebody else is going to have to do this all over
21 again. So, I think we got up and moved or something
22 like that.

23 **THE COURT:** Okay.

24 Now, I'm going to go down here to question
25 No. 30, and it states, "Donte Johnson is an

1 African-American male. Is there anything about that
2 fact that would affect your ability to be fair and
3 impartial in this case?" and you said, "Yes.
4 Statistically, more African-American males commit
5 hate crimes than any other race."

6 Where did you get that from?

7 **PROSPECTIVE JUROR:** Well, where I'm from,
8 more -- the amount of African-American males in the
9 town where I'm from, statistically in that area were
10 more hate crimes.

11 **THE COURT:** Where are you from?

12 **PROSPECTIVE JUROR:** Marcola, Oregon, just
13 outside of Eugene/Springfield area.

14 **THE COURT:** They don't have very many
15 blacks in Oregon, one of the smallest numbers in the
16 country. I guess all of the ones that are there --

17 **PROSPECTIVE JUROR:** From all the --

18 **THE COURT:** I guess all of the ones that
19 are there --

20 **PROSPECTIVE JUROR:** -- statistics that
21 I've read up on, that's what it came to.

22 **THE COURT:** Would you be interested to
23 know that African-Americans are the number one group
24 who are the victims of hate crimes in this country?

25 **PROSPECTIVE JUROR:** Yes.

1 **THE COURT:** It dwarfs everybody else --
2 Jews, Asians, Hispanics, so your suggestion is kind
3 of wrong there. They are the victims. Not only
4 that -- hold on a minute.

5 On Question No. 30 -- also, do you know
6 what the African-American population is in Oregon?

7 **PROSPECTIVE JUROR:** No, I don't know.

8 **THE COURT:** One point nine percent, not
9 even as many as Arizona. That's just an aside.

10 The other question to follow up on that
11 says, "If the evidence shows that the victims in
12 this case are of a different racial background than
13 Donte Johnson, would that affect your ability to be
14 fair and impartial?" You go, "Yes. Race plays a
15 very big part in most hate crimes."

16 How do you know this is a hate crime?

17 **PROSPECTIVE JUROR:** Well, from the
18 information that my chief gave me, it was, more or
19 less -- I kind of gathered that it was a hate crime.

20 **THE COURT:** Of course, I don't know that.
21 I haven't heard the facts of the case myself, so I
22 don't know.

23 Approach the bench, Counsel.

24 (Sidebar conference outside the presence
25 of the court reporter.)

1 **THE COURT:** Mr. Stam, since you have
2 information that you talked to the police officer
3 and you have information a lot of other people don't
4 have, we're going to excuse you, sir.

5 **PROSPECTIVE JUROR:** Okay.

6 **THE COURT:** Thank you very much.

7 **THE CLERK:** Carlos Villareal is not here.

8 **THE COURT:** I'm going to issue an order to
9 show cause.

10

11 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 166

12 **THE COURT:** Miyoshi.

13 **PROSPECTIVE JUROR:** Me-yosh-shi.

14 **THE COURT:** Honolulu, Hawaii.

15 How long have you been in Las Vegas?

16 **PROSPECTIVE JUROR:** About a year and a
17 half.

18 **THE COURT:** So, you have a master's degree
19 from the University of Hawaii?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** And a bachelor's from Hawaii
22 too?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** They're both in speech?

25 **PROSPECTIVE JUROR:** Yes.

1 **THE COURT:** What kind of work do you do?
2 **PROSPECTIVE JUROR:** I work for a church.
3 **THE COURT:** Church.
4 You give speech lessens at the church?
5 What do you do at the church?
6 **PROSPECTIVE JUROR:** I'm a secretary.
7 **THE COURT:** Secretary.
8 Have you ever worked in the schools as a
9 speech pathologist or anything?
10 **PROSPECTIVE JUROR:** No.
11 **THE COURT:** Why didn't you go into that
12 field? What were you planning on doing?
13 **PROSPECTIVE JUROR:** Speech communications.
14 **THE COURT:** What were you going to do with
15 it?
16 **PROSPECTIVE JUROR:** Eventually, I wanted
17 to be a lecturer in the university teaching speech
18 eventually as a lecturer.
19 **THE COURT:** Are you planning on getting
20 your Ph.D.?
21 **PROSPECTIVE JUROR:** No, not at this time.
22 **THE COURT:** Not at this time.
23 Your husband -- what kind of work does he
24 do?
25 **PROSPECTIVE JUROR:** He's a minister.

1 **THE COURT:** Is that the church that you're
2 the secretary in?

3 **PROSPECTIVE JUROR:** Yes.

4 **THE COURT:** What's the name of the church?

5 **PROSPECTIVE JUROR:** New Hope, Las Vegas.

6 **THE COURT:** What kind of church is it?

7 **PROSPECTIVE JUROR:** It's a Four Square
8 gospel church, Christian.

9 **THE COURT:** I've heard that name, "Four
10 Square."

11 What does that mean?

12 **PROSPECTIVE JUROR:** It's a denomination.

13 **THE COURT:** That's the denomination, Four
14 Square?

15 Where is it headquartered?

16 **PROSPECTIVE JUROR:** I think it's in
17 California.

18 **THE COURT:** Very good.

19 Your mother-in-law is a court clerk in the
20 courts there in Hawaii?

21 **PROSPECTIVE JUROR:** Yes. She just
22 retired.

23 **THE COURT:** Tell me this here, ma'am: You
24 made some interesting statements here on your
25 questionnaire.

1 How do you feel about lawyers? I know you
2 said you were discouraged that some people with
3 expensive lawyers and high status folks don't seem
4 to get their just desserts in the criminal justice
5 system; is that right?

6 **PROSPECTIVE JUROR:** Yeah, just by watching
7 certain cases.

8 **THE COURT:** Watching TV like O.J. Simpson?

9 **PROSPECTIVE JUROR:** Yeah, like that that
10 comes to mind.

11 **THE COURT:** And some of these other cases.
12 Did you watch that Robert Blake case?

13 **PROSPECTIVE JUROR:** Very little.

14 **THE COURT:** What do you think of lawyers?

15 **PROSPECTIVE JUROR:** I don't know anyone
16 personally who is a lawyer, but --

17 **THE COURT:** Your general opinion.

18 **PROSPECTIVE JUROR:** General opinion --
19 let's see.

20 **THE COURT:** These lawyers want to know
21 what you think about lawyers.

22 **PROSPECTIVE JUROR:** Well, just being part
23 of this case, I just see that they're hard working.
24 I think they have to do a lot of research on the
25 case and put a lot of time and energy, but I respect