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Court of Appeals No. 62109.2  
Skagit County Superior Court No. 03-1-00660-1

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DIVISION ONE  
AUG - 8 2008

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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In re the Personal Restraint of:

PATRICK L. MORRIS

Petitioner.

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PERSONAL RESTRAINT PETITION WITH LEGAL ARGUMENT  
AND AUTHORITIES

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## **I. STATUS OF PETITIONER/PROCEDURAL HISTORY**

Petitioner Patrick L. Morris is currently incarcerated at the North Fork Correctional Facility in Sayre, Oklahoma.

The Skagit County Prosecutor charged Morris with two counts of Child Molestation in the First Degree and one count of Rape of a Child in the First Degree. CP 1. The alleged victim for all three counts was his minor daughter, A.W. The trial court sentenced Morris to 130 months on Count I, 130 months on Count II and 189 months on Count III, with the terms to run concurrently. CP 129.

On November 28, 2005, this Court affirmed Morris's convictions in an unpublished decision. State v. Morris, 130 Wn. App. 1036, 2005 WL 3150305 (2005). His timely petition for review was denied on July 11, 2007. State v. Morris, 160 Wn.2d 1022, 163 P.3d 794 (2007). The mandate issued on August 31, 2007. This personal restraint petition is timely filed under RCW 10.73.090(3)(b).

Morris was represented in the superior court by Corbin Volluz, 409 Main Street, Mount Vernon, WA 98273-3837. He was represented on appeal by Mark Mestel, 3221 Oakes Avenue, Everett, WA 98201-4407.

Morris is not seeking to proceed at public expense.

## **II. STATEMENT OF THE CASE**

### **A. SOURCES OF FACTS**

The facts relating to this petition are based on the clerk's papers and transcripts filed in the direct appeal, and on the appendix to this

personal restraint petition (PRP). Morris has filed a motion to transfer the record from the direct appeal to this file.

B. TRIAL TESTIMONY

One evening in March, 2003, five-year-old A.W. was lying in bed watching television with her mother, Theresa Scribner, and her mother's husband, Sam Scribner. A.W. remarked: "Daddy touches me." 6/9/04 RP 94. A.W.'s father is Patrick Morris, *id.* at 62, although she would also sometimes call Sam Scribner "daddy." 6/9/04 RP 163-64. Upon questioning by Ms. Scribner, A.W. eventually described touching of her private parts.<sup>1</sup> 6/9/04 RP 95-97. When asked at trial to give details of this questioning, Scribner said she could not remember because "everything was a blur right then." 6/9/04 RP 165.

According to Sam Scribner, A.W. did not make her disclosure out of the blue but rather in response to Theresa Scribner asking A.W. what was wrong. 6/10/04 RP 165. Theresa then stayed in A.W.'s room for 10-15 minutes talking to her about the disclosure. *Id.* at 168. In an interview with a defense investigator, Sam admitted that Theresa specifically asked A.W. whether her dad penetrated her with his finger. *Id.* at 166-67.

Dr. Les Richards, the family pediatrician, told Ms. Scribner not to ask A.W. more questions about the alleged abuse, but to leave that to a professional interviewer. 6/10/04 RP 11. Nevertheless, Ms. Scribner did continue to discuss the matter with A.W. 6/9/04 RP 172.

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<sup>1</sup> On cross-examination, Scribner agreed that Morris had been instructed at times to apply cream or ointment to A.W.'s vagina. 6/9/04 RP 168.

Dr. Richards referred Scribner to a clinic better qualified to perform a sexual abuse examination. 6/10/04 RP 11. There, Dr. Andrea Bradford Smith performed a physical examination and took colposcope photographs. Id. at 75-76. She observed nothing abnormal. Id. at 79. She told Scribner that this was a normal exam and did not say that there was physical evidence of digital penetration. Id. at 93. She would never use the term “smoothing.” Id. at 94. Nevertheless, when reporting the incident to the police, Scribner said that Dr. Smith found evidence of penetration including “smoothing” of the vagina. 6/11/04 RP 39, 43.

Scribner reported the incident to CPS and to the police. 6/9/04 RP 111-17. Although the police advised Scribner to obtain a protective order regarding Morris, she waited three weeks to do so. 6/9/04 RP 119, 186; 6/10/04 RP 25.

Scribner agreed to a treatment plan recommended by CPS. 6/9/04 RP 183-84. A.W. was to meet with a counselor individually twice a month and also attend an eight-week girls’ group. 6/10/04 RP 107-08. Scribner was also offered a “non-offending parent’s” group for herself. Id. at 108. She did not take advantage of the group sessions for either herself or A.W. Id. She cancelled six of the individual sessions for A.W. 6/11/04 RP 222.

In the months preceding A.W.’s disclosure, Scribner and Morris had many arguments about child support. 6/9/04 RP 84-85, 151-52. Scribner ultimately told Morris that he should terminate his parental rights so that Sam Scribner could adopt A.W. Id. at 139-40, 155. “It got to that

boiling point that I felt like I was forced to say: 'Hey, if you don't care enough, then terminate.'" Id. at 155. She also told Morris that if he loved his daughter he should pay his child support like he was supposed to. Id. at 160. Scribner agreed that A.W. may have overheard the arguments about child support, termination, and adoption. Id. at 160. Morris was unwilling, however, to terminate his parental rights. Id. at 161. A.W. was clearly aware of this dispute because, in her interview with police investigator Candy Ashbrook, A.W. said that "Sam is going to be my really [sic] daddy now." 6/11/04 RP 137.

According to Scribner, A.W. claimed that her father touched her with his mouth or tongue. 6/9/04 RP 111. In her trial testimony, however, A.W. repeatedly denied such contact. 6/9/04 RP 48, 59. A.W. did not recall going to see a doctor, being colposcoped, discussing the abuse with her therapist, or talking to the defense investigator on the Monday preceding trial. Id. at 50-51. She remembered telling her mother that her dad hurt her, but could not remember how he hurt her. Id. at 55. Nor could she remember whether there was any penetration during the touching. Id. A.W. could not recall that her grandparents were living at the same house where the abuse allegedly occurred, when the abuse began, for how long it continued, how many times it occurred, or when it stopped. Id. at 60.

Morris testified in his own defense. 6/14/04 RP 92. He denied any improper conduct with A.W. Morris explained how angry Scribner was about the missing child support payments. Id. at 106-08. Shortly before A.W.'s "disclosure", Theresa yelled at him in front of A.W. She said that

his failure to keep up with payments showed he did not love his daughter and that he should sign over his parental rights to Sam. Morris made it clear that he would refuse. 6/14/04 RP 109-11.

Morris's mother, Leta Benfield, clearly recalled how upset Patrick was after the argument with Scribner. 6/15/04 (morning) RP 51-53. Because Morris lived with her in 2002, she witnessed their visitation. Id. at 45-46. She described the good relationship between A.W. and Morris. Id. at 46-47. Ms. Benfield, a registered nurse, would generally bathe A.W. when she stayed over each week. Id. at 49. Benfield never saw any signs of abuse. Id. at 50-51. Leta's husband, James Benfield, confirmed the good relationship between Morris and A.W. Id. at 85-88.

Kathy Morris, Patrick's ex-wife, observed his visitations with A.W. from 1999 to 2002. 6/15/05 (afternoon) 29-30. She described Patrick's relationship with A.W. as positive and loving. Id. at 31-32.

### **III. GROUNDS FOR RELIEF**

- 1) The trial court violated Morris's right to a public trial under the Sixth Amendment and Article I, section 22 of the Washington Constitution when it closed the courtroom during substantial portions of jury selection.
- 2) Morris was denied his right to present a defense under the Sixth and Fourteenth amendments when the trial court excluded proposed testimony from a defense expert.

- 3) Defense counsel's handling of the testimony of the defense expert, and of a videotaped interview of A.W. by that expert, deprived Morris of his Sixth Amendment right to effective assistance of counsel.
- 4) Morris was denied his Fourteenth Amendment due process right to effective assistance of counsel on appeal when his appellate lawyer failed to raise the above ground for relief.
- 5) The cumulative error of all claims raised here violated Morris's Fourteenth Amendment right to due process.

#### **IV. ARGUMENT**

##### **A. MORRIS'S RIGHT TO A PUBLIC TRIAL WAS DENIED WHEN THE TRIAL COURT CLOSED THE COURTROOM FOR PORTIONS OF JURY SELECTION**

Mr. Morris is entitled to a new trial because the trial court closed the courtroom for preliminary matters and for substantial portions of jury selection.

When court commenced on June 8, 2004, the official transcript notes: "Proceedings held in chambers." 6/8/04 RP 1. Similarly, the Clerk's Trial Minutes state: "Outside the presence of the jury Court calls into chambers the clerk, court reporter, defendant, Corbin Volluz and Dona Bracke." App. B at 1. The parties discussed various issues including whether a child hearsay hearing would be necessary. The transcript then indicates: "Proceedings held in the courtroom with the jury present." 6/8/04 RP 3.

After some initial general questions and comments to the jury panel the court announced:

Well, Ladies and Gentlemen, we have some interviews to do of those people who indicated they wanted to talk privately. We have quite a few of those to do, actually; so what I'm going to do is ask a few of those to remain so we can start those before lunch. The rest of you report back at 2:00.

RP (voir dire) at 45-46; App. A.<sup>2</sup> The court then recited the numbers of the eleven jurors who requested private questioning and told them when to report back to the court. The reporter indicates that the proceedings then continue "in chambers." App. A at 46. This continued for some time until proceedings resumed in the courtroom. App. A at 93.

The unnecessary closure of the courtroom violated Morris's right to a public trial under Article I, Section 22 of the Washington Constitution and the Sixth Amendment to the United States Constitution. See State v. Bone-Club, 128 Wn.2d 254, 906 P.2d 325 (1995); Waller v. Georgia, 467 U.S. 39, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984). "The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." Waller, 467 U.S. at 45 (citations and internal quotations omitted). The trial court must perform a weighing test consisting of five criteria:

1. The proponent of closure or sealing must make some showing [of a compelling interest], and where that

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<sup>2</sup> The transcript of June 8, 2004 that was before this Court on direct appeal did not include the jury selection. See RP (6/8/04) 3 ("At which time the Judge addresses the jury panel, voir dire begins, and a jury of 12 is selected"). For purposes of this PRP, Morris obtained a transcript of the jury selection, which is included in the Appendix as App. A.

need is based on a right other than an accused's right to a fair trial, the proponent must show a "serious and imminent threat" to that right.

2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.
3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests.
4. The court must weigh the competing interests of the proponent of closure and the public.
5. The order must be no broader in its application or duration than necessary to serve its purpose.

Bone-Club, 128 Wn.2d at 258-59 (citations omitted; alteration in original).

The Washington Supreme Court "has strictly watched over the accused's and the public's right to open public criminal proceedings." State v. Easterling, 157 Wn.2d 167, 174, 137 P.3d 825 (2006). Protection of the right to a public trial "clearly calls for a trial court to resist a closure motion except under the most unusual circumstances." Bone-Club, 128 Wn.2d at 259. Closure can be justified only if the trial court enters specific findings in support; an appellate court's post hoc determination cannot cure deficient trial court findings. Bone-Club, 128 Wn.2d at 261, citing Waller, 467 U.S. at 49 n.8. See also, State v. Brightman, 155 Wn.2d 506, 516, 122 P.3d 150 (2005); State v. Frawley, 140 Wn. App. 713, 167 P.3d 593 (2007).

When the right to a public trial is violated, prejudice is presumed and a new trial must be granted even when the closure related only to a pretrial hearing. Bone-Club, 128 Wn.2d at 261-62. The same rule applies

to jury selection. Personal Restraint of Orange, 152 Wn.2d 795, 814, 100 P.3d 291 (2004). This standard generally applies when the claim is raised for the first time on postconviction review because appellate counsel would have been ineffective in failing to raise it. See section D, below.

In this case, the trial court never discussed the five Bone-Club factors nor made specific findings to justify the closure. Even if it had done so, the factors could not have been satisfied here. The requests for private questioning were not made to preserve Morris's right to a fair trial and no juror raised any imminent threat to a compelling interest of her own.

It is true that defense counsel did not object to the closure. The Washington Supreme Court has explained, however, that the failure to object cannot constitute a waiver. See Bone-Club, 128 Wn.2d at 257. In that case, "[t]he court neither sought nor received an objection or assent from Defendant on the record." Id. "The motion to close, not Defendant's objection, triggered the trial court's duty to perform the weighing procedure." Id. at 261. See also, State v. Easterling, 157 Wn.2d at 173 n.2 ("A criminal accused's rights to a public trial and to be present at his criminal trial are issues of constitutional magnitude that may be raised for the first time on appeal."); Id. at 176 n.8 ("This court has explicitly held that a defendant does not waive his right to appeal an improper closure by failing to lodge a contemporaneous objection.") Similarly, in this case the court never sought input from the defense attorney about closing the courtroom.

In State v. Momah, 141 Wn. App. 705, 171 P.3d 1064 (2007), this Court found no proof on the record that the trial court actually ordered closure. In that case, the court stated that a certain juror had been taken into chambers for individual questioning and that “the door is closed.” Id. at 1066-67. This Court noted that doors to courtrooms are generally closed during proceedings but that does not mean that the press or public is excluded. Id. at 1069.

Momah, however, is likely to be overturned. The Washington Supreme Court granted review in Momah and held oral argument on June 10, 2008. In other cases, the Supreme Court has not placed the burden on the defendant to show that specific people were actually excluded from the courtroom. See State v. Brightman, 155 Wn.2d at 512-13 (reversing due to courtroom closure although “there is no evidence that the court enforced its ruling, there is no record of a written order, and there is nothing else in the record indicating that anyone was denied access to the courtroom”); Personal Restraint of Orange, 152 Wn.2d at 807-08 (reversing due to courtroom closure without requiring proof that any person had actually been kept out of the voir dire proceedings). Similarly, in this case, the State cannot “overcome the strong presumption that the courtroom was closed.” State v. Brightman, 155 Wn.2d at 516. It is commonly understood that the reason for holding hearings in chambers is to keep them private. No spectator would have believed that he could have demanded admittance to the judge’s chambers

Because the Washington Supreme Court's decision in Momah is likely to affect this case, this Court may wish to stay consideration of the PRP pending a ruling in Momah.

B. MORRIS'S CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE WAS VIOLATED WHEN THE TRIAL COURT EXCLUDED PORTIONS OF THE PROPOSED TESTIMONY OF LAWRENCE DALY

1. Introduction

The defense hired Lawrence Daly as a private investigator and an expert in child abuse allegations. Daly's 25-page report (App. C) was provided to the State. 6/14/04 RP 4. The prosecutor moved to exclude all of Daly's testimony. To support its motion the prosecutor questioned Daly extensively outside the presence of the jury. 6/14/04 RP 28-71. Daly has a bachelor's degree in criminology and a master's degree in Psychology in Child Abuse. As of 2004, Daly had 12 years experience as a police officer and 15 years as a private investigator. App. C at 1. In both capacities, he had extensive experience investigating allegations of child sexual abuse. He had testified many times as an expert witness regarding investigation of such cases.

The trial court excluded several topics that Daly wished to cover, including the following: (1) Daly's assessment of the quality of Detective Ryan's investigation; and (2) discussion of studies regarding the effects of "coaching" on child witnesses and the reasons for believing that A.W.'s testimony was coached. 6/14/04 RP 75-76, 84.

2. Legal Standards

“[S]tate and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials.” United States v. Scheffer, 523 U.S. 303, 308, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998); see also Crane v. Kentucky, 476 U.S. 683, 689-690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986); Marshall v. Lonberger, 459 U.S. 422, 438, n. 6, 103 S.Ct. 843, 74 L.Ed.2d 646 (1983); Chambers v. Mississippi, 410 U.S. 284, 302-303, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973); Spencer v. Texas, 385 U.S. 554, 564, 87 S.Ct. 648, 17 L.Ed.2d 606 (1967). This latitude, however, has limits. “Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’ ” Crane, supra, at 690, 106 S.Ct. 2142 (quoting California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984); citations omitted). This right is abridged by evidence rules that “infring[e] upon a weighty interest of the accused” and are “‘arbitrary’ or ‘disproportionate to the purposes they are designed to serve.’ ” Scheffer, supra, at 308, 118 S.Ct. 1261 (quoting Rock v. Arkansas, 483 U.S. 44, 58, 56, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987)).

Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727, 1732, 164 L.Ed.2d 503 (2006). See also, Washington v. Texas, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L.Ed.2d 1019 (1967) (the right to present defense witnesses “is a fundamental element of due process”); State v. Maupin, 128 Wn.2d 918, 924, 913 P.2d 808 (1996).

In particular, the defense is entitled to explore the adequacy of the police investigation. See Kyles v. Whitley, 514 U.S. 419, 446-47, 115 S. Ct. 1555, 131 L.Ed.2d 490 (1995).

3. Daly’s Critique of Detective Ryan’s Investigation

Mr. Daly noted that Detective Kathy Ryan was the lead investigator in this case, yet she took a “passive role” and did little or no investigation of her own. App. C at 3. Further, Detective Ryan failed to limit the number of interviews of A.W., which undermined the reliability of the information received. Ryan also failed to ensure that the primary forensic interview, conducted by Candy Ashbrook, was videotaped. Id. at 5-6. Instead, Ms. Ashbrook was permitted to rely on her written notes, prepare a report based on them, and then destroy the notes. Id.

Detective Ryan also should have searched for physical evidence to support or weaken the claim of sexual abuse. In particular, Ryan “should have executed a search for stain and fiber evidence in every location in which sexual abuse was alleged to have occurred.” Id. at 7. Ryan also failed to explore “alternative hypotheses” for how the alleged victim could have learned details of the abuse. Id.

Ryan also failed to question A.W.’s mother, Theresa Scribner, to test her recall of what A.W. told her and to see whether Scribner may have deliberately or inadvertently coached A.W. Id. at 8-9. Instead, Ryan permitted Scribner to fill out a handwritten statement on her own. Id. at 9.

The trial court excluded any testimony along these lines. It believed that the quality of Detective Ryan’s investigation was irrelevant because she did so little.

THE COURT: . . . What is the relevance of that? She said virtually nothing when she got on the stand. So who cares?

MR. VOLLUZ: Which is about the sum total of her investigation.

THE COURT: Precisely. So who cares?

6/14/04 RP 75.<sup>3</sup>

The trial court missed the point. It is true that the detective's testimony was not particularly harmful in itself since she admitted that she played no active role in the investigation. But Mr. Daly could have explained why it was inadequate for Ryan to be so passive. The defense could then have argued that the poor investigation helped create a reasonable doubt concerning Morris's guilt.

4. Factors Indicating that A.W. had been "Coached"

Larry Daly was also prepared to testify about specific factors, relevant to this case that had been shown to affect children's recollection of events. App. C at 12-20. For example, one study showed that 58% of pre-school children produced false narratives to events that never took place, simply by being asked whether the event had ever happened to them. 27% of these children continued to insist that the event occurred even after the being told that it had not. Id. at 13-14.

In another study, some children watched a "janitor" handle dolls in an appropriate manner while he cleaned them, and others saw him handle the dolls in a rough and abusive manner. The interviewers then questioned the children about what they saw, with some interviewers taking an

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<sup>3</sup> The Court also noted that Mr. Daly referred to Det. Ryan's breach of the "standard of care." It may be true that this term would more appropriately apply to a civil case. But Mr. Daly could have presented his critique of Det. Ryan's work without referring to any civil standards.

“accusatory” tone, others an “exculpatory” tone, and others a neutral tone. When the tone of the interviewer was inconsistent with the activity actually viewed by the child, 90% of the children ultimately adopted the view of the interviewer. Id. at 14-15. The children would continue to give an incorrect report when questioned later by their parents. Id. at 16. Other studies yielded similar results. Id. at 16-20.

According to Daly, these studies helped explain how A.W. was likely coached by her mother, and thereby came to believe the accusations against Morris. Id. at 19-20. Daly elaborated on this point during an offer of proof outside the presence of the jury.

[A] child saying daddy touched me could be innocuous. This is something that in society we’ve kind of perverted. So, you know daddy could have touched her, and it was nothing. And you start asking a hundred questions of a child with the connotation that something bad had happened. Then the child may feel that she has to respond; that daddy did something wrong.

6/14/04 RP 66-67.

The prosecutor moved to exclude any testimony along these lines. Id. at 83-84. In her view, Daly’s testimony fell within the general topic of children’s suggestibility, a topic that State v. Swan, 114 Wn.2d 613, 790 P.2d 610 (1990), cert. denied, 498 U.S. 1046, 111 S. Ct. 752, 112 L. Ed. 2d 772 (1991), and State v. Willis, 151 Wn.2d 255, 87 P.3d 1164 (2004) had “eliminated from expertise [sic] testimony because it’s within the common knowledge of jurors that preschoolers are suggestible.” Id. at 84.

“That’s what Swan holds. That’s what Willis holds. So to get in now and say they are suggestible, you know, flies in the face of these cases.” Id.

Defense counsel explained that Daly would go beyond the general suggestibility of children and explain how particular types of questioning could lead to specific errors in a child’s memory. Id. at 82-83. For example, Daly would discuss studies involving “stereotype induction” and “memory attribution” – concepts not typically understood by the general public.

The trial court agreed with the prosecutor.

That is the one thing Swan and Willis says; it’s not admissible under this expert’s testimony, the suggestibility of young children and how their memory could be affected by adult manipulation. This is not coming in either.

Id. at 84.

In fact, those Washington Supreme Court decisions support the admissibility of Daly’s proposed testimony.

We begin by emphasizing that our holding in Swan does not bar all expert testimony on child interview techniques and suggestibility. In Swan, we reviewed and upheld a trial court’s decision to exclude particular expert testimony under the particular circumstances.

Willis, 151 Wn.2d at 261. In Swan, the defense psychologist did not have “bona fide qualifications” and his position on child interviewing was not accepted by the scientific community. Swan, 114 Wn.2d at 656. See also, Willis, 151 Wn.2d at 261 (explaining Swan). While the general principle that younger children are susceptible to suggestion is within the understanding of the jury, “specialized knowledge regarding the effects of

specific interview techniques and protocols is not likely within the common experience of the jury.” Willis, 151 Wn.2d at 261 (citation and internal quotations omitted).

For example, that wet pavement is more slippery than dry pavement is within the general knowledge of the jury. That does not prevent the admissibility of expert testimony regarding specific stopping distances under specific friction coefficients created when specific driving surfaces are wet. Similarly, merely because it is a matter of general knowledge that children’s memories are changeable does not preclude testimony that specific interview techniques might compromise specific memories.

Id.

The admissibility of expert testimony regarding child witnesses is not governed by any special rules but rather by the same evidence rule – ER 702 – that applies to all expert testimony. Id. at 262. “Admissibility depends on whether (1) the witness qualifies as an expert, (2) the opinion is based upon an explanatory theory generally accepted in the scientific community, and (3) the expert testimony would be helpful to the trier of fact.” Id. at 261 (citations and internal quotations omitted.) In Willis, the trial court was within its discretion in excluding the proposed testimony because it was unhelpful on the specific facts of that case. While the defense expert was well-qualified to testify that certain events could have tainted the child witness’s recollection, that testimony was largely irrelevant because the child’s story did *not* change after “any possible tainting interview techniques were introduced.” Id. at 264.

The Court of Appeals decision in Willis – affirmed in relevant part by the Supreme Court – provides some additional analysis that is useful here. See State v. Willis, 113 Wn. App. 389, 54 P.3d 184 (2002). As the Court observed, “[t]he majority of courts that have considered the issue agree that while an expert may not opine as to the credibility of the child witness, testimony from a qualified expert about proper techniques for interviewing children can be helpful to the jury in evaluating the testimony of interviewers.” Id. at 394, citing Barlow v. State, 270 Ga. 54, 507 S.E.2d 416, 418 (Ga. 1998); United States v. Rouse, 111 F.3d 561, 571-72 (8th Cir.), cert. denied, 522 U.S. 905, 118 L. Ed. 2d 188 (1997); Guam v. McGravey, 14 F.3d 1344, 1348-49 (9th Cir. 1994); Washington v. Schriver, 255 F.3d 45, 57 (2nd Cir. 2001); State v. Malarney, 617 So. 2d 739, 740-41 (Fla. Dist. Ct. App. 1993); State v. Sloan, 912 S.W.2d 592, 596-97 (Mo. Ct. App. 1995); State v. Sargent, 144 N.H. 103, 738 A.2d 351, 353-54 (1999); State v. Michaels, 136 N.J. 299, 642 A.2d 1372, 1384 (1994); People v. Alvarez, 159 Misc. 2d 963, 607 N.Y.S.2d 573, 574 (N.Y. Sup. Ct. 1993); State v. Gersin, 76 Ohio St. 3d 491, 1996 Ohio 114, 668 N.E.2d 486, 487-88 (1996); State v. Kirschbaum, 195 Wis.2d 11, 535 N.W.2d 462, 466-67 (Wis. Ct. App. 1995).<sup>4</sup>

Here, Lawrence Daly clearly was qualified as an expert through his extensive training and experience. See App. C at 1-2. It was undisputed that his opinions on this matter were generally accepted. Daly cited

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<sup>4</sup> Morris thanks attorney Robert Perez for his research contributions to this portion of the PRP.

several scientific studies to support his opinions and the State did not question their validity. Finally, the testimony would have been helpful to the trier of fact. Daly's testimony was not limited to the general principle that younger children are susceptible to suggestion. Rather, he would have provided "specialized knowledge regarding the effects of specific interview techniques" that is not "likely within the common experience of the jury." See Willis, 151 Wn.2d at 261. For example, it is not obvious that merely asking a child to think about whether something happened to her would be likely to induce a false memory. See App. C at 13-14. Similarly, it is not obvious that the "accusatory" or "exculpatory" tone used by the questioner would have such a dramatic effect on a child's recall. Id. at 14-16.

These principles were highly relevant to the facts of this case because the only arguably spontaneous utterance by A.W. was an unremarkable one: "My daddy touches me." A.W. made more incriminating statements only after Theresa Scribner pressed her for details. As discussed above in section II(B), there was evidence that Scribner asked specific questions – such as whether Morris digitally penetrated A.W. – rather than open-ended ones. As Daly could have explained, merely asking a child whether certain events took place can be enough to convince her that they did. Further, the impact of an "accusatory tone" was highly relevant here because of the high likelihood that Scribner employed such a tone. A.W.'s "disclosure", after all, came

on the heels of a bitter and contentious argument between Scribner and Morris over child support payments and termination of parental rights.

For these reasons, the exclusion of Daly's expert testimony violated ER 702 and Morris's constitutional right to present a defense.

C. DEFENSE COUNSEL'S HANDLING OF DALY'S TESTIMONY, AND OF A VIDEOTAPED INTERVIEW OF A.W. BY DALY, DEPRIVED MORRIS OF EFFECTIVE ASSISTANCE OF COUNSEL

Defense counsel's original plan was apparently to play the videotape of Lawrence Daly's interview of A.W. while Daly gave his commentary on the significance of A.W.'s various statements. When the trial court excluded significant portions of Daly's testimony, counsel abandoned the notion of presenting either Daly or the videotape. The next day, however, the *prosecutor* announced that she planned to play a portion of the videotape for the jury. 6/15/04 (afternoon) RP 3. Mr. Volluz then stated that he wanted the entire tape played "if it's going to be played at all." Id. at 3-4. When asked what he meant by that, he responded: "Well, apparently it's going to be played." Id. at 4. The prosecutor then closed her rebuttal case by playing the entire videotape. 6/16/04 RP 2, 10. The jurors were told that the interview was conducted by a defense expert. Id. at 10. The jurors never heard from Daly at all. In closing argument, the prosecutor noted that A.W. made some accusations during the Daly interview that she did not make in court. The prosecutor suggested that this was due to A.W. being more relaxed in the setting of the interview. Id. at 16-17.

Defense counsel's handling of this matter was deficient. First, counsel should have objected to the State playing the videotape after successfully excluding Daly's interpretation of it. Daly, after all, believed that A.W. had been "coached" by Theresa Scribner and therefore parroted an incriminating version of events. The defense would not likely have conducted the interview at all had it known that the State would be permitted to offer the videotape as proof that A.W.'s story was more or less consistent, while Daly was prohibited from explaining why that was the case.

Second, if the judge nevertheless ruled that the tape could be played, the defense should have at least taken advantage of the testimony that the trial court would have allowed. Daly would have been permitted to critique the techniques of the State's investigator, Candy Ashbrook. 6/14/04 RP 74, 77. As the parties and the Court were aware, Daly would have opined that "Ms. Ashbrook's interview was simply unacceptable as a forensic interview." App. C at 5.

Some of Ms. Ashbrook's questions were leading and suggestive. Her Forensic Protocol and Procedure is unfamiliar to me and I am aware of the top protocols being used nationally and internationally. Ms. Ashbrook only gathered evidence that would support a conviction.

Id. Although Daly was prohibited from testifying that A.W. had been "coached", his critique of Ashbrook's questioning may have helped the jury reach that conclusion on its own. If the jurors understood how Ashbrook's questions were unprofessionally leading, suggestive, and geared towards gathering only incriminating evidence, the jurors might not

have given any weight to the fact that A.W. repeated some similar statements to Daly.

Daly would have explained why Ashbrook should have taped her interview of A.W., and not destroyed her notes of the interview. App. C at 5-6. Ashbrook's procedure "has specifically been termed 'troublesome' by top experts in the field." Id. at 6.

Whatever the means used to record the interview, it is critical that every question and the child's answer be recorded in exactly the language used by the child. . . . How do we know that Ms. Ashbrook simply failed to record exculpatory information?

Id. This would have aided the defense argument that the lack of evidence created a reasonable doubt.

Although the trial court excluded significant portions of Daly's proposed testimony, a reasonable defense lawyer would still have put Daly on the stand, particularly once it became clear that the videotape of his interview would be played for the jury.

A criminal defendant has a Sixth Amendment right to competent counsel. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). This right is violated when the defendant is prejudiced by counsel's deficient performance, that is, when there is a reasonable likelihood that counsel's error could have affected the result.

Id. Here, as discussed above, counsel's handling of the videotape and Daly's testimony was deficient in view of the trial court's rulings and the prosecutor's desire to play the tape. It is reasonably likely that the errors affected the result. The State's case was based on the statements of a five-

year-old. Her innocent comment – “daddy touched me” – became incriminating only after aggressive questioning by her mother, who was engaged in a bitter dispute with Morris over child support and parental rights. Scribner demonstrated her bias against Morris by falsely telling the police that a medical examination had revealed physical confirmation of abuse. Other actions of Scribner suggested that she did not truly believe Morris had abused A.W.: Scribner was in no hurry to obtain a protective order, and she declined to take A.W. to much of the counseling recommended by CPS. That A.W. herself was aware of her mother’s anger towards Morris helped explain how she could come to believe the allegations. There was no physical evidence of abuse and Morris denied any inappropriate touching.

Had the jury heard Daly’s critique of the State’s forensic investigator, it is reasonably likely that the jury would have had a reasonable doubt. Instead, the jury saw only the tape of Daly’s interview of A.W., which the State used to its advantage. Had that tape been excluded – or at least explained – the result would likely have been different.

D. MORRIS WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL

The Due Process Clause of the Fourteenth Amendment guarantees the right to effective assistance of counsel on appeal. Evitts v. Lucey, 469 U.S. 387, 396, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985).

In order to prevail on an appellate ineffective assistance of counsel claim, petitioners must show that the legal issue

which appellate counsel failed to raise had merit and that they were actually prejudiced by the failure to raise or adequately raise the issue.

In re Maxfield, 133 Wn.2d 332, 344, 945 P.2d 196 (1997). When appellate counsel was ineffective, the court could remand for a new appeal. Personal Restraint of Dalluge, 152 Wn.2d 772, 788, 100 P.3d 279 (2004). But when, as here, the appellate court requires no further information to decide the merits of the underlying claim, it can be more efficient “to resolve the trial court error under the standard of review applicable upon direct appeal.” Id. at 789.

In this case, three meritorious issues were not raised on appeal. First, counsel failed to raise the claim regarding courtroom closure during jury selection. See section A, above. “Because the error would have been per se prejudicial on appeal, the failure of [Morris’s] appellate counsel to raise the issue below constituted ineffective assistance of counsel.” Personal Restraint of Orange, 152 Wn.2d 795, 800, 100 P.3d 291 (2004). See also, Orange, 152 Wn.2d at 814.

Second, appellate counsel failed to raise the trial court’s exclusion of significant portions of Daly’s proposed testimony. See section B, above. Because that claim was meritorious, and Morris was prejudiced by the error, the failure to raise it likewise constituted ineffective assistance of counsel.

Third, appellate counsel could have raised the ineffective assistance of trial counsel on direct appeal since the claim is based primarily on facts that are in the record. As a practical matter, however, it

may make no difference whether appellate counsel was ineffective in this regard because claims of ineffective assistance are reviewed under the Strickland standard whether raised on direct appeal or collateral attack.

Thus, all claims raised in this PRP should be considered under the standards applicable to a direct appeal. Morris has now demonstrated that each of these issues has merit and that he was prejudiced by appellate counsel's failure to raise them.

#### E. CUMULATIVE ERROR REQUIRES REVERSAL

Even when no individual error is sufficiently prejudicial to warrant relief, the cumulative effect of the errors may require reversal. Cargle v. Mullin, 317 F.3d 1196, 1206-07 (10<sup>th</sup> Cir. 2003); Mak v. Blodgett, 970 F.2d 614, 624- 25 (9th Cir. 1992), cert. denied, 507 U.S. 951, 113 S.Ct. 1363, 122 L.Ed.2d 742 (1993); State v. Clark, 143 Wn.2d 731, 771-72, 24 P.3d 1006, cert. denied, 534 U.S. 1000, 122 S.Ct. 475, 151 L.Ed.2d 389 (2001).

Here, two errors contributed to an unfair trial: the trial court's exclusion of significant portions of Lawrence Daly's testimony, and defense counsel's failure to exclude the videotape and/or present what he could of Daly's testimony. When combined, these errors turned what could have been significant exculpatory evidence into evidence that favored the State.<sup>5</sup> Thus, even if the Court finds that no single error warrants relief, it should reverse based on cumulative error.

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<sup>5</sup> The Court need not consider the cumulative effect of the error regarding courtroom closure since a finding that the courtroom was closed requires automatic reversal in itself.

**V. REQUEST FOR RELIEF**

Because several errors invalidate Morris's convictions, the Court should vacate his judgment and remand for a new trial on all counts.

**VI. OATH**

After being first duly sworn on oath, I depose and say that: I am the attorney for petitioner, I have read the petition, know its contents, and believe the petition is true.

DATED this 8<sup>th</sup> day of August, 2008.

Respectfully submitted,



David B. Zuckerman, WSBA #18221  
Attorney for Patrick Morris

SUBSCRIBED AND SWORN TO before me, the undersigned notary public, on this 8<sup>TH</sup> day of AUGUST, 2008.



Notary Public for Washington

My Commission Expires: 11/09/08



**CERTIFICATE OF SERVICE**

I hereby certify that on the date listed below, I served by United States Mail one copy of the Personal Restraint Petition and Appendix on the following:

Skagit County Prosecutor's Office  
605 S. 3<sup>rd</sup> Street  
Mt. Vernon, Washington 98273

Mr. Patrick L. Morris #871931  
North Fork Correctional Facility  
1605 East Main  
Sayre, OK 73662

8/8/08  
Date

Emily Knudsen  
Emily Knudsen

RECEIVED  
COURT OF APPEALS  
DIVISION ONE  
AUG - 8 2008

Court of Appeals No. C02169-2  
Skagit County Superior Court No. 03-1-00660-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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In re the Personal Restraint of:

PATRICK L. MORRIS

Petitioner.

---

APPENDIX TO PERSONAL RESTRAINT PETITION

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By:  
**David B. Zuckerman**  
Attorney for Petitioner  
1300 Hoge Building  
705 Second Avenue  
Seattle, WA 98104  
(206) 623-1595

RECEIVED  
COURT OF APPEALS  
DIVISION ONE

AUG - 8 2008

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(Skagit County Superior Court No. 03-1-00660-1)

- A. Verbatim Report of Proceedings, Voir Dire, June 8, 2004, State v. Patrick Morris, Skagit County Superior Court No. 03-1-00660-1

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SKAGIT COUNTY

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State of Washington,	)	Skagit County Cause
	)	No. 03-1-0660-1
Plaintiff,	)	
	)	
	)	
	)	
Patrick Morris,	)	
	)	
	)	
Defendant.	)	

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VERBATIM REPORT OF PROCEEDINGS

The Honorable Susan K. Cook  
Department III  
Skagit County Courthouse  
Mount Vernon, Washington 98273

APPEARANCES:

For the Plaintiff: DONA BRACKE  
Chief Deputy Prosecuting Attorney  
Skagit County Prosecutor  
605 S. Third Street  
Courthouse Annex  
Mount Vernon, 98273

For the Defendant: CORBIN VOLLUZ  
Attorney at Law  
409 Main Street  
Mount Vernon, WA 98273

DATE: June 8, 2004

REPORTED BY: Jennifer Christine Schroeder,  
RPR, CCR #2221, Official Reporter

1 MOUNT VERNON, WASHINGTON

2 9:30 A.M.

3 --oo0oo--

4  
5 (Proceedings held in open court jury panel not present)

6  
7 THE COURT: Good morning, Mr. Morris. I wanted  
8 to make you aware about what we did yesterday when you  
9 weren't here. We went ahead with pretrial motions on things  
10 that were going to be admitted and not admitted in the  
11 trial. I understand from Mr. Volluz you were aware that was  
12 going to happen; you waived your presence in that hearing;  
13 is that correct.

14 THE DEFENDANT: Yes.

15 THE COURT: All right. That's all I want to  
16 know.

17 MS. BRACKE: One more waiver to the child hearsay  
18 hearing.

19 THE COURT: Yes, we have not done one; is that  
20 right?

21 MR. VOLLUZ: No child hearsay hearing.

22 THE COURT: As I have understood you've  
23 considered it with your client?

24 MR. VOLLUZ: Well, I've certainly considered it,  
25 Your Honor. I believe the child hearsay will come up at a

1 point after the child testifies and it's based upon what the  
2 child testifies to.

3 THE COURT: Is the child going to testify fairly  
4 early?

5 MR. BRACKE: I intend to call her first.

6 THE COURT: We'll know then. If she doesn't have  
7 any recollection of certain interviews of the events when  
8 she gets on the stand, we may have some hearsay problems.  
9 But other than that recollection, the evidence is subject to  
10 cross; I don't think there will be a problem.

11 Do either of you have any concerns about her  
12 competence?

13 MR. VOLLUZ: No, we have considered that. We're  
14 not challenging her competency. She's six years old. She  
15 seems competent.

16 THE COURT: We'll go ahead without the hearsay  
17 hearing if that's agreeable to both of you. Then we'll deal  
18 with any issues that arise after her testimony; does that  
19 work?

20 MR. VOLLUZ: Very good.

21 THE COURT: Good morning, Ladies and Gentlemen.  
22 Be seated. Welcome to jury service in Skagit County. I'm  
23 Judge Susan Cook. I'll be presiding over this trial. And I  
24 want to first of all thank you for being here this morning.  
25 I realize that this probably isn't what you had at the top

1 of your list to be doing on Tuesday morning this week. I  
2 understand this is an inconvenience for everybody. Nobody  
3 really wants to be here. It's something you had to schedule  
4 and actually cancel other things that you would rather be  
5 doing since you were ordered to be here; so I want you to  
6 know we appreciate it. A lot of other states, even some  
7 jurisdictions in Washington have trouble getting jurors to  
8 respond to jury summons. As you probably all realize the  
9 justice system doesn't work unless there are people like you  
10 who are willing to sacrifice and report to jury service.  
11 Fortunately we haven't had the problem they have in other  
12 states, but I think that's a result of the people here in  
13 Skagit County; they take their responsibility as citizens  
14 seriously and I want you to know we do appreciate that very  
15 much.

16 Let me introduce some of the people who are here  
17 this morning so you know who is in the courtroom. As I  
18 said, I'm Judge Susan Cook. Here on my right is Della  
19 Jette. She is the clerk. She will be keeping record of  
20 what goes on during the course of the trial. As this goes  
21 on she is also responsible for taking care of any exhibits  
22 that are admitted. So she is the person who safeguards  
23 those exhibits and makes sure when you go back into the jury  
24 deliberation room those exhibits are safely brought back for  
25 your examination back there.

1           Down here in front of me you can barely see her  
2 little brown head bobbing away, this is Jennifer Schroeder.  
3 She is the court reporter. It's her job to record  
4 everything that is said during the course of trial. She's  
5 taking everything down as I say it. It's really quite  
6 remarkable. Sometimes I get distracted watching her. She  
7 uses a kind of code. You can imagine what it would be like  
8 trying to type what I'm saying on a type writer; it wouldn't  
9 work. Nobody can type that fast. She uses a code or  
10 shorthand and the machine that helps her do that. And if I  
11 asked her to, she could read back to me exactly what I've  
12 said since I walked into the room right now. It's really,  
13 truly remarkable. She'll be doing that throughout the  
14 entire trial.

15           Over here is Helga Schink in the sunflower  
16 jacket. She is the bailiff. It will be her responsibility  
17 to take care of the jurors and see to it they have  
18 everything they need, including what we refer to around here  
19 as the "P" word, parking; that's always a problem. I realize  
20 some of you had difficulty this morning finding a place to  
21 park. There simply aren't enough places to park in this  
22 part of town. It is very difficult, particularly on Tuesday  
23 morning when we also have the juvenile offender calendar.  
24 There are hundreds of people coming to this building, and  
25 it's very, very difficult. Helga helps with those kind of

1 things. She makes phone calls for you. She finds you what  
2 you need in order to do your duty as jurors. Sitting next  
3 to note her is Kristen Cavanaugh. She's a law clerk with us  
4 for the summer. She's a law student. She's helping out  
5 generally wherever she can. It's wonderful to have her.  
6 Those are the folk that are going to be working in the  
7 courtroom as this trial progresses.

8 All right are the parties ready?

9 MS. BRACKE: Yes, Your Honor, State is ready.

10 MR. VOLLUZ: Defense is ready, Your Honor.

11 THE COURT: All right. Ladies and Gentlemen, we  
12 are about to embark on the jury selection process. We are  
13 going to be picking 14 people who will serve a jurors in  
14 this case out of a group of about 54 of you, who are in this  
15 room. That process will probably take us most of the day.

16 The jury selection process is a process where we  
17 engage in conversations with you, ask you questions, have  
18 you talk about how you feel about certain issues. The whole  
19 idea of the jury selection process is to find out how you  
20 feel about certain issues, what your reactions are to  
21 certain topics. Each of us has had life experiences that  
22 color the way we look at certain subject matters, some of us  
23 get very excited about one thing, but it doesn't bother the  
24 person sitting next to us at all. We're very different and  
25 unique in that regard. And the process of jury selection is

1 to talk with you about your individual reactions to the  
2 subject matters we're going to be dealing with to find out  
3 if this is something that upsets you, or creates anxiety in  
4 you, or about which you have really fixed strong views that  
5 might color your ability to be objective.

6 The whole goal of this process is to pick 14  
7 people who will be able to be objective and unemotional, who  
8 will be able to serve as jurors in this case, who will come  
9 without any biases or prejudices along with them to the  
10 decision making process. It takes us a while to select 14  
11 people and to discuss with you your feelings about the case,  
12 and that's so we know whether you're going to be able to be  
13 fair and objective. That's what the jury selection process  
14 is about. We're going to talk with you and ask you  
15 questions. We're going through a whole series of processes  
16 to sort out 14 people who can do that job.

17 So first and foremost we need to get you sworn in  
18 to answer all these questions truthfully. If you would  
19 please rise and raise your right hand, the clerk will do  
20 that.

21 (The jury panel is sworn in)

22 THE COURT: Is there anybody here having difficulty  
23 hearing me? Sir, we're going to move you right up here so  
24 you can be right in the middle of the action. Be sure to  
25 let me know if my voice is not carrying in the microphone.

1 JUROR NO. 48: I do have a microphone but.

2 THE COURT: You're Juror Number?

3 JUROR NO. 48: 48.

4 THE COURT: Thank you, sir.

5 Is there anybody else who has any trouble? Okay.

6 If you're not able to hear at any time, sir, you go like

7 this (indicating). I'll keep an eye out for that signal.

8 We do have an assisted hearing device. We can use that if  
9 you need it. Just let me know.

10 As I said, we're going to get started on the jury  
11 selection process here. As I also indicated that is going  
12 to involve asking you some questions. We are not doing this  
13 to embarrass you or to pry into your private affairs. We  
14 are doing it to try to find out if you have any preconceived  
15 ideas about the subject matter that we're going to be  
16 dealing with that would affect your ability to be fair and  
17 impartial in this case. That's the whole goal of this jury  
18 selection process.

19 Alright. This is a criminal case. It has been  
20 instituted by the State of Washington as the plaintiff. And  
21 the State is represented by Ms. Dona Bracke, Deputy  
22 Prosecuting Attorney for Skagit County.

23 MS. BRACKE: Good morning, Ladies and Gentlemen,  
24 my name is Dona Bracke. I work with the Skagit County  
25 Prosecuting Attorney's Office.

1 THE COURT: The defendant is Patrick Lynn Morris.  
2 He is represented by defense attorney, Corbin Volluz.

3 MR. VOLLUZ: Good morning everybody. I'm Corbin  
4 Volluz. This is my client, Pat Morris.

5 THE DEFENDANT: Good morning everybody.

6 THE COURT: The defendant is charged with three  
7 offenses. I am going to read to you the charging document.  
8 The document is called the information. This is the  
9 document that charges Mr. Morris with these three offenses.

10 The first charge is Child Molestation in the  
11 First Degree. The document reads: On or about August 6th,  
12 2001 and March 6th, 2003 in Skagit County, Washington you  
13 did engage in sexual contact with and were at least 36  
14 months older than Alyssa Warner, a minor female child, date  
15 of birth August 6th, 1997, a person who was less than 12  
16 years of age and not married to you.

17 The second charge is Child Molestation in the  
18 Third Degree, that on or about August 6th, 2001 and March  
19 6th, 2003 in Skagit County, Washington you did engage in  
20 sexual contact with and were at least 36 months older than  
21 Alyssa Warner, a minor female child, date of birth August  
22 6th, 1997, a person who was less than 12 years of age and  
23 not married to you.

24 The third charge is Rape of a Child in the First  
25 Degree, on or about August 6th, 2001 and March 6th, 2003 in

1 Skagit County, Washington you did engage in sexual  
2 intercourse with and were at least 24 months older than  
3 Alyssa Warner, a minor female child, date of birth August  
4 6th, 1997, a person who was less than 12 years of age and  
5 not married to you.

6 The defendant has entered pleas of not guilty to  
7 all three charges. Those pleas put in issue every element  
8 of the crimes charged.

9 The information, the document I just read from,  
10 is only an accusation against the defendant which informs  
11 him of the charges. You are not to consider the filing of  
12 the information or its contents as proof of the matters  
13 charged. It will be your duty, if you are selected for this  
14 jury, to determine the facts in this case from the evidence  
15 produced in court. It will also be your duty to accept the  
16 law of the court regardless of what you personally believe  
17 the law is or ought to be. You are to apply the law to the  
18 facts and in this way decide the case.

19 A defendant is presumed innocent. That  
20 presumption continues throughout the entire trial unless you  
21 find during your deliberations it has been overcome by the  
22 evidence beyond a reasonable doubt.

23 The State has the burden of proving each element  
24 of the crimes charged beyond a reasonable doubt. A  
25 reasonable doubt is one for which a reason exists and may

1 arise from the evidence or lack of evidence. It is such a  
2 doubt as would exist in the mind of a reasonable person  
3 after fully, fairly, and carefully considering all of the  
4 evident or lack of evidence.

5 If after such consideration you have an abiding  
6 belief in the truth of the charge, you are satisfied beyond  
7 a reasonable. Now some of you may have served on juries  
8 before. Some of those cases may have been civil cases. In  
9 a civil case where one person is suing another person for  
10 money damages the plaintiff must prove his or her case by  
11 what we call the preponderance of the evidence, that is by  
12 the greater weight of the evidence. In a criminal case like  
13 this one, the State must prove every element of the crime  
14 charged beyond a reasonable doubt. In a civil case the  
15 verdict does not need to be unanimous, but in a criminal  
16 case like this one the law requires that all jurors agree.

17 Now, ladies and gentlemen, I have a very  
18 difficult question for you. This case is scheduled to run  
19 through the end of next week, June 18th. It may very well  
20 take us that long to get through it, deliberations will take  
21 longer. So I think you need to plan, if you are selected  
22 for this jury, to be here through Friday of next week. Is  
23 there anybody here who absolutely cannot serve through  
24 Friday of next week?

25 Now, before everybody here raises their hand, let

1 me tell you what I mean by absolutely cannot serve through  
2 Friday, next week. This is an inconvenience for everybody.  
3 Nobody wants to be here. Everybody has something that they  
4 plan to do within the next couple of weeks. What I'm asking  
5 is is there anybody here that has nonrefundable tickets to  
6 Paris on Monday, or bypass surgery scheduled for next week,  
7 or something that they absolutely cannot change that makes  
8 it impossible for them to be here through Friday of next  
9 week? All right. With those considerations anybody here  
10 who has that kind of a problem? I need you to use your  
11 numbers.

12 Let's start with Juror No. 13. What's the  
13 conflict, sir?

14 JUROR NO. 13: Well, I run my own business so it  
15 would be very hard to run it from the courtroom.

16 THE COURT: It would be what kind of business?

17 JUROR NO. 13: Mobile upholstery business.

18 THE COURT: Alright. Thank you.

19 No. 9?

20 JUROR NO. 9: I'm a massage therapist. I have my  
21 own practice.

22 THE COURT: No. 18?

23 JUROR NO. 18: I'm a school teacher. June 18th  
24 is the last day of school. Between now and the last day I  
25 have to grade 200 student's report cards, exit students.

1 THE COURT: Anybody else? No. 26?

2 JUROR NO. 26: Yeah I've been excused for next  
3 week for a job I'm taking with the State.

4 THE COURT: The court administrator excused you?  
5 You're out of here, sir. Leave your number on the bench.  
6 We use those again. Thank you.

7 JUROR NO. 26: See you.

8 THE COURT: No. 44?

9 JUROR NO. 44: Also excused by the Court  
10 Administrator.

11 THE COURT: All right. Leave your number. No.  
12 49?

13 JUROR NO. 49: School teacher.

14 THE COURT: We have two of those. All right.  
15 We'll take those into consideration.

16 JUROR NO. 35: The last day.

17 THE COURT: The 18th, you already have an excuse  
18 from the Court Administrator? Leave your number there,  
19 thank you.

20 All right. Ladies and Gentlemen, can I see the  
21 numbers who believe -- No. 9, No. 13, No. 18, No. 35 got  
22 excused for 18th. 49. Anybody else?

23 Alright. What we are going to do now, Ladies and  
24 Gentlemen, is ask you to fill out a questionnaire. This  
25 allows you to answer some questions privately. It may be

1 appropriate in this case for you to do so. We're going to  
2 pass out the questionnaires. There's only a few questions.  
3 It's only two pages. Please put your juror number on the  
4 questionnaire and answer the questions truthfully. You are  
5 under oath. Once you've answered these questions, we'll  
6 collect those. When you finished we'll resume with the jury  
7 selection process. Thank you, Ladies and Gentlemen.

8 (Jury panel fills out questionnaire)

9 THE COURT: Thank you, ladies and gentlemen.  
10 Everybody get done with the questionnaire? Alright. Good.

11 I have some general questions for the group. The  
12 first thing I want to be sure is that you all have your  
13 cards and that you all can find them because we are going to  
14 use those to help you respond to the questions. We don't  
15 know all of you by name yet so we've got to use those  
16 numbers to identify you so as we go through these questions,  
17 if you answer yes to the question you hold up that card and  
18 we'll get your number down so we know who is responding to  
19 the questions.

20 Is there anybody here who has heard about this  
21 case before? Anybody have any conversations about it, read  
22 about it in the newspaper, overheard somebody talking about  
23 it, think they know anything about it? Anybody?

24 (No response)

25 Alright. I'm going to read through the list of

1 the individuals the attorneys tell me may be witnesses in  
2 this case. If you know any of these individuals, you need  
3 to raise your card. Lisa Harvey Clark, who works at Compass  
4 Health.

5 Robin Webb-Lahey, who worked formerly at the  
6 Prosecuting Attorney's Office. No. 50. Alright. Anybody  
7 else?

8 Verna Dorrell from Anacortes, D-O-R-R-E-L-L.  
9 Patricia Dorrell, Anacortes.

10 Gretchen Van Pelt, who works at the Prosecuting  
11 Attorney's Office. No. 1 and No. 15.

12 Leanne King, works for Child Protective Services.  
13 Dr. Robert Petty, who works at Island Hospital in  
14 Anacortes. No. 7.

15 Dr. Les Richards, works in Anacortes, No. 13.

16 Candy Ashbrook from here in Mount Vernon.

17 Dr. Andrea Smith.

18 Michelle Lambert, who is an attorney.

19 Diana Lowry, works at Compass Mental Health.

20 James Benfield from Anacortes, No. 19. Leta  
21 Benfield, Anacortes.

22 John Winge from Concrete. Irene Winge, Concrete.

23 Elizabeth Coffey from Lynnwood, Washington.

24 Jerry Benfield, Lynnwood, Washington. Allen  
25 Benfield, Concrete.

1 Kevin Morris from Sedro-Woolley.  
2 Janeen Frizzell, Concrete. Johnny Frizzell, from  
3 Concrete.  
4 Clara Riggs from Coupeville.  
5 Kathy Morris from Anacortes, No. 18.  
6 Vivian White, who is an attorney in Mount Vernon.  
7 Larry Daly from Covington, Washington.  
8 Kathleen T. Ryan, Detective with the Anacortes  
9 Police Department, No. 15 and No. 34.  
10 Sergeant Lou D'Amelio, Anacortes Police  
11 Department, No. 15, No. 18, No. 21, and No. 10.  
12 Sergeant Wayne Korterud from the Anacortes Police  
13 Department, 15, 20, 34, 33, and 21.  
14 Alyssa Warner from Anacortes, Washington.  
15 Teresa Scribner, Anacortes, Washington. Samuel  
16 Scribner, Anacortes.  
17 Karen Talbert, Anacortes.  
18 Matt Wicker, Anacortes.  
19 Jessica Brooks, Sedro Woolley.  
20 Alright. Thank you, Ladies and Gentlemen.  
21 Is there anybody here who has served on a  
22 criminal jury before in a criminal case, served on a jury,  
23 actually went back and deliberated?  
24 Okay. No. 7, what kind of case was it?  
25 JUROR NO. 7: Ax murder case in Monterey,

1 California.

2 THE COURT: No. 8?

3 JUROR NO. 8: Theft.

4 THE COURT: 11?

5 JUROR NO. 11: Murder case here.

6 THE COURT: 12?

7 JUROR NO. 12: Hunting without a license, here.

8 THE COURT: No. 18?

9 JUROR NO. 18: Drug case.

10 THE COURT: Okay, 27?

11 JUROR NO. 27: Drug case.

12 THE COURT: No. 30?

13 JUROR NO. 30: Theft in Orlando, Florida.

14 THE COURT: Alright. Thank you. Anybody else

15 here? 37?

16 JUROR NO. 37: Drug case here in Mount Vernon.

17 THE COURT: Okay. 53?

18 JUROR NO. 53: Theft.

19 THE COURT: Okay. Did I miss anybody? 8?

20 JUROR NO. 8: Arson.

21 THE COURT: You've been on two criminal?

22 JUROR NO. 8: Been on two.

23 THE COURT: Anybody here who had such a lousy  
24 experience as a juror in a case that they feel they never  
25 want to repeat the experience again? Everybody was okay

1 with it?

2           Alright. Anybody here who has testified as a  
3 witness before, come in to court, sworn to tell the truth?  
4 Just give me an idea generally what kind of case. 15?

5           JUROR NO. 15: Criminal case.

6           THE COURT: No. 32?

7           JUROR NO. 32: Civil case.

8           THE COURT: 34?

9           JUROR NO. 34: Grand jury.

10          THE COURT: And 37?

11          JUROR NO. 37: Drunken driving.

12          THE COURT: Anybody else been a witness? 54?

13          JUROR NO. 54: Civil case, land use.

14          THE COURT: Anybody else? 51?

15          JUROR NO. 51: Adoption hearing.

16          THE COURT: 19?

17          JUROR NO. 19: A guy was cutting timber on  
18 another person's property. I was called in as a witness.

19          THE COURT: Alright. Anybody here who has been  
20 the victim of a crime? Most people usually raise their  
21 hands for this. It includes everything from car prowls, to  
22 residential burglary, to assault, to whatever. Just give me  
23 an idea what it was. No. 1.

24          JUROR NO. 1: Vandalism, also the homeowner's  
25 association I was in had money stolen.

1 THE COURT: No. 5?  
2 JUROR NO. 5: Motorcycle stolen.  
3 THE COURT: No. 6?  
4 JUROR NO. 6: Assault.  
5 THE COURT: No. 9?  
6 JUROR NO. 9: Hit by a drunk driver.  
7 THE COURT: No. 10?  
8 JUROR NO. 10: Theft.  
9 THE COURT: Alright. No. 17?  
10 JUROR NO. 17: House broken into and assault.  
11 THE COURT: 18?  
12 JUROR NO. 18: Theft.  
13 THE COURT: 19?  
14 JUROR NO. 19: Theft on two different occasions.  
15 THE COURT: Alright. Missed you, 14.  
16 JUROR NO. 14: Theft.  
17 THE COURT: 22?  
18 JUROR NO. 22: Theft.  
19 THE COURT: 24?  
20 JUROR NO. 24: Assault.  
21 THE COURT: No. 30?  
22 JUROR NO. 30: Theft.  
23 THE COURT: 31?  
24 JUROR NO. 31: House broken into.  
25 THE COURT: 32?

1 JUROR NO. 32: Theft.  
2 THE COURT: 34?  
3 JUROR NO. 34: Vandalism.  
4 THE COURT: 48?  
5 JUROR NO. 48: Two break ins, residence one,  
6 broke into my business.  
7 THE COURT: 37?  
8 JUROR NO. 37: Embezzlement, car hit by drunken  
9 driver.  
10 THE COURT: 40?  
11 JUROR NO. 40: Theft.  
12 THE COURT: 42?  
13 JUROR NO. 42: Theft.  
14 THE COURT: 43?  
15 JUROR NO. 43: Theft.  
16 THE COURT: 45?  
17 JUROR NO. 45: Theft.  
18 THE COURT: 50?  
19 JUROR NO. 50: Theft.  
20 THE COURT: 51?  
21 JUROR NO. 51: Theft.  
22 THE COURT: 49?  
23 JUROR NO. 49: Theft.  
24 THE COURT: 55?  
25 JUROR NO. 55: Theft.

1 THE COURT: Anybody here who I missed? No. 20?

2 JUROR NO. 20: Armed robbery.

3 THE COURT: Anybody here whose experience in  
4 connection with that was so bad that they don't think they  
5 could be fair in a case involving sitting as a juror in a  
6 criminal case? Anybody have a really lousy experience or  
7 particularly good experience they feel persuaded them one  
8 way or the other?

9 (No response)

10 Who here is connected in some way with the  
11 justice system either in connection to law enforcement, the  
12 court system or somehow connected to the justice system?

13 No. 3.

14 JUROR NO. 3: Son is a prosecuting attorney for  
15 the county.

16 THE COURT: For which county?

17 JUROR NO. 3: Champagne.

18 THE COURT: Your son?

19 JUROR NO. 3: Yes.

20 THE COURT: No. 5?

21 JUROR NO. 5: Father-in-law retired Moulton  
22 Sheriff's Department.

23 THE COURT: No. 11?

24 JUROR NO. 11: Housemate Guardian ad Litem in  
25 Snohomish, Whatcom, Skagit County.

1 THE COURT: 19?

2 JUROR NO. 19: Daughter works in Burlington,  
3 something to do with courts in Burlington, not exactly sure  
4 what.

5 THE COURT: 15?

6 JUROR NO. 15: Retired law enforcement.

7 THE COURT: 23?

8 JUROR NO. 23: My wife is a court clerk in  
9 Burlington.

10 THE COURT: 29?

11 JUROR NO. 29: My dad is a retired deputy for  
12 Island County.

13 THE COURT: 31?

14 JUROR NO. 31: Brother-in-law officer in Mount  
15 Vernon.

16 THE COURT: 32?

17 JUROR NO. 32: Member of the bar of Arkansas.

18 THE COURT: Okay. 33?

19 JUROR NO. 33: My husband is a retired police  
20 officer.

21 THE COURT: Thank you. 37?

22 JUROR NO. 37: Sedro Woolley, Washington my  
23 brother is an attorney.

24 THE COURT: Okay. 54?

25 JUROR NO. 54: I'm married to an attorney who

1 practices in town.

2 THE COURT: 53? ...

3 JUROR NO. 53: My husband volunteers with the  
4 Mount Vernon Police Department. I don't know if that counts  
5 or not.

6 THE COURT: Sure. Anybody I miss? No. 9?

7 JUROR NO. 9: My brother is a police officer for  
8 Edmonds.

9 THE COURT: Anybody whose connection with the  
10 justice system causes any concern about your ability to be  
11 impartial or fair in this case? Anybody have any concerns  
12 about that? No. 3?

13 JUROR NO. 3: Well, my son prosecutes these types  
14 of cases.

15 THE COURT: The reason I ask that question is  
16 sometimes you have to go home and talk to the person that is  
17 connected to the justice system in some way. The question  
18 has to do with whether you would feel reluctant to disclose  
19 you decided a case in a particular way for fear of their  
20 reaction? That's really what this question is geared  
21 toward, how you would feel, if you would be reluctant to  
22 talk to your son about having decided the case in a  
23 particular way?

24 JUROR NO. 3: No.

25 THE COURT: Do you feel, given your relationship,

1 you could be fair to both sides?

2 JUROR NO. 3: No.

3 THE COURT: You don't think so?

4 JUROR NO. 3: No.

5 THE COURT: Thank you for letting me know. No.  
6 19.

7 JUROR NO. 19: I was a defendant in a criminal  
8 case one time years ago, and it was not a very good  
9 experience at all.

10 THE COURT: You think that might affect the way  
11 you look at that?

12 JUROR NO. 19: Certainly would.

13 THE COURT: Thank you for letting me know. 50?

14 JUROR NO. 50: I used to do civil lawsuits with  
15 children, and my husband works with Corbin.

16 THE COURT: That might affect how you look at  
17 this case in terms of impartiality?

18 Alright. Thank you. Anybody else?

19 (No response)

20 Once in awhile we have folks on a jury panel who  
21 know one another. This is a pretty large panel. One time I  
22 had the delightful experience of having a couple in the  
23 midst of a very acrimonious divorce; that could create a  
24 problem. I always ask anybody here who knows anybody else  
25 on the jury panel well. I know you might see one another in

1 the grocery store from time to time, but anybody who knows  
2 anybody well? No. 10, who do you know?

3 JUROR NO. 10: Chris, No. 18.

4 THE COURT: Are you good friends?

5 JUROR NO. 10: We live on the same island, which  
6 is pretty close.

7 THE COURT: That makes you pretty close. Okay.  
8 No. 19?

9 JUROR NO. 19: I know No. 4.

10 THE COURT: Do you know him well?

11 JUROR NO. 4: Fairly well.

12 THE COURT: No. 18?

13 JUROR NO. 18: I know Jeff Thomas, fellow school  
14 teacher.

15 THE COURT: Likewise, Mr. Thomas, No. 49. Okay.  
16 Anybody else? 47?

17 JUROR NO. 47: I know Mr. Woodworth, neighbor.

18 THE COURT: He's No. 19.

19 Is there anybody here, apart from reasons that  
20 you talked about on your questionnaire, anybody here who has  
21 any concerns, worry, uncomfortableness about serving as a  
22 juror in this case? We'll go into those questionnaires a  
23 little bit later. Anybody who for another reason -- No. 9?

24 JUROR NO. 9: I'm not understanding the question,  
25 uncomfortable because of the case matter?

1 THE COURT: Uh-huh, because of the case.

2 JUROR NO. 9: Yeah, I would be.

3 THE COURT: Can you tell me why?

4 JUROR NO. 9: Because I, in a round about way  
5 have experienced abuse in my childhood, any abuse, in any  
6 way, shape, or form --

7 THE COURT: Emotional topic for you?

8 JUROR NO. 9: Yes.

9 THE COURT: Got it. Anybody else? No. 50.

10 JUROR NO. 50: I just got done doing one of these  
11 cases within the family.

12 THE COURT: Okay. Alright. Did you talk about  
13 that in your questionnaire?

14 JUROR NO. 50: Yeah.

15 THE COURT: We'll take care of that.

16 Anybody else? Alright, Ladies and Gentlemen, I  
17 think what we're going to do now, then, is get to know you a  
18 little bit. This is sometimes a little difficult for you  
19 but it's very helpful for us because we get to hear from  
20 your point of view what it is that you think is important  
21 about you or different about you or what makes you an  
22 individual. I'm going to ask each of you to stand up.

23 No. 1, Mr. Osgood, you're going to get to go  
24 first. What I'm going to ask you to do is stand up,  
25 introduce yourself, talk about yourself a little bit, tell

1 us what you like to do in your spare time, what you are  
2 interested in, tell us about your family, what do you  
3 consider to be different about you, if you have  
4 affiliations, what groups or associations. That's the sort  
5 of thing that sets you apart from the ordinary. By all  
6 means let us know about that. I know this is hard to do.  
7 People do not like to stand up and talk about themselves in  
8 front of absolute strangers. That's what I'm asking you to  
9 do. I know it is tough. It is important for you to get  
10 through this process. I want you to tell your story.

11 Before we get started, some time ago we were at  
12 that point in the jury selection process and I was  
13 explaining what we were about to do. I turned to No. 1,  
14 asked him to stand up and talk about himself, to try to get  
15 the ball rolling. He was an elderly gentleman. He looked a  
16 little unkept. He stood up and said: I'm a hermit. I  
17 don't like people, and I don't want to be here. And it was  
18 a little hard to get information about anybody else the rest  
19 of the whole thing. So you have a heavy burden. You have  
20 to get the ball rolling. If you would please, stand up and  
21 introduce yourself. There's some clues over here. They do  
22 sometimes help.

23 JUROR NO. 1: My name is Dan Osgood. I've lived  
24 in Mount Vernon six or seven years where I met my second  
25 wife. We both have two children, almost out of the house,

1 all of them. So in our spare time we like to RV. We take  
2 off whenever we can and get out of town. I'm a project  
3 manager based out of L.A. working out of my home office.  
4 Movies, anything I can rent and watch at home so I don't  
5 have to deal with crowded theaters. Not a lot of  
6 organizations. Basically anytime we get out of town that's  
7 what we do.

8 THE COURT: Thank you, Mr. Osgood.

9 Mr. Thompson, Number 2?

10 JUROR NO. 2: Dana Thompson. In March I just  
11 graduated from nursing school; so I'm a nurse. And in  
12 nursing school I met my girlfriend and we are engaged, and I  
13 am also a single father. I raise my 11-year-old son. She  
14 is single mother. She has a five-year-old daughter. And my  
15 hobbies and interests are the two children. He plays a lot  
16 of baseball, football, basketball. And I help with that in  
17 any way I can. Favorite movie, I like science fiction; TV  
18 program, I watch a lot of law and order, CSI shows, that's  
19 about all I watch. The person I admire the most is probably  
20 the president.

21 THE COURT: Alright. Thank you, Mr. Thompson.

22 Mr. McAvoy?

23 JUROR NO. 3: Frank McAvoy, from south of  
24 Concrete. My interests are mainly landscaping. I don't  
25 have any favorite book or movies or any favorite public

1 person.

2 THE COURT: Thank you, sir.

3 Mr. Hornsby, No. 4?

4 JUROR NO.4: My name is Owen Hornsby. I'm a  
5 temporary worker for Puget Sound Energy. I'm semi-retired.  
6 I work all summer. My wife works for Snelson on pipelines.  
7 My interests are fishing and hunting. I don't belong to any  
8 clubs. Person I most admire living or dead, George  
9 Washington.

10 THE COURT: Alright. Thank you.

11 Mr. Brooks?

12 JUROR NO. 5: Robert Brooks. I'm married. I  
13 have one child who provided me with two terrific  
14 grandchildren. I'm retired from Georgia Pacific in  
15 Bellingham. My hobbies are classic cars, street rods. I  
16 don't really belong to any organizations or clubs. I lived  
17 in Skagit Valley for 31 years.

18 THE COURT: Ms. Ingraham?

19 JUROR NO. 6: My name is Shari Ingraham. My  
20 husband and I have been married almost eight years. I work  
21 at Best Western here in town. I've lived here about two  
22 years. Watch a lot of movies, read a lot of books. That's  
23 about it.

24 THE COURT: Thank you.

25 Ms. Exley, No.7?

1 JUROR NO. 7: I'm Debbie Exley. I live in  
2 Anacortes. I'm a physical therapist for Island Hospital. I  
3 work in the home health department; so I provide care of  
4 people in their home. I like to garden, and I like to see  
5 new places. Organizations I belong to, master composter,  
6 recycler in Skagit County, somewhat active more in the past  
7 with the dog park in Anacortes and ladies book club.

8 THE COURT: Alright No. 8, Mr. Tollefson.

9 JUROR NO. 8: Been married for 42 years, had two  
10 children and retired from Texaco Refinery. I have two  
11 hobbies/interests, I guess you might say, playing tennis and  
12 the other thing that keeps me busy, an organization, Love in  
13 the Name of Christ. It unites churches together in Skagit  
14 County, poverty level in need; we work with all the agencies  
15 of course. And Endurance is one of my favorite books by  
16 Shackleton. And I don't watch much TV, news. And I like  
17 Mr. Bush.

18 THE COURT: Thank you...

19 Ms. Crediford.

20 JUROR NO. 9: My name is Gail Crediford, married  
21 with six step-children, three of them stay with me, one just  
22 made me a grandparent recently. I'm a massage therapist. I  
23 work right here in the city right across the street,  
24 actually next door. My hobbies and interests include  
25 horseback riding, and when people introduce me to new stuff

1 I think is fun; so I do it. So it becomes a hobby. I'm  
2 interested in everything, very open about that.  
3 Organizations, I'm in church often. I like old comedies,  
4 Golden Girls, Mash. Kids think I'm square about that.  
5 And public person, I just like strong women. I tend to  
6 admire them mostly because they are more inspirational to  
7 me; so I don't have one particular person I admire. I just  
8 like to read and learn more about stronger women, what they  
9 do, how they got there, that's mainly me.

10 THE COURT: Thank you.

11 Ms. Barrett, No. 10?

12 JUROR NO. 10: Mariah Barrett. I live in  
13 Anacortes on Guemes Island. I like flowers. I like to walk  
14 in the woods. I sing songs. I work at a book store, work  
15 as a waitress. I work in all trades. I like a lot of books  
16 by Angela Moore.

17 THE COURT: Thank you. Ms. Trueblood?

18 JUROR NO. 11: Sandra Trueblood, work for the US  
19 postal service for several decades it seems. I'm still  
20 depressed over the Stanley Cup. My hobbies are my dogs. I  
21 love to travel, especially up north, Alaska Highway, Yukon,  
22 Northwest Territory. Favorite book, historical; TV programs  
23 as well. My favorite public person is probably Michael  
24 Moore.

25 THE COURT: Alright. Mr. Dowley, No. 12?

1 JUROR NO. 12: Mark Dowley. I work for Puget  
2 Sound Energy, turbine service. I like camping and biking.  
3 No organizations, like Sci-Fi, Westerns. And no public  
4 person.

5 THE COURT: Thank you.

6 Mr. Bartelmey?

7 JUROR NO. 13: Dale Bartelmey. I've got my own  
8 mobile upholstery; that kind of takes a lot of my time.  
9 I've got two mobile upholstery shops. And I'm also a  
10 teacher, spend a lot of time in study. I've got a lot of  
11 computer study material, probably 400 some books on  
12 computers. I spend a lot of time studying.

13 THE COURT: Alright. Thank you.

14 Ms. Jenkins, No. 14?

15 JUROR NO.14: My name is Sue Jenkins. My husband  
16 and I moved here three years ago from Chehalis, Washington.  
17 He took on a position here in the Northwest, and we moved to  
18 Anacortes. We have two young men who are out of the home  
19 now. We are empty nesters. We have one coming back from  
20 the University of Washington on Saturday only if it doesn't  
21 rain because we are not going to move in the rain. Another  
22 week our other son, Brandon, he is a third year  
23 electrician's apprentice. They are both doing really well.  
24 I work about 35 hours a week at Island Optometry in  
25 Anacortes. I enjoy my job there. Other than that, most

1 recently I've been reading Bounty Hunter. Those are really  
2 great in books. I like Survivor and President Lincoln.

3 THE COURT: Thank you.

4 Mr. Koegel?

5 JUROR NO. 15: I'm Jerry Koegel. I'm the  
6 Director of the Tribal Gaming Board and License Casino. We  
7 do auditing, about 900 audits a year, oversee surveillance  
8 license agents. We work, you know, we do tribes, public and  
9 tribal. Married and have two grown children. Grandfather.  
10 Any spare time I have I end up in the yard trimming bushes  
11 for my wife. Modest traveling. Like reading anything from  
12 biographies on Jefferson and Franklin to Cornwall or Tom  
13 Clancey, Candy's Dramas, whatever.

14 THE COURT: Thank you.

15 Ms. Sexton, No. 16?

16 JUROR NO. 16: I'm Kristy Sexton. I have a large  
17 family. I'm the youngest of seven children. I'm a  
18 preschool teacher here in Mount Vernon. I'm a college  
19 student in Bellingham and I don't like talking in front of  
20 people.

21 THE COURT: Understood.

22 Ms. Fowler, No. 17?

23 JUROR NO. 17: Marsha Fowler, I'm married. I  
24 have one daughter, one granddaughter. I'm retired. We  
25 spend our winter in Arizona, traveled to Mexico by RV three

1 times. I just returned from Mazatlan. My favorite program  
2 is probably Law and Order. Right now I guess I would say I  
3 admire President Reagan.

4 THE COURT: Ms. Damarjian.

5 JUROR NO. 18: Chris Damarjian, school teacher,  
6 kindergarten through sixth. I teach science, mother of  
7 three teenage boys. I like to read non-fiction, interested  
8 in politics and that's it.

9 THE COURT: Thank you.

10 Mr. Woodworth, No. 19?

11 JUROR NO. 19: John Woodworth, four grown  
12 children, eight grandchildren. I have one son still at  
13 home, you know, in and out of college, working back and  
14 forth right now. He's working for Janiki Engineering in  
15 Sedro Woolley. I'm a carpenter crew chief, Seattle City  
16 Lighting. My hobbies are gardening and photography, fishing  
17 organizations. I'm part of the Concrete license booster  
18 club, favorite books: On Shaky Grounds, which was written  
19 several years ago. Earthquake movies, Hunt for Red October  
20 was probably my favorite. I have to watch a lot of sports  
21 baseball, mainly basketball. Admire public person, right  
22 now I can't think of very many I admire.

23 THE COURT: No. 20.

24 JUROR NO. 20: Gary Wiggins, electrician Tesoro  
25 Refinery, married 32 years, have two children, ride

1           motorcycles, do a lot of shooting, have birds, read most  
2           non-fiction. That's who I am.

3                   THE COURT: Ms. Woolsey, 21.

4                   JUROR NO. 21: I'm Annette Woolsey. We've lived  
5           in Skagit County since 1980; Director for youth activity  
6           programs in Anacortes for five years; two daughters that we  
7           have raised completely in Skagit County, one of them is  
8           getting her Masters degree in Boston; one of them at Eastern  
9           Washington University. My youngest daughter is a Leukemia  
10          survivor. That's it.

11                   THE COURT: Alright. Thank you.

12                   Mr. May, No. 22?

13                   JUROR NO. 22: John May, work for Puget Sound  
14          Energy. I like basketball. TV show probably the Simpsons;  
15          like to read about American History, play guitar for  
16          Fabulous Chryslers.

17                   THE COURT: No. 23.

18                   JUROR NO. 23: Thomas Mattingly, night custodian  
19          elementary school in Burlington. I'm a home brewer and a  
20          veteran, and I love to garden and that's about it.

21                   THE COURT: Alright. Thank you. Ms. Bowen, No.  
22          24.

23                   JUROR NO. 24: Cynthia Bowen, my husband is a  
24          diesel mechanic near Mount Vernon; my son is 20 and heading  
25          to University of Hawaii in criminal justice. Hobbies, I

1 like working in the garden and traveling, and I don't belong  
2 to any organizations; CSI is my favorite TV program.

3 THE COURT: Alright, thanks. Ms. Berentson, No.  
4 23.

5 JUROR NO. 23: Evelyn Berentson, I live in Mount  
6 Vernon, been here most of my life. I'm a retired bartender.  
7 My interests are my grandchildren. I have 14 of them.  
8 Don't belong to any clubs and watch old movies and Law and  
9 Order. And I think Mr. Reagan was an important person.

10 THE COURT: Mr. Lindholm, No. 26. He's gone,  
11 cross him off.

12 No. 27, Mr. Ekvall?

13 JUROR NO. 27: Brent Ekvall, we live in La Conner  
14 now. My wife and I raised two children in the Seattle area  
15 where I practiced architecture for 30 some years, retired up  
16 near La Conner about eight years ago, and primarily because  
17 we enjoy boating and continue to do so big time. Recently  
18 started doing just part-time employment. I watch generally  
19 only news programs on television, not too much of anything  
20 else. I enjoy non-fiction books, currently not one at this  
21 point.

22 THE COURT: Thank you.

23 Mr. Cavazos, No. 28?

24 JUROR NO. 28: My name is Ed Cavazos. I work at  
25 the potato warehouse, pretty much takes up all my time right

1 now. We're into remodeling, getting ready for the season.  
2 Hobby is fishing. No clubs or organizations; movies pretty  
3 much action, science fiction, that's about it.

4 THE COURT: Thank you, sir.

5 Ms. Oldemeyer, No. 29?

6 JUROR NO. 29: Val Oldemeyer, been married for  
7 three years, having a house built here in Mount Vernon. I  
8 lived in Oak Harbor most of my life. I like comedy movies.  
9 I work at a dental office in Anacortes. And my hobbies are  
10 pretty much open. I don't have any specific hobbies. I go  
11 fishing with my husband, crabbing with my friends.

12 THE COURT: Alright. Thank you.

13 Ms. Smola, No. 30?

14 JUROR NO. 30: Well I just turned 80.

15 THE COURT: Congratulations.

16 JUROR NO. 30: I'm retired, of course, and  
17 there's a lot of hobbies. I like to sew, quilt, garden,  
18 cook, things like that. I belong to quilting clubs, floral  
19 arts club, active in church things. I like to read  
20 autobiographies. Well, I don't really have any special  
21 ones. I think all people have special gifts.

22 THE COURT: Thank you.

23 Ms. Olson?

24 JUROR NO. 31: I have lived in Skagit County most  
25 of my life. I don't have any children, and I currently work

1 for the Department of Social and Health Services.

2 THE COURT: Thank you. Mr. Nixon.

3 JUROR NO. 32: Bob Nixon, I live in Anacortes  
4 with my wife and three dogs. I'm an attorney trying to  
5 retire from law practice in Little Rock, Arkansas. I have  
6 traveled there frequently. My law practice has been  
7 commercial litigation. I'm in a group that has set up off  
8 leash dog park in Anacortes. I know Ms. Exley as a result  
9 of that. I am interested in current events, politics. I  
10 like to watch sports on television.

11 THE COURT: Thank you, Mr. Nixon.

12 Ms. George, No. 33?

13 JUROR NO. 33: I'm Rebecca George. I've been  
14 married for 29 years, and we have three children and I've  
15 worked for 15 years with preschool children teaching  
16 instructional assistants. My hobbies include quilting. One  
17 of my passions is doing line project quilts. We give to law  
18 enforcement agencies for children. I belong to a church,  
19 very active in that, teach Sunday school. I love gardening  
20 and sports.

21 THE COURT: Thank you.

22 Ms. Trafton, No. 34?

23 JUROR NO. 34: Dale Trafton. I'm retired. My  
24 husband is retired from Texaco. I am a mother of four,  
25 grandmother of two. Volunteer at the Anacortes Red Cross

1 Disaster Team.

2 THE COURT: Thank you.

3 Ms. Klepper was excused.

4 That brings us to 36, Mr. Johnson?

5 JUROR NO. 36: My name is H.R. Johnson. I've  
6 lived in Skagit County since 1972, moved here from Moses  
7 Lake. I opened up three convenience stores with gas  
8 stations attached. With the price of gas now I'm glad I'm  
9 rid of them. I've only been retired for three years. What  
10 I'm doing now is catching up on what I missed for the last  
11 50 years. I don't belong to anything. I belong to what I'm  
12 retired from.

13 THE COURT: No. 37, Ms. Swenson.

14 JUROR NO. 37: I'm Marlene Swenson. I'm a  
15 retired school teacher. I lived in an Eskimo community  
16 where I taught and retired from there. I enjoy outdoor  
17 activities. I like to hike, kayak, boat. I'm involved in,  
18 very involved in my church, several community service  
19 organizations.

20 THE COURT: Alright. Thank you. Mr. Ball, No.  
21 38.

22 JUROR NO. 38: Ed Ball, I work up in Bellingham,  
23 a programmer. My wife is an elementary school teacher.  
24 She's at home taking care of our three young daughters. I  
25 am an active member of the First Christian Reformed Church,

1 Mount Vernon. My oldest daughter goes to the Christian  
2 school. I'm a board member of that school.

3 THE COURT: Thank you.

4 No. 39, Ms. Stamey?

5 JUROR NO. 39: My name is Alyssa Stamey. I did  
6 work for Skagit County Services, lived in the valley my  
7 whole life. Married with one dog, three cats. In my spare  
8 time I like to ride my horse, read, and travel.

9 THE COURT: Thank you.

10 No. 40, Ms. Taylor?

11 JUROR NO. 40: Rebecca Taylor, been a librarian  
12 in Mount Vernon for 23 years. If I'm not reading I'm just  
13 watching television, or partying, or dancing, or I love old  
14 square one. I got a new car, too. Love my friends, love  
15 the water. That's about it.

16 THE COURT: Okay. Thank you.

17 Ms. Gjerstad, No. 41?

18 JUROR NO. 41: Sandra Gjerstad, raised in Skagit  
19 Valley. I'm a self employed dry waller. I've got three  
20 grown children, four grandchildren. I'm an avid skier, just  
21 recently took up motorcycle riding, like to travel.  
22 Volunteer Special Olympics Winter games. I like Hillary  
23 Clinton, Elizabeth Doll. I'm slightly politically  
24 motivated.

25 THE COURT: Alright.

1 Mr. Smith, No. 42?

2 JUROR NO. 42: Doug Smith. I work for State of  
3 Washington and have two daughters and granddaughters. Most  
4 of my interests are with the outdoors. I hunt, fish, hike,  
5 camp, boat. I stay pretty active that way. As far as other  
6 activities I belong to the NCHA. I ride cutting horses. I  
7 keep myself pretty active that way.

8 THE COURT: Thank you very much.

9 Ms. Williams, No. 43?

10 JUROR NO. 43: Mary Williams. I work for a City  
11 department. Youngest of five, nine nieces and nephews, big  
12 family. I like to travel. My sister lives in Greece, been  
13 over there a couple of times. I recommend it. I like to  
14 sew and my favorite book, I Know This Much is True, by Wally  
15 Lam. That's about it.

16 THE COURT: Alright. Thank you very much. I  
17 think this is Ms. Black. Ms. Higgins was excused. That's  
18 No. 44. So you're No. 45.

19 JUROR NO. 45: Sandra Black, recently divorced, I  
20 have three children, two of which are teenagers. Work for  
21 Mount Vernon School District; very active in Mount Vernon  
22 Soccer, also 4-H with my daughter. Do a lot of youth  
23 things. Don't have a lot of time to read, so I read  
24 magazines or Chicken Soup for the Soul book, very family  
25 oriented. My parents are here. We do Sunday dinner

1 together, things like that. You know pretty much family is  
2 my life. Other organizations, I do a lot with the  
3 community, try to stay as active as possible in the  
4 community, and, you know, with my kids as much as I can,  
5 volunteer a lot at school and a lot with my kids.

6 THE COURT: Thank you.

7 Mr. Swapp, No. 46?

8 JUROR NO. 46: Eric Swapp, I'm a firefighter,  
9 Sedro Woolley Fire Department, also going to Skagit Valley  
10 College and studying in fire science degree, two little  
11 sisters, and I love the Mariners, so come back.

12 THE COURT: Ms. Omstead, No. 47.

13 JUROR NO. 47: Ruby Omstead, personal assistant  
14 for the Mining Company in Upper Skagit; six brothers and  
15 sisters, lot of nieces, nephews. I like period piece  
16 movies, historical books.

17 THE COURT: We're at No. 49, Mr. Thomas.

18 Mr. Anderson was excused.

19 JUROR NO. 49: Jeff Thomas, born and raised,  
20 still live in Anacortes where I grew up. My parents were  
21 teachers, sister is a teacher; my wife is a teacher, also  
22 coach basketball. I enjoy doing outdoor things like hiking,  
23 camping, fishing, sports, ride my motorcycle.

24 THE COURT: Thank you, Mr. Thomas.

25 Ms. Tyra, No. 50.

1 JUROR NO. 50: Adel Tyra, work at Schucks Auto  
2 Supply. I'm six and a half months pregnant. I'm having a  
3 boy. That's pretty much about it. I don't have too many  
4 hobbies.

5 THE COURT: Mr. Belford, No. 51.

6 JUROR NO. 51: My name is Donovan Belford, I'm an  
7 equipment operator for a logging company. I live in Lyman  
8 with my girlfriend and my youngest son. My other son is  
9 grown up. I don't belong to any organizations. And I like  
10 to watch the David Lettermen show.

11 THE COURT: Alright. Thank you. No. 52.

12 JUROR NO. 52: My name is Dorothy Arends. My  
13 husband and I retired to Anacortes 12 years ago from  
14 Seattle, five children, nine grandchildren. I like to read  
15 and do a lot of needlepoint work. We camp. We have camped  
16 all of our life.

17 THE COURT: Thank you.

18 Ms. Brady is No. 53.

19 JUROR NO. 53: Joyce Brady. Lived in Mount  
20 Vernon since 1985. My husband retired. We have been  
21 married for 53 years, three children, square dance most of  
22 our life. I like costume rock jewelry, belong to a clogging  
23 group. The light of my life is my 21-year-old  
24 granddaughter. I thought I would never have any  
25 grandchildren. My son finally came through.

1 THE COURT: Great.

2 Ms. Sjostrom?

3 JUROR NO. 54: Elizabeth Sjostrom, live in Mount  
4 Vernon last eight years, been married 11 years, no children,  
5 two dogs, work for the City of Mount Vernon, mainly.

6 THE COURT: Ms. Hartnett?

7 JUROR NO. 55: Kathleen Hartnett, I work in the  
8 accounting department at the Skagit County Treasurer's  
9 Office. Been there 17 years. Husband and I moved here 25  
10 years ago from Wisconsin. I have a son who just graduated  
11 from University of Washington, daughter going to be a junior  
12 at the University, played softball, my traveling involved  
13 following the school team. We also like to boat.

14 THE COURT: Thank you.

15 Thank you all, Ladies and Gentlemen, for your  
16 willingness to talk about yourself. I know that's hard.  
17 We're going to take our morning recess at this point. We'll  
18 be in break for 15 minutes. Public restrooms are on the  
19 third floor and first floor. We'll resume at 20 after 11.  
20 Please be back by then and don't discuss this case with  
21 anyone or allow anyone to discuss it with you.

22 (Recess taken)

23 THE COURT: Alright. No. 48, Mr. Anderson, I  
24 thought I had excused you because when I looked back I  
25 didn't see you in the row. I totally overlooked you sitting

1 right smack in front of me. Would you please tell us a  
2 little bit about yourself.

3 JUROR NO. 48: I'm the last one. I can bore you  
4 to death, but I have been in Skagit County for, oh, since  
5 1971; Anderson Tire Service is the business I operated for  
6 30 years. I retired, and we moved to Burlington. We live  
7 on the golf course that would be a lovely place to be today  
8 too. I used to read quite a bit until I got involved with  
9 the computer. Now I think my reading has fallen down to  
10 about two books a month.

11 THE COURT: Thank you, sir, my apologies for  
12 overlooking you. Alright. At this time we're going to  
13 excuse the four jurors who had problems No. 9, No. 13, No.  
14 18, and No. 49. Just leave your cards in the seats there.  
15 Thank you for being here. You will need to call the jury  
16 line again after 5:00 Friday. They may need you for another  
17 case.

18 Alright, now. Is there anyone here who knows Mr.  
19 Morris? Is there anyone here who knows his attorney, Mr.  
20 Volluz? Yes, No. 54, Ms. Sjostrom. Anyone here who knows  
21 the Deputy Prosecutor, Ms. Bracke? Alright.

22 Well, Ladies and Gentlemen, we have some  
23 interviews to do of those people who indicated they wanted  
24 to talk privately. We have quite a few of those to do,  
25 actually; so what I'm going to do is ask a few of those to

1 remain so we can start those before lunch. The rest of you  
2 report back at 2:00. Mighty long lunch hour, but I don't  
3 think there would be any point in having you come back  
4 before lunch. We're going to be occupied with other things.

5 What I need right now is for No. 1, No. 4, No.  
6 10, No. 16, and No. 24 to remain. The rest of you are  
7 excused. And I would ask that No. 25, 27, 31, 32, 47, and  
8 54 report back at 1:15. The rest of you at 2:00. Any  
9 questions when you're suppose to report back?

10 (In chambers)

11 MR. VOLLUZ: I've spoken with my client about the  
12 sensitive nature of what's going on back here. He  
13 understands he has the right to be present. We also spoke  
14 about the fact it would be more likely for jurors to be more  
15 forthcoming with what they are talking about if he were not  
16 in the room. He has agreed to waive his presence, if that's  
17 agreeable to everybody.

18 THE COURT: Is that right, Mr. Morris?

19 THE DEFENDANT: Yes.

20 THE COURT: Thank you, sir.

21 MR. VOLLUZ: I told him to be back by 2:00.

22 THE COURT: 2:00.

23 THE DEFENDANT: Okay.

24 THE COURT: So far I've excused No. 9, No. 13,  
25 No. 18, No. 26, No. 35, No. 44 and No. 49. Is that what

1 everybody has?

2 MR. VOLLUZ: Isn't 48 gone as well?

3 THE COURT: 48 is the one I misstated.

4 MR. VOLLUZ: Okay.

5 THE COURT: Who managed to avoid D Day.

6 Bring No. 1, into chambers.

7 THE COURT: Hello. Pull up a chair. How are  
8 you?

9 JUROR NO. 1: Pretty good.

10 THE COURT: You indicated that you would prefer  
11 being questioned outside the presence of the other jurors.

12 JUROR NO. 1: Just cause I didn't know where the  
13 question was going to go.

14 THE COURT: Mostly the question is going to have  
15 to do with your answer to Number 2. You know somebody whose  
16 grandfather forced her to have sex?

17 JUROR NO. 1: That's correct.

18 THE COURT: Who is that somebody?

19 JUROR NO. 1: Somebody who I know very well.

20 THE COURT: A good friend?

21 JUROR NO. 1: Very, very close, yes.

22 THE COURT: You also, I think, indicated that it  
23 would be difficult for you to be fair in this kind of a  
24 case.

25 JUROR NO. 1: It would be hard for me. I mean

1 it's just out of all of the criminal things that can happen,  
2 probably the one that gets my goat more than anything.

3 THE COURT: Is your relationship with this other  
4 person so close that you feel that that is going to kind of  
5 overwhelm your ability to --

6 JUROR NO. 1: If that person knew I was on the  
7 jury and that person saw the verdict went one way or the  
8 other I would be answering --

9 THE COURT: There would be a reaction?

10 JUROR NO. 1: There would be a very strong  
11 reaction to it.

12 THE COURT: Alright. So you're feeling some  
13 pressure.

14 JUROR NO. 1: I don't want to say I'm pressured.  
15 She is a very upright person. She wouldn't pressure me, but  
16 just based on my relationship with her and the fact it's  
17 something that's gone on. I mean the abuse didn't go on for  
18 a year but my relationship with her has gone on for years.  
19 I know how this has affected her over the years. That, I  
20 would think, gives me a little bit of unobjectivity.

21 THE COURT: Something that's going to be in the  
22 back of your mind while you're hearing this case?

23 JUROR NO. 1: It would be, yes.

24 THE COURT: Alright. Follow-up questions?

25 MS. BRACKE: Is this someone in your family home?

1 JUROR NO. 1: It is a relative. Skagit County is  
2 so small, I don't want to betray her trust either. It is a  
3 family relative.

4 MS. BRACKE: Something you still discuss?

5 JUROR NO. 1: There's about three or four people  
6 who are aware and discuss it every once in awhile, but it's  
7 not a daily topic of conversation or anything like that. I  
8 mean, the abuse was years ago.

9 MS. BRACKE: My next question was how many years  
10 ago are we talking about?

11 JUROR NO. 1: 30, 35.

12 MS. BRACKE: Let me ask you if you were selected  
13 as a juror and ended up on the jury, do you think you could  
14 do your job as a juror?

15 JUROR NO. 1: When it comes down to it, I mean  
16 I'm a computer guy. I do everything the way it is supposed  
17 to be done. So my typical reaction is, yes, I could. But  
18 honestly, because of this particular -- you know, if you're  
19 telling me this was arson, you were telling me this was  
20 murder, you were telling me anything else, I would say, no  
21 question at all. But I have to be honest there is that part  
22 back there, this is too raw. I don't know. I would like to  
23 say I could.

24 MS. BRACKE: Given your relationship with someone  
25 who is a victim, do you think you might not be able to be

1 fair to the defendant in this case and basically go in with  
2 an open mind?

3 JUROR NO. 1: I would be biased against this  
4 defendant. I mean, I could try to set that aside but that  
5 would be in the back of my head. I couldn't fully set it  
6 aside.

7 MS. BRACKE: Thank you.

8 JUROR NO. 1: Sorry.

9 THE COURT: Follow-up questions?

10 MR. VOLLUZ: Maybe I don't even have to ask you  
11 any questions. I'm going to suggest perhaps it would be  
12 best if you were removed from the jury, for cause.

13 THE COURT: Yeah. That motion is granted. I  
14 think you hit it right on the head.

15 Mr. Osgood, you would be a great juror in a  
16 different kind of case. That's what we're going to do is  
17 excuse you from this one. You'll have to call the jury line  
18 this weekend after 5:00 Friday.

19 JUROR NO. 1: On Friday, okay.

20 THE COURT: That will be next week if they need  
21 you.

22 JUROR NO. 1: Just leave this?

23 THE COURT: Enjoy the sunshine.

24 Hello, come on in. Mr. Thompson, right?

25 JUROR NO. 4: Hornsby.

1 THE COURT: No. 4, Mr. Hornsby. Sorry about  
2 that. How are you this morning, sir?

3 JUROR NO. 4: Pretty good.

4 THE COURT: You indicated you wanted to talk  
5 outside the presence of the other jurors about something,  
6 but you answered no to all the other questions?

7 JUROR NO. 1: No. I just feel funny talking in  
8 front of everybody, that's all that was.

9 THE COURT: No particular experience you've had  
10 you needed to discuss privately?

11 JUROR NO. 4: I have a hard time talking in front  
12 of people.

13 THE COURT: That's understood.

14 JUROR NO. 4: That's the only reason.

15 THE COURT: I finally got used to it. But it was  
16 hard for me too at first. Are you going to be able to speak  
17 your mind if you're selected for the jury?

18 JUROR NO. 4: I think so.

19 THE COURT: Can you get involved in a discussion  
20 and tell them what you think?

21 JUROR NO. 4: Yes, that wouldn't be any problem.

22 THE COURT: Any follow-up questions?

23 MS. BRACKE: No, Your Honor.

24 MR. VOLLUZ: No.

25 THE COURT: Mr. Hornsby, you be back at 2:00.

1 Have a nice lunch.

2 JUROR NO. 4: Okay.

3 THE COURT: Enjoy the sunshine.

4 JUROR NO. 4: Thank you.

5 THE COURT: Hello, come on in. Have a seat. How  
6 are you?

7 JUROR NO. 10: Good.

8 THE COURT: You indicated on your questionnaire  
9 you would prefer to discuss. Things outside the presence of  
10 the other jurors. I imagine that has something to do with  
11 the answer to your other questions.

12 JUROR NO. 10: Right.

13 THE COURT: Okay. So you had an experience  
14 yourself when you were 17?

15 JUROR NO. 10: Uh-huh.

16 THE COURT: Alright.

17 JUROR NO. 10: Mostly has to do with a situation  
18 involving my family members.

19 THE COURT: Tell me about that.

20 JUROR NO. 10: Step-sister, no longer my  
21 step-sister, was continually molested, raped by her older  
22 brother while we were all in the household; so he should be  
23 in jail now. I hope he's not out. I haven't seen him in  
24 three or four years, but that was an issue.

25 THE COURT: How old was she?

1 JUROR NO. 10: From the time she was 3 until she  
2 was 15.

3 THE COURT: Given that experience how do you  
4 think you will fair if you're selected as a juror in this  
5 case?

6 JUROR NO. 10: Yeah, I've been thinking about  
7 that I have a fair mind.

8 MS. BRACKE: Is it something you're going to be  
9 able to set aside, or is it something that's going to keep  
10 recurring, overshadowing when you're listening to this case?

11 JUROR NO. 10: Yeah, it will be there. My mother  
12 was molested when she was younger by a family friend. She  
13 was never able to talk about it with her parents; so I don't  
14 know. That's a hard thing to think about because I want to  
15 be fair and even minded, you know what I mean.

16 THE COURT: Well, that's why we go through this  
17 process, because there are experiences that people have that  
18 affect their ability to be fair and objective. And I guess  
19 what we really need to know is if you think that your  
20 experiences -- are these other people's experiences and your  
21 own going to color your view of this case in any way?

22 JUROR NO. 10: I don't know the facts that are  
23 going on in the case yet; so I can't really say if they are  
24 going to color my view, you know what I mean? Part of my  
25 experience, part of my life, so very definitely they have

1 weight.

2 THE COURT: The facts in this case are going to  
3 be decided by the jurors. If you are on the jury, that will  
4 be your job, to decide what happened. Do you think the  
5 other experiences that you have had are going to interfere  
6 with your ability to do that fairly?

7 JUROR NO. 10: No, not fairly, no.

8 THE COURT: Ms. Bracke?

9 MS. BRACKE: Nope.

10 THE COURT: Mr. Volluz?

11 MR. VOLLUZ: No, Your Honor.

12 THE COURT: Alright. Thank you very much, Ms.  
13 Barrett. I appreciate your being here.

14 JUROR NO. 10: Thank you.

15 THE COURT: Have a nice lunch.

16 MR. VOLLUZ: Before she goes, perhaps defense  
17 would move to excuse this juror for cause based on what she  
18 said then she wouldn't have to come back.

19 THE COURT: Ms. Bracke?

20 MS. BRACKE: I thought she ended up where she  
21 could be fair.

22 THE COURT: I think that is where she ended up.

23 MR. VOLLUZ: I'm sorry, did you say not fairly?  
24 I thought you said that. Tell me what you said there at the  
25 end about being fair.

1 JUROR NO. 10: The past situations in my life  
2 definitely, like anyone else, have an influence over what I  
3 think and how I feel, but I think I could be a fair juror.

4 MR. VOLLUZ: Okay.

5 JUROR NO. 10: You know what I mean? I mean, we  
6 can't disregard the things that have happened to us but we  
7 can still be fair. I mean honestly, not that I really -- I  
8 don't necessarily want to participate, but I have to be  
9 honest. I could be fair.

10 THE COURT: Thank you.

11 Hi, come on in. Have a seat.

12 You indicated on your questionnaire you would  
13 prefer to talk outside the presence of the other jurors.  
14 Does that have to do with your friend's sister?

15 JUROR NO. 16: Yes, the main reason I didn't want  
16 to talk in front of them is because I have anxiety disorder.  
17 I didn't want to have a panic attack in front of everyone.

18 THE COURT: Are you doing okay?

19 JUROR NO. 16: Yeah. I'm fine.

20 THE COURT: Let's get started with that. How is  
21 it going to be for you if you are on the jury?

22 JUROR NO. 16: The only thing that bothers me is  
23 if it's a large group.

24 THE COURT: 12 is not too many?

25 JUROR NO. 16: It makes me shake and cry, not

1 because of emotion, but because that's what it makes me do.  
2 It shouldn't be a problem.

3 THE COURT: Are you able to speak your mind in  
4 there and voice your opinion?

5 JUROR NO. 16: Definitely.

6 THE COURT: Participate?

7 JUROR NO. 16: Yes.

8 THE COURT: We don't want to make you cry and  
9 shake.

10 Tell me about your friend's sister.

11 JUROR NO. 16: She was a friend from high school  
12 and about a year after we graduated her younger sister came  
13 forward and said her grandfather had done some things to her  
14 and a couple of their cousins. She said the same thing. He  
15 was convicted, went to jail, died about a year later.

16 THE COURT: Do you think that's going to affect  
17 your ability to be fair?

18 JUROR NO. 16: I don't know, no.

19 THE COURT: Any follow-up questions?

20 MS. BRACKE: No.

21 MR. VOLLUZ: No.

22 THE COURT: Have a nice lunch be back at 2:00.

23 This one is Ms. Bowen No. 24. Hi, come on in.

24 How are you?

25 JUROR NO. 24: Fine. Thank you.

1 THE COURT: You indicated on your questionnaire  
2 you wanted to talk outside the presence of the other jurors.  
3 I assume that has to do with your own experience with your  
4 grandfather; is that right?

5 JUROR NO. 24: Yes.

6 THE COURT: I don't want to get too far into that  
7 if you're not comfortable talking about it, but I do need to  
8 know if that's going to affect your ability to be fair in  
9 this case.

10 JUROR NO. 24: I would like to say no, but my  
11 heart tells me different; so I mean, I'll try. I'm sorry.

12 THE COURT: That's okay. This is going to be  
13 really hard, isn't it?

14 JUROR NO. 24: Yes.

15 THE COURT: We're not going to make you do this.  
16 If this was a robbery case, you probably would do just fine.  
17 So you're excused, and you need to call the jury line again  
18 after 5:00 on Friday. Have a nice afternoon.

19 We'll do the other. I guess we have a couple of  
20 additional ones.

21 MS. BRACKE: 43, 50, and 52.

22 THE COURT: That leaves us with nine to do after  
23 lunch at 1:15. You will have extra preemptories because of  
24 the extras we are picking; so you will have it all together.

25 MR. VOLLUZ: Do six now, the original 12, then

1           only the two last.

2                       THE COURT: I don't divvy it up that way. I  
3           don't select an alternate until everything is done.

4                       MR. VOLLUZ: Eight for all?

5                       THE COURT: Give you eight total, each.

6                       Anything we need to deal with before we resume?

7                       Alright. See you back here at 1:15 then. We'll  
8           go forward with the rest of them. Okay.

9                               (The noon break is taken)

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## 1 AFTERNOON SESSION

2 1:15

3 THE COURT: Ms. Berentson, No. 25. Hi, come on  
4 in. Have a seat. Did you enjoy the sunshine?

5 JUROR NO. 25: Love it.

6 THE COURT: You indicated that you would like to  
7 be questioned outside the presence of the other jurors.  
8 What is it that you are concerned about?

9 JUROR NO. 25: I'm not concerned about anything  
10 just that I'm one not to -- I get flustered when somebody  
11 asks me a question. Sometimes I kind of hold back, but  
12 there's no real reason though.

13 THE COURT: I notice that you mentioned that you  
14 had answered a question yes to whether you or somebody you  
15 know had contacted CPS?

16 JUROR NO. 25: I contacted the police department  
17 on a little boy, his mother had beat him, and I was  
18 babysitting for my daughter. This little Hispanic boy came  
19 running across the road. We heard him screaming. I said  
20 come on in, let me see what I can do. He said my mom beat  
21 me with a hanger. My daughter was there. He pulled his --  
22 we asked him if we could look to see. I called the police,  
23 you know, and when the police got there they also looked.  
24 He had bruises from a hanger, looked like probably a plastic  
25 one pretty good sized welt. The police went over and talked

1 to the boy's parents.

2 THE COURT: Okay. That's what that is all about.  
3 Any concerns about the subject matter of this case?

4 JUROR NO. 25: No, I mean it's not -- it's on  
5 everybody's mind nowadays, but I don't personally know of  
6 anybody that has been abused or molested or anything, not  
7 personally.

8 THE COURT: The fact that you get flustered, is  
9 that going to interfere with your ability to express your  
10 opinions back in the jury room?

11 JUROR NO. 25: No. Probably more than what they  
12 want.

13 THE COURT: Mr. Volluz, any follow up?

14 MR. VOLLUZ: No.

15 THE COURT: Thank you very much. I appreciate  
16 your coming in.

17 No. 27 is next, that would be Mr. Ekvall.

18 Come in. Have a seat. You indicated you would  
19 appreciate being questioned outside the presence of the  
20 other jurors. What is your concern?

21 JUROR NO. 27: Well, I find that alleged crimes  
22 like this are extremely disgusting to me. I sort of felt --  
23 at first I thought perhaps the fellow that was with the  
24 attorney was an assistant attorney. When I found out that  
25 he was not and that the charges were against him, although

1           alleged, I understand that, I just kind of felt I had an  
2           instant dislike for him. And for someone to be accused of  
3           three counts of this there's probably something wrong in  
4           there somewhere. If it was one, that's different, but I  
5           guess it would take quite a bit of convincing for me to feel  
6           like I could find someone like that not guilty.

7                    THE COURT: Okay. The distaste arose upon  
8           hearing what the charges were?

9                    JUROR NO. 27: Yes.

10                   THE COURT: Dislike immediately upon seeing him?

11                   JUROR NO. 27: No.

12                   THE COURT: It was when you learned what the  
13           charge was?

14                   JUROR NO. 27: Yes. I guess I find the crime  
15           like drug selling or something, where somebody is wrong in  
16           buying, someone is wrong in selling, that's one thing. But  
17           here when someone was attacking, so to speak, a completely  
18           innocent person I feel that's a whole different kind of a  
19           crime in my mind.

20                   THE COURT: You understand the juror's job is to  
21           decide whether or not this actually happened?

22                   JUROR NO. 27: That's true. I just think I'm  
23           going to have to take a lot of convincing.

24                   THE COURT: Alright, Ms. Bracke?

25                   MS. BRACKE: Do you need more convincing than

1 what's required by law?

2 JUROR NO. 27: Well, I think I'd listen,  
3 carefully, certainly to judge it by the law but somehow, I'm  
4 sorry, I should be more open minded at this stage. I look  
5 to the question long and hard and I felt in my mind, boy,  
6 I'm going to have a hard time being convinced being open  
7 minded.

8 MS. BRACKE: So you don't think you could be fair  
9 to the defendant?

10 JUROR NO. 27: I'm not sure I could be. I  
11 apologize for that.

12 MS. BRACKE: You don't have to apologize.

13 JUROR NO. 27: I wish I weren't that way. I'm  
14 afraid I feel that way.

15 MS. BRACKE: We appreciate the fact that you're  
16 candid about that.

17 THE COURT: Any follow up, Mr. Volluz?

18 MR. VOLLUZ: No. Believe me, maybe I more than  
19 anybody else appreciate you being candid about it.

20 I ask Mr. Ekvall be a excused for cause.

21 THE COURT: I'm going to excuse you from this  
22 jury. I think later this week or next week they will  
23 probably have another case for you and it probably won't be  
24 of this subject matter.

25 JUROR NO. 27: I'm very happy to serve.

1 THE COURT: You call the jury line after 5:00  
2 Friday. They will tell you whether you need to report or  
3 not.

4 JUROR NO. 27: Okay.

5 THE COURT: I appreciate you being here. Thank  
6 you for being candid with us.

7 JUROR NO. 27: Thank you for listening to me.

8 THE COURT: Have a nice afternoon.

9 Olson, 31. Hello. Come on in and have a seat.  
10 You indicated you answered several questions and said you  
11 would like to follow up outside the presence of the jurors.

12 JUROR NO. 31: Uh-huh.

13 THE COURT: Tell me which one of these things is  
14 most problematic.

15 JUROR NO. 31: Three of my sisters were sexually  
16 abused by our stepfather and he was convicted. I'm not  
17 saying I wouldn't look fairly. I do have some definite  
18 opinions on it.

19 THE COURT: It looks like there was some other  
20 issues too. You said your father physically and mentally --

21 JUROR NO. 31: Yeah.

22 THE COURT: That's your biological?

23 JUROR NO. 31: Uh-huh.

24 THE COURT: Two individuals?

25 JUROR NO. 31: Right.

1 THE COURT: That wasn't sexual abuse. It was  
2 physical and mental?

3 JUROR NO. 31: Right.

4 THE COURT: In light of all of that, can you look  
5 inside yourself and tell me whether you think you can be  
6 fair and objective in this case?

7 JUROR NO. 31: I think it would depend on the  
8 evidence. I think if it's gone this far it sounds pretty  
9 much like it's happened to me.

10 THE COURT: Uh-huh. You understand he's presumed  
11 innocent?

12 JUROR NO. 31: I understand that.

13 THE COURT: The jury is the one who has to decide  
14 what, if anything, happened.

15 JUROR NO. 31: Right, uh-huh.

16 THE COURT: Do you think you can set aside your  
17 past experiences and be impartial?

18 JUROR NO. 31: I believe so.

19 THE COURT: Is that going to take a lot of  
20 effort?

21 JUROR NO. 31: Possibly.

22 THE COURT: Is it something that you think you're  
23 going to constantly be reminded of, things that happened to  
24 your sister or bring back memories of things that happened  
25 that's going to kind of take over?

1 JUROR NO. 31: I don't think so much the memories  
2 of it just the idea.

3 THE COURT: How close were you to the sister,  
4 have you discussed with them about what happened?

5 JUROR NO. 31: We are not a super close knit  
6 family. We didn't discuss it extensively. I am close to  
7 them now. They have chose not discuss it further, not deal  
8 with it.

9 THE COURT: You know what happened but haven't  
10 had any heart to heart with them?

11 JUROR NO. 31: Not extensively.

12 THE COURT: Well, I guess I need to know how you  
13 feel about this. You understand the jury is the ones who  
14 have to decide what happens. You'll be hearing from a lot  
15 of people. What we need is somebody whose objective is  
16 fair, impartial, and can set aside their own views and look  
17 at this.

18 JUROR NO. 31: I believe I could do that.

19 THE COURT: Follow up?

20 MS. BRACKE: How long ago was this?

21 JUROR NO. 31: It's been probably 15, 16 years.

22 MS. BRACKE: Been some time.

23 JUROR NO. 31: It was in childhood.

24 MS. BRACKE: The sexual abuse, you weren't  
25 involved?

1 JUROR NO. 31: I was not involved.

2 MS. BRACKE: Did you know at the time that it was  
3 happening?

4 JUROR NO. 31: Not until the Court hearing  
5 started getting under way.

6 MS. BRACKE: Didn't have any suspicions or  
7 anything?

8 JUROR NO. 31: I think I did have suspicions,  
9 yes. One of my sisters, I believe, hinted around about it.  
10 But I was too young. I was obviously the youngest one so.

11 MS. BRACKE: About how old were you?

12 JUROR NO.31: Probably 8 or 9.

13 MS. BRACKE: The sisters?

14 JUROR NO. 31: Were a couple years older than me  
15 like three years older, four years older, five years older.

16 MS. BRACKE: That's what the judge is asking,  
17 separate incidents. Can you set those aside and judge this  
18 case fairly based on what you hear?

19 JUROR NO. 31: I think so.

20 MS. BRACKE: Nothing further.

21 THE COURT: Mr. Volluz?

22 MR. VOLLUZ: Hi. I'm way over here in the  
23 corner. Do you already think Pat Morris is guilty?

24 JUROR NO. 31: Do I think that?

25 MR. VOLLUZ: Yeah.

1 JUROR NO. 31: Not knowing anything.

2 MR. VOLLUZ: You said something -- maybe you can  
3 explain it to me. Maybe I wrote it down wrong. You said  
4 something about when you heard the charges -- and by that I  
5 think the problem is when the judge read them out loud, that  
6 you said sounds like it's happened to me?

7 JUROR NO. 31: Me working for the State, I  
8 believe that if DCS has gone this far, there must be some  
9 pretty good evidence or give me an inclination there's a  
10 reason for that, 'cause DCS doesn't have the manpower and  
11 ability to pursue as many cases as they need to, and I feel  
12 that.

13 MR. VOLLUZ: So you feel if it's come this far --

14 JUROR NO. 31: There's probably some evidence,  
15 probably some indication that it's happened.

16 MR. VOLLUZ: Is that what you meant, "sounds like  
17 it's happened to me"?

18 JUROR NO. 31: Right.

19 MR. VOLLUZ: Do you think you would have any  
20 problem then presuming, in other words, or thinking that Pat  
21 Morris, my client, is not guilty, even at the get go?

22 JUROR NO. 31: Do you think I presume?

23 MR. VOLLUZ: Do you have any problem of thinking  
24 of him not guilty, then?

25 JUROR NO. 31: At this point? No.

1 MR. VOLLUZ: You don't have any problem thinking  
2 he's innocent?

3 JUROR NO. 31: I guess that's being contradictory  
4 on my part. I guess at this point maybe a little bit.

5 MR. VOLLUZ: There's no right or wrong answer.  
6 We just want to hear how would you feel.

7 JUROR NO. 31: Uh-huh.

8 MR. VOLLUZ: So then you would have trouble  
9 presuming him innocent at the outset because of the charge  
10 against him?

11 JUROR NO. 31: If it's gone this far, yes.

12 MR. VOLLUZ: Based on that, Your Honor, the  
13 defense would be asking that Ms. Olson be allowed to be  
14 excused for cause.

15 MS. BRACKE: Could I ask one follow up?

16 THE COURT: Sure.

17 MS. BRACKE: If the judge tells you you are to  
18 presume him innocent would you follow her instructions?

19 JUROR NO. 31: Well, yeah, I guess I'm not  
20 explaining myself enough. I understand that at this point  
21 he is innocent. But on the same token, being where I work  
22 and going through this before, I know that it doesn't mean  
23 they are necessarily guilty right off the get go. But I  
24 feel that my first gut instinct was there must be some  
25 evidence for it to have gone this far.

1 MS. BRACKE: I think that's valid; though, there  
2 has to be some indication, something that's been presented  
3 to get to court. Your job as a juror is to determine if  
4 that truly happened or not or determine the facts to be.

5 JUROR NO. 31: Uh-huh. I understand it would be  
6 my responsibility to go in believing him innocent.

7 MS. BRACKE: That is the big question, can you do  
8 that?

9 JUROR NO. 31: I think so, yeah.

10 MR. VOLLUZ: We've been back and forth.

11 JUROR NO. 31: I'm probably not explaining myself  
12 very good.

13 MR. VOLLUZ: You're doing fine just answering the  
14 different kinds of questions, I think, that come up with  
15 different kinds of answers. You understand the whole rule  
16 that a person, no matter what the crime is that's charged,  
17 is presumed to be innocent, okay?

18 JUROR NO. 31: Okay.

19 MS. BRACKE: What I understood you to be saying  
20 was that because of your job, because of your experience,  
21 that you would have difficulty presuming my client innocent  
22 at the start of this trial?

23 JUROR NO. 31: That's not what I meant, no.

24 MS. BRACKE: What did you mean?

25 JUROR NO. 31: I meant that It would probably not

1 take a whole lot of evidence to convince me guilty.

2 MS. BRACKE: Do you think it would take evidence  
3 beyond a reasonable doubt or less than that to convince you  
4 that you feel that?

5 JUROR NO. 31: I would not want to charge  
6 somebody that is innocent; so I understand that it has to be  
7 beyond a reasonable doubt, I understand.

8 MS. BRACKE: But you don't think it would take  
9 much to get there?

10 JUROR NO. 31: I would have to hear all the  
11 circumstances. I can't honestly answer that right now.

12 MS. BRACKE: Okay.

13 JUROR NO. 31: I understand that our goal is to  
14 not sentence somebody that is guilty or innocent. I  
15 understand, and I firmly believe as well.

16 MR. VOLLUZ: What do you think the odds are that  
17 Pat Morris is innocent?

18 MS. BRACKE: I'm going to object. I don't think  
19 that's an appropriate question what the odds are.

20 THE COURT: Overruled. Go ahead.

21 MR. VOLLUZ: What do you think the odds are that  
22 Pat Morris is innocent?

23 JUROR NO. 31: I don't know.

24 MR. VOLLUZ: Do you have any idea based on your  
25 experience, any idea based on your experience?

1 JUROR NO. 31: No, and not hearing any further  
2 information yet.

3 MR. VOLLUZ: Just getting back, when you said you  
4 heard the charges, you said it sounded like it happened to  
5 you?

6 JUROR NO. 31: Back to me explaining, if it's  
7 gone this far obviously it's not going by hearsay. The  
8 child said I was abused. It definitely had to have been  
9 more if Compass Health is involved, doctors are involved.  
10 There has to be some sort of evidence.

11 MR. VOLLUZ: Okay. That's all the questions I  
12 have.

13 THE COURT: Anything further?

14 MS. BRACKE: No.

15 THE COURT: Thank you.

16 JUROR NO. 31: May I be excused?

17 THE COURT: You're excused from the room but not  
18 jury service.

19 MR. VOLLUZ: Had a chance there for a second.

20 THE COURT: 2:00. Take a walk in the sunshine be  
21 back at 2:00.

22 JUROR NO. 31: Thank you.

23 Mr. Nixon, No. 32.

24 Hello, come on in. Have a seat. You indicated  
25 in your questionnaire that you would like to be questioned

1 outside the presence of the other jurors. What's that all  
2 about?

3 JUROR NO. 31: Only if you had any questions  
4 about my answers.

5 THE COURT: Your answers were all no.

6 JUROR NO. 32: Right. I was surprised you were  
7 calling me because I didn't think that was my interpretation  
8 of it, if you had any questions about those answers, I would  
9 rather be quizzed in your office, in chambers, rather than  
10 the courtroom, but they were all no.

11 THE COURT: I'm assuming that was the truth?

12 JUROR NO. 32: Yes.

13 THE COURT: So there's no experiences that you  
14 had that relate to childhood sexual abuse?

15 JUROR NO. 32: No.

16 THE COURT: Any experiences that are going to  
17 make you anything other than fair and impartial in this  
18 case?

19 JUROR NO. 32: Well, I almost checked yes on the  
20 next to the last one because, you know, I wasn't sure I  
21 could give the defendant a fair trial. But, you know, I'm  
22 torn. I know I've tried in a case. You can push aside your  
23 feelings about things and I can to that.

24 THE COURT: Well, I don't think if any of us like  
25 childhood sexual abuse. That's not something anybody is a

1 proponent of.

2 JUROR NO. 32: Right.

3 THE COURT: The issue is whether it happened or  
4 not that's what the jurors are going have to decide. Do you  
5 think you can be objective on that particular issue?

6 JUROR NO. 32: Yes.

7 THE COURT: Okay. No hesitation there?

8 JUROR NO. 32: No.

9 THE COURT: Okay. Ms. Bracke?

10 MS. BRACKE: No.

11 THE COURT: Mr. Volluz?

12 MR. VOLLUZ: I'm fine.

13 THE COURT: Thank you, Mr. Nixon, I appreciate  
14 you coming in.

15 No. 43, that is Ms. Williams.

16 Hi, come on in. Have a seat. Alright. You  
17 indicated you would like to be questioned outside the  
18 presence of the other jurors about this. Looks like there  
19 may have been the possibility of some sexual molestation in  
20 your family?

21 JUROR NO. 43: Uh-huh.

22 THE COURT: Tell me about that.

23 JUROR NO. 43: Well, I don't like to go into a  
24 lot of detail. Pretty much when I was really young my  
25 brother may have molested me. I don't remember because I

1 blocked it out. Later on he did come and talk to me about  
2 it when I was about 16 or 17, told me everything he did,  
3 that's the only discussion I've ever had about it.

4 THE COURT: Did he tell you why he was telling  
5 you?

6 JUROR NO. 43: He was going through some very  
7 rough periods in his life and he was pretty much letting out  
8 everything he needed to let out so that was one of the  
9 things he had to deal with.

10 THE COURT: You don't remember any of it?

11 JUROR NO. 43: I don't remember, but he went into  
12 detail; so it was pretty much just living through it again.

13 THE COURT: How old were you?

14 JUROR NO. 43: He said I must have been around  
15 four, three or four. So I wouldn't remember at that point.

16 THE COURT: Okay. How do you feel about being a  
17 juror on this case?

18 JUROR NO. 43: I don't feel comfortable at all.  
19 It really freaks me out. I don't feel really comfortable at  
20 all.

21 THE COURT: Is that because of the subject  
22 matter?

23 JUROR NO. 43: Uh-huh.

24 THE COURT: Is there a different reason?

25 JUROR NO. 43: Yeah, definitely that.

1 THE COURT: Ms. Bracke.

2 MS. BRACKE: Can I ask you a question, a couple  
3 questions? Do you think if your brother had never come and  
4 talked to you about it, do you still feel not comfortable  
5 because of the charge?

6 JUROR NO. 43: It is a hard case to deal with.  
7 Certainly I wouldn't feel comfortable no matter what that  
8 brings on. I could probably serve on a jury had it not  
9 happened but still it's a hard one.

10 MS. BRACKE: Because I've been doing this a lot  
11 of years; I have yet to find a juror that child molestation  
12 doesn't bother them at all.

13 JUROR NO. 43: That's kind of a hard thing to  
14 say.

15 MS. BRACKE: Most of the jurors -- it's not going  
16 to be a pleasant topic, they are not pleasant charges. None  
17 of that is easy; so I just want to know if it's that part  
18 which I think every other juror out there may be  
19 experiencing or because your brother came and told you this  
20 that you don't think that you would be a good juror.

21 JUROR NO. 43: I think yeah it's definitely my  
22 brother thing, not a pleasant topic to get into. I don't  
23 ever want to deal with that.

24 MS. BRACKE: When the information was read did  
25 you figure out the age of the victim based on her date of

1 birth?

2 JUROR NO. 43: I tried not to think about it.

3 MS. BRACKE: Thank you.

4 THE COURT: Mr. Volluz, any questions?

5 MR. VOLLUZ: Would you like me to ask any before  
6 I move to excuse for cause?

7 THE COURT: Sounds to me this is a topic that's  
8 going to be very uncomfortable for you.

9 JUROR NO. 43: Okay.

10 THE COURT: Call the jury line on Friday after

11 5:00. You may be needed for a different kind of case.

12 Sounds like that would be fine, but maybe not this one.

13 Thank you very much.

14 JUROR NO. 43: Thank you.

15 Ms. Omstead, No. 47.

16 Hi, have a seat. How are you?

17 JUROR NO. 47: Fine.

18 THE COURT: You get some sunshine?

19 JUROR NO. 47: Yeah.

20 THE COURT: It's nice, isn't it?

21 JUROR NO. 47: Yeah.

22 THE COURT: You indicated you would like to talk  
23 to us outside the presence of the other jurors about this  
24 topic. Is that because of this incident with your friend?

25 JUROR NO. 47: Yeah, you know it was a real harsh

1 thing for her to go through, and she talked about it a lot.  
2 We all went through it. It was a horrible, horrible thing.

3 THE COURT: How old was she?

4 JUROR NO. 47: She was like 22.

5 THE COURT: How many years ago was this?

6 JUROR NO. 47: Probably about 6 years ago.

7 THE COURT: Alright. How do you think that's  
8 going to affect you if you are a juror in this case?

9 JUROR NO. 47: Well, I don't know. I think that  
10 if the evidence is against him, then I think he should pay

11 for what he did, because obviously it affects people for a  
12 long time afterwards.

13 THE COURT: You understand that the juror's job  
14 is going to be to decide the facts, to decide what happened?

15 JUROR NO. 47: Yeah.

16 THE COURT: At this point Mr. Morris is presumed  
17 innocent.

18 JUROR NO. 47: Uh-huh.

19 THE COURT: Given that, are you going to be able  
20 to set aside what happened to your friend and look at this  
21 objectively or is this going to be hard to do?

22 JUROR NO. 47: I think obviously we would hear  
23 the evidence. I think I could be if I heard, you know, if I  
24 know that we're getting -- I just want to make sure that,  
25 you know, we're getting all of it.

1 THE COURT: Sometimes I hear jurors say they want  
2 to hear all the evidence. What I think they really mean is  
3 I want to hear all the evidence before I convict him. Is  
4 that what you're saying?

5 JUROR NO. 47: I don't want to put somebody where  
6 they didn't do anything. If he did do something, obviously  
7 that can be something.

8 THE COURT: Can you keep an open mind whether he  
9 did or not at this point?

10 JUROR NO. 47: Yeah, I think I could.

11 THE COURT: You sound like you are a little  
12 hesitant.

13 JUROR NO. 47: Well, I want to hear what  
14 happened. But I think I could. I'm not going to say  
15 anything until I hear what happened.

16 THE COURT: Follow up, Mr. Volluz?

17 MR. VOLLUZ: You checked the box saying you  
18 thought it would be difficult to be fair to both sides if  
19 you were a juror in a case like that that involved  
20 allegations of sexual abuse. Do you still feel that way?

21 JUROR NO. 47: Just because one of my friends --  
22 obviously all others have gone through this. Whether I'm  
23 going to be able to be objective -- everybody is tainted.  
24 Obviously nobody likes that kind of stuff that has gone on  
25 or whatever.

1 MR. VOLLUZ: Nobody likes theft either. Seems  
2 like half of the entire jury panel has been a victim of it  
3 at some time or another.

4 JUROR NO. 47: Yeah.

5 MR. VOLLUZ: If this were a theft case do you  
6 think you could be a fairer juror than this case that  
7 involves allegations of child sex abuse?

8 JUROR NO. 47: I guess, yeah, I would probably  
9 not be tainted either way.

10 MR. VOLLUZ: Do you feel you are tainted in a  
11 case involving child abuse?

12 JUROR NO. 47: I guess if I really wanted to get  
13 down to it I guess I would be tainted more than somebody got  
14 their stereo taken or car taken. Obviously to me it's way  
15 more serious than something like that.

16 MR. VOLLUZ: Certainly is.

17 JUROR NO. 47: Yeah.

18 MR. VOLLUZ: How did you feel when the judge read  
19 the charges, what the charges were?

20 JUROR NO. 47: I didn't think we were going to be  
21 in for something like this.

22 MR. VOLLUZ: Do you still feel like the way you  
23 checked the box on the form that it would be difficult for  
24 you to be fair to the defendant in this case?

25 JUROR NO. 47: Yeah, if I'm going to be fair, if

1 I don't think he's guilty, you know, if I hear the evidence,  
2 well, he didn't do it. I don't know if I'm the best juror  
3 on this, if you think I'm going to be tainted one way or  
4 another.

5 MR. VOLLUZ: Well, do you think you're going to  
6 be tainted?

7 JUROR NO. 47: I wouldn't be against like a theft  
8 case.

9 MR. VOLLUZ: That's all the questions I have.

10 MS. BRACKE: I have one.

11 Let's say it was a murder case. Would you be  
12 more tainted because it was a murder case than it was a  
13 theft case?

14 JUROR NO. 47: I would think so. I would really,  
15 really like want to know every single bit of evidence, you  
16 know what I mean? If the case was rape rather than murder,  
17 that's even worse. I would have to get all the facts. I  
18 would really want to think about who was the one. I guess,  
19 yeah, you're right, murder would be even worse, you know,  
20 just an awful thing.

21 MS. BRACKE: Or the child molestation, not  
22 necessarily that it's child molestation, it's more serious  
23 than theft. Murder is more serious?

24 JUROR NO. 47: Yeah, and obviously child  
25 molestation it right there, really close. I know how my

1 friend felt when that happened to her. It was awful. It  
2 was really bad.

3 MS. BRACKE: I have nothing further.

4 THE COURT: Is it going to be easier for you to  
5 convict the defendant in this case than it would be for you  
6 to convict the defendant in a theft case?

7 JUROR NO. 47: No, because if you hear the  
8 evidence, and if the evidence in a theft case would be  
9 guilty or whatever, if you hear the evidence in this case  
10 innocent or whatever, it would be the same.

11 THE COURT: So you still have an open mind about  
12 that?

13 JUROR NO. 47: Yeah. Do I think -- if you're  
14 innocent, with my friend having gone through that, I've also  
15 heard of people who knows somebody, who knows somebody who's  
16 been accused of stuff like that. If he's innocent he's  
17 innocent.

18 THE COURT: Okay. Any further questions?

19 MR. VOLLUZ: So you feel like you could be fair?

20 JUROR NO. 47: Yeah, I think I could be. It's  
21 just the issue that's so -- it weighs so heavily on  
22 everybody. I want to be really fair.

23 MR. VOLLUZ: Okay. Thanks.

24 THE COURT: Anything else? Stick around. We  
25 need you at 2:00.

1 No. 50.

2 Hello, come on in. How are you?

3 JUROR NO. 50: I'm okay.

4 THE COURT: Pregnant and okay?

5 JUROR NO. 50: Yeah.

6 THE COURT: Alright. You indicated that you  
7 would -- actually, you didn't indicate you wanted to be  
8 questioned outside the presence of the jurors, but I guess  
9 you did say that later?

10 JUROR NO. 50: Uh-huh.

11 THE COURT: Tell me what it is that is of concern  
12 to you?

13 JUROR NO. 50: Well, first off, two complaints,  
14 I'm really uncomfortable sitting out there. I'll have to go  
15 to the bathroom more often than you let us out. For  
16 emotional reasons --

17 THE COURT: Do you find yourself really emotional  
18 right now?

19 JUROR NO. 50: Well, just because of everything  
20 we've just been through considering that, you know, here I  
21 am six and a half months pregnant, kind of emotional anyway.

22 THE COURT: Tell me what you mean when you say  
23 "everything we've just been through".

24 JUROR NO. 50: Well, our family we just went  
25 through this kind of case.

1 THE COURT: You did?

2 JUROR NO. 50: With Kevin Ronny Smith.

3 THE COURT: That wasn't my case. I don't know  
4 anything about it. Tell me what your role was. Who is who?

5 JUROR NO. 50: Okay. Well, my soon-to-be  
6 husband, his little sisters were molested by him. It  
7 started like when we were first together he told me that he  
8 once saw Kevin coming out of his sister's bedroom.

9 THE COURT: I misunderstood. I thought you were  
10 saying soon to be husband. Kevin Ronny Smith molested your  
11 soon to be husband's little sisters?

12 JUROR NO. 50: Uh-huh. So I told their mother;  
13 that's when we started the case. He was going to try to  
14 kidnap the youngest sister, which is his real daughter he  
15 has in common with Gerald's mom's soon-to-be husband and the  
16 step daughter which is Gerald's sister was molested by him,  
17 and so we went through all that. He tried to go to  
18 Kentucky, never showed up for his court date.

19 THE COURT: You've been kind of in the middle of  
20 all this? Is it over?

21 JUROR NO. 50: No, he never showed up.

22 THE COURT: So he's fled. So it's still kind of  
23 in limbo? How is that going to affect you if you're a juror  
24 in this case?

25 JUROR NO. 50: Well, to be honest, I don't think

1 little kids lie about stuff like that, so.

2 THE COURT: Alright. Follow up?

3 MS. BRACKE: No.

4 THE COURT: Mr. Volluz?

5 MR. VOLLUZ: I'm hiding over here behind you.

6 THE COURT: If you want to sit in the other chair  
7 that would be fine, you'll have a little better view of him,  
8 you can see us all that way.

9 MR. VOLLUZ: Okay. You said you don't think that  
10 little kids lie about things like this.

11 JUROR NO. 50: (No response).

12 MR. VOLLUZ: Do you think there's any other  
13 reason that they might tell a story?

14 JUROR NO. 50: Yeah, there could be reasons, but  
15 I don't think that they necessarily go this far.

16 MR. VOLLUZ: Can I ask you what you base that on,  
17 experience or what?

18 JUROR NO. 50: Well, there's another girl also  
19 involved in the case of Kevin Ronny Smith. They brought it  
20 up. She was like -- well, they said the reason it didn't go  
21 to court is she was too young. At the time everyone thought  
22 she was lying the whole entire time. 10 years later then  
23 Gerald's sister is bringing up molestation. Then it turned  
24 into rape. So, therefore, she wasn't really necessarily  
25 lying. Everyone else -- I thought at first she was lying

1 too, so.

2 MR. VOLLUZ: So now you sort of changed your mind  
3 completely on that subject?

4 JUROR NO. 50: (No response).

5 MR. VOLLUZ: Let's say the little girl gets up  
6 and testifies that this happened, okay, regardless of any  
7 other evidence that may come out. Is that alone going to be  
8 sufficient for you? Are you going to convict Pat Morris  
9 based on that alone?

10 JUROR NO. 50: I'm not sure.

11 MR. VOLLUZ: You said you feel like little kids  
12 don't lie about that; so she would be telling the truth  
13 about it if she stated it in court?

14 JUROR NO. 50: I think so, yeah.

15 MR. VOLLUZ: You'd find him guilty regardless of  
16 that, regardless of what the other evidence was?

17 JUROR NO. 50: Probably.

18 MR. VOLLUZ: Do you feel like you be would be  
19 able to be a fair juror to the defense in a case like this?

20 JUROR NO. 50: Depends on if it has pretty good  
21 evidence.

22 MR. VOLLUZ: By fair I don't mean what your  
23 ultimate decision is going to be at the end of the trial. I  
24 just mean right here at the very beginning before any  
25 evidence is to be heard, do you think you would be able to

1 be a fair juror in this case?

2 JUROR NO. 50: (No response).

3 MR. VOLLUZ: I would like to ask that Ms. Tyra be  
4 excused for cause, Your Honor, so she does not have to sit  
5 on this case.

6 MS. BRACKE: No objection.

7 THE COURT: Thank you, Ms. Tyra, I appreciate you  
8 being honest with us. Call the jury line after Friday.

9 Thanks for coming.

10 JUROR NO. 50: Yep.

11 No. 52, Ms. Arends. Hello, come on in and have a  
12 seat. How are you?

13 JUROR NO. 52: Fine.

14 THE COURT: You're a smart one. You brought a  
15 book.

16 JUROR NO. 52: I went and bought it.

17 THE COURT: Okay. I think you told the bailiff  
18 you would like to meet with me privately about some of the  
19 subjects. Tell me what's concerning to you.

20 JUROR NO. 52: I was molested as a teenager by my  
21 brother-in-law. I lived with my brother-in-law and sister.  
22 This was back -- my father was 50 when I was born. When I  
23 was 12 or so he had a stroke and couldn't work any more. So  
24 we both moved in with my sister and brother-in-law. This  
25 was never anything violent. He would come into my bedroom

1 at night and fondle me. I have never told anyone until a  
2 couple years ago. I was at a mission. I felt like I needed  
3 to say it out loud but it had never -- maybe I'm weird. I  
4 never let it bother me. In fact, after my sister died, I  
5 was still on speaking terms with my brother-in-law. I  
6 didn't let my daughter be alone with him, but I just don't  
7 have any really ill will, and I don't know why that is, but  
8 I don't.

9 THE COURT: How do you feel about being a juror  
10 in this case?

11 JUROR NO. 52: I think I could be very impartial  
12 because I don't have any lingering -- we're talking this  
13 happened 55 years ago.

14 THE COURT: How old were you?

15 JUROR NO. 52: 12 to maybe 15 sometime.

16 THE COURT: Okay.

17 JUROR NO. 52: I have no lingering feelings. I  
18 guess I have been reading about all the things that are  
19 going on; I feel it doesn't touch me personally so.

20 THE COURT: So you're not worried about being a  
21 juror?

22 JUROR NO. 52: No, I'm not, I'm not.

23 THE COURT: Follow up, Mr. Volluz?

24 MR. VOLLUZ: Yes. Hi Ms. Arends. I'm Corbin.  
25 There's no reason that you should be surprised by this but

1 the testimony is going to be the case involved a little  
2 girl, her father came into her bedroom at night while she  
3 was in bed and fondled her. Knowing that, do you think it  
4 would make it difficult to be a fair juror?

5 JUROR NO. 52: No, I don't think so.

6 MR. VOLLUZ: Still be okay?

7 JUROR NO. 52: Uh-huh.

8 MR. VOLLUZ: Thank you.

9 THE COURT: Alright. Thank you very much, Ms.  
10 Arends. We're hoping to get started right about 2:00.

11 Looks like Ms. Sjostrom might very pretty strong  
12 feelings about this issue.

13 Come on in. Have a seat. How are you?

14 JUROR NO. 54: Good.

15 THE COURT: No. 54, Ms. Sjostrom. You indicated  
16 that you might have difficulty being fair to both sides.

17 JUROR NO. 54: Yeah. Actually, a bit, and I have  
18 one conflict. I couldn't say it in public. I have a  
19 really, really important job interview Thursday morning, one  
20 hour, if I could be gone one hour, but besides that, that's  
21 very, very tough. I can't have that be public.

22 THE COURT: That's this week?

23 JUROR NO. 54: Thursday morning.

24 THE COURT: What time?

25 JUROR NO. 54: 10:30 to 11:30 at the brewery. I

1 could be right back. I'm usually pretty darn fair, but  
2 these cases actually wig me out quite a bit. In fact, I  
3 quit law and didn't have kids because of it.

4 THE COURT: Quite a big impact on you?

5 JUROR NO. 54: It did have a big impact. I'm  
6 usually pretty fair. I like Corbin quite a bit. I like  
7 you.

8 MR. VOLLUZ: I like your husband a lot. I don't  
9 know. You seem very nice though.

10 THE COURT: Questions?

11 MS. BRACKE: No.

12 THE COURT: Mr. Volluz?

13 MR. VOLLUZ: Let's go back to the judge's  
14 original question. Do you feel like it would be difficult  
15 to be fair to the defense in this case?

16 JUROR NO. 54: I would have to think. I have a  
17 little bit more insight into a jury, than some people have.  
18 I think that's more it. I think I look into some of their  
19 testimony a little bit more than probably I normally would a  
20 car accident or something else like that, just because I had  
21 so many clients that went through so much therapy, watching  
22 them. I would probably watch them differently from what  
23 they said just because of that experience that I had  
24 beforehand. I'm usually pretty fair. But I think it was  
25 just something I had to live through for about two years,

1 nothing but these kinds of cases, more repressed memory for  
2 some. But I think just having to listen to the therapists  
3 so much, I think I might be eye-balling things a little  
4 differently than somebody else, not that I'm a psychiatrist.  
5 It's something I saw when I had to go through these cases  
6 beforehand. I might pick up on it a little differently;  
7 that might change my view towards an innocent person or  
8 guilty person. I don't know one way or the other. I'm just  
9 saying I think I would overanalyze it than just the normal  
10 testimony.

11 MR. VOLLUZ: You're not sure if that would favor  
12 the defense?

13 JUROR NO. 54: I think it might favor the  
14 prosecutor is what I'm saying. I don't know the age here or  
15 anything like that.

16 MR. VOLLUZ: 6 now.

17 JUROR NO. 54: I don't need to know, but it's  
18 just one of these things I had from my clients between 6 and  
19 13 when this happened and listening to the psychiatrists  
20 talk to me about these cases, I think I just look at people  
21 a little differently. I could see when they weren't  
22 answering things. I might read more into it than what was  
23 really coming out in the testimony.

24 MR. VOLLUZ: Wouldn't you think you would read  
25 into something -- we're talking about the child right now, I

1 think the child wasn't answering things. What things do you  
2 mean by "not answering"?

3 JUROR NO. 54: From when we worked on these cases  
4 the kids had defense mechanisms. I don't know anything  
5 about this case, they had defense mechanisms, boyfriends,  
6 things like that where they would testify in a very  
7 predictable manner and maybe necessarily because they either  
8 fear the defendant or they would -- some of them actually  
9 liked the defendant. I mean this was something that was  
10 not, you know, they didn't necessarily hate them. But I

11 think I would read more into it just based on looking at the  
12 child, based on these other cases, rather than seeing a  
13 regular child. I don't have a child myself; so I don't have  
14 to see if they are lying or not. Just a profile I gathered  
15 when we were dealing with these cases. I think I look at  
16 these things differently, which probably would be different  
17 than someone else who wouldn't have to do these things  
18 before.

19 MR. VOLLUZ: Which isn't necessarily bad. One of  
20 the things that concerns me, is as I understand it, you felt  
21 what you bring to the case would tend to favor the  
22 prosecution?

23 JUROR NO. 54: But I also, I kind of feel bad if  
24 I went against my husband's practice with you, too. I feel  
25 a little bit uneasy if I slammed Corbin's client today.

1           Yeah, I wouldn't want to put that against the case either. I  
2           don't know. I mean it is a very difficult topic for me,  
3           something that I would probably rather not see again. But  
4           the only thing I'm concerned about is my interview on  
5           Thursday. If you had a small break, one hour, and I left  
6           and came back. Also, my boss really wanted me to pull out  
7           of this. I said I'm always busy. I have night hearings,  
8           big ones. I can only do these next two weeks. I couldn't  
9           be sequestered at night.

10                   THE COURT: We don't do that anyway. I don't  
11           want her to lose out on her job interview. You're excused.  
12           Go and good luck, whatever it is.

13                   JUROR NO. 54: You don't need me any more?

14                   THE COURT: Leave your card with Helga. Enjoy  
15           the sunshine.

16                   Let me go through and see who we have excused;  
17           Mr. Osgood, No. 1; Ms. Crediford, No. 9; 13, Ms. Bartlemey;  
18           No. 18, Ms. Damarjian; No. 24, Ms. Bowen; Mr. Lindholm, No.  
19           26; No. 27, Mr. Ekvall; No. 37, Ms. George; No. 35, Ms.  
20           Klepper; No. 43, Ms. Williams; No. 44, Ms. Higgins; No. 49,  
21           Mr. Thomas; No. 50, Ms. Tyra; No. 54, Ms. Sjostrom.

22                   That will leave us with 42 jurors, I believe.

23                   I don't have anymore questions for the jurors.  
24           I'm ready to turn to you guys, unless there's anything you  
25           want me to ask.

1 (Proceedings resume in the courtroom after lunch).

2 THE COURT: Good afternoon. Be seated. I  
3 apologize for the late start. We've been waiting for one  
4 juror who apparently got lost over the lunch hour.

5 Ladies and Gentlemen, the attorneys probably have  
6 follow-up questions at this point. I'm going to ask Ms.  
7 Bracke to start.

8 (Juror No. 15 arrives at 2:00).

9 We got started about 15 minutes ago. You're  
10 excused. Thank you.

11 MS. BRACKE: Ladies and Gentlemen, I have some  
12 questions that are general questions. If at some point you  
13 can't hear me, if you want to say something, let me know.  
14 Raise your hand. It may be difficult to hear in the back.

15 Having had an opportunity to read the  
16 questionnaire that you filled out, there are a number of  
17 them where people have checked the box saying this would be  
18 difficult, this type of charge would be difficult for me to  
19 sit on. I think in the many years I've been doing this I've  
20 never had anyone say it will be really easy for me to sit on  
21 a child molestation or child rape case. So you know you  
22 probably are in pretty good company in terms of that. What  
23 I need to know for a show of you is who checked that box,  
24 based on the charge alone, if there are any of you -- we've  
25 talked to some of you privately. If there are any of you,

1 just based on the charge, are saying I can't be fair; I  
2 heard the word child molestation; I heard the word rape of a  
3 child; I can't be fair. No. 2 and 3. Okay.

4 Mr. Thompson, tell me a little bit about why you  
5 have though feelings.

6 JUROR NO. 2: Because my fiancée has a  
7 five-year-old girl. As soon as I heard the charges, I felt  
8 that there was no way that I could be objective about these  
9 charges.

10 MS. BRACKE: Is that --

11 JUROR NO. 2: As soon as she was reading the  
12 charges, that's what I felt.

13 MS. BRACKE: Now, like I said, I doubt you're  
14 going to find anyone in this room that would say I'm really  
15 happy to hear this evidence. Really, I'm completely at ease  
16 with these charges. No problem. So what we're trying to  
17 distinguish is those people who -- obviously you know people  
18 have distaste for this charge and whether or not that's  
19 going to control what they do as a juror or they can set  
20 that aside, be fair and impartial, judge the evidence that's  
21 presented in the trial. So that's why I'm asking you these  
22 questions. The charge alone is so horrible to you that no  
23 matter who was sitting on that side of the room, that person  
24 is guilty no matter what?

25 JUROR NO. 2: I wouldn't say no matter what, but

1 I would say 80 percent of the time because I just don't feel  
2 that those charges are, you know, anything small or light.  
3 If someone has put themselves in a position to be charged  
4 with something like that, then there must be some sort of  
5 truth to it.

6 MS. BRACKE: Another charge that's as serious as  
7 a murder charge, right?

8 JUROR NO. 2: Right.

9 MS. BRACKE: Would you feel the same way if you  
10 were sitting here and the charge was murder?

11 JUROR NO. 2: Yes, I think so. If for some  
12 reason they are charged with that crime and somehow they got  
13 themselves put in that position, whether it's true or not,  
14 there's some reason they are charged with that, somehow you  
15 know it happened like at 2:00 in the morning or 3:00 in the  
16 morning, most people are at home asleep, you know? For some  
17 reason this person was out and committed a crime for  
18 whatever reason.

19 MS. BRACKE: So it's not exactly the charge so  
20 much?

21 JUROR NO. 2: Not exactly the charge. I don't  
22 like that charge either.

23 MS. BRACKE: Now what you brought is an issue  
24 that come up a lot, that's the, well, if he's sitting here  
25 he must have done something.

1 JUROR NO. 2: I wouldn't say without a doubt but,  
2 you know, of course he's not guilty until proven so. But  
3 there has to be some reason the charges came about, that's,  
4 of course, why you have a trial.

5 MS. BRACKE: That's the question. So are you  
6 willing to wait and listen to what those reasons are?

7 JUROR NO. 2: No, I don't think so. I think I've  
8 already been -- I wouldn't say I've made up my mind, but I  
9 think I've already been influenced by what I believe that it  
10 would take a lot to prove otherwise.

11 MS. BRACKE: You would almost require the  
12 defendant to prove his innocence to you as opposed to the  
13 prosecution?

14 JUROR NO. 2: I think so, I think so, yeah.

15 MS. BRACKE: So it is your feeling about that  
16 across the board for any criminal charge?

17 JUROR NO. 2: No, I don't think so.

18 MS. BRACKE: Just the serious ones, then?

19 JUROR NO. 2: More serious, yeah.

20 MS. BRACKE: The fact that your fiancée has a  
21 five year old -- well, let me ask you: When the charges  
22 were read did you compute the age of the victim?

23 JUROR NO. 2: Yes.

24 MS. BRACKE: So it matched the age of your  
25 fiancée's --

1 JUROR NO. 2: That's what came to my mind when I  
2 hear charges like that, her daughter, my son.

3 MS. BRACKE: Anyone who would be doing something  
4 like that to our children --

5 JUROR NO. 2: Correct, correct.

6 MS. BRACKE: Thank you, Mr. Thompson.

7 What is it, Mr. McAvoy?

8 JUROR NO. 3: I have a granddaughter about the  
9 same age, 6 or 7, same thought. Plus my son prosecuted  
10 these cases. What he said is we have no use for them.

11 MS. BRACKE: Does he discuss the trials he does?

12 JUROR NO. 3: Not very much, no. He's out of  
13 state, but I get newspaper clippings.

14 MS. BRACKE: Right before you were saying that  
15 you get newspaper clippings or letters.

16 JUROR NO. 3: Sometimes, yes, and letters, yeah.

17 MS. BRACKE: About what your son is doing?

18 JUROR NO. 3: Yes.

19 MS. BRACKE: So he's kind of famous to make the  
20 newspaper?

21 JUROR NO. 3: Yes, on certain cases, outstanding  
22 cases, yeah.

23 MS. BRACKE: Are those cases child abuse or child  
24 molestation cases?

25 JUROR NO. 3: Some of them.

1 MS. BRACKE: Okay. Where does he practice?

2 JUROR NO. 3: Champagne County, Illinois.

3 MS. BRACKE: Okay how long has he been doing this  
4 type of work?

5 JUROR NO. 3: Nine or 10 years.

6 MS. BRACKE: Are you concerned at all if you sat  
7 on a jury on a child sex case, and you voted not guilty, and  
8 you had to tell him, you know, I acquitted someone on a sex  
9 abuse case or sexual molestation case that he would be upset  
10 with you?

11 JUROR NO. 3: I have no idea.

12 MS. BRACKE: That hasn't crossed your mind at all  
13 today?

14 JUROR NO. 3: No.

15 MS. BRACKE: Okay. Mr. McAvoy, if you were  
16 chosen to be a juror on this trial would you be able to try  
17 that case and not decide the case based on what your son  
18 might think?

19 JUROR NO. 3: No, that wouldn't have nothing to  
20 do with it. Cases like this -- I pretty well made up my  
21 mind I guess.

22 MS. BRACKE: So without hearing any of the facts  
23 of the case you've decided?

24 JUROR NO. 3: Yeah.

25 MS. BRACKE: What did you decide based on your

1 knowledge?

2 JUROR NO. 3: I don't like them.

3 MS. BRACKE: You don't like the charge you mean?

4 JUROR NO. 3: I don't know how to put it in  
5 words.

6 MS. BRACKE: Anybody here like the charge? So  
7 you're in good company. Nobody likes it.

8 JUROR NO. 3: It bothers me, charges of that  
9 nature really bother me.

10 MS. BRACKE: Anybody here the charge bothers you?

11 I'm just trying to point out that a majority --

12 JUROR NO. 3: I don't think I could make any kind  
13 of a fair judgment one way or the other.

14 MS. BRACKE: So just because of those things, how  
15 strongly you feel?

16 JUROR NO. 3: Yes.

17 MS. BRACKE: Any other case would be okay, a  
18 murder case, or robbery, or theft?

19 JUROR NO. 3: Murder, no. Robbery or theft might  
20 be different.

21 MS. BRACKE: So you, along with Mr. Thompson, the  
22 more serious the charges get the more your view is someone  
23 is probably guilty, is that what you're saying?

24 JUROR NO. 3: More or less, yeah.

25 MS. BRACKE: Okay, thank you.

1           No. 38, Mr. Ball, thinking along the same lines  
2 as Mr. Thompson.

3           JUROR NO. 38: No, I think the reason I checked  
4 the box was simply because I have three daughters that age,  
5 approximately. My oldest is 6. And I think at least I'm  
6 afraid -- I mean I don't like to imagine that I would not be  
7 objective. But I'm afraid my emotions might hold more sway  
8 over me than I would like, simply because I have a daughter  
9 that age, but that is the extent of it, although I think I  
10 could be objective in most cases, I'm afraid in this case  
11 that the facts -- my daughter is that age. And normally my  
12 objective nature might be clouded.

13           MS. BRACKE: If we had to find 14 jurors that  
14 didn't have children it would be difficult.

15           JUROR NO. 38: Yes.

16           MS. BRACKE: Just from looking as a group what we  
17 then are left to is finding jurors who may have children or  
18 raised children but can put aside their own personal  
19 emotional attachment to their children for purposes of  
20 hearing the trial.

21           JUROR NO. 38: I want to believe I can do that.  
22 I felt like I needed to be honest. The emotions that were  
23 stirred simply by the charges themselves.

24           MS. BRACKE: As you sit there right now do you  
25 think you could do that?

1 JUROR NO. 38: Do I think I could be objective?

2 MS. BRACKE: Give Mr. Morris a fair trial?

3 JUROR NO. 38: I would like to think I could.

4 It's hard to promise that, simply because I know what that  
5 emotion could be. So I wish I could say strongly one way or  
6 the other it would be certainly my goal to be objective.

7 MS. BRACKE: Anyone else? 51, Mr. Belford?

8 JUROR NO. 51: Yeah, my girlfriend's sister's  
9 daughter was molested by her stepfather since she was like 9  
10 years old until she was like 17 or something. And I guess,

11 you know, I just had to listen to everybody like when all  
12 this came to trial and how it just trashed their whole  
13 family. The whole thing is disgusting to me. I'm not sure  
14 about how objective I can be. But you know what I mean. I  
15 wasn't, you know, directly involved. Just the whole thing  
16 kind of would, you know, it's grody.

17 MS. BRACKE: Your girlfriend's sister's daughter  
18 was the victim?

19 JUROR NO. 51: Yes.

20 MS. BRACKE: It was her stepfather who was  
21 charged?

22 JUROR NO. 51: Yes.

23 MS. BRACKE: So actually there were criminal  
24 charges; there was a trial?

25 JUROR NO. 51: He's in prison, yeah.

1 MS. BRACKE: And I didn't hear quite clearly you  
2 said the family was trashed or she was trashed?

3 JUROR NO. 51: Well, it just, you know, the whole  
4 thing, you know, it just opened a big can of worms among her  
5 family, you know, some people were believing this and that,  
6 some people would believe another story. It just gets so  
7 balled up that you just after a while you don't know who is  
8 telling the truth or what.

9 MS. BRACKE: Were you called as a witness in that  
10 trial?

11 JUROR NO. 51: No.

12 MS. BRACKE: Did you have any first-hand  
13 knowledge of what had happened?

14 JUROR NO. 51: No.

15 MS. BRACKE: So are you saying that that would  
16 affect your ability to be fair and impartial in this case?

17 JUROR NO. 51: Maybe. You know, I have no way of  
18 knowing for certain, but I think it might.

19 MS. BRACKE: So obviously everyone sitting here  
20 has life experiences.

21 JUROR NO. 51: Right, right.

22 MS. BRACKE: We can't find jurors who don't have  
23 them. Given what happened is kind of in your family but  
24 removed a little bit, do you think you would be able to put  
25 that aside for the purpose of listening to the evidence in

1 this case and being a fair and impartial juror?

2 JUROR NO. 51: I really have this idea. I guess  
3 it would depend on, I don't know.

4 MS. BRACKE: Do you feel right now you think you  
5 could be fair and impartial to Mr. Morris?

6 JUROR NO. 51: No.

7 MS. BRACKE: That's based on the experience with  
8 your girlfriend's sister's daughter?

9 JUROR NO. 51: The whole pedophile thing is just,  
10 you know, sick.

11 MS. BRACKE: So, it's the charge?

12 JUROR NO. 51: Yes.

13 MS. BRACKE: Thank you. Someone else had their  
14 number up. No. 53, Ms. Brady did.

15 JUROR NO. 53: Yes. I would like to think that I  
16 could be objective and fair but I have always known I'm a  
17 very emotional person. I'm not sure I can keep my emotions  
18 under control. I get teary-eyed hearing this, just thinking  
19 about it.

20 MS. BRACKE: I don't think there's a requirement  
21 that none of you have any emotions while you're here and you  
22 might have emotions; you might have reaction. You can't  
23 come to a verdict based on your emotions. It has to be  
24 based on the evidence. Do you think you could do that?  
25 Have you ever been a juror before?

1 JUROR NO. 53: Yes.

2 MS. BRACKE: So you've been in a situation before  
3 where you have had to set aside your personal experiences,  
4 whatever they may be?

5 JUROR NO. 53: That was theft. It settled before  
6 we finished anyway.

7 MS. BRACKE: Did you raise your hand for having  
8 been a victim of theft when the judge asked you that?

9 JUROR NO. 53: No, I wasn't a victim. I was on a  
10 jury.

11 MS. BRACKE: Never been the victim of any kind of  
12 crime?

13 JUROR NO. 53: I don't think so, no.

14 MS. BRACKE: As you were sitting there waiting to  
15 hear a theft case were you concerned about your emotions too  
16 at that trial?

17 JUROR NO. 53: I don't remember if I was.

18 MS. BRACKE: So is it the charge that is  
19 triggering your emotions here?

20 JUROR NO. 53: (No response).

21 MS. BRACKE: What are those emotions you're  
22 experiencing?

23 JUROR NO. 53: Just that I think of the children,  
24 things that happen to them. I don't understand it. It's  
25 hard for me.

1 MS. BRACKE: Any other emotions?

2 JUROR NO. 53: That's alright now.

3 MS. BRACKE: Are you thinking Mr. Morris is  
4 guilty just because he's been charged?

5 JUROR NO. 53: No, I don't know enough about  
6 that.

7 MS. BRACKE: Are you thinking that your emotions  
8 would cause you to find him guilty even if there was no  
9 evidence?

10 JUROR NO. 53: I would hope not.

11 MS. BRACKE: Have --

12 JUROR NO. 53: I would try to be.

13 MS. BRACKE: Have you been in a situation where  
14 you've decided something based just on your emotions?

15 JUROR NO. 53: I don't know. I don't know that I  
16 can answer that.

17 MS. BRACKE: Can you sit and make a decision  
18 about things? Do you try and look at both sides of an  
19 issue?

20 JUROR NO. 53: Yes. I don't know.

21 MS. BRACKE: As you sit there right now what do  
22 you think?

23 JUROR NO. 53: I think I would have to hear  
24 testimony. I don't know if I could handle testimony.

25 MS. BRACKE: Do you think if you hear the

1 testimony right off the bat that may do it for you, you  
2 couldn't be fair?

3 JUROR NO. 53: Could I?

4 MS. BRACKE: What if you hear the testimony, you  
5 say I don't believe that?

6 JUROR NO. 53: I don't know. I would have to  
7 take it from there I guess.

8 MS. BRACKE: You wouldn't convict Mr. Morris if  
9 you heard the testimony and didn't believe it, would you?

10 JUROR NO. 53: No.

11 MS. BRACKE: If you heard the testimony and you  
12 believed it beyond a reasonable doubt could you convict him  
13 then?

14 JUROR NO. 53: Probably.

15 MS. BRACKE: That's the standard that you're  
16 going to have to apply. Do you think you could apply that  
17 standard to what you hear?

18 JUROR NO. 53: I would hope so. I don't know.

19 MS. BRACKE: If the judge tells you you have to  
20 do that, as a juror would you do that?

21 JUROR NO. 53: I guess if the judge told me I had  
22 to, yeah.

23 MS. BRACKE: Thank you.

24 Anyone else? This is a difficult process. Those  
25 of you sitting there might be experiencing a lot of emotion.

1 There's a lot of thought process going on because of the  
2 charge. If anyone has anything you want to talk about that  
3 you're experiencing such as the other jurors that you think  
4 Mr. Volluz or myself would like to know while we go through  
5 a process of picking 14 people, you can raise your hand at  
6 any point.

7 THE COURT: That's about 20 minutes.

8 MS. BRACKE: Thank you.

9 THE COURT: Mr. Volluz, any follow-up questions?

10 MR. VOLLUZ: When would you like me to bring up  
11 any motions to strike for cause?

12 THE COURT: As they arise.

13 MR. VOLLUZ: I didn't want to interrupt.

14 THE COURT: As they arise.

15 MR. VOLLUZ: I was taking notes here. I'll make  
16 those motions on jurors No. 2, No. 3, No. 38, No. 34, No.  
17 51, and No. 53.

18 THE COURT: Either of you have any follow-up  
19 questions for the jury?

20 MS. BRACKE: I'm sorry, could I get the numbers  
21 again?

22 THE COURT: Go ahead.

23 MR. VOLLUZ: 2, 3, 38

24 I'm happy to ask a few questions, follow-up  
25 questions.

1 THE COURT: If you're ready. You don't have to.

2 MS. BRACKE: I have no objection to 2 and 3.

3 THE COURT: Alright.

4 MS. BRACKE: I do as to 34, 38, and 53, not as to  
5 51.

6 THE COURT: Alright. No. 51, you are excused at  
7 this time. Mr. Belford, just leave your card there.

8 Juror No. 2, Mr. Thompson, you are excused, as  
9 well as No. 3, Mr. McAvoy. Leave your card there in the  
10 seat. Helga will collect those. With respect to Nos. 34

11 and 53 -- oh, yeah be sure to call the jury line Friday  
12 after 5:00 -- No. 53 and 34 have been denied.

13 MS. BRACKE: 38?

14 THE COURT: Oh, 38, I'm sorry, denied.

15 MR. VOLLUZ: Thank you, Your Honor.

16 Hi everybody. My name is Corbin, Corbin Volluz.  
17 I am Pat Morris' attorney. I know there's a lot of things  
18 that we learn about in school, in civics class. We hear  
19 terms such as -- in criminal trials you hear the term  
20 "presumed innocent". We hear the term "right to testify".  
21 We hear such terms as "beyond a reasonable doubt" and for a  
22 lot of people the last time they hear those abstract things,  
23 if they get it right on the test, then they go on with the  
24 rest of their lives. But here in this room is where all of  
25 those abstract principals come into play. Here is where the

1 rubber hits the road and here is where it's important that  
2 everybody understand exactly what these terms mean. In  
3 other words, what are the rules that we're going by.

4 The first thing I would like to bring up here is  
5 the judge told you that there are different standards of  
6 proof, different burdens of proof in different kinds of  
7 cases. Does anybody remember what she said about civil  
8 cases? This isn't a civil case. It's a criminal case. If  
9 you would just hold up your number.

10 JUROR NO. 21: 21. Civil cases are judged on a  
11 preponderance of evidence.

12 MR. VOLLUZ: That's exactly what she said,  
13 preponderance of the evidence. What does that mean?

14 JUROR NO. 21: That the most, you know, items of  
15 things, that you say in your defense or your proof of your  
16 case, whoever has the most.

17 MR. VOLLUZ: Right. Scales of justice, that's  
18 out here. Even if you find evidence on both sides,  
19 preponderance of the evidence is whoever has even just a  
20 little bit more, more likely than not, right, okay? That's  
21 in a civil case.

22 Right now we'll give someone else a chance to  
23 talk if someone else knows the answer of what the standard  
24 of proof in a criminal case is such as this one. Do you  
25 remember.

1 JUROR NO. 10: Evidence beyond a shadow of a  
2 doubt basically.

3 MR. VOLLUZ: Very good, very good. Technically  
4 it's beyond a reasonable doubt. A lot of times people throw  
5 in shadow there. Beyond a reasonable doubt, what does that  
6 mean? Is that greater or less than beyond a preponderance?

7 JUROR NO. 10: Greater amount of evidence.

8 MR. VOLLUZ: So we have a system where the rules  
9 are when a person is charged of committing a crime, all the  
10 state has to prove is proof by more evidence; proof is

11 beyond a reasonable doubt. Why do you think that our system  
12 is set up that way? No. 7?

13 JUROR NO. 40: Keep from putting people who are  
14 not guilty in jail.

15 MR. VOLLUZ: Alright. Otherwise, you just do it  
16 by a reasonable doubt, you can eliminate people who are not  
17 guilty in jail.

18 JUROR NO. 40: Yes.

19 MR. VOLLUZ: So there is a priority in our system  
20 put on not locking away innocent folks?

21 JUROR NO. 40: Right.

22 MR. VOLLUZ: Does anybody have any comments about  
23 that, disagree with that? No. 7. How do you feel about the  
24 way our system is set up? What do you think?

25 JUROR NO. 7: I think it's right. I think it's

1 fair. All facts are true until proven guilty. The burden  
2 is the prosecutions.

3 MR. VOLLUZ: Why do you think the burden rests on  
4 the prosecution? I can't see your card. I don't have your  
5 names memorized. I shuffle back and forth on the table  
6 looking at your names. According to my number that would  
7 take up a whole lot of time. I hope you'll forgive me if  
8 I -- No. 6, okay, you've heard the phrase "presumption of  
9 innocence" before?

10 JUROR NO. 6: Uh-huh.

11 MR. VOLLUZ: What does that mean?

12 JUROR NO. 6: Means that we assume he's innocent  
13 until somebody proves to us that our presumption is wrong.

14 MR. VOLLUZ: Uh-huh, who said somebody?

15 JUROR: The State.

16 MR. VOLLUZ: Right, right. How much do think  
17 they have to prove it by?

18 JUROR: Until we're convinced that there isn't a  
19 doubt in our minds.

20 MR. VOLLUZ: Okay. See, now all these things  
21 start coming together, proof beyond a reasonable doubt.  
22 What do you think about that? Presumed innocent, it's a  
23 very, very funny thing, not funny HA, HA funny. Pat is just  
24 like everybody else in this room except one big difference.  
25 Have you noticed he's on this side of that bar and everybody

1 else is out there on that side of the bar? Alright. He's  
2 over here now. Is there anybody here who has trouble with  
3 the idea in the law and really applying it and believing  
4 that Pat Morris here is at this point in time innocent of  
5 any wrong doing?

6 JUROR NO. 10: Whether or not he's guilty or  
7 innocent. I mean, if he's committed a crime, then he's  
8 guilty, but we don't know he's guilty; that's why we use the  
9 word "presumed" or "assumed innocent".

10 MR. VOLLUZ: Right. So whether he is -- I mean  
11 he could be guilty, but he could be proven guilty or could  
12 be proven not guilty. He can't be on his own jury.

13 No. 19, yes.

14 JUROR NO. 19: I sat where he sat, not for the  
15 same charge in the same position. I'm a firm believer, have  
16 been for over 30 years, in my mind you are you not presumed  
17 innocent. You have to prove you're innocent.

18 MR. VOLLUZ: Why do you feel that way?

19 JUROR NO. 19: Because of my personal experience.

20 MR. VOLLUZ: Can you tell me about that?

21 JUROR NO. 19: I would rather not.

22 MR. VOLLUZ: Well, then, if we put it in general  
23 terms, would I be right in thinking that because of your  
24 experience where you were sitting where Pat Morris is  
25 sitting some time ago that you got to a jury trial?

1 JUROR NO. 19: Yes.

2 MR. VOLLUZ: Did you feel you were not presumed  
3 innocent?

4 JUROR NO. 19: I did.

5 MR. VOLLUZ: You did feel you were not presumed  
6 innocent?

7 JUROR NO. 19: That's correct.

8 MR. VOLLUZ: Okay. Let me ask this: Did they  
9 convict you?

10 JUROR NO. 19: Yes.

11 MR. VOLLUZ: You were acquitted.

12 JUROR NO. 19: I was.

13 MR. VOLLUZ: Yet you felt like you weren't  
14 presumed innocent, you had to prove it?

15 JUROR NO. 19: I did. At that time I wasn't  
16 entrusting an attorney in Skagit County. I went out of the  
17 area to find my own attorney. Over 30 years ago.

18 MR. VOLLUZ: How do you think that relates to the  
19 possibility of your being a juror in this case?

20 JUROR NO. 19: My own personal feeling is that  
21 the State would have to proof his guilt period, not beyond a  
22 reasonable doubt. It would have to be absolute.

23 MR. VOLLUZ: Okay.

24 How does anybody feel about that?

25 JUROR NO. 12: Totally agree.

1 MR. VOLLUZ: Agree as well?

2 Presumption of innocence, No. 11, can I ask you?  
3 What do you think about this situation being able to presume  
4 Pat Morris innocent even now as he sits here before you?

5 JUROR NO. 11: As you said he's entitled to a  
6 trial by peers just as I would be if I was in his position  
7 on that side. I would hope for a fair trial. I would hope  
8 people would give me the benefit of the doubt and listen to  
9 the evidence.

10 MR. VOLLUZ: You raised a very, very interesting  
11 idea and that is that you would be entitled, you personally,  
12 would be entitled to presumption of innocence if you were  
13 sitting here?

14 JUROR NO. 11: Yes.

15 MR. VOLLUZ: How many people here think it is  
16 within the realm of possibility that you could sit at some  
17 time in your life where Pat Morris is sitting? We've got  
18 number 38 raising his hand. Please, raise your card.

19 No. 38, you haven't talked to me yet anyway. Do  
20 you think that's within the realm of possibility?

21 JUROR NO. 38: Absolutely.

22 MR. VOLLUZ: How is that?

23 JUROR NO. 38: I just don't know. You don't try  
24 to put yourself in situations where anyone would think  
25 you're guilty or something but circumstances of life, either

1 people could be cruel to you or people could be confused,  
2 you know. It just seems possible. You said if it's  
3 possible doesn't matter how hard you try to live a life that  
4 looks innocent, it may be misconstrued. It's important that  
5 you be proven guilty.

6 MR. VOLLUZ: And I understand you feel that even  
7 though you're living a life where you're not committing  
8 crimes, it is possible through circumstances or through the  
9 interference of other people who are against you you could  
10 end up charged of a crime?

11 JUROR NO. 38: Yes.

12 MR. VOLLUZ: Before I get to No. 45, who has a  
13 comment? Does anybody disagree with that? Does anybody  
14 disagree with that?

15 Okay. Let me ask it another way. Let's see the  
16 hands and numbers. Does everybody agree with No. 38 that it  
17 is within the realm of possibility that even though you live  
18 a life where you're not committing a crime, that through  
19 circumstances beyond your control you could possibly end up  
20 seated where Pat Morris is sitting, charged with a crime?  
21 No. 45, you had something you wanted to say?

22 JUROR NO. 45: Every day people get in their car,  
23 and they run over people on accident, charged with a crime  
24 by no fault of their own. People are charged with crimes  
25 that they didn't necessarily commit. They have to prove

1 that you didn't commit that crime. I mean, every day people  
2 are charged with crimes. You know anybody could be charged.  
3 People who are mean, you see people every day who you  
4 wouldn't think committed a crime who are charged with a  
5 crime. So I mean everybody in this room could be charged  
6 with a crime today, tomorrow, or any other day.

7 MR. VOLLUZ: When you say that you feel that  
8 every day, obviously this is a big country and this is a big  
9 state. But you said even more specifically that every day  
10 people who are not guilty are charged with crimes. Is that  
11 based just upon your own feeling or some experience that you  
12 have had?

13 JUROR NO. 48: You see every day or not every day  
14 but on the news. You see on the news where people let  
15 people out of jail because of DNA. They have gone back and  
16 proven them innocent for DNA, a new test that they've got,  
17 things like that. They've gone back and checked DNA, proved  
18 somebody sitting in jail for 20 years. Gone back and done  
19 testing, found out they weren't really the one who committed  
20 a crime.

21 MR. VOLLUZ: You know you also --

22 JUROR NO. 48: I watch those shows Cold Case  
23 files. I've seen a lot that stuff.

24 MR. VOLLUZ: Here is a real interesting question.  
25 I'm going to ask No. 5. You've got a little advance

1 warning. I never thought about this before you mentioned  
2 it, but how do you feel -- obviously these people who are  
3 convicted are sent away and released 20 years later based on  
4 DNA and a jury who convicted them -- how do you think you  
5 would feel if you were a juror who convicted someone and 20  
6 years later they were released because DNA test showed he  
7 wasn't the guy, you got it wrong?

8 JUROR NO. 5: Unfathomable, took time out of  
9 somebody's life for something they didn't do.

10 MR. VOLLUZ: No. 4, your thoughts?

11 JUROR NO. 4: I wouldn't feel very good about it  
12 I can tell you that.

13 MR. VOLLUZ: I wouldn't expect so, yet you've got  
14 to figure 20 years before they were all thinking this person  
15 was guilty based upon whatever evidence they heard.

16 JUROR NO. 4: That's true. I just never thought  
17 about putting myself in the position of one of those jurors.

18 MR. VOLLUZ: Am I about at the end of my 20  
19 minutes?

20 THE COURT: Real close.

21 MR. VOLLUZ: Well, I think that I may have two  
22 minutes left.

23 THE COURT: Sure.

24 MR. VOLLUZ: All right.

25 Let me sort of conclude this thing. When we talk

1 about Pat Morris here he has what's called the right not to  
2 testify himself, right to remain silent, Fifth Amendment;  
3 everybody remember that in Civics class? Let's say Pat  
4 Morris doesn't take the stand and testifies. In other  
5 words, he exercises that Fifth Amendment right to remain  
6 silent, to not have to testify in this case against him.

7 What would that make you think about Pat Morris?

8 JUROR NO. 10: Would I wonder why he wouldn't  
9 testify if he were innocent?

10 MR. VOLLUZ: Right.

11 JUROR NO. 10: Uh-huh.

12 MR. VOLLUZ: How many other people would feel  
13 something like that? Very, very common to feel that way,  
14 isn't it? If he doesn't have something to hide then how  
15 come he's not testifying? Now, here is where things start  
16 getting turned on its head from the very basic rule, what is  
17 the first rule here? That he is presumed innocent. We have  
18 this idea in this country that a person is presumed innocent  
19 until proven guilty. The State has to prove guilt not that  
20 the person who is charged has to prove they are innocent, am  
21 I right about that? We are on the same page as that. Then  
22 what happens when we start saying well, he better present  
23 evidence for himself. He had better testify for himself,  
24 otherwise I'm more likely to find him guilty. No. 14, what  
25 do you think about that?

1 JUROR NO. 14: Ask me that question again.

2 MR. VOLLUZ: Big long winded thing, I'm sorry.

3 Do you feel then -- do you see what I'm saying?

4 JUROR NO. 14: I don't remember your question.

5 MR. VOLLUZ: If Pat here, as the defendant,  
6 doesn't present evidence, doesn't testify for himself -- we  
7 just had some people saying that. You know, we had a lot of  
8 people saying that. And then I went through my long-winded  
9 thing about to prove the guilt. How do you feel about that?

10 JUROR NO. 14: Well, I think if he chooses not to

11 say something, that's his choice. Then whatever the

12 evidence is, that's how it stands. Has no bearing on it,

13 not his responsibility.

14 MR. VOLLUZ: Doesn't really contribute anything  
15 to the evidence before the jury, does it?

16 JUROR NO. 14: I guess it depends on what it  
17 says.

18 MR. VOLLUZ: No. 24 case hypothetical is I'm not  
19 saying anything. Do you see what I'm saying? Do you agree  
20 with that?

21 JUROR NO. 24: But if he was to say something,  
22 then we have a different --

23 MR. VOLLUZ: Right. All right. Now I'm surely  
24 at the end of my 20 minutes now.

25 THE COURT: Yeah.

1 MR. VOLLUZ: I'll pick up later. Thank you.

2 THE COURT: Ms. Bracke?

3 MS. BRACKE: Your Honor, the State would like to  
4 exercise a challenge for cause as to No. 19, Mr. Woodworth.

5 THE COURT: Any follow-up questions, Mr. Volluz?

6 MR. VOLLUZ: Sure. 19, I think maybe what the  
7 prosecutor is alluding to is that you would make the  
8 prosecutor, make the government prove beyond a reasonable  
9 doubt, prove guilt beyond any doubt.

10 JUROR NO. 19: I would.

11 MR. VOLLUZ: Now, you know the law is that the  
12 burden of the government is to prove a charge beyond a  
13 reasonable doubt. Okay. Close, but it's not exactly the  
14 same thing, right?

15 JUROR NO. 19: Right.

16 MR. VOLLUZ: All right. Now the judge is going  
17 to instruct members of the jury. If you were on the jury  
18 she would be instructing you that the burden is beyond a  
19 reasonable doubt; that if you find evidence that convinces  
20 you beyond a reasonable doubt that you are to convict, if  
21 the judge instructs you that way, will you follow that  
22 instruction?

23 JUROR NO. 19: I would have a tough time.

24 MR. VOLLUZ: Would you follow it?

25 JUROR NO. 19: I'm not sure I could with my own

1           conscious.

2                   MR. VOLLUZ: That's all the questions I have.

3                   THE COURT: Thank you. Mr. Woodworth, you are  
4           excused. Leave your card there in the bench. Helga will  
5           reuse that. I appreciate you being with us. Call the jury  
6           line again Friday after 5:00.

7                   JUROR NO. 19: Okay.

8                   MS. BRACKE: No. 12, did you think this was  
9           coming?

10                  JUROR NO. 12: Yep.

11                  MS. BRACKE: You said you totally agree with Mr.  
12           Woodworth who just left.

13                  JUROR NO. 12: Yep.

14                  MS. BRACKE: He talked about a lot of different  
15           things before he left. Before I ask, though, the same  
16           things, I want to know what you totally agree with.

17                  JUROR NO. 12: I just think you have to prove to  
18           me guilt.

19                  MS. BRACKE: The real question there is at what  
20           standard would I have to proof that because Mr. Woodworth it  
21           was absolute.

22                  JUROR NO. 12: You would have to be pretty close.  
23           Is that what you're talking about?

24                  MS. BRACKE: The judge is going to tell you  
25           beyond a reasonable doubt, not beyond a shadow of a doubt;

1           although we use that term in movies. We hear that a lot.  
2           Doesn't have to be beyond a shadow of a doubt, not beyond  
3           all doubt, although standards that probably, given human  
4           experiences, human nature, are difficult to ever obtain. So  
5           what the court system, criminal justice system requires is  
6           that the doubt has to be a reasonable one. That's the  
7           burden the State has across the country. It's a burden,  
8           don't you think?

9                        JUROR NO. 12: At times.

10                      MS. BRACKE: Do you think it's an unfair burden  
11           at times?

12                      JUROR NO. 12: I've been through this process  
13           before as a juror. And I know if the prosecution tried  
14           really hard to convict a person and was really adamant he  
15           was guilty and there was no way in my mind and a lot of  
16           other jurors' minds too that he was guilty. So I just  
17           remember that case.

18                      MS. BRACKE: Well, that's what I'm asking. Are  
19           you going to hold me to a burden of proof that I'm not  
20           required to meet by law?

21                      JUROR NO. 12: I hope not.

22                      MS. BRACKE: As you sit there do you think maybe  
23           you will be pretty close?

24                      JUROR NO. 12: I'm not trying to be unfair.  
25           You're going to have to prove to me. You've got a job ahead

1 of you.

2 MS. BRACKE: As you sit there now do you think  
3 you lean more towards the defense?

4 JUROR NO. 12: I'm not leaning any way. I  
5 haven't heard any testimony.

6 MS. BRACKE: As to the burden of proof you're  
7 thinking beyond more than a reasonable doubt?

8 JUROR NO. 12: I'm just going to say --  
9 reasonable doubt, that's a hard term for me to understand.  
10 You're going to have to prove to me that he is guilty like  
11 Mr. Woodworth said. You're going to have to prove to me in  
12 my mind that he is guilty.

13 MS. BRACKE: That's what I'm trying to get out  
14 there is no prosecutor who wants a juror who says it has to  
15 be absolute. If you're sitting there and that's what you're  
16 really thinking, then it's fair to tell me that it's also  
17 fair for you to have that view.

18 JUROR NO. 12: Without hearing what's going on?

19 MS. BRACKE: You don't have to hear what's going  
20 on to know whether it's going to require the State to prove  
21 the case absolutely or beyond a reasonable doubt because  
22 your standard is higher than what the criminal justice  
23 system requires. If it's higher, that's fine, but I deserve  
24 to know that.

25 JUROR NO. 12: I can't say it's going to be high.

1 MS. BRACKE: As you sit there now do you think  
2 you'll be able to apply beyond a reasonable doubt and not  
3 hold the state to that standard?

4 JUROR NO. 12: I'll try.

5 MS. BRACKE: Can you do that?

6 JUROR NO. 12: You're still going to have to  
7 prove to me he's guilty. I have a hard time with what  
8 you're saying. Explain to me that term.

9 MS. BRACKE: Let me put it this way: Beyond all  
10 doubt is that how you think, beyond all doubt; you need to  
11 know he's guilty?

12 JUROR NO. 12: I need to know he's guilty to  
13 convict him.

14 MS. BRACKE: Beyond a shadow of a doubt?

15 JUROR NO. 12: Yes.

16 MS. BRACKE: I would exercise a challenge for  
17 cause as to Juror No. 12.

18 THE COURT: Mr. Volluz, any follow-up questions?

19 MR. VOLLUZ: I think what we're getting into  
20 almost might be considered semantics. Philosophers would  
21 argue that really there is nothing in the universe that can  
22 be proven beyond all doubt.

23 Are you saying you're going to hold the State to that  
24 high a standard that they have to erase all doubt from your  
25 mind or just the legal doubt of reasonable doubt. In other

1 words, if you have a doubt in your mind at the end of all  
2 the evidence that it's an unreasonable doubt --

3 JUROR NO. 12: Let's say a fraction of a doubt  
4 and there's mounting evidence against him, I could make a  
5 fair judgment.

6 MR. VOLLUZ: Of guilty?

7 JUROR NO. 12: Yes.

8 MR. VOLLUZ: If you were convinced beyond a  
9 reasonable doubt that Pat was guilty?

10 JUROR NO. 12: I would have to be, again, yes  
11 pretty sure.

12 MR. VOLLUZ: Okay. By listening to the  
13 evidence. All right. That's all the questions I have.

14 THE COURT: Any follow up?

15 MS. BRACKE: No, Your Honor.

16 THE COURT: All right.

17 MR. VOLLUZ: We object to him being excused for  
18 cause at this time.

19 THE COURT: I think maybe the best way to proceed  
20 at this point, Ladies and Gentlemen, is to give you an  
21 instruction on the definition of reasonable doubt. Then ask  
22 if you're going to be able to follow that instruction rather  
23 than to talk about it just in the abstract. A reasonable  
24 doubt is one for which a reason exists and may arise from  
25 the evidence or from the lack of evidence. Proof beyond a

1 reasonable doubt is proof that leads you firmly convinced of  
2 the defendant's guilt. There are very few things in this  
3 world that we know with absolute certainty and in criminal  
4 cases the law does not require proof that overcomes every  
5 possible doubt. If based on your consideration of the  
6 evidence you are firmly convinced that the defendant is  
7 guilty of the crime charged, you must find him guilty. If,  
8 on the other hand, you think there is a real possibility  
9 that he is not guilty, you must give him the benefit of the  
10 doubt and find him not guilty. My question is will you be  
11 able to follow that instruction?

12 JUROR NO. 12: Yes.

13 THE COURT: All right. Thank you. Request of  
14 challenge for cause is denied.

15 MS. BRACKE: Thank you, Your Honor.

16 After hearing that instruction, does anyone  
17 sitting there think he has to prove beyond a shadow of a  
18 doubt or all doubt? Everyone is firmly seated and firmly  
19 convinced now, right? Firmly convinced works for everyone?  
20 Raise your hand if it doesn't cause -- if you're firmly  
21 convinced that's where you are going to be. If someone  
22 doesn't like that or feels firmly convinced enough, raise  
23 your hand.

24 Let me ask for those jurors who have children,  
25 whether they are grown or still young, anyone ever discussed

1 good touches, bad touches with their children, or stranger  
2 touches, that type of thing?

3 Let's start in the first row, No. 33, Ms. George.  
4 Is that while they were growing up.

5 JUROR NO. 33: Yes.

6 MS. BRACKE: Did they also have a program at the  
7 school at that time where they discussed those issues?

8 JUROR NO. 33: Yes, had an officer come in and do  
9 a program that was put into place.

10 MS. BRACKE: A police officer?

11 JUROR NO. 33: Yes.

12 MS. BRACKE: Did you think what they did in  
13 school was enough, or did you also do some education at  
14 home?

15 JUROR NO. 33: Always followed up at home.

16 MS. BRACKE: Did you have any strong feelings  
17 about why that was required by you?

18 JUROR NO. 33: I just felt it was one more thing  
19 I could do to protect my children. If they should get in a  
20 situation, they would go to somebody that was safe and share  
21 their story.

22 MS. BRACKE: In raising your children it was  
23 where it was difficult for them to share things with you,  
24 not sexual abuse nature but other things even that didn't  
25 even rise to that level of seriousness?

1 JUROR NO. 33: Oh, yes.

2 MS. BRACKE: Okay. Can you even think of  
3 situations where that may happen to children of sexual  
4 abuse?

5 JUROR NO. 33: Yes.

6 MS. BRACKE: Anyone, good touches, bad touches?  
7 No. 41, Mrs. Gjerstad. Now was that a discussion you had  
8 with your children or at school?

9 JUROR NO. 41: With the children and in school.  
10 I got printed. Then also talking about where to go, who to  
11 talk to, different areas. It was in the health class at  
12 school. Grandchildren, I've also seen it in school with  
13 them, not as much, some like when they get older they get  
14 more.

15 MS. BRACKE: Did you have any problems with that  
16 being talked about in school?

17 JUROR NO. 41: No.

18 MS. BRACKE: Did you think it was important?

19 JUROR NO. 41: Yes.

20 MS. BRACKE: Was there a reason you felt the need  
21 to also talk to your children about that at home?

22 JUROR NO. 41: Yes. Children have very big  
23 trust. I wanted my kids to understand whether it was a  
24 family member, stranger, that it doesn't have to be myself,  
25 someone else other than in the family. They could talk to

1 someone else. They were clear it encompasses many things  
2 not just a stranger.

3 MS. BRACKE: But you didn't think children  
4 automatically know to report that?

5 JUROR NO. 41: No, I don't think so.

6 MS. BRACKE: Anyone else? 45.

7 JUROR NO. 45: We talked about that. We talked  
8 about alcohol. We talked about drugs. We talked about all  
9 that kind of stuff in the school district, that kind of  
10 stuff is talked about at school.

11 MS. BRACKE: Do you think that's a good thing?

12 JUROR NO. 45: I don't see any harm in it. They  
13 don't go overboard, scare the kids, made it a big issue that  
14 scared the kids. You don't want to push it, you know, make  
15 them think everybody is out to get them.

16 MS. BRACKE: Do you think that children  
17 reporting, having someone tell them they should do that?

18 JUROR NO. 45: I think they need to know that  
19 they need to be able to trust someone and be able to tell  
20 them.

21 MS. BRACKE: Do you think that?

22 JUROR NO. 45: I don't think so.

23 MS. BRACKE: Report some type of --

24 JUROR NO. 45: A person you trust.

25 MS. BRACKE: Anyone in the back row, this side,

1 anyone good touches, bad touches? Anyone who has that  
2 discussion with children based on your work, your  
3 employment?

4 33, where was your employment?

5 JUROR NO. 33: Sedro-Woolley School District  
6 preschool program. We do what we call a second step, which  
7 is a social emotional program. It's published that we do  
8 the good touch, bad touch, show pictures, talk about this is  
9 a good touch, this is a bad touch.

10 MS. BRACKE: Do you acquire some training to do  
11 that?

12 JUROR NO. 33: The person that presents this  
13 program, yes.

14 MS. BRACKE: Did you do that also as a result  
15 of your position with the district, did you have those  
16 discussions with your children?

17 JUROR NO. 33: Just follow up and to reiterate.

18 MS. BRACKE: Because you work in the school  
19 district, did you ever have a child complain to you or  
20 report any type of allegation?

21 JUROR NO. 33: No.

22 MS. BRACKE: Okay. Were you trained in what to  
23 do if a child did report?

24 JUROR NO. 33: Yes.

25 MS. BRACKE: Were you aware of situations where

1 children did report at school?

2 JUROR NO. 33: No.

3 MS. BRACKE: Never privy to that information?

4 JUROR NO. 33: Kept very private.

5 JUROR NO. 37: Yes, I'm a teacher involved in  
6 those type of discussions.

7 MS. BRACKE: Don't they somewhat routinely have  
8 teachers go through refresher courses?

9 JUROR NO. 37: They do. If you're lucky enough  
10 to have a counselor, they often are the ones that normally  
11 the teacher's role is follow up, and discussion,  
12 reiteration. It can go either way.

13 MS. BRACKE: Did you ever have the misfortune  
14 to have a child come in and report to you?

15 JUROR NO. 37: Yes, I did.

16 MS. BRACKE: Were you explained how to handle  
17 that?

18 JUROR NO. 37: Right. Yes, we definitely have  
19 reporting in our chain of command, where to go for sexual  
20 abuse or physical, emotional, that type of abuse.

21 MS. BRACKE: Were there any instructions  
22 regarding any questions or not?

23 JUROR NO. 37: Definitely. We were not to do the  
24 investigation. Our role is to do the reporting.

25 MS. BRACKE: Filled out the form or something of

1 that nature; let someone higher up know?

2 JUROR NO. 37: Yes.

3 MS. BRACKE: Anyone else because of employment  
4 had to be involved in that situation? Sometimes in cases  
5 like this there are people who have maybe a natural bias,  
6 and maybe everyone does, I don't know, to believe an adult  
7 over a child, especially in the criminal arena.

8 So you're sitting there now with lots of people  
9 up here. You'll be one of 14. There may be a child witness  
10 who testifies. And then there may be adults that contradict

11 that testimony. And there have been jurors they have a  
12 natural bias to believe an adult over a child, pretty across  
13 the board. So what I need to know is if there's anyone in  
14 our jury pool now who thinks that way, that when faced with  
15 that situation of believing a child or an adult they would  
16 all pick an adult or they would in these type of cases?  
17 Anyone have that feeling? Anyone questioning whether or not  
18 they could believe a child over an adult? Nope.

19 Anyone in the jury pool who has been through what  
20 we commonly call a custody battle during a divorce battle  
21 over children? No one? Close friend or close family  
22 members that have been involved in terms of a custody  
23 battle? Anyone involved?

24 JUROR NO. 6: My mom did foster care when I was  
25 little. At one point in time she wanted to adopt one of the

1 foster children and the State was trying to deny her  
2 custody. We went into a custody dispute with the State. My  
3 mom won.

4 MS. BRACKE: Did you have to be a witness in that  
5 trial?

6 JUROR NO. 6: No.

7 MS. BRACKE: You were aware it was ongoing?

8 The flip side of believing an adult over a child  
9 is, and you may have heard this, I would all believe a child  
10 about allegations of this nature because kids don't lie  
11 about things like that.

12 No. 21, is that based on training, have you had  
13 education, reading, or just that gut feeling.

14 JUROR NO. 21: No, it's a gut feeling.

15 MS. BRACKE: Do you have children?

16 JUROR NO. 21: I have two daughters. They are  
17 grown, 18 and 23.

18 MS. BRACKE: Certainly I'm going to guess kids  
19 don't lie period?

20 JUROR NO. 21: No, I don't mean that at all.

21 MS. BRACKE: Those are pretty good kids.

22 JUROR NO. 21: They are good kids but, yeah,  
23 something like this I just can't imagine a child making it  
24 up out of the blue.

25 MS. BRACKE: Okay. Because of that feeling would

1 that mean that if you were to be a juror on this case and  
2 heard Elizabeth get up and testify to certain things, that  
3 that would do it for you?

4 JUROR NO. 21: I would be biased that way. I  
5 would have to say generally I'm kind of a skeptical person.  
6 I would tend to be real critical about what everybody said,  
7 but I would say that yeah, I would side on her side.

8 MS. BRACKE: Regardless of what may have gone on,  
9 in you view the kids are not lying, that would be postponed,  
10 and you wouldn't give that a fair shake?

11 JUROR NO. 21: I don't know that I would be  
12 unfair. My bias would be on the side of the child.

13 MS. BRACKE: No. 10?

14 JUROR NO. 10: I would not.

15 MS. BRACKE: Is that based on?

16 JUROR NO. 10: Based on dealing with little kids  
17 all the time, having little kids' friends hanging around  
18 then I don't think a small child would lie.

19 MS. BRACKE: If you were picked as a juror in  
20 this case does that mean you would not be fair in terms of  
21 Mr. Morris, listening to what may be presented on the  
22 defense case?

23 JUROR NO. 10: I would believe the child if she  
24 was telling me she was sexually abused.

25 MS. BRACKE: Okay. 46?

1 JUROR NO. 46: I would agree with the little kid.  
2 My experience on all school kids is they are the most honest  
3 truthful people in the world. You ask a simple question and  
4 they will give you a simple answer. I don't think they  
5 would lie about something like that.

6 MS. BRACKE: That's based on your work-related  
7 more than --

8 JUROR NO. 46: Yeah, I don't have any kids.

9 MS. BRACKE: Or having classes, that kind of  
10 thing; is that correct?

11 JUROR NO. 46: (No response).

12 MS. BRACKE: Do you think that that would mean  
13 you couldn't be fair and impartial in this case?

14 JUROR NO. 46: I think I could be fair and  
15 impartial, might sway me a little bit.

16 MS. BRACKE: I understand, you haven't heard any  
17 evidence. You know this is all in a vacuum, not knowing  
18 this little girl or anything about her. Do you think you  
19 might be persuaded the other way if you saw her, critically  
20 evaluated her testimony, say gee, I believe every little  
21 kid, maybe I don't this one?

22 JUROR NO. 46: Possibly.

23 MS. BRACKE: Okay. So you're not of the view  
24 that if the kid gets up and testifies, says certain things,  
25 are you going to believe them no matter what?

1 JUROR NO. 46: Right. But I would have a  
2 tendency to believe them.

3 MS. BRACKE: No. 34?

4 JUROR NO. 34: I also would tend to believe the  
5 child had been sexually abused.

6 MS. BRACKE: Is that from work?

7 JUROR NO. 34: No, raising four kids, two  
8 grandchildren, they don't make things like that up.

9 MS. BRACKE: From a personal experience with your  
10 kids?

11 JUROR NO. 34: Uh-huh.

12 MS. BRACKE: Having raised children?

13 JUROR NO. 34: Huh-uh.

14 MS. BRACKE: They make other things up though?

15 JUROR NO. 34: Oh, yeah.

16 MS. BRACKE: Like who ate the cookie? Okay.  
17 Thank you. 32.

18 JUROR NO. 32: I'm going to go back to the other  
19 side of it. I don't know anything about the case or how the  
20 evidence is going to come out, but if it came down to the  
21 testimony of a child versus the testimony of an adult that  
22 came down to that, I would have a hard time putting someone  
23 away based solely on the testimony of the child.

24 MS. BRACKE: Okay. That question I asked  
25 earlier, right?

1 JUROR NO. 32: Yes.

2 MS. BRACKE: Okay. And I understand no one has  
3 heard anything. I understand almost everything I say is in  
4 a vacuum, but if it was just what the kid said, just what  
5 some other adult said contradicts that, you'd tend to  
6 believe the adult?

7 JUROR NO. 32: No, I just couldn't convict  
8 somebody if that's all the proof that you got.

9 MS. BRACKE: What if after hearing the child you  
10 were convinced, firmly convinced?

11 JUROR NO. 32: I wouldn't be firmly convinced if  
12 that's all you've got.

13 MS. BRACKE: If the child says that, that would  
14 never be convincing for you?

15 JUROR NO. 32: It's hard to know, to be firmly  
16 convinced solely on the testimony of the child, if that's  
17 all you've got.

18 MS. BRACKE: If the judge told you that that was  
19 enough and you believed that child, are you telling me you  
20 still wouldn't apply the standard of the law and convict  
21 someone?

22 JUROR NO. 32: It would be tough. I mean, I  
23 would probably do what the judge said, but it would be a  
24 very difficult thing to do.

25 MS. BRACKE: Why do you think it's difficult for

1           you?

2                       JUROR NO. 32: Because I think children -- I  
3           don't have children; so, you know, I've got a disadvantage  
4           there. But I know children have very strong imaginations.  
5           And if all you've got is the testimony of a child, that's  
6           the way I'm putting the scenario, if that's all you've got.  
7           That's not enough for me. I would hope you would have more  
8           than that.

9                       THE COURT: I think we'll take our afternoon  
10           recess at this point. Ladies and Gentlemen, we're going to  
11           try to reconvene in less than 15 minutes. So as I said  
12           before, there are restrooms on the third floor and on the  
13           first floor.

14                                       **(Recess taken)**

15                       THE COURT: Be seated. Mr. Volluz, follow-up  
16           questions?

17                       MR. VOLLUZ: Thank you, Your Honor.

18                       Perhaps this would be a good time to -- it might  
19           be best to dismiss the following jurors for cause based upon  
20           Ms. Bracke's questions and their answers jurors numbered 10,  
21           21, 34, 46.

22                       THE COURT: All right. Ms. Bracke?

23                       MS. BRACKE: Well, I don't recall any of those  
24           indicating they couldn't be fair and impartial.

25                       MR. VOLLUZ: The basis being that they all said

1 that they would have a tendency to believe the child, and I  
2 think that shows an unfair bias.

3 MS. BRACKE: I don't believe that any of them  
4 said that they did. I mean people have tendencies, but they  
5 said they could be fair and impartial, setting that aside.  
6 I don't think that would rise to the level of cause.

7 THE COURT: Motion is denied as to all four  
8 jurors.

9 MR. VOLLUZ: Thank you, Your Honor.

10 All right. No. 32, last thing being said, Mr.  
11 Nicholson, I believe you said something provocative, one  
12 that bounced off the rest of the jurors in the panel. He  
13 said if the evidence came down to just the testimony of the  
14 child versus the testimony of the adult and there wasn't any  
15 other evidence, that he felt he would have a very hard time  
16 finding Pat Morris guilty. Anybody have any comments about  
17 that? How do you feel about that? Agree, disagree? We're  
18 going to need some numbers. No. 8, what do you think?

19 JUROR NO. 8: I would sort of tend to believe you  
20 to have more evidence than that.

21 MR. VOLLUZ: Okay. Sorry. Explain that a little  
22 bit more for me.

23 JUROR NO. 8: I would tend to believe what he  
24 said.

25 MR. VOLLUZ: What he said?

1 JUROR NO. 10: Right, I'd have to have more.

2 MR. VOLLUZ: You would go along with what Mr.  
3 Nicholson said? Okay. I want to get some people I haven't  
4 been able to talk to yet. I hate for you to be on the jury  
5 without even saying hello. No. 20, what do you think?

6 JUROR NO. 20: If it were based solely on that  
7 evidence, I would have to agree. I'm reminded of similar  
8 cases with child custody cases similar in Wenatchee when  
9 they found out the children did have enormous imaginations.  
10 So if it were to boil down to simply testimony, it would  
11 have to be thought of pretty hard.

12 MR. VOLLUZ: Are you raising your hand?

13 JUROR NO. 10: I'm raising my hand. Are you  
14 asking that if it were between the testimony of a child and  
15 the testimony of Mr. Morris, who would I believe or between  
16 the testimony of this child and another adult?

17 MR. VOLLUZ: No, I'm trying much more generic  
18 than that to find out what people's responses are to what  
19 Mr. Nicholson said right before we took the break. No. 7,  
20 what do you think?

21 JUROR NO. 7: So the question is if based on the  
22 testimony of a child versus an adult if I could convict  
23 somebody based on that or not; is that what you're asking?

24 MR. VOLLUZ: Yes, if that's what you think the  
25 issues are respond to that. I'm just interested in what you

1 have to say.

2 JUROR NO. 7: I think it's some and part of the  
3 evidence being compiled together.

4 MR. VOLLUZ: Okay. After all the compiling was  
5 done, and that's all you had left, how would you feel?

6 JUROR NO. 7: If all I had left was the testimony  
7 of the child versus the testimony of an adult, I would have  
8 to take into consideration the character, quality, content  
9 of the testimony.

10 MR. VOLLUZ: Okay. Okay. Number -- thank you  
11 for that -- No. 6?

12 JUROR NO. 6: I think that it would have to be  
13 beyond a reasonable doubt. I mean, the testimony alone may  
14 not bring us to that point.

15 MR. VOLLUZ: Okay. Next to you is No. 5.

16 JUROR NO. 5: Yes. I would have to say depending  
17 on the character of the testimony.

18 MR. VOLLUZ: That makes sense, doesn't it?

19 JUROR NO. 5: Yes.

20 MR. VOLLUZ: Sure. You're not going to let me  
21 see that.

22 No. 4, I'll ask you this question then. I'm  
23 going to a different question. Have you the same answer as  
24 everybody else has?

25 JUROR NO. 4: I have no experience with kids; so

1 I don't know. I don't have any kids. I have no experience  
2 with them.

3 MR. VOLLUZ: What about grownups?

4 JUROR NO. 4: I would have to listen to both  
5 sides because I wouldn't be going towards the kids. I have  
6 no experience.

7 MR. VOLLUZ: 16?

8 JUROR NO. 16: I'm a preschool teacher. I have a  
9 degree in childhood education. I know for a fact children  
10 will lie about things. Surprise you. They won't lie about  
11 something they don't have experience with. However, they  
12 can have great influence, especially by adults. Children  
13 will lie about many things, for many other reasons. Say if  
14 this happened to someone they know, they heard something  
15 about it, they can laugh it off. I think you have to weigh  
16 it as you would with an adult. An adult that's capable of  
17 lying or telling the truth as the child is. There's no  
18 difference just because they are a different age.

19 MR. VOLLUZ: Well, that raises an interesting  
20 concept. No. 21 said something related to that which was  
21 that you don't -- if a child is going to come up with  
22 something like this, i.e., sexual molestation by an adult  
23 out of the blue -- I mean obviously nobody is going to come  
24 up with something that they have no experience in, certainly  
25 not a child.

1 All right. No. 16, with your experience and  
2 training is there any place that a child could come up with  
3 an allegation of sexual abuse?

4 JUROR NO. 16: If they have heard it from another  
5 source. If they've never heard of sexual abuse or anything  
6 they are not going to come up with it out of their own  
7 imagination, doesn't work like that. But hearing it they  
8 would be capable of saying it happened to them even if it  
9 didn't.

10 MR. VOLLUZ: Have you ever experienced that  
11 happening?

12 JUROR NO. 16: Personally, no.

13 MR. VOLLUZ: Just your training?

14 JUROR NO. 16: Yes.

15 MR. VOLLUZ: Heard examples of it happening?

16 JUROR NO. 16: Yes.

17 MR. VOLLUZ: No. 52, then we'll go back to 17.  
18 52 first.

19 JUROR NO. 52: Well, I think given the atmosphere  
20 of entertainment today, they could see it anywhere on  
21 television. I mean my youngest daughter is 36, but what my  
22 grandchildren watch, even the cartoons I know can be  
23 violent. So I think it's possible. I'm not saying that  
24 we'll see 100 percent, it's certainly possible they would be  
25 influenced by that.

1 MR. VOLLUZ: Thank you. Number, what was it, 17?

2 JUROR NO. 17: I know a situation, it did happen,  
3 a child was 12 or 13 years old. She did lie. When they  
4 were in court she admitted she was lying, finally.

5 MR. VOLLUZ: In court?

6 JUROR NO. 17: Yes.

7 MR. VOLLUZ: Under what circumstances?

8 JUROR NO. 17: Her mother was going to remarry.  
9 She didn't want her to remarry, so she made up this story to  
10 her mother and future husband actually went through hell in  
11 court. The daughter finally admitted she made up the story.

12 MR. VOLLUZ: When you say in court, that's  
13 because of her accusations of her mother's boyfriend --

14 JUROR NO. 17: It went to court.

15 MR. VOLLUZ: He was charged with a crime?

16 JUROR NO. 17: Uh-huh.

17 MR. VOLLUZ: And it went all the way to trial?

18 JUROR NO. 17: Uh-huh.

19 MR. VOLLUZ: And in court the person admitted, 12  
20 year old admitted she made that up?

21 JUROR NO. 17: Uh-huh.

22 MR. VOLLUZ: Were you there when this happened?

23 JUROR NO. 17: No, not in court, no. I worked  
24 with her mother.

25 MR. VOLLUZ: The reason I'm acting dumb-founded

1 is never in my experience has anything like that happened as  
2 far as I knew. That only happened in Perry Mason. Okay, so  
3 very, very interesting.

4 JUROR NO. 17: I never thought about that until  
5 this last break. I don't know why I remembered that, but it  
6 did happen.

7 MR. VOLLUZ: Okay. Everybody, let's get a show  
8 of cards there. Would everybody agree -- I'll ask this  
9 question another way in a second -- would everybody agree  
10 that it is possible for a child to make an allegation of

11 sexual abuse when it never happened? Now, I promised to ask  
12 it another way: Don't you think it's impossible to raise --  
13 I see everybody who is raising -- anybody feels the other  
14 way, that it would not be possible for a child to make  
15 allegations of sexual abuse unless it really happened? No.  
16 34.

17 JUROR NO. 42: Could go either way, depends what  
18 happened with the child, what the background is, what the  
19 allegations are. There's a lot of things that have to come  
20 into play there.

21 MR. VOLLUZ: Go either way?

22 JUROR NO. 42: It's possible.

23 MR. VOLLUZ: So it is possible? No. 34, what do  
24 you have to say about that?

25 JUROR NO. 34: The age of the child, five years

1 old, I just don't think so.

2 MR. VOLLUZ: Okay. Well, let me go back to Mr.  
3 Nicholson, okay. He said something about imaginations, that  
4 children have strong imaginations. We all agree with that,  
5 right? We generally think of imaginations as a wonderful  
6 thing. We associate it with childhood, the Easter Bunny,  
7 the Tooth Fairy, Santa Clause.

8 No. 16, do you think it's possible for someone  
9 from the outside, an adult or a child, to corrupt,  
10 contaminate a child's imagination with ugly things?

11 ~~JUROR NO. 16: (No response).~~

12 MR. VOLLUZ: You do?

13 JUROR NO. 16: Uh-huh.

14 MR. VOLLUZ: Why do you feel that way?

15 JUROR NO. 16: Children are very impressionable.  
16 I mean a child's imagination it's based on their  
17 environment, the things they've experienced. Like I said  
18 before, they are not going to come up with something like  
19 that out of nowhere if they know nothing of it.

20 MR. VOLLUZ: Right, right. You say they are  
21 impressionable. Do you think it's possible for these kind  
22 of allegations to be impressed upon them?

23 JUROR NO. 16: Yes, it's possible.

24 MR. VOLLUZ: With your experience and training,  
25 have you ever heard about that happening?

1 JUROR NO. 16: Do you mean specifically with the  
2 type of accusation?

3 MR. VOLLUZ: Well, let's start there and then go  
4 to something else.

5 JUROR NO. 16: No, I haven't.

6 MR. VOLLUZ: Something else, something other than  
7 this?

8 JUROR NO. 16: Kids all the time will, I mean,  
9 other kids I see every day.

10 MR. VOLLUZ: My brother always accused me of  
11 things, and I never did them. No. 20, was it you who  
12 mentioned Wenatchee?

13 JUROR NO. 20: Uh-huh.

14 MR. VOLLUZ: Do you know the details of that?

15 JUROR NO. 20: Sketchy. I wouldn't want to go on  
16 record citing the details.

17 MR. VOLLUZ: You're on record, not under oath.

18 JUROR NO. 20: The part that stuck out in my  
19 mind, I recalled the part that bothered me was not the  
20 reporting, not the allegations but the influence online of  
21 questioning after the reporting. It got to a point where a  
22 child was giving testimony, I believe, and she started  
23 talking about the elephant circus animal being brought into  
24 the school, which at that point everybody knew it was all  
25 bogus. I'm talking about recently.

1 MR. VOLLUZ: You know, Wenatchee is just over the  
2 mountain, we're talking about the city. Who here has heard  
3 about Wenatchee? So there's quite a few of you. Okay. Now  
4 you said something about children based upon the line of  
5 questioning.

6 JUROR NO. 20: Well, I think there is strong  
7 influence after reporting, there can be leading questions,  
8 et cetera. A particular goal can be reached by forming  
9 questions a particular way. So I'm sure we're all aware of  
10 that.

11 MR. VOLLUZ: Yeah, talking about talking to  
12 children, authority figures talking to children, asking  
13 leading questions and then what happened, having the child  
14 agree with leading questions.

15 JUROR NO. 20: A child is somewhat encouraged,  
16 feels good about the way he or she is answering questions,  
17 hopes it continues and Wenatchee happened. Lives were  
18 ruined in that case.

19 MR. VOLLUZ: Yeah, by that you mean an innocent  
20 person was sent to prison?

21 JUROR NO. 20: Innocent people.

22 MR. VOLLUZ: Okay. Let's get off the heavy sex  
23 stuff with children for a second. Does anybody here have an  
24 instance where they have children they work with where  
25 they were able to influence a child simply by suggestive

1 questioning or even by the tone of voice used, even with  
2 your own children? Anybody ever have that experience or  
3 seen it happen? Let's go with No. 45.

4 JUROR NO. 45: I had a teacher tell my son --  
5 when my daughter was little Santa Clause. I convinced her  
6 it was true. I also had a child convince my son there  
7 wasn't Santa Clause. Just last year I told my son there  
8 was, just because it was amazing how, you know, now my son  
9 believes in Santa Clause because he doesn't wear socks and  
10 underwear. Christmas, it's amazing, the certain things they  
11 can say and they will believe you. And I mean simple little  
12 things, you can say that they will believe.

13 MR. VOLLUZ: Can I bring up something? Basically  
14 I'm sure that everybody here is a good parent. I'm going to  
15 talk about the leading. Nobody here, I'm sure, at least I'm  
16 relatively sure, who is going to tell their child that there  
17 is a horrible monster under the bed that's going to sneak  
18 out when the lights are out and walk around the room. Okay.  
19 Right? But if you told your child that, imagine how many  
20 things your little child, five or six year old, would  
21 believe. So children will believe horrible things if you  
22 tell them in addition to the nice fun things you tell them.  
23 Is that fair to say? Of course, we only think about the  
24 nice fun things. We don't tell them about monsters under  
25 the bed.

1 THE COURT: How about 10 minutes, Ms. Bracke?

2 MS. BRACKE: I don't have any further questions.

3 THE COURT: All right. Mr. Volluz, did you have  
4 anything that you wanted to ask in addition?

5 MR. VOLLUZ: I did, Your Honor, more sort of like  
6 summary questions.

7 THE COURT: Go ahead.

8 MR. VOLLUZ: Okay. Thank you. A couple of  
9 summary questions. We have kind of been at this from all  
10 sorts of different angles. How many of you would like to  
11 feel like you can be a fair juror in a case where Pat here  
12 is charged with Rape of a Child in the First Degree, Child  
13 Molestation in the First Degree, all involving the same  
14 child. You've heard the judge read the information  
15 regarding all the charges, and I think we're to the point  
16 where everybody who is still left feels they could be a fair  
17 juror. I've got to throw something else in the mix, okay,  
18 something to know before, you know, you wouldn't be a fair  
19 juror in this case. The alleged victim is his biological  
20 daughter. He is charged with raping and molesting his  
21 biological daughter.

22 Now, is there anybody here who feels they  
23 couldn't be a fair juror to Pat Morris as well as the  
24 prosecution in this case? If so, raise your card because  
25 now is the time. No. 10, are you raising your card? No.

1 47, okay. I just haven't asked that question, but I think  
2 that's enough to make a motion.

3 THE COURT: All right.

4 MR. VOLLUZ: No. 10?

5 THE COURT: Ms. Barrett, you're going to have a  
6 hard time being fair?

7 JUROR NO. 10: If he is accused of raping a  
8 child.

9 THE COURT: You're excused, ma'am.

10 47, Ms. Omstead, you're not going to be fair?

11 JUROR NO. 47: Makes it even worse than, you know  
12 how bad it is, shows you another degree of horribleness, a  
13 kid of that age. I have a nephew that old. I know they  
14 don't fantasize, lie or joke around about fantasies about  
15 that kind of stuff, it isn't going to happen.

16 THE COURT: Thank you, ma'am, you can be excused.  
17 Call the jury line again on Friday after 5:00. Go ahead.

18 MR. VOLLUZ: Is there anyone else who feels they  
19 can't be a fair? Juror 34.

20 JUROR NO. 34: I had trouble before, now I really  
21 have trouble.

22 THE COURT: All right. Let me get done with the  
23 ones we just had. Now, who else?

24 MR. VOLLUZ: 34.

25 THE COURT: 7, 46, 8, and 33.

1 solid ground before. I no longer feel on solid ground in my  
2 own mind based on that relationship.

3 MS. BRACKE: A stranger or a family friend is  
4 still on solid ground?

5 JUROR NO. 7: Yes.

6 MS. BRACKE: Now, it's believed he did this  
7 because it's his daughter, biological daughter.

8 JUROR NO. 7: No, I feel myself less able to be  
9 -- my confidence is shaken about my ability to be objective.  
10 Prior to this it didn't arouse -- I wasn't repulsed. Now I  
11 feel that repulsion may put a dent in my objective.

12 MR. VOLLUZ: Make a motion to dismiss for cause  
13 Juror No. 7.

14 THE COURT: Is this going to interfere with your  
15 ability to be fair?

16 JUROR NO. 7: I think so.

17 THE COURT: You think so?

18 MS. BRACKE: Could we approach the bench?

19 THE COURT: Sure.

20 (Bench bar discussion)

21 Ms. Exley, you understand the issue in this case  
22 as a juror is not whether it's a horrible thing, it's  
23 whether it happened at all? That's the issue with respect  
24 to that issue. You don't believe you could be fair?

25 JUROR NO. 7: I would like to think that I would

1 be fair, hope I could be. I don't know what this emotion  
2 would do. I will try. I don't know. I just felt certain  
3 before, now I feel less certain.

4 THE COURT: Okay. Well, I can't read your mind.  
5 I can't read your heart. You tell me if this is a case  
6 you're going to be able to be fair, impartial, and  
7 objective.

8 JUROR NO. 7: I don't think so.

9 THE COURT: In that case you're excused. Thank  
10 you. All right. Your motion is also with respect to No. 8;  
11 is that right, Mr. Volluz?

12 MR. VOLLUZ: Frankly I was standing up over there  
13 with my note pad when everybody raised their numbers. I  
14 didn't get them down.

15 MS. BRACKE: That is one of the numbers.

16 MR. VOLLUZ: 34, 46, 8.

17 MS. BRACKE: 33.

18 MR. VOLLUZ: And 33.

19 THE COURT: Let me ask you the same question.  
20 This is not a case about whether or not molesting one's  
21 biological daughter is a good thing or bad thing. This is a  
22 case whether it happened at all. Are you able to be fair  
23 and objective and impartial with respect to that issue?

24 JUROR NO. 8: I want to let you know I've been  
25 involved in a situation very much like this where my friend

1 was put in jail for six years for this kind of thing. I  
2 visited him in jail. I stood behind him because of this,  
3 but there is an involvement in this kind of situation. So  
4 anyway, I want to let you know that.

5 THE COURT: I appreciate that.

6 JUROR NO. 8: All I can say is I'll do my best if  
7 I have to be on this jury.

8 THE COURT: Can you set aside your experience  
9 with your friend and focus on this case?

10 JUROR NO. 8: I can't separate all my feelings,  
11 but I will do my best.

12 THE COURT: All right. Thank you. Who else has  
13 a problem? All right, No. 34. I'm going to ask you the  
14 same question. Ms. Trafton, in this case the issue is not  
15 whether child molestation is a good thing or bad thing. The  
16 issue is whether it happened. Can you be fair and impartial  
17 with respect to that issue?

18 JUROR NO. 34: No.

19 THE COURT: In that case you are excused.

20 Who else? 33, Ms. George, in this case the jury  
21 is not going to be asked to take a vote on whether they like  
22 child molestation or don't like it. They are going to be  
23 asked to decide whether it happened. Are you going to be  
24 fair and impartial with respect to that question?

25 JUROR NO. 33: No, I don't think I can.

1 THE COURT: All right. You're excused.

2 Who else? No. 46, Mr. Swapp, this is not a  
3 popularity contest about child molestation. It is a  
4 question of whether it happened. Are you going to be able  
5 to be impartial with respect to that issue.

6 JUROR NO. 46: I know I can't, nope.

7 THE COURT: You're excused.

8 Anyone else?

9 All right. Any further questions, Mr. Volluz?

10 MR. VOLLUZ: Yes, Your Honor. This also is a

11 concluding-type question. I've got a couple of conclusions.

12 All right. I'm going to ask this one other time. I would  
13 like to know, if you're going to be on the jury -- obviously  
14 you all can't be -- I'd like you to imagine being on the  
15 jury, doing this case. You know what the charges are. You  
16 know what the relationships are. Now, imagine yourself now  
17 that I've got you on the jury, I want you to imagine  
18 yourself for a second that you're in the position of Pat  
19 here; that you're here in court. You're charged with Rape  
20 of Child in the First Degree, two counts of Child  
21 Molestation in the First Degree. Would you feel comfortable  
22 if you were in Pat's shoes, knowing that you are on the jury  
23 deciding this case?

24 No. 29, how do you feel about that?

25 JUROR NO. 29: I don't know how -- I don't know

1 that anybody can. I don't know.

2 MR. VOLLUZ: Having your fate in somebody else's  
3 hands even if it is with 14 others.

4 JUROR NO. 14: Scary all the way around.

5 MR. VOLLUZ: Well, how would you feel if you're  
6 in Pat's chair with someone like you on the jury?

7 JUROR NO. 14: I don't know, they don't know me.

8 MR. VOLLUZ: But you know you, that's the sort of  
9 questions that I'm getting at.

10 JUROR NO. 14: I would think so because I'm  
11 objective. But in my case if I was sitting there I would  
12 not feel comfortable with anybody if I don't know who they  
13 are. I would feel comfortable if I was --

14 MR. VOLLUZ: I'm going to ask it a different way  
15 because we're running out of time. Is there anybody here  
16 who does not feel comfortable being on a trial like Pat is  
17 with someone such as yourself in the jury deciding this  
18 case? No. 37, how do you feel?

19 JUROR NO. 37: My passion and my profession is as  
20 an advocate for children. I know I tend to lean towards  
21 that, that's my priority. So there's going to be that  
22 definite sway. However, myself, I keep myself open minded  
23 when it come to kids.

24 MR. VOLLUZ: I think we are all objective and  
25 open minded about most things. But I also think the problem

1 with some of us, some things you cannot be as objective and  
2 open minded. Is this situation it's like that for you, No.  
3 37?

4 JUROR NO. 37: Yes.

5 MR. VOLLUZ: And do you see how I'm asking the  
6 same question in a different way? Are you basically telling  
7 me that you feel that in a case like this allegations that  
8 are made that you wouldn't be able to be a completely fair  
9 juror for Pat?

10 JUROR NO. 37: I would hope that I would, but,  
11 again, the emotions would be hard.

12 MR. VOLLUZ: We all hope that we would be  
13 objective. All right. Are you telling me you think you  
14 wouldn't be objective and fair in this case?

15 JUROR NO. 37: I don't know, you would have to  
16 hear the testimony. My gut reaction, I would tend to lean  
17 toward the other side.

18 MR. VOLLUZ: For the government?

19 JUROR NO. 37: Well, for the child is what I'm  
20 saying.

21 MR. VOLLUZ: Okay. I think that I understand  
22 what you're saying and I think that's enough for a motion to  
23 dismiss based on cause.

24 THE COURT: Follow up?

25 MS. BRACKE: Your an advocate for children. The

1 judge indicated earlier this is going to be a case decided  
2 that it didn't happen; you're not going to be an advocate  
3 for a child. Do you think you could decide it didn't  
4 happen?

5 JUROR NO. 37: It's overwhelming. I know she  
6 asked that question. I wanted to be honest.

7 MS. BRACKE: Frankly, that question I think is a  
8 little unfair for a juror because if you are sitting up  
9 there you want a juror who is going to acquit you, right?  
10 It's really unfair if you were going to be sitting over  
11 there. We don't want a fair and objective person. We want  
12 someone on your side to acquit you. So I think it's a  
13 little unfair for jurors so say, gee, if I go over there and  
14 go through that imagination to get to that point. The point  
15 is what the judge indicated. You're going to decide it did  
16 or didn't happen, period. You're not going to have to be an  
17 advocate for a child. You're going to have to make that  
18 decision it did or it didn't. You think that isn't proven  
19 beyond a reasonable doubt for you; you're going to acquit?  
20 If you think it happened, and you have evidence presented to  
21 you and you're convinced, firmly convinced, then you're  
22 going to convict, right? Anything less than being firmly  
23 convinced, you acquit, correct?

24 JUROR NO. 37: I would hope.

25 MS. BRACKE: So because the victim is a child,

1 versus a teenager, versus an adult being a victim of a sex  
2 assault case, the evidence you're going to require will be  
3 the same; is that correct?

4 JUROR NO. 37: Right.

5 MS. BRACKE: So when you look at it that way, can  
6 you be fair and impartial to anyone that would be charged  
7 with this crime because that's what the law says?

8 JUROR NO. 37: I would hope so. But I just want  
9 to make it very clear my reaction as far as having a child  
10 involved. A little bit is coming more from the heart rather  
11 than the head. That's just my reaction.

12 MS. BRACKE: Thank you. I would object.

13 THE COURT: Motion is denied.

14 Anything further, Mr. Volluz?

15 JUROR NO. 48: Can I make one remark?

16 MR. VOLLUZ: Please.

17 JUROR NO. 48: I feel if the prosecution could  
18 prove his case, we would not walk the jury box. If it were  
19 the other way, I'd be inclined to go along with his feeling.  
20 I've got one little problem, like I said, I have a hearing  
21 problem. Everybody out here, I've heard so many of the  
22 prospective jurors, I just didn't understand them.

23 THE COURT: All right. Let me reassure you what  
24 you are going to need to listen to. The witness is going to  
25 be testifying here. If you are on the jury we're going to

1 put you smack dab in front of them. You'll be able to hear.  
2 The attorneys will use the microphone. I will have a  
3 microphone. The witnesses will have a microphone. I think  
4 you'll hear everything that goes on in the trial. They are  
5 talking behind you. I think that makes a lot of difference  
6 in terms of the acoustics, your ability to hear what they  
7 are saying but you've been able to hear the questions from  
8 the attorneys?

9 JUROR NO. 47: Very well.

10 THE COURT: I think we can accommodate that.

11 Anything further?

12 MS. BRACKE: No.

13 THE COURT: Ladies and Gentlemen, what we're  
14 going to do then is pick 14 people to serve on a jury in  
15 this case, then we'll get the rest of you out of here  
16 shortly thereafter. I need for you to stay where you are  
17 next to one another. You may stand up, get the blood  
18 flowing to the lower extremities. We're going to work up  
19 here for a few minutes. Then we'll announce the decision.

20 MR. VOLLUZ: Your Honor, not to be rude, could we  
21 have a few minutes here. Everybody, once they have  
22 stretched and are sitting with their numbers up, I don't  
23 have their names.

24 THE COURT: All right, Ladies and Gentlemen, once  
25 you have had a chance to stretch hold your numbers up so

1 they can be seen from up here, that will help us reaffirm  
2 who everybody is. It's been a big group. It's been a long  
3 day. As long as you are not hiding somebody behind you, you  
4 can go ahead and stand up. You don't need to hold them way  
5 up there. Your arm is going to get tired. Just hold them  
6 where we can see them from the stand if we need to. Thank  
7 you.

8 MR. VOLLUZ: Everybody is holding up their card  
9 for me you can put them down. Thank you.

10 We're ready.

11 THE COURT: All right. Ms. Bracke?

12 (Side Bar Conference)

13 THE COURT: We have selected 14 people who will  
14 serve as jurors in this case. I will call the names of  
15 those people who have been selected. If I call your name  
16 you may come forward through that opening in the bar there,  
17 come over to where Helga is standing. She will tell you  
18 where to sit in the jury box. People's whose name I do not  
19 call, you are excused with my thanks for being here today  
20 and your patience. You will need to call the jury line  
21 again Friday after 5:00. They may need you next week for  
22 another potential jury service.

23 No. 11, Ms. Trueblood; No. 16, Ms. Sexton; No.  
24 22, Mr. May; No. 53, Ms. Brady; No. 41, Ms. Gjerstad; No.  
25 39, Ms. Stamey; No. 14, Ms. Jenkins; No. 40, Ms. Taylor; No.

1 29, Ms. Oldemeyer; No. 23, Mr. Mattingly; No. 5, Mr. Brooks;  
2 No. 8, Mr. Tollefson; No. 17, Ms. Fowler and No. 25, Ms.  
3 Berentson.

4 All right, Ladies and Gentlemen, thank you for  
5 being here today. I appreciate your patience. Ladies and  
6 Gentlemen, it's been a long day. We're going to wrap this  
7 up, get you on your way. The first order of business is  
8 please raise your right hand. The clerk will do that for  
9 me.

10 (Jury panel sworn in)

11 THE COURT: There's a couple of things I need to  
12 tell you about before we break. Helga is going to give you  
13 juror badges. They hang around your neck on strings. The  
14 idea is not to make you look like dorks. The idea is people  
15 will recognize you as jurors on the street so they will not  
16 approach you and talk to you about this case. There are  
17 going to be a lot of witnesses in this case. You won't  
18 necessarily know them by sight. They won't recognize you  
19 unless you have that thing around your neck and they might  
20 come up to you and start a conversation. I would ask you to  
21 think about what it would look like to the other side if  
22 they saw a juror having a conversation with a witness for  
23 the other side down on the street corner, even if all they  
24 were talking about is the weather. It doesn't create a very  
25 good impression. You need to avoid that. You wear those

1 things anytime you're in the vicinity of the courthouse.  
2 The folks involved in the case testifying will be able to  
3 know you are seated jurors, and you are off limits, cannot  
4 approach you, cannot talk to you.

5 The other thing I need to caution you is that you  
6 may not discuss this case with anyone, including with one  
7 another at this point, and that includes your family  
8 members. This is one of the hardest things the jurors have  
9 to do for the next two weeks. You're going to be involved  
10 all day long in something that's very intense, but when you  
11 go home you cannot talk about it with the people in your  
12 household. All of us are used to doing that, usually we  
13 discuss our day with whomever lives in our household. You  
14 can't do that. This is the one exception to that rule.  
15 There's a reason for it. You must make your decisions in  
16 this case based only on what happens in this courtroom,  
17 based on the testimony that comes from the witnesses, the  
18 exhibits that are admitted into evidence.

19 If you have conversations with other individuals  
20 about this case, those people aren't here, they haven't  
21 heard the testimony, they won't see the exhibits, they won't  
22 listen to the argument in original words, they are not in a  
23 position to make any decisions or provide any input about  
24 this case. So you must isolate yourself from any  
25 information from anyone else about this case. Now, when you

1 go home, whoever lives in your house is going to say to you:  
2 Are you on a jury? You are going to say: Yes. They are  
3 going to say: What kind a case is it? The minute you tell  
4 them what kind of case it is, no matter what the case is  
5 about, they are going to tell you what they think about that  
6 kind of case. Those are the kind of opinions that you have  
7 to protect yourself from. Outside influences of that sort,  
8 no matter how trustworthy, are off limits for the next two  
9 weeks. It is a lonely job but a violation of this court  
10 order can result in a mistrial so it is a very serious  
11 thing.

12 The other thing I need to caution you about is  
13 protect yourself from any exposure to overhearing  
14 conversations about the case, or reading about it in the  
15 newspaper, or hearing about it on the radio. You are in a  
16 very special status of citizen right now. You are kind of  
17 protected by a barrier around you from any information about  
18 this case, from any source whatsoever except this courtroom.  
19 So be very cautious about those things.

20 The folks who are involved in this trial will not  
21 approach you. They will not strike up a conversation with  
22 you. The attorneys will not greet you in the hallway. The  
23 witnesses will not come up to you if you have your badge on.  
24 Don't be offended that the folks aren't being friendly.  
25 They are under court order not to approach you or talk to

1           you. It's your isolated special status as jurors that  
2           requires that.

3                       Helga will tell you about the parking situation,  
4           how to get into your deliberation room when you come back  
5           tomorrow morning. We will resume at 9:30. Be here a little  
6           bit before 9:30 tomorrow morning so we can get started.  
7           I'll have a whole lot more to talk to you about tomorrow  
8           when we come back. Have a nice evening it.

9                               (Jury leaves)

10                              We'll be ready to start at 9:30 -- 9:00 tomorrow  
11           morning. A few preliminary things, 15 minutes, start right  
12           after that.

13                              (Court in recess).  
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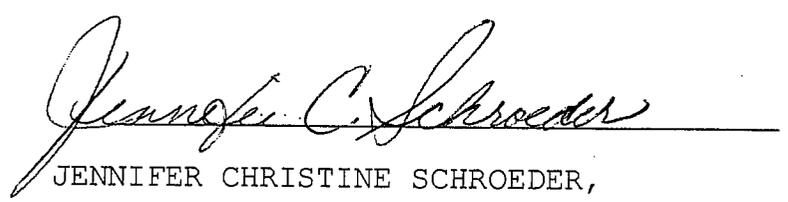
STATE OF WASHINGTON )  
 )  
COUNTY OF SKAGIT )

ss: C E R T I F I C A T E

I, JENNIFER C. SCHROEDER, Official Court Reporter  
in and for the County of Skagit do hereby certify;

That the foregoing is a true and correct  
transcript of the proceedings held on June 8, 2004.

Witness my hand on this 3<sup>rd</sup> day of  
April, 2008.

  
JENNIFER CHRISTINE SCHROEDER,

CCR #2221, RPR, OFFICIAL COURT REPORTER

B. Trial Minutes, June 16, 2004, State v. Patrick Morris, Skagit County Superior  
Court No. 03-1-00660-1

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Wednesday, June 16, 2004 Wednesday, June 16, 2004 Tuesday, June 08, 2004

State of Washington v Patrick Morris 03-1-00660-1

Judge Susan K. Cook  
Clerk – Della Jette  
Court Reporter – Jennifer Schroeder  
Bailiff – Helga Schink

The State of Washington is represented by Dona Bracke  
Defendant is present & represented by Corbin Volluz  
55 jurors are present and reporting for the first time  
Jurors are seated by random computer selection  
Outside the presence of the jury Court calls into chambers the clerk, court reporter,  
defendant, Corbin Volluz and Dona Bracke.  
Court advises the Defendant of the Pre-Trial Motions that were heard in court June 7th  
without his presence. The defendant waives his presence.  
Ms. Bracke addresses the child hearsay hearing. Defendant waives.  
Court finds to go without hearsay hearing.

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Court welcomes jurors  
Court introduces court staff  
Court explains the jury process & how voir dire works  
By direction of the court all jurors are sworn regarding qualifications & voir dire @ 9:55  
Counsel introduce themselves  
Court advises jurors of nature of case & sequence of events  
Jurors that have conflicts with the length of trial are juror #13, #9, #18, #26, & #49  
Juror #26 is excused (Richard L. Lindholm)  
Juror #35 is excused (Heidi Klepper)  
Juror #44 is excused (Kim Higgins)  
Court asks all jurors to fill out a questionnaire  
Bailiff hands out juror questionnaires to all 55 potential jurors  
When jurors have completed filling out their questionnaires

**RECESS @ 10:10 RECONVENE @ 10:17**

Court questions jurors  
Court admonishes all potential jurors and excuses them for break

**RECESS @ 11:05 RECONVENE @ 11:20**

All parties present  
Court advises all potential jurors that some of the jurors are going to be interviewed  
privately in chambers.  
Court advises jurors #1, #4, #10, #16 & #24 to stay and be interviewed in chambers  
Court advises jurors #25, #27, #31, #32, #43, #47, #50, #52 & #54 to report back @ 1:15  
to be interviewed. All other jurors are told to report back @ 2:00pm.

Page 2

Court admonishes all potential jurors and excuses them for lunch

Court calls into chambers individually all of the potential jurors that marked on their questionnaires that they wish to discuss something in private.

Mr. Volluz advises court that the defendant has chosen not to be present and waives his presence during the interview process as this may be uncomfortable for some of the jurors.

In chambers with Juror #1 @ 11:30

Ms. Bracke voir dres Juror #1 @ 11:31

Mr. Volluz moves to dismiss Juror #1 for cause

Court grants

In chambers with Juror #4 @ 11:36 – this juror is told to report back @ 2:00pm

In chambers with Juror #10 @ 11:36 – this juror is told to report back @ 2:00pm

In chambers with Juror #16 @ 11:42 – this juror is told to report back @ 2:00pm

In chambers with Juror #24 @ 11:45 – Court excuses Juror #24 and instructs her to call the jury line.

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**RECESS @ 11:50 RECONVENE @ 1:15 IN CHAMBERS**

All parties present

In chambers with Juror #25 @ 1:16

In chambers with Juror #27 @ 1:18

Ms Brack voir dres Juror #27 @ 1:21

Mr. Volluz moves to excuse Juror #27 for cause

Court excuses Juror #27 for cause

In chambers with Juror #31 @ 1:23

Ms Brack voir dres Juror #31 @ 1:26

Mr. Volluz voir dres Juror #31 @ 1:29

Mr. Volluz moves to excuse Juror #31 for cause

Court denies

In chambers with Juror #32 @ 1:35

In chambers with Juror #43 @ 1:37

Ms. Bracke voir dres Juror #43 @ 1:40

Court excuses Juror #43 – she is told to call the jury line

In chambers with Juror #47 @ 1:40

Mr. Volluz voir dres Juror #47 @ 1:44

Ms. Bracke voir dres Juror #47 @ 1:45

In chambers with Juror #50 @ 1:48

Mr. Volluz voir dres Juror #50 @ 1:50

Mr. Volluz moves to excuse Juror #50 for cause

Court excuses Juror #50 for cause

In chambers with Juror #52 @ 1:51

Mr. Volluz voir dres Juror #52 @ 1:55

In chambers with Juror #54 @ 1:55

Mr. Volluz voir dres Juror #54 @ 1:57

Page 3

Court excuses Juror #54

Juror #15 is excused (Gerald D. Koegel)

On behalf of the State Ms. Bracke begins examination of the jurors on voir dire @ 2:16

Mr. Volluz moves to excuse Jurors #2, #3, #38, #34, #51 & #53 for cause

State has no objection to Jurors # 2, #3 & #51

State has objection to Jurors #34, #38 & #53

Court excuses Juror #51 for cause

Court excuses Juror #2 for cause

Court excuses Juror #3 for cause

Court denies the motion to excuse Jurors #34, #38 & #53

On behalf of the defense Mr. Volluz begins examination of the jurors on voir dire @ 2:39

Ms. Bracke moves to excuse Juror #19 for cause

Mr. Volluz voir dire @ 2:57

Ms. Bracke continues examination of voir dire @ 2:59

Ms. Bracke moves to excuse Juror #12 for cause

Mr. Volluz voir dire Juror #12 @ 3:06

Mr. Volluz objects to excusing Juror #12

Court reads the instruction on "reasonable doubt" to all jurors

Court denies the State's motion to excuse Juror #12

**RECESS @ 3:20 RECONVENE @ 3:32**

Defendant is present

Mr. Volluz moves to excuse Jurors #10, #21, #34 & #46

State opposes

Court denies as to all four jurors

Mr. Volluz continues examination of the jurors on voir dire @ 3:32

Mr. Volluz moves to excuse Juror #10

Court excuses Juror #10 for cause

Mr. Volluz moves to excuse Juror #47 for cause

Court excuses Juror #47 for cause

Mr. Volluz moves to excuse Juror #7 for cause

Court questions Juror #7

Court excuses Juror #7 for cause

Mr. Volluz moves to excuse Juror #8, #33, #34 & #46

Juror #8 is excused for cause

Juror #34 is excused for cause

Juror #33 is excused for cause

Juror #46 is excused for cause

Mr. Volluz moves to excuse Juror #37 for cause

Ms. Bracke voir dire Juror #37 @ 4:11

Court denies motion

Counsel exercise peremptory challenges (See Judges List)

Counsel accept jury as impaneled @ 4:34

Page 4

Court thanks and excuses the remainder of the jury & instructs them to call the jury line Friday after 4:30

By direction of the court clerk swears jury in to try the case @ 4:34

Court gives general admonishments to the jury and excuses them for the evening

Court adjourns @ 4:38

Wednesday, June 09, 2004

Defendant is present and is not in custody

Outside the presence of the jury Court & Counsel address preliminary matters

Mr. Volluz addresses Motion in Limine regarding the defendant talking to the police State advises court she was not going to bring it up.

Court reminds counsel to talk to police officers before testifying to remind them this subject is off limits.

Both Counsel move to exclude witnesses.

Court grants

Jury returns to open court @ 9:30

Court gives general instructions to the jury and advises them on taking notes during trial.

Court gives general admonishments to the jury and the trial schedule

On behalf of the State Ms. Bracke makes opening statement @ 9:47

On behalf of the Defendant Mr. Volluz makes opening statement @ 9:59

**RECESS @ 10:30 RECONVENE @ 10:43**

Defendant is present and is not in custody

Outside the presence of the jury court notes the charging document dates are different as to allegations.

Ms. Bracke moves to interlineate the charging document. and amend the information

Mr. Volluz objects

Court recommends counsel reading State v Debolt

Court addresses reliability issue under State v Ryan

Court states defense has waived reliability under State v Ryan

Court states Mr. Volluz to give court a heads up if reliability issue arises before testimony so that court can address State v Ryan.

Jury returns to open court @ 10:54

On behalf of the State the following are sworn and examined:

1. Alyssa Warner S/T @ 10:54

**RECESS @ 11:35 RECONVENE @ 11:41**

Defendant is present and is not in custody

Jury returns to open court @ 11:42

Having been previously sworn Alyssa Warner resumes testimony @ 11:42

**Cross @ 11:42**

- C. Declaration of Lawrence W. Daly, July 28, 2008, In Re Personal Restraint of Patrick L. Morris, Court of Appeals (Division I) No. \_\_\_\_\_  
(Skagit County Superior Court No. 03-1-00660-1)
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

In Re the Personal Restraint of:  
  
PATRICK L. MORRIS,  
  
Petitioner.

SKAGIT 03-1-00660-1  
~~SNOHOMISH COUNTY NO.: 02-1-02368-6~~  
COURT OF APPEALS NO.:

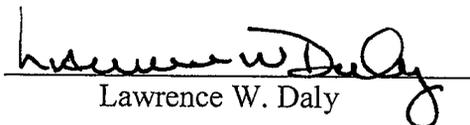
**DECLARATION OF LAWRENCE W. DALY**

Lawrence W. Daly declares as follows:

- 1) I was retained by the defense in this case as an investigator and expert on child abuse allegations.
- 2) Attached is a true and correct copy of a report I provided to the defense. This report was shared with the prosecutor.
- 3) Had I been called to the stand, and had the judge permitted me to, I would have testified to all of the points set out in this report.

I swear under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

July 28, 2008  
Date & Place

  
Lawrence W. Daly

*From the desk of Lawrence W. Daly, MSc*

**The Patrick Morris Report**

I was retained by defense attorney Corbin T. Valluz to review the State's Discovery, interview the State's Witnesses, conduct scientific research and possibly testify if this matter was to go to trial. I have been asked to provide an opinion about the standard of care and the breach of that standard of care by law enforcement and the child interviewer in this case. I am competent to testify to the matters set forth herein and do so to the best of my personal knowledge.

**1. Background – Experience/Education.** I am a licensed private investigator in the State of Washington and the name of my business in Covington, Washington is Systematic Investigations. I have a MSc, which is a Masters in Psychology in Child Abuse and the Law. I also have a Bachelor's degree in Criminology from Southern Oregon State University in the year of 1977. I have been doing private investigations and consultations work since June of 1989, or at the time of this declaration, for 15 years now. One aspect of my work involves assisting attorneys in criminal cases, including investigations of child sexual abuse. This includes interviewing suspects, witnesses, alleged victims, doing background checks, analyzing statements, analyzing documents, and other investigative tasks. I have worked both for civil plaintiffs and defendants since retiring from law enforcement, for criminal defendants.

Before private investigating, I was a police officer with the Department of Public Safety, King County; they are now referred to as King County Sheriff. I was in this position for ten years, and before that I was at City of Pacific Police Department for almost two years. Therefore, approximately 12 years of law enforcement experience. Combined, I have been involved professionally with criminal investigations as either a law enforcement officer or private investigator for over 26 years.

1 Over the years as both a law enforcement official and private investigator, I have received  
2 specialized training. Generally, I attend two to three seminars a year, so I've probably attended  
3 over 60 seminars in law enforcement related fields.

4 I also am a student of the literature on proper investigations, particularly in the area of  
5 criminal investigations of suspected child abuse, including sexual abuse.

6 I would estimate that in my career, I have worked on over 4000 cases involving allegations  
7 of sexual abuse involving a child or children. The cases have ranged from simple allegations to  
8 complex allegations. I was the lead investigator for many falsely accused suspects in the  
9 Wenatchee Sex Ring Debacle of 1994-1995, which involved many false accusations of child sex  
10 abuse – and specifically spent 100s of hours not only reviewing the investigations done by  
11 Wenatchee Police Department and Douglas County Sheriff's office, but also interviewing  
12 witnesses, suspects, alleged victims, and reviewing reports.

13 I have testified for both civil plaintiffs and defendants, and criminal defendants in over  
14 100 cases, including in the following jurisdictions, Lewis, Klickitat, Snohomish, King, Pierce,  
15 Island, Clallam, Skagit and Douglas Counties, which are Counties in the State of Washington; I  
16 have also testified in Alaska and Oregon. I have qualified as an expert in the field of police  
17 criminal investigation involving child sexual abuse investigations and child interview protocols  
18 and procedures.

19 I have written several books and articles, which began in 1988 with the book Innocence,  
20 The Ragged Edge. Since that time I have written the book Child Abuse Investigations, It Could  
21 Happen To You and numerous articles all dealing with interviewing children and investigating  
22 child sexual abuse allegations. I have lectured nationwide and provided seminars to a variety of  
23 professional audiences on the subject of child sexual interviewing and investigations.

24 **2. My Opinions In General.** All opinions in this report are stated in terms of the duty  
25 of care for a police officer investigating a potential crime in Washington under Washington law,  
26 including but not limited to RCW 26.44.050. My knowledge of the standards described below is  
27  
28

1 based on my education, training, and more than 26 years of law enforcement experience. In my  
2 opinion, the Anacortes Police Department and specifically Detective Ryan did not meet the  
3 standard of care when investigating the allegations of child sexual abuse of Patrick Morris. The  
4 items that I outline below in this report, in summary, show that Mr. Ryan's investigation  
5 amounted to improper and negligent police investigative work falling below the acceptable  
6 standard of care in conducting investigations involving children and parents, and allegations of  
7 child sexual abuse, in this State. In my opinion, as a direct and proximate result of Defendants'  
8 failure to exercise ordinary care and meet the standard of care, Mr. Morris suffered unnecessary  
9 separation from his child.

10 3. Sources Relied Upon. In making my opinions in this case, I rely not only on my  
11 experience and education, but I rely on many sources on proper police investigative work. I  
12 make it not only my profession to read the sources, but to use them in my investigative work  
13 here in Washington. I have included a listing of some of the relevant and recent sources at the end  
14 of this report

15 4. Specific Failures of Det. Kathy Ryan. Det. Kathy Ryan, as a criminal investigator  
16 for the Anacortes Police Department in this case, must attempt to gather all the evidence in any  
17 case, including exculpatory, inculpatory, and/or neutral evidence. This involves an active, as  
18 opposed to a passive, duty. Just because she filled out some paperwork does not make her  
19 exempt from completing her tasks as a police officer. These are all appropriate things to do, but  
20 by doing these perfunctory, administrative tasks, by no means fulfills the legislative duty under  
21 RCW 26.44.050 of investigating the case. Det. Ryan did not investigate this case, as she was  
22 required to do.

23  
24 5. Failure to Provide All Information. Because the source of this allegation of sexual  
25 abuse was the mother of the child, Mrs. Theresa Scribner and her husband Mr. Sam Scribner. A  
26 thorough examination of their motives, hostility, malice, or other should have been accomplished.  
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1 That is, Det. Ryan should have done more than just "receive" the allegation from Theresa  
2 Scribner and her husband. Det. Ryan should have assessed the custody issues, where Mrs.  
3 Scribner was making increasingly serious efforts to terminate Mr. Morris's parental rights and  
4 attempting to have Mr. Scribner outright adopt Ms. Morris. She could have accessed this  
5 through simply doing an interview of Theresa Scribner, who admits to such an incident within  
6 months of the allegations. She could then have accessed more information by interviewing Leta  
7 Benfield, Pat Morris' mother, who was present in the home when the alleged abuse was  
8 occurring, and who would have been a natural person to interview, as well as James Benfield,  
9 who was also present in the home when the alleged abuse was occurring.

10  
11 Det. Ryan controls this flow of information to the courts, the prosecutors, and to  
12 decision makers. In my opinion, it fell below the standard of care to overlook this information  
13 and more importantly, to not follow up on this information by simply not interviewing direct  
14 witnesses as well as collateral witnesses and asking the proper questions. Again, Det. Ryan's  
15 duty under RCW 26.44.050 is not a duty of passivity where she just collects information and  
16 receives work of others; instead, it is to conduct an investigation, which I opine she did not do.

17  
18 In this regard, the information and reports that Mrs. Scribner was providing to the other  
19 professionals and organizations (such as medical professionals, child protective services, etc.)  
20 was certainly within the scope of Det. Ryan's duty and she should have obtained this  
21 information, reviewed it, and provided this to the prosecutor, the Court and the decision makers.  
22 This information formed an integral part of the investigation of the allegations against Mr.  
23 Morris. Had Det. Ryan done her job, she would have seen the false allegations made by Mrs.  
24 Theresa Scribner and how they were exaggerated, blown out of proportion, but also, expanding  
25 over time. Otherwise, the allegation of sexual abuse by Mr. Morris was conveyed in a vacuum,  
26 which is unacceptable. Although Det. Ryan only saw her duty as one of collecting information,  
27  
28

1 it was also her job to find out if the allegation were true or false. Det. Ryan's investigation did  
2 not do this; it was a non-investigation. She did not do anything active. She received reports,  
3 reviewed reports, and obtained documents, but she did do what she was required to do. Instead,  
4 she relied on the reports of others, and did not even attend the interview of the child conducted  
5 by Candice Ashbrook. She made no independent investigation. Had she conducted a thorough  
6 investigation, a reasonable investigator would not have believed that Mr. Morris was guilty and  
7 would not have been able to find a reasonable suspicion of guilt.

8  
9 Furthermore, Det. Ryan did not understand the concept of **repeated interviews**. It is  
10 important to limit the number of interviews an alleged victim of child sexual abuse is subjected to  
11 . **Repeated interviews** undermine the reliability of the information received and can convey to  
12 the child that his or her earlier responses were wrong or inadequate.

13  
14 The primary government forensic interview of Ms. Morris was conducted by Ms. Candy  
15 Ashbrook. Ms. Ashbrook's interview was simply unacceptable as a forensic interview. Some of  
16 Ms. Ashbrook's questions were leading and suggestive. Her Forensic Protocol and Procedure is  
17 unfamiliar to me and I am aware of the top protocols being used nationally and internationally.  
18 Ms. Ashbrook only gathered evidence that would support a conviction or support probable  
19 cause. She did not explore any alternative hypothesis regarding these disclosures by Alyssa  
20 Warner. At one point in the interview she had an opportunity to explore an alternative theme  
21 with Alyssa Warner, but chose not to. Ms. Ashbrook failed to ask her about Mrs. Theresa  
22 Scribner and how many times she had discussed the case facts with her. Ms. Ashbrook did not  
23 detail what Alyssa Warner's affect was during the interview. Instead of videotaping the  
24 interview, Ms. Ashbrook taped the question and answer from her destroyed interview notes,  
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1 which is unreasonable and which procedure has specifically been termed "troublesome" by top  
2 experts in the field.

3  
4 Recording the interview, whether on video or audiotape, is the best way to maintain such  
5 a record. Whatever the means used to record the interview, it is critical that every question and  
6 the child's answer be recorded in exactly the language used by the child. This was not done here.  
7 This is unacceptable. How do we know that Ms. Ashbrook simply failed to record exculpatory  
8 information? All information obtained in the child interview must be included in the report,  
9 whether exculpatory or inculpatory.

10  
11 Det. Ryan's conduct also fell below the standard of care when she failed to corroborate  
12 the information she obtained about sexual abuse with the medical examination. Det. Ryan should  
13 have assessed the medical examination by Dr. Smith herself, not simply relying on Mrs. Scribner's  
14 statements of what Dr. Smith allegedly stated the medical examination showed. The same is true  
15 of Theresa Scribner's representations regarding the medical examination Alyssa received from Dr.  
16 Petty after she fell off the stool at her father's house in April of 2002. Again, thorough police  
17 work and investigation requires at least reviewing the medical reports and/or discussing the same  
18 with the doctor, (not just "skimming" the medical reports). Det. Ryan had done neither. She did  
19 obtain the reports, but did not investigate the matter, nor apparently review them or he would  
20 have caught these mistakes as well. Had Det. Ryan done so, she would have discovered that Dr.  
21 Smith's findings were that Ms. Morris examination was a normal examination, and that Dr.  
22 Petty's findings were that there was no tear in Alyssa's vagina, nor a "cut inside of her vagina,"  
23 as Theresa Scribner included in her petition for a no contact order, and told Sgt. Lou D'Amelio,  
24 respectively.  
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1 Physical evidence is critical in child sexual abuse cases as well. Investigators should  
2 search for physical evidence in every case. Det. Ryan should have executed a search for stain and  
3 fiber evidence in every location in which sexual abuse was alleged to have occurred. Of course,  
4 this would lead to exculpatory evidence if there was no such evidence.

5  
6 **6. Alternative Hypotheses.** Within the standard of care for law  
7 enforcement investigations is to explore "Alternative Hypotheses." Lanning (2004)  
8 states, "Every alternative way that a victim could have learned about the details of  
9 the abuse must be explored, if for no other reason than to eliminate them and  
10 counter defense arguments." American Prosecution Research Institute (2004) states,  
11 " Throughout the investigation, the investigator must consider alternative  
12 explanations for the child's statements that would indicate there was no abuse. As  
13 the child is interviewed, the investigator should look for sufficient confirmation of  
14 the people involved and the circumstances described so that the possibility of  
15 deliberate falsehood, misinterpretation of innocent contacts, or coaching by  
16 someone else can be ruled out." Milne and Bull, 1999 state, "Survey-involves taking  
17 an overview of the case, key players and evidence to allow the investigator to draw  
18 tentative conclusions, predictions, estimations and alternative hypotheses. This  
19 allows a Summary to be produced as an aid to briefing which notes (i) the state of  
20 plays as it stands, (ii) the change in lines of investigation due to emergent  
21 information from collection, collation, and evaluation and (iii) the outcome and  
22 recommendations for further investigations, where the model starts again at  
23 Assess."

24 Here, Det. Ryan did nothing to explore alternative hypotheses, and as such, her failure to  
25 do so means he fell below the standard of care in Washington.  
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1           7.     Mother's Memories Unexplored           That Det. Ryan and Interviewer  
2 Ms. Candy Ashbrook have a duty to keep abreast of the studies, protocols and procedures of  
3 the current littérature in child abuse interviews and investigations. That Det. Ryan and Ms.  
4 Ashbrook should have been aware of a study written and published by Dr. Stephen Ceci, Dr.  
5 Maggie Bruck and Dr. Emmett Fancoeur, 1999. That, according to the study conducted by  
6 Ceci, Bruck, and Francoeur (1999) you will see that the accuracy of mother's memories of  
7 conversations with their preschool aged children is extremely debatable. This article focuses  
8 on memory for a specific type of conversation: an interview:  
9

- 10     • When mothers were forewarned that their memories would later be recorded (within  
11       days), their ability to recall information was not improved compared to mothers who  
12       were given no forewarning.
- 13     • In fact they had difficulty recalling how the information was elicited from their  
14       children, whether the children's statements were spontaneous or prompted, or  
15       whether specific utterances were spoken by themselves or by their child.
- 16     • In many situations, adults provide hearsay testimony about their conversations with  
17       children but there are good reasons for suspecting that adults cannot accurately recall  
18       the contents or structure of conversations with their children.
- 19     • Being able to accurately recall the structure of a conversation is necessary for  
20       evaluating the statements of young children.
- 21     • This study shows that adults have poor verbatim but good gist recall of the target  
22       sentence. They cannot differentiate the original target sentence from its paraphrase.
- 23     • Adults must be able to reconstruct the context of the interview that led to a child's  
24       statement, not merely what the statement was. Otherwise, there is no basis for  
25       evaluating the validity of the child's statements because it is unknown if these were  
26       highly prompted or coached in some way.
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- 1 • Past research has shown that children's reports are most reliable when they are  
2 elicited by open-ended questions that are not repeated.
  - 3 ○ Conversely, children's reports are least reliable when they are elicited by  
4 specific leading questions, especially when they are repeated and across  
5 sessions.
- 6 • Adults thrust into the role of interviewers have difficulty keeping track of the  
7 source of utterances, the spontaneity of the utterances, and, at times, even their gist,  
8 even when it's only been a few days following the conversation.
- 9 • The difficulties of mothers in this study may reflect the attentional demands of  
10 structuring an interrogative interview with very young children, or they may reflect  
11 general difficulties in remembering aspects of conversations, regardless of the age of  
12 the participants.

13  
14 That Det. Ryan nor Ms. Ashbrook never took the time to explore these factors with  
15 Mrs. and/or Mr. Scribner. That Det. Ryan's protocol is to utilize a handwritten statement  
16 that the witness is required to fill out and Ms. Ashbrook does not conduct any inquiry into  
17 how the disclosure came about as she "assumes" the post event information was already dealt  
18 with.

19  
20 8. Modeling Sexual Behavior In numerous studies listed below it will  
21 demonstrate that children often model and express sexual behavior.

- 22 • In the study conducted by Drs. Silovscky and Niec, on children with sexual behavioral  
23 problems, 62% did not have a history of sexual abuse. This study supported the  
24 belief that sexual behaviors are not an effect of having been sexually abused.
- 25  
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- 1 • In the study conducted by Drs. Drach, Wientzen, and Ricci, on diagnosing sexual  
2 behavior problems they found no relationship between sexual behavior and child  
3 sexual abuse.
- 4 • In the study conducted by Drs. Davies, Glaser, and Kossoff on children's sexual play  
5 and behavior, they found children have a frequent curiosity about sex and sexual  
6 behavior. Some children simulated sexual intercourse. Though it was rare, some  
7 children did insert objects into other children.
- 8 • In the study conducted by Drs. Friedrich, Grambsch, Broughton, Kuiper, and Beike,  
9 on normative sexual behavior in children they found that the frequency of different  
10 behaviors varied widely but the children "exhibit a wide variety of sexual behaviors at  
11 relatively high frequencies." However, some behaviors were unusual (i.e., more  
12 aggressive or imitative of adult sexual behavior). Older children were less sexual than  
13 younger children. The frequency decreases after peaking at the 3 to 5 year age span.  
14 This may be attributed to children learning cultural standards, which then cause a  
15 more inverted expression of sexuality.
- 16 • In the study conducted by Dr. R. Best on games children play in primary school, he  
17 found that children learn and experiment on their own about sex. First grade children  
18 play "house," where they chase, hug, and kiss. Children learn early on that such  
19 games must be kept secret from adults. Children play "show-and-tell" even first  
20 grade boys, who use their finger in their pants and pretend to be displaying their  
21 penis.

22  
23 9. Theresa Scribner's Misrepresentations Pages 35-38 (of the transcript of the  
24 interview I conducted with Theresa Scribner), Mrs. Scribner is unsure of when her daughter acted  
25 out with other children and how they "touched each other." On page 43 Mrs. Scribner  
26 conveniently forgets who she talked to at the prosecutor's office who told her not to talk to the  
27  
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1 GAL. When Mr. Daly tells her she will have to be reinterviewed because she's not prepared, she  
2 suddenly remembers who: Robin Lakey. On page 68, Mrs. Scribner states that Detective Ryan  
3 told her to make excuses to keep Pat away from Alyssa. This is inconsistent with Detective  
4 Ryan's report which says that Mrs. Scribner called her asking for excuses and Detective Ryan  
5 told her it was not her job to come up with excuses and that she should get a no contact order like  
6 she was told in the first place. There are several areas in this report I will discuss Ms. Scribner's  
7 lies; to outline each and everyone at this point seems futile since that will be up to Mr. Corbin  
8 Volluz in his closing argument. However, and I will repeat this often in this report, Det. Kathy  
9 Ryan had the responsibility and duty of following this case and maintaining a pulse on what was  
10 transpiring and failed to do so. Instead the responsibility shifted to the prosecutor's office and it  
11 is apparent that the prosecutor's office failed to note these discrepancies in Ms. Scribner's  
12 reports, even though the prosecutor has the responsibility of reviewing the reports provided  
13 them by police prior to making a filing decision. Had the prosecutor noted these discrepancies, it  
14 would have been reasonable for the prosecutor to send the case file back to the detective with a  
15 request that further investigation be done. This apparently did not happen. Rather, the  
16 prosecutor simply filed the charges recommended by Detective Ryan.

17 **10. Sam Scribner's Story** At the bottom of page 34, Sam states that Theresea  
18 asked what the next step should be with Alyssa making the statement that daddy touched her  
19 and showing on specific area of her body where he allegedly touched her. Sam states, "Well, we  
20 talked about, well, I think that she definitely needs to be, you know, examined. And then I think  
21 we need to, you know, set up an appointment with a counselor to have somebody talk to her,  
22 you know about the incident and have her share, you know, I just told her that I think you need  
23 to take the proper steps with this. I mean, this is serious. And that's basically all I told her and  
24 then she took it from there, so." Why wasn't Alyssa's father (the accused) called and asked  
25 about this? With such radical statements from a five year old, why not get on the phone and ask  
26 the father what is Alyssa talking about? Why jump to such conclusions without talking to Pat  
27  
28

1 Morris? On page 42-43, Mr. Scribner states that the last time Alyssa talked to him about the  
2 incident or that he overheard anything about the incident was on March 3, 2003. How is it  
3 possible that after having medical examinations, multiple counseling sessions, etc., that Mr.  
4 Scribner could not have heard any discussion on the alleged abuse? Wouldn't someone who once  
5 considered adopting his stepdaughter take a greater interest in a case where her biological father is  
6 sexually abusing her?

7 **11. Alyssa Morris' Interview Comparison Analysis**

- 8 a. See Exhibit One  
9  
10 b. See Exhibit Three

11 **12. Scientific Studies**

- 12 a. **Sam Stone:** The second study also demonstrates the powerful effects of a  
13 stereotype induction when it is paired with repeated suggestive questioning.  
14 A stranger named "Sam Stone" visited preschoolers (ages 3 to 6 years) in their  
15 classroom for 2 minutes in their day-care center (see Leichtman & Ceci, in  
16 press). During this visit, he merely said, "Hello," walked around the room,  
17 then said, "Goodbye," and left. He did not touch, tear, throw, or break  
18 anything. Following Sam Stone's visit, the children were asked for details  
19 about the visit on four different occasions over a 10-week period. During  
20 these four occasions, the interviewer refrained from using suggestive questions.  
21 She simply encouraged the children to describe Sam Stone's visit in as much  
22 detail as possible.

23 One month following the fourth interview, the children were interviewed a  
24 fifth time by a new interviewer who asked about two "nonevents" that  
25 involved Sam doing something to a teddy bear and a book. In reality, Sam  
26  
27  
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1 Stone never touched either one. When asked in the fifth interview, "Did Sam  
2 Stone do anything to a book or a teddy bear?" most children rightfully replied,  
3 "No." Ten percent of the youngest (3- to 4-year-old) children's answers  
4 contained claims that Sam Stone did anything to a book or teddy bear. When  
5 asked if they actually saw him do anything to the book or teddy bear, as  
6 opposed to "thinking they saw him do something" or "hearing he did  
7 something," no only 5% of their answers contained claims that anything  
8 occurred.

9 Finally, when these 5% were gently challenged ("You didn't really see him do  
10 anything to the book/the teddy bear, did you?"), only 2.5% still insisted on  
11 the reality of the fictional event. None of the older (5- to 6-year-old) children  
12 claimed to have actually seen Sam Stone do either of the fictional events.  
13 These children's responses can be regarded as a control against which to  
14 measure the effects of stereotype induction paired with repeated questioning.

- 15  
16  
17 b. **Mousetrap**: We wondered what would happen if preschoolers were asked  
18 repeatedly to think about some event, creating mental images each time they  
19 did so. Would this result in subsequent source misattributions that lead to the  
20 creation of false memories? In a series of recent studies, we have addressed  
21 this issue (Ceci, Huffman, Smith, & Loftus, 1994; Ceci, Loftus, Leichtman, &  
22 Bruck, 1994). The events that children were asked to think about were actual  
23 events that they experienced in their distant past (e.g., an accident that  
24 required stitches) and fictitious events that they never experienced (e.g.,  
25 getting their hand caught in a mousetrap and having to go to the hospital to get  
26 it removed).
- 27  
28

1 Because repeatedly creating mental images is a pale version of what can  
2 transpire in therapies where a variety of techniques are used to encourage the  
3 creation of various images, our studies provide a fairly conservative test of the  
4 hypothesis that repeatedly thinking about fictional events can lead to false  
5 beliefs about their reality. Each week for 10 to 11 consecutive weeks,  
6 preschool children were individually interviewed by a trained adult. The adult  
7 showed the child a set of cards, each containing a different event. The child  
8 was invited to pick a card, and then the interviewer would read it to the child,  
9 ask the child to think about it before replying, and ask if the event ever  
10 happened to them. For example, when the child selected the card that read,  
11 "Got finger caught in a mousetrap and had to go to the hospital to get the trap  
12 off," the interviewer would ask, "Think real hard, and tell me if this ever  
13 happened to you. Do you remember going to the hospital with a mousetrap  
14 on your finger?" In our first study, (Ceci, Crotteau-Huffman, et al., 1994),  
15 58% of the preschool children produced false narratives to at least one of the  
16 fictitious events, with 25% of the children producing false narratives to the  
17 majority of the fictitious events. Twenty-seven percent of the children in this  
18 study refused to accept our debriefing, insisting that they remembered the  
19 fictitious events occurring.

20 c. Chester Clarke-Stewart, Thompson, and Lepore (1989; see also  
21 Goodman & Clarke-Stewart, 1991) conducted a study in which 5-  
22 and 6-year-olds viewed a staged event that could be construed as  
23 either abusive or innocent. Some children interacted with a  
24 confederate named "Chester" as he cleaned some dolls and other  
25 toys in a playroom. Other children interacted with Chester as he  
26 handled the dolls roughly and in a mildly abusive manner.  
27 Chester's dialogue reinforced the idea that he was either cleaning  
28

1 the doll (e.g., "This doll is dirty, I had better clean it") or playing  
2 with it in a rough, suggestive manner (e.g., "I like to play with  
3 dolls, I like to spray them in the face with water").

4 The children were questioned about this event several times on the  
5 same day, by different interviewers who differed in their  
6 interpretation of the event. The interviewer was (a) "accusatory" in  
7 tone (suggesting that the janitor had been inappropriately playing  
8 with the toys instead of working), (b) "exculpatory" in tone  
9 (suggesting that the janitor was just cleaning the toys and not playing),  
10 or (c) "neutral" and nonsuggestive in tone. In the first two types of  
11 interviews, the questions changed from mildly to strongly suggestive  
12 as the interview progressed.

13 ...when the interviewer contradicted the activity viewed by the  
14 child, those children's stories quickly conformed to the suggestions  
15 or beliefs of the interviewer. By the end of the first interview, 75%  
16 of these children's remarks were consistent with the interviewer's  
17 point of view; and 90% answered the interpretive questions in  
18 agreement with her point of view, as opposed to what actually  
19 happened.

20 Children changed their stories from the first to second interviews  
21 only if the two interviewers differed in their interpretation of the  
22 events. Thus, when the second interviewer contradicted the first  
23 interviewer, the majority of children then fit their stories to the  
24 suggestions of the second interviewer. If the interviewer's  
25 interpretation was consistent across two interviews, but  
26 inconsistent with what the child had observed, the suggestions  
27  
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1 planted in the first session were quickly taken up and mentioned  
2 by the children in the second session. Moreover, when questioned  
3 by their parents, the children's answers were consistent with the  
4 interviewers' biases.

5 Finally, although the effects of the interviewers' interpretations  
6 were most observable in children's responses to the interpretive  
7 questions about what the janitor had done, 20% of the children also  
8 made errors on the factual questions in the direction suggested by  
9 the biased interpretation, even though no suggestions had been  
10 given regarding these particular details.

11 **d. Pediatrician Visit** - We have conducted one study that  
12 highlights the deleterious effects of repeating misinformation  
13 across interviews in young children's reports (Bruck, Ceci,  
14 Francoeur, & Barr, 1995). These effects are particularly pernicious  
15 because not only can the repeated misinformation become directly  
16 incorporated into the children's subsequent reports (they use the  
17 interviewers' words in their inaccurate statements), but it can also  
18 lead to fabrications or inaccuracies that, although not directly  
19 mirroring the content of the misleading information or questions,  
20 are inferences based on the misinformation.

21 The children in our study visited their pediatrician when they were  
22 5 years old. During that visit, a male pediatrician gave each child a  
23 physical examination, an oral polio vaccine, and an inoculation.  
24 During that same visit, a female research assistant talked to the  
25 child about a poster on the wall, read the child a story, and gave the  
26 child some treats.  
27  
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1           Approximately one year later, the children were reinterviewed  
2           four times over a period of 1 month. During the first three  
3           interviews, some children were falsely reminded that the male  
4           pediatrician showed them the poster, gave them treats, and read  
5           them a story and that the female research assistant gave them the  
6           inoculation and the oral vaccine. Other children were given no  
7           misinformation about the actors of these events. During the fourth  
8           and final interview, when asked to recall what happened during the  
9           original medical visit, children who were not given any misleading  
10          information gave highly accurate final reports. They correctly  
11          recalled which events were performed by the male pediatrician and

12          by the female research assistant. In contrast, the misled children  
13          were very inaccurate; not only did they incorporate the misleading  
14          suggestions into their reports, with more than half of the children  
15          falling sway to these suggestions (e.g., claiming that the female  
16          assistant inoculated them rather than the male pediatrician), but 38  
17          % of these children also included nonsuggested but inaccurate  
18          events in their reports. They falsely reported that the female  
19          research assistant had checked their ears and nose. These  
20          statements are inferences that are consistent with the erroneous  
21          suggestion that the research assistant had administered the shot:  
22          She therefore must have been the doctor, and therefore she carried  
23          out procedures commonly performed by doctors. None of the  
24          control children made such inaccurate inferences. Thus, young  
25          children use suggestions in highly productive ways to reconstruct  
26          and at times distort reality.

27          The pediatrician study just described also illustrates the differential  
28          impacts of providing misinformation immediately after an event  
            compared with many months later. In the first phase of this study,

1 we examined the effect of giving different types of feedback to 5-  
2 year-old children immediately following their inoculation.  
3 Children were given pain-affirming feedback (emphasizing that the  
4 shot hurt), pain-denying feedback (emphasizing that the shot did  
5 not hurt), or neutral feedback (the shot is over). One week later,  
6 when we interviewed these children about their visit, they did not  
7 differ in their reports concerning how much the shot hurt or how  
8 much they cried.

9 These results indicate that the children in this study could not be  
10 easily influenced to make inaccurate reports concerning significant  
11 and stressful procedures involving their own bodies - when their  
12 memory for the inoculation was still relatively fresh. The pattern  
13 of results changed dramatically when we provided the same  
14 children similar feedback during multiple interviews 1 year after  
15 the inoculation.... These results indicate that suggestive  
16 interviewing procedures can influence children's reports about  
17 stressful events involving their own bodies, when they are  
18 provided long after the event takes place and when they are  
19 provided on multiple occasions.

20 13. Medical Examinations Mrs. Theresea Scribner has lied about the medical  
21 examinations performed upon Ms. Alyssa Morris by the professionals involved in this  
22 matter to improve her position that child sexual abuse occurred.

23  
24 14. The Coached Child The "Coached Child" is not a new phenomena, but finally  
25 the prosecution is talking and teaching on the subject. In a recent seminar in Huntsville, Alabama  
26 I attended a seminar on the Coached Child. Alyssa Morris is a classic example of the Coach  
27  
28

1 Child. It appears likely that she has been the product of coaching by her mother, Mrs. Theresa  
2 Scribner, most likely for reasons relating to Theresa Scribner's disenchantment with Pat Morris  
3 remaining Alyssa's legal father. There is no doubt that Mrs. Theresa Scribner's reliability and  
4 credibility has become a major issue of the pre-trial investigation, and should have been a major  
5 issue, if not the major issue, of Detective Ryan's investigation, should she have decided to do  
6 one.

7  
8 As Dr. Allison DeFelice the instructor of "The Coached Child" stated, "children that  
9 may be being coached need to be treated differently when being interviewed." Ms. Candy  
10 Ashbrook had no idea that Ms. Morris was a "Coached Child" because she works in a system,  
11 which is antiquated and was working with an incompetent investigator, Det. Ryan who failed to  
12 keep abreast of the facts of the case, failed to note the misrepresentations of Theresa Scribner in  
13 the reports Detective Ryan reviewed and sent to the prosecutor's office, and failed to tell Candy  
14 Ashbrook prior to her interview of Alyssa Warner. In this way, Alyssa Morris's being identified  
15 as a potential "Coached Child" slipped through the cracks in the Skagit County Criminal Justice  
16 System until I identified Ms. Morris as a potential victim of being a "Coached Child". When I  
17 identified Ms. Morris as a "Coached Child", I immediately brought my thoughts, opinions and  
18 expertise to Mr. Corbin Volluz, who immediately brought the information to the Skagit County  
19 Superior Court Judges and Prosecutors. The information fell on deaf ears, and was apparently  
20 never acted upon in follow-up investigations.

21  
22  
23 Dr. Allison DeFelice was adamant that the person I believed was coaching the child be  
24 kept away from the child prior to the interview, near the interview room and so forth. In fact she  
25 suggests that the person who is coaching the child not be allowed to bring the child to the  
26 interview. The Skagit County Superior Judges and Prosecutors failed to understand the necessity  
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1 of taking any proactive steps to assist Mr. Corbin Volluz or myself in getting these request  
2 accomplished. It wasn't until DPA Dona Bracke frustrated my interview of Alyssa Morris on  
3 two separate occasions that Judge John Meyer and Judge Susan Cook took notice that some  
4 conditions needed to be placed upon my interview of the child. Although the sanctions that were  
5 levied against her brought about some of the things Dr. Allison DeFelice suggested in interviewing  
6 a potential "Coached Child", the "Coached Child is a phenomenon that the Skagit County Court  
7 Judges and Prosecutor's needs to realize does exist.

8  
9 **15. The Need for Procedures and Protocols in Investigating Allegations of**

10 **Child Sex Abuse** I have read over 100 protocols internationally, nationally, locally, county  
11 and state wide. Any police agency entrusted with the delicate, but important, duty of  
12 investigating allegations of child sex abuse should follow a recognized protocol. This should be a  
13 child sex abuse interview and investigative written procedure and protocol that is either  
14 consistent with the Washington State Protocol or the Structured Protocol created by the National  
15 Mental Health Institute. The Anacortes Police Department has no procedures or protocols in  
16 investigating allegations of child sex abuse.

17  
18 **19. Affect of Ms. Alyssa Morris** I have interview well over five thousand  
19 children over the past twenty-three years. I have developed some expertise in  
20 discerning whether I am dealing with a true child abuse victim. It is the way they  
21 present. It is their affect. While recognizing that not all children respond the  
22 same way to being victims of sexual abuse, there is nevertheless an overall  
23 pattern of presentation. Ms. Alyssa Morris did not have any affect. In fact, she  
24 had a very happy disposition about herself through out the interview never  
25 getting upset about any of my questions. She was very pleasant to talk to.  
26 Children who are real victims provide emotional affects when they provide

1 "truth hits". Truth hits are descriptions of abuse. Ms. Morris told me a story  
2 about a girl who was allegedly awakened by her father and rubbed in her vaginal  
3 area for an hour, with no lotion, never making her sore, which barely awakened  
4 her from her sleep, during which she said nothing to her father and her father  
5 said nothing to her. This story is not consistent with an actual account of sexual  
6 abuse.

7  
8  
9 20. False Allegations Briefly I just want to talk about false allegations  
10 here by quoting a couple resources. Goodman and Bottoms state, "A false  
11 allegation can also occur without the deliberate complicity of the child. For example,  
12 a parent, caught up in a custody dispute, could deliberately generate a false  
13 allegation of abuse that a child might come to believe. Alternatively, both parent  
14 and child may make behavior of the other parent." Hollin and Howells (1991) state,  
15 "Distortions in testimony can arise from factors other than the cognitive failings of  
16 the individual child. As others have warned (Raskin and Yuille, 1989), in  
17 interviewing children suspected of being abused the possibility of deliberate  
18 falsification can never be ruled out. The proportion of such false or malicious  
19 allegations is a continuing source of debate with estimates ranging from 2% (Jones  
20 and McGraw, 1987) to claims of over 50% in cases involving custody disputes  
21 (Raskin and Yuille, 1989)."

22 21. Summary. This case was flawed from the beginning. It was set to fail, because  
23 the Criminal Justice System in Skagit County failed to investigate. In this matter Det. Kathy  
24 Ryan and Sgt. DJ Amelio are not properly trained on how to conduct proper interviews of  
25 witnesses. Instead of sitting down with the most important witnesses and trying to ascertain  
26 what specific information they may have, they hand them a statement to be filled out by the  
27 witnesses themselves. This method of interviewing went away when audiotaping became the  
28

1 popular way of being the effective and efficient method of conducting interviews. Moreover, this  
2 allows the investigating police officer a chance to evaluate the credibility of the witnesses.  
3 Secondly, this allows the investigating police officer the opportunity to follow the flow of  
4 information, which didn't take place in this case. Det. Kathy Ryan sat at the police station and  
5 waited for reports to come to her. She did not conduct any follow-up interviews. She did not  
6 conduct the interview of the alleged victim, Ms. Morris. There are multiple training sites in the  
7 United States available for investigating police officers that work in this field to receive the  
8 necessary training.  
9

10  
11  
12 As source No. 10 below states, "law enforcement interacts with a variety of professions  
13 and agencies during the investigation process," ... "It is not the job of law enforcement officers to  
14 believe a child or any other victim or witness. Instead, law enforcement must listen, assess, and  
15 evaluate, and then attempt to corroborate any and all aspects of a victim's statement." Lanning,  
16 pages 247-248. In my opinion, Det. Ryan listened to others, but made no assessment or  
17 evaluation of the evidence.

18 Also, Det. Ryan did nothing to seek corroborating physical evidence about this occurring  
19 in Alyssa's bed - if she was being rape or molested in her bed, as she alleges she made a  
20 disclosure along these lines, then why didn't Det. Ryan obtain evidence from her bedroom that  
21 might corroborate this alleged disclosure. Failing to attempt to corroborate or not corroborate  
22 such elementary aspects of these allegations falls below the standard of care.

23 Moreover, in Lanning, Source No. 10, it is stated that "[i]nvestigators must verify  
24 through active investigation the exact nature and content of each disclosure, outcry, or statement  
25 made by the victim. Second-hand information about disclosure is not good enough" Lanning,  
26 page 258. Here, the key words above are "active investigation." Det. Ryan did not actively  
27  
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1 investigate to find corroboration or exculpatory evidence – he relied on the work of others and  
2 second hand information, which falls below the standard of care for investigation child sex abuse  
3 allegations.

4 Therefore, it is my opinion, on a more probable than not basis, within a reasonable  
5 degree of certainty, that the prosecution of Mr. Morris, and the separation of him from his  
6 family and child, would not have occurred but for the mistakes and failures outlined above.

7  
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1 19. G. Goodman and B. Bottoms (1993) Interviewing Children in Sexual Abuse Cases

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5 22. R.C.W. 13.34.050

6 23. R.C.W. 7.69A.030

7 24. RPC Misconduct 8.4

8  
9 The above sources are used in Washington by law enforcement investigators and are relied  
10 upon in this field.

11 Exhibit 1: Alyssa Morris's Comparative Analysis

12 Exhibit 2: Alyssa Morris's Verbatim Witness Interview Statement

13 Exhibit 3: Alyssa Morris's Interview Analysis with Candy Ashbrook  
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