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HINDA SEAPY
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. CR-13057
	)	
ROBERT WAYNE MURRAY,	)	<u>JURY TRIAL</u>
ROGER WAYNE MURRAY,	)	
	)	
Defendant.	)	
_____	)	(VOIR DIRE, VOL. I)

Before the Honorable James E. Chavez, Judge

Friday, May 29, 1992

9:10 a.m.

Kingman, Arizona

Reporter's Transcript of Proceedings

Appearances:

For the State:	James J. Zack, Deputy County Attorney 315 N. Fourth Street Kingman, Arizona 86401
For Robert W. Murray:	M. Ruth O'Neill, Attorney at Law
For Roger W. Murray:	Frank E. Dickey, Jr., Gerald Gavin, Deputy Public Defenders Kingman, Arizona 86401

Reported by: Rick A. Pulver, Official Reporter

MOHAVE COUNTY SUPERIOR COURT, DIVISION IV

1 P R O C E E D I N G S

2 (The following proceedings were had in chambers
3 outside the presence of the prospective panel.)

4 THE COURT: As long as all the attorneys are here,
5 Freiday Construction is asking that Michael Medlin be
6 excused.

7 Any objection?

8 MS. O'NEILL: No.

9 MR. DICKEY: No.

10 THE COURT: Okay. Also, one of the jurors we talked
11 to yesterday, Rita Dunn -- we didn't talk to her, I think
12 we passed her for cause, but she called this morning
13 saying that she didn't answer a question right and she
14 wanted to make sure that we understood that her son had
15 been convicted of a drug related charge three years ago.
16 And so, if you want to talk to her, she will be in at
17 1:30.

18 Is there any need to change that one, or --

19 MS. O'NEILL: I don't think so.

20 THE COURT: Okay. Well, that was my feelings.

21 MR. ZACK: I got a brief thing.

22 THE COURT: We are back on the record. Go ahead,
23 Jace.

24 MR. ZACK: Your Honor, the sheriff's office has been
25 trying to comply with the Court's instructions to have the

1 defendants here by 8:00 o'clock in the morning way before
2 the jurors. I was told this morning that the clothing
3 that the attorneys were bringing over didn't arrive until
4 after 8:00, so they couldn't be here 'till --

5 THE COURT: Okay.

6 (Ms. Marcum has entered chambers.)

7 MS. O'NEILL: Judge, can we have the juror excused
8 while we discuss this?

9 THE COURT: We are a little ahead of you. Okay.
10 Thank you. I told Beth we were ready, and that was my
11 fault, because I thought they were ready. So, go ahead.

12 (Ms. Marcum has left the chambers.)

13 MR. ZACK: Anyway, they wanted them here by 8:00.
14 They are going to have to get the clothes here earlier any
15 day that they want them here at the time that the judge
16 wants.

17 THE COURT: We have been trying -- I understand
18 security's been trying to get them here by 8:00 o'clock to
19 avoid --

20 MS. O'NEILL: Your Honor, for the record, I wasn't
21 aware the Court had ordered that they be at the courthouse
22 at 8:00 o'clock in the morning.

23 THE COURT: I think that was their decision to try
24 to do that.

25 MS. O'NEILL: And I think we talked about this off

1 the record. I don't know if I talked to you about it or
2 not. I was not informed that they wanted to have them
3 over here by 8:00, ever. I was informed when I brought my
4 client's clothes over to the jail yesterday morning at
5 8:00 o'clock they had been looking for them since 7:00.
6 At 7:45, they evidently had been calling places. I don't
7 know where they called. They didn't call me looking for
8 clothes. If that is their decision and if that is what
9 the sheriff's office wants, and if the sheriff's office
10 will assure me that clothing brought over, for example, at
11 any time, will be available Monday morning, we can do it
12 that way. But, you know, the jail is locked. It's hard
13 for us to get in early in the morning. We can make the
14 arrangements, but I need to know what the arrangements
15 are.

16 THE COURT: The reason that they were bringing them
17 over early was to avoid having armed guards over before
18 the jurors were in court, which was requested by defense
19 counsel. I realize that may have not been communicated to
20 everyone. I'd just like in the future to coordinate this
21 a little better. They are going to be trying to get them
22 here before the jury starts arriving.

23 MS. O'NEILL: Your Honor, I don't have any problem
24 with that. I just have a problem with Mr. Zack bringing
25 up this complaint when nobody ever told me that I had to

1 have clothing at the jail at 7:00 in the morning. That's
2 the only problem I have. And it sounds like Mr. Zack is
3 saying, why did we even bother bringing them over because
4 nobody does what we want, and when nobody's communicated
5 it to me. And I don't think they have communicated that
6 to Mr. Dickey's office, either.

7 THE COURT: At this point I think everybody
8 understands the situation. It's a moot issue. For the
9 record, I have excused Michael Medlin at his employer's
10 request, and I did talk to you about Rita Dunn having
11 called and added something to her questionnaire.

12 Now, bring in Ms. Marcum.

13 (Ms. Marcum has entered chambers.)

14 THE COURT: Thanks for coming in to talk to us. I
15 apologize for the miscommunication a minute ago, but we
16 weren't quite ready. I just have a few questions about
17 your questionnaire that you filled out. There's two
18 defendants in this case, Robert Wayne Murray and Roger
19 Wayne Murray. There's going to be evidence presented
20 regarding both of those defendants, or separately as one
21 defendant.

22 Do you think you will be able to keep that
23 straight if you are selected as a juror?

24 MS. MARCRUM: Yes.

25 THE COURT: And have you heard anything about this

1 case prior to coming in here?

2 MS. MARCRUM: Not a whole lot. Just that it was,
3 you know, in Santa Claus or something, involved two
4 people.

5 THE COURT: Okay. All right. And based on what
6 little you have heard, were you -- or, did you form an
7 opinion about this case before you came in?

8 MS. MARCRUM: No.

9 THE COURT: Is there any reason why you couldn't be
10 a fair and impartial juror if you were selected to be a
11 juror on this case?

12 MS. MARCRUM: No.

13 THE COURT: Ms. O'Neill, do you have any questions?

14 MS. O'NEILL: Yes. Ms. Marcum, you indicated on
15 your questionnaire that you think that defendants should
16 have to produce some kind of evidence as to their
17 whereabouts at the time of the crime?

18 MS. MARCRUM: Yes.

19 MS. O'NEILL: Can you tell us what would happen if
20 such evidence -- do you understand that the defendants
21 don't have to put on any evidence?

22 MS. MARCRUM: Yeah.

23 MS. O'NEILL: Is that going to affect your ability
24 to hear the case if they don't satisfy you as to some kind
25 of alibi or something like that?

1 MS. MARCRUM: I just think you'd have to go by the
2 rules that were set like that one part, those three
3 statements, you'd have to use that. But, that was just my
4 own personal opinion.

5 THE COURT: Okay. Do you have any other questions?

6 MS. O'NEILL: Do you have any opinions about what
7 kind of evidence you would expect to see a defendant
8 present in court?

9 MS. MARCRUM: Not really.

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

11 MR. GAVIN: Your Honor, I have some questions.
12 Question 36 discusses -- I have in my notes something
13 about cover-ups and proof.

14 THE COURT: Okay.

15 MR. GAVIN: Would you have that question? I am
16 sorry.

17 THE COURT: Well, the question was, do you feel the
18 judges and courts have been too soft on the criminals, too
19 hard on the criminals, or no opinion. She put in the too
20 soft on the criminals, explains lots of criminals get off
21 easy, but it's hard to prove something that someone is
22 trying desperately to cover up.

23 Do you have any questions?

24 MR. GAVIN: I would just ask, what do you mean by
25 that?

1 MS. MARCRUM: It would be hard to prove one way or
2 another, you know. It would be really hard to prove even
3 with all the evidence in the situation.

4 MR. GAVIN: Do you believe that defendants are
5 covering up when they deny charges?

6 MS. MARCRUM: Not all of them.

7 THE COURT: I am sorry.

8 MR. GAVIN: Question 15. You mentioned sometimes
9 criminals have too many rights, or you believe that the
10 criminals may have more rights than the victim's?

11 MR. MARCRUM: In some cases, I think, because they
12 have -- it's like the victims or whoever's representing
13 them have more to prove. It's like it would be hard for a
14 victim to prove something that's stated that they scheme
15 up, where -- as whether or not the defendant's the one
16 that did it, but the person who did the crimes would know
17 more about it if they thought it up.

18 MR. GAVIN: You don't think it's fair that victims
19 should have to prove their case?

20 MS. MARCRUM: I think they should have to prove it,
21 but sometimes they have to prove so much that it would be
22 really hard to, though.

23 MR. GAVIN: That's all the questions I have, Your
24 Honor.

25 THE COURT: Mr. Zack?

1 MR. ZACK: Your Honor, would you check Question 45?
2 I believe she said she might find it hard to judge
3 somebody.

4 THE COURT: Okay. What she said was -- the question
5 is, would it be difficult to judge someone, and she said a
6 question mark over yes; would require a whole lot of
7 concentration and understanding.

8 MR. ZACK: Could you explain that a little bit more,
9 please?

10 MS. MARCRUM: Well, you just would have to
11 understand all of the elements of it real well. You'd
12 have to know everything about it. Seems like it would be
13 hard to do. Be hard for someone to really know what
14 happened if they weren't there.

15 MR. ZACK: Do you believe that -- do you believe you
16 might require more proof that something happened than
17 other people will?

18 MS. MARCRUM: I believe it's hard to prove something
19 for a fact that something happened when you weren't
20 actually there to witness it.

21 MR. ZACK: Do you prefer to have live witnesses in
22 any type of case?

23 MS. MARCRUM: Yeah, I guess.

24 MR. ZACK: If there is no eyewitnesses, would you
25 find it more difficult to make a decision in the case?

1 MS. MARCRUM: I think it would be hard.

2 MR. ZACK: Thank you.

3 THE COURT: Okay. I want to clarify a couple
4 things. You answered that you disagreed with some of
5 these rules, but if I told you that those were the rules
6 that you had to follow, would you follow those rules?

7 MS. MARCRUM: Yeah.

8 THE COURT: And would you follow my instructions on
9 the law?

10 MS. MARCRUM: Yes.

11 THE COURT: Ms. O'Neill, any --

12 MS. O'NEILL: No.

13 THE COURT: Mr. Gavin?

14 MR. GAVIN: Just one follow up question, Your Honor.
15 Regarding guilt and innocence, would that be a difficult
16 decision for you to reach?

17 MS. MARCRUM: I think it would be difficult for
18 anybody. Put the judgment on another person without
19 really knowing for sure.

20 MR. GAVIN: No further questions. Thank you.

21 THE COURT: If you were selected as a juror it would
22 be your duty to reach a verdict of some type along with
23 the other jurors.

24 Do you think you could handle that kind of
25 duty? I know it's hard, but do you think you could do

1 it?

2 MS. MARCRUM: As good as any other person.

3 THE COURT: Okay. Mr. Zack, any other questions?

4 MR. ZACK: No, Your Honor.

5 THE COURT: Thank you. You can step out.

6 (Ms. Marcrum has left chambers.)

7 THE COURT: Challenges? Mr. Gavin?

8 MR. GAVIN: No, Your Honor.

9 THE COURT: Ms. O'Neill?

10 MS. O'NEILL: No.

11 THE COURT: Mr. Zack?

12 MR. ZACK: No.

13 THE COURT: Okay. What about my uncle, Ignacio

14 Chavez; is there any reason to talk to him?

15 MS. O'NEILL: Your Honor, I don't think we need to

16 speak with him at this time. I would move that he be

17 excused for cause due to his relationship to the Court.

18 THE COURT: Any objection?

19 MR. ZACK: Yes.

20 THE COURT: Well, I'm going to excuse him anyway.

21 So, let's go to Peter David Manderfield.

22 Do you need to talk to Mr. Manderfield?

23 MS. O'NEILL: Your Honor, he had indicated that he

24 may have some problems with serving for an extended period

25 of time. He also doesn't appear to agree with the rules

1 stated in Question 20 of Part 2, of basically your
2 question. I think we should probably discuss those things
3 with him.

4 THE COURT: Okay.

5 MR. GAVIN: He also may have a problem keeping the
6 evidence separate as to each defendant.

7 THE COURT: Which question asks about if he can
8 serve for an extended period of time?

9 MS. O'NEILL: Question No. 9, the first part.

10 THE COURT: Okay. Let's -- well, let's talk to
11 him. We are going to talk to Mr. Manderfield. Ms.
12 Marcrum can come back at 1:30, and Mr. Chavez can leave.

13 (Mr. Manderfield has entered chambers.)

14 THE COURT: Just sit down here. You are Mr.
15 Manderfield?

16 MR. MANDERFIELD: Yes, I am.

17 THE COURT: I just have a few quick questions. On
18 your questionnaire you had indicated that you might have
19 trouble serving for an extended period of time because of
20 your work?

21 MR. MANDERFIELD: That's correct.

22 THE COURT: If this trial lasts three weeks, will
23 you be able to attend it?

24 MR. MANDERFIELD: Probably not. We are short
25 handed. We are short of the engineering technicians now,

1 and my boss is going to be on vacation the 8th through the
2 11th of June. So, it would be difficult, yes.

3 THE COURT: Okay. Any objections to Mr. Manderfield
4 being excused?

5 MR. ZACK: Yes. I'd like to see if he could work it
6 out.

7 THE COURT: Would you be able -- if I were to leave
8 you on the jury, would you be able to put your full
9 attention to it while you are here?

10 MR. MANDERFIELD: Yes, I think I could.

11 THE COURT: Even though you might be worried about
12 your job, you could come in and spend the time that's
13 required?

14 MR. MANDERFIELD: Would I get to go back at night to
15 the job?

16 THE COURT: Yes.

17 MR. MANDERFIELD: I don't know. It would be -- like
18 I say, we are behind right now and short handed, so I
19 can't guarantee it, no.

20 THE COURT: You also answered yes to No. 20 on the
21 second part. Basically it's a list of rules that is
22 required in any criminal case, proof beyond a reasonable
23 doubt, defendant's presumption of innocence and right not
24 to testify.

25 You indicated you disagreed with those rules.

1 Can you tell us about that?

2 MR. MANDERFIELD: Well, I agree that the defendant
3 is innocent until proven guilty, but I feel that it's
4 sometimes necessary to put him on the stand to get to the
5 facts. That's why I answered it that way.

6 THE COURT: He has a right not to testify, and that
7 can't be considered by the jury during deliberations.

8 If you were selected on the jury, would you be
9 able to follow that rule?

10 MR. MANDERFIELD: Yes, I would.

11 THE COURT: Okay. The fact that he doesn't testify,
12 or one of them or both of them don't testify, would that
13 affect your thinking about this case?

14 MR. MANDERFIELD: No.

15 THE COURT: Ms. O'Neill, any questions?

16 MS. O'NEILL: No, Your Honor.

17 MR. GAVIN: No, Your Honor.

18 THE COURT: Mr. Zack?

19 MR. ZACK: No, Your Honor.

20 THE COURT: Thank you for coming in. You can come
21 back at 1:30 this afternoon.

22 MR. MANDERFIELD: 1:30?

23 THE COURT: Yes.

24 (Mr. Manderfield has left chambers.)

25 THE COURT: Any challenges for cause?

1 MS. O'NEILL: Yes, Your Honor. I would ask that he
2 be excused for cause. If his work schedule -- he says
3 he'll try, but it's obvious that he was very hesitant in
4 discussing that. Also, it appears from the questionnaire,
5 if his boss is on vacation, he's probably in charge of the
6 place, and since he will be on vacation next week or week
7 after next, then he'll probably almost assuredly be in
8 trial. I'd ask that he be excused.

9 MR. GAVIN: We join that, Your Honor.

10 THE COURT: Mr. Zack?

11 MR. ZACK: Your Honor, he said he could do it. It
12 wouldn't be easy. Certainly anybody in a supervisory
13 position, that's a problem. He said he could be here, he
14 could do it. He'd have to go home at night, which he
15 would. He can serve and he should serve.

16 THE COURT: That motion is denied. Ms. Cindi
17 Breaux, any reason to talk to her?

18 MS. O'NEILL: I don't think I need to talk to her.

19 THE COURT: Mr. Gavin?

20 MR. GAVIN: Nothing from me, Your Honor.

21 THE COURT: Mr. Zack?

22 MR. ZACK: No.

23 THE COURT: Any challenges for cause on Ms. Breaux?

24 MS. O'NEILL: No.

25 THE COURT: Mr. Zack?

1 MR. ZACK: No.

2 MR. GAVIN: (Is shaking his head.)

3 THE COURT: Ellis James Furchtbar, any reason to
4 talk to him?

5 MR. GAVIN: We have no reason, Your Honor.

6 THE COURT: Ms. O'Neill?

7 MS. O'NEILL: Your Honor, the only concern I have
8 about this witness is that he's 83 and there may be some
9 health problems that he didn't want to get into, or maybe
10 some hearing --

11 THE COURT: All right. Mr. Zack?

12 MR. ZACK: Doesn't matter.

13 MS. O'NEILL: I don't -- I don't know that we need
14 to talk to him about it. We can probably deal with that.

15 MR. GAVIN: Given his age, it might be appropriate
16 to see if he would have any trouble hearing us in here.

17 THE COURT: Let me just ask him a few questions.
18 Let's bring him in and ask them.

19 (Mr. Furchtbar has entered chambers.)

20 THE COURT: You are Mr. Furchtbar?

21 MR. FURCHTBAR: Yes, sir.

22 THE COURT: I just have a few questions for you.
23 First of all, is there any reason that you would have any
24 difficulty sitting on this case?

25 MR. FURCHTBAR: No.

1 THE COURT: Okay.

2 MR. FURCHTBAR: I have plenty of time.

3 THE COURT: What's that?

4 MR. FURCHTBAR: I have plenty of time. All
5 retired.

6 THE COURT: Okay.

7 MR. FURCHTBAR: Nothing to do.

8 THE COURT: Do you have any health or physical
9 problems that would prevent you from sitting on this case?

10 MR. FURCHTBAR: No, no.

11 THE COURT: Are you able to hear well?

12 MR. FURCHTBAR: I was having problems yesterday, but
13 I don't seem to have a problem, but seems like acoustics
14 in there, I noticed you couldn't understand the people,
15 too.

16 THE COURT: That's a difficult courtroom to hear in.

17 MR. FURCHTBAR: I just -- you know, I thought, well,
18 maybe it's me, but then I have seen everybody else was
19 having the same problem.

20 THE COURT: Yes. That's a terrible courtroom.

21 Where were you sitting yesterday when we were talking?

22 MR. FURCHTBAR: I was in the, towards the back at
23 first, but I didn't have much trouble when I was over here
24 on the side.

25 THE COURT: On the side?

1 MR. FURCHTBAR: Yeah.

2 THE COURT: Okay. And do you think you can be fair
3 and impartial if you are called to sit on this case?

4 MR. FURCHTBAR: Yeah. I could be fair.

5 THE COURT: Thank you. Ms. O'Neill, any questions?

6 MS. O'NEILL: No.

7 MR. GAVIN: No, Your Honor.

8 THE COURT: Mr. Zack?

9 MR. ZACK: No, Your Honor.

10 THE COURT: Thanks for coming in. Come back at

11 1:30.

12 MR. FURCHTBAR: All right. Thank you.

13 (Mr. Furchtbar has left chambers.)

14 THE COURT: Theobald. Any reasons to talk to Ms.
15 Theobald?

16 MS. O'NEILL: No.

17 THE COURT: Mr. Gavin?

18 MR. GAVIN: No, Your Honor.

19 THE COURT: Mr. Zack?

20 MR. ZACK: No.

21 THE COURT: Any challenges for cause on the last
22 two?

23 MS. O'NEILL: No, Your Honor.

24 MR. GAVIN: No.

25 MR. ZACK: No.

1 THE COURT: Okay. Mr. Bell. Any reason to talk to
2 Mr. Bell?

3 MR. GAVIN: Yes, Your Honor. Your Honor, he stated
4 in Question 37 that his wife's aunt was murdered in his
5 home, that they didn't catch the murderer. Justice was
6 not served. Crime is spreading. Just has a -- seems to
7 have a lot of negative feelings toward criminals in
8 general.

9 MS. O'NEILL: Your Honor, I would -- must move that
10 he be excused for cause for the reasons that Mr. Gavin has
11 discussed.

12 THE COURT: Mr. Zack?

13 MR. ZACK: If somebody's murdered and nobody's
14 caught, I don't think anybody would say justice is served.
15 That, by itself, is not grounds.

16 MS. O'NEILL: Your Honor --

17 MR. GAVIN: We are worried that may spill over to
18 this case where the murderer was apparently caught, or at
19 least he may think is caught.

20 THE COURT: Ms. O'Neill?

21 MS. O'NEILL: Your Honor, that is a concern. There
22 may be a, and understandably under these types of
23 circumstances, feeling that justice wasn't served, then
24 he's going to make darn sure that somebody gets put away
25 this time.

1 THE COURT: Well, I'm going to bring him in to talk
2 about it.

3 THE CLERK: So, Ms. Theobald is to come back at
4 1:30?

5 THE COURT: Yes.

6 THE CLERK: Is it Herbert?

7 THE COURT: Herbert Wayne Bell.

8 (Mr. Bell has entered chambers.)

9 THE COURT: You are Mr. Bell?

10 MR. BELL: Uh-huh. Yeah.

11 THE COURT: Just -- you can sit down. We have a
12 couple of questions for you based on your questionnaire.

13 First of all, you indicated that in this
14 question about violent crimes that your wife's aunt has
15 been assaulted and murdered in her home?

16 MR. BELL: Yes.

17 THE COURT: How long has that been?

18 MR. BELL: That's about seven years ago.

19 THE COURT: Okay. I take it that it was a traumatic
20 experience at the time?

21 MR. BELL: Well, at the time it happened we didn't
22 know about it. The two of us didn't know about it until
23 sometime later, after most -- you know, she wasn't that
24 close to her aunt, but we had visited her aunt just the
25 year before, two years before we got married. And I

1 answered the question that way because I --

2 THE COURT: Okay. Well, that was the kind of answer
3 it called for. But, do you have any strong feelings about
4 that particular incident?

5 MR. BELL: I don't about that, personally.
6 Personally, I didn't really know her for a long period of
7 time, myself.

8 THE COURT: Do you think that knowing about that
9 incident would affect your abilities to sit on this case
10 in any way? .

11 MR. BELL: I don't think so.

12 THE COURT: Okay. You also said that sometimes you
13 feel the victims don't get justice.

14 Could you expand on that a little bit?

15 MR. BELL: Well, it's -- and it may be because the
16 news and so on, what I see on the news programs about a
17 person who is victimized, and it just seems that -- that
18 the persons who did it just go free or, you know, it is
19 the feeling -- isn't -- they didn't get a stiff enough
20 sentence.

21 THE COURT: In this particular case, if you are
22 selected as a juror and you are watching the evidence,
23 will you be thinking at all about your wife's aunt at
24 all?

25 MR. BELL: No. I'm sure.

1 THE COURT: You think that your feelings about that
2 sometimes the victims don't get justice, do you think that
3 would interfere with your ability to look at the evidence
4 and be fair and impartial when you're looking at the
5 evidence?

6 MR. BELL: I don't think so. Looking at the
7 evidence, being on the inside, knowing what's really going
8 on, I don't think --

9 THE COURT: Is there any reason that you think that
10 you cannot be fair and impartial in this case? Let me
11 rephrase.

12 Can you be fair and impartial in this case?

13 MR. BELL: Yes.

14 THE COURT: Okay. Ms. O'Neill?

15 MS. O'NEILL: Mr. Bell, there was a question you
16 answered that indicated you thought it might be difficult
17 to make a decision about whether a person was guilty or
18 not. Question 45.

19 Can you tell us -- maybe the judge can read you
20 that question again.

21 MR. BELL: I believe that's the one -- there was
22 one, are there any circumstances --

23 THE COURT: Let me show you 45.

24 MR. BELL: 45? I -- yeah. That -- that's not the
25 question I was thinking of. I don't -- I don't believe I

1 answered that the way I really feel.

2 THE COURT: If you were called to sit as a juror,
3 would you be able to listen to the evidence and determine
4 what you think the facts are?

5 In other words, decide which witnesses are
6 being truthful or which are accurate, or which are not,
7 and decide on what you feel the facts are, deliberate with
8 the other jurors and come up with a verdict one way or the
9 other?

10 MR. BELL: I think so.

11 THE COURT: Do you think that you would be able to
12 apply the standards? In other words, that the State has
13 to prove the defendant guilty beyond a reasonable doubt,
14 that the defendant is presumed to be innocent, and that
15 the defendants have a right not to testify.

16 Can you apply those standards to this case and
17 render a verdict?

18 MR. BELL: Yes.

19 THE COURT: Ms. O'Neill, any other questions?

20 MS. O'NEILL: Yes. You said something when you were
21 explaining some of your feelings to the judge a few
22 minutes ago about sometimes it seems that somebody gets
23 victimized and the criminals get off.

24 Do you think that people who get arrested, that
25 that's some evidence that they may be guilty, or do you

1 attach weight to the fact that they are charged, thinking
2 that they did what they are accused of?

3 MR. BELL: I tend to believe that if a person is
4 arrested, he is, I would say, on the road to being guilty
5 right there. My feeling is that persons in that
6 situation, they've got their foot in the door already, to
7 me. It tends to make me lean that way.

8 THE COURT: Suppose I were to advise you that the
9 fact that they were arrested, or any person is arrested,
10 can't be held against them; that you have to look at the
11 evidence in court and decide just on the evidence you see
12 in court. An arrest one way or another has no play in it.

13 Would you be able to ignore that?

14 MR. BELL: I understand, yeah. I understand what
15 you are saying. I believe so, if -- you know, if I was
16 instructed not to use the arrest as part of the decision.
17 I've never done this before, but I -- in my opinion I
18 could do that, separate it.

19 THE COURT: Okay. Thank you. Do you have any
20 additional questions?

21 MS. O'NEILL: No, Your Honor.

22 MR. GAVIN: Just one quick follow-up to the
23 question, sir.

24 If someone's arrested, do you believe that they
25 are probably guilty then?

1 MR. BELL: Well, I would say it would depend on the
2 situation. But my feelings have always been that if they
3 are arrested, that's a strike against them to me, it
4 seems. Had they not been in the situation and needed to
5 be arrested.

6 MR. GAVIN: But, at that point do you believe that
7 they are guilty or innocent more typically?

8 MR. BELL: I don't believe I would believe that they
9 were being guilty.

10 MR. GAVIN: But, you would not believe that they
11 were innocent, also?

12 MR. BELL: Yeah, right. That you wouldn't believe
13 they're completely innocent.

14 THE COURT: Mr. Zack?

15 MR. ZACK: Would it be fair to say that you don't
16 think police go out and arrest somebody for no reason at
17 all?

18 MR. BELL: No. I don't think they do.

19 MR. ZACK: But, if the judge tells you not to
20 consider the fact that they're charged, and just decide
21 this on what you hear in the courtroom, the testimony and
22 the exhibits, you can decide and reach your verdict based
23 solely on what you see and hear in the courtroom?

24 MR. BELL: I believe so.

25 MR. ZACK: Thank you.

1 THE COURT: Any additional questions?

2 MS. O'NEILL: No, Your Honor.

3 MR. GAVIN: No, Your Honor.

4 THE COURT: Thanks for coming back.

5 (Mr. Bell has left chambers.)

6 THE COURT: Any challenges for cause?

7 MS. O'NEILL: Your Honor, I renew my challenge for
8 cause. 54 years of conditioning to one opinion is going
9 to be very hard to --

10 MR. GAVIN: I would join that challenge, Your Honor.
11 He also was somewhat hesitant on whether or not he could
12 put aside his feelings and abide by your instructions. He
13 did indicate that he believed he could do so. To me, that
14 doesn't say yes I can. There was some hesitation still in
15 his voice to me. For that additional reason I would also
16 join that.

17 MR. ZACK: Your Honor, first of all, anybody coming
18 into this hearing room, the vast majority are feeling very
19 intimidated, naturally acting nervous, which is very
20 understandable. When you put the question to him, could
21 he ignore the fact they were arrested and make a decision,
22 he said yes. He said most people do -- the police
23 generally don't go around arresting people for no reason
24 whatsoever. Ultimately he said he can decide on what he
25 hears in the courtroom. That's all you can ask.

1 THE COURT: Challenge is denied. Randall Briggs, do
2 we need to talk to him?

3 MR. GAVIN: We've got no reason, Your Honor.

4 MS. O'NEILL: No.

5 MR. ZACK: Your Honor, I believe he said that he's
6 had a cousin charged with murder I'd like to know more
7 about.

8 THE COURT: Okay. Let's talk to Mr. Briggs.

9 (Mr. Briggs has entered chambers.)

10 THE COURT: Mr. Briggs, please be seated. I just
11 have a couple quick questions based on your
12 questionnaire.

13 And in Question No. 39 you indicated that a
14 member of your family, a cousin, had been charged with
15 murder?

16 MR. BRIGGS: (Is nodding his head.)

17 THE COURT: Can you tell us a little bit about that?

18 MR. BRIGGS: All I know is what my dad told me about
19 it, because I don't speak to him that much. Him and two
20 other guys.

21 THE COURT: Where was that?

22 MR. BRIGGS: That was in Yucca. Not here in
23 Arizona, but in California.

24 THE COURT: How long has that been?

25 MR. BRIGGS: It's been about six, seven years ago.

1 THE COURT: Has he been tried, I assume?

2 MR. BRIGGS: Yeah. He got 25 to 30 years.

3 THE COURT: Do you think when you listen to the
4 evidence on this case that you'd be thinking about your
5 cousin's case at all?

6 MR. BRIGGS: No. I don't know nothing about my
7 cousin's case.

8 THE COURT: Do you know, would it affect your
9 deliberations in this case at all?

10 MR. BRIGGS: Huh-uh.

11 THE COURT: That's a no?

12 MR. BRIGGS: That's a no.

13 THE COURT: Okay. Ms. O'Neill?

14 MS. O'NEILL: I don't have any questions, Your
15 Honor.

16 MR. GAVIN: No questions, Your Honor.

17 THE COURT: Mr. Zack?

18 MR. ZACK: No, Your Honor.

19 THE COURT: Okay. Thanks for coming in. You can
20 come back at 1:30 this afternoon.

21 MR. BRIGGS: Okay.

22 (Mr. Briggs has left chambers.)

23 THE COURT: Challenges for cause?

24 MS. O'NEILL: No.

25 MR. GAVIN: No, Your Honor.

1 THE COURT: Any reasons to talk to Mr. Ellis?

2 MR. GAVIN: Yes, Your Honor. Question No. 45, he
3 indicated he may have some difficulty with the guilt or
4 innocence decision. Question 35, he also indicated that
5 justices could do a better job, which --

6 THE COURT: Which question was that?

7 MR. GAVIN: No. 35, Your Honor.

8 THE COURT: Mr. Zack, any additional?

9 MR. ZACK: He also -- he had mainly just said --
10 Question 45 is what I'd like to ask him.

11 THE COURT: Let's bring in Mr. Ellis.

12 (Mr. Ellis has entered chambers.)

13 THE COURT: Please be seated here.

14 MR. ELLIS: Okay.

15 THE COURT: Okay. Somebody in your family has been
16 charged with drugs; is that right?

17 MR. ELLIS: My son-in-law.

18 THE COURT: Your son-in-law. Okay. Does that
19 affect your thinking about the criminal justice system at
20 all?

21 MR. ELLIS: No.

22 THE COURT: Do you think that the criminal justice
23 system -- I am asking you questions based on your
24 questionnaire. That's all I am asking.

25 MR. ELLIS: Right.

1 THE COURT: You said it could do a better job.
2 Could you expand on that a little bit?

3 MR. ELLIS: Not really. If I was a judge I might be
4 able to, but I -- it just -- just doesn't seem that they
5 really do -- all of them aren't really consistent.

6 THE COURT: Okay.

7 MR. ELLIS: According to the news and things like
8 that.

9 THE COURT: Okay. Some people -- you also said that
10 it's too soft and too hard on criminals, and that
11 sentencing is inconsistent; some people get off easy, and
12 other people get a harsh sentence.

13 MR. ELLIS: Right. My son-in-law was one that got
14 off too easy.

15 THE COURT: Okay. You haven't heard anything about
16 this case --

17 MR. ELLIS: No.

18 THE COURT: -- before coming to court? Okay. Now,
19 on one of these other questions there was a question that
20 asked if you were selected as a juror, would you be able
21 to judge the guilt or innocence of another person, the
22 defendants in this case.

23 Would that be too difficult for you?

24 MR. ELLIS: No.

25 THE COURT: Okay. If you were called as a juror,

1 would you be able to sit and listen to the evidence and
2 determine what evidence you believe and what evidence you
3 don't believe?

4 MR. ELLIS: Yes.

5 THE COURT: Would you be able to deliberate with the
6 other jurors and come up with a decision, a verdict?

7 MR. ELLIS: I believe so.

8 THE COURT: Okay. Ms. O'Neill, any questions?

9 MS. O'NEILL: No, Your Honor.

10 MR. GAVIN: No, Your Honor.

11 THE COURT: Mr. Zack?

12 MR. ZACK: No, Your Honor.

13 THE COURT: Thanks for coming in. You can come back
14 at 1:30 this afternoon.

15 MR. ELLIS: Okay.

16 (Mr. Ellis has left chambers.)

17 THE COURT: Any challenges for cause on Mr. Ellis?

18 MS. O'NEILL: No, Your Honor.

19 MR. GAVIN: No, Your Honor.

20 MR. ZACK: No.

21 THE COURT: Do we need to talk to Mr. Marlin -- is
22 there any reason to talk to Mr. Marlow?

23 MS. O'NEILL: Mr. Marlow believes that the standard
24 of proof is too hard for the State. He doesn't believe he
25 could judge the witnesses by the same standard, although

1 he doesn't necessarily indicate that it's police officers
2 that that affects, based on the second part of 19. He
3 doesn't agree with the rules in Question 20, and he has a
4 friend who was a victim of a violent crime and feels
5 justice was not served. I think we probably need to
6 address those issues. That's 37.

7 THE COURT: Let's talk to Mr. Marlow.

8 MR. GAVIN: Your Honor, I'd note there was also a
9 question regarding Bullhead City Police, who they were
10 that he may know.

11 (Mr. Marlow has entered chambers.)

12 THE COURT: You are Mr. Marlow?

13 MR. MARLOW: Yes, sir.

14 MR. GAVIN: Thanks for coming in to talk to us.

15 THE COURT: Just basically what we are doing is
16 going through the questionnaires and asking follow-up
17 questions to make sure that we didn't miss anything. But,
18 there are a couple of your questions that we wanted to
19 talk to you about.

20 On Question No. 37 it involved a question
21 regarding violent crime, and you indicated that you knew
22 someone who had been a victim of violent crime, and then
23 you said rape has been most of what I've heard.

24 MR. MARLOW: I have several friends that had been
25 raped, yes.

1 THE COURT: Okay. Can you expand on how you feel
2 about the criminal system in that sense?

3 MR. MARLOW: Well, as it explains, I think it's the
4 next two, next question or two that -- I am sure that a
5 lot has been done, but not every criminal has been caught,
6 so you can't really go on somebody that's not caught.

7 THE COURT: Okay. Do you think the fact that some
8 criminals don't get caught, you know, do you think that
9 would affect your sense of what's right or wrong with
10 regard to this case?

11 MR. MARLOW: No.

12 THE COURT: Do you think you can sit on this case
13 and be fair and impartial?

14 MR. MARLOW: I could, but I would like to add that
15 right now I am on vacation, and when I go back to work --
16 I work for a utility company, and when I go back I am
17 required to be on call. I am on call the next two weeks I
18 go back, and I should of mentioned it yesterday, but it
19 wasn't according to what you had asked.

20 THE COURT: Do you feel that coming to court on this
21 case while you are on vacation puts a big burden on you?

22 MR. MARLOW: No.

23 THE COURT: Do you think you would be able -- if you
24 were required to stay on the jury, that you'd be upset
25 about the fact that you're vacation was ruined by having

1 to come to jury duty?

2 MR. MARLOW: No. Not my vacation, but I am a little
3 concerned about my job, myself. I have a very high
4 standing on where I work. They do depend on me and they
5 rely on my services.

6 THE COURT: Do you think you would be able to give
7 this case your full attention when you're worried about
8 your job?

9 MR. MARLOW: If it came down to it, I guess I would
10 have to.

11 THE COURT: Do you have any questions, Ms. O'Neill?

12 MS. O'NEILL: Yes. Mr. Marlow, you indicated that
13 you thought that the burden of proof of beyond a
14 reasonable doubt was too difficult a standard for the
15 State.

16 Can you tell us a little bit about your
17 feelings on this issue?

18 MR. MARLOW: The question was kind of hard to
19 understand. If there's not sufficient proof of a case,
20 then how can you convict somebody without the evidence?
21 If there's not enough evidence, then that person shouldn't
22 be tried like that.

23 MS. O'NEILL: So, you think if a person goes to
24 trial, that should be an indication that they are guilty
25 and they should be convicted?

1 MR. MARLOW: I don't think -- I don't think they
2 should be convicted unless they are proven guilty.

3 MS. O'NEILL: But, you think that's a hard standard
4 for the State to meet?

5 MR. MARLOW: It can be, to a certain extent.

6 MS. O'NEILL: Do you believe that if someone is
7 arrested and charged with a crime, that that's an
8 indication that they committed the crime?

9 MR. MARLOW: No.

10 MS. O'NEILL: You said that you didn't -- you
11 wouldn't be able to judge the testimony of all the
12 witnesses by the same standard.

13 Can you tell us what you mean by that?

14 MR. MARLOW: There's another question in there that
15 states that if one person is found guilty and the other
16 person is not found guilty, then I'm not going to say that
17 both people are guilty if only one is.

18 MS. O'NEILL: Okay. Is that what you -- do you
19 believe, then, that the defendants should be testifying in
20 the case?

21 MR. MARLOW: If they have the right to say what
22 happened, yes. They need to let everybody know what has
23 happened.

24 MS. O'NEILL: Okay. So, you are saying that you
25 might believe one defendant and not another defendant,

1 assuming both testify?

2 MR. MARLOW: That's not true. If there is more
3 evidence towards the one that is guilty, or even if --
4 even if they are both not guilty, it all relies on
5 sufficient evidence.

6 MS. O'NEILL: What if neither of them testify?

7 MR. MARLOW: Then you are not getting a full story
8 of what might have happened.

9 MS. O'NEILL: Is that going to affect how you view
10 the case?

11 MR. MARLOW: I feel that they should speak out as to
12 what they are saying what has happened. That might not
13 help their case, but it is a good idea that they speak
14 out.

15 MS. O'NEILL: Thank you.

16 THE COURT: Mr. Gavin?

17 MR. GAVIN: Yes, Your Honor. Sir, Question 36, you
18 said serious offenders get off too easy, or something to
19 that effect?

20 MR. MARLOW: There are some people that have gotten
21 off very easy for serious murders that don't get what they
22 deserve. They only get a few years in the jail, and then
23 they are out on the streets again. And I -- I have seen a
24 lot of people released that have gone and killed again,
25 and they still release them after they serve more time.

1 MR. GAVIN: Question 35. You said penalties could
2 be more harsh for some criminals. I assume --

3 MR. MARLOW: Okay. Personal opinion? People that
4 have committed serious crimes, according to murder, have
5 escaped the death sentence when they do deserve it because
6 they have killed more than once, and every time they get
7 out they do it again.

8 MR. GAVIN: Okay. So, you do believe in the death
9 penalty?

10 MR. MARLOW: Yes, I do.

11 MR. GAVIN: Question 29. You stated that you knew
12 Bullhead City Police officers?

13 MR. MARLOW: Yes. I'd prefer not to mention their
14 names. I'm sorry, that's the way I am. I don't reveal
15 some of my friends.

16 MR. GAVIN: As you know, there's going to be a lot
17 of officers, or you may not know. There's probably going
18 to be quite a few officers testifying in this case.

19 MR. MARLOW: That's fine.

20 MR. GAVIN: You do not indicate on the witness list
21 that you knew any of those witnesses.

22 MR. MARLOW: None of the ones that are on the list.

23 MR. GAVIN: Would it be safe to assume, then, that
24 the people that you know, the Bullhead City Police
25 officers, are not on this list?

1 MR. MARLOW: Correct.

2 MR. GAVIN: Okay.

3 THE COURT: Mr. Zack, any questions?

4 MR. ZACK: Just a couple on the question they asked
5 about reasonable doubt.

6 Do you feel like you'd have to have proof
7 sufficient that you have no doubts about the guilt of a
8 person before you would vote for guilty?

9 MR. MARLOW: There would still be doubts. It would
10 have to be evidence that would be positive. Not all
11 evidence can be true. A lot of it could be hearsay. It
12 would have to be sufficient evidence to prove the case.

13 MR. ZACK: By sufficient evidence, do you think you
14 should have to have absolutely no doubt in your mind,
15 whatsoever, before you vote for guilty?

16 MR. MARLOW: I would have doubt if I didn't have
17 enough evidence. Like I am saying, more, like witnesses
18 or videotapes or something to that sort where they've
19 actually seen the crime in progress.

20 MR. ZACK: Do you feel like it would be very, very
21 difficult to convict somebody unless you had an eyewitness
22 or videotape of the crime?

23 MR. MARLOW: Yes. It would be difficult.

24 MR. ZACK: That's all.

25 THE COURT: Okay. Thanks for coming in and talking

1 to us.

2 MR. MARLOW: Yes, sir.

3 (Mr. Marlow has left chambers.)

4 THE COURT: Challenges?

5 MS. O'NEILL: Yes, Your Honor. I would challenge
6 this person for cause. His answers were very, or seemed
7 to be somewhat evasive on some areas. Also, it appears
8 that he believes that if the defendants don't testify,
9 that that's not the way things should go, and he's going
10 -- there is, I believe, a significant likelihood that he's
11 going to hold that against the defendants if they choose
12 not to testify.

13 MR. ZACK: No objection.

14 THE COURT: I am also concerned about his job. I
15 think he's very blunt in his answers. I don't think he
16 was evasive at all. I think he was very blunt, but I
17 think his job is going to bother him. So, he's excused.

18 Cochrum, do we need to talk to her?

19 MR. GAVIN: Yes, Your Honor. Question 9. Again,
20 she's indicated she may have trouble keeping information
21 separate as to each defendant. She's also indicated in
22 Question 16 that criminals may have too many rights as
23 opposed to victims. Question 36, she says I don't know if
24 I go along with plea bargains. I'd be curious as to what
25 she means by that. She also knows a witness, Sinclair.

1 THE COURT: Well, let's talk to her.

2 (Ms. Cochrum has entered chambers.)

3 THE COURT: Hello. Be seated. You are Ms. Cochrum?

4 MS. COCHRUM: Yes.

5 THE COURT: You indicated in your questionnaire that
6 you knew a Virginia Sinclair?

7 MS. COCHRUM: I don't know her, no.

8 THE COURT: Okay.

9 MS. COCHRUM: It's another Virginia.

10 THE COURT: Oh, all right. Okay. There are a
11 couple of other questions I have for you. Okay.

12 You heard about this case on the radio on your
13 way to court yesterday?

14 MS. COCHRUM: Yes.

15 THE COURT: Was that the only thing you've ever
16 heard about it?

17 MS. COCHRUM: Yes.

18 THE COURT: Okay.

19 MS. COCHRUM: I might have read it in the Havasu
20 paper vaguely a long time ago, but I don't remember. I
21 don't remember anything about it.

22 THE COURT: Okay. Based on what you heard on the
23 radio yesterday, is there -- have you made up your mind on
24 anything regarding this case?

25 MS. COCHRUM: No.

1 THE COURT: Okay. So, you have an open mind about
2 the facts of this case?

3 MS. COCHRUM: I certainly do.

4 THE COURT: There's also a question in here, you
5 said, indicated you didn't know if you go along with plea
6 bargains.

7 Can you expand on that a little bit?

8 MS. COCHRUM: Well, if a person was found guilty,
9 and to give that person a deal because they helped -- it's
10 -- of course, I don't know the laws, but to me if a person
11 is guilty they should -- if a person is found guilty they
12 should do the time, whatever it may be.

13 THE COURT: Ms. O'Neill, any questions?

14 MS. O'NEILL: No, Your Honor.

15 THE COURT: Mr. Gavin?

16 MR. GAVIN: Yes. I just had one quick follow-up
17 question. There's two defendants in this case, two
18 brothers that are involved.

19 You indicated that you may have some trouble
20 keeping the information straight as to each brother, or --

21 MS. COCHRUM: No.

22 MR. GAVIN: Okay. If you found one of the brothers
23 guilty, if you believe the evidence indicated one of the
24 brothers was guilty, would you have to also find the other
25 brother guilty?

1 MS. COCHRUM: Not necessarily. No.

2 MR. GAVIN: So, you could keep the evidence separate
3 as to each one?

4 MS. COCHRUM: Yes. I'm a Libra, so I have the
5 scales. I have to get the facts and weigh it.

6 THE COURT: And if you would listen to the evidence
7 as far as gathering facts in this case, do you base your
8 decision on, if you were a juror, solely on the evidence
9 in court?

10 MS. COCHRUM: Uh-huh.

11 THE COURT: Any reason -- do you believe you can be
12 fair and impartial on this case?

13 MS. COCHRUM: Impartial?

14 THE COURT: Can you be fair and impartial?

15 MS. COCHRUM: Oh, certainly.

16 THE COURT: Mr. Zack, do you have any questions?

17 MR. ZACK: No, Your Honor.

18 MR. GAVIN: One additional question, Your Honor.
19 Question 16, you indicated criminals may have more rights
20 at the expense to victims, or too many rights?

21 MS. COCHRUM: Did I indicate that?

22 MR. GAVIN: I made a mistake. I thought that's what
23 you indicated.

24 THE COURT: What was the number?

25 MR. GAVIN: 16, Your Honor. Okay. What it says is,

1 you believe that persons who are accused of crimes are
2 afforded too many rights at the expense of crime victims,
3 and you said sometimes.

4 Do you have anything additional you want to say
5 about that?

6 MS. COCHRUM: I don't have anything additional to
7 say about that.

8 THE COURT: He just didn't hear you. Anything else,
9 Mr. Gavin?

10 MR. GAVIN: No, Your Honor.

11 THE COURT: Thanks for coming in. You can come back
12 at 1:30.

13 MS. COCHRUM: Okay, sir.

14 (Ms. Cochrum has left chambers.)

15 THE COURT: Challenges for cause on Ms. Cochrum?

16 MS. O'NEILL: No, Your Honor.

17 MR. GAVIN: No, Your Honor.

18 MR. ZACK: No.

19 THE COURT: Next is Ronald Harshman.

20 MS. O'NEILL: Your Honor, maybe we can do this
21 without talking to him. I would challenge Mr. Harshman
22 for cause for a couple of reasons. Number one, his prior
23 knowledge about the case. Under Question 42, the two
24 brothers killed an older defenseless couple. Sounds like
25 there's some bias in that answer. He is -- I believe he's

1 Malibu Harshman's, at the county attorney's office,
2 father-in-law. He's indicated he's discussed the case. I
3 don't know whether he's discussed that with Malibu or
4 anybody else. I am not saying that she would give any
5 more information, but I believe the connection to the
6 county attorney's office is something that gives me
7 concern, especially in light of the answer to Question 42.
8 I'd ask that he be dismissed for cause at this time.

9 THE COURT: Mr. Zack?

10 MR. ZACK: I oppose. I believe that yesterday in
11 court he said he thought she was a secretary, but wasn't
12 sure. Apparently they're not very close. There's no
13 indication he discussed the case with her or even seen
14 her. So, in that case I don't think it's grounds for
15 cause.

16 THE COURT: Well, let's talk to him.

17 (Mr. Harshman has entered chambers.)

18 THE COURT: Come on in and sit down. There's just a
19 few questions we have following up from yesterday.

20 You had indicated that your daughter-in-law
21 works for the county attorney's office, and I know I
22 talked to you a little bit about that yesterday. But, do
23 you talk to her about her work at all?

24 MR. HARSHMAN: No. She hardly ever mentions it.
25 She's very conscientious about that.

1 THE COURT: Okay. Have you talked to her about this
2 case at all?

3 MR. HARSHMAN: No.

4 THE COURT: You indicated that you had heard about
5 this case.

6 Was that all through the media, or did you talk
7 to someone about this case?

8 MR. HARSHMAN: No. Just in the -- in the newspaper.
9 I believe it was on television. I can't really remember
10 for sure, but I know I read a few articles in the paper at
11 the time that it happened.

12 THE COURT: Okay. Have you formed an opinion about
13 the case based on what you've heard?

14 MR. HARSHMAN: Not one way or another, no. I can't
15 say that I have.

16 THE COURT: Okay. What do you know about the case
17 at this point?

18 MR. HARSHMAN: Just what is in the paper, that two
19 gentlemen were supposedly caught in Holbrook or someplace
20 after they suspected them doing the murder at Grasshopper
21 Junction. That's about all I know, just basically what
22 was in the paper.

23 THE COURT: If you were selected as a juror, would
24 you be able to set aside what you heard about this in the
25 newspaper and decide the case solely on the evidence you

1 hear in court?

2 MR. HARSHMAN: I think so, because I don't believe
3 -- you know, hold something against somebody that they are
4 not guilty of, that's for sure.

5 THE COURT: Okay. Thank you. Ms. O'Neill?

6 MS. O'NEILL: Mr. Harshman, you indicated you had
7 talked about the case.

8 Do you remember who you talked to about it or
9 what those conversations were about?

10 MR. HARSHMAN: I don't remember saying anything
11 about talking about the case. I said that I saw it on the
12 news. I talked to my wife about it a time or two.

13 MS. O'NEILL: Just basically a discussion with your
14 wife?

15 MR. HARSHMAN: Yeah. Just, you know --

16 MS. O'NEILL: In that discussion, were any opinions
17 thrown out about the defendants in the case as opposed to
18 the victims in the case, or about the victims?

19 MR. HARSHMAN: Other than just thinking, gosh, how
20 could something like that happen. Husband/wife type
21 conversations.

22 MS. O'NEILL: All right. Thank you.

23 THE COURT: Mr. Gavin?

24 MR. GAVIN: Yes, Your Honor. Question 16 discussed
25 criminal's rights versus victim's rights.

1 You indicated that you thought criminals had
2 too many rights?

3 MR. HARSHMAN: Yeah. I kind of lean that way, yes,
4 sir.

5 MR. GAVIN: Just explain a little bit what your
6 feelings are in that area.

7 MR. HARSHMAN: Seems -- I don't know. I am just
8 basing what I think on what I read in the paper on
9 different cases, not particularly this one, but just seems
10 like a lot of times that victims are kind of forgotten and
11 brushed aside. Of course, maybe I don't know all the
12 details.

13 MR. GAVIN: What kind of rights do you think
14 criminals have that maybe they shouldn't have?

15 MR. HARSHMAN: I believe they have the right to a
16 fair trial. They should be treated humanely, treated -- I
17 mean, you know, just basically things like that.

18 MR. GAVIN: They don't have a right that sticks out
19 in your mind that you're bothered with?

20 MR. HARSHMAN: Criminals?

21 MR. GAVIN: Yes, sir.

22 MR. HARSHMAN: Not that I -- sometimes I think they
23 are -- I don't know, just -- that's hard to say. Just
24 personal opinion, I guess.

25 THE COURT: Mr. Zack, any questions?

1 MR. ZACK: No, Your Honor.

2 THE COURT: If you were selected as a juror in this
3 case and I were to instruct you on the law, including what
4 the defendants' rights were, would you be able to follow
5 my instructions?

6 MR. HARSHMAN: I believe so, yes.

7 THE COURT: Would you be able to listen to the
8 evidence and apply the instructions to it and deliberate
9 and come up with a verdict?

10 MR. HARSHMAN: I believe so, yes.

11 MR. GAVIN: Just an additional follow-up question,
12 Your Honor. Question 36.

13 THE COURT: Okay. Do you think you can be fair and
14 impartial on this case?

15 MR. HARSHMAN: Yes, sir. I think so.

16 MR. GAVIN: I am sorry, I didn't mean to interrupt
17 you. Question 36 was whether judges and courts, I believe
18 something to the effect that how effective they are, or
19 how they are as far as criminals go.

20 THE COURT: Well, Question 36 says, have you ever
21 felt that judges and courts have been too soft on
22 criminals, too hard on criminals, no opinion, and you put
23 down too soft on criminals.

24 Can you tell us about that?

25 MR. HARSHMAN: Sometimes when you read in the paper,

1 the severity of the crime, you wonder -- again, you don't
2 know all the facts, but you wonder why it went one way or
3 another. I think that's --

4 THE COURT: Okay. Do you think overall, the
5 criminal justice system is fair?

6 MR. HARSHMAN: I believe so. Yeah. It's the best
7 anybody's got.

8 THE COURT: And the rules that we talked about, the
9 defendants' right to remain silent, the defendants' right
10 not to testify, their presumption of innocence and the
11 State's burden of proof which is beyond a reasonable
12 doubt, do you agree with those particular rules?

13 MR. HARSHMAN: You mean if the defendants don't want
14 to testify, it's his right? Yeah, I think so.

15 THE COURT: Okay. And would you hold that against
16 them at all if they did not testify?

17 MR. HARSHMAN: I don't think so. If the other facts
18 -- there's enough facts there to judge the case on.

19 THE COURT: Of course, it's the State's burden to
20 bring those facts into court.

21 Do you understand that?

22 MR. HARSHMAN: Yes.

23 THE COURT: Okay. All right. Thank you. Ms.
24 O'Neill?

25 MS. O'NEILL: I don't have any other questions.

1 MR. GAVIN: No further questions.

2 THE COURT: Mr. Zack?

3 MR. ZACK: No, Your Honor.

4 THE COURT: Thanks. You can come back at 1:30 this
5 afternoon.

6 MR. HARSHMAN: Thanks.

7 (Mr. Harshman has left chambers.)

8 THE COURT: Any further argument on challenge for
9 cause?

10 MS. O'NEILL: I don't have anything to add.

11 MR. GAVIN: I would join in Ruth's motion for cause,
12 Your Honor. I just believe it's inappropriate, any
13 relative from either of our offices to sit on this jury.

14 THE COURT: Mr. Zack?

15 MR. ZACK: I'm still opposed to -- he clarified that
16 he's never discussed the case and she didn't talk about it
17 with him. It's more coincidental that she happens to
18 work there than anything else.

19 THE COURT: Motion for cause is denied. Mr.
20 Douglass. Do we need to talk to Mr. Douglass?

21 MR. GAVIN: Yes, Your Honor. Question 16, again,
22 indicated that criminals have too many rights. Is unsure
23 regarding Robert and Roger, keeping their information
24 separate, is Question 9. Question 36, he believes too
25 soft on the criminals, people who should be separated from

1 society are too often put back on the streets. He also
2 indicated a possible problem with service. He said jury
3 duty would be okay with him, but this is a busy season.
4 He may have some work concerns.

5 THE COURT: Okay. Let's talk to Mr. Douglass.

6 MR. ZACK: Your Honor, again, he also mentioned he
7 is -- that he's unsure about the reasonable doubt
8 standard.

9 (Mr. Douglass has entered chambers.)

10 THE COURT: Sit down. How are you doing?

11 MR. DOUGLASS: Okay.

12 THE COURT: We just wanted to ask some follow-up
13 questions based on your questionnaire.

14 MR. DOUGLASS: Okay.

15 THE COURT: You indicated that you might have -- you
16 work with the Ford Motor Company?

17 MR. DOUGLASS: Yes.

18 THE COURT: And it's a busy season out there. I
19 think I talked to you in the full courtroom yesterday?

20 MR. DOUGLASS: No.

21 THE COURT: Oh, I didn't talk to you?

22 MR. DOUGLASS: No. I didn't raise my hand.

23 THE COURT: Oh, okay. Do you have hours that are
24 going to affect your ability to sit on the jury?

25 MR. DOUGLASS: Oh, I guess it wouldn't, but my job

1 will go to pot while I'm gone.

2 THE COURT: What kind of job do you have out there?

3 MR. DOUGLASS: I order and receive all the fuel and
4 all the tires, and I receive experimental parts and
5 distribute them.

6 THE COURT: Will you be worried about your job if
7 you are sitting on the jury?

8 MR. DOUGLASS: Oh, yes.

9 THE COURT: Do you think it will interfere with your
10 abilities to listen to the evidence?

11 MR. DOUGLASS: Oh, I don't think so, no.

12 THE COURT: What about the rights of criminals? In
13 a case like this the State has the burden of proving the
14 defendants' guilt beyond a reasonable doubt.

15 Do you think you'd be able to follow that
16 standard?

17 MR. DOUGLASS: Yes.

18 THE COURT: Okay. Do you think that criminals have
19 too many rights?

20 MR. DOUGLASS: Sometimes.

21 THE COURT: Okay. Would that -- that feeling, would
22 that affect your abilities to sit on this case?

23 MR. DOUGLASS: Oh, no.

24 THE COURT: Do you think that you would be, while
25 you are sitting on this case, thinking that, you know --

1 do you have an opinion about these defendants at all?

2 MR. DOUGLASS: No.

3 THE COURT: Ms. O'Neill?

4 MS. O'NEILL: I don't have any other questions,
5 Judge.

6 MR. GAVIN: Yes, Your Honor. You said that
7 criminals may have too many rights sometimes?

8 MR. DOUGLASS: Sometimes.

9 MR. GAVIN: Why do you think they have too many
10 rights, sir?

11 MR. DOUGLASS: Oh, just looking at all the things
12 that go on in the jails anymore. They've got more rights
13 than most of the people that aren't in there.

14 MR. GAVIN: What rights do you think that they have
15 that we don't have?

16 MR. DOUGLASS: Oh, I really couldn't say.

17 MR. GAVIN: Do you believe they have quite a few
18 rights that you and I don't share?

19 MR. DOUGLASS: Oh, I don't say they have more than
20 we do. They get treated sometimes better than they
21 should.

22 MR. GAVIN: You also indicate you may have -- you --
23 may be the way the question is worded in the
24 questionnaire, but could you keep the evidence straight as
25 to each defendant? There are two brothers charged in the

1 case.

2 MR. DOUGLASS: The similarities of the names is
3 going to be a little rough.

4 MR. GAVIN: It is going to be a little rough for
5 you? Do you believe you would be confused on the stand
6 sometimes?

7 MR. DOUGLASS: I don't believe so.

8 MR. GAVIN: One brother -- if you thought the
9 evidence indicated one brother was guilty and perhaps the
10 other brother wasn't, would you feel it necessary to find
11 both brothers guilty?

12 MR. DOUGLASS: Oh, no.

13 MR. GAVIN: Thank you, sir. I have no other
14 questions.

15 THE COURT: When you say that they -- I take it by
16 what you were saying that you feel that sometimes people
17 who are convicted of crimes are pampered in prison or get
18 too easy of a time in prison?

19 MR. DOUGLASS: Yeah. Well, my opinion is something
20 like murder, they shouldn't be put back on the street.

21 THE COURT: Okay. Do you understand in a criminal
22 case the jury has the duty to find whether or not the
23 defendants are guilty or not guilty --

24 MR. DOUGLASS: Yes.

25 THE COURT: -- based on the facts?

1 MR. DOUGLASS: Yes.

2 THE COURT: And the judge has the burden of deciding
3 guilt -- I am sorry, punishment?

4 MR. DOUGLASS: Right.

5 THE COURT: So, would punishment affect your
6 abilities to sit on this case at all?

7 MR. DOUGLASS: No.

8 THE COURT: If you were selected as a juror, could
9 you listen to the evidence and decide just on the evidence
10 that you hear in court?

11 MR. DOUGLASS: Yes.

12 THE COURT: Okay. Thank you. Mr. Zack, do you have
13 any questions?

14 MR. ZACK: Will you check his Answer No. 18? Almost
15 the last page.

16 THE COURT: The law requires the State to prove that
17 each defendant is guilty beyond a reasonable doubt. Do
18 you believe this is too difficult a standard for the
19 State, and you marked unsure.

20 Could you explain that a little bit?

21 MR. DOUGLASS: Not really. I am unsure.

22 THE COURT: Do you have any follow-up questions?

23 MR. ZACK: Do you believe that burden is too
24 difficult to ever prove?

25 MR. DOUGLASS: How do you mean?

1 MR. ZACK: The burden is on the State to prove the
2 defendant guilty beyond a reasonable doubt.

3 Do you think that's a very, very high burden,
4 that it's very difficult to reach?

5 MR. DOUGLASS: Yes.

6 THE COURT: Would you have to be convinced beyond
7 any doubt in your mind of the guilt of somebody before you
8 find them guilty?

9 MR. DOUGLASS: Yes.

10 MR. ZACK: Do you have -- you'd have to have
11 absolutely no doubts in your mind --

12 MR. DOUGLASS: Right.

13 MR. ZACK: -- before you --

14 MR. DOUGLASS: Yes, sir.

15 MR. ZACK: Even a minor doubt could keep you from
16 convicting someone?

17 MR. DOUGLASS: I think so, yes.

18 MR. ZACK: Thank you.

19 THE COURT: Well, it's kind of difficult to talk
20 about reasonable doubt, because it's one of those things
21 that everybody talks about, but nobody can define.

22 Do you think if I were to tell you it's your
23 job to look at the facts of this case, to determine who is
24 telling the truth and who is not telling the truth if
25 there is a discrepancy between the witnesses, and also to

1 apply that standard, beyond a reasonable doubt, that you
2 could do it in this case?

3 MR. DOUGLASS: I think so.

4 THE COURT: Okay. And when I say beyond a
5 reasonable doubt, if there was some doubt in your mind but
6 you couldn't find a good reason for it, would you find the
7 defendants guilty or not guilty, or --

8 MR. DOUGLASS: I don't know.

9 THE COURT: Okay. Well, would you be able to
10 deliberate with the other jurors?

11 MR. DOUGLASS: Oh, yes.

12 THE COURT: And now -- okay. Do you think you can
13 be a fair and impartial juror in this case?

14 MR. DOUGLASS: I think so.

15 THE COURT: Ms. O'Neill, any other questions?

16 MS. O'NEILL: No, Your Honor.

17 THE COURT: Mr. Gavin?

18 MR. GAVIN: Just one quick follow-up. If Robert and
19 Roger did not take the stand and testify, would you give
20 that any significance?

21 MR. DOUGLASS: No.

22 MR. GAVIN: You wouldn't think they were -- that
23 would indicate some sort of guilt on their part if they
24 didn't take the stand?

25 MR. DOUGLASS: Huh-uh.

1 MR. GAVIN: That's all. Thank you.

2 THE COURT: Anything else?

3 MR. ZACK: No, Your Honor.

4 THE COURT: Thanks for coming in.

5 (Mr. Douglass has left chambers.)

6 THE COURT: Any challenges for cause?

7 MS. O'NEILL: No.

8 MR. GAVIN: No, Your Honor.

9 MR. ZACK: The State would. It appears that his
10 concept of reasonable doubt is beyond what is called for,
11 that is, he holds the State to a higher standard of law
12 than the law requires.

13 THE COURT: Any discussion?

14 MS. O'NEILL: I would object to the challenge for
15 cause.

16 MR. GAVIN: I would also, Your Honor. He meets the
17 criteria. He's also indicated he could follow whatever
18 your instructions are in this case.

19 THE COURT: Well, I'm going to excuse him. Not just
20 because of his answers on reasonable doubt, but also his
21 concern about his work. I'm going to excuse him.

22 MR. ZACK: At some point I need to do something
23 about the morning coffee.

24 THE COURT: Of what?

25 MR. ZACK: Recycling the morning coffee.

1 THE COURT: Let's take a recess for a minute. Let's
2 do one more and get through the 36 that we called
3 yesterday.

4 Mary Chase. Any reason to talk to Mary Chase?

5 MS. O'NEILL: No, Your Honor.

6 MR. GAVIN: No, Your Honor.

7 MR. ZACK: No, Your Honor.

8 THE COURT: Okay. Any challenges for cause on Mary
9 Chase?

10 MS. O'NEILL: No.

11 MR. GAVIN: No.

12 MR. ZACK: No.

13 THE COURT: Okay. She can be advised to come back
14 at 1:30, and we will take a recess until exactly 10:30.

15 (A recess was taken from 10:20 a.m. to 10:40 a.m.)

16 (The following proceedings were had in chambers
17 outside the presence of the prospective panel.)

18 THE COURT: Is there anything we need to talk about
19 before calling in one of the jurors?

20 MR. ZACK: Only thing I was going to mention, I
21 think we are going to have to call all the following ones
22 in because I don't know if you asked the ones that were
23 out of -- the ones that you put in the box yesterday,
24 after --

25 THE COURT: I wanted to start with Ms. Anderson,

1 anyway, because she was one that had asked me to be
2 excused.

3 (Ms. Anderson has entered chambers.)

4 THE COURT: Hello.

5 MS. ANDERSON: Hello.

6 THE COURT: Sit down. You are Lorraine Anderson?

7 MS. ANDERSON: Yeah, uh-huh.

8 THE COURT: You had asked me to be excused, and I
9 didn't allow you to be excused.

10 Can you tell me again what the reason is?

11 MS. ANDERSON: I am going on a cruise from the 18th
12 of June to the 25th of June over to London, England,
13 taking the Concord back.

14 THE COURT: Okay. Now, we have just a few questions
15 possibly on the questionnaire.

16 But, do you know any of the attorneys in this
17 case, or do you know any --

18 MR. ZACK: I am right here.

19 THE COURT: -- do you know any member of the county
20 attorney's office --

21 MS. ANDERSON: No.

22 THE COURT: -- or some -- okay. Just wanted to make
23 sure, because that's a question I had asked of the group
24 up there, but not of those that were in the back of the
25 courtroom.

1 MS. ANDERSON: Uh-huh.

2 THE COURT: Ms. O'Neill, do you have any questions?

3 MS. O'NEILL: Ms. Anderson, you indicated on the
4 questionnaire that you thought you might give more weight
5 to the testimony the police officers give.

6 Can you kind of tell us why you feel that way?

7 MS. ANDERSON: Well, I probably been around police
8 officers more than most people because my husband was a
9 deputy sheriff, and I worked for the district attorney's
10 office, and that's the only reason.

11 MS. O'NEILL: But -- I noticed that you had done
12 that, and that's part of the reason?

13 MS. ANDERSON: Yeah. The only reason.

14 MS. O'NEILL: Okay. All right. That's all I -- the
15 only question I have.

16 MR. GAVIN: Just got a couple quick questions.
17 Question 16, criminals sometimes have too many rights?

18 MS. ANDERSON: Well, in the only way I think of
19 that, the only reason I think that way, sometimes they get
20 by with more than they should.

21 MR. GAVIN: What do you mean by getting by?

22 MS. ANDERSON: Well, sometimes because of their
23 counsel, and sometimes just exploits the case, let them
24 go, and for no reason at all.

25 MR. GAVIN: So, you think sometimes attorneys get

1 guilty people off?

2 MS. ANDERSON: I think so.

3 MR. GAVIN: Okay. You also said the system is too
4 lenient?

5 MS. ANDERSON: Sometimes.

6 MR. GAVIN: How do you feel about that, ma'am?

7 MS. ANDERSON: Just like the death penalty, I am a
8 believer in the death penalty, and people should have
9 that, it, don't get it. Stuff like that.

10 MR. GAVIN: You understand in this case there's two
11 brothers that are being charged with the crime?

12 MS. ANDERSON: Yeah.

13 MR. GAVIN: Would you be able to keep the evidence
14 separate as to each brother?

15 MS. ANDERSON: I think so.

16 MR. GAVIN: There wouldn't be any confusion
17 regarding the similarities of their names?

18 MS. ANDERSON: No.

19 MR. GAVIN: That's all the questions I have.

20 THE COURT: Mr. Zack?

21 MR. ZACK: You don't know any of the officers
22 involved in this case, do you?

23 MS. ANDERSON: No, I don't.

24 MR. ZACK: Do you think you can judge the testimony
25 of every witness, no matter whether they're an officer or

1 not, on your perceptions whether they had an opportunity
2 to observe something, whether they saw what they did, and
3 use that as a standard applying it to everybody, just not
4 to police officers, but to all the witnesses?

5 MS. ANDERSON: That's right. I don't think I would
6 have any trouble with that.

7 MR. ZACK: If you did that, do you think you would
8 weigh each witness's testimony the same?

9 MS. ANDERSON: I am sure I would. I'd try.

10 MR. ZACK: Thank you.

11 THE COURT: Let me ask you this. Your cruise begins
12 on June 18th?

13 MS. ANDERSON: Yes.

14 THE COURT: Do you have to be at a particular place
15 to begin that? In other words, would you have to leave --

16 MS. ANDERSON: That's right.

17 THE COURT: -- Lake Havasu --

18 MS. ANDERSON: Flying out of Las Vegas into New
19 York.

20 THE COURT: What date would you have to leave?

21 MS. ANDERSON: I am going to leave on the 17th.

22 THE COURT: Okay.

23 MS. ANDERSON: We don't know yet. The night of the
24 17th, or early -- the flight leaves at 6:00 o'clock in the
25 morning on the 18th. We might stay overnight in Las

1 Vegas.

2 THE COURT: Well, you know, this case could last
3 three weeks, although it may last less. I don't know.

4 Counsel object to her being excused based on
5 that?

6 MR. ZACK: Well, Your Honor, when you asked us
7 original estimates, I said two weeks.

8 THE COURT: Okay.

9 MR. ZACK: And somewhere, it wasn't from me,
10 somebody started saying three weeks. I don't know where
11 that came from. I am saying two weeks, at the most.

12 MS. O'NEILL: Your Honor, I wouldn't object to Ms.
13 Anderson being excused.

14 MR. GAVIN: We have no objection.

15 MS. O'NEILL: It may trickle over into that week,
16 but I don't know if it would or not, but I would hate to
17 have you on the jury and have it mess up your plans.

18 MR. ZACK: Your Honor, certainly with alternates
19 that could be taken care of.

20 THE COURT: All right. Let's -- I am going to ask
21 you to come back at 1:30. And, you know, at this point I
22 am going to still leave you on the jury. I think the
23 chances of it going to the 17th are very slim at this
24 point. So, I appreciate your coming in.

25 MS. ANDERSON: Yes. Thank you.

1 (Ms. Anderson has left chambers.)

2 THE COURT: Okay. Challenges for cause?

3 MS. O'NEILL: Your Honor, I would move that she be
4 stricken for cause. She appears to believe the police
5 officers more. She has a feeling that guilty people get
6 off. I didn't ask her the follow-up questions about
7 whether or not she believed people who had been arrested,
8 if that was evidence of guilt, although she does tend to
9 believe police officers more. She's had so much contact
10 with the police, I believe she would have difficulty with
11 this case, especially if we get going into the end of week
12 two and it doesn't look like we are all going to be
13 wrapped up in time. And we don't know how long
14 deliberations are going to take in this case.

15 THE COURT: Mr. Gavin?

16 MR. GAVIN: That would be my main concern, Your
17 Honor. If deliberations are carried out for a long time,
18 but in the back of her mind she's going to be worrying
19 about that trip, she may be more inclined to change her
20 mind to accommodate her travel plans. The police,
21 anti-crime bias, to me those two things combined should
22 remove her.

23 THE COURT: Mr. Zack?

24 MR. ZACK: Your Honor, I believe she indicated that
25 she didn't know any of the officers here, she could judge

1 it by the same standard as anybody else. State would
2 oppose.

3 THE COURT: Well, I'm going to deny the challenges
4 for cause. She did say she could be fair and judge them
5 by the same standard.

6 Any reason to talk to Ms. Nelson?

7 MR. GAVIN: We probably should, Your Honor.
8 Question 45 she indicated regarding the guilt/innocence
9 decision, whether that would be difficult. She doesn't
10 know. She believes criminals may have too many rights
11 sometimes. Question 34, they are not treated harsh
12 enough. She also stated in 24, she seems like she may
13 have concerns about showing up each day for duty. She's
14 pretty busy at work and she's driving on bald tires, but
15 she will manage. She seems to have some concerns about
16 getting here.

17 THE COURT: Anything additional?

18 MS. O'NEILL: No.

19 THE COURT: Mr. Zack?

20 MR. ZACK: State would oppose talking to her if need
21 be, but there's nothing in her answers that are a whole
22 lot different than anyone else's.

23 THE COURT: Well, let's talk to her.

24 (Ms. Nelson has entered chambers.)

25 THE COURT: Sit down there, please. Okay. You are

1 Ms. Nelson?

2 MS. NELSON: Yes.

3 THE COURT: We just need to clarify a few of the
4 questions on the questionnaire.

5 You indicated that you might have some
6 difficulty getting to court because of your car?

7 MS. NELSON: Well, I am getting two new tires on
8 Tuesday, and there might be somebody that I can ride with
9 from Havasu, too.

10 THE COURT: Do you -- how do you feel about criminal
11 cases in general?

12 MS. NELSON: What do you mean, how do I feel about
13 them?

14 THE COURT: Do you think that the system is unfair,
15 or fair?

16 MS. NELSON: I think it's basically fair.

17 THE COURT: Okay. Do you think if you are selected
18 on this case, that there's any reason -- do you think you
19 could be fair?

20 MS. NELSON: I would hope I could be.

21 THE COURT: Okay. Is there anything about the
22 charges or anything that would make it difficult for you
23 to sit on the jury?

24 MS. NELSON: No.

25 THE COURT: On one of the questions you said that --

1 let me just find that one. If you are selected as a juror
2 in this case you will, at the end of the case, be called
3 upon to judge the guilt or innocence of another person,
4 the defendants in this case. Would that be difficult for
5 you, and you said don't know.

6 Could you expand on that a little bit?

7 MS. NELSON: Well, I would hope I'd be able to make
8 a decision, yes.

9 THE COURT: Do you have a doubt about that?

10 MS. NELSON: No, not really. I have just never been
11 in this situation before.

12 THE COURT: Why do you think it might be hard for
13 you to make a decision?

14 MS. NELSON: I don't know. Maybe if I wasn't clear
15 on the facts, in my mind.

16 THE COURT: Do you think you could be in the court
17 as a juror and listen to the facts of the case and make
18 your decision, or at least determine which of the evidence
19 you believe and which you don't believe, and then come to
20 a conclusion with the other jurors?

21 MS. NELSON: I think I probably could.

22 THE COURT: All right. Any questions, Ms. O'Neill?

23 MS. O'NEILL: No, Your Honor.

24 MR. GAVIN: I just have a quick question, Your
25 Honor. If you had come to a decision about the case and

1 you felt that these gentlemen were either guilty or
2 innocent, would you allow another juror to change your
3 mind and sway your mind, or would you stick by your own
4 beliefs?

5 MS. NELSON: Well, I guess it would depend on what
6 kind of argument they gave me, but if I basically felt the
7 way I did --

8 MR. GAVIN: Let's say you deliberated for a week and
9 you were the only person that said these guys, you
10 believed these gentleman to be innocent, and everybody
11 else said they are guilty, and they said why don't you
12 change your mind.

13 Do you think you'd change your mind at that
14 point?

15 MS. NELSON: I might, but it would depend on how
16 strongly I felt that -- if it was just a little inkling I
17 might, but if it was something that I really felt was
18 important, I don't know that I would give up on it.

19 THE COURT: Mr. Zack, any questions?

20 MR. ZACK: No, Your Honor.

21 THE COURT: Anything else, Ms. O'Neill?

22 MS. O'NEILL: No, I don't.

23 THE COURT: Okay. Thanks for coming in and talking
24 to us. You can come back -- you are free to go for now,
25 but come back at 1:30 this afternoon. Okay. Thank you.

1 MS. NELSON: Okay.

2 (Ms. Nelson has left chambers.)

3 THE COURT: Challenges for cause on Ms. Nelson?

4 MS. O'NEILL: No, Your Honor.

5 MR. GAVIN: No, Your Honor.

6 MR. ZACK: No.

7 THE COURT: Okay. Any reason to talk to Ms.

8 Heinitz?

9 MS. O'NEILL: Yes, Your Honor. She indicated on the
10 questionnaire that she can't sit for over 20 minutes at a
11 time without back support.

12 THE COURT: Without what?

13 MS. O'NEILL: Neck support. She also had indicated
14 that she thought it would be difficult to make a decision
15 on the case, to render a verdict.

16 THE COURT: Based on health reasons, is there any
17 objection to her being excused?

18 MR. ZACK: No.

19 MR. GAVIN: No objection, Your Honor.

20 THE COURT: Ms. O'Neill?

21 MS. O'NEILL: No.

22 THE COURT: Ms. Heinitz, spelled H-e-i-n-i-t-z, can
23 be excused.

24 Ms. Pashano. Any reason to talk to Ms.
25 Pashano?

1 MS. O'NEILL: Your Honor, I would move that Ms.
2 Pashano be stricken for cause. She indicated in response
3 to Question No. 10, graphic photos would bother me. And
4 to Question No. 11 she answered yes to Part 2 regarding
5 whether or not -- whether she could -- whether the
6 penalties would affect her abilities to render a verdict
7 in this case.

8 MR. DICKEY: I think she also indicates she didn't
9 wish to serve, and her husband works for the Kingman
10 Police Department.

11 THE COURT: Mr. Zack? Any need to -- any objection
12 to her being excused?

13 MR. ZACK: Yes.

14 THE COURT: Let's talk to her, then.

15 MR. ZACK: Again, Your Honor, I think you are going
16 to have to talk to all of them. We haven't asked them if
17 they know the attorneys.

18 (Ms. Pashano has entered chambers.)

19 THE COURT: All right. Please be seated. Okay.
20 Just asking some questions.

21 First of all, one of the questions you weren't
22 asked but a lot of other people were asked out of the
23 group was, do you know any of the attorneys in this case?

24 MS. PASHANO: No, I don't.

25 THE COURT: Okay. Do you know any member of Mr.

1 Zack's office, the county attorney's office?

2 MS. PASHANO: Yes, I do.

3 THE COURT: Who do you know?

4 MS. PASHANO: I know Matt Smith. He plays
5 basketball with my husband. MacArthur, Bruce MacArthur.
6 I -- does he still work there?

7 THE COURT: Yes. Any of the others?

8 MS. PASHANO: I know Malibu Harshman, the secretary
9 for the county attorney's office.

10 THE COURT: Okay. And do you know any of the
11 defense attorneys, Mr. Dickey, Mr. Gavin, or Ms. O'Neill?

12 MS. PASHANO: No, I don't.

13 THE COURT: Okay. The fact that your husband is a
14 police officer, would that affect your ability to sit on
15 this case?

16 MS. PASHANO: I don't think so. I haven't heard
17 anything about this particular case. I mean, he doesn't
18 have any knowledge of it.

19 THE COURT: Do you talk to him about his cases,
20 about his work sometimes?

21 MS. PASHANO: Occasionally.

22 THE COURT: Okay. Do you think you would be able to
23 judge other police officers by the same standards as you
24 would witnesses -- he's not a witness on this case, I
25 understand that, but listening to the testimony of police

1 officers and civilian witnesses, would you be able to
2 judge them by the same standards?

3 MS. PASHANO: I would think that a police officer
4 wouldn't have as much to gain by lying, as much as an
5 accused would have of lying.

6 THE COURT: Do you -- I believe you also indicated
7 in here that you would be bothered by graphic
8 photographs.

9 Would that -- if there were photographs like
10 that in this case and you were a juror, would that
11 interfere with your abilities to be a juror?

12 MS. PASHANO: I just think it would be upsetting for
13 me to see something like that. I don't -- I don't -- you
14 know, I don't care to know all the graphic details of
15 things.

16 THE COURT: Would it be so upsetting that you would
17 be unable to keep an open mind about all the evidence?

18 MS. PASHANO: I don't think so, but, I don't know.

19 THE COURT: Okay.

20 MS. PASHANO: I never had to see pictures like that,
21 so, I don't know.

22 THE COURT: Ms. O'Neill?

23 MS. O'NEILL: You indicate that you know some of the
24 people that were on the witness list?

25 MS. PASHANO: Uh-huh.

1 MS. O'NEILL: Frank Smith and Jean Jackson. Do you
2 know them very well, or how often do you see them?

3 MS. PASHANO: I see Frank Smith occasionally at
4 friend's houses.

5 MS. O'NEILL: So, it's a social thing?

6 MS. PASHANO: Uh-huh.

7 MS. O'NEILL: How about Jean Jackson?

8 MS. PASHANO: We are just friends. She used to work
9 at the police department with my husband.

10 MS. O'NEILL: You said you also might know John
11 Anthony?

12 MS. PASHANO: I might. I don't know. If it is the
13 same one that works at DES, I know him.

14 MS. O'NEILL: And you would just know that person
15 through work?

16 MS. PASHANO: Through work.

17 MS. O'NEILL: Another one of the questions that you
18 answered had to do with the fact that the judge decides
19 the penalties in this case, but with the kind of penalties
20 these people are facing, do you think that knowing that
21 you would only decide guilt or innocence, could you put
22 the possible penalties out of your mind and leave that to
23 the judge if there was a conviction?

24 MS. PASHANO: It would be up to the judge to make
25 the decision, so I wouldn't -- I guess I wouldn't have to

1 worry about that, just concentrate on whether they were
2 guilty or not guilty.

3 MS. O'NEILL: Based on the fact that you know
4 several police officers and you are married to one, you
5 had indicated that may factor into your ability to weigh
6 testimony of the witnesses; is that right?

7 MS. PASHANO: I guess I probably trust a police
8 officer's a little bit more, but I believe they are just
9 human like anybody else. They can make mistakes.

10 MS. O'NEILL: Do you think that because a police
11 officer makes an arrest in a case, that that's an
12 indication that someone's probably guilty?

13 MS. PASHANO: I think if they arrest somebody,
14 probably they have enough evidence to arrest them. They
15 should have -- I feel they should have enough if they are
16 going to actually arrest them, and they think -- I think
17 they should have enough evidence when they arrest somebody
18 to take them to court and have it -- I don't know. These
19 aren't easy questions to answer.

20 MS. O'NEILL: I understand that, because that's what
21 you think it should be like.

22 Do you think that's the way it is usually?

23 MS. PASHANO: I would hope it's that way.

24 MS. O'NEILL: Okay.

25 THE COURT: Mr. Gavin?

1 MS. O'NEILL: Okay. Thanks.

2 MR. GAVIN: Mr. Dickey will handle this.

3 THE COURT: Mr. Dickey?

4 MR. DICKEY: In your questionnaire you indicated
5 that you were involved in some other business involving a
6 class reunion; is that right?

7 MS. PASHANO: Yes, that's right.

8 MR. DICKEY: And are you the one -- who are the --
9 are you the only one working on that, or are there other
10 people working with you?

11 MS. PASHANO: There's about six or seven other
12 people.

13 MR. DICKEY: And when is this class reunion
14 scheduled?

15 MS. PASHANO: Scheduled for the 12th, 13th, and 14th
16 of June.

17 MR. DICKEY: So, it's something that's coming up in
18 the near future?

19 MS. PASHANO: It's -- yeah, something that I have to
20 work on during the daytime to, you know, on the side kind
21 of, to help get things ready.

22 MR. DICKEY: And would it cause you a problem if you
23 were called to sit on this jury and the reunion came up
24 during the period of time that this matter was going on?

25 MS. PASHANO: I think it would just cause more

1 stress to me, and I don't feel I need any more stress.

2 MR. DICKEY: Now, I understood that you were
3 acquainted with Matt Smith.

4 Was that as a result of working for Child
5 Protective Services?

6 MS PASHANO: No, it wasn't. He's a friend of my
7 husband's.

8 MR. DICKEY: And I got the impression from your
9 questionnaire that this is a case where you'd rather not
10 serve; is that right?

11 MS. PASHANO: I prefer not to.

12 MR. DICKEY: And do you believe that police officers
13 never make a mistake?

14 MS. PASHANO: No.

15 MR. DICKEY: Do you believe that sometimes they may
16 make an arrest in error?

17 MS. PASHANO: It's possible.

18 MR. DICKEY: And if these officers whom you are
19 acquainted with testified in the case, would you be able
20 to give what they say the same treatment as you would give
21 officers that you don't know?

22 MS PASHANO: Yes.

23 MR. DICKEY: And so, I take it then that if you
24 heard them say something that you didn't believe was
25 accurate, you could find that it was not accurate?

1 MS. PASHANO: I don't know how I would know that it
2 wasn't accurate.

3 MR. DICKEY: Well, you understand that as a juror
4 you have to judge which witnesses are to be believed and
5 which evidence is proved and that sort of thing?

6 MS. PASHANO: I guess just based on their testimony
7 I would have to decide which person I believed.

8 MR. DICKEY: And do you know what you would use to
9 determine which witness to believe or not to believe?

10 MS. PASHANO: I guess, as I said before, the police
11 officer wouldn't have anything to gain by lying, maybe
12 someone else would.

13 MR. DICKEY: You understand, though, that a
14 policeman, by what he does, vouches for his work?

15 THE COURT: Well, I don't understand that, Mr.
16 Dickey.

17 Mr. Zack, do you have any questions?

18 MR. ZACK: Just very briefly. Ms. Pashano, knowing
19 that if a guilty verdict were returned that the death
20 penalty could be imposed, would that make you less likely
21 or make you require more proof of guilt before you voted
22 for a guilty verdict?

23 MS. PAHSANO: I guess if they are guilty, I would
24 just decide if they were guilty, and I think the judge, he
25 should decide whether that warranted the death penalty or

1 not. I don't think I'd want to be on the jury to make
2 those choices for death, but -- I don't think I would have
3 any, you know, decision in that matter.

4 MR. ZACK: Thank you.

5 THE COURT: Thank you. Those are all the questions.
6 If you'll wait outside for a few minutes, we'll let you
7 know.

8 (Ms. Pashano has left chambers.)

9 THE COURT: Ms. O'Neill, any discussion?

10 MS. O'NEILL: I don't have anything to add to my
11 prior motion.

12 THE COURT: Mr. Dickey?

13 MR. DICKEY: Your Honor, I believe that because of
14 the, what she's indicated relating to her work on this
15 reunion and the fact that it's coming up possibly during
16 the time that this matter would be in progress, I think
17 that she might have some problems. As she's indicated,
18 that might cause her stress, because I believe from what
19 she's indicated, that is something that she's probably
20 looking forward to. So, I would join in Ms. O'Neill's
21 motion.

22 THE COURT: Comments?

23 MR. ZACK: I'd oppose, but I tend to think that I am
24 wasting my time arguing it.

25 THE COURT: You are right. She's excused for

1 cause. Ms. Pethers, is there any reason -- oh, we have to
2 talk to her, anyway. So, let's tell her that she doesn't
3 have to come back, and Ms. Pethers to come in.

4 (Ms. Pethers has entered chambers.)

5 THE COURT: Ms. Pethers, first, I have a question.
6 Do you know any of the attorneys in this case?

7 MS. PETHERS: No.

8 THE COURT: Mr. Zack is a deputy county attorney.
9 Do you know any member of his office?

10 MS. PETHERS: I have been in there. I know some
11 people that work there, Bob Moon. That's about it.

12 THE COURT: Okay. How do you know Bob Moon?

13 MS. PETHERS: Through my mother's case.

14 THE COURT: Your mother is?

15 MS. PETHERS: Heidi Garcia.

16 MR. ZACK: Pardon me?

17 MS. PETHERS: Heidi Garcia.

18 THE COURT: And Bob Moon was the county --

19 MS. PETHERS: The county attorney.

20 THE COURT: He was prosecuting your mother, then?

21 MS. PETHERS: Yeah. It didn't even go to trial.
22 Judges dismissed it.

23 THE COURT: Anything about the fact that you know
24 Bob Moon as prosecuting your mother that would affect your
25 abilities to sit on this case?

1 MS. PETHERS: No.

2 THE COURT: Have you heard anything about this case?

3 MS. PETHERS: No. Other than what I stated the
4 other day, that it happened. I don't even know how.

5 THE COURT: Ms. O'Neill, any questions?

6 MS. O'NEILL: No, Your Honor.

7 THE COURT: Mr. Dickey?

8 MR. DICKEY: No, Your Honor.

9 THE COURT: Mr. Zack?

10 MR. ZACK: No, Your Honor.

11 THE COURT: Thanks for coming in. You can come back
12 at 1:30 this afternoon.

13 MS. PETHERS: 1:30, okay.

14 (Ms. Pethers has left chambers.)

15 THE COURT: Challenges for cause?

16 MS. O'NEILL: No, Your Honor. But just for the
17 Court's information and maybe Mr. Zack's information, I
18 wasn't sure until I saw her, she is not the Pethers that I
19 represented, but I have represented a woman with this same
20 last name that may be related to her. She doesn't
21 indicate she recognized me, so I don't think that will be
22 a problem.

23 THE COURT: Mr. Dickey?

24 MR. DICKEY: I have nothing, Your Honor.

25 THE COURT: Mr. Zack?

1 MR. ZACK: Nothing.

2 THE COURT: Okay.

3 MR. DICKEY: Your Honor, there is something I
4 neglected to mention yesterday, and I think I better bring
5 it to the Court's attention. On Mr. Miller, who has a
6 shoe store, I am a customer of his.

7 MS. O'NEILL: Which Mr. Miller?

8 MR. DICKEY: Carl, I think.

9 THE CLERK: Allen Carlyle.

10 THE COURT: Okay. You are a customer of his?

11 MR. DICKEY: Yes. In the shoe shop down here.

12 THE COURT: Okay. All right. Thank you. Anybody
13 else have any further comments on that? Mr. Zack?

14 MR. ZACK: No.

15 MS. O'NEILL: No.

16 THE COURT: Okay. Mr. Evans, we will need to talk
17 to him. Bring him in here. Just tell Bob that we will be
18 talking to everybody in order.

19 THE CLERK: Okay.

20 MS. O'NEILL: Your Honor, Mr. Evans has indicated he
21 has a hearing problem.

22 (Mr. Evans has entered chambers.)

23 THE COURT: Come on in. Sit down right here. How
24 are you doing? Mr. Evans, I just have a few quick
25 questions for you.

1 You're -- oh, first, let me ask you, do you
2 know the people I introduced yesterday? Do you know any
3 of them? Ms. O'Neill, Mr. Dickey, Mr. Gavin --

4 MR. EVANS: No.

5 THE COURT: -- or Mr. Zack?

6 MR. EVANS: No.

7 THE COURT: Do you know any member of the county
8 attorney's office?

9 MR. EVANS: No.

10 THE COURT: Okay. You indicated that you had a
11 little trouble hearing?

12 MR. EVANS: I have a big trouble hearing.

13 THE COURT: Okay. You are having trouble hearing me
14 right now, aren't you?

15 MR. EVANS: No. I get you right now all right.

16 THE COURT: Okay. All right. Yesterday when we
17 were in the courtroom, were you able to hear everything
18 that happened?

19 MR. EVANS: I wasn't able to hear anything that
20 happened. You know, basically nothing.

21 THE COURT: Okay. Sure. Where were you sitting in
22 the courtroom yesterday? Were you sitting close to the
23 front, or --

24 MR. EVANS: About the middle of the left-hand side.

25 THE COURT: If you were sitting up where the other

1 jurors, up on the side where those that were impaneled
2 were sitting, would you be able to hear what was going on?

3 MR. EVANS: Maybe if I was sitting up in the front,
4 maybe.

5 THE COURT: Okay. Is there any reason why you can't
6 sit on this jury other than that?

7 MR. EVANS: I have a hearing with the industrial
8 commission the 5th of next month.

9 THE COURT: Okay.

10 MR. EVANS: I think it's 11:00 o'clock.

11 THE COURT: Okay. All right. Thank you. Ms.
12 O'Neill, any questions?

13 MS. O'NEILL: No. Mr. Evans, is that the 5th of
14 June?

15 MR. EVANS: Beg your pardon?

16 MS. O'NEILL: The 5th of June that you have your
17 meeting?

18 MR. EVANS: 5th of June, uh-huh.

19 MS. O'NEILL: Nothing else.

20 THE COURT: Mr. Gavin, Mr. Dickey?

21 MR. DICKEY: Mr. Evans, you indicated that you knew
22 Dan Bishop. How do you know Dan Bishop?

23 MR. EVANS: Well, I don't know. When he was a kid.
24 Like, I have been here 50 years and I know a lot of people
25 around here.

1 MR. DICKEY: Is Dan a friend of yours?

2 MR. EVANS: I wouldn't say he's a friend, he's an
3 acquaintance. And I knew his stepfather and his mother
4 and so forth.

5 MR. DICKEY: There are two brothers who are
6 defendants in this case, and you indicated, I think, in
7 your questionnaire, there might be some problem keeping
8 the evidence separate as to each.

9 Do you think that would be a problem?

10 MR. EVANS: It might be on account of my hearing,
11 you know.

12 THE COURT: Okay. Thank you. Mr. Zack, any
13 questions?

14 MR. ZACK: No, Your Honor.

15 THE COURT: Okay. Thanks. Oh, come in. Just wait
16 outside for a minute and we will let you know what we are
17 going to do.

18 MR. EVANS: Okay. Thank you.

19 THE COURT: Okay. Thanks for coming in.

20 (Mr. Evans has left chambers.)

21 THE COURT: Any objection to Mr. Evans being
22 excused?

23 MS. O'NEILL: No.

24 MR. ZACK: No.

25 THE COURT: Okay. Advise him that he's excused.

1 And then we need to talk to Ms. Davis.

2 MR. ZACK: I have Schuerr.

3 (Ms. Schuerr has entered chambers.)

4 THE COURT: Ms. Schuerr, is that how you say your
5 name?

6 MS. SCHUERR: Schuerr.

7 THE COURT: Schuerr, okay. All right. I just have
8 a few questions for you.

9 First of all, do you know any of the attorneys
10 in this case, Ms. O'Neill, Mr. Dickey, Mr. Gavin, or Mr.
11 Zack?

12 MS. SCHUERR: No.

13 THE COURT: And do you know any members of the
14 county attorney's office?

15 MS. SCHUERR: No.

16 THE COURT: Okay. Is there any reason why you
17 couldn't sit on the jury?

18 MS. SCHUERR: No.

19 THE COURT: Okay. Ms. O'Neill, do you have any
20 questions?

21 MS. O'NEILL: No, I don't.

22 THE COURT: Mr. Dickey?

23 MR. DICKEY: No questions, Your Honor.

24 THE COURT: Mr. Zack?

25 MR. ZACK: No, Your Honor.

1 THE COURT: Okay. Thanks for coming in. Come back
2 at 1:30 this afternoon.

3 MS. SCHUERR: Okay. Thank you.

4 (Ms. Schuerr has left chambers, and Ms. Holloway has
5 entered chambers.)

6 THE COURT: Holloway. Ms. Holloway?

7 MS. HOLLOWAY: Yes?

8 THE COURT: I just have a few questions for you.
9 First of all, do you know any of the attorneys, Ms.
10 O'Neill, Mr. Dickey, Mr. Gavin, or Mr. Zack?

11 MS. HOLLOWAY: No.

12 THE COURT: And do you know any member of the county
13 attorney's office?

14 MS. HOLLOWAY: No.

15 THE COURT: Okay. Is there any reason why you can't
16 sit on this jury?

17 MS. HOLLOWAY: No.

18 THE COURT: Ms. O'Neill, any questions?

19 MS. O'NEILL: No, Your Honor.

20 THE COURT: Mr. Gavin? Or, Mr. Dickey? I am sorry.

21 MR. DICKEY: You indicated in your questionnaire
22 that you do not think the defendants -- if a person is
23 convicted of the sentence, that the sentences are harsh
24 enough.

25 Can you tell us what you mean by that?

1 MR. HOLLOWAY: I've based -- it was hard to answer
2 the question. It's based on me, what the crime was. And
3 some of them, I feel that they had the right sentence for
4 them, and some of them it just doesn't seem that they got
5 what they deserved for what they did.

6 MR. DICKEY: I see. Do you understand that if you
7 are selected as a juror in this case you would have to
8 decide based on the evidence and the law that the judge
9 would give, whether these two defendants are guilty or not
10 guilty?

11 MS. HOLLOWAY: Yes.

12 MR. DICKEY: And you understand that the judge would
13 then determine the sentence?

14 MS. HOLLOWAY: Yes.

15 MR. DICKEY: And do you think that you would be able
16 to do that? Make the decision as to whether or not they
17 are guilty or not guilty or innocent?

18 MS. HOLLOWAY: Yes.

19 MR. DICKEY: And there are two brothers. Do you
20 believe you'd be able to keep the evidence as to each
21 separate?

22 MS. HOLLOWAY: Yes.

23 MR. DICKEY: And judge them separately?

24 MS. HOLLOWAY: Yes.

25 THE COURT: Mr. Zack, any questions?

1 MR. ZACK: No, Your Honor.

2 THE COURT: I was looking through yours, and I don't
3 know -- when you filled this out, did you have a complete
4 -- is this the only page of witnesses that you saw? Was
5 there only one page in there?

6 MS. HOLLOWAY: No.

7 THE COURT: All right. So, you did see a list that
8 had this page with it?

9 MS. HOLLOWAY: Yes.

10 THE COURT: Okay. Somehow when this got put
11 together that page is either misplaced or missing.

12 So, do you know any of the witnesses in this
13 case?

14 MS. HOLLOWAY: No.

15 THE COURT: Okay. Thanks for coming in and talking
16 to us.

17 MR. DICKEY: I do have a couple more questions.

18 THE COURT: I am sorry.

19 MR. DICKEY: You also indicated that you think that
20 the defendants have too many rights.

21 What did you mean by that?

22 MS. HOLLOWAY: Too many rights?

23 MR. DICKEY: Yes.

24 MS. HOLLOWAY: How was the question worded?

25 THE COURT: Which question are you looking at, Mr.

1 Dickey? No. 36?

2 MR. GAVIN: Probably 16.

3 MS. O'NEILL: Probably 16 of Part 2, Your Honor.

4 THE COURT: Well, actually what you said was -- the
5 question is, do you believe that persons who are accused
6 of crimes are afforded too many rights at the expense of
7 crime victims, and you said sometimes. Okay.

8 Do you want to look at that? I guess if you
9 can expand on that for us it would be helpful.

10 MS. HOLLOWAY: I answered the question in thinking
11 that people, after they are -- I just feel the people that
12 are in jail after they have been convicted, they're there
13 at the expense of us and we are paying for them to be
14 there, and --

15 THE COURT: Do you think they are pampered or
16 treated too easily once they are in prison?

17 MS. HOLLOWAY: Not pampered, but the ones that get
18 -- well, they get their food and their medical, and some
19 get some kind of, not schooling, but training for things.

20 THE COURT: Okay. Mr. Dickey, do you have any other
21 questions?

22 MR. DICKEY: So, you think that after they have been
23 convicted, that there's a problem with them being kept
24 there at the taxpayer's expense?

25 MS. HOLLOWAY: Yes.

1 MR. DICKEY: If we don't use that system, what would
2 you suggest be done?

3 MS. HOLLOWAY: I don't know. I don't have an answer
4 for that.

5 MR. DICKEY: I have no further questions.

6 THE COURT: Mr. Zack, any questions?

7 MR. ZACK: No, Your Honor.

8 THE COURT: Ms. O'Neill, any questions?

9 MS. O'NEILL: No, Your Honor.

10 THE COURT: Thanks for coming in and talking to us,
11 and if you could come back at 1:30 this afternoon.

12 MS. HOLLOWAY: Okay.

13 (Ms. Holloway has left chambers.)

14 THE COURT: Any challenges for cause?

15 MS. O'NEILL: No.

16 THE COURT: Mr. Dickey?

17 MR. DICKEY: No, Your Honor.

18 THE COURT: Mr. Zack?

19 MR. ZACK: No.

20 THE COURT: Okay. Just tell Bob we need to send the
21 next one in.

22 MS. O'NEILL: Your Honor, if this is Mr. Azzolino,
23 he indicated at Question 20, at the end, that he believes
24 defendants should have to testify.

25 THE COURT: Okay. All right.

1 (Mr. Azzolino has entered chambers.)

2 THE COURT: Mr. Azzolino?

3 MR. AZZOLINO: Yes. Thank you.

4 THE COURT: And did I pronounce your name right?

5 MR. AZZOLINO: Azzolino.

6 THE COURT: Azzolino. Okay. Thank you. First, let
7 me introduce the attorneys in this case. They were
8 introduced yesterday, but I want to make sure whether you
9 know any of them or not. There's Ms. O'Neill --

10 MR. AZZOLINO: No. I didn't know any of them
11 yesterday.

12 THE COURT: You saw them --

13 MR. AZZOLINO: I am a stranger in town, more or
14 less. Seven years here. Well, I mean, haven't met too
15 many people.

16 THE COURT: Do you know any members of the county
17 attorney's office?

18 MR. AZZOLINO: No.

19 THE COURT: Okay. In your questionnaire yesterday
20 you were advised of the defendant's rights. They have a
21 right to make the State prove the case beyond a reasonable
22 doubt --

23 MR. AZZOLINO: Yes.

24 THE COURT: -- they have a right to a presumption of
25 innocence, the right not to testify, and that can't be

1 held against them by the jury. And you indicated you
2 understand those rights, but you also indicated that the
3 defendant should testify.

4 MR. AZZOLINO: That's the way I feel.

5 THE COURT: Okay. Explain that for me.

6 MR. AZZOLINO: Well, I feel they should explain
7 their own case, defend themselves at least.

8 THE COURT: Do you think it's to their advantage to
9 testify?

10 MR. AZZOLINO: Yeah. I think so.

11 THE COURT: But if in this case the defendants were
12 not to testify, would you hold that against them?

13 MR. AZZOLINO: Not necessarily, no.

14 THE COURT: Do you think if they don't testify, that
15 that's something -- well, assume they don't testify.

16 Is that something that the jury should consider
17 in their deliberations?

18 MR. AZZOLINO: Partly. Partly, because if a man is
19 innocent he would want to tell the jury his story, you
20 know. I know I would if I were accused of something.

21 THE COURT: All right. Ms. O'Neill?

22 MS. O'NEILL: No. I don't have any other
23 questions.

24 THE COURT: Mr. Dickey?

25 MR. DICKEY: You understand that the State has to

1 prove the defendants guilty, and if they don't prove them
2 guilty, the defendants don't have to do anything?

3 MR. AZZOLINO: That's true. That's right. The
4 obligation is on the State.

5 MR. DICKEY: And so, you understand that the
6 defendants have to decide, after the State's presented
7 it's case, whether or not they think the State's proved
8 anything.

9 If they don't think the State's proved it, then
10 would you still require them to testify before you find in
11 their favor?

12 MR. AZZOLINO: Not necessarily. But if you were up
13 to something, I would want to explain my side of it. But,
14 I wouldn't hold it against them, no.

15 MR. DICKEY: I have no questions.

16 THE COURT: Mr. Zack, any questions?

17 MR. ZACK: Just a few. You indicated on the
18 questionnaire, I believe, that you could follow the
19 instructions of the judge that he gives you?

20 MR. AZZOLINO: Uh-huh.

21 MR. ZACK: And if Judge Chavez told you that you
22 were instructed not to consider whether the defendant
23 testifies or not, if they don't testify you can't think
24 about that in your deliberations, if he told you that was
25 the rule, could you follow that?

1 MR. AZZOLINO: If he said it was the rule, yes.

2 MR. ZACK: Thank you.

3 THE COURT: Ms. O'Neill, any other questions?

4 MS. O'NEILL: No, Your Honor.

5 THE COURT: Okay. At the end of this case I'm going
6 to tell you, I am going to instruct the jury that they
7 cannot consider whether the defendants testified or not.
8 Let me rephrase that.

9 If the defendants don't testify, it can't be
10 held against them in any way, and at the end of the case I
11 am going to tell the jury that they can't consider that as
12 part of their deliberations.

13 So, given that, would you consider that at all
14 in this case if they did not testify?

15 MR. AZZOLINO: I would consider all the other
16 aspects of the case.

17 THE COURT: Okay.

18 MR. AZZOLINO: It would depend. But as I said
19 before, if I were on trial I would want to speak my peace
20 and my own defense.

21 THE COURT: Sure.

22 MR. AZZOLINO: But, if a man doesn't want to, that's
23 his privilege.

24 THE COURT: Well, they decide whether to testify or
25 not based on the advice that's given to them by an

1 attorney.

2 MR. AZZOLINO: Sure.

3 THE COURT: And at the end of the case I am going to
4 tell you that you cannot consider that in your
5 deliberations in any way.

6 And if I tell you that, will you follow that
7 instruction?

8 MR. AZZOLINO: Yeah. I would follow the judge's
9 advice.

10 THE COURT: Now, given the evidence in this case,
11 would you be able to listen to the evidence and reach a
12 verdict based on the evidence that you hear in court?

13 MR. AZZOLINO: I think so. I think so.

14 THE COURT: Is there any reason why you cannot be
15 fair and impartial in this case?

16 MR. AZZOLINO: Nothing I can think of.

17 THE COURT: Okay. Thank you. Ms. O'Neill, any
18 other questions?

19 MS. O'NEILL: No.

20 THE COURT: Mr. Dickey?

21 MR. DICKEY: No, Your Honor.

22 THE COURT: Mr. Zack?

23 MR. ZACK: No, Your Honor.

24 THE COURT: Thanks for coming in. We will let you
25 know what to do in a minute.

1 MR. AZZOLINO: Thank you.

2 THE COURT: Okay. Challenges for cause?

3 MR. DICKEY: No, Your Honor.

4 MS. O'NEILL: No.

5 THE COURT: Mr. Zack?

6 MR. ZACK: No.

7 THE COURT: He can come back at 1:30 then. Oh, you
8 can come back at 1:30 this afternoon.

9 MR. AZZOLINO: Thank you.

10 THE COURT: Thanks. We'll see you.

11 (Mr. Azzolino has left chambers.)

12 MR. DICKEY: The next lady indicates she has a
13 medical problem, a problem sitting.

14 (Ms. Shrum has entered chambers.)

15 THE COURT: Okay. Come on in. Sit here. You are
16 Ms. Shrum; is that how you say your name?

17 MS. SHRUM: Shrum, uh-huh.

18 THE COURT: First of all, do you know any of the
19 attorneys in this case, Ms. O'Neill --

20 MS. SHRUM: No.

21 THE COURT: -- Mr. Dickey, Mr. Gavin? Do you know
22 any of them?

23 MS. SHRUM: No.

24 THE COURT: Do you know Mr. Zack?

25 MS. SHRUM: No.

1 THE COURT: Do you know any members of the county
2 attorney's office?

3 MS. SHRUM: No. We have only lived here a little
4 while, and I don't know anybody, so --

5 THE COURT: How long is a little while?

6 MS. SHRUM: 19 months.

7 THE COURT: Okay. All right. You indicated you
8 have had back surgery and you have trouble sitting for a
9 long time?

10 MS. SHRUM: I have to wear a --

11 THE COURT: Do you think you'd be able to sit and
12 listen to the evidence in this case with having had that
13 surgery?

14 MS. SHRUM: I don't know. I have five fusions. I
15 have to be able to move around. If it is an hour or so I
16 can sit, but any longer than that my legs go to sleep.

17 THE COURT: Okay. Thank you. Any additional
18 questions?

19 MS. O'NEILL: No, Your Honor.

20 THE COURT: Mr. Dickey?

21 MR. DICKEY: I may have some questions, Your Honor,
22 maybe discuss the other matter.

23 THE COURT: Mr. Zack, any -- oh, well, I guess I'd
24 like to know if counsel have any objection to Ms. Shrum
25 based on her medical reasons?

1 MR. ZACK: Just on that basis, Ms. Shrum, generally
2 the court doesn't go more than an hour and-a-half at a
3 time without a break.

4 Would that be a problem for you?

5 MR. SHRUM: Probably not. I could probably set for
6 an hour and-a-half. I'm not going to say I can do it, but
7 I probably can.

8 MR. ZACK: Do you just have to stand up once in a
9 while?

10 MS. SHRUM: I move my legs. I have got five fusions
11 in my neck, and then I have got a lot --

12 MR. ZACK: But, if you stand up, shuffle your feet
13 a little bit --

14 MS. SHRUM: Then I'd be all right.

15 MR. ZACK: Thank you.

16 MR. DICKEY: I have no objection to her being
17 excused, Your Honor, for medical reasons.

18 THE COURT: Well, I guess I would like to go
19 further. Mr. Zack, what's your --

20 MR. ZACK: She seems like she says that she can
21 handle service.

22 THE COURT: Well, I think she can handle it. I am
23 going to allow her to, if she is selected, to stand up and
24 move around.

25 Do you think you could do that while testimony

1 is going on, and still listen to the testimony?

2 MS. SHRUM: Yes, sir.

3 THE COURT: Okay. I am going to allow you to do
4 that.

5 Do you have any questions regarding any of the
6 other matters?

7 MS. O'NEILL: Yes. I do have a couple. You had
8 indicated in your questionnaire that you believe that the
9 laws aren't harsh enough.

10 Is that your belief?

11 MS. SHRUM: Yes.

12 MS. O'NEILL: You said something about when a death
13 sentence is handed down it should be carried out fast.

14 Do you believe that there are some types of
15 crimes that should always receive the death penalty?

16 MS. SHRUM: Yes. I really do.

17 MS. O'NEILL: What types of crimes are those?

18 MS. SHRUM: Rape of a child, murder. I guess that
19 would be the biggest, the two things.

20 MS. O'NEILL: And I think you also said that you
21 think that if police have enough evidence to arrest
22 somebody, they are almost always guilty. Is that the
23 question?

24 MS. SHRUM: Yes. Oh, yes.

25 MS. O'NEILL: The guy behind you is writing this

1 down.

2 MS. SHRUM: My son-in-law is a police officer, and
3 we had a business right across the street from the police
4 department for 25 years. I got to know all the officers
5 pretty good. Nine times out of 10 the guys get back on
6 the street before the boys got their paperwork done. I
7 just don't feel that the courts are harsh enough. I don't
8 think that -- I don't know. I just have strong feelings
9 about that.

10 MS. O'NEILL: Given those strong feelings that you
11 have, do you think it might be difficult to put those
12 aside and just look at the evidence in this case?

13 MS. SHRUM: I really -- I really don't know. I
14 don't know whether I could put my feelings aside and just
15 go for the evidence. I just really don't know whether I
16 could.

17 THE COURT: Okay.

18 MS. O'NEILL: And I think you also -- I am sorry. I
19 think you also said that you were concerned about the
20 possibilities there might be some kind of graphic evidence
21 in the case?

22 MS. SHRUM: I didn't --

23 MS. O'NEILL: I am sorry. I might be looking at the
24 wrong answer.

25 MS. SHRUM: No.

1 MS. O'NEILL: You read in one question there was
2 some rules about the rights of defendants, and I think
3 that you didn't agree with those.

4 Do you recall that? That's -- maybe the judge
5 can show you that.

6 MS. SHRUM: I don't remember.

7 MS. O'NEILL: No. 20, yes. It was a long
8 questionnaire, I realize --

9 THE COURT: Basically this is the question here.
10 It's a long question, and the part she's referring to is
11 this answer right here, but this --

12 MS. SHRUM: Oh. Well, I was kind of back and forth
13 on that. I don't know. I really don't know how I -- I
14 feel about that. The way I feel, that it should be up to
15 the defendants to prove their innocence, not for the
16 courts to have to prove they're guilty. Just --

17 THE COURT: Okay. I understand that. Mr. Dickey?

18 MS. O'NEILL: I don't have anything else, Judge.
19 Thank you.

20 THE COURT: Mr. Dickey?

21 MR. DICKEY: I believe you also -- you indicated
22 that you didn't know whether you could follow the judge's
23 instructions.

24 Is that still what you think?

25 MS. SHRUM: Well, like I said, I really don't know

1 if I could put it completely out of my mind and be honest
2 with myself or with the Court. I really don't. The way I
3 feel about the way the world's going right now, the laws
4 and things, I really don't know.

5 MR. DICKEY: I have no further questions.

6 THE COURT: Mr. Zack, any questions?

7 MR. ZACK: No, Your Honor.

8 THE COURT: Well, Ms. Shrum, all things considered,
9 and taking into account your hardship with your back, and
10 plus the doubts that you have about the case, I'm going to
11 allow you to be excused.

12 MS. SHRUM: Thank you, Your Honor.

13 THE COURT: Thanks for your honesty.

14 (Ms. Shrum has left chambers, and Ms. Wright has
15 entered chambers.)

16 THE COURT: Just sit here.

17 MS. WRIGHT: Okay.

18 THE COURT: You are Ms. Wright?

19 MS. WRIGHT: Yes.

20 THE COURT: First thing I'd like to do is, the
21 attorneys were introduced yesterday.

22 Do you know any of those attorneys?

23 MS. WRIGHT: No, I don't.

24 THE COURT: Do you know any member of the county
25 attorney's office?

1 MS. WRIGHT: No.

2 THE COURT: I guess I don't have any other
3 questions.

4 Do you have any questions?

5 MS. O'NEILL: No, I don't.

6 THE COURT: Mr. Dickey?

7 MS. O'NEILL: No, Your Honor.

8 THE COURT: Mr. Zack?

9 MR. ZACK: No, Your Honor.

10 THE COURT: Thanks for coming in. And if you could
11 come back at 1:30 this afternoon.

12 MS. WRIGHT: Okay.

13 (Ms. Wright has left chambers, and Mr. Way has
14 entered chambers.)

15 THE COURT: Okay. Thank you. You are Mr. Way?

16 MR. WAY: Yes.

17 THE COURT: And yesterday in court I introduced the
18 attorneys.

19 Did you see them in Court yesterday?

20 MR. WAY: Well, yes. I saw the attorneys.

21 THE COURT: Are there any of them that you recognize
22 or that you know?

23 MR. WAY: No. I don't know them.

24 THE COURT: Do you know any member of the county
25 attorney's office?

1 MR. WAY: No.

2 THE COURT: Is there anything about this case that
3 would make it difficult for you to serve as a juror?

4 MR. WAY: I don't suppose so.

5 THE COURT: Okay. Do you think you could be fair
6 and impartial in this case?

7 MR. WAY: Well, I've never been on a case, so -- I
8 suppose so.

9 THE COURT: Ms. O'Neill, do you have any questions?

10 MS. O'NEILL: Yes. Mr. Way, you had indicated that,
11 in your questionnaire, that you would tend to give more
12 weight to the testimony of a police officer.

13 Can you tell us why you feel that way?

14 MR. WAY: Well, they carry some weight with me, I
15 would say, because of their position, their education,
16 their experiences, and their reliability.

17 MS. O'NEILL: So, you believe that police officers
18 have an inherent reliability and that would cause you to
19 believe them?

20 MR. WAY: Well, I think they have a lot of good
21 judgment or they wouldn't be where they're at.

22 MS. O'NEILL: And you also said that you were unsure
23 about -- there was a question about whether you believed
24 -- the standards of proof of beyond a reasonable doubt was
25 too difficult for the State, and you indicated you weren't

1 sure about that?

2 MR. WAY: Beyond a reasonable doubt. Well, yes. I
3 don't know. That's being assumed innocent before -- until
4 guilty. Well, it looks to me like you wouldn't get in
5 that position unless you've had an indication of being
6 guilty, but, I don't know. I'm a little wishy-washy on
7 it, I guess.

8 MS. O'NEILL: So, you believe that if someone gets
9 to the point of trial, do you think there's an indication
10 there that they are probably guilty?

11 MR. WAY: Something occurred for them to get there.

12 MS. O'NEILL: Okay. So, you think --

13 MR. WAY: Well, I mean --

14 MS. O'NEILL: That answer --

15 MR. WAY: I have a tendency to lean towards that
16 they've got a problem with the way they have been living,
17 yeah.

18 MS. O'NEILL: And do you understand that you can
19 only look at the evidence in the case and not the charges?

20 MR. WAY: You are supposed to, but your mind has a
21 tendency to travel, or --

22 MS. O'NEILL: Do you think your mind might have a
23 tendency to travel into things besides the evidence in
24 court?

25 MR. WAY: Well, human error, you jump to conclusions

1 or you assume. It's hard not to be put on.

2 MS. O'NEILL: Have you had any problems during the
3 past couple days hearing what was going on?

4 MR. WAY: Hearing?

5 MS. O'NEILL: Hearing things?

6 MR. WAY: Well, acoustics, they don't have any in
7 there. I mean, I can't hear the names, really, but I know
8 it's not my name, that's all.

9 MS. O'NEILL: How about you in here this morning,
10 have you had any problem hearing?

11 MR. WAY: No. Not in here.

12 MS. O'NEILL: Okay. How do you feel about that
13 presumption of innocence? Do you think that's okay, or do
14 you have some problems with that?

15 MR. WAY: Yeah. I have some problems with it, I
16 guess. A little doubt.

17 MS. O'NEILL: Okay. I don't think I have any other
18 questions. Thanks.

19 MR. WAY: Okay.

20 THE COURT: Mr. Dickey?

21 MR. DICKEY: You are a mason; is that correct?

22 MR. WAY: Yeah.

23 MR. DICKEY: And did -- one of the people that was
24 killed in this was a mason.

25 Would that affect your ability to be fair and

1 impartial in this matter?

2 MR. WAY: Well, no. But I might say, well, that was
3 a sad situation for a member of an organization who
4 belonged to.

5 MR. DICKEY: You indicated also, I believe, that
6 there might be some confusion keeping the evidence
7 separate between the two defendants because of the
8 similarity of their names.

9 Could you tell us about that, why you think you
10 might have some trouble?

11 MR. WAY: Well, their names are almost the same. I
12 guess I could go more on their size rather than their
13 name.

14 MR. DICKEY: I believe you also indicated you think
15 the criminal justice system is too lenient.

16 Why do you feel that way?

17 MR. WAY: Well, here in latter years there's just
18 been too many people that have had problems and have
19 gotten convictions that they just, they don't serve their
20 time, or that the court system seems to be too lenient
21 compared, like some of our foreign countries. If it was
22 more strict and they adhered to the sentences, then they
23 wouldn't be going out and redoing things, or a guy would
24 think twice before he done something, but -- because he
25 don't want to have the treatment that the predecessor

1 had.

2 MR. DICKEY: Now, you also indicated that you think
3 defendants have too many rights sometimes.

4 What do you mean by that?

5 MR. WAY: Well, they -- oh, they treat them like
6 they are on a vacation sometimes. I mean, they give them
7 such good accommodations.

8 MR. DICKEY: Now, do you believe that police
9 officers always tell the truth?

10 MR. WAY: Well, yes, I do, even though I've gotten
11 some driving tickets before I didn't appreciate, I really
12 I think they know -- I think they have a lot of respect
13 and they know what they are doing.

14 MR. DICKEY: Do you believe that police officers can
15 ever make a mistake?

16 MR. WAY: Well, anybody can make a mistake, but
17 usually they are pretty quick to correct it.

18 MR. DICKEY: If you had a policeman testifying and a
19 civilian testifying, would you be able to look at their
20 testimony and apply the same standard to determine which
21 one you believed?

22 MR. WAY: Well, I think probably there, the type of
23 character, a person, how they appear to you, might have an
24 affect on me.

25 MR. DICKEY: You understand that as a juror you have

1 to determine which witnesses to believe or not believe,
2 and which evidence to consider or not to consider?

3 MR. WAY: Yes.

4 MR. DICKEY: Do you think you could do that?

5 MR. WAY: I presume so.

6 MR. DICKEY: And I believe you also indicated you
7 didn't think that the courts did a good job.

8 Do you understand the courts have to follow
9 what laws the legislature passes?

10 MR. WAY: Well, yes. They are tied -- their hands
11 are tied too, at times, and so, those laws control
12 things. But, I don't agree with the way things always end
13 up.

14 MR. DICKEY: Did you have a daughter who was a
15 victim of a crime?

16 MR. WAY: Well, she did have a problem, yes. That's
17 considered a crime what happened to her, but --

18 MR. DICKEY: Would the fact that your daughter had
19 been a victim of a crime, would that make it difficult for
20 you to sit in judgment of other persons?

21 MR. WAY: Well, I don't think so, and -- I don't
22 think so in this case.

23 MR. DICKEY: I have no further questions.

24 THE COURT: Mr. Zack, do you have any questions?

25 MR. ZACK: Just a couple. If the judge told you

1 that you should weigh the testimony according to the same
2 standards, do you think you could do that for each
3 witness?

4 MR. WAY: Weigh their testimony --

5 MR. ZACK: By the same standard. You wouldn't use a
6 different standard for a police officer and a civilian
7 witness?

8 MR. WAY: No. I said the looks of their character
9 might have an influence on me.

10 MR. ZACK: Just the way somebody looks would affect
11 how you --

12 MR. WAY: Well, yes. I mean, you judge character by
13 some of the -- what I am getting at, you know, the hippie
14 look or something like that. I have had in my day a lot
15 of characters to deal with, and then I get -- you get a
16 judgment of people that way.

17 MR. ZACK: Okay. Nothing further.

18 THE COURT: Okay. Thanks for coming in and talking
19 to us. And if you will wait outside the door for a
20 minute, we will let you know what you're to do next.

21 MR. WAY: All right.

22 (Mr. Way has left chambers.)

23 THE COURT: Challenges?

24 MS. O'NEILL: Yes, Your Honor. We would move that
25 he be dismissed for cause. It doesn't appear that he

1 believes that he can set aside his preconceived ideas
2 which are, among other things, that somebody gets arrested
3 they are probably guilty, that police officers are
4 virtually always right, and that he would give more weight
5 to their testimony.

6 THE COURT: Mr. Dickey?

7 MR. DICKEY: Join in the motion, Your Honor. Also,
8 I believe because he is a mason, one of the victims in
9 this case was a mason, we would feel that that might also
10 be a contributing factor in his ability to be fair and
11 impartial in this matter.

12 THE COURT: Mr. Zack?

13 MR. ZACK: As much as I'd like him, I won't waste
14 your time with argument.

15 THE COURT: Mr. Way is excused. Let's do one more
16 before we take a lunch break. If it were up to me we'd
17 possibly go through lunch and get 36, but I am probably
18 going to have to take a break here in a minute.

19 (Mr. Bennett has entered chambers.)

20 THE COURT: Come on in. You are Mr. Bennett?

21 MR. BENNETT: Yes, sir.

22 THE COURT: Why don't you sit down here. First, let
23 me ask you, do you remember when the attorneys were
24 introduced in court yesterday?

25 MR. BENNETT: Yes, sir.

1 THE COURT: Do you recollect knowing any of them?

2 MR. BENNETT: No, sir.

3 THE COURT: And do you know any member of the county
4 attorney's office?

5 MR. BENNETT: No, sir.

6 THE COURT: Do you think you can be -- well, let me
7 ask you this. Is there any reason why you can't sit on
8 this jury?

9 MR. BENNETT: No, sir.

10 THE COURT: Do you think it would be difficult for
11 you to sit on the jury for any reason?

12 MR. BENNETT: No, sir.

13 THE COURT: And do you think you can be fair and
14 impartial?

15 MR. BENNETT: I believe so.

16 THE COURT: Thank you. Ms. O'Neill, do you have any
17 questions?

18 MS. O'NEILL: Just real briefly. Mr. Bennett, you
19 had indicated that you had heard or read something about
20 this case?

21 MR. BENNETT: Yes, ma'am.

22 MS. O'NEILL: Could you tell us what it is that
23 you --

24 MR. BENNETT: My -- when it happened, I read about
25 it.

1 MS. O'NEILL: Have you read about it periodically
2 while it was pending?

3 MR. BENNETT: Once or twice I might have read it.

4 MS. O'NEILL: Have the items that you have read
5 about or perhaps heard on the radio or anything, caused
6 you to form any opinions.

7 MR. BENNETT: No.

8 MS. O'NEILL: Okay.

9 THE COURT: Mr. Dickey?

10 MR. DICKEY: Mr. Bennett, you indicate your son is a
11 police officer.

12 Have you ever talked with him about his work?

13 MR. BENNETT: Not in the last four years. He's a
14 police officer in New York.

15 MR. DICKEY: And have you talked with him about his
16 work?

17 MR. BENNETT: Not specifics, no, sir.

18 MR. DICKEY: Has he ever mentioned to you how he
19 feels about people charged with crimes?

20 MR. BENNETT: Not specifics, no, sir.

21 MR. DICKEY: And how do you feel about people who
22 are charged with crimes?

23 MR. BENNETT: I don't understand what you mean by
24 that?

25 MR. DICKEY: Well, in other words, if a person is

1 charged with a crime, do you feel that he is entitled to
2 all the protection that the law allows?

3 MR. BENNETT: Yes, sir.

4 MR. DICKEY: And in the answer in your questionnaire
5 you indicated you sometimes feel the defendants have too
6 many rights.

7 Can you tell us what you meant by that?

8 MR. BENNETT: Well, I can't -- sometimes what I seen
9 in the papers, and that seems that they get too much
10 leeway.

11 MR. DICKEY: Would -- you understand that in the
12 court system, the court is here to enforce the laws that
13 the legislature passes?

14 MR. BENNETT: Well, I understand that. I look at it
15 from a laymen's point of view.

16 MR. DICKEY: And that the legislature and the people
17 made the constitution and provided that people accused of
18 crimes have certain rights?

19 MR. BENNETT: Yeah. I believe they should have
20 their rights.

21 MR. DICKEY: Do you think that you could make sure
22 that the rights of the State and the rights of the
23 defendants are protected in this case?

24 MR. BENNETT: I do, yes, sir.

25 MR. DICKEY: No further questions.

1 THE COURT: Mr. Zack, any questions?

2 MR. ZACK: Just a couple. I believe you indicated
3 that if the death penalty could be imposed upon
4 conviction, that would affect your --

5 MR. BENNETT: What? I didn't hear that.

6 MR. ZACK: Excuse me. Your Honor, if you'd just
7 check that one question, make sure I've got it right.

8 THE COURT: You do have it right. It's number -- on
9 No. 11. Well, the death penalty -- there are two possible
10 penalties in Arizona for a first degree murder conviction,
11 one is life imprisonment, and the other is the death
12 penalty. This particular case is a death penalty case.
13 But, what punishment to impose, whether it's life
14 imprisonment or death, that's up to the judge.

15 MR. BENNETT: I understand that.

16 THE COURT: Would the fact that the death penalty
17 can be imposed in this case affect your abilities to
18 listen to the evidence in this case?

19 MR. BENNETT: I don't believe so.

20 THE COURT: Would you be able to listen to the
21 evidence and decide solely on the evidence the guilt or
22 innocence without taking into account punishment at all?

23 MR. BENNETT: I believe I can.

24 THE COURT: Do you have any additional questions?

25 MR. ZACK: No, Your Honor.

1 THE COURT: Okay. Did you say you had any
2 additional questions?

3 MR. ZACK: No.

4 THE COURT: Anything else, Ms. O'Neill? Mr. Dickey?

5 MR. DICKEY: No, Your Honor.

6 THE COURT: Thanks for coming in and talking to us.
7 I'd like you to come back at 1:30 this afternoon.

8 MR. BENNETT: Okay. Thank you.

9 (Mr. Bennett has left chambers.)

10 THE COURT: Okay. Any strikes for cause?

11 MS. O'NEILL: No.

12 MR. DICKEY: No, Your Honor.

13 MR. ZACK: No.

14 THE COURT: Okay. At this point we have 31 we will
15 pass for cause. We need five more before we can begin
16 peremptories. As I had started to say, it would be my
17 preference to go through lunch, but I don't suppose it's
18 any big deal if we come back at 1:30 and finish it.

19 Any comments?

20 MR. ZACK: (Is shaking his head.)

21 MS. O'NEILL: No.

22 MR. GAVIN: No, Your Honor.

23 MR. DICKEY: No, Your Honor.

24 THE COURT: Well, let's finish then.

25 MR. ZACK: Well, let me just, on this general

1 schedule, I am guessing by the time you get through
2 peremptories, admonition, it's going to be late in the
3 afternoon. As I indicated before, I don't want to try to
4 do closing arguments -- strike that -- opening statements
5 late on Friday afternoon after sitting around for a day.
6 In fact, I find this more tiring than trial itself. So
7 just, my schedule, I am for not to, what the Court -- even
8 if we got that far, which I'm not sure we will.

9 THE COURT: Even if we got that far, I would then,
10 to have that done, well, before 5:00 o'clock, and it would
11 be my opinion that I should read the admonition and
12 instructions regarding not discussing the case, and then I
13 will order them to come back at 9:00 o'clock on Monday and
14 we will begin with opening statements on Monday. I am not
15 inclined to begin any part of that today.

16 MS. O'NEILL: Your Honor, the only other thing is
17 that I think I've got through about 90. I am not sure if
18 we are going to need to go any further than that.

19 THE COURT: At this point we are on 70.

20 MS. O'NEILL: I know there's a couple of people
21 coming up I have notations that I need to talk about, but
22 if we get to the point where for some reason we are not
23 getting five by then, I may need to take a break.

24 THE COURT: Mr. Dickey?

25 MR. DICKEY: Your Honor, we went through -- we were

1 furnished through 75 last night, so if we run to 75, then
2 we're going to not need to read in the questionnaires for
3 the --

4 THE COURT: This is what I'm going to do then. I am
5 going to go through 75, and during lunch break you can
6 read some more. Burns is next.

7 MS. O'NEILL: Your Honor?

8 THE COURT: Yes?

9 MS. O'NEILL: I would move to strike Mrs. Burns for
10 cause. She has a relative who was a murder victim. The
11 murder was committed during a robbery. I just think the
12 facts are too similar. There's some other concerns I have
13 about her, including some health problems. I just ask
14 that she be excused.

15 THE COURT: Mr. Zack, any comments?

16 MR. ZACK: I oppose.

17 THE COURT: We are going to talk with the next five.
18 What I'd like to do is have everyone else from 70 to 75
19 stay. I would like anyone else to be told to come back at
20 1:30.

21 THE CLERK: Okay.

22 THE COURT: And just bring in Ms. Burns.

23 (Ms. Burns has entered chambers.)

24 THE COURT: Why don't you come on in. For the
25 record, you are Ms. Burns?

1 MS. BURNS: Yes.

2 THE COURT: Okay. And you indicated that you would
3 have to be going to Idaho to attend a mother-in-law's 80th
4 birthday celebration.

5 Did I talk to you about this yesterday?

6 MS. BURNS: Well, you did. And I first held up my
7 hand, and then I decided, as I stated later on, this is an
8 obligation, so I could miss the birthday party reunion. I
9 would prefer not to, but --

10 THE COURT: When is that scheduled for?

11 MS. BURNS: Her birthday is the 4th.

12 THE COURT: The 4th of June?

13 MS. BURNS: Uh-huh. Which is on a Thursday, and the
14 reunion will be on Sunday following the 4th, whatever that
15 day is.

16 THE COURT: Okay. Did you also -- you saw the
17 attorneys as they were introduced yesterday?

18 MS. BURNS: Yes, I did.

19 THE COURT: Are there any of them that you know?

20 MS. BURNS: No.

21 THE COURT: An do you know any members of the county
22 attorney's office?

23 MS. BURNS: No. We are fairly new to the state. We
24 have only lived here three years, and this is my only
25 second time in Kingman. So, no, I don't know any of

1 them.

2 THE COURT: Okay. You indicated in your
3 questionnaire that you knew someone who had been murdered
4 in a robbery.

5 How long has that been?

6 MS. BURNS: My sister-in-law. That was in 1978.

7 THE COURT: Do you have a strong feeling about that
8 as of today?

9 MS. BURNS: Oh, definitely.

10 THE COURT: Yes. Where did that happen?

11 MS. BURNS: That was in Long Beach, California. It
12 was their first day back from a week's vacation after he
13 retired at the age of 72, so I feel very strongly about
14 it.

15 THE COURT: This case and the allegations in this
16 case are murder and robbery.

17 Do you think that you would be thinking about
18 your sister-in-law while you are listening to the evidence
19 in this case?

20 MS. BURNS: Certainly possible. I would try to keep
21 that from happening, but it is within the realm of
22 possibility, of course, being human, which I am.

23 THE COURT: Okay. I guess I don't have any other
24 questions.

25 Ms. O'Neill, do you have some questions?

1 MS. O'NEILL: Ms. Burns, just the fact that the
2 charges are similar in this trial and to what happened
3 with your sister-in-law, whether or not you think about
4 your sister-in-law during the trial, do you think that's
5 going to affect how you view the evidence in this case?

6 MS. BURNS: I would hope not.

7 MS. O'NEILL: Okay. And you had indicated that you,
8 while you understood some of the rules of the court
9 proceedings regarding the rights of defendants, you didn't
10 necessarily agree with some of them.

11 Can you tell us about that?

12 MS. BURNS: Well, if I understood that correctly, it
13 would be just I don't always agree with the length in
14 which the law goes to apprehend criminals. Then with all
15 the plea bargaining there is so quickly, and a lot of
16 times, that is, allow the perpetrator to commit the same
17 type of crime repeatedly.

18 MS. O'NEILL: Do you believe that if someone is
19 arrested and charged with an offense, that is something to
20 consider whether or not they are guilty of the offense?

21 MS. BURNS: If they have been --

22 MS. O'NEILL: If they have been charged, yes.

23 MS. BURNS: Not necessarily.

24 MS. O'NEILL: What kind of relationship did you
25 have with your sister-in-law? Were you close?

1 MS. BURNS: Very close. Six boys, six girls, and
2 that's -- my family is very important to me. That's why I
3 would like to attend the -- but, it's not a life/death
4 thing, of course, except from the standpoint that my
5 mother-in-law is going to be 80. But, yes, we are -- are
6 a very close family from the south.

7 MS. O'NEILL: All right. Thank you.

8 THE COURT: Mr. Dickey?

9 MR. DICKEY: Because of the similarity in the cases,
10 would you rather not sit on this type of case?

11 MS. BURNS: Well, in all fairness, I would rather
12 not.

13 MR. DICKEY: And do you think that because of the
14 similarity it might cause you some problems in being able
15 to keep the incident separate?

16 MS. BURNS: Well, as I indicated, I would try not
17 to, but --

18 MR. DICKEY: You indicated that, in your
19 questionnaire, that you had some mason and Shrine
20 affiliation; is that right?

21 MS. BURNS: Yes.

22 MR. DICKEY: And the evidence in this case would
23 show that one of the persons who died was a mason and a
24 Shriner.

25 Would that affect your ability to sit in

1 judgment in this case?

2 MS. BURNS: Well, that's hitting pretty close to
3 home, too, because my husband is pretty involved with both
4 Masons and Shriners, and the Shriners in relation to
5 crippled children. He does a lot of help with the
6 children's hospital's burn center, and I work with The
7 Daughter's of the Nail, which is a women's affiliation
8 with the Shriners who do the sewing for the children in
9 the hospitals. So, from that standpoint --

10 MR. DICKEY: I believe you also indicated that you
11 would have trouble following -- you disagreed with the
12 rules that govern that type of case, the presumption of
13 innocence and proof beyond a reasonable doubt and that
14 sort of thing.

15 Can you tell us about that?

16 MS. BURNS: I am sorry, I don't understand your
17 question, and I don't remember that particular question in
18 the questionnaire.

19 THE COURT: I think what you actually said was that
20 you understood the rules and that you could follow them,
21 but you disagreed with them.

22 MS. BURNS: Perhaps I implied the laxness of the
23 courts sometimes.

24 THE COURT: Okay. Let me just show you.

25 MS. BURNS: Okay. Put my glasses on. I was

1 hurrying at that time, too, because I was only the second
2 -- the last -- second to the last one left in the
3 courtroom, so I felt like I was a little bit of a retard.
4 Here?

5 THE COURT: Yes.

6 MS. BURNS: Well, I -- I think a defendant is
7 required to prove innocence. Is that the one that's in
8 question?

9 THE COURT: No. The question is those three, those
10 three rules that are set out above there. Those are the
11 law, and you said you agreed with them -- I mean, you said
12 that you could follow them and you understood them, the
13 only thing is that you said that you disagreed with them.

14 Which part is it that you disagree with?

15 MS. BURNS: Well, I suppose just that part where I
16 think the defendant is required to prove his innocence.
17 That is why they have lawyers, is to help them prove their
18 innocence.

19 THE COURT: Okay. But, the rule is that the
20 defendant does not have to produce any evidence in court,
21 and he doesn't have to testify, and the jury cannot hold
22 that against him.

23 MS. BURNS: I'm not familiar with the aspect. I
24 have never been on jury duty before.

25 THE COURT: Let me just phrase it this way. If I

1 were to tell you that the defendants did not have to
2 testify and they don't have to put any evidence on for
3 their case, that they would decide whether to do those
4 things with their attorneys giving them advice, and if I
5 were to tell you that the jury could not hold that against
6 them in deliberations, would you follow that?

7 MS. BURNS: Yes.

8 THE COURT: Okay. Thank you. Mr. Zack, do you have
9 any questions?

10 MR. ZACK: You don't know anybody involved in this
11 case at all, do you?

12 MS. BURNS: No. I haven't even heard of the case.

13 MR. ZACK: So, you don't know the victims in this
14 particular case?

15 MS. BURNS: I never heard about them, never read
16 about it in the paper.

17 MR. ZACK: So, you think you could impartially view
18 the evidence produced in this case and any evidence that
19 shows what happened to the victim's in this case, and keep
20 that -- keep your sister-in-law's death out of your mind
21 and just look at the evidence here?

22 MS. BURNS: As I stated, I could try. That's the
23 best I can say.

24 MR. ZACK: Thank you.

25 THE COURT: Okay. Thank you. You know, I think

1 that --

2 MR. DICKEY: I have another question, Your Honor.

3 THE COURT: Mr. Dickey, I'm not going to take it
4 right now. Ms. Burns, I think that you have indicated
5 that you would try to do your duty in this case, but I'm
6 not going to put you in that position. I am going to
7 excuse you at this time as a juror in this case. And I
8 appreciate your coming and doing your duty. Thank you.

9 MS. BURNS: I appreciate your consideration. Thank
10 you.

11 (Ms. Burns has left chambers, and Ms. Rael has
12 entered chambers.)

13 THE COURT: You are Lela Rael?

14 MS. RAEL: Uh-huh.

15 THE COURT: Is that how you say your last name?

16 MS. RAEL: Rael.

17 THE COURT: Rael. Okay. Yesterday did you see the
18 attorneys when they were introduced in court?

19 MS. RAEL: Yes, I did.

20 THE COURT: Are there any of them that you know?

21 MS. RAEL: No.

22 THE COURT: Do you know any member of the county
23 attorney's office?

24 MS. RAEL: No.

25 THE COURT: Just have a few questions based on your

1 answers to your questionnaire.

2 What did you know about this case before you
3 came in yesterday?

4 MS. RAEL: I had heard just, you know, about the
5 shooting or the killing in Chloride. I hadn't heard a
6 whole lot. I didn't pay that much attention to it, but I
7 had heard that. About it.

8 THE COURT: Did you form any opinion about the case
9 before you came in here?

10 MS. RAEL: I hadn't thought about that. Yes, I
11 guess I did. Being people were arrested, I automatically
12 thought guilty.

13 THE COURT: Okay. As a juror in this case, would
14 you be able to set aside that opinion and render a verdict
15 solely on the evidence that you hear in Court?

16 MS. RAEL: I honestly don't know if I could or not.
17 I have never been in a position where I have had to do
18 that, and I don't know if I could.

19 THE COURT: Okay. Ms. O'Neill, do you have any
20 questions?

21 MS. O'NEILL: There's a question on the
22 questionnaire about whether, if there was some type of
23 graphic evidence introduced, whether that would affect
24 your ability to sit on the jury.

25 I think you indicated that might be a problem

1 for you, or do you recall?

2 MS. RAEL: I don't remember what I put on that.

3 THE COURT: What number is that?

4 MS. O'NEILL: No. 10.

5 THE COURT: From the second part?

6 MS. O'NEILL: Yes. I may have --

7 THE COURT: No. She said no.

8 MS. O'NEILL: Oh, she did say no. Okay. You
9 indicated like you did here today that you didn't know if
10 you could return a verdict solely on the evidence.

11 Is that because of the opinion that you
12 formed?

13 MS. RAEL: Yeah, I guess it really is. This is
14 something that I have never thought about before, so -- I
15 mean, being a juror, and so, I guess in all honesty I'm
16 not real sure of that.

17 MS. O'NEILL: What is the opinion that you have?

18 MS. RAEL: Right now?

19 MS. O'NEILL: Yes.

20 MS. RAEL: Of their guilt or innocence, is that what
21 we are talking about?

22 MS. O'NEILL: Yes.

23 MS. RAEL: Right now I am trying to open my mind up
24 to where I don't really have an opinion because I thought
25 that was only fair, but yet, I am still swayed toward the

1 guilt just because that's what I have -- you hear that.

2 MS. O'NEILL: Is that based on the things that you
3 read or heard?

4 MS. RAEL: From before, yeah.

5 MS. O'NEILL: Have you talked about this case with
6 anybody?

7 MS. RAEL: Since?

8 MS. O'NEILL: Since the beginning -- no, no. In the
9 last couple days?

10 MS. RAEL: I -- my husband and I had talked about
11 it, what happened when it happened. And other than that,
12 I can't remember if there was anyone else or not.

13 MS. O'NEILL: You also said in the questionnaire
14 you're a little bit more candid than some people. You are
15 not sure if you can be fair to someone who intentionally
16 does wrong.

17 Could you go into the trial, putting everything
18 out of your mind, and just look at the evidence and be
19 fair in deciding whether someone has done something
20 wrong?

21 MS. RAEL: I'd like to think I could, but I'm not
22 positive that I can.

23 MS. O'NEILL: Okay. Thank you. I don't have any
24 other questions.

25 THE COURT: Thank you. Mr. Dickey?

1 MR. DICKEY: There are two defendants in this case,
2 and I believe you indicated in your questionnaire you were
3 unsure whether you could separate the evidence as it
4 applies to each.

5 Could you tell us about that?

6 MS. RAEL: I have an easier time with faces than I
7 do with names, and I believe it would be hard for me to
8 get the names straight.

9 MR. DICKEY: And if the evidence showed that one of
10 the defendants was guilty, but the evidence didn't show
11 the other defendant was guilty, would you find them both
12 guilty, or would you find one guilty and one not guilty?

13 MS. RAEL: Boy, I honestly don't know.

14 MR. DICKEY: And you indicated you were unsure about
15 whether you could apply the reasonable doubt standard.

16 Now, you understand that the State has to prove
17 each of the defendants guilty of all the -- of each one of
18 the charges alleged beyond a reasonable doubt, and if they
19 don't, you have to find them not guilty?

20 MS. RAEL: Uh-huh.

21 MR. DICKEY: Do you have a problem with that
22 standard?

23 MS. RAEL: I guess not with the standard. I
24 understand it, but it's not -- it's easier said than
25 actually applied.

1 MR. DICKEY: So, you're not sure whether you could
2 determine it in any particular case?

3 MS. RAEL: Right. I'm not sure.

4 MR. DICKEY: I have no further questions.

5 THE COURT: Mr. Zack?

6 MR. ZACK: If the judge told you that just because
7 somebody is charged with a crime or just because they have
8 been arrested, you are not to consider that, whatsoever,
9 in your deliberations, you are supposed to decide what the
10 evidence is produced in the courtroom, do you think you
11 could do that?

12 MS. RAEL: You know, I don't know if I could or not,
13 because it's like once you are arrested -- maybe it's the
14 way I grew up or whatever, but right away there's already
15 guilt, and so, it's hard for me to see it differently, I
16 guess.

17 MR. ZACK: Thank you.

18 THE COURT: Okay. Thank you. We appreciate your
19 coming in and talking to us, and thank you for being
20 honest about that. I am going to excuse you at this time.
21 So, you won't have to come back.

22 MS. RAEL: Okay. Thank you.

23 (Ms. Rael has left chambers, and Mr. Adams has
24 entered chambers.)

25 THE COURT: Just sit down there. You are Mr. Adams?

1 MR. ADAMS: That's right.

2 THE COURT: Okay. Yesterday in court the attorneys
3 were introduced.

4 Do you recognize any of them?

5 MR. ADAMS: No. I thought I probably have seen this
6 gentleman before, but I have no idea who he is. I live in
7 Lake Havasu. Maybe he's practiced there, I don't know.

8 THE COURT: And Mr. Zack, do you recognize him?

9 MR. ADAMS: No.

10 THE COURT: Do you know any member of the county
11 attorney's office?

12 MR. ADAMS: No.

13 THE COURT: You indicated that you had heard about
14 this case.

15 How did you hear about it?

16 MR. ADAMS: I just heard about it driving in. It
17 was on the Bullhead station that they were forming a jury
18 for this case.

19 THE COURT: Okay. So, you know very little --

20 MR. ADAMS: Very little.

21 THE COURT: -- about the case? Did you form any
22 opinions about it?

23 MR. ADAMS: No.

24 THE COURT: Do you think that if you were selected
25 as a juror you would listen only to the evidence that was

1 in court, and disregard anything you've heard about the
2 case?

3 MR. ADAMS: I really haven't heard anything about
4 it.

5 THE COURT: Okay. Is there any reason why -- is
6 there anything about this case that would make it
7 difficult for you to sit as a juror?

8 MR. ADAMS: About the case? No.

9 THE COURT: Anything about the criminal justice
10 system that would make it difficult for you to sit as a
11 juror?

12 MR. ADAMS: (Is shaking his head.)

13 THE COURT: Do you think overall the criminal
14 justice system is fair?

15 MR. ADAMS: Yeah. I answered the question there
16 similar to that. I think it's fair, when it's done
17 correctly.

18 THE COURT: All right.

19 MR. ADAMS: Made up of human beings, too.

20 THE COURT: I understand. Question No. 20, I'm
21 going to show that one to you. That says that these are
22 rules of law and the State has to prove the defendant
23 guilty beyond a reasonable doubt, and the defendant is to
24 have a right not to testify. You indicated that you
25 understood these rules and that you could follow them, but

1 you indicated also that you disagreed with them.

2 Could you expand on that for me?

3 MR. ADAMS: I don't really disagree with the rules.

4 I probably just answered it incorrectly. I don't know.

5 THE COURT: Okay. All right. If you were selected
6 as a juror on this case, do you think you could be fair
7 and impartial?

8 MR. ADAMS: I think I would be.

9 THE COURT: Ms. O'Neill, do you have any questions?

10 MS. O'NEILL: Mr. Adams, do you think it would be
11 difficult for you to make a decision and sit in judgment
12 on the defendants?

13 MR. ADAMS: On a murder case?

14 MS. O'NEILL: Yes.

15 MR. ADAMS: I don't think so.

16 MS. O'NEILL: I don't have anything else.

17 THE COURT: Mr. Dickey?

18 MR. DICKEY: Was I incorrect that in your
19 questionnaire you said if -- the type of case might make
20 it difficult to judge?

21 THE COURT: I don't know. Do you --

22 MR. ADAMS: I am not sure what question --

23 THE COURT: I guess Question No. 45. If you were
24 selected as a juror in this case, that you will be called
25 upon to judge the guilt or innocence of another person,

1 the defendants in this case, would that be difficult for
2 you, and you answered yes. Look at No. 45.

3 MR. ADAMS: I think I meant I would take it
4 seriously. I don't think it would be an easy decision,
5 but I don't have any compulsions of not coming to a
6 decision.

7 THE COURT: Okay. Thank you. Mr. Dickey, any other
8 questions?

9 MR. DICKEY: No, Your Honor.

10 THE COURT: Mr. Zack?

11 MR. ZACK: No, Your Honor.

12 THE COURT: Thanks for coming in. And if you would
13 come back at 1:30, we'd appreciate it.

14 MR. ADAMS: Okay.

15 MR. DICKEY: Your Honor, I do have a question that
16 just occurred to me.

17 You had a relative, you indicated a relative
18 was a victim of a crime. Would that --

19 MR. ADAMS: Yeah. I mentioned my mother was
20 mugged.

21 MR. DICKEY: Would that cause you any problems in
22 sitting in judgment in this case, the fact that you had a
23 relative that was a victim of a crime?

24 MR. ADAMS: No. I don't think so.

25 MR. DICKEY: All right. Thank you.

1 THE COURT: Okay. Thanks. Come back at 1:30.

2 (Mr. Adams has left chambers.)

3 THE COURT: Any challenges for cause?

4 MS. O'NEILL: No.

5 MR. DICKEY: No, Your Honor.

6 MR. ZACK: No.

7 THE COURT: Okay. Mr. Kersch is next.

8 MS. O'NEILL: Mr. Kersch indicated some health
9 problems, Judge, you might want to ask him about.

10 (Mr. Kersch has entered chambers.)

11 THE COURT: Okay. Hi. Come on in, sit down.

12 Okay. For the record, you are Mr. Kersch?

13 MR. KERSCH: Yes.

14 THE COURT: And is that how you pronounce your name?

15 MR. KERSCH: That's it.

16 THE COURT: Okay. Do you remember in court
17 yesterday I introduced the attorneys?

18 MR. KERSCH: Yes.

19 THE COURT: Was there any of those that you know?

20 MR. KERSCH: No.

21 THE COURT: And do you know any member of the county
22 attorney's office?

23 MR. KERSCH: No.

24 THE COURT: You indicated that you have a number of
25 medical problems. Would any of those interfere with your

1 abilities to sit on this case?

2 MR. KERSCH: Well, the only one that might create
3 some sort of a problem, I have diabetes. Might make the
4 diabetes, my regular diet, the irregular meals, or -- but,
5 that's about the only thing.

6 THE COURT: Well, I know that we have gone past noon
7 this afternoon, but generally we won't do that. Once we
8 are actually taking testimony I would generally break at
9 noon and come back at 1:30, and then break also at 5:00
10 o'clock.

11 If I did that, would you be able to sit as a
12 juror?

13 MR. KERSCH: I think I could probably handle it.

14 THE COURT: Have you heard anything at all about
15 this case?

16 MR. KERSCH: I know nothing about it.

17 THE COURT: Okay. Is there anything about this case
18 that would make it difficult for you to sit as a juror?

19 MR. KERSCH: Not that I know of.

20 THE COURT: And do you think you could be a fair and
21 impartial juror on this case?

22 MR. KERSCH: I would like to think so.

23 THE COURT: Okay. Thank you. Ms. O'Neill, do you
24 have any questions?

25 MS. O'NEILL: No, I don't, Your Honor. Thank you.

1 THE COURT: Mr. Dickey?

2 MR. DICKY: You indicated you feel that the
3 criminal justice system is too lax and too soft.

4 Could you tell us why you feel that way?

5 MR. KERSCH: Well, I feel in many cases the sentence
6 is not, in my opinion, commensurate with the crime.

7 MR. DICKY: Well, you understand that the
8 legislature sets the penalties and the judges have to
9 enforce what the legislature indicates the penalties
10 should or should not be?

11 MR. KERSCH: I realize that.

12 MR. DICKY: And I noticed that you, one of your
13 affiliations, you belong to the NRA.

14 Are you acquainted with their Crime Strike
15 Program?

16 MR. KERSCH: Yes.

17 MR. DICKY: And do you believe in that?

18 MR. KERSCH: Yes.

19 MR. DICKY: I have no further questions.

20 THE COURT: Mr. Zack?

21 MR. ZACK: Nothing, Your Honor.

22 THE COURT: Okay. Thanks for coming in and talking
23 to us. You are free to go now. Would you come back at
24 1:30?

25 MR. KERSCH: 1:30?

1 THE COURT: Yes.

2 (Mr. Kersch has left chambers.)

3 THE COURT: Any challenges for cause of Mr. Kersch?

4 MS. O'NEILL: No, Your Honor.

5 MR. DICKEY: Yes, Your Honor. I will challenge him
6 for cause. The NRA has initiated a policy of monitoring
7 court cases, and part of their procedure is to try to
8 lessen the rights of persons charged with violent crimes,
9 and it's also -- they are trying to get rid of defendants'
10 rights in certain cases. And I would move to disqualify
11 Mr. Kersch also because of the fact that he indicates he
12 has a medical problem with diabetes. If they are required
13 to deliberate in the case, depending on how long they
14 deliberated, there may be a problem there having him be
15 able to go without food for a period of time.

16 THE COURT: Mr. Zack?

17 MR. ZACK: I've never noticed a policy of this
18 county to deprive jurors of food if they ask for it. I am
19 sure that will not be a problem. The Crime Strike NRA
20 thing, all these asked is if he's familiar with it, not
21 whether he agreed with it. In the question in the
22 questionnaire he said he could be fair and impartial.

23 THE COURT: The question was whether he agreed with
24 it. Even so, he was not asked if that would affect his
25 abilities on this. Every other indication that he's given

1 is that he can be fair and impartial, so the challenge is
2 denied.

3 (Mr. Anderson has entered chambers.)

4 THE COURT: For the record, you are Mr. Anderson?

5 MR. ANDERSON: Yes, sir.

6 THE COURT: And do you remember in court yesterday I
7 introduced the attorneys on this case?

8 MR. ANDERSON: I believe so.

9 THE COURT: Okay. Well, there's Ms. O'Neill, Mr.
10 Dickey, Mr. Gavin, and Mr. Zack.

11 Do you know any of them?

12 MR. ANDERSON: No, sir.

13 THE COURT: And do you know any member of the county
14 attorney's office?

15 MR. ANDERSON: No, sir.

16 THE COURT: Is there any reason why you can't sit on
17 this case, on this jury?

18 MR. ANDERSON: No, sir.

19 THE COURT: If you were selected to sit on the jury,
20 do you think you could be fair and impartial?

21 MR. ANDERSON: I believe so, yes.

22 THE COURT: Ms. O'Neill?

23 MS. O'NEILL: Mr. Anderson, you indicated in the
24 questionnaire that you thought you might give more weight
25 to testimony by police officers.

1 Can you tell us why you feel that way?

2 MR. ANDERSON: Well, being a person under the law,
3 working for the law, I would imagine they would possibly
4 have a little bit more cause in their say as compared to
5 -- I thought maybe they would have just a little bit of --

6 MS. O'NEILL: Okay. When you say working for the
7 law and under the law, are you referring to the officers,
8 or you?

9 MR. ANDERSON: Yes.

10 MS. O'NEILL: That they are working under the law?

11 MR. ANDERSON: Yes.

12 MS. O'NEILL: Not you?

13 MR. ANDERSON: No, not me.

14 MS. O'NEILL: Okay. You think that you could, if
15 the judge instructed you that you were to judge all
16 witness's testimony by the same standards, do you think
17 you could put that notion aside and just look at
18 everybody's testimony from the same standard?

19 MR. ANDERSON: Yes.

20 MS. O'NEILL: I believe that you also indicated that
21 you thought it might be difficult for you to sit in
22 judgment on someone; is that correct?

23 MR. ANDERSON: I don't believe I made that --

24 MS. O'NEILL: Yes. 45, Judge. I'm not sure --

25 THE COURT: Okay. Question 45, why don't you take a

1 look at that.

2 MR. ANDERSON: Okay. I misread that. I don't feel
3 that -- I am sorry. I misread it. I don't feel it would
4 be a problem.

5 THE COURT: Okay. All right. Thank you. Any other
6 questions, Ms. O'Neill?

7 MS. O'NEILL: No. Those are the only ones I have.

8 THE COURT: Mr. Dickey?

9 MR. DICKEY: You indicated sometimes you think the
10 defendants have too many rights.

11 Could you tell us what you mean by that?

12 MR. ANDERSON: Defendants have too many rights?
13 What question would that be under?

14 THE COURT: Which question is that?

15 MR. DICKEY: I believe it's the last --

16 MS. O'NEILL: Probably 16, Judge.

17 THE COURT: Okay. What you actually said was
18 sometimes.

19 Do you believe that persons who are accused of
20 crimes are afforded too many rights at the expense of
21 crime victims, and you said sometimes. Maybe you could
22 just explain that for us.

23 MR. ANDERSON: Well, maybe things were thrown out
24 too often and under technicalities and stuff. Maybe I
25 just interpreted that question -- that's kind of how I

1 viewed it.

2 MR. DICKEY: Well, you understand that the law
3 provides rights for people who are accused of crimes, and
4 also rights for people who are the victims of crimes?

5 MR. ANDERSON: Uh-huh.

6 MR. DICKEY: Do you know about that?

7 MR. ANDERSON: Yes, sir.

8 MR. DICKEY: And do you feel that a person who is
9 accused of a crime should not have any rights?

10 MR. ANDERSON: No, sir, I don't.

11 MR. DICKEY: And would you be able to judge this
12 case solely on the evidence that you heard in court and
13 apply the laws as the judge would give it?

14 MR. ANDERSON: Yes. I feel I could.

15 MR. DICKEY: No further questions.

16 THE COURT: Mr. Zack, any questions?

17 MR. ZACK: No, Your Honor.

18 THE COURT: Do you think you could judge the
19 testimony of all the witnesses by the same standards?

20 MR. ANDERSON: Yes. I feel I could.

21 THE COURT: Okay. And I guess that's the only
22 question I have. You are free to go now. Could you come
23 back at 1:30?

24 MR. ANDERSON: Yes, sir.

25 THE COURT: Okay. Thank you.

1 (Mr. Anderson has left chambers.)

2 THE COURT: Any challenges for cause on Mr.

3 Anderson?

4 MR. DICKEY: No, Your Honor.

5 MS. O'NEILL: No.

6 MR. ZACK: No.

7 THE COURT: Okay. All right. We are going to break

8 for lunch. I believe counsel needs to read some more.

9 They are free to do so.

10 (A recess was taken from 12:35 p.m. to 1:35 p.m.)

11 (Continued in Volume II.)

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Certificate of Reporter

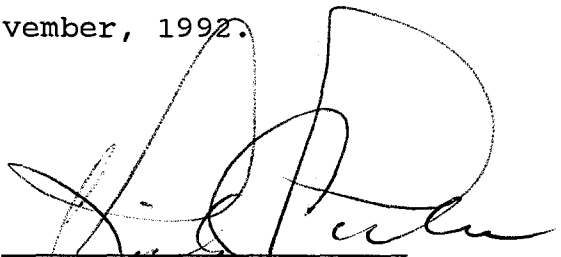
I, Rick A. Pulver, Official Reporter in the Superior Court of the State of Arizona, in and for the County of Mohave, do hereby certify that I made a shorthand record of the proceedings had in the foregoing entitled cause at the time and place hereinbefore stated;

That said record is full, true, and accurate;

That the same was thereafter transcribed under my direction; and

That the foregoing typewritten pages constitute a full, true, and accurate transcript of said record, all to the best of my knowledge and ability.

Dated this 5th day of November, 1992.



RICK A. PULVER