

No.

37230-4

[Handwritten signature]

86001-7

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION TWO

IN RE THE RESTRAINT OF:

DANIEL J. STOCKWELL,

Petitioner.

PERSONAL RESTRAINT PETITION

Judgment in Pierce County Superior Court No. 86-1-00878-2
The Hon. Robert H. Peterson, Presiding

NEIL M. FOX
WSBA No 15277
Cohen & Iaria
1008 Western Ave. Suite 302
Seattle WA 98104

Phone: 206-624-9694
Fax: 206-624-9691
e-mail: nmf@cohen-iarria.com

[Faint stamp]

TABLE OF CONTENTS

	<i>Page</i>
A. <u>STATUS OF PETITIONER</u>	1
B. <u>STATEMENT OF GROUNDS FOR RELIEF</u>	1
1. <u>Facts Upon Which Unlawful Restraint is Based</u>	1
2. <u>Argument Why Restraint is Unlawful</u>	3
a. <i>Summary of Argument</i>	3
b. <i>This Petition is Not Time Barred</i>	4
c. <i>The Guilty Plea Should Be Withdrawn Because it Did Contain the Proper Statutory Maximum</i>	6
i. <i>The Plea Was Not Voluntary</i>	6
ii. <i>Withdrawal of the Plea</i>	9
C. <u>REQUEST FOR RELIEF</u>	10
D. <u>OATH</u>	12
E. <u>PETITIONER'S CERTIFICATION</u>	13

TABLE OF CASES

	Page
<i>Washington Cases</i>	
<u>In re Restraint of Davis</u> , 142 Wn.2d 165, 12 P.3d 603 (2000)	10
<u>In re Restraint of Goodwin</u> , 146 Wn.2d 861, 50 P.3d 618 (2002)	4
<u>In re Restraint of Isadore</u> , 151 Wn.2d 294, 88 P.3d 390 (2004)	7,8,9
<u>In re Restraint of Stroudmire</u> , 141 Wn.2d 342, 5 P.3d 1240 (2000)	4
<u>In re Restraint of Thompson</u> , 141 Wn.2d 712, 10 P.3d 380 (2000)	4
<u>In re Restraint of Turay</u> , 150 Wn.2d 71, 74 P.3d 1194 (2003)	4,5
<u>In re Restraint of Vega</u> , 118 Wn.2d 449, 823 P.2d 1111 (1992)	6
<u>State v. Barton</u> , 93 Wn.2d 301, 609 P.2d 1353 (1980)	7
<u>State v. Mendoza</u> , 157 Wn.2d 582, 141 P.3d 49 (2006)	6,8,9
<u>State v. Miller</u> , 110 Wn.2d 528, 756 P.2d 122 (1988)	6,10
<u>State v. Ross</u> , 129 Wn.2d 279, 916 P.2d 405 (1996)	6,7
<u>State v. Vensel</u> , 88 Wn.2d 552, 564 P.2d 326 (1977)	7
<u>State v. Walsh</u> , 143 Wn.2d 1, 17 P.3d 591 (2001)	6,10
<i>Federal and Other State Cases</i>	
<u>Henderson v. Morgan</u> , 426 U.S. 637 (1976)	6
<i>Statutes, Constitutional Provisions, and Rules</i>	
CrR 4.2	6,9

RAP 16.4	1,10,11
RCW 9A.20.020	5
RCW 9A.20.021	2,3,5
Former RCW 9A.44.070	1,3
RCW 10.73.090	2,3,4,5,6
RCW 10.73.100	2,5
RCW 10.73.140	5,6
U.S. Const. amend. 14	<i>passim</i>
Wash. Const. art. 1, § 3	<i>passim</i>

A. STATUS OF PETITIONER

Petitioner Daniel J. Stockwell, an inmate at the Washington State Reformatory, Washington State Department of Corrections (DOC # 912170), applies for relief from restraint as defined in RAP 16.4(b). Mr. Stockwell challenges his 1986 conviction for Statutory Rape in the First Degree in Pierce County Superior Court No. 86-1-00878-2. A copy of the judgment and sentence entered in that case on October 3, 1986 (signed on September 26, 1986) is attached as Exhibit 3.

B. STATEMENT OF GROUNDS FOR RELIEF

1. Facts Upon Which Unlawful Restraint is Based

By information filed on April 29, 1986, in Pierce County Superior Court, the State of Washington charged Mr. Stockwell with one count of Statutory Rape in the First Degree, under former RCW 9A.44.070, alleging that Mr. Stockwell, “during the period between February 1, 1985 and March 31, 1985, did unlawfully and feloniously being over the age of 13 years, engage in sexual intercourse with Christina Sawyer, who was less than 11 years old.” Exhibit 1.

Mr. Stockwell entered a guilty plea to that charge on July 29, 1986. A copy of the “Statement of Defendant on Plea of Guilty” is

attached as Exhibit 2. The statement lists the maximum sentence as “twenty (20) years” and a \$50,000 fine. In fact, because the crime took place after July 1, 1984, and Statutory Rape in the First Degree was a Class A felony, the maximum sentence was confinement for a term of life, not 20 years. RCW 9A.20.021.

Mr. Stockwell was sentenced on September 26, 1986 (judgment actually filed on October 3, 1986). The judgment repeats the error from the plea form, stating in Section 4 that the maximum term is 20 years.¹ Exhibit 3.

Mr. Stockwell was under the supervision of the Department of Corrections until October 1989, until he finished making his legal financial obligation payments. Ex. 4. Mr. Stockwell did not receive a order of discharge until October 25, 1989. Exhibit 5. Mr. Stockwell never received any notice from the Department of Corrections as to the requirements of RCW 10.73.090 - .100 with regard to this case. Exhibit 7.

Mr. Stockwell has not filed any other petition for collateral relief attacking this judgment.

¹ There are no surviving transcripts from 1986 for this case. Ex. 6.

2. Argument Why Restraint is Unlawful

a. *Summary of Argument*

In 1985, the crime of Statutory Rape in the First Degree, former RCW 9A.44.070, was a Class A felony. Because the crime took place after July 1, 1984, the statutory maximum was “confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine.” RCW 9A.20.021(1)(a).

In Pierce County Superior Court No. 86-1-00878-2, however, the judgment lists the wrong maximum penalty – 20 years, instead of life – making the judgment facially invalid. Moreover, the guilty plea is invalid because the defendant’s statement made at the time he pled guilty also reveals that he was incorrectly informed as to the maximum possible penalty.

Because the judgment is facially invalid, this petition is not time-barred under RCW 10.73.090. Because the plea was based upon misinformation about a direct consequence of the plea, the plea was unconstitutional as it was neither knowing nor voluntary. The plea therefore violated due process of law under U.S. Const. amend. 14 and

Wash. Const. art. 1, § 3. Under these circumstances, prejudice is presumed. The judgment should be vacated and Mr. Stockwell is entitled to withdraw his plea.

b. *This Petition is Not Time Barred*

This petition is clearly filed more than one year after the judgment was final. RCW 10.73.090 establishes a time-bar to this petition if “if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.”

A judgment and sentence is invalid on its face if it evidences the invalidity “without further elaboration.” In re Restraint of Goodwin, 146 Wn.2d 861, 866, 50 P.3d 618 (2002). In Goodwin, the Supreme Court held that the term “facial invalidity” was broader than “constitutional invalidity,” and that clearly erroneous sentencing errors (such as the improper use of juvenile convictions to determine an offender score) made the judgment facially invalid. Moreover, the phrase “on its face” includes the documents signed as part of a plea agreement. Id. at 866 n.2 (citing In re Restraint of Stroudmire, 141 Wn.2d 342, 354, 5 P.3d 1240 (2000) & In re Restraint of Thompson, 141 Wn.2d 712, 719, 10 P.3d 380 (2000)).²

² The Supreme Court has explained that “the relevant question in a
(continued...)

In this case, the maximum penalty listed on the judgment and sentence is clearly erroneous. While the 20 years listed on the judgment (and the guilty plea statement) was correct for crimes that took place before July 1, 1984, RCW 9A.20.020(1) & (4), the maximum was clearly life for Class A felonies that took place after July 1, 1984. RCW 9A.20.021(4). As noted, the crime in this case allegedly took place between February to March 1985. Ex. 1. Thus, the maximum was life, not 20 years.

The face of the judgment itself reveals an error that renders it invalid without further elaboration. RCW 10.73.090 does not apply.

Additionally, Mr. Stockwell who was still under the supervision of the Department of Corrections on July 23, 1989, was never informed by DOC of the restrictions on collateral attack set out in RCW 10.73.090 & .100. Exhibit 7. RCW 10.73.140 specifically provides:

As soon as practicable after July 23, 1989, the department of corrections shall attempt to advise the following persons of the time limit specified in RCW 10.73.090 and 10.73.100: Every person who, on July 23,

² (...continued)

criminal case is whether the judgment and sentence is valid on its face, not whether related documents, such as plea agreements, are valid on their face. Such documents may be relevant to the question whether a judgment is valid on its face, but only if they disclose facial invalidity in the judgment and sentence itself.” In re Restraint of Turay, 150 Wn.2d 71, 82, 74 P.3d 1194 (2003).

1989, is serving a term of incarceration, probation, parole, or community supervision pursuant to conviction of a felony.

This language is mandatory, and if a defendant is not given proper notice, the time limits cannot be applied. In re Vega, 118 Wn.2d 449, 450-51, 823 P.2d 1111 (1992). Thus, in addition to the fact that the judgment is facially invalid, RCW 10.73.090 does not apply because of the lack of compliance with RCW 10.73.140.

c. *The Guilty Plea Should Be Withdrawn Because it Did Contain the Proper Statutory Maximum*

i. *The Plea Was Not Voluntary*

Under the Due Process Clauses of U.S. Const. amend. 14 and Wash. Const. art. 1, § 3, a guilty plea is only constitutionally valid if it is made knowingly, voluntarily and intelligently. Henderson v. Morgan, 426 U.S. 637, 644-45 (1976); State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). Whether a plea satisfies this standard depends primarily on whether the defendant correctly understood its consequences. State v. Walsh, 143 Wn.2d 1, 8, 17 P.3d 591 (2001); State v. Miller, 110 Wn.2d 528, 531, 756 P.2d 122 (1988); CrR 4.2(d). A defendant must understand “all” the “direct” consequences of the plea. State v. Ross, 129 Wn.2d 279,

284, 916 P.2d 405 (1996). A sentencing consequence is direct when “the result represents a definite, immediate and largely automatic effect on the range of the defendant’s punishment.” *Id.* at 284, *quoting State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980).

The maximum possible sentence is a “direct” consequence of a guilty plea. *State v. Vensel*, 88 Wn.2d 552, 555, 564 P.2d 326 (1977) (“We believe it is important at the time a plea of guilty is entered, whether in justice or superior court, that the record show on its face the plea was entered voluntarily and intelligently, and affirmatively show the defendant understands the maximum term which may be imposed.”).

Here, there is no question but that Mr. Stockwell was misinformed of the legal maximum for the crime of Statutory Rape in the First Degree. The guilty plea statement clearly shows that he was told that the maximum was 20 years, not life.

When a defendant is misinformed about a direct consequence of a guilty plea, he or she does not need to demonstrate that the misinformation materially affected his decision to plead guilty. *In re Restraint of Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004), the Supreme Court held that a defendant “need not make a special showing of materiality,” in order for

misinformation to render a guilty plea invalid, but instead must only show that the misinformation concerned “a direct consequence of [the] guilty plea.” 151 Wn.2d at 296. The Court rejected the State’s arguments about materiality:

[T]he materiality test requested by the State conflicts with this court's jurisprudence. This court has repeatedly stated that a defendant must be informed of all direct consequences of a guilty plea, and that failure to inform the defendant of a direct consequence renders the plea invalid.

151 Wn.2d at 301.

In State v. Mendoza, supra, the defendant was misinformed about the standard range. The true range was actually lower than what was stated on the plea form. Nevertheless, the Supreme Court of Washington held that a:

guilty plea may be deemed involuntary when based on misinformation regarding the direct consequences of the plea, regardless of whether the actual sentencing range is lower or higher than anticipated. Absent a showing that the defendant was correctly informed of all of the direct consequences of his guilty plea, the defendant may move to withdraw the plea.

157 Wn.2d at 591.

Again, the Washington Supreme Court rejected the State’s argument to apply a materiality test:

In determining whether the plea is constitutionally valid, we decline to engage in a subjective inquiry into the defendant's risk calculation and the reasons underlying his or her decision to accept the plea bargain. Accordingly, we adhere to our precedent establishing that a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea, regardless of whether the actual sentencing range is lower or higher than anticipated.

157 Wn.2d at 590-91.

Here, Mr. Stockwell was misinformed about the maximum penalty – a direct consequence of the guilty plea. He was not informed of this mistake prior to sentencing. To the contrary, the mistake was repeated on the judgment itself. Thus, the plea was constitutionally involuntary, in violation of the Due Process Clauses of U.S. Const. amend. 14 and Wash. Const. art. 1, § 3.

ii. *Withdrawal of the Plea*

A defendant may withdraw his or her guilty plea if it was invalidly entered or if its enforcement would result in a manifest injustice. Isadore, supra; CrR 4.2(f). “An involuntary plea produces a manifest injustice.” Isadore, 151 Wn.2d at 298.

Where a plea agreement is based upon misinformation, the defendant may choose specific enforcement of the agreement or

withdrawal of the guilty plea. Walsh, 143 Wn.2d at 8-9. The defendant's choice of remedy controls, unless there are compelling reasons not to allow that remedy. Miller, 110 Wn.2d at 535.

Mr. Stockwell chooses withdrawal of his plea. If the State objects, then the State should be required to make a *prima facie* showing of any compelling reason not to allow this remedy. If the State cannot do so, then this Court should vacate the judgment and remand to Pierce County Superior Court to allow for withdrawal of the plea. If the State makes a *prima facie* showing, then this Court should remand for a hearing on Mr. Stockwell's choice of remedy.

C. REQUEST FOR RELIEF

Mr. Stockwell is under restraint as defined by RAP 16.4(b). See In re Davis, 142 Wn.2d 165, 170 n.2, 12 P.3d 603 (2000) (defendant still under restraint and could file PRP even if no longer incarcerated or under state supervision). Mr. Stockwell has no other remedies available to him other than by filing a Personal Restraint Petition. The restraint is illegal under the Due Process Clause of U.S. Const. amend. 14 and the Due Process Clause of Wash. Const. art. 1, § 3. Because Mr. Stockwell was

clearly informed of the wrong statutory maximum for the crime he was charged with committing, he has shown actual prejudice.

RAP 16.4(c) provides in part:

The restraint must be unlawful for one or more of the following reasons . . .

...

(2) The conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or . . .

...

(5) Other grounds exist for a collateral attack upon a judgment in a criminal proceeding or civil proceeding instituted by the state or local government; . . .

...

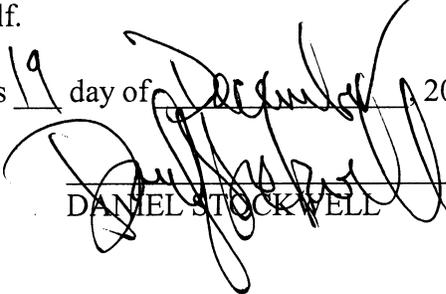
(7) Other grounds exist to challenge the legality of the restraint of petitioner.

Here, the plea was unconstitutional under U.S. Const. amend. 14 and Wash. Const. art. 1, § 3, and thus relief under RAP 16.4(c) is justified. The conviction should be vacated and Mr. Stockwell should be allowed to withdraw his guilty plea.

E. PETITIONER'S CERTIFICATION

I, Daniel Stockwell, declare that I have received a copy of the petition prepared by my attorney and that I consent to the petition being filed on my behalf.

Dated this 19 day of December 2007.



DANIEL STOCKWELL

Relevant Statutory Provisions and Rules

CrR 4.2 provides in part:

(a) Types. A defendant may plead not guilty, not guilty by reason of insanity, or guilty. . . .

....

(d) Voluntariness. The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea. . . .

...

(f) Withdrawal of Plea. The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice. If the defendant pleads guilty pursuant to a plea agreement and the court determines under RCW 9.94A.090 that the agreement is not consistent with (1) the interests of justice or (2) the prosecuting standards set forth in RCW 9.94A.430-.460, the court shall inform the defendant that the guilty plea may be withdrawn and a plea of not guilty entered. If the motion for withdrawal is made after judgment, it shall be governed by CrR 7.8. . . .

RAP 16.4 provides:

(a) Generally. Except as restricted by section (d), the appellate court will grant appropriate relief to a petitioner if the petitioner is under a "restraint" as defined in section (b)

and the petitioners restraint is unlawful for one or more of the reasons defined in section (c).

(b) Restraint. A petitioner is under a "restraint" if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.

(c) Unlawful Nature of Restraint. The restraint must be unlawful for one or more of the following reasons: (1) The decision in a civil or criminal proceeding was entered without jurisdiction over the person of the petitioner or the subject matter; or (2) The conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or (3) Material facts exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government; or (4) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government, and sufficient reasons exist to require retroactive application of the changed legal standard; or (5) Other grounds exist for a collateral attack upon a judgment in a criminal proceeding or civil proceeding instituted by the state or local government; or (6) The conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or (7) Other grounds exist to challenge the legality of the restraint of petitioner.

(d) Restrictions. The appellate court will only grant relief by a personal restraint petition if other remedies which may be available to petitioner are inadequate under the circumstances and if such relief may be granted under RCW 10.73.090, .100, and .130. No more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown.

U.S. Const. amend. 14, § 1 provides in part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wash. Const. art. 1, § 3 provides:

No person shall be deprived of life, liberty, or property, without due process of law.

RCW 9A.20.020, "Authorized sentences for crimes committed before July 1, 1984," provides in part:

(1) Felony. Every person convicted of a classified felony shall be punished as follows:

(a) For a class A felony, by imprisonment in a state correctional institution for a maximum term fixed by the court of not less than twenty years, or by a fine in an amount fixed by the court of not more than fifty thousand dollars, or by both such imprisonment and fine; . . .

....

(4) This section applies to only those crimes committed prior to July 1, 1984.

Former RCW 9A.20.021 (1985), "Maximum sentences for crimes committed July 1, 1984, and after," provided in part:

(1) Felony. No person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

(a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine; . . .

...

(4) This section applies to only those crimes committed on or after July 1, 1984.

Former RCW 9A.44.070 (1985) provided:

Statutory rape in the first degree. (1) A person over thirteen years of age is guilty of statutory rape in the first degree when the person engages in sexual intercourse with another person who is less than eleven years old.

(2) Statutory rape in the first degree is a class A felony. . .

RCW 10.73.090 provides:

(1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a

motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial court;

(b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or

(c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final.

RCW 10.73.140 provides:

As soon as practicable after July 23, 1989, the department of corrections shall attempt to advise the following persons of the time limit specified in RCW 10.73.090 and 10.73.100: Every person who, on July 23, 1989, is serving a term of incarceration, probation, parole, or community supervision pursuant to conviction of a felony.

Exhibit 1

J.R. APR 29 1986

FILED

IN COUNTY CLERKS OFFICE
A.M. APR 29 1986 P.M.

PIERCE COUNTY, WASHINGTON
BRIAN SONNTAG, COUNTY CLERK
By _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DANIEL J. STOCKWELL,

Defendant.

86 1 00878 2
NO.

INFORMATION

I, WILLIAM H. GRIFFIES, Prosecuting Attorney for Pierce County,
in the name and by the authority of the State of Washington, do accuse
DANIEL J. STOCKWELL of the crime of STATUTORY RAPE IN THE FIRST
DEGREE, committed as follows:

That DANIEL J. STOCKWELL, in Pierce County, Washington, during
the period between February 1, 1985 and March 31, 1985, did unlawfully
and feloniously being over the age of 13 years, engage in sexual
intercourse with Christina Sawyer, who was less than 11 years old,

86000 9802/6/11 0000

1 contrary to RCW 9A.44.070, and against the peace and dignity of the
2 State of Washington.

3 DATED this 28th day of April, 1986.

4
5 Filed Direct
6 City Case
7 WA02703

WILLIAM H. GRIFFIES

PROSECUTING ATTORNEY IN AND FOR
SAID COUNTY AND STATE.

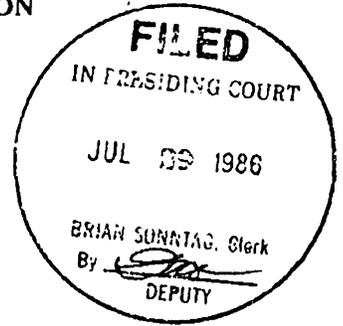
8
9 mtc

BY 
BARBARA COREY-BOULET
Deputy Prosecuting Attorney

Exhibit 2

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

VOL 156 PAGE 1565



J.R. JUL 29 1986

STATE OF WASHINGTON,

Plaintiff,

vs.

DANIEL J STOCKWELL,

Defendant.

NO. 86-1-00878-2

STATEMENT OF DEFENDANT ON PLEA
OF GUILTY (Felony)

1. My true name is Daniel James Stockwell
2. My age is 35, dob 7-27-51
3. I went through the 15th grade in school.
4. I have been informed and fully understand that I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is:
MICHAEL R JOHNSON
5. I have been informed and fully understand that I am charged with the crime(s) of _____
STATUTORY RAPE IN THE FIRST DEGREE

The elements of the crime(s) are: In Pierce County, Washington, between February 1, 1985 and March 31, 1985, the defendant did being over the age of 13 years, engage in sexual intercourse with Christina Sawyer, who was less than 11 years old.

The maximum sentence(s) is (are): twenty (20) years
years and \$ 50,000
fine(s).

In additton, I understand that I may have to pay restitution for crime(s) to _____ when I enter a guilty plea and for any other uncharged crime(s) for which I have agreed to pay restitution. The standard sentence range for the crime(s) is/are at least 36 months and no more than 48 months

based upon my criminal history which I understand the Prosecutor presently knows to be: _____

1985 Ind Lib adult

Criminal history attached as Appendix _____ and incorporated by reference.

I have been given a copy of the information.

And I further understand that as a First Time Offender, the court may decide not to impose the standard sentence range, and then the court may sentence me up to 90 days of total confinement and two years of community supervision. (If First Offender provision is not applicable, this statement shall be stricken and initialed by the defendant and the judge).

6. I have been informed and fully understand that:

(a) I have the right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.

11792885 80111

- (b) I have the right to remain silent before and during trial, and I need not testify against myself.
- (c) I have the right to hear and question any witness who testifies against me.
- (d) I have the right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.
- (e) I am presumed innocent until the charge(s) is (are) proven beyond a reasonable doubt, or I enter a plea of guilty.
- (f) I have the right to appeal a determination of guilt after a trial.
- (g) If I plead guilty, I give up the rights in statements (a) through (f) of this paragraph 6.

7. I plead Guilty to the crime(s) of _____

 STATUTORY RAPE IN THE FIRST DEGREE

_____, as charged in the _____
 information.

8. I MAKE THIS PLEA FREELY AND VOLUNTARILY.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. I have been informed and fully understand that the Prosecuting Attorney will make the following recommendations to the court: exceptional sentence within SSOSA guidelines, provided Comte
(defendant's therapist) affirms that defendant is still treatable; \$365.00 fine;
restitution, if any; reasonable costs; \$70.00 CVPA

2008 11/09/2005 08:12

14. I have been further advised ~~the~~ the crime(s) of _____
NA

with which I am charged carries with it a term of total confinement of not less than _____ years.
I have been advised that the law requires that a term of total confinement be imposed and does not permit any modification of this mandatory minimum term. (If not applicable, any or all of this paragraph shall be stricken and initialed by the defendant and the judge).

15. I have been advised that the sentences imposed in Counts _____
NA

will run consecutively/concurrently unless the court finds substantial and compelling reasons to run the sentences concurrently/consecutively.

16. I understand that if I am on probation, parole, or community supervision, a plea of guilty to the present charge(s) will be sufficient grounds for a Judge to revoke my probation or community supervision or for the Parole Board to revoke my parole. _____

17. I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, ~~exclusion~~ exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
NA

18. The court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime(s) in the information. This is my statement: _____

I, Dennis Stokwell, am over 18 years of age, and did have oral sex with Christine Sawyer under 11 years of age. This was in Pierce County in February + Early March of 1985. I voluntarily revealed this to my group which entered in January of 1986.

88114 9802/5/11 8888

19: I have read or have had read to me and fully understand all of the numbered sections above (1 through 19) and have received a copy of this "Statement of Defendant on Plea of Guilty" form. I have no further questions to ask of the court.

[Handwritten Signature]
Defendant

[Handwritten Signature]
Deputy Prosecuting Attorney

BARBARA L. COREY-BOULET

[Handwritten Signature]
Defendant's Attorney

MICHAEL R. JOHNSON

The foregoing statement was read by or to the defendant and signed by the defendant in the presences of his or her attorney, and the undersigned Judge, in open court. The court finds the defendant's plea of guilty to be knowingly, intelligently and voluntarily made, that the court has informed the defendant of the nature of the charge and the consequences of the plea, that there is a factual basis for the plea, and that the defendant is guilty as charged.

Further, the court finds that acceptance of this plea is consistent with prosecuting standards and the interests of justice.

Dated this 29 day of July, 1986
[Handwritten Signature]
Judge



Exhibit 3

OCT 3 1986

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON LIBER 172 PAGE 256
FOR THE COUNTY OF PIERCE

THE STATE OF WASHINGTON

vs.
DANIEL J. STOCKWELL

Filed
IN COUNTY CLERKS OFFICE
A.M. OCT 2 1986
PIERCE COUNTY WASHINGTON
BRIAN SOMMERS County Clerk
PIERCE

NO. 86-1-00878-2

JUDGMENT AND SENTENCE

SID NO. WA10438137

white; male; 7/27/51

This court having conducted a sentencing hearing pursuant to RCW 9.94A.110 on September 26,
1986 upon defendant's conviction(s) of the crime(s) set forth below, and the court having heard from the parties and considered the presentence reports and the records and files herein, and otherwise being fully advised, now makes the following findings:

1. PARTIES PRESENT: Present at the sentencing hearing were the defendant, the defendant's attorney, MICHAEL R. JOHNSON, Deputy Prosecuting Attorney BARBARA L. COREY-BOULET, and

2. CURRENT OFFENSE(S): The defendant has been convicted of the following current offense(s) upon a plea of guilty/~~conviction by jury/verdict of guilty by the court~~, on the 29th day of JULY, 19 86.

Count I Crime: STATUTORY RAPE IN THE FIRST DEGREE
RCW: 9A.44.070 Crime Code: 1A02.010
Date of Crime: between February 1, 1985 and March 31, 1985
Incident Number: 86-097272
Special Finding: _____

Count _____ Crime: _____
RCW: _____ Crime Code: _____
Date of Crime: _____
Incident Number: _____
Special Finding: _____

Count _____ Crime: _____
RCW: _____ Crime Code: _____
Date of Crime: _____
Incident Number: _____
Special Finding: _____

[] Additional current offenses attached as Appendix A.

This court has jurisdiction of the defendant and the subject matter. It is ADJUDGED that the defendant is guilty of the current offenses set forth above.

52188 58827/6/11 8888
8888 11/9/2888 88125

The following group(s) of current offenses encompassed the same criminal conduct and should be counted as one crime in determining the offender score (RCW 9.94A.400 (1)): _____

The following counts in the _____ information are hereby dismissed: _____

3. CRIMINAL HISTORY: This Court finds that the defendant has the following criminal history used in calculating the offender score pursuant to RCW 9.94A.360:

	Sentencing Date	Crime	Adult/Juvenile	Crime Date	Crime Type
1.	9/6/85	Ind Lib	adult	2/21/85	
2.					
3.					
4.					

The defendant's criminal history is attached in Appendix B and incorporated by reference into this Judgment and Sentence.

4. SENTENCE DATA:

	OFFENDER SCORE	SERIOUSNESS LEVEL	RANGE	MAXIMUM TERM
Count I	1	IX	36 - 48 months	20 years
Count				
Count				

Presumptive data score sheet(s) is attached as Appendix C and is incorporated by reference into this judgment.

5. SENTENCE ALTERNATIVE FINDINGS:

A. FIRST TIME OFFENSE: The defendant qualifies as a first-time offender pursuant to RCW 9.94A.120 (5). The first-time offender waiver is/is not used in this sentence.

B. EXCEPTIONAL SENTENCE: Substantial and compelling reasons exist which justify a sentence above/below the standard range for count(s) _____. Findings of Fact and Conclusions of Law pursuant to RCW 9.94A.120 (3) and Stipulations as to real and material facts, if any, are attached as Appendix D.

C. SPECIAL SEXUAL OFFENDER SENTENCING ALTERNATIVE: The defendant has been convicted of a felony sexual offense as specified in RCW 9.94A.120 (7) (a) and is eligible for use of the special sexual offender sentencing alternative. The defendant and the community will/will not benefit from use of the alternative.

D. SEXUAL OFFENDER TREATMENT PROGRAM: The defendant has been convicted of a felony sexual offense, does not qualify for the special sexual offender sentencing alternative, and is to be sentenced to a term of confinement of more than one year but less than six years. The defendant shall/shall not be ordered committed for evaluation for treatment pursuant to RCW 9.94A.120 (7) (b).

[X] E. RESTITUTION: Based on information concerning restitution attached in Appendix E, the defendant is responsible for payment of restitution:

[] For offenses adjudicated herein pursuant to RCW 9.94A.140 (1).

[] For offenses which were not prosecuted and for which the defendant agreed to make restitution in a plea agreement, which is attached to Appendix E.

[X] To be set by later order of court.

6. [XX] MONETARY PAYMENTS JUDGMENT AND SENTENCE: The defendant is ADJUDGED to be responsible for making monetary payments as stated below, within ten years, under the supervision of the Department of Corrections. The defendant is ORDERED to make the following monetary payments:

[] A. COSTS: Court costs in the amount of \$ _____

[XX] B. VICTIM ASSESSMENT: Penalty assessment pursuant to RCW 7.68.035: \$ ~~50.00~~ 70.00

[] C. RESTITUTION: Restitution payments to: (subject to modification based on failure of co-defendants to pay):

_____ \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

[] Restitution information attached in Appendix E - - total amount ordered: \$ _____

[X] D. RECOUPMENT: Recoupment for defense attorney's fees of to D.A.C. \$ 250.00

[X] E. FINE: A monetary fine in the amount of \$ 365.00

[] F. DRUG ENFORCEMENT FUND: Reimbursement in the amount of \$ _____

[] G. OTHER: Other costs in the amount of \$ _____

for _____ T \$ 685.00

The above payments shall be made to the Pierce County Superior Court Clerk, 110 County-City Building, Tacoma, Washington 98402, and the Clerk of the Court shall credit monetary payments to the above obligations in the above listed order according to the rules of the clerk and according to the following terms:

RESTITUTION OFFICER

[X] Terms to be set by defendant's Community Correction Officer.

Provided that no forfeiture proceedings are pending at the date of this order, bail or bond is exonerated.

(SUSPENDED SENTENCE - SPECIAL SEXUAL OFFENDER SENTENCING ALTERNATIVE)

7. DETERMINATE JUDGMENT AND SENTENCE: The court having found that the defendant is eligible for the Special Sexual Offender Sentencing Alternative (RCW 9.94A.120 (7) (a)) and that the community and the defendant will benefit from its use, and further having determined that no legal cause exists to show why a further judgment should not be pronounced, it is therefore ORDERED, ADJUDGED and DECREED that the defendant serve the determinate sentence and abide by the conditions set forth below.

SENTENCE: The defendant is sentenced to a term of total confinement of _____ days/months on Count I, _____ days/months on Count II, _____ days/months on Count III. The terms of this sentence are concurrent. The execution of this sentence is SUSPENDED and the following conditions are imposed:

[] A. CONFINEMENT: _____ days/months of total confinement in the Pierce County Jail, with credit for time served prior to this date, to commence _____.

[] B. ALTERNATE CONVERSION:

[] a. _____ days/months of total confinement are hereby converted to _____ days/months of partial confinement to be served subject to the rules and regulations of the Pierce County Jail.

[] b. _____ days of total confinement are hereby converted to _____ hours of community service to be completed as follows: _____

[] c. The defendant is eligible for an alternative sentence to total confinement pursuant to RCW 9.94A .380 but alternatives were not utilized because: _____

[X] C. TREATMENT: 04 days/months of ~~inpatient~~/outpatient sex offender treatment as follows: continue treatment with Comte and Associates follow all directions of

[X] D. COMMUNITY SUPERVISION: 12 months in community supervision by the Department of Corrections, to commence immediately, the defendant shall report by _____ to the Community Corrections Office. The defendant shall comply with all rules, regulations and requirements of the Community Corrections Officer.

[] E. OTHER CONDITIONS: _____

[] Additional conditions of sentence are attached as Appendix E.

Violations of the conditions or requirements of this sentence are punishable by up to 60 days of confinement for each violation (RCW 9.94A.200 (2)) or by revocation of the suspension and execution of the sentence (RCW 9.94 A.120 (7) (a) (vi)).

The following appendices are attached to this Judgment and Sentence and are incorporated by this reference:

- [] Appendix A, Current Offenses
- [] Appendix B, Current History
- [] Appendix C, Sentence Scoring Worksheet(s)
- [] Appendix D, Exceptional Sentence
- [] Appendix E, Restitution

DONE IN OPEN COURT this 20 day of September, 19 86.

[Signature]
JUDGE

Presented by:

Kathleen Proctor
Deputy Prosecuting Attorney
PIERCE COUNTY, WASHINGTON
County Clerk

Approved as to form:

Michael R Johnson
Attorney for the Defendant

F I L E
IN COUNTY CLERKS OFFICE
OCT - 3 1986 P.M.
PIERCE COUNTY, WASHINGTON
County Clerk

FINGERPRINTS



Fingerprint(s) of: DANIEL J STOCKWELL

Attested by: Sonntag BRIAN SONNTAG
CLERK COUNTY CLERK

By: Charbonneau JUDICIAL ASSISTANT
DEPUTY CLERK Date: 9/26/86 SEP 26 1986

CERTIFICATE

I, _____,
Clerk of this court, certify that the above is a true
copy of the Judgment and Sentence in this action
on record in my office.

Dated: _____

Clerk

By: _____
Deputy Clerk

OFFENDER IDENTIFICATION

State I.D. Number WA10438137

Date of Birth 7/27/51

Sex male

Race white

8888 11/9/2888 88138

Exhibit 4



DEPARTMENT OF CORRECTIONS
DIVISION OF COMMUNITY SERVICES

2 OCT 30 1989

REPORT TO: The Honorable Robert H. Peterson

DATE: 10/20/89

NAME: STOCKWELL, DANIEL J.

NUMBER: DOC #912170
Pierce Co. #86-1-00878-2 (B)

CRIME: Statutory Rape in the First Degree

SENTENCE: 12 Months Comm. Supv.
10 Years LFO

DATE OF SENTENCE OR PAROLE: 09/26/86

TERMINATION DATE: 09/26/87 Comm. Supv.
09/26/96 LFO

PRESENT LOCATION: 7410 South Park
Tacoma, Washington 98408

STATUS: Level 6

TYPE OF REPORT: REQUEST FOR DISCHARGE

The above named Offender has satisfactorily completed the sentence requirements in the category(s) marked below:

Community Supervision for 12 Months

N/A _____ hours community service

Payment of:

<u> -0-</u>	Court costs
<u> \$612.50</u>	Restitution
<u> \$365.00</u>	Fine
<u> \$250.00</u>	Attorney's fees
<u> \$ 70.00</u>	Crime Victim's Compensation
<u> -0-</u>	Drug Fund Assessment
<u> -0-</u>	Supervision Fees

FILED
IN COUNTY CLERK'S OFFICE

A.M. OCT 27 1989 P.M.

PIERCE COUNTY WASHINGTON
TED RUTA COUNTY CLERK
BY _____ DEPUTY

Other: _____

Comments: Please be advised that Mr. Stockwell has now fulfilled all conditions imposed by the Court. A Discharge is recommended at this time.

William R. Lester
Submitted By: William R. Lester
Community Corrections Officer
6422 Montclair Road S.W.
Tacoma, WA 98499
(206) 964-9387

Stuart K. Forsythe
Approved By: Stuart K. Forsythe, Supervisor
Orig & 2: Court
cc: PA
Agency File
Present to Court

8888 11/9/2006 08:147

Exhibit 5

STATE OF WASHINGTON,

Plaintiff

vs.

DANIEL J. STOCKWELL

Defendant.

NO. Pierce Co. #86-1-00878-2 (B)

CERTIFICATE AND ORDER OF DISCHARGE

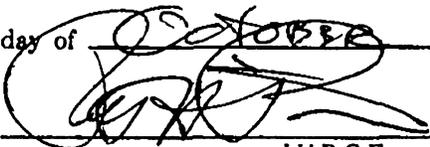
DOC #912170

This matter having come on regularly before the above entitled court pursuant to RCW 9.94A.220, the court having been notified by the Secretary of the Department of Corrections or his designee that the above named defendant has completed the requirements of his/her sentence, and there appearing to be no reason why the defendant should not be discharged, and the court having reviewed the records and file herein, and being fully advised in the premises, Now, Therefore,

IT IS HEREBY CERTIFIED that the defendant has completed the requirements of the sentence imposed.

IT IS HEREBY ORDERED that the defendant be DISCHARGED from the confinement and supervision of the Secretary of the Department of Corrections.

IT IS FURTHER ORDERED that the defendant's civil rights lost by operation of law upon conviction be HEREBY RESTORED.

DONE IN OPEN COURT this 25 day of OCTOBER, 1989

JUDGE

Presented by:

Kathleen Proctor
Deputy Prosecuting Attorney

CERTIFICATE AND ORDER OF DISCHARGE

WRL:smg
10/20/89

FILED
IN COUNTY CLERK'S OFFICE

A.M. **OCT 27 1989** P.M.

PIERCE COUNTY WASHINGTON
TED RUTT COUNTY CLERK
BY [Signature] DEPUTY

JC

55158 9027/61 55158
5558 11/9/2006 08158

Exhibit 6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION TWO

IN RE PERSONAL RESTRAINT OF:) NO. _____
DANIEL J. STOCKWELL,) CERTIFICATION OF NEIL M. FOX
Petitioner.)

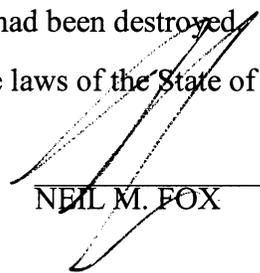
I, Neil M. Fox, certify and declare as follows:

1. I am an attorney licensed to practice law in the State of Washington. I represent Mr. Stockwell, the petitioner.

2. In the Summer of 2007, I attempted to locate transcripts for the guilty plea and sentencing hearings (7/29/86 & 9/26/86) from Pierce County Superior Court No. 86-1-00878-2. On August 6, 2007, I received a phone call from Amy Roetto, Managing Court Reporter at Pierce County Superior Court. Ms. Roetto informed me that none of the court reporters' notes from the two hearings were still in existence and had been destroyed.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

12/20/08 Seattle WA
DATE AND PLACE



NEIL M. FOX



Exhibit 7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION TWO

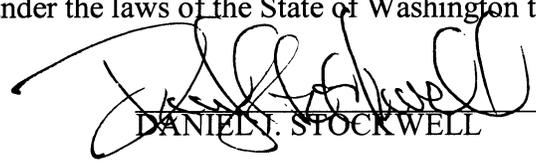
IN RE PERSONAL RESTRAINT OF: DANIEL J. STOCKWELL, Petitioner.	}	NO. _____ CERTIFICATION OF DANIEL J. STOCKWELL
---	---	--

I, Daniel J. Stockwell, certify and declare as follows:

1. I am the petitioner in this Personal Restraint Petition.
2. With regard to Pierce County Superior Court No. 86-1-00878-2, I was never given notification by the Department of Corrections of the requirements of RCW 10.73.090 & .100 regarding limitations on collateral attack petitions.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

12/19/07
DATE AND PLACE



 DANIEL J. STOCKWELL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COHEN & IARIA
National Building, Suite 302
1008 Western Avenue
Seattle, Washington 98104
206-624-9694

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

IN RE THE PERSONAL RESTRAINT OF
DAN STOCKWELL,
Petitioner.

COA NO. 37230-4-II

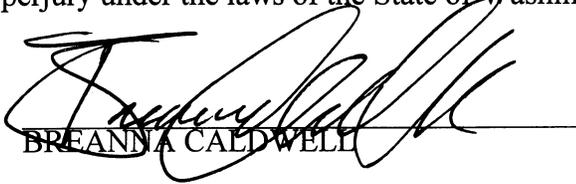
CERTIFICATE OF SERVICE

I, Breanna Caldwell, certify and declare, that on the 21st day of Decemberr 2007, I deposited copies of this Personal Restraint Petition, with proper postage attached, addressed to:

Gerald Horne
Pierce County Prosecuting Attorney's Office
930 Tacoma Ave. South, Room 946
Tacoma WA 98402-2171

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

12/21/07 Cohen & Iaria
DATE AND PLACE


BREANNA CALDWELL

86001-7



Exhibit 1

zcy

RECEIVED AND FILED
IN OPEN COURT

JUN 18 2004

DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATE OF WASHINGTON,)	
	)	No. 03-1-01319-4
Plaintiff,)	
	)	JUDGMENT AND SENTENCE
v.)	
)	
DAN NMI STOCKWELL,)	
Age: 52; DOB: 07/27/1951,)	
)	
Defendant.)	

A sentencing hearing was held in which the Defendant, the Defendant's attorney, and the Deputy Prosecuting Attorney were present. The Court now makes the following findings, judgment and sentence.

The Defendant was found guilty, by plea jury verdict bench trial trial upon stipulated facts, of the following--

2.1 CURRENT OFFENSE(S) <small>Asterisk (*) denotes same criminal conduct (RCW 9.94A.525).</small>		RCW	Date(s) of Crime from to		Special Allegations*
I	Child Molestation in the First Degree	9A.44.083	03/01/2002	04/01/2003	DV
II	Attempted Child Molestation in the First Degree	9A.44.083, 9A.28.020	03/01/2002	04/01/2003	DV

2.2 CRIMINAL HISTORY (RCW 9.94A.525) <small>Asterisk (*) denotes prior convictions that were same criminal conduct.</small>		Date of Crime	Date of Sentence	Sentencing Court	Juv (x)
Indecent Liberties		02/21/1985	09/06/1985	Pierce Co. Cause No. 85-1-00611-1	
Statutory Rape in the First Degree		02/01/1985 - 03/31/1985	09/26/1986	Pierce Co. Cause No. 86-1-00878-2	

///



Russell D. Hauge, Prosecuting Attorney
Adult Criminal and Administrative Divisions
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 337-7174; Fax (360) 337-4949

2.3 SENTENCING DATA									
Count	Offender Score	Seriousness Level	Standard Range	Days (x)	Mo. (x)	Special Allegations Type*	Mo.	Total Standard Range (Mo.)	Maximum Term
I.	9	X	149 to 198	-	X	-	-	149-198 to life	life
II.	9	X	149 to 198	-	X	-	-	149-198 to life	life

Defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

*SPECIAL ALLEGATION KEY (RCWs)- F=Firearm, DW=Deadly Weapon (9.94A.602,510); DV=Domestic Violence (10.99.020); SZ=School Zone (69.50.435); SM=Sexual Motivation (9.94A.835); VH=Vehicular Homicide Prior DUI (46.61.5055); CF=drug crime at Corrections Facility (9.94A.510); JP=Juvenile Present at manufacture (9.94A.605).

CONFINEMENT/STATUS

- CHEMICAL DEPENDENCY**-The Court finds the Defendant has a chemical dependency that contributed to the offense(s). RCW 9.94A.030(9).
- 2.4-EXCEPTIONAL SENTENCE**-Substantial and compelling reasons exist justifying a sentence above the standard range below the standard range, and/or warranting exceptional conditions of supervision for count(s) _____. The Prosecutor did did not recommend a similar sentence. The exceptional sentence was stipulated by the Prosecutor and the Defendant. Findings of Fact and Conclusions of Law entered in support of the exceptional sentence are incorporated by reference.
- 4.5-PERSISTENT OFFENDER**-The Defendant is a Persistent Offender as defined by RCW 9.94A.030(32) and 9.94A.570 and is sentenced to life without the possibility of early release.

COURT'S SENTENCE: Sentences over 12 months will be served with the Department of Corrections. Sentences 12 months or less will be served in the Kitsap County Jail, unless otherwise indicated.

CONFINEMENT UNDER RCW 9.94A.712- The Defendant is sentenced to the following term of confinement in the custody of the DOC:

COUNT I Minimum Term: ~~___ Months~~ **LIFE**
 Maximum Term: 10 years from today's date for the remainder of Defendant's life

COUNT II Minimum Term: ~~___ Months~~ **LIFE**
 Maximum Term: 10 years from today's date for the remainder of Defendant's life

The Indeterminate Sentencing Review Board may increase the minimum term of confinement.

IF MULTIPLE COUNTS-Total confinement ordered: ~~LIFE~~ Days Months Max. Term: ~~LIFE~~
 COUNTS TO BE SERVED- Concurrent Consecutive Counts _____ served consecutive; the remainder served concurrent. VUCSA enhancements served consecutive concurrent; the remainder consecutive.

- CONCURRENT TO OTHER CAUSES**-This sentence shall run concurrent to sentence(s) ordered in cause number(s) _____
- CREDIT FOR TIME SERVED.** RCW 9.94A.505. Defendant shall receive credit for time served prior to sentencing solely for this cause number as computed by the jail unless specifically set forth-____ days.
- 4.3-NO CONTACT ORDER**-Defendant shall abide by the terms of any no contact order issued as part of this Judgment and Sentence.

SUPERVISION

- 4.6-COMMUNITY CUSTODY.** RCW 9.94A.505, .545 and WAC 437-20-010. Defendant shall be supervised for the longest time period checked in the table below. Defendant shall report to DOC in person no later than 72 hours after release from custody and shall comply with all conditions stated in this Judgment and Sentence, including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody.

THIS PROVISION WILL ONLY BE APPLIED IN THE EVENT OF THE DEFENDANT'S RELEASE:



Russell D. Hauge, Prosecuting Attorney
 Adult Criminal and Administrative Divisions
 614 Division Street, MS-35
 Port Orchard, WA 98366-4681
 (360) 337-7174; Fax (360) 337-4949

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Community Custody Is Ordered for Counts Sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:
 COUNT(S) I 10 years from today's date for the remainder of the Defendant's life
 COUNT(S) II 10 years from today's date for the remainder of the Defendant's life



SUPERVISION SCHEDULE: The Defendant Shall-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STANDARD

- Obey all laws and obey instructions, affirmative conditions, and rules of the court, DOC and CCO.
- Report to and be available for contact with assigned CCO as directed.

•Obey all no-contact orders including any in this judgment.

•Remain within prescribed geographical boundaries and notify the court or CCO in advance of any change in address or employment.

•Notify CCO within 48 hours of any new arrests or criminal convictions.

•Pay DOC monthly supervision assessment.

•Comply with crime-related prohibitions.

SERIOUS VIOLENT / VIOLENT OFFENSE, SEX OFFENSE, AND/OR CRIME AGAINST A PERSON

•Work only at DOC-approved education, employment and/or community service.

•Possess or consume no controlled substances without legal prescription.

•Reside only at DOC-approved location and arrangement.

•Consume no alcohol, if so directed by the CCO.

SEX-CRIME RELATED

•Commit no sexual offenses and commit no offenses involving a minor.

•Have no direct or indirect contact with victim(s) or his or her family, including by telephone, computer, letter, in person, or via third party.

•Possess/access no sexually exploitive materials (as defined by Defendant's treating therapist or CCO).

•Frequent no adult book stores, arcades, or places providing sexual entertainment.

•Possess/access no pornography, sexually explicit materials, and/or information pertaining to minors via computer (i.e. internet)

Contact no "900" telephone numbers that offer sexually explicit material. Provide copies of phone records to CCO.

Have no contact with any children under the age of 18 without the presence of an adult who is knowledgeable of this conviction and who has been approved by Defendant's CCO.

Do not loiter or frequent places where children congregate including, but not limited to, shopping malls, schools, playgrounds, and video arcades.

Abide by curfew set by CCO.

Submit to periodic polygraph and plethysomograph exams at own expense at request of CCO or any treatment provider.

Do not hitchhike or pick up hitchhikers.

PSI CONDITIONS-All conditions recommended in the Pre-Sentence Investigation are incorporated herein as conditions of community custody, in addition to any conditions listed in this judgment and sentence, unless otherwise noted: _____

SSOSA

•Devote time to specific employment or occupation.

•Successfully complete approved outpatient and/or inpatient sex offender treatment program with treatment provider noted below for a period of 36 months. Defendant shall not change sex offender treatment providers or treatment without first notifying the Prosecutor, CCO, and the Court, and shall not change providers without Court approval after a hearing if the Prosecutor or CCO object to the change.

•Treatment Provider-_____

EVALUATIONS- Complete an evaluation for:
 substance abuse anger management mental health, and fully comply with all treatment recommended by CCO and/or treatment provider.

PROGRAMS / ASSAULT

Have no assaultive behavior.

Successfully complete a certified DV perpetrators program.

Successfully complete an anger management class.

Successfully complete a victim's awareness program.

ALCOHOL/DRUGS

Possess or consume no alcohol.

Enter no bar or place where alcohol is the chief item of sale.

Possess and use no illegal drugs and drug paraphernalia.

Submit to UA and breath tests at own expense at CCO request.

Submit to searches of person, residence or vehicles at CCO request.

Have no contact with any persons who use, possess, manufacture, sell or buy illegal controlled substances or drugs.

Install ignition interlock device as directed by CCO. RCW 46.20.710-.750.

OTHER:



FINANCIAL OBLIGATIONS

4.1-LEGAL FINANCIAL OBLIGATIONS-The Court finds that the Defendant has the ability or likely future ability to pay legal financial obligations. RCW 9.94A.142. The Defendant shall pay by cash, money order, or certified check to the Kitsap County Superior Court Clerk at 614 Division Street, MS-34, Port Orchard, WA 98366, as indicated-

X	\$500 Victim Assessment, RCW 7.68.035 [PCV]	\$ _____ Sheriff service/sub. fees [SFR/SFS/SFW/SRF]
X	\$960 Court-appointed attorney fees [PUB]	\$ _____ Witness Costs [WFR]
X	\$110 Filing Fee [FRC]	\$ _____ Jury Demand fee [JFR]
X	\$100 DNA / Biological Sample Fee, RCW 43.43.7541	\$ _____ Court-appointed defense fees/other defense costs
	\$1,000 Contribution to SIU- _____	X \$100 Contribution-Kitsap County Expert Witness Fund [Kitsap County Ordinance 139.1991]
	\$100 Crime Lab fee, RCW 43.43.690(1)	X \$500 Contribution-Kitsap County Special Assault Unit
	\$3,000 Methamphetamine / amphetamine Cleanup Fine, RCW 69.50.440 or 69.50.401(a)(1)(ii)	\$100 Contribution-Anti-Profitteering Fund of Kitsap County Prosecuting Attorney's Office, RCW 9A.82 .110
	Emergency Response Costs - DUI, Vehicular Homicide or Vehicular Assault, RCW 38.52.430, per separate order.	\$100 DV Assessment, Laws of 2004, ch. 15 § 2 <input type="checkbox"/> Kitsap Co. YWCA <input type="checkbox"/> Kitsap Co. Sexual Assault Center

RESTITUTION-To be determined at a future date by separate order(s).

REMAINING LEGAL FINANCIAL OBLIGATIONS AND RESTITUTION-The legal financial obligations and/or any restitution noted above may not be complete and are subject to future order by the Court.

PAYMENT SCHEDULE - All payments shall commence immediately and be made in accordance with policies of the clerk and on a schedule as follows: pay \$100 \$50 \$25 _____ per month commencing 60 days following release from custody, unless otherwise noted: _____.

12% INTEREST FOR LEGAL FINANCIAL OBLIGATIONS/ADDITIONAL COSTS-Financial obligations in this judgment shall bear interest from date of the judgment until paid in full at the rate applicable to civil judgments. An award of costs of appeal may be added to the total legal financial obligations. RCW 10.82.090, RCW 10.73. INTEREST WAIVED FOR TIMELY PAYMENTS-The Superior Court Clerk has the authority to waive the 12% interest if the Defendant makes timely payments under this payment schedule.

50% PENALTY FOR FAILURE TO PAY LEGAL FINANCIAL OBLIGATIONS- Defendant shall pay the costs of services to collect unpaid legal financial obligations. Failure to make timely payments will result in assessment of additional penalties, including an additional 50% penalty if this case is sent to a collections agency due to non-payment. RCW 36.18.190.

OTHER

4.2-HIV TESTING-The Defendant shall submit to HIV testing. RCW 70.24.340.

4.2-DNA TESTING-The Defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency or DOC shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

If the Defendant is not placed into custody at the time of sentencing, the Defendant shall report immediately to the Kitsap County Jail to arrange for collection of a biological sample for DNA.

FORFEITURE-Forfeit all seized property referenced in the discovery to the originating law enforcement agency unless otherwise stated.

4.10-COMPLIANCE WITH SENTENCE-Defendant shall perform all affirmative acts necessary for DOC to monitor compliance with all of the terms of this Judgment and Sentence.

JOINT AGREEMENTS IN THE PLEA AGREEMENT-Are in full force and effect unless otherwise stated in this judgment and sentence.

EXONERATION-The Court hereby exonerates any bail, bond, and/or personal recognizance conditions.

JUDGMENT AND SENTENCE; Page 5

[Form revised December 15, 2002]



Russell D. Hauge, Prosecuting Attorney
Adult Criminal and Administrative Divisions
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 337-7174; Fax (360) 337-4949

NOTICES AND SIGNATURES

5.1-COLLATERAL ATTACK ON JUDGMENT-Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.

5.2-LENGTH OF SUPERVISION-The court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5).

5.3-NOTICE OF INCOME-WITHHOLDING ACTION-If the Court has not ordered an immediate notice of payroll deduction, you are notified that the DOC may issue a notice of a payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.5-ANY VIOLATION OF JUDGMENT AND SENTENCE-Is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.

5.6-FIREARMS-You must immediately surrender any concealed pistol license and you may not own, use, or possess any firearm unless your right to do so is restored by a court of record.

Clerk's Action Required-The court clerk shall forward a copy of the Defendant's driver's license, identicaid, or comparable identification, to the DOL along with the date of conviction or commitment. RCW 9.41.040, 9.41.047.

Cross off if not applicable-

5.7-SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 48 hours excluding weekends and holidays after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report



1 weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by
2 the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to
3 list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be
4 considered in determining an offender's risk level and shall make the offender subject to disclosure of information to
5 the public at large pursuant to RCW 4.24.550.

6 If you move to another state, or if you work, carry on a vocation, or attend school in another state you must
7 register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or
8 after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice
9 within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in
10 Washington State.

11 If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of
12 your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If
13 you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of
14 your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

15 **5.8-PERSISTENT OFFENDER-**

16 ~~"Three Strike" Warning-You have been convicted of an offense that is classified as a "most serious offense"
17 under RCW 9.94A.030. A third conviction in Washington State of a most serious offense, regardless of whether the
18 first two convictions occurred in a federal or non-Washington state court, will render you a "persistent offender."~~

19 **"Two Strike" Warning-**In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree,
20 rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child
21 molestation in the first degree; or (2) any of the following offenses with a finding of sexual motivation: murder in the
22 first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second
23 degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or a burglary in the
24 first degree; or (3) any attempt to commit any of the crimes listed in RCW 9.94A.030(32), and you have at least one
25 prior conviction for a crime listed in RCW 9.94A.030(32) in this state, federal court, or elsewhere, this will render you
26 a "persistent offender." RCW 9.94A.030(32).

27 **Persistent Offender Sentence-**A persistent offender shall be sentenced to a term of total confinement for life
28 without the possibility of early release, or, when authorized by RCW 10.95.030 for the crime of aggravated murder in
29 the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. RCW 9.94A.570.

30 **5.8-DEPARTMENT OF LICENSING NOTICE-**The court finds that Count _____ is a felony in the
31 commission of which a motor vehicle was used. **Clerk's Action-**The clerk shall forward an Abstract
of Court Record to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285.

5.8-TREATMENT RECORDS-If the Defendant is or becomes subject to court-ordered mental health or
chemical dependency treatment, the Defendant must notify DOC and must share the Defendant's treatment
information with DOC for the duration of the Defendant's incarceration and supervision. Laws of 2004, ch.
166 § 11.

SO ORDERED IN OPEN COURT.

DATED- JUNE 18, 2004

[Signature]
WACHTER, WSBA NO. 23278
Deputy Prosecuting Attorney

[Signature]
JUDGE **M. KARLYNN HABERLY**

[Signature] [Signature]
Walney, WSBA NO. 7215
Attorney for Defendant

[Signature]
DAN NMI STOCKWELL
Defendant

If I have not previously done so, I hereby agree to waive my
right to be present at any restitution proceedings:
[Signature] (initials)

JUDGMENT AND SENTENCE; Page 7

[Form revised December 15, 2002]



Russell D. Hauge, Prosecuting Attorney
Adult Criminal and Administrative Divisions
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 337-7174; Fax (360) 337-4949

1 Translator signature/Print name—
2 I am a certified interpreter of, or the court has found me other wise qualified to interpret, the
3 _____ language, which the Defendant understands. I translated this Judgment
4 and Sentence for the Defendant into that language.

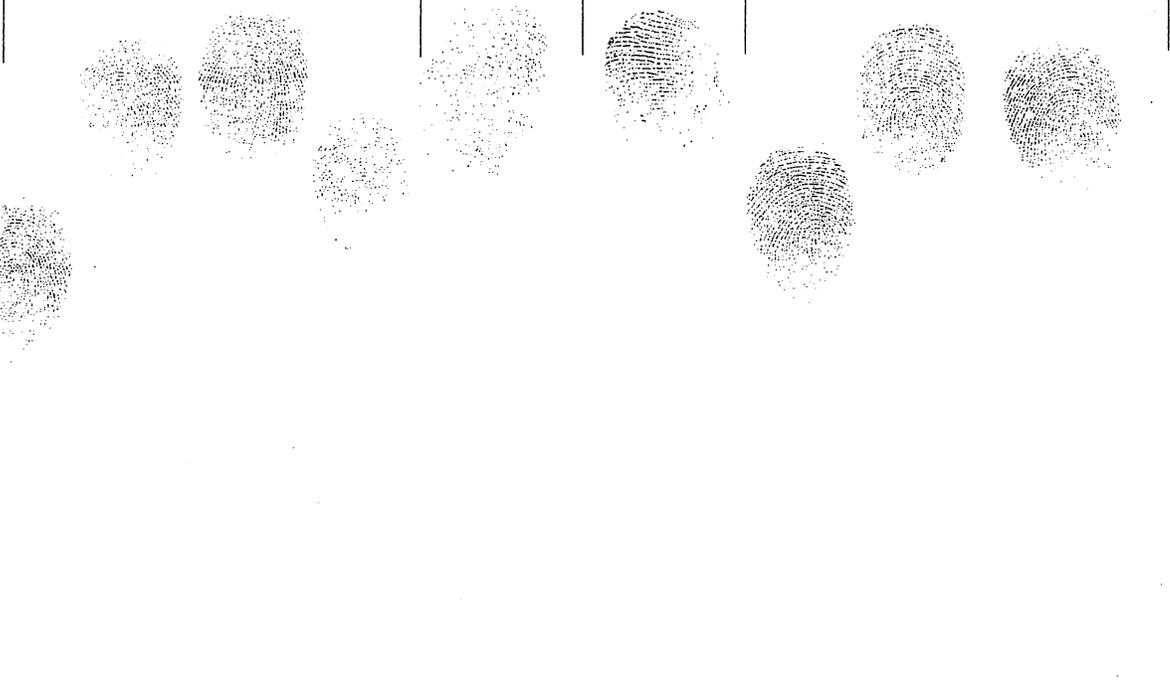
4 **IDENTIFICATION OF DEFENDANT**

5 Race: White Sex: Male DOB: 07/27/1951 Age: 52
6 D/L: STOCKDJ499M7 D/L State: Washington SID: 10438137 Height: 6-02
7 Weight: 265 JUVIS: Unknown Eyes: Brown Hair: Brown
8 DOC: 912170 SSN: 539-54-7458 FBI: [fbi number]

9 **FINGERPRINTS**—I attest that I saw the same Defendant who appeared in Court on this document affix his or
10 her fingerprints and signature thereto.
11 Clerk of the Court—*[Signature]* Deputy Clerk. Dated JUN 18 2004

12 **DEFENDANT'S SIGNATURE**—*[Signature]*

13 Left 4 fingers taken simultaneously Left Thumb Right Thumb Right 4 fingers taken simultaneously



27 Prosecutor's File Number—03-159195-1

28 **Prosecutor Distribution**—Original (Court Clerk); 1 copy (Prosecutor), 1 copy (DOC), 1 copy (Defense Atty); 1 copy (Pros Stat Keeper)



A
ay

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

RECEIVED AND FILED
IN OPEN COURT

JUN 18 2004

DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)	
	)	No. 03-1-01319-4
Plaintiff,)	
	)	NO CONTACT ORDER
v.	)	(Judgment and Sentence Appendix 4.3)
)	
DAN NMI STOCKWELL,)	
Age: 52; DOB: 07/27/1951,)	
)	
Defendant.)	

THIS MATTER having come on regularly before the Court to determine the need to issue a No Contact Order in the above-entitled matter; and the Court having determined to issue a No Contact Order herein to protect the following-

Persons-ENM (dob 03/03/1997) and MS (dob 12/23/1995)

The Court finds this is a Domestic Violence Offense pursuant to RCW 10.99.020.
Business(es) or Group(s)-n/a

IT IS ORDERED THAT-

- Defendant is RESTRAINED from causing or attempting to cause any physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking the victim(s).
- Defendant is RESTRAINED from having any contact whatsoever in person or through others, by telephone, mail, computer, or by any other means, except for service of process of court documents by a third party or contact by Defendant's lawyer with the victim.
- Defendant is RESTRAINED from entering or knowingly coming within or knowingly remaining within _500_____ [feet] [yards] [miles] of the Victim's [residence] [school] [place of work] [business] [_____].



1 **WARNINGS TO THE DEFENDANT:** Violation of the provisions of this order with actual
2 notice of its terms is a criminal offense under chapter 26.50 RCW, and will subject a violator to arrest. If
3 the violation of this order involves travel across a state line or the boundary of a tribal jurisdiction, or
4 involves conduct within the special maritime and territorial jurisdiction of the United States, which
5 includes tribal lands, the you may be subject to criminal prosecution in federal court under 18 U.S.C.
6 sections 2261, 2261A, or 2262.

7 Any assault; drive-by shooting, or reckless endangerment that is a violation of this order is a felony. Any
8 conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical
9 injury to another person is a class C felony.

10 Effective immediately, and continuing as long as this order is in effect, you may not possess a firearm or
11 ammunition. 18 U.S.C. section 922(g)(8). A violation of this federal firearms law carries a maximum
12 possible penalty of 10 years in prison and a \$250,000 fine. An exception exists for law enforcement
13 officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. section
14 925(a)(1). If you are convicted of an offense of domestic violence, you will be forbidden for life from
15 possessing a firearm or ammunition. 18 U.S.C. section 922(g)(9); RCW 9.41.040.

16 **YOU CAN BE ARRESTED EVEN IF ANY PERSON OR PERSONS
17 PROTECTED BY THIS ORDER INVITES OR ALLOWS YOU TO
18 VIOLATE THIS ORDER'S PROHIBITIONS.**

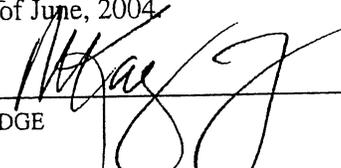
19 You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court
20 can change the order.

21 Pursuant to 18 U.S.C. section 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico,
22 any United States territory, and any tribal land within the United States shall accord full faith and credit to
23 the order.

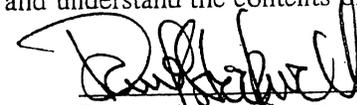
24 **This No Contact Order Is Permanent: The Order is in Effect for the Remainder of the
25 Defendant's Life**

26 *All previous No Contact Orders issued under this cause number, if any, are hereby rescinded.*

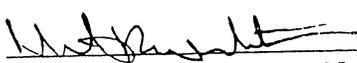
27 DONE IN OPEN COURT this 18th day of June, 2004

28 
JUDGE

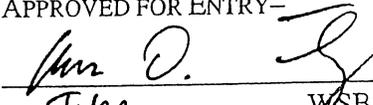
29 I have read or have had read to me and understand the contents of this No Contact Order,
30 and have received a copy.

31 
DANIEL JAMES STOCKWELL
Defendant

PRESENTED BY-


NEIL R. WACHTER, WSBA No. 23278
Deputy Prosecuting Attorney

APPROVED FOR ENTRY-


Taney, WSBA No. 22154
Attorney for Defendant



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Clerk's Action Required: The Court Clerk shall immediately forward a copy of this No Contact Order to the Kitsap County Sheriff's Office.

Law Enforcement Action Required: The Kitsap County Sheriff's Office shall immediately enter this No Contact Order in a state computer-based criminal intelligence system.

LE Police Report No. 2003SO004956

IDENTIFICATION OF DEFENDANT

Race: White	Sex: Male	DOB: 07/27/1951	Age: 52
D/L:STOCKDJ499M7	D/L State: Washington	SID: 10438137	Height: 6-02
Weight: 265	JUVIS: Unknown	Eyes: Brown	Hair: Brown
DOC: 912170	SSN: 539-54-7458	FBI: [fbi number]	

Prosecutor's File Number-03-159195-1



Exhibit 2

Exh.2 - 2004 info

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

RECEIVED AND FILED
IN OPEN COURT
APR 19 2004
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)	
	)	No. 03-1-01319-4
Plaintiff,)	
	)	FIRST AMENDED INFORMATION
v.)	
	)	(Total Counts Filed - 2)
DAN NMI STOCKWELL,)	
Age: 52; DOB: 07/27/1951,)	
)	
Defendant.)	

COMES NOW the Plaintiff, STATE OF WASHINGTON, by and through its attorney, NEIL R. WACHTER, WSBA NO. 23278, Deputy Prosecuting Attorney, and hereby alleges that contrary to the form, force and effect of the ordinances and/or statutes in such cases made and provided, and against the peace and dignity of the STATE OF WASHINGTON, the above-named Defendant did commit the following offense(s)-

COUNT I
Child Molestation in the First Degree

On or between March 1, 2002 and April 1, 2003, in the County of Kitsap, State of Washington, the above-named Defendant, being at least thirty-six (36) months older than the victim, had sexual contact with another person who was less than twelve (12) years old and not married to the perpetrator, to-wit: ENM, 03/03/1997; contrary to the Revised Code of Washington 9A.44.083.

(MAXIMUM PENALTY—Life imprisonment and/or a \$50,000 fine pursuant to RCW 9A.44.083(2) and 9A.20.021(1)(a), plus restitution and assessments.)



1 (If the Defendant has previously been convicted on two separate occasions of a "most serious
2 offense" as defined by RCW 9.94A.030(24), in this state, in federal court, or elsewhere, the
3 mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
to RCW 9.94A.030(27)(a) and 9.94A.120(4).)

4 (If the Defendant has previously been convicted in this state or elsewhere on one separate
5 occasion of rape in the first or second degree, or rape of a child in the first or second degree, or
6 child molestation in the first degree, or indecent liberties by forcible compulsion, or any of the
7 following, provided there is a finding of sexual motivation: murder in the first or second degree,
8 or homicide by abuse, or kidnapping in the first or second degree, or assault in the first or second
9 degree, or burglary in the first degree, or an attempt to commit any of the preceding crimes, the
mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
to RCW 9.94A.030(27)(b) and 9.94A.120(4).)

10 JIS Code: 9A.44.083 Child Molestation 1

11 **COUNT I**
12 Special Allegation—Domestic Violence

13 AND FURTHERMORE, the Defendant did commit the above crime against a family or
14 household member; contrary to Revised Code of Washington 10.99.020.

15 **COUNT II**
16 **Attempted Child Molestation in the First Degree**

17 On or between March 1, 2002 and April 1, 2003, in the County of Kitsap, State of
18 Washington, the above-named Defendant, with intent to commit the crime of child molestation in
19 the first degree, did any act which is a substantial step toward the commission of that crime
20 (being at least thirty-six (36) months older than the victim, had sexual contact with another person
21 who was less than twelve (12) years old and not married to the perpetrator, to-wit: MS,
22 12/23/1995); contrary to the Revised Code of Washington 9A.44.083 and 9A.28.020(1).
23 (MAXIMUM PENALTY—Life imprisonment and/or a \$50,000 fine pursuant to RCW 9A.44.083(2)
24 and 9A.20.021(1)(a), plus restitution and assessments.)

25 (If the Defendant has previously been convicted on two separate occasions of a "most serious
26 offense" as defined by RCW 9.94A.030(24), in this state, in federal court, or elsewhere, the
27 mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
to RCW 9.94A.030(27)(a) and 9.94A.120(4).)

28 (If the Defendant has previously been convicted in this state or elsewhere on one separate
29 occasion of rape in the first or second degree, or rape of a child in the first or second degree, or
30 child molestation in the first degree, or indecent liberties by forcible compulsion, or any of the
31 following, provided there is a finding of sexual motivation: murder in the first or second degree,
or homicide by abuse, or kidnapping in the first or second degree, or assault in the first or second



1 degree, or burglary in the first degree, or an attempt to commit any of the preceding crimes, the
2 mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
3 to RCW 9.94A.030(27)(b) and 9.94A.120(4).)

4 JIS Code: 9A.44.083 Child Molestation 1

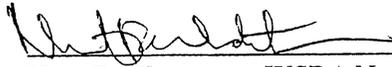
5 **COUNT II**
6 Special Allegation-Domestic Violence

7 AND FURTHERMORE, the Defendant did commit the above crime against a family or
8 household member; contrary to Revised Code of Washington 10.99.020.

9 I certify (or declare) under penalty of perjury under the laws of the State of Washington
10 that I have probable cause to believe that the above-named Defendant committed the above
11 offense(s), and that the foregoing is true and correct to the best of my knowledge, information and
12 belief.

13 DATED: April 5, 2004
14 PLACE: Port Orchard, WA

STATE OF WASHINGTON



NEIL R. WACHTER, WSBA NO. 23278
Deputy Prosecuting Attorney

17 All suspects associated with this incident are-

18 Dan nmi Stockwell
19
20
21
22
23
24
25
26
27
28
29
30
31



Exhibit 3

Exh. 3 - DW II opinion

FILED
COURT OF APPEALS
DIVISION II

05 AUG 23 AM 8:40

STATE OF WASHINGTON

BY _____
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

DAN NMI STOCKWELL,

Appellant.

No. 31920-9-II

PART PUBLISHED OPINION

Hunt, J. — Dan Stockwell appeals two Persistent Offender Accountability Act (POAA) life sentences for first degree and attempted first degree child molestation with special allegations of domestic violence against family members. He argues the trial court erred in determining that his prior first degree statutory rape conviction was comparable to a first degree child rape conviction and, thus, a “strike” under the POAA¹ because, under *Blakely*,² a jury must decide whether he is a persistent offender. Holding the trial court properly determined that Stockwell’s prior conviction was legally comparable to a POAA strike offense, we affirm.

¹ RCW 9.94A.030(32)(b); RCW 9.94A.570.

² *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

FACTS

A jury found Dan Stockwell guilty of one count of first degree child molestation and one count of attempted first degree child molestation committed against family or household members, his step-granddaughters.

The State asked the trial court to sentence Stockwell to life in prison, without the possibility of parole, under the “two strikes” provision of the POAA, RCW 9.94A.030(32)(b); RCW 9.94A.570. The State argued that Stockwell’s 1986 first degree statutory rape conviction under former RCW 9A.44.070(1) (1985), though not an enumerated “strike” offense, is comparable to the enumerated offense of first degree child rape under RCW 9A.44.073(1).

The trial court ruled that former RCW 9A.44.070(1)’s definition of statutory rape was broader than RCW 9A.44.073(1)’s definition of child rape because the latter offense contains an additional element—that the victim was not married to the perpetrator. The trial court noted that (1) the 1986 information charged Stockwell with having committed the statutory rape in 1985; (2) the 1986 statutory rape judgment and sentence, indicated that Stockwell was 35 years old at the time of his conviction; and (3) the affidavit of probable cause showed that the victim was the eight-year-old daughter of Stockwell’s girlfriend. The trial court found that these documents were circumstantial evidence that the victim was not married to Stockwell at the time of the offense.

The trial court then ruled that Stockwell’s prior 1986 statutory rape conviction was comparable to first degree child rape under RCW 9.94A.030(32)(b)(ii) and, therefore, it would count as a strike under the POAA. Accordingly, the trial court imposed two concurrent life sentences without the possibility of parole. Stockwell appeals.

ANALYSIS

I. PERSISTENT OFFENDER STATUS

Stockwell first argues the trial court improperly relied on judicially determined facts to increase his sentence beyond the standard range in violation of his Sixth Amendment³ right to a jury trial when it imposed persistent offender life sentences without parole under RCW 9.94A.030(32)(b) and RCW 9.94A.570. He contends that the trial court's comparability analysis, counting his prior conviction for first degree statutory rape as a "strike" under the POAA, violates his right to a jury trial for exceptional sentencing factors set forth in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). We hold that the trial court properly determined the legal comparability between the offenses; therefore, we do not reach Stockwell's *Blakely* argument.

A. POAA

The POAA requires the sentencing court to sentence a persistent offender to a life sentence without the possibility of release, regardless of the standard range or statutory maximum sentence for the charged offense. RCW 9.94A.570. RCW 9.94A.030(32)(b) defines a "persistent offender" as one who:

(b)(i) Has been convicted of: (A) . . . rape of a child in the first degree, child molestation in the first degree, . . . or (C) an attempt to commit any crime listed in this subsection 32(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection.

³ U.S. CONST. amend. VI.

(Emphasis added.) The trial court found that Stockwell met this definition of a persistent offender, based on a prior statutory rape conviction it found comparable to a prior “strike” offense listed under this statute.

B. Comparability

Stockwell argues that the record does not support the trial court’s finding that his prior first degree statutory rape conviction is comparable to first degree child rape, a POAA strike offense. More specifically, he argues, the trial court could not infer he was not married to the victim from the fact that she was the eight-year-old daughter of his girlfriend and that he was 35 years old at the time. We disagree.

In conducting a comparability analysis, Washington courts (1) determine the most comparable offense and its classification, (2) compare the elements of the offenses, and (3) treat the prior conviction as if it were a conviction for the comparable persistent offender offense. *State v. Berry*, 141 Wn.2d 121, 131, 5 P.3d 658 (2000). These three steps for comparing statutory elements is a process of *legal* comparability.

But if the statutes being compared contain different elements, “the sentencing court may look at the defendant’s conduct, as evidenced by the indictment or information, to determine whether the conduct would have violated the comparable . . . statute.” *State v. Morley*, 134 Wn.2d 588, 606, 952 P.2d 167 (1998) (quoting *State v. Duke*, 77 Wn. App. 532, 535, 892 P.2d 120 (1995)).⁴ This method of evaluating the defendant’s prior conduct entails a process of *factual* comparability. See *Personal Restraint of Lavery*, 154 Wn.2d 249, 255-58, 111 P.3d 837 (2005)

⁴ *Morley* reminds us, “While it may be necessary to look into the record of a foreign conviction to determine its comparability to a Washington offense, the elements of the charged crime must remain the cornerstone of the comparison.” 134 Wn.2d at 606.

(analyzing legal and factual comparability in a two part test to determine whether foreign convictions are comparable to Washington strike offenses under the POAA).

The elements of first degree statutory rape, Stockwell's prior first strike conviction, are set forth in former RCW 9A.44.070(1) (1985): "A person over thirteen years of age is guilty of statutory rape in the first degree when the person engages in sexual intercourse with another person who is less than eleven years old." The elements of first degree child rape, the comparable contemporary offense, are defined under RCW 9A.44.073(1): "A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and *not married to the perpetrator* and the perpetrator is at least twenty-four months older than the victim." (Emphasis added.) Stockwell argues that these two offenses are not legally comparable because the current child rape statute requires proof that the victim was not married to the perpetrator, an element not included in the former first degree statutory rape statute. We disagree.

We have previously held that nonmarriage is an implied element under former RCW 9A.44.070(1). *State v. Bailey*, 52 Wn. App. 42, 47, 757 P.2d 541 (1988), *aff'd*, 114 Wn.2d 340 (1990).⁵ Thus, by pleading guilty to the 1986 first degree statutory rape as charged, Stockwell also pleaded guilty to the implied element of his nonmarriage to the victim.

We hold, therefore, that the trial court did not err in finding that Stockwell's 1986 first degree statutory rape conviction was legally comparable to first degree child rape for POAA purposes.

⁵ *Contra State v. Hodgson*, 44 Wn. App. 592, 599, 722 P.2d 1336 (1986), *aff'd in part, rev'd in part*, 108 Wn.2d 662 (1987).

B. *Blakely*

Stockwell further argues that the trial court violated the Sixth Amendment in relying on a “judicially determined fact” (i.e., that he was not married to his 1986 victim), rather than a jury verdict or his own admission, “to impose a greater sentence than allowed by the jury’s verdict,” contrary to *Blakely*. Because we uphold the trial court’s analysis finding Stockwell’s prior conviction legally comparable to a current strike offense, we need not address Stockwell’s arguments concerning factual comparability.

Accordingly, we affirm the trial court’s sentencing of Stockwell as a persistent offender.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

II. ADDITIONAL ISSUES

A. Counsel

Stockwell’s appellate counsel argues that the POAA: (1) violates the separation of powers doctrine;⁶ (2) violates the “guarantee clause” in article 4, section 4 of the U.S. Constitution and the “fundamental principles” provision in article I, section 32 of the Washington Constitution; and (3) constitutes a bill of attainder.⁷ As the parties’ counsel discuss in their briefs, our Supreme Court has already resolved these issues contrary to Stockwell’s

⁶ WASH. CONST. art. 4, § 1.

⁷ U.S. CONST. art. I, § 10, cl. 1; WASH. CONST. art. 1, § 23.

arguments.⁸ Because these Supreme Court cases are binding on us, we do not further consider these issues.

B. Pro Se

Stockwell alleges pro se⁹ that the trial court erroneously admitted child hearsay statements. Because counsel did not object to the child hearsay at trial, however, we do not consider these issues on appeal, except within the context of Stockwell's ineffective assistance of trial counsel argument. We do not review on appeal an alleged error not raised at trial unless it is a "manifest error affecting a constitutional right." RAP 2.5(a)(3); *State v. Scott*, 110 Wn.2d 682, 686-87, 757 P.2d 492 (1988). No such manifest error affecting a constitutional right is involved here.¹⁰

Although Stockwell argues that his trial counsel was ineffective, the record shows only Stockwell's dissatisfaction and disagreement with counsel's trial strategy. Such dissatisfaction

⁸ See *State v. Thorne*, 129 Wn.2d 736, 768-69 n.7, 760, 921 P.2d 514 (1996) (holding that the POAA does not violate the separation of powers doctrine and noting that the Washington three strikes law does not contain the same constitutional deficiencies as the California law; and holding that the POAA is not a bill of attainder). See also *State v. Davis*, 133 Wn.2d 187, 190, 943 P.2d 283 (1997) (holding that "any challenge to the Three Strikes Law based on the "Guarantee Clause" would be frivolous").

⁹ Stockwell filed a Statement of Additional Grounds in accordance with RAP 10.10.

¹⁰ Stockwell attempts to raise a *Crawford* right to confrontation issue. But *Crawford* applies only to cases where the declarant did not testify and the testimonial statement was not subject to cross examination by the defendant. *Crawford v. Washington*, 541 U.S. 36, 59 n.9, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004) ("when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements."). Here, in contrast, both child victims testified and were subject to Stockwell's cross examination.

Furthermore, Stockwell's trial counsel specifically stated that after he and Stockwell conferred, they decided not to raise constitutional objections under *Crawford* because both children were testifying.

and disagreement do not amount to ineffective assistance counsel.¹¹ See *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996) (holding that matters of trial strategy or tactics do not establish deficient performance of counsel).

Stockwell also argues that the trial court erroneously failed to give a limiting instruction pertaining to the child hearsay statements during the victims' interviews with Cynthia Conrad. The trial court allowed the State to read a nearly verbatim report created by Cynthia Conrad, detailing her interviews with the child victims, based on her immediate recollection of the interviews. During this reading, the jurors followed along with individual copies.

Stockwell mistakenly argues that the trial court erred in allowing this report to be sent back to the jury without an instruction not to place undue emphasis on the testimony. The record does not support this assertion and argument. On the contrary, the record shows that when Stockwell's trial counsel objected, the trial court allowed the read-aloud report for "illustrative" purposes only, and it did not allow the report into the jury room during deliberations.

Stockwell further argues that in closing argument, the prosecutor vouched for Cynthia Conrad's credibility, which prejudiced his case. We disagree. Our review of the record shows that the prosecutor made proper arguments by emphasizing Conrad's professional credentials.

¹¹ Defense counsel conceded that the hearsay statements were reliable under the factors enumerated in *State v. Ryan*, 103 Wn.2d 165, 175-76, 691 P.2d 197 (1984). Counsel made this decision after the competency hearing where the court determined that the children were competent to testify. Knowing that the children would testify, counsel conferred with Stockwell and decided not to challenge the admissibility of the child hearsay statements at trial. This was a reasonable trial strategy in light of the defense's opportunity to impeach the child witnesses on cross examination and to point out disparities between their present testimonies and their prior hearsay statements. Moreover, the record reflects that the trial court exhaustively analyzed all of the *Ryan* reliability factors before finding the children's prior statements admissible; thus, it is doubtful that trial counsel's alleged "failure" to challenge their reliability resulted in any prejudice to Stockwell.

31920-9-II

The prosecutor did not express a personal opinion and, thus, did not vouch for Conrad's credibility. *See State v. Fiallo-Lopez*, 78 Wn. App. 717, 730, 899 P.2d 1294 (1995) (holding that it is improper vouching for a prosecutor to assert a personal opinion about a witness' credibility).

We find no error.

Affirmed.

Hunt J.
(Hunt, J.)

We concur:

Bridgewater, P.J.
Bridgewater, P.J.

Van Deren, J.
Van Deren, J.

Exhibit 4

Exh 4 - SCA opinion

159 Wn.2d 394, *, 150 P.3d 82, **;
2007 Wash. LEXIS 2, ***

1 of 3 DOCUMENTS

The State of Washington, *Respondent*, v. Dan Stockwell, *Petitioner*.

No. 77693-8

SUPREME COURT OF WASHINGTON

159 Wn.2d 394; 150 P.3d 82; 2007 Wash. LEXIS 2

June 29, 2006, Argued

January 4, 2007, Filed

PRIOR HISTORY: [***1]

State v. Stockwell, 129 Wn. App. 230, 118 P.3d 395, 2005 Wash. App. LEXIS 2098 (2005)

SUMMARY:

Sanders, J., dissents by separate opinion.

Nature of Action: Prosecution for first degree child molestation and attempted first degree child molestation.

Superior Court: The Superior Court for Kitsap County, No. 03-1-01319-4, M. Karlynn Haberly, J., on June 18, 2004, entered a judgment on a verdict of guilty and sentenced the defendant to life imprisonment as a persistent offender.

Court of Appeals: The court *affirmed* the judgment at 129 Wn. App. 230, 118 P.3d 395 (2005), holding that the defendant's prior conviction of first degree statutory rape was legally comparable to the current offense of first degree rape of a child, which is a qualifying offense for purposes of persistent offender sentencing.

Supreme Court: Holding that the defendant's prior conviction of first degree statutory rape is subject to comparability analysis, is comparable to the current offense of first degree rape of a child, and qualifies as a "strike" for purposes of persistent offender sentencing, the court *affirms* the decision of the Court of Appeals and the judgment.

HEADNOTES:

[1] **Appeal--Review--Issues of Law--Standard of Review.** A case that presents only questions of law is reviewed de novo.

[2] **Criminal Law--Punishment--Sentence--Life Imprisonment Without Parole--Persistent Offender Accountability Act--"Most Serious Offense"--Former Offense--Comparability Test.** Whether a former offense

qualifies as a "strike" offense for purposes of persistent offender sentencing under RCW 9.94A.505 and .570 and RCW 9.94A.030(29) and (33) depends on whether the elements of the former offense are comparable to the elements of a current designated "strike" offense. If the elements of the former offense are comparable to the elements of a current designated "strike" offense, the former offense will count as a "strike" as if it were the current designated offense.

[3] **Sexual Offenses--Rape--Statutory Rape--Elements--Nonmarriage to Victim.** Nonmarriage to the victim is an implied element of the former crime of first degree statutory rape under former RCW 9A.44.070 (1986) (repealed by Laws of 1988, ch. 145, § 24(1)).

[4] **Criminal Law--Punishment--Sentence--Life Imprisonment Without Parole--Persistent Offender Accountability Act--Sexual Offenses--Two Strikes Provisions--Qualifying Offenses--Statutory Rape.** For purposes of sentencing an offender to life imprisonment as a persistent sex offender under RCW 9.94A.030(33)(b) and RCW 9.94A.570, first degree statutory rape under former RCW 9A.44.070(1) (1986) is comparable to first degree rape of a child under RCW 9A.44.073(1) and counts as a "strike" offense.

COUNSEL: Catherine A. Glinski, for petitioner.

Russell D. Hauge, Prosecuting Attorney, and Randall A. Sutton, Deputy, for respondent.

JUDGES: AUTHOR: Justice Tom Chambers. WE CONCUR: Chief Justice Gerry L. Alexander, Justice Charles W. Johnson, Justice Susan Owens, Justice Barbara A. Madsen, Justice Mary E. Fairhurst, Justice James M. Johnson, Justice Bobbe J. Bridge AUTHOR: Justice Richard B. Sanders (Dissenting).

OPINION BY: Tom Chambers

OPINION

En Banc

[*395] [**83] P1 Chambers, J. -- We must decide whether first degree rape of a child and first degree statutory rape are legally comparable crimes. We conclude they are and affirm Dan Stockwell's life sentence as a persistent offender.

I

P2 In 1986, Stockwell pleaded guilty to one count of first degree statutory rape. The information filed in the 1986 case charged:

[*396] That DANIEL J. STOCKWELL, in Pierce County, Washington, during the period between February 1, 1985 and March 31, 1985, did unlawfully and feloniously being over the age of 13 years, engage in sexual intercourse with [CS], who was less than 11 years old, contrary to RCW 9A.44.070[(1986)], and against the peace and dignity of the State of Washington.

Clerk's Papers (CP) at 62-63.¹ The probable cause affidavit additionally revealed that CS was eight years old and that "the defendant, her mother's boyfriend, on numerous occasions, [***2] engaged in sexual intercourse with her." CP at 64. Stockwell's statement on plea of guilty acknowledged that he was over 13, CS was under 11, and that they had had intercourse. Nowhere in the charging or sentencing documents or in the guilty plea does it affirmatively state that Stockwell was not married to eight-year-old CS, though it does establish he was 34 years old at the time.²

1 At approximately the same time, Stockwell pleaded guilty to one count of indecent liberties against a different victim. After these two convictions, he received sex offender treatment. It appears that there are no intervening convictions.

2 In 1986, the age of consent to marry in Washington was 18. Laws of 1973, 1st Ex. Sess., ch. 154, § 26, *codified as RCW 26.04.010*. A marriage where one party is younger than 17 is simply void *unless* a trial judge finds a "necessity" not to void it. *Id.*

P3 Later, Stockwell married CS's mother. Then, in 2004, Stockwell was tried and convicted [***3] of first

degree child molestation and attempted child molestation of two of his wife's granddaughters. Given his prior rape conviction, the State successfully sought a life sentence under the Persistent Offender Accountability Act (POAA), former *RCW 9.94A.030(32)(b)* (2002), *recodified as RCW 9.94A.030(33)(b)*; *RCW 9.94A.570*.

P4 Stockwell appealed his sentence, arguing that his prior offense, first degree statutory rape, is neither listed as nor comparable to a strike offense, and thus he was not eligible for a life sentence. The Court of [**84] Appeals affirmed the trial court. We accepted review.

[*397] II

[1]P5 Since only questions of law are before us, our review is de novo. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The POAA requires a life sentence upon the second (or third) conviction for certain designated crimes or for crimes that are deemed "comparable" to those designated. *RCW 9.94A.030(33)*. First degree rape of a child is a designated strike offense, but in 1986 no crime in Washington bore that name. See *RCW 9.94A.030(33)(b)(i)* [***4] , .570. We turn first to whether rape of a child is legally comparable to first degree statutory rape.

[2]P6 We recently considered a similar question in *In re Personal Restraint of Lavery*, 154 Wn.2d 249, 111 P.3d 837 (2005). We reiterated that when "the elements of the foreign conviction are comparable to the elements of a Washington strike offense on their face, the foreign crime counts toward the offender score as if it were the comparable Washington offense." *Id.* at 255 (citing *State v. Morley*, 134 Wn.2d 588, 605-06, 952 P.2d 167 (1998)). While Stockwell's offense was not a foreign one, we will apply a similar approach here.

P7 Thus, if the elements of the strike offense and the elements of the foreign (or prior) crime are comparable, the former (or prior) crime is a strike offense. *Id.* Legal comparability analysis is not an exact science, but when, for example, an out-of-state statute criminalizes more conduct than the Washington strike offense, or when there would be a defense to the Washington strike offense that was not meaningfully available to the defendant in the other jurisdiction or at the time, the elements may not be legally [***5] comparable. See *Lavery*, 154 Wn.2d at 256-57.

[3]P8 Only one element concerns us here. The legislature has added a statutory element to first degree rape of a child: nonmarriage. *RCW 9A.44.073(1)*. The former statutory rape statute, however, did not mention marriage. See former *RCW 9A.44.070* , *repealed by*

159 Wn.2d 394, *; 150 P.3d 82, **;
2007 Wash. LEXIS 2, ***

Laws of 1988, ch. 145, [*398] § 24(1).³ Stockwell argues that the modern statute criminalizes less conduct (by exempting sexual contact between spouses) and provides a defense (of marriage) that would not have been available under the prior law. The Court of Appeals rejected his claim because it found that nonmarriage was an implied, nonstatutory element of the crime of statutory rape and thus the elements were comparable. *State v. Stockwell*, 129 Wn. App. 230, 235, 118 P.3d 395 (2005).

3 The legislature created the current crime of first degree rape of a child in that same act. See Laws of 1988, ch. 145, § 2, codified as RCW 9A.44.073.

P9 [***6] In the 1980s, divisions of the Washington State Court of Appeals split on whether nonmarriage was an implied element of first degree statutory rape: Division Two finding it was, Division One finding it was not. *State v. Bailey*, 52 Wn. App. 42, 46-47, 757 P.2d 541 (1988), *aff'd on other grounds*, 114 Wn.2d 340, 787 P.2d 1378 (1990); *State v. Hodgson*, 44 Wn. App. 592, 599, 722 P.2d 1336 (1986), *aff'd on other grounds*, 108 Wn.2d 662, 740 P.2d 848 (1987).⁴

4 Stockwell asserts that this court has already found that rape of a child and statutory rape were not substantially similar in *In re Personal Restraint of Thompson*, 141 Wn.2d 712, 10 P.3d 380 (2000). We disagree. In *Thompson*, the petitioner pleaded guilty to a crime (rape of a child) that did not exist on the date of the conduct charged. This court vacated, tolled the statute of limitations, and allowed refile of the charges under the correct statute. A judgment and sentence is clearly invalid on its face if it is for a crime that did not exist at the time. *Id.* at 719. The primary issue in *Thompson* was whether the defendant had waived the issue or invited the error by pleading guilty. While there was some discussion of the elements of the two crimes in the context of the statute of limitations and the appropriate scope of a superseding indictment, the parties did not appear to be disputing what the elements were, merely the consequences of them.

P10 [***7] In *Bailey*, a defendant was charged with first degree statutory rape of a three-year-old child. The jury was instructed that if it could not reach a verdict on that charge, it could consider whether the defendant had committed indecent liberties as a lesser included offense. The jury returned a verdict [***85] for indecent liberties and *Bailey* appealed. *Bailey* argued that, per *Hodgson*, indecent liberties was *not* a lesser included offense of first degree statutory rape since indecent liberties

contained an element not present in first degree statutory rape: nonmarriage.

[*399] P11 Division Two disagreed. It concluded:

the analysis in *Hodgson* leads to absurd results. First, the Legislature cannot possibly have contemplated statutory rape in the first degree [as] being perpetrated on one's spouse. In the unlikely event that a child of 10 years [old] or less establishes sufficient necessity to receive permission from the superior court to marry, it is inconceivable that the Legislature intended to criminalize consensual sexual intercourse between spouses, regardless of their ages. The fact that the Legislature did not expressly make nonmarriage an element of first degree [***8] statutory rape can lead to only one logical conclusion: the Legislature did not expect that children under the age of 10 would be marrying. Therefore, the only plausible reading of former RCW 9A.44.070 is to consider nonmarriage an implicit element of the crime.

Bailey, 52 Wn. App. at 46. We agree with Division Two that it is simply inconceivable that the legislature would expect that children 10 years old or less would marry. Nonmarriage is an implied element of the crime of first degree statutory rape.

[4]P12 Further, our purpose today is to determine what the legislature intended. Cf. *State v. Calle*, 125 Wn.2d 769, 777-78, 888 P.2d 155 (1995). The legislature added this comparability clause after a court declined to infer one. See *State v. Delgado*, 148 Wn.2d 723, 725, 63 P.3d 792 (2003) and Laws of 2001, ch. 7, § 2(31)(b)(ii). Given the apparent impetus for adding a comparability clause to the POAA, given *Bailey*, and given the legislative history of these statutes, we hold as a matter of law that first degree statutory rape under former RCW 9A.44.070(1) and first degree rape of a child under RCW 9A.44.073(1) [***9] are comparable. See RCW 9.94A.030(33)(b), .570.⁵

5 Before 2004, it was clear that prior crimes could also be factually comparable to strike offenses. *Morley*, 134 Wn.2d 588, 952 P.2d 167. Since we find that rape of a child and statutory rape are legally comparable, no fact finding is necessary. Therefore, we do not reach whether *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct.

2531, 159 L. Ed. 2d 403 (2004) requires a jury trial to determine whether a prior offense is factually comparable.

[*400] III

P13 Former first degree statutory rape and rape of a child in the first degree are comparable. Therefore, first degree statutory rape is a "strike" under the "two strikes" provision of the POAA. We affirm the Court of Appeals and affirm Stockwell's life sentence.

Alexander, C.J., and C. Johnson, Madsen, Bridge, Owens, Fairhurst, and J. [***10] M. Johnson, JJ., concur.

DISSENT BY: Richard B. Sanders

DISSENT

P14 Sanders, J. -- (dissenting) The majority holds first degree statutory rape under former RCW 9A.44.070(1) (1986) and first degree rape of a child under RCW 9A.44.073(1) are legally comparable crimes. I disagree.

P15 To conclude statutory rape and rape of a child are comparable, the majority reasoned, "it is simply inconceivable that the legislature would expect that children 10 years old or less would marry," and therefore, "[n]onmarriage is an implied element of the crime of first degree statutory rape." Majority at 399. This is unsupported. The majority dismisses *In re Personal Restraint of Thompson*, 141 Wn.2d 712, 10 P.3d 380 (2000) where we compared the elements of first degree statutory rape (former RCW 9A.44.070) and first degree rape of a child (RCW 9A.44.073) and found the two statutes *not* legally comparable for purposes of a guilty plea. We stated in *Thompson*, "[o]ne of the elements of first degree statutory rape is that the victim be less than 11 years old (former RCW 9A.44.070); for first degree rape of a child the victim [***11] must be less than 12 years old. Also, the earlier statute requires the perpetrator to be over 13 years of [**86] age, whereas the later statute says instead that the perpetrator must be at least 24 months older than the victim *and not married to the victim.*" *Id.* at 722 (emphasis added).

P16 Furthermore, while Division Two of the Court of Appeals held nonmarriage is an implied element of first degree statutory rape, Division One has held it is

not. See [*401] *State v. Bailey*, 52 Wn. App. 42, 47, 757 P.2d 541 (1988), *aff'd*, 114 Wn.2d 340, 787 P.2d 1378 (1990); *State v. Hodgson*, 44 Wn. App. 592, 599-600, 722 P.2d 1336 (1986), *aff'd*, 108 Wn.2d 662, 740 P.2d 848 (1987). *Bailey* and *Hodgson* analyzed whether indecent liberties is a lesser included offense of statutory rape and focused on whether each element of the lesser offense of indecent liberties (containing the element of nonmarriage) is included in the charged offense of statutory rape. In *Hodgson*, the State, like the majority here, argued that because RCW 26.04.010 renders a marriage between two people under 17 years of [***12] age void, "the Legislature omitted the nonmarriage element because it was obvious that a person under 11 years of age could not be legally married." *Hodgson*, 44 Wn. App. at 599. The court found this argument unpersuasive, reasoning that because RCW 26.04.010 "allows for marriage under the age of 17 when the age requirement 'has been waived by a superior court judge ... on a showing of necessity' ... , nonmarriage is *not* an element implicit in first degree statutory rape." *Id.* (emphasis added) (first alteration in original). The court continued:

Furthermore, the fact that the Legislature requires proof of nonmarriage in second (victim 11 to 13 years old) and third (victim 14 to 15 years old) degree statutory rape indicates a legislative recognition that victims under 17 may be married... . This suggests that the Legislature, as a matter of policy, decided that intercourse with a victim under 11 constitutes statutory rape regardless of whether the perpetrator and the victim are married.

Id. at 599-600.

P17 I am not persuaded by the majority's unsupported assertion that nonmarriage is an implied [***13] element of statutory rape and therefore cannot agree statutory rape and rape of a child are comparable crimes.

P18 I respectfully dissent.

Exhibit 5

Exh 5 - S. Ct Mandate



I have affixed the seal of the Supreme Court of the State of Washington and filed this Mandate this 29th day of January, 2007.

A handwritten signature in black ink, appearing to read "Ronald R. Carpenter".

RONALD R. CARPENTER
Clerk of the Supreme Court
State of Washington

cc: Hon. M. Karlynn Haberly, Judge
Hon David W. Peterson, Clerk
Kitsap County Superior Court
Hon. David Ponzoha, Clerk
Court of Appeals Division II
Catherine E. Glinski
Randall A. Sutton
Reporter of Decisions

Exhibit 6

Exh. 6- Juror Questionnaire

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

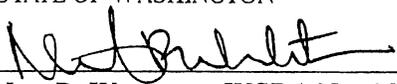
RECEIVED AND FILED
IN OPEN COURT
APR 20 2004
DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)	
	)	No. 03-1-01319-4
Plaintiff,)	
	)	STATE'S PROPOSED JUROR
v.	)	QUESTIONNAIRE
)	
DAN NMI STOCKWELL,)	
Age: 52; DOB: 07/27/1951,)	
)	
Defendant.)	

Comes Now, the Plaintiff, STATE OF WASHINGTON, by and through its attorney of record below-named, and presents the attached proposed juror questionnaire, for use in voir dire for trial in the above-entitled action.

DATED this 20th day of April, 2004.

STATE OF WASHINGTON

NEIL R. WACHTER, WSBA No. 23278
Deputy Prosecuting Attorney

Prosecutor's File Number-03-159195-1

STATE'S PROPOSED JUROR QUESTIONNAIRE



Russell D. Hauge, Prosecuting Attorney
Special Assault Unit
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 337-7148; Fax (360) 337-7229

Juror Number: _____

TO PROSPECTIVE JURORS

This questionnaire is designed to elicit information about your qualifications to sit as a juror in a pending case, and to shorten the process of jury selection. Please respond to the following questions as completely as possible. The information contained in this questionnaire will become part of the court's permanent record, although all questionnaires will be sealed and will not be available to the general public. During the questioning by the attorneys and the Court, you will be given an opportunity to explain or expand any answers if necessary. There is also an explanation section at the end of this questionnaire if you need more room to answer particular questions.

Some of these questions may call for information of a personal nature that you may not want to discuss in an open courtroom with the press and/or the public present. If you feel an answer may invade your right to privacy, you may circle the question number to the left of the question. The Court will then give you an opportunity to explain your request for confidentiality in a closed hearing.

After you have filled out the questionnaire completely and signed the juror oath, please present your questionnaire to the Bailiff. Please make certain that your juror number appears on each page.

If you wish to make further comments regarding any of your answers, please do so on the space provided under "Further Explanation" on the last page of the questionnaire. Thank you for your cooperation.

**YOU ARE UNDER THE COURT'S ORDER: YOU MAY NOT DISCUSS THIS
QUESTIONNAIRE OR YOUR ANSWERS WITH ANYONE.**

JURY QUESTIONNAIRE

PLEASE PRINT AND USE BLACK INK. PLEASE WRITE LEGIBLY.

1. Full Name: _____

2. Date of Birth: _____

3. Part of county in which you reside: (not specific address) _____

4. Marital Status: Single Married ____ yrs Living w/Someone ____ yrs

Separated Divorced Divorced and Remarried Widowed

5. Number of children? ____ Ages and gender of children? _____

6. Are you: Employed Student Retired Unemployed Homemaker

If you are employed, what is your current job or position, or if you are retired or not currently employed, what was your most recent job or profession?

7. State the level and extent of your education or training, including schools attended and degrees: _____

8. Have you taken any courses or attended any seminars in the following areas: constitutional law, criminal justice, criminology, forensic science, law enforcement, child development, psychology or any related fields? Yes No If YES, what courses or seminars, and how have you used this instruction? _____

9. Have you ever been involved in any way with sexual assault or abuse or an allegation of sexual assault or abuse, as a: (check all that apply)

Victim? Accused? Witness? Other No

If you checked any box other than "no", describe the situation(s): _____

10. Has anyone you know ever been involved in any way with sexual assault or abuse or an allegation of sexual assault or abuse, as a: (check all that apply)
- Victim? Accused? Witness? Other No

If you checked any box other than "no", describe the situation(s): _____

11. Regarding your answers to questions 9 and 10 – if you answered other than "no":
- a. Is there anything about those experiences that will affect your ability to be fair and impartial to both sides in this case? Yes No If YES, please describe:

- b. Were the incidents investigated by the police and/or prosecuted in the courts? Yes No If YES, please describe what happened: _____

12. Have you, any family members, or friends ever been a victim of any crime you have not identified in previous questions? Yes No If YES, where, when, what type of crime? What was the outcome of a prosecution, if any? _____

13. Have you, any family members, or friends ever been arrested for or convicted of any criminal offense? Yes No If YES, explain. _____

14. Have you ever served as a juror in a Federal or State Court or in a court martial proceeding?
 Yes No If YES, how many times? ____ For each time you served, list the type of case(s) and approx. date(s): _____

a. Were you ever the presiding juror (or foreperson)? Yes No

b. If your jury reached a verdict, do not disclose what it was. Did you reach a verdict?

Yes No If NO, explain why: _____

c. Describe your experience as a juror. What did you like and dislike? _____

15. Do you believe you can follow the Court's instructions on the law and the way it must be applied, even if you believe the law should be different? Yes No If NO, explain:

16. Do you have any health problems or take any medications that could affect your ability to serve on this jury? Yes No If YES, briefly state your situation: _____

a. What is the condition of your hearing? _____

b. What is the condition of your eyesight? _____

17. Is there anything you would like to discuss privately with the court? Yes No If YES, explain: _____

18. The following persons have been identified as attorneys, potential witnesses and/or persons who may be mentioned during this trial. Please circle each name that you recognize.

Neil Wachter Kitsap County Prosecutor's Office	Aaron Talney Attorney at Law Crawford, McGilliard, Peterson, Yelish & Dixon	Ryan Witt Kitsap County Prosecutor's Office
Cynthia Conrad Kitsap County Prosecutor's Office (retired)	Richard Kitchen Kitsap County Prosecutor's Office	Keith Sawyer Ollala
Amanda Sawyer Ollala	Christina Monroe Port Orchard	Douglas Dillard Kitsap County Sheriff's Office

JUROR OATH

I hereby certify under penalty of perjury that all the answers given in this questionnaire are true, correct, and complete to the best of my knowledge.

Juror's signature

Date

FURTHER EXPLANATIONS

Question # Response

Exhibit 7

Exh. 7 - VRP (Apr. 19, 2004)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON,)	
)	
)	
Plaintiff,)	
v.	)	No. 03-1-01319-4
)	
DANIEL STOCKWELL,)	
)	
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS

April 19, 2004

Call Only

Before the Honorable THEODORE SPEARMAN,
a Kitsap County Judge, sitting in Department 4 thereof.

FOR THE PLAINTIFF: RYAN WITT
 Deputy Prosecuting Attorney

FOR THE DEFENDANT: AARON TALNEY
 Attorney at Law

Nickoline M. Drury, CCR, RMR
Official Court Reporter
CCR# 2622
614 Division Street, MS-24
Port Orchard, Washington 98366

1 THE COURT: Please have a seat.

2 The first case, call-only, is State vs. Stockwell,
3 case number 03-1-01319-4.

4 Good morning.

5 MR. WITT: Good morning, Your Honor.

6 THE COURT: What do we have? I think this is
7 call-only.

8 MR. KELLY: Your Honor, Mr. Talney is out in the
9 hall. I will grab him.

10 (Whereupon, Mr. Talney entered the courtroom.)

11 THE COURT: Good morning Mr. Talney.

12 MR. TALNEY: Good morning, Your Honor.

13 Did the Court just call Mr. Stockwell?

14 THE COURT: Yes, I did.

15 Are we ready to go with this?

16 MR. TALNEY: My understanding, Your Honor, is
17 we're awaiting to see if a court is available.

18 THE COURT: Why don't you go around and --

19 MR. TALNEY: That was the last I heard.

20 THE COURT: -- talk to Valda.

21 MR. WITT: Your Honor, what I would like to do,
22 first of all, is pass forward an Amended Information, and
23 I'm requesting of the Court that Mr. Stockwell be
24 arraigned on the Amended Information.

25 THE COURT: Mr. Stockwell, have you had an

1 opportunity to see the First Amended Information, sir?

2 THE DEFENDANT: Just now, Your Honor.

3 THE COURT: There's a charge being added, child
4 molestation in the first degree, attempted child
5 molestation in the first degree, and a special allegation
6 of domestic violence on this.

7 Will counsel waive the reading of the Information?

8 MR. TALNEY: We will, Your Honor.

9 THE COURT: Ready to enter a plea?

10 MR. TALNEY: Not guilty.

11 MR. WITT: I just wanted to make the Court aware
12 that the State does have some time constraints. We would
13 like to do whatever we can to get this trial off the
14 ground today or tomorrow. A critical witness is going to
15 be leaving the country.

16 THE COURT: I understand that.

17 MR. WITT: Okay. Thank you, Your Honor. I will
18 express that --

19 THE COURT: Ms. Johnson is waiting to talk to
20 you.

21 MR. WITT: Thank you.

22 (Hearing adjourned.)

23 THE COURT: Anything else? We still have Illee.
24 What did we decide on Illee? I have got Lee on my desk
25 and I have got Pierce on my desk.

1 MR. WITT: You should have Stockwell as well.
2 This was the one you sent Mr. Talney and I over to see --

3 THE COURT: Yes, I have handed down Stockwell.
4 The file should be down there.

5 What's the status?

6 MR. TALNEY: Your Honor, my understanding is
7 we're set for call-only again for tomorrow. I guess it's
8 to be determined still, is my understanding.

9 THE COURT: What's going to be determined?

10 MR. TALNEY: The actual trial date, whether it's
11 going to start tomorrow or whether it's not.

12 MR. WITT: That's correct.

13 I would like to request of the Court there are some
14 matters going on today such as the Cook trial that has a
15 large number of jurors. If that matter was to resolve, I
16 would just like for the Stockwell matter to be put on
17 standby, maybe give the parties two hours' notice, and
18 then it's conceivable we could begin the trial today.
19 The only reason we're not beginning today is there's not
20 a large enough jury pool present. If Cook pled, for
21 example, then we could start today. That's what the
22 State requests.

23 THE COURT: Counsel, do you have any objection
24 to that?

25 MR. TALNEY: No, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: How do we make that so?

THE CLERK: I'm sorry?

THE COURT: How do we make -- Counsel has requested a standby status and a phone call if the Cook matter should resolve itself so they could start through with their case.

MR. WITT: I will inform Valda.

THE COURT: You will let Ms. Johnson know that?

MR. WITT: Yes.

THE COURT: That sounds reasonable.

Have a good day.

(Hearing adjourned.)

Exhibit 8

EXH. 8- VLP (Apr. 20, 2004)

ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	
vs.	)	NO. 03-1-01319-4
	)	APPEAL NO. 31920-9-II
DANIEL STOCKWELL,)	
)	
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS

VOLUME I

April 20, 2004

Jury Voir Dire

Before the Honorable M. KARLYNN HABERLY

APPEARANCES:

FOR THE PLAINTIFF: NEIL R. WACHTER
RYAN WITT
Deputy Prosecuting Attorneys

FOR THE DEFENDANT: AARON TALNEY
Attorney at Law

KATHRYN M. TODD, RMR, CCR
Official Court Reporter
614 Division Street
Port Orchard, WA 98366
(360) 337-7177

I N D E X

VOLUME I

	<u>Pages</u>
Introductory instructions to jury	2 - 9
General voir dire by the court	9 - 23
Colloquy between court and counsel	23 - 32
Individual voir dire of jurors	32 - 47
Colloquy between court and counsel	47 - 53
Individual voir dire of jurors	54 - 176

JURORS EXCUSED:

Juror No. 4	177
Juror No. 6	60
Juror No. 7	47
Juror No. 16	99
Juror No. 17	24
Juror No. 18	101
Juror No. 19	114
Juror No. 22	116
Juror No. 25	119
Juror No. 28	120
Juror No. 43	175
Juror No. 47	26
Juror No. 50	26
Juror No. 54	176
Juror No. 60	25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Preliminary matters and motions
in limine previously transcribed.)

THE COURT: All right. Then it looks like we
are ready for the jury.

You may bring the jury in. Juror number 25 is
going to be seated out of order.

(The prospective jurors entered the
courtroom.)

THE COURT: It looks like our planning worked
out just right.

Good morning. I am Judge Karlynn Haberly, and I
will be presiding over this trial.

Is there anyone here who has any difficulty hearing
me?

Okay. Do you, too? Okay. Would a hearing assist
help you back there? Okay. We will get you a hearing
assist.

(Juror number 25 and someone in the
back.)

THE COURT: I want to thank each of you for
being here and participating on this panel. I would
like to ask you all to please stand and raise your right
hand, and I will administer the oath.

(The prospective jurors sworn.)

THE COURT: I am going to introduce the court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

staff that will be work with us during the trial.

Below me is Kathy Todd. She is the official court reporter, and it's her job to take down every word that is said here in the courtroom, so during the voir dire proceedings, it's important that you speak up so you can be heard, and especially from the back of the room, and also, that only one person speak at a time so she can take down what is being said. If you are asked a question with the answer yes or no, please say yes or no and not just shake your head one way or the other.

Over here is Gwen Warren. She is the administrative clerk of the court. It's her job to take care of all the administrative details that occur in the courtroom, keep track of all the exhibits, the jurors that are called, the witnesses that are called, and other details during the course of the trial.

Your bailiff today is Kathy Lougheed, seated over here. I assume you have all met her. It's her job to take care of the jury, to answer any questions that you might have, and to assist in maintaining order in the courtroom. The bailiff is the only person involved in this trial with whom you should have any direct contact either inside or outside of the courtroom. If you have any personal needs, please get her attention if you are here in the courtroom, or you can ask your questions

1 when you are outside of the courtroom.

2 We are going to be selecting our jury in a method
3 known as the Struck jury selection method, and for those
4 of you that had jury service maybe 10 years or more
5 before, you may recall they started with juror number 1
6 and went right down the line until we got -- today it
7 would be down to juror number 60. By that time, the
8 only people listening are the attorneys and the clients
9 and the judge, and it was not very interesting for the
10 jury panel as a whole. This method allows for questions
11 to go back and forth across the room, so it's important
12 that you pay attention as the attorneys may be asking a
13 question over here and then go over to the back rows or
14 some other location in the courtroom. We have found
15 this gives a lot more information more quickly, is a
16 faster process than going through and individually
17 questioning each of the jurors, so during the voir dire
18 proceedings, you are instructed that the remarks that I
19 make, the questions I ask, and the questions the
20 attorneys ask are directed to everyone in the courtroom,
21 and you should pay close attention to the proceedings.

22 The lawyers and I will ask you questions, and these
23 are not to embarrass you or to pry into your private
24 affairs, but to determine if you are unbiased and
25 without preconceived ideas which might affect your

1 ability to be a juror on this particular case. You
2 should not withhold information in order to be seated on
3 this jury. Again, it is not my desire or the desire of
4 the attorneys to invade your privacy or embarrass you.
5 The purpose of the questions is to select the fairest,
6 most impartial jury possible so all parties can be
7 assured that the jurors selected will have no biases or
8 preconceived ideas. And again, if you are asked a
9 question which you prefer to answer outside the presence
10 of other jury panel members, please make that request
11 and I will consider it.

12 You should be straightforward in your answers to
13 the questions rather than answering in a way you might
14 expect the lawyers or myself would expect you to answer.
15 It is presumed when a jury has been selected and
16 accepted by both sides, that each of you will keep an
17 open mind until the case is finally submitted, that you
18 will accept the instructions of law from the court, and
19 will base any decision upon the law and the facts
20 uninfluenced by any other considerations. The purpose
21 of the questions on voir dire is to determine if you
22 have that frame of mind.

23 We do have a list here with your names on it, but
24 most often we will refer to you by the tag that you have
25 on your shoulder, and sometimes in the back I might have

1 to ask you to tell me your number because I can't quite
2 see some of those in the back there, but it's a little
3 quicker for the court reporter to take down who is
4 speaking and to make identification for the record.

5 The lawyers have the right and the duty to
6 challenge any juror for cause. This is for bias or
7 preconceived ideas which affect your ability to be an
8 impartial juror. They may also challenge a juror
9 without giving any reason. This is a guarantee to both
10 sides that they may remove a juror if they wish to do
11 so. These are called peremptory challenges. If there's
12 a challenge against you for either bias or peremptory
13 challenge, please do not be offended as it's not a
14 challenge based on any personal reflection on you.

15 The case we are about to begin is a criminal action
16 instituted by the State of Washington. The state is
17 represented by Neil Wachter and Ryan Witt, seated in
18 front of me.

19 MR. WACHTER: Good morning, everyone. Thank
20 you for being here.

21 MR. WITT: Good morning.

22 THE COURT: The defendant is Dan Stockwell,
23 represented by Aaron Talney.

24 THE DEFENDANT: Good morning, everyone.

25 MR. TALNEY: Good morning.

1 THE COURT: The defendant is charged in an
2 information with Count I, child molestation in the first
3 degree. It's alleged on or between March 1, 2002, and
4 April 1, 2003, in the County of Kitsap, State of
5 Washington, that Dan Stockwell, being at least 36 months
6 older than the victim, had sexual contact with another
7 person who was less than 12 years old and not married to
8 Mr. Stockwell, that being Emily Monroe, with a special
9 allegation of domestic violence, that the defendant did
10 commit the crime against a family or household member.

11 Count II is attempted child molestation in the
12 first degree. It's alleged on or between March 1, 2002,
13 and April 1, 2003, in the County of Kitsap, State of
14 Washington, that Dan Stockwell, with the intent to
15 commit the crime of child molestation in the first
16 degree, did an act which is a substantial step toward
17 the commission of that crime, the victim being at least
18 36 months older than -- or he being 36 months older than
19 the victim, had sexual contact with another person who
20 was less than 12 years old and not married to
21 Mr. Stockwell, and that would be Megan Sawyer, and
22 again, the allegation of domestic violence, which means
23 that defendant committed the crime against a family or
24 household member.

25 The defendant has entered a plea of not guilty to

1 both of these charges, and that plea puts into issue
2 every element of the crime charged. The information in
3 this case is only an accusation which informs the
4 defendant of the charge. You are not to consider the
5 filing of the information or its contents which I have
6 read to you as proof of the matters charged. It is your
7 duty to determine the facts in this case from the
8 evidence produced in the courtroom. It is also your
9 duty to accept the law from the court regardless of what
10 you personally believe the law is or ought to be. You
11 are to apply the law to the facts, and in this way
12 decide this case.

13 A defendant is presumed innocent. This presumption
14 continues throughout the entire trial, unless during
15 your deliberations you find it has been overcome by
16 evidence beyond a reasonable doubt. The state has the
17 burden of proving each element of the crimes charged
18 beyond a reasonable doubt. A reasonable doubt is one
19 for which a reason exists and may arise from the
20 evidence or lack of evidence. It is such a doubt as
21 would exist in the mind of reasonable person after
22 fully, fairly, and carefully considering all of the
23 evidence or lack of evidence. If after such
24 consideration you have an abiding belief in the truth of
25 the charge, you are satisfied beyond a reasonable doubt.

1 In a civil case, the plaintiff must prove his or
2 her case by a preponderance of the evidence. In a
3 criminal case such as this one, the state must prove
4 every element of the crime charged beyond a reasonable
5 doubt. In a criminal case, the law requires that all
6 jurors agree to return a verdict.

7 At this time I am going to ask you some general
8 questions, and these touch upon your qualifications to
9 sit as a juror in this case.

10 The first question I have, is there anyone here who
11 is not a resident of Kitsap County?

12 Is there anyone on the panel who has difficulty
13 reading or writing the English language?

14 Raise your hand if you have an answer to any of
15 these.

16 Have any of you ever heard of this case before,
17 State of Washington v. Dan Stockwell?

18 Okay, juror number 14. Anybody else? Okay.

19 Do any of you know Dan Stockwell?

20 Do any of you know Neil Wachter or Ryan Witt with
21 the prosecuting attorney's office here in Kitsap County?

22 Do any of you know Aaron Talney, with the Crawford,
23 McGilliard, Peterson, Yelish and Dixon Law Firm in Port
24 Orchard?

25 Okay, juror number 19. And what is your number?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

42.

Juror 19, have you had legal services done there?

JUROR NO. 19: I have worked with them because I worked with Kitsap County on cases.

THE COURT: Okay. And anything about working with Mr. Talney or any of the attorneys in that law firm that you think would affect your ability to be fair and impartial in this case?

JUROR NO. 19: No.

THE COURT: And juror 42, how do you know Mr. Talney?

JUROR NO. 42: I had a case with him.

THE COURT: Okay. Thank you.

Anyone else that didn't raise their hand?

Are any of you connected with a law enforcement agency? 28 and 33.

And juror 28, what is your connection with law enforcement?

JUROR NO. 28: I am a 911 dispatcher for Kitsap County.

THE COURT: And, how long have you worked in that position?

JUROR NO. 28: Eight years.

THE COURT: Do you feel you could be fair to both sides in this case?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 28: Yes.

THE COURT: Okay. All right.

Juror 33?

JUROR NO. 33: Yes, ma'am. I am a retired Coast Guard officer, federal law enforcement powers.

THE COURT: And, having worked in that profession, do you think you could be fair and impartial in this case? Be fair to both sides?

JUROR NO. 33: (Inaudible.)

THE COURT: You think you can?

JUROR NO. 33: Yes.

THE COURT: Anyone else have a spouse or close relative that works in law enforcement?

Juror number 30, what's that?

JUROR NO. 30: My husband works for the Federal Bureau of Prisons, and both my brother-in-laws are cops.

THE COURT: Okay. And having those connections there, do you think you have any biases or preconceived ideas about law enforcement?

JUROR NO. 30: No.

THE COURT: Do you think you could be fair to both sides in this case?

JUROR NO. 30: Yes.

THE COURT: Juror number 6, what is your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

connection?

JUROR NO. 6: My nephew is a police officer.

THE COURT: And, again, you probably had some conversations with him. Anything about your nephew being a police officer you think would affect your ability to be fair and impartial in this case?

JUROR NO. 6: No.

THE COURT: Juror number 27?

JUROR NO. 27: Son, police department, Idaho.

THE COURT: Again, having discussions with him about his job, is there anything about that that you think would make you have a bias?

JUROR NO. 27: No.

JUROR NO. 22: My brother is a police officer.

THE COURT: And, is there anything about your brother being in law enforcement you think would affect your ability to be fair and impartial?

JUROR NO. 22: No.

THE COURT: The back row. I can't see your number.

JUROR NO. 39: My nephew is a police officer.

THE BAILIFF: 39.

THE COURT: Thank you.

And you have a relative that is a police officer?

JUROR NO. 39: Yes.

1 THE COURT: And anything about knowing what
2 your relative does that you think would affect your
3 ability to be fair and impartial, like specialized
4 knowledge --

5 JUROR NO. 39: No.

6 THE COURT: -- about law enforcement?

7 JUROR NO. 39: No.

8 THE COURT: You think you could be fair to
9 both sides?

10 JUROR NO. 39: (Nods head.)

11 THE COURT: Juror 44?

12 JUROR NO. 44: Chief of police down in
13 Pasadena.

14 THE COURT: Again, is there anything you have
15 heard about being chief of police that you think would
16 affect your ability to be fair and impartial?

17 JUROR NO. 44: No.

18 THE COURT: Juror number 17?

19 JUROR NO. 17: My sister is a court reporter
20 in King County.

21 THE COURT: Do you ever go over to court,
22 watch her report?

23 JUROR NO. 17: Not really. I have been there
24 to see her.

25 THE COURT: And anything about what she might

1 have told you about cases she has that you think would
2 affect your ability to be fair?

3 JUROR NO. 17: I don't believe so.

4 THE COURT: You think you could be fair to
5 both sides?

6 JUROR NO. 17: Yes.

7 THE COURT: Juror number 3?

8 JUROR NO. 3: I went to the police academy in
9 San Diego for two years.

10 THE COURT: Okay. Did you come out of there
11 with any biases or preconceived ideas about law
12 enforcement?

13 JUROR NO. 3: No.

14 THE COURT: Do you think you could be fair to
15 both sides?

16 JUROR NO. 3: I think so.

17 THE COURT: Okay. Juror number 38?

18 JUROR NO. 38: My brother-in-law is a superior
19 court judge in Cowlitz County, retired now.

20 THE COURT: Okay. And anything about knowing
21 what your brother-in-law did do you think would affect
22 your ability to be fair and impartial?

23 JUROR NO. 38: No.

24 THE COURT: Do you think you could be fair to
25 both sides?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 38: (Nods head.)

THE COURT: Someone else back there raised their hand. 42? What is your connection with law enforcement?

JUROR NO. 42: My brother is a police officer.

THE COURT: Okay. Again, knowing what your brother does, anything about being a juror on this case you think would cause you to have or do you have any preconceived ideas or biases?

JUROR NO. 42: No.

THE COURT: You think you could be fair to both sides?

JUROR NO. 42: Yes.

THE COURT: Thank you.

Juror number 34.

JUROR NO. 34: My brother-in-law is a police officer in another state.

THE COURT: Okay. Again, anything about hearing experiences of your brother-in-law you think would affect your ability to be fair in this case?

JUROR NO. 34: No.

THE COURT: All right. Are any of you connected with the administration of justice? Work in a court system?

Okay. Back there. I can't see your number. 47,

1 what is your connection?

2 JUROR NO. 47: I am an attorney. I don't know
3 how broad you were reading that.

4 THE COURT: In your legal work, do you
5 practice any criminal law?

6 JUROR NO. 47: Not anymore.

7 THE COURT: You did in the past?

8 JUROR NO. 47: I used to be a prosecutor.

9 THE COURT: All right. I am sure the
10 attorneys will probably have more questions for you, but
11 at this point, do you think you could be fair to both
12 sides?

13 JUROR NO. 47: I would like to think so.

14 THE COURT: Okay. All right.

15 JUROR NO. 33: I have been hired back as a
16 civilian with the Coast Guard, and I run the licensing
17 office. In that process, we have to review criminal
18 backgrounds of applicants and sometimes I have to refer
19 those to federal attorneys for federal cases.

20 THE COURT: So you have some connection with,
21 well, the court system, in that way?

22 JUROR NO. 33: Yes. I also used to
23 participate in merchant marine administrative hearings.

24 THE COURT: I will ask you, with that
25 background, do you think you can be fair to both sides

1 in this case?

2 JUROR NO. 33: Yes.

3 THE COURT: Number 55?

4 JUROR NO. 55: My brother is a fire
5 investigator and my sister-in-law is a guard at a prison
6 in Spokane.

7 THE COURT: Again, with those -- hearing what
8 their experiences are in the criminal justice system, do
9 you think you could be fair to both sides?

10 JUROR NO. 55: I do.

11 THE COURT: Thank you.

12 All right. In this particular case we are going to
13 use a questionnaire. We'll have you fill out about
14 experiences and things that we need to know. That will
15 be done by a questionnaire.

16 At this point I want to tell you what our trial
17 schedule is, because it's a little bit unusual, and I
18 will go over that with you. Before I tell you that, let
19 me ask you, or tell you, the regular court hours for
20 jury trials are from 9:00 to noon, then we take an hour
21 and a half recess, then 1:30 to 4:30 for the jury. Is
22 there anyone that has any difficulty with baby-sitting
23 arrangements, day care or elder care that would
24 interfere with them being here from 9:00 to 4:30?

25 Juror number 4, what is the nature of your

1 difficulty?

2 JUROR NO. 4: Either myself or my wife don't
3 work. We both work, but we are always home with the
4 kids. We don't have a set-up day care situation.

5 THE COURT: All right. Anyone else?

6 Juror number 17?

7 JUROR NO. 17: Same issue. I have some
8 scheduling issues.

9 THE COURT: All right.

10 Does anyone have any difficulty with
11 transportation, getting to the courthouse by 9:00 and
12 staying until 4:30?

13 Then let me go over the length of this trial. This
14 is not going to be a short trial. Today is Tuesday. We
15 will be picking the jury today, and it might go into
16 tomorrow morning. Wednesday, we would start testimony
17 with witnesses, and Wednesday, Thursday, Friday, and
18 then due to some scheduling conflicts, we are not going
19 to be in court Monday, Tuesday, Wednesday next week, so
20 that's April 26, 27, 28. So, whoever is selected on the
21 jury, it would be today, April 20, through Friday,
22 April 23, then there would be no court on Monday,
23 Tuesday, Wednesday. You would come back Thursday,
24 April 29, and 30. We expect this would -- We are going
25 to try to get it to the jury by Friday, but we are not

1 very hopeful about that, so if we didn't get to the jury
2 by Friday, you would come back next week on Thursday,
3 Friday, and it would get to the jury by Thursday or by
4 Friday.

5 So, having that in mind, and the break-up in the
6 schedule -- sometimes that's helpful for work, that you
7 have three days and know when you are coming back -- I
8 am going to ask for hardships. These would be
9 hardships, either financial hardships for you or your
10 family, or you have got tickets to Hawaii or some other
11 plans that interfere with you being on this jury.

12 So let me take the box first. Any hands there of
13 hardships being on this jury?

14 Juror number 5, what's the nature of your hardship?

15 JUROR NO. 5: I am self-employed, so --

16 THE COURT: Okay. Would this be a financial
17 hardship on you and your family?

18 JUROR NO. 5: It wouldn't help.

19 THE COURT: Okay. And the first row. Number
20 28, 17? I can't see your number. Number 22, 15, 17.
21 Somebody down here. 28.

22 And juror number 15, what's the nature of your
23 hardship?

24 JUROR NO. 15: Only if it goes beyond May 12.

25 THE COURT: It won't. You are okay until

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

May 12. You are in.

Juror number 17?

JUROR NO. 17: Self-employed, financial hardship.

THE COURT: Okay. Juror 22?

JUROR NO. 22: Self-employed, financial hardship.

THE COURT: Would that be a financial hardship on you and your family?

JUROR NO. 22: Yeah. I'm the only one that works in my family. Two kids.

THE COURT: And juror 28?

JUROR NO. 28: I applied for another job out of state and I have a physical exam. I'm flying out to California May 4th.

THE COURT: May 4th?

JUROR NO. 28: May 4th.

THE COURT: I think we are okay with that.

THE BAILIFF: Number 19.

JUROR NO. 19: I can cancel my plans, but my wife and I are planning to leave town next Friday, going down to San Francisco.

THE COURT: This Friday or the 30th?

JUROR NO. 19: The next Friday.

THE COURT: Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Then I will take number 60.

JUROR NO. 60: I am trying to run a business and my partner is going to be out of town.

THE COURT: There's not anyone that can fill in?

JUROR NO. 60: I don't know anyone.

THE COURT: The second row?

I'll start with juror number 44. What's the nature of your hardship?

JUROR NO. 44: Self-employed, hardship.

THE COURT: Okay. And would this be a financial hardship on you or your family?

JUROR NO. 44: Yes.

THE COURT: Okay, then the next row, back there. I can't see your number again. 47. The nature of your hardship?

JUROR NO. 47: I am scheduled for depositions every day of the week next week, and also, a summary judgment this week, so I don't have anyone to cover.

THE COURT: Okay.

Number 50?

JUROR NO. 50: I have plane tickets for the 29th.

THE COURT: Okay. Anyone else back there, 50 through 60?

1 All right. Anyone that didn't raise their hand
2 that wants to raise their hand now?

3 Juror No. 7?

4 JUROR NO. 7: I am self-employed.

5 THE COURT: Okay. Would this be a financial
6 hardship on you and your family?

7 JUROR NO. 7: Yes.

8 THE COURT: Okay. Anyone else that I didn't
9 get?

10 Okay. What we are going to do at this time is, you
11 are going to go with your bailiff, and I know it's
12 really crowded out there, so do the best you can. She
13 is going to hand out the questionnaires to you to fill
14 those out. You need to put your jury number, your badge
15 number up on the upper right-hand corner of the front
16 page of that, and fill out the questionnaire. Take the
17 time you need to do that. Once you have filled out the
18 questionnaire, give it back to your bailiff.

19 This is going to take some time because after we
20 get them, we have to copy all of these for the attorneys
21 to look at. These questionnaires are going to be given
22 to the court and to the attorneys. The questionnaires,
23 after voir dire proceedings are done, are returned back
24 to the clerk of court and they are shredded. They are
25 not seen by anybody outside of the attorneys and the

1 court that need to have this information. The copies
2 are shredded. The originals are filed in a sealed file
3 with the clerk of court for the record-keeping, so I
4 want to let you -- advise you of that as to these
5 particular questionnaires.

6 Also, depending on answers to the questionnaires,
7 there's a question in there about whether you would like
8 to be examined or questioned outside the presence of
9 other jury panel members, and be sure to consider that
10 box there or check that if that is your request, and we
11 will honor that request, also.

12 So, at this time you can head out the back door
13 here, and Ms. Lougheed --

14 THE BAILIFF: Are they going to be excused?

15 THE COURT: No, we will wait.

16 (The prospective jurors left the
17 courtroom.)

18 THE COURT: We will start with the hardships
19 then. Number 4 indicated no day care.

20 If we agree to dismiss them, we will dismiss them.
21 If you want to have more questions, we can have more
22 questions.

23 Do you know juror number 42, Mr. Talney?

24 MR. TALNEY: I didn't recognize the name.

25 THE COURT: He had a prior felony it says on

1 his questionnaire, so we will have Gwen check that out.

2 MR. WACHTER: On his --

3 THE COURT: Robert Redding Brown.

4 MR. WACHTER: On his questionnaire he said he
5 had been convicted of a felony, then checked the box
6 that said his -- he thought his rights were restored.

7 THE COURT: It must be Kitsap if Mr. Talney
8 represented him. We'll check that.

9 And number 4, with the day care?

10 MR. WACHTER: 4 and 17 both claim that there
11 was a day care complication, and I don't know that the
12 record has been set to establish it, and whether either
13 one could work their way around this.

14 THE COURT: 17 had financial hardship. He was
15 self-employed, also.

16 MR. WACHTER: That may take care of him.

17 THE COURT: Any objection to excusing
18 juror 17?

19 MR. TALNEY: No, Your Honor.

20 (Juror No. 17 excused.)

21 THE COURT: 4 we will keep for now.

22 Juror number 5 indicated financial hardship.

23 MR. WACHTER: Your Honor, from the state's
24 perspective, there are several people who said they were
25 self-employed and that this would cause a financial

1 hardship. Number 5 said it would be difficult. The
2 problem is that based on what we know now, if you strike
3 one of them, you kind of are committed to striking them
4 all. I don't know that the record has been made as to
5 whether this is something that would cause them to forgo
6 mortgage payments or to have other real difficulties in
7 their families, so that is the state's concern with
8 regard to the stated hardships on financial problems.
9 That begins with number 5.

10 THE COURT: All right. We will question them
11 more.

12 MR. TALNEY: Your Honor, I think a record was
13 more individually established for 60, the woman in the
14 back who was apparently running her own business with
15 another partner. Her partner was going to be absent,
16 she was the only one available to get the business
17 going.

18 MR. WACHTER: I don't disagree.

19 THE COURT: Then 60 will be excused.

20 (Juror No. 60 excused.)

21 MR. TALNEY: I believe number 50 had plane
22 tickets for April 29th.

23 THE COURT: Right.

24 MR. TALNEY: I think that would probably be
25 good enough.

1 MR. WACHTER: I have no objection to releasing
2 50.

3 THE COURT: Number 50 will be excused.

4 (Juror No. 50 excused.)

5 THE COURT: What about the attorney, 57?

6 MR. WACHTER: I think he was 47. I guess the
7 concern is that an attorney is always going to have a
8 full schedule, and I mean, he claims it's a hardship. I
9 am not here to say he's wrong, but I don't really take a
10 position on 47.

11 MR. TALNEY: I have no objection to excusing
12 47.

13 THE COURT: I am going to excuse 47.

14 (Juror No. 47 excused.)

15 THE COURT: How about number 19? I think he
16 said he could adjust it or something.

17 MR. TALNEY: He did say he could change his
18 plans. I don't know how much grief that would cause
19 him. It sounded like he was driving to San Francisco,
20 or California.

21 THE COURT: He said San Francisco. I didn't
22 hear if he was driving or flying.

23 MR. WACHTER: I thought I heard flying.

24 THE COURT: That was the other one. He said
25 he knew you, didn't he?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. WITT: It was 19 that knew Aaron.

THE COURT: He works for Kitsap County, engineering department? I don't know.

MR. TALNEY: I have no idea. I am certainly willing to get rid of anybody that knows me, however.

THE COURT: I can't read what he does there.

MR. WACHTER: This would be speculation on my part, but it may be that he is with GIS, the Geographic Information System. They produce all manner of maps. Sometimes they put together courtroom exhibits that we use.

THE COURT: Well, those four jurors we will excuse.

How are we copying these questionnaires?

MR. WACHTER: The bailiff has asked if I will do it, and if the court so directs, then I will do it.

THE COURT: Any objection, Mr. Talney?

MR. TALNEY: No, Your Honor.

THE COURT: All right. You can let Ms. Lougheed know as to 17, 47, 50, and 60 -- I have a note here -- they will be excused.

MR. WACHTER: There was a juror in their data sheet who caught the attention of both Mr. Talney and myself; juror number 8. His name is Rick Wilson. I don't know if the court wants to bring him in, but he

1 made a statement in here that included the words that "A
2 criminal has more rights than I do," and that this was
3 "A waist" -- w-a-i-s-t -- "of time."

4 THE COURT: Okay. Let's just flag that for
5 now. We'll see if he needs to be individually
6 questioned in any event. We'll hold off.

7 MR. TALNEY: Your Honor, I have another issue
8 that I would like to put on the record, also. I was
9 watching the jury box as the court read off the
10 information. As soon as the court read that this was a
11 child molestation case from the information, juror
12 number 7 started to actively cry. To describe her
13 mannerism, she leaned forward, she covered her face, she
14 at one point removed a handkerchief and started wiping
15 her eyes. She was actively crying as the court read
16 through both Count I and Count II of the information,
17 and was obviously having an emotional reaction to it
18 from her body language.

19 In addition to actually crying, as she was leaving
20 the courtroom, I guess I would describe her as giving
21 both Mr. Stockwell and myself what I guess I would
22 describe as a look of disgust as she was going out of
23 the courtroom. I don't know if anybody else witnessed
24 her behavior as the information was being read.

25 THE COURT: I didn't. I was looking at juror

1 number 6, actually.

2 MR. TALNEY: Mr. Stockwell informs me he saw
3 that, also.

4 THE COURT: Well, let's see what her
5 questionnaire looks like. We may need to question her
6 individually.

7 Any other issues?

8 MR. WACHTER: Not for now. I did not see
9 juror number 7, so I can't say one way or the other.

10 THE COURT: Well, I want to question her
11 individually, but we'll wait and see if she is in the
12 list anyway.

13 MR. TALNEY: Right.

14 THE COURT: We'll be at recess until the
15 questionnaires are completed.

16 THE CLERK: On juror number 42, I only show
17 misdemeanor, nothing felony.

18 THE COURT: Okay. What kind of misdemeanor
19 was it; do you know?

20 THE CLERK: Two DUIs and a negligent driving
21 and an infraction for speeding.

22 THE COURT: We don't have any questions about
23 that in the questionnaire. Number 13 is on there. He
24 will probably answer that question, if you have ever
25 been convicted of any criminal offense.

1 MR. WACHTER: If your clerk has the date of
2 birth, we may be able to run a national check on the
3 person.

4 THE CLERK: I do.

5 THE COURT: We don't have a date of birth.

6 THE CLERK: I do.

7 THE COURT: Mr. Talney represented him,
8 according to him.

9 MR. WACHTER: For all we know, he had some
10 contact with the criminal justice system in another
11 state that isn't --

12 THE COURT: Number 13 on the questionnaire, he
13 will be asked that question.

14 THE CLERK: The date of birth I show for
15 Robert Redding Brown is 5/11 of '70.

16 MR. WACHTER: Thank you.

17 THE COURT: All right. We'll be at recess
18 until the questionnaires are ready.

19 Are you going back to your office, Mr. Talney?

20 MR. TALNEY: Yes, I thought I probably would.

21 THE COURT: We'll give you a call.

22 MR. TALNEY: I will give the bailiff my
23 number.

24 THE COURT: Ms. Warren will give you a call
25 when the questionnaires are ready.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. WACHTER: Okay.

(Court recessed.)

THE COURT: We will take like four jurors, then you can go over the rest of the forms over lunchtime. I would like to take this time, though.

Juror number 56 advises, "In 1981 I was tried for vehicular homicide and found not guilty."

And juror number 42 raised a question. I reread this question. I think there's kind of a problem with it. It's number 17. It says, "Is there anything you would like to discuss privately with the court?" instead of, "Is there anything you would like to discuss outside the presence of other jury members?" I think some people might be answering, "I don't want to talk about anything." They don't want to talk about the molestation. That's what 42 kind of indicated to the bailiff. So, we might look at that real carefully, because I saw another one here, there was an instance of molestation by an uncle and they said they didn't want to discuss anything, so we probably want to discuss that with them.

So, if we could take four, it looks like number 2 -- Is that on your list?

MR. WACHTER: Number 2 is on my list. Number 1 is also on my list. That person said they had

1 an ex-girlfriend who was a rape victim. "I want to
2 discuss things in private."

3 THE COURT: So 1 and 2. Then I have 5.

4 MR. WACHTER: I have 5.

5 THE COURT: 1, 2, 5, and 6. And let's take
6 care of number 7. I don't want to keep her over the
7 lunch hour. It looks like she is not going to be able
8 to make it, given she wrote this is too emotional for
9 her. A cousin was molested and murdered. Then let's
10 take 1, 2, 5, 6, and 7.

11 THE BAILIFF: Can I excuse the rest for lunch,
12 to be back at 1:20?

13 THE COURT: Yes.

14 (Juror No. 1 entered the courtroom.)

15 THE COURT: Mr. Head, we called you in in
16 response to your questionnaire. You indicated you had
17 an ex-girlfriend who had been raped?

18 JUROR NO. 1: Yes.

19 THE COURT: Did this rape occur while you
20 still had a dating relationship?

21 JUROR NO. 1: No, it was actually several
22 years before.

23 THE COURT: Okay. And do you think that --
24 Do you think you could put aside what she told you and
25 her experience, and listen to the witnesses as they come

1 on the stand here and decide this case on its own
2 evidence and testimony?

3 JUROR NO. 1: Yes.

4 THE COURT: Any questions from the state?

5 MR. WACHTER: No. Thank you, Your Honor. No
6 questions.

7 THE COURT: Mr. Talney?

8 MR. TALNEY: How long ago was that?

9 JUROR NO. 1: Our relationship ended in 1993,
10 so it was well over 10 years ago. The rape was probably
11 18 years ago.

12 MR. TALNEY: Did that have any personal impact
13 on you? Did you know the other individual involved?

14 JUROR NO. 1: No.

15 MR. TALNEY: Do you know if it went through
16 court?

17 JUROR NO. 1: I know nothing of that. She
18 just told me the circumstances at the beginning of our
19 relationship.

20 MR. TALNEY: I don't have any further
21 questions, Your Honor.

22 THE COURT: Thank you. You can be excused
23 until 1:30.

24 (Juror No. 1 left the courtroom and
25 Juror No. 2 entered the courtroom.)

1 THE COURT: Ms. Jones, if you want to take a
2 seat in the front row.

3 We called you in in response to your questionnaire.
4 The relative that was convicted about eight years ago,
5 was that here in Kitsap County?

6 JUROR NO. 2: No. In King County.

7 THE COURT: Okay.

8 JUROR NO. 2: Although he lived in Kitsap when
9 it took place.

10 THE COURT: Okay. What were the circumstances
11 of that crime?

12 JUROR NO. 2: He abducted a girl in Seattle,
13 who was young. She didn't look as young as she was, but
14 she was young, younger than he, and he admitted to that,
15 went and turned himself in for that, and he was -- he
16 let her go before --

17 THE COURT: Basically a kidnap?

18 JUROR NO. 2: It's something I wanted to put
19 out of my mind, so I don't remember all the details.

20 THE COURT: Basically a kidnapping?

21 JUROR NO. 2: Yes.

22 THE COURT: Did it involve sexual assault or
23 molestation?

24 JUROR NO. 2: I believe that that was the
25 intent, but he did not follow through, and let her go

1 within an hour. I think.

2 THE COURT: All right. And you also said --
3 indicated you had a weak stomach.

4 JUROR NO. 2: I am sorry, but I am not joking.

5 THE COURT: That's what I wanted to ask you
6 about, too. Would it be very traumatic for you to sit
7 in a trial of this type?

8 JUROR NO. 2: It depends on what it covered.
9 For instance, I took part in -- it was some classes that
10 I attended on behalf of a person that was going through
11 alcohol treatment. They covered STDs, and I left after
12 the first five minutes because they got right into
13 blood-borne -- you know, how things are passed, and I
14 just physically cannot -- I get woozy and I will pass
15 out, so, you know, I don't know what this is going to
16 cover. If it gets like that, I won't do well.

17 THE COURT: Okay. Well, you bring up another
18 aspect then. There's going to be 12 jurors deliberating
19 in the end, and it will be in a jury deliberation room
20 in the back of this courtroom. It's not a very big
21 room. Would that be claustrophobic for you in
22 discussing these kinds of issues?

23 JUROR NO. 2: Not -- It depends on the nature
24 of what happened. I would say, if it's something where
25 it's graphic --

1 THE COURT: If there were a lot of pictures,
2 that type of thing? Like if it was murder case?

3 JUROR NO. 2: Yeah, if it was bloody, if it
4 involved physiological testimony, I probably would be
5 bothered.

6 THE COURT: Okay. All right.

7 Mr. Wachter, any questions?

8 MR. WACHTER: Thank you, Your Honor.

9 Good morning, Ms. Jones.

10 JUROR NO. 2: Good morning.

11 THE COURT: Is there a connection between your
12 experience with the relative and your feelings about
13 hearing this kind of information, or is that just kind
14 of what your makeup is, that you just don't like hearing
15 that kind of stuff?

16 JUROR NO. 2: I don't believe I personalize it
17 because of what happened with my relative. It's just,
18 my own personal makeup. I don't know why.

19 MR. WACHTER: Okay. Let me ask you first
20 about the matter with your relative. Was it prosecuted
21 in King County?

22 JUROR NO. 2: Yes, it was.

23 MR. WACHTER: Do you have any feelings about
24 the way the criminal justice system handled the matter?

25 JUROR NO. 2: Yes, I do.

1 MR. WACHTER: Can you tell us about those?

2 JUROR NO. 2: He went to voluntary treatment,
3 tried to do everything that he felt was appropriate. I
4 mean, for turning yourself in, you admit, you go through
5 and do all the things you need to do, he did all of
6 that, and I don't believe that he was wrongly convicted,
7 but he was wrongly cast as if he had not done any of
8 that to get himself, you know, to make it right. He was
9 verbally -- just in the papers, it was very, you know,
10 they made him look like he hadn't done any of that, like
11 he had hidden everything. So, I felt that that was a
12 little bit wrong, but it wasn't necessarily the court
13 system. I didn't hear any of the positive points of his
14 character, however.

15 MR. WACHTER: Tell us how you feel about the
16 prospects of being asked to judge whether a person
17 committed an offense like this.

18 JUROR NO. 2: The prospect of it is quite
19 daunting. I imagine deciding would stay with you for a
20 long time.

21 MR. WACHTER: I expect that there will be
22 evidence of what we call sexual contact, and it won't
23 involve photographs of a graphic nature, but there will
24 be testimony and there will be talk about sexual
25 touching. And with that in mind, tell us how you feel,

1 whether you can be fair and impartial, because I don't
2 want to discount anything you have said. This is stuff
3 that everybody -- every juror will have to talk about.
4 How will you feel if you have to talk about or hear that
5 kind of evidence, hear that kind of argument, and then
6 talk about it in a deliberation setting?

7 JUROR NO. 2: I think you are coming from will
8 it bother me, will I be able to decide, because if it
9 bothered me -- I don't know. I think it's going to be
10 hard for anybody to talk about or hear. As far as the
11 things that would bother me most would be medical
12 evidence probably. I would have a hard time discussing
13 something that made me truly ill. However, I think
14 evidence deserves to be heard.

15 MR. WACHTER: Set aside medical evidence for
16 the time being. Say we are not calling in a medical
17 expert or nurse or whatever, just the discussion of
18 sexual contacts, such as touching by one person on
19 another person's private areas, and we will use more
20 graphic terminology. Does that trigger the queasy
21 stomach, or how do you feel about that type of
22 information being -- hearing that kind of thing and then
23 talking about that kind of thing in deliberation?

24 JUROR NO. 2: I don't believe that that would
25 make me pass out.

1 MR. WACHTER: The bottom line is, can you be
2 fair to both these parties, and if you had a bias, where
3 would it lie?

4 JUROR NO. 2: I think I could probably be
5 fair, because everyone's lives are at stake here and
6 everyone has the same chance -- you know, deserves the
7 same chance to have a good life. If I have a bias, it
8 would probably be on behalf of a child, because they are
9 a child and I am a woman, so that's probably where my
10 bias would lie. I may have other biases that I don't
11 realize because of my relative, but I don't know, so
12 that's as honest as I can be.

13 MR. WACHTER: That's all we can ask. Thank
14 you.

15 THE COURT: Mr. Talney?

16 MR. TALNEY: Ma'am, if you are sitting on this
17 jury and you have to go back and deliberate the case,
18 one of the requirements would be that you discuss it
19 openly with the other jurors, and listen to them.
20 Obviously in an allegation such as this, there is going
21 to be discussions about the vaginas, the vaginal area,
22 those kinds of things. Is that something that you are
23 going to be able to discuss yourself with other people?

24 JUROR NO. 2: I don't know. I have not done
25 that before.

1 MR. TALNEY: Sure. We're just trying to get a
2 sense I guess. We don't know you, either. What if
3 that's the discussion that's happening back there? Do
4 you have any concerns? I don't know that we are going
5 to be talking about blood, or you are not going to be
6 seeing pictures of blood and things like that. Is it
7 just blood you are squeamish with, or is it -- I am
8 trying to get a better sense.

9 JUROR NO. 2: I really can't say for sure. I
10 just know that there are times when I feel that I am
11 stuck listening to something that is beyond what I want
12 to grasp, and it's usually -- it's only happened to me
13 in the nature of having to sit in on information about
14 procedures that had to do with medical things, STDs.
15 Those are the instances. I don't choose to watch things
16 that are graphic. I don't watch surgeries, you know.
17 Certain things on TV I don't choose to see, so if
18 someone is discussing that this victim said that she was
19 touched in this way, I would have no trouble discussing
20 that that's what she said, and I would have no trouble
21 saying that this is the evidence they presented, if that
22 was what you are asking me.

23 MR. TALNEY: And in reading through your
24 questionnaire, there was that question about "Is there
25 anything about those experiences that will affect your

1 ability to be fair and impartial to both sides in this
2 case?" and your answer was, "I don't know. It was
3 traumatic and I would prefer not to hear about this
4 subject." Did that incident with your relative have
5 personal repercussions on you?

6 JUROR NO. 2: It affected our family.

7 MR. TALNEY: And how was that? I mean --

8 JUROR NO. 2: He was convicted, couldn't say
9 where he was. We felt we could not address anything
10 about him for those years while he was gone. We visited
11 him, and it was very hard, the whole thing. He was a
12 very special member of our family.

13 MR. TALNEY: And he's out of custody now?

14 JUROR NO. 2: Yes.

15 MR. TALNEY: Is there a relationship? Has
16 that been reestablished?

17 JUROR NO. 2: Yes. It was never broken.

18 MR. TALNEY: Does this situation still have an
19 impact on you?

20 JUROR NO. 2: I am sure it does in a way.

21 MR. TALNEY: What about emotionally? I guess,
22 you know, the bottom line is, let's say you are
23 listening to the evidence in this case, or you are back
24 in the jury room discussing it. Do you have any
25 concerns about how you are going to filter through the

1 evidence just based on your own personal experience?

2 JUROR NO. 2: I don't see that I would compare
3 the two.

4 MR. TALNEY: And I guess that's the question.
5 How traumatic is it today? Do you think it would
6 interfere at all with your ability to hear the facts or
7 decide the case impartially for both sides?

8 JUROR NO. 2: How traumatic is it today?

9 MR. TALNEY: Uh-hum.

10 JUROR NO. 2: Well, it's a break of trust and
11 it affects your trust in the future. Even though you go
12 on and forgive and see changes, it still affects your
13 trust, and not to a degree that you want to reveal, but
14 it's there, and so it's still traumatic because of that.
15 We never -- Whenever I see anything on TV about someone
16 getting hurt somewhere, I think, "Where was so and so?"
17 not because I think he did it for sure or anything like
18 that, but just because if he did it once, you know,
19 what's his mindset today? Is he healthy still? Is he
20 not as healthy today as he was yesterday?

21 MR. TALNEY: I would certainly expect that you
22 might hear from a child witness during this process. Do
23 you think you would automatically believe the child's
24 testimony just because of your own experience, or do you
25 think you could weigh this person's testimony just like

1 you might any other witness? Do you have any concerns
2 there?

3 JUROR NO. 2: I think I value children's words
4 for what they are. They don't always -- They are
5 coming from somewhere in that child, from their
6 experience, for whatever reason, and adults around them
7 have to filter through stuff to find the real child
8 there. That's how I view a child's testimony, that
9 there may be things that they see one way that are
10 coming from some other kind of -- I don't know. There's
11 lots of reason for children to say things.

12 MR. TALNEY: So, it sounds like you would take
13 everything they say or don't say in consideration in
14 trying to figure out what's going on.

15 JUROR NO. 2: I would.

16 MR. TALNEY: What about -- Your answer was
17 that you would prefer not to hear about this subject. I
18 think that would probably be true for most people. Do
19 you think there would be any chance that at some point
20 you would just start blocking things out?

21 JUROR NO. 2: I suppose that could be possible
22 if it was something I didn't expect, and it was too much
23 for me. I suppose that's a possibility that I could.
24 Not just right at this point. As far as how I put it,
25 that I would prefer not to hear about it, it's just

1 because I believe that maybe someone else who doesn't
2 have my particular experience and makeup could be --
3 could hear this easier, and do it in a manner that
4 wasn't quite so -- I think it would be hard.

5 MR. TALNEY: So, it sounds like you are saying
6 if it was a drug case, you understand your obligation as
7 a juror, you would have no problem with hearing a case
8 like that, but a case with these kinds of allegations,
9 it might be just personally traumatic for you?

10 JUROR NO. 2: I am just not sure where it's
11 going to go, and I think there's lots of people out
12 there that don't take it the way I do. They are not
13 worried that they are going to get physically hot and
14 think they are going to faint, and I think there's tons
15 of people that don't have that happen, and there's
16 probably lots of people that haven't had a person who
17 was convicted in their family. There will be a lot of
18 thinking about that stuff if I hear about this
19 particular case, I am sure, just because -- you can't
20 just disassociate yourself like that completely. I am
21 not trying to protect myself, however.

22 MR. TALNEY: As we have been discussing it,
23 Mr. Wachter and myself, do you feel yourself having
24 physical reactions now just in our questioning?

25 JUROR NO. 2: No. Of course anyone would be

1 nervous getting so many questions.

2 MR. TALNEY: You probably didn't expect when
3 you came in that you were going to be asked these
4 questions. I just notice that you were kind of flushed.
5 I was just wondering.

6 JUROR NO. 2: It requires a lot of opening up,
7 and judging your words before you say them. Something
8 like this, it's quite serious. I don't take it lightly.

9 MR. TALNEY: Thank you for your time. I don't
10 have any further questions.

11 MR. WACHTER: May I ask one more?

12 THE COURT: Okay.

13 MR. WACHTER: Ms. Jones, the allegation here
14 will be that there was this contact between a step
15 grandparent and a step grandchild. Is there anything
16 about the fact that there is a family relationship that
17 would affect the way that you see this case, be able to
18 judge it? Because you have talked about your relative,
19 and I failed to ask you earlier whether just the fact of
20 a family relationship in this particular case means
21 anything to you.

22 JUROR NO. 2: What it means to me is that
23 family has a position of trust, and that it's difficult
24 to see someone in a family abuse that trust, or possibly
25 abuse it. One of the people we came in contact or grew

1 to know during my relative's experience was another
2 person who had been convicted and was a grandfather and
3 had taken advantage of a grandchild that was a step
4 grandchild, and so I am familiar, but other than
5 anybody's feelings about family, I don't believe that I
6 would have a special prejudice. It wasn't like that in
7 our case, with my family. Nothing to do with family,
8 other than that particular kind of illness is a power
9 thing. That's what I think. And trust is a big issue.

10 MR. WACHTER: Thank you.

11 THE COURT: You can be excused until 1:30.

12 (Juror No. 2 left the courtroom.)

13 THE COURT: Could you bring juror number 7 in,
14 and you can excuse 5 and 6.

15 (Juror No. 7 entered the courtroom.)

16 THE COURT: Ms. Woodyard, if you would take a
17 seat in the front row there.

18 We called you in in response to your questionnaire,
19 and you had a very emotional response to going through
20 this obviously.

21 JUROR NO. 7: Yes.

22 THE COURT: Given the nature of this case, do
23 you think it would be traumatic for you to be a juror on
24 this case?

25 JUROR NO. 7: Yes.

1 THE COURT: Okay. Any objections to excusing
2 this juror?

3 MR. WACHTER: No, Your Honor.

4 MR. TALNEY: No, Your Honor.

5 THE COURT: You may be excused. Thank you.
6 Maybe you will get called back on a different kind of
7 case or a civil type of case. Thank you for your time.
8 You are excused. You do not need to call in the rest of
9 the week.

10 JUROR NO. 7: Thank you.

11 (Juror No. 7 was excused.)

12 MR. WACHTER: Did the court want to talk about
13 the two we have spoken to so far?

14 THE COURT: That's fine. Juror number 1,
15 there didn't seem to be any issue there.

16 MR. WACHTER: I saw none.

17 MR. TALNEY: I agree.

18 THE COURT: Juror number 2?

19 MR. WACHTER: Your Honor, I don't think
20 number 2's situation rises to the level of cause. What
21 is clear to me is that if this was a case where we were
22 calling a SANE nurse and having a great deal of medical
23 testimony, that she would kind of exclude herself from
24 this. I think both counsel at least alluded to the type
25 of discussions there will be in this courtroom.

1 Frankly, I gave her -- I gave her one other kind of
2 opportunity to show us a reason to dismiss her when I
3 asked her about the family aspect at the very end, and
4 she mentioned how she became familiar with a case where
5 a step grandfather had molested a granddaughter, and she
6 thought that even that familiarity with that situation
7 would not affect her ability to be fair. What she
8 discussed is a possibility of experiencing some
9 problems. The standard requires a probability that she
10 would not be able to be fair and impartial, and I just
11 don't think we have met that.

12 THE COURT: Mr. Talney?

13 MR. TALNEY: Your Honor, I would challenge
14 number 2 for cause. Her physical demeanor, from the
15 beginning she was certainly experiencing discoloration
16 in her face, and seemed at times -- I guess her voice
17 seemed to me somewhat shaky in her response. When I
18 asked her specifically about the discoloration in her
19 face, it actually had grown more to be a complete blush
20 on her face and down her neck, being red. Obviously the
21 court heard her response to that. Her extended answer
22 almost towards the end where she started talking about
23 how that she didn't believe she was probably the right
24 juror in a case such as this, I think was telling. It
25 was obvious she knew what her responsibility was, and

1 was dedicated in trying to carry it out, to be fair and
2 impartial, but it seemed to me in her free-flowing
3 answer, she had real concerns about whether or not she
4 was going to be able to fulfill that obligation.

5 THE COURT: Based on what I have seen so far,
6 I am going to deny the motion for cause. She was very
7 explicit about what would cause her to faint. It would
8 be graphic, pictorial-type depictions of medical
9 procedures, and we don't have that in this case. I
10 thought her answers were very thoughtful about what a
11 serious matter this was, and thoughtful responses, and
12 she also indicated she could separate her cousin's
13 situation from the facts of this case. So at this point
14 I will deny the challenge for cause.

15 That's it.

16 MR. WACHTER: Your Honor, at 1:30 I will
17 develop a list on our side, and does the court plan to
18 then just keep the people that we have identified for
19 individual questioning, then bring the whole group back
20 for tomorrow?

21 THE COURT: We'll see how many you have got.

22 MR. WACHTER: We are coming up with a number
23 of them so far.

24 THE COURT: Okay. We have a judges' meeting
25 at lunchtime, but I could probably be back here by 1:20

1 if you want to.

2 MR. TALNEY: I can be back, no problem.

3 THE COURT: Our meeting is not that long, so I
4 should be available. We'll see you at 1:20.

5 (Court recessed.)

6 THE COURT: I forgot about juror number 14.
7 She said she knew about this case or she knew
8 Mr. Stockwell, one or the other.

9 MR. WACHTER: Heard of the case. She didn't
10 say she --

11 THE COURT: Right. So we need to find out
12 about that. I didn't want to ask her any more
13 questions. So we will put her on our list if she is not
14 on it already.

15 We have got 5 and 6 we are going to do. Then have
16 you two conversed, or not?

17 MR. TALNEY: We have not.

18 MR. WACHTER: We have not.

19 THE COURT: Then why don't we go through
20 Mr. Wachter's list then.

21 MR. WACHTER: Actually, I want to defer to
22 Mr. Talney. That may be a better starting point, and we
23 can chime in.

24 MR. TALNEY: Number 8, 9, maybe 10, 11, 14,
25 16, 18, 19, 22, 25, 28, 29, 30, 33, maybe 34, 36, 38,

1 39, 40, 42, 43, 44, 51, maybe 52, 54, and I assume the
2 state wants 56.

3 THE COURT: Juror number 12, he said something
4 about his wife is pending charges or something?

5 MR. TALNEY: Yes, I recall that.

6 THE COURT: "Wife, Deborah Futch, is under
7 criminal charge by Kitsap County. No charge as of yet."

8 MR. WACHTER: I can only presume that means
9 that there is an investigation, but no charges have been
10 brought yet.

11 THE COURT: You might want to talk to him.

12 MR. WACHTER: I think it might be worth
13 talking to the person.

14 THE COURT: All right. Out of your list, that
15 was one I thought we should look at. You have got 14 on
16 your list.

17 MR. WACHTER: Your Honor, Mr. Witt has 31
18 through 60, and I have 1 through 30. I don't have
19 additional persons.

20 THE COURT: Mr. Witt?

21 MR. WITT: Well, Your Honor, I guess I should
22 qualify my answer. I am going to need to double-check
23 with what Mr. Talney has said. There may not be
24 anything additional on top of what he has mentioned.

25 THE COURT: Why don't we start with these. On

1 top of what Mr. Talney has indicated, we would want to
2 speak with juror number 35. I believe that's it.

3 Let's have juror number 32. Over the lunch hour
4 she realized she might know Tina Monroe.

5 MR. WACHTER: She does go by Tina in some
6 circles.

7 THE COURT: 32 will be added then.

8 Well, that's a lot. That's 31 to question. That's
9 almost everybody, isn't it?

10 MR. TALNEY: Pretty darn close.

11 MR. WACHTER: It's enough people that my
12 thought is we'll do well to get through all of this
13 individual questioning in the afternoon.

14 THE COURT: It looks like I better put Valda
15 on notice we might need some more jurors, too.

16 MR. TALNEY: I would think that that's a
17 possibility. I noted the individuals who responded in
18 their questionnaire that they didn't think they could be
19 fair. I think I have 13 of those specific individuals.
20 There's 14 of them left I think.

21 THE COURT: What I am going to do is I am
22 going to read off the list of numbers we're going to
23 have -- these are the ones we are not going to question
24 individually. I am going to have them come in here and
25 I will excuse them for the day and give them some

1 instructions, then we'll start with the individuals.

2 The ones for Ms. Lougheed to put together is
3 jurors 1, 2, 3, 4, 13, 15, 20, 21, 23, 24, 26, 27, 31,
4 37, 41, 45, 46, 48, 49, 53, 55, 57, 58, and 59. If you
5 could bring those jurors in, I am going to excuse them
6 for the day to come back at nine tomorrow, then we'll
7 get started on the individuals.

8 (Above-referenced jurors entered
9 the courtroom.)

10 THE COURT: I brought all of you juror members
11 in here as a group because after going through the
12 questionnaires over the lunch hour, we determined that
13 none of you need to be individually questioned. The
14 other jurors need to have some individual questioning
15 done, so you are going to be excused at this time to
16 return tomorrow morning.

17 What time? 8:45?

18 Report in by 8:45 so we can get started at 9:00.
19 This afternoon will be spent talking with the other
20 jurors, so there's really no reason for you to stay
21 here, but we'll be starting tomorrow at 9:00.

22 You are instructed not to discuss this case among
23 family members, friends, or yourselves. I know you
24 don't know very much about the case as yet, but that's
25 an instruction that continues throughout the entire

1 trial, the reason being we don't want you to hear
2 anybody express any opinions or give their spin on
3 whatever you might have told them about the case, so
4 it's important not to discuss it, and also, not to read,
5 view, or listen to any media reports on the subject of
6 this trial. I don't know that there will be any
7 newspaper reports, but there could be, and if there
8 were, you are not to read those or have anybody else
9 read them to you or comment on the subject of any media
10 article that you might see out there.

11 So, I want to thank you, and I am sorry we couldn't
12 have excused you at noon, but we had to go over the
13 questionnaires at the lunch hour.

14 JUROR NO. 46: I want to clarify. Discuss in
15 no shape or form, not one word in any way?

16 THE COURT: You can say you are a juror going
17 through the jury selection process right now.

18 JUROR NO. 46: But that's it.

19 THE COURT: But not the type of case it is.

20 Thank you. So you are excused, and we'll see you
21 tomorrow morning at 9:00. 8:45 report in.

22 (Jurors excused for the day.)

23 THE COURT: Juror number 5? This juror also
24 had a financial hardship I want to cover.

25 (Juror No. 5 entered the courtroom.)

1 THE COURT: Mr. Krause, if you want to have a
2 seat there.

3 I called you in in response to your questionnaire.
4 There was a question there, "Have you, any family
5 members or friends ever been arrested for or convicted
6 of any criminal offense?" and you didn't want to put
7 anything down here, so what was the nature of the
8 offense and who was it?

9 JUROR NO. 5: I was arrested, but not
10 convicted. It was about 1983. It was kind of a group
11 of drug possession, where they arrested everybody that
12 was there.

13 THE COURT: Okay. And no charges ever came
14 out of that?

15 JUROR NO. 5: No.

16 THE COURT: Okay. All right. Then you also
17 indicated this morning that this would be a financial
18 hardship?

19 JUROR NO. 5: Well, my wife works, and I work
20 some. I guess to be truthful it wouldn't be an extreme
21 financial hardship. It would just be inconvenience I
22 guess. Potential income.

23 THE COURT: You've got lots of jobs.

24 JUROR NO. 5: Yeah, I do a lot of freelancing.

25 THE COURT: All right. So then we would be

1 off three days next week, so you would have time to
2 catch up, so you think that would work for you?

3 JUROR NO. 5: It would, sure.

4 THE COURT: Okay. All right.

5 Any questions from the state?

6 MR. WACHTER: Please.

7 Good afternoon. About this arrest, it happened 20
8 years ago. Were you an adult at that point? Were you a
9 juvenile?

10 JUROR NO. 5: I was an adult.

11 MR. WACHTER: Do you mind me asking what kind
12 of drug it was?

13 JUROR NO. 5: Cocaine. It was just at an
14 establishment where it was there, but it wasn't mine.

15 MR. WACHTER: Well, do you have any feelings
16 towards either police or the system that relate to that
17 incident?

18 JUROR NO. 5: No. As far as am I angry about
19 it?

20 MR. WACHTER: That's one way to put it.

21 JUROR NO. 5: No.

22 MR. WACHTER: Should either party be concerned
23 about you having a bias that you may carry with you when
24 it comes to this kind of a case?

25 JUROR NO. 5: I don't think so.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. WACHTER: Thank you.

I have no other questions, Your Honor.

THE COURT: Mr. Talney?

MR. TALNEY: Sir, it doesn't sound like anything about that would make you feel like you might be impartial to one side or the other. You don't think that's going to have any impact on how you view this case, do you?

JUROR NO. 5: I don't believe it would.

MR. TALNEY: That's all I have, Your Honor.

THE COURT: Then you will be excused to return tomorrow morning at 8:45. We will get started at 9:00, and I want to advise you not to discuss the case among family members or friends or read any media reports on the subject of this trial. See you tomorrow morning.

JUROR NO. 5: What time again?

THE COURT: She will have you report in at 8:45. She will give you some instructions. Thank you.

(Juror No. 5 left the courtroom and Juror No. 6 entered the courtroom.)

THE COURT: We called you in in response to your questionnaire, and I guess you had a number of concerns. One was you didn't think you could be fair.

JUROR NO. 6: I don't think I could.

THE COURT: You have had time to think about

1 this longer over lunchtime.

2 JUROR NO. 6: I have had time to think about
3 it, yes.

4 THE COURT: Why don't you think you could be
5 fair?

6 JUROR NO. 6: Because I harbor some very hard
7 feelings about this particular accusation.

8 THE COURT: Then you had issue with your
9 brother-in-law I guess, also. How long ago was that?

10 JUROR NO. 6: About 15 years ago, and it ended
11 up causing a divorce. So my sister and he separated and
12 then divorced.

13 THE COURT: Okay. All right.

14 Mr. Wachter?

15 MR. WACHTER: May I ask just a couple
16 questions?

17 THE COURT: Yes.

18 MR. WACHTER: Good afternoon. I know this is
19 not easy to talk about the subject, but it may be that
20 it's somewhat difficult for a lot of people.

21 JUROR NO. 6: Uh-hum.

22 MR. WACHTER: You recognize that if you are on
23 this jury, you will hear a set of evidence that has
24 nothing to do with these incidents from your past.

25 JUROR NO. 6: Correct.

1 MR. WACHTER: The court will essentially
2 instruct you to follow the law and apply it to this
3 evidence, so one way --

4 JUROR NO. 6: I am aware of that.

5 MR. WACHTER: -- one way of putting the
6 question, are you able to set aside your personal
7 experiences and deal with this case strictly on what is
8 before you? I know that sounds somewhat clinical, but
9 the jury is asked to not apply those specific life
10 experiences to the specifics of this case. Are you
11 someone who is able to do that, or is this really hard?

12 JUROR NO. 6: I thought in the beginning, yes,
13 I would be able to do that, but then after leaving and
14 having time to think about it, I am not sure that I can,
15 and I felt since that was the question inside me, that
16 maybe I couldn't.

17 MR. WACHTER: Do you think it's -- I am going
18 to ask some very specific questions. Do you think it's
19 a possibility that you would have problems being fair,
20 or do you think it's a probability?

21 JUROR NO. 6: I think it's a probability.

22 MR. WACHTER: Thank you.

23 I have no other questions. No objections.

24 MR. TALNEY: I have no questions, Your Honor.

25 THE COURT: Okay. Any objection?

1 MR. TALNEY: No.

2 THE COURT: All right. I am going to excuse
3 you. Thank you for your honesty here, and it's a
4 difficult situation. Maybe you will get called back on
5 a different type of trial, but you have completed your
6 service for this week. Thank you very much.

7 JUROR NO. 6: Thank you. I am sorry.

8 MR. WACHTER: Nothing to apologize about.

9 (Juror No. 6 was excused.)

10 THE COURT: Number 8, because of his juror
11 profile, you are concerned about?

12 MR. TALNEY: Yes, Your Honor.

13 (Juror No. 8 entered the courtroom.)

14 THE COURT: Mr. Wilson, I called you in not
15 specifically on your questionnaire, but on your jury
16 profile. When you turned the profile in, you indicated
17 you did not want to be a juror, that it was a waste of
18 time.

19 JUROR NO. 8: Last time I came here we sat
20 until 2:30. The judge took and said -- didn't care for
21 the agreement between the two parties, and so they sat
22 down, readjudicated the whole thing, and said our
23 services weren't necessary, and so we sat there and sat
24 there and sat there, and it was really a pain in the
25 butt. If it was going to do something and be

1 meaningful, I'd go through it, sure, that's no problem,
2 but if I am looking at sitting for three, four, five
3 days and not doing anything, and it's just waiting and
4 waiting. The bad part was it went -- we were supposed
5 to have started at ten. By one, we had no idea what was
6 going on. We didn't leave and didn't even get lunch
7 until after we left. I am a diabetic. That's not good.
8 So, I put down I wasn't thrilled with it.

9 THE COURT: Well, we don't want somebody on
10 the jury who is going to sit there and be angry through
11 the whole process.

12 JUROR NO. 8: If I was actually sitting on the
13 jury and doing it, I have no problem doing it. What I
14 am talking about is sitting out in the lobby, sitting in
15 the hallway, just waiting and waiting and waiting. You
16 feel like you are a captive and all you are doing is
17 trying to do your civic duty.

18 THE COURT: And you are. Because we don't
19 have a script, we don't know how many people -- it
20 turned out we have a large group of people we have to
21 individually question, which is what's going on right
22 now. The other jurors did not need to be. So, do you
23 think from what has gone on so far -- What's going to
24 happen now, if you stay on the panel, you will be
25 excused to come back tomorrow at nine o'clock. We'll

1 select the jury tomorrow, and then we'll start with
2 testimony. We have that three-day break, then
3 testimony.

4 JUROR NO. 8: Like I said, last time it was
5 from start to finish sitting in the jury box pool back
6 there, the whole time. No communication, no nothing
7 other than saying we are starting at 10 and at 1:30.
8 This one has moved along, things have happened, I can
9 see a process going on. That's fine. I don't mind
10 that. I did 25 years in the service. Believe me, I
11 have seen all kinds of things from one end to the other.
12 I have had to sit down, hurry up and wait. You just
13 want to see something happen, not just nothing.

14 THE COURT: Well, I will tell you from my
15 point of view we don't plan to have jurors out there, we
16 try to avoid it, but sometimes it cannot be avoided.
17 I'll see if the attorneys have any questions.

18 Mr. Wachter?

19 MR. WACHTER: I don't have any questions yet.
20 Thank you.

21 THE COURT: Mr. Talney?

22 MR. TALNEY: Thank you, Your Honor.

23 Sir, I also notice that you wrote in -- it says
24 that "A criminal has more rights than I do," with an
25 exclamation point.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 8: That's true.

MR. TALNEY: What were you trying to convey there?

JUROR NO. 8: There we were, captive, sat in the corner. The person came in, the plea agreement was made prior to us getting there by -- it was about nine o'clock. At ten we were told we were going to be going in. All we did was just sat and sat and sat there. I had nothing to do but cool my heels, and I am just going, "Come on, give me a break. What did I do?" I am here because I was summonsed. If I get a job to do something, I will go out and do my job to the best of my ability, but I don't like to just sit. I am not a sitting person is what it boils down to, and I keep active and doing things.

MR. TALNEY: It can happen. Like the judge said, we don't have a script. Let's say some issue comes up that nobody was expecting, and you are sitting around for three hours back there doing nothing, except for maybe reading the book you brought, if you bring one. What kind of impact do you think that's going to have on you?

JUROR NO. 8: None, as long as -- See, if I went into the -- if it goes into the trial, something is happening up until that point, you sit for five or six

1 hours, that's different. That's where I feel, gee, come
2 on, give me break. I want to do something.

3 MR. TALNEY: So it sounds like your
4 frustration was they never asked you to do anything.
5 They brought you, held you around, then told you, "See
6 you later."

7 JUROR NO. 8: That's right. The other issue,
8 I am a diabetic. I am also a Mormon. I don't drink
9 coffee. I don't drink tea. I was told we couldn't even
10 go out to the drinking fountain the first three hours
11 because there would be people in the hallways that we
12 couldn't go around.

13 MR. TALNEY: Today --

14 JUROR NO. 8: Last time I came, this isn't too
15 swift. What is there for me to drink? I can't drink
16 juice, I can't drink tea and I can't drink coffee, so
17 here I am, nothing, and that's frustrating.

18 MR. TALNEY: Your response about the rights of
19 a criminal, are there any rights that you would take
20 away?

21 JUROR NO. 8: No. I think they are fine in
22 place.

23 MR. TALNEY: I don't quite understand the
24 statement maybe.

25 JUROR NO. 8: What I was trying to get the

1 point across was I was summoned, and essentially I look
2 at I was being incarcerated because I could not have
3 anything to drink, go to the bathroom, sitting there,
4 kept in limbo. I am sitting in the dark.

5 MR. TALNEY: Okay.

6 JUROR NO. 8: It's like putting somebody in
7 the closet and saying there you are for five hours and
8 we'll come back and see if -- I felt like I was in the
9 dark. If they kept saying there's an agreement going on
10 or there's something happening, at least keep the people
11 informed. There's nothing worse than going and sitting
12 and sitting and sitting. It's like you go to an
13 airport, we're going to fly you out tomorrow. Just sit
14 around and we'll get to you. How frustrating is that if
15 you get snowed in or rained in or something happens you
16 can't get out? Going through the lines to get on an
17 airplane, now everybody is in line for security. It
18 gets frustrating. As long as things move, that's fine.

19 MR. TALNEY: Was there anyone you held
20 particularly responsible for your captivity?

21 JUROR NO. 8: No, I don't think so.

22 MR. TALNEY: Have you ever served on a
23 court-martial?

24 JUROR NO. 8: No, luckily.

25 MR. TALNEY: Why is that?

1 JUROR NO. 8: I wouldn't care to be on either
2 side. Military justice is very, very unforgiving, very
3 hard and very stiff, and I never wanted to be on the
4 receiving end and I never wanted to be on the giving
5 end.

6 MR. TALNEY: I notice in your questionnaire
7 you wrote that your wife had been abused as a teen?

8 JUROR NO. 8: Yes.

9 MR. TALNEY: Did that have any personal impact
10 on your life?

11 JUROR NO. 8: Sure, it's going to have some
12 impact.

13 MR. TALNEY: Is it -- Would you describe it
14 as an open wound for your wife, or is this something
15 that she has worked through?

16 JUROR NO. 8: Twenty-seven years of her and I
17 being together and sharing all the problems we have had
18 off and on over the years, I think we have pretty well
19 taken care of things.

20 MR. TALNEY: Did you know her when it
21 happened?

22 JUROR NO. 8: Yes.

23 MR. TALNEY: And --

24 JUROR NO. 8: Did it make any difference? No.

25 MR. TALNEY: Did it go to trial or ever get

1 prosecuted or investigated?

2 JUROR NO. 8: No.

3 MR. TALNEY: Did it involve a relative or
4 family member of hers?

5 JUROR NO. 8: Yes.

6 MR. TALNEY: You have heard the allegations in
7 this case, that it involves a household or family
8 member. Does that cause you any concern about how you
9 might see the evidence in this case or view it?

10 JUROR NO. 8: No.

11 MR. TALNEY: How do you think you separate the
12 two?

13 JUROR NO. 8: Well, number one, it was
14 something that was perpetrated upon my wife, it was not
15 on me. Two, I saw the things she went through and we
16 had to deal with, and I think that that's a personal
17 thing that people have to deal with. It's not always
18 the best thing, I am not thrilled with it; however, you
19 figure that if I knew about it before we were married --
20 I have been married for 27 years -- obviously we have
21 been able to deal with it and keep things separate and
22 keep even connection with the family members that were
23 involved.

24 MR. TALNEY: I notice, you obviously checked
25 the box that you didn't think that that experience would

1 affect your ability to be fair and impartial to both
2 sides, both the prosecution and the defense. Do you
3 still feel that way, or do you have any concerns?

4 JUROR NO. 8: No, I still feel the same way.
5 I don't think it makes a difference.

6 MR. TALNEY: Thanks for your time, sir.
7 That's all I have.

8 THE COURT: You can be excused. See you
9 tomorrow, 8:45. We will start at 9:00.

10 (Juror No. 8 left the courtroom and
11 Juror No. 9 entered the courtroom.)

12 THE COURT: Take a seat in the front row
13 there.

14 We called you in in response to your questionnaire.
15 You indicated that you had been a sexual assault victim.

16 JUROR NO. 9: Yes.

17 THE COURT: My first question would be, do you
18 think you can put that aside, your own personal
19 experience, and listen to the witnesses who come on the
20 stand here and decide this case on the testimony and
21 law?

22 JUROR NO. 9: I would hope so. Yes, I think I
23 could.

24 THE COURT: Okay. I see you have had quite a
25 bit of education, and courses in psychology and

1 different courses. Do you feel like you have resolved
2 your personal issues?

3 JUROR NO. 9: Yes. I had a lot of work to do
4 to resolve that, but it's been a long time.

5 THE COURT: Okay. So you think you could be
6 fair --

7 JUROR NO. 9: I feel like I have moved on,
8 yes. It's a page in my history for sure.

9 THE COURT: Okay. You think you can be fair
10 to both sides in this case?

11 JUROR NO. 9: Yes, I think I could.

12 THE COURT: Mr. Wachter?

13 MR. WACHTER: Thank you, Your Honor.

14 Good afternoon, Ms. Carlson. I don't want to open
15 old feelings, but I have to ask you some questions just
16 so we can know a little bit more about you, and some of
17 it's hypothetical because you don't know exactly what
18 you are going to hear in this courtroom. First of all,
19 I notice this thing didn't get reported or didn't get
20 prosecuted. Did it get reported to the police?

21 JUROR NO. 9: No. No one actually heard about
22 it until I was older. I was a young child, I was like
23 10 and it was my uncle, and I didn't tell anybody about
24 it until I was -- I had children of my own.

25 MR. WACHTER: The fact that our case involves

1 people who have a family connection, at least a step
2 grandchild, that's the allegation, should that be of any
3 concern to us because your experience was one with a
4 family member?

5 JUROR NO. 9: I don't think that a family
6 member or not family member -- to me it's doesn't matter
7 who. It wouldn't have mattered who it was in my
8 situation. Abuse to me is abuse. People have to deal
9 with, which I had to deal with.

10 MR. WACHTER: Is there -- When you heard the
11 charge of child molestation, what was your reaction? I
12 am going ask the whole panel that probably down the
13 line, but personally.

14 JUROR NO. 9: I did think about it. I mean,
15 it occurred to me, oh, am I a qualified person to deal
16 with this? Am I okay with this? Because it's something
17 that I have dealt with, but of course I didn't talk
18 about it or think about it on a daily basis. There are
19 some old wounds, but it's something I feel I have dealt
20 with and I have moved on, and I just feel like that it
21 was an issue that I had to take care of so that I could
22 live the type of life I want to live, and whether this
23 situation is a different situation -- I don't know what
24 this situation is.

25 MR. WACHTER: That was going to be my next

1 question, whether you would use any of that past
2 experience and hold it against Mr. Stockwell.

3 JUROR NO. 9: I don't know. I don't know
4 Mr. Stockwell. My situation was with a particular
5 individual, and I must admit that I consider a child
6 molestation as a tough subject. I do. I have feelings
7 about it, strong feelings about it. I think it's a
8 scary issue.

9 MR. WACHTER: I am not trying to belittle
10 those feelings, but would you expect that all jurors or
11 all potential jurors would have some feelings about the
12 subject?

13 JUROR NO. 9: Yes, I would.

14 MR. WACHTER: I guess the question is, do you
15 think your feelings would prevent you from being fair?

16 JUROR NO. 9: No. I don't think -- I think I
17 am a very fair person, but I will admit I do have
18 feelings about the subject.

19 MR. WACHTER: Thank you very much.

20 THE COURT: Mr. Talney might have a few
21 questions.

22 Mr. Talney?

23 MR. TALNEY: I am afraid I do, ma'am. You say
24 strong feelings. What are those? What are your
25 thoughts?

1 JUROR NO. 9: Well, I am a mother. I feel
2 strongly that children need to be protected against
3 people who would hurt them in any way, so my feelings
4 are when someone is accused of child molestation, it's
5 scary, it's a big deal.

6 MR. TALNEY: If in this case you were to
7 listen to a child testify, if that were to happen, do
8 you think those strong feelings that you have are going
9 to be reflected in how you see the testimony? I mean, I
10 don't want to make it a trick question for you. The
11 bottom line is, would you be more likely to believe the
12 child just because of your own experience, or on the
13 flip side I guess, would you discount what the child has
14 to say?

15 JUROR NO. 9: No, I don't think either way
16 that way. I mean, I would listen to what the child
17 would have to say, and irregardless of my history, I
18 would listen to what the child had to say. I would
19 understand and figure out what was going on.

20 MR. TALNEY: Obviously my concern as
21 Mr. Stockwell's representative is that your reaction
22 would be to be overprotective of the child. Do you
23 think there's any concern that that's going to happen?

24 JUROR NO. 9: I don't honestly know. I know I
25 can speak for myself as a mother that I am

1 overprotective, or would be overprotective of my child.
2 Maybe that's just a feeling I have, as I don't know if
3 everybody else is like that. I think that a lot of us
4 probably are a little overprotective of children.

5 MR. TALNEY: What you do with your own
6 children is completely up to you, but here, like the
7 judge has already talked about, one of the legal
8 principles we have is beyond a reasonable doubt. And,
9 have you ever served as a juror before?

10 JUROR NO. 9: No, I haven't.

11 MR. TALNEY: So one of the concepts here in a
12 criminal case when there's criminal allegations is that
13 you would have to find the defendant not guilty unless
14 you were convinced beyond a reasonable doubt. And I
15 guess the real question is, do you think based on your
16 own experience that there is any risk that you might
17 lower that standard for a case where the allegations are
18 child molestation in an attempt to be overprotective of
19 the child?

20 JUROR NO. 9: No, I don't think I would be
21 that way.

22 MR. TALNEY: Okay. I guess it sounds like you
23 thought about it some, and you realize what your
24 obligations are, and it sounds like you feel that you
25 can try and separate your own personal maybe emotional

1 side from your analytical side.

2 JUROR NO. 9: Yes, I do think that.

3 MR. TALNEY: Any concerns at all that you
4 don't think you are going to be able to live up to that
5 obligation?

6 JUROR NO. 9: Nothing that I can think of.

7 MR. TALNEY: Thank you for your time.

8 THE COURT: Thank you. You are going to be
9 excused at this time. Return tomorrow morning, 8:45,
10 and I instruct you not to discuss the case with family
11 members or friends. See you tomorrow morning.

12 JUROR NO. 9: All right.

13 (Juror No. 9 left the courtroom and
14 Juror No. 10 entered the courtroom.)

15 THE COURT: We called you in in response to
16 your questionnaire. You indicated you had several
17 friends that have been victim of sexual assault. Has
18 this been recent situations?

19 JUROR NO. 10: No, they are situations that
20 happened years ago that they told me about.

21 THE COURT: Okay. So, was there -- Let me
22 ask it this way. Can you put aside those incidents that
23 you know about or circumstances and decide this case on
24 its own testimony, witnesses, that come on the stand?

25 JUROR NO. 10: Yes.

1 THE COURT: Do you think you can be fair to
2 both sides in this case?

3 JUROR NO. 10: (Nods head.)

4 THE COURT: Mr. Wachter?

5 MR. WACHTER: Thank you, Your Honor.

6 Were you around when your friends had the
7 experience with the sexual assaults?

8 JUROR NO. 10: No. Both things happened years
9 before I knew them.

10 MR. WACHTER: And did you get some pretty
11 graphic descriptions of what happened?

12 JUROR NO. 10: I wouldn't go quite so far as
13 graphic. There were some details given, but not
14 graphic.

15 MR. WACHTER: If you hear testimony about
16 sexual touching that is alleged in this case, do you
17 think there's anything about that kind of subject that
18 would cause you to have a problem being fair as a juror?

19 JUROR NO. 10: No.

20 MR. WACHTER: Are you comfortable, as
21 comfortable as anyone else with the subject?

22 JUROR NO. 10: I think so.

23 MR. WACHTER: Thank you very much.

24 THE COURT: Mr. Talney?

25 MR. TALNEY: When your friends, when they were

1 victimized, were they adults or were they children?

2 JUROR NO. 10: One I believe was 18 or 19, the
3 other was I think 24 or 25, 26 maybe.

4 MR. TALNEY: Did it have anything to do with
5 family members or anything?

6 JUROR NO. 10: I think one was an ex-boyfriend
7 and the other was an employer.

8 MR. TALNEY: It doesn't sound like that's
9 going to have any effect on how you see this case.

10 JUROR NO. 10: No, I don't think so.

11 MR. TALNEY: I don't have any further
12 questions, Your Honor.

13 THE COURT: Thank you. You will be excused
14 then to return tomorrow morning at 8:45, and I will
15 instruct you not to discuss the case among family
16 members or friends, and we'll see you tomorrow morning.

17 (Juror No. 10 left the courtroom and
18 Juror No. 11 entered the courtroom.)

19 THE COURT: Dr. Sutton.

20 JUROR NO. 11: PJ is fine.

21 THE COURT: We called you in because on your
22 questionnaire, there had been a molestation that
23 occurred in your family, and I just wanted to
24 double-check to make sure that that wouldn't affect your
25 ability to be a juror in this case. I presume it

1 happened some time ago, and can you put aside that
2 incident and decide this case on its own evidence,
3 testimony, witnesses that come on the stand, and the
4 law?

5 JUROR NO. 11: Yes, I believe I can.

6 THE COURT: Do you think you can be fair to
7 both sides?

8 JUROR NO. 11: Absolutely.

9 THE COURT: You can get time off work to be
10 here?

11 JUROR NO. 11: I work for the Navy, so they
12 know I have jury duty this week and they are probably
13 not happy with me missing patients, but I will call them
14 when I get home and say one more day I guess.

15 THE COURT: All right. Mr. Wachter?

16 MR. WACHTER: Thank you, Your Honor.

17 Dr. Sutton, how long ago did this happen with your
18 oldest sister?

19 JUROR NO. 11: Twenty-five years ago maybe.

20 MR. WACHTER: Now, this is an older sister,
21 not just your oldest sister, correct?

22 JUROR NO. 11: Older and oldest.

23 MR. WACHTER: How much older?

24 JUROR NO. 11: She's six years older than me.

25 MR. WACHTER: When did you become aware what

1 was going on?

2 JUROR NO. 11: My dad sat down and told us
3 that he had a problem, had to go to counseling, when I
4 was about 10.

5 MR. WACHTER: The allegations in this case
6 involve obviously Mr. Stockwell and children who are
7 step grandchildren. Is there anything about the fact
8 that -- What we expect the evidence to be here is a
9 family matter. Does that mean anything to you?

10 JUROR NO. 11: I understand.

11 MR. WACHTER: I didn't say that well. Is
12 there any issue about this being a case with family
13 members?

14 JUROR NO. 11: That's not an issue. I will be
15 fine. I understand the case, and I think I can be
16 objective.

17 MR. WACHTER: Do you tend to -- Do you lean
18 one way or the other as you sit here today about hearing
19 anything else about the case because you have this kind
20 of experience through your older sister?

21 JUROR NO. 11: No.

22 MR. WACHTER: Thank you very much.

23 THE COURT: Mr. Talney?

24 MR. TALNEY: Sir, before your father disclosed
25 I guess to the family what was going on, did you have

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

any idea yourself before then?

JUROR NO. 11: No.

MR. TALNEY: And I guess was the counseling successful? Was the family reconciled afterwards?

JUROR NO. 11: Absolutely. And I think counseling wasn't just because of that. Also some physical abuse stuff, too. So, and like I said, in the thing, it was nothing that went to trial or civil or criminal action or anything like that.

MR. TALNEY: Have you ever served as a juror before?

JUROR NO. 11: No.

MR. TALNEY: One of the concepts the judge already explained was beyond a reasonable doubt, and if you are not convinced beyond a reasonable doubt, you would have to find the defendant not guilty.

JUROR NO. 11: Right.

MR. TALNEY: Any concern in your mind that your past experience with your sister would cause you to lower that burden in any way? Or I guess you could see that our concern might be that you might skew the evidence one way or the other.

JUROR NO. 11: Absolutely.

MR. TALNEY: Any concern about that at all?

JUROR NO. 11: No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. TALNEY: That's all I have, Your Honor.

THE COURT: Thank you. You will be excused at this time to return tomorrow morning at 8:45.

JUROR NO. 11: Thank you.

THE COURT: Thank you.

(Juror No. 11 left the courtroom and Juror No. 12 entered the courtroom.)

THE COURT: Take a seat in the front row there.

You had given us some information on your questionnaire regarding your wife and there may be some criminal charges?

JUROR NO. 12: Yes, ma'am.

THE COURT: Is that pending right now in Kitsap County?

JUROR NO. 12: I think so. We had a deposition a while back. She worked for the treasurer, county treasurer, and when we went to deposition, her lawyer asked them if there's any criminal charges and they said yes, so she took the Fifth on that.

THE COURT: Okay. So is she suing the County over loss of job or something?

JUROR NO. 12: Yes, ma'am.

THE COURT: It's a civil lawsuit?

JUROR NO. 12: Yes, I guess that's what you

1 call it.

2 THE COURT: Okay. Well, I guess the obvious
3 question is, how do you feel about being a juror here
4 where the Kitsap County Prosecutor's Office is involved?
5 We don't know anything other than what you wrote here.

6 JUROR NO. 12: It's my civic duty. Regardless
7 of what happens on the other side, I look at it just
8 like when I was a coach or an instructor, I go out and
9 do my job, I take that person and am unbiased. No
10 matter what the skill level is what they do, I tried to
11 bring in whatever they needed to be worked on out of
12 them. I don't think I will be biased one way or the
13 other, if that's what you are asking me.

14 THE COURT: That's what I am asking. I will
15 see if the attorneys have some questions.

16 Mr. Wachter?

17 MR. WACHTER: Thank you.

18 Hello, Mr. Futch.

19 JUROR NO. 12: Hello.

20 MR. WACHTER: As the court told you, I work
21 for the Kitsap County Prosecutor's Office, as does
22 Mr. Witt, and I expect that if this lawsuit takes its
23 course, that there would be people in the civil division
24 of our office who would be involved. I don't know
25 anything about your lawsuit. I understand you told us

1 that it's your civic duty. Do you feel like the timing
2 is something that -- you might prefer a different timing
3 of having to serve as a juror?

4 JUROR NO. 12: Are you asking me whether I
5 swing one way or the other?

6 MR. WACHTER: Sure.

7 JUROR NO. 12: I don't think so. I think
8 that's what I tried to get across a while ago. No
9 matter what has taken place on that side, I will take
10 and look at this objectively. Is that what you are
11 asking, sir?

12 MR. WACHTER: I think we are all going to ask
13 that question. I guess from the state's perspective,
14 are you able to tell us that you would be fair to the
15 state? There are two parties here, state and
16 Mr. Stockwell, and in this case, this prosecutor's
17 office represents the state. Do you think that you can
18 be fair to both parties in your present circumstances?

19 JUROR NO. 12: Yes, sir.

20 MR. WACHTER: If you are in the middle of this
21 trial, and if your wife gets a nasty letter saying she
22 has to do X, Y, and Z as a result of the litigation
23 that's going on, is that going to be a distraction to
24 you from this case?

25 JUROR NO. 12: I don't think so.

1 MR. WACHTER: I assume you and she talk about
2 what's going on in her case regularly?

3 JUROR NO. 12: Yes, sir.

4 THE COURT: That's a daily subject, or
5 routine?

6 JUROR NO. 12: No, sir. We try not to talk
7 about it as much as possible.

8 MR. WACHTER: Is it a potential distraction to
9 you in any way?

10 JUROR NO. 12: I don't think so.

11 MR. WACHTER: Thank you for your time,
12 Mr. Futch.

13 THE COURT: Mr. Talney?

14 MR. TALNEY: Thank you, Your Honor.

15 Sir, do you know the name of your wife's attorney?

16 JUROR NO. 12: Randy Loun.

17 MR. TALNEY: Do you know -- Were you present
18 during the depositions?

19 JUROR NO. 12: I was present at my deposition.

20 MR. TALNEY: Do you know who the attorney was
21 for the other side?

22 JUROR NO. 12: Well, the guy doing the
23 deposition was Alan Miles.

24 MR. TALNEY: Not Neil Wachter or Ryan Witt,
25 right?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 12: No.

MR. TALNEY: You have never seen these two individuals before?

JUROR NO. 12: First time I have seen them.

MR. TALNEY: Okay. I don't have any other questions.

THE COURT: Then you are going to be excused at this time to return tomorrow morning at 8:45, and we will get started with the rest of the panel then.

(Juror No. 12 left the courtroom and Juror No. 14 entered the courtroom.)

THE COURT: Take a seat right there.

When I asked this morning about if anybody had ever heard of this case, you responded you had, so --

JUROR NO. 14: I thought this case I saw in the newspaper.

THE COURT: And --

JUROR NO. 14: I don't remember much about it. I just remember reading.

THE COURT: You don't remember any specifics?

JUROR NO. 14: No. I just -- the name, when I heard the name, I thought, I think I saw something in the newspaper about that. That's all I remember.

THE COURT: Okay. All right. You don't have any impressions about what you read, or just the name

1 clicked?

2 JUROR NO. 14: Yeah, that it was police action
3 or something.

4 THE COURT: Do you have any recollection how
5 long ago that was?

6 JUROR NO. 14: It must have been quite a while
7 ago. Maybe six months.

8 THE COURT: Because this was charged quite a
9 ways back.

10 JUROR NO. 14: Yeah.

11 THE COURT: All right. And then you were
12 also -- were you a victim of this molestation, also?

13 JUROR NO. 14: Yes.

14 THE COURT: And it sounds like this happened
15 quite a few years ago.

16 JUROR NO. 14: Yeah, when I was a child.

17 THE COURT: And, in your mind, emotionally do
18 you think you have gotten past it?

19 JUROR NO. 14: Oh, yeah. I think it's
20 something that happened a long time ago. I dealt with
21 it a long time ago.

22 THE COURT: Okay. So you feel this would not
23 be too traumatic on you, opening old wounds?

24 JUROR NO. 14: No, I don't think so. I didn't
25 feel like I did anything wrong, so it was something that

1 happened to me.

2 THE COURT: I am sure you didn't.

3 Mr. Wachter?

4 MR. WACHTER: Thank you.

5 Good afternoon.

6 JUROR NO. 14: Good afternoon.

7 MR. WACHTER: Did this happen at the hands of
8 two people?

9 JUROR NO. 14: Uh-hum, yeah; my grandfather
10 and father.

11 MR. WACHTER: If you are on this jury, you
12 will hear that the people we have labeled as victims are
13 step grandchildren of the defendant.

14 JUROR NO. 14: Okay.

15 MR. WACHTER: Is there anything about that
16 fact that should concern either side when it comes to
17 you as a potential juror?

18 JUROR NO. 14: I would suppose because it
19 happened to me that there would be some concern, yeah.

20 MR. WACHTER: The question though is, if you
21 hear about a grandparent/grandchild kind of relationship
22 where this happens, as we say, is alleged to have
23 happened --

24 JUROR NO. 14: Right.

25 MR. WACHTER: -- do you think you could still

1 be fair?

2 JUROR NO. 14: Yeah, I think I could be. Yes.

3 MR. WACHTER: Is your personal experience
4 something that you might hold against Mr. Stockwell?

5 JUROR NO. 14: Well, I know it can happen,
6 because it happened to me, but I also know that it might
7 not happen.

8 MR. WACHTER: Is this something that
9 happened -- I don't want to dig up too much. Have you
10 gone through some counseling? Some work?

11 JUROR NO. 14: Yes, I have.

12 MR. WACHTER: Years?

13 JUROR NO. 14: Yeah, years ago, in my 20s and
14 30s.

15 MR. WACHTER: Do you believe there were other
16 people in your family who were victims?

17 JUROR NO. 14: Yes.

18 MR. WACHTER: And, did much time pass between
19 when it happened and when you disclosed?

20 JUROR NO. 14: Yes. Probably 10 years.

21 MR. WACHTER: Was there any sort of police
22 report made as a result?

23 JUROR NO. 14: No.

24 MR. WACHTER: Was there ever a time where your
25 father or grandfather were confronted with this?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 14: Yes.

MR. WACHTER: Is there anything about that moment or that time where they were confronted with this that it's going to get dredged up if you hear about a confrontation that's alleged to have occurred where persons asked about whether they did such an act?

JUROR NO. 14: You mean would it affect me emotionally? No, I think I have dealt with it. I don't think I have a big problem, you know, understanding it, or I am not going to react to it emotionally.

MR. WACHTER: How young were you?

JUROR NO. 14: Before I could talk, so probably under two when it started.

MR. WACHTER: Until what age?

JUROR NO. 14: Fifteen.

MR. WACHTER: Do you believe that you can separate those experiences from what you hear in the courtroom and render a fair verdict if you are on this jury?

JUROR NO. 14: Yes.

MR. WACHTER: Thank you.

THE COURT: Mr. Talney?

MR. TALNEY: I appreciate you taking the time to talk with us about this. It's hard to ask the questions and I am sure it's hard to answer them.

1 You certainly might in this trial hear from a child
2 that would be in the same age group that you were. I
3 think you listed your brother had also been a victim?

4 JUROR NO. 14: Right.

5 MR. TALNEY: And what age was he, do you know?

6 JUROR NO. 14: He says he was -- We adopted
7 him when he was seven. He had probably been there a
8 year until he was about 13 I believe.

9 MR. TALNEY: So, it would have been around the
10 same age as your brother, then your nephew, too?

11 JUROR NO. 14: Yes.

12 MR. TALNEY: Was that --

13 JUROR NO. 14: Later on of course, until he
14 was a teenager.

15 MR. TALNEY: If you were to listen to this
16 child's testimony, do you think your past experience at
17 all is going to affect how you view the evidence or the
18 testimony or the story of this child?

19 JUROR NO. 14: I don't know. I guess I
20 couldn't answer that.

21 MR. TALNEY: Sure. We're asking you
22 hypothetical questions, to assume things that you have
23 never heard before. I guess to get to the bottom line,
24 obviously from this side of the table our concern is you
25 would listen to this child testify, and perhaps have an

1 overprotective reaction because of your own situation,
2 as opposed to listening to it clinically and evaluating
3 it and things like that. And do you have any concerns
4 about that?

5 JUROR NO. 14: I don't particularly, no. I
6 can see where you would.

7 MR. TALNEY: Okay. That's an honest answer
8 for sure. Obviously you had a bad experience there and
9 you can't change who you are in this world, and I guess,
10 do you think our concerns -- do we have any reason to
11 have that concern? I mean other than reading your
12 history here, which is obviously concerning, but is
13 there anything in your makeup --

14 JUROR NO. 14: I think I could be fair, but I
15 can understand that you would be concerned that maybe I
16 wouldn't be, but I honestly think I could be.

17 MR. TALNEY: And that's a question. One of
18 the legal concepts the judge has already explained is
19 this beyond a reasonable doubt. Have you ever served as
20 a juror before?

21 JUROR NO. 14: Yes, a long time ago.

22 MR. TALNEY: Was it a criminal case?

23 JUROR NO. 14: Drunk driving.

24 MR. TALNEY: So, you must have heard that
25 beyond a reasonable doubt, you have to acquit unless you

1 are convinced beyond a reasonable doubt. And that's
2 kind of really the bottom line question, too, is do we
3 have any need to be concerned that you might lower that
4 burden because of your own experience?

5 JUROR NO. 14: Right.

6 MR. TALNEY: Trying to be overprotective, or
7 cautious, or any concerns?

8 JUROR NO. 14: I don't have any concerns.

9 MR. TALNEY: Okay.

10 That's all I have, Your Honor.

11 THE COURT: Thank you. You may step out.

12 MR. TALNEY: Actually, I am sorry. I did have
13 a question about the newspaper article.

14 JUROR NO. 14: Yes.

15 MR. TALNEY: Did you form an opinion after
16 having read it?

17 JUROR NO. 14: I am not even sure if it was
18 the right article, because I just remember a child
19 molestation article that I read and the name sounded
20 familiar, but that was all. That's why I raised my
21 hand. The name sounded familiar, and I remember reading
22 an article about child molestation.

23 MR. TALNEY: Do you recall whether you formed
24 an opinion about whether it happened or not at the time
25 that you read the article?

1 JUROR NO. 14: No, I didn't. I just read the
2 article.

3 MR. TALNEY: So --

4 JUROR NO. 14: It was a while ago. It wasn't
5 something real recent.

6 MR. TALNEY: Do you recall if you even had any
7 facts about the incident itself?

8 JUROR NO. 14: You know what, I thought that
9 the article I read -- maybe it was the same one -- it
10 had to do with a police officer, so maybe I read a
11 different article, then I put the two together because
12 of name familiarity.

13 MR. TALNEY: Thanks for your time.

14 THE COURT: You will be excused today, and
15 come back tomorrow morning, 8:45, then you will be
16 instructed not to discuss the case with family members
17 or friends.

18 (Juror No. 14 left the courtroom and
19 Juror No. 16 entered the courtroom.)

20 THE COURT: Mr. Chessman, if you will take a
21 seat.

22 We called you in in response to your questionnaire,
23 and you had worked in the area of social work with
24 clients and therapy, and I guess my basic question is,
25 having that experience, have you developed any

1 preconceived ideas or biases that might affect your
2 ability to be fair in this case, given the nature of the
3 case?

4 JUROR NO. 16: I don't know how to say if I
5 have biases. I just know it was an incredibly
6 emotionally draining, costly 15 years of my life, and
7 that's why I changed professions. And it was difficult,
8 and I am happy to not be doing that work anymore, but
9 those -- the cases, I saw all kinds of cases and
10 clients, but the ones that were involved with domestic
11 abuse, or especially with young children with sexual
12 abuse in their history were the ones that were the most
13 difficult and the ones that many cases I never saw
14 resolved. And with my daughter, stepdaughter, she still
15 never dealt with it in later life, so it's disturbing to
16 me. I don't know if that's a bias, but I have really
17 been involved in quite a bit.

18 THE COURT: Okay.

19 Mr. Wachter?

20 MR. WACHTER: Thank you, Your Honor.

21 Good afternoon, Mr. Chessman.

22 JUROR NO. 16: Good afternoon.

23 MR. WACHTER: This case, I expect you will
24 hear evidence where there's allegations of sexual
25 contact that occurred between family members, and this

1 is really the thrust of our question. Do you feel like
2 you can be fair to both sides in a trial where you are
3 presented with that kind of information, those kinds of
4 allegations?

5 JUROR NO. 16: Well, I think I can be fair.
6 It's just -- I mean, I think I have heard this kind of
7 story, similar stories. It's just -- all I am saying,
8 it's very difficult. I don't look forward to it.

9 MR. WACHTER: Do you feel like you are more
10 likely to believe that this type of allegation is true
11 as a result of your personal experience?

12 JUROR NO. 16: Oh, boy, I would say I tend --
13 I probably lean in the direction of believing, in most
14 cases having believed the victims, and in some cases I
15 have had to learn that I was wrong, but I will start out
16 usually believing that the victim has got some credence.

17 MR. WACHTER: If it was the counseling setting
18 and you were presented with a victim who described an
19 incident of sexual abuse, is that kind of how you start
20 your interaction with the person? Kind of taking them
21 at their word?

22 JUROR NO. 16: I would probably start there.

23 MR. WACHTER: Here in the legal setting, we
24 have a presumption of innocence that attaches to
25 Mr. Stockwell, and that is with him throughout the

1 trial, and there is no presumption of truthfulness that
2 attaches to any witness. Can you play by this new set
3 of rules here in the courtroom? Can you apply the law
4 to these facts and not any other facts that you have
5 heard outside of this courtroom?

6 JUROR NO. 16: Well, I am a reasonable person.
7 I think I can do that. I will just say yes.

8 MR. WACHTER: If I ask you the question, would
9 you rather be on a burglary trial, what is your answer?

10 JUROR NO. 16: Definitely.

11 MR. WACHTER: With that said, are you somebody
12 who can be fair to Mr. Stockwell as an accused person in
13 this court setting?

14 JUROR NO. 16: Well, to be honest, I don't
15 know. I would like to think I can, but I don't know. I
16 have a lot of bias and a lot of -- I guess I do have
17 bias. It's really -- it's been a hard set of cases for
18 me to deal with in my past.

19 MR. WACHTER: The question will ultimately be,
20 does that bias make you somebody who can't -- or put a
21 different way -- Let me start over. Is your bias
22 something that you can set aside for this kind of case?

23 JUROR NO. 16: I think so.

24 MR. WACHTER: I have the burden of proving the
25 state's case beyond a reasonable doubt. Because of your

1 personal contact with people in a counseling setting,
2 are you going to be tempted to lower that burden, make
3 it easier for the state to prove its case?

4 JUROR NO. 16: I don't know how to answer
5 that.

6 MR. WACHTER: It's pretty theoretical, I
7 apologize, but will you hold the state to its burden of
8 proof in this case if you are a juror?

9 JUROR NO. 16: Well, I don't know if I totally
10 understand what that means, but I think, yes, I would.
11 I mean, I have to learn more what that means.

12 MR. WACHTER: Well, as a juror you will be
13 instructed on what a reasonable doubt is, and you will
14 be instructed that the state must prove each element of
15 the charged crimes beyond a reasonable doubt. Are you
16 capable of holding the state to that kind of a burden?

17 JUROR NO. 16: Yes.

18 MR. WACHTER: Thank you. I have no other
19 questions.

20 THE COURT: Mr. Talney?

21 MR. TALNEY: I think I can almost see the
22 struggle going on in your mind with these concepts. You
23 obviously have no doubt, it seems pretty clear to you
24 what your obligation as a juror is, to be fair and
25 impartial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 16: Yes.

MR. TALNEY: I see on the question, I think it's number 11, where it asks you specifically whether or not with your past experience you could be fair and impartial, I think you put a question mark.

JUROR NO. 16: Yes.

MR. TALNEY: Do you think -- Well, why did you put the question mark? What were you trying to convey?

JUROR NO. 16: Probably that this is the last place I would like to be right now.

MR. TALNEY: Is this kind of case going to I guess inflict some personal pain or hardship on you if you have to listen to the facts of this case and go through as a juror on this case?

JUROR NO. 16: I think that's what I am saying. It stirs up a lot of history.

MR. TALNEY: Which obviously, I think Mr. Wachter mentioned, if this was a burglary case, no problem, it would be much easier for you.

JUROR NO. 16: Right.

MR. TALNEY: Is that -- Since it's not a burglary case, do you think that's a burden that you are going to be able to take on, or is this just not the kind of case that you think you would be the appropriate

1 juror for?

2 JUROR NO. 16: I think -- I just don't -- I
3 would rather not.

4 MR. TALNEY: It might be impossible, but I
5 guess what we are struggling to do here is to try and
6 quantify how much pain or personal toll it is going to
7 have on you. I guess what I am trying to convey to you,
8 sir, you don't fail in your civic duty by expressing
9 that this is too much, or on the flip side, that you can
10 do it; it's going to be inconvenient, I don't like it,
11 but I can do it, or is it such a level that this is --
12 just because of my situation, it has a personal impact
13 greater than I am really willing to bear?

14 JUROR NO. 16: Well, it's hard to quantify,
15 but it does feel like it's going to be more than I would
16 like to take on at this point in my life. For one, the
17 one thing I mentioned in that questionnaire that is
18 still an unresolved issue to me is the man who was my
19 teacher, my mentor, through 10 of my 15 years as a
20 therapist, was charged with sexual abuse of female
21 clients, and in fact, taken to court on that, and he
22 never admitted any wrongdoing, and I felt that just has
23 never been resolved, because I had to say good-bye to
24 him because he never acknowledged that he did anything
25 wrong, and that's something that I still feel is a

1 hanging, unresolved part of my life that I can't do
2 anything about, and I would rather not have to look at
3 all those issues again.

4 THE COURT: Mr. Talney?

5 Mr. Chessman, I am going to excuse you at this
6 time. I think that the depth of your experience is such
7 that it would be difficult for you to be fair in this
8 type of a case, and then plus your personal experience.
9 I want to thank you for your service here, and maybe you
10 will get called back on a different type of case, but
11 you don't need to call in the rest of the week. Thank
12 you very much.

13 JUROR NO. 16: Thank you.

14 (Juror No. 16 was excused.)

15 MR. TALNEY: I appreciate the court cutting me
16 off.

17 THE COURT: Mr. Wachter signaled me.

18 MR. WACHTER: I gave the court kind of a nod
19 that I had no objection to what the judge did.

20 THE COURT: He was too involved.

21 (Juror No. 18 entered the courtroom.)

22 THE COURT: Okay. Juror 18, Mr. White, if you
23 would have a seat in the front row, there.

24 Two things I wanted to tell you before I ask any
25 questions. First of all, this information regarding

1 your wife is kept confidential, in a sealed file. It's
2 not public in any way, other than right here, and these
3 people aren't talking about it. And then the other,
4 when you were on a jury before, you disliked having to
5 recall the testimony by memory. We do allow you to take
6 notes during a trial now, so you would have notes you
7 could look at.

8 JUROR NO. 18: That's different now.

9 THE COURT: I will tell you those two things
10 that came up here in my mind reading through this.

11 And, you have indicated difficulties that your wife
12 has had. Let me ask you, if you are a juror on this
13 case and the witnesses come up here, testimony is given,
14 I give you the law, do you think you can put aside your
15 personal experiences, your wife's experiences, and
16 decide the case on its own evidence, testimony,
17 witnesses?

18 JUROR NO. 18: Um, she's been in therapy for
19 15 years now, and our marriage is getting stronger, but
20 it's still fragile. I would like to think I could be
21 impartial, but I don't think she would ever forgive me
22 if I voted against the state.

23 THE COURT: These victim girls are about the
24 same age group, too, so --

25 JUROR NO. 18: Yes. Recently she did get

1 confirmation of it happening through her dad's younger
2 brother, who was there at the time.

3 THE COURT: Any objection to excusing this
4 juror?

5 MR. WACHTER: None, Your Honor.

6 MR. TALNEY: No, Your Honor.

7 THE COURT: Mr. White, thank you for being up
8 front with us.

9 JUROR NO. 18: Is there any way this can be
10 noted on my record or anything, because this is the
11 second time I have been called for a trial like this.

12 THE COURT: There's a law that says if you are
13 called more than once in one year, you do not need to --

14 JUROR NO. 18: It was about 10 years ago. It
15 was a similar-type thing.

16 THE COURT: Well, we usually don't excuse off
17 the name list. So, thank you for your service here, and
18 you are excused.

19 (Juror No. 18 was excused. Juror
20 No. 19 entered the courtroom.)

21 THE COURT: Mr. Roda, if you want to take a
22 seat in the front row.

23 We start with one issue, you knew Mr. Talney or
24 worked with his office I think you said?

25 JUROR NO. 19: Right down the street.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: You work at Public Works?

JUROR NO. 19: Yes, I do.

THE COURT: What kind of work did you do with their office?

JUROR NO. 19: Mainly with land use issues.

THE COURT: When they were doing a rezone or something?

JUROR NO. 19: No. I am responsible for buying land for the County, and sometimes when people don't want to sell to the County, we have to take it through the court system, so I dealt with some of his attorneys there.

THE COURT: Okay. All right. And you also have plans to go to San Francisco on April 30th?

JUROR NO. 19: Yes. My wife and I do, yes.

THE COURT: Do you have airline tickets?

JUROR NO. 19: We are planning to drive down.

THE COURT: Okay.

JUROR NO. 19: We were planning to go for a week.

THE COURT: So if you were here until later in the day -- I don't know when this is going to get submitted to the jury.

JUROR NO. 19: It's one of those things.

THE COURT: All right. Let's talk about some

1 of the other issues here. This was your daughter that
2 was sexually abused, and do you think -- This case
3 involves two girls that are cousins, and they are in
4 that age -- well, a little older than the four-year-old,
5 but not a whole lot older. Do you think given that,
6 that you could put your personal experiences aside
7 and/or not?

8 JUROR NO. 19: I like to think I have an open
9 mind, but --

10 THE COURT: It's a pretty emotional issue for
11 you?

12 JUROR NO. 19: I think for anybody that has
13 daughters or else grandkids that are girls, I would
14 think so. I think it's a red-button issue, to be quite
15 frank with you.

16 THE COURT: Well, do you think -- The
17 question was asked here -- You said you like to believe
18 that you could be fair. I think Mr. Wachter might ask
19 you this, or I will ask you, if you were on a different
20 kind of a case, a burglary case or theft case, some
21 other kind of case, possession of drugs, do you think
22 you would feel better about being a juror on that type
23 of case than this type of case?

24 JUROR NO. 19: Probably the first one.

25 THE COURT: In terms of fairness?

1 JUROR NO. 19: I don't know. I really can't
2 answer that. Like I said before, I like to think that I
3 am fair and that I have a fairly broad mind. I would
4 have to judge it on the facts of the case to be quite
5 frank with you.

6 THE COURT: Do you think you could be fair to
7 both sides in this case?

8 JUROR NO. 19: I would like to think so.

9 THE COURT: Do you think it's a possibility or
10 a probability?

11 JUROR NO. 19: There's a probability that, you
12 know -- it has to do with the facts of the case, you
13 know, to be quite frank with you.

14 THE COURT: Okay. Mr. Wachter?

15 MR. WACHTER: Thank you, Your Honor.

16 I noticed your daughters are 28 and 32 years old?

17 JUROR NO. 19: They are older now, yeah.

18 MR. WACHTER: So, did either of them -- Were
19 they both victimized, or --

20 JUROR NO. 19: Just one.

21 MR. WACHTER: Did she go through any sort of
22 therapy?

23 JUROR NO. 19: Yes, she did.

24 MR. WACHTER: And, I don't remember from your
25 questionnaire so I will just ask you. Did this become a

1 subject of a prosecution?

2 JUROR NO. 19: Yes, it did.

3 MR. WACHTER: Did you testify?

4 JUROR NO. 19: No, we did not. We didn't have
5 to.

6 MR. WACHTER: There was no trial?

7 JUROR NO. 19: There was a trial, but my wife
8 and I were not called.

9 MR. WACHTER: Do you have any feelings about
10 the criminal justice system as a result of that
11 experience?

12 JUROR NO. 19: No, I don't.

13 MR. WACHTER: Let me put it another way. Is
14 there anything from your experience through the court
15 system in that, from that, that you carry with you that
16 might apply in this case?

17 JUROR NO. 19: No. That was nearly 24 years
18 ago.

19 MR. WACHTER: Well, is there some risk of
20 digging up some old memories with this kind of subject
21 matter?

22 JUROR NO. 19: To be -- Yes, there is. My
23 wife is a mental health therapist, and some of her
24 clients are young girls and young boys. I mean, she is
25 somewhat known within the area, and I happen to be her

1 husband. Now we don't talk about cases, but there is --
2 I am pretty much well aware of what goes on, so --

3 MR. WACHTER: If you hear a child testify in
4 this type of a case, are you more likely to believe the
5 child than you think you would be otherwise if you
6 didn't have this experience or your wife's background?

7 JUROR NO. 19: It would depend upon the
8 questions being asked. There has been a lot of debate
9 about the testimony of young children in court, whether
10 or not they are led to certain answers, or if what
11 happened did happen.

12 MR. WACHTER: Let me ask it another way. Are
13 you someone who would automatically assume the truth of
14 what a child had to say?

15 JUROR NO. 19: Yes. I base that upon, I have
16 two granddaughters, one of them is three and the other
17 one is five, and I have grandsons, and that age, they
18 speak fairly straightforward.

19 MR. WACHTER: Is that something that is --
20 Is that really a factor of their age, or is that a
21 factor of your experience?

22 JUROR NO. 19: Both.

23 MR. WACHTER: I can't give you too much of the
24 fact specifics of this case, but the two children who
25 are alleged to be victims in this case are seven and

1 eight years of age. Do you have a -- If you hear from
2 a child witness talking about this type of allegation
3 who is in that age range, do you have any presumptions
4 about whether they are telling the truth?

5 JUROR NO. 19: No, I don't.

6 MR. WACHTER: Do you draw a distinction
7 between that age range, seven and eight, and what you
8 have described, three to five?

9 JUROR NO. 19: Yes, I do. They have a lot
10 more knowledge at the age of seven and eight as opposed
11 to a child between three and five.

12 MR. WACHTER: It's hard to know how one is
13 going to react to a set of facts.

14 JUROR NO. 19: That's true.

15 MR. WACHTER: So I recognize that I am asking
16 difficult questions, hypothetical questions. Will you
17 do your best to be absolutely fair to both parties in
18 this case?

19 JUROR NO. 19: I would like to think that I
20 would be.

21 MR. WACHTER: Will you impute anything that
22 you know from your daughter's experience or your wife's
23 practice, hold it against Mr. Stockwell?

24 JUROR NO. 19: No.

25 MR. WACHTER: Thank you. I have no other

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

questions.

THE COURT: Mr. Talney?

MR. TALNEY: Sir, were partners from the firm I work for, were they representing other individuals or was it their property that you were trying to get?

JUROR NO. 19: They were representing other people.

MR. TALNEY: Okay. Anything about -- I don't believe that we have ever met.

JUROR NO. 19: No.

MR. TALNEY: Okay. Anything about those dealings that were especially horrible that you would have a problem?

JUROR NO. 19: I like most of the people that you work with. They are nice men. I don't know how they are in court, but outside of the court they are -- we have lunch and stuff like that.

MR. TALNEY: So on the flip side, is there anything about that association that Mr. Wachter should be concerned about?

JUROR NO. 19: No.

MR. TALNEY: How do you know Cynthia Conrad?

JUROR NO. 19: Through my work here with the County, when she was employed by the County.

MR. TALNEY: Do you know her personally or

1 professionally?

2 JUROR NO. 19: Just through work.

3 MR. TALNEY: How is she connected in the work?

4 JUROR NO. 19: Through the county prosecutor's
5 office. Sometimes I am called to testify when Kitsap
6 County gets sued. I have been in court at least three
7 times on lawsuits against the County, when it relates to
8 County-owned land.

9 MR. TALNEY: What did she have to do with that
10 process?

11 JUROR NO. 19: I believe that she may have
12 just had the case, or when the case was passed on, but I
13 do know that I did meet her. That was years ago.

14 MR. TALNEY: Okay.

15 JUROR NO. 19: Not recently, because that
16 office there has changed personnel.

17 MR. TALNEY: I also noticed you circled the
18 name of Richard Kitchen. Do you know Dick Kitchen?

19 JUROR NO. 19: Yes, I do.

20 MR. TALNEY: How is that?

21 JUROR NO. 19: The people that I circled
22 through work. And Mr. Dillard, too.

23 MR. TALNEY: What kind of relationship do you
24 have with Mr. Kitchen?

25 JUROR NO. 19: It has to do with trying to

1 find some owner that we were trying to serve some papers
2 on, and he was one we --

3 MR. TALNEY: So he did some investigative
4 work?

5 JUROR NO. 19: Right.

6 MR. TALNEY: If he were to testify in this
7 case, would that past experience have an effect on how
8 you viewed his testimony?

9 JUROR NO. 19: I think he's a very honest
10 person, yes.

11 MR. TALNEY: I guess would he be a leg up on
12 another witness that you hadn't known?

13 JUROR NO. 19: Depends on -- it would depend
14 on the other person, what he's speaking.

15 MR. TALNEY: Let me kind of maybe cut to the
16 bottom line. If he were to testify, would you
17 automatically assume that he was telling the truth,
18 or --

19 JUROR NO. 19: Yes, certainly.

20 MR. TALNEY: And what about Douglas Dillard?

21 JUROR NO. 19: I met him and his wife, again,
22 through work issues.

23 MR. TALNEY: Did he do some investigative work
24 for you?

25 JUROR NO. 19: No. He wanted to have a county

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

road vacated and I worked with him on that.

MR. TALNEY: I see.

JUROR NO. 19: Then I met his wife.

MR. TALNEY: So it wasn't a law enforcement issue, it was actually a land issue?

JUROR NO. 19: Yes.

MR. TALNEY: Your work, not his?

JUROR NO. 19: Right. Same thing with the other person, Mr. Kitchen.

MR. TALNEY: And so, if Mr. Dillard were to testify in this courtroom, again, based on your past experience with him, would you assume that he was telling the truth?

JUROR NO. 19: Yes.

MR. TALNEY: Your prior comments, I think Mr. Wachter asked you several times and obviously we asked you in writing about whether you could be fair, and I think you said you would hope so. One time you said, "I would like to think I have an open mind, but --"

JUROR NO. 19: Yes. It's a red-button issue. I am just being honest.

MR. TALNEY: Well, that's obviously what we are asking you to do. That's the important thing. Only you can describe to us your own personal feelings.

1 That's the question, is can you view the evidence
2 impartially both for Mr. Wachter and for the defense
3 side, also, or based on those past experiences is that
4 just not something that you're going to be able to do in
5 this particular case?

6 JUROR NO. 19: I would like to -- I don't want
7 to repeat myself, but I would like to think that I can,
8 but there's always the past that crops up at times, so
9 the question is am I old enough to put that to rest. I
10 have never been tested, so --

11 MR. TALNEY: We're asking you hypotheticals,
12 obviously.

13 JUROR NO. 19: Right.

14 MR. TALNEY: That's all I have, Your Honor.

15 THE COURT: Thank you. You can step outside,
16 then we'll be with you in just a minute.

17 MR. TALNEY: I did have a follow-up on his
18 vacation time. I apologize.

19 Has your wife already taken vacation time?

20 JUROR NO. 19: No. We are going to see her
21 father, who is 82, plus my mom, who is 84. That was the
22 purpose of the trip. We have not been down there since
23 last year.

24 MR. TALNEY: Are they experiencing health
25 problems right now?

1 JUROR NO. 19: Yes. That could be checked
2 out, yes.

3 MR. TALNEY: I mean, that was the purpose of
4 the trip, though?

5 JUROR NO. 19: That was the purpose of the
6 trip.

7 MR. TALNEY: Because of the health problems?

8 JUROR NO. 19: We haven't been down there for
9 four months. We drive or else fly down there at least
10 three times a year, and I didn't expect to maybe be here
11 through Friday of next week.

12 MR. TALNEY: Have you already expended some
13 money or made any kind of reservations?

14 JUROR NO. 19: We just told our parents that
15 things were arranged.

16 MR. TALNEY: Is there any hospitalizations or
17 anything going on right now for them?

18 JUROR NO. 19: As a matter of fact there is.

19 MR. TALNEY: Could you explain?

20 JUROR NO. 19: My mother is 84, okay. My
21 mother is 84. This can all be checked out. She --

22 MR. TALNEY: You are under oath, sir.

23 JUROR NO. 19: Two years ago she was home and
24 she suffered a fall. She was put in a hospital. She
25 almost died. I was there for two weeks. I have been

1 back and forth the last 20 months, and a minimum of six
2 times. She has three weeks to go. She had a turn for
3 the worse, whereas now she has stopped speaking and she
4 has to be fed, and there is a possibility that we are
5 going to move her from one place to this other place.

6 MR. TALNEY: Are you going down to arrange for
7 some care for her?

8 JUROR NO. 19: Right, my brother and I.

9 MR. TALNEY: Okay. I don't have any further
10 questions.

11 THE COURT: All right. You can wait outside
12 in the hallway then.

13 MR. WACHTER: Your Honor, I would have no
14 objections. I don't know what counsel thinks.

15 MR. TALNEY: I don't have any objection.

16 THE COURT: All right. You are going to be
17 excused, Mr. Roda. Thank you for your service here.

18 (Juror No. 19 was excused.)

19 THE COURT: It's a little after three. Our
20 clock is not working. Do you want to take a 10-minute
21 recess or keep going?

22 MR. WACHTER: We're in your hands, Your Honor.
23 It's up to you.

24 THE BAILIFF: Did you want to start another
25 one?

1 THE COURT: We're just talking.

2 MR. TALNEY: I am good for a little while
3 longer.

4 THE COURT: All right, then you can bring 22
5 in.

6 (Juror No. 22 entered the courtroom.)

7 THE COURT: Mr. Taylor, if you would take a
8 seat there.

9 And we called you in based on your questionnaire,
10 and you explained what happened to you when you were a
11 young child in Venezuela, and somewhere. I lost the
12 question here, about whether you felt you could be fair.

13 JUROR NO. 22: My handwriting is not the best.

14 THE COURT: Okay. You said you could not see
15 yourself being completely unbiased. And you have had
16 some more time to think about this since you filled this
17 out, and I want to first address one issue as to this
18 was a long time ago, and apparently it was not reported,
19 or you were told you couldn't report it or something
20 when you were there.

21 JUROR NO. 22: I mean, it was me and my
22 brother. An older kid across the street, 17 or 18. It
23 happened for a good while, three years, and my
24 parents -- we never told my parents. It was just, it
25 was a very -- my parents being missionaries growing up,

1 it was a very bad factor to have anything like that
2 happen to you as a child. So sorry. This is a very
3 emotional subject.

4 THE COURT: That's why I want to ask you
5 about, do you think being in a trial of this kind of
6 subject would be --

7 JUROR NO. 22: It's hard.

8 THE COURT: -- quite traumatic for you?

9 JUROR NO. 22: It's very, very traumatic.

10 THE COURT: You can stop.

11 Counsel, any objection to excusing this juror?

12 MR. WACHTER: No.

13 MR. TALNEY: No objection.

14 THE COURT: I am going to excuse you. Thank
15 you very much for your service here. I don't want to
16 traumatize you. It's not something you want to think
17 about. You can get called back another time on a
18 different trial, but you are done calling in for this
19 week and you are excused. Thank you very much.

20 JUROR NO. 22: Thank you, Your Honor.

21 (Juror No. 22 was excused. Juror
22 No. 25 entered the courtroom.)

23 THE COURT: Ms. Lilyquist, you indicated in
24 your questionnaire that you did not think you could be
25 fair in this case.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 25: No.

THE COURT: You have had some time to think about that since -- Can you hear me okay?

JUROR NO. 25: Okay.

THE COURT: Okay. There's not a lot of people in here now. You have had some time to think about this. Is that still your feeling, you cannot be fair to both sides in this case?

JUROR NO. 25: No, I could not be fair.

THE COURT: Okay. Is this based on your life experiences?

JUROR NO. 25: And friends in the department. I grew up with -- My father was a police officer. My husband was killed on the job. I was close friends with someone who was sexually assaulted in Las Vegas, and I have heard many cases that they worked on with children. It would be difficult.

THE COURT: Okay.

Do counsel have any questions?

MR. WACHTER: If I may.

Is it the experience with your stepdaughter, or is it the experience with friends?

JUROR NO. 25: It's not with my stepdaughter, no. She claimed this years after her mother divorced her stepfather. She said that she told her mother and

1 my husband that he had molested her, and it was probably
2 10 or 15 years prior that she brought that up, so there
3 were no -- he didn't go to trial, they didn't prosecute
4 or anything, but it was difficult for her, and we did
5 have her with us for a time after she claimed that. But
6 no, it's through friends and family, and I heard some
7 awful things that -- cases that they worked on. One
8 case was near my home.

9 MR. WACHTER: I guess I have to ask you this.
10 If you hear evidence of this kind of case, are you able
11 to put aside the other cases you have heard about?

12 JUROR NO. 25: It would be very difficult. I
13 don't even watch movies about children being hurt. I
14 find it difficult to even watch a movie or read. If
15 there's something on the news about a child being hurt,
16 I won't watch it.

17 MR. WACHTER: Can you think of any place you
18 would want to be less than here?

19 JUROR NO. 15: No. No. I was sick to my
20 stomach when I heard what the case was.

21 MR. WACHTER: Thank you. I have no questions
22 and no objection.

23 THE COURT: Any objection, Mr. Talney?

24 MR. TALNEY: No objection, Your Honor.

25 THE COURT: Ms. Lilyquist, thank you for your

1 service. I will excuse you at this time. You have
2 completed your service for this week. Thank you very
3 much.

4 (Juror No. 25 was excused. Juror
5 No. 28 entered the courtroom.)

6 THE COURT: You had indicated that you are
7 having a personal situation going on with your brother
8 right now?

9 JUROR NO. 28: Yes, Your Honor.

10 THE COURT: Let me just ask a question. You
11 know what this case is about, what the charges are. Do
12 you think it would be traumatizing to you to sit on a
13 case such as this one?

14 JUROR NO. 28: It's traumatizing for me to be
15 here right now.

16 THE COURT: Any objection to her being
17 excused?

18 MR. WACHTER: No, Your Honor.

19 MR. TALNEY: No, Your Honor.

20 MR. WACHTER: I would ask one question.

21 May I ask your brother's name?

22 JUROR NO. 28: Nick Hernandez, Junior.

23 MR. WACHTER: Was that a local prosecution?

24 JUROR NO. 28: No, it's in Los Angeles.

25 MR. WACHTER: Thank you. I don't have any

1 other questions.

2 THE COURT: You are going to be excused
3 Ms. Alonzo. Thank you for your service here.

4 (Juror No. 28 was excused. Juror
5 No. 29 entered the courtroom.)

6 THE COURT: Have a seat there.

7 On your questionnaire you indicated you have two
8 female friends who have been victims as children.

9 JUROR NO. 29: That's correct.

10 THE COURT: Have you had a lot of discussions
11 with them about their victimization?

12 JUROR NO. 29: I think so.

13 THE COURT: Okay. This case involves the two
14 named alleged victims that I read who are cousins, and
15 it involves a relationship with the step grandfather,
16 and I think you indicated it was a grandfather in the
17 one you have.

18 JUROR NO. 29: Both cases.

19 THE COURT: Do you think you can put aside the
20 cases or what happened with your friends and decide this
21 case on the witnesses and testimony that you hear here
22 in the court and apply the law?

23 JUROR NO. 29: Yes, I think so.

24 THE COURT: Do you think you can be fair to
25 both sides?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 29: I do.

THE COURT: Mr. Wachter?

MR. WACHTER: Thank you, Your Honor.

Good afternoon.

JUROR NO. 29: Hi.

MR. WACHTER: How long ago did this abuse occur with your two friends?

JUROR NO. 29: They were both children and right now one is 53 and the other one is late 40s.

MR. WACHTER: How specific or how graphic did either of them get with you?

JUROR NO. 29: Not specific.

MR. WACHTER: You didn't hear lots of details?

JUROR NO. 29: No.

MR. WACHTER: Did you hear whether this was something that was kind of a one-time incident, or was it an ongoing kind of situation?

JUROR NO. 29: It was ongoing. Probably seemed like maybe two, three years.

MR. WACHTER: Do you know what age your friends were when this happened?

JUROR NO. 29: One of them must have been between 8 and 11, the other one was probably a little bit more around 13, something of that nature.

MR. WACHTER: I noticed you said there was not

1 a prosecution or investigation, either one?

2 JUROR NO. 29: That's correct.

3 MR. WACHTER: Sorry to interrupt you.

4 JUROR NO. 29: I was just going to say that
5 really, they didn't start talking about it until they
6 were older.

7 MR. WACHTER: Do you know if either one of
8 them confronted the person who did this?

9 JUROR NO. 29: Yes, the younger one did, the
10 one that's in her 40s.

11 MR. WACHTER: How old was that person when she
12 confronted?

13 JUROR NO. 29: She was an older adult. I
14 don't know, maybe in her 30s.

15 MR. WACHTER: Did you hear much about that
16 confrontation?

17 JUROR NO. 29: No, because I wasn't her friend
18 at that time. But it was disappointing for her.

19 MR. WACHTER: Why was it disappointing?

20 JUROR NO. 29: Because he pretty much denied
21 it.

22 MR. WACHTER: Was it the same person who
23 victimized both of your friends, or different?

24 JUROR NO. 29: Different. And different
25 friends, different situations.

1 MR. WACHTER: They weren't connected somehow?

2 JUROR NO. 29: Right.

3 MR. WACHTER: If you sit on this jury, you
4 will hear that what the state is alleging here happened
5 between grandfather and step grandchildren. Are you
6 tempted to -- will you be tempted to bring in facts from
7 your friends' experience?

8 JUROR NO. 29: I don't think so. I don't.

9 MR. WACHTER: Do you think that you would
10 automatically believe a seven-year-old or eight-year-old
11 if you heard one testify about this kind of subject
12 matter?

13 JUROR NO. 29: No, I don't think I could
14 automatically. I will have to weed out. I can only go
15 by statistics, you know, that say that we need to listen
16 to the children, not dismiss them.

17 MR. WACHTER: We won't bring in statistics as
18 part of the evidence in this case. We only can bring in
19 people to talk about what they observed. Are you able
20 to separate out your past experiences or what you have
21 learned from your friends, just judge this case based on
22 solely the evidence?

23 JUROR NO. 20: I do believe I can.

24 MR. WACHTER: Thank you very much.

25 THE COURT: Mr. Talney?

1 MR. TALNEY: Ma'am, I notice that you have a
2 nursing degree?

3 JUROR NO. 29: Yes, I do.

4 MR. TALNEY: You are not currently working as
5 a nurse?

6 JUROR NO. 29: Yes, I am.

7 MR. TALNEY: Where do you work?

8 JUROR NO. 29: Harrison Hospital.

9 MR. TALNEY: What is your particular
10 specialty?

11 JUROR NO. 29: Actually it's medical at this
12 point.

13 MR. TALNEY: Have you ever worked an ER or
14 intake where victims of rape or child abuse have come
15 in?

16 JUROR NO. 29: No.

17 MR. TALNEY: Has that ever been an area of
18 expertise?

19 JUROR NO. 29: No.

20 MR. TALNEY: I assume you probably had some
21 schooling or training concerning those areas?

22 JUROR NO. 29: Uh-hum, yes, I have.

23 MR. TALNEY: Is it a periodical that you were
24 referring to about statistics, and what were you
25 referring to when you were talking about that?

1 JUROR NO. 29: Just the information that's out
2 there, about what happens when children are abused, and
3 how culpable the situation is, the facts are. You hear
4 of so many children not being believed at the very
5 beginning, when things are starting to actually come,
6 you know, into the public attention, which I think has
7 been maybe 15 years now, where we can come to a point
8 where we can say, children can -- you can decipher facts
9 from children by coloring, or talking with a child
10 psychologist, et cetera. That's what I meant by that.

11 MR. TALNEY: Okay.

12 JUROR NO. 29: In a controlled setting in
13 other words.

14 MR. TALNEY: Okay. You might hear from the
15 child during testimony if you are on the jury. You
16 might also hear from people who talked to the child.
17 Concerning the child themselves, is there anything about
18 your research or your past experience, or your own just
19 life experience I guess perhaps, that would make you
20 believe that child more than you might some other kind
21 of witness? Like do you think you would be more likely
22 to believe a child than as opposed to analyzing and
23 breaking down their testimony?

24 JUROR NO. 29: No, I don't think so. I think
25 that even when I was listening to my friends, you know,

1 just -- how does -- one has to weigh on some form of
2 facts, the truth of it. I can't really say that I would
3 come to quick judgment, so I think I would want to just
4 listen first and not be judgmental or, you know, but
5 certainly not disbelieve just a child because that child
6 is a child, by all means.

7 MR. TALNEY: Certainly you wouldn't want to --
8 certainly Mr. Wachter doesn't want you to automatically
9 disbelieve the child.

10 JUROR NO. 29: That's correct.

11 MR. TALNEY: And then clearly, you know, to be
12 fair and impartial, obviously we don't want you to
13 automatically believe any particular witness.

14 JUROR NO. 29: That's correct.

15 MR. TALNEY: And so, do you think you could do
16 that fairly for both sides?

17 JUROR NO. 29: I think so.

18 MR. TALNEY: Did you know your friends at the
19 time they were being abused?

20 JUROR NO. 29: No.

21 MR. TALNEY: They were friends later on in
22 life?

23 JUROR NO. 29: Absolutely. Older adults.

24 MR. TALNEY: Have you ever read any articles
25 or done any research or had any kind of training

1 concerning child interviewers?

2 JUROR NO. 29: No.

3 MR. TALNEY: Or the proper technique to
4 interview a child concerning allegations?

5 JUROR NO. 29: Nothing specific. Only maybe
6 TV documentaries or that type of thing, where they might
7 bring in a child and put a Crayola before them, but no,
8 nothing specific. I couldn't sit down here and tell you
9 how it's done.

10 MR. TALNEY: Okay. That hasn't been something
11 that has been covered in a class that you have ever
12 attended, anything like that?

13 JUROR NO. 29: Not specifically.

14 MR. TALNEY: Okay. Thanks for your time.
15 That's all I have.

16 THE COURT: Thank you. You will be excused at
17 this time to report back tomorrow morning at 8:45. And
18 thank you for your service here, and we'll see you
19 tomorrow morning.

20 (Juror No. 29 left the courtroom and
21 Juror No. 30 entered the courtroom.)

22 THE COURT: Ms. Ulrich, take a seat right in
23 front there.

24 You indicated you had been the victim of a rape.
25 Is that something that's very difficult for you to talk

1 about?

2 JUROR NO. 30: No. It's been a lot of years.

3 THE COURT: Okay. Then, you know what the
4 nature of this case is about. Do you think this would
5 be personally traumatic for you to sit on a case such as
6 this?

7 JUROR NO. 30: Uh-uh.

8 THE COURT: So you have resolved some issues
9 that you had.

10 JUROR NO. 30: It was a long time ago, almost
11 25 years ago.

12 THE COURT: Do you think you could be fair to
13 both sides in this case?

14 JUROR NO. 30: Uh-hum.

15 THE COURT: Mr. Wachter?

16 MR. WACHTER: Thank you, Your Honor.

17 Hello.

18 JUROR NO. 30: Hi.

19 MR. WACHTER: You were about 18 years old?

20 JUROR NO. 30: Uh-hum. I was 18.

21 MR. WACHTER: The questionnaire said that this
22 was not reported, or prosecuted?

23 JUROR NO. 30: It was reported, not
24 prosecuted.

25 MR. WACHTER: Okay. Anything about that fact

1 that you have feelings about?

2 JUROR NO. 30: I decided not to prosecute at
3 the time. It was somebody that I knew.

4 MR. WACHTER: Did it happen here in this
5 county?

6 JUROR NO. 30: No, it happened in King County.

7 MR. WACHTER: Did you go through any sort of
8 counseling or anything like that to kind of recover from
9 it?

10 JUROR NO. 30: I went through counseling
11 before I was married, yes.

12 MR. WACHTER: If you are in this case as a
13 juror, you are going to hear information about sexual
14 contacts that are alleged. I guess I will say they are
15 somewhat graphic. Are you able to handle that kind of
16 information, that kind of testimony?

17 JUROR NO. 30: Uh-hum.

18 MR. WACHTER: Is there anything that --

19 JUROR NO. 30: If you are asking if I have any
20 issues with it or anything like that, I don't.

21 MR. WACHTER: I just have to ask.

22 JUROR NO. 30: I understand.

23 MR. WACHTER: Are you going to hold anything
24 against Mr. Stockwell because he's the accused in this
25 situation, and the person who committed this rape in

1 1980 was not prosecuted?

2 JUROR NO. 30: No.

3 MR. WACHTER: Can you be fair to both sides?

4 JUROR NO. 30: I can be fair to both sides.

5 MR. WACHTER: Thank you.

6 THE COURT: Mr. Talney?

7 MR. TALNEY: Ma'am, that didn't involve a
8 family member, did it?

9 JUROR NO. 30: No.

10 MR. TALNEY: So, this --

11 JUROR NO. 30: It was a person that I had
12 dated in the past.

13 MR. TALNEY: It doesn't sound like it would be
14 very similar to the evidence you might hear in this
15 case.

16 I think you also noted that your sister is
17 currently facing some charges?

18 JUROR NO. 30: No, she already did. It was
19 about I would say eight years ago. She had a felony
20 that had to do with drugs, and really that's all I know.

21 MR. TALNEY: Did that happen in this county?

22 JUROR NO. 30: Yes.

23 MR. TALNEY: You don't have any idea who
24 prosecuted her or who the defense attorney was for that
25 situation?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 30: I have no idea.

MR. TALNEY: Any concerns you have that the Kitsap County Prosecutor's Office would have been dealing with your sister? Does that have any effect on how you see this case?

JUROR NO. 30: No. I really didn't have anything to do with it whatsoever. All I know is she has a felony. That's all I know.

MR. TALNEY: That's all I have, Your Honor.

THE COURT: Thank you. You will be excused at this time, to return tomorrow morning at 8:45 a.m. Thank you.

(Juror No. 30 left the courtroom.)

THE COURT: 32, I don't see why we were questioning her. There was a murder case she was a juror on?

MR. TALNEY: I don't think I have 32 on my list.

THE CLERK: Mr. Witt added her.

THE COURT: Ms. Berger?

MR. TALNEY: I believe she knew Tina Monroe.

THE COURT: Thank you.

(Juror No. 32 entered the courtroom.)

THE COURT: I was looking at your questionnaire and I didn't see an issue, but now I know

1 what it was. You told the bailiff you knew Tina Monroe.

2 JUROR NO. 32: Yeah. Where I work there
3 was -- I just knew the name Tina Monroe. I don't really
4 know if it's the same person, or if I saw her, if it
5 would be the same person.

6 THE COURT: How old of a person do you think
7 she is, in the decade range?

8 JUROR NO. 32: Probably like in her 20s or
9 something.

10 THE COURT: Do you know if she has any
11 children?

12 JUROR NO. 32: No, I don't. I just kind of
13 know the name. I work in a business office of a nursing
14 home, so I just heard the name like from the payroll
15 person.

16 THE COURT: Okay. Anything about that name
17 that you associate anything with Tina Monroe?

18 JUROR NO. 32: No.

19 THE COURT: Okay. Maybe the attorneys have
20 some questions for you.

21 Mr. Wachter?

22 MR. WITT: Ma'am, we appreciate you bringing
23 that to the court's attention after this process is
24 going. This is a case where there's going to be a
25 number of witnesses, and the way this process will go is

1 some of those witnesses will be testifying. Will that
2 be an issue if you see Tina Monroe, Christina Monroe, or
3 you just have this name recognition?

4 JUROR NO. 32: I just have name recognition.

5 MR. WITT: Does just knowing that individual's
6 name give you any different perspective of a person
7 besides Jane Doe?

8 JUROR NO. 32: No.

9 MR. WITT: You just know the individual's
10 name?

11 JUROR NO. 32: Right.

12 MR. WITT: Do you think there's a chance from
13 your profession and what you do that you would run into
14 her in the hall and maybe not know it?

15 JUROR NO. 32: Probably, yeah.

16 MR. WITT: Let's say we cross that bridge and
17 you do recognize Ms. Monroe from contacts in the hall or
18 otherwise. Do you think that would be something that
19 would give you difficulty in sitting in on this case?

20 JUROR NO. 32: Probably not.

21 MR. WITT: I guess what both parties need is
22 assurances that you are not going to sway your
23 decision-making ability one way or another, support for
24 the state, support for Mr. Stockwell. Do you feel
25 pretty confident you can sit in on this case and view

1 the evidence, and if it does come up in your mind, you
2 would not treat that or not treat Ms. Monroe as a
3 witness above all others?

4 JUROR NO. 32: Yeah, I wouldn't treat her any
5 different just because of the name recognition. It's
6 obviously not someone that I feel like I really know, or
7 would sway me one way or the other.

8 MR. WITT: Okay. I appreciate your answers.
9 Thank you very much.

10 THE COURT: Mr. Talney?

11 MR. TALNEY: Where exactly do you work?

12 JUROR NO. 32: Ridgemont Terrace Nursing Home,
13 up here on Pottery.

14 MR. TALNEY: Do you have contact with the
15 nursing staff?

16 JUROR NO. 32: Just the day people, because I
17 work in the business office so I just mostly have
18 contact with seeing them in the hall, but not any of the
19 other shifts because it's 24 hours.

20 MR. TALNEY: Okay. But, you wouldn't
21 necessarily have daily working contact with the nursing
22 staff?

23 JUROR NO. 32: No, I don't.

24 MR. TALNEY: If this Tina Monroe happens to be
25 the person that you think it is --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 32: Yeah, Christina Monroe.

MR. TALNEY: Do you know if she still works there?

JUROR NO. 32: I don't. I don't know.

MR. TALNEY: This wouldn't be somebody that you have ever socialized with?

JUROR NO. 32: If I socialized with her, it was just because it was a face I recognized and not --

MR. TALNEY: You wouldn't have lunch or anything like that.

JUROR NO. 32: Right.

MR. TALNEY: And would you even know whether or not she was good or bad at her job?

JUROR NO. 32: Not in this case, no. I mean, some of the aides I know by name and talk with them, but most of them are so busy with patient care that you just kind of see them in the halls.

MR. TALNEY: If you did recognize her and she still worked there, and then she was a witness in this trial, do you have any concerns about -- Let's say hypothetically you didn't believe her when she testified. Do you have any concerns about going back and being in the same building?

JUROR NO. 32: No, I don't think so, not at this point.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. TALNEY: Do you think there would be any pressure on you to believe her if you were both working in the same building?

JUROR NO. 32: No.

MR. TALNEY: And if it turns out to be the same Tina Monroe, there's no bad blood or anything between the two of you?

JUROR NO. 32: Correct. Again, it's just the name. After I filled out the questionnaire and I was thinking about it, I thought I have heard the name Tina Monroe at work, but I don't know if it was the same as Christina. I just thought I better say something.

MR. TALNEY: We definitely appreciate that.

JUROR NO. 32: Okay.

THE COURT: Thank you. You will be excused at this time to return tomorrow morning at 8:45 a.m.

JUROR NO. 32: All right.

THE COURT: Thank you.

(Juror No. 32 left the courtroom.)

MR. TALNEY: Your Honor, I do believe that it is actually the same person.

THE COURT: She doesn't know her, though.

MR. WACHTER: I think that Mr. Talney is right.

THE COURT: Are you making a motion?

1 MR. TALNEY: I would challenge her for cause.
2 I obviously concede it doesn't appear she knows much
3 about her, but my concern would be is that her memory
4 would be jogged once actually seeing her. If they are
5 working at the same office -- and I don't know whether
6 or not she actually does still work there. I don't know
7 if the state does or not.

8 THE COURT: What is the state's response?

9 MR. WITT: Obviously we don't know if that is
10 the same Christina Monroe. I guess it could be;
11 however, Mr. Talney has raised an objection. I don't
12 think he has met the foundation for that objection.
13 State asked several questions proposing --

14 THE COURT: I am going to deny the motion.
15 She didn't seem to indicate if she could even hardly
16 recognize her.

17 (Juror No. 33 entered the courtroom.)

18 THE COURT: Mr. Curley, if you will take a
19 seat in the front row there.

20 You have a lot of issues you raised in your
21 questionnaire, but despite all of this, you felt you
22 could be fair in this case.

23 JUROR NO. 33: Well, because my training as a
24 Coast Guard investigator and as a prosecutor in
25 administrative hearings is that, you know, you look for

1 the facts and you let the facts speak for themselves.
2 So, I mean, I had to train myself in those jobs that I
3 do. However, in the questionnaire, some of the other
4 questions that were raised about personal matters, I
5 wasn't expecting that when I read that, so -- and
6 because of my job, I didn't want to have to air those
7 things out in front of other people.

8 THE COURT: Sure. That's why we do these
9 individually.

10 Do you think you could -- like with your brother,
11 do you think you could put aside what happened with him
12 and his case, and decide this case on the witnesses that
13 come up on the stand?

14 JUROR NO. 33: Yes, ma'am.

15 THE COURT: You have had time to think about
16 this. You don't have any second thoughts about your
17 ability to be fair?

18 JUROR NO. 33: No.

19 THE COURT: Mr. Wachter?

20 MR. WACHTER: It will be Mr. Witt from here
21 out.

22 THE COURT: Mr. Witt.

23 MR. WITT: Thank you.

24 Mr. Curley, you indicated a couple things in your
25 questionnaire that you wanted to speak about in private.

1 The court and parties just want to respect that. Some
2 of these things are questions about some personal
3 subjects and I don't potentially want to touch on a hot
4 button or ask you questions that are going to be too
5 upsetting, but some of these I do need to go into a
6 little bit. Some are not comfortable talking about.

7 JUROR NO. 33: It's okay here. That's fine.

8 MR. WITT: I guess first of all, you indicated
9 that as a child you had been a victim of child
10 molestation.

11 JUROR NO. 33: When I was about -- I think I
12 was around eight years old, and I was living in New
13 Hampshire, and there was a guy that lived in this
14 trailer park -- we lived in a trailer park -- an older
15 kid. I don't even know if he was a teenager or young
16 adult, but he took me on a walk and, you know, accosted
17 me. I got away from him. He didn't do anything worse
18 than illegal touching, but my father was quite upset
19 when I told him, but I don't think the guy ever got
20 arrested or anything. It was just a matter of my father
21 confronting him, so I don't really recall much more than
22 that about that.

23 MR. WITT: So you don't know if your dad got
24 in contact with law enforcement?

25 JUROR NO. 33: I really can't say.

1 MR. WITT: Do you know what the outcome was of
2 your dad speaking with that person?

3 JUROR NO. 33: The guy never came around me
4 again. My dad was a pretty tough character.

5 MR. WITT: I guess, do you harbor any
6 resentment about that, that he was never held
7 accountable on top of what your father did?

8 JUROR NO. 33: I think probably as a kid I
9 just felt satisfied that my father took care of it,
10 because I didn't really have a concept of the law then,
11 not that young.

12 MR. WITT: So that was a guy from a trailer
13 park that you really didn't know prior to that, is that
14 correct?

15 JUROR NO. 33: Well, he lived there, and I did
16 talk to him before, stuff like that, and I kind of got
17 to where I trusted him.

18 MR. WITT: So, you think he formed a
19 relationship with you to the extent where he gained your
20 trust?

21 JUROR NO. 33: Yes.

22 MR. WITT: In this case, the judge has read
23 the charges to you. Mr. Stockwell is accused of
24 improper things with his step grandchildren, and what's
25 also been alleged is there's a family relationship. Do

1 you think the fact that -- I guess the only similarity
2 is the fact that there is a relationship of trust. Is
3 there anything from that instance that would make it
4 hard for you to sit in judgment on Mr. Stockwell?

5 JUROR NO. 33: I don't think so, because
6 again, I think my training that I have had as a law
7 enforcement officer and, you know, administrative
8 prosecutor in administrative Coast Guard hearings has
9 overcome that. I haven't thought about that thing in
10 years. It was just the questionnaire that brought it
11 out.

12 MR. WITT: I am not too familiar with military
13 kind of law, but I am just going to assume they have
14 different laws. Is there anything so entrenched in you
15 because of all your prior experience and your prior
16 education, your prior duties as like a military
17 prosecutor that would make it difficult for you to
18 follow this body of law if it's different?

19 JUROR NO. 33: No.

20 MR. WITT: And the judge touched a little bit
21 on what happened with your brother in Florida. How long
22 ago was that?

23 JUROR NO. 33: That I think was about three
24 years ago.

25 MR. WITT: I guess speculating, do you think

1 your brother had any run-ins with that person in the
2 trailer park back in his youth?

3 JUROR NO. 33: My brother -- that brother then
4 would have been about four years old. I don't think so.

5 MR. WITT: How close are you with that
6 brother?

7 JUROR NO. 33: I am not as close with him as I
8 am with the middle brother. I am the oldest brother.

9 MR. WITT: Did you have any feelings that came
10 up -- I don't know if your brother went to trial.

11 JUROR NO. 33: He was convicted.

12 MR. WITT: Any hard feelings you have against
13 the State of Florida for holding him accountable, or his
14 defense attorney, anything like that that either party
15 should know about?

16 JUROR NO. 33: We as a family felt it was a
17 husband and wife thing. They were both accused, or both
18 convicted, and yeah, to be honest with you, we were a
19 little bit disappointed that the state wasn't a little
20 harder on her, because she was in our opinion the one
21 that brought him to that.

22 MR. WITT: She was the more culpable?

23 JUROR NO. 33: Yes.

24 MR. WITT: You think they came down harder on
25 your brother?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 33: Yes.

MR. WITT: Now, you realize the State of Florida, State of Washington, different set of facts, different cast of characters. Is there anything that could trouble you from that old experience about this office and this court system?

JUROR NO. 33: You mean my brother's situation?

MR. WITT: Yes, what happened in Florida.

JUROR NO. 33: I would hope not, you know, because everything is supposed to be about fairness in court. I would hope not.

MR. WITT: I know there's -- you have indicated some other things that are more mundane, some family history of DUI, and I am going to assume those are with local law enforcement officers?

JUROR NO. 33: Yes.

MR. WITT: Anything about those experiences, hearing talk amongst your family that someone is going to jail or someone is being prosecuted, anything about that that would cause the state some concern?

JUROR NO. 33: My youngest son, who is the one I indicated had a DUI, he had a case once that was -- He had actually had two. One of them was -- the first one was as a minor where he wasn't actually pulling

1 away. I think as a minor you have to be .04 or
2 something like that, and it wasn't really the court I
3 had a problem with, it was the defense attorney that we
4 got for him, and basically didn't do squat for him, and
5 wound up costing me like \$2,500. With my own
6 background, although I can't be an officer of the court
7 in the State of Washington, I could have done a better
8 job myself than he did, so I harbor resentment about
9 that, but I didn't hold it against the prosecuting
10 office or the judges or anything.

11 MR. WITT: But from your prior experience, it
12 sounds to me like you feel pretty much comfortable with
13 doing these kind of difficult legal determinations, and
14 if you had taken an interest in your son's case, you
15 felt you could have done a better job. Do you find from
16 your education that you are a person that can understand
17 these legal concepts?

18 JUROR NO. 33: My job is merchant marine
19 license officer. I run the Northwest region of the
20 United States, and a lot of the applicants that come in
21 to get a merchant marine license, to run like ferries
22 and tow boats and oil tankers, whatever, part of our job
23 is to make sure that the person is suitable both
24 knowledge-wise, physically, and suitable in terms of
25 criminal background, so we have to -- there's a whole

1 regulatory body of regs that we have to follow, that
2 where we are required to put assessment periods on them
3 and stuff, if there are recent charges, although the
4 regulation will allow a person to make an application in
5 less than that assessment period. When that happens,
6 they have to provide lots of things like compliance with
7 the court, something that would show us that they are
8 suitable. And I have dealt with cases of child
9 molestation charges or people being convicted of that
10 where I have had to make a decision whether or not they
11 can serve in the merchant marine or not. I think
12 there's SSOSA is a program that they go through, and I
13 have had to myself actually put conditions on those
14 people that they have to complete those programs before
15 we would give them a merchant marine license, and I do
16 that. I am the one that does that.

17 MR. WITT: What it all comes down to is your
18 answer to question 11. You have indicated that there's
19 nothing that would affect your ability to be fair and
20 impartial to either side. After all these questions
21 that I have asked, do you still maintain that belief?

22 JUROR NO. 33: Yes, I do.

23 MR. WITT: Thank you very much.

24 THE COURT: Mr. Talney?

25 MR. TALNEY: You have some more. I don't

1 blame you for going for the door.

2 So you served on an administrative discharge?

3 JUROR NO. 33: In the Coast Guard, for
4 licenses, they have an administrative procedure where
5 you have administrative law judges, and if people get in
6 to, you know, accidents on vessels or if they do other
7 illegal things, like beat each other up or something
8 like that, the Coast Guard can bring charges against
9 those people and then they take them in front of an
10 administrative law judge in the Coast Guard. Even
11 though we are nonlawyers to prosecute the cases, of
12 course there's preponderance-of-evidence-type situation,
13 but, you know, we had to follow the federal rules of
14 evidence in presentation of evidence, and qualifying all
15 those things, very similar to most any case.

16 MR. TALNEY: So, basically an administrative
17 proceeding, but using federal rules of evidence?

18 JUROR NO. 33: Correct.

19 MR. TALNEY: And your role was in the
20 presentation of the evidence?

21 JUROR NO. 33: Yes. And eventually I became
22 the supervisor of an office of a number of people that
23 did that for me, and I had to triage caseloads and
24 stuff.

25 MR. TALNEY: Did you ever serve on a

1 court-martial?

2 JUROR NO. 33: No. I did serve as a
3 preliminary investigating officer for a court-martial,
4 though.

5 MR. TALNEY: Article 32 officers?

6 JUROR NO. 33: Yes, and it didn't get any
7 further than that. It wound up being a nonjudicial
8 function.

9 MR. TALNEY: What kind of case was that?

10 JUROR NO. 33: Illegal use of accrued flying
11 miles for personal use.

12 MR. TALNEY: Okay. I have got you. They used
13 their frequent flier miles --

14 JUROR NO. 33: -- for personal use when it
15 belonged to the government.

16 MR. TALNEY: Okay. So, did you make a
17 recommendation that it was founded or unfounded or
18 should it go forward to the convening authority?

19 JUROR NO. 33: In my investigation of that
20 particular case I found that the Coast Guard had very
21 poor guidance on what to do with their miles and
22 recommended leniency, which he got.

23 MR. TALNEY: What was the highest rank that
24 you achieved in the Coast Guard?

25 JUROR NO. 33: I retired as lieutenant

1 commander, as a Mustang officer they call it.

2 MR. TALNEY: In that capacity, you probably
3 had to do a number of informal investigations, also?

4 JUROR NO. 33: Are you talking about criminal,
5 against people that worked for me, things like that?

6 MR. TALNEY: Sure.

7 JUROR NO. 33: There were a few times when I
8 had to put people in court, but I have to clarify,
9 though, for you, sir. There's a difference between
10 that, my role just as a superior officer to junior
11 people as opposed to what I did in the merchant marine
12 against civilians that had merchant marine licenses.

13 MR. TALNEY: Sure. From your earlier
14 responses, it didn't sound like you were going to be the
15 type of person who would jump to a conclusion in a
16 courtroom setting. Is that fair to say?

17 JUROR NO. 33: Yes.

18 MR. TALNEY: How do you -- In this particular
19 kind of case, where you have some of your own personal
20 experience, how are you able to do that, separate your
21 own personal experience from what's required of you as a
22 juror?

23 JUROR NO. 33: How do you do that?

24 MR. TALNEY: How do you think you go about it?
25 It would seem like a difficult thing, to be able to

1 separate out what may have happened to you personally,
2 and circumstances with your brother, and sit as an
3 impartial juror in this type of case.

4 JUROR NO. 33: Well, I have to say, yes, I
5 abhorred what happened. I am ashamed of my brother.
6 Okay. But still, I think my training is what does it.
7 I think my training and my own life as a Coast Guard
8 officer and as an administrative prosecutor and
9 investigator, and my own degree in law enforcement
10 administration and studies that had to do in that
11 pursuit, that has -- that's what it is. I think that
12 prevents me from doing that. I have to realize that
13 regardless of what may have happened to me in my
14 personal life, when you are called for duty, something
15 like this, you have to weigh the facts, and you know the
16 person is either guilty or they are not.

17 MR. TALNEY: Okay.

18 That's all I have, Your Honor.

19 THE COURT: Okay. You will be excused then to
20 come back tomorrow morning at 8:45. And have a good
21 evening, and we'll see you tomorrow morning.

22 JUROR NO. 33: Thank you, Your Honor.

23 (Juror No. 33 left the courtroom and
24 Juror No. 34 entered the courtroom.)

25 THE COURT: Mr. Schneider, take a seat in the

1 front row there.

2 You had indicated on your questionnaire you had
3 worked for Child Protective Services in California?

4 JUROR NO. 34: Yes.

5 THE COURT: And I assume as part of that work
6 you investigated child molestation cases?

7 JUROR NO. 34: Yes. I was in the emergency
8 services department.

9 THE COURT: Okay. And based on those
10 experiences then, your experience with I guess it was an
11 ex-girlfriend, is there anything about those you think
12 would affect your ability to be fair and impartial in
13 this case?

14 JUROR NO. 34: No. I answered honestly, but
15 that was an ex-girlfriend a long time ago, and it was
16 something she dealt with, and my work experience left me
17 with -- well, gave me a lot of training about
18 impartiality, about you look for the facts, you don't
19 look for the judgment.

20 THE COURT: Okay.

21 Mr. Witt, any questions?

22 MR. WITT: Yes, Your Honor.

23 What you just said was interesting. The facts; is
24 that what you said?

25 JUROR NO. 34: Right.

1 MR. WITT: Does that mean you want to get your
2 building blocks, your evidence, then go to the
3 conclusion, not pick your conclusion you want, then
4 build your case in reverse?

5 JUROR NO. 34: That's how I try to do
6 everything. I try to -- you know, people have opinions
7 about all sorts of things, but I really feel strongly
8 that you pay attention to the facts and then you listen
9 to what they tell you. Don't go from a decision. I
10 mean, those are very emotional times, and you don't go
11 from assumptions or decisions or accusations. You have
12 to go with -- It's a very serious matter. You have to
13 go with the facts.

14 MR. WITT: Are we talking specifically about
15 your CPS involvement?

16 JUROR NO. 34: I thought that's --

17 MR. WITT: I just wonder if you do that more
18 broadly in all aspects when you have to make a decision.

19 JUROR NO. 34: Yeah, I do. I mean, you ask my
20 wife or my friends, they would always say facts may be
21 hard to swallow, but that's what we have. To me, it
22 feels like that's what people are about, that's what
23 society is about, what are the facts. I mentioned
24 college degrees. I have a research background, too.
25 Start with your conclusions, you collect the facts, then

1 you listen to them. So, yes.

2 MR. WITT: How long ago did you work for CPS?

3 JUROR NO. 34: From '89, fall of '89 to the
4 spring of 1990.

5 MR. WITT: Would you have worked all types of
6 a general caseload, or did you have a specific type of
7 caseload?

8 JUROR NO. 34: No. The way the office was
9 divided, it was essentially emergency services, which
10 meant if there was a complaint made about potential
11 abuse or neglect, we were the first people to go out,
12 sometimes with law enforcement, to start the
13 investigation, and had the power to have the child
14 removed from the home to emergency shelter care. After
15 that we were on to another case. It was the rest of the
16 office that handled any kind of further matters.

17 MR. WITT: You just did the initial birth of
18 the case?

19 JUROR NO. 34: Yes.

20 MR. WITT: In doing that, you mentioned that
21 you did some type of investigation. It would either be
22 CPS alone or CPS joined by law enforcement; is that
23 accurate?

24 JUROR NO. 34: Yes. There were times when you
25 needed the backup or assistance of law enforcement.

1 MR. WITT: And, in bringing a case to life,
2 would you ever have the opportunity to interview a
3 victim?

4 JUROR NO. 34: Yes. That was my primary job.

5 MR. WITT: Did you receive training in how to
6 do that before you started with CPS?

7 JUROR NO. 34: The county that I worked for
8 provided three -- I want to say three months of
9 training. I am sorry, one month of training, doing
10 investigations.

11 MR. WITT: What county was that?

12 JUROR NO. 34: Riverside, California.

13 MR. WITT: We talked briefly about a
14 girlfriend that you had a long time ago. You described
15 her experience. Is there anything about that that would
16 cause you to have a difficult time making a fair and
17 impartial decision for Mr. Stockwell or for the state?

18 JUROR NO. 34: No, I don't think so. I didn't
19 know the perpetrator at all. This was never something
20 she brought up. She had for the most part dealt with
21 it.

22 MR. WITT: And, I imagine when you would go
23 out to CPS calls, you probably were one of the first
24 people there. Is there anything so egregious, something
25 that -- an experience that would cause you to have a

1 difficult time sitting in this case?

2 JUROR NO. 34: No. I did my work, and I think
3 I did a good job. Then I have always felt like if you
4 can go home and feel like you did the best you could,
5 then the rest of it you don't worry about. I didn't
6 lose sleep. I didn't think about them afterwards.

7 MR. WITT: It was turned over to someone
8 else's hands?

9 JUROR NO. 34: Sure.

10 MR. WITT: Do you recall what -- I guess what
11 was the median age range of children you would respond
12 to?

13 JUROR NO. 34: Well, this was both neglect --
14 it was either signs of neglect or abuse, but usually
15 elementary school is what I recall mostly. I recall
16 going to a lot of elementary schools to take the initial
17 complaint from a teacher.

18 MR. WITT: Does neglect or abuse, those
19 definitions that you use, does that include sexual
20 assault?

21 JUROR NO. 34: Abuse does. Neglect does not.

22 MR. WITT: All right. I have no further
23 questions. Thank you very much.

24 THE COURT: Mr. Talney?

25 MR. TALNEY: Sir, did the training you were

1 talking about involve specific training on how to
2 conduct a child interview?

3 JUROR NO. 34: Yes.

4 MR. TALNEY: Were there set procedures in your
5 office on how to conduct such an interview? Was there
6 like a written policy or anything like that?

7 JUROR NO. 34: As I recall there were
8 guidelines, but every situation was so different. The
9 county that I worked in, some kids couldn't even speak
10 English, so there was a translator. That's more
11 difficult. Some kids couldn't speak at all to you about
12 it. In fact, you had to get information from other
13 sources. Guidelines, but not a set -- I don't recall a
14 set procedure.

15 MR. TALNEY: Did you videotape or record or
16 take verbatim reports or anything? How did you keep
17 track of the interviews? Was there a policy there?

18 JUROR NO. 34: There was no videotape or
19 photography. I kept field notes on a pad so that I
20 could write up my investigation for the social service
21 department, what I saw and what decisions I made.

22 MR. TALNEY: Was there any policy about what
23 happened with your notes? What did you do with them?

24 JUROR NO. 34: They were always filed with the
25 office there, into a chart, a paper chart.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. TALNEY: Who would you forward those reports to? If you were the first stage of the process, where would it go from there?

JUROR NO. 34: As I recall, it went to my supervisor, who reviewed them, I think. It's been a while.

MR. TALNEY: So, was part of your job making an initial determination whether or not the abuse allegations were founded or unfounded? Or was that a word you used?

JUROR NO. 34: No, not founded or unfounded. My job was pretty constricted to determining was there a need to hold a child out of their home or wherever they were living to emergency shelter care to stop whatever abuse or neglect appeared to be happening, so that the child's safety is now better, and then the other parts of the office would then take that case, and there was a certain time, I don't recall, that it would go before a judge, so forth, for further action.

MR. TALNEY: Did you ever personally come across a situation where you did not believe the allegation of abuse?

JUROR NO. 34: At the moment I heard it?

MR. TALNEY: As you were going through the process.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 34: Yes.

MR. TALNEY: So obviously, clearly, there must have been instances where you did believe the situation, took the child out of the home. I am just wondering if the flip side were true.

JUROR NO. 34: Yes, yes. If it really did appear that -- well, my investigation that day, the outcome of that was I didn't feel like I had enough evidence to pull a child out of a home, I could either refer that case on or I might pick it up the next day and do more investigation, and there are certainly times when I just didn't find the evidence.

MR. TALNEY: I assume in your work when you were deciding whether there was enough evidence or not, you didn't use any standard like beyond a reasonable doubt probably?

JUROR NO. 34: I am trying to recall. I don't recall that those legal conditions applied in the narrow purview.

MR. TALNEY: Obviously as the judge already explained earlier today, some time ago now, beyond a reasonable doubt is the standard here. Have you served as a juror before?

JUROR NO. 34: No.

MR. TALNEY: Okay. So that probably wasn't

1 the same standard you were using back then to determine
2 whether or not there was enough evidence to pull a child
3 from a home.

4 JUROR NO. 34: I don't know how to answer
5 that. I don't know if there's an actual definition
6 "beyond a reasonable doubt." What I was restrained to
7 do was to in a very short amount of time to determine
8 did I need to take this child out of a home that moment,
9 that day, for the immediate protection. Once I did or
10 didn't do that, I moved on to the next case.

11 MR. TALNEY: The judge is certainly going to
12 give you a number of instructions on the law and
13 definitions. Do you have any concern about being able
14 to follow the law as given to you by the court as
15 opposed to your own personal experience dealing with
16 these issues that would have been on a different
17 standard?

18 JUROR NO. 34: No. I mean, if -- I guess my
19 feeling is if we don't have that, we don't have much as
20 a society. You apply the facts to the law seems to me.
21 It's immaterial if I agree with the law or don't agree
22 with the law in my mind.

23 MR. TALNEY: Is there any concern in your mind
24 that based on your past professional experience, that
25 your reaction in this situation might be to try and

1 protect the child, and in that trying to protect the
2 child, you might lower the standard of proof, the burden
3 of proof that is required in a criminal case?

4 JUROR NO. 34: I don't see that as my role as
5 a juror.

6 MR. TALNEY: Thanks for your time, sir.

7 That's all I have, Your Honor.

8 THE COURT: You will be released at this time
9 to return tomorrow morning at 8:45 a.m. Thank you for
10 your service here today, and we'll see you tomorrow
11 morning.

12 (Juror No. 34 left the courtroom.)

13 THE COURT: We're not going to get through
14 everybody today, so I was looking at ones we need to --
15 I want to do 36 and 54 for sure, and 43. I got my
16 papers out of order here. Just a minute.

17 (Juror No. 35 entered the courtroom.)

18 THE COURT: You are Mr. Hlebechuk?

19 JUROR NO. 35: Yes.

20 THE COURT: You indicated you had been found
21 guilty of first degree theft and forgery on your --

22 JUROR NO. 35: Correct.

23 THE COURT: -- form, and we have checked our
24 records and you have been -- there is an order of
25 discharge signed, so your civil rights have been

1 restored. From looking at your questionnaire, it looks
2 like you marked that they had been restored and we just
3 confirmed that, so I want to see if the attorneys have
4 any questions on that.

5 Mr. Witt?

6 MR. WITT: Thank you, Your Honor. Could I
7 have just a brief moment, Your Honor?

8 THE COURT: Yes.

9 Mr. Talney?

10 MR. TALNEY: How long ago was that?

11 JUROR NO. 35: The first part of this year,
12 and the last -- no, I guess it was the middle of last
13 year.

14 MR. TALNEY: Do you recall the name of -- Did
15 you have an attorney?

16 JUROR NO. 35: Yes.

17 MR. TALNEY: Who were you represented by?

18 JUROR NO. 35: Ron Ness.

19 MR. TALNEY: Not a member of the firm that I
20 work with, but was there anything that was particularly
21 outstanding one way or the other, bad, good, that
22 affects how you might see the players in this case?

23 JUROR NO. 35: No.

24 MR. TALNEY: And, were Mr. Wachter or Mr. Witt
25 present on the prosecution side in your case?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 35: I don't believe so.

MR. TALNEY: But was that here in Kitsap County?

JUROR NO. 35: Correct.

MR. TALNEY: Anything about them being members the Kitsap County Prosecutor's Office that is going to be a problem or affect your review of this case?

JUROR NO. 35: No.

MR. TALNEY: Obviously there would be concerns from the prosecutors' side if they were in the same office you were prosecuted by. Are you going to hold it against them?

JUROR NO. 35: No.

MR. TALNEY: I see you smiling, so no problem with that?

JUROR NO. 35: No.

MR. TALNEY: Anything about that situation at all, sir, that you can think of that might give anybody cause for concern that you are a juror on this case?

JUROR NO. 35: No, nothing that went on other than my stupidity.

MR. TALNEY: That's all I have, Your Honor.

THE COURT: Mr. Witt?

MR. WITT: Thank you, Your Honor.

I just wanted to touch on that a little bit more

1 than what Mr. Talney has done. I have to make an
2 assumption that if you were tried in this court in this
3 county, it would have been by a deputy out of our
4 office, so --

5 JUROR NO. 35: It was a plea, not a trial.

6 MR. WITT: It didn't go to trial?

7 JUROR NO. 35: No.

8 MR. WITT: At some point in time, though, a
9 deputy from my office worked on that plea agreement.

10 JUROR NO. 35: Okay.

11 MR. WITT: I just wondered if you would hold
12 anything against the individual from our office or our
13 office as a whole.

14 JUROR NO. 35: No.

15 MR. WITT: Generally, every time there's a
16 criminal investigation, law enforcement is involved.
17 Anything about that case, the way you were investigated
18 by law enforcement, that would cause you to I guess
19 harbor ill feeling about law enforcement?

20 JUROR NO. 35: No.

21 MR. WITT: Let's say this is a public
22 courtroom. As a juror you are sitting there listening
23 to someone deliver an opening statement, and in walks
24 the prosecutor that maybe worked on your case and you
25 recognize him. Would that cause an emotional response

1 or anything about that?

2 JUROR NO. 35: No. Everything was fair and up
3 front, and --

4 MR. WITT: That's all we want to know, just
5 that you recognize that it was the administration of
6 justice, and we don't want any hard feelings one way or
7 the other towards either party.

8 JUROR NO. 35: No.

9 MR. WITT: What do you think about I guess the
10 prospect of being on the other side of the table, being
11 a juror?

12 JUROR NO. 35: As opposed to what?

13 MR. WITT: Well, you were an accused person,
14 and then now you are in a different position. What do
15 you think about that?

16 JUROR NO. 35: I don't really have any
17 feelings about that. I mean, it's a job one side of the
18 table or the other, so --

19 MR. WITT: The court is going to give you some
20 law, and the court is going to ask you, and the parties
21 are going to trust that you will follow that law. Is
22 that something that you can assure both parties that you
23 will do?

24 JUROR NO. 35: Oh, yeah.

25 MR. WITT: I don't know if you disagree with

1 the law you were charged with before or anything like
2 that. I just don't know the facts from your case, but
3 we just need to know when you are provided this law, are
4 you going to be able to follow it?

5 JUROR NO. 35: Sure.

6 MR. WITT: Thank you. I appreciate your
7 honesty with those answers.

8 THE COURT: Thank you. You will be excused
9 for tonight. We'll see you tomorrow morning 8:45 a.m.

10 JUROR NO. 35: Thank you.

11 (Juror No. 35 left the courtroom.)

12 THE COURT: Counsel, we're going to take juror
13 36, then 43, then 54. The rest have been excused until
14 the morning.

15 (Juror No. 36 entered the courtroom.)

16 THE COURT: Take a seat there.

17 You indicated in your questionnaire that your
18 sister was molested by your stepfather.

19 JUROR NO. 36: Correct.

20 THE COURT: How long ago was that?

21 JUROR NO. 36: She was 8, so it was
22 probably -- She's probably 30 now. So that's when it
23 started. It got into the courts probably, I think she
24 was 13, it finally made it.

25 THE COURT: So it went on for a long period of

1 time. On the question about whether you felt you could
2 be fair in this case, you said you are not sure, and you
3 have had more time to think about that. What do you
4 think now?

5 JUROR NO. 36: It's hard for me to say. I
6 mean, to be honest, I know to treat somebody as they're
7 innocent until proven guilty is kind of hard to do when
8 a kid is involved who can't speak for themselves.

9 THE COURT: The alleged victims in this case
10 are in the age range of six and seven. The alleged
11 victims are in the age range of six and seven years old.
12 If you were a juror on this case, do you think you could
13 put aside what happened with your sister and listen to
14 the witnesses as they come here and the testimony here
15 in the courtroom, or would your sister's experience keep
16 coming back to you?

17 JUROR NO. 36: I don't know how to answer
18 that. I am not sure.

19 THE COURT: Do you think you could put it
20 aside and focus on the testimony in this case?

21 JUROR NO. 36: Probably.

22 THE COURT: Okay, all right.

23 Mr. Witt?

24 MR. WITT: Thank you, Your Honor.

25 Some of the questions I have to ask you are kind of

1 personal in nature. I apologize if I touch on any.
2 It's just something we have to get through.

3 Are you pretty close with your sister?

4 JUROR NO. 36: Not so much anymore. She lives
5 in Montana.

6 MR. WITT: What about when you guys were kids?

7 JUROR NO. 36: Yes, we were pretty close.

8 MR. WITT: Close in age?

9 JUROR NO. 36: She is three years younger.

10 MR. WITT: How old were you when you found out
11 she had been abused?

12 JUROR NO. 36: I was probably 16.

13 MR. WITT: So she waited a short period of
14 time, but not too long, to disclose.

15 JUROR NO. 36: She started seeing a counselor
16 and it came out with the counselor, and my mom wasn't
17 sure -- that's kind of a weird thing, but my mom wasn't
18 sure she was going to press charges, but the counselor
19 had to bring it to the state apparently.

20 MR. WITT: Was that in the State of Washington
21 or Montana?

22 JUROR NO. 36: Montana.

23 MR. WITT: So the counselor brought it to the
24 state's attention. What happened then?

25 JUROR NO. 36: Well, of course my mom filed

1 for divorce right away, but it ended up going to court,
2 ended up he got some sort of probation, and he had to
3 tell the courts where he lived, give them his address.
4 He couldn't leave the state for a certain period of
5 time, and I don't know how long that was.

6 MR. WITT: Let me cut right to it. In this
7 case, Mr. Stockwell is accused of -- you are going to
8 hear evidence by the state and it's going to be wholly
9 independent, wholly different, I assume, from what the
10 types of things you know about your sister. I
11 understand what happened to your sister might be
12 troubling, as it would be to anybody, but my question to
13 you is, we are going to be dealing with a different set
14 of facts, you are going to be dealing with different
15 people, and I am wondering if you are going to be able
16 to set your -- I guess set your issues with the events
17 that happened with your sister behind, and listen to the
18 evidence in this case impartially.

19 JUROR NO. 36: I mean, I never sat through
20 anything like this, so I am not sure exactly how it's
21 going to go.

22 MR. WITT: Right. And you know, just about if
23 I ask anybody in the county if they would like to be in
24 on a child molestation case, I doubt that many people
25 would say yes, so I don't think your answer is -- not to

1 downplay it, but it's a pretty general answer, so I just
2 need to know, with your background and with your
3 closeness with your sister, are you able to put those
4 old events behind and give Mr. Stockwell a fair shake
5 today, give the state a fair shake, and just listen to
6 the evidence independently?

7 JUROR NO. 36: I am not sure. I am not sure.

8 MR. WITT: Okay. I know you talked about this
9 old case with your stepfather. We talked about
10 repercussions. Is that something that bothers you?
11 Because, I know it sounds like he's on some type of
12 registration program. We are talking about what
13 happened after the fact. It sounds like he was
14 penalized in some way. Is that something that causes
15 you concern, the fact that there could be ramifications
16 to this?

17 JUROR NO. 36: A little bit. I mean, what if
18 it were wrong? Not that I should be judging already,
19 but what if we are wrong and something happened, we made
20 the wrong decision, or what if we are right? I don't
21 know.

22 MR. WITT: You're just concerned about, you
23 think the decision has a lot of magnitude?

24 JUROR NO. 36: Right.

25 MR. WITT: Well, not worrying about what the

1 consequences are, if you put that out of your mind,
2 would you be able to listen to the evidence impartially
3 and make a decision on that evidence without
4 repercussion?

5 JUROR NO. 36: Just on the evidence, probably.

6 MR. WITT: Getting back to the topic we just
7 talked about, your stepfather is not allowed to be
8 around kids?

9 JUROR NO. 36: Right.

10 MR. WITT: He's got to register. Do you think
11 that those types of things are too harsh?

12 JUROR NO. 36: No.

13 MR. WITT: So that sounds like then I guess
14 that repercussion, what happened to him, that doesn't
15 bother you too much?

16 JUROR NO. 36: No. It makes sense.

17 MR. WITT: I think you answered my ultimate
18 question. I really appreciate your honesty. Thank you
19 very much.

20 THE COURT: Mr. Talney?

21 MR. TALNEY: Thank you, Your Honor.

22 Sir, I have noticed that you are kind of flushing.
23 Maybe you can probably feel that happening to yourself.
24 Is this a difficult topic for you?

25 JUROR NO. 36: Not too much anymore. It's

1 been a while.

2 MR. TALNEY: It sounded like from one of your
3 earlier answers, one of your real concerns is that it
4 involves a child. Is that fair to say?

5 JUROR NO. 36: Correct.

6 MR. TALNEY: What are your concerns there?

7 JUROR NO. 36: Well, like I was saying, what
8 if the wrong decision is made? Put the child in danger.

9 MR. TALNEY: Do you think you are going to
10 have a reaction to try and protect the child as part of
11 your being a juror?

12 JUROR NO. 36: It's hard not to think about it
13 as, what if that was my kid, you know, so possibly.

14 MR. TALNEY: One of the definitions the court
15 has already read to you is beyond a reasonable doubt,
16 and you would have to find Mr. Stockwell not guilty
17 unless you were convinced beyond a reasonable doubt. Is
18 there concern in your mind that you might lower that
19 burden because of a desire to protect the child or not
20 want to be wrong and the child be placed in danger?

21 JUROR NO. 36: Not necessarily.

22 MR. TALNEY: One of the things you did mention
23 is, you thought that you might have a difficulty
24 presuming a person innocent in a case that involved a
25 child. Is that a fair synopsis of what you said?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 36: Yes.

MR. TALNEY: How would you explain that?

JUROR NO. 36: For me, it's easier to decide on the side of the kid, just because a lot of times they can't speak up for themselves. I don't know if their ages are older. Possibly.

MR. TALNEY: You may be presented with the testimony of a seven- or eight-year-old. Do you think you would have a tendency to believe them more than you might another witness? Like let's say if an adult were to testify and a seven-year-old were to testify about the same thing. Okay. Would you have -- would you automatically give the seven-year-old more -- would the seven-year-old be more believable just right out of the gate?

JUROR NO. 36: Not necessarily.

MR. TALNEY: Could you just explain what your concerns are.

JUROR NO. 36: Concerning -- What are you talking about?

MR. TALNEY: Being able to presume somebody innocent.

JUROR NO. 36: I don't know how to answer that.

MR. TALNEY: I think one of the things you

1 said is, a child can't speak for themselves necessarily.
2 Do you think that would affect how you view the
3 evidence, or are you more likely to believe the
4 allegations when a child is involved, or do you think
5 you would still weigh their evidence, see if it's
6 consistent, whether it matches what other people might
7 say, matches up with the other evidence, those kinds of
8 things, or is it in your mind, does a child have a
9 disability in a courtroom setting so you are just more
10 likely to believe them, give them an advantage?

11 JUROR NO. 36: I don't remember ever being
12 recorded with kids, so I don't know necessarily they
13 have a disadvantage. I would have to listen to all the
14 evidence I suppose.

15 MR. TALNEY: Specifically with your sister,
16 did you ever know at the time that the abuse was going
17 on that it was happening?

18 JUROR NO. 36: No, I didn't.

19 MR. TALNEY: So, it wasn't until afterwards.
20 Did your sister tell you or did another family member?

21 JUROR NO. 36: My mother told me.

22 MR. TALNEY: And what were your feelings that
23 that happened? How old were you?

24 JUROR NO. 36: Well, I was shocked. I
25 couldn't believe that it happened. He had been pretty

1 much the father figure in the house. There was three of
2 us kids, so I never suspected it, never thought it would
3 happen. Of course I was angry, upset about it.

4 THE COURT: Mr. Talney, I think we need to --
5 Do you have any more specific questions?

6 MR. TALNEY: No. Actually, I think I am done.

7 THE COURT: We can question him more.

8 MR. WITT: When we resume tomorrow, I would
9 like to ask a couple brief questions of Mr. Cole.

10 THE COURT: Tomorrow you can.

11 You will be excused for this evening then to return
12 tomorrow morning at 8:45 a.m. Thank you for your
13 service here today. We'll see you in the morning.

14 Number 43, please.

15 (Juror No. 36 left the courtroom and
16 Juror No. 43 entered the courtroom.)

17 THE COURT: Take a seat in the front row
18 there.

19 We are calling you in in response to your
20 questionnaire. You indicated that you were a victim of
21 being sexually molested by your stepfather?

22 JUROR NO. 43: Yes, ma'am.

23 THE COURT: How old were you?

24 JUROR NO. 43: The first time I was six.

25 THE COURT: So you were a young child. Okay.

1 And then, was it your -- you said your oldest son
2 molested his sisters? Was that your children?

3 JUROR NO. 43: Yes.

4 THE COURT: So there's two. Your personal
5 incident then happened in your home, also.

6 JUROR NO. 43: Yes, ma'am.

7 THE COURT: And then you indicated you have a
8 very -- a child molester is guilty, a very closed
9 opinion about this.

10 JUROR NO. 43: Yes, I do.

11 THE COURT: And you don't know very much about
12 this case other than what the charges are.

13 JUROR NO. 43: No, ma'am, I don't.

14 THE COURT: Have you already made up your
15 mind --

16 JUROR NO. 43: Yes, I have.

17 THE COURT: -- that Mr. Stockwell is guilty?

18 JUROR NO. 43: Yes, he is.

19 THE COURT: All right. Any objection to
20 excusing this juror?

21 MR. WITT: No, Your Honor.

22 MR. TALNEY: No, Your Honor.

23 THE COURT: You are going to be excused. I want
24 to thank you for your service here and your opinions,
25 and you have completed your service for this week.

1 Thank you for your time. Thank you.

2 (Juror No. 43 was excused. Juror
3 No. 54 entered the courtroom.)

4 THE COURT: Ms. Baum, we called you in in
5 response to your questionnaire, and you indicated you
6 had been a victim of child molestation at age 8 to 13.

7 JUROR NO. 54: Yes.

8 THE COURT: Before we ask any more questions
9 about that, I want to let you know in this particular
10 case, the two alleged victims are cousins and the
11 defendant is their step grandfather. Okay. And so
12 having that in mind, do you think you can put aside your
13 own experiences and listen to the witnesses here?

14 JUROR NO. 54: Once I heard what the gentleman
15 was being charged with, I had this little knot in my
16 stomach. I just --

17 THE COURT: Would it be traumatic for you to
18 sit as a juror on this case?

19 JUROR NO. 54: Yes.

20 THE COURT: Do you still feel -- I will ask a
21 yes or no question. Do you still have unresolved issues
22 about your molestation?

23 JUROR NO. 54: Yes.

24 THE COURT: Counsel, any objection to excusing
25 this juror?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. TALNEY: No objection, Your Honor.

MR. WITT: No objection, Your Honor.

THE COURT: We don't want this to be a traumatic situation for you, and maybe you will get called back in on a different kind of case, but I am going to excuse you at this time. Thank you for your service here.

(Juror No. 54 was excused.)

THE COURT: We have one other issue to deal with. That's juror number 4. We got a call from Dr. Afton's boss, Dr. Ruck (phonetic), who says it's endangering people's life for him not to be at work. They are short emergency room doctors, and I know from lots of different jury cases that the Naval Hospital has been really short-handed due to the deployment of a lot of medical personnel in Iraq, so with that in mind, what is counsels' response?

MR. WACHTER: One moment, Your Honor.

MR. TALNEY: I would have no objection, Your Honor. It would appear that if they are going to make a statement that people's lives are in danger, I think that would cover it.

THE COURT: I do know they have been short-handed. I was surprised at his answer when I asked.

1 MR. WACHTER: I can't object under the
2 circumstances.

3 THE COURT: Okay. Then Dr. Afton will be
4 excused by court order, and Ms. Lougheed will contact
5 him.

6 (Juror No. 4 was excused.)

7 THE COURT: Tomorrow morning then we can start
8 questioning with 36 again. You wanted to talk with him
9 further. Then we'll do the other ones.

10 MR. WACHTER: Do we want to talk about any
11 people in terms of challenges, or do you want to defer
12 until tomorrow morning?

13 THE COURT: Until tomorrow morning.

14 MR. WACHTER: Your Honor, given the
15 circumstances, I haven't been able to get back to the
16 office and pull together the state's instructions. I
17 guess I would ask your blessing to bring them to court
18 at nine o'clock tomorrow.

19 THE COURT: That will be just fine.

20 MR. WACHTER: Thank you, Your Honor.

21 THE COURT: Thank you for your patience today.
22 We'll see you tomorrow morning, nine o'clock,
23 Mr. Stockwell.

24 THE DEFENDANT: Yes, ma'am.

25 (Court recessed.)

Exhibit 9

Exh. 9. VRC (Apr. 21, 2004)

ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	
vs.	)	NO. 03-1-01319-4
	)	APPEAL NO. 31920-9-II
DANIEL STOCKWELL,)	
)	
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS

VOLUME II

April 21, 2004
Jury Voir Dire

Before the Honorable M. KARLYNN HABERLY

APPEARANCES:

FOR THE PLAINTIFF:	NEIL R. WACHTER RYAN WITT Deputy Prosecuting Attorneys
FOR THE DEFENDANT:	AARON TALNEY Attorney at Law

KATHRYN M. TODD, RMR, CCR
Official Court Reporter
614 Division Street
Port Orchard, WA 98366
(360) 337-7177

I N D E X

VOLUME II

	<u>Pages</u>
Individual voir dire of jurors	179 - 240
General voir dire by the court	242 - 244
Voir dire by Mr. Wachter	244 - 288
Colloquy between court and counsel	289 - 292
Voir dire by Mr. Talney	292 - 334
Colloquy between court and counsel	335 - 337
Individual voir dire of juror number 24	337 - 338
Voir dire by Mr. Wachter	339 - 359
Voir dire by Mr. Talney	360 - 377
State passes for cause	377
Defense passes for cause	378
Peremptory challenges	378 - 382

JURORS EXCUSED:

Juror No. 2	379
Juror No. 3	378
Juror No. 9	381
Juror No. 12	380
Juror No. 14	378
Juror No. 15	381
Juror No. 21	244
Juror No. 24	380
Juror No. 26	379
Juror No. 29	380
Juror No. 31	380
Juror No. 33	382
Juror No. 36	187
Juror No. 37	382
Juror No. 38	189
Juror No. 39	382
Juror No. 40	206
Juror No. 41	379
Juror No. 42	207
Juror No. 44	213
Juror No. 45	336
Juror No. 51	223
Juror No. 56	235

1 THE COURT: I've got some jury updates.
2 Juror 33 knows Jennie in the prosecutor's office. She
3 used to work with her.

4 MR. WACHTER: It so happens my legal assistant
5 is named Jennie Shiver, J-e-n-n-i-e, S-h-i-v-e-r.

6 THE COURT: I don't know that that makes any
7 difference, but that's what the bailiff was told.

8 Number 20 thinks the defendant was his neighbor 25
9 to 30 years ago. We probably need to inquire on that.

10 And number 14 contacted Gwen. She had an envelope
11 to deliver to Craig Lindsay in the prosecutor's office,
12 so I don't know what that was about.

13 MR. WACHTER: I understand that that delivery
14 happened yesterday?

15 THE COURT: This morning.

16 MR. WACHTER: I am looking to the bailiff.

17 THE BAILIFF: I wasn't there. It was in
18 Superior Court from what I understand, in front of
19 Delores. This morning?

20 THE CLERK: Uh-hum.

21 THE COURT: About a quarter to nine. I don't
22 know what it's about, but I am just telling you.

23 MR. WACHTER: Thank you, Your Honor.

24 THE COURT: In case anybody is interested.

25 All right. So you want to go back to 36 then?

1 MR. WITT: I would appreciate that, Your
2 Honor.

3 MR. WACHTER: Was Mr. Talney done with juror
4 number 36?

5 THE COURT: I cut him off.

6 MR. TALNEY: I am happy to let you start in.

7 THE COURT: Mr. Witt had some questions he
8 wanted to ask.

9 MR. WACHTER: The only other housekeeping
10 matter is that I have -- I am filing the state's
11 proposed jury instructions. There is a bench copy. It
12 doesn't have the official stamp. I just hand-wrote
13 "bench copy" for the court.

14 THE COURT: Okay.

15 MR. WACHTER: And I would be asking for us to
16 be able to speak to 14, 20, and 33 individually just to
17 verify that there's no problem there. Thank you, Your
18 Honor.

19 THE COURT: All right, you can bring 36 in.

20 (Juror No. 36 entered the courtroom.)

21 THE COURT: You can take a front seat again.
22 There are a few more questions the attorneys wanted to
23 ask you.

24 Mr. Witt?

25 MR. WITT: Thank you, Your Honor.

1 Good morning, Mr. Cole. I wanted to ask you some
2 questions to follow up on an answer that you gave in
3 your questionnaire here. That question is, "Is there
4 anything about this case that would call into question
5 your ability to be fair and impartial to either side?"
6 When we talked about that a little bit before, I just --
7 I wanted to get some clarification. You had some
8 preliminary instructions from the judge. If you are
9 selected, you are going to get a lot more instructions.
10 That's going to be really the law of this court. That's
11 what you would have to follow. Is there any concern
12 that you couldn't follow that law? That you couldn't
13 follow that law? I mean, regarding such matters as
14 assessing credibility of people, leaving out an
15 emotional response?

16 JUROR NO. 36: Well, I would have to follow
17 the rules. I mean, um, I don't know. It may be
18 difficult for me.

19 MR. WITT: Everyone that comes into this
20 courtroom, they have an outside life, and you almost
21 have an independent life as a juror. And we just -- you
22 have some things in your past, with your sister, that
23 obviously causes some I guess emotional response. What
24 we need to know is that you can set that aside, live
25 that independent role as a juror. That's all the

1 question is. Can you set the things outside of court
2 apart from this and give Mr. Stockwell a fair trial and
3 give the state a fair trial?

4 JUROR NO. 36: I don't know if I would because
5 of some of that stuff, and not dealing with it the way I
6 dealt with it. Maybe. I don't know. I don't know.

7 MR. WITT: In a trial, we are going to have
8 evidence, but we need to be assured that you can look at
9 that evidence and view the case just on that evidence.
10 That's something that the court is going to ask you to
11 do. Are you going to be able to do that?

12 JUROR NO. 36: I know I sound like I am going
13 back and forth. I know that's what I am supposed to do.
14 Probably. I don't know how to answer that. I mean, I
15 don't know until I am there, I guess.

16 MR. WITT: Thank you very much.

17 THE COURT: Mr. Talney, any further questions?

18 MR. TALNEY: I do, Your Honor.

19 Sir, it sounds like you are more hesitant than you
20 were yesterday. Have you spent some more time thinking
21 about it?

22 JUROR NO. 36: Yes, I have.

23 MR. TALNEY: Is it fair to say that you are
24 more hesitant about your role as a juror today?

25 JUROR NO. 36: Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. TALNEY: Go ahead.

JUROR NO. 36: There was questions that I answered in a way that I didn't figure I would answer them, some of them. Maybe some stuff that was not dealt with or whatever.

MR. TALNEY: What specifically?

JUROR NO. 36: Just, well, it was a difficult thing, you know, forcing to take sides kind of a little bit, and it was easier not to deal with it than to deal with it, so I just kind of put it away.

MR. TALNEY: We have kind of opened it back up?

JUROR NO. 36: Yeah, and unfortunately, I had to think about it last night, also.

MR. TALNEY: It's clear you understand what you are supposed to do as a juror.

JUROR NO. 36: Right.

MR. TALNEY: I think we have asked you enough questions about that right now. It's got to be clear, but as Mr. Witt was talking to you, sometimes just your own life experience doesn't make that possible to carry out that role in this particular kind of case. Like maybe if it was a shoplifting case, no problem I assume, but in this particular kind of case, just because of what it is and what your experience is, now that we have

1 unfortunately opened it back up for you, do you have
2 concerns that you are not going to be able to live up to
3 the standard that you know is required of you?

4 JUROR NO. 36: Yes.

5 MR. TALNEY: And do you have concerns yourself
6 that you will be able to be that fair and impartial
7 juror that you know you are supposed to be?

8 JUROR NO. 36: Yes.

9 MR. TALNEY: I guess unfortunately we have
10 reopened it for you now with our questioning. Do you
11 have concerns that as you hear the testimony, that's
12 going to be reopened further?

13 JUROR NO. 36: There is some concern.

14 MR. TALNEY: I notice that you have two
15 children, ages five and nine?

16 JUROR NO. 36: Right.

17 MR. TALNEY: And daughters or sons?

18 JUROR NO. 36: The oldest is a daughter.

19 MR. TALNEY: You may hear from a couple of
20 girls that are around seven and eight. Do you have any
21 concerns about that?

22 JUROR NO. 36: Concerns --

23 MR. TALNEY: Having children of your own
24 around the same age?

25 JUROR NO. 36: A little bit. I mean, you

1 know, everybody is worried about their daughter, and
2 people these days.

3 MR. TALNEY: That's not the main issue,
4 though.

5 JUROR NO. 36: Right.

6 MR. TALNEY: Would it be fair to say, sir,
7 that you couldn't guarantee the court that you would be
8 fair and impartial in this particular kind of case?

9 JUROR NO. 36: It bothers me. I don't know.
10 I don't want to get in trouble or anything like that by
11 not doing what I am supposed to do.

12 MR. TALNEY: The only obligation you have
13 here, sir, is just to tell the truth, and the reason
14 we're asking these questions is to try and get your
15 honest responses. You quite honestly shouldn't be
16 concerned about a personal consequence to telling the
17 truth. So, it sounds like that's a real struggle for
18 you, though, because it sounds like you definitely want
19 to do your duty as a juror.

20 JUROR NO. 36: Yeah. I mean, I don't want to
21 be here, but especially this morning.

22 MR. TALNEY: That's all I have, Your Honor.

23 THE COURT: Okay. You may step outside in the
24 hallway. Thank you.

25 (Juror No. 36 left the courtroom.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Is there a motion?

MR. TALNEY: I would challenge for cause, Your Honor.

THE COURT: Mr. Witt?

MR. WITT: Your Honor, Mr. Cole to a series of questions has answered with I guess a lot of honesty. He's not holding anything back. He will have some difficulty with this, with the relationship with his sister, but I think he showed to the court that he will do the best to his ability, and he's going to make every attempt he can to set whatever from his personal life aside. He's indicated that, at least yesterday, it wasn't that difficult a topic to talk about. I understand he slept on it and it might be a little more difficult now and he would rather be in a different place, but I assume most jurors feel that way. He said he could set these events with his sister aside.

Yesterday he said he had some concerns about repercussions that a person that dealt the abuse had. He had concerns about the repercussions. He could set those aside and view the case independently on the facts. He has stated he has concerns he couldn't live up to the standard that he's required to today, but I think his answers shed, or his answers demonstrated that he would do everything in his ability to live up to that

1 standard, and I think he's a good candidate to sit on
2 this jury.

3 THE COURT: Mr. Talney?

4 MR. TALNEY: Your Honor, I would say his
5 answers yesterday were at best equivocal about whether
6 he could put it aside or whether he couldn't. It
7 appeared today that obviously he had thought about it
8 some more. He had realized that he hadn't buried it as
9 well as he thought he had. Faced with that, it appeared
10 that he thought there was going to be personal
11 consequences to him if he said that he couldn't be fair
12 and impartial, and it appeared that he was very
13 reluctant to actually admit that that was the case, but
14 in the end, both by his body language and his final
15 statement that he couldn't guarantee the court that he
16 could be fair and impartial in a case like this, it
17 appears that he has come around and acknowledged the
18 fact that things have now been brought to the surface
19 and this wouldn't be a good case for him.

20 THE COURT: Well, as Mr. Talney questioned him
21 about being more hesitant today, he definitely was more
22 hesitant today. He was questioned pretty much at length
23 yesterday. I cut it off, but he was questioned at
24 length, and knowing what the issues are that the
25 attorneys are asking him about, and I am very concerned

1 about today, he was more hesitant after he had had time
2 to think about it. It's obvious to me, the way he
3 doesn't answer the questions quickly, he's thinking a
4 lot before answering questions, that the emotional
5 impact of what he went through as a child with his
6 sister and his family, and him having to take sides, was
7 very troubling to him. And I am going to grant the
8 challenge for cause. I think there's sufficient basis
9 there in terms of his family experience, the
10 nine-year-old daughter that he has, and that he's not
11 thought about this, and it's very troubling to him and
12 may become more so as the case proceeded and he heard
13 the testimony, so I will grant the motion. Juror 36
14 will be excused, and 38 is next.

15 (Juror No. 36 was excused. Juror
16 No. 38 entered the courtroom.)

17 THE COURT: Ms. Kahler, if you will take a
18 seat in the front row.

19 First I wanted to ask, you felt you could not be a
20 fair and impartial juror in this case. You have had
21 more time to think about this since you filled this
22 questionnaire out. How do you feel now?

23 JUROR NO. 38: I really don't know. I can't
24 say I would be or wouldn't be. I don't know until I
25 have heard more about what it's about, more details on

1 it. I really couldn't say. I am sorry.

2 THE COURT: You had disclosed you had
3 uncomfortable touchings by your uncle when you were
4 younger. How old were you?

5 JUROR NO. 38: It started when I was about 6,
6 until I was about 14.

7 THE COURT: Okay. And based on that, you have
8 apparently taken a view that you abhor child abuse, or
9 this is what you wrote down.

10 JUROR NO. 38: To a degree, yeah, I do. I
11 think that for me, the whole viewpoint of it is, it's
12 unrepairable damage that's done to a child who has no
13 idea what's being done to them, and for me it wasn't --
14 I didn't think I would get emotional.

15 THE COURT: Okay. So, let me --

16 JUROR NO. 38: The realization of it really
17 didn't affect me until I was an adult, because it was
18 someone I loved and trusted, and no one in my family did
19 anything about it and they knew about it and they didn't
20 stop it. So, a lot of things surfaced as an adult that
21 I didn't understand or realize should have surfaced as a
22 child, until I became old enough to know what was going
23 on was wrong, and I was very fortunate because it was --
24 it was minor fondling and kissing-type things that went
25 on. He never sexually attacked me or anything, but it

1 was enough to damage me as a woman, as an adult, and
2 make it hard for me to deal with relationships as an
3 adult.

4 MR. WITT: We have no objection.

5 THE COURT: Mr. Talney, any objection?

6 MR. TALNEY: No, Your Honor.

7 THE COURT: I don't want to get you all upset
8 here, but I am going to excuse you and maybe -- I am
9 sorry you had to come back today. We couldn't get
10 through everybody yesterday because it takes a while to
11 talk about these things, but maybe you will get called
12 back on another kind of jury, but you have finished your
13 jury duty for this time, and thank you very much for
14 your service here.

15 JUROR NO. 38: Thank you.

16 (Juror No. 38 was excused. Juror
17 No. 39 entered the courtroom.)

18 THE COURT: Mr. Santos, if you would take a
19 seat in the front row.

20 In your questionnaire you talked about your
21 daughter having been raped. How long ago was that?

22 JUROR NO. 39: About 18 years ago.

23 THE COURT: Okay. And you said no complaint
24 was filed?

25 JUROR NO. 39: No.

1 THE COURT: Was it a family member involved or
2 not?

3 JUROR NO. 39: No, ma'am.

4 THE COURT: How old was she at the time?

5 JUROR NO. 39: I believe she was about 21
6 years old.

7 THE COURT: Okay, so she was an adult.

8 JUROR NO. 39: Pardon me?

9 THE COURT: She was an adult?

10 JUROR NO. 39: Yes, ma'am.

11 THE COURT: Okay. All right. And in answer
12 to our question about whether you thought you could be
13 fair and impartial, you wrote the effect on the victim
14 would cause you to maybe not be fair?

15 JUROR NO. 39: Yes.

16 THE COURT: Okay. As I told you yesterday,
17 the defendant is presumed innocent, and this is a trial
18 to determine whether the state can prove the charges
19 beyond a reasonable doubt.

20 JUROR NO. 39: I understand that, Your Honor.

21 THE COURT: Keeping that in mind, do you still
22 think you could not be fair to the defense in this case?

23 JUROR NO. 39: It's hard to say, because I
24 usually get emotional. Child molestation, sexual abuse
25 is hard for me to take because of the victim. Inasmuch

1 that I would really like to participate, I'd like to be
2 fair to the accused. I don't know whether he did it or
3 not, so --

4 THE COURT: I will have the attorneys ask you
5 some questions.

6 Mr. Witt?

7 MR. WITT: Thank you, Your Honor.

8 You have indicated that you don't -- I believe what
9 I heard was, you didn't know whether he did it or not.
10 That's exactly what both parties want to hear at this
11 point. It sounds like you understand your role and that
12 Mr. Stockwell as he sits here right now is presumed
13 innocent.

14 JUROR NO. 39: Uh-hum.

15 MR. WITT: And following that same logic, at
16 this point in the trial there is not evidence. He has
17 not been convicted of this charge.

18 JUROR NO. 39: I understand.

19 MR. WITT: And you also indicated to the court
20 and the parties that you want to try to be fair?

21 JUROR NO. 39: Uh-hum.

22 MR. WITT: You have been instructed just
23 preliminarily by the judge on some -- on the law that
24 you will apply to this case and there's going to be a
25 lot more law that you are instructed on.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 39: I understand.

MR. WITT: And what we need to know, are you going to be able to follow that law that's instructed to you? And I give the caveat, as he sits here, he's presumed innocent. You haven't heard any evidence, and it's likely that the evidence that you do hear will be different from what you know happened to your daughter.

JUROR NO. 39: I understand.

MR. WITT: I guess what the state needs to know from you and what Mr. Stockwell needs to know, can you put the events that happened with your daughter aside, allow this presumption of innocence to carry through until evidence, if it is, is presented?

JUROR NO. 39: As I -- Excuse me. I have a problem articulating myself. As I indicated, when it comes to sexual abuse, family abuse, child molestation, I have a very deep conviction about that, those issues. I am not trying to suggest that it would influence my decision. I am not suggesting that at all, but it could be a motivating factor, you know.

MR. WITT: Do you think your degree of influence would be different from anybody else who comes in and sits on a case where there's allegations of sex abuse? The reason I say that is because it's probably not comfortable or sterile and nonemotional for anybody

1 to hear allegations of sex abuse.

2 JUROR NO. 39: I understand what you are
3 trying to say. You can't eliminate from me having --

4 MR. WITT: Do you think what you have
5 internally is more than what the general population
6 would have, feelings for sex abuse victims, victims of
7 sex crimes?

8 JUROR NO. 39: Well, I read the newspaper, you
9 know, and it's happening every day. It could be because
10 we are a sick society, but having said that, as I
11 stated, I would really like to participate, but my
12 having an open mind when it comes to child abuse might
13 have some factor with having an open mind on this issue.

14 MR. WITT: It's not uncommon that, Mr. Santos,
15 you watch the news and you read the newspaper. Most
16 people do. And most people are going to see those same
17 possibly influential and I guess troubling images or
18 stories, but are you able to come into this courtroom
19 and when that door is closed, put those aside? We need
20 to just deal with just this case, and that's what
21 everyone is going to be asked to do, is put those old
22 images and old stories behind them.

23 JUROR NO. 39: I think I could
24 compartmentalize, but I'd just like to let the court
25 know how I feel about it.

1 MR. WITT: I do appreciate your honesty there.
2 From your training -- You do some managerial-type
3 things?

4 JUROR NO. 39: Yes.

5 MR. WITT: What is your profession?

6 JUROR NO. 39: I have 30 years service.
7 Deputy disbursing officer. I started as an E-8, senior
8 enlisted, then after serving 30 years I was civil
9 service as a department head and as a deputy disbursing
10 officer, retiring 15 years from civil service.

11 MR. WITT: In your profession and in your
12 training, it sounds like you have done some managerial
13 things and obviously some very structured things if you
14 retired after 30 years in the service. That's kind of
15 what I am interested in, if you are able to follow the
16 rules, because that's what you are going to be asked to
17 do is leave those things behind you. You told me just a
18 minute ago that you believed that you could
19 compartmentalize the facts that you hear here, the facts
20 that you hear in this case.

21 Now, following up on that, do you think that you
22 can do your best in your ability to compartmentalize
23 that and leave all your extraneous influences out?

24 JUROR NO. 39: I think I can, but again, going
25 back to the same issue that was first discussed, sexual

1 abuse, I don't know. See, as a father and all, I am not
2 trying to suggest that the accused, you know, is
3 innocent, but I'd just like to let the court know how I
4 feel.

5 MR. WITT: And that's why we are asking you
6 these questions.

7 JUROR NO. 39: Yes.

8 MR. WITT: I'd just like to know, and you have
9 told me this, but if you can do your best to in your
10 words compartmentalize this case.

11 JUROR NO. 39: Yes.

12 MR. WITT: Is that something you can do?

13 JUROR NO. 39: Yes.

14 MR. WITT: Thank you very much.

15 MR. TALNEY: Sir, as you were describing
16 wanting the court to know, would it be fair to say you
17 were having an emotional reaction to having to discuss
18 that with the court?

19 JUROR NO. 39: Could you repeat the question,
20 please. Elaborate.

21 MR. TALNEY: I will just ask you more
22 specifically. It appears from where I was sitting that
23 your voice was kind of cracking, and that perhaps your
24 lip was quivering a little bit.

25 JUROR NO. 39: Let me interrupt. I think I

1 should have stated a few minutes ago that -- I think I
2 did -- I have a problem speaking because of my partial,
3 and also, sometimes that it probably must be -- you
4 might find it extremely difficult to understand what I
5 am trying to convey.

6 MR. TALNEY: Okay. Well, that's why I ask the
7 question. I didn't know if that was an emotional
8 response or not. Is this -- If you are sitting on the
9 jury, you would obviously have to go back in the jury
10 room and discuss the case with the other jurors.

11 JUROR NO. 39: Sure.

12 MR. TALNEY: In this particular kind of case,
13 would you feel confident in your ability to go back and
14 discuss it analytically with the other jurors, or do you
15 have any concern that you might have an emotional
16 response in discussing --

17 JUROR NO. 39: I think I can put the emotion
18 aside. I have made judgment based on the evidence.

19 MR. TALNEY: Okay. Well, that's the question,
20 obviously. Mr. Witt asked you a number of times
21 already. I guess, you obviously seem to realize what
22 your job is as a juror, to be fair and impartial.

23 JUROR NO. 39: Yes.

24 MR. TALNEY: It seems clear that you want to
25 carry that out. Do you have concerns that in this

1 particular kind of case, because it does involve
2 allegations of sexual contact, that you are not going to
3 be able to live up to those obligations?

4 JUROR NO. 39: I have pretty good training as
5 far as that, but what -- I may, through the course of
6 the -- after court, being questioned, I might break
7 down. That's what I would like to -- Now I've started
8 to -- I am getting very emotional, and I think it's
9 rather unfortunate that I would inasmuch as I would like
10 to participate as a citizen, I would like to participate
11 with this process, but I don't like to be in the
12 predicament that it's up to you to decide, but, you
13 know --

14 MR. TALNEY: That's why we are asking you
15 questions, and I guess, you know, you are participating
16 in the process just by being here.

17 JUROR NO. 39: Yes.

18 MR. TALNEY: But I thought I had noted your
19 voice kind of tightening up, and maybe --

20 JUROR NO. 39: Yes.

21 MR. TALNEY: -- kind of your eyes welling up a
22 little bit. Is that accurate?

23 JUROR NO. 39: Yes. As I indicated, I have a
24 heart problem, hypertension. I think I put in there
25 that I am on medication.

1 MR. TALNEY: You did. Does that cause any
2 problems with actually serving as a juror?

3 JUROR NO. 39: I don't know. I don't know to
4 be honest with you. I don't think it would. I don't
5 know, but I'd just like -- I am pretty sure that you are
6 fully aware, as I stated --

7 MR. TALNEY: You are not -- there's not a risk
8 that you are going to have a medical emergency or
9 something while you are sitting here?

10 JUROR NO. 39: Hopefully not.

11 MR. TALNEY: And there's fairly frequent
12 breaks if you are sitting as a juror. You don't have a
13 medical situation where you couldn't listen to evidence
14 for, you know, an hour and a half or two hours? You
15 would be fine with that?

16 JUROR NO. 39: (Nods head.)

17 MR. TALNEY: It sounds like you have --
18 Say potentially you might hear testimony from a child,
19 seven- or eight-year-old child in this case. Do you
20 have a concern that when listening to that testimony,
21 you are going to have an emotional reaction to that
22 testimony as opposed to being able to look at it
23 analytically, break it down, weigh the evidence, things
24 like that?

25 JUROR NO. 39: It depends how graphic it is.

1 If it's too graphic, I possibly might get affected, yes.

2 MR. TALNEY: I guess the question isn't
3 whether or not you might have an emotional reaction to
4 it. I guess the question is whether or not that's going
5 to interfere -- do you think that's going to interfere
6 at all with your ability to be fair and impartial?

7 JUROR NO. 39: I don't think so. I don't
8 think so. As I said, I can say that I can presume that
9 the accused is not guilty unless I see --

10 (Remainder of sentence inaudible.
11 Juror was asked to repeat by the
12 court reporter.)

13 JUROR NO. 39: I don't think so I said.

14 MR. TALNEY: That's all I have, Your Honor.

15 Thank you, sir.

16 THE COURT: You can step outside in the
17 hallway. Thank you.

18 JUROR NO. 39: Thank you.

19 (Juror No. 39 left the courtroom.)

20 MR. TALNEY: Your Honor, I would challenge 39
21 for cause. I would probably concede that his actual
22 answers -- I can predict the state's argument that he
23 could compartmentalize, but his tone and manner of
24 speaking when just talking about whether or not he could
25 be fair and impartial in a sex case, he repeatedly --
his voice tightened up, he appeared to quiver, his eyes

1 would well up. He didn't actively cry, but certainly in
2 just explaining to the court his concerns, he had an
3 obvious physical response, which he did endorse when I
4 asked him about that.

5 THE COURT: Mr. Witt?

6 MR. WITT: Your Honor, if I could borrow a
7 phrase that Mr. Santos used and compartmentalize him.
8 He's a juror that just wants the court to be fully
9 aware. That's what he kept saying, and when he
10 addressed his emotional response, or when he addressed
11 whether he would be emotional, he stated that he may be,
12 but who wouldn't be when you are hearing allegations of
13 sex abuse, especially with a child? But when Mr. Talney
14 asked the follow-up question to that really was the
15 telling answer, was even if he was emotional, would it
16 cause him to be unfair and partial, he stated that it
17 would not. Mr. Santos just wanted the court to be fully
18 aware. That's really all. He was giving a response
19 that probably any juror would.

20 He did state to me as well as to Mr. Talney that he
21 could put his emotional response aside, that he could
22 have an analytical discussion with his members on the
23 jury panel, and that he could make a judgment based
24 solely on the evidence.

25 Finally, there's nothing in the record that

1 establishes that there is a probability that Mr. Santos
2 would be unfair or impartial. I see no reason to strike
3 him as a juror.

4 THE COURT: The motion for cause will be
5 denied. This is a close call, I would agree, but to the
6 critical questions Mr. Santos gave appropriate answers,
7 and that he would not let the emotions get in the way of
8 listening to the testimony or analyzing the testimony.
9 He could compartmentalize and put aside his own feelings
10 about sexual abuse and child molestation. So I will
11 deny the motion.

12 (Juror No. 40 entered the courtroom.)

13 THE COURT: Number 40, Mr. Pollock, if you
14 would take a seat there.

15 JUROR NO. 40: Thank you.

16 THE COURT: On your questionnaire, you felt
17 you could not be fair -- well, what you wrote down was,
18 based on your sister's experience as a family law
19 attorney and what experiences she has had that she has
20 related to you. And you have had more time to think
21 about that. Do you think you can be fair to both sides?

22 JUROR NO. 40: No. That's why I put it down.
23 I think that would make me highly prejudiced in this
24 situation.

25 THE COURT: Okay. So is your bias, you

1 think -- Well, I don't know. I guess you are saying
2 false child molestation allegations are made to
3 influence child custody cases, and that this would be a
4 child making a false allegation?

5 JUROR NO. 40: Well --

6 THE COURT: This is a different situation
7 here.

8 JUROR NO. 40: Yeah, but when it gets --
9 Quite frankly, I have thought about it some more. When
10 it gets into the situations -- and I thought about it
11 last night. I thought, you know, given my -- what I
12 have known about these things in the past and how people
13 can be quite frankly manipulated, I still think I don't
14 believe I would be able to make a fair decision on this.

15 THE COURT: Okay. I will have the attorneys
16 question you if they have any questions.

17 Mr. Witt?

18 MR. WITT: Do you mind if I ask if your sister
19 practices locally?

20 JUROR NO. 40: No, I don't mind. She
21 practices in Seattle.

22 MR. WITT: So she does family law and she is a
23 mediator.

24 JUROR NO. 40: She is a mediator, arbitrator.

25 MR. WITT: It sounds like she maybe tells you

1 about it, about some of the caseload she has?

2 JUROR NO. 40: Whenever I go to lunch with my
3 sister, obviously she doesn't specifically name what's
4 going on or people's names, but often the discussion
5 turns into these type of matters. She has been doing
6 family law for 22 years.

7 MR. WITT: So she has a captive audience over
8 the lunch hour and she vents to you basically?

9 JUROR NO. 40: Yeah.

10 MR. WITT: What types of stories does she tell
11 you about these false accusations?

12 JUROR NO. 40: Well, Lynn used to defend --
13 for the most part used to defend the men in divorce
14 proceedings, and she'd just say that -- this was in the
15 '90s I think, early '90s -- it really started to be that
16 that was -- people were using that as a tool in child
17 custody cases, and it came to the -- and she said it
18 can't -- as frequently as it was coming up, it couldn't
19 be that often, so --

20 MR. WITT: Did she make you believe that it's
21 something that happens?

22 JUROR NO. 40: Yes, yes.

23 MR. WITT: Can you assess any I guess value to
24 that? What do you mean by it occurs a lot or it's
25 prevalent?

1 JUROR NO. 40: That a lot of times in child
2 custody cases, those type of things, that it was
3 starting to appear quite frequently when there was a
4 hotly-contested child custody, which in her view most of
5 them were.

6 MR. WITT: Okay. You are going to hear in
7 this case -- you will hear from a couple of pretty-young
8 girls. Is there something about your past -- you have
9 kind of alluded to that -- that would cause you to not
10 take their testimony at face value?

11 JUROR NO. 40: I also do have the opinion that
12 children can be manipulated in these situations, and I
13 have got kids, and what they say, and the truth is often
14 hard to find, get out of a kid, and they can be very
15 manipulated by their parents.

16 MR. WITT: The trial that we are preparing to
17 do, what we are conducting now is a very serious
18 proceeding. We just need to know whether you are going
19 to be fair to the State of Washington and to
20 Mr. Stockwell.

21 JUROR NO. 40: Right.

22 MR. WITT: Either party. And if you have any
23 concerns about impartiality, this is the time to let us
24 know.

25 JUROR NO. 40: I think I have stated that. I

1 am concerned about my impartiality.

2 MR. WITT: Would your feelings about that
3 change if no evidence was brought forward in this case
4 about child custody issues?

5 JUROR NO. 40: It could a little bit, but like
6 I stated, the more I have thought about this, young
7 children in these type of cases, and once again, the
8 experience of my sister, hearing about the kids claiming
9 that something has happened where nothing has.

10 MR. WITT: Is there a particular age group
11 that you can identify?

12 JUROR NO. 40: My real experience is only with
13 up to 13-year-olds at this point, so I can't say that
14 there's an age group that I think can't be manipulated a
15 little bit by their parents.

16 MR. WITT: Just for the state's understanding,
17 what you are really basing your feelings of partiality
18 on is the numerous accounts of false accusations.

19 JUROR NO. 40: Correct.

20 MR. WITT: You don't think that's anything
21 that you could set aside in coming to court.

22 JUROR NO. 40: No. I think I would -- it
23 would prejudice my opinion.

24 MR. WITT: Thank you very much.

25 THE COURT: All right. Mr. Pollock, I want to

1 thank you for your service. I am going to excuse you.
2 You have convinced me that you have some biases and
3 preconceived ideas, that you wouldn't be able to keep an
4 open mind.

5 JUROR NO. 40: Great.

6 THE COURT: You are excused. Thank you for
7 your service, and you are done calling in for this week.

8 (Juror No. 40 was excused. Juror
9 No. 42 entered the courtroom.)

10 THE COURT: Mr. Brown, if you want to have a
11 seat in the front row there.

12 I know there's a lot of things in your
13 questionnaire that you don't want to talk about, that
14 you said you don't want to talk about. And you were
15 accused and there were false allegations?

16 JUROR NO. 42: Yes.

17 THE COURT: And I think I know the answer to
18 this, but I am going to ask the question, do you think
19 you can put aside what's happened to you personally and
20 listen to the witnesses that come on the stand and
21 decide this case based on the evidence produced in this
22 case?

23 JUROR NO. 42: No, I can't.

24 THE COURT: Either attorney have any
25 questions?

1 MR. WITT: No, Your Honor. No objection.

2 MR. TALNEY: I have no questions.

3 THE COURT: I am going to excuse you. I am
4 sorry I had to have you come back again today. We
5 didn't get through everybody yesterday, but given your
6 answers here and what you have told me here in court,
7 then I think you have some biases and couldn't be fair
8 in this particular case. Maybe you will get called back
9 on a different kind of trial at a different time.

10 (Juror No. 42 was excused. Juror
11 No. 44 entered the courtroom.)

12 THE COURT: Ms. Otte?

13 JUROR NO. 44: Otte, accent on the E.

14 THE COURT: All right. Thank you. We have
15 read your questionnaire. We know this is a very
16 difficult subject. What I am going to ask you is
17 fairness, whether you can be fair to either side. You
18 have written a pretty strong statement here indicating
19 you cannot be fair.

20 JUROR NO. 44: Uh-hum.

21 THE COURT: You have had time to think about
22 this since you filled this out. Is that still your
23 feeling here, that you could not be fair?

24 JUROR NO. 44: If there is evidence to prove
25 that this person is guilty of the crime, I think it

1 needs to be stopped so that it never happens again to
2 another child, because I think children put their trust
3 in adults, and they are -- they respect adults, but
4 adults need to be responsible. When they violate a
5 child, it affects them physically for the rest of their
6 lives and emotionally, and you cannot take those hurts
7 away.

8 THE COURT: Okay. Then with your own
9 experiences, would that interfere with you being able to
10 listen to testimony here and --

11 JUROR NO. 44: I have a feeling I wouldn't be
12 fair to that person.

13 THE COURT: You would not be fair?

14 JUROR NO. 44: That I think I would be very
15 biased. If there's just -- you know, if there's very
16 much evidence to prove that they are guilty, it would be
17 very hard.

18 THE COURT: Yesterday, I told you about
19 presumption of innocence. Do you feel you would have a
20 hard time dealing with presumption of innocence?

21 JUROR NO. 44: I do know that some people are
22 wrongly accused. If there's been a disagreement between
23 two people and one wants to go out and get back at
24 somebody, they can wrongly accuse somebody of something,
25 and I wouldn't want somebody being prosecuted that was

1 innocent; however, if there's very much evidence
2 pointing and proving to this, throw the book at them.

3 THE COURT: Okay. What the jurors would do
4 would be -- they are fact-finders, listen to the
5 evidence and find whether the state has proven their
6 case beyond a reasonable doubt. Do you think you would
7 be able to do that, or would your own biases interfere?

8 JUROR NO. 44: I think my biases would
9 interfere with that, because I have had a case growing
10 up, I didn't write down, that I had been molested by
11 friends of the family.

12 THE COURT: All right.

13 JUROR NO. 44: And I was terrified to say
14 anything to my parents. It took 20 years.

15 THE COURT: Any questions from counsel?

16 MR. WITT: Yes, Your Honor.

17 We do really appreciate your thoughts on this. I
18 just need to press a little bit more.

19 JUROR NO. 44: That's fine.

20 MR. WITT: You made a statement, throw the
21 book at them, and if there was evidence that he did
22 this, it needs to be stopped. And at trial, all the
23 parties play different roles. As the judge just told
24 you, do you understand that you would be a finder of
25 fact? You would be the person that determines if

1 something happened?

2 JUROR NO. 44: Uh-hum.

3 MR. WITT: Whereas the judge in the case would
4 be the one that would impose a sentence, if any, and
5 they would have all the dealings with whether the book
6 should be thrown at them or -- Do you understand that
7 there's a differentiation between the punishment, all
8 the concerns around punishment and what you do?

9 JUROR NO. 44: Uh-hum.

10 MR. WITT: Just finding of the facts?

11 JUROR NO. 44: I understand that. I know I
12 don't have any say-so in what happens to them if they
13 are found guilty or not guilty.

14 MR. WITT: Just from your preliminary answers,
15 it sounded to me like a lot of your concern was that you
16 would be maybe overly harsh if he was guilty, how he
17 would be sentenced. Is that accurate, or am I
18 misstating?

19 JUROR NO. 44: You say overly harsh, but what
20 does it do to a little girl for the rest of her life?
21 She has to live with that forever. There's only one
22 victim for the rest of their lives. The other one gets
23 away free, to do it again?

24 MR. WITT: I understand what you are saying,
25 but what I am getting at is just slightly different. I

1 guess, is it accurate, what you have just said is that
2 you have concerns about sentencing, about what would
3 happen after this case or after if he's found guilty
4 what would happen. Is that accurate? You have very
5 strong opinions about suffering the victim is going to
6 go through, prior occurrences, if this ever did happen.
7 Is that what your concern is?

8 JUROR NO. 44: I am concerned that they would
9 get away with something. I feel there does need to be a
10 stiff penalty, yes, but I still feel like there would be
11 a bias if there's any type of doubt, even just any bit
12 of guilt to this person's situation.

13 MR. WITT: What the judge touched on a minute
14 ago was some instructions you are going to be given by
15 the court. You are going to be instructed on what the
16 state's burden of proof is, what our burden is in
17 proving this case. What the state needs to know is that
18 you are going to adhere to those instructions, that you
19 would hold the state to that burden. It's important to
20 the state and it's important to Mr. Stockwell. That's
21 really I guess what the analysis is at this point. So,
22 I guess when you walk through that door and you become a
23 juror and you put your old hat as an ordinary citizen
24 away, will you be able to follow the judge's and this
25 court's instructions, being the fact-finder?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 44: I definitely would want to know the facts about what was going on.

MR. WITT: Well, what the question is, what we need to find out is, if you can separate yourself when you come through the court door and follow the instructions that you are given, follow the law, and hold the state to its burden.

JUROR NO. 44: I think I would emotionally be too involved with this, with this case.

MR. WITT: Is that because it seems like you are influenced by things that occur in society as a whole? Is that accurate?

JUROR NO. 44: Society as a whole, but then also what took place with my own life, too.

MR. WITT: Right. Do you mind telling us how long ago you were victimized?

JUROR NO. 44: In grade school, and then also in college.

MR. WITT: Have you been able to deal with that through counseling or --

JUROR NO. 44: I haven't gone to counseling, no. I just -- I think in a lot of ways, raising my own children, I am far more protective of them, and trying to make them aware of what can happen, and that they have to tell me or another adult what took place, and

1 don't be ashamed of something like that, because I think
2 guilt is put on a child by the adult.

3 MR. WITT: That's really what the parties need
4 to know, is if you are selected as a juror, can you put
5 those old experiences, the prior rape, and things that
6 you see in society, and your beliefs about sentencing,
7 can you view this case without those external influences
8 and view this on its facts alone?

9 JUROR NO. 44: Probably not.

10 MR. WITT: Thank you.

11 MR. TALNEY: I don't have any questions, Your
12 Honor.

13 THE COURT: Ms. Otte, I am going to excuse
14 you. I think with your experience, you have some biases
15 and it would be difficult for you to keep an open mind
16 in this case, so maybe you will get called back on a
17 different kind of jury, but it could also be pretty
18 traumatic for you to sit through this particular trial,
19 too, so I am going to excuse you, and you are done
20 calling in for the week. Thank you for your time here.

21 MR. WITT: Your Honor, I apologize for having
22 that buzzer go off. I am not very adroit with
23 technology.

24 (Juror No. 44 was excused. Juror
25 No. 51 entered the courtroom.)

1 THE COURT: Mr. LaPorte, have a seat in the
2 front row there.

3 You did not want to put any information in
4 regarding the sexual molestation that occurred within
5 your family. Who was the victim of the molestation?

6 JUROR NO. 51: It was two. There was my
7 sister and a cousin. Not of the same -- not from the
8 same person.

9 THE COURT: How old was your sister when she
10 was molested?

11 JUROR NO. 51: It was over years by my
12 stepfather. It probably started when she was I would
13 say in Newfoundland, '55, started up then, and lasted up
14 into the '60s, when I was in the Army, and so I don't
15 know how many years that is. It's something that they
16 didn't talk about a lot. There was a lot of doubt on it
17 for a long time because my mother kind of denied that it
18 ever happened until later on, and then it was kind of a
19 showdown just before she died.

20 THE COURT: And based on that experience, and
21 your cousin, do you think you can be fair to both sides
22 in this case?

23 JUROR NO. 51: I really kind of doubt it. I
24 hate to say that, but it's something that with my
25 stepdad, I have never been able to be close to him, and

1 when I started finding out later in years after I got
2 out of the service about what he had done, and my sister
3 and I had got back closer -- because we were always a
4 pretty well broken up family. My folks were divorced
5 back in the '40s and we were all kind of scattered
6 around. My older brothers were in the service and
7 everything so we didn't see them. My sister and I were
8 more closer because we were together more, you know,
9 with my stepdad and my mom. He was in the Air Force and
10 got shipped out. That's how we ended up in
11 Newfoundland, and we went to a lot of different schools,
12 and I think when I finally got out of school and joined
13 the Army, then it kind of left my sister alone with him.
14 We had a younger sister that was a half sister, my
15 stepdad and mom had, but I think that Lynn was more --
16 after I left I think she was more susceptible. That's
17 my sister. She was more susceptible to being --

18 THE COURT: Let me ask you another question.
19 Do you think you could put aside your sister's
20 experience, your family experience, and listen to the
21 witnesses that come up here on the stand, the testimony,
22 and listen to that and base any decision on the
23 testimony here in the court and the law as given to you?

24 JUROR NO. 51: I don't know. I don't think
25 so. I know yesterday when you first brought this up,

1 it's something that just hits me right now.

2 THE COURT: So it's an emotional issue for
3 you?

4 JUROR NO. 51: Yes. I am not trying to get
5 out of anything, but it really is. It's just something
6 that irks me. I have always wanted to have a
7 relationship with my stepdad, but then this came on and
8 then it turned into an impossibility. The more I
9 thought about it, I guess the more I hated him. I don't
10 know. We were never close anyway. He was too close to
11 our age I think. He was a lot younger than my mother
12 was, and I don't know, just finding out about that,
13 everybody was against my sister all the time. They
14 wouldn't believe her, that this had happened, because
15 he's that kind of a guy. I mean, he was way up -- I
16 mean, as far as the Air Force, enlisted personnel, he
17 was up there. He was a Vietnam vet. He had been in
18 Thailand and he had quite a career in the Air Force,
19 about 30 years I think, and --

20 THE COURT: Well, then you don't think you
21 could put that aside, that that would interfere with
22 your ability to listen to the evidence?

23 JUROR NO. 51: I really don't. And I always
24 admired my uncle. He was a Second World War vet. He
25 had gone in on D Day. I always -- I thought the world

1 of him until I found out that he was molesting his
2 youngest daughter, and then it just changed like instant
3 hate. Something I couldn't -- I couldn't fathom it.
4 And I guess knowing -- My cousin is close to my age, a
5 quiet, neatest gal you could ever find, and it just --
6 to me, it's just -- God.

7 THE COURT: We'll see if the attorneys have
8 any questions for you.

9 MR. WITT: If I could just very briefly, Your
10 Honor.

11 You stated that as you started to learn more and
12 more about what your stepdad had done, you started to
13 hate him, is that right?

14 JUROR NO. 51: Well, I don't -- we were never
15 real close anyway.

16 MR. WITT: But you wanted to have a
17 relationship with him?

18 JUROR NO. 51: Yeah, I always wanted, because
19 everybody else that we knew in school -- Divorce back
20 then was a bad thing anyway, and then when we went to
21 Newfoundland, that was like an old Catholic place, and
22 the people really looked down on you then, and the Air
23 Force, too, there was a status. He was an enlisted man,
24 but still he had been in for such a long time that there
25 was a thing going to school there, that --

1 MR. WITT: Is it accurate that at some point
2 where your relationship with him was unsalvageable and
3 you started hating him?

4 JUROR NO. 51: We just never had anything in
5 common. Yeah, when I found this out and knew for sure.
6 There was a lot of doubt on it for so long. I actually
7 thought at one time that my sister was making a story
8 out of this, too, and my brothers still feel that way.
9 They can get along with my stepdad real well.

10 MR. WITT: Once you found out your sister
11 wasn't making this up, how did you feel about your
12 stepdad then?

13 JUROR NO. 51: A lot worse. Even though he
14 came up and handed me a check for \$5,000, I still -- I
15 could see around it then, then I knew that she was
16 telling the truth, and the hurt that had gone on for so
17 many years, and she was so screwed up over all these
18 years. And it's hard to fathom how bad it was until you
19 try to put yourself in her place and everything, and how
20 she was trapped with this guy, and my mother accusing
21 her of all kinds of different things, like trying to
22 bring him on or something, you know. She would say that
23 "He wouldn't be that way if you didn't dress so
24 provocatively," and, "You strut around and go out with
25 every Air Force guy that you see and everything. What

1 do you expect him to think?"

2 MR. WITT: I just wanted to get clarification
3 on something. You said it got to a point where you
4 hated him, is that accurate?

5 JUROR NO. 51: I really can't say that. I
6 don't know where I can draw that as hate.

7 MR. WITT: You had strong feelings?

8 JUROR NO. 51: I don't have anything in common
9 with the man. I don't know that I really hate him,
10 because I don't know if I even liked my real dad, you
11 know.

12 MR. WITT: So I am more accurate saying you
13 have strong feelings against your stepdad. What about
14 your uncle who you once held as a hero?

15 JUROR NO. 51: That was a letdown there from
16 the word go. I had been out cutting wood with this guy,
17 hunting deer with him for years and everything.

18 MR. WITT: Now as you look at Mr. Stockwell
19 today, does he remind you of your stepdad or of your
20 uncle?

21 JUROR NO. 51: No. He reminds me of a lawyer.

22 MR. WITT: Do you have those same strong
23 feelings against Mr. Stockwell?

24 JUROR NO. 51: I am not putting you on.
25 Yesterday when it was said what the thing was on it, it

1 was an instant -- my thoughts went to my sister and my
2 stepdad, and --

3 MR. WITT: Let me tell you this. You have
4 been instructed by the judge that as Mr. Stockwell sits
5 here now, he's presumed innocent.

6 JUROR NO. 51: I know.

7 MR. WITT: He doesn't remind you of your
8 stepdad. He doesn't remind you of your uncle. Are you
9 able to give him that presumption of innocence?

10 JUROR NO. 51: I don't know. That's what --
11 I don't know what I mean. I don't know if I can or not,
12 because it just instantly -- it's something that comes
13 on to me. I don't know if I can or not. I really
14 don't. It's a funny thing, because I am not very much
15 into being out anymore since my wife passed away. I am
16 pretty closed up and everything, and I can't really say
17 what I think I am going to do or anything like that, but
18 the feeling was instantly when they said something about
19 this, that's what came on, and I don't know.

20 MR. WITT: What do you think about the fact
21 that most everyone that comes into this position,
22 everyone has a background and everyone has a life, but
23 what you are being asked to do is a daunting task, and
24 that's leave that behind, leave those influential
25 matters behind. You are being asked to do the same

1 thing that all the jurors are asked to do. That's what
2 the parties need to be assured, is that you can leave
3 those things behind. Is that something that you can do?

4 JUROR NO. 51: I don't think I can leave them
5 behind. I really don't. I just don't think I can. I
6 am sorry. I am not trying to shirk out of jury duty or
7 anything like that, but this is -- it's a feeling that I
8 have, I guess. I don't know if there's any way of
9 putting it any other way.

10 MR. WITT: Do you think it's possible that you
11 wouldn't be able to give him a fair trial, or do you
12 think it's probable?

13 JUROR NO. 51: I don't think I would, unless
14 the evidence went the other way to where he didn't --
15 you know, didn't seem like he was guilty, then I might.
16 I don't know. But otherwise, it's more -- it's more --
17 okay, that's the feeling I have. It's more I am against
18 him right now than it is that I am not.

19 MR. WITT: Thank you.

20 THE COURT: Mr. LaPorte, I am going to excuse
21 you from service on this particular trial. It's pretty
22 clear you can't keep an open mind.

23 JUROR NO. 51: I wish you would. I really do
24 have a bad feeling about this. I mean, it's something I
25 am still working on with my sister even, and she is the

1 loneliest gal in the world. She's been to counseling
2 for so many years, and for my brothers to take a side
3 the way they have. Her life has been so screwed up.

4 I guess this is kind of like a -- I haven't been
5 to a counselor or anything about this, and she actually
6 tried to get me to go, and I cannot see how my brothers
7 can side with him over her. And I know that maybe they
8 don't know the truth the way I do, because I know. She
9 had it out with him in front of me, and he talked to her
10 and he apologized to her, and my mother apologized to
11 her and everything, but it's too late. She is 50-some
12 years old. She is stuck where she is at. She has got
13 the feelings, or the lack of feelings I guess that we
14 all have. We were pretty dysfunctional anyway. There
15 was a lot of drinking. My family has a history of
16 alcoholics. I am an alcoholic, not practicing or
17 anything. It's been a lot of years since I have, but we
18 don't have the same feelings that other people have.

19 THE COURT: Okay. All right. Well, I am
20 going to excuse you at this time then, but thank you for
21 your service here.

22 JUROR NO. 51: Thanks for listening to me and
23 thanks for letting me say something.

24 THE COURT: All right. Is your wife Donna?
25 Was your wife's name Donna?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 51: Betty.

THE COURT: I know a Donna LaPorte.

JUROR NO. 51: Donna LaPorte?

THE COURT: Bremerton?

JUROR NO. 51: No. I don't think we are related. Thank you.

(Juror No. 51 was excused. Juror No. 52 entered the courtroom.)

THE COURT: Ms. Thomas, take a seat in the front row.

When you filled out your questionnaire, you did not answer the question about whether you felt you could be fair and impartial to both sides in this case.

JUROR NO. 52: I must have missed that. I am sorry.

THE COURT: Okay. And knowing what little you know about the case right now, do you think you can be fair to both sides?

JUROR NO. 52: Yes.

THE COURT: And you told us about your son being murdered in Seattle. How long ago was that?

JUROR NO. 52: Ten years ago.

THE COURT: There was no prosecution out of that?

JUROR NO. 52: Nothing. I don't know if there

1 was no evidence to prosecute. Nothing came of it. I am
2 always hoping they will reopen it, do something.

3 THE COURT: All right. And because nothing
4 was done in that case, do you think that would affect
5 your opinions in here, or would --

6 JUROR NO. 52: No.

7 THE COURT: Have you ever been on a jury
8 before?

9 JUROR NO. 52: No.

10 THE COURT: All right. I will have the
11 attorneys ask you some questions then.

12 Mr. Witt?

13 MR. WITT: Thank you, Your Honor.

14 Good morning.

15 JUROR NO. 52: Good morning.

16 MR. WITT: You have answered our primary
17 question. The reason that we really need to talk to you
18 is to get from you an assurance that you can give both
19 sides a fair and impartial trial. I guess to a lesser
20 degree, you have indicated that travesty happened to
21 your son?

22 JUROR NO. 52: Uh-hum.

23 MR. WITT: I don't want to get into that,
24 opening old wounds, but one thing I would like to know
25 is, you did indicate that nothing was done. Is there a

1 possibility that due to the fact that nothing was done
2 about it, you have hard feelings for the City of Seattle
3 Police or the King County deputies, the prosecutor's
4 office for I guess how that situation was treated?

5 JUROR NO. 52: No, I have no hard feelings. I
6 am always hopeful. Maybe it's a cold case and some
7 evidence will come in, because forensics have made big
8 steps, and so I am just hoping maybe someday something
9 will be found out.

10 MR. WITT: Okay. Is there anything else that
11 you would like either party to know about, or the court,
12 about your ability to sit as a juror?

13 JUROR NO. 52: No.

14 MR. WITT: Okay. Thank you very much.

15 THE COURT: Mr. Talney?

16 MR. TALNEY: I just have a couple questions,
17 ma'am.

18 JUROR NO. 52: I am sorry.

19 MR. TALNEY: In your questionnaire you circled
20 that you knew Mr. Crawford and Mr. Yelish?

21 JUROR NO. 52: Yes.

22 MR. TALNEY: How do you know them?

23 JUROR NO. 52: Because I had -- 20-some years
24 ago I had a welfare -- I was on welfare and I was
25 working, and I phoned in my hours and there was a

1 mix-up, and so then I had to repay that back and go to
2 court and it was quite a big deal, and I just remember
3 them from the lawyers.

4 MR. TALNEY: Your lawyer? A lawyer for you?

5 JUROR NO. 52: It seemed like that was
6 somebody. It's so long ago, I can't remember, but it
7 seemed like that was the law firm.

8 MR. TALNEY: Okay. Anything about that -- I
9 obviously work in that law firm, so anything about that
10 situation that you think we need to know? It doesn't
11 sound like you remember too much about it.

12 JUROR NO. 52: No. It was just kind of cut
13 and dried, and I explained my side and just, I had to go
14 through that, and repay it, and I mean, I just -- I
15 couldn't do anything about it, but I just did what they
16 told me.

17 MR. TALNEY: Okay. Anything about
18 Mr. Crawford or Mr. Yelish that I should be concerned
19 about? Maybe it was a particularly horrible experience
20 with them, or that the prosecutor should be concerned
21 about maybe perhaps you thought they were great?

22 JUROR NO. 52: I just remember they were very
23 professional, very intelligent, and that was it.

24 MR. TALNEY: Nothing that would have any
25 effect on you today I take it.

1 JUROR NO. 52: No.

2 MR. TALNEY: That's all I have.

3 THE COURT: Okay. Thank you, and you can step
4 outside.

5 JUROR NO. 52: Thank you.

6 (Juror No. 52 left the courtroom and
7 Juror No. 56 entered the courtroom.)

8 THE COURT: Mr. Jenkins, if you want to take a
9 seat in the front row there.

10 You had indicated that there had been a molestation
11 in your family with your cousin and a stepdaughter?

12 JUROR NO. 56: My cousin and his stepdaughter.

13 THE COURT: How old was the stepdaughter at
14 the time approximately, if you know?

15 JUROR NO. 56: I believe she was around 12, 11
16 or 12.

17 THE COURT: Okay. Was there a custody thing
18 going on?

19 JUROR NO. 56: Gosh, this was all hearsay I
20 heard through the family. I didn't talk to him
21 personally about it.

22 THE COURT: Okay. So you don't think that
23 would interfere with your ability to be fair in this
24 case?

25 JUROR NO. 56: You know, I thought about that

1 last night when I went home, and I probably would have
2 to side with -- I think I would -- with the prosecution.
3 I think I would be a little more -- I mean, with the
4 defense.

5 THE COURT: You would be more partial to the
6 defense?

7 JUROR NO. 56: Partial to the defense.

8 THE COURT: Because this was a false
9 allegation as it turned out?

10 JUROR NO. 56: Yes.

11 THE COURT: Do you think you could put that
12 aside and keep an open mind and listen to the testimony,
13 then decide the case after you hear all the testimony?

14 JUROR NO. 56: Boy, I don't know. I don't
15 know. That's a hard one to answer.

16 THE COURT: Let me have the attorneys question
17 you a little bit then.

18 Mr. Witt?

19 MR. WITT: Thank you, Your Honor.

20 It came out that that stepdaughter in your family
21 had lied about allegations that she made?

22 JUROR NO. 56: Uh-hum.

23 MR. WITT: Were those pretty serious
24 allegations?

25 JUROR NO. 56: Yeah. To my cousin I guess,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

yeah.

MR. WITT: How old was she?

JUROR NO. 56: Eleven or twelve. I don't remember.

MR. WITT: If it came about that you sat on this jury and there were some juvenile girls that were witnesses, would you have a hard time taking their testimony at face value, or would the fact that or your belief that --

MR. TALNEY: I would object, Your Honor. Maybe we should have a side bar.

(Side bar conference.)

THE COURT: Mr. Witt, you can rephrase your question.

MR. WITT: Thank you, Your Honor.

I guess my concern is, the state's concern is, if you sat on this jury, you would hear testimony from a couple of girls, and how would that impact you with your previous experience with the girl in your family?

JUROR NO. 56: I would probably have to listen really close and pay attention to what they were saying and how they were saying it. I mean, it would be hard to speculate right now on how I would react to that. I think I might be a little more biased, you know, thinking maybe they would be untrue or not saying the

1 whole truth. It depends on what comes out I guess.

2 MR. WITT: So you think that that belief that
3 you have is something that you would carry with you into
4 your decision-making process here, or in assessing
5 testimony here?

6 JUROR NO. 56: I think so.

7 MR. WITT: I have no further questions.

8 THE COURT: Mr. Talney?

9 MR. TALNEY: Sir, it sounds like you, from
10 your own experience, you know that not all allegations
11 are true. I guess as you sit here today, the law
12 requires you to presume Mr. Stockwell innocent. It
13 doesn't sound like you have any problem with that.

14 JUROR NO. 56: No.

15 MR. TALNEY: And if I heard you right, you
16 said that if one of these girls were to testify, you
17 would watch very closely, I think you said you would pay
18 attention really close. Would you be trying to factor
19 in whether you thought they were telling the truth or
20 not telling the truth? I guess, here's the bottom line.
21 Your job as a juror --

22 JUROR NO. 56: Is to be unbiased, yeah.

23 MR. TALNEY: -- is to decide whether or not
24 the testimony from somebody on the stand is true or not
25 true, or mistaken, or a lie, or whatever else it might

1 be. And the question is whether or not you think you
2 can do that without making a presumption in advance, are
3 they telling the truth or are they lying.

4 JUROR NO. 56: Boy, I don't know. That's a
5 hard one to answer. It just seems -- it was like my
6 cousin went through so much, through his trial and
7 everything, and then to have it come out that she stated
8 that she was lying, and it just -- it pretty much really
9 devastated his life, and I would have a hard time not
10 listening to their testimony with a tainted ear
11 thinking, maybe, you know, they are not telling the
12 truth, maybe they are bringing up false charges, you
13 know.

14 MR. TALNEY: That's kind of the question. The
15 question is not would you evaluate their testimony and
16 try and make that determination, but really, before they
17 even said anything -- I mean, would you have a
18 presumption in your mind that they are not telling the
19 truth? That -- I mean, the flip side would be that you
20 just automatically believe them if they took the stand
21 and said "This happened to me," and then the flip side
22 of that, which I think is probably more appropriate in
23 your situation, what we are talking about is, are you
24 going to no matter what they say or what the evidence
25 might be, you are going to have in your mind that they

1 are not telling the truth?

2 JUROR NO. 56: I think that would be back
3 there. Even though with the evidence and everything, I
4 still think that would be back there because of the
5 situation with my cousin. Gosh. I would always have
6 that doubt, you know, are they being truthful, even with
7 the evidence. Boy, it would be hard.

8 MR. TALNEY: Okay. Obviously -- I mean, the
9 prosecution is entitled to a fair trial, also, not just
10 Mr. Stockwell, and so that's the question. Is this a
11 concern that you might not be able to give them a fair
12 trial, or do you think you won't be able to?

13 JUROR NO. 56: I think I might not be able to
14 give them a fair trial.

15 MR. TALNEY: Okay. Thanks for your time, sir.

16 THE COURT: How long ago did this happen with
17 your cousin?

18 JUROR NO. 56: I believe in the early '90s. I
19 am not sure of the year.

20 THE COURT: About 10 years ago?

21 JUROR NO. 56: Yeah.

22 THE COURT: It still seems pretty fresh in
23 your mind from the way you described it. You also
24 mentioned there was a trial, so he was charged and it
25 went to a trial?

1 JUROR NO. 56: He was charged, they went
2 through -- I don't believe a jury trial. I believe they
3 went through whatever they do before.

4 THE COURT: Some pretrial hearings?

5 JUROR NO. 56: Yes, and that came out.

6 THE COURT: Okay. All right. You can step
7 outside then.

8 (Juror No. 56 left the courtroom.)

9 THE COURT: Is there a motion?

10 MR. WITT: State is making a motion to excuse
11 Mr. Jenkins.

12 THE COURT: Does defense want to argue?

13 MR. TALNEY: Your Honor, this individual has
14 said no more than a number of other people the state has
15 aggressively argued to keep in the jury pool because of
16 their past experiences. I think in the end he said he
17 might not be able to give them a fair trial. I think
18 that's certainly analogous to the possibility versus
19 probability the state has been arguing fairly
20 strenuously. When asked specific questions, he
21 basically stated that he would pay close attention and
22 try and figure out whether they were -- what they were
23 saying. I think it's directly analogous to a number of
24 individuals we have already kept on.

25 THE COURT: Mr. Witt?

1 MR. WITT: Your Honor, he did state that he
2 would pay attention and try to figure out what was
3 happening, but that was with the caveat that it would
4 always be in the back of his mind that the girls could
5 be bringing up false charges. He was very clear with
6 the court in stating that he may have a tainted ear. I
7 think he has left no doubt that he comes to this as a
8 biased individual. He would be biased towards defense
9 and that he cannot set those prior beliefs behind him
10 when he comes into the courtroom. He answered that
11 question directly that he could not leave behind his
12 bias about the false allegation within his family. It
13 sounds like it was traumatic for him as well as other
14 family members watching what his cousin went through.

15 And Your Honor, this juror member is different than
16 the other jury members. The other ones have stated that
17 they could leave these allegations behind or these
18 emotions behind; however, this person has been different
19 in the fact that he's told the court that he does have a
20 tainted ear and that he cannot leave that behind. It
21 would always be in the back of his mind, the possibility
22 that the victim in this case could be making it up, and
23 therefore, it would not be a fair and impartial trial
24 from the state's standpoint.

25 THE COURT: I am going to grant the motion to

1 challenge this juror. He clearly stated he could not
2 keep an open mind, that he would start with a -- it
3 wouldn't be a level playing field, would start with the
4 presumption that there was a lie and work from there to
5 determine what the truth was. So, this juror will be
6 excused. That's number 56.

7 (Juror No. 56 was excused.)

8 THE COURT: Then we need 14, 20, and 33, and
9 then we will take recess.

10 THE BAILIFF: All three together?

11 THE COURT: Yes, they can all come in
12 together.

13 What is Jennie's last name?

14 MR. WACHTER: Shiver. I think that's the only
15 Jennie in our office.

16 THE COURT: This says on juror 14 that they
17 had a house robbery that happened in 2003. Maybe that's
18 what Mr. Lindsay is involved with.

19 (Jurors No. 14, 20, and 33 entered
20 the courtroom.)

21 THE COURT: Ms. Komac, juror number 14, it was
22 reported to me that you were delivering a letter or
23 something to Craig Lindsay at the prosecutor's office?

24 JUROR NO. 14: Yes. My office gave it to me.

25 THE COURT: Your office did?

1 JUROR NO. 14: Yes.

2 THE COURT: You work for the Department of
3 Transportation?

4 JUROR NO. 14: Yes, I do.

5 THE COURT: So you don't have anything going
6 on with the prosecutor's office?

7 JUROR NO. 14: Not at all. I just did it
8 because they saved a stamp.

9 THE COURT: All right.

10 And juror number 20, Mr. Hart, you think you might
11 have been neighbors with Mr. Stockwell?

12 JUROR NO. 20: Did you live on Long Lake?

13 THE DEFENDANT: No, not 30 years ago.

14 JUROR NO. 20: We had a Stockwell that was a
15 neighbor, and it's been a long time.

16 THE COURT: You don't have any recollection?

17 THE DEFENDANT: No.

18 THE COURT: This is not the Mr. Stockwell you
19 are thinking of.

20 And juror number 33, you know Jennie at the
21 prosecutor's office?

22 JUROR NO. 33: Yes. I saw her in the hallway
23 yesterday. She used to work for the same office that I
24 worked for. Not exactly in the same department, but she
25 worked for the --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: This is Jennie Shiver?

JUROR NO. 33: Yeah. Her name was Shiver then, yeah.

THE COURT: She is a legal assistant in the prosecutor's office. She may be associated with this case in terms of the office work. Is there anything about that that would cause you any feelings one way or another?

JUROR NO. 33: No. It was just odd for me, because naturally in the questionnaire, I don't know these gentlemen and I said no, then she comes in and I do know her and she works for them, so I just needed to make sure you knew that.

THE COURT: Okay.

JUROR NO. 33: But I have not discussed with her anything at all about the case.

THE COURT: Okay. Any questions from counsel of these jurors?

MR. WACHTER: May I please?

As to all of you -- Good morning, by the way. Is there anything about -- Juror 14 and 33, is there anything about your knowledge of these individuals that should cause us concern?

JUROR NO. 33: Which individuals?

MR. WACHTER: In your case, Ms. Shiver; in

1 your case, Mr. Lindsay.

2 JUROR NO. 14: I don't know anybody. I was
3 just a delivery person.

4 MR. WACHTER: And in your case, juror
5 number 33, it's possible that we will be in the midst of
6 trial and Ms. Shiver will try to quietly open the door
7 and come in and pass a piece of paper to one of the
8 attorneys at our table. Will that affect how you judge
9 this case at all?

10 JUROR NO. 33: No.

11 THE COURT: Did you have any feelings one way
12 or another toward Ms. Shiver?

13 JUROR NO. 33: No. She's a pleasant person.
14 I like her, but I don't see how that's going to have any
15 effect on this.

16 MR. WACHTER: We just need to check that out.
17 Thank you.

18 MR. TALNEY: Juror number 33, sir, continuing.
19 You already said you didn't talk to her at all about the
20 case.

21 JUROR NO. 33: No.

22 MR. TALNEY: Did you tell her what case you
23 were here for?

24 JUROR NO. 33: She just asked me -- she saw
25 that I was a juror of course, and she said, "What case

1 are you" -- or, "In superior court?" and I said
2 superior. She didn't mention the judge's name, the
3 defendant's name, or anything. She just asked which
4 court it was.

5 MR. TALNEY: Did you ask her what her job was
6 here now? Did you chat about her work?

7 JUROR NO. 33: Yeah. I said, "Do you work
8 over here?" She said, "I actually work for the
9 prosecutor's office," and I said, "Oh, if that's the
10 case, then we need to let the court know that." And I
11 am sorry I didn't bring that up yesterday. The line of
12 questioning was --

13 MR. TALNEY: Much different.

14 JUROR NO. 33: Yeah.

15 MR. TALNEY: Did she tell you who specifically
16 she worked for or anything like that?

17 JUROR NO. 33: She said she worked for these
18 two gentlemen. I don't know if she meant that directly
19 or just because she is part of your office.

20 MR. TALNEY: It doesn't sound like you have
21 any idea what her role, if any, would have been in this
22 case?

23 JUROR NO. 33: No.

24 MR. TALNEY: Thanks for your time.

25 THE COURT: Okay. That will do it, and you

1 can go back out in the hallway.

2 (Jurors No. 14, 20, and 33 left
3 the courtroom.)

4 THE COURT: We're going to take a short recess
5 and then have the whole panel in and get started with
6 questioning. We'll take -- Is 10 minutes enough?

7 MR. WACHTER: Please, Your Honor.

8 THE COURT: We will take a 10-minute recess
9 and then have the panel in.

10 (Court recessed.)

11 THE COURT: Are you ready?

12 MR. WACHTER: Only one or two things to
13 mention to the court, just housekeeping. During the
14 break I learned from Mr. Talney and his client that
15 Mr. Stockwell apparently had went shopping at Fred Meyer
16 yesterday and ran into juror number 44?

17 MR. TALNEY: 34.

18 MR. WACHTER: What I understand is they both
19 recognized each other, nothing was said. They both
20 turned and walked away. That was the end of it.

21 THE COURT: Okay.

22 MR. TALNEY: That's correct, Your Honor.

23 THE COURT: I don't think we need to
24 individually question him.

25 I am going to ask a few more questions about

1 following the law, and any reason why you shouldn't sit
2 here, the general questions. I didn't ask those early
3 on. If something comes up out of there, you will be
4 able to individually question them.

5 MR. WACHTER: That should cover it. I have
6 been meaning to mention that tomorrow our building will
7 have an earthquake drill.

8 THE COURT: I know about that. I kind of
9 forgot about it because I don't want to know about it.
10 Okay.

11 We just talked to Valda and we're going to be able
12 to go on Friday morning, but she says not Friday
13 afternoon. I might end up doing probate calendar, which
14 I think is only going to take 20 minutes, 30 minutes, so
15 we might start at 9:30 on Friday, but we will definitely
16 go on Friday morning.

17 So, okay. Are you planning any -- You are not
18 planning any witnesses today, just planning to get the
19 jury today?

20 MR. WACHTER: I guess.

21 THE COURT: I think that's probably what we
22 should do.

23 MR. WACHTER: We talked about that in the
24 break, and I would prefer to start with witnesses
25 tomorrow. If there's time left over today, I don't

1 think it will be very long. I know I will be talking
2 with the jury at least until noon on my segment, then I
3 will ask to reserve the rest.

4 THE COURT: Okay.

5 MR. TALNEY: That makes sense to me, Your
6 Honor.

7 THE COURT: Even if we end up at four o'clock,
8 I think it's better to do that.

9 MR. WACHTER: We are prepared to deliver
10 opening statement if time permits, but --

11 THE COURT: Well, we'll see this afternoon.
12 We won't start with any witnesses today.

13 All right. You can bring the jury in.

14 (The remaining prospective jurors
15 returned to the courtroom.)

16 THE COURT: Good morning. I want to first
17 thank you for your patience throughout this process. As
18 you know, we have been individually questioning
19 different jurors and it takes some time. We can never
20 really tell what our timetable is going to be, but we
21 are finally to the point of having the panel back in. I
22 have about two or three additional questions to ask you,
23 then the attorneys will start their voir dire
24 questioning.

25 The first question I have, is there anyone here who

1 would be unable to assure the court they would follow
2 the law regardless of what you personally believe the
3 law is or ought to be? Knowing what little you know
4 about this case, is there anyone on the jury panel who
5 would be unable to assure the court that they would
6 follow the law as given to you by the court?

7 Other than what you have told us in your individual
8 questioning, do any of you know of any reason why you
9 might not be able to try this case impartially?
10 Something that has come up since we talked or that you
11 have thought about?

12 Okay, juror 21?

13 JUROR NO. 21: I found out that I had a trip
14 planned next Friday.

15 THE COURT: On the 30th?

16 JUROR NO. 21: Right.

17 THE COURT: Do you have plane tickets?

18 JUROR NO. 21: No, it's we made reservations
19 to go to Victoria on the Clipper. We can't get our
20 money back.

21 THE COURT: Okay. That leaves early in the
22 morning, doesn't it?

23 JUROR NO. 21: Yes, it does.

24 THE COURT: 8:20?

25 JUROR NO. 21: Around there.

1 THE COURT: Okay. Anybody else have a
2 hardship or other plans that came up?

3 Okay. As to juror number 21, any objection to
4 excusing her?

5 MR. WACHTER: Not from the state, Your Honor.

6 MR. TALNEY: No, Your Honor.

7 THE COURT: I would go ahead and excuse you
8 then based on your plans, and maybe you will get called
9 again another time. Thank you very much. You can check
10 with your bailiff there. You can stay and watch if you
11 want.

12 (Juror No. 21 was excused.)

13 THE COURT: All right. And does anyone know
14 of any reason whatsoever why they should not sit in this
15 case? Something you haven't told us when we were having
16 our discussions earlier?

17 Okay. Those are my questions, and we will call on
18 Mr. Wachter first. He will start his questioning.

19 Mr. Wachter?

20 MR. WACHTER: Thank you, Your Honor.

21 Good morning, everyone. This is the only part of
22 trial where we get to be interactive. As any of you
23 have seen on TV dramas, movies, anything having to do
24 with the legal practice, the jury generally sits in this
25 part that we call the box, which has more comfortable

1 seats by the way. We're working on this. And they
2 listen, and occasionally it depicts a nod or something
3 like that, but generally the jurors are pretty stoic, so
4 this is the only part where the attorneys and you get to
5 speak. I will get turns, Mr. Talney will get turns, but
6 the process is advancing. I thank you for waiting,
7 because it sometimes takes a while to get to this stage.

8 There's a reason for everything that is happening
9 here, and now this is a phase where we get to talk, but
10 it's not just one on one. This is about being able to
11 interact with one another, so often an attorney will ask
12 a question and it will trigger an answer from more than
13 one of you. Feel free to raise your hand when that
14 happens.

15 The other thing I would ask of you is, when we are
16 doing this, keep in mind that everyone is trying to
17 hear. They didn't design these courtrooms to be
18 acoustically perfect, so what that means is if you are
19 juror number 14 here in the corner, and juror number 59
20 there, if you are speaking, please remember you are not
21 just talking with me and the folks right by you, but
22 it's juror number 14. Furthermore, the court reporter
23 is trying to take down every word. We keep a record of
24 every word that is said here, and so if you nod, that's
25 hard for her to take down. Yes or no is what we ask of

1 you if it's yes or no. We ask the same thing of
2 witnesses. It's just so that the record is as clean as
3 possible.

4 By the way, I should mention that in this state,
5 you are not given a transcript of what happens, so that
6 when you are -- if you are on this jury and you are
7 deliberating, you don't get a -- you don't have an
8 opportunity to say, "Hey, can we have the testimony of
9 witness X?" That's just part of this. You will be
10 asked to rely on your memories and notes, if those are
11 allowed.

12 Now, I just have a few general questions before we
13 start getting into several topics that I would like to
14 speak with you about this morning. First of all, how
15 many of you have been on a jury before? A general show
16 of hands. Maybe about 20 percent of you.

17 Have any of you been on a jury where there's this
18 kind of a charge, a charge of --

19 JUROR NO. 20: I was on a rape charge.

20 MR. WACHTER: Juror number 20. By the way, I
21 don't get to ask you what was the verdict, and we don't
22 want to hear you say what the verdict was, if there was
23 a verdict, but I can ask you, was there a verdict?

24 JUROR NO. 20: Yes.

25 MR. WACHTER: I may have some follow-up

1 questions for you.

2 Well, when you sat down here and you heard the
3 judge start to tell you about this case and you heard
4 the judge read the charge, the charges -- you heard
5 there are two of them -- what was your reaction?
6 Anybody?

7 Juror number 57.

8 JUROR NO. 57: Oh, no.

9 MR. WACHTER: Oh, no. Why?

10 JUROR NO. 57: Just because it's a crime that
11 I don't think anybody would want to necessarily pick to
12 hear.

13 MR. WACHTER: Anybody else? Juror number 15?

14 JUROR NO. 15: Pretty much the same reason.
15 It catches you off guard a little bit.

16 MR. WACHTER: You didn't wake up that morning
17 thinking that a child molestation case was on the docket
18 for you?

19 Juror number 33?

20 JUROR NO. 33: My reaction was this is -- it's
21 a serious case, and our job is to pay really close
22 attention and do it properly.

23 THE COURT: Who else? Some of you are kind of
24 nodding. If you had a different reaction, anybody.

25 Juror No. 23.

1 By the way -- excuse me -- I am going to identify
2 each of you by juror number. If it seems impersonal,
3 it's because we have to get through this and I am going
4 to mess up your names anyway.

5 Juror number 23.

6 JUROR NO. 23: I felt a little sad or upset,
7 just thinking, another one. It seems like the news
8 lately I have heard a lot of abuse cases lately.

9 MR. WACHTER: Anybody else? Juror number 14?

10 JUROR NO. 14: Well, I was kind of surprised
11 the lady next to me -- I felt sorry for her -- she was
12 crying as soon as she heard the case.

13 MR. WACHTER: Did everybody hear her? There
14 we go. Same goes for you. I used you as an example.

15 JUROR NO. 14: I was a little concerned for
16 the lady next to me who was crying when she heard that
17 it was child molestation, and she was visibly upset over
18 the issue.

19 MR. WACHTER: Thank you.

20 Anybody else? Juror number 10.

21 JUROR NO. 10: Yes, I had very much a similar
22 reaction, and my thought was that it's a very terrifying
23 feeling to know you have to choose between such a
24 horrible crime or possibly, you know, that a child is
25 lying, because I do know a child who could do such a

1 thing.

2 MR. WACHTER: You know it can happen.

3 JUROR NO. 10: I know it can happen, and it's
4 a horrible thing. You have to think about who is
5 telling the truth on such a serious issue.

6 MR. WACHTER: Anybody else? I am sorry.
7 Juror number 34.

8 JUROR NO. 34: I think I was struck by the
9 seriousness of it. The introduction video, Perry Mason,
10 talks about decisions you make can affect one's life for
11 a long time, and here I am in this situation. It's not
12 just a traffic violation, it's a serious matter.

13 MR. WACHTER: Anybody else?

14 Now, what you said, nobody is going to take issue
15 with, about these kind of decisions having an effect on
16 a person's life. Do you think you are asked to judge a
17 person's life? And if you are sitting on this criminal
18 case, are you asked to judge a person's life?

19 Juror number 5?

20 JUROR NO. 5: No.

21 MR. WACHTER: Why not?

22 JUROR NO. 5: You are here to try to determine
23 whether they committed the crime or not.

24 MR. WACHTER: Did everybody hear that? I am
25 not endorsing or otherwise. I am just asking.

1 Okay. Juror number 12, I thought I saw you maybe
2 say yeah.

3 JUROR NO. 12: Well, I think that in a way you
4 are kind of judging their life, because you are going to
5 be taking part of their life away from them when you
6 make a judgment. So, in a way I think you are kind of
7 affecting their life, or making a decision on their
8 life. I think that's what you said.

9 MR. WACHTER: Well, I want to know what you
10 think, even if I ask a question inartfully. If the
11 judge instructed you that you are not to consider
12 sentencing except insofar as it may tend to make you
13 careful, can you follow that kind of an instruction?

14 JUROR NO. 12: Yes, sir.

15 MR. WACHTER: Do you understand that if the
16 jury was to find Mr. Stockwell guilty, the jury is not
17 going to be participating in a sentencing proceeding.

18 JUROR NO. 12: Right.

19 MR. WACHTER: You understand that.

20 JUROR NO. 12: Right, I know I am not going to
21 participate, but the jury is going to be making a
22 decision on whether the person is guilty or not guilty.

23 MR. WACHTER: That's right. And that is based
24 on an incident, not on a person's life. Would you agree
25 with that statement?

1 JUROR NO. 12: Okay. I guess I misunderstood
2 your question. I mean, I thought when you asked that
3 question, am I going to be affecting his life in some
4 way, and I think as a jury, we are affecting his life
5 because he's going to be sentenced, but I am not going
6 to be --

7 MR. WACHTER: You are not judging him as a man
8 or a person. Is that what you are trying to say?

9 JUROR NO. 12: I am not judging the man or the
10 person, I am judging the case itself.

11 MR. WACHTER: Anybody else have thoughts on
12 that, what we are here to decide?

13 Juror number 33?

14 JUROR NO. 33: Well, I think most of us
15 understand that the judge is the one that does
16 judgments, but as a member of the jury, I guess in a way
17 you can say we might be judging evidence, but evidence
18 is put in front of us, is this evidence qualified, is it
19 relevant, all those buzz words that you use in a
20 courtroom, and we just do that piece of it. What
21 happens from there is beyond us.

22 MR. WACHTER: Juror number 11?

23 JUROR NO. 11: I think that we are supposed to
24 be here to hear the facts and stuff. I think
25 regardless, we are going to judge people. You know, we

1 should hear the facts and know what the facts are when
2 those facts come out. Because we are human, we are
3 going to make a judgment on what we believe happened.
4 So I think, yes, we are going to judge people.

5 MR. WACHTER: Fair enough. Thank you.

6 You mentioned something about you as jurors
7 deciding what is relevant. Do you understand the judge
8 is actually kind of a referee, that the judge -- you may
9 for instance hear the attorneys make objections, and
10 sometimes an attorney will stand up and say, "Objection,
11 relevance." The judge makes that call. You understand
12 that part?

13 JUROR NO. 33: Correct.

14 MR. WACHTER: What if there's a question that
15 gets asked in the courtroom where there's an objection,
16 and you were thinking, "Gosh, I really wanted to know
17 the answer to that question," and the judge says,
18 "Sustained," which means, "Go to the next question,
19 please." Well, is there anybody who would have a
20 problem just going along with that process, and
21 understanding that you don't get to know the answer to
22 that specific question? Anybody troubled by the idea
23 that there's going to be those moments in a trial?
24 There's no show of hands there.

25 Now, you mentioned a few things about -- one of you

1 mentioned some recent news stories -- I am not going to
2 ask you to regurgitate them -- you have heard about on
3 the news, but does anybody have an impression of what a
4 child molester looks like or acts like? What is a
5 prototype child molester to you? Anybody have a
6 description they could share?

7 JUROR NO. 3: It could be you or I or anybody.

8 MR. WACHTER: That's juror number 3 for the
9 record. Thank you.

10 Who else?

11 JUROR NO. 24: They have to be sick.

12 MR. WACHTER: Possibly sick? Now, when you
13 say that, is that something that you might --

14 JUROR NO. 24: Mentally.

15 MR. WACHTER: Is that something that you would
16 know just from looking at the person?

17 JUROR NO. 24: No.

18 MR. WACHTER: Who else?

19 How many of you when you think of child molester
20 think about a stranger coming out from the hedges,
21 somebody who comes on to the scene and does that act?
22 How many of you think about that situation?

23 Juror number 58?

24 JUROR NO. 58: Maybe years ago this was what
25 was portrayed. Someone your age, today, things have

1 changed. We are finding it's churches, it's your
2 next-door neighbor, it's teachers, it's anybody and
3 everybody. Anybody could fall into this. There is no
4 mold.

5 MR. WACHTER: Who has --

6 JUROR NO. 5: It's occasionally a parent of a
7 child.

8 MR. WACHTER: Juror number 5. Juror number 3,
9 you are nodding.

10 JUROR NO. 3: I am agreeing.

11 MR. WACHTER: Who else? Anybody have a --
12 making this very broad, does anybody have an idea what a
13 prototype child molester is? Is there anybody who has
14 an opinion as they sit here today about whether
15 Mr. Stockwell committed this act? Anybody have an
16 opinion about that? Committed what he is alleged to
17 have done? No answer.

18 In this kind of a case, what type of evidence do
19 you -- Let me try to rephrase this. In this type of
20 case, you may be confronted with some words, some
21 subjects that are hard to talk about. A number of you
22 indicated reaction to the charge. I will tell you that
23 you are likely to hear evidence of -- likely to hear
24 evidence from the witness stand of for instance touching
25 of genitalia by a person's hands, and we may be more

1 graphic than that. You are given permission to talk in
2 these terms in this kind of a case. Is there anybody
3 who has difficulty in talking in frank terms about this
4 kind of subject? That's what we have to do to discuss
5 the evidence. If you are on this jury, is there anybody
6 who would just be offended and kind of turn off their
7 hearing if you hear that kind of evidence from the
8 stand? No answer.

9 How many of you think that a child that -- an act
10 of child molestation, you will be -- that's going to be
11 defined for you by the court. How many of you walked in
12 here thinking that the act of child molestation is a
13 violent act? How many of you think that? A violent
14 act? A few hands.

15 Juror number 2? How come?

16 JUROR NO. 2: Because it makes them a victim,
17 and I just think that's violent.

18 MR. WACHTER: Juror number 8?

19 JUROR NO. 8: To me it's a violation of the
20 person's rights as a human being to have someone else
21 come and attack them.

22 MR. WACHTER: Is everybody hearing okay?

23 JUROR NO. 34: There's a lot of noise through
24 the wall here.

25 JUROR NO. 8: It's a basic violation of the

1 person's rights that has been accosted. You should be
2 able to take and live on your own and not have people do
3 things that you don't want to have done to them.

4 MR. WACHTER: Juror number 13, did I see you
5 raise your hand?

6 JUROR NO. 13: About the same like him, is
7 that I think it's a violation of a person's rights. It
8 screws up a person's mind pretty much the rest of -- a
9 lot of their life.

10 MR. WACHTER: Juror number 29?

11 JUROR NO. 29: I think I agree with him. I
12 think it's a violation of every aspect of that being,
13 because it will maim that -- might maim that individual
14 for the rest of their life.

15 MR. WACHTER: I am going to get semantic on
16 you for a moment. Violent versus violation. Is there a
17 difference?

18 Juror number 24, I thought I saw you nod your head,
19 sir.

20 JUROR NO. 24: I think, yes, you are taking a
21 child which does not understand the way of life, and
22 this human being comes along and doing things that they
23 don't understand. It's very wrong.

24 MR. WACHTER: Juror number 3?

25 JUROR NO. 3: I think it's also like a power

1 play, a part of to have control of somebody.

2 MR. WACHTER: Okay. Do you think that an act
3 of child molestation necessarily results in physical
4 harm to a victim? Physical harm. No answer.

5 Sorry. Juror number 15.

6 JUROR NO. 15: No. The simple act of touching
7 and touch like that doesn't in itself entail violence.
8 When you think of violence, you think of being
9 physically struck or harmed or hurt in that manner as
10 opposed to say a violation where mentally, you have got
11 somebody upset and everything else, but it doesn't --
12 you wouldn't call that violence per se.

13 MR. WACHTER: Juror number 29, when I was so
14 bold as to kind of correct you on that, did you
15 understand? Do you agree or disagree with what juror
16 number 15 said?

17 JUROR NO. 29: I think I understand what you
18 are saying. I suppose in my mind, also, when we speak
19 of violence, I think of also like mental abuse, that
20 type of thing. There may not be a physical swing per
21 se, but it definitely is as it were, mentally,
22 emotionally, thrown against the wall so to speak.
23 That's the kind of reaction an individual might have.

24 MR. WACHTER: Thank you.

25 Juror number 23?

1 JUROR NO. 23: When I think of the word
2 violent, I think of a person acting on an act of
3 aggression, so I suppose it depends where the motivation
4 behind it is coming from I guess.

5 MR. WACHTER: Do you think that -- Excuse me.
6 Do you think that an act of child molestation is
7 something that is an aggressive act?

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

9 MR. WACHTER: Don't know.

10 Juror 33?

11 JUROR NO. 33: I think what confuses me and
12 probably a lot of people is that violence and violation
13 both come from the same root word, right? And also, in
14 a child molestation case, even though maybe what was
15 actually done was only touching, it could have been that
16 the person was forcefully held while that was being
17 done, which could then border on actually being violent,
18 even though maybe there was no bruises or scars or
19 anything left. And I think after we see the evidence,
20 we would have to determine that.

21 MR. WACHTER: And obviously, I don't get to
22 share much of the evidence with you at this phase. I am
23 just trying to find out if you walk in the door with
24 some expectations when you are confronted with this type
25 of an allegation.

1 Do you think that an act of child molestation
2 necessarily involves verbal threat made to a child? Is
3 this an act of child sexual assault? Does it
4 necessarily involve a verbal threat?

5 JUROR NO. 30: I don't think it necessarily
6 has to involve a verbal threat.

7 THE COURT: Who else?

8 JUROR NO. 55: It can involve coercion, which
9 isn't audibly a verbal threat.

10 MR. WACHTER: Juror 55. Who else?

11 JUROR NO. 30: Sometimes children are already
12 intimidated by adults. I don't think it necessarily has
13 to be verbal.

14 MR. WACHTER: Do you think that people who are
15 close to an act of child molestation know, are going to
16 see signs? In other words, somebody in a family unit
17 who thinks they know an individual will be able to see
18 some sign if's there's some act of sexual abuse going
19 on?

20 Juror number 8?

21 JUROR NO. 8: Not always.

22 MR. WACHTER: Why not?

23 JUROR NO. 8: Outward appearances, actions, a
24 person may be a loving, caring parent or a friend or
25 relative or neighbor or something like that, and that

1 you don't know, you can't -- it's not something that is
2 branded on their forehead that says, "I have a problem."

3 MR. WACHTER: Who else?

4 JUROR NO. 11: I think often -- not always,
5 but often, yes, you can see signs, you can see signs
6 through the child, whether it's not being as normal as
7 possible, or doing worse at school in grades, or many
8 different things, so I think there are a lot of signs
9 that can be seen. Again, maybe not every time, but I
10 think often.

11 MR. WACHTER: Would you tend to hold it
12 against a witness if you heard that the witness just
13 didn't put two and two together, if there were such
14 signs that presented in a situation?

15 JUROR NO. 11: I wouldn't hold it against
16 somebody. I think a lot of people miss signs or ignore
17 them. You are not going to hold it against them because
18 they did that.

19 MR. WACHTER: Who else? You are going to see
20 some signs, even from the vantage of being really close
21 to the situation. Will you see signs that there's an
22 act of abuse going on? Thank you.

23 How many of you have sat up here in the witness
24 chair? I don't mean in this specific room, but I mean
25 in any courtroom or even a court-martial. How many of

1 you have sat up here -- I will take numbers -- and been
2 sworn in and testified? So let me just jot some numbers
3 here.

4 JUROR NO. 3: Does a divorce count?

5 MR. WACHTER: I mean any kind of case.

6 3, 10, 9, 11, 15, 14. That's everybody from the
7 box. Got you. And back here; 46, 30, 33, 34, and then
8 55 and 57.

9 JUROR NO. 27: If divorce counts.

10 THE COURT: It does.

11 MR. WACHTER: 27.

12 Anybody else?

13 JUROR NO. 10: I didn't hear my number.

14 MR. WACHTER: I got you. Yes.

15 JUROR NO. 10: Sorry.

16 MR. WACHTER: I don't want to make this very
17 long, but I want to ask just generally what kind of
18 case, what was your experience.

19 Juror number 3.

20 JUROR NO. 3: Divorce.

21 MR. WACHTER: What was it like being on the
22 stand?

23 JUROR NO. 3: I was really glad to get it
24 over, so it was a relief.

25 MR. WACHTER: Okay. Juror number 10?

1 JUROR NO. 10: It was I guess you would call
2 it a civil case, just with a judge. It was just a
3 matter of someone not paying my debt for some work that
4 I helped him do on a house.

5 MR. WACHTER: So you were testifying about
6 this work.

7 JUROR NO. 10: I was testifying. I was
8 probably 11 at the time. It was quit a long time ago.

9 MR. WACHTER: What was that like testifying at
10 that age?

11 JUROR NO. 10: I hardly remember. It was just
12 a simple matter of asking what kind of work I had done
13 on the house with my dad, how often we had been there,
14 simple questions.

15 MR. WACHTER: Thank you.

16 Juror number 9?

17 JUROR NO. 9: An employer that I had worked
18 for was suing another employee, and they were calling in
19 witnesses to clarify who was telling the truth.

20 MR. WACHTER: Keep your voice up, please.
21 Employer/employee dispute?

22 JUROR NO. 9: Right.

23 MR. WACHTER: Thank you.

24 Juror number 11.

25 JUROR NO. 11: It was a disorderly conduct and

1 police brutality case. I was 15 or 16 years old. I was
2 just a witness.

3 MR. WACHTER: Who called you?

4 JUROR NO. 11: I believe it was the disorderly
5 guy that got his leg broken.

6 MR. WACHTER: What was that like testifying?
7 You were 15?

8 JUROR NO. 11: 15 or 16. I was a little
9 nervous.

10 MR. WACHTER: Juror number 15.

11 JUROR NO. 15: It was just a traffic violation
12 situation.

13 MR. WACHTER: Were you contesting a ticket or
14 were you --

15 JUROR NO. 15: I was testifying for the state
16 as a witness.

17 MR. WACHTER: What was your experience like?

18 JUROR NO. 15: Just go up and tell your story
19 and that was it. I mean --

20 MR. WACHTER: Just another day?

21 JUROR NO. 15: Just what I observed, and that
22 was it.

23 MR. WACHTER: Thank you.

24 Juror number 14?

25 JUROR NO. 14: I am a CASA.

1 MR. WACHTER: Oh, yes. How many times have
2 you testified in that role?

3 JUROR NO. 14: Probably a dozen.

4 MR. WACHTER: For those of us who don't know
5 that acronym.

6 JUROR NO. 14: I am a court-appointed guardian
7 ad litem for children in foster care.

8 MR. WACHTER: What do you think about, or how
9 has that been for you testifying on that subject?

10 JUROR NO. 14: It's being pretty positive. I
11 actually have learned a lot about the system, and the
12 court system and stuff and helping the children.

13 MR. WACHTER: Thank you.

14 Juror number 3?

15 JUROR NO. 3: We did a mock-up when I was in
16 the police academy. We went to court, had to learn how
17 to testify, and we watched several cases, too, so I had
18 that instance.

19 MR. WACHTER: You have had that experience?

20 JUROR NO. 3: Yes.

21 MR. WACHTER: Thank you.

22 The front row first. Juror number 30.

23 JUROR NO. 30: I have been a couple times.
24 One was just a traffic, and the other one was in an
25 employer against a group of employees.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. WACHTER: Which one was -- Was one of them more stressful than the other?

JUROR NO. 30: The one with the employer I guess.

MR. WACHTER: So some emotions there?

JUROR NO. 30: Yeah. There were a lot of people I worked for that I had to testify.

MR. WACHTER: Juror number 27, you mentioned --

JUROR NO. 27: Divorce. That was easy.

MR. WACHTER: Fair enough.

JUROR NO. 27: Ninety days later everything was over and done with.

MR. WACHTER: Fair enough.

Juror number 33?

JUROR NO. 33: I was called for the government in a fraud case, the federal government.

MR. WACHTER: Is that your one time testifying?

JUROR NO. 33: Yes.

MR. WACHTER: What was that like testifying in that kind of matter?

JUROR NO. 33: Well, it was kind of almost like Simpson's in the sense that they had monitors in front of everybody and all that kind of stuff, and the

1 evidence was shown that way. I am just talking about
2 the procedure. It was a lot different than what I am
3 seeing here, but I turned out to be the key witness in
4 the case and they won. That was kind of gratifying that
5 I played a positive role.

6 MR. WACHTER: We're fairly low tech. here
7 unless one of our palm pilots goes off. Thank you.

8 Juror number 34?

9 JUROR NO. 34: In a previous job as a county
10 designated mental health professional I had authority to
11 sign 72-hour commitment orders for people for mental
12 health hold. If the hospital they were detained to
13 wanted to file a 14-day petition, I as the person doing
14 the initial investigation had to testify. Civil
15 commitment matters.

16 MR. WACHTER: How many times did you do that?

17 JUROR NO. 34: Up to a hundred.

18 MR. WACHTER: How did you like that, or did it
19 become fairly routine?

20 JUROR NO. 34: Well, every person is
21 different, but it was a situation where I was sometimes
22 going to someone's home, sometimes it was emergency
23 rooms, sometimes police were involved, but it was
24 gathering evidence around -- three conditions had to
25 exist. The person had evidence of a mental disorder,

1 they were showing signs of danger to self or others, or
2 a degree of disability, and there was a connection
3 between the two. You had to have your ducks in a row so
4 to speak, so testifying was pretty straightforward,
5 because I was simply stating the facts as I put down on
6 my affidavit and swearing to what I had observed.

7 MR. WACHTER: Thank you.

8 Juror number 55?

9 JUROR NO. 55: I was witness to an assault of
10 a police officer when they were called next door to
11 domestic violence, a domestic case I guess.

12 MR. WACHTER: How long ago?

13 JUROR NO. 55: It's been about five years ago.

14 MR. WACHTER: What was that like?

15 JUROR NO. 55: Pretty straightforward. I just
16 had to explain what happened, what I witnessed. Very
17 minimal time, and short, to the point.

18 MR. WACHTER: 57?

19 JUROR NO. 57: An acquaintance I knew slightly
20 had been driving on a suspended license, and he called
21 me as a witness to testify if he was or was not driving
22 the car.

23 MR. WACHTER: That doesn't sound like the most
24 stressful that you can think of.

25 JUROR NO. 57: No, except that he wanted me to

1 say he wasn't driving the car.

2 MR. WACHTER: Out of all of you who have just
3 told us about your experience here on the witness stand,
4 who figures it was the youngest? Juror number 10
5 probably? You were --

6 JUROR NO. 10: I was 10 or 11. I was probably
7 11.

8 MR. WACHTER: Anybody younger than that?

9 What do you think it would be like for someone
10 perhaps three or four years younger than that to get on
11 the stand, just about something fairly mundane?

12 JUROR NO. 10: It would depend on the child
13 very much. Some seven-year-olds are very outgoing and
14 not bothered about speaking in front of people, some are
15 very shy.

16 MR. WACHTER: Who else? Juror number 59.

17 JUROR NO. 59: I think it's going to be a
18 little traumatic for any child to have to come to court
19 and testify. That's just my observation.

20 MR. WACHTER: Juror number 33?

21 JUROR NO. 33: Also, I think children,
22 sometimes they tend -- even if they speak well or not,
23 they tend to try to give you the answer they think you
24 want to hear and you have to be careful of it.

25 MR. WACHTER: So, you are going to listen for

1 whether I or any attorney is just taking a child by the
2 hand and spoon-feeding them the answers?

3 JUROR NO. 33: Right.

4 MR. WACHTER: Fair enough.

5 Juror number 11.

6 JUROR NO. 11: When I was 15 I had to come in
7 and sit down and tell my story to I think maybe just the
8 lawyers, and then had to come back again and tell it.
9 They just said, "Tell your story and go back out," then
10 I had to come back in and actually have to tell the
11 story again, but then get questioned. When I got
12 questioned, I was really -- I was 15 or 16. I was
13 pretty nervous, because one of the attorneys made me
14 feel like I was lying; "Are you sure that's what you
15 saw?" you know, and it really -- I mean, maybe I don't
16 know what I am talking about, so I think for a young
17 child, I think it would be very intimidating, especially
18 if they have to be crossed, talked to or whatever it's
19 called.

20 MR. WACHTER: Cross-examined?

21 JUROR NO. 11: Cross-examined.

22 MR. WACHTER: Did you raise your hand,
23 juror 12?

24 JUROR NO. 12: No, sir.

25 MR. WACHTER: Anybody else?

1 Well, let's dig a little deeper. How do children
2 tell us about something that has happened? How does a
3 child relate an event that's happened? It doesn't have
4 to be a traumatic event, but just something that
5 happened in their life, even if it's what was your
6 summer vacation trip.

7 Juror number 23?

8 JUROR NO. 23: I think a lot of times through
9 their actions, behavior, not verbally. Depending on
10 their age, too. So, maybe bathroom functions, stuff
11 like that, where everything might have been fine, then
12 all of a sudden there is a drastic change if it was
13 something that was obviously a negative impact on them.

14 MR. WACHTER: Do children tell stories in
15 chronological order? By stories I mean generically an
16 account of some event, not necessarily a fictional
17 story. How do children tell about some event that's
18 occurred?

19 JUROR NO 26: It depends on their age.

20 MR. WACHTER: Okay. Well, under 10.

21 JUROR NO. 26: Not necessarily. They tell it
22 as it comes to their mind.

23 MR. WACHTER: Juror number 37?

24 JUROR NO. 37: I think they probably emphasize
25 what sticks out in their mind the most, and upon that

1 day concentrate on their emotions, how they were
2 feeling, and it's tough to decipher what actually
3 physically occurred more so than how they were feeling.

4 JUROR NO. 33: I agree with her that it is
5 perception. A child that young can perceive something
6 very differently from an adult, and the way they reflect
7 it could be totally different.

8 MR. WACHTER: How about something that is
9 traumatic? How many of you have ever sat down and
10 talked with a child about something that is traumatic?
11 Boy, there's a surprise. Juror number 14. Okay. Who
12 else? 30, and 58, juror number 34, 23, and 8 and 9.

13 Juror number 14, do you regularly interview
14 children?

15 JUROR NO. 14: Yes.

16 MR. WACHTER: Does that go into the area of
17 sexual abuse?

18 JUROR NO. 14: It hasn't yet, no. I haven't
19 had one.

20 MR. WACHTER: What's your experience of how
21 children tell you about something that was traumatic?

22 JUROR NO. 14: Usually, what I have seen so
23 far is they don't exactly remember the dates or the
24 times specifically.

25 MR. WACHTER: Any other major conclusion you

1 have come to after having done this for a while?

2 JUROR NO. 14: That would be pretty much it.

3 MR. WACHTER: Juror number 9?

4 JUROR NO. 9: I thought you were looking at
5 him.

6 MR. WACHTER: I skipped him.

7 JUROR NO. 9: What was your question?

8 MR. WACHTER: Tell us if you have talked with
9 a child who related something that was traumatic.

10 JUROR NO. 9: Yes, I have, on more than one
11 occasion.

12 MR. WACHTER: Are you comfortable talking with
13 us about it?

14 JUROR NO. 9: Yes. It's just different
15 children, different experiences, that I can't come up
16 with one particular way they reacted. Pretty much
17 people that I have talked to, the children I have talked
18 to haven't been very forthcoming. You kind of have to
19 just sit and work with them, and most of them have been
20 very quiet, and would more react to different things,
21 and it took a lot of trust before they would ever really
22 say much of anything.

23 MR. WACHTER: Thank you.

24 Juror number 8?

25 JUROR NO. 8: Death of a pet or family member,

1 unfortunately. Pretty distraught. They bring with that
2 talking about the fears that they have, and then on the
3 other side, they will turn around and immediately start
4 talking about something that was really great with mom,
5 dad, or pet, or whatever, and then go back to something
6 that affected them, that bothered them.

7 MR. WACHTER: Kind of yo-yo there?

8 JUROR NO. 8: Yes.

9 MR. WACHTER: Now, to the pews here. Juror
10 number 30?

11 JUROR NO. 30: Yeah, I have had to talk to my
12 niece and nephew and my son when my sister was murdered,
13 and that was -- they all reacted differently with that,
14 so I don't think there's any set way. They were all
15 quiet at first, though, depending on their comfort
16 level.

17 MR. WACHTER: Were you the person having to
18 inform them?

19 JUROR NO. 30: Actually, my niece and nephew
20 witnessed the murder, my son did not, but they were all
21 very close, so it was a tough situation, but I think
22 they all came through it okay, but I think they all
23 handled it different.

24 MR. WACHTER: What was that like when they
25 first told you?

1 JUROR NO. 30: When I first learned about it?

2 MR. WACHTER: Right. Let me ask it
3 differently.

4 JUROR NO. 30: I don't remember parts of it to
5 be honest with you.

6 MR. WACHTER: Very well. I am not going to
7 ask too much on that. Thanks.

8 Juror number 34? Again, what experience do you
9 have with children relating a traumatic event?

10 JUROR NO. 34: The question is how much
11 experience?

12 MR. WACHTER: If you can tell us what has been
13 your observation of children when they are relating a
14 traumatic event.

15 JUROR NO. 34: I would agree with juror 10
16 earlier when she said there's a lot of variability.
17 It's like, I think it depends on the age, and it depends
18 on how much -- what kind of abuse to some degree. I
19 think it's just kids are different, like all people are
20 different. Some are very forthcoming and organized in
21 their thinking and speech, some deny it totally.
22 There's a broad range of reactions and expression.

23 MR. WACHTER: Does it matter what day it is?
24 Does that make a difference with a child telling about
25 something that was a pretty serious deal?

1 JUROR NO. 34: As in day of the week, or how
2 long ago from the event?

3 MR. WACHTER: One day to the next, how it
4 could go for a child on one day versus another in terms
5 of being able to freely tell you about it.

6 JUROR NO. 34: I think so.

7 MR. WACHTER: What do you think about that,
8 that a child might be able to articulate something one
9 day, and another day might have a harder time? Does
10 anybody take issue with that idea?

11 JUROR NO. 30: I agree with that it depends on
12 their emotional level with the situation at the time.

13 MR. WACHTER: Please keep your voice up,
14 folks. Thank you.

15 JUROR NO. 33: Times when they have had more
16 time to think about it, what's happened, too, their
17 story would be different.

18 MR. WACHTER: Thank you. That was juror 33.

19 Juror 58? My question again is, what's been your
20 observation of how children tell about a traumatic
21 event?

22 JUROR NO. 58: The traumatic event is not
23 child molestation, it's a death in the family or
24 something like that. For the child, it is very
25 traumatic, and I have dealt with this with my three

1 grandchildren and they all take it differently. They
2 all relate later the facts somewhat the same, but a
3 little variation, depending on their ages. That's what
4 I come up with. The youngest one, well, I am not really
5 sure. The oldest one is more into the details. I think
6 it has a lot to do with age. It has to do with how
7 close they are to the person. There's a lot of
8 variabilities, there really are.

9 MR. WACHTER: Thank you.

10 How many of you are parents? Keep your hands up.
11 How many of you have talked with your children or have
12 children of an age where you have talked with them about
13 good touching and bad touching?

14 Okay. Juror number -- somebody I haven't talked to
15 so far. Let me see those hands. Juror number 46, tell
16 us about how old your children are and when you may have
17 had that conversation.

18 JUROR NO. 46: Age 24, 22, both boys, and 15,
19 daughter. All three kids over a period of the last 10
20 years, and the boys, yeah, probably 12 years ago, 10, 12
21 years ago when they were like 8 and 10, and it's
22 basically cut and dry, private parts, don't touch, as
23 far as someone else touching them. That's personal,
24 that's your body, it's your physical private place, and
25 you don't touch.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. WACHTER: How old were your kids when you imparted that lesson?

JUROR NO. 46: Eight to ten, possibly even younger than that, but I am going to say eight to ten, somewhere in there.

MR. WACHTER: Who has talked to their kids at a younger age than that? And I am not by the way criticizing your timing as far as that goes.

Juror 30? How young were your kids when you had that discussion?

JUROR NO. 30: I think it was probably between three and four.

MR. WACHTER: Three and four? Who else?
Juror 34?

JUROR NO. 34: Yeah, around three or four.

MR. WACHTER: Did you raise your hand, 26?

JUROR NO. 26: Yes. Before they started school.

JUROR NO. 11: Three years old.

JUROR NO. 9: Three or four.

JUROR NO. 8: Three to five.

JUROR NO. 14: Three or four.

MR. WACHTER: How easy or hard is it for a child to talk about their private parts? Anybody?

Juror number 11?

1 JUROR NO. 11: At three, pretty easy. Very
2 easy, actually. They have no problem with it. My
3 six-year-old, now you try to talk to him about it, "No,
4 Dad, leave me alone," but that young, pretty easy.

5 MR. WACHTER: Who else? Age is a good thing
6 to throw in to this. It's worth talking about whether
7 there's differences.

8 Juror number 23?

9 JUROR NO. 23: I agree. I have a
10 three-and-a-half-year-old. He talks to anybody about
11 anything, about his private parts, his bathroom habits
12 and all that. That's all -- no modesty at that age,
13 definitely.

14 JUROR NO. 46: I agree with the other two. I
15 have a three-and-a-half-year-old, almost four-year-old
16 grandson which I failed to mention, and now that I
17 compare his ability to communicate about private parts
18 with say a child that's seven, eight or nine years old,
19 it's easier at the younger age.

20 MR. WACHTER: That's juror 46.

21 Anybody else on that? How easy or hard would it be
22 for a child to respond to, I don't know, somebody about
23 5-foot-11 wearing a suit, and looking kind of
24 business-like, asking them to talk about their private
25 parts in court? How is that going to work? Anybody?

1 What do you expect there?

2 JUROR NO. 24: They won't come out --

3 MR. TALNEY: Objection.

4 JUROR NO. 24: -- directly.

5 MR. TALNEY: I object. If I could have a side
6 bar.

7 (Side bar conference.)

8 MR. WACHTER: Let me rephrase my question to
9 you. Tell us a little bit about how you think a child
10 will react to an adult, kind of an authority position,
11 who is then asking the child to talk about their private
12 parts? What do you expect?

13 JUROR NO. 11: They will be shy.

14 MR. WACHTER: Shy. Who else? Juror 33?

15 JUROR NO. 33: I kind of think that it could
16 again depend on the child. Some might be intimidated by
17 a person like that, some may not.

18 MR. WACHTER: How about juror number 35? Sir,
19 what is your -- what do you think a child will -- how do
20 you think a child will react when asked about these
21 kinds of things to talk about?

22 JUROR NO. 35: I think it has a lot to do with
23 the age and maybe relationship with the adult, whether
24 they know them or don't know them, or if they have been
25 taught to not express their -- or talk to strangers, or

1 have confidence in their relatives. It can go from one
2 end to the other.

3 JUROR NO. 8: Embarrassment and shame
4 possibly.

5 JUROR NO. 46: That's pretty general. The age
6 factor I don't think you put in there, right?

7 MR. WACHTER: I am deliberately general about
8 that kind of a question. If there's an issue that you
9 pinpoint off as age, that's up to the answerer.

10 JUROR NO. 46: Obviously an adult speaking to
11 a child about their private parts, again, the age factor
12 comes into play.

13 MR. WACHTER: Thank you.

14 Can a child tell the same account twice about some
15 event in their life? Can they tell it the same -- Let
16 me try it over again.

17 If a child is telling you about some event that
18 happened to them, can they tell it the exact same way
19 over a long time?

20 JUROR NO. 55: If they feel strongly about it,
21 they will have more ability to tell it the same twice.

22 MR. WACHTER: That's juror 55. Thank you.

23 JUROR NO. 55: Yes. My four- to five-year-old
24 grandson in that period of a year there, yes, he has
25 related stories over and over again exactly the same,

1 word for word. And I mean, it's not a story that would
2 make you jump or anything, it's an everyday story,
3 something that happened at school, but he has details
4 and he's a very detail-oriented child.

5 MR. WACHTER: Is that something that varies
6 between children, or what do you think?

7 JUROR NO. 58: I am sure it does. Some kids
8 grasp things. Some are really into things. I mean, my
9 grandson, he's very mechanically inclined. You give him
10 one of these things you put together and he can put it
11 together just by looking at the pictures. They are
12 supposed to be for seven-year-olds. At five he's
13 putting them together, you don't even think about it,
14 yet he's having trouble with reading.

15 MR. WACHTER: Go figure.

16 Juror number 37?

17 JUROR NO. 37: With just everyday stories,
18 they went to the zoo, a child can, based on what kind of
19 reaction they are receiving from the person they are
20 telling it to, may embellish or may skip over certain
21 details or cut to the point that they want to make, and
22 so when they retell, if they notice that one person
23 reacted to a certain part of the story in a positive way
24 or a way that they wanted, they may concentrate more on
25 that part or they may embellish.

1 MR. WACHTER: Juror number 41, I haven't
2 spoken with you yet. What do you think of what juror 37
3 just said?

4 JUROR NO. 41: Could you repeat some of it?

5 MR. WACHTER: I am going to paraphrase. You
6 correct me if I am wrong.

7 Children repeating a story, such as maybe just
8 going to the zoo, will sometimes react to the listener
9 and embellish certain parts or leave out other parts as
10 they retell the story.

11 JUROR NO. 41: That's probably true. If a
12 child was telling a story and the audience person is
13 listening, not giving a reaction, then it's not the same
14 to the child as if the person is reacting in a positive
15 or negative way, so --

16 MR. WACHTER: Juror number 26.

17 JUROR NO. 26: Your question is pretty broad
18 again, so it would also depend on the age of the child,
19 the length of time between when they told the story this
20 time and this time. There could be variations affected
21 by their memory, the details.

22 MR. WACHTER: Again, it's deliberately broad.
23 I apologize. I don't want --

24 JUROR NO. 26: I understand.

25 JUROR NO. 46: The comfort level of the

1 relationship. Those are factors in there, also. The
2 reaction that a child gets when they have discussions
3 with adults. Yeah, their reaction, whether they are an
4 open book.

5 MR. WACHTER: Juror 29, what do you think
6 about my -- about what is being said here about children
7 telling, giving an account more than once?

8 JUROR NO. 29: I think if it's something that
9 we're talking about, something that's serious, I believe
10 that it's probably something that they would carry with
11 them and can relate basically the same.

12 MR. WACHTER: Juror number 31?

13 JUROR NO. 31: I think that a child will tend
14 to have more variation in how they tell a story to the
15 same adult. It depends on who is asking the questions,
16 how intimidated they are, what they have said, the
17 reaction they have had before in telling a story.

18 THE COURT: Juror 33?

19 JUROR NO. 33: Just as a parent -- I don't
20 mean to be a Jabberwocky -- my experience having three
21 children, that usually if the event is true, then yes,
22 sometimes the story will change from one time to
23 another, but the thrust of it remains the same; whereas
24 if the event they are talking about is a lie, you can
25 really see a difference more so in their stories from

1 time to time and you eventually catch them. I think
2 this comes from just being more experienced as a parent.

3 MR. WACHTER: One of the people the state may
4 call or expects to call as a witness has a title of
5 being a child interviewer.

6 JUROR NO. 46: Child what?

7 MR. WACHTER: Interviewer. How many of you
8 have ever met or had contact with a person who is a
9 child interviewer? Anybody?

10 Juror number 34, in your work as a certified mental
11 health professional or in what setting?

12 JUROR NO. 34: A brief stint in Child
13 Protective Services.

14 MR. WACHTER: Okay. We asked you a few
15 questions about that. I won't ask you to repeat all
16 that.

17 Anybody else? Juror number 9?

18 JUROR NO. 9: I have come in contact with a
19 person just socially, not someone that -- a friend of a
20 friend at a party -- that was their job. They were a
21 child interviewer.

22 MR. WACHTER: Would you know that person by
23 name?

24 JUROR NO. 9: No. It's back a long time ago.

25 MR. WACHTER: Would you know if that person

1 worked for the Kitsap County Prosecutor's Office?

2 JUROR NO. 9: I doubt it. It was in Redmond,
3 20 years ago.

4 MR. WACHTER: Okay. Anybody have any reaction
5 to the fact of a person having a job as a child
6 interviewer? What do you think? A person gets on the
7 stand and says, "My job is then to interview children."

8 Is that a surprise to you that such a job exists,
9 juror 23?

10 JUROR NO. 23: I would just think of them
11 probably as a compassionate person.

12 MR. WACHTER: Juror 26?

13 JUROR NO. 26: Do they have any -- What are
14 the credentials required to hold that job?

15 MR. WACHTER: You will get to hear that, but I
16 am just asking you, as you walk in the door here as
17 folks who don't know the case, don't know the witnesses,
18 do you have a reaction that there is such a position?

19 JUROR NO. 26: No.

20 MR. WACHTER: Juror 46?

21 JUROR NO. 46: Yeah, I would have to
22 understand some more information or get some more
23 information to form a better opinion about a child
24 interviewer. And I think you made reference to possibly
25 working for the prosecutor's office. I don't think

1 myself -- I am thinking to myself, are we not dealing
2 with a pediatrician here, or are we dealing with a
3 pediatrician here? So, there you go.

4 MR. WACHTER: Fair enough. Does the fact
5 that -- and I have already told you this person has been
6 employed by the prosecutor's office. Does the fact that
7 such a witness may talk about conversations with
8 children, that the fact that they are employed by a
9 prosecutor's office, does that automatically trigger any
10 reaction by you? Does anybody just say, "Whoa, wait a
11 second"? Anybody have a reaction that way, one way or
12 another?

13 Juror 3?

14 JUROR NO. 3: Actually, I would expect the
15 child to be interviewed.

16 THE COURT: Juror number 23?

17 JUROR NO. 23: I am assuming they have the
18 child's interests at heart. I don't think it would
19 matter who.

20 MR. WACHTER: Juror number 31?

21 JUROR NO. 31: Actually, I would begin to
22 wonder if there was any bias built into a position like
23 that, working for the prosecutor's office, whether there
24 would be an equal type of position to allow the defense.
25 That's my only thought.

1 MR. WACHTER: Okay. You would want to hear
2 more? Is that what I hear you say? Or you would kind
3 of walk into it thinking, "I am not sure I could believe
4 a person in that kind of position, if they are employed
5 by the prosecutor's office"?

6 JUROR NO. 31: I think I would wonder, and it
7 would depend on the credentials a little bit, about
8 bias, because when interviewing children, especially
9 repetitively, the truth that comes out could be biased
10 in one direction rather than being objective.

11 MR. WACHTER: Thank you.

12 Who else? Juror 46?

13 JUROR NO. 46: Yeah, I am listening and
14 getting an impression here. You know, when you say
15 prosecutor's office, you think suit and tie, you think
16 interview, you think official, and with this day and
17 age, and the exposure that we all see almost daily in
18 this arena, that actually something like this could be a
19 very good thing.

20 MR. WACHTER: That -- Which part could be a
21 good thing?

22 JUROR NO. 46: A person in this capacity, in
23 the prosecuting attorney's office, in the right context,
24 in a relaxed atmosphere, with situations such as we
25 might have to make a decision on here could be a very

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

good thing.

MR. WACHTER: Anybody else? Juror number 1?

JUROR NO. 1: I think it's more about the second-hand testimony, their interpretation, their own personal interpretation of the issue.

MR. WACHTER: Juror number 2, did you raise your hand? No?

Now what if that person doesn't come in here and say, "Well, I believe X, Y and Z," or "I didn't believe this." They are just talking about a process and repeating what was told them in an interview. Is that different from what you were saying?

JUROR NO. 1: Either way, it's still second-hand testimony. If they are unbiased, then I feel it's acceptable.

MR. WACHTER: Juror number 48, I saw your hand.

JUROR NO. 48: I might have some skepticism in that kind of situation, simply remembering what happened in Eastern Washington some years ago, kids that sort of created these stories as I recall through an interview process, that sort of thing. I don't know if that was prosecutor-related, but I kind of remember it that way.

THE COURT: Counsel, we're at the noon hour.

MR. WACHTER: Thank you, Your Honor. It's

1 time for me to break.

2 THE COURT: We're going to recess for the noon
3 hour and start back up at 1:30, so have a nice lunch and
4 we'll see you at 1:30.

5 (The prospective jurors left the
6 courtroom.)

7 THE COURT: We'll be at recess until 1:30.

8 (Court recessed.)

9 THE COURT: There was one side bar at 11:50,
10 that Mr. Talney was objecting to questioning along the
11 lines of the child and a man in a suit, and thought it
12 was getting too close to the evidence in the case.
13 Mr. Wachter, at my direction, changed it to an authority
14 figure.

15 MR. WACHTER: That's basically accurate.

16 There was a previous side bar where Mr. Witt had
17 made a remark about taking a child's testimony at "face
18 value." That was objected to, and I didn't -- I wasn't
19 part of the side bar discussion, but that also should be
20 put on the record.

21 THE COURT: I didn't make any ruling or
22 direction at that point.

23 MR. TALNEY: I think he just rephrased.
24 Mr. Witt basically agreed to rephrase and did, and there
25 was no further objection.

1 MR. WITT: That's accurate.

2 THE COURT: Is there a juror missing?

3 THE BAILIFF: No. We were missing one, but
4 one just showed up. No, I was writing a note. Juror
5 number 40 wants to make a correction to something he
6 said this morning, and I said, "Does it need to be out
7 of the presence of the other jurors?" He said no.

8 THE COURT: Are you going to continue?

9 MR. WACHTER: I think I should just stop for
10 now and reserve the rest of my time. I think I went
11 about an hour, but I didn't time myself.

12 THE COURT: I wrote 11:03.

13 THE CLERK: I have 11:04.

14 MR. WACHTER: I will go with that. That gives
15 me one more minute.

16 THE COURT: I will ask juror number 40 about a
17 correction then, unless you have something else. After
18 that, you can. Then we'll go on to Mr. Talney.

19 And on Friday, I am going to be assigned just to
20 this trial, so I am not going to be doing probate before
21 we start the trial, so it will start at nine o'clock.

22 THE BAILIFF: It was 46, not 40.

23 MR. TALNEY: I guess I would ask the court to
24 cut me off at an hour so I could reserve the rest of my
25 time.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: I will do that.

You can bring the jury in.

MR. WACHTER: While we are waiting, I want to put the court and Mr. Talney on notice that over the lunch hour we had an emergent situation that the Special Assault Unit dealt with, not involving this case. There is some small possibility that someone would come in here with a note for me, and that I may need to ask for a recess without being -- without giving you much of a reason why, but I can describe more detail if you wish.

THE COURT: That's fine.

MR. TALNEY: I don't need an explanation.

THE COURT: That's fine.

(The prospective jurors returned to the courtroom.)

THE COURT: Juror number 46 indicated he wanted to add something to an answer?

JUROR NO. 46: Thank you. I made a statement this morning on the question concerning -- I don't remember the content of the question, but my response was the ages of the children, when we began to talk about private parts, and I indicated eight to ten. After going home, having lunch, and playing with my four-year-old grandson, I did realize that it was much earlier than that. It was more likely four to five or

1 four to six years old, and since what we are saying is
2 being recorded, I want to make sure that I corrected
3 that record.

4 THE COURT: Okay. It's corrected for the
5 record. Thank you.

6 Mr. Talney?

7 MR. TALNEY: Thank you, Your Honor.

8 Let me take this opportunity to introduce myself
9 again. I am Aaron Talney. I represent Dan Stockwell.
10 As Mr. Wachter kind of said -- I guess he might be the
11 opening act here -- it's true, this is going to work
12 much better if we kind of have a dialogue about some
13 concepts. I am going to ask some general questions
14 probably to start out with, kind of talk about some
15 general legal principles which maybe, probably, you
16 haven't spent any time thinking about since maybe your
17 high school or your college civics class of some kind.
18 Feel free to share your attitudes. That's what it's
19 about.

20 Obviously about half of you I think have already
21 gone through some very directed questioning where we
22 were asking specific questions about specific areas. I
23 would like this to be kind of a more open discussion, so
24 if you have some ideas, please don't hesitate to raise
25 your hand and share them with everybody and we will talk

1 about it.

2 So I want to go back kind of really to the
3 foundation maybe, why we have juries. Why do you get
4 called in here other than receiving your summons in the
5 mail knowing that you're going to have to rearrange your
6 plans for the day or the week? Why do we go through
7 this process?

8 Juror number 15, do you have any thoughts?

9 JUROR NO. 15: Well, it's part of our basic
10 constitution, as far as justice, and decisions being
11 made by a peer group regarding matters of law and such.

12 MR. TALNEY: Okay. It's definitely the
13 foundation of our system. It's what we know.

14 Juror 59, I saw you had your hand up.

15 JUROR NO. 59: My interpretation is we are
16 here to listen to evidence and then decide whether
17 something did or did not happen.

18 MR. TALNEY: Why do we do it that way do you
19 think, though? Why do we ask 12 citizens -- in this
20 case I think there will probably be 14 of you, a couple
21 extra, but juror number 33?

22 JUROR NO. 33: Well, because, you guys are
23 trained and skilled in this area, and we're lay people,
24 and if lay people can come to a certain decision based
25 on how you present it, I think it removes the concept of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

maybe somebody got railroaded or not.

MR. TALNEY: So it might add more legitimacy to it by having your average citizen. Okay.

Juror number 32, do you have any thoughts about that? Is it a good thing or is it a bad thing do you think?

JUROR NO. 32: I think it's a good thing.

MR. TALNEY: Why do you think it's a good thing?

JUROR NO. 32: I think the more opinions and different aspects that people look at things, and come to a conclusion, the more fair.

MR. TALNEY: So, the fact that there is 12 people that have to agree, somehow that builds in more fairness?

JUROR NO. 32: To me it does, yeah.

MR. TALNEY: What about if we tie that into some of Mr. Wachter's questions about children, and what do you expect from children? Who has more than one child?

Okay, juror number 23 I guess. Okay. Are your two children different in personality?

JUROR NO. 23: Extremely.

MR. TALNEY: Night and day?

JUROR NO. 23: Pretty much.

1 MR. TALNEY: So, would you expect that if you
2 were talking, or if I was talking to them about a
3 particular subject, any subject, that they might have a
4 different reaction between the two of them?

5 JUROR NO. 23: Sure.

6 MR. TALNEY: Is one more verbal than the
7 other?

8 JUROR NO. 23: The second one is only nine
9 months old, he's not there yet, but personality-wise I
10 can sort of foresee.

11 MR. TALNEY: One is definitely more verbal
12 than the other?

13 JUROR NO. 23: Yeah, but I can appreciate
14 that.

15 MR. TALNEY: I think juror number 11, do you
16 have more than one child?

17 JUROR NO. 11: Yes.

18 MR. TALNEY: Different personality?

19 JUROR NO. 11: Absolutely.

20 MR. TALNEY: Would they have a different
21 reaction perhaps if an adult authoritative figure were
22 asking them questions about a particular subject?

23 JUROR NO. 11: Very much so.

24 MR. TALNEY: So, juror number 10, do you think
25 that plays into -- juror number 32 thought that there

1 was a benefit to having 12 different minds. Do you
2 think that kind of plays in?

3 JUROR NO. 10: Having more children?

4 MR. TALNEY: You would certainly have
5 different experiences I will bet from juror number 11 in
6 your child-rearing.

7 JUROR NO. 10: Yes.

8 MR. TALNEY: Maybe different challenges or
9 other things like that.

10 Okay. Why don't -- if we were going to have a
11 child testify in a trial, why don't we have 12 child
12 psychologists sitting up here and deciding whether or
13 not this child is telling us the truth or not telling us
14 the truth? Do you have any thoughts about that?

15 Juror number 8?

16 JUROR NO. 8: They are not peers.

17 MR. TALNEY: What's the benefit, though, do
18 you think? Do you think it's better that we have just
19 12 average citizens or do you think it would be better
20 if we had 12 child psychologists?

21 JUROR NO. 8: A cross-section of experience,
22 and I think it would be much better than having 12
23 psychologists.

24 MR. TALNEY: Juror number 3, I see you nodding
25 your head pretty emphatically. What are your thoughts?

1 JUROR NO. 3: If we all had the same
2 profession, our thoughts might go along the same line,
3 and with a group of -- a diversified group of people, we
4 are -- our thought processes will slightly be different.
5 We may come upon the same conclusion, we may not, but I
6 think it's good to have a group of your peers.

7 MR. TALNEY: Juror number 34, I think you have
8 probably -- have you taken quite a few child psychology
9 courses? You have your master's degree, right?

10 JUROR NO. 34: Yes.

11 MR. TALNEY: Is it in psychology or education?

12 JUROR NO. 34: One each.

13 MR. TALNEY: Okay. I guess I saw both.
14 Congratulations. So, what do you think about that?
15 About, you know, if we are deciding about what a child
16 is telling us, what are your thoughts about sticking 12
17 child psychologists in the box and asking them to decide
18 versus your average Joe?

19 JUROR NO. 34: I think a psychologist can have
20 a professional opinion, but I have also known lots of
21 psychologists whose children were really not well
22 behaved, so it's different to have a professional
23 assessment versus coming from your life experience.

24 MR. TALNEY: So sometimes life is the best
25 teacher of all is what I am hearing maybe.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 34: Sometimes.

MR. TALNEY: What about, why don't we just let the police decide? Why don't we skip this whole process itself, calling in 12 citizens, making them rearrange their vacation plans or their work schedule?

Juror number 10?

JUROR NO. 10: My husband is a security guard and he gets very hardened and cynical by what he sees all day. I think the police would have a hard time after seeing crime day in and day out not just saying, "Guilty."

MR. TALNEY: So just based on the work experience, people that he comes into contact with?

JUROR NO. 10: He comes into a very different sort than I do. I work with kids, he works with people who are on drugs and doing all kinds of things I don't see.

MR. TALNEY: I think you said, are you a teacher?

JUROR NO. 10: I am a teacher.

MR. TALNEY: What grade?

JUROR NO. 10: I teach K through eight. I teach music, so I teach the whole school.

MR. TALNEY: So you probably come into contact with maybe some of the junior people that he might come

1 in contact with, but then on the flip side, you see some
2 bright kids who are really dedicated.

3 JUROR NO. 10: Uh-hum.

4 MR. TALNEY: So, as just an average citizen,
5 you might have a broader perspective.

6 JUROR NO. 10: I think I haven't become so
7 hardened and cynical. He might start to expect the
8 worst of people because he sees it day in and day out in
9 his work.

10 MR. TALNEY: Juror number 3, I think you said
11 you went to the police academy. Did you actually ever
12 work as a police officer?

13 JUROR NO. 3: Actually, I went because I moved
14 to California and I wasn't a citizen yet of California,
15 and if you joined the reserves at that point, you got to
16 go to school for free, and so I did little things like
17 parades. We did do a little work down at the border,
18 but nothing extensive in that line. It actually didn't
19 pay enough.

20 MR. TALNEY: What are your thoughts about why
21 don't we let the police officers decide?

22 JUROR NO. 3: Even from going to the police
23 academy -- which fortunately was actually training by
24 policemen that had worked in the job, so you really got
25 to learn rather than by someone that just taught by the

1 book; I had a lot more respect for being taught by
2 someone that had actually done the job -- but they
3 themselves felt it would be too autocratic, so I think
4 you need a diverse opinion from several different points
5 of view.

6 MR. TALNEY: What about if we change the label
7 from police officer to child interviewer? Juror number
8 5?

9 JUROR NO. 5: That would be --

10 THE COURT: Why not leave it in that person's
11 hands?

12 JUROR NO. 5: They are all too like-minded.
13 There's not a diverse -- that's not a diverse enough
14 group.

15 MR. TALNEY: Let's assume that you thought
16 that this individual was honest, hard-working, decent,
17 whatever adjective you want to give this individual.
18 Let's deal with a child interviewer. Why don't we let
19 the child interviewer decide? Do you still -- Would
20 there still be a problem if say you believed this
21 individual, that they are hard-working and honest?

22 JUROR NO. 5: Leaving it up to one person, one
23 person possibly could make a mistake as easy as any.

24 MR. TALNEY: Juror number 20, do you have any
25 thoughts?

1 JUROR NO. 20: No. I go along pretty well
2 with what he said.

3 MR. TALNEY: Juror number 12? Let's go back
4 to the police officer. Let's assume that you thought
5 the police officer was hard-working, honest, decent,
6 looking out for the community. Why don't we just let
7 them decide instead of bringing in citizens to decide?

8 JUROR NO. 12: Like already has been spoken,
9 the police officer might be hardened, they may not be as
10 objective to the case as 12 individuals.

11 MR. TALNEY: Okay. Let's take it a step
12 further down the line. Why don't we just let
13 Mr. Wachter and Mr. Witt decide? You have already been
14 introduced to Mr. Wachter. He seems like a nice enough
15 guy.

16 Juror number 31?

17 JUROR NO. 31: Well, a court of law in this
18 country is supposed to be the positioning of opposing
19 ideas in a forum that allows people to make up their
20 minds as to which ideas seem correct, the veracity of
21 the evidence and so on. If you just let one side or the
22 other decide, then I think that would be a formula not
23 for justice, but I think that's what happened in Germany
24 in World War II.

25 MR. TALNEY: Juror number 30, do you have any

1 thoughts about that?

2 JUROR NO. 30: No. I agree with what has
3 already been said. I think you have to have a diverse
4 group, and I don't think one person can make a decision.
5 Everybody makes mistakes. If you have a bigger group,
6 and you have a lot of ideas going around, and evidence
7 along with that, or lack of it, you have a better idea
8 of what the truth is and finding the truth.

9 MR. TALNEY: Juror number 33, I think we
10 discussed it with you alone, but in your work
11 experience, you have basically served in a similar
12 function, like a prosecutor, right?

13 JUROR NO. 33: Yes.

14 MR. TALNEY: In administrative hearings where
15 you were responsible for presenting the evidence and
16 that kind of stuff? What do you think about that?
17 When you were working in that role, did you want that
18 responsibility to be the decider, or did you see your
19 role as something different?

20 JUROR NO. 33: I did not want to be the
21 decider. My role was to present the evidence as we knew
22 it on behalf of the government, and always try to
23 maintain the idea of fairness, so that if the other side
24 brought in other evidence that either disputes what we
25 were saying or at least mitigates the situation, that

1 that needs to be allowed. If it was left totally to me,
2 my side, there was no trier of fact, I could pretty well
3 do anything I want. That wouldn't be right.

4 MR. TALNEY: Okay. So one of the concerns
5 would be, you would just have too much power.

6 JUROR NO. 33: Correct.

7 MR. TALNEY: Does anybody think it's a bad
8 idea -- there's lots of discussions about -- usually it
9 comes up in a case that people think goes horribly wrong
10 that you read about in the newspaper, and you think to
11 yourself like, how on earth could a jury have decided
12 that? A lot of people think that way about the
13 O.J. Simpson case. Some people have the exact opposite
14 view on that case. The latest is this individual who
15 just got his case overturned by an appellate court who
16 was accused of molesting hundreds or has admitted to
17 molesting hundreds of individuals over a period of time.
18 They just arrested him for getting a bad driver's
19 license. Anybody familiar with that case? It's just
20 been on the news. Every time you turn around his sister
21 is getting interviewed on the news.

22 Okay. So usually when something, when you read
23 about it, it sounds like such an injustice happened,
24 people talk about, you know, maybe this just isn't the
25 right system, maybe we should try something else.

1 Anybody think that this just isn't the way we should be
2 doing things? No? Everybody is pretty satisfied with
3 the way it goes. Okay.

4 Let's talk a little bit about a concept that the
5 judge has already discussed a little bit, which is
6 beyond a reasonable doubt, and in the individual
7 questions, we touched upon it a little bit, also.
8 Anybody ever sit as a juror in a criminal case? I know
9 we have a couple of them. We have gotten the definition
10 of beyond a reasonable doubt. Anybody ever sit as a
11 juror in a civil case where all you were deciding was
12 about money? Anybody sit through one of those? Okay.

13 In a civil case, when all you are doing is arguing
14 about money, like let's say a traffic accident, somebody
15 injured you, the burden of proof that this side has to
16 prove would be a preponderance of the evidence.
17 Basically the easy way to think about that is 51
18 percent, 51 percent more likely that it happened. If I
19 am convinced more than I am not convinced, then I will
20 give you your money. Okay? And I would say probably a
21 lower standard than that might be something that we
22 probably use in our everyday life when we are trying to
23 decide things, and that would be what I might call the
24 maybe standard. Okay. So, maybe it happened. And
25 oftentimes in our daily life that's probably good enough

1 for us and we move on. Then we might have this
2 preponderance of the evidence, 51 percent. Somewhere
3 higher than that is beyond a reasonable doubt.

4 The judge has given you an instruction about it.
5 The judge will go on further to define it, and I can't
6 give you a grade percentage of what beyond a reasonable
7 doubt is. It just doesn't get quantified like that, but
8 it's something higher. Why do you think we do that?

9 Juror number 13? Why in a criminal case, why do we
10 demand that the prosecutor prove the case beyond a
11 reasonable doubt?

12 JUROR NO. 13: Because you could really screw
13 up somebody's life, especially in this case, if you
14 convict somebody of something they really didn't do.

15 MR. TALNEY: Okay.

16 JUROR NO. 13: Fifty-one percent is pretty
17 close to fifty percent. If you are just talking about
18 money, money comes and goes, where a criminal case is
19 deciding somebody's life, which is more important.

20 MR. TALNEY: Consequences certainly might be
21 one. Anybody have some other thoughts, just other than
22 this is a very serious issue?

23 Juror number 8?

24 JUROR NO. 8: You are innocent until you are
25 proven guilty. You have to be convinced.

1 MR. TALNEY: What does that mean to you,
2 innocent until proven guilty? Because if you watch any
3 TV shows at all, you come across that phrase. We all
4 assume that it's true, I am innocent until proven
5 guilty. What does that mean to you?

6 JUROR NO. 8: If I am convinced that person
7 has committed the act that they have done, then I would
8 be considering them to be guilty of what they have been
9 charged with. If they haven't done it and I have
10 questions on and I don't have an assurance of myself,
11 knowing that that would be the case, then that didn't
12 happen.

13 MR. TALNEY: Juror number 23?

14 JUROR NO. 23: Also, when you accuse someone,
15 you can't say you are guilty of something without having
16 the opportunity to defend yourself. I mean, you can't
17 just be -- You are innocent until someone says they can
18 prove that you are guilty.

19 MR. TALNEY: Juror number 11, do you have any
20 thoughts?

21 JUROR NO. 11: I think the system we have set
22 up is to give a defendant the benefit of the doubt, so
23 when all the facts are given, we look at those facts,
24 and if there's a doubt, the defendant is innocent.
25 That's the way our system is set up. If there's no

1 doubt, then you go with what the facts show. If you
2 have no doubt, you have no doubt.

3 MR. TALNEY: Juror number 24, juror number 11
4 was talking about our system is basically designed to
5 give the defendant the benefit of the doubt I think is
6 how he put it. What do you think about that? Is that a
7 good thing or is that a bad thing?

8 JUROR NO. 24: I think it's a good thing.

9 MR. TALNEY: Why is that a good thing?

10 JUROR NO. 24: Well, the fact you have to find
11 out. There's so much going through the world today that
12 it's just not right for somebody to be judged just by
13 looking, not finding out the facts.

14 MR. TALNEY: Does anybody have an opposite
15 view? Again, sometimes --

16 Juror number 11?

17 JUROR NO. 11: I do.

18 THE COURT: Okay.

19 JUROR NO. 11: Sometimes I think that the
20 benefit of the doubt is too much leniency. I think it's
21 quite easy to put a little doubt in there, you know. If
22 a doubt is in there, you have got to give them the
23 benefit of that doubt. Sometimes I think it's a little
24 too easy.

25 MR. TALNEY: How would you respond to that in

1 this situation, personally?

2 JUROR NO. 11: Personally, I think it goes the
3 same way. If there's doubt that it happened, then you
4 have to give that benefit to the defendant.

5 MR. TALNEY: So I guess what I am
6 understanding you saying is you know what the rule is,
7 you are going to follow the rule, but sometimes you
8 don't necessarily like it.

9 JUROR NO. 11: Right.

10 MR. TALNEY: Okay. That seems fair.

11 Juror number 12, you made the mistake of smiling,
12 so now I am going to call on you. That will teach you.

13 JUROR NO. 12: That sure will.

14 MR. TALNEY: You kind of agree with that? It
15 looked like -- I think I saw you nodding your head.

16 JUROR NO. 12: Yes, sir, I kind of agree. You
17 have to weigh the facts, and which side probably sways
18 you the best is the way you are going to lean, but you
19 have to be fair no matter what facts are being
20 presented. You have to weigh the facts.

21 MR. TALNEY: Why do you think we set up the
22 system this way, that if you are not convinced beyond a
23 reasonable doubt, you have to find the person not
24 guilty?

25 JUROR NO. 12: Why did we do that?

1 MR. TALNEY: Uh-hum. I mean, that's the way
2 it is, there's no doubt about that, but why do we do it
3 that way?

4 JUROR NO. 12: I guess it's so that if you
5 don't have a hard case against them, you can't prove
6 he's guilty, I guess.

7 MR. TALNEY: Juror number 11?

8 JUROR NO. 11: I think when it was set up
9 people probably felt that it was better to let a guilty
10 person go free than an innocent person be convicted.
11 That it's more of a travesty for somebody that's
12 innocent to be convicted of something they didn't do
13 than it is for a guilty person to be set free. I think
14 it's because we are a forgiving society. We think
15 people can change, that people can go through counseling
16 or whatever, which is great. So, if a guilty person
17 gets off, that's not great, but it's way better than an
18 innocent person being convicted.

19 MR. TALNEY: Would anybody change that system?
20 If they were running the place, would anybody change it
21 from beyond a reasonable doubt to something less? What
22 about in a child molest case? Would everybody agree
23 that when they heard that this was going to be a child
24 molest case, that you had some kind of personal reaction
25 that probably wasn't favorable? You hear child molest,

1 and you are thinking bad things immediately I would
2 assume, and I would assume that everybody would say that
3 they think child molestation is a horrible crime, right?
4 Everybody would agree? Okay.

5 Would you also agree that that's not necessarily
6 why we are all here? Okay. But would anybody change
7 this standard because of the kind of case that it is?
8 We have a system set up where you have to prove a case
9 beyond a reasonable doubt. Does it matter what kind of
10 case it is? Should there be a different -- Let's say
11 this is a shoplifting case versus a child molestation
12 case. Should we change the different burden?

13 Juror number 3?

14 JUROR NO. 3: No, I don't believe we should.

15 MR. TALNEY: Why is that? Let me ask you
16 this. You would probably feel worse if you were sitting
17 in a jury and you let somebody who had been -- somebody
18 you thought had been guilty of child molest go if you
19 were a juror than you would a shoplifter, right?

20 JUROR NO. 3: Not really. I have been a
21 checker for a while, and no, I wouldn't. I think if,
22 you know, you actually do the crime, you have got to pay
23 the time, but I think it better be proven.

24 MR. TALNEY: Juror number 8, what do you think
25 about that?

1 JUROR NO. 8: All crimes are against society
2 so they should be dealt with exactly the same, no
3 difference.

4 MR. TALNEY: Rules the same no matter what the
5 crime might be?

6 JUROR NO. 8: Yes.

7 MR. TALNEY: Juror number 15, what do you
8 think about that?

9 JUROR NO. 15: I pretty much tend to agree
10 with that. You were right when you said most of us were
11 probably a little bit aghast when we found out what the
12 charges were before the start of the trial, but at the
13 same time, I don't see changing the standards of proof
14 based on we're dealing with child molestation versus
15 arson or what have you, and it really comes down to an
16 individual thing anyway. We talk about in our legal
17 system, the accused is innocent until proven guilty, and
18 that's 12 people reaching a consensus that each of us
19 had been convinced beyond a reasonable doubt of the
20 guilt, and if that's not true, then we don't have a
21 consensus of beyond a reasonable doubt. It comes back
22 to an individual thing to a certain extent, and not a
23 group thing.

24 MR. TALNEY: Juror number 1, what do you think
25 about changing the burden of proof depending on the

1 case?

2 JUROR NO. 1: It should not be changed. I
3 mean, if a group -- if a broad cross-section of society
4 that that person is living in either believes almost
5 wholly or not that the crime has been committed, then --

6 MR. TALNEY: Juror number 23, what if you
7 decide that you really like one of these girls that is
8 going to testify? She will be a cute kid. I don't
9 remember. Do you have a daughter?

10 JUROR NO. 23: Two boys.

11 MR. TALNEY: What if you find her to be an
12 adorable kid? Do you think that changes beyond a
13 reasonable doubt?

14 JUROR NO. 23: No. I mean, I am a sixth grade
15 elementary teacher. I have lots of cute girls that
16 aren't really so cute, especially 12-year-olds. But
17 seriously, no. I mean, I understand, we all have
18 emotional reactions, but you have to keep that separate
19 from what the job would be as a juror.

20 MR. TALNEY: Okay. So intellectually you have
21 to separate the two I guess is what you are saying?

22 JUROR NO. 23: Uh-hum.

23 MR. TALNEY: But as a human being, that's not
24 always so easy.

25 JUROR NO. 23: Sure.

1 MR. TALNEY: Juror number 26, would you agree
2 that the trial is not about how adorable the child is
3 going to be?

4 JUROR NO. 26: Right.

5 MR. TALNEY: And you might have a personal
6 connection once you see the child or something like
7 that. Would you agree with the comments generally that
8 juror number 23 made?

9 JUROR NO. 26: Yes, I would.

10 MR. TALNEY: How do you think you go through
11 that process, though? Because that's not what we do in
12 our everyday life, right? I mean, you don't try and
13 compartmentalize your decisions about -- well, you never
14 think in beyond a reasonable doubt terms normally,
15 right?

16 JUROR NO. 26: Right.

17 MR. TALNEY: How do you think you go about
18 that process? You are human.

19 JUROR NO. 26: I don't think it's -- It's not
20 that much different than determining if your own child
21 has done something wrong and deserves discipline. You
22 love that child, but there's right and there's wrong,
23 and at the same time you are not going to discipline
24 your child for stealing the neighbor kid's bicycle
25 unless you are sure that he or she has done that.

1 MR. TALNEY: Does anybody have concerns that
2 they might not be able to do that process, to
3 analytically look at the evidence or the testimony
4 that's presented, the rest of the evidence of the case,
5 and just have an emotional reaction to the child
6 themselves? Anybody that might have a child about the
7 same age, seven- or eight-year-old?

8 Juror number 26 kind of touched on a question I
9 wanted to talk about, also. How do you tell when
10 somebody, in this instance a child, is telling the truth
11 and telling a lie? We do that in our everyday lives if
12 you have children, or if you are a teacher I would
13 assume you do that all the time, right?

14 What do you use, juror 26?

15 JUROR NO. 26: Well, you get the children in a
16 room together. I mean, you get one story, get the other
17 story, you get them in one room together, get both their
18 stories, and then between that and what you know of your
19 own child. In the case of your own child, you pretty
20 much tell by looking in their eyes, but --

21 MR. TALNEY: Mr. Wachter asked a lot of
22 questions about how you would react to a child doing a
23 certain thing, or what you would expect from a child.
24 And you know your own child very well. How old are your
25 children?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 26: My son is 18.

MR. TALNEY: So, you have a few years under your belt trying to figure out whether he's telling the truth or not?

JUROR NO. 26: Yes.

MR. TALNEY: Does he have any specific signs that you know "I've got it"?

JUROR NO. 26: Yeah.

MR. TALNEY: Do his ears turn red or anything like that?

JUROR NO. 26: He can't look me in the eyes and he can't keep a straight face.

MR. TALNEY: So, if we had your son on the stand, and I had you sitting in the jury box, you would know right away whether he was telling us the truth or not, right, because you know him?

JUROR NO. 26: Yeah.

MR. TALNEY: Does anybody have a child who has a hard time making eye contact just generally with a stranger? Anybody ever have a really shy child? Juror number 11? So maybe her son's reaction wouldn't be the same as your child.

JUROR NO. 11: That's probably true.

MR. TALNEY: And how do you think you deal with that when there's going to be a child sitting right

1 over here, and they may look you in the eye or they may
2 not. Their ears may turn red, they may not. How do you
3 think you use all that?

4 Do you have any thoughts, juror number 14?

5 JUROR NO. 14: Well, I guess I am not so sure
6 I could tell if they were lying or not, because I guess
7 I thought I could with my children really well, too.
8 Now that they are older, I find out I wasn't reading
9 them as well as I thought I was.

10 MR. TALNEY: Okay. Juror number 5, what do
11 you think about that?

12 JUROR NO. 5: I think we just have to deal
13 with what they present us with.

14 MR. TALNEY: You have gotten lots of
15 hypotheticals, but I guess it seems what you are saying
16 is, you will see it when you see it.

17 JUROR NO. 5: It's hard to prejudge.

18 MR. TALNEY: Juror number 31, what do you
19 think about that?

20 JUROR NO. 31: Well, I agree that it's
21 probably at times hard to tell for sure with anybody
22 whether they are telling the truth or not, but you have
23 to look for consistency. I would presume that the child
24 is going to be asked questions by both sides, and to the
25 extent that you think a child can be consistent, you

1 look for that. You get the same story from different
2 angles.

3 MR. TALNEY: Now is that something that you
4 use just in your everyday life?

5 JUROR NO. 31: I have, yes.

6 MR. TALNEY: So, juror number 26 brings up one
7 thing, you might look at body language, and another
8 thing you might be looking at is the consistency of the
9 story.

10 Juror number 37 I think it is, what else do you use
11 in your everyday life just trying to figure out whether
12 somebody is telling the truth or telling a lie?

13 JUROR NO. 37: I suppose it would be the
14 context of when they decide to say something, whether --
15 It's hard to assume what they are thinking in their
16 head, but if they bring up a point that maybe you hadn't
17 even put into their mind, and yet they decide to bring
18 it up and concentrate on that subject. There's also the
19 body language and the consistency of the story.

20 MR. TALNEY: Juror number 35, do you have any
21 thoughts? What are the kinds of things you use just in
22 your everyday life?

23 JUROR NO. 35: I think it's pretty much what
24 everybody has been saying. You have to look at body
25 language and you have to listen. I think it would be

1 harder in this atmosphere than at home, when you can get
2 one in the living room and another one in the bedroom
3 and do your talking that way. I think it would be very
4 difficult in this situation, because of the I guess fear
5 and intimidation that the children might have sitting up
6 in that chair. It would be a difficult thing to pick
7 out.

8 MR. TALNEY: This is obviously not your normal
9 atmosphere, some people might want to keep in mind.

10 Juror number 55, what kind of stuff do you use in
11 your everyday life? We have body language, consistency
12 of story. Do you use anything else?

13 JUROR NO. 55: It's hard to add to everything
14 that's been said. With my children, it would be a lot
15 easier. Again, as mentioned before, a lot of things
16 they say are probably similar, but trying to listen to
17 your son or daughter's story, knowing them, it would be
18 easier than being presented -- most of the case will be
19 presented by yourself and the prosecution, and you just
20 have to listen to everything, concentrate on the facts,
21 and come up with a decision based on what you are
22 presented.

23 MR. TALNEY: What about a word-play situation?
24 Let's take it away from children like your own children.
25 What do you use? Does anybody have to make decisions

1 like that?

2 Juror number 30?

3 JUROR NO. 30: Yeah. I am responsible for a
4 lot of restaurants, and I have to investigate sexual
5 harassment, any other allegations that might be there,
6 or unfair work practices, and I basically just try to
7 interview as many people as I can and get as many
8 different perspectives as I can in a situation, and I
9 also watch body language, and I reinterview to see if I
10 get the same story.

11 MR. TALNEY: So maybe in addition to the
12 consistency and the body language, you would add does it
13 match with other versions?

14 JUROR NO. 30: I try to see how much
15 consistency there is. If I have one person that is
16 quite a bit different than the others, I try to
17 reinterview that person a couple more times to see why
18 their story would be so different.

19 MR. TALNEY: So, you would want to look at the
20 other people involved and maybe determine if it's
21 consistent with the other evidence? Would that be a
22 fair way to put it?

23 JUROR NO. 30: Uh-hum.

24 MR. TALNEY: Juror number -- Sorry, ma'am. I
25 can't see your tag. 29? What do you think? What do

1 you use in your everyday life?

2 JUROR NO. 29: Well, my line of work, I
3 fortunately take a lot of history to come to some kind
4 of critical thinking, so I rely on that, background of
5 an individual.

6 MR. TALNEY: And I kind of started that
7 question out with how do you tell when somebody is
8 telling the truth and when somebody is lying. That's
9 kind of how we sometimes think of things in a courtroom.
10 It's black or it's white, truth or lie. Are there other
11 options besides truth and lie?

12 JUROR NO. 10: There are people who believe
13 they are telling the truth.

14 MR. TALNEY: Okay.

15 JUROR NO. 10: And it's not actually what
16 really happened.

17 MR. TALNEY: How does that happen?

18 JUROR NO. 10: I'll give an example, a problem
19 I had with a class that was doing a lot of talking.
20 They were assigned a report, and they all told me that
21 none of them were talking except for two, which
22 obviously wasn't the truth. I think that class is just
23 so used to talking, that if they whisper just a little
24 bit, they define it as not talking. So, they are
25 talking, but in their minds they believe they weren't

1 because they only said one or two things, and they
2 define talking as jumping all over the room or whatever.

3 MR. TALNEY: So they just had a different
4 definition.

5 JUROR NO. 10: Something like that.

6 MR. TALNEY: Okay. So, they weren't really
7 actively you didn't think lying, trying to deceive you?

8 JUROR NO. 10: No, I don't think they were
9 actively lying, but their parents thought I accused them
10 of lying because what they said was not the truth, but
11 they also believed what they were saying, I think.

12 MR. TALNEY: Juror number 9, what do you think
13 about that? Are there other options besides just truth
14 and lying?

15 JUROR NO. 9: I think there have to be --
16 We live in a gray line in much of our life, and as far
17 as what she was saying about people really believing
18 lots of times what is not in fact the truth, I have seen
19 that happen with a lot of people. I don't know why it
20 happens, but sometimes you want it to be something so
21 bad that you will convince yourself, and the longer you
22 keep at it, the more of truth it becomes. I have seen
23 it in a lot of people.

24 MR. TALNEY: Juror number 57?

25 JUROR NO. 57: I also think that people can

1 take a simple fact and then they start building on it as
2 they are talking and it starts elaborating into
3 something more because they want the people that are
4 listening to be interested or accept what they are
5 saying, so the more they see they are getting a reaction
6 to the story, they --

7 MR. TALNEY: They start out telling somewhat
8 of a similar story, all of a sudden they are the center
9 of attention, it's going well, and they just kind of
10 keep running with it?

11 JUROR NO. 57: Right.

12 MR. TALNEY: Juror number 33?

13 JUROR NO. 33: Back to being a parent, or
14 being a boss, that your role is to admonish an employee,
15 one of the techniques that I use is of course to see if
16 what they are saying fits the circumstances that
17 surround the act, or physical evidence, or documentary
18 evidence, some of those other things, because it may
19 turn out that what they say can't be supported by those
20 other things, one way or the other. That helps you
21 arrive at the truth, or at least whether or not what
22 they are telling you is believable.

23 MR. TALNEY: Have you ever had a situation
24 where that happens, where you just know what this person
25 tells you cannot be true because you know -- Let's say

1 they said it was sunny all day and you were standing in
2 the rain and you knew that it wasn't true, but they were
3 convinced that it was true. Have you ever had a
4 situation like that, where you thought they weren't
5 lying to you? You know what they told you couldn't be
6 true, but you didn't actually actively think that they
7 were lying about it?

8 JUROR NO. 33: You are asking me about that?

9 MR. TALNEY: Yes.

10 JUROR NO. 33: Well, again, that kind of
11 depends on the age. I know I have had a chip on my
12 shoulder when I was younger. They had convinced
13 themselves that they didn't do it, and in their mind
14 they don't think they are lying to me, but you know that
15 it's not the truth, so you have to separate the fact
16 that they don't think they are lying to you from what
17 the truth really is.

18 MR. TALNEY: How do you think that happens,
19 that they come to this conclusion that they think they
20 are telling you the truth?

21 JUROR NO. 33: Rationalization.

22 MR. TALNEY: Anybody else had that situation,
23 where they have told you something you know can't be
24 true?

25 Juror number 10?

1 JUROR NO. 10: I can't think of anything
2 specific offhand, but know that's happened with my kids
3 plenty. When a couple of them have a fight with each
4 other, it's very often one did do -- like I will find
5 the bite mark on the other one and the first one
6 insisted he didn't bite. Well, when I dig further, the
7 truth comes out, "Well, I only put my mouth on him and
8 squeezed my jaws a little bit," and they totally
9 redefine what they did, and I say, "Well, yeah, that's
10 what biting is," and they do -- like he said, they
11 rationalize it and they explain why the other one did
12 something where they absolutely had to put their mouth
13 and squeeze their jaws, because they didn't really bite
14 and they do believe it and they rationalize it.

15 MR. TALNEY: What about the situation where
16 the person just got it wrong? You know, they thought
17 that this happened, this is what they thought they saw,
18 but they just got it wrong?

19 Juror number 5?

20 JUROR NO. 5: Two people can witness the same
21 incident and have total different perceptions of what
22 they saw.

23 MR. TALNEY: Okay. What about the big lie? I
24 hope I don't destroy anybody's beliefs here, but
25 Santa Claus. Why do kids believe there's a Santa Claus?

1 JUROR NO. 11: Because we tell them there is.

2 MR. TALNEY: That's an easy one, right? We
3 tell them. Why else do you think? I mean --

4 JUROR NO. 13: Because they want to believe.

5 JUROR NO. 58: They see examples of Santa
6 Claus.

7 MR. TALNEY: They see the guys sitting in the
8 mall asking them what they want for Christmas.

9 JUROR NO. 33: Tradition. There's going to be
10 a reward for them at Christmas time.

11 MR. TALNEY: There's actual positive
12 reinforcement to the concept, right? I believe in Santa
13 Claus. My dad told me there was a Santa Claus. I sat
14 in Santa Claus's lap, and what do you think? Do you
15 know, in fact I actually got a present at the end.

16 JUROR NO. 57: And a picture.

17 THE COURT: What else do you think goes into
18 that?

19 Juror number 14, do you have any thoughts on that?

20 JUROR NO. 14: I think we all want to believe
21 in Santa Claus, so I think that's part of it, too.

22 MR. TALNEY: Okay. Some hopeful expectations?
23 I guess juror number 13, what do you think?

24 JUROR NO. 13: There is no Santa Claus.

25 MR. TALNEY: I am not saying whether there is

1 or there isn't. Mr. Wachter actually told me there was
2 no Santa Claus.

3 MR. WACHTER: Hey.

4 JUROR NO. 8: Remember the postal system.
5 It's never wrong.

6 JUROR NO. 13: I guess, why do we believe?

7 MR. TALNEY: Why do kids believe in
8 Santa Claus?

9 JUROR NO. 13: We reinforce it with other
10 ideas, that you better be good, and I guess we reinforce
11 it because it helps parenting I guess, probably, or
12 something like that, but I think it's just because it's
13 reinforced.

14 JUROR NO. 15: The simple fact of the matter
15 is, for both the parents and the children, it's fun.

16 MR. TALNEY: Okay. Absolutely. There was
17 kind of an interesting saying that happened just this
18 last Christmas actually, and after Christmas, my
19 daughter said --

20 MR. WACHTER: I object to personal stories.

21 MR. TALNEY: Okay. Did anybody have a
22 situation where your child after the fact said, "You
23 know, Dad, I knew there was no Santa Claus. I just
24 didn't want to tell you"? Anybody have that situation
25 where your child after the fact confesses to you they

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

already knew?

Juror number 8?

JUROR NO. 8: My sons enjoy it. They knew it was for their benefit.

MR. TALNEY: Okay. Why wouldn't he have told you, though, when he first figured it out?

JUROR NO. 8: Mom is an easier target than dad.

MR. TALNEY: Why do you think the child wouldn't just confess right away? Anybody have some thoughts?

Juror number 58?

JUROR NO. 58: They are going to make out better, 100 percent better if they keep it to themselves until after that holiday is over with.

MR. TALNEY: Do you think your child didn't want to disappoint you? Do you think that was part of it?

Juror number 9, I see you shaking your head.

JUROR NO. 9: Yes, I think so. I can remember being that age myself and not wanting to disappoint my grandparents. I saw them do it, but they were so excited for me that I just didn't want to break their heart.

MR. TALNEY: If the trial were about is there

1 a Santa Claus, how do you think you factor that in?

2 Juror number 11?

3 JUROR NO. 11: Well, we know the truth, so
4 maybe being up here, that's a little bit easier, but you
5 are going to hear somebody say, "Yeah, there's a Santa
6 Claus. I have got all the evidence. I have got
7 presents, the cookies were gone," whatever else. I
8 think we just have to weigh what we know. Since we know
9 there's no Santa Claus, there cannot be a Santa Claus,
10 that's the truth.

11 MR. TALNEY: So, you compare some of that with
12 other things that you might be able to tell are true I
13 guess.

14 JUROR NO. 11: Absolutely.

15 MR. TALNEY: Juror number 23, do you have any
16 thoughts?

17 JUROR NO. 23: I just have a hard time
18 separating that question because I know that's not why
19 we are here, so for Santa Claus, yeah. I don't know if
20 I can answer that really.

21 MR. TALNEY: That's fair enough.

22 One of these things that we already talked about a
23 little bit is a presumption of innocence, and let me
24 come back to that; that any defendant, no matter what it
25 is, is presumed innocent until proven guilty beyond a

1 reasonable doubt. And so as Mr. Stockwell sits here,
2 he's presumed innocent.

3 Juror number 31, is that a good thing or a bad
4 thing?

5 JUROR NO. 31: Well, as we discussed a little
6 bit before, I think it's a good thing because the
7 alternative to that is a very bad thing. We start --
8 Our system of justice is based on that. Other systems
9 in the world aren't, but they are noted for not having
10 much justice and respect for individual rights. And I
11 think some people say the jury system, sure, has its
12 faults, but it's the best system that there is. So, not
13 being 100 percent accurate may not always be the best
14 thing, but I think it is the best.

15 MR. TALNEY: Juror number 29, what do you
16 think about that? Is that a good thing that we have in
17 our system, or is it a bad thing?

18 JUROR NO. 29: Definitely. I think that's
19 been proven through the generations that our --
20 especially this justice system was established here in
21 America, definitely contributes to our democracy, that
22 control doesn't go to just one particular arena. So
23 yes, I do.

24 MR. TALNEY: Sir, I can't see your number.
25 Are you 27 or 28? 27. What do you think about that?

1 JUROR NO. 27: Well, if he was -- say he was
2 presumed to be guilty, what would we be doing here?

3 MR. TALNEY: We could have saved a lot of time
4 I guess. What about in the context of this case?

5 Juror number 41, did you have a reaction when you
6 heard that the charge was child molest?

7 JUROR NO. 41: I did. I guess it's small
8 shock, typical reaction when you hear that sort of
9 thing.

10 MR. TALNEY: Sure. I don't think you would be
11 human if you didn't have some kind of reaction to it,
12 realizing this is what you were going to be discussing
13 for the next few days. How does that, this presumption
14 of innocence, though -- and do you think that's a
15 difficult thing to keep in mind when the charge is
16 something like child molest?

17 JUROR NO. 41: I don't think so. I don't
18 think so. I think it doesn't really matter what the
19 charge is. I think the principle has worked this long
20 and it's a good thing, and I don't think that if it was
21 a child molestation or bank robbery or not paying,
22 innocent until proven guilty is the right thing.

23 MR. TALNEY: Juror number 45, sir? What do
24 you think about that?

25 JUROR NO. 45: I am just listening.

1 MR. TALNEY: Presumption of innocence. Do you
2 think that's a good thing or bad thing?

3 JUROR NO. 45: No opinion.

4 MR. TALNEY: You don't want to say anything in
5 the forum today?

6 JUROR NO. 45: (Shakes head.)

7 MR. TALNEY: Is there something about the
8 charge that just makes you not want to talk?

9 JUROR NO. 45: I just want to listen.

10 MR. TALNEY: It's somewhat important that we
11 try and get your attitudes. Would you call yourself a
12 private person?

13 JUROR NO. 45: Me?

14 MR. TALNEY: Yes.

15 JUROR NO. 45: I am alive.

16 MR. TALNEY: Is there a specific reason why
17 you wouldn't like to share anything with us today?

18 JUROR NO. 45: Because I haven't been in court
19 for a long, long time, 40 or 50 years. I am just
20 listening to kind of learn.

21 MR. TALNEY: Well, you might have some
22 experiences that would help educate the rest of us
23 potentially.

24 Juror number 46, what do you think about that, this
25 presumption of innocence?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 46: Seeing is believing.

MR. TALNEY: What do you mean by that?

JUROR NO. 46: It's pretty obvious to me that we're going to be introduced to variations of doubt here and we may have to make a decision based on the pure evidence provided. That's what I mean.

MR. TALNEY: Do you think it's difficult to maintain that presumption of innocence in a child molest case?

JUROR NO. 46: Not right now, and hopefully after this is over I could still say the same thing.

MR. TALNEY: Juror number 48, what do you think?

JUROR NO. 48: I think it's at least as important in this kind of a case to keep that in mind because what's at stake is so much greater than perhaps lesser charges.

MR. TALNEY: Juror number 49?

JUROR NO. 49: I think it's important to maintain a balance. Justice is supposed to be a matter of balance. The state has a role to maintain peace and stability in society, and they present to us people who are accused of supposedly committing some crimes. It's important that we give some room for doubt for the person who has been accused of some crime; otherwise,

1 it's easier for those who have the power to carry out
2 justice in as short as possible time. On the other
3 hand, the innocence, if we presume that one party is
4 innocent, then the other party has got to demonstrate
5 that the crime was committed. That demonstration is
6 through evidence. That really restores the balance of
7 power in this case. The accused doesn't really have as
8 much power as the state. To try and restore that
9 balance, the state has to demonstrate to us that the
10 crime was committed.

11 MR. TALNEY: Okay.

12 THE COURT: You have three more minutes.

13 MR. TALNEY: Thank you, Your Honor.

14 Who had -- I think we talked to some of you
15 individually already, but who had a very strong reaction
16 when they heard what the actual charge was that you were
17 going to be dealing with today?

18 Juror number 14? This concept of presumption of
19 innocence, that Mr. Stockwell as he sits here today, you
20 haven't heard any evidence, so he's presumed innocent
21 until proven guilty. How do you think intellectually
22 you do that, even though you have a strong reaction?

23 JUROR NO. 14: Well, actually my first
24 reaction was I didn't know which one of you was the
25 defendant, so I couldn't really form a judgment one way

1 or the other by appearances. I didn't form any judgment
2 at the start, and I still haven't formed any judgment
3 one way or the other.

4 MR. TALNEY: Okay. Juror number 15, the same
5 to you. Do you think you will be able to maintain that
6 presumption of innocence for Mr. Stockwell?

7 JUROR NO. 15: I think so. Again, I would
8 agree with 14, that when we came in, I didn't know who
9 the defendant was when the statement was made. I had
10 strong feelings about the subject, but that doesn't
11 necessarily mean that I can't look at that person and
12 think that they are innocent until the prosecution
13 proves otherwise.

14 MR. TALNEY: So, maybe just recognizing that
15 you have the reaction when the charge is read, that
16 then, you know, putting your mind to work, and thinking,
17 well, this is what's required of me, you can separate
18 the two?

19 JUROR NO. 15: I think I probably can.

20 MR. TALNEY: Does anybody think that they
21 can't do that? Just because of the nature of the
22 charge, the presumption of innocence just isn't
23 something that you are going to be able to fulfill?

24 Thank you, Your Honor.

25 THE COURT: We're going to take afternoon

1 recess at this time. This will be about a 15-minute
2 recess. If you want to follow Ms. Lougheed.

3 (The prospective jurors left the
4 courtroom.)

5 THE COURT: We'll be at recess for 15 minutes.

6 (Court recessed.)

7 THE COURT: You each have 30 more minutes, so
8 we will start with Mr. Wachter.

9 MR. WACHTER: Thank you, Your Honor.

10 MR. TALNEY: Actually, Your Honor, there is a
11 couple of things I would like to put on the record. I
12 believe it was juror number 45 who refused to respond to
13 my questions. I believe he was actually asleep when I
14 first asked him the question, and the response he did
15 give actually didn't seem to really fit the question I
16 asked. I think I asked him whether there was a reason
17 he didn't want to share with us, and his response was,
18 "I haven't been in court for 40 or 50 years." I would
19 challenge him for cause. It doesn't appear that he was
20 paying any attention or would be willing to discuss and
21 deliberate with the other jurors.

22 THE COURT: Did you have an opinion on that?

23 MR. WACHTER: I don't know what to make of
24 him, but I agree with Mr. Talney's characterization that
25 he didn't seem to want to participate. I never saw him

1 raise a hand to questions, and his answer was -- he was
2 not only nonresponsive, it was nonsensical. I don't
3 know whether there's some issue of capacity, or whether
4 he's -- my wife calls me a curmudgeon. I don't know.

5 THE COURT: He's odd, his response was. I
6 couldn't tell if he was sleeping or not.

7 MR. TALNEY: His eyelids were closed.

8 THE COURT: Okay. What's the other matter? I
9 can excuse him.

10 MR. TALNEY: The other one was an earlier
11 issue. Juror number 24, an older gentleman sitting in
12 the front row on the right, when Mr. Wachter was asking
13 him questions --

14 THE COURT: Let me just --

15 Kathy, we're going to excuse juror number 45.
16 Excuse him and thank him.

17 (Juror No. 45 was excused.)

18 MR. TALNEY: He was talking about the case
19 being a child molest case, and he started to cry. We
20 did not individually voir dire that individual, but when
21 discussing the subject of child molestation -- and I do
22 not remember the specific question. I think it was
23 Mr. Wachter talking about your reaction to hearing the
24 charges.

25 THE COURT: Didn't he recovery pretty quickly?

1 MR. TALNEY: He has certainly participated
2 since then, but when actually having to discuss child
3 molestation, he actively began to cry in court, and I
4 would challenge him for cause.

5 MR. WACHTER: Your Honor, I didn't see it.
6 Certainly if Mr. Talney wants to inquire of him
7 individually, or otherwise, that's appropriate.

8 THE COURT: Let's do that I guess, bring juror
9 number 24 in. That's probably the fastest way.

10 (Juror No. 24 entered the courtroom.)

11 THE COURT: Mr. Arnold, if you want to take a
12 seat in the front row there.

13 We just wanted to check in with you. The attorneys
14 observed you had a pretty emotional response to one of
15 the questions they asked about child molestation, and
16 are you -- do you have some strong feelings one way or
17 the other, or feeling uncomfortable with the subject?

18 JUROR NO. 24: Just to hear it I think was a
19 shock. It's -- I have been raised mostly in the Asian
20 country, and my family, over there, they go -- my kids
21 grew up where they didn't -- they had clothes, but the
22 rest of them, they run around no clothes and there was
23 nothing. Get back in the United States here, and
24 everything seems to be reversed. It's a little
25 shocking.

1 THE COURT: Are you feeling okay about being a
2 juror?

3 JUROR NO. 24: Oh, yes. It will be no
4 problem.

5 THE COURT: Let me ask if the attorneys have
6 any questions they want to ask.

7 MR. WACHTER: I don't have any questions, Your
8 Honor. Thank you.

9 THE COURT: Mr. Talney?

10 MR. TALNEY: Sir, you did appear to have an
11 emotional reaction to having to discuss the topic. Do
12 you think that's going to affect how you see the
13 evidence or anything like that?

14 JUROR NO. 24: No. I think most of it, you
15 know, I think all human beings are going to be -- once
16 you hear something like that, wouldn't be normal, in my
17 feelings, you know. No, I believe I can handle it. It
18 would be no problem in that.

19 MR. TALNEY: I don't have any further
20 questions, Your Honor.

21 THE COURT: Okay, good. Then you can step
22 back outside and we'll bring the panel in. Thank you.

23 (Juror No. 24 left the courtroom. The
24 remaining prospective jurors returned
to the courtroom.)

25 THE COURT: Mr. Wachter, you may continue.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. WACHTER: Thank you, Your Honor.

Good afternoon, everyone. Welcome back. Thank you for your continued patience. We are making progress, believe it or not.

So, if a child believes in Santa Claus or the Easter Bunny or the Tooth Fairy -- No, I didn't tell Mr. Talney that there's no Santa Claus. If a child believes any of those things, is that child less credible telling you about something really serious? Does anybody think there's anything to that? Is the child less credible? No response? Okay. Heads shook no.

We talked about the system. Mr. Talney asked you about why we have a standard of beyond a reasonable doubt, and I heard a few of you talk about it in terms of if there is a doubt, then we have to find not guilty. I want to ask you, in your mind is there a difference between "a doubt" and "a reasonable doubt"? Is there any difference between those two ideas? Anyone.

Juror number 34.

JUROR NO. 34: Yeah, a big difference.

MR. WACHTER: What does it mean to you?

JUROR NO. 34: A little bit of doubt. Beyond a reasonable doubt to me means pretty much believe what you have seen.

1 MR. WACHTER: Who else? Juror number 23?

2 JUROR NO. 23: I think along the lines of how
3 he was using, like a percentage, so it's not just 51
4 percent, it's much higher than that. I visually can
5 sort of see that, so definitely he's not close, it's
6 quite over, above.

7 MR. WACHTER: You understand that -- Please
8 keep your voices up.

9 You understand that we won't assign a percentage to
10 this idea.

11 JUROR NO. 23: That helps me in my mind sort
12 of figure that out.

13 MR. WACHTER: Juror 15?

14 JUROR NO. 15: I think, most of the things we
15 do in life there's always a doubt. You investigate
16 around when you buy a car, but you are left with always
17 this little doubt that, "Should I have gone for that
18 other model that was on sale?" but, you know, reasonably
19 you think, "I made the right decision." And I kind of
20 make that analogy, because we are dealing with -- it's
21 life. Everything we do, I think to a certain extent we
22 always have a doubt of one form or the other. I think
23 in the case of the burden of proof in this particular
24 case, would a reasonable person either doubt it or not
25 doubt it, and that's something we each have to make a

1 decision on in our own minds about. There's no -- as
2 you say, you can't assign a percentage or anything to
3 it.

4 MR. WACHTER: Thank you.

5 Juror number 11, what do you think? I am going to
6 pick on you.

7 JUROR NO. 11: I made a comment.

8 MR. WACHTER: You made a comment. Tell us
9 what you think of my question?

10 JUROR NO. 11: There is definitely a
11 difference. Yeah, there might be a little doubt, but if
12 you can -- I think when it says reasonable doubt, it has
13 to be something that is enough to give the benefit to
14 the defendant. It couldn't be a little random thing, it
15 has to be enough, and where that enough comes from I
16 guess is our own interpretation.

17 MR. WACHTER: Juror number 12, what do you
18 think? Is there a difference?

19 JUROR NO. 12: Yes, sir. I doubt if I can
20 curl 25 pounds, but beyond a reasonable doubt I cannot
21 press 315 pounds because I have not worked out in over a
22 year. So, there is doubt and reasonable doubt.

23 MR. WACHTER: What do we have to prove? Does
24 the state have to prove each and every fact that gets
25 discussed, or does the state have to prove elements of a

1 crime? What do you walk in here thinking? Put another
2 way, is the jury asked to be like a fact-finding
3 commission to delve into every last detail and determine
4 what the answer is, or is the jury asked to determine
5 whether the state has proven the elements of the crime?
6 Which is it?

7 JUROR NO. 33: The second.

8 JUROR NO. 24: The state -- the jury I think
9 would have to make sure that the state made the right
10 decision finding whether he's guilty or not, whatever
11 the crime was.

12 MR. WACHTER: Juror number 41, what is your
13 response to my question? Are you asked to find the
14 answer to every last little fact talked about in here,
15 or is it about whether the state has met its burden to
16 prove elements of a crime?

17 JUROR NO. 41: I think the latter, and I don't
18 think that the state needs to prove each little element.
19 I am paraphrasing what you are saying. I think the big
20 picture is what's important, not every little detail.

21 MR. WACHTER: Okay. Is it possible for
22 instance that the state can present evidence and you
23 don't wind up knowing the specific day of the week that
24 a crime happened on? Does that matter to you if the
25 case is charged over a long range of time? Anybody get

1 hung up on that if you weren't able to pinpoint, okay,
2 this happened on this day? No response?

3 JUROR NO. 48: I am going to say no,
4 especially a child. It could be over a long period of
5 time.

6 THE COURT: 48, what do you think about that?
7 How specific does the state have to prove its case? Is
8 it about proving the elements of a crime, or is it more
9 specific than that, that we have to prove every single
10 fact discussed?

11 JUROR NO. 48: Overall, for me it has to do
12 with proving the elements of the crime, but of course if
13 there are enough specific details that are in conflict
14 or left unproved, then that creates an element of doubt.

15 JUROR NO. 47: If I may add, we are getting to
16 the reasonable doubt thing again, and I guess, never
17 serving as a juror before, I am going to assume that's
18 something that we do as a jury on our own. Is that
19 true? Prove that reasonable doubt? Am I supposed to
20 ask a question? Is that okay?

21 MR. WACHTER: I can't answer many questions in
22 this process, but you are charged with determining
23 whether the state has proven its case, and you will have
24 reasonable doubt defined for you. You will go through a
25 deliberation process and nobody can tell you exactly how

1 that is going to go. You may look at different issues
2 and say, "Does this raise a reasonable doubt?" Does
3 that make sense?

4 JUROR NO. 46: Yes, it does. That's something
5 we will do on our own.

6 MR. WACHTER: Juror number 48, have you been
7 on a jury before?

8 JUROR NO. 48: No, I haven't.

9 MR. WACHTER: Do you feel comfortable with the
10 idea that you may not know everything with precision,
11 but you might be able -- might be satisfied that the
12 state has met its burden of proof?

13 JUROR NO. 48: Yes.

14 MR. WACHTER: Juror number 49, what do you
15 think about that question?

16 JUROR NO. 49: I agree. My decision is going
17 to be based primarily on what is presented here, not
18 what I am imagining or what I would like to be
19 presented. So, if there's any questions, I would expect
20 the defense to bring those out, to challenge what is
21 being presented. My decision is what I see or hear.

22 MR. WACHTER: Thank you.

23 I want to ask you a little bit about the issue of
24 evidence. Juror number 20, you were on a jury with a
25 sexual allegation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 20: Right.

MR. WACHTER: Did you hear from someone who was labeled a victim, who is named as the victim?

JUROR NO. 20: Yes.

MR. WACHTER: Did that person testify?

JUROR NO. 20: Yes.

MR. WACHTER: Did you hear from many other witnesses?

JUROR NO. 20: There was quite a few. It's been a few years back, but it was all surrounding a party and there was people that were in the party and everything, and some of them gave statements.

MR. WACHTER: Okay. Did you ever come to a point in your deliberations where you thought to yourself, "Gee, I wish we just had this additional piece of evidence. I just wish we knew or somebody had looked into that one more thing"?

JUROR NO. 20: Well, there were certain points in it that I wished could have been changed, but I think we made the right decision, from what the judge gave us instructions to do.

MR. WACHTER: If you are a member of this jury, and you are wishing that there might have been some other piece of evidence out there, something else presented, something else looked into, does that

1 automatically raise a reasonable doubt for you? I am
2 not asking you to forecast your verdict. I am asking
3 whether that automatically raises some reasonable doubt
4 for you.

5 Juror number 3?

6 JUROR NO. 3: I will say no, but what was the
7 question exactly again?

8 MR. WACHTER: Boy, if there is some issue that
9 you just thought, "Gee, I wish that this had been looked
10 into or I wish this had been presented," does that
11 automatically raise a reasonable doubt?

12 JUROR NO. 3: No, because I don't think that's
13 our job to find the evidence. I think it's you find the
14 evidence, and then you have to probably send it to the
15 defense attorney, and he argues it back and forth, and
16 that's your guys' job. We are here to listen to it and
17 you put forth to us.

18 MR. WACHTER: Is there anyone here who thinks
19 this kind of a process, the jury trial, should be about
20 holding the state or the police or the authorities to
21 some sort of standard of perfection? Think about that.

22 Juror number 52, I haven't spoken with you very
23 much. Do you think that the state should be held to
24 some -- to a standard of perfection in a criminal case?

25 JUROR NO. 52: No. I think that facts that

1 they gather is what they have to present.

2 MR. WACHTER: Thank you.

3 You were questioned about the presumption of
4 innocence. Now, let me give you a hypothetical in a
5 totally unrelated case. Let's suppose you have a bank
6 robbery, and it's a modern bank with modern surveillance
7 gear and the films are running correctly, and these bank
8 robbers forget about the mask part. In other words,
9 they are in there without masks. That kind of evidence
10 is presented. Is there still a presumption of
11 innocence, even after you have seen that kind of
12 videotape?

13 Juror number 31?

14 JUROR NO. 31: Yes.

15 MR. WACHTER: Why?

16 JUROR NO. 31: Because there could be many
17 circumstances that actually would result in that person
18 having his photograph being taken. I kind of remember
19 Patty Hearst. I don't know if you remember that, way
20 back. That's an example.

21 MR. WACHTER: Okay. Who else? Juror 33?

22 JUROR NO. 33: Sometimes I have seen those
23 kind of footages before, and sometimes, yeah, you see
24 this person in there, but it isn't real -- the face
25 isn't real clear. It kind of looks like them, but it

1 might not be them.

2 MR. WACHTER: You are kind of expanding on my
3 example here, but fair enough. I guess the question I
4 would have for you, is it like a process of keeping
5 score, where you have got two teams and you are kind of
6 keeping score along the way, or do you suspend judgment
7 until the end? Which is it?

8 JUROR NO. 3: The second.

9 MR. WACHTER: Is that the sensible way to look
10 at the presumption of innocence here? He's presumed
11 innocent through the evidence, through the argument, and
12 only until such time you are in deliberations and you
13 find the state has met its burden of proof. Does that
14 make sense to everyone?

15 JUROR NO. 3: Yes.

16 MR. WACHTER: Does it make sense? It's almost
17 the flip side of the state's burden of proof. We must
18 prove a case beyond a reasonable doubt; ergo, he is
19 innocent until we do so. Is there anyone who disagrees
20 with that characterization of our system?

21 How many of you hearing that this is an allegation
22 of child molestation expect that you are going to hear
23 from a police officer on the stand? Just walking in the
24 door you think you might?

25 Juror number 12, how come?

1 JUROR NO. 12: Why do I suspect there would be
2 a police officer?

3 MR. WACHTER: Right.

4 JUROR NO. 12: Due to the case, it has to be
5 investigated by the police department itself because it
6 is a crime.

7 MR. WACHTER: If I don't present a police
8 officer, or if the state doesn't call a police officer
9 to the stand, will you be surprised?

10 JUROR NO. 12: Yes, sir, I probably would be.

11 MR. WACHTER: If you heard there was a law
12 enforcement investigation that occurred, that I still
13 don't call the police, will you be surprised?

14 JUROR NO. 12: Probably not.

15 MR. WACHTER: Who else has a reaction to my
16 question? Both of them.

17 Juror number 31?

18 JUROR NO. 31: Well, I was thinking that in
19 this kind of a circumstance, you would call a police
20 officer if they had direct knowledge of something that
21 was trying to be proven and presented, but
22 after-the-fact investigation conducted by a police
23 officer doesn't really mean that it's direct knowledge,
24 so unlike say a traffic accident or something where they
25 directly participate in the circumstances of the

1 incident, I could see where you may not call a police
2 officer.

3 MR. WACHTER: I am not forecasting one way or
4 the other. I just wonder if anyone had some
5 predispositions about that issue. Anybody else have
6 something to say about that issue?

7 Juror 34?

8 JUROR NO. 34: I wouldn't be surprised if a
9 police officer didn't testify, but if the second part of
10 your question was if there was evidence presented about
11 an investigation, then I would expect that someone would
12 under oath attest to the fact that they did the
13 investigation. It just wouldn't be presented and say,
14 "Here, you have got to believe this report."

15 MR. WACHTER: Okay. Anybody else on that?
16 Thank you.

17 You probably notice that there are two individuals
18 here who have the title deputy prosecuting attorney. Is
19 there anyone who makes anything out of that fact, that
20 you may see Mr. Witt and myself handle different
21 portions of the trial? No response?

22 I want to ask you a few questions about children
23 and lying. If a child tells a lie, why does a child do
24 that? I am asking you in the most general sense, but
25 what prompts a child to tell a lie?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 3: Attention.

MR. WACHTER: You can't all respond at once.
One at a time. Who wants to go first?

JUROR NO. 27: Doesn't want to get in trouble.

MR. WACHTER: Who else?

JUROR NO. 3: Wants attention.

MR. WACHTER: Wants attention. Who else?
Juror 57?

JUROR NO. 57: Wants something.

MR. WACHTER: Wants something. Can you be
more specific?

JUROR NO. 57: My son when he was younger, he
made up this big story about how he went to school and
during recess, he was in charge of the balls, and one
got away from him and he was going to be in trouble, and
he was putting on this big act, you know, for me, and I
felt really bad and I was going, "Don't worry about it.
We'll buy a ball," and so I said, "Do you want some milk
and some cookies?" and, "Yeah, yeah, yeah," and I gave
it to him, and the next day he was all smiles. He said,
"Boy, I got you, Mom," because there was a rule that he
couldn't have milk and cookies after seven because he
wet the bed, and he said, "I got you. I wanted that
milk so I made up a story." I thought, wow, talk about
being manipulated.

1 MR. WACHTER: Okay. Anybody at some point or
2 another felt like they had been manipulated by a child
3 in that kind of setting? Lots of nods.

4 Did I see a hand over here? Juror number 2?

5 JUROR NO. 2: I was just going to say, they
6 often lie when they don't want to have to tell the
7 truth. It's just, you know, not that they would
8 normally lie, but I think sometimes kids do because they
9 don't want to have to tell what really happened.

10 MR. WACHTER: Juror number 10, did I see your
11 hand?

12 JUROR NO. 10: Kids could lie for revenge,
13 power over someone.

14 MR. WACHTER: Juror number 13, what do you
15 think about my question?

16 JUROR NO. 13: Other reasons that kids lie?

17 MR. WACHTER: Yes.

18 JUROR NO. 13: Sure. A lot of reasons that
19 have already been mentioned. Sometimes it's easier to
20 tell a lie than to tell the truth so you don't get asked
21 a bunch more questions, or just makes -- some people lie
22 to make it easier on themselves.

23 MR. WACHTER: Anybody else? Juror number 29?

24 JUROR NO. 29: They may lie to protect
25 somebody else.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. WACHTER: What do you mean by that?

JUROR NO. 29: Um, if for example they are trying to protect their brother or sister, you know, from getting into trouble, they might lie themselves, so that if they are being queried about the situation that might involve their brother or sister for example, they might want to not get them in trouble so they will lie to keep them out of trouble.

MR. WACHTER: Juror number 5?

JUROR NO. 5: Possibly to preserve their own dignity. They may lie if they are embarrassed by a situation which is kind of a double-edged sword.

MR. WACHTER: Is that another -- that is kind of a variation on the keep out of trouble.

JUROR NO. 5: Probably more being embarrassed by something that they did, and know that it was wrong, but didn't want that.

MR. WACHTER: Juror number 20, do you have any other ideas on what prompts kids to lie?

JUROR NO. 20: No. They all do it for different reasons I guess. I have had five of them and they are all different.

MR. WACHTER: We have pretty much established that kids operate differently.

JUROR NO. 20: Right.

1 MR. WACHTER: There's a word that we use
2 called motive. That's kind of a legal word. You don't
3 usually talk in your everyday conversations and say,
4 "Well, that person's motivation is this," or if a
5 door-to-door salesman comes along, you don't necessarily
6 say -- it's obvious that the person has an agenda, a
7 reason for being there, but you don't say that's their
8 motive. Is motive fair game in a jury trial? Do you
9 think that's fair for us to talk about?

10 Juror number 1?

11 JUROR NO. 1: I believe so.

12 MR. WACHTER: How come?

13 JUROR NO. 1: Because there may be a reason
14 behind what they are doing that would be their motive.
15 Everything is driven by a motive in one way or another.

16 MR. WACHTER: Do you think that every kid or
17 every young child who lies has some motive behind it?
18 Short of a child who happens to have a mental illness,
19 but otherwise, do you think motive usually plays a part?

20 JUROR NO. 1: I think any motive in that case
21 would be fear. I mean just bottom line would be fear.

22 MR. WACHTER: Can you explain?

23 JUROR NO. 1: Fear of prosecution, fear of
24 getting in trouble. What other people have been saying;
25 fear of getting others in trouble, same as others have

1 been saying.

2 MR. WACHTER: How about something as serious
3 as the issue of child molestation? Do you think motive
4 is also a fair thing to talk about?

5 Juror number 49?

6 JUROR NO. 49: Yes, I think it is.

7 MR. WACHTER: Why is that?

8 JUROR NO. 49: To connect an act, evidence,
9 there is a need to establish something like motive.
10 Otherwise, we do not make sense why such an act was
11 committed. We are looking at preponderance of evidence,
12 a number of circumstances.

13 MR. WACHTER: I am sorry.

14 JUROR NO. 49: If it comes down to a single
15 act, and we are going to make our decisions based on
16 that one act of behavior, it would help to perhaps have
17 some motive established.

18 MR. WACHTER: There may be crimes in this
19 world for which it's hard to know what the motive is.
20 Do you agree or disagree with that statement?

21 JUROR NO. 49: I agree.

22 MR. WACHTER: My question is mostly, should we
23 evaluate motive when it comes to a child's testimony or
24 a child's statements? Do you think that's something we
25 can -- we should look at in this context of a child

1 molestation allegation?

2 JUROR NO. 49: A child's evidence as opposed
3 to a child's molestation case in general. We evaluate
4 the child's evidence.

5 MR. WACHTER: Understanding that a child is
6 talking about the subject of a sexual assault --

7 JUROR NO. 49: Right.

8 MR. WACHTER: -- is it fair to evaluate motive
9 in that context?

10 JUROR NO. 49: Not necessarily.

11 MR. WACHTER: Juror 31?

12 JUROR NO. 31: I think that it gets to
13 discussing the credibility of what you hear, what a
14 witness says, and unless there's some other obvious
15 reason why credibility can be established or not, then
16 it may serve to decide -- to help one decide whether the
17 witness is credible, to understand what the motive might
18 be for saying what they say. So, I think that it's
19 certainly fair ground to explore.

20 MR. WACHTER: Thank you.

21 Juror number 32, what do you think of the question?
22 Is motive fair ground when you are talking about a
23 child's statements about this subject?

24 JUROR NO. 32: No, I don't think they
25 necessarily have a motive. I guess it would depend on

1 the age of the child. I think most of them, I would
2 hope, wouldn't be making up something.

3 MR. WACHTER: Anybody else have thoughts on
4 the subject?

5 Juror number 8?

6 JUROR NO. 8: What is the legal definition of
7 motive?

8 MR. WACHTER: I will give you a generic
9 definition that you may -- you can or may or may not
10 have a reason to do something.

11 JUROR NO. 8: I can accept that then. Motive
12 is everything we do; breathing, walking, talking.
13 There's a motive for everything. There's a reason for
14 it.

15 MR. TALNEY: Juror 31, when we were last
16 talking before the lunch break, I asked some questions
17 about the issue of a child interviewer and you mentioned
18 that you would maybe have a little bit of concern
19 because that in this instance, the person is employed by
20 the prosecutor's office. Tell us a little bit more
21 about that.

22 JUROR NO. 31: Well, actually, I spent a lot
23 of years working for the government, and I understand
24 how bureaucracies can sometimes influence the way
25 employees that work for a bureaucracy think, and so what

1 I told you is that I would have reason to question the
2 objectivity of that. That doesn't mean that I would
3 discount the objectivity necessarily, but I would at
4 least -- it would occur to me that I would need to have
5 sufficient evidence to convince me that somebody that
6 works for the prosecutor's office is in fact conveying
7 an objective story rather than one that's maybe shifted
8 a little bit one way.

9 MR. WACHTER: What would you be listening --
10 Excuse me. Was there another comment?

11 JUROR NO. 23: My chair.

12 MR. WACHTER: Your chair growled.
13 What would you be listening for?

14 JUROR NO. 31: Well, one of the things is -- I
15 think you mentioned this later -- is how much
16 interpretation is there versus actual quotation. I
17 think that even though most of us aren't child
18 psychologists, we would be more comfortable with a
19 direct relation or a direct accounting of what the child
20 said, then we can interpret what that means, rather than
21 having other people tell us what it means. Even though
22 experts of course need to be listened to, if all I am
23 hearing is interpretation rather than actual quotes,
24 then that would increase my amount of doubt.

25 MR. WACHTER: Would you listen to the person's

1 credentials?

2 JUROR NO. 31: Certainly.

3 MR. WACHTER: Would that make any difference
4 to you in determining whether the testimony was biased
5 or partial?

6 JUROR NO. 31: I think credentials matter,
7 yes.

8 THE COURT: Mr. Wachter, you have about three
9 more minutes.

10 MR. WACHTER: Thank you, Your Honor.

11 You probably can tell that I would be able to ask
12 you questions for a very long time, and I won't.

13 Is there anybody else who had other thoughts about
14 this issue that I brought up, the child interviewer you
15 will hear from is employed by my office? Any other
16 reactions on that one?

17 We've talked a long time. I know it seems like you
18 have sat there for a while. In the course of that time,
19 is there anything else that has come to your minds,
20 something else that we should know about you, your life
21 experiences, that you think would bear on this trial,
22 your ability to serve? Is there anything else? No
23 response.

24 I thank you all very much for your candor.

25 THE COURT: Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Mr. Talney.

MR. TALNEY: I am going to follow up on some of the points Mr. Wachter was talking about. He talked about in this concept of the prosecutor has to prove the case beyond a reasonable doubt, what are you going to really require him to prove, is it going to be the minutiae or the elements of the case, and certainly the court is going to give you instruction on exactly what the prosecutor has to prove.

And maybe I will steal his hypothetical perhaps on the bank robbery. And one of his questions were, if you had a thought in your mind that, "Gosh, I wish they would have done X," does that necessarily create a reasonable doubt? And I think everybody agreed that in a hypothetical situation, wondering about X might not create a reasonable doubt, but if we spin that into his hypothetical; okay, bank robbery, photograph, video. Let's pretend it's actually a good photograph of the person running out of the bank. Okay. Now, if we are talking about minutiae, well, maybe you might be wondering, "Hey, did they get a spot of his DNA as he was running out of the bank? Then we would know for certain that it was him." I would imagine everyone would think that, okay, that might be a good thought, an additional thing, but it might not have much to do with

1 the actual bank robbery that was witnessed. But what if
2 you thought that the thing that X didn't happen was they
3 never went and got the photograph, the video from the
4 bank, and there was a real question in your mind about
5 whether or not this was the specific individual that did
6 the crime.

7 Juror number 11, if X is now they didn't go and get
8 the video to show you the pictures, in that scenario,
9 does that create a reasonable doubt for you?

10 JUROR NO. 11: Absolutely. It depends. Like
11 the first question was asked by Mr. Wachter, if
12 something was left out that you wanted in there that you
13 were worried about, would that leave a reasonable doubt,
14 it depends on what's left out. If it's something little
15 or no big deal, no, it's not a reasonable doubt. If
16 it's something that to you was big and we needed to know
17 that, yes, it's reasonable doubt.

18 MR. TALNEY: Would everybody agree that it
19 just depends on what the evidence might be, I guess,
20 that was either included or excluded? Does everybody
21 agree with that? You can't tell now because you haven't
22 heard anything about the case I guess. Right? Okay.

23 So, a doubt might be created in your mind both by
24 the evidence that is presented or the evidence that
25 isn't presented, and you will get an instruction

1 specifically from the court on how you factor those
2 things in. So, like many things about this process, you
3 get more information later on.

4 So, one of the things Mr. Wachter also brought up
5 is that it's the state's burden to prove the case beyond
6 a reasonable doubt, and I think we have talked about
7 that quite a bit now. I want to look at it at kind of a
8 different angle. It's solely the prosecutor's burden to
9 prove the case, and there's never a burden on the
10 defense to present any evidence. In fact, you might
11 have preferred it, but I could have sat silently during
12 the entire trial. Maybe I would not have opened my
13 mouth even to introduce myself to you. You probably
14 thought it would have been pretty weird, but if at the
15 end of that process, the trial is over, I still haven't
16 said anything, if the case hadn't been proved beyond a
17 reasonable doubt by Mr. Wachter, could you find the
18 individual not guilty?

19 Juror number 8?

20 JUROR NO. 8: Yes.

21 MR. TALNEY: What do you think about that
22 process? Would you agree that that's the way our system
23 is set up?

24 JUROR NO. 8: It's giving the best opportunity
25 to the defendant.

1 MR. TALNEY: What do you think about that, the
2 fact that I could sit absolutely silently, I don't have
3 to present any evidence, and it would be Mr. Wachter's
4 complete burden to try and prove the case to you?

5 Juror number 33, what do you think about that? Is
6 that a good thing or a bad thing?

7 JUROR NO. 33: I think it's bad for the
8 defendant for your side not to try to refute some of the
9 evidence. That's what would be bad about it. I mean,
10 it's an adversarial process. Yes, we understand they
11 have to do it beyond a reasonable doubt, but your job is
12 to create reasonable doubt.

13 MR. TALNEY: Certainly strategically it might
14 be foolish for me not to say hello to you when I come in
15 here or have asked you some questions, but what about
16 the fact that if he doesn't prove it, I don't have to
17 say a word?

18 Juror number 34, what do you think about that?

19 JUROR NO. 34: That's the way it goes.

20 MR. TALNEY: You might be sitting there
21 thinking, they are digging a hole deeper and deeper and
22 we are just fine, or they don't have much evidence. You
23 have seen the evidence I assume. Sometimes I don't say
24 anything because I don't need to.

25 Juror number 35, would you agree that's the way we

1 have it set up? That's the way it works? It's the
2 prosecutor's complete burden to prove the case?

3 JUROR NO. 35: Sure.

4 MR. TALNEY: Is that good or bad? Why do we
5 do it that way?

6 JUROR NO. 35: Well, we do it that way to
7 protect the defendant from having a verdict without all
8 the evidence, without proof. If they haven't proved it,
9 it's fine for you to sit there and enjoy the day I
10 guess.

11 MR. WACHTER: Juror number 37, why do you
12 think that is, that there's no obligation on the defense
13 to present evidence?

14 JUROR NO. 37: Because I think the prosecuting
15 side has to have enough evidence to back up that there
16 was a crime committed, and so if there wasn't one, or if
17 there wasn't enough circumstantial evidence, why was it
18 being brought to court to begin with? It puts the
19 question of whether something actually occurred or not,
20 so if they didn't have enough to present and you didn't
21 have to do anything but sit down and twiddle your
22 thumbs, it kind of makes you wonder, was there enough
23 evidence that this could have occurred.

24 MR. TALNEY: Anybody think that that's not
25 right, that that's just not the way it should be? That

1 there should be some requirement on me, on the defense,
2 to present evidence to you? No one?

3 Juror number 59?

4 JUROR NO. 59: Yes. I am not going to say
5 that I think it's not right, but I think that's the
6 option of the defendant. I mean, if he prefers that you
7 don't -- as his lawyer, you don't speak or say your
8 part, that's his option, or give rebuttal to whatever it
9 is they present.

10 MR. TALNEY: Juror number 57.

11 JUROR NO. 57: The defendant is assumed that
12 he's innocent from the time he's arrested until he comes
13 to court and all through the trial, so by you not saying
14 anything, he's still innocent, and it's their job to
15 tell us why he's not innocent, and if they can't prove
16 it, then they don't have a case, and otherwise, they
17 could bring anybody they wanted to into court.

18 MR. TALNEY: Do you think that's the right way
19 to do it?

20 JUROR NO. 57: Yes.

21 MR. TALNEY: Nobody probably wants to admit
22 it, but did anybody pay attention to the Martha Stewart
23 case? Anybody realize, besides people that are
24 interested in this kind of stuff, after the fact -- she
25 got convicted -- after the fact, all the commentaries

1 talked about the fact that she didn't take the stand,
2 she didn't testify on her own behalf, what a huge
3 mistake that was strategically. I don't know if any of
4 these people ever were actually at the trial or know
5 anything about the law, but that was their take. What
6 about the fact that the defendant doesn't have to take
7 the stand?

8 What do you think about that, juror number 5?

9 JUROR NO. 5: I guess I don't. It's their
10 option.

11 MR. TALNEY: Why do you think the system is
12 set up that way?

13 JUROR NO. 5: Because they are innocent until
14 the prosecution finds or presents enough evidence for
15 the jury to find otherwise.

16 MR. TALNEY: Juror number 23, what do you
17 think about that?

18 JUROR NO. 23: Yeah, I agree. You could have
19 a defendant who maybe just isn't comfortable speaking in
20 front of people or, you know, there could be many
21 reasons why someone would not want to take the stand.

22 MR. TALNEY: So, like one of those people that
23 would never volunteer to give their report in class,
24 kind of hide under the desk, stage fright, whatever it
25 might be. Okay. What about that, though? Would

1 anybody change that system if they could, if they were
2 in power, if they ran the show?

3 Juror number 11?

4 JUROR NO. 11: Yeah, I would like to see him
5 on the stand.

6 MR. TALNEY: Would anybody agree with that?
7 That may be a human reaction. Sometimes we ask you not
8 to be human I guess in here. Human reaction is, you
9 know, I would like to hear from him. Some head nods.

10 Okay. Juror number 2, how do you get -- Would you
11 agree with the principle, juror number 2, you would like
12 to hear from him, but would you agree that there's
13 absolutely no obligation for him to actually take the
14 stand?

15 JUROR NO. 2: I agree there's no obligation.
16 I think that it would be nice to hear things like alibis
17 and stuff like that, if it's there. It just seems like
18 why leave that out if it's -- you know, if it could
19 help.

20 MR. TALNEY: Sure. Here's the bottom-line
21 question I guess. The question is, would you hold it
22 against him? The law says he doesn't have to do it and
23 that you can't make a presumption about it if he
24 doesn't. And the human reaction is, I would like to
25 hear from him. And I see juror number 11 nodding his

1 head, too. Can you get past that? Can you separate
2 what the law requires and what just as a human being
3 maybe you would like to hear?

4 JUROR NO. 2: Yes, you can separate it, but
5 again, you would wonder, is there nothing that could
6 help him, by what he might share? You would wonder if
7 there's a gap there. Just, I don't know.

8 MR. TALNEY: If we go back to this concept
9 that the defense doesn't have to present any evidence,
10 that it's completely Mr. Wachter or Mr. Witt's burden
11 to prove the case, how do you factor that in, juror
12 number 11?

13 JUROR NO. 11: If the defense didn't present
14 any evidence, then of course there's no reason for the
15 defendant to ever take the chair, to stand up there and
16 swear under oath he's going to tell the truth, and if
17 the prosecutors didn't show that there was a crime
18 committed, then great for the defense, but if the
19 defense shows something, and they bring some evidence
20 forward and try stuff, and the defendant doesn't take
21 the stand, there might be questions.

22 MR. TALNEY: Okay. Here's my question really
23 to everybody. If you have this human reaction that, you
24 know, I would like to hear from him, but on the other
25 hand you acknowledge that the way the system is set up,

1 is he doesn't have to take the stand and you can't hold
2 it against him, how do you resolve that conflict in your
3 own brain I guess?

4 Juror number 37, what do you think?

5 JUROR NO. 37: I was just thinking back to if
6 the defendant wasn't going to take the stand, and how we
7 all determine if somebody is lying or not by their body
8 language, by their personal accounts of things, it would
9 be difficult for us to use our own tools to determine if
10 somebody was lying or not, so in that case, it's one of
11 those things you just have to grit your teeth and bear
12 it if they don't have to. Sure, you would love to see
13 it happen, but you have to set your own personal
14 judgments aside and go with what's presented.

15 MR. TALNEY: Juror number 33?

16 JUROR NO. 33: The other thing, though, that
17 we have to remember, though, is both sides are going to
18 get a shot and it can go both ways. They could say
19 something that's going to help, but they may say
20 something that's going to put them in prison, and they
21 have a right not to incriminate themselves and we have
22 to respect that, because the system is set up to protect
23 all of us. It could wind up being us up there some day
24 for something we didn't do. Maybe something you say
25 makes it look like you did, and you didn't. Now you

1 have just sealed your fate.

2 MR. TALNEY: Okay. Would anybody change the
3 burden of proof based on whether or not Mr. Stockwell
4 took the stand or not? It's kind of the question, if he
5 were not to get up there and talk to you, would you
6 lower the burden of proof? Would you be more likely to
7 convict him than not if he didn't? I guess that's
8 really the question. The law says you can't hold it
9 against him, but does anybody have any concerns about
10 actually being able to carry that out in real life? No?

11 Sometimes these concepts are easier to talk about
12 in a hypothetical sense because I really do think a lot
13 of the times we ask you to act like jurors, like you
14 don't normally act in your everyday life. Beyond a
15 reasonable doubt probably isn't something that you use a
16 lot in your everyday life to decide, you know, whether
17 you are going to get skimmed milk or two percent. It's
18 just not something, a concept that we use. So, let's
19 just assume that -- this will never happen -- that the
20 weather out there right now is like it was yesterday.
21 Did anybody get caught in a big rainstorm yesterday
22 without your coat? No? Okay. Juror number 14. At
23 least I wasn't alone.

24 So, let's say the same thing happens today. I am
25 driving by, you don't have your coat, your car breaks

1 down, you are walking home, I stop and I pick you up.
2 Okay. This can never happen because if you noticed, I
3 can't even say hello to you in the hall and I try and
4 avoid eye contact, and Mr. Wachter will do the same
5 thing. We just absolutely want no appearance of any
6 kind of impropriety. We can't smile at you, can't have
7 dueling hellos. He's got a better hello than I do out
8 in the hall. So we try to ignore you, but per the
9 hypothetical, let's say that I pick you up and I drive
10 you home. You get in the car, and the first thing you
11 see is a cigarette butt in my ashtray. Okay.

12 Juror number 10, what's your first thought?

13 JUROR NO. 10: I guess the first thought is
14 that you were smoking, but obviously it means that
15 someone in the car was smoking.

16 MR. TALNEY: So, your first -- everybody would
17 probably agree your first thought is I am a smoker.
18 Okay. That's how we decide things in everyday life,
19 right? Because do you care whether I am a smoker? No.
20 Nobody cares whether I am a smoker. It makes no
21 difference in your life. It doesn't affect anybody
22 really but me, if I am doing it in my own car, but
23 that's how we probably decide things, with a snap
24 judgment.

25 One of the things Mr. Wachter talked about was, you

1 have to suspend judgment until you have heard all of the
2 evidence, it's all come in, you go back and deliberate,
3 and then at that point in time you decide. So that's
4 kind of a different thought process than we are usually
5 normally going through.

6 Juror number 12, do you have any problem with
7 suspending judgment until all the evidence has come in
8 and you have a chance to go back and talk with the other
9 jurors and discuss it?

10 JUROR NO. 12: I have no problem because
11 that's what I have to do.

12 MR. TALNEY: Would anybody agree that they are
13 pretty quick to make judgments? Some people are
14 deliberate thinkers, they want all the evidence before
15 they ever decide anything. Some people are quick to
16 decide. Any quick-decidors around here? No? Okay.

17 Well, juror number 11?

18 JUROR NO. 11: Yeah, I believe I am.

19 JUROR NO. 15: I am too.

20 MR. TALNEY: And 9.

21 What about this, probably suspending judgment until
22 you have heard everything, everything has been
23 presented, everybody has argued? You might be exhausted
24 listening to us, but you can't decide until you get back
25 there. That's not in your normal makeup. Any problem

1 in flipping your thinking for while you are a juror?

2 JUROR NO. 15: No. The only thing I get for
3 making quick decisions is trouble, so --

4 MR. TALNEY: Okay. Juror number 9?

5 JUROR NO. 9: I make quick decisions about
6 many things, but not about everything, and this is a
7 different setting.

8 MR. TALNEY: Okay. So you don't care, there's
9 no consequences to you if I am a smoker, but in a
10 situation like this, it's an important situation, you
11 will wait until you have heard all the evidence.

12 JUROR NO. 9: Right.

13 MR. TALNEY: So then, let's talk about juror
14 number 10. You mentioned yourself, well, at least maybe
15 somebody was smoking in the car, so it sounds like you
16 are probably not convinced beyond a reasonable doubt
17 that I am a smoker.

18 JUROR NO. 10: No.

19 MR. TALNEY: Okay. Juror number 24?

20 JUROR NO. 24: I have to see you first,
21 whether you are a smoker or not.

22 MR. TALNEY: One other thing that you would
23 want to know before deciding whether I was a smoker
24 beyond a reasonable doubt would be --

25 JUROR NO. 24: If you get close enough.

1 MR. TALNEY: -- whether you actually saw me
2 smoke or if I smelled like smoke? Those kinds of
3 things?

4 JUROR NO. 24: (Nods head.)

5 MR. TALNEY: So, that would be something that
6 you would factor into questions you didn't know the
7 answer to, questions you didn't have the answer to,
8 whether or not I was a smoker beyond a reasonable doubt.

9 JUROR NO. 24: I would have to see you first.
10 Before you could have been in a room with a bunch of
11 smokers.

12 MR. TALNEY: So maybe if I smelled like it,
13 that you still might not be there beyond a reasonable
14 doubt.

15 MR. WACHTER: I object to use of beyond a
16 reasonable doubt as to hypotheticals.

17 THE COURT: Your objection is noted.

18 You can ask another question.

19 MR. TALNEY: So, how do you think you apply
20 that beyond a reasonable doubt standard here, when
21 that's just not something that you would normally do?
22 That's just not how we think really.

23 Juror number 30, do you have any thoughts about
24 that?

25 JUROR NO. 30: Well, you have to weigh all the

1 facts and the evidence and then make your decision from
2 there, and there may be small doubt, but maybe a large
3 doubt. You just have to decide which one it is, whether
4 it's beyond a reasonable doubt or not.

5 MR. TALNEY: Okay. I think Mr. Wachter talked
6 a little bit about that, is there a difference between
7 doubt, any doubt, and a reasonable doubt, and I guess
8 everybody is willing to agree that there is a
9 difference. There is that qualifier beforehand, it's a
10 reasonable doubt, right?

11 You know, if the defense is that aliens swooped
12 down in a UFO, and that's what happened, I would suspect
13 probably most people wouldn't think that that was a
14 reasonable doubt. It might be a doubt, but it wouldn't
15 be a reasonable doubt probably. So, the word kind of
16 defines itself I guess.

17 Juror number 41, what do you think about applying
18 this standard, this beyond a reasonable doubt? We don't
19 do it in our everyday life. How do you wrap your brain
20 around that in here?

21 JUROR NO. 41: My training as a mathematician.
22 That's why I tend to think of things maybe different
23 than other people. I could see myself getting into the
24 mindset of collecting a bunch of data and waiting until
25 I had all the data to make a decision.

1 MR. TALNEY: So professionally, your mind kind
2 of works that way in any event.

3 JUROR NO. 41: Yeah.

4 MR. TALNEY: Okay. Juror number 53, what do
5 you think about that?

6 JUROR NO. 53: About what?

7 MR. TALNEY: About, like my hypothetical is,
8 you get into my car, our everyday life you probably jump
9 to the immediate conclusion that I am a smoker, but
10 would you agree that I am probably not -- well, are you
11 convinced I am a smoker beyond a reasonable doubt at
12 that point in time?

13 JUROR NO. 53: No, I am not convinced that you
14 are.

15 MR. TALNEY: So, how do you apply this
16 standard in this setting, when you don't normally -- we
17 normally just don't think like that?

18 JUROR NO. 53: It's going to be difficult. In
19 court you are bound by law. Whatever you think is out
20 the window. You are bound by law to follow the law,
21 whether your opinion contradicts that or not. In real
22 life it's different as far as I am concerned. My house,
23 you know, if I do something, find something amiss, I am
24 the law in that house. In here, no. We have another
25 set of law here, so it's going to be different. It's

1 going to be hard.

2 MR. TALNEY: So maybe just recognizing what
3 the rules are here, and that they might be different
4 than what you are used to applying in your everyday
5 life?

6 JUROR NO. 53: That's right.

7 MR. TALNEY: Would everybody agree with that,
8 it's probably the best you can do? Okay.

9 We have asked a lot of questions, but there's no
10 possible way we could actually get to know you in this
11 period of time, so I guess really for my last question I
12 would just ask you to look into your own hearts, if
13 there's something we have asked you, something we
14 haven't asked you, and just look in at yourself and let
15 us know if there's just some reason you don't think that
16 you could be a fair and impartial juror in this case,
17 either to Mr. Wachter's side or to the defense side. No
18 response.

19 Thank you for your time.

20 THE COURT: Thank you.

21 State pass for cause?

22 MR. WACHTER: May I have a moment, Your Honor?

23 THE COURT: You may.

24 MR. WACHTER: State passes for cause, Your
25 Honor.

1 THE COURT: Defense pass for cause?

2 MR. TALNEY: Nothing that wasn't previously
3 expressed, Your Honor.

4 THE COURT: All previous objections are noted
5 for the record.

6 All right. The attorneys are now ready to exercise
7 their peremptory challenges, so we will take them as
8 soon as they are ready.

9 MR. WACHTER: Thank you, Your Honor. The
10 state thanks but excuses juror number 3.

11 THE COURT: Ms. Kabel, thank you for your
12 service here. You are excused at this time.

13 JUROR NO. 3: Thank you.

14 (Juror No. 3 was excused.)

15 THE COURT: Mr. Arnold, if you will come
16 forward and take seat number 3.

17 Mr. Talney, when you are ready.

18 MR. TALNEY: We would like to thank and excuse
19 juror number 14.

20 THE COURT: Ms. Komac, thank you for your
21 service here. You are excused at this time.

22 (Juror No. 14 was excused.)

23 THE COURT: Ms. Housley, do you want to come
24 forward and take seat number 14. You have to come
25 around the front.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. WACHTER: Your Honor, the state thanks but excuses juror number 41.

THE COURT: Okay. Mr. Hughes, thank you for your service here. You are excused at this time.

(Juror No. 41 was excused.)

MR. TALNEY: Your Honor, we would thank and excuse juror number 2.

THE COURT: Ms. Jones, thank you for your service here. You are excused at this time.

(Juror No. 2 was excused.)

THE COURT: Mr. Fustos, if you will take seat number 2. Can you get up here or not?

JUROR NO. 27: Just stand right here?

THE COURT: Is that all right with counsel?

MR. WACHTER: No problem, Your Honor.

THE COURT: Can you can sit at the --

JUROR NO. 27: I would rather stand.

THE COURT: All right.

MR. WACHTER: Thank you, Your Honor. State thanks but excuses juror number 26.

THE COURT: Ms. Housley, thank you for your service here. You are excused at this time.

(Juror No. 26 was excused.)

THE COURT: So Ms. Elm, if you will come forward and take seat number 14 here.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. TALNEY: Your Honor, we would like to thank and excuse juror number 24.

THE COURT: Mr. Arnold, thank you for your service here. You are excused at this time.

(Juror No. 24 was excused.)

THE COURT: Ms. Ulrich, come forward and take seat number 3, right next to juror number 23.

MR. WACHTER: State thanks and excuses juror number 12.

THE COURT: Mr. Futch, thank you for your service here. You are excused at this time.

(Juror No. 12 was excused.)

THE COURT: Mr. March, please take seat number 12.

MR. TALNEY: Your Honor, we would like to thank and excuse juror number 29.

THE COURT: That will be Ms. Elm. Thank you for your service here.

(Juror No. 29 was excused.)

THE COURT: Ms. Berger, if you will come up and take seat number 14.

MR. WACHTER: State thanks but excuses juror number 31.

THE COURT: Mr. March, thank you for your service. You are excused at this time.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Juror No. 31 was excused.)

THE COURT: Mr. Curley, if you would take seat number 12.

MR. TALNEY: We would like to thank and excuse juror number 9.

THE COURT: Ms. Carlson, thank you for your service here.

(Juror No. 9 was excused.)

THE COURT: Mr. Schneider, seat number 9.

MR. WACHTER: Your Honor, the state passes this round.

THE COURT: Thank you.

MR. TALNEY: We thank and excuse juror number 15.

THE COURT: Mr. Erickson, thank you for your service here. You are excused at this time.

(Juror No. 15 was excused.)

THE COURT: Mr. Hlebechuk can come forward and take seat number 7.

MR. WACHTER: Your Honor, state passes this round.

THE COURT: Thank you.

MR. TALNEY: Your Honor, we would like to thank and excuse juror number 33.

THE COURT: Mr. Curley, thank you for your

1 service here. You are excused at this time.

2 (Juror No. 33 was excused.)

3 THE COURT: Ms. Gorsch, if you would take seat
4 number 12.

5 MR. WACHTER: Your Honor, may I have a quick
6 side bar?

7 (Side bar conference.)

8 MR. WACHTER: Your Honor, the state thanks but
9 excuses juror number 37. Thank you.

10 THE COURT: Ms. Gorsch, thank you for your
11 service here. You are excused at this time.

12 (Juror No. 37 was excused.)

13 THE COURT: Mr. Santos, if you will come
14 forward and take seat number 12.

15 MR. TALNEY: Your Honor, we would exercise our
16 last peremptory challenge.

17 THE COURT: Mr. Santos, the defense is going
18 to exercise their peremptory, so thank you for your
19 service here. You are excused at this time.

20 (Juror No. 39 was excused.)

21 THE COURT: Mr. Schooler, Mark Schooler, you
22 can take that seat, 12.

23 MR. WACHTER: Your Honor, the state accepts
24 the jury as constituted.

25 THE COURT: All right. Those 14 of you, you

1 have been selected to be the jury for this case.

2 Those of you in the back row, I want to thank you
3 for your time and service here and your patience. You
4 are excused at this time. You have completed your call
5 for this week. Thank you very much. You can check with
6 your bailiff there.

7 (The remaining prospective jurors
8 were excused.)

9 THE COURT: I will give you a few instructions
10 here right now. We are going to be --

11 JUROR NO. 12: I would like to offer my chair
12 to this gentleman.

13 JUROR NO. 27: I am fine. Thank you.

14 THE COURT: I think we will probably switch
15 you two tomorrow. That's fine.

16 You are going to be excused at this time, it's
17 about 4:20, and you are instructed not to discuss this
18 case among family members, friends, or anyone else,
19 including among fellow jurors, until it's submitted to
20 you for your deliberations. And the reason for that is
21 that if you hear somebody else express opinions, that
22 may put some extraneous ideas in your head, and we want
23 all the discussion to be held with all the jurors at the
24 same time and not outside the presence of the courtroom.

25 You are also instructed not to read, view, or

1 listen to any media reports on the subject of this
2 trial. I don't know that there will be any, but if
3 there are, you are instructed not to read them or to let
4 anyone else read those to you.

5 Before you leave here, Ms. Lougheed is going to
6 show you where the deliberation room is at the back of
7 this courtroom, and that's where you should come in the
8 morning. And please, once you come into the courthouse,
9 please come directly up here and not be out in the
10 hallway. There may be people out there associated with
11 this trial that don't know you and you don't know them.
12 There may be even some discussions going on with
13 potential witnesses out there or whatever, and so you
14 are instructed to come straight to the deliberation room
15 in the morning, and then when you come back from lunch
16 to come back here.

17 And tomorrow morning I will give you some further
18 instructions, so you are excused at this time. Have a
19 good evening, and see you tomorrow morning, nine
20 o'clock.

21 (The jury was excused for the day.)

22 THE COURT: All right. Then Mr. Stockwell,
23 you need to be back here by nine o'clock tomorrow
24 morning.

25 Any further matters? The side bar.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

At about 4:20, Mr. Wachter just wanted to recheck the numbers to see whether he could strike Ms. Gorsch, number 37, and I informed him he could, and he did.

So, anything further?

MR. WACHTER: Not from the state. Thank you, Your Honor.

THE COURT: Okay. We'll see you tomorrow morning.

(Court recessed.)

Exhibit 10

EXH. 10- III v20

ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	
vs.	)	NO. 03-1-01319-4
	)	APPEAL NO. 31920-9-II
DANIEL STOCKWELL,)	
)	
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS

VOLUME III

April 22, 2004
Opening Statements

Before the Honorable M. KARLYNN HABERLY

APPEARANCES:

FOR THE PLAINTIFF:	NEIL R. WACHTER
	RYAN WITT
	Deputy Prosecuting Attorneys

FOR THE DEFENDANT:	AARON TALNEY
	Attorney at Law

KATHRYN M. TODD, RMR, CCR
Official Court Reporter
614 Division Street
Port Orchard, WA 98366
(360) 337-7177

I N D E X

VOLUME III

	<u>Pages</u>
State's opening statement	386 - 392
Defendant's opening statement	392 - 397

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(State's opening statement)

MR. WITT: May it please the court, counsel, ladies and gentlemen of the jury.

Ultimate betrayal. The ultimate betrayal of two little girls, Emily Monroe and Megan Sawyer. They are currently seven and eight years old. They're cousins, and they are the step grandchildren of Mr. Stockwell, and they are grandchildren who loved and who trusted the person that they are going to refer to as Papa. This is a case about a man who broke that ultimate bond of trust by molesting one of his granddaughters, Emily, and attempting to molest the other, Megan, and that's why Mr. Stockwell sits before you today charged with one count of child molestation in the first degree, and a second count of attempted child molestation in the first degree.

Mr. Stockwell lives alone on a little farm. He's lived alone out there since approximately the end of 2001 when Grandma Stockwell died. He lives out there with horsies, with roosters, with doggies, and it was routine for Emily and Megan to go out to Mr. Stockwell's farm. When they would be at Mr. Stockwell's farm, with Mr. Stockwell watching them, he would be the sole person out there that would be providing supervision or would be providing care, and the girls loved it. They had the

1 best of both worlds because they were with a grandparent
2 and they are on a farm with horsies, but the down side
3 of that is that situation gave Mr. Stockwell ultimate
4 access to these two little girls. The girls trusted him
5 and the girls' parents trusted him. As I mentioned, it
6 was routine for the parents to leave the girls out there
7 with Mr. Stockwell.

8 Now, as I mentioned the parents, what I need to
9 tell you is a little bit about the parents and just
10 basically about the dynamics of this family and how
11 these relationships exist. Christina Monroe and Keith
12 Sawyer are brother and sister. Keith Sawyer is married
13 to Amanda Sawyer. Keith and Amanda are the parents of
14 Megan Sawyer. Christina Monroe is the mother of Emily
15 Monroe. So the brother and sister have two children.
16 Emily and Megan are cousins. Now, Keith and Christina,
17 being brother and sister, are the stepchildren of
18 Mr. Stockwell, so following that, their children are the
19 step grandchildren of Mr. Stockwell.

20 Keith and Christina grew up with Mr. Stockwell. He
21 really was the father figure to them. They grew up with
22 him, they knew him, and they trusted him, and they
23 trusted him enough to leave their daughters alone with
24 him. And you will hear from all of the witnesses about
25 how that ultimate trust was shattered.

1 One day they are about to do something that they
2 routinely do. The parents planned for Emily and Megan
3 to go out to Mr. Stockwell's farm. With this prospect,
4 Megan on this day became very upset, got very emotional,
5 became crying, pleading, not to go out to
6 Mr. Stockwell's house. And in the days immediately
7 after that, Megan went to her mother, Amanda Sawyer, and
8 asked Amanda about bad touching. Concerned, Amanda
9 inquired with Megan about if she knew about bad touching
10 or if she knew about someone who had done some bad
11 touching, and Megan confided in her mother that
12 Mr. Stockwell, or Papa, had bad-touched Emily, and that
13 he had attempted to do the same to me.

14 You are going to hear about this sexual contact.
15 You are going to hear about it from the girls as they
16 testify. You are going to hear about it from the
17 parents. The people who will relay this information to
18 you, as far as the parents, that will be Keith and
19 Amanda Sawyer and Christina Monroe. Now, the girls also
20 spoke with a forensic child interviewer. That
21 interviewer, named Ms. Conrad, had the opportunity to
22 speak with Megan and with Emily.

23 I have just told you quite a number of people that
24 are going to testify, and it's not necessary in court
25 that these testimonial matters are going to come out in

1 chronological order; however, in jury, or in closing
2 argument or final argument, most likely this will be
3 synthesized for you in a chronological order, but there
4 are some matters that also I need to address in my
5 opening statement such as the dates when this occurred.
6 This crime occurred between March 3rd of 2002, and
7 March 2nd of 2003, and it will be proven that this
8 occurred in Kitsap County. Further, Emily Monroe was
9 born in 1997. She is currently seven years old. Megan
10 Sawyer was born in 1995, and she is currently eight
11 years old. Mr. Stockwell was born in 1951. At the time
12 of these offenses, both girls were less than 12 years
13 old, and Mr. Stockwell was more than 36 months their
14 senior. Also, neither Emily nor Megan were ever married
15 to Mr. Stockwell.

16 I mentioned just a moment ago one of the bits of
17 evidence you are going to hear is testimony from an
18 individual named Cynthia Conrad. The forensic child
19 interviewer, Ms. Conrad, interviewed both the children,
20 Megan and Emily. You are going to hear most likely the
21 majority of the content of that interview, and I just
22 want to point out a couple highlights to you.

23 In interviewing Emily, Emily told Ms. Conrad that
24 Papa touched her private part, that she describes that
25 touch as a bad touch. Papa touched her at his house, in

1 the living room, touched her private part with his hand,
2 and he moved his hand around.

3 The second individual, Megan, spoke with
4 Ms. Conrad. Megan told Ms. Conrad that she observed
5 Mr. Stockwell touching Emily, she observed him touch
6 Emily on her private part, that the touching occurred in
7 Mr. Stockwell's house, in Mr. Stockwell's living room.
8 She further stated to Ms. Conrad that "He did it to me,
9 too."

10 These girls are seven and eight, and they are in a
11 difficult position. They are going to be testifying to
12 you from the witness stand in front of Mr. Stockwell, in
13 front of a grandparent, in front of Papa, and they are
14 going to be accusing Papa. I don't know exactly what
15 they are going to say on the witness stand. I will only
16 know that once they have said it, but that is the nature
17 of this type of case, but you are going to be asked to
18 view these statements in their totality, the statements
19 that these girls make in court overlaid with the
20 statements that they made to their parents, the
21 statements that you are going to hear from the parents
22 in court, the statements that the girls made to
23 Ms. Conrad.

24 You are going to assess those statements for their
25 totality, but when you are making that assessment,

1 there's some more statements that you need to take into
2 consideration, and those are statements that are made by
3 Mr. Stockwell himself. You see, the day after these
4 girls confided in their parents, Keith Sawyer, the
5 father of Megan, went to Mr. Stockwell's farm. He
6 confronted him about this. He let Mr. Stockwell know
7 exactly what the girls said. Mr. Stockwell became
8 emotional, he started crying, and in speaking with
9 Keith, he told Keith he never touched Megan, who is
10 Keith's daughter, but he said he did touch Emily. He
11 really made no excuse for it. The long and short of his
12 conversation with him was he just got carried away. So
13 that statement needs to be taken into consideration,
14 too, when you are viewing all these statements in their
15 totality.

16 I am certain when you do, this case will be proven
17 to you beyond a reasonable doubt, and at the close of
18 all the evidence, the state will be asking you to return
19 verdicts of guilty on child molestation in the first
20 degree, and attempted child molestation in the first
21 degree.

22 One procedural matter. I stated incorrect dates.
23 The dates of the charged offense are March 1st of 2002,
24 to April 1st of 2003. That will become relevant later,
25 but I just thank you for your attention and look forward

1 to speaking to you later.

2
3 * * * * *

4
5 (Defense opening statement.)

6 MR. TALNEY: The ultimate betrayal, a child
7 molester. You know, I am afraid I don't have a nice
8 catch phrase for you, but I am going to ask you to
9 decide this case based on fact, not emotion. Labels are
10 easy. Labels ask you to avoid the actual facts of the
11 case. You can easily grab hold of a label, but you have
12 taken your oath. We have asked you a lot of questions
13 about your duties as a juror, your ability to follow the
14 law, and that is simply what I am going to ask you to
15 do. Keep an open mind and listen to what the actual
16 facts of the case are.

17 The judge already read you the charges, and
18 Mr. Witt alluded to what they have claimed or charged
19 Mr. Stockwell with. Somewhere over this year time span,
20 somewhere within there, over a year, they are claiming
21 that Mr. Stockwell, and they have to prove to you beyond
22 a reasonable doubt that Mr. Stockwell committed the act
23 of child molestation in the first degree and an
24 attempted child molestation in the first degree. And
25 the judge will give you definitions of the crime to take

1 back with you and explain what the legal basis for all
2 those are, but basically, what they are going to be
3 trying to prove to you beyond a reasonable doubt is that
4 there was a sexual touching of their intimate or sexual
5 parts for sexual gratification, and an attempt to do
6 that.

7 So, we have got the players that are going to have
8 to be introduced to you. We start out with the two
9 girls. All right. I expect you will probably get
10 introduced to both of them today; if not today,
11 tomorrow. So, you have Emily, and then it makes some
12 sense to just try and figure out who these players are
13 in your own mind, and we have her mother, Christina. So
14 you have Emily Monroe, and then we have Megan Sawyer,
15 the other child that you will probably be introduced to
16 soon, then we have her parents, we have Keith and Amanda
17 Sawyer.

18 So, just as an easy way to try and keep track of
19 who these players are, then they are obviously cousins,
20 and they have a great connection between the two because
21 what you will find out is, they do spend a lot of time
22 together. In a child care situation, as it turns out,
23 Amanda Sawyer takes care of and watches Emily quite a
24 bit throughout this time period. She provides child
25 care while Christina is working. The girls spend a lot

1 of time together at the Sawyer home and elsewhere. You
2 also find out that during this time period, that the
3 Monroes and the Sawyers actually lived together for a
4 period of time, which will become important.

5 And Mr. Witt already alluded to the fact that you
6 need to take these statements in their totality, and how
7 they came up, and when you do that, what you are going
8 to learn is that these statements have changed over
9 time, and in significant ways. And what you will find
10 out is that originally Megan comes forward and she
11 describes a situation about Emily, and there's some
12 confusion about whether she saw this happen or she was
13 told by Emily whether it happened or not, and then that
14 statement becomes not only was Emily touched in this
15 way, but in fact, "I was also touched." And then, the
16 statement goes on, certain times actually being denied
17 that she was touched at all in certain situations, and
18 you will learn that the children have actually sat in
19 that chair before, and what they said, what their
20 version of events was at that point in time, and then
21 ultimately, this version melds into -- in fact some
22 months later actually, through a period of different
23 interviews, contact with different individuals, finally
24 comes out to be watching pornographic movies and forced
25 to put mouth on penis is the last version of events,

1 something that is significantly different, and
2 exponentially different from what the original
3 allegations were.

4 And it's important for you to listen to how these
5 allegations came forward, when they were, what was going
6 on at the time that these allegations were made and how
7 they changed along the line, and what you will find out,
8 and one specific instance is, the actual -- the first
9 claim that Megan Sawyer was actually touched really
10 comes about in an argument between Amanda and Keith
11 Sawyer, the husband and wife. They are having an
12 argument at their own home about Mr. Stockwell actually,
13 and at that point in time Amanda Sawyer comes forward
14 and says basically, "Well, he tried to touch your
15 daughter, too," and that's the first time that Keith
16 Sawyer has ever heard about this allegation that his
17 daughter was touched, and that's just one example.

18 So you need to keep in mind how these allegations
19 came forward, what they did, where the children were at
20 a specific point in time and how they morphed over time
21 to become a much different allegation at the end than it
22 ever started.

23 And it's true, these children were interviewed by
24 this individual, Cynthia Conrad, who will be described
25 as a child interviewer. And you will have a chance to

1 meet her, I think in probably just a few minutes, and
2 what you are going to find out is, she is completely
3 unsupervised and uncheckable. What you are going to
4 find out is, any evidence of the interview itself is
5 either intentionally not taken or destroyed after the
6 interview is done. So what you will find out is, there
7 is no videotape, there is no tape recording. The only
8 record of the interview itself is Ms. Conrad's notes,
9 which she then prepares a report from, and you will find
10 out that as soon as she types up what she wants to put
11 into the report, her notes are shredded. The only
12 actual evidence of what happened in that room one can
13 only be told by Cynthia Conrad, but her notes themselves
14 are shredded.

15 It's kind of interesting, because you will also
16 learn that they do have the ability to have somebody
17 else watch that interview. The room that the interview
18 actually takes place in has two-way glass, just kind of
19 like when you are watching cop movies and you see the
20 detectives sitting behind the glass watching an
21 interview actually take place on the other side. The
22 actual room that the interview takes place in has that
23 available to it, but nobody gets to watch. Not even
24 another police officer gets to watch, not another
25 psychologist, doctor, no one.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

And it's interesting to note from Mr. Witt's opening statement that he doesn't know what these children said, and that's probably a fair assessment, but when you learn about how their story has changed from day one to the end, we're not just talking about you're never quite certain what a child might react like in a courtroom setting, because nobody knows what the next version is going to be. We would like you to keep that in mind, and at the end of the case, I will be asking you to find Mr. Stockwell not guilty.

(End of opening statements.)

Exhibit 11

Exh-11- Juror Info

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP**

STATE OF WASHINGTON

vs.

DANIEL STOCKWELL

Hon. M. KARLYNN HABERLY

Court Reporter: **Kathy Todd**

Clerk: **Gwen Warren**

Bailiff: **Kathy Lougheed**

Cause No. **03-1-01319-4**

Date: **April 20, 2004**

Day 1 of 6

Page 1 of 16

**STATE APPEARED THROUGH COUNSEL NEIL WACHTER and RYAN WITT
DEFENDANT APPEARED WITH COUNSEL AARON TALNEY**

**THE FOLLOWING JURORS WERE DULY SWORN AND IMPANELLED TO TRY THIS
CASE:**

- | | |
|------------------------|-------------------------------|
| 1) JASON HEAD | 7) GARY HLEBECHUK |
| 2) ROGER FUSTOS | 8) RICK WILSON (alternate 1) |
| 3) DEBORAH ULRICH | 9) JERRY SCHNEIDER |
| 4) CHRISTINA SWARTWOOD | 10) LARUA STACK (alternate 2) |
| 5) KEVIN KRAUSE | 11) PHILLIP SUTTON |
| 6) JAMES HART | 12) MARK SCHOOLER |
| | 13) JON BELDEN |
| | 14) RUTH BERGER |

9:11 Court is in session.

Mr. Wachter – Advises Ryan Witt will be sitting second chair and there are no 3.5 issues.

Court – Addresses preliminary matters with Counsel. (length of trial, peremptory challenges, alternates (seat 8 alternate #1, seat 10 alternate #2), witnesses excluded).

Court – Grants State's motions in limine 1, 2, 3, 4, 5, 6, 7, 8 (subject to argument with in WPIC, 9 10).

Mr. Talney – Argues State's motion in limine #11.

Mr. Wachter – Advises he does not anticipate presenting in the State's case in chief prior convictions.

Court – Grants #11.

Mr. Wachter – Argues to exclude reference to suspected sexual contact with others.
Mr. Talney – Responds

Court – Regarding suspected sexual contact with others or sexual explicated discussion with an older child and offer of proof needs to be made outside the presence of the jury.

9:45 Prospective jurors in the courtroom.

9:48 **Court** – Administers qualifying oath to jurors and introduces Staff, Counsel and Case.

9:56 **Court** – Conducts general voir dire.

10:12 Prospective jurors out of the courtroom to fill out questionnaire.

Court – Excuses jurors 17, 60, 50 and 47.

Mr. Talney – Advises juror #7 was actively crying when the information was read.

11:26 Court is again in session.

Court and Counsel question the following jurors individually, 1, 2, 5, 6 and 7, remaining jurors excused until 1:30.

Court – Excuses jurors #7 for cause.

Mr. Wachter – Argues juror #2 has not risen to the standard to be excused for cause.

Mr. Talney – Challenges #2 for cause.

Court – Denies challenges for cause of juror #2.

1:25 Court is again in session.

Court – Excuses the following jurors to return tomorrow morning 1, 2, 3, 4, 13, 15, 20, 21, 23, 24, 26, 27, 31, 37, 41, 45, 46, 48, 49, 53, 55, 57, 58 and 59.

1:40 The following jurors questioned individually 5, 6(excused), 8, 9, 10, 11, 12, 14, 16(excused), 18(excused), 19(excused), 22(excused), 25(excused), 28(excused), 29, 30, 32 (Mr. Talney challenges juror for cause – Mr. Witt opposes challenge – **Court** denies challenge), 33, 34, 35, 36, 43(excused), 54(excused).

Court – Addresses note from juror #4's employer. Excused.

4:31 Court is adjourned.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON

vs.

DANIEL STOCKWELL

Hon. M. KARLYNNN HABERLY

Court Reporter: KATHY TODD

Clerk: GWEN WARREN

Cause No. 03-1-01319-4

Date: April 21, 2004

Day 2 of 6

Page 4 of 16

State appearing through counsel NEIL WACHTER & RYAN WITT
Defendant appearing with counsel AARON TALNEY

Pursuant to a continuation from the 20th day of April 2004 this cause comes on regularly this day for further Jury Trial. All interested parties to this action and their respective counsel are present in Court.

9:04 Court is in session.

Court – Informs Counsel juror #33 use to work with Jenny in the Prosecutors Office, jurors #20 may have been a neighbor of the Defendant 25-30 years ago and juror #14 had an envelope for Craig Lindsay in the Prosecutors office.

Mr. Wachter – Ask to speak to the jurors individually.

9:08 Juror # 36 recalled and individual questions continue.

Mr. Talney – Challenges juror #36 for cause.

Mr. Witt – Argues

Mr. Talney – Responds

Court – Grants the challenge for cause and excuses juror #36.

The following jurors questioned individually 38(excused), 39(Mr. Talney challenges for cause – Mr. Witt opposes – **Court** – Denies challenge) 40(excused), 42(excused), 44(excused), 51(excused), 52, 56(Mr. Witt challenges for cause – Mr. Talney opposes – **Court** – Grants challenge).

Inquires made of jurors 14, 20 and 14.

10:25 Sidebar held with Counsel Witt & Talney.
10:39 Court is at recess.
10:54 Court is again in session.

Mr. Wachter – Advises he just learned Mr. Stockwell ran into juror #34 in Fred Meyer, but nothing was said.

10:59 Remaining prospective jurors in the courtroom.

11:02 **Court** – Conducts general voir dire and excused juror #21 for cause.

11:04 Mr. Wachter – Conducts general voir dire.

11:46 Mr. Talney – Objects and asks for a sidebar.

11:46 **Court** – Holds sidebar with Counsel – Talney & Wachter.

12:01 Court is at recess.

1:34 Court is again in session.

1:35 Court – Places sidebars on the record.

1:40 Prospective jurors in the courtroom.

1:41 Mr. Talney – Conducts general voir dire.

2:40 Jurors out of the courtroom.

2:41 Court is at recess.

3:05 Court is again in session.

Mr. Talney – Addresses juror #45 and his failure to participate in questions and was asleep when he was addresses.

Court – Excuses juror #45.

Mr. Talney – Advises juror #24 was actively crying when asked about molestation.

Court – Will inquire of #24 individually.

3:09 Juror #24 questioned by Court and Mr. Talney.

3:11 Jurors in the courtroom.

3:11 Mr. Wachter – Conducts general voir dire.
3:41 Mr. Talney – Conducts general voir dire.

4:06 Mr. Wachter – State passes for cause.
Mr. Talney – Nothing that wasn't previously discussed.

PEREMPTORY CHALLENGES

Plaintiff

Excuses #3 - Seats #24
Excuses #41
Excuses #26 – Seats #29
Excuses #12 – Seats #31
Excuses #31 – Seats #33
Passes
Passes
Excuses #37 – Seats #39
Accepts

Defendant

Excuses #14 – Seats #26
Excuses #2 - Seats #27
Excuses #24 – Seats #30
Excuses #29 – Seats #32
Excuses #9 - Seats #34
Excuses #15 – Seats #35
Excuses #33 – Seats #37
Excuses #39 – Seats #46

4:23 Court is adjourned.

Exhibit 12

Exh 12 - Child Interview Report
- ERM

= /

**Kitsap County Prosecutor
Child Interview Report**

Date Reported/referred: 4/9/03

Agency: CPS

Date of Interview: 4/11/2003

Victim:

Name: E N M

Address:

City:

Phone:

Race: White

DOB: 3/3/97

Sex: Female

Suspect:

Dan Stockwell

15822 Windy Cedar Ln.

Port Orchard, WA 98366

360/895-6004

White

Male

Non-Offending Parent:

Name: Christina L. Monroe

Phone: (same as victim)

Collateral Contacts:

Location of Incident: 15822 Windy Cedar Ln, Port Orchard, WA 98366

Date(s) of Incident: Approximately 3/3/2002 through 3/3/2003

Interview Summary

Ei was interviewed at the Special Assault Unit. She was brought by her mother but was interviewed alone. She did not acknowledge me when I tried to talk to her in the waiting room. Her mother finally had to tell her to look at me and listen to me. She was extremely self-conscious and spoke baby talk throughout the interview. She was able to understand truth and lie and family relationships. She told me her Papa rubbed her crotch outside her clothing. She said he told her if she told, someone would call the police. She stated it happened only once when she was five at his house.

Content of Interview

CLC: My name is Cynthia. I need you to look at me just while I tell you this part then you can color. I am going to ask you some questions. If I ask you something and you don't know what I'm saying, just tell me, 'I don't know what you are saying.' If I ask you a question and you don't know the answer. You can say I don't know. Like if I ask you what is my dog's name, what would you say?

ENM: I don't know.

CLC: That's right, because you don't even know my dog do you. If I ask you what is your name, what would you say?

ENM: E

CLC: That's right, because you know your name. So if I ask you a question and you know the answer, you tell me. If I ask you a question and you don't know the answer, you say I don't know. (She is looking at the paper where I am writing getting up from her chair and looking on my clipboard.) I notice that you are looking at what I am writing. I am writing down everything we talk about. If you want to look at it later when we are all done you can look at it again. Now I want to talk about truth and lie. Do you know how to tell the truth?

ENM: (nods her head yes).

CLC: How do you tell the truth?

ENM: (does not answer).

CLC: When you tell the truth, do you say what really happened or do you make something up?

ENM: Say what really happened.

CLC: If I say that you came here in an airplane today, is that true or is that a lie?

ENM: A lie.

CLC: Why is that a lie?

ENM: Cuz.

CLC: Cuz why?

ENM: I don't know.

CLC: Did you come here in an airplane?

ENM: Huh unh (no).

CLC: If I broke a cup and I said that you did it, would I be telling the truth or would I be telling a lie?

ENM: A lie.

CLC: Why is that a lie?

ENM: You broke a cup and I didn't.

CLC: If I broke a cup and I said I did do it, is that telling the truth or is that telling a lie?

ENM: Telling the truth (she is talking baby talk).

CLC: Now I want to ask some questions about you. What is your whole name?

ENM: E N M

CLC: How old are you?

ENM: 6

CLC: When is your birthday?

ENM: March.

CLC: March what?

ENM: I don't know.

CLC: What did you do when it was your birthday?

ENM: Opened presents and had cake and ice cream.

CLC: Tell me about your cake.

ENM: It was Strawberry and the ice cream was strawberry too.

CLC: Is that your favorite?

ENM: Yes.

CLC: Who was at your birthday?

ENM: Mommy, Papa, Auntie Connie.

CLC: Anybody else?

ENM: Laurie.

CLC: What is the best present you got at your birthday?

ENM: Pla-Doh.

CLC: Who do you live with?

ENM: My mommy.

CLC: Is there anybody else in the house?

ENM: Garrett.

CLC: Who is Garrett?

ENM: My dad.

CLC: Anybody else live there?

ENM: Brenda and he's my little brother and Christian and Nicholas.

CLC: Who are Christian and Nicholas?

ENM: My big brother and my baby brother.

CLC: How old is Brandon?

ENM: 5.

CLC: How old is Christian?

ENM: 8

CLC: How old is Nicholas?

ENM: 1.

CLC: Where does everybody sleep at your house?

ENM: I sleep in my room. Brandon and Christian sleep on beds in their room. Nicholas sleeps in mom and dad's room and they sleep in their room.

CLC: What did your mom say about why you were coming to see me today?

ENM: (does not answer).

CLC: What do you think we're going to talk about?

ENM: Papa.

CLC: Does Papa have another name?

ENM: Papa Dan Stockwell.

CLC: Who is Papa?

ENM: My Papa.

CLC: Who does he live with?

ENM: His doggies and Grandma and birds and roosters and horsies

CLC: That's lots of animals.

ENM: He lives on a farm (she talks about the markers which she has made remarks about before. She talks about the color and scent of each one that she picks up).

CLC: Do you go to Papa's house sometimes?

ENM: Yes.

CLC: Do you ever sleep there?

ENM: When I lived with him.

CLC: How old were you when you lived with him?

ENM: 5.

CLC: Tell me what happened when you lived with Papa.

ENM: I don't want to tell you one part. Do you want me to?

CLC: I need to know all the parts. I want you to tell me.

ENM: I peed in the bed.

CLC: Tell me all about when you peed in the bed.

ENM: I had to go potty (she keeps looking over at the paper I am writing on).

CLC: Whose bed were you in when you peed the bed?

ENM: On the floor.

CLC: What happened when you peed the bed?

ENM: I got in trouble.

CLC: What kind of trouble?

ENM: I got spanked and mom yelled at me.

CLC: Who spanked you?

ENM: My mommy.

CLC: Did Papa ever do anything that made you feel bad?

ENM: Yell at me.

CLC: When you lived at Papa's house, where did you sleep?

ENM: On the floor.

CLC: Did somebody sleep on the floor with you?

ENM: Brandon and Christian.

CLC: What room did you sleep in?

ENM: It wasn't in a room. It was at the living room.

CLC: Where did your mommy sleep?

ENM: On the couch.

CLC: Where did your Grandma and Papa sleep?

ENM: In the bed.

CLC: Did you ever get to get in Grandma and Papa's bed?

ENM: Unh huh (no), only if I wanted to look at jewelry I could get on the bed.

CLC: I want to know if you know the parts of your body. Point to some of the parts of your body that you know and tell me the names for those parts.

ENM: Fingers, arm, leg, tummy

CLC: What about this part (pointing to my head)?

ENM: Head.

CLC: Tell me some of the parts that are on your head.

ENM: Hair, face.

CLC: What is the part you sit on?

ENM: Butt.

CLC: Where is your butt?

ENM: (points to her buttocks).

CLC: Where is the part you go pee with?

ENM: Right here (she points to her crotch)

CLC: What do you call the part?

ENM: Private. (She giggles).

CLC: Did somebody touch you there? Remember you're going to tell me the truth.

ENM: Unh huh (yes).

CLC: Who touched your private part?

ENM: Papa.

CLC: What kind of touch did he do?

ENM: A bad touch.

CLC: What did Papa do when he touched you?

ENM: I don't remember.

CLC: Eh sometimes kids tell me they don't remember when it's something they don't want to talk about. Is that what you're doing?

ENM: (shakes her head no).

CLC: I'm going to try to help you remember by asking you some more questions. Where were you when Papa touched your private part?

ENM: At his house.

CLC: Was it daytime or nighttime?

ENM: Day.

CLC: What room were you in when Papa touched you?

ENM: The living room.

CLC: Where was your mom?

ENM: At her house.

CLC: The house you live in now?

ENM: Yes.

CLC: Where was your Grandma?

ENM: Dead, up in heaven.

CLC: When did your Grandma die?

ENM: When I was four.

CLC: How old were you when Papa touched you?
ENM: 5.

CLC: What did he touch you with?
ENM: His hand.

CLC: What part of you did he touch?
ENM: My private.

CLC: Before when I asked you what kind of touch, you couldn't tell me. I'm going to show you some kinds of touches on the table and I want you to tell me if it was any of these kinds of touches (I show touching, rubbing, pinching, grabbing, poking on the table with my hand). Was it any of those?

ENM: (puts her fingers on the table as I did when I showed her touching).

CLC: Did he hold his hand still or move it?
ENM: Move it.

CLC: Show me on the table how he moved it.
ENM: (makes a rubbing motion on the table).

CLC: Was the touching outside of your clothes or underneath your clothes?
ENM: Outside.

CLC: What did Papa say to you when he touched you on your private?
ENM: Do you want to watch a movie.

CLC: Were you sitting or standing or laying down when he touched you?
ENM: Sitting.

CLC: Tell me how you were sitting.
ENM: Like I am sitting right now.

CLC: Where was he?
ENM: Sitting by me.

CLC: Did your Papa do the touching one time or more than one time?
ENM: One time.

CLC: Was there ever a time when your Papa put his hand inside of your clothes?
ENM: (shakes her head no).

CLC: When your Papa touched your private, how did that make you feel?
ENM: Sad.

CLC: Did you do anything when you felt sad?

ENM: (shakes her head no).

CLC: Do you like to go see your Papa?

ENM: (nods her head yes).

CLC: Did your Papa ever babysit you?

ENM: Huh unh (no), but I go to his house.

CLC: What do you do at his house?

ENM: Watch a movie.

CLC: Are you usually there by yourself or is someone else there with you?

ENM: By myself.

CLC: Does Papa ever do any other kinds of touching besides what you told me?

ENM: Huh unh (no).

CLC: Would you tell me if he did?

ENM: (nods her head yes).

CLC: Did you ever tell anyone that Papa touched your private?

ENM: Huh unh (no).

CLC: What made you not tell?

ENM: Cuz I don't want them to tell the police.

CLC: Did someone say they would tell the police?

ENM: Papa did.

CLC: What did he say about that?

ENM: He said, "if you tell someone they might tell the police."

CLC: When did he say that?

ENM: When I was at his house.

CLC: Did he say it when he was touching you or say it some other time?

ENM: Some other time.

CLC: Did any of your clothes ever get pulled down or taken off at Papa's house?

ENM: (shakes her head no).

CLC: Did Papa ever want you to touch him anyplace?

ENM: (shakes her head no).

CLC: Did your mom ever ask you if Papa touched you?

ENM: When I was at my house.

CLC: What did you tell her?

ENM: I told her Papa touched me.

CLC: How many times did Papa touch you?

ENM: Once.

CLC: Why do you think it didn't ever happen again?

ENM: (does not answer).

CLC: Did anyone else ever touch you like Papa did?

ENM: Huh unh (no).

CLC: Why did Papa stop touching your private part?

ENM: Cuz he didn't want me to tell the police.

CLC: Did Papa ever touch you someplace else on your body besides your private part?

ENM: (shakes her head no).

CLC: What clothes did you have on when Papa touched your private part?

ENM: My overalls.

CLC: Did you have them partway on or all the way on?

ENM: all the way on.

CLC: Is there anything else you want to tell me about Papa?

ENM: Unh unh (no).

CLC: Did you see Papa touch somebody else?

ENM: (shakes her head no).

CLC: Did somebody see Papa touch you?

ENM: (shakes her head no). Huh Unh (no).

CLC: Those are all the questions I need to ask you. You did a great job. Thank you for talking to me.

End of Interview.

Cynthia Conrad
Child Interviewer

Prepared by CLC
4/11/2003

Exhibit 13

Exh. 13. Child interview report (red)

**Kitsap County Prosecutor
Child Interview Report**

Date Reported/referred: 4/9/03
Agency: CPS
Date of Interview: 4/23/2003

Victim:

Name: M S
Address:
City:
Phone:
Race: White
DOB: 12/23/95
Sex: Female

Suspect:

Dan Stockwell
15822 Windy Cedar Ln.
Port Orchard, WA 98366
360/895-6004
White

Male

Non-Offending Parent:

Name: Amanda and Keith Sawyer
Phone: (same as victim)

Collateral Contacts:

Location of Incident: 15822 Windy Cedar Ln, Port Orchard, WA 98366
Date(s) of Incident: Unknown

Interview Summary

Ms. [redacted] was interviewed at the Special Assault Unit. She was brought by her mother but was interviewed alone. She would not come out of the playhouse to meet me or begin the interview. It took about 10 minutes for her mother to convince her to come out. Her mother came with her into the interview room and left after she was seated. When I started to tell Ms. [redacted] what would happen, she started to cry and had her face hidden in several stuffed animals she had carried into the room. She answered my questions. The interview was very short because of her discomfort.

Content of Interview

CLC: My name is Cynthia and I want to tell you what we are going to do here. I am going to ask you some questions.

MS: (Starts crying.)

CLC: Tell me your name.

MS: M

CLC: M What?
MS: M S.

CLC: How old are you?
MS: 7.

CLC: When Is your birthday?
MS: (Shrugs her shoulders. It should be noted she is still not looking at me and is still crying).

CLC: Who lives with you at your house?
MS: Mommy and daddy and Kylie and me.

CLC: How old is Kylie?
MS: One.

CLC: What is your mom's name?
MS: Amanda.

CLC: What is your dad's name?
MS: Keith.

CLC: Do you have any grandmas and grandpas?
MS: Grandma and Papa.

CLC: Do Grandma and Papa have any other names like your name is Megan?
MS: Unh unh (no).

CLC: Do you know that Er came to see me?
MS: Unh huh (yes).

CLC: Do you know what she came to see me about?
MS: Unh unh (no).

CLC: I want to know if you ever saw anybody touch E:
MS: Papa Don.

CLC: Tell me what you saw.
MS: He did it.

CLC: What did he do?
MS: On her private.

CLC: Was that touching on the outside of her clothes or under her clothes?
MS: Outside.

CLC: What did he say when he did that?

MS: Nothing.

CLC: Did she say anything to him?

MS: I don't know.

CLC: Were you there?

MS: Unh huh (yes).

CLC: Where were you when Papa Dan touched E ?

MS: At his house.

CLC: In what room?

MS: The living Room.

CLC: Where was E ?

MS: The Living room.

CLC: Did anything like that ever happen to you?

MS: He did it to me too.

CLC: Did he do it the same day or a different day?

MS: The same day.

CLC: Was the touching inside your clothes or outside your clothes?

MS: Outside.

CLC: Did he say anything to you?

MS: No.

CLC: Did it ever happen again?

MS: I don't know.

CLC: Did it happen one time or more than one time?

MS: I don't know.

CLC: You don't know or you don't want to say?

MS: I don't know.

CLC: Did Papa ever say anything about don't tell?

MS: Unh unh (no).

CLC: Just one more question, where is your private part? Can you show me on one of those teddy bears?

MS: (shakes head no).

CLC: When you say private do you mean the part you go pee with?
MS: (nods head yes).

CLC: Okay M: , we are all finished. Let's go back to the playroom.

End of Interview

Cynthia Conrad
Child Interviewer

Prepared by CLC
4/223/2003

Exhibit 14

Exh. 14 - 1986 Info

J.R. APR 29 1986

FILED
IN COUNTY CLERKS OFFICE
A.M. APR 29 1986 P.M.
PIERCE COUNTY, WASHINGTON
BRIAN SONNTAG, COUNTY CLERK

By _____
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DANIEL J. STOCKWELL,

Defendant.

86 1 00878 2
NO.

INFORMATION

I, WILLIAM H. GRIFFIES, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DANIEL J. STOCKWELL of the crime of STATUTORY RAPE IN THE FIRST DEGREE, committed as follows:

That DANIEL J. STOCKWELL, in Pierce County, Washington, during the period between February 1, 1985 and March 31, 1985, did unlawfully and feloniously being over the age of 13 years, engage in sexual intercourse with Christina Sawyer, who was less than 11 years old,

8858 11/9/2006 8858

1 contrary to RCW 9A.44.070, and against the peace and dignity of the
2 State of Washington.

3 DATED this 28th day of April, 1986.

4
5 Filed Direct
6 City Case
7 WA02703

WILLIAM H. GRIFFIES

PROSECUTING ATTORNEY IN AND FOR
SAID COUNTY AND STATE.

8
9 mtc

By 
BARBARA COREY-BOULET
Deputy Prosecuting Attorney

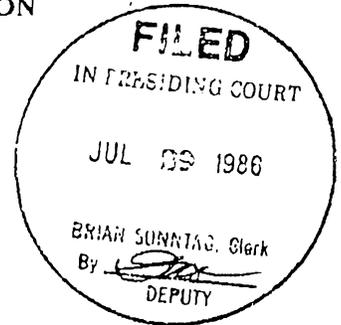
5050 51/9/2886 88889

Exhibit 15

Exh. 15-1986 SDP

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

VOL 100 PAGE 1065



J.R. JUL 29 1986

STATE OF WASHINGTON,

Plaintiff,

vs.

DANIEL J STOCKWELL

Defendant.

NO. 86-1-00878-2

STATEMENT OF DEFENDANT ON PLEA
OF GUILTY (Felony)

1. My true name is Daniel James Stockwell

2. My age is 35, dob 7-27-51

3. I went through the 15th grade in school.

4. I have been informed and fully understand that I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is:

MICHAEL R JOHNSON

5. I have been informed and fully understand that I am charged with the crime(s) of _____

STATUTORY RAPE IN THE FIRST DEGREE

The elements of the crime(s) are: In Pierce County, Washington, between February 1, 1985 and March 31, 1985, the defendant did being over the age of 13 years, engage in sexual intercourse with Christina Sawyer, who was less than 11 years old.

The maximum sentence(s) is (are): twenty (20) years

years and \$ 50,000

fine(s).

6888 11/9/2085 88118

In addition, I understand that I must have to pay restitution for crime(s) to _____ when I enter a guilty plea and for any other uncharged crime(s) for which I have agreed to pay restitution. The standard sentence range for the crime(s) is/are at least 36 months and no more than 48 months

based upon my criminal history which I understand the Prosecutor presently knows to be: _____
1985 Ind Lib adult

Criminal history attached as Appendix _____ and incorporated by reference.

I have been given a copy of the information.

And I further understand that as a First Time Offender, the court may decide not to impose the standard sentence range, and then the court may sentence me up to 90 days of total confinement and two years of community supervision. (If First Offender provision is not applicable, this statement shall be stricken and initialed by the defendant and the judge).

6. I have been informed and fully understand that:

(a) I have the right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.

11/9/2005 09:11:53

- (b) I have the right to remain silent before and during trial, and I need not testify against myself.
- (c) I have the right to hear and question any witness who testifies against me.
- (d) I have the right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.
- (e) I am presumed innocent until the charge(s) is (are) proven beyond a reasonable doubt, or I enter a plea of guilty.
- (f) I have the right to appeal a determination of guilt after a trial.
- (g) If I plead guilty, I give up the rights in statements (a) through (f) of this paragraph 6.

7. I plead Guilty to the crime(s) of _____

STATUTORY RAPE IN THE FIRST DEGREE

_____, as charged in the _____ information.

- 8. I MAKE THIS PLEA FREELY AND VOLUNTARILY.
- 9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
- 11. I have been informed and fully understand that the Prosecuting Attorney will make the following recommendations to the court: exceptional sentence within SSOSA guidelines, provided Comte
(defendant's therapist) affirms that defendant is still treatable; \$365.00 fine;
restitution, if any; reasonable costs; \$70.00 CVPA

2008 11/07/2008 08:11:12

14. I have been further advised the crime(s) of _____

NA

with which I am charged carries with it a term of total confinement of not less than _____ years.

I have been advised that the law requires that a term of total confinement be imposed and does not permit any modification of this mandatory minimum term. (If not applicable, any or all of this paragraph shall be stricken and initialed by the defendant and the judge).

15. I have been advised that the sentences imposed in Counts _____

NA

will run consecutively/concurrently unless the court finds substantial and compelling reasons to run the sentences concurrently/consecutively.

16. I understand that if I am on probation, parole, or community supervision, a plea of guilty to the present charge(s) will be sufficient grounds for a Judge to revoke my probation or community supervision or for the Parole Board to revoke my parole. _____

17. I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

18. The court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime(s) in the information. This is my statement: _____

I, Daniel Stokwell, am over 13 years of age, and did have oral sex with Christina Sawyer under 11 years of age. This was in Pierce County in February + Early March of 1985. I voluntarily revealed this to my group which entered in January of 1986.

00112
00113
00114
00115
00116
00117
00118
00119
00120
00121
00122
00123
00124
00125
00126
00127
00128
00129
00130

19: I have read or have had read to me and fully understand all of the numbered sections above (1 through 19) and have received a copy of this "Statement of Defendant on Plea of Guilty" form. I have no further questions to ask of the court.

[Handwritten Signature]
Defendant

[Handwritten Signature]
Deputy Prosecuting Attorney

BARBARA L. COREY-BOULET

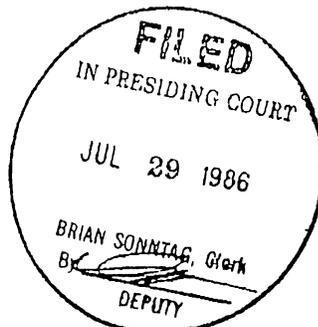
[Handwritten Signature]
Defendant's Attorney

MICHAEL R. JOHNSON

The foregoing statement was read by or to the defendant and signed by the defendant in the presences of his or her attorney, and the undersigned Judge, in open court. The court finds the defendant's plea of guilty to be knowingly, intelligently and voluntarily made, that the court has informed the defendant of the nature of the charge and the consequences of the plea, that there is a factual basis for the plea, and that the defendant is guilty as charged.

Further, the court finds that acceptance of this plea is consistent with prosecuting standards and the interests of justice.

Dated this 29 day of July, 1986
[Handwritten Signature]
Judge



FILED 88112 5882/6/11 8885

Exhibit 16

Exh. 16-1986 J&S

OCT 3 1986

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON LIBER 172 PAGE 256
FOR THE COUNTY OF PIERCE

THE STATE OF WASHINGTON

vs.
DANIEL J. STOCKWELL

Plaintiff
FILED
IN COUNTY CLERKS OFFICE
A.M. OCT 2 1986
PIERCE COUNTY WASHINGTON
BRIAN J. SMITH AG. County Clerk
DEPT 10

NO. 86-1-00878-2

JUDGMENT AND SENTENCE

SID NO. WA10438137

white; male; 7/27/51

This court having conducted a sentencing hearing pursuant to RCW 9.94A.110 on September 26,
1986 upon defendant's conviction(s) of the crime(s) set forth below, and the court having heard from the parties and considered the presentence reports and the records and files herein, and otherwise being fully advised, now makes the following findings:

1. PARTIES PRESENT: Present at the sentencing hearing were the defendant, the defendant's attorney, _____
MICHAEL R JOHNSON, Deputy Prosecuting Attorney BARBARA I. COREY-BOULET,
and _____

2. CURRENT OFFENSE(S): The defendant has been convicted of the following current offense(s) upon a plea of guilty/convicted by jury/verdict of guilty by the court, on the 29th day of JULY, 19 86.

Count I Crime: STATUTORY RAPE IN THE FIRST DEGREE
RCW: 9A.44.070 Crime Code: _____
Date of Crime: between February 1, 1985 and March 31, 1985
Incident Number: 86-097272
Special Finding: _____

Count _____ Crime: _____
RCW: _____ Crime Code: _____
Date of Crime: _____
Incident Number: _____
Special Finding: _____

Count _____ Crime: _____
RCW: _____ Crime Code: _____
Date of Crime: _____
Incident Number: _____
Special Finding: _____

Additional current offenses attached as Appendix A.

This court has jurisdiction of the defendant and the subject matter. It is ADJUDGED that the defendant is guilty of the current offenses set forth above.

92155 5852/6/86 853

(SUSPENDED SENTENCE - SPECIAL SEXUAL OFFENDER SENTENCING ALTERNATIVE)

7. DETERMINATE JUDGMENT AND SENTENCE: The court having found that the defendant is eligible for the Special Sexual Offender Sentencing Alternative (RCW 9.94A.120 (7) (a)) and that the community and the defendant will benefit from its use, and further having determined that no legal cause exists to show why a further judgment should not be pronounced, it is therefore ORDERED, ADJUDGED and DECREED that the defendant serve the determinate sentence and abide by the conditions set forth below.

SENTENCE: The defendant is sentenced to a term of total confinement of _____ days/months on Count I, _____ days/months on Count II, _____ days/months on Count III. The terms of this sentence are concurrent. The execution of this sentence is SUSPENDED and the following conditions are imposed:

- A. CONFINEMENT: _____ days/months of total confinement in the Pierce County Jail, with credit for time served prior to this date, to commence _____.
- B. ALTERNATE CONVERSION:
 - a. _____ days/months of total confinement are hereby converted to _____ days/months of partial confinement to be served subject to the rules and regulations of the Pierce County Jail.
 - b. _____ days of total confinement are hereby converted to _____ hours of community service to be completed as follows: _____
- c. The defendant is eligible for an alternative sentence to total confinement pursuant to RCW 9.94A.380 but alternatives were not utilized because: _____

C. TREATMENT: 24 ~~days~~ months of ~~inpatient~~ outpatient sex offender treatment as follows: continue treatment with Comte and Associates follow all directions of

D. COMMUNITY SUPERVISION: 17 months in community supervision by the Department of Corrections, to commence immediately, the defendant shall report by _____ to the Community Corrections Office. The defendant shall comply with all rules, regulations and requirements of the Community Corrections Officer.

E. OTHER CONDITIONS: _____

Additional conditions of sentence are attached as Appendix E.

Violations of the conditions or requirements of this sentence are punishable by up to 60 days of confinement for each violation (RCW 9.94A.200 (2)) or by revocation of the suspension and execution of the sentence (RCW 9.94A.120 (7) (a) (vi)).

The following appendices are attached to this Judgment and Sentence and are incorporated by this reference:

- Appendix A, Current Offenses
- Appendix B, Current History
- Appendix C, Sentence Scoring Worksheet(s)
- Appendix D, Exceptional Sentence
- Appendix E, Restitution

DONE IN OPEN COURT this 26 day of September, 19 86.

[Signature]
JUDGE

Presented by:

Kathleen Proctor
Deputy Prosecuting Attorney
PIERCE COUNTY, WASHINGTON
OCT 3 1986 P.M.
PIERCE COUNTY TAG, County Clerk

Approved as to form:

Michael R Johnson
Attorney for the Defendant

FINGERPRINTS



Fingerprint(s) of: DANIEL J STOCKWELL

Attested by: Sonntag, BRIAN SONNITAG
CLERK COUNTY CLERK

By: Charbonneau, JUDICIAL ASSISTANT
DEPUTY CLERK Date: 9/26/86 SEP 26 1986

CERTIFICATE

I, _____,
Clerk of this court, certify that the above is a true
copy of the Judgment and Sentence in this action
on record in my office.

Dated: _____

Clerk

By: _____
Deputy Clerk

OFFENDER IDENTIFICATION

State I.D. Number WA10438137

Date of Birth 7/27/51

Sex male

Race white

SEP 26 1986

Exhibit 17

Exh. 17 - Stockwell affidavit

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION TWO

IN RE PERSONAL RESTRAINT OF: } NO. _____
DAN STOCKWELL, } CERTIFICATION OF DAN STOCKWELL
Petitioner. }

I, Dan Stockwell, certify and declare as follows:

1. I am the petitioner in this Personal Restraint Petition.
2. I was represented on the direct appeal in COA No. 31920-9-II by Catherine Glinski. I spoke and corresponded with Ms. Glinski about the issues she was raising on the appeal.

3. I specifically asked her why she did not order the transcripts for ~~voir dire~~ and opening, and asked that she order those transcripts. Ms. Glinski declined to do so.

I had earlier written to the Clerk's Office of the Kitsap County Superior Court & requested the jury selection transcripts, but was told in response that these transcripts had not been authorized for transcription at public expense, which is why I asked Ms. Glinski to get them.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

19 Dec 2007 Seattle
DATE AND PLACE

[Signature]
DAN STOCKWELL