

No. 89571-6  
COA No. 263541-III

**SUPREME COURT  
STATE OF WASHINGTON**

**COPY**

**STATE OF WASHINGTON**

*Appellee-Respondent,*

v.

**JERRY ALLEN HERRON**

*Appellant-Petitioner,*

Received  
Washington State Supreme Court

DEC 26 2014

Ronald R. Carpenter  
Clerk

SUPERIOR COURT No. 07-1-00022-9  
WHITMAN COUNTY  
HONORABLE DAVID FRAZIER

**SUPPLEMENTAL ARGUMENT IN  
SUPPORT OF REVIEW**

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## **A. IDENTITY OF PETITIONER**

Jerry Herron, petitioner below, is an inmate at Stafford Creek, serving a 231 month sentence imposed on July 27, 2007, for 1<sup>st</sup> degree rape.

## **B. COURT OF APPEALS DECISION**

Mr. Herron seeks review of Division Three's unpublished decision in *State v. Herron*, slip opinion attached as Appexdix A to the original Petition for Review.

## **C. SUPPLEMENTAL ISSUE PRESENTED FOR REVIEW**

Given Mr. Herron's *limited* waiver for a closed courtroom for only panelists who indicated serious issues regarding participation in a rape trial, did the trial court's *broadened* use of the in camera session — striking jurors for reasons unrelated to Herron's limited waiver — violate Herron's rights under Bone-Club and *Applegate*.

The decisional law appears divided as to the necessity of the trial court adhering to the *Bone-Club* procedure where, as here, defendants execute a partial waiver to a public trial; the issue also raises a substantial question under the State's constitution.

## **D. SUPPLEMENTAL STATEMENT OF THE CASE**

As supplement to the original Statement of Proceedings and  
SUPPLEMENTAL ARGUMENT IN SUPPORT OF REVIEW - 1

Facts, Mr. Herron adds the following:

At the June 15 pretrial conference, in the context of discussing the proposed juror questionnaire, the court asked Mr. Herron whether he understood that he had the right to a public trial. RP 6/15/07 104:9-15. Mr. Herron stated he understood. RP 104:16.

The court expanded the colloquy to include waiver where the questionnaire was going to raise highly sensitive matters, such as sexual misconduct.

THE COURT: And by the same token, if you want to waive that right so that jurors will know that *if they respond positively to some of these questions about things like have they ever been accused of a sex offense or been a victim of a sex offense or an unwanted sexual touching*, have a close friend or family member – we discussed last week, very often individuals are very reluctant to disclose those things, and particularly to disclose those things if they know they are going to be talked about in front of, well, for instance, 50 other jurors and other members of the public.

RP 6/15/07 104:17-105:3 (emphasis added). The court then reviewed its past practice, pre-*Bone-Club*, and explained the benefits of *in camera* review for sensitive issues:

the argument is that [venire panelists] tend to be more open and honest and disclose things that they might not otherwise disclose if they knew that 50, 75 people were going to hear about these things. And it is totally your decision as to how that is handled.

RP 6/18/07 105:5-18.

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Mr. Herron stated he wanted these jurors questioned in chambers. RP 105:23.

On that record, the court found Mr. Herron to have knowingly, voluntarily, and intelligently waived his right to an open courtroom and noted to Mr. Herron that he made the “safe, wise” decision. RP 108:23 to 109:3. The parties agreed that the jury questionnaires would be reviewed and *only such jurors as might be affected by the nature of the charge would be brought back to chambers for private questioning.*

The court concluded: “And at this time it will be understood that unless I hear otherwise from the defense *this will be a chambers conference inquiry relating to the questionnaire.* \* \* \* And in that regard the waiver of the public aspect of the trial in only this limited regard is accepted.” RP 110:12-20.

As shown next, the actual closed-chambers discussion went far afield and resulted in numerous informal strikes for matters not relating to the sensitive matters raised in the questionnaire.

**JUNE 18, 2007 — closed proceedings during  
voir dire**

On June 18, 2007, the court began by briefly introducing the

case and gave a summary of the struck jury method. RP 6/18/07, 3-5 (see Attachment 2). The court addressed the jury questionnaire and informed the jurors that their responses will be provided to both attorneys.

THE COURT: [B]ecause of the subject matter of today's case you've been provided in advance with a written jury questionnaire form. The allegation here concerns an allegation of rape, and sometimes people have things, when there's a sex offense that is being alleged, sometimes they have things that have occurred that they don't like to talk about in open fashion.

RP 6/18/07, 6:9-16. Next the court stated the following:

THE COURT: [T]hen if there were responses that need some follow-up I go in chambers with the parties and with the attorneys and then if we need to ask you some questions relating to those questionnair reponses then we bring you in on an individual basis, one by one. Everything is recorded but we can make some inquires in a relative degree of confidentiality, so you don't have to discuss sensitive things in front of the public in front of all the other jurors.

And again, this is to minimize the difficulty of having to answer these questions for the jury panel, and also to encourage full disclosure of things that might be important.

RP 6/18/07, 7:3 to 7:15. So far as the public and Mr. Herron knew, the *in camera* closed sessions were only to review highly confidential, sensitive matters.

After questioning several potential jurors regarding their  
SUPPLEMENTAL ARGUMENT IN SUPPORT OF REVIEW – 4

knowledge and experience with rape, rape victims, or others accused of rape, the court stated the following:

THE COURT: Okay. And we will be going — What I'm going to do, as a matter of fact, is take a break from our sessions in court, and I'm going to turn off our amplification system here, so when we have discussion in chambers it's not broadcast here. But I want to meet with counsel and — parties in chambers.

RP 6/18/07, 49:20 to 50:1. The trial court thereupon explicitly reopened the record in closed chambers (RP 6/18/07, 50:13) and proceeded to strike several jurors before any motion had been made for cause. “Why don't we talk about some of these people that have issues — And we won't bring — we'll agree that some of these should be excused. We don't have to ask them any questions, don't have to bring them in.” RP 6/18/07, 50:16-20. The people with “issues” however included a number of panelists who had not provided sensitive or confidential answers to the questionnaire.

Counsel and the court first discussed which of the venire panel had been excused before court opened. RP 6/18/07, 51-52. Additional discussion covered members of the venire who were, in fact, still on the panel and were in fact present outside the closed chamber's door. RP 6/18/07 53-59. Discussion covered scheduling issues, predispositions regarding the nature of the alleged offense, SUPPLEMENTAL ARGUMENT IN SUPPORT OF REVIEW – 5

and other routine issues. RP 6/18/07 53-59.

At page 59, the trial court begins to drop jurors. “If you agree, I’ll knock [the student from the panel]; if not, we can talk to her some more.” Both parties appear to agree to removing the student, though the transcript indicates only one, unnamed, counsel. RP 59.

At this point, there has not been a request by either party to expand the limited justification for a closed-courtroom as agreed on June 15, nor has the court engaged in the *Bone-Club* procedures prior to court-closure.

The trial judge summarized the for-cause eliminations made to that point. RP 6/18/07 59-63.

Finally, at page 63, the court turns for the first time to the questionnaire and the original purpose for a closed session — the only purpose for which the Defendant gave his waiver. The trial court determined that juror “Number eight” should be brought back to chambers. RP 63:18 to 64:7. The court adds juror “Number 11.” RP 64:8. The court then adds jurors 24 through 26, as well as 28, 32, 33. RP 65:11 to 67:8.

In all, the trial court determined while in chambers with counsel to have 19 jurors (numbers 54, 49, 46, 41, 36, 35, 32, 26, 25, 24, 23,

20, 17, 14, 12, 11, 8, 7, 6) interviewed in chambers. RP 6/18/07 67:9-12. The court, still in camera, also determined to excuse 15 jurors for miscellaneous reasons unrelated to the questionnaire — as to those 15, the court sought agreement. RP 6/18/07 67:15-21. The court also confirmed on juror’s release who had been released during open court. See RP 6/18/07 69:12-14.

The results of the in-chambers cull from the venire was announced in open court and the venire members instructed to remain for further in-chambers questioning or to go on their way. RP 69.

### **Supplemental Argument**

#### **I. ONCE VOIR DIRE HAD COMMENCED, IN CAMERA REVIEW OF INDIVIDUAL VENIRE MEMBERS — EXCEPT THOSE WHO WERE PLAINLY WITHIN THE SCOPE OF THE DEFENDANT’S WAIVER — VIOLATED BONE-CLUB PRINCIPLES**

The issue here arises when a court conducts an in camera review of venire members *after* voir dire has commenced. Compare *State v. Slert*, 334 P.3d 1088, 1092 (2014) (experience and logic test does not forbid unwaived in-camera discussion of jurors where *voir dire* has not begun). In this instance, Mr. Herron’s waiver of his right to a public and open trial was limited to questions posed to jurors who,

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by their own statements in a pretrial questionnaire, expressed concerns over answering sexual history questions. He was not asked nor did he agree to closed in-camera discussion of all jurors' myriad concerns.

While it is true that “courts indulge every reasonable presumption against waiver of fundamental constitutional rights,” *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938), a defendant may waive his or her *Bone-Club* procedures, provided the waiver is knowing, intelligent, and voluntary. *State v. Frawley*, 334 P.3d 1022, 1030-35 (2014) (defendant may waive *Bone-Club* rights, including right to *Bone-Club* procedures per JJ Stevens and Fairhurst concurring with partial dissent by McCloud, J.M. Johnson, and Gonzalez; Wiggins dissenting).<sup>1</sup>

Herron's partial waiver was not a knowing or voluntary relinquishment of his right to an open courtroom and should not foreclose the court's duty to follow the *Bone-Club* procedures.

Here the evidence is firm that Mr. Herron waived his open-courtroom rights for the portion of the *voir dire* focussing upon

---

<sup>1</sup> In contrast, Justices C. Johnson, with JJ Owens and Yu concurring, held that a defendant's waiver was insufficient to support closure unless the trial court also conducted the *Bone-Club* analysis. *Frawley*, 334 P.3d at 1028.

sensitive answers to questions probing the panelists' experience with sexual behaviors and misconduct. RP 104-05, 108-09. But there is nothing in the record showing that Mr. Herron agreed to broad discussions regarding the venire panelists' routine concerns over schedule, health, convenience and other issues.

Where, as here, the court closure extends beyond the agreed-to limitations, there is no basis on which to claim waiver.

In effect, as to all except those venire members who had signaled having sensitive information, Mr. Herron had given no waiver. "Open justice is just too important to our constitution and our state to allow us to look for reasons to turn a blind eye to improperly locked courtroom doors. When the court room doors are locked without a proper prior analysis under [*Bone-Club*], the people deserve a new trial." *State v. Easterling*, 157 Wn.2d 167 at 187 (2006) (Chambers, J., concurring).

### **CONCLUSION**

For the reasons set forth above and in the original and supplemental Petitions, Jerry Herron respectfully asks this Court to accept his Petition for Review.

///

DATED THIS 23rd day of December, 2014.

Law Offices of JEFFRY K FINER

  
\_\_\_\_\_  
Jeffrey K. Finer, WSBA #14610  
Attorney for Jerry Herron

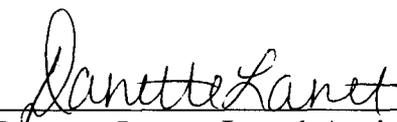
CERTIFICATE OF SERVICE

I, Danette Lanet, certify that on the 23rd day of December, 2014, I caused the foregoing *Supplemental Argument in Support of Review*, to be served, via USPS, postage prepaid, on the following:

Dennis Tracy  
Whitman County Prosecutor  
PO Box 30  
Colfax, WA 99111

Jerry Herron  
DOC #711463  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

DATED this 23rd day of December, 2014.

  
\_\_\_\_\_  
Danette Lanet, Legal Assistant

# ATTACHMENT 1

# Court of Appeals No. 263541

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF WHITMAN

STATE OF WASHINGTON,

Plaintiff,

vs.

JERRY HERRON,

Defendant.

No. 07-1-00022-9

Hon. David Frazier

March 29, 2007

April 5 & 19, 2007

May 10, 2007

June 8, 15 & 18, 2007

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VERBATIM TRANSCRIPT OF PROCEEDINGS  
From Electronic Recording

VOLUME I - Pages 1-176

APPEARANCES:

For Plaintiff:

CAROL L. LA VERNE

DENIS TRACY

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KENNETH C. BECK, TRANSCRIBER

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1 MOTION TO SUPPRESS

2 March 29, 2007

3  
4 THE COURT: All right. And good morning. We  
5 are here for a hearing, motion to suppress, a 3.5  
6 hearing, in the State of Washington versus Jerry Allen  
7 Herron, 07-1-00022-9 is the case number. I'll let the  
8 record reflect Mr. Herron is present; he is here with  
9 his attorney Mr. Mark Monson. Deputy prosecuting  
10 attorney Carol La Vern is present, who represents the  
11 State of Washington. And the court has received  
12 briefing from both sides, and it appears everyone is  
13 ready to proceed.

14 And I think I said this was a -- did I say --  
15 3.3 hearing, or -- admissibility of statements -- Rule  
16 3.5--

17 MR. MONSON: 3.5, yeah, that's right.

18 THE COURT: And, -- before we proceed here, Mr.  
19 Herron, you are here and you're represented by  
20 counsel, and Mr. Monson has been representing you.

21 The purpose of today's hearing is for the court  
22 to hear evidence to make a determination as to whether  
23 statements that the prosecution alleges you made will  
24 be admissible at the trial of your action here. And  
25 that's the sole purpose of this particular hearing.

1           And I need to advise you at this time that  
2           because that is the issue here there are some rights  
3           that you have, and I want to tell you a little bit  
4           about the procedures that the court will be following  
5           here.

6           The prosecution has the burden of establishing  
7           the admissibility of any statements before those  
8           statements can be admitted. And at this type of a  
9           hearing you have a right -- you may but you need not  
10          testify at this hearing concerning the circumstances  
11          surrounding the statement. You need to understand  
12          that if you do testify at this hearing you'll be  
13          subject to cross examination by the prosecution with  
14          respect to the circumstances surrounding the statement  
15          and with respect to the issue of your credibility.

16          If you do testify at this hearing you do not by  
17          doing so, by so testifying, waive your right to remain  
18          silent during the trial.

19          And finally, if you do testify at this hearing  
20          neither the fact that you testified nor the substance  
21          of your testimony at this hearing will be mentioned to  
22          the jury at trial unless you testify at trial  
23          concerning the statements that the state offers.

24          Now, do you understand these things?

25          DEFENDANT: Yes.

1           THE COURT: And have you had a chance to review  
2 these rights with Mr. Monson?

3           DEFENDANT: (Inaudible).

4           THE COURT: Okay. Then with that, at this time  
5 -- I don't know whether you would like to make any  
6 preliminary remarks from both sides in the form of an  
7 opening statement or not. Ms. La Verne? Did you--

8           MS. LA VERNE: Actually it's a procedural  
9 issue, your Honor. What the state would like to do is  
10 to call Sergeant Chapman to lay a foundation for the  
11 statements of the defendant that we -- the state would  
12 be offering, and to put some preliminary facts into  
13 evidence so that the court has a picture of how this  
14 all came about.

15           The state filed a transcript of the interview  
16 that we're going to be -- that's going to be at issue  
17 here. I did that so that the court would be able to  
18 review that ahead of time. I will be filing a motion  
19 to seal that because it does have the name of the  
20 victim in it. Or I can redact -- I could probably  
21 redact a copy, whichever the court would prefer.

22           Also there is a recording of that interview,  
23 and if the court would like -- The state would prefer  
24 to mark and offer the recording as an exhibit and have  
25 the court listen to it, because it -- I think it makes

1 it clearer just how non-coercive this interview was.  
2 But I will take my cues from the court. And I only  
3 have one witness I'll be calling, Sergeant Chapman.

4 THE COURT: All right. And, Mr. Monson, did  
5 you wish to make -- opening comments?

6 MR. MONSON: Preliminarily, your Honor.

7 With regard to the motion to seal the  
8 transcript, that the defense doesn't have any  
9 objection to that.

10 With regard to the state's placing the  
11 transcript in the court file, because our argument is  
12 based on the transcript certainly we don't object to  
13 that being marked as an exhibit, nor do we object to  
14 the court listening to the CD as well.

15 So,--.

16 And, your Honor, I know that the sum and  
17 substance of the state's argument and the defense  
18 argument with regard to this 3.5 hearing is contained  
19 in the pleadings that have been filed. I know that  
20 Ms. La Verne has done a good job of outlining her  
21 argument, and ours is also outlined in there, and I --  
22 If the court hasn't had time to review those, my  
23 thought would be we could give the court some  
24 additional time to review that, because that does  
25 contain the sum and substance of, I think, both of our

1 arguments.

2 THE COURT: No. I took your briefs home last  
3 night. And I also reviewed the transcript that was  
4 provided -- I believe an attachment to Ms. La Verne's  
5 brief -- I'm looking at the file, though. I don't see  
6 in the file the transcript. I had a copy of it with  
7 page three--

8 MS. LA VERNE: I did file it--

9 THE COURT: Okay.

10 MS. LA VERNE: And I didn't -- I didn't  
11 actually mention it as an attachment to the -- my  
12 memorandum, and I should have done that.

13 MR. MONSON: You know, your Honor, if it's not  
14 in there, and since the defense doesn't have any  
15 objection to you reviewing that transcript, maybe the  
16 easy thing to do would just be to -- not put it in the  
17 court file, since it's not mentioned in any other--

18 MS. LA VERNE: It was file stamped yesterday.

19 MR. MONSON: Oh, was it file stamped?

20 THE CLERK: Oh. Okay.

21 THE COURT: All right. Well, I'll grant the  
22 motion to seal the transcript that was filed with the  
23 court. It will be sealed since it bears the name of  
24 the alleged victim. And it sounds as though the  
25 state's going to be offering the same transcript in

1 evidence, or asking the court to refer to the  
2 transcript that's being filed as evidence, which -- no  
3 dispute -- How about just handling it that way? It  
4 will be filed, it will be filed under seal, and am I  
5 -- is it fair to say that that filing then is going to  
6 -- It's admissibility for purposes of this hearing is  
7 going to be agreed to.

8 MR. MONSON: Yes, your Honor.

9 THE COURT: You're both basing your arguments  
10 on that transcript--

11 MS. LA VERNE: And I think your copy has --  
12 file -- copy filed stamp on--

13 THE COURT: Probably. I think it does, too.  
14 It does.

15 And then as far as whether or not the recording  
16 is admitted for this hearing, I'm just going to leave  
17 that up to the discretion of Ms. La Verne. If you  
18 wish to offer that, after laying a foundation or just  
19 rely on the written transcript, I'll leave that up to  
20 you and leave it up to Mr. Monson if you don't offer  
21 it.

22 So with that, for the record, to clarify, the  
23 written transcript that's been provided will be  
24 admitted into evidence, considered by the court. No  
25 further -- and referring to that which is going to be

1 filed under seal.

2 And--

3 MR. MONSON: And, your Honor, one preliminary  
4 matter--

5 THE COURT: Yes.

6 MR. MONSON: Admitted into evidence for  
7 purposes of this hearing only; is that correct?

8 THE COURT: Yes. Okay. So, Ms. La Verne, I'll  
9 let you call your first witness.

10 MS. LA VERNE: Thank you. I call Sergeant  
11 Chapman.

12 THE COURT: And do you promise that the  
13 testimony you give in this matter will be the truth?

14 THE WITNESS: I do.

15 DIRECT EXAMINATION

16 BY MS. LA VERNE:

17 Q Would you please state your full name and spell your  
18 last name?

19 A Christopher R. Chapman.

20 Q What's your occupation? I'm sorry; go ahead and spell  
21 your last name.

22 A C-h-a-p-m-a-n. I'm a deputy sheriff with the  
23 sheriff's department.

24 Q How long have you been with the sheriff's department?

25 A Twelve years full-time.

1 Q I want to direct your attention to February 13<sup>th</sup> and  
2 14<sup>th</sup> of this year. Were you on duty on those days?  
3 A Yes, I was.  
4 Q Did you have occasion to take a report of a rape?  
5 A I did.  
6 Q Who was the victim? Or, who was the complaining  
7 witness?  
8 A Kristen Beck.  
9 Q Did you talk to her?  
10 A I did.  
11 Q As a result of talking to her, were you able to  
12 identify a suspect?  
13 A I was.  
14 Q Who was the suspect that you identified?  
15 A Jerry Allen Herron.  
16 Q Did you determine where he lived?  
17 A Yes, I did.  
18 Q Where was that?  
19 A Airway Heights.  
20 Q When did you talk to Ms. Beck?  
21 A It was, I think my first contact was around 2:00 in  
22 the morning. So it would have been the 14<sup>th</sup>.  
23 Q 14<sup>th</sup>? Did you personally go to Airway Heights?  
24 A I did.  
25 Q When did you do that?

1 A On the 14<sup>th</sup>.

2 Q Before you went to Airway Heights did you obtain a  
3 search warrant?

4 A Yes, I did.

5 Q When you went to Airway Heights -- where was the  
6 search warrant -- what was the location where you were  
7 to search?

8 A The exact location?

9 Q In general terms.

10 A I can't remember the numbers, but it was Mintle  
11 Street, and it was Trailer No. 35.

12 Q Was that what you identified as Mr. Herron's address?

13 A That's correct.

14 Q Okay. While you were in -- or, in Airway Heights did  
15 you have contact with Mr. Herron?

16 A No.

17 Q At some point did you have contact with Mr. Herron?

18 A Yes, I did.

19 Q How did that happen?

20 A Prior to leaving Airway Heights I had passed on my  
21 probable cause to the Airway Heights Police  
22 Department. They had had a discussion with him on the  
23 phone earlier about having him come to the office,  
24 their office, and he did, and then they arrested him  
25 on my probable cause.

1 Q And then how did he get to Whitman County? --he's  
2 obviously here.

3 A Correct. They called me, and I was in Colfax at the  
4 time, so I turned around and then we met up in  
5 Spokane, and I took possession of him.

6 Q Okay. So you didn't actually go to the Airway Heights  
7 Police Department?

8 A No.

9 Q Okay. Where did you -- where was the transfer?

10 A It was at -- just south of Spokane on 195 there's a --  
11 used to be Tidyman's; I can't remember the store now  
12 -- parking lot.

13 Q What time was that?

14 A I don't remember the exact time. I think it was -- I  
15 think it was around 8:00 in the evening.

16 Q Still on the 14<sup>th</sup>?

17 A Still on the 14<sup>th</sup>.

18 Q When you took custody of Mr. Herron, what rights did  
19 you advise him of?

20 A I advised him of his Miranda rights. I read them off  
21 of a full-size sheet of paper that I had.

22 Q Okay. From memory can you recite what it was you told  
23 him?

24 A I can give it a try, but--.

25 Q Was it the entire Miranda--

1 A It was. Yes.

2 Q Okay. After you got him in your car then where did  
3 you take him?

4 A I drove him down to Colfax.

5 Q Was there any conversation in the car on the way down?

6 A There was some conversation, yes, but nothing  
7 concerning the case.

8 Q Okay. When you arrived in Whitman County did you  
9 arrange to interview him?

10 A I did.

11 Q Did he agree to be interviewed?

12 A He did.

13 Q Did you again advise him of his Miranda warnings?

14 A Yes, I did.

15 Q Was -- Who else besides you and Mr. Herron was present  
16 at that interview?

17 A Colfax Police Officer Ossie.

18 Q What time did you interview him?

19 A I don't remember, but it was -- within the two hours,  
20 though--. I don't have my report.

21 Q Okay. Where did the interview take place?

22 A Our interview room.

23 Q Okay. Was that interview recorded?

24 A It was.

25 Q Describe how you arranged to record it.

1 A Well, I asked Officer Ossie if he would sit in with  
2 me, and -- so we set up two tape recorders. There was  
3 a new type of tape recorder that we have in our  
4 office, and I wasn't familiar with it. So I set that  
5 one up as well as a second tape recorder.

6 Q It's actually tape recorders, or is it digital?

7 A They're digital.

8 Q --digital.

9 A One was an iPod and an Olympus digital tape recorder.

10 Q Was the entire interview recorded?

11 A Yes, it was.

12 Q Did you arrange, or did someone in your department  
13 arrange to have a written transcript made from that  
14 recording?

15 A Yes.

16 Q Have you reviewed that transcript and the recording to  
17 make sure that it's accurate?

18 A Yes, I have.

19 Q And is it accurate?

20 A It is.

21 Q Have you seen a copy marked with a copy filed stamp of  
22 that interview?

23 A Yes.

24 Q Is it the same one that you -- that you reviewed and  
25 approved?

1 A Yes.

2 MS. LA VERNE: Your Honor, I -- I guess I -- I  
3 don't know if I'm offering it into evidence or not.  
4 It's already been filed -- mark it as an exhibit? Or,  
5 -- I'd ask the court to--.

6 THE COURT: Well, I have before me the -- filed  
7 transcript, and this has been marked by the clerk as  
8 Document No. 37 in the file. This is a document that  
9 the court will sign an order and will seal. And as I  
10 understand it there's a stipulation that that filed  
11 document will be admitted into evidence and considered  
12 by the court as evidence for purposes of this 3.5  
13 hearing. Is that understood?

14 MR. MONSON: Correct, your Honor.

15 THE COURT: So it doesn't need to be further  
16 marked. It will just be considered as evidence in  
17 this case as it in the file.

18 And it's, again, Document No. 37.

19 Q Sergeant Chapman, approximately how long did the  
20 interview last?

21 A Just shy of an hour.

22 Q Do you happen to have a copy of that transcript in  
23 front of you?

24 A I do.

25 Q Do you -- Did you note on there what time the

1 interview began?

2 A I did. 8:27 in the evening.

3 Q So then it would have been over with by 9:27?

4 A Yes. Or maybe just shy of it. I actually have the  
5 ending time here.

6 Q What is the ending time?

7 A 9:15.

8 Q Do you know if Mr. Herron had had dinner before you  
9 brought him down here?

10 A Pardon me?

11 Q Did you know if he'd had dinner?

12 A I didn't know.

13 Q Did he ask for anything to eat?

14 A He did.

15 Q And was -- did he get some food?

16 A I made arrangements for that. I'm assuming he did.

17 Q Okay. But he got his food after the interview was  
18 over?

19 A Yes.

20 Q Okay.

21 MS. LA VERNE: Your Honor, I'm going to rely on  
22 the court's reading of the transcript rather than  
23 having the officer repeat it. Also I would ask to  
24 have a copy of the CD marked as Plaintiff's Exhibit 1  
25 and admitted and have it the court listen to it. I

1 can have Sergeant Chapman identify the CD itself--.

2 May I approach the witness, your Honor?

3 Q (Inaudible) I realize by looking at the CD you can't  
4 tell much, but have you looked -- CD -- the interview  
5 in preparation for this hearing today?

6 A Yes.

7 Q Does that look like one?

8 A Yes. This is actually my writing, the one I provided  
9 you.

10 MS. LA VERNE: I offer Exhibit 1.

11 MR. MONSON: No objection, your Honor.

12 THE COURT: Exhibit 1 is admitted.

13 MR. MONSON: Your Honor, I guess I should say  
14 no objection assuming that what's on that CD is -- is  
15 the interview. And I believe it is.

16 MS. LA VERNE: I have nothing further.

17 MR. MONSON: Your Honor, because this is to a  
18 certain degree a motion to suppress, -- the defense  
19 would like to take just a few moments and perhaps go  
20 beyond the traditional scope of maybe a 3.5 hearing.  
21 I know that -- I'd like to inquire preliminarily into  
22 his interview with the -- with the initial victim and  
23 get some background information just to make sure that  
24 there's a determination as to probable cause and  
25 things like that. So, -- But I'll proceed and if the

1 state has an objection I'm sure I'll hear about it.

2 CROSS EXAMINATION

3 BY MR. MONSON:

4 Q Sergeant Chapman, early on you -- at the beginning of  
5 this hearing you testified that you had a conversation  
6 with the victim Kristen Beck; is that correct?

7 A Yes.

8 Q And you testified that she identified the defendant --  
9 or, based on your conversation with her you were able  
10 to identify Mr. Herron as the suspect in this case; is  
11 that correct?

12 A Yes.

13 Q Can you explain what was Ms. Beck's demeanor when you  
14 met with her? What was her condition, situation?

15 A When I met with her she had just completed an exam,  
16 and we went into a room and spoke. And -- she had  
17 several different emotions. She was fairly easy to  
18 talk to, and at times, when we spoke about certain  
19 issues, she got upset. Was frustrated. So, --  
20 there's a range of emotions.

21 Q Had she been drinking?

22 A She said she had.

23 Q Did she indicate how much she had been drinking?

24 A Yes. I think she said four beers if I remember  
25 correctly.

1 Q Do you remember what size those beers were that she  
2 stated?

3 A She told me 24-ounce beers.

4 Q Were you able to detect the odor of alcohol on her  
5 when--

6 A I was. I did.

7 Q And do you know about how long after the alleged crime  
8 had taken place that you were able to -- that you  
9 interviewed her? What was the time frame between the  
10 alleged crime and your interview, I guess is a better  
11 question.

12 A I don't have the exact times but I believe she came  
13 into the hospital around nine, and my interview -- in  
14 the evening of my interview on the 13<sup>th</sup>, and then I  
15 interviewed her around 2:00 on the 14<sup>th</sup>. So, four and  
16 a half to five hours.

17 Q Did she tell you that she was impaired?

18 A She made some statement, and I can't remember exactly  
19 what the -- wording was. I asked that question, I  
20 believe.

21 Q And my understanding is you recorded that conversation  
22 with her; is that correct?

23 A Yes.

24 Q Okay. How was it that you were able to determine from  
25 your conversation with her that Mr. Herron was a

1 potential suspect in this case?

2 A Well, from some of the things she gave me as well as  
3 what she had told Pullman Police officers. They gave  
4 me a very detailed -- they conducted an interview  
5 prior to my arrival. And we sat down for probably a  
6 half our; they walked me through their interview. So  
7 I had their information as well. And through those  
8 two means, Mrs. Beck and the Pullman Police, we were  
9 able to make the link.

10 Q Okay. Is that information contained on an affidavit  
11 for a search warrant?

12 A I believe so. Think it's--.

13 Q Now you mentioned that the search warrant was obtained  
14 before visiting with Ms. Beck; is that correct?

15 A No. It was after.

16 Q I'm sorry. Before you visited with Ms. Beck? Or did  
17 you obtain a search warrant after you had listened to  
18 Pullman P.D. and conducted your interview with Ms.  
19 Beck?

20 A I listened to Pullman P.D., and then Ms. Beck, and  
21 then the following day, five hours later, I drew up a  
22 search warrant.

23 Q You testified, Sergeant, that you had passed on your  
24 probable cause with the Airway Heights Police  
25 Department, they arrested Mr. Herron; is that correct?

1 A Yes.

2 Q And then you took possession of him in Spokane; is  
3 that correct?

4 A Yes.

5 Q So is it true that you obtained no statement regarding  
6 anything that he may have said to the Airway Heights  
7 Police Department; is that right? Or, strike that.

8 Let me ask this:

9 Did you obtain any statements of the nature  
10 that we're talking about today, any confessions or  
11 anything of that nature, from the Airway Heights  
12 Police Department?

13 A I did.

14 Q Can you -- Are those contained in your report?

15 A Yes.

16 Q What did--

17 A They also presented a report as well.

18 Q Okay. What -- what did Mr. Herron tell the Airway  
19 Heights Police Department?

20 A After he arrived at the -- Airway Heights Police  
21 Department, they placed him under arrest, they  
22 Mirandized him, and told him of the charges, which was  
23 rape and unlawful imprisonment, and they said that a  
24 Whitman County deputy was coming to pick him up. And  
25 that was fairly -- pretty much the extent of -- they

1 didn't want to discuss the case. They didn't really  
2 know anything other than what I had told them.

3 Q To your knowledge did they discuss the case with him?

4 A No.

5 Q Okay. So they waited for you to come and do that?

6 A Yes.

7 Q So to your knowledge there's no incriminating  
8 statements that he made to the Airway Heights Police  
9 Department that you're aware of?

10 A Well, I -- I think there's an incriminating statement  
11 he made. I could tell you what they told me and  
12 what's in their report.

13 Q What's your understanding of what he told the Airway  
14 Heights Police Department?

15 A And they brought it to my attention when I -- when we  
16 made the switch. They said something of interest  
17 during their contact with him, that after they  
18 Mirandized him, told him that, "You're under arrest  
19 for" -- for the rape and for the unlawful imprisonment  
20 he wanted to make a phone call. And apparently I  
21 think he was still in handcuffs -- or, he was in  
22 handcuffs at that time. They said, "That's fine, you  
23 can make a phone call," and they made a phone call on  
24 the speaker phone and spoke with an individual and he  
25 told this individual that apparently he was under

1       arrest for rape and that the Pullman Police were  
2       coming up to pick him up. Which Airway Heights  
3       thought was significant because they had never  
4       mentioned anything about Pullman Police.

5   Q   Now, you mentioned that you read Mr. Herron his rights  
6       from a sheet of paper?

7   A   Yes.

8   Q   Do you have that in your report someplace?

9   A   It is.

10  Q   Did he sign that paper?

11  A   He didn't. He was in handcuffs. But it was in the  
12       presence of the other two officers.

13  Q   And your testimony is with regard to your ride down  
14       from Spokane with him that you had a conversation but  
15       nothing concerning the case; is that right?

16  A   Nothing of any substance that this -- I can't remember  
17       anything -- I would have put it in my report if it was  
18       something I thought was--.

19  Q   Nothing of any significance one way or the other?

20  A   No. I have a new patrol car, and I thought we may  
21       talk, and -- I can't hear anything. He was actually  
22       the first person in that car, so -- We had a difficult  
23       time talking.

24  Q   Just kind of chit-chat?

25  A   Yeah. Very little chit-chat, and we listened to

1 music.

2 Q We have had admitted into evidence for purposes of  
3 this hearing only the transcript of your interview  
4 with Mr. Herron. Was there any discussion before the  
5 interview as to what was going to happen, what would  
6 be expected of him, anything of that nature?

7 A I can't remember specifically. A lot of times I will  
8 give a outline to somebody, say, "This is what's going  
9 to happen" -- And this may have happened in the car --  
10 "I'd like to talk to you, and" -- we'll sit and talk.  
11 But that would have been the extent of it.

12 Q And so your recollection is that Mr. Herron, at the  
13 time you interviewed him, was aware of the serious  
14 nature of the charges that could be lodged against  
15 him?

16 A Oh, absolutely. I outlined them when I put him in my  
17 car.

18 Q So there's no doubt that he knew that you were looking  
19 at him for a rape; is that right?

20 A Right. And in the interview he even -- he even said  
21 it himself at the very, very beginning. So, he was  
22 well aware.

23 Q In your opinion did he appear nervous?

24 A He actually seemed very calm. At times he was  
25 agitated at the situation. But for the majority of

1 the conversation we had a very calm conversation.

2 MR. MONSON: Your Honor, I think that's all  
3 I've got at this time.

4 THE COURT: Ms. La Verne, anything further?

5 MS. LA VERNE: I have nothing further.

6 THE COURT: All right. (Inaudible).

7 MS. LA VERNE: The state has no other evidence.

8 THE COURT: And does the defense have any  
9 evidence?

10 MS. LA VERNE: --give the CD to -- clerk.

11 MR. MONSON: Your Honor, if I can have about  
12 thirty seconds?

13 Your Honor, we don't have any evidence to  
14 present.

15 THE COURT: All right. Now, I assume that  
16 you're going to want me to listen to the CD. I  
17 believe Ms. La Verne had indicated that. But -- I  
18 assume as well you want to go ahead and proceed with  
19 your argument. Is that -- Or did you want wait until  
20 I've listened to this?

21 MR. MONSON: Well, what do you prefer, your  
22 Honor? I mean, our argument may be more meaningful if  
23 you listen to it, but I think I agree with Ms. La  
24 Verne; it's a fairly clear-cut issue. I guess it  
25 depends on -- We have just very brief argument. I

1 think mine is outlined in about a paragraph in my  
2 memorandum.

3 THE COURT: Why don't you just go ahead with  
4 your argument, then. I can -- I'm not going to be  
5 able to leave the bench and immediately listen to the  
6 entire tape. We've got some other things going. I  
7 have a 10:30 case and then I've got some other  
8 matters. So,--.

9 ARGUMENT

10 MS. LA VERNE: I think the only issue, your  
11 Honor, is -- the mention of an attorney in the  
12 interview. He clearly was read his Miranda rights and  
13 he waived them, so the voluntariness of the statement  
14 isn't an issue. And once the court has reviewed that  
15 transcript and listened to the tape, it's the state's  
16 position that those brief mentions of an attorney  
17 don't come anywhere close to a request for an attorney  
18 such that would require the officer to stop the  
19 interview and to see to it that he had counsel before  
20 the interview continued.

21 There were very innocuous mentions about an  
22 attorney, he might need one if it got any more serious  
23 and this. And he certainly never asked for one.

24 At the end of the interview when he said "I'm  
25 done talking" he clearly was able to express himself

1       then and he knew how to tell the officer he was  
2       through talking. So there certainly is no evidence  
3       whatsoever that his free will was overridden by the  
4       police officer or that he was in any way coerced.

5               THE COURT: All right. Mr. Monson?

6               MR. MONSON: Your Honor, very briefly.

7                               ARGUMENT

8               MR. MONSON: The issue here is what happens  
9       when Mr. Herron stated, towards the beginning of the  
10      interview, "If I'm going to be" -- "If I'm going to  
11      get charged I probably need an attorney." I think the  
12      case law is clear that when that happens that is  
13      considered an equivocal request for an attorney, and I  
14      think case law indicates that what needs to happen is  
15      the investigating officer needs to confine his line of  
16      questioning to one issue and one issue only, and that  
17      is to clarify whether in fact Mr. Herron wanted an  
18      attorney.

19              Our position, your Honor, is that didn't  
20      happen. You can read through the transcript, listen  
21      to the -- listen to the CD, and I think the evidence  
22      will indicate that rather than clarify whether in fact  
23      that attorney was something he really wanted, the  
24      interview continued.

25              And this is supported, your Honor, with an

1 event that happened at the end of the hearing [sic],  
2 which was Mr. Herron stating that "I don't want to  
3 sign anything before I talk to an attorney," and then  
4 Sergeant Chapman, rather than clarifying that again  
5 just went forward and conducted his business and  
6 concluded the interview. And so that's consistent  
7 with what happened at the beginning, your Honor.

8 So, we think based on the fact that there was a  
9 request for an attorney, the portions of the  
10 transcript after that initial request ought to be  
11 stricken and suppressed from evidence.

12 THE COURT: Ms. La Verne, anything further?

13 MS. LA VERNE: Nothing further, your Honor.

14 THE COURT: Nothing further?

15 All right.

16 COLLOQUY

17 Well, -- Let's see. I did go through the  
18 transcript, and I did note a couple of potential  
19 issues. And one was right at the beginning, right  
20 after Deputy Chapman advised Mr. Herron of his  
21 constitutional rights, and at one point he asked him,  
22 "Having these rights in mind do you wish to waive them  
23 and talk to me, now?" Mr. Herron's response was,  
24 quote, from the transcript, "I guess until I don't  
25 want to."

1           Then Deputy Chapman asked, "Pardon me?" And  
2 the response from Mr. Herron was, "Till I don't want  
3 to." Then the interview went on.

4           The law is well settled that if a defendant  
5 expresses a desire to not talk, to not answer  
6 questions, to exercise Fifth Amendment rights, all  
7 questioning must cease. And it's clear from just  
8 reading this portion of the interview that right after  
9 Mr. Herron was advised of his rights, that he  
10 indicated -- And it was not the first time he was  
11 advised of his rights; he was advised of his rights by  
12 the Airway Heights Police, by Deputy Chapman on the  
13 transfer, and in the interview. Mr. Herron himself  
14 acknowledges that he had been previously advised of  
15 those rights by the deputy at the time of the  
16 transfer, and then of course on the record in the  
17 interview transcript he was advised of his rights.

18           And with respect to the statement, "I" -- in  
19 response to, "Do you wish to waive," "I guess until I  
20 don't want to," to me that very clearly expresses on  
21 Mr. Herron's part an understanding of his rights,  
22 including his right to remain silent, and his desire  
23 to talk and his understanding that he could stop  
24 talking at any time if he wanted to. And I don't see  
25 any constitutional problem with respect to that issue.

1 And it really wasn't raised or argued here, but I will  
2 address it anyway -- I did address it anyway.

3 And then what I want to do is listen to the  
4 tape, because the second area, as I noted in the  
5 transcript, is what's being challenged and contested  
6 today. And after Deputy Chapman posed the question to  
7 Mr. Herron, "Anything else" -- And this is on page 7  
8 of the transcript -- "Anything else of interest that  
9 you might" -- No. "Anything else of interest that you  
10 think might be important for me to know about the trip  
11 down," Mr. Herron's response was, "No. And if I'm  
12 going to get charged I probably need an attorney. I  
13 didn't do it."

14 Then, Deputy Chapman responded, "Well, I can  
15 certainly get you one. I'm just--" -- and then he was  
16 interrupted by Mr. Herron, when Mr. Herron stated,  
17 "I'm just bewildered; I can't believe this all --  
18 really can't." "I really can't believe this."

19 And the response from the deputy was "Okay."  
20 Mr. Herron then says, "I don't know," and then Deputy  
21 went on with questioning, "What did she look like?"  
22 "Do you remember what she looked like?" And Mr.  
23 Herron responded, and -- went on.

24 So the question is whether this statement by  
25 Mr. Herron to the effect of, "If I'm going to get

1 charged I probably need an attorney, I didn't do it,"  
2 whether that constitutes either an equivocal or  
3 unequivocal request for an attorney. And I think it  
4 would be helpful to listen specifically to the tape.  
5 Sometimes how people say things are as important as  
6 what they say.

7 And then I want to take a closer look at the  
8 case law. And I researched this issue not too long  
9 ago, and -- exactly what is said seems to -- courts  
10 have construed defendants' mentions of attorneys,  
11 depending on the context, in different ways, as to  
12 whether it was a request or whether there was  
13 something equivocal or whether it was not a request at  
14 all. So, -- I want to take a look at those as well.

15 And I'm thinking, here -- Mr. Monson, are you  
16 here tomorrow?

17 MR. MONSON: No, your Honor, I'm not. I am  
18 here -- in about 45 minutes we've got another matter  
19 and I've got an arraignment (inaudible). I'm out of  
20 town until Sunday afternoon.

21 THE COURT: Well, if you were here tomorrow I  
22 would -- just give a decision then.

23 What I'll do is I'll take a look at this and  
24 then either do something in writing or bring it back  
25 before the court -- When are we set for trial?

1 MR. MONSON: 16<sup>th</sup> right now, your Honor.

2 THE COURT: The 16<sup>th</sup> of April? So, time is of  
3 the essence, here, obviously.

4 MR. MONSON: And your Honor, I guess--

5 THE COURT: Well, I'll try to get something  
6 done today. I think this afternoon is fairly light,  
7 although I have to get ready for tomorrow.

8 MR. MONSON: And, your Honor, just for the  
9 record as well, since we're here on this case, this  
10 morning I filed two motions in limine. I don't know  
11 if there's really any disagreement with them at this  
12 time.

13 One of them relates to -- I didn't take any  
14 testimony from Sergeant Chapman -- I maybe should have  
15 -- but one of them relates to a statement that was  
16 made during the interview regarding the fact that Mr.  
17 Herron was on a DOC for a felony and the relation to  
18 the DNA. And you'll hear that as you -- as you listen  
19 to the tape. And I think the state is in agreement  
20 that unless I think Mr. Herron gets on the stand,  
21 opens that door, that that statement shouldn't come  
22 in, because it has to do with criminal history.

23 And then the second one just has to do with  
24 hearsay, and we'd seek to prevent any mention of  
25 statements that the victim said -- The victim is

1 planning on -- or, the alleged victim is planning on  
2 testifying, and so we'd -- based on hearsay we're  
3 seeking to clarify those.

4 And the court doesn't need to take those up at  
5 this time, but I wanted the court to be aware that  
6 those were filed this morning. But I think to a large  
7 degree we're in agreement with what should happen on  
8 that.

9 THE COURT: Okay. Well, first, I -- just  
10 looking at these. Now, if you don't come to some  
11 agreement as to those issues you're going to have to  
12 note it for a hearing.

13 MR. MONSON: I'll take--.

14 MS. LA VERNE: Your Honor, I'll prepare a  
15 written order sealing. And I'm going to include the  
16 CD in that sealing order, since obviously -- And -- if  
17 I don't get it done before Mr. Monson leaves today  
18 maybe he'll give me permission to forge his signature  
19 -- to the order.

20 MR. MONSON: --probably okay, your Honor. We  
21 don't have any -- any dispute. So--.

22 THE COURT: Well, for a short period of time,  
23 the issue of sealing is not going to be too much of an  
24 issue because I am going to have these in my chambers.  
25 So, -- Because I'll be listening to these. And I will

1 read my copy rather than the original of the written  
2 transcript, but -- I'll have the file.

3 Okay. So, I'll get back with a decision  
4 hopefully shortly.

5 MR. MONSON: Thank you, your Honor.

6 *Recording ends*

1 MOTION FOR CONTINUANCE

2 April 5, 2007

3  
4 THE COURT: --State versus Jerry Allen Herron,  
5 07-1-00022-9. Mr. Herron is here. He's here with his  
6 attorney Mr. Mark Monson, and the state is represented  
7 by deputy prosecuting attorney Carol La Verne. And I  
8 have been handed by Mr. Monson a waiver of Mr.  
9 Herron's right to a speedy trial. Mr. Herron is  
10 presently set for trial I think Monday, the 16<sup>th</sup> of  
11 April.

12 MR. MONSON: That's correct, your Honor.

13 THE COURT: And a continuance is being  
14 requested; is that correct--

15 MR. MONSON: That's correct--

16 THE COURT: --Mr. Monson? And I have, Mr.  
17 Herron, before me this waiver of speedy trial rights  
18 form that appears to bear your signature. You did  
19 sign this document?

20 DEFENDANT: Yes, sir. I agree with--

21 THE COURT: All right. You've sat down with  
22 Mr. Monson and talked about this?

23 DEFENDANT: Yes, we did, sir.

24 THE COURT: You're obviously still in custody,  
25 and when you're in custody you have a right to be

1 brought to trial within 60 days of your arraignment.  
2 Right now you are set for the 16<sup>th</sup> of April, well  
3 within the 60 days. And if we continue this, I  
4 believe what was requested is June 18<sup>th</sup> for a trial  
5 date.

6 MR. MONSON: That's the defense's request, your  
7 Honor. That will give us some additional time to  
8 prepare our case. I think the state may have -- I  
9 think the state would like to request one in May. And  
10 I don't presume to speak for Ms. La Verne, but if  
11 she'll let me I will. But the basis for our -- the  
12 basis for our June request is that based on some DNA  
13 results that have come back, I've contacted a  
14 laboratory and they're going to need at least four  
15 weeks to prepare and to analyze what they need to do.  
16 And so I think in an abundance of caution if we set  
17 this out an additional 50 days or so to the 18<sup>th</sup>, that  
18 would probably ensure that we can get everything ready  
19 to go and prevent us from having to come back in in  
20 May, postpone -- What I want to do is just be as  
21 expeditious as possible.

22 THE COURT: Ms. La Verne, any objection?

23 MS. LA VERNE: Your Honor, the state would  
24 prefer a May trial date. We have a witness who's  
25 moving out of state early in June. That means we'll

1 have to bring him back. But if Mr. Monson is  
2 asserting that he needs that much time, I don't have  
3 any evidence that he doesn't--.

4 THE COURT: --when -- what he needs the time  
5 for? DNA testing, or re-testing. And -- it took the  
6 state a long time to get their results. It's  
7 understandable why it will probably take the defense a  
8 long time.

9 So, I'll grant the motion based on the speedy  
10 trial waiver. And we're set for the 18<sup>th</sup> of June now.  
11 The 8<sup>th</sup> of June will be the readiness hearing.

12 MR. MONSON: Okay.

13 *Recording ends*

1 MOTION TO REVOKE FEES

2 April 19, 2007

3  
4 THE COURT: All right. Please be seated. We  
5 had specially set at this time the matter of State of  
6 Washington versus Jerry Allen Herron, 07-1-00022-9.  
7 Mr. Herron is here with Mr. Monson; Ms. La Verne is  
8 here for the state. The matter comes before the court  
9 on the state's motion to review the financial status  
10 of Mr. Herron and specifically to review whether it  
11 was appropriate for the court to grant expert services  
12 and investigative services at public expense.

13 And, Ms. La Verne, you filed your motion here,  
14 together with some information concerning income that  
15 was not previously disclosed, which you believe Mr.  
16 Herron has. Is there anything further you want to say  
17 at this time?

18 MS. LA VERNE: No.

19 THE COURT: And, Mr. Monson.

20 MR. MONSON: Just very briefly, your Honor.

21 I haven't looked at the -- Just by way of  
22 clarification, there is a pension payment of  
23 approximately \$1,100 once per month. I haven't looked  
24 at the needs standard but my impression was the  
25 poverty level is right at about \$1,200 a month. The

1 court would be better informed as to what that is.  
2 But I don't know that even with this pension that's  
3 coming in he would be above the poverty level, number  
4 one.

5 But with regard to those expenses, I do have  
6 documentation here where that money goes. There's a  
7 house payment of approximately \$732, also -- and  
8 that's over on the west side. There's a mobile home  
9 payment of about \$300. And so this money that is  
10 coming in is very quickly consumed. I think that is  
11 the reason that that didn't show up on the affidavit.  
12 And certainly Mr. Herron is better equipped to discuss  
13 why the numbers that were on that affidavit were put  
14 on the affidavit because that certainly happened  
15 before I was involved in this case.

16 But again, after examining this, it looks like  
17 even with that pension payment he is underneath, I  
18 think, the poverty level. I can submit to the court  
19 that Mr. Herron has been paying all of his expenses  
20 while he's been in jail, including medical and dental,  
21 and is going to continue to do that.

22 So, that's the situation. So I do think it's  
23 still appropriate at this time to continue to --  
24 continue to allow these expenses to be paid by the  
25 court subject to recuperation [sic] at the conclusion

1 of the case.

2 THE COURT: Shirley, I -- the financial  
3 affidavit is filed separately. And I'm going to need  
4 to take a look at that.

5 MR. MONSON: And, your Honor, we have a copy if  
6 you'd like--

7 THE COURT: Oh. I don't need it--

8 MS. LA VERNE: It's attached to my motion--.

9 THE COURT: I didn't go that far. So I don't  
10 need it.

11 And you had some documentation as well?

12 MR. MONSON: We do, your Honor. And--. This  
13 is -- And I'll just provide, show this to the--.

14 And I'll pass forward -- this is a copy -- he  
15 receives, and your Honor, that's with regard to a home  
16 in Liberty Lake--.

17 And again, Mr. Herron's better equipped to talk  
18 about the specifics of that.

19 THE COURT: Well, actually, his financial  
20 affidavit was in a pretty good situation to -- That  
21 would have been a very good time for you to disclose  
22 the fact that you own real estate, when you were asked  
23 that specific question.

24 DEFENDANT: Sir, could I talk--.

25 THE COURT: Yes. Well, yeah. Like I say, you

1 had a chance to accurately and fully disclose your  
2 financial situation when you requested that this court  
3 appoint a lawyer for you. It looks to me like you did  
4 not disclose substantial retirement income and didn't  
5 disclose real estate that you own.

6 DEFENDANT: Well, your Honor, when -- I came in  
7 the night before, and I was pretty well shell-shocked  
8 over the whole situation. When I came to court I just  
9 was so nervous -- I really didn't understand the form  
10 because it doesn't show any -- where -- to show the  
11 money going out. And--

12 THE COURT: Well, but what about the money  
13 coming in? It did--

14 DEFENDANT: Yeah. I really--

15 THE COURT: --show that.

16 DEFENDANT: --didn't show -- as an asset  
17 because -- immediately goes right out, sir. And I --  
18 I didn't think of it in that sense. I'm sorry.

19 THE COURT: You own real estate, and--.

20 DEFENDANT: I don't own it. I'm -- buying it  
21 -- The IRS has a \$112,000 lien on it. I can show you  
22 that paper too. And because my wife was murdered in  
23 the property, in the house, and I'm trying to sell it  
24 -- IRS has a \$112,000 lien against the property for  
25 back taxes. And they gave me a temporary -- they have

1 the lien on the property -- income and my pension --  
2 temporarily took off so that I could -- payments on  
3 the house and stuff until it's decided. It was going  
4 to court next -- actually it goes to court tomorrow.  
5 But the attorney over there contacted my attorney --  
6 trying to get a continuance to save it, until maybe  
7 I'm out -- the next court date if I'm acquitted, sir.

8 So, actually the 23<sup>rd</sup> of this month the IRS  
9 could take my pension check anyway. You have to call  
10 them and tell -- I have an accountant in Spokane  
11 that's -- Mike Hansen, that is working on the '97-98  
12 taxes. I had to get them microfilmed from Social  
13 Security sent over to him so that he could find -- my  
14 tax income 'cause I didn't -- My parents died in '97  
15 and I inherited some money and it was -- wasn't  
16 reported as tax-exempt inheritance -- I didn't file a  
17 tax return, so they thought it was income. And --  
18 made \$97,000 that year, which -- (inaudible) never  
19 made that kind of money in my life, so they put a lien  
20 on my property because I never did a tax return.

21 So, I -- And I've paid for my dental bill here.  
22 My glasses are broke, and I have an eye appointment on  
23 the 7<sup>th</sup> to go -- get these glasses -- (inaudible). I  
24 have asthma (inaudible) problem and medical -- I have  
25 receipts here to show all my medical payments I made.

1 So I pretty well -- (inaudible) myself here, -- what I  
2 have left over, sir.

3 THE COURT: And is there anything that  
4 documents what is the actual amount of his monthly --  
5 pension--

6 DEFENDANT: Your Honor, I -- you can show the  
7 -- I have a record of the jail whatever was deposited  
8 in here -- show that, right there--

9 MR. MONSON: On the 13<sup>th</sup> of March and also on  
10 the 30<sup>th</sup> of March--

11 DEFENDANT: And if I was trying to hide it,  
12 sir, I wouldn't -- you know, I wouldn't have had it  
13 sent down here in cash. You know? It was just an  
14 oversight on my side. I didn't look at it right. And  
15 I wasn't thinking too straight, actually, the day  
16 after; I was pretty scared, sir. I still am.

17 Thank you.

18 THE COURT: There's a payment that was received  
19 in the middle of March and one in the -- end of March.

20 What's -- How much a month is this pension?

21 DEFENDANT: \$1,117.54.

22 THE COURT: And when do you receive that  
23 pension payment?

24 DEFENDANT: Usually three days before the end  
25 of the month, your Honor.

1 THE COURT: And what explanation do you have  
2 for the March 13<sup>th</sup> entry and then the March 30<sup>th</sup> entry?

3 Why did you receive two payments in March two  
4 weeks apart?

5 DEFENDANT: I received the February 28<sup>th</sup> payment  
6 probably late -- first of March and the other one at  
7 the end of March, sir. I have no idea. I changed my  
8 address to down here so it would come down here just  
9 so I could pay my medical and dental bills and stuff.

10 THE COURT: Where is the real estate that you  
11 own?

12 DEFENDANT: It's in Seattle, sir. You have the  
13 paper, don't you? Somebody took it. (Inaudible).

14 THE COURT: I have a mortgage statement--

15 DEFENDANT: Yeah.

16 THE COURT: --doesn't say where the--

17 DEFENDANT: It's got the address. It says  
18 "(Inaudible) property," on the -- right-hand side  
19 somewhere.

20 THE COURT: 9678 54<sup>th</sup> Street, Seattle.

21 DEFENDANT: Yes, sir.

22 THE COURT: And what's the value of that  
23 property?

24 DEFENDANT: Well, here's the promissory note  
25 for the sale, -- being held up right now. I can't

1 sell it because there's a lis pendens lien on it.  
2 That's what we're trying to get off. But I sold it  
3 for \$180,000 but there's a \$112,000 IRS lien against  
4 it--

5 THE COURT: You have sold the property?

6 DEFENDANT: No. I can't sell it 'til the lien  
7 is off it. But I'm trying to. I have a promise -- a  
8 note for sale. And it shows all the bills against the  
9 property and the IRS lien right on it, if you want to  
10 look at it.

11 THE COURT: I would like to look at that.

12 DEFENDANT: The interest on \$112,000 is --  
13 going up about a \$1,000 a month, your Honor. And so  
14 I'm -- hoping to get it settled -- I can at least pay  
15 my IRS debt off.

16 The lis pendens lien that's on it is my step-  
17 son, your Honor.

18 THE COURT: What's that?

19 DEFENDANT: My step-son. My wife -- My wife  
20 was murdered in the house. While I was in jail she  
21 had a boyfriend, and he shot her in the head and  
22 killed her then laid down and killed himself; it was a  
23 murder-suicide. And that's why the house has not been  
24 -- anybody been in it. And he -- he is the one that's  
25 put the lis pendens lien on it, on behalf of his

1 mother's estate, trying to get the house.

2 I had the house -- three years, and the deed of  
3 trust shows me as single person on it, before I  
4 married -- but it's all up in -- he put the lien on it  
5 so I'm tied up, I can't do anything with it. In the  
6 meantime IRS goes up about \$1,000 a month in interest,  
7 and they've been good enough to give me a continuance  
8 two months at a time to be able to work, and pay with  
9 my pension check -- mortgage payments on it 'til it's  
10 decided. And basically I have to -- 30<sup>th</sup> of this month  
11 with the IRS. I need to make a phone call and see if  
12 I can get an extension again, to even be able to get  
13 my pension check to pay on it, sir. It's really a  
14 mess.

15 And it's hard to explain on this paper, so I  
16 guess they -- And I didn't have the paper work to  
17 prove it so that's why I didn't do it.

18 MR. MONSON: And, your Honor, I don't know if  
19 this makes a difference, but Mr. Herron, on State's  
20 Exhibit D, has outlined where the money has been spent  
21 up to this point and you're certainly welcome to take  
22 a look at that. I'd be happy to provide a copy to the  
23 -- happy copy to the state, your Honor.

24 THE COURT: If I could see that.

25 MR. MONSON: --just outlined on the side, --

1 margins, what these--.

2 MS. LA VERNE: Your Honor, Sergeant Poffenroth  
3 informs me that he's -- the Swanson orders, for  
4 example, those are apparently snack foods that he  
5 orders in large quantities on a fairly regular basis.

6 THE COURT: Well, I'm trying to figure out how  
7 much is on deposit right now. Is it -- \$2,500?

8 DEFENDANT: It's right at \$1,100. I tried to  
9 send \$800 out -- to pay for my stuff, and captain  
10 wouldn't let me do it 'til I saw you, your Honor. I  
11 think it's right up -- one check right now. And I  
12 have an eye appointment the -- that's probably going  
13 to be about \$200 on the 7<sup>th</sup>, for my glasses. So I was  
14 going to send \$800 out and try and keep the rest to  
15 pay my co-payment on the medicines instead, your  
16 Honor.

17 MS. LA VERNE: Your Honor, (inaudible) today  
18 he's still showing \$2,530.24--

19 DEFENDANT: That's not right.

20 MS. LA VERNE: --jail.

21 DEFENDANT: That's not right. Actually I  
22 brought the receipt. It's right at \$1,100.

23 MS. LA VERNE: That's almost \$200 worth of junk  
24 food in a month.

25 DEFENDANT: Well, (inaudible).

1 MS. LA VERNE: --Swanson?

2 DEFENDANT: (Inaudible).

3 THE COURT: Eileen, do you have the -- I signed  
4 today -- approval of the investigative bill for--

5 MR. MONSON: I've got--

6 THE COURT: --\$600?

7 MR. MONSON: --your Honor, it was \$498.82.  
8 I've got a copy of that right here.

9 And, your Honor, I guess my concern with --  
10 with regard to not paying these bills that are coming  
11 with the -- depending on what happens with this  
12 pension check and depending on what happens with the  
13 IRS -- And I guess the first thing we ought to do is  
14 probably determine whether or not that pension payment  
15 puts him over the -- over the poverty level.

16 But my concern as his defense attorney would be  
17 if something does happen to that, then my ability to  
18 prosecute this case from a defense perspective, if  
19 there's -- if funding isn't made available -- I think  
20 if the court's inclined to have Mr. Herron participate  
21 in payment of his expenses, that we do that at the  
22 conclusion -- at the conclusion of the case. But I  
23 would sure hate to have something happen that could  
24 prejudice my ability to talk to these experts and have  
25 the work done that I need to have done to provide an

1 adequate defense.

2 MS. LA VERNE: Your Honor, I would like to  
3 inquire if there's any other assets or income that he  
4 was too nervous or confused to report.

5 THE COURT: Mr. Herron, we had a suppression  
6 hearing, and in the course of that I listened to a  
7 tape recording, heard evidence. You are no stranger  
8 to the legal system. And your story here that you  
9 were too nervous when you filled out a financial  
10 affidavit under oath and under penalty of perjury to  
11 think about, realize, or to understand that you needed  
12 to disclose major assets that you might have had an  
13 interest in, and a substantial monthly pension, is  
14 very difficult for me to believe. You misrepresented  
15 your financial situation to this court, and in doing  
16 that the court appointed a lawyer for you.

17 Subsequent to that time, based upon the same  
18 representations, without your making any modification  
19 or update, it was represented to this court that you  
20 were financially unable to pay necessary costs for an  
21 investigator, and necessary costs for a DNA expert,  
22 when at the time that those orders were signed  
23 apparently you were receiving at least \$1,100 a month,  
24 and maybe more.

25 Now, I appreciate you're here with some

1 documents -- some -- as to what maybe your expenses  
2 are, and what maybe your income is. But I hope you  
3 can understand why I'm somewhat skeptical as I sit  
4 here today--

5 DEFENDANT: I understand, sir.

6 THE COURT: --giving any credibility to what  
7 I'm hearing from you. When you said "All," the only  
8 thing you had in the world, you made \$8 an hour  
9 previously, when apparently you had an interest in  
10 real estate, and when you had a pension that paid  
11 \$1,100, maybe \$2,20 a month -- And the evidence I have  
12 before me leads me to conclude it's probably more  
13 likely \$2,200 than what you say -- \$1,100 -- Well,  
14 you've got two deposits in the month of March two  
15 weeks apart. That looks to me like it could be every  
16 other week you--

17 DEFENDANT: --pension of \$1,117--

18 THE COURT: I want verification, sir. I don't  
19 want your word for it. Period.

20 We do know, right now, as we speak, you're  
21 facing very serious criminal charges. And we do know  
22 that you've got \$2,500 on deposit in the Whitman  
23 County Sheriff's Office, and that you spend \$250 a  
24 month apparently on snack food. So, you, sir, can  
25 afford your own investigator; you can afford your own

1 experts. You've got \$2,000 there, \$2,500 there, that  
2 you can apply to these necessary defense costs.

3 Now, you might want to spend it on Twinkies or  
4 something; fine. But you've got the money, you've got  
5 the ability, to hire your own experts. The taxpayers  
6 should not have to do that here, given your financial  
7 situation.

8 DEFENDANT: --have \$2,500, sir--

9 THE COURT: Well, that's the evidence I have.  
10 That's at least some documented evidence, and not a  
11 sworn affidavit from you that's not accurate.

12 So I am revoking the orders I previously  
13 entered in the case -- And even if you only have  
14 \$1,100, as you say, next month you'll be receiving  
15 \$1,100 more. You don't have living expenses. You're  
16 in the Whitman County Jail right now. And it looks  
17 like you're in the process, from what you tell me, of  
18 losing this house anyway. I don't know what the value  
19 of the house is, I don't know what the equity of the  
20 house is. You didn't disclose these things as you  
21 were required to do so earlier.

22 And while, again, you may have other ways that  
23 you would like to spend your money, that's not the  
24 issue here. It's whether you're financially able to  
25 afford the necessary experts for your defense. You

1 are.

2 So I am -- what I'm doing is revoking the  
3 previous orders. I signed an order today that I  
4 wouldn't have signed had I realized the true financial  
5 situation -- authorizing the county to pay \$498.82  
6 towards investigative services. The order here is  
7 going to provide that that amount is going to be  
8 deducted from what you have on deposit with the  
9 sheriff's office and forwarded to the clerk to pay for  
10 those expenses.

11 You've got the money. You're going to have to  
12 pay for it. You misled the court. You weren't  
13 truthful to the court. And that's the consequence.

14 So, I'll sign an order accordingly, and--.

15 MS. LA VERNE: Thank you, your Honor.

16 MR. MONSON: Your Honor, if I could have that  
17 paper work--?

18 THE COURT: Yes.

19 Oh. The paper work -- I gave everything to  
20 Shirley.

21 *Recording ends*

1 MOTION TO RECONSIDER REVOCATION OF FEES

2 May 10, 2007

3  
4 THE COURT: This is State of Washington versus  
5 Jerry Allen Herron, 07-1-00022-9. Mr. Herron is here  
6 with his attorney Mark Monson, and the state is  
7 represented by both Prosecuting Attorney Dennis Tracy  
8 deputy prosecuting attorney Carol La Verne. And Mr.  
9 Monson had filed a motion asking the court to  
10 reconsider the revocation of approval of -- expert  
11 costs at county expense. And I have read the motion  
12 that was filed. Mr. Monson, is there anything further  
13 you wanted to present at this time?

14 MR. MONSON: No, your Honor. Only that my  
15 understanding when we were last in court was the  
16 court's concern appeared to be that there was a lack  
17 of paper work as far as what Mr. Herron did or did not  
18 have. I think I've outlined it -- Well, I've just  
19 provided what paper work has been provided to me. I  
20 can go into it a little bit more if you'd like.

21 Since the last time we were in court I know  
22 that Mr. Herron has paid for -- at least half of the  
23 bill for the investigator. But again, my concern,  
24 your Honor, is -- I don't know that we ever had a  
25 formal determination of whether or not he was indigent

1       such that he would either qualify or not qualify for  
2       court-appointed experts. I -- standing right here  
3       don't know what the poverty guideline is or what the  
4       court follows, but my concern is I think it would be  
5       appropriate to have a formal determination.

6               And I did provide a receipt from the monthly  
7       benefit check that indicates that after taxes -- I  
8       think his income is about \$1,100 -- \$1,100 a month.

9               And again, I'd just reiterate my concern that I  
10       as the defense counsel made representations to these  
11       investigators and also to the DNA laboratory based on  
12       an order that I had, and I am very concerned that  
13       without the potential of back-up funding from the  
14       court it's going to hamper my abilities to prepare  
15       adequately for trial, number one, but number two,  
16       right now as it stands I'm the only one who's  
17       obligated, I think, with regard to a formal -- formal  
18       contact.

19               So, that's why I thought, your Honor, it was  
20       important to present this new information to you in  
21       the form of a motion to reconsider, and also to have  
22       -- ask you to make a formal finding of whether or not  
23       he's indigent for purposes of asking for -- for  
24       funding from the court. And to let you know that he  
25       has participated in, at least partially at this point,

1 in paying for the -- part of his experts.

2 My concern, though, is with the DNA lab. I  
3 think that's going to be a significant -- significant  
4 expense as we -- as we approach, and I'm just  
5 concerned about my ability to get that work done and  
6 have it paid for.

7 THE COURT: You say he's -- there was to be a  
8 transfer of \$400--some from his account. I checked  
9 with the clerk's office just before coming in here;  
10 that hasn't been done.

11 MR. MONSON: I don't know that that has been  
12 done, but I can tell you that I got a second invoice  
13 from our investigator. Capt. Ingels issued a check to  
14 the investigator. I sent that off, and I've got a  
15 copy of that. So, -- The second half of that invoice  
16 has been paid from his funds over at the jail.

17 THE COURT: That invoice being--

18 MR. MONSON: The confidential -- My  
19 investigator, your Honor. And I--

20 THE COURT: Well, there was \$400--some paid to  
21 the court. Was there another--

22 MR. MONSON: Right. There was another one for  
23 -- There was essentially \$500 -- two invoices that  
24 were for \$500, roughly. And Mr. Herron paid the  
25 second invoice of that. And the reason he didn't pay

1 that first one is because my understanding was that  
2 was going to be taken out of -- taken out of his--

3 THE COURT: So he's paid \$500.

4 MR. MONSON: He's paid \$500. And I've got an  
5 invoice to -- or, a letter to them, and I got  
6 confirmation from -- from them this week that they had  
7 received that.

8 THE COURT: And -- not calling on the  
9 prosecution because I'm not sure that this is  
10 something the prosecution would be proper to even --  
11 factor in on, is the issue of defense costs.

12 Mr. Herron, the way it works is, if you -- The  
13 court previously made a determination that you were  
14 indigent. That determination was based upon your  
15 sworn declaration under oath with respect to your  
16 financial situation. Based on the information under  
17 oath you provided the court I appointed Mr. Monson to  
18 represent you. That decision has never been changed.  
19 Although as you're aware it was brought to my  
20 attention that you provided the court with incomplete,  
21 inaccurate information concerning your financial  
22 status. You had a retirement, didn't disclose that to  
23 the court. How you didn't know that -- I know that  
24 was your argument -- I hope you can understand how  
25 that's very difficult for the court to believe. I

1 didn't believe it. And -- I was very concerned  
2 because I didn't have any verification of your income  
3 other than the amounts that have been deposited with  
4 the jail, that appeared to me to be twice monthly  
5 deposits, \$1,117.54. I found that because one such  
6 deposit had been made on March 13<sup>th</sup>, 2007, a second at  
7 the end of the month on March 30<sup>th</sup>, 2007, and it  
8 appeared to me that you were receiving that amount  
9 every two weeks.

10 I've reviewed what Mr. Monson filed today,  
11 which is the -- I believe it's Exhibit 2 to the motion  
12 that he filed, and that shows a payment -- (inaudible)  
13 Automatic Sprinkler industry pension plan in the  
14 amount of \$1,117.54 for -- well, dated March 31<sup>st</sup>,  
15 2007, and it shows that there's a \$121 deduction from  
16 that, and maybe most significantly, there is a year-  
17 to-date amount of \$3,715, which would show that you  
18 receive from this source, at least, the \$1,117.54 net.  
19 So I am satisfied that that's your net monthly income  
20 from this particular source.

21 I was provided by you with, I believe, a  
22 promissory note or something -- that was somewhat  
23 confusing last time -- relating to some real estate in  
24 King County -- Exhibit 3 to Mr. Monson's motion is a  
25 quit-claim deed to, looks like, King County property,

1 and that deed is dated, I believe, before your arrest  
2 or before charges in this action -- at any rate,  
3 before appointment of counsel, January 8<sup>th</sup>, 2007, and  
4 this seems to address any interest that Mr. Herron  
5 might have in that particular tract of property. And  
6 I'll note that Mr. Herron has been in custody for some  
7 time, and while he listed \$8 an hour as salary I'm  
8 sure that he does not have that income any longer.  
9 And most likely this \$1,100-some-odd, \$1,117.54, is  
10 his only net monthly income.

11 I don't have any information as to other assets  
12 that could be used to employ counsel, or employ in  
13 this case expert services. And -- one thing to not be  
14 able to afford a lawyer, particularly -- a lot more  
15 income, Mr. Herron, than you have here, and when  
16 you're facing a charge of rape in the first degree,  
17 even with much more income and no liquid assets it  
18 would be very difficult to hire a lawyer. So that's  
19 one issue. And counsel's been appointed to represent  
20 you.

21 But there's a second issue with respect to  
22 assisting in paying part of the costs of your defense,  
23 and paying expert witness and investigative fees here.  
24 And even if I construe everything presented to me in  
25 the light most favorably to Mr. Herron, as I look

1 through what's been provided he has \$1,117.54 a month.  
2 The state guidelines are \$1,065. So he would exceed  
3 the state guidelines by \$52.54.

4 He is also in custody, has been in custody,  
5 remains in custody, which would indicate to the court  
6 he does not have any substantial living expenses.  
7 Food is being paid, for instance, for Mr. Herron. And  
8 I saw previously on the -- both for the period of  
9 March 5<sup>th</sup> through April 8<sup>th</sup> the jail summary of his, or  
10 accounting of Mr. Herron's account at the jail showed  
11 he spent something like \$228.49 on -- commissary  
12 privileges.

13 So what I'm going to do, I'm going to consider  
14 that fact, plus the fact that he's got \$52.54 of  
15 income above the state guidelines. I'm finding Mr.  
16 Herron indigent but able to at least partially  
17 contribute towards his defense. And I'm going to find  
18 that he should be able to contribute at least \$150 a  
19 month towards his expert witness costs here.

20 And I'm going to have Mr. Monson, if you would,  
21 file with the court in some fashion the verification  
22 that he's paid for the investigative services, and if  
23 he's paid \$500 then that will satisfy that portion of  
24 the court's previous order that required him to pay  
25 \$498.82, and then I will require that he pay \$150 a

1 month into the registry of the court for -- I believe  
2 he's used up his -- what the court had authorized for  
3 investigative services. And I had authorized, what,  
4 up to \$2,000 for--

5 MR. MONSON: And, your Honor--

6 THE COURT: --DNA expert.

7 JAIL STAFF: --I haven't made the payment to  
8 the DNA expert. I was waiting to see the outcome of  
9 this hearing before I -- before I did that.

10 THE COURT: All right. Well, I will reinstate  
11 the order that authorizes the expenditure of up to  
12 \$2,000. And for that to be paid -- I looked at  
13 Rule 3.1 -- I believe it's subsection (f), and that  
14 requires in order for these to be paid a detailed  
15 summary, time sheet or a summary from the provider,  
16 and then a motion with that attached, then I'll  
17 authorize the payment as they come in, and I'll -- in  
18 advance you're authorized up to \$2,000. I find he's  
19 able to contribute and -- \$150 a month starting May 1.  
20 Since he's already paid the \$500, then -- Did you make  
21 a copy of that?

22 And I think you're going to have to make an  
23 order to this effect.

24 MR. MONSON: I can do that. Your Honor, I --  
25 Do you want me to file that? Or is your--

1           THE COURT: And maybe attach that to the --  
2 whatever you -- the order -- Or file it; whatever.  
3 And then that you can include in your order that the  
4 payment of that additional amount will constitute  
5 satisfaction of the court's order of April 19<sup>th</sup> that he  
6 paid -- What did he pay? \$500?

7           MR. MONSON: \$482.44, your Honor.

8           THE COURT: Well, I'll -- Did he pay that  
9 directly to the provider?

10          JAIL STAFF: He did, your Honor.

11          THE COURT: So I'll let that satisfy the --  
12 April 18<sup>th</sup> order -- 18<sup>th</sup> or 19<sup>th</sup>, whatever day it was.

13          So, effective as of May first, last Tuesday,  
14 he'll need to pay \$150 into the registry of the court,  
15 continue that during the pendency of the case. And  
16 that will be applied by the court to the DNA expert  
17 costs.

18          And I'd normally require a more detailed  
19 financial affidavit. I don't think it's necessary  
20 given the documentation that's provided by Mr. Monson  
21 today.

22          MR. TRACY: Your Honor, we're just discussing  
23 scheduling the trial of this matter, which is  
24 currently set for June the 18<sup>th</sup>. And I've noted that  
25 there are a number of criminal cases set to go, to

1 begin on June the 18<sup>th</sup>. And I've discussed with  
2 defense counsel the potential of moving this case, and  
3 we're both in agreement that the case should not be  
4 moved and we'll proceed to trial on June the 18<sup>th</sup>. And  
5 I'd just ask the court to give this case the first  
6 priority on the docket.

7 THE COURT: Done.

8 MR. TRACY: Thank you.

9 THE COURT: Yeah. Mr. Herron is in custody. I  
10 believe there's a previous extension of his trial,  
11 continuance. So it's -- he should be given priority,  
12 will be given priority. This is the first setting for  
13 June 18 -- Whatever other cases look like they might  
14 go, the prosecution might want to tip off defense  
15 counsel that -- in those cases that this is the case,  
16 and there'll be some other dates set, or we'll have to  
17 find another judge or something for some cases.

18 All right.

19 MR. TRACY: Thank you, your Honor.

20 DEFENDANT: Your Honor, thank you very much.

21 Sorry for the (inaudible).

22 *Recording ends*

1 READINESS HEARING

2 June 8, 2007

3  
4 MR. MONSON: --State of Washington versus Jerry  
5 Herron, 07-1-00022-9. It's a readiness hearing. And  
6 we are here just to let the court know that we are  
7 proceeding to trial on Monday the 18<sup>th</sup>.

8 THE COURT: All right. And let's see. I  
9 believe I had indicated earlier -- maybe in -- Or was  
10 that the case that was set for the same day? I don't  
11 think you were involved; I think Mr. Martonick was --  
12 that -- indicated this case would probably go. And I  
13 pointed out that we would be giving this case the  
14 priority in the first setting. So--

15 MR. MONSON: And--

16 THE COURT: --will be going? You are ready?

17 MR. MONSON: We are ready. And the one, I  
18 think, joint thing that we wanted to visit with you  
19 about today was the size of the jury pool. I think  
20 Mr. Tracy and I both agree that it needs to be a  
21 little bit larger than usual, just based on the nature  
22 of the charge, and -- I don't know. Dennis, we were  
23 thinking at least maybe 50 people.

24 MR. TRACY: Yes. Your Honor, I suggest the  
25 clerk bring in at least 50--

1 THE CLERK: We always do 45 for--

2 MR. TRACY: 45? Okay. And if that's been  
3 sufficient in the past, then probably it would be so  
4 here. This isn't -- This case does involve a couple  
5 of issues that may -- may cause us to run through more  
6 potential jurors than your average case. This is a  
7 sex crime, and also involves alcohol, it involves  
8 essentially a homeless person -- well, not a homeless  
9 person; that's an incorrect characterization on my  
10 part, but -- it -- involves a lot of issues. So, at  
11 least 45 I think the court ought to have.

12 THE CLERK: Well, if you think 50 I'll call--

13 MR. TRACY: I'd say fifty--

14 THE COURT: Let's do 50. We've got 25, I'm  
15 going to say, are automatic, so you've got -- you've  
16 got 13 that will be empaneled with an alternate, and  
17 12, with pre-empt's; that means we need 25. So if we  
18 bring in 50 that's 25 extra. There's always some for  
19 cause, and--

20 MR. TRACY: The victim's a local person--

21 THE COURT: Let's bring in 50.

22 MR. MONSON: And your Honor, along those lines,  
23 with regard to jury selection, I have proposed to Mr.  
24 Tracy a very short, brief, supplemental jury  
25 questionnaire. I don't think he's got a problem with

1       that.

2               THE COURT: I have a questionnaire--

3               MR. MONSON: And I heard that you had a  
4 questionnaire. This one -- The reason for this is  
5 just to detect some of the basic attitudes with regard  
6 to constitutional rights with regard to jury trials,  
7 with regard to things of this nature. And so, our  
8 pitch is that we could -- if the court approved that  
9 we could pass that out when the jury came in. I don't  
10 think it would take them more than two or three  
11 minutes to fill that out. But I think it would give  
12 us -- I think it could actually speed up -- speed up  
13 our jury selection process.

14              THE COURT: Anything you're objecting to--

15              MR. TRACY: No objection to the defense's  
16 proposed jury questionnaire.

17              THE COURT: All right. And then--. The  
18 standard questionnaire that I've been giving in sex  
19 cases, it asks questions like, "Have you ever been  
20 charged with a sex offense," or close friend -- victim  
21 -- Why don't I email that to the two of you, and then  
22 include that--

23              MR. TRACY: With those--

24              THE COURT: Yeah.

25              MR. MONSON: And your Honor, I've got a

1 proposed order, and I -- have a space for Denis to  
2 sign. I didn't know if it would be him or Mr.  
3 Druffel, so I didn't put his--

4 MR. TRACY: Oh. I see--

5 MR. MONSON: --name on that.

6 THE COURT: Now, the next thing is that I have  
7 -- typically in cases involving sex offenses, I have  
8 handed out those, had everyone fill those out, had  
9 those -- jury turn those in to the bailiff, then I  
10 collected them then -- defendant and counsel -- gone  
11 in chambers so -- individually examine the jurors.  
12 There are one or two appellate court cases now that  
13 question that procedure. I think -- I became aware of  
14 it in another case that Mr. Tracy gave me -- I think  
15 it's an Asotin County case.

16 MR. TRACY: Right. They're still trying--

17 THE COURT: I'm not sure why (inaudible), but--

18 MR. TRACY: This issue is the defendant's  
19 constitutional right to a public trial, and that --  
20 jury selection is considered part of that public  
21 trial.

22 THE COURT: Do you know the name of the case?  
23 Are you aware of the case?

24 MR. MONSON: I was aware of the case just in  
25 conversation with Mr. Tracy yesterday--.

1           MR. TRACY: I can get that case to the court  
2 and Mr. Monson -- first part -- by (inaudible).

3           MR. MONSON: And I suspect that Mr. Tracy and I  
4 are going to get together to -- some things next week,  
5 and--.

6           THE COURT: Well, let's just all -- we'll all  
7 be aware of it. I have always done that for fear that  
8 -- sex sensitive issues, the jurors may have been  
9 victims and not disclosed that because they're in  
10 front of all the jurors, and then there's a danger of  
11 seating jurors that aren't fair and unbiased. I  
12 (inaudible) protection of the defendant.

13          MR. MONSON: And we certainly don't object to  
14 that.

15          THE COURT: But I think if there is any  
16 objection I can't -- follow that procedure--

17          MR. TRACY: I think you're right, your Honor.  
18 And I think -- would have to be a little bit more than  
19 that. We can discuss this more next week, but off the  
20 top of my head I'd suggest two alternative  
21 possibilities. One is that the defendant -- knowing  
22 and voluntary waiver of his right in this regard, and  
23 that's -- affirmatively after a colloquy from the  
24 bench, acknowledge his rights and agree to a procedure  
25 of questioning individual jurors in chambers. In his

1 presence, of course, but--.

2 Or, alternatively, that the court take  
3 individual jurors to another room, which would be open  
4 to the public -- or, for instance, I suppose you could  
5 just announce that any members of the public that are  
6 here to watch this trial are also welcome in chambers  
7 -- You could do it that way.

8 But the idea, I think, is that the jury  
9 selection process has to be open to the public. It  
10 doesn't have to be open to the other potential jury  
11 pool, as long as you make a finding of a potential for  
12 -- for pollution of the jury pool.

13 MR. MONSON: And, your Honor, my inclination  
14 would be if it's -- if we're looking for an  
15 affirmative waiver of a public examination of these  
16 individual jurors, Mr. Herron and I are present, we're  
17 certainly willing to waive that. I think an  
18 examination in private in your chambers with Mr.  
19 Herron present and myself and the prosecutor, I think  
20 that's going to bear far more fruit than just simply a  
21 voir dire situation, trying to get individuals to talk  
22 about some of these touchy -- touchy things. So we  
23 would -- we would be prepared to -- do something along  
24 those lines.

25 THE COURT: Okay. Well, we'll discuss it

1 further. Mr. Herron is here. I don't know if you  
2 fully understand the issues we've been talking about--

3 DEFENDANT: I think I do, sir.

4 THE COURT: But it's something that -- the  
5 voir dire--

6 DEFENDANT: --privacy in chambers--

7 THE COURT: What's that?

8 DEFENDANT: I agree on the chambers, privacy of  
9 your chambers--

10 THE COURT: Okay.

11 DEFENDANT: --with all of us present.

12 THE COURT: Here's the issue: If you ask a  
13 group of people in open court, "Have you ever been  
14 accused" -- "Have you ever been a victim of a sexual  
15 offense," or "Have you ever been the victim of an  
16 inappropriate sexual touching," "Have you ever been  
17 accused of a sex crime," because of the nature of the  
18 allegation, if someone has, they might be embarrassed  
19 and reluctant to say that in front of 50 other jurors  
20 and spectators. And these are things that we -- want  
21 to know, to determine whether that person can be fair  
22 and impartial.

23 The old procedure was we would -- it wouldn't  
24 be totally private; we'd take individuals who  
25 responded in writing back in chambers, and then with

1 the person accused of the crime, his lawyer, the  
2 prosecutor, and discuss these things with the juror,  
3 so then I can make a determination whether I feel they  
4 can be fair and impartial.

5 There's a case that says if the defendant  
6 objects, that they have a right to have that process  
7 done in open court -- well, you can discuss that with  
8 Mr. Monson, and -- That's an issue that's going to be  
9 pretty much up to you as to your decision how we  
10 proceed--

11 DEFENDANT: --appreciate that very much, sir.

12 THE COURT: Okay.

13 MR. TRACY: Your Honor, what time will the jury  
14 venire report to the courtroom, then, Monday. If  
15 there's going to be the questionnaires do you have  
16 them come early? Or--

17 THE COURT: No, I don't. I have them come at  
18 9:00. And then I think there's a point where I hand  
19 the questionnaires out. It doesn't take them long. I  
20 have them do that -- won't take them five or ten  
21 minutes to do--

22 MR. TRACY: Okay.

23 THE COURT: I usually go through my  
24 preliminaries -- hand it out--.

25 MR. TRACY: Also, your Honor, at this time I'm

1 asking the court consider -- to consider limiting both  
2 sides for jury selection -- voir dire process. My  
3 suggested time would be something like two hours --  
4 two hours per side.

5 MR. MONSON: I don't know that the defense  
6 wants to be limited. I suspect that would be -- I  
7 suspect with the jury questionnaires, and with -- I  
8 know that Mr. Tracy will do a thorough job. I'd like  
9 to think that inside of four hours of questioning from  
10 lawyers they'll be -- we'll be ready to select a jury.  
11 But I think the court needs to recognize that if we do  
12 have some -- some answers -- I would hate for that  
13 time to be included with some of these individuals  
14 that we would need to interview individually in your  
15 chambers. And that may take some time, and -- I would  
16 hate for the four hours to tick by and then the court  
17 to say, "Okay, we're done, let's go in there and pick  
18 a jury."

19 THE COURT: Well, at this time I'm not willing  
20 to -- open it up -- amount of time. (Inaudible). I  
21 don't see it being a problem. And -- keeping in mind  
22 that the lawyers (inaudible) the process, and -- have  
23 to face the fact that, the reality that if you take a  
24 whole long time -- Two hours should be -- suffice.  
25 You said two hours, and not one hour -- (Inaudible)

1 more than two hours -- For instance, if the defense,  
2 or if it's the prosecutor, you're running a risk of  
3 offending and alienating the jury. I think you both  
4 have more common sense than that.

5 But, -- I think we'll just have to play it by  
6 ear, and see how things are going. And it may require  
7 more than two hours. It may -- I would think it  
8 wouldn't -- take anywhere near that. So, I'm not  
9 going to impose any limitations right now, but -- it  
10 looks like time is being wasted, (inaudible) not being  
11 productive, I'm going to then think about that, say  
12 "You've got 15 more minutes," or something.

13 THE CLERK: May we confirm the number of days  
14 for trial?

15 MR. MONSON: I believe four.

16 MR. TRACY: That's probably a good estimate.

17 THE COURT: Probably all week.

18 MR. TRACY: Your Honor, the defense has filed a  
19 motion directing the deputies to keep their distance  
20 -- for an order directing the deputies to keep their  
21 distance during the trial. I'm asking that the court  
22 be available next week to meet with me and defense  
23 counsel and the sheriff to talk about just security  
24 for the trial, and we can discuss defense's motion at  
25 that time.

1 MR. MONSON: That would be fine, your Honor.  
2 It's similar to a motion we filed (inaudible).

3 THE COURT: You have clothes, street clothes.  
4 We do need to meet, yes, and--

5 MR. MONSON: Talk about the transportation--

6 THE COURT: --talk about those issues, and --  
7 transporting to and from the courtroom, so -- the jury  
8 -- (inaudible).

9 MR. TRACY: And your Honor, I'll -- I'm happy  
10 to make myself available at your convenience to make  
11 that (inaudible).

12 THE COURT: I don't even have a clue what next  
13 week is light.

14 THE CLERK: The court's best available is on  
15 Monday.

16 MR. MONSON: That would be fine.

17 THE COURT: Now, Mr. Herron wants to confer  
18 with Mr. Monson about a question that he thinks should  
19 be asked of the court. Do you want to ask Mr.  
20 Monson--

21 DEFENDANT: No. I just wanted to say thank you  
22 for your consideration, sir.

23 THE COURT: Okay.

24 DEFENDANT: --in everything, and tell you thank  
25 you for -- appreciate (inaudible).

1                   MR. TRACY: Thank you, your Honor.

2   *Recording ends*

1 PRETRIAL MOTIONS

2 June 15, 2007

3  
4 THE COURT: All right. And we're on at this  
5 time, State of Washington versus Jerry Allen Herron,  
6 07-1-00022-9 is the case number. Mr. Herron is here;  
7 he's here with his attorney Mr. Monson. And  
8 Prosecuting Attorney Denis Tracy is present for the  
9 state. We're on for trial on this case Monday, and  
10 there've been some motions in limine filed by the  
11 defense. And I believe I indicated if there were any  
12 other issues, let's hear them now.

13 So, Mr. Monson?

14 MR. MONSON: Thank you, your Honor. And just  
15 preliminarily, for the record, Mr. Tracy, Mr. Druffel,  
16 myself and Mr. -- My intern who's assisting me -- we  
17 met together this week and I think to a large degree  
18 we have reached an agreement as far as the bodies of  
19 some of these motions. And with Mr. Tracy's  
20 permission maybe what I'll do is just outline the  
21 motions that were filed, the discussions that we've  
22 had, and the agreement, and we'll put those to the  
23 court for its approval or rejection.

24 Your Honor, the first motions that were filed  
25 were back on March 29<sup>th</sup> of '07. And the first one was

1 a motion in limine regarding Mr. Herron's criminal  
2 history. And the basis of that -- If you might  
3 recall, that was right before our 3.5 hearing, and one  
4 of the issues in the interview with Sergeant Chapman  
5 -- thought Sergeant Chapman was here, but -- He's here  
6 in the back -- One of the issues was discussions  
7 regarding the fact that Mr. Herron is on DOC  
8 supervision and things like that. And that came out  
9 in his initial interview with Mr. Herron. And in  
10 particular he had discussed with him that he was on  
11 DOC supervision for a felony. And my understanding of  
12 the Rules of Evidence, your Honor, is absent Mr.  
13 Herron opening the door or testifying, criminal  
14 history of the defendant is inadmissible. I don't  
15 think that Mr. Tracy has an objection to that, but I  
16 don't presume to put--

17 THE COURT: Why don't we just do this: Are you  
18 going to offer, Mr. Tracy, or do you intend to offer,  
19 at least in your case in chief, any evidence that Mr.  
20 Herron was on DOC supervision?

21 MR. TRACY: No, your Honor. I don't intend --  
22 I don't intend do that. No. That's the simple  
23 answer.

24 THE COURT: All right. So I'll grant that  
25 motion. And in any motion, then in limine get --

1       might get granted, or even not granted, I'll certainly  
2       reserve to counsel the opportunity to have the court  
3       revisit the issue--

4               MR. TRACY: Thank you.

5               THE COURT: --if doors get opened or if other  
6       circumstances might make the evidence relevant or  
7       otherwise admissible--

8               MR. TRACY: Thank you, your Honor.

9               THE COURT: And on any of these, such as this  
10      DOC supervision, I'll -- I'm granting the motion in  
11      limine, and I'll bar and prohibit the prosecution and  
12      any of their witnesses from mentioning the fact of DOC  
13      supervision in the presence of the jury. If you want  
14      to -- think it's admissible, address it outside the  
15      presence of the jury.

16              MR. MONSON: And your Honor, along that vein,  
17      on June 8<sup>th</sup> I filed a second motion in limine regarding  
18      criminal history, and -- we have covered -- I think we  
19      might have covered this from the first one, but we  
20      expect that one of the state's witnesses, Randy  
21      Forcum, after interviewing him, he mentioned some  
22      items about Mr. Herron being on probation and things  
23      like that as well. So along the same vein, I filed a  
24      second motion in limine to prevent mention of that as  
25      well. And I -- Again, I think Mr. Tracy's in

1 agreement that he wouldn't -- he wouldn't call Randy  
2 Forcum to talk about that, or--

3 THE COURT: Or any other witness.

4 MR. MONSON: Or any other witness to talk about  
5 that. So,--

6 THE COURT: Agreed or disagreed, Mr. Tracy?

7 MR. TRACY: I agree, your Honor.

8 THE COURT: Granted.

9 MR. MONSON: Thank you, your Honor.

10 Moving back to March 29<sup>th</sup>, defense filed a  
11 motion in limine regarding hearsay, specifically  
12 statements made by the alleged victim here to either  
13 law enforcement or to other people. What we're  
14 seeking to do is prevent this hearsay from coming in,  
15 and we believe that the state's witness, the  
16 complaining witness is going to be available for  
17 trial. Defense has had an opportunity to interview  
18 her--

19 THE COURT: Agree or disagree, Mr. Tracy?

20 MR. TRACY: Well, your Honor, I think--

21 THE COURT: Is there a dispute here?

22 MR. TRACY: Just to this extent: I think this  
23 motion is a little broad at this point, and that the  
24 court should not grant it -- as (inaudible). Well, --  
25 I mean, I suppose the court can grant -- I have no

1 objection to the court granting it as it is. But to  
2 let everyone know, I think that Ms. Beck's, the  
3 victim's, statement, for instance to her father or  
4 someone else that "I was raped," that that -- I expect  
5 that those witnesses may testify to that, but that it  
6 will be either not hearsay or not offered for the  
7 purpose of proving the truth of the matter asserted.  
8 So,--.

9           You know, the defense motion is that no one  
10 should be able to say anything that Kristen Beck told  
11 them. I think that's a little too broad. Because the  
12 evidence rules may allow them to do so.

13           But I do not anticipate seeking to have other  
14 witnesses testify about the details about what  
15 happened.

16           THE COURT: All right. At this point I'm going  
17 to handle this -- I'm going to probably speed the  
18 process up. If I see that there's a dispute, and if  
19 there is then we can argue about it. If there's not  
20 -- quick an easy.

21           On this issue, though, I'm going to grant this  
22 motion, and make it like the others, subject to  
23 reconsideration on the prosecutor's request outside  
24 the presence of the jury. So if you intend -- Let's  
25 say there was an excited utterance, "I was raped," "I

1 was raped," that very well might be admissible as an  
2 exception to the hearsay rule. Before it's admitted,  
3 though, I think it would be appropriate to have that  
4 issue resolved outside the presence of the jury. Then  
5 you -- gives you time to argue the objection so the  
6 jury isn't tainted by hearing--

7 MR. MOSMAN: Thank you, your Honor.

8 THE COURT: So, -- I think -- I hope this  
9 motion is mainly being directed -- Maybe I'm wrong --  
10 towards police witnesses that very often testify "She  
11 told me," blah, blah, blah, blah. That's clearly --  
12 the witnesses are going to be here; it would be  
13 clearly hearsay. But if it's offered for a non-  
14 hearsay purpose or falls within an exception, let's  
15 just hear it outside the jury's presence.

16 MR. MONSON: Thank you, your Honor.

17 THE COURT: Okay. Next motion.

18 MR. MONSON: And, the next motion, your Honor,  
19 is filed June 13, motion in limine regarding Corporal  
20 Robert Swan. Mr. -- Corporal Swan apparently stopped  
21 Mr. Herron and ultimately arrested him for a DUI that  
22 same evening.

23 Now, in the body of the motion -- And this is  
24 an error on my part -- The intent of the motion was to  
25 prevent him from talking about the fact that he was

1 arrested for this unrelated offense. And I think Mr.  
2 Tracy and I, we have visited about this, and I think  
3 we've come to an accord of sorts as to how he can get  
4 the information that he wants in a way that doesn't  
5 potentially taint a jury by hearing about an unrelated  
6 misdemeanor offense of DUI.

7 And again, I don't presume to put words in Mr.  
8 Tracy's mouth, but that was my understanding after our  
9 meeting.

10 MR. TRACY: That's true, your Honor. I think  
11 the defense and the state are in agreement. I don't  
12 know how to handle the defense's motion, though,  
13 that's right in front of the court today. We could  
14 present a written order Monday--

15 MR. MONSON: Sure.

16 MR. TRACY: --or we could -- we could outline  
17 verbally here what the agreement is.

18 MR. MONSON: It wouldn't take but thirty  
19 seconds--

20 THE COURT: You're going to have to, because I  
21 don't understand what -- I mean, clearly the fact that  
22 he was arrested for anything would -- Well, go ahead;  
23 what's your agreement?

24 MR. TRACY: Well, your Honor, the defendant was  
25 -- the allegation is that he raped the victim on the

1 way down to Pullman, then continued on into Pullman,  
2 dropped the victim off there and then drove back to  
3 Airway Heights. On his drive back to Airway Heights,  
4 near Airway Heights he was stopped by Airway Heights  
5 police officer Corporal Swan for expired tabs. In the  
6 course of that stop the officer smelled alcohol, did a  
7 DUI investigation and arrested the defendant for DUI,  
8 and gave him a breath test. And the agreement that  
9 we've reached, your Honor, is that the state will not  
10 seek to elicit, and there should be no testimony  
11 regarding the defendant being investigated or arrested  
12 for DUI, or cited for DUI.

13 But it would be allowable for the officer to  
14 testify that he stopped the defendant for expired  
15 tabs, that he talked with him, that it was that  
16 defendant driving that car at that time, on that road  
17 in that location in that direction, he smelled alcohol  
18 on the defendant's breath, he found a knife in the  
19 car, and he ought to be able to talk about that knife,  
20 the location of the knife, and the sheath -- Excuse  
21 me. A sheath was also found in the car. That it was  
22 that particular, that the defendant said he was coming  
23 back from Pullman.

24 The officer took a picture of the defendant,  
25 which we do intend to offer into evidence. It does

1 not show the defendant in custody per se; it's just  
2 the officer took a picture of him while he was dealing  
3 with the defendant on the side of the road that night.  
4 The purpose for that, your Honor, is that it shows the  
5 defendant wearing clothing that the victim had  
6 described the defendant wearing.

7 The officer won't testify about a DUI  
8 investigation or arrest, and the officer will not  
9 testify -- about defendant's criminal history.

10 MR. MONSON: And that's an accurate  
11 description, your Honor.

12 THE COURT: Okay. So basically he'll be  
13 allowed -- the officer will be allowed to testify --  
14 And this sounds like the way it ought to be -- to the  
15 -- Now, who am I going to give a bad time -- It's my  
16 fault.

17 So he'll be able to testify as to the  
18 circumstances of the stop, what he observed, but will  
19 not be able to get into the -- any reason for the stop  
20 other than expired tabs, and no references at all as  
21 to arrest, citation, any charges relating to the stop.  
22 Right? Other than expired tabs. Right? That's easy  
23 to understand.

24 MR. MONSON: And then our final motion, your  
25 Honor, is regarding Ms. Beck's criminal history. She

1 -- she is the complaining witness, your Honor. She  
2 has two juvenile adjudications that I think are  
3 relevant -- And we're making this motion pursuant to  
4 the Rules of Evidence, 609(d), which talks about  
5 evidence of juvenile adjudications. It says "Evidence  
6 of a juvenile adjudication is generally not admissible  
7 under this rule. The court may, however, in a  
8 criminal case allow evidence of a finding of guilt --  
9 juvenile offense proceeding of a witness other than  
10 the accused if the conviction of the offense would be  
11 admissible to attack the credibility of an adult and  
12 the court is satisfied that the admission in evidence  
13 is necessary for a fair determination of the issue of  
14 guilt or innocence."

15 And, your Honor, with -- I forwarded a copy of  
16 this motion along with the attachments to both the  
17 court and to counsel yesterday evening. The two  
18 adjudications, one is in 1998, and the defendant --  
19 I'm sorry -- the complaining witness Ms. Beck, who was  
20 then known as Kristen Woltering, pled guilty to the  
21 crimes of criminal trespass first degree and theft in  
22 the third degree. The -- I think the Rules of  
23 Evidence are clear that that would be -- A conviction  
24 of an adult would -- for a theft charge would be  
25 admissible. I think that is relevant to her

1       credibility, especially in regard to a charge of this  
2       nature.

3               Secondarily, your Honor, in the same -- And  
4       that was Whitman County case number 98-8-00002-3. The  
5       order of disposition was filed on January 9<sup>th</sup> of 1998.

6               The second thing that we would offer, or would  
7       like to offer, is Whitman County case number 98-8-  
8       00003-1, filed January 9<sup>th</sup> of 1998, wherein the  
9       complaining witness pled guilty to the offense of MIP,  
10       criminal trespass first degree and vehicle prowl in  
11       the second degree. I think the substance of the  
12       second degree vehicle prowl, your Honor, is best laid  
13       out in the statement of the juvenile on plea of  
14       guilty, which was also attached. And that was  
15       attached on -- I'm referencing page three and page  
16       four of that. In her allocution, in Paragraph 1.16,  
17       she says, "This is my statement. In late December  
18       1997 in Whitman County I entered the properties of  
19       several people. I did not have anyone's permission to  
20       go onto their properties. I took items of small value  
21       from several of the properties, e.g., change and beer.  
22       I also entered a vehicle with the intent of taking  
23       things from the vehicle without the owner's  
24       permission."

25               Your Honor, I would submit again, like the

1 third degree theft charge, this is highly probative of  
2 her -- of her credibility. I think we she an adult I  
3 think it would be -- it would be admissible under the  
4 rule. And we would ask at this time that you allow  
5 the defense to present evidence regarding these two  
6 juvenile adjudications.

7 We have one other adult adjudication out of  
8 District Court that I provided a copy to Mr. Tracy  
9 about, but that's not -- that's not related to this  
10 motion, although I wanted the court to be aware that  
11 we would be offering that as well.

12 And I don't know if Mr. Tracy has any issues  
13 with that.

14 MR. TRACY: Yes.

15 Your Honor, I have a cross motion in limine  
16 I'll make verbally now, which is that the court  
17 determine ahead of time what of the victim's criminal  
18 history would -- allowed to be mentioned during the  
19 trial here, just in general.

20 And as I understand it, the defense has three  
21 convictions that they will seek to talk about, should  
22 -- Well, of course the victim will testify. And two  
23 of those are juvenile convictions. One is an adult  
24 misdemeanor conviction for making a false statement.  
25 I have no objection to the defense raising that

1 conviction; I agree it's very appropriate.

2 I do object to the defense raising the two  
3 juvenile convictions in this case and ask the court --  
4 ask that the court not permit -- You're looking at  
5 Evidence Rule 609, your Honor, (d) is the one that  
6 refers to juvenile convictions of a witness. And in  
7 general those are not admissible. However, you do  
8 have discretion, your Honor, in permitting a showing  
9 of convictions here if the evidence -- is necessary  
10 for a fair determination of the issue of guilt or  
11 innocence of the defendant, here.

12 So, is it necessary? I think that's another  
13 way of saying, is it necessary in a determination of  
14 the credibility of the victim here. It's not, your  
15 Honor. These two convictions were from a period of  
16 time when the victim was 13 years old. A 13-year-old  
17 girl, convicted of, in one instance, gross misdemeanor  
18 theft in the third degree. And I've looked but so far  
19 have not located any factual basis. And I haven't  
20 asked Ms. Beck about it. I haven't been able to  
21 locate the factual basis for that conviction in any  
22 court record or in any record that my office might  
23 have.

24 The other instance is vehicle prowling and  
25 theft in the third degree. I do have the factual

1 basis there. Mr. Monson has supplied the defendant in  
2 that case, who is our victim witness here, her  
3 statement on plea of guilty, which is as Mr. Monson  
4 read.

5 I was also able to locate the Local Rule 16  
6 certificate from that case, and I'd like to hand that  
7 forward.

8 Although you cannot read on the copy the case  
9 number, I do believe that this is the case that  
10 matches the statement on plea of guilty. This is--

11 MR. MONSON: It's the 98-8-00023.

12 MR. TRACY: And this is the deputy prosecutor's  
13 summary of the officer's probable cause. If necessary  
14 we have located the police report for that instance,  
15 too.

16 But even if you just go on the statement of  
17 defendant on plea of guilty -- you have a 13-year-old  
18 girl who went into somebody's car and took something  
19 of small value, your Honor -- Otherwise it would be a  
20 felony -- and then also went onto somebody's porch and  
21 took their beer.

22 I submit that that's not helpful to the jury in  
23 this case when they determine the credibility of Ms.  
24 Beck, the 22-year-old woman who has said that this man  
25 raped her at knifepoint.

1           MR. MONSON: Your Honor, in support of that, I  
2 think it's highly probative. I guess by way of an  
3 offer of proof, I think I would be more inclined to  
4 err on the side of the state in this case if that was  
5 the only history she had. But it's not. She has an  
6 extensive history of criminal activities throughout  
7 Idaho and also throughout Washington.

8           Now, granted, in the trial that we're going to  
9 have, most of it's misdemeanor, and it's -- I don't  
10 know that it's admissible under the rule in the --  
11 like what we're talking about right now. But the  
12 state's provided me with her Washington criminal  
13 history. It's extensive. I've done a little diving  
14 into her Idaho history; it's extensive. In fact, your  
15 Honor, -- and this will form the basis, I'm sure, of  
16 one of Mr. Tracy's future motions -- the complaining  
17 witness is incarcerated at the Latah County Jail right  
18 now. And that's for a 2003 series of convictions out  
19 of Latah County for MIP, for urinating in public, and  
20 I think for malicious injury -- malicious injury to  
21 property. I want to say -- the time she kicked out  
22 the window in the police car? That might be one.

23           At any rate -- So, apparently she continues to  
24 commit crime. Again, now, that may or may not be  
25 relevant to the determination here, but certainly we

1 think, given the gravity of the charges against Mr.  
2 Herron, we think that in a case like this it's  
3 essential that the court give the defendant the  
4 benefit of the doubt.

5 And, I think it is probative with regard to  
6 whether or not she's going to get up on the stand and  
7 tell us the truth about what happened.

8 THE COURT: All right. Well, you have no  
9 dispute, and I don't think there could be a dispute,  
10 on the adult conviction, false statement. That's  
11 clearly admissible, should be admissible.

12 As I read the rule here, in the context of the  
13 conviction records that have been presented to me by  
14 Mr. Monson in support of the motion, it appears to me  
15 that this is a discretionary call with the court. The  
16 rule, 609(d), says the court may admit juvenile  
17 adjudications if certain requirements are met.  
18 Clearly here a couple of these juvenile adjudications  
19 are the type of crimes -- they're crimes of, what --  
20 they say moral turpitude -- that if they were adult  
21 convictions would be admissible here.

22 But then the court also has to be satisfied  
23 that admission of this evidence is necessary to a fair  
24 determination of the issue of guilt or innocence. And  
25 what we are dealing with here are misdemeanor

1 convictions for unlawfully taking property or entering  
2 a vehicle with the intent to steal property that  
3 occurred back -- Well, I don't know when they  
4 occurred. The conviction was January of 1998, so the  
5 offenses had to have been prior to that. At the time  
6 of the conviction the individual here, Ms. Beck, was  
7 13 years old. And the date of conviction until the  
8 date of trial would be something like nine years and  
9 five months. And given the very young age -- We're  
10 not dealing with a 17-year-old, or a 16-year-old, or a  
11 15- or 14-year-old; we're dealing with a 13-year-old.  
12 And we're talking about a crime that occurred -- two  
13 crimes that occurred almost nine and a half years ago.  
14 Had they been adult crimes, under Rule 609(b), they  
15 expire, they're no longer admissible if they're adult  
16 convictions.

17 So under these circumstances I can't see any  
18 way that it would be appropriate for the court to  
19 allow the admission of these juvenile adjudications.  
20 I certainly am not satisfied that admission of this  
21 evidence is necessary for a fair determination of the  
22 issue of guilt or innocence. And to the contrary, I  
23 think it would be unfairly prejudicial to the witness  
24 and to the state.

25 So, I'm going to deny the motion for the

1 admission of that type of evidence in cross  
2 examination.

3 MR. TRACY: Your Honor, I handed forward the --  
4 what's labeled the Local Rule 16 certificate. And I  
5 am offering that in support of my request that you  
6 deny the defense motion, which you have just done.  
7 But to keep a complete record I'm asking that the  
8 court admit that and--

9 THE COURT: Why don't we have this marked --  
10 what? -- Exhibit--?

11 THE CLERK: A.

12 THE COURT: --A? I will consider it. I will  
13 admit it. It's consistent with Mr. Monson's -- the  
14 statements of defendant on plea of guilty that were  
15 submitted in those -- Ms. Beck, and Ms. Woltering,  
16 stated in her own words what she did, and what is in  
17 there is consistent with the local rule statement.  
18 But -- it does establish, I believe, the vehicle  
19 prowling, if she were an adult, because of her  
20 statement that she unlawfully entered a vehicle to  
21 steal money, something to that effect, if she were an  
22 adult I think because of that it would be admissible.  
23 I agree with Mr. Monson in that regard. It's just the  
24 -- I don't feel that it's necessary to determine the  
25 guilt or innocence. And extremely old, she was

1 extremely young at the time.

2 MR. MONSON: Your Honor, we covered Rule 609.  
3 Are you going to allow the defense to inquire about  
4 that on -- under 608, specific instances of conduct?

5 We can't -- 609 will not let us prove the  
6 conviction. But 608 allows us to inquire into  
7 specific instances which cannot be proved by extrinsic  
8 evidence. But would you allow us to inquire about  
9 that?

10 THE COURT: No. It doesn't apply.

11 MR. MONSON: Does not apply? So you will not  
12 allow--

13 THE COURT: It is -- specific instances of  
14 conduct of the witness for the purpose of attacking or  
15 supporting the witness' credibility other than  
16 conviction of a crime may not be proved by extrinsic  
17 evidence. They may, however, in the discretion of the  
18 -- so in other words, the first part doesn't --  
19 wouldn't allow these convictions.

20 MR. MONSON: Well,--

21 THE COURT: --may, however, in the discretion  
22 of the court, if probative of truthfulness or  
23 untruthfulness, be inquired into on cross examination  
24 of the witness concerning the witness' character for  
25 truthfulness or untruthfulness--.

1 MR. MONSON: I think I'm under 608(b)--

2 THE COURT: More concerning the character for  
3 truthfulness or untruthfulness of another witness--

4 MR. MONSON: And, your Honor,--

5 THE COURT: That applies when you have a  
6 reputation witness that says "I'm familiar with his  
7 reputation for truth and veracity, it's good," then  
8 you're allowed to inquire of the specific instances.  
9 If that happens, then you would be able to ask, "Well,  
10 did--" -- If the state offered a witness to vouch for  
11 Ms. Beck's reputation for truth and veracity, said  
12 "She's got a good reputation," then you can attack  
13 that by specific instances of conduct, such as, "Well,  
14 did you know she was convicted of vehicle prowling  
15 when she was thirteen years old."

16 MR. MONSON: Well, your Honor--

17 THE COURT: Or, "Did you know"--

18 MR. MONSON: My intent would be to ask her  
19 directly if she broke into a house or broke into this  
20 car with intent of taking things.

21 THE COURT: Yeah. And that's -- I'm not going  
22 to allow you to do that. That's not within the -- I  
23 don't believe that's within the scope of 608.

24 Improper. You lose.

25 Anything further, now, from the defense?

1           MR. MONSON: I don't think anything -- anything  
2 at this time, your Honor.

3           MR. TRACY: Your Honor, to clarify your ruling  
4 that you just made regarding Rule 608. Under 608(b),  
5 my understanding the court is deciding that -- in the  
6 exercise of its discretion, that you are not allowing  
7 the defense to ask about these old juvenile  
8 convictions.

9           Am I understanding? You're exercising your  
10 discretion in not allowing the defense to -- to ask  
11 the victim during cross examination of her about these  
12 old juvenile convictions?

13          THE COURT: Yes.

14          MR. TRACY: Thank you.

15          THE COURT: Under either 608 or 609.

16          MR. TRACY: My first motion, your Honor -- Mr.  
17 Monson just referred to it -- Ms. Beck is currently in  
18 custody at the Latah County Jail on an unrelated  
19 misdemeanor sentence of some sort. I think my best  
20 information is that it relates to a probation  
21 violation from an incident that happened some years  
22 ago.

23                 Also, Mr. Monson did tell you that Ms. Beck has  
24 a number of -- I believe all -- misdemeanor  
25 convictions. I know of some in Washington -- may well

1 have some in Idaho. I know of no felony convictions.

2 I'm asking that the court, other than what we  
3 have discussed already, regarding the making a false  
4 statement, I'm asking that the court order defense not  
5 to mention Ms. Beck's criminal history unless they  
6 think it is specifically relevant to some issue and  
7 then that they bring it up outside the presence of the  
8 jury before doing so.

9 THE COURT: Is that something you intend to do?

10 MR. MONSON: Your Honor, I don't know -- Well,  
11 I don't know that the fact that she's in jail is  
12 terribly relevant, but -- So we don't intend to elicit  
13 from her that she's been in jail over in Latah County  
14 for who knows how long--

15 MR. TRACY: About a week, maybe.

16 MR. MONSON: About a week or so. But -- No, we  
17 don't -- we don't intend to elicit that.

18 MR. TRACY: Or the other criminal history. The  
19 other misdemeanor criminal history.

20 MR. MONSON: My only reservation would be if  
21 there is a misdemeanor theft or other misdemeanor acts  
22 that are contemplated under the rule. Clearly they're  
23 not ten years old, as the court was concerned, and so  
24 they're -- they would be much more recent in time.

25 And so we would just ask the court to allows us, if it

1 fits under the rule, to bring it in.

2 But I think Denis is right; the majority of  
3 what's going on over there is MIP, urinating in  
4 public, malicious injury to property, these kinds of  
5 things. And--

6 THE COURT: None of which would be admissible.

7 MR. MONSON: None of which would be admissible  
8 as convictions. But, your Honor, 608(b) I think  
9 allows us to inquire into specific instances of bad  
10 acts that are not convictions. So if there is  
11 something out there that's not a conviction, then I  
12 think it's fair game. The--

13 THE COURT: Well, it still has to relate to--

14 MR. MONSON: Sure.

15 THE COURT: --truthfulness--

16 MR. MONSON: Exactly.

17 THE COURT: Urinating in public--

18 MR. MONSON: No. And I'm not saying that is.  
19 But I'm saying, your Honor, if there is something else  
20 out there -- I don't know how you want us to bring  
21 that up, if you want us to--

22 THE COURT: Outside the presence of the jury.

23 MR. MONSON: Okay. Fair enough.

24 THE COURT: So, yeah. Then we can lay a  
25 foundation, make an offer of proof, and--

1 MR. MONSON: Okay.

2 THE COURT: --I can hear the specifics.

3 MR. TRACY: And then, your Honor, I have a  
4 general motion in limine asking that the defense not  
5 mention the victim's sexual history or elicit any  
6 testimony from any witness about that before bringing  
7 it up outside the presence of the jury and getting the  
8 court's permission to do so.

9 THE COURT: Is that even something that's--

10 MR. MONSON: No, your Honor. I think that's  
11 consistent with the rape shield law.

12 THE COURT: Okay.

13 MR. TRACY: And then, lastly, your Honor, I  
14 just want to inform the court and defense counsel that  
15 I do intend to play the defendant's statement,  
16 recorded statement. But I'm not going to play the  
17 whole thing. And I can inform defense counsel off the  
18 record as to the point at which I intend to stop the  
19 tape, so to speak. And also of course I'll have to  
20 excise the references to Department of Corrections. I  
21 will have a -- my proposed exhibit in that regard,  
22 then, I should have by Monday morning. But I'll  
23 inform counsel this afternoon about the point at which  
24 I'm going to stop -- stop the tape for the jury.

25 THE COURT: All right. There's a transcript.

1 MR. TRACY: Uh-huh.

2 THE COURT: So you can--

3 MR. TRACY: I can point it right out.

4 THE COURT: Point it out? Then that way, Mr.  
5 Monson, you're -- you would be entitled, I believe, to  
6 admit portions, any other portion in fairness that  
7 ought to be admitted. So you'll be aware, and we'll  
8 have time to do that.

9 MR. TRACY: Well, and there of course could be  
10 an issue there, your Honor, about -- I agree that if  
11 the state tried to offer a portion of an interview,  
12 and left out the context of some statement, or because  
13 it was a portion there was some -- somehow some  
14 unfairness, some context left out, like I say, the  
15 defense would be allowed to put it in context. But if  
16 there's portions of the interview that don't relate to  
17 the context that would be offered by the state, then  
18 there'll be an argument about whether the defense  
19 should be allowed to play that.

20 THE COURT: All right. And you're going to do  
21 your tape in a manner where it will be efficiently--

22 MR. TRACY: Should be pretty seamless, I think.

23 THE COURT: --seamlessly--.

24 MR. TRACY: Yeah. We'll give it a try. I  
25 can't do it, but--

1 THE COURT: --that helps--  
2 MR. TRACY: --somebody can.  
3 THE COURT: --Edwards, you're not going to be  
4 fumbling around with the tape recorder, and missing  
5 the--  
6 MR. TRACY: We're going to have Sergeant  
7 Chapman on the witness stand--  
8 THE COURT: --going too far, and coming back--  
9 MR. TRACY: He's going to say "beep" really  
10 loud.  
11 That's all--  
12 THE COURT: Do we have any other issues?  
13 MR. TRACY: Not unless I think of some more  
14 before Monday--  
15 THE COURT: All right. I had intended by this  
16 time -- but trials during the week got in my way -- to  
17 come up with -- come up with -- that questionnaire. I  
18 believe, last Friday Mr. Monson gave me -- You filed--  
19 MR. MONSON: I did, your Honor--  
20 THE COURT: --your proposed questions. Do you  
21 happen to have -- probably in the file, but--  
22 MR. MONSON: I can give you a copy of it, or  
23 give it to Ms. Bafus--  
24 THE COURT: There's no objection to any of  
25 those things. And, you know, I think I have--

1           MR. MONSON: Or I could email it to Ms. Roe. I  
2 thought it--

3           THE COURT: Either give me a copy or email it  
4 directly to me. I'm going to see if I have what I've  
5 done in the past on the computer, here.

6           (Inaudible) juror questionnaire.

7           It could be in the file. I just didn't--

8           THE CLERK: I'm sure -- saw it.

9           THE COURT: Now, I'll have you look over --  
10 this is the -- just relates -- One for you, one for  
11 Mr. Tracy--. And what I thought would be to -- My  
12 thinking was just to incorporate these agreed  
13 questions in with -- what is here.

14           And we were also going to talk about the issue  
15 of examining jurors that respond in a positive fashion  
16 to these questions in chambers outside the presence of  
17 the public and other jurors, when Mr. Herron has a  
18 right to have that inquiry done in open court in a  
19 public fashion. We briefly discussed that last week.  
20 Mr. Monson, I think you were going to talk with Mr.  
21 Herron a little more about that. Are you prepared to  
22 -- Do you know now how--

23           MR. MONSON: We are, your Honor. And we've  
24 talked with the state about it. I know Mr. Herron is  
25 prepared to -- I don't know if waive his right to a

1 public inquiry is the proper term here, but certainly  
2 we've discussed it and we would have no objection if  
3 somebody answers one of these questions in a way that  
4 would merit going into chambers, or going someplace  
5 else out of the -- out of the hearing of the other  
6 panel members, we don't have any objection. You can  
7 certainly inquire of Mr. Herron, but on his behalf we  
8 would certainly be prepared to waive that.

9 THE COURT: All right. Mr. Herron, you  
10 understand you have a right to a public trial, where  
11 no one other than perhaps the witnesses are excluded  
12 from the courtroom, and where -- when the jury  
13 questioning takes place, you have a right to have  
14 anybody that wants to be here present for that  
15 process. Do you understand that fully?

16 DEFENDANT: Yes.

17 THE COURT: And by the same token, if you want  
18 to waive that right so that jurors will know that if  
19 they respond positively to some of these questions  
20 about things like have they ever been accused of a sex  
21 offense or been a victim of a sex offense or an  
22 unwanted sexual touching, have a close friend or  
23 family member -- we discussed last week, very often  
24 individuals are very reluctant to disclose those  
25 things, and particularly to disclose those things if

1 they know they're going to be talked about in front  
2 of, well, for instance, 50 other jurors and other  
3 members of the public.

4 DEFENDANT: Yes, sir.

5 THE COURT: And so, in the past, until a recent  
6 case, I have generally conducted inquiries of jurors  
7 -- let them know that we'll talk about these things in  
8 chambers, where the lawyers would be present and you  
9 would be present, but they wouldn't have to talk about  
10 those things in an open courtroom in front of 50, 75  
11 other people.

12 And the reason I do that is that I -- well, the  
13 argument is that they tend to be more open and honest  
14 and disclose things that they might not otherwise  
15 disclose if they knew that 50, 75 people were going to  
16 hear about these things.

17 And it is totally your decision as to how that  
18 is handled. I will--

19 DEFENDANT: --like it to be done that way, sir.

20 THE COURT: By an inquiry in--

21 DEFENDANT: --inquire--

22 THE COURT: --individual jurors--

23 DEFENDANT: --jurors in the judge's chambers.

24 THE COURT: Okay. And of course, again, you  
25 would be present. Everything would be recorded--

1           DEFENDANT: I'd like to be present, yes, sir.

2           THE COURT: Well, I don't believe I would do it  
3 unless you were present.

4           DEFENDANT: Thank you, sir.

5           THE COURT: You have to be -- I'm not going to  
6 give you a choice on that one.

7           DEFENDANT: All right. Thank you.

8           THE COURT: All right. And you've discussed  
9 this with Mr. Monson?

10          DEFENDANT: Yes, your Honor, I have.

11          THE COURT: And you're sure this is how you  
12 want to proceed?

13          DEFENDANT: Yes, your Honor.

14          THE COURT: Okay. And Mr. Tracy, did you want  
15 to factor in on this?

16          MR. TRACY: Your Honor, the only other  
17 suggestion I have is that we present the defendant  
18 with the option of questioning potential jurors about  
19 these very intimate issue, not in front of the other  
20 potential jurors but not in a closed chambers  
21 situation, but rather in open court situation such as  
22 using the district court courtroom down the hall, so  
23 in an atmosphere that is open to the public, so it  
24 would comport with the defendant's right to a public  
25 trial, and yet would not cause a risk of tainting a

1 potential -- of tainting the potential jury pool.

2 That is the other option that's available. And  
3 I think as long as the defendant makes a knowing and  
4 intelligent, informed choice between all of these  
5 things, then I have no objection. But I think the  
6 defendant should be presented with that option as  
7 well.

8 So he can have his public trial--

9 THE COURT: We just exclude the other jurors.

10 MR. TRACY: Right. It would not serve the  
11 purpose, necessarily, of -- or, there would still be  
12 the risk, I guess, is what I'm trying to say, of  
13 jurors not being as forthcoming about these intimate  
14 issue, because there might be members of the public  
15 there. But it's an option.

16 THE COURT: Well, and that is an option. The  
17 only reason that I have done this in the past -- that  
18 I've found it necessary in the past, is a concern that  
19 not every juror would make disclosures which could  
20 affect the issue of fairness here if they knew that  
21 the public at large would know about some of these  
22 personal things, or other jurors. I mean, that's the  
23 purpose of doing it in this fashion. But I can, as  
24 another alternative exclude the other jurors so people  
25 wouldn't be discussing or disclosing these types of

1 things in front of other jurors. And -- But that  
2 would still leave it open for anyone that's interested  
3 to come in and listen, outside spectators -- The  
4 concern I would have is that jurors looking around and  
5 see a lot of people in the courtroom, they might be  
6 reluctant to make full and complete disclosure. But  
7 -- You may want to do it that way, Mr. Herron.

8 And so, I'll let you discuss this further with  
9 -- Right now -- Well, tell me how you feel. I think--

10 DEFENDANT: I'd rather have it done not in  
11 public with the jurors, your Honor.

12 THE COURT: Not in public?

13 DEFENDANT: Not in public--

14 THE COURT: And in chambers--

15 DEFENDANT: In chambers--

16 THE COURT: In that fashion.

17 DEFENDANT: Because I'd rather -- I'd rather  
18 have people be (inaudible) not be influenced by other  
19 people, or maybe somebody they deal with down the  
20 street, or something; you know, (inaudible) being  
21 important. And I feel that it would be more  
22 appropriate (inaudible).

23 THE COURT: Okay. Well, based on what you've  
24 just said I feel that that's a knowing and a voluntary  
25 decision. And I think it's an intelligent decision on

1 your part. It's your call to make, but I think it's a  
2 safe, wise thing to do from your standpoint. And it  
3 sounds like you feel the same way.

4 MR. MONSON: And your Honor, we'd be willing to  
5 sign a written waiver to that effect as well.

6 THE COURT: You and Mr.--

7 MR. MONSON: If the state is--

8 THE COURT: --(inaudible)--

9 MR. MONSON: --if the state is concerned about  
10 that.

11 THE COURT: --(inaudible). Yeah, the form  
12 itself says "In order to select a fair and impartial  
13 jury the jury selection process requires that certain  
14 items of information be collected from each potential  
15 juror. In this case that includes information that  
16 might be embarrassing to you if you were asked these  
17 questions in open court. Your answers to this  
18 questionnaire are not public information. The judge  
19 will see your answers and is required to share those  
20 answers with the defendant and the attorneys for the  
21 parties. The judge and attorneys may then have some  
22 additional questions to ask you in the judge's  
23 chambers outside the presence of other potential  
24 jurors and courtroom spectators. This questionnaire  
25 and a tape recording of any questioning relating to

1 your answers will be sealed from public inspection and  
2 may only be opened or reviewed on order of the court.  
3 The purpose of this procedure is to safeguard your  
4 privacy and to prevent possible embarrassment while  
5 preserving the rights of the parties to this action to  
6 have a fair and impartial jury."

7 That's what the jury is told right up front.  
8 And the reason they're told that is to encourage them  
9 to be candid and open and honest to these questions.

10 So, you can review -- Mr. Monson has the form.  
11 You can review that portion and the questions as well.  
12 And at this time it will be understood that unless I  
13 hear otherwise from the defense this will be a  
14 chambers conference inquiry relating to the  
15 questionnaire.

16 MR. MONSON: Thank you, your Honor.

17 DEFENDANT: Thank you.

18 THE COURT: And in that regard the waiver of  
19 the public aspect of the trial in only this limited  
20 regard is accepted.

21 Now, do we have any other issues?

22 MR. MONSON: One brief issue. And I visited  
23 with Ms. Roe about this. We have one potential  
24 witness who is -- our DNA expert is involved in a  
25 trial in Chicago on Tuesday and is very likely going

1 to be unable to make it here in person. We wanted the  
2 court to be aware of it. She said that she'd be  
3 available to participate by phone if needed be. We'd  
4 like to let the court -- ask the court's permission  
5 that if we deem it necessary for her to come and  
6 testify that she be able to participate by phone.

7 THE COURT: --any objection from the  
8 prosecution?

9 MR. TRACY: No objection, your Honor.

10 MR. MONSON: And then--

11 THE COURT: So that permission will be  
12 granted--

13 THE CLERK: And we're going to try to get that  
14 (inaudible).

15 THE COURT: We have telephone problems.  
16 Hopefully they'll be fixed. You won't be talking --  
17 This won't be probably Tuesday anyway.

18 MR. MONSON: I think Wednesday is what we had  
19 talked about. So--

20 THE COURT: But you will be permitted to call  
21 that witness--

22 MR. MONSON: Thank you, your Honor.

23 THE COURT: --by telephone.

24 MR. MONSON: And then my last one, and I don't  
25 know if this needs to be handled on the record, but

1 the court had previously authorized funds for defense  
2 experts, in particular our DNA scientist's work. We  
3 have expended those at this point, and I need to come  
4 and ask the court for some additional funding. We're  
5 saving quite a bit by not having her come and testify,  
6 but there are going to be some continued expenses for  
7 that as well. So if I can submit that to the court.

8 THE COURT: You may--

9 MR. MONSON: And then that's all -- that's all  
10 I've got, your Honor. Thank you.

11 THE COURT: Okay. Do you have that--

12 MR. MONSON: I do. I have a--

13 THE COURT: --ready?

14 MR. MONSON: And I didn't put an amount in  
15 there, your Honor, but--

16 *Ex parte conference with defense counsel re expenses*

17 MR. MONSON: Thank you, your Honor. That's all  
18 we have.

19 MR. DRUFFEL: Your Honor, if I may, returning  
20 to the questionnaire, maybe -- at the risk of  
21 redundancy -- and I'll wait for Mr. Monson to get back  
22 -- perhaps it would be appropriate on Questions 5 and  
23 -- we have a numbering problem -- One, two, three,  
24 four -- the first five, and then what probably should  
25 be six, and seven -- they would -- again, at he risk

1 of redundancy, just make sure we're clear, but they  
2 would actually read, "Have you ever been accused of or  
3 charged with an offense involving inappropriate sexual  
4 contact," -- That will be on what is numbered five,  
5 which should be -- should be numbered six -- "with an  
6 offense involving inappropriate sexual contact" -- and  
7 again, which should be number seven, the same --  
8 inserting that word.

9 Again, I understand that it's probably  
10 redundant, but maybe it would be appropriate to be  
11 completely clear to the prospective jurors.

12 THE COURT: Actually, I won't have number --  
13 name -- juror number, then -- the numbering's -- I'll  
14 change -- It's one, two, three, four, five, six --  
15 "Have you ever been the recipient of an unwanted  
16 sexual contact." "To your knowledge has anybody in  
17 your family or close friend ever been the recipient of  
18 unwanted sexual contact" -- What will be Question 3 --  
19 "Have you ever been accused of or charged with an  
20 offense involving" -- you're saying "inappropriate  
21 sexual contact" at that--

22 MR. DRUFFEL: That would be my suggestion, yes,  
23 your Honor.

24 THE COURT: "Inappropriate." Any--

25 MR. MONSON: Well, your Honor, I'd rather paint

1 it with a broader brush than a narrow brush,  
2 especially with this what one -- I agree that it may  
3 be redundant, but it may be necessary just depending  
4 on who's in the panel.

5 MR. DRUFFEL: You do want it or you don't?

6 MR. MONSON: No, I don't want it, your Honor.  
7 And the reason I don't want it is I just -- if -- you  
8 know--

9 THE COURT: Well, this is--

10 MR. MONSON: What somebody thinks is--

11 THE COURT: This is much broader.

12 MR. DRUFFEL: It is broader.

13 MR. MONSON: I'd rather--

14 THE COURT: Although it's -- "Have you ever  
15 been accused of a crime involving sexual contact" --  
16 "been accused of a crime involving sexual contact"  
17 pretty well entails inappropriate.

18 I think I'm going to leave it like it is.

19 MR. DRUFFEL: Well, then change the word from  
20 "offense" to "crime."

21 THE COURT: "Accused of or charged with an  
22 offense involving" -- What's the difference between an  
23 offense or a crime? What's the difference?

24 MR. DRUFFEL: A crime is clearer to prospective  
25 members of the jury.

1 THE COURT: Well, how about "with an offense or  
2 crime?"

3 MR. MONSON: I'd be okay with "an offense or--"

4 THE COURT: Or just change it to "crime."

5 That's -- It is clear, I think, for--.

6 So instead of having "offense," if I just say  
7 "crime" there's no reason to say "offense."

8 Okay. So, "offense" will be deleted, "crime"  
9 will be substituted.

10 And then I'm also going to include -- Oh,  
11 you've got "agree," "strongly agree,"--.

12 Now, these other things--. The Monson  
13 proposals -- Why do we need to discuss those in  
14 private? Or was that even your suggestion?

15 MR. MONSON: Well, I just -- Well,--

16 THE COURT: You just wanted a questionnaire.

17 MR. MONSON: Right. And my understanding was  
18 you were -- was it my understanding you were going to  
19 try to incorporate the two?

20 THE COURT: Well, it was, but I -- now that I  
21 pay attention to them,--

22 MR. MONSON: Well, I think they are -- to a  
23 certain extent they've got some of the same  
24 information on -- But,--.

25 And keep in mind, your Honor, that was

1 submitted before we had an idea of what the court was  
2 planning on submitting itself. The idea was to try to  
3 elicit this information so that we could inquire  
4 privately about some of those issues as well.

5 THE COURT: Well, why inquire privately as to  
6 their feelings as to whether a defendant should  
7 testify, or whether--

8 MR. MONSON: Well, not -- not necessarily that,  
9 your Honor, but--

10 THE COURT: --(inaudible). You could ask --  
11 Why include these in a questionnaire?

12 MR. MONSON: Well, not necessarily -- Your  
13 questionnaire covers items more of a sexual nature.  
14 But I think that this questionnaire that I propose  
15 talks more about their biases and their attitudes  
16 towards criminal defendants in general, whether there  
17 -- should be required to testify, and I think it would  
18 help us speed up the process, to tell you the truth,  
19 if we had an idea of -- of what some of these juror  
20 attitudes were with regard to just the judicial system  
21 and the trial system and the defendant's criminal --  
22 or constitutional rights.

23 And these don't necessarily -- the questions  
24 that I've proposed, I don't think we need to take them  
25 in private.

1           THE COURT: I'll just try to incorporate these,  
2           have one questionnaire, try to incorporate these  
3           questions. And then you'll get copies of everybody's  
4           responses, both attorneys. And then based on the  
5           responses to the Monson questions you can do whatever  
6           you want to do with them.

7           We won't talk about those in private.

8           MR. MONSON: Fair enough.

9           THE COURT: You can -- It will -- there'll be  
10          responses and you can use those as the basis for  
11          further questions, challenges, or whatever you deem  
12          appropriate. But those questions aren't really  
13          related to the need for -- I might just do it  
14          separately. I don't know. I'll do something.

15          Mr. Tracy, you thought you might have some  
16          additional questions that you wanted to submit? Or--

17          MR. TRACY: No, your Honor.

18          THE COURT: You don't have any? Okay. So I'll  
19          try to do something incorporating all of these.

20          We were going to meet and discuss security last  
21          Monday, and nobody showed up.

22          MR. TRACY: And Mr. Monson and I have talked  
23          informally about this, your Honor. Deputy Chapman's  
24          here. If you'd like we can talk further about it.

25          But in general the plan is that at -- that Mr. Herron

1 will be supplied his clothes and be able to be dressed  
2 and be available to be brought over to court not later  
3 than 8:30 in the morning. And then when defense  
4 counsel says that he's ready, then the sheriff's  
5 office personnel will bring Mr. Herron over in  
6 handcuffs to the library off the courtroom here, where  
7 he'll meet Mr. Monson. And at that point the -- Well,  
8 at that point the handcuffs will be removed and Mr.  
9 Herron and Mr. Monson can walk together into the  
10 courtroom, where the potential jury venire members  
11 will be kind of milling about.

12 The sheriff's office will have armed guards at  
13 all exits to the hallway, and able to deal with the  
14 defendant should he decide to want to leave. But they  
15 will not be hovering over him as he and his counsel  
16 walk into the courtroom.

17 THE COURT: So he'll just walk in.

18 MR. TRACY: Yeah. He could walk in this door  
19 here, or this one, here. Whichever.

20 THE COURT: As we begin the trial, the jury --  
21 jurors will all be in the courtroom, the big panel.  
22 So we will not let the go around, or over here; we  
23 won't let them use this restroom. And then -- So,--

24 MR. TRACY: So this door--

25 THE COURT: --Mr. Monson and -- So, let's have

1       them bring him to the library right at 8:30. No  
2       juror's going to see a thing. This door will be shut.  
3       And then during recesses we'll just worry about that  
4       -- we'll just keep--

5               MR. MONSON: Keep him here and then--

6               THE COURT: Keep him here--

7               MR. MONSON: --the jury out--

8               THE COURT: Yeah. When we have the 50 people  
9       here, we'll have him use this door. When we get our  
10      twelve jurors and one or two alternates, they'll be  
11      going out this door, so what we'll do is we'll send  
12      them out, send them to the jury room, keep them there  
13      until he goes around this way and across, and we'll  
14      shut the door that goes to the room here. Eileen will  
15      have to handle that.

16              Sometimes we have other things to talk about,  
17      like take a noon recess, there'll be some issues you  
18      want to make a record of outside the jury's presence.  
19      When we do that we'll just send the jury out first,  
20      and then Mr. Herron can be taken any way you want.  
21      Probably then we'll go that way.

22              But you've got the first day down. And I want  
23      to start right at nine o'clock. I told Ms. Kidne  
24      (ph.) she was responsible for getting Mr. Tracy here--

25              MR. TRACY: Understand that--

1           THE COURT: She's present. She's aware of  
2           that. Getting him here at 9:00 is difficult. If you  
3           need help, maybe Deputy Chapman can help.

4           And then we've got to worry about handcuffs.  
5           The jury's seen Mr. Tracy in handcuffs--.

6           I think Mr. Monson's usually here on time,  
7           aren't you?

8           MR. MONSON: I am, your Honor.

9           THE CLERK: And can I make sure, then, if we're  
10          going to start right at nine o'clock that I've got all  
11          the exhibits and everything prior to.

12          MR. TRACY: I've got my stickers for you.

13          THE CLERK: Okay.

14          THE COURT: All right. And so it will probably  
15          be into the afternoon before we have a jury.  
16          Probably. We'll see how it goes.

17          And then I wasn't going to limit you on your  
18          amount of time for questioning. We'll I think  
19          probably definitely get in opening statements, and Mr.  
20          Tracy, you'll have a witness or two available so we  
21          can--

22          MR. TRACY: I will. Yes, I can.

23          THE CLERK: Are we doing the struck jury?

24          THE COURT: Never done anything different.  
25          Okay.

1                   MR. MONSON: Thank you, your Honor.

2   *Recording ends*

1 MORNING SESSION

2 June 18, 2007

3

4 *Prospective jurors present*

5 THE COURT: And good morning. We are here at  
6 this time for the jury trial in the matter of State of  
7 Washington versus Jerry Allen Herron, and this is  
8 superior court case number 07-1-00022-9. I'll let the  
9 record reflect that the defendant Mr. Herron is  
10 present, he's here with counsel, and the state is  
11 present as well.

12 And I believe we have a panel of 50 or a little  
13 over 50 prospective jurors present in attendance. And  
14 as I look out there it looks like everyone is anxious  
15 to begin this trial this morning.

16 Initially the things that I say here are going  
17 to be directed towards the panel of prospective  
18 jurors. And initially I want to thank each of you for  
19 your prompt appearance here this morning, and I want  
20 to thank you for taking the time to carry out your  
21 duty as jurors for this particular matter.

22 Now, I know, and we all appreciate that there  
23 -- when you have a jury trial and people have to take  
24 time away from employment and away from their daily  
25 activities there is invariably some inconveniences and

1       some sacrifices involved in having to come in and  
2       having to serve. I hope each of you understand,  
3       however, that jury duty is a very important part of  
4       being a citizen of this country. I tell jurors that  
5       it is just as important to our form of government as  
6       paying taxes and serving in the military and  
7       performing some of the other duties of citizenship  
8       that we don't always feel comfortable doing. And the  
9       right to a trial by jury, and particularly the right  
10      to a trial by jury in the type of case that we're  
11      dealing with today, which is a criminal case, is one  
12      of the most important and one of the most fundamental  
13      rights that's afforded by our justice system. And  
14      like other duties of being a citizen, while there are  
15      inconveniences and sacrifices, it can also involved  
16      some rewards. And as you approach the case today I  
17      hope you try to have a positive attitude. And I think  
18      you'll find, particularly those that eventually get  
19      seated, the panel usually finds jury duty to be an  
20      educational and an interesting and a rewarding  
21      experience.

22                So as we go forward here today I hope each of  
23      you find that to be the case here. As I look out it  
24      looks like everyone is very happy to be here. I see a  
25      lot of smiling faces. So I'm sure that everyone is

1 going to approach the case in that manner.

2 The first aspect of our trial here is going to  
3 involve selecting thirteen people, the twelve jurors  
4 that will actually be seated in this particular case,  
5 plus one alternate juror that will be called upon --  
6 be seated here just like every other juror but will  
7 only go in to deliberate in the event that any other  
8 juror might be unable to serve through the entire  
9 case, here. So we'll be selecting thirteen people  
10 today.

11 Probably the first question that you have in  
12 your mind is, well, we only need thirteen jurors, why  
13 did old Judge Frazier bring 50 of us in here. And  
14 there is a reason that we do the various things that  
15 we do. And sometimes what we do doesn't on its  
16 surface appear to make sense, but there are reasons  
17 why we bring, for instance, so many jurors in.

18 Under the law jury selection has to be handled  
19 on a random basis. Your names are all eventually --  
20 first of all drawn from a combined list of every  
21 registered voter in Whitman County, plus everyone that  
22 lives in Whitman County or lists Whitman County as  
23 their residence that either has a driver's license or  
24 an identification card with the Washington Department  
25 of Licensing. There's a combined list and back last

1 August, I believe it was, from that entire pool there  
2 were something like 3,000 names drawn to be available  
3 to serve both the superior court and the district  
4 court, and even the Colfax Municipal Court. And then  
5 from that pool of 3,000 as each case comes up and we  
6 need to have a panel for a jury trial we draw whatever  
7 names that we feel are necessary to come in to serve  
8 for each particular case.

9 Some of you may have noticed we're rather  
10 strict in requiring those that get drawn to come in to  
11 serve. That's done for a number of reasons, primarily  
12 because the law requires it. If you get drawn, the  
13 law, unless there are extraordinary circumstances,  
14 does require that you serve. Also by making everyone  
15 come in that gets drawn that gives us a larger pool  
16 and we're able to have a policy where if you come in  
17 and you serve on one panel, whether you're actually  
18 seated or just come in for the selection process and  
19 then get excused, for this particular term you will  
20 not be subject to being re-called. So by coming in  
21 today you've served your duty for this particular  
22 term, and unless you get lucky and get drawn again  
23 next year or in subsequent years you won't have to  
24 come in again. So we don't, like some courts, have  
25 you come in every day for two weeks or something like

1 that, and -- or make you subject to being called for a  
2 month or a particular period of time. We draw you  
3 once; once you come in then you've served your duty.

4 Finally, the reason that we're strict on having  
5 everyone come in is because the purpose of a jury  
6 trial is to have a broad, diverse panel, people from  
7 all walks of life, all ages, that come in from  
8 different backgrounds and experiences, to make the  
9 important decisions that have to be made in a  
10 collective manner in a case like this. So by being  
11 strict, as again the law requires, we don't have a  
12 panel of just retired people or just farmers or  
13 business people or students, or young or old people;  
14 we have a good, broad diverse panel that will be  
15 involved in making the decisions that we have to make  
16 here.

17 But because of the random nature of your  
18 selection we don't have any way of knowing whether  
19 those of you that are called are actually qualified to  
20 serve. In other words, we don't have any way of  
21 knowing whether any of you are related or closely  
22 acquainted with parties to this action, we don't have  
23 any way of knowing whether some of you may have  
24 personal knowledge about this case or any way of  
25 knowing whether you might have biases or prejudices

1 that might affect your ability to be a fair and  
2 impartial juror in this case. So we bring in a very  
3 large number of prospective jurors, and we will be  
4 subjecting you to a question-and-answer process to  
5 determine whether you're qualified to serve in this  
6 particular case.

7 First of all, as a judge I'll be asking the  
8 panel a number of general questions that touch upon  
9 your qualifications to serve. After I conclude my  
10 questions then each of the attorneys will be given an  
11 opportunity to ask you questions. If during any of  
12 this questioning process something is disclosed that  
13 might make it appear that you shouldn't be seated in  
14 the case understand that the attorneys have the duty  
15 to challenge you, to raise the issue as to whether you  
16 should be serve. I have the duty to rule on that  
17 challenge. And then after we go through any  
18 challenges then at the end of the questioning process  
19 there'll be a point where I'll have the lawyers come  
20 up, I'll hand them a list with all of your names on  
21 it, and under our system each side of a case such as  
22 we have here today can exclude six jurors without  
23 giving any reason for that whatsoever. And that's  
24 just an added guarantee, an added assurance that's  
25 built into our system so that everyone can be

1 comfortable that the panel of jurors that they have is  
2 fair and impartial.

3 Now, the whole goal of this process is to make  
4 sure that as you approach the case and approach the  
5 important decisions that you'll have to make in this  
6 case that you will be able to decide this case based  
7 upon the evidence that's presented to you during the  
8 course of the trial here within the constraints of  
9 this courtroom, and under the court's instructions as  
10 to the law. We ask you these questions to make sure  
11 that you don't have any biases, don't have any  
12 prejudices that might affect your ability to be fair,  
13 to make sure you don't have any allegiances to one  
14 side or the other or any personal knowledge that might  
15 affect your ability to determine the case in a fair  
16 fashion and based on the law and under the evidence  
17 that's presented again during the course of this  
18 particular trial.

19 So, we'll be going through this questioning and  
20 answer process. In the event that it appears that  
21 someone perhaps should not serve, again understand  
22 that as the lawyers represent their two sides here  
23 they not only have the right to challenge a juror for  
24 cause but they have a duty to do so. So in the event  
25 that there may be a challenge to your qualifications

1 to serve, understand that's not a personal reflection  
2 upon you; it's a necessary part of the proceedings.  
3 And by the same token if one side challenges you and I  
4 overrule the challenge and you ultimately get seated  
5 in the case you're obviously and certainly not to hold  
6 it against the party that raised the challenge.  
7 Again, it's just a very important and it's a necessary  
8 part of these types of proceedings here.

9 As we go through the questioning process, very  
10 shortly I'm going to have all prospective jurors stand  
11 up. Just like the witnesses that take the witness  
12 stand during the course of the trial I'm going to have  
13 the panel of prospective jurors raise their right  
14 hand. I'll administer an oath to you, so as you  
15 answer questions here keep in mind you are under oath,  
16 just like witnesses that will be called. And I stress  
17 that because it is very important that you be as open  
18 and honest and as candid as you possibly can as you  
19 answer the questions that were being asked here.  
20 You're not to withhold any information, and again you  
21 must be honest and truthful in the answers that you  
22 make. Don't answer a question just because you think  
23 that's how we want you to answer, or don't answer a  
24 question if you're anxious to get seated on the panel  
25 for that sole purpose. And maybe more likely, don't

1 answer a question in a manner that you might think  
2 will put you back to work right away and get you  
3 disqualified. Just be as honest and as open as you  
4 possibly can as we go through the questioning here.

5 Now before we begin the questions I want to  
6 take just a few minutes here, I want to explain to you  
7 a little bit about this case. I'm going to be  
8 introducing the individuals, the various people and  
9 the parties that are involved in this particular case.  
10 There's a few legal concepts that I'll be going over  
11 with you. Then we'll administer the oath and proceed  
12 with the examination process.

13 Now, as I said at the outset, the type of case  
14 that we're dealing with today is a criminal case.  
15 Criminal actions of this nature are instituted by and  
16 under the name of the State of Washington as the  
17 plaintiff. And we refer to the plaintiff, the  
18 plaintiff is the legal designation for a party,  
19 generally at least, that brings an action in court.  
20 And in a criminal case the plaintiff is the State of  
21 Washington. And the plaintiff is represented by the  
22 Whitman County Prosecuting Attorney's Office, and  
23 specifically in this case we have Mr. Denis Tracy, the  
24 Whitman County Prosecuting Attorney, and also Mr. Bill  
25 Druffel, who is a deputy prosecutor. We'll have --

1 Mr. Tracy -- shouldn't say this, but he's the shorter  
2 gentleman to my left, and Mr. Druffel's the -- looks  
3 very tall today -- to my right.

4 Now, the defendant is the person that a legal  
5 action is brought against. And in a criminal case the  
6 person that the action is brought against, again, is  
7 termed the defendant. And in this case today the  
8 defendant is Mr. Jerry Allen Herron. And, Mr. Herron,  
9 could I have you also stand and face the jury so they  
10 can see you, and become acquainted with you. This is  
11 Mr. Jerry Allen Herron. And Mr. Herron is represented  
12 by attorney Mark Monson. And Mr. Monson, you are  
13 assisted today by--

14 MR. MONSON: Mr. Bart Rakes.

15 THE COURT: What was the name?

16 MR. MONSON: Bart Rakes, your Honor.

17 THE COURT: Bart Rakes. Okay. Mr. Monson's an  
18 attorney in Moscow representing Mr. Herron in this  
19 particular action.

20 Mr. Herron, as I said, is designated as the  
21 defendant because this action has been brought against  
22 him, and he's been charged by reason of the  
23 prosecuting attorney's office filing a written  
24 document with the court. And the document that  
25 brought about these charges is called an information.

1 So when we refer to the information, well, that's just  
2 the legal term for the written document that's been  
3 filed and that charges Mr. Herron with the crime in  
4 question. The information in this case accuses Mr.  
5 Herron of the crime of rape in the first degree. And  
6 specifically the information, the charge in this  
7 action, alleges that on or about February 13, 2007,  
8 that the defendant Mr. Herron did engage in sexual  
9 intercourse by forcible compulsion with a victim  
10 that's been identified by the initials K.C.B., and it  
11 is alleged that Mr. Herron used or threatened to use a  
12 deadly weapon or what appeared to be a deadly weapon.  
13 And one of the issues that the jury will be called  
14 upon to decide here also relates to the allegation  
15 that at the time of the commission of the crime that  
16 the defendant was armed with a deadly weapon other  
17 than a firearm.

18 Now, in this case the defendant Mr. Herron has  
19 entered a plea of not guilty to this charge. And a  
20 plea of not guilty puts in issue each and every  
21 element of the crime which has been charged here.

22 I've referred to this information and I've summarized  
23 this information, but understand that that is just a  
24 written document. The purpose of that is to inform  
25 Mr. Herron of the nature of the charges that he's

1 facing here. But the fact that an accusation has been  
2 made or a charge has been filed in this case, or the  
3 fact that Mr. Herron may have been arrested or  
4 otherwise charge, is not evidence and is not proof of  
5 the matters which have been charged. That's why this  
6 jury panel is here today, is to determine what the  
7 facts are in this case.

8 Again, Mr. Herron has entered a not guilty  
9 plea. And as jurors in the case you cannot consider  
10 the filing of the information or the contents of the  
11 information that I've just reviewed with you as proof  
12 of the matters which have been charged. If you're  
13 selected as a juror in this case it's going to be your  
14 duty to determine what the facts are in this case, not  
15 from the fact that an accusation has been made or a  
16 charge has been made, but you'll be determining the  
17 facts in this case based upon the evidence that's  
18 presented in this courtroom during the course of this  
19 trial.

20 Now, as jurors it is also your duty to accept  
21 the law that will be instructed to you by the court.  
22 The jury does not get to determine what the law is.  
23 For the most part the law has been determined either  
24 by the legislature or by appellate courts. And the  
25 way it works is, you'll be hearing the testimony of

1 witnesses, you'll be taking other evidence as the jury  
2 panel in this case, and from the evidence that you  
3 hear you'll determine what the facts are in this case.

4 At the end of all of the evidence then the  
5 court is going to be giving you instructions as to  
6 what the law is. And as jurors it is your duty to  
7 follow the court's instructions as to the law  
8 regardless of what you personally believe the law is,  
9 and regardless of what you personally believe the law  
10 ought to be. So you'll apply the law to the facts and  
11 in this way the jury will decide this case.

12 Now, in our system we have a very important  
13 concept called the presumption of innocence. A  
14 defendant in a criminal case is presumed innocent.  
15 And this presumption continues throughout the entire  
16 trial unless after all of the evidence has been  
17 presented, during the course of your deliberations,  
18 you feel that this presumption has been overcome by  
19 the evidence beyond a reasonable doubt. And since the  
20 state has brought the action, has made the accusation  
21 here, the state has the burden of proof. The burden  
22 is on the state to prove each and every element of  
23 every charge that has been filed in an action, and  
24 they must prove each of those elements by evidence  
25 beyond any reasonable doubt.

1           Now, reasonable doubt has been defined as a  
2           doubt for which a reason exists. A reasonable doubt  
3           may arise from the evidence or it may arise from the  
4           lack of evidence. A reasonable doubt has been defined  
5           as such a doubt as would exist in the mind of a  
6           reasonable person after that person fully, fairly and  
7           carefully considered the evidence and fully, fairly  
8           and carefully considered the lack of evidence. And if  
9           after your deliberations you do not have a doubt for  
10          which a reason can be given as to the defendant's  
11          guilt, well, then and only then are you satisfied  
12          beyond a reasonable doubt.

13                 Now, as I said, I've introduced some of the  
14          individuals that are involved. The state also has an  
15          officer, Sergeant Chapman, Chris Chapman, of the  
16          Whitman County Sheriff's Office, that will possibly be  
17          a witness in the case, who's seated at the counsel  
18          table. And Sergeant Chapman, I'm going to have you  
19          stand up and embarrass you as well, since everyone  
20          else has been introduced at the counsel table.

21                 We have other support personnel involved. To  
22          my immediate right is Shirley Bafus. Shirley is our  
23          county elected court clerk. And our bailiff is Eileen  
24          Roe, and she greeted you as you arrived here today,  
25          and I think she made a little spiel to you at the

1 beginning and handed out some questionnaires. And  
2 Eileen Roe will serve as the bailiff. She's also the  
3 court administrator, so she answers my phone and does  
4 my secretarial work and scheduling. So she'll be in  
5 and out of the courtroom.

6 The job of the court clerk, Shirley, here, is  
7 to keep track of all documents and exhibits that are  
8 offered or may be admitted during the course of the  
9 trial. And then she also keeps the electronic record  
10 of all of the proceedings that take place in each of  
11 the cases that we have. We in our court don't utilize  
12 a court reporter, stenographer. Shirley runs a  
13 somewhat sophisticated computerized reporting system  
14 here, and that's how we keep our record. That's  
15 connected to this little clock here so you can tell  
16 where we are in the record when something occurs here,  
17 if you're wondering what the clock is doing up here.  
18 That tells us the recorder is on and where we are in  
19 this point in the proceeding.

20 Now because we record everything  
21 electronically, as we go through the jury selection  
22 process and as the questions begin, it's important  
23 that we be able to keep a record of who's talking.  
24 Now we have separate microphones and separate channels  
25 for the judge and the attorneys and the witnesses, but

1 if you are a juror seated in the back of the courtroom  
2 you don't have a microphone and we don't have any way  
3 of knowing who you are. So as we go through the jury  
4 questions, I'll be asking a number of questions first  
5 of all myself. When you respond to a question I'll  
6 have you raise your hand, and then I usually try to  
7 start with the lower numbers and in order work my way  
8 up, and before you respond to any questions when I  
9 call upon you, given that we've got 50 jurors and a  
10 large room, here, I'm probably going to have you stand  
11 up to give your responses, and then before you respond  
12 we'll need to have you state your name each and every  
13 time that you do respond so the record will reflect  
14 who is speaking here.

15 So, with that, I would like to go ahead and  
16 proceed with the selection process or the questioning  
17 process. As I said, that involves first of all my  
18 administering an oath. So if all prospective jurors  
19 would please stand, raise your right hands, I'll swear  
20 you under oath.

21 *Jury selection begins*

1 AFTERNOON SESSION

2 June 18, 2007

3

4 *Jury selected and sworn*

5 THE COURT: Please be seated. And you now are  
6 the panel of sworn jurors for this particular case.  
7 So far as we've proceeded with the case we've tried to  
8 make you comfortable and we perhaps have tended to  
9 focus on a little light side of what is involved here,  
10 but as you can tell we're now down to the very serious  
11 business of trying this case. And before we proceed  
12 with hearing the opening statements of the lawyers and  
13 before we proceed with the evidence in the case I'm  
14 going to be subjecting you to some instructions and  
15 some court orders that will govern your conduct  
16 through the rest of the trial here. And then I'm  
17 going to take a few minutes as well to explain some of  
18 the procedures that we'll be following, try to give  
19 you an idea of what to expect as we go through the  
20 case.

21 You are the sworn panel, as I've said. And I  
22 want to stress how important it is for you to keep  
23 your minds open and to remain attentive throughout the  
24 entire trial. I tell juries that it's just as  
25 important that you pay as much attention in the middle

1 and at the end of the case as you do at the beginning.

2 From now on until the conclusion of the trial  
3 when you're sent out to begin your deliberations on  
4 your verdict in this case you're going to be under a  
5 court instruction to not discuss the case among  
6 yourselves or with anyone else. And this is an  
7 instruction I'll remind you about very frequently,  
8 here. But under the law, when you go to take your  
9 recesses you'll all be together. You'll also be  
10 permitted to go home this evening. But you're not  
11 permitted to talk about the case until all of the  
12 evidence is in, until I send you out back to the jury  
13 room, after all of the evidence is in, to begin your  
14 deliberations on the case.

15 You're not to permit anyone to discuss the case  
16 with you outside this courtroom. Everything that you  
17 hear about this case and the decisions that you make  
18 about this case have to come from what you see and  
19 hear in this courtroom during the course of this  
20 trial. We're letting you go home in the evenings, of  
21 course. It's important when you go home that you not  
22 go by a scene of an event that's alleged to be  
23 involved in this case. You're not permitted to talk  
24 to your family or friends or anyone else about the  
25 case. People will be curious; they'll probably ask

1       you questions. And you're simply going to have to  
2       tell them that the old judge put you under a court  
3       order to not talk. When the case is all over you'll  
4       be freed from that order and you can talk to whatever  
5       extent at that point that you would like.

6               Also you're not permitted to do any type of  
7       investigation on your own outside the courtroom. That  
8       includes not just going to the scene of an event, but  
9       trying to contact anyone that might have knowledge or  
10      information about the case. We have the Internet now,  
11      where it seems everyone is going to find out things.  
12      You're not to use the Internet, encyclopedias,  
13      dictionaries, any source that could provide  
14      information about this particular case. Again, what  
15      you learn about the case and the decisions you make  
16      have to be based on what takes place here in the  
17      courtroom.

18             This is in the form of a court order, and if  
19      you're to violate a court order it can be very  
20      serious. It can lead to a personal penalty against  
21      you. It would also result in a mistrial, and that  
22      would obviously be very expensive to everyone  
23      concerned including the county.

24             The reason that you're under particular orders  
25      to not discuss the case is based on experience.

1 Experience has shown that at least some jurors might  
2 tend to start making up their mind earlier if they  
3 were permitted to start talking about the case before  
4 everything had been presented and before you'd heard  
5 all of the evidence in the case. So to be safe,  
6 you're just under that order to not talk until it's  
7 all over.

8 It's also important of course that you keep  
9 your mind free of any outside influences. Again,  
10 you'll be dedicated to this case through Thursday, and  
11 all indicates are, even though we're a little slow in  
12 getting the jury selected, the indications I'm getting  
13 is this case should still conclude by Thursday. So  
14 this is your job for the next four days, and stay  
15 closely attuned and attentive throughout this time.

16 You're not to make any efforts to go out and to  
17 determine on your own what the law is. When we take  
18 recesses you'll go directly to the jury room, and  
19 you'll be under the custody of the bailiff. And  
20 she'll be there if you need anything for your comforts  
21 or need to make telephone calls, like a doughnut or  
22 something like that. Just let her know and she can  
23 assist you -- anything that's necessary for your  
24 comfort. She cannot help you, however, in carrying  
25 out your role as jurors, so she can't answer questions

1       about the case or how your decision-making process is  
2       to be conducted. That's going to be solely up to you  
3       as the jurors in this case.

4               When you go to lunch, when you take evening  
5       recess and when you come back from one of those  
6       recesses, I would ask that you come directly as  
7       possible, once you get to the courthouse, right back  
8       to the jury room. The reason I say that is, is that  
9       very often there are witnesses in the hallway,  
10      attorneys in the hallway, people that might be talking  
11      about the case. So we want to make every effort that  
12      you avoid hearing things that they say.

13              Every now and then we have people from the  
14      press that come in, and it isn't unusual for there to  
15      be a story in the evening paper, morning paper. Once  
16      in a while we even make the television. And you are  
17      also under an instruction to avoid and to not read  
18      anything that might be in the press, or listen or  
19      watch anything in the press that pertains to this  
20      case. Just avoid the subject of this case entirely  
21      until a decision is reached.

22              Now, I don't see anyone that's a reporter here.  
23      Maybe I'm missing something. But every now and then  
24      reporters do make it into the courtroom, and there are  
25      newspaper articles. And this is particularly

1 important -- we had a case a couple, three months ago,  
2 and after the jury went out to begin their  
3 deliberations one of the lawyers brought me a copy of  
4 one of the newspapers, and I didn't even -- name of  
5 the defendant was even different than the person who  
6 was on trial. Everything was mixed up, including the  
7 charges. So, those reports aren't always accurate.  
8 But most importantly, what you read in the newspaper  
9 or see on TV, hear on the radio, those things aren't  
10 evidence, and just simply cannot be considered by the  
11 jury.

12 Now, we all have our special duties and  
13 functions in a case of this nature. As the jury  
14 panel, as I've told you earlier, the job you're going  
15 to have here is going to be to listen carefully to the  
16 evidence and from the evidence that's presented it's  
17 your job to determine what the facts are in this case.

18 Now, when I say evidence that is a legal term.  
19 Evidence includes such things as the testimony of  
20 witnesses that take the witness stand here, and then  
21 evidence can also consist of documents, photographs,  
22 weapons an other physical type objects.

23 Now, one of my duties as a judge in the case is  
24 going to be to rule on the admissibility of evidence.

25 I will be making the decisions as to whether evidence

1 should be admitted during the course of the trial.  
2 And by that I mean that it's up to me to decide  
3 whether or not you should consider evidence that is  
4 offered by the parties. So for example if a party  
5 offers a photograph as an exhibit, well, it's up to me  
6 to decide whether that photograph is admissible.

7 And as jurors you must not concern yourselves  
8 with the reasons for my rulings. You must either not  
9 consider or discuss any evidence that I do not admit,  
10 and also if you hear and answer to a question or you  
11 happen to see a photograph that does not get admitted,  
12 or if I order you to strike any particular item of  
13 evidence that you may have seen or heard, you must  
14 strike that and not consider that evidence in the  
15 decision-making process that you conduct here.

16 A little warning. On occasion some evidence, a  
17 question might be asked or an item of evidence may be  
18 offered, and I sometimes am not able to rule on the  
19 admissibility until I hear what the answer is, or  
20 until I hear the attorneys' arguments with respect to  
21 that particular issue. And very often I need to hear  
22 those things outside the presence of the jury. So  
23 from time to time when there's objections I may excuse  
24 the jury so we can hear things and I can hear argument  
25 to assist me in making the decisions that I make. We

1 have procedures in effect -- used some of those  
2 procedures, as a matter of fact, in this case, where  
3 we try to handle as many of these issues before you're  
4 brought in, to save you time and to speed the trial  
5 process up. But sometimes it's unavoidable. And I  
6 know that if there are objections that have to be  
7 heard outside the jury's presence it can tend to delay  
8 the trial and cause interruptions, and I know it can  
9 be frustrating from the jury's standpoint. But if  
10 that does happen, and hopefully it won't happen or  
11 won't happen very often, here, you're just simply  
12 going to have to understand that it is an unavoidable  
13 part of the trial, and you must not hold it against  
14 the party if there are objections made that tend to  
15 interrupt or delay this trial.

16 Now, as I said, the evidence in the case is  
17 going to include the testimony of witnesses and any  
18 exhibits that are admitted into evidence. The  
19 exhibits that are admitted into evidence for the most  
20 part at the end of the trial will go with you to the  
21 jury room. So you'll be able to review those, inspect  
22 those, and to look and discuss those exhibits to  
23 whatever extent that you would like. The other  
24 evidence -- the bulk of the evidence in this case is  
25 going to consist of the testimony of witnesses.

1           Now, when witnesses testify it is important  
2           that you listen very carefully. You'll need to  
3           remember the testimony of the witnesses during your  
4           deliberations, because rarely if ever will a witness'  
5           testimony be repeated for you. Now, the lawyers in  
6           the case -- and maybe before I explain anything else I  
7           should explain that sound. I indicated earlier we  
8           have an electronic recording system, and it's tied  
9           into our amplification system. And I don't know why  
10          but on occasion we pick up radio traffic from truckers  
11          that go by and police vehicles, and I don't know what  
12          all. So when you hear a sound like we just heard,  
13          that doesn't have anything to do with this case. And  
14          there's been a couple times when we've had some -- I  
15          blame it on truckers, not police officers, -- pretty  
16          rough language come through. So hopefully that won't  
17          occur here. But ignore the extraneous sounds that you  
18          might hear from trucking broadcasts or whatever it may  
19          be.

20                 Now, again, going back to things that the  
21          lawyers say, the lawyers are going to be permitted to  
22          make remarks during the trial, and there's some times  
23          when they'll be making an opening statement and at the  
24          end -- they'll be making final arguments directly to  
25          the jury. And then of course they'll be addressing

1 the court in objections, and the lawyers will be  
2 asking the witnesses questions.

3 But as jurors here, you need to understand that  
4 the statements and the remarks and the arguments that  
5 the lawyers make are not evidence. Things that they  
6 say here are intended to help you understand the  
7 evidence and to help you understand and apply the law,  
8 and of course to present you with their viewpoint on  
9 how you should decide the case and why, but again,  
10 what comes from the mouths of the lawyers is not  
11 evidence, and you must disregard anything that a  
12 lawyer might say that's not supported by the evidence  
13 or by the instructions as to the law that are given to  
14 you by the court.

15 By the same token, under our state  
16 constitution, as a judge in the case I am prohibited  
17 from making any comment on the evidence in any manner.  
18 Just as I said to you, don't consider what the lawyers  
19 say as evidence, if I do something during the course  
20 of the trial that appears to you to be my expression  
21 of opinion as to the weight or value of a particular  
22 item of evidence, that's not my job and you must  
23 disregard that entirely. A comment on the evidence is  
24 from the judge some expression or some indication as  
25 to the judge's opinion as to the value of the evidence

1 or the weight that should be given to the evidence.  
2 So if, for instance, there's a witness on the stand  
3 and if I say something as though I'm impressed by that  
4 witness' testimony, or not impressed, or if I roll my  
5 eyes or make some expression that you might interpret  
6 as being a comment on the evidence, you must ignore  
7 that, then -- do so completely.

8 You are the sole judges of the credibility of  
9 the witnesses, and also the sole judges of the weight  
10 to be given any particular item of evidence in the  
11 case, and that is of no concern to me as a judge in  
12 this case.

13 Now, as I said, the lawyers may also from time  
14 to time make objections as to the admissibility of the  
15 evidence, and you must understand that as the lawyers  
16 represent their two opposing sides in this case, in  
17 our adversarial system, here, that they have a duty to  
18 pose any objections that they deem appropriate. And  
19 you must not as jurors let those objections influence  
20 you, and you must not make any assumptions or draw any  
21 inferences or conclusions merely because a lawyer has  
22 made an objection -- the admissibility of evidence.

23 There was a question I think to one of the  
24 lawyers during the selection process concerning note-  
25 taking. We will allow you to take notes during the

1 course of the trial. As a matter of fact I believe  
2 you all have your note pads. And the only stipulation  
3 is, is that if you decide to take notes we do require  
4 that you only take the notes on those note pads. I  
5 take notes on this laptop computer, here. You don't  
6 have that luxury, so you can't bring in laptops or  
7 even your own notebooks; you have to take the notes  
8 directly on the pad that has been provided.

9 Just as you can't talk about the case among  
10 yourselves until you go to deliberate, likewise you're  
11 not permitted to communicate about the case by sharing  
12 notes with one another. About the only caution I have  
13 as far as notes are concerned is to caution you to try  
14 to not to take detailed or word-for-word notes, as  
15 that could interfere with your ability to observe the  
16 demeanor of witnesses and to observe the events that  
17 take place during the course of the trial.

18 At the conclusion of the case after a verdict  
19 has been reached the bailiff is going to take those  
20 note pads back from you and she'll rip all the note  
21 pages out -- she will not read those -- notes that you  
22 take or permit anyone else, including myself, to do  
23 so. She has a shredder and she'll shred the notes and  
24 no one will be given any opportunity to read those at  
25 all.

1           Now, as far as the order of the proceedings are  
2 concerned, the next phase when I conclude my  
3 instructions, here, will be when the attorneys will be  
4 given an opportunity to make their opening statements  
5 directly to the jury. And since the state has the  
6 burden of proof in the case, in each phase of the  
7 trial the prosecutor will be given a chance to go  
8 first. So in the opening statement phase the  
9 prosecution will be given the first opportunity to  
10 make an opening statement to you. An opening  
11 statement is essentially an outline from the attorneys  
12 as to the evidence that they expect to be presented  
13 during the course of the trial.

14           After the prosecutor's opening then defense  
15 counsel has an option. The defense can make their  
16 opening statement right immediately at that point or  
17 they can reserve it; the defense can wait until the  
18 prosecution has presented all of the evidence and it's  
19 their option to make their opening statement at that  
20 point.

21           After the opening statement or statements then  
22 we'll proceed with the evidentiary portion of the  
23 trial. And as I said the plaintiff will present the  
24 testimony of plaintiff's witnesses and evidence to you  
25 first. When the plaintiff is finished then the

1 defendant may, but has been indicated, isn't required  
2 to present evidence. If the defense does present  
3 evidence at the conclusion of the defense case then we  
4 go back to the prosecution for rebuttal evidence. At  
5 the conclusion of the prosecution's rebuttal we go  
6 over to the defense for what's called surrebuttal.  
7 And we go back and forth until all of the evidence has  
8 been presented in the case.

9 Then after the evidence has been presented and  
10 each side has totally rested their cases, then at that  
11 point the court will be providing you with the  
12 instructions as to the law that applies in this case.  
13 And then after those instructions then you will be  
14 hearing final arguments from the attorneys. Then  
15 after the final arguments, at that point you'll be  
16 sent off to the jury room to begin the deliberations  
17 on your verdict.

18 And one of the first duties that you'll have  
19 when you go back to begin your deliberations will be  
20 to select a presiding juror. It will be the presiding  
21 juror that will preside over your discussions, which  
22 technically are called the deliberations. And then  
23 you will deliberate with a goal of reaching a  
24 decision. The decision that you reach is what we  
25 refer to as your verdict. And until you are in the

1 jury room for your deliberations, again, you can't  
2 discuss the case with other jurors or with anyone  
3 else.

4 Now, throughout the trial, as I've said  
5 earlier, it's very important that you maintain an open  
6 mind. You must not form any firm or fixed opinion  
7 about any issue in this case until the entire case has  
8 been submitted to you for your deliberation.

9 And you've been sworn here, so you are now  
10 officers of the court. As such you must not let your  
11 emotions overcome your rational thought process. You  
12 must reach your decision based upon the facts that are  
13 proved to you and under the court's instructions as to  
14 the law, and you must not base your decision in this  
15 case on sympathy, bias or personal prejudice.

16 To assure that all parties receive a fair  
17 trial, as jurors you must act impartially. You must  
18 act with an earnest desire to determine and to declare  
19 the proper verdict in this case. As I'm sure you're  
20 aware, that involves a lot of hard work, a lot of  
21 attention and a lot of commitment, and it involves  
22 cooperation, not just jurors among other jurors, but  
23 from all concerned here.

24 I want to again thank you for your willingness  
25 to serve, and your role here is very vital. And as we

1 proceed with the case, I do hope that you find this to  
2 be an educational experience, and I hope you find this  
3 to be a rewarding experience as well.

4 So, that concludes my preliminary instructions  
5 to you. And I will pretty much be through talking  
6 until the conclusion of the case. I'll get a few  
7 words in edgewise as we go along, here, but from this  
8 point on you'll mainly be hearing from the attorneys  
9 and from witnesses.

10 So with that, at this time I'll let the  
11 prosecution proceed with their opening statement.

12 MR. TRACY: Your Honor, could we maybe take a  
13 five- or ten-minute break while we set up the podium,  
14 and--

15 THE COURT: You need to get some things set up?  
16 What's -- Can we do it in five minutes--

17 MR. TRACY: Sure.

18 THE COURT: And -- like to get the opening  
19 statements wrapped up today, then we'll come back --  
20 evidence tomorrow?

21 MR. TRACY: Well, that was another question  
22 that I was going to have. And--

23 THE COURT: Looks like you each have no more  
24 than thirty minutes in opening.

25 MR. TRACY: That's probably pretty--

1           THE COURT: And if you're through before that  
2 we'll probably recess for the evening--

3           MR. TRACY: Okay.

4           THE COURT: --because we won't get much  
5 evidence in tonight.

6           So, we'll take a short recess.

7 *Jury out*

8 *Recess*

9 *Jury in*

10 *Counsel made opening statements*

11 *Jury out*

12           THE COURT: All right. And counsel, do either  
13 of you have anything we need to hear outside the  
14 jury's presence?

15           MR. MONSON: Your Honor, we -- the defense has  
16 another motion pursuant to the motions in limine that  
17 were argued and ruled upon on Friday.

18           THE COURT: Okay.

19           MR. MONSON: My understanding the court's  
20 ruling -- the court will allow -- move this -- see  
21 each other -- with the understanding that the  
22 defendant -- or, I'm sorry; not the defendant's but  
23 the alleged victim's, Ms. Beck's, juvenile criminal  
24 history that we discussed is not admissible, my  
25 understanding of the court's oral ruling was that if

1 we wanted to present other evidence not in the form of  
2 convictions with regard to prior bad acts which bear  
3 on her truthfulness -- veracity, the court wanted us  
4 to do that outside the presence of the jury. And I'd  
5 like to take that up while we've got a few minutes --  
6 few minutes--.

7 And I apologize; I haven't gotten a copy of  
8 this to counsel, but I'll certainly make this  
9 available to counsel. I might have -- might have a  
10 spare copy.

11 Your Honor, I'm -- And this is pursuant to 608,  
12 609--

13 THE COURT: 608(b), I think.

14 MR. MONSON: 608(b)--

15 THE COURT: --is what you referred to--

16 MR. MONSON: --specific instances of conduct.

17 In doing some investigation over the weekend, I  
18 have located an arrest -- not a conviction, but an  
19 arrest -- in Latah County for providing false  
20 information to a peace officer. And I've got a  
21 affidavit of probable cause that I'd be happy to  
22 forward the court for its consideration. But the  
23 defense is requesting at this time to be able to cross  
24 examine her with regard to these events.

25 And certainly, your Honor, I'd be happy to make

1 this available to the court for review as well.

2 Your Honor, earlier in the year, on April 20<sup>th</sup>,  
3 2003--

4 THE COURT: Okay. Now, what -- was that the  
5 date of what you're referring to?

6 MR. MONSON: Yes.--

7 THE COURT: Providing false information?

8 MR. MONSON: Some time--

9 THE COURT: Latah County?

10 MR. MONSON: Latah County case number 32896 was  
11 the uniform citation number.

12 Now, again, your Honor, she wasn't convicted of  
13 this. She was simply arrested on this. I believe the  
14 disposition was as part of a plea bargain this one was  
15 dismissed.

16 Then, your Honor, again, in Latah County  
17 uniform citation number 30669 in a affidavit by the  
18 arresting officer -- dated April 20<sup>th</sup>, 2003 --  
19 Actually, it was dated April 21<sup>st</sup> is the affidavit --  
20 again, it indicates that the victim Kristen Beck was  
21 arrested for failure to provide identification after  
22 possessing and consuming beer.

23 Part of the instance here, your Honor, was,  
24 just as by way of an offer of proof, when -- the Latah  
25 County deputies were called to Mingles in Moscow where

1 the employees were detaining a female they believed  
2 was under 21 age who had bought a beer. They  
3 contacted the female, asked her for identification.  
4 She said she didn't have any. She asked -- The police  
5 asked the female to tell them her name and date of  
6 birth. She gave the police a false name. She told --  
7 she told the officer her name was Randi R. Keeney and  
8 the date of birth was 10/30/83. The officer reports  
9 that the female hesitated on the middle initial as she  
10 didn't know it. "She also told me she was 18 when the  
11 date of birth she gave would have made her 19." They  
12 ran a license check, nobody came out. "The female  
13 said she never had a driver's license or  
14 identification. Female said that she was from  
15 Lewiston. She also told me her middle initial was  
16 possibly M, not R."

17 They located Randi Keeney, called her, and  
18 Keeney is the one who told police that she believed  
19 that the female they had in custody was Kristi  
20 Woltering, also known as Kristi Beck.

21 Two of the female's friends were with her in the  
22 bar, also, your Honor, indicated to officer that the  
23 girl who was identifying her as Randi, they didn't  
24 know her last name but they knew that her first name  
25 was Kristi.

1           And so the defense would like permission from  
2           the court to inquire as to this instance of providing  
3           false information to the -- to the officers  
4           (inaudible).

5           THE COURT: Now, that's two separate  
6           incidents--

7           MR. MONSON: Two separate incidences. One was  
8           on September 8, 2003, and the other was on April 20<sup>th</sup>,  
9           2003.

10           Then, your Honor, I guess on a side note, with  
11           regard to character evidence -- And I think the -- Let  
12           me cite the rule, here -- I'm looking for the rule,  
13           your Honor, that allows the -- 404(a), that talks  
14           about character evidence. 404(a)(2) talks about  
15           evidence of a pertinent trait of character of the  
16           victim of the crime offered by an accused is  
17           admissible. And your Honor, we would like to also  
18           talk about in one of these things where she had --  
19           became resistive after the officers had handcuffed  
20           here -- Matter of fact, this was this April 20<sup>th</sup> --  
21           April 20<sup>th</sup> incident -- Officers put her in handcuffs,  
22           put her in the car. She struggled. She attempted  
23           several times to assault the officers by kicking them.  
24           They eventually got her into the back of the car,  
25           closed the door. She immediately laid down on the

1 seat and began kicking the right rear passenger  
2 window. Within about four kicks she shattered the  
3 window then kicked it out. She was then removed from  
4 the car and hobbled. "She continued to kick, pinch,  
5 when anything got her (inaudible) she began spitting  
6 at us." Ultimately she was transferred to jail.

7 We think this is relevant with regard to some  
8 of the -- evidence that we'd like to elicit from her  
9 regarding her propensity to fight.

10 There was one more, your Honor. I know that --  
11 I don't know that we visited this on Friday, but we  
12 have a part of her criminal history that indicates a  
13 misdemeanor conviction for -- I want to say either  
14 assault or assault/domestic violence. And I'm looking  
15 for that right now. And I apologize; I don't have it  
16 right here.

17 There was an assault fourth degree, your Honor,  
18 on December 25<sup>th</sup> of '04. We think that that's  
19 potentially relevant, given these circumstances. And  
20 I've got a certified copy of that judgment and  
21 sentence that I'd be happy to provide the prosecution  
22 as well.

23 And then, your Honor, in light of all this --  
24 And I know part of the court's concern on Friday when  
25 we talked about Ms. Beck's juvenile adjudications was

1 that they were so far removed in time from the present  
2 date that they weren't completely probative. I think  
3 given the fact that she has some history -- granted,  
4 these two aren't convictions but a couple of them are.  
5 She continues to have problems with the police. We'd  
6 like to renew our motion in limine to allow us to  
7 visit with her and elicit her juvenile adjudications  
8 for vehicle prowl and also for Theft 3. I think it  
9 shows a pattern. And that would be the basis for our  
10 motions, your Honor.

11 THE COURT: All right. Mr. Tracy?

12 MR. TRACY: Your Honor, counsel's just raised,  
13 I think, if I'm right, three different instances of  
14 conduct -- Am I right?

15 MR. MONSON: --believe so. Yes.

16 MR. TRACY: One from September 8<sup>th</sup> of 2003. One  
17 from April 21<sup>st</sup> of 2003. And one from December 25<sup>th</sup> of  
18 2004. Is that correct?

19 And I -- I -- I have to ask -- Before I can  
20 respond, your Honor, I have to ask, did any of those  
21 result in a criminal conviction?

22 MR. MONSON: They did. One of them did.

23 MR. TRACY: Which one?

24 MR. MONSON: The Assault 4 resulted in a  
25 criminal conviction in Whitman County District Court.

1       Assuming that the printout is correct.  Although I do  
2       have a -- I think I gave you a copy of that judgment  
3       and sentence--

4               THE COURT:  That's the assault conviction?

5               MR. MONSON:  That's correct, your Honor.

6               THE COURT:  How does that relate to character  
7       for truthfulness?

8               MR. MONSON:  Well, it -- Your Honor, I'm not  
9       saying that that relates to character for  
10       truthfulness.  But I am saying that that's a pertinent  
11       trait of character of the victim of a crime.  In this  
12       case -- it indicates that she's a fighter.  That,  
13       along with her testimony that I expect to elicit that  
14       she's a fighter, and that she wasn't afraid of Mr.  
15       Herron, I think is relevant to -- to (inaudible) here.

16               MR. TRACY:  Your Honor, I have to disagree with  
17       respect to defense counsel.  It's in no way relevant  
18       here, your Honor.  The -- As an offer of proof, your  
19       Honor just heard the opening statements here.  All the  
20       evidence from the state, I suggest, will indicate that  
21       the victim, Ms. Beck, asked for and got a ride from a  
22       strange -- a stranger, and he pulled a knife on her,  
23       and she acquiesced to his demands.  There was no fight  
24       offered, not by the defendant, not by the victim.

25       There was no fight engaged in.  There was no threat of

1 a fight. There was a threat of murder, but there was  
2 no threat of a fight. How -- I just disagree that--.

3 First of all, I disagree that kicking out a  
4 window shows that the victim likes to engage in  
5 fights. Secondly, even if it did -- Excuse me -- that  
6 it shows a character trait of liking to fight. But  
7 even if it did, it has no relevance here. The defense  
8 hasn't offered any suggestion of any relevance, any  
9 suggestion of any offer of proof other than what you  
10 -- what's been described to you.

11 I'll certainly agree, the victim will say, on  
12 direct, that she did not feel afraid of the defendant  
13 -- until he pulled a knife on her. And that's why she  
14 got in the car.

15 MR. MONSON: And, your Honor, I think one of  
16 the reasons it's relevant is because during the  
17 state's questioning of the panel they inquired as to  
18 what they would expect, "Would you expect somebody to  
19 fight back," "Would you expect somebody to stop --  
20 stop a rape." I think that they -- I think that they  
21 made that relevant.

22 THE COURT: Well, I'm not going to allow  
23 evidence of an assault conviction to show any  
24 propensity to fight. Primarily a conviction for  
25 assault would entail an unlawful assault, an assault

1 in the absence of self-defense. By it's very nature,  
2 that's what the crime of assault involves. And that's  
3 a different situation than what I'm hearing argued  
4 here, a willingness to fight to protect some -- one's  
5 self. So I'm -- I don't feel it's at all relevant.  
6 So I'm not going to admit that particular evidence to  
7 prove what's been suggested.

8 And I'm assuming you're arguing this would come  
9 in under 404(b).

10 MR. MONSON: Your Honor, I think for (a)(2).

11 THE COURT: 404(b). Evidence of other crimes,  
12 wrongs or acts is not admissible to prove the  
13 character of a person in order to show action in  
14 conformity therewith. It may however be admissible  
15 for some other purposes such as proof of motive,  
16 opportunity, intent, preparation, plan, knowledge,  
17 identity or absence of mistake or accident.

18 I think by its very nature you're trying to  
19 show that since this lady was convicted of assault at  
20 a prior time she has an assaultive character and on  
21 this occasion did, or, I guess, should have, because  
22 of that character, acted in an assaultive fashion or  
23 acted as a fighter. And I read 404(b) as prohibiting  
24 that. And so, I will exclude that type of evidence.

25 MR. MONSON: Your Honor, are you also ruling

1 that that's excluded under 404(a)(2), character of a  
2 victim?

3 THE COURT: Evidence of a person's character --  
4 trait of character is not admissible for the purpose  
5 of proving conformity therewith on a particular  
6 occasion except evidence of a pertinent trait or  
7 character of the victim of the crime -- offered by an  
8 accused or by the prosecution to rebut the same -- I  
9 don't see where this is a pertinent trait of  
10 character. Plus, I believe the manner in which that  
11 type of evidence comes in is reputation, isn't it?  
12 Don't -- I don't believe a specific--

13 MR. MONSON: Well, and your Honor, I suspect  
14 that she's going to testify that she -- she gets in a  
15 lot of fights.

16 THE COURT: Methods of proving character. This  
17 is 405(a). "In all cases in which evidence of  
18 character or a trait of character" -- such as being a  
19 fighter -- "of a person is admissible proof may be  
20 made by testimony as to reputation." You only get  
21 into specific -- "...cross examination, inquiry is  
22 allowable into relevant specific instances of  
23 conduct."

24 What you want is on direct -- Well,--

25 MR. MONSON: It would be on cross, your Honor.

1           THE COURT: Well, but I believe what this means  
2 is that if you call a witness to testify as to the  
3 character of an individual for peace or character as  
4 being a fighter, -- has to be by way of reputation.  
5 If that evidence comes in, then on cross to impeach  
6 you can get into specific instances of conduct.

7           So I don't feel under 404(a), 4(b), a  
8 conviction for assault is -- as has been represented  
9 to me would -- comes in or would be admissible.

10          MR. MONSON: Your Honor, just by way of  
11 clarification -- And I don't know what Mr. Tracy has  
12 planned. I don't know if he plans on addressing --  
13 addressing, you know, the marks and things like that  
14 under her eye that they found and that she had  
15 indicated that that wasn't from the rape, but was from  
16 a fight with a girl before, are you going to allow me  
17 on cross to ask her about her statement to me when we  
18 interviewed her that she gets in lots of fights? We  
19 asked her about that and that was her response.

20          THE COURT: Well, I'm going to wait until --  
21 I'm not going to pre-judge that one. I'm going to  
22 have you wait and I'm going to take any objections --  
23 You can ask the question. If there is objection I'll  
24 rule on it at that time. I just have to see how the  
25 evidence comes in and take the objections in context.

1           Now, you also want to get in evidence of  
2 something that occurred February 23<sup>rd</sup> of '03 that was--

3           MR. MONSON: April--

4           THE COURT: Or April of '03--

5           MR. MONSON: And then September--

6           THE COURT: And that was an arrest for failing  
7 to provide ID after purchasing alcohol.

8           MR. MONSON: Correct. And what had happened,  
9 your Honor, as I indicated, she gave the police a  
10 false name; she gave them the wrong name. And if the  
11 court would like -- and I'll certainly make this  
12 available to Mr. Tracy -- if you want to simply review  
13 the probable cause affidavits, that's easier. I could  
14 submit those by way of an offer of proof.

15           I don't think I can get -- I don't think I can  
16 admit these because I don't think that the rule  
17 provides that I can prove them by extrinsic evidence.

18           THE COURT: No. But that's fine for purpose of  
19 an offer of proof. Mr. Tracy, what's your--

20           MR. TRACY: Your Honor, I can't respond to  
21 this without looking at the material.

22           THE COURT: All right. So you've got the  
23 booking sheets for both the--

24           MR. MONSON: I do.

25           THE COURT: --April and the September incident?

1           MR. MONSON: Yes, I do. And I've got a copy  
2 of, I guess, the charging document -- And actually,  
3 Denis, here is -- What they do is, they create a  
4 separate booking sheet for each charge although it  
5 contains the same language. One is -- the April 20<sup>th</sup>  
6 one that Mr. Tracy has is failing to provide  
7 information -- The identical information is contained  
8 in this one; it's resisting and obstructing. They  
9 just ran me a copy of both of them, that--.

10           And I've got a copy of the charging document as  
11 well.

12           And again, your Honor, just for clarity of the  
13 record, these were not convictions. I just want to  
14 make that -- make that clear.

15           THE COURT: All right. Mr. Tracy, you wanted  
16 to review the booking sheet before you respond.

17           MR. TRACY: Yes, your Honor.

18           THE COURT: When is Ms. Beck -- when do you  
19 intend to call her?

20           MR. TRACY: I think first.

21           THE COURT: Oh, she'll be your first witness?  
22 Okay. And you have a copy for me as well?

23           MR. MONSON: I have a copy of one. Mr. Tracy  
24 has the other. But--.

25           THE COURT: Well, you can let -- This isn't

1 going to come up until cross examination, so--.

2 MR. MONSON: Correct. But I thought it was  
3 appropriate we talk about it--

4 THE COURT: No, I--

5 MR. MONSON: --before.

6 Your Honor, the jury's here at 9:00 tomorrow?

7 THE CLERK: Yes.

8 THE COURT: Uh-huh.

9 MR. MONSON: Could we be here at 8:30 and  
10 resolve this issue?

11 THE COURT: Sure.

12 THE CLERK: Does Mr. Tracy need a copy--

13 MR. MONSON: I think he does.

14 THE COURT: Is this false -- providing false  
15 information to a police officer, is the allegation  
16 there that she falsely accused someone of a crime?

17 MR. MONSON: No. She -- she lied to them about  
18 her name. She gave them a different name.

19 THE COURT: These are -- two similar type  
20 allegations.

21 THE CLERK: Did you want that one, too?

22 MR. MONSON: Oh. This is just -- this is --  
23 the same thing. This is just an extra copy--.

24 THE COURT: All right. Well, just off-hand --  
25 and I'll let -- we'll address this tomorrow, but it

1 sounds to me as though lying to a police officer is  
2 the type of conduct covered under ER 608(b). I'm not  
3 ruling on that until I hear argument and look into it  
4 a little further, but it very well may be admissible.  
5 If I decide that it is, I believe the proper  
6 procedures is -- the only thing that can be done is  
7 you ask the witnesses on -- the witness, Ms. Beck, on  
8 cross examination, "Did you lie to a police officer,"  
9 "Did you do this?" I don't believe the documents  
10 are--

11 MR. MONSON: I don't--

12 THE COURT: Extrinsic evidence is not  
13 admissible--

14 MR. MONSON: Right.

15 THE COURT: If I recall the rule, if she says  
16 no, even though you may have proof that she did,  
17 you're stuck with that answer.

18 MR. MONSON: Okay.

19 THE COURT: I believe that's the rule. So--

20 MR. MONSON: I think--

21 THE COURT: That's something you'll need to  
22 look into as well.

23 MR. TRACY: Your Honor, I'll raise this issue  
24 for the parties to think about, too -- My initial  
25 reading of the rule is that this needs to be in the

1 context of character evidence. That the defense  
2 doesn't get to ask Ms. Beck, "Did you lie to a cop  
3 three years ago?" Instead the defense can call a  
4 witness saying that "She's a liar." Or, if I had a  
5 witness to say, "She's a truthful person," then they  
6 could ask about specific instances on cross. But --  
7 maybe I'm reading the rule wrong.

8 THE COURT: I think 608 -- Rule 608 allows only  
9 on cross examination -- inquire into specific  
10 instances of conduct that relate to truthfulness.

11 Here's 608(b). Specific instances of the  
12 conduct of a witness for purpose of attacking or  
13 supporting the witness' credibility may not be proved  
14 by extrinsic evidence -- Okay. So that's what I was  
15 referring to. You can't admit the booking sheet or  
16 call the police officer that you claim she lied to;  
17 that's extrinsic evidence. But they may, in  
18 discretion of the court, if probative of truthfulness  
19 or untruthfulness, be inquired into on cross  
20 examination of the witness concerning the witness'  
21 character for truthfulness or untruthfulness or  
22 concerning the character for truthfulness or  
23 untruthfulness of another witness as to which  
24 character the witness being cross examined has  
25 testified.

1           So I think that's -- that is where you're  
2           trying to get this in--

3           MR. TRACY: Yeah. And I was referring to --  
4           There's State v. Barnes, 774 P.2d 547, that says if  
5           the witness denies the specific instance on cross  
6           examination the inquiry is at an end. The cross  
7           examiner must take the answer of the witness and may  
8           not call a second witness to contradict the first  
9           witness.

10          So I think that's--

11          THE COURT: That's extrinsic evidence.

12          MR. TRACY: Yeah. That would be -- And I think  
13          calling somebody else--

14          THE COURT: If she says yes, you've  
15          accomplished your impeachment; it's all over.

16          MR. TRACY: I think the wording of the rule --  
17          I'll do the research tonight, your Honor, but I think  
18          the wording of the rule is -- that doesn't even get to  
19          be brought up unless there is evidence of character  
20          for truthfulness.

21          MR. MONSON: Your Honor, the rule says specific  
22          instances of conduct for the purpose of attacking the  
23          witness' credibility may not be proved. They may,  
24          however, be inquired into on cross examination of the  
25          witness.

1           MR. DRUFFEL: Concerning the witness'  
2 character--

3           MR. TRACY: I don't think--

4           MR. DRUFFEL: Concerning the witness'  
5 character.

6           MR. MONSON: For truthfulness or  
7 untruthfulness--

8           MR. DRUFFEL: Right.

9           MR. MONSON: That's absolutely right.

10          MR. DRUFFEL: But there won't be--

11          MR. MONSON: (Inaudible).

12          MR. DRUFFEL: But the state won't be offering  
13 testimony for it to be attacked, for a character -- a  
14 characterization of her truthfulness.

15          MR. MONSON: But the state doesn't cross  
16 examine their own witness.

17          MR. DRUFFEL: Right. But it's only after we  
18 open that door that you're allowed to bring in that --  
19 that extrinsic information.

20          MR. MONSON: If you -- testify--

21          MR. DRUFFEL: That I'm a truthful person--

22          MR. TRACY: --"I'm not a liar,"--

23          MR. DRUFFEL: Then that would be a different  
24 situation. And that's--

25          MR. MONSON: I just don't see any other way

1 that this type of evidence comes in, your Honor. I  
2 think this is how you--

3 MR. DRUFFEL: Exactly.

4 MR. MONSON: Right. And so what the state is  
5 saying then there's an absolute bar to anything unless  
6 she gets up there and says "I'm truthful." Well, by  
7 raising her hand and swearing under penalty of oath  
8 she's saying "I'm truthful." Otherwise there would be  
9 no point in swearing her in as a witness.

10 MR. TRACY: That's just simply not what the --  
11 rule is saying.

12 MR. MONSON: I guess on cross examination I can  
13 ask her if she's a truthful person.

14 MR. TRACY: Except I don't think you can--

15 MR. MONSON: Put it in issue with that--

16 MR. TRACY: --(inaudible)--

17 MR. DRUFFEL: (Inaudible).

18 THE COURT: Well, I'm looking at the -- what's  
19 this? -- the comments to Rule 608. No; these are  
20 author's comments in Tegland's book, here. It says  
21 the rule allows inquiry into specific instances only  
22 when those instances demonstrate a general disposition  
23 for truthfulness or untruthfulness. Conduct involving  
24 fraud or deception is a typical example. In general  
25 the rule does not allow inquiry about acts of

1 violence, drug use, (inaudible) personal habits or the  
2 like. State v. McDaniel is cited. Prosecution for  
3 assault, defendant should have been allowed to impeach  
4 the victim's credibility by showing that she had  
5 committed perjury in a related civil proceeding when  
6 she lied about her drug use. (Inaudible) properly  
7 allowed the state to impeach a defense witness by  
8 eliciting the witness' own admission that she had once  
9 made a false statement under oath. That's State v.  
10 Wilson cited as an example.

11 Another case -- Looks to me like this is the  
12 type of prior conduct that would be the appropriate  
13 subject of cross examination. But we have time to  
14 study it and we'll argue about it at 8:30.

15 What you're getting at here is specific  
16 instances of conduct -- admissible manner of proving  
17 character for truthfulness or untruthfulness. And  
18 again, if she denies it, you're sunk. If she admits  
19 it, you've accomplished it and it ends.

20 Let's do come in at 8:30. Any other issues  
21 you're anticipating? How about jury instructions? Do  
22 you have proposals?

23 MR. TRACY: I don't have a set prepared for you  
24 yet, your Honor. I can--

25 THE COURT: Okay.

1           MR. TRACY: --have them probably by the end of  
2 the day tomorrow.  
3           MR. MONSON: Probably the same--  
4           THE COURT: Okay.  
5           MR. TRACY: --asking for the standard  
6 instructions for Rape 1 and -- deadly weapon  
7 enhancement.  
8           THE COURT: Yeah. Is this going to be a lesser  
9 included? Are we going to have lesser included--  
10          MR. TRACY: Possibly a fourth degree assault,  
11 your Honor.  
12          THE COURT: --offenses, plus the -- but not  
13 third degree or--. Not second or third degree rape?  
14          MR. TRACY: Potentially, but we haven't  
15 totally--  
16          THE COURT: Well, I'll look at your proposals  
17 when you get them.  
18          MR. TRACY: --talk about it--  
19          THE COURT: That will be the easier way to--.  
20          All right. We'll see everyone at 8:30, then.  
21 *Recording ends*

I certify that the foregoing is a correct transcript  
from the electronic sound recording of the proceedings  
in the above-entitled matter.

A handwritten signature in cursive script that reads "K Beck".

Kenneth C. Beck, Transcriber

October 2, 2007

# ATTACHMENT 2

# Court of Appeals No. 263541

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF WHITMAN

STATE OF WASHINGTON,

Plaintiff,

vs.

JERRY HERRON,

Defendant.

No. 07-1-00022-9

Hon. David Frazier

June 18, 2007

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VERBATIM TRANSCRIPT OF JURY SELECTION  
From Electronic Recording

VOLUME I-A - Pages 1-112

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JURY SELECTION  
June 18, 2007

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THE COURT: . . .So, with that, I would like to go ahead and proceed with the selection process or the questioning process. As I said, that involves first of all my administering an oath. So if all prospective jurors would please stand, raise your right hands, I'll swear you under oath.

At this time I will ask each of you if you'll solemnly swear or affirm that you will truthfully answer any questions that are asked of you either by the court or by the attorneys as those questions touch upon your qualifications to serve as jurors in this case. And if so answer "I will."

JURORS: "I will."

THE COURT: All right. Please be seated.

And I'll start out with some easy questions. And as we go through the questions it isn't unusual for, you know, a question to be asked and people will be thinking and we'll move on, and then maybe three or four questions, five questions down the line an answer to question number one will come back to you. So don't hesitate, if you forgot a response or didn't

1 think of a response until later time, don't hesitate  
2 to raise your hand and to give your response at that  
3 time.

4 I appreciate as well, and we all appreciate,  
5 that it probably isn't a lot of fun to have to come in  
6 and have judges and lawyers ask you questions. So, we  
7 have over the years relaxed the process a great deal.  
8 And as a matter of fact the process is now much --  
9 much quicker than the old process was. It used to be  
10 that we would first of all draw twelve names, have  
11 twelve people seated over here in the jury box, we'd  
12 start with Juror No. 1, and the plaintiff's lawyer  
13 would usually have 170, 180 questions to ask, and then  
14 the defense lawyer would have 170, 180 questions, we'd  
15 go on -- I'm exaggerating maybe, not always, with the  
16 number -- then they go to number two and the same  
17 questions, and we'd be about ready to shoot ourselves  
18 by the time we got down to Juror No. 4. That was a  
19 long, drawn-out, monotonous process.

20 We now have what's called the struck jury  
21 method, where we just pretty much ask the entire  
22 questions. My questions, first of all, are going to  
23 be very general. They'll apply to everyone that is in  
24 the courtroom. When I am through then starting with  
25 the prosecutor there'll be questions from the

1 attorneys, and then when he's through from defense  
2 counsel.

3 The lawyers will have an option. They can ask  
4 the group general questions that apply to all of you,  
5 or they may single some of you out for individual  
6 questioning. But there'll be not near the repetition  
7 that there used to be in the old system.

8 We usually have a jury selected around noon,  
9 sometimes eleven o'clock or so. However, because of  
10 the subject matter of today's case you've been  
11 provided in advance with a written jury questionnaire  
12 form. The allegation here concerns an allegation of  
13 rape, and sometimes people have things, when there's a  
14 sex offense that is being alleged, sometimes they have  
15 things that have occurred that they don't like to talk  
16 about in open fashion. And it sometimes is very  
17 important that everyone know about these things in  
18 making that determination as to whether you'll be a  
19 fair and impartial juror. So we have provided each of  
20 you with a questionnaire where -- with a degree of  
21 confidence, if things that are important of this  
22 nature need to be disclosed they can be disclosed in  
23 that confidential fashion.

24 And then after I go through my general  
25 questioning -- Those forms have been collected --

1 That's probably where the bailiff is, is making  
2 copies, which will be provided only to the attorneys  
3 -- and then if there were responses that need some  
4 follow-up I go in chambers with the parties and with  
5 the attorneys and then if we need to ask you some  
6 questions relating to those questionnaire responses  
7 then we bring you in on an individual basis, one by  
8 one. Everything is recorded but we can make some  
9 inquiries in a relative degree of confidentiality, so  
10 you don't have to discuss sensitive things in front of  
11 the public in front of all the other jurors.

12 And again, this is to minimize the difficulty  
13 of having to answer these questions for the jury  
14 panel, and also to encourage full disclosure of things  
15 that might be important.

16 But before we get to that point I do want to go  
17 through and I'll ask some general questions, and then  
18 we will take a brief recess where the questionnaires  
19 will be reviewed by the attorneys and by the court.  
20 And we may be calling some of you in on an individual  
21 basis.

22 Now, I'll start with some easy questions. Is  
23 there anyone here, based upon anything that I have  
24 explained so far, or any introduction I've made, that  
25 feels that maybe they've heard something about this

1 case before? Or has anyone read anything in the  
2 paper, heard anything on the radio or TV, rumor on the  
3 street, where this case sounded familiar to them?

4 And I introduced the defendant, Mr. Jerry Alan  
5 Herron. Is there anyone here related or acquainted  
6 with Mr. Herron?

7 And I've introduced his attorney Mr. Mark  
8 Monson. Anyone here related, acquainted, familiar at  
9 all, with Mr. Monson?

10 Okay. We have a few hands. And what I'm going  
11 to do is just start -- and take your names. So, Juror  
12 No. 13, have you stand, tell me your name for the  
13 record, and tell me how you know Mr. Monson.

14 JUROR (off mic'): I'm (Inaudible) Beardsley,  
15 (inaudible) my daughter.

16 THE COURT: All right. And is there anything  
17 about -- So he's represented you as a lawyer, at least  
18 on a limited basis.

19 JUROR: Yes.

20 THE COURT: Is there anything about that that  
21 might affect your ability to be a fair and impartial  
22 juror here?

23 JUROR: No.

24 THE COURT: And I'll just tell all the jurors  
25 that -- it's important they understand, the lawyers

1 here present evidence and argue their positions in the  
2 case, but they're not parties to the action. But  
3 sometimes the fact someone knows a lawyer gives that  
4 side an advantage, sometimes a disadvantage. Any  
5 concern that your acquaintance with Mr. Monson might  
6 influence your ability to be fair?

7 JUROR: Huh-huh.

8 THE COURT: Okay. Thank you. And do we have  
9 -- I know we had several hands. I see Juror No. 20.

10 JUROR (off mic'): I'm Juror No. 20, Jane Lear.  
11 I first recognized Mr. Monson -- I work at the  
12 University of Idaho law library. He was a student  
13 there. And then I served, I think September of 2006,  
14 (inaudible), on the (Inaudible) case, and I was a  
15 juror for that and he was one of the attorneys.

16 THE COURT: All right. And is there anything  
17 about that that -- your acquaintance with him might  
18 affect your ability to be fair and impartial?

19 JUROR: No, sir.

20 THE COURT: Okay. But you worked at the  
21 University of Idaho Law School library.

22 JUROR: Right.

23 THE COURT: And Mr. Monson went to the library?  
24 That's surprising (laughter). But -- All right. All  
25 right. But you feel comfortable being a juror here.

1 JUROR: Yes, I do.

2 THE COURT: Okay. Thank you. All right.

3 And who else knows Mr. Monson? Ma'am?

4 JUROR (off mic'): No. 39, my name is Cindy  
5 Whitmore. He gave my husband and my son and I some  
6 legal advice about some firework issues in the state  
7 of Idaho.

8 THE COURT: All right. And how you do feel  
9 he's -- since he's involved in the case, any concern  
10 about being a juror in the case?

11 JUROR: Not so far, your Honor.

12 THE COURT: Okay. Nothing -- he doesn't have  
13 an advantage or disadvantage?

14 JUROR: No, he does not.

15 THE COURT: Okay. Thank you. Anyone else  
16 acquainted with Mr. Monson?

17 JUROR (off mic'): My names is (Inaudible)  
18 Johnson. He represented my ex-boyfriend in a case,  
19 (inaudible).

20 THE COURT: All right. And how do you feel --  
21 any concern about that affecting your ability to be a  
22 fair juror?

23 JUROR: No.

24 THE COURT: Okay. Anyone else know Mr. Monson?

25 And then this Mr. -- is it "Bricks?"

1 JUROR: "Roecks," your Honor.

2 THE COURT: "Roecks." Okay. I've got some  
3 allergies and I'm not hearing very well. So, anyone  
4 related, acquainted with Mr. Roecks?

5 Okay. Does he even look familiar to anyone?

6 Does he ever go to the law library? I believe  
7 he's probably--.

8 Uh-oh. Okay. And then, -- Whitman County  
9 Prosecuting Attorney Denis Tracy has been introduced.  
10 Anyone here related, acquainted, familiar at all with  
11 Mr. Tracy?

12 Okay. Several hands. So Juror No. 10.

13 Sir?

14 JUROR (off mic'): My name is Gary Meadows.  
15 He's my neighbor, and we've been in social situations  
16 together.

17 THE COURT: All right. And how do you feel  
18 about being a juror in a case where you're neighbors  
19 of one of the attorneys? Any concern that he might  
20 have an advantage or disadvantage because of that?

21 JUROR: No, not on that basis.

22 THE COURT: Okay. Any basis? You say "on  
23 that"--

24 JUROR (off mic'): (Inaudible).

25 THE COURT: Okay. The fact that Mr. Tracy's

1 involved, does it give you any concern at all, about--

2 JUROR: No.

3 THE COURT: --being a juror? Or being able to  
4 be fair?

5 JUROR: No.

6 THE COURT: Okay. Good. Thank you.

7 Now, we had other hands--. And, No. 20?

8 JUROR (off mic'): Number 20, Jane Lear again.  
9 He was one of the attorneys in the (Inaudible) that I  
10 served on the jury.

11 THE COURT: All right. And how do you feel --  
12 anything about that experience -- Anything about that  
13 experience that gives you concern about being a juror  
14 again?

15 JUROR: No.

16 THE COURT: You should buy a lottery ticket.  
17 That was just two or three years ago. You're--

18 JUROR: --not so lucky.

19 THE COURT: All right. So you're balanced --  
20 you're familiar with both attorneys from that  
21 experience--

22 JUROR: Yes.

23 THE COURT: And from that, no concern that that  
24 might affect your ability to be a fair juror?

25 JUROR: No, sir.

1 THE COURT: Okay. Anyone else, now, familiar  
2 with Mr. Tracy? Ms. Whitmore?

3 JUROR (off mic'): No. 39, Cindy Whitmore. I  
4 ran elections with Denis Tracy when he was first  
5 elected. I've had involvement with Officer Chapman,  
6 (inaudible) -- certain issues. At this point I have  
7 no problem being a jury,--

8 THE COURT: Okay.

9 JUROR: --no prejudice or biases towards--

10 THE COURT: That's not going to influence your  
11 decisions in this case?

12 JUROR: No, sir, your Honor.

13 THE COURT: Okay. Thank you. Anyone else know  
14 Mr. Tracy?

15 Okay. And he's being assisted today by Mr.  
16 Bill Druffel, who was introduced. Anyone here  
17 related, acquainted or familiar with Mr. Druffel?

18 Juror No. 1?

19 JUROR (off mic'): I'm No. 1, Brittany Damon.  
20 He lives in the same town as me in Colton.

21 THE COURT: Okay. And are you personally  
22 acquainted with Mr. Druffel?

23 JUROR: --family friends--.

24 THE COURT: All right. Is there anything about  
25 your acquaintance that gives you any concern that it

1           might affect your ability to be a fair juror here?

2           JUROR: No, sir.

3           THE COURT: Okay. Anyone else -- Anyone  
4 else--. Behind Ms. Damon--

5           JUROR (off mic'): I'm Joanne (Inaudible). We  
6 live in the same -- town with Bill. I've known him  
7 since he's been in diapers. (Laughter)

8           THE COURT: All right. I think--

9           MR. DRUFFEL: --couple of years ago, right?

10          THE COURT: We might need some stories, then--

11          JUROR: --and I do serve on a couple councils  
12 with Bill.

13          THE COURT: All right. Is there anything about  
14 -- You've known him quite a while. Any concern you  
15 might lean that way, or the other way, because you  
16 know Mr. Druffel?

17          JUROR: No.

18          THE COURT: Okay. I mean, that's not going to  
19 influence your role as a juror here? If you know him  
20 pretty well?

21          Okay. So you feel--

22          JUROR: I know him, but -- no--

23          THE COURT: Okay.

24          JUROR: --okay.

25          THE COURT: All right. Thank you. Anyone else

1 know Mr. Druffel?

2 MR. DRUFFEL: Well, I'll note for the record,  
3 your Honor, that I represented the other side in Ms.  
4 Beardsley's matter that Mr. Monson (inaudible).

5 THE COURT: All right. Were you aware of that,  
6 Ms. Beardsley?

7 JUROR (off mic'): I've never met him before.  
8 (Inaudible) -- a couple years and I don't remember.

9 THE COURT: Okay. Well, he's disclosing he  
10 might have been on the other side of your case. How  
11 do you feel now that you know that? Any -- No hard  
12 feelings? Okay. No hard feelings as a result of  
13 that?

14 JUROR: No--

15 THE COURT: Or favorable feelings? All right.

16 All right. Anyone else know Mr. Druffel?

17 And someone had -- I believe Ms. Whitmore had  
18 indicated she's acquainted with Sergeant Chapman --  
19 Chris Chapman with the Whitman County Sheriff's  
20 Office. Anyone else here related, acquainted, with  
21 Sergeant Chapman?

22 Okay. I'll start low, work my way up. Juror  
23 No. 20 knows everybody--

24 JUROR: That's because he was a witness at the  
25 -- at the trial.

1 THE COURT: Okay. Is that the only--  
2 JUROR: Yes.  
3 THE COURT: --connection you have with--  
4 JUROR: Yes.  
5 THE COURT: --Mr. Chapman? Anything about  
6 that--  
7 JUROR: No, sir.  
8 THE COURT: --affect you? Okay. And -- Juror  
9 No. 21, Hasgrove.  
10 JUROR (off mic'): --No. 21, Candy Hasgrove.  
11 And I've had very good dealings with him.  
12 THE COURT: All right. Does he have an  
13 advantage if he's a witness--  
14 JUROR: No.  
15 THE COURT: And would you tend to believe his  
16 testimony over that of other witnesses just because  
17 you've had some dealings with him?  
18 JUROR: No.  
19 THE COURT: Comfortable you could be fair here?  
20 JUROR: Yes, uh-huh.  
21 THE COURT: Okay. And, who else do we have  
22 that knows Deputy Chapman?  
23 JUROR (off mic'): I'm No. 30, (Inaudible),  
24 thank you. We actually were at Pullman High School  
25 together at the same time.

1 THE COURT: Okay. You probably have some  
2 stories about Sergeant Chapman, but--

3 JUROR: No. (Laughter)

4 THE COURT: Oh. All right. So, -- All right.

5 How do you feel about being a juror here -- if  
6 he's involved? Any concern that he'd have an  
7 advantage or disadvantage?

8 JUROR: No.

9 THE COURT: Okay. He was boring in high  
10 school, is what you're saying. (Laughter)

11 JUROR: --wouldn't say boring--

12 THE COURT: Okay. But -- you don't feel that  
13 your fairness would be compromised because you went to  
14 school with him or know him?

15 JUROR: No.

16 THE COURT: Do you know him very well?

17 JUROR: No.

18 THE COURT: Okay. Because he very well may be  
19 a witness in the case, unlike the attorneys--

20 JUROR: Understood.

21 THE COURT: Okay. Now, others -- I think we  
22 had other hands for knowing Sergeant Chapman.

23 JUROR (off mic'): I'm Juror No. 46. My name  
24 is Alyssa (Inaudible). And I've known Chris  
25 throughout the years. He used to be my neighbor. We

1 went to high school together, (inaudible). (Laughter)

2 THE COURT: Okay.

3 JUROR: And I've seen him around town, and--

4 THE COURT: All right.--

5 JUROR: --the years.

6 THE COURT: Now, any concern about -- if he's a  
7 witness here and you're a juror, about being fair and  
8 impartial? Any concern that you might give his  
9 testimony greater or less weight just because you know  
10 him?

11 JUROR: No.

12 THE COURT: Okay. You feel you can be fair  
13 even though you know one of the witnesses?

14 JUROR: Yes.

15 THE COURT: Okay. All right. Anyone else know  
16 Sergeant Chapman?

17 JUROR (off mic'): --45. My name is  
18 (Inaudible). I'm an EMT with the (Inaudible) Fire  
19 Department (inaudible) I have occasion to run into Mr.  
20 Chapman at accident scenes and that sort of thing.  
21 (Inaudible).

22 THE COURT: All right. And so how do you feel  
23 about being -- any concern about this -- this  
24 affecting your ability to be fair?

25 JUROR: No.

1           THE COURT: And shortly I'm going to go through  
2 a list of other witnesses, some of which I believe are  
3 police witnesses. You probably know quite a few  
4 police officers because if your EMT work?

5           JUROR: I -- Yes. I am -- I don't associate  
6 with them daily, but I -- I meet them (inaudible).

7           THE COURT: Okay. On a professional basis.  
8 Any concern because of that position that you might  
9 lean one way or the other if you're selected as a  
10 juror?

11          JUROR: No.

12          THE COURT: Okay. You've been on jury duty  
13 before, haven't you? Maybe you've been witness--

14          JUROR: One time.

15          THE COURT: Okay.

16          JUROR (off mic'): (Inaudible).

17          THE COURT: Okay. All right. Anyone else know  
18 Sergeant Chapman.

19          JUROR (off mic'): I'm No. 49, Diane Whitman,  
20 and I know Chris through -- he's also a neighbor, and  
21 works with my younger son, and is friends with my  
22 husband, who is in the fire department (inaudible).

23          THE COURT: All right. Anything about that  
24 give you any concern about being a fair juror in this  
25 case?

1 JUROR: No.

2 THE COURT: Anyone else know Sergeant Chapman?

3 Before I forget, we've got two Damons too. Are  
4 the two of you--

5 JUROR (off mic'): She's my granddaughter.

6 THE COURT: Granddaughter. Okay.

7 All right. Well, let me start with  
8 Grandmother. How do you feel if you're both selected  
9 here, both on the jury panel, any concern that you  
10 might vote the way she does because she's your  
11 granddaughter? For that mere reason alone? Or, just  
12 the opposite?

13 JUROR: Yeah, there might be some problem  
14 there--

15 THE COURT: Okay--

16 JUROR: --(inaudible) or something--.

17 THE COURT: Then how do you feel?

18 JUROR (off mic'): I would be (inaudible) to  
19 say my personal opinion.

20 THE COURT: Do you have any problems  
21 disagreeing with your grandmother or holding--. Okay.  
22 But Grandmother might; is that what I'm hearing?

23 JUROR: I don't (inaudible).

24 THE COURT: Okay. But -- Grandmother said,  
25 would that might be an issue?

1 JUROR: No, I think I'd be comfortable with--

2 THE COURT: Okay. Once -- oddly enough we've  
3 had husband-wife, and mother-daughter, things like  
4 that, before. So, -- that's the way the random  
5 process goes.

6 I have a list of other potential witnesses --  
7 Unless I missed anyone that knows -- did I miss anyone  
8 that is acquainted at all with Sergeant Chapman?  
9 Okay. There's a somewhat long list of people -- other  
10 people that could be potential witnesses. And I  
11 believe I'll just take names of those that know these  
12 people.

13 I have Sergeant Jody Hamilton with the Whitman  
14 County Sheriff's Office. How many here are related,  
15 acquainted, familiar at all with Sergeant Jody  
16 Hamilton? That name sound familiar to anyone?

17 And Nanette Bolyard, also with the sheriff's  
18 office. Anyone know Nanette Bolyard? No hands?

19 And Kay Aubel, also works in the sheriff's  
20 office. Kay Aubel? Okay.

21 JUROR (off mic'): We've known each other  
22 through -- well, since high school days, just --  
23 socially.

24 THE COURT: Okay. And if she's a witness any  
25 concern that that might -- and this is Mr. Van Tine,

1 No. 27, probably. Anything -- any concern that that  
2 might affect your fairness?

3 JUROR: None at all.

4 THE COURT: Okay. And then, anyone else know  
5 Kay Aubel?

6 Another potential witness is Kristen Beck, B-e-  
7 c-k. It says here formerly Kristen Woltering. Anyone  
8 related, acquainted, familiar at all with Kristen Beck  
9 -- or Kristen Woltering?

10 --have one hand. Ms. Whitmore?

11 JUROR (off mic'): Cindy Whitmore, Juror  
12 No. 37. And I believe she may be related to my  
13 husband. Other than that I have no clue who she is.

14 THE COURT: Okay. Just because of the name?  
15 Is that--

16 JUROR: Yes.

17 THE COURT: --what -- And, if you are related  
18 or if she is related, how close of relationship is  
19 that to your husband?

20 JUROR: She would be a cousin.

21 THE COURT: Okay. Any -- If that is the case  
22 any concern you might give her testimony greater or  
23 less weight, just because of that relationship?

24 JUROR: No, sir, your Honor.

25 THE COURT: You don't personally know her?

1 JUROR: No, sir.

2 THE COURT: Okay.

3 JUROR: I just know the name, that they're  
4 related to my husband.

5 THE COURT: Okay. The Beck name or the  
6 Woltering name?

7 JUROR: The Woltering.

8 THE COURT: Okay. All right. Anyone else --  
9 Kristen Beck or Woltering. Name sound familiar to  
10 anyone else?

11 Okay. And then other potential witnesses. I  
12 believe it's Corporal Bob Swan with the Airway Heights  
13 Police Department. Anyone know Bob Swan?

14 Or a Wade Weingardner, with the Pullman Police  
15 Department. Wade Weingardner.

16 MR. DRUFFEL: It's actually W-i-n-e, your  
17 Honor.

18 THE COURT: W-i--?

19 MR. DRUFFEL: I'm not sure it makes any  
20 difference, but--.

21 THE COURT: Okay. That name sound familiar to  
22 anyone?

23 Okay. And then Steve Hardin, identified as a  
24 nurse at the Pullman Regional Hospital. Anyone know  
25 Steve Hardin, H-a-r-d-i-n.

1 Ms. Whitmore, you know a lot of people too.  
2 Anything about -- How do you know -- Steve  
3 Hardin?

4 JUROR (off mic'): He was a nurse (inaudible),  
5 your Honor.

6 THE COURT: Okay. How do you -- Anything about  
7 that--

8 JUROR: No, sir, your Honor--

9 THE COURT: --might affect your fairness here?

10 JUROR: (Inaudible).

11 THE COURT: Okay. And I had someone in the  
12 back--

13 JUROR (off mic'): 31, (Inaudible). He was a  
14 co-worker. I used to work there.

15 THE COURT: All right. So you worked with Mr.  
16 Hardin? You--

17 JUROR: I used to.

18 THE COURT: Okay. And if he's a witness in the  
19 case, how do you feel? Any concern that might affect  
20 your ability to be a fair juror?

21 JUROR: (No audible response).

22 THE COURT: Okay. Anyone else know Mr. Hardin?

23 And, Randy Forcum, F-o-r-c-u-m. Randy Forcum.

24 Does that name sound familiar to anyone?

25 Randy Woltering. Might be a relative of Ms. --

1 Is he a relative? Do you know?

2 JUROR (off mic'): I don't know all the  
3 Wolterings. I just know the name, your Honor.

4 THE COURT: All right. Do you know a Randy  
5 Woltering?

6 JUROR: No, sir, your Honor.

7 THE COURT: Okay. Could be the same -- could  
8 be related to your husband?

9 JUROR: Could be.

10 THE COURT: Okay. Anyone else know Randy  
11 Woltering?

12 And Sharon Hill. Anyone know Sharon Hill?  
13 Related or acquainted?

14 And Ahn Chu. And that's A-h-n--

15 JUROR (off mic'): Oh. Wait.

16 THE COURT: Oh. I had a hand?

17 JUROR: Yes. Sharon (Inaudible), your Honor.  
18 She's related to (Inaudible). They crop dust spray.  
19 So, that's how I just know who she is.

20 THE COURT: Okay. And any concern if--

21 JUROR: No, sir, your Honor.

22 THE COURT: --she's a witness? Okay.

23 And then Ahn Chu, A-h-n, and then the last name  
24 is C-h-u. That name sound familiar to anyone?

25 And Christy Randall. Christy Randall.

1           Matthew Gammett, G-a-m-m-e-t-t. That name  
2 sound familiar to anyone?

3           And Julie Heinig, H-e-i-n-i-g. Some of these  
4 people are from out of the area, but I'll call them  
5 anyway.

6           And Shirley Vanning, V-a-n-n-i-n-g. Shirley  
7 Vanning sound familiar to anyone?

8           Okay. Today's case is -- I say today's case --  
9 Our case here is expected to take four days. So we'll  
10 probably go through Thursday. Is there anyone that  
11 has anything going on the outside world where if we go  
12 four days -- Let's even say five. I don't expect  
13 that, but it could happen -- where that would really  
14 create a hardship?

15           Juror No. 4.

16           JUROR (off mic'): Diane (Inaudible), No. 4,  
17 and I'm going to be attending my mother's funeral on  
18 Friday.

19           THE COURT: I'm sorry; you're what?

20           JUROR: My mother's funeral on Friday.

21           THE COURT: Oh. All right.

22           JUROR: In Seattle.

23           THE COURT: All right. So do you need to leave  
24 before--

25           JUROR: Yes.

1 THE COURT: Okay. So this wouldn't be good for  
2 you.

3 JUROR: No.

4 THE COURT: Okay. All right. That's -- I am  
5 going to go ahead at this time, given those  
6 circumstances -- make it easy, excuse you, and -- we  
7 won't make you hang around any further. Unless you  
8 want to. Okay?

9 JUROR: No. Thank you.

10 THE COURT: So Juror No. 5 will be excused.  
11 Any--

12 Number four.

13 All right. Do we have other jurors -- anyone  
14 else in the first row? Okay. I'm going to go to the  
15 second row, Juror No. 16.

16 JUROR (off mic'): Jennifer Jansen. My  
17 daughters and I (inaudible).

18 THE COURT: Okay.

19 JUROR: (Inaudible). So I don't know if I can  
20 stay -- on a juror.

21 THE COURT: No. I don't think you'd be able to  
22 keep your mind on the case. I'm going to go ahead and  
23 excuse -- I'm going to let you leave as well. Okay?

24 All right. And then, Juror No. 17.

25 JUROR (off mic'): Joanne Baker, 17. We are

1 planning on leaving on vacation on Friday.

2 THE COURT: Okay. So we're okay unless--

3 JUROR: --Thursday would be okay, then.

4 THE COURT: Okay.

5 JUROR: We are -- do have reservations all over  
6 -- starting Friday.

7 THE COURT: Are you taking your granddaughter  
8 with you?

9 JUROR: (Inaudible).

10 THE COURT: Okay. All right. And -- Well --  
11 I'll -- I'm going to discuss how -- the likelihood of  
12 us going into Friday. I don't think that's going to  
13 be a problem, but -- something we'll discuss.

14 Number -- must be 18. Nineteen.

15 JUROR (off mic'): Nineteen, yes. Bonnie  
16 Johnson. I work nights so that I don't have to pay  
17 for baby-sitting, for my child during the day.  
18 Because my husband works during the day and we swap  
19 schedules. So, I have kind of emergency baby-sitting  
20 services today but I don't have formal -- place to  
21 take him or -- anything like that. So--.

22 THE COURT: Okay. And if you're selected as a  
23 juror is your plan to keep working?

24 JUROR: Yeah. I work nights. So, I mean, I  
25 work 'til 2:00 a.m. I'm a bartender. But I don't

1 have (inaudible) during the daytime (inaudible).

2 THE COURT: Okay. And your employer won't let  
3 you off for--?

4 JUROR: I'm the manager. I'm the one who's  
5 there.

6 THE COURT: Okay. You're the--

7 JUROR: I'm (inaudible).

8 THE COURT: Okay. All right. We'll come back.  
9 There'll be some further discussion, I'm sure.

10 Juror No. 20.

11 JUROR (off mic'): Number 20, Jane Lear. I'm  
12 supposed to leave for a convention in Hartford,  
13 Connecticut on Thursday morning.

14 THE COURT: Okay. So it's in the morning  
15 Thursday.

16 And, anyone else--?

17 JUROR (off mic'): Juror 22, Fred (Inaudible).  
18 I have to be in Seattle for a doctor's appointment on  
19 Friday, Friday morning. So I'd have to leave early  
20 Friday morning--.

21 THE COURT: Okay. So, you're good through  
22 Thursday--

23 JUROR: I'm good through Thursday.

24 THE COURT: And, who else do I have in that  
25 second row? Number ten? Are you--

1 JUROR (off mic'): Oh, I'm wavering.

2 THE COURT: You're wavering. Well, let's -- we  
3 might as well hear about it.

4 JUROR: All right. I am -- working on a grant  
5 proposal. I'm a professor at WSU, and I need to put  
6 together some material for my dean who has to write a  
7 letter for this proposal and he's going on vacation on  
8 Wednesday, and I need -- I have a deadline for getting  
9 the proposal in to the federal government.

10 THE COURT: Okay. So if you -- is this week--

11 JUROR: If it goes beyond the end of the week  
12 he's going to be gone. And then I'll -- just be a  
13 little bit -- it will be difficult for me to get the  
14 information to him to get the letter provided for me  
15 that I need to support this proposal.

16 THE COURT: Okay. So if you're -- if we're  
17 just here through Thursday is that going to be a  
18 problem?

19 JUROR: Wednesday he's leaving.

20 THE COURT: He's leaving Wednesday. Okay. How  
21 long --is -- is it something--

22 JUROR: --for two weeks.

23 THE COURT: No; is this something you can  
24 gather the information in the evening, or something,  
25 or is that -- are we talking a lot of--

1 JUROR: Yeah. It would be more difficult, but  
2 I could -- I could do it, yes.

3 THE COURT: Okay. All right. And again,  
4 there'll be some, I'm sure, collective discussion of  
5 that later. Anyone else, second row. Sir?

6 JUROR (off mic'): Doug Chambers, No. 25. I  
7 have a three-day business trip that starts tomorrow  
8 morning.

9 THE COURT: Okay. Is that something that could  
10 be rescheduled, or would that be a big problem?

11 JUROR: It would be a problem.

12 THE COURT: All right. Anyone else in the  
13 second row? (Inaudible)?

14 JUROR (off mic'): --No. 27, Rick Van Tine. I  
15 am the sole employee in my department at work, so when  
16 I'm not there, -- my department pretty much comes to a  
17 standstill.

18 THE COURT: Okay. There's nobody that can sub  
19 in or take your place temporarily?

20 JUROR: Not usually.

21 THE COURT: Okay. Is it going to be a real  
22 hardship for four days?

23 JUROR: (Inaudible).

24 THE COURT: Okay. It's--

25 JUROR: --work -- they can work -- (inaudible).

1           THE COURT: Okay. We'll probably come back and  
2 talk. Okay?

3           All right. Now, are we up to the third row?  
4 I'm going to go third row--

5           JUROR (off mic'): Juror No. 29, (Inaudible)  
6 Jensen. I am supposed to start a class today at WSU,  
7 which is a prerequisite to every course I need next  
8 semester to graduate. And (inaudible) it's only six  
9 weeks. So if I miss this week I've missed --  
10 (inaudible).

11          THE COURT: Okay. Is it just one class you're  
12 talking?

13          JUROR: Yes.

14          THE COURT: It's like a Monday-Wednesday-Friday  
15 class, or is it every day?

16          JUROR: Every day, your Honor.

17          THE COURT: Okay. And it's in your major, it's  
18 a prerequisite.

19          JUROR: Uh-huh.

20          THE COURT: Okay. And again, we'll probably be  
21 coming back to talk. And then--

22          JUROR (off mic'): Just need to use the  
23 restroom.

24          THE COURT: What's that? Oh.

25          JUROR: Yeah.

1           THE COURT: Fair enough. Who else do we have  
2 in the third row?

3           Okay. Ma'am?

4           JUROR (off mic'): I'm No. 40. (Inaudible) is  
5 my name. Actually, my reason is health concerns. I  
6 have chronic pain condition called fibromyalgia. And  
7 I have a difficult time sitting more than hour and a  
8 half at a time. And -- I have difficult time  
9 standing, also. And I take medication called  
10 (Inaudible). I take it four times a day, 1,200 mg.  
11 And it just seems like -- I'm okay when I talk -- one  
12 to one conversation, but -- notice that in this  
13 setting I'm not really catching very well, my  
14 attention span seems to be short--.

15           THE COURT: All right. Does this affect -- If  
16 you're here -- And we might work some long days, here.  
17 So that would be difficult for you?

18           JUROR: Yeah.--

19           THE COURT: Okay.

20           JUROR: --It would be almost impossible.

21           THE COURT: Okay. All right. And I'll come  
22 back and I -- Well, I think I'm going to go ahead,  
23 make it easy -- that's pretty clear-cut in your case.  
24 I'm going to let -- I'm going to go ahead and excuse  
25 Juror No. 40. So you'll be free to leave.

1 JUROR: Thank you.

2 THE COURT: Okay.

3 All right. Now, -- Oh, boy. We've got -- Let  
4 me come back to the front row, just before I go to  
5 the--

6 JUROR (off mic'): --sorry. My name is  
7 (Inaudible) Sakimoto. And - I'm kind of wavering  
8 because I just (inaudible) -- I have a full-time job  
9 right now at WSU, and I'm interviewing for another job  
10 in Spokane on Thursday afternoon. And I don't know if  
11 that would be a problem if I could get it changed.  
12 They're interviewing Tuesday, Wednesday, Thursday, and  
13 I was interviewing Thursday afternoon at 1:30.

14 THE COURT: Okay. It's 1:30 Thursday. You  
15 might be able to reschedule but you don't know.

16 JUROR: Correct.

17 THE COURT: Okay. All right. And we'll come  
18 back -- anyone in any row other than the last row.  
19 Okay. Juror No. 10.

20 JUROR (off mic'): I'm -- I'm having some  
21 difficulty hearing you all the time, so if I could try  
22 the assisting device I would like to--.

23 THE COURT: Oh. Well, anyone else having any  
24 problem hearing? Okay. We do have some assistance  
25 devices, and we'll provide those.

1           Now let's go to the back row with potential  
2 problems.

3           JUROR (off mic'): Christine Parks, No. 42. I  
4 have two problems. I have a doctor's appointment  
5 tomorrow that it takes me about a month to get. I've  
6 had it for 30 days. And I'm also the only one in town  
7 this week to open up our business, Colfax Cat Clinic.

8           THE COURT: Okay. Okay. So you've got two  
9 issues. And we'll probably come back -- Juror No. 43.  
10 I believe it's 43.

11           JUROR (off mic'): No. 43, John Sturgis. I'm  
12 on disability. I have a panic disorder, anxiety  
13 attacks. And, I don't think I could deal with this  
14 every day. I have a problem with confined spaces, and  
15 -- set it off. And it makes me have a hard time  
16 concentrating on what's being said. You know? I'm on  
17 -- I have -- don't have them all the time, but --  
18 having one right now.

19           THE COURT: Okay. So it would be difficult for  
20 you to pay attention and--

21           JUROR: Not all the time, but it would--

22           THE COURT: Okay.

23           JUROR: --I see it as a problem.

24           THE COURT: All right. And you say even like  
25 right now there's some--

1 JUROR: Yeah.

2 THE COURT: --issues? Okay. Okay. And I'll  
3 come back and probably -- have some further  
4 discussion.

5 No. 44.

6 JUROR (off mic'): Yeah. Darrel (Inaudible),  
7 No. 44. I have two dentist appointments Friday, with  
8 two different dentists.

9 THE COURT: Friday, though.

10 JUROR: Friday--

11 THE COURT: Okay. So if we're done--

12 JUROR: --Spokane--

13 THE COURT: If we're done Thursday you're in  
14 good shape.

15 JUROR: Yeah.

16 THE COURT: Four days of jury duty and then two  
17 dental appointments. (Laughter) I don't know if I  
18 should say "good shape" or not. Jury duty won't seem  
19 so bad, after two dental appointments.

20 Let's see. -- And I've lost count. I can't --  
21 I can't see that far. And I -- Probably 46.

22 JUROR (off mic'): Alyssa (Inaudible), Juror  
23 46.

24 THE COURT: Sorry.

25 JUROR: I have three little boys ages one,

1 three and five, and I'm their sole provider, so I have  
2 a question. What time do you anticipate we'll be done  
3 every day? Because I have to be in Pullman to pick  
4 them up at day care.

5 THE COURT: All right. When do you have to be  
6 in Pullman?

7 JUROR: The day care closes at 5:30, but my  
8 children usually get picked up before that. I mean, I  
9 -- (inaudible).

10 THE COURT: So you have to be in Pullman at  
11 5:30.

12 JUROR: By 5:30 at the latest.

13 THE COURT: Okay.

14 JUROR: (Inaudible).

15 THE COURT: Well, it's something I'm going to  
16 talk to the lawyers about -- before we -- to get -- we  
17 can -- Well, we'll talk about it.

18 Who else do I have in the back row? Anyone  
19 else with problems--

20 JUROR (off mic'): I'm Abby Tyler, No. 50. And  
21 we're getting married next week. We (inaudible)  
22 starting Monday, so (inaudible) go into next week--

23 THE COURT: So this week's okay--

24 JUROR: This week's okay--

25 THE COURT: Okay. All right. And then who --

1 55? Is that--

2 JUROR (off mic'): 55, Carlos (Inaudible). I  
3 am -- self-employed, and -- can't take time off.

4 THE COURT: All right. What type of work--

5 JUROR: I'm a (inaudible).

6 THE COURT: Okay. So it would be a hardship to  
7 -- have to take four days. Is that--.

8 JUROR: Yes.

9 THE COURT: Okay. All right. Anyone else in  
10 the back row?

11 All right. Is there anyone here -- Usually one  
12 of the first questions I ask, if anyone has any  
13 physical problems or disabilities that might affect  
14 their ability to give the case their full attention.  
15 I asked about hearing. Is there anyone that has any  
16 hearing impairment or problem that hasn't already --  
17 Juror number--

18 JUROR (off mic'): This isn't working. Doesn't  
19 do any good.

20 THE COURT: That's not working.

21 JUROR: Well, it doesn't do anything different  
22 than my hearing aids.

23 THE COURT: All right. Oh, you wear hearing  
24 aids.

25 JUROR: Yes.

1           THE COURT: Okay. Now we have a special one  
2   that's--  
3           THE CLERK (off mic'): --what he's got.  
4           THE COURT: Oh.  
5           THE CLERK: This is all green. It's on -- it's  
6   on--.  
7           THE COURT: Well, we're going to have to make--  
8           THE CLERK: (Inaudible).  
9           JUROR: Mostly I can hear, but it's not--  
10          THE COURT: Okay. Would it help if you came  
11   closer?  
12          You know, try that,--  
13          JUROR: It helps to enunciate.  
14          THE COURT: Okay. That's the problem.  
15   (Laughter) In other words, you just can't understand  
16   me.  
17          JUROR: Sometimes.  
18          THE COURT: Okay. I'll try to do a little  
19   better, here.  
20          JUROR: I'm sorry--  
21          THE COURT: All right. No; that's fine. We --  
22   And that -- It's important. If at any time anyone  
23   doesn't hear or understand what we have to say, make  
24   sure you repeat it, 'cause it's very important that  
25   you do understand what we're saying.

1           I believe I asked if anyone had heard about  
2 this case before; no one responded. Is that correct?

3           I explained that under the law the jury does  
4 not get to determine what the law is in a case. The  
5 court will be instructing you as to what the law is.  
6 And the law requires that if you're a juror you must  
7 follow the law regardless of your personal beliefs.

8           Now, it isn't unusual, as individuals, for  
9 people to disagree with a law that's on the books.  
10 But even if you're confronted with a situation where  
11 you don't like the law, if you're a juror you must  
12 follow the court's instructions. Is there anyone here  
13 that can't assure the court that they'll be able to do  
14 that?

15           And, you know, I throw out -- sometimes --  
16 we've got some controversial issues. Death penalty.  
17 These don't apply in this case. But like death  
18 penalty, abortion, gun control, all types of issues  
19 like that where we've got laws but people disagree  
20 with them. So, -- Those are not issues in this case,  
21 but if there's something similar and you have strong  
22 personal, religious, political beliefs, different, is  
23 there anyone that can't assure me that you'll still be  
24 able to follow the court's instructions?

25           Okay. Juror No. 10.

1 JUROR (off mic'): No. 10. I have very strong  
2 opinions on sexual abuse.

3 THE COURT: All right. And of course you  
4 understand here there's an allegation -- Well, what we  
5 have here is an allegation and it's the duty of the  
6 jury to determine whether the state is able to prove  
7 that beyond a reasonable doubt. But it is the mere--

8 JUROR: But I have also an emotional response.

9 THE COURT: Okay. So you have -- does that  
10 give you some concerns about being a juror in this  
11 case?

12 JUROR: It does.

13 THE COURT: Okay. All right. Then we'll,  
14 again, probably be coming back.

15 Anyone else have anything similar?

16 JUROR (off mic'): Juror 12. Yeah. I've known  
17 women who have seriously been -- been --been raped,  
18 and -- Yeah, I have very strong feelings. I wrote it  
19 in my little thing--

20 THE COURT: Okay. And we'll probably take that  
21 up in an individual basis, here, with the attorneys.

22 Okay?

23 JUROR (off mic'): Juror number (inaudible),  
24 (Inaudible). I'm a little confused. Are we talking  
25 about the actual law -- law that's on the books, or

1 are we talking about how we feel about (inaudible)  
2 right now? I'm just confused.

3 THE COURT: Well, yeah. The question related  
4 to -- if you're confronted with a law and you disagree  
5 with the law, would you--

6 JUROR: Just the law.

7 THE COURT: Yeah.

8 JUROR: Okay. (Inaudible).

9 THE COURT: Okay. So that's not a problem?  
10 Even if you disagree with a law you're going to be  
11 able to follow the court's instruction as to what the  
12 law is.

13 JUROR: (No audible response).

14 THE COURT: Okay. All right. Anyone else --  
15 have any concern about being able to follow the  
16 court's instructions?

17 Is there anyone here that is connected in any  
18 manner with law enforcement?

19 Okay. So, -- And I'm just going to get you --  
20 So Juror No. 12 responded--

21 JUROR: I have quite a few friends -- they're  
22 not in Whitman County, but they are state troopers.

23 THE COURT: All right. And is there anything  
24 about that acquaintance that--

25 JUROR: No. It wouldn't affect my--

1 THE COURT: Okay.

2 JUROR: --(inaudible) either way.

3 THE COURT: You're not yourself connected or  
4 haven't been. You've not been a police officer, or--

5 JUROR: No, I haven't--

6 THE COURT: --trained in that area.

7 Juror No. 8.

8 JUROR (off mic'): Connie Sakimoto. I know a  
9 couple police officers, and I'm on Colfax Fire also,  
10 and some of them are. But that's about all, except  
11 that my son's a lawyer, in Baghdad right now--.

12 THE COURT: All right. And is there anything  
13 about any of these things that might affect your  
14 ability to be a fair juror here?

15 JUROR: No.

16 THE COURT: I just want to make sure that  
17 because of that you don't lean one way or the other.

18 JUROR: No.

19 THE COURT: Okay. So, Juror No. 6 is--

20 JUROR (off mic'): Julia (Inaudible), Juror  
21 No. 6. I have a friend who's an FBI agent.

22 THE COURT: Okay. And any -- not involved in  
23 this case, obviously--

24 JUROR: Not involved in this case--

25 THE COURT: Any concern about being a juror

1 here.

2 JUROR: No, sir.

3 THE COURT: Okay. Now, mainly -- is anyone  
4 here a law enforcement officer or have a close --  
5 close friend or family member, or a connection that  
6 gives them concern they might have trouble being fair.

7 Juror No. 19.

8 JUROR (off mic'): (Inaudible). I've actually  
9 had a police officer lie to my face, and I do have a  
10 problem with (inaudible).

11 THE COURT: All right. So if there are police  
12 witnesses in the case, are you telling me you'd have  
13 concern being fair?

14 JUROR: I -- I had one lie to my face--

15 THE COURT: Okay.

16 JUROR: --and -- ever since then I've had a  
17 hard time with them. So,--.

18 THE COURT: Okay. All right. And we'll come  
19 back again. There'll probably be some questions.

20 All right. Anyone else have a response -- Ms.  
21 Whitmore?

22 JUROR (off mic'): No. 37, your Honor, Cindy  
23 Whitmore. I have a tenant who is a Pullman police  
24 officer. He's one of my renters. I consider him a  
25 friend. I talk to him every day. I don't feel that

1 knowing him would make me biased in any way, but just  
2 so that you know that--

3 THE COURT: Okay.

4 JUROR: --he's been a renter for seven years.

5 THE COURT: No one that's been disclosed here  
6 today.

7 JUROR: No, sir.

8 THE COURT: As a witness. Okay.

9 Anyone else. Ma'am?

10 JUROR (off mic'): No. 39, Danielle Eisley. I  
11 -- my ex-boyfriend's a former Pullman police officer  
12 -- he left in -- 2003 or 2004.

13 THE COURT: Okay. You say your ex-boyfriend?

14 JUROR: Yes.

15 THE COURT: --is an ex-police officer?

16 JUROR: Yes.

17 THE COURT: Okay. So, double ex'es. Is there  
18 anything about that that gives you any concern about  
19 being--

20 JUROR: No.

21 THE COURT: --a juror here? If there's a  
22 Pullman officer that's a witness, any concern about  
23 that affecting your ability to be fair?

24 JUROR: No.

25 THE COURT: Okay. Thank you.

1           Anyone else.

2           JUROR (off mic'): --No. 35, (Inaudible). My  
3 son is a correctional officer (inaudible).

4           THE COURT: --correction officer?

5           JUROR: In Texas.

6           THE COURT: In Texas. All right. Any concern  
7 about that affecting your ability to be a fair juror?

8           JUROR: No.

9           THE COURT: Anyone else. Any connection with  
10 law enforcement.

11           JUROR (off mic'): I'm No. 49, Diane Whitman.  
12 And my younger son is a corrections officer with  
13 Whitman County Sheriff's Department, and I have some  
14 friends that are police officers--

15           THE COURT: All right.

16           JUROR: But I don't really think that that  
17 would (inaudible).

18           THE COURT: Okay. You're not concerned about  
19 that affecting your ability to be fair?

20           JUROR: (No audible response).

21           THE COURT: Okay. All right. Anyone else.  
22 Connection with law enforcement. And we had one  
23 juror, Juror No. 19, indicated -- sounds like a bad  
24 experience previously with a law enforcement officer.  
25 Anyone else feel that they've ever had a particularly

1 unpleasant experience with a law enforcement officer.

2 Or particularly favorable experience with a law  
3 enforcement officer. Sometimes we hear about those  
4 things, too.

5 Okay. Has anyone here ever been themselves  
6 accused of a crime?

7 Close friend or family member accused of a  
8 crime.

9 Juror No. 19. And, -- Is there -- Well, how  
10 close of a relative?

11 JUROR (off mic'): Well, my boyfriend, soon to  
12 be husband, grew up in Lewiston, and -- (inaudible).  
13 And his brother actually has been pulled in several  
14 times recently, allegations of cocaine (inaudible).

15 THE COURT: All right. And is there anything  
16 about these experiences that might affect your ability  
17 to be a fair juror here?

18 JUROR: From his -- No, I don't think so.

19 THE COURT: Okay.

20 JUROR: --from my own experiences.

21 THE COURT: Okay. And that -- you do feel that  
22 that would create a problem.

23 JUROR: Yeah. I've a bad taste in my mouth  
24 (inaudible).

25 THE COURT: Okay. All right. Then, Juror

1 No. 8.

2 JUROR (off mic'): Connie Sakimoto. I have an  
3 ex-brother in law that also was charge at one time  
4 with sexual misconduct, with my nieces, but that was  
5 dismissed -- thrown out, but--.

6 THE COURT: Okay. Now is there anything about  
7 that that might carry over and affect your ability to  
8 be a fair juror here?

9 JUROR: No.

10 THE COURT: Okay. All right. Anyone else ever  
11 had a close friend, family member, accused of a crime.

12 Okay. And I usually give the panel -- might  
13 not do any good, but -- an open shot. Is there anyone  
14 who just flat out does not want to be seated on this  
15 jury.

16 Okay. Juror No. 19. Is there any reason we  
17 haven't heard about--.

18 JUROR (off mic'): Well, actually, yes. My  
19 very first job, I was 16 years old, and I was sexually  
20 accosted by my boss. And, I didn't do anything about  
21 it. I was young, and stupid. I didn't know you could  
22 do anything about it. (Inaudible).

23 THE COURT: Okay. So you're concerned about  
24 being a fair juror in this case. Okay.

25 All right. Anyone else -- just does not want

1 to be seated. Juror No. 10?

2 JUROR (off mic'): No. 10. I really feel I  
3 will have trouble with this case being objective,  
4 because of my previous concerns that I expressed.

5 THE COURT: Okay. All right. Juror No. 1.

6 JUROR (off mic'): I'm No. 1, Brittany Damon.  
7 I knew of an individual but never personally had met  
8 him that was accused of rape and I (inaudible).

9 THE COURT: All right. And if you're selected  
10 as a juror, is that going to affect your--

11 JUROR: No.

12 THE COURT: Okay. You feel you could still be  
13 fair?

14 JUROR: (No audible response).

15 THE COURT: Okay. All right. Anyone else that  
16 at this time just doesn't want to be on this jury.

17 Okay. --Johnson?

18 JUROR (off mic'): (Inaudible) personally  
19 (inaudible).

20 THE COURT: Okay. And we will be going -- What  
21 I'm going to do, as a matter of fact, is take a break  
22 from our sessions in court, and I'm going to turn off  
23 our amplification system here, so when we have  
24 discussions in chambers it's not broadcast here. But  
25 I want to meet with counsel and -- parties in

1 chambers.

2 If the jury wants to stretch, use the restroom,  
3 -- then if we do have some individual questioning  
4 that's necessary -- We'll take that up at this time  
5 and then come back and we'll handle the peremptory --  
6 we'll handle the questioning by the lawyers.

7 Okay? So, if you want to stretch, and relax,  
8 use the restroom, you'll be able to. And I'll meet  
9 with counsel and Mr. Herron in chambers.

10 *Recess open court*

11 *In chambers, jurors talking in next room*

12 *Only one mic' in chambers for four speakers*

13 THE COURT: We're on the record.

14 THE CLERK: Yes.

15 THE COURT: Okay.

16 Why don't we talk about some of these people  
17 that have issues -- And we won't bring -- we'll agree  
18 that some of these should be excused. We don't have  
19 to ask them any questions, don't have to bring them  
20 in.

21 I excused number -- Let me see, here. I've  
22 knocked off 4 and 16--

23 MR. MONSON: And No. 9 as well.

24 MR. DRUFFEL: Number--

25 THE COURT: Was that the--?

1 MR. MONSON: She was the nursing--  
2 THE COURT: --nursing--  
3 MR. MONSON: --she was the nursing mother.  
4 She's right on the -- she's right on--  
5 THE COURT: Eileen sent her home.  
6 MR. MONSON: --right on the edge of the bench,  
7 next to the guy with the hearing -- No. 10 with the  
8 hearing--  
9 COUNSEL: Well, I -- there hasn't been any  
10 record made -- Are we on -- we're on--  
11 COUNSEL: We're the record.  
12 COUNSEL: And that's on the record, too,--.  
13 THE COURT: Nine was the nursing mother.  
14 COUNSEL: Nine I believe was the nursing  
15 mother.  
16 THE COURT: Was she in the courtroom?  
17 COUNSEL: No.  
18 THE COURT: She was here earlier--  
19 COUNSEL: I saw--  
20 THE COURT: --I saw--. I think that she had  
21 some problems -- Eileen sent her home.  
22 COUNSEL: (Inaudible) both crossed out?  
23 THE COURT: Well, there was--  
24 COUNSEL: I've got--  
25 THE COURT: Someone had a--

1 COUNSEL: --sixteen--.

2 THE COURT: There were some that had --

3 somebody had a car wreck, or a car problem--

4 COUNSEL: Yeah. I wasn't aware that two--

5 THE COURT: --on the way--

6 COUNSEL: So two is gone.

7 THE COURT: Two did not show for some reason --

8 was excused earlier.

9 Four, I knocked off today. She had the

10 mother's funeral.

11 Nine was the nursing mother. Apparently, she

12 showed, had the baby, and Eileen sent her home.

13 Fifteen had football camp. I excused him.

14 COUNSEL: I didn't know he was--.

15 THE COURT: And I don't know about sixteen.

16 COUNSEL: Sixteen I think--

17 THE COURT: Oh--

18 COUNSEL: --she--

19 THE COURT: Yeah. Yeah.

20 COUNSEL: Was it the child? I thought she

21 said--

22 THE COURT: I thought she said child.

23 COUNSEL: She said dog. She's very emotional

24 about it--

25 THE COURT: Oh. I thought she said child.

1 COUNSEL: Close.

2 THE COURT: Well, she was pretty upset.

3 All right. And -- or, 18 is gone.

4 COUNSEL: Eighteen is gone?

5 THE COURT: And that was one that there was

6 some -- called in this morning, and I don't recall the

7 reason -- just didn't show.

8 And then 31--

9 COUNSEL: And I think -- (inaudible)--

10 THE COURT: I think 31 was the problem -- had a

11 car wreck or something.

12 Some of these called last week.

13 COUNSEL: Oh, did they?

14 THE COURT: Shane Severe -- not here; I don't

15 know why.

16 COUNSEL: So -- Patricia Otter is--

17 THE COURT: 31's not here. 48 -- not here. 53

18 and 54 are not here.

19 COUNSEL: We knew -- 54, we knew about.

20 THE COURT: Well, and there was -- some of them

21 called late Friday, I think.

22 So, the bottom line is, 2 is gone, -- 4's gone.

23 9's gone. 15, 16, 18, 31, 48, 53 and 54.

24 COUNSEL: 40. Fibromyalgia.

25 THE COURT: Oh, and 40.

1 All right. So, one didn't have any -- she had  
2 some issue but said she could be fair.

3 You -- and knows you--.

4 COUNSEL: And (inaudible).

5 THE COURT: One's that. 17's leaving on a  
6 vacation Friday. That's the grandmother.

7 COUNSEL: (Inaudible).

8 THE COURT: But I don't think she had any  
9 problem 'til Friday.

10 COUNSEL: Well, we know, your Honor, this is  
11 going into Wednesday for sure -- because that's when  
12 the DNA--.

13 THE COURT: Are you dead certain it will be  
14 over Thursday?

15 MR. MONSON: I don't know. It depends on how  
16 long Denis takes to extract information from his DNA  
17 folks. But we're -- I've got my gal -- I told her  
18 that we're planning on starting with DNA right at 9:00  
19 unless something else--

20 THE COURT: Wednesday.

21 COUNSEL: I think--.

22 THE COURT: Okay. So Friday people we're not  
23 going to worry about. Keep 17 right now.

24 What about this lady, No. 19, that works nights  
25 to avoid paying for a baby-sitter?

1           COUNSEL: I think she ought to be excused. I  
2 don't -- a couple other--

3           THE COURT: There's a couple other -- Oh.  
4 Nineteen.

5           COUNSEL: I think we had a--

6           THE COURT: I'll excuse 19.

7           Now, I can't read my writing on 20. I've got  
8 something.

9           COUNSEL: Convention in--

10          THE COURT: Convention.

11          COUNSEL: --Thursday in Connecticut.

12          THE COURT: Leaves Thursday. So that might  
13 be--

14          COUNSEL: You know, she was on (Inaudible). I  
15 remember her. She was right--

16          THE COURT: I remember--

17          COUNSEL: --right in the front row, right in  
18 the front row in the middle.

19          THE COURT: All right. I'm going to -- She  
20 won't be here--

21          MR. MONSON: She's got to leave on Thursday is  
22 what I've got, your Honor.

23          THE COURT: Well,--

24          MR. MONSON: That's No. 20.

25          THE COURT: Now on her, I would think that's

1 something she could reschedule, and it wouldn't --  
2 it's not a pressing -- I don't think that's grounds to  
3 send her home.

4 MR. MONSON: Is it something that we could give  
5 her some time to call and find out

6 THE COURT: I don't see why not. If she can.  
7 Let's go back to -- 20.

8 Okay. So we'll do -- we'll do like -- we'll do  
9 20 and 8, we'll keep them on right now, talk to them  
10 more.

11 All right. 22 had doctor appointment in  
12 Seattle. He's good through Thursday, so we don't  
13 need to worry about him.

14 COUNSEL: (Inaudible).

15 THE COURT: And he had other issues.

16 MR. MONSON: --got some -- He's expressed some  
17 pretty strong opinions (inaudible).

18 THE COURT: But then you might look at his  
19 questionnaire--

20 MR. MONSON: I remember looking at his  
21 questionnaire--

22 THE COURT: He pretty well said he'd have  
23 trouble being fair in a case involving a sex  
24 allegation. But we can bring him in and talk to him  
25 in greater detail.

1 MR. MONSON: Yeah. We don't know if it's  
2 somebody who was falsely accused or somebody that was  
3 a victim. We don't know a lot about--.

4 COUNSEL: I'm just -- concerned about --  
5 concerned--

6 THE COURT: 25 said he had a three-day business  
7 trip, can't reschedule. Do we have an agreement that  
8 -- we want to talk to him?

9 COUNSEL: (Inaudible).

10 THE COURT: And -- 27 was, I believe, the self-  
11 employed hairdresser.

12 COUNSEL: (Inaudible) five.

13 THE COURT: Oh, no. 27 is Rick Van Tine. I  
14 think he's okay. He works for the grange. He drives  
15 a fuel truck. I think there's others that can--

16 MR. MONSON: (Inaudible). I thought you did--

17 THE COURT: We had--

18 COUNSEL: Oh, did he--

19 THE COURT: --29, the -- student. Starts  
20 summer school today.

21 MR. MONSON: I -- Well, the problem with summer  
22 school is just -- it's super-concentrated.

23 COUNSEL: It is super-concentrated.

24 (Inaudible) -- hour every day.

25 COUNSEL: --taking it right now.

1           COUNSEL: --finish the summer -- there's one  
2 (inaudible)--.

3           THE COURT: All right. Let's -- Denis just  
4 handed me No. 10's questionnaire. "Do you have any  
5 reason to believe you might not be able to be fair and  
6 impartial in a case involving allegations of a sexual  
7 nature." He said, "Yes. I have a very strong and  
8 emotional response against sexual predators or persons  
9 who commit unwanted sexual acts, -- relates to sexual  
10 abuse that occurred within a member of my immediate  
11 family."

12           He pretty well said he'd have trouble being  
13 fair. So I'm going to knock No. 10. -- strike him by  
14 cause. Plus he's got the (inaudible).

15           COUNSEL: And the hearing--

16           THE COURT: And the hearing--.

17           Okay. 27's okay. 29, starts class today.  
18 What are we going to do with the student? If you  
19 agree, I'll knock her; if not, we can talk to her some  
20 more.

21           COUNSEL: I don't have any objection.

22           THE COURT: I don't think she's shown a  
23 hardship, but you -- sometimes if you keep people that  
24 don't want to be here they're not good jurors. So,--

25           MR. MONSON: Well, I'd -- I'd be worried if I

1 were missing a full week of--

2 THE COURT: Okay. So you both agree to knock  
3 29? Strike her?

4 Or not?

5 COUNSEL: Yes.

6 THE COURT: I mean, I don't think there's legal  
7 grounds. And I'm not pressuring anybody. So -- both  
8 agree to knock 29 -- strike.

9 I think we've got 20 jurors -- (inaudible).

10 40. Health concerns. 40 sounded pretty  
11 serious--

12 COUNSEL: (Inaudible).

13 THE COURT: Oh. Wow. I still think -- strong  
14 (inaudible).

15 COUNSEL: (Inaudible).

16 THE COURT: No. 8. (Inaudible).

17 *Talking in other room overpowers voices*

18 THE COURT: Oh, yeah. (Inaudible). And No.

19 42. Doctor appointment tomorrow--. You agree to  
20 strike 42?

21 43 sounded -- He's got documentation. I need  
22 to get that. Doesn't say much. He is on State  
23 Industrial. "We've determined" -- Well, no. "We have  
24 determined that you are eligible for vocation rehab'  
25 services." "(Inaudible) disability and require

1 vocational rehabilitation services, you get to keep  
2 your job."

3 COUNSEL: (Inaudible).

4 THE COURT: "Priority Category No. 2,  
5 individual with severe disabilities." This doesn't  
6 document -- He said it was panic attacks and what  
7 else?

8 MR. MONSON: Anxiety.

9 THE COURT: Anxiety.

10 MR. MONSON: --anxiety, and he was--

11 THE COURT: Would have trouble being here--

12 MR. MONSON: --experiencing claustrophobic  
13 extremes (inaudible).

14 THE COURT: So, any objection to striking --  
15 43?

16 COUNSEL: No objection.

17 THE COURT: Okay. So both sides agree; 43--.

18 I've got 46 -- has to be -- Sounds like that's  
19 just a day care issue, but we'd have -- we'd have to  
20 quit by 5:00.

21 MR. MONSON: I mean, if we were sensitive --  
22 The only -- the only issue would be when -- when the  
23 jury starts deliberations. And that might be a  
24 concern for both (inaudible).

25 THE COURT: All right. Let's keep her and talk

1 to her. You can talk to her about--. She's -- 46.

2 And 51 is the hairdresser. Fifty -- fifty-  
3 five.

4 COUNSEL: (Inaudible).

5 MR. MONSON: I saw he wrote something -- when  
6 he turned in his jury questionnaire--.

7 COUNSEL: Oh, that's right. --out of work--

8 COUNSEL: (Inaudible).

9 THE COURT: Do you want to talk to him? He's  
10 way -- he's 55. He's the last one.

11 Now we've already struck 19, right? And we've  
12 struck 10. So we don't need to talk about those any  
13 further.

14 Okay. Do you want to -- everybody -- you guys  
15 have your questionnaires in order? What's--

16 COUNSEL: (Inaudible).

17 THE COURT: Well, I thought we'd take--

18 COUNSEL: (Inaudible).

19 THE COURT: Yeah. In order.

20 One is still around. Two is gone. Three's  
21 still around. Four -- we can -- we do need -- there  
22 was a response, we don't need to worry about -- Five,  
23 still around. Six, still around. Seven, eight, still  
24 around. Nine and ten are gone.

25 Ten is gone. Eleven is still around.

1 Sixteen is gone. Seventeen -- (inaudible).  
2 COUNSEL: Eighteen, nineteen--  
3 THE COURT: --didn't respond. Nineteen --  
4 What's 13?  
5 COUNSEL: Thirteen--  
6 THE COURT: --still here.  
7 COUNSEL: --still here.  
8 THE COURT: Nineteen, -- is gone.  
9 Twenty is here. 21, -- (inaudible).  
10 COUNSEL: Your Honor, not knowing how much  
11 longer it will be, shall we let those others go now?  
12 THE COURT: Yeah. Let them--.  
13 Thirty.  
14 Okay. Now,--.  
15 Now, what I had thought is -- on the last page,  
16 Question No. 7, your survey about things they agree or  
17 disagree, not to talk to them individually, no, -- so  
18 just giving you guys an idea -- (inaudible).  
19 Let's go back to -- Let's start with number --  
20 I tried to sort out those that -- still have  
21 (inaudible). Number one. Anybody see any reason to  
22 individually inquire of No. 1?  
23 MR. MONSON: The only -- the only reason would  
24 be if she's -- somewhat uncomfortable -- discussions  
25 about sexual -- sexual behaviors.

1 THE COURT: I'm going to let you handle that  
2 individually, (inaudible). That's not--.

3 One, we won't bring in. Three. Looks like --  
4 sometimes defendants may be--. No reason to bring in  
5 No. 3.

6 Number five. (Inaudible).

7 *Voices in other room much louder*

8 THE COURT: Number six, close family member--.  
9 Number six, Julia (Inaudible). So maybe we better  
10 bring her in.

11 Number seven, "I have no reason to believe that  
12 I -- not be able to be fair and impartial"--.

13 She does say (inaudible).

14 (Inaudible) based on (inaudible) -- Juror  
15 No. 6?

16 COUNSEL: I'd just (inaudible) -- how closely  
17 related is (inaudible).

18 THE COURT: Number eight. Close friend or  
19 family -- She's got a -- she's got three (inaudible).  
20 Better bring her in. Weren't we going to talk to her  
21 about something anyway?

22 COUNSEL: Yep.

23 THE COURT: Her interview--

24 COUNSEL: --interview--

25 THE COURT: So we'll--

1 COUNSEL: --your Honor. And (inaudible) --  
2 clarify her--

3 *Voices in other room overpower recording*

4 THE COURT: We could do that on--.

5 No reason -- Yeah. We're just going to talk  
6 about -- first two pages of the questionnaire. In  
7 chambers. But he did (inaudible) issues.

8 Number eleven. Better bring eleven back.

9 Twelve, (inaudible).

10 MR. MONSON: That was Mr. -- He was the other  
11 one who got up and expressed some--

12 THE COURT: So bring him in.

13 Thirteen. (Inaudible). So -- don't need to  
14 bring her in. --hope I have the right--.

15 COUNSEL: No. 14 has (inaudible).

16 THE COURT: Let's see. I've mixed my files up.  
17 Six -- We're bringing her in or not bringing her in?  
18 Bringing--.

19 COUNSEL: Six, seven--

20 COUNSEL: Six, seven--

21 THE COURT: Eight.--

22 COUNSEL: Eight--

23 THE COURT: Eleven--

24 COUNSEL: --eleven in as well?

25 THE COURT: Yep. And twelve. (Inaudible).

1 *Voices from other room overpower recording*

2 THE COURT: Better bring -- fourteen--

3 COUNSEL: Seventeen--

4 THE COURT: Seventeen. Bring in.

5 Twenty we'd need to bring in.

6 Twenty-one -- No, no, no, no, no. We don't  
7 need to bring in 21.

8 Twenty-two. No, no. (Inaudible).

9 Twenty-three. (Inaudible). --twenty-three?

10 *Voices from other room overpower recording*

11 THE COURT: Twenty-four -- No, no, no, no, no--  
12 --bring in to be safe? If they say no--.

13 Well, -- he's answered yes -- yes to

14 Question 4. "Any member of your family or close  
15 friend ever been accused of or charged with a crime  
16 involving sexual -- says yes. And in 6 he says -- can  
17 be fair and impartial.

18 Twenty-five. We'll bring in 25.

19 Twenty-six has yes, -- better bring in --  
20 better bring in 26.

21 Twenty-seven, no, no, no, no, no,--.

22 Twenty-eight, no, no, no -- We have to bring in  
23 28.

24 Thirty. No, no, no -- No, no. We won't bring  
25 in 30.

1 Thirty-two, -- one yes -- bring--.  
2 Thirty-three, no, yes -- bring--.  
3 Thirty-four, no, no, no, no -- will not bring  
4 in.  
5 Thirty-five -- bring in 35--.  
6 Thirty-six -- has a yes -- (inaudible).  
7 Thirty-seven -- no, no, -- (inaudible) 37?  
8 Thirty -- You want 38?  
9 COUNSEL: (Inaudible).  
10 THE COURT: Okay. Thirty-nine. --one yes --  
11 Question 4.  
12 Let's bring in 39--.  
13 COUNSEL: 39 didn't mark yes--  
14 THE COURT: --bring her in.  
15 *Voices from other room overpower recording*  
16 THE COURT: And 41 I'd bring in.  
17 Forty-four, we don't need to do. (Inaudible).  
18 Forty-five we don't need to.  
19 (Inaudible) -- a couple yeses; we'll bring in.  
20 Forty-seven, I don't -- (inaudible).  
21 Forty-nine -- one yes -- (inaudible) 49.  
22 Fifty--.  
23 COUNSEL: (Inaudible) 47 (inaudible)?  
24 THE COURT: Oh, no. We won't bring in--  
25 MR. MONSON: (Inaudible) yes. I think we

1 (inaudible).

2 THE COURT: All no's. (Inaudible) bring in.

3 Fifty-one -- no, no--

4 MR. MONSON: There's a yes--

5 THE COURT: It says yes for (inaudible).

6 *Voices from other room overpower recording*

7 THE COURT: Fifty-two we don't need to bring  
8 in. Fifty-five--.

9 So the bring-ins I have are 54, 49, 46, 41,  
10 (inaudible), 36, 35, 33, 32, 26, 25, 24, 23, 20, 17,  
11 14, 12, 11, 8, 7, 6. (Inaudible) bring them in,  
12 starting (inaudible).

13 COUNSEL: (Inaudible)

14 THE COURT: --coming -- not coming in.

15 Well, before we bring them in, I'm going to  
16 send some of these home. Let's make -- Some of these  
17 might not be here in the first place, but these are  
18 the ones I said I'd excuse, some of which are agreed:  
19 2, 4, 9, 10, 15, 16, -- so, 15, 16, 18, 19, 29, 31,  
20 40, 42, 43, 48, 53 and 54. Everybody agree? I can  
21 send--.

22 COUNSEL: (Inaudible).

23 THE COURT: And what I'll do is put--.

24 THE CLERK: (Inaudible).

25 THE COURT: Yeah. But I'm just thinking --

1 Well, -- I'll put the witness right here. I'll put  
2 the juror--.

3 THE CLERK: No. He's gone.

4 THE COURT: Oh.

5 COUNSEL: Forty-three?

6 COUNSEL: Forty-three, yeah.

7 COUNSEL: (Inaudible) 43 (inaudible).

8 *Voices from other room overpower recording*

9 THE COURT: --I'd like to bring -- (inaudible).

10 Would you like me to -- excuse these?

11 (Inaudible). I'm just going to go out and excuse  
12 these. Then we'll bring these in -- These, and I'll  
13 -- (inaudible).

14 COUNSEL: (Inaudible)?

15 THE COURT: Sure.

16 COUNSEL: (Inaudible).

17 *Voices from other room overpower recording*

18 THE COURT: Yeah. (Inaudible)--

19 MR. MONSON: (Inaudible). There might be a few  
20 problems, but--

21 THE COURT: We're still on the record?

22 COUNSEL: (Inaudible).

23 THE COURT: Yeah.

24 *Voices from other room overpower recording*

25 THE COURT: Okay. We're going to go -- go back

1 in (inaudible).

2 THE CLERK: (Inaudible).

3 THE COURT: Do we have some downstairs?

4 THE CLERK: Yeah. (Inaudible).

5 THE COURT: All right.

6 *Judge returns to courtroom*

7 THE COURT: Now, do we have all the jurors back  
8 in the courtroom? Okay, well, all we're going to do  
9 at this time is, we've gone through and -- I'm going  
10 to name those that are going to be excused so they can  
11 be on their way. If I don't call your name, don't  
12 leave; make sure you stay. Some of these I'll be  
13 calling have already been excused, such as Juror  
14 No. 2, Heather Rossman. Juror No. 4 is excused.  
15 Juror No. 9, Ms. Gregg, Janet Gregg, will be excused.  
16 So you're free to leave, Ms. Gregg.

17 No. 10, Gary Meadows, is excused, so you're  
18 free to leave. And Terry (Inaudible) has already been  
19 excused. No. 16, Jennifer Jansen, already excused, I  
20 believe. Juror No. 18 is excused. Juror No. 19,  
21 Connie Johnson, excused. Free to leave, Ms. Johnson.  
22 Thank you all for coming in, those of you that I'm  
23 excusing.

24 Juror No. 29, Talia Jensen, is excused. Juror  
25 No. 31, Patricia Ager, is excused. Juror No. 40 has

1       been excused and has already gone. Juror No. 42 is  
2       excused. And Juror No. 43 is excused. Juror No. 49  
3       is excused.--

4               COUNSEL: 48, your Honor--

5               COUNSEL: Excuse me, your Honor. 48.

6               THE COURT: I'm sorry. 48. 49 has to stay.  
7       Don't get excited, Ms. Whitman. (Laughter)

8               And then -- then Juror No. 53 and Juror No. 54  
9       are excused.

10              All right. So those of you that are remaining,  
11       we're going to at this time be calling in a few of you  
12       for some examination in chambers. And the clerk will  
13       have you come in when we're ready to proceed. But I  
14       wanted to--

15              THE CLERK: Your Honor?

16              THE COURT: Yes.

17              THE CLERK (off mic'): There were some who were  
18       still in the jury room that I overlooked -- some of  
19       the first few numbers that you read, I believe we  
20       missed one, perhaps.

21              THE COURT: Well, Juror No. 2 is excused,  
22       No. 4, No. 9, 10, 15, 16, 18, 19, 29, 31, 40, 42, 43,  
23       48, 53 and 54. Those jurors are all excused. If any  
24       of you remain--.

25              Okay? So, we'll start the individual

1 examination. I'll have counsel and -- return to  
2 chambers, and--.

3 *In chambers:*

4 THE COURT: Now I'm going to flip --  
5 (inaudible).

6 COUNSEL: Okay.

7 COUNSEL: --chairs--

8 THE CLERK: (Inaudible) over here--

9 THE COURT: Okay.

10 THE CLERK: --(inaudible).

11 THE COURT: We've got to wait for genius, here,  
12 and then we'll--.

13 COUNSEL: (Inaudible)--

14 THE CLERK: Huh?

15 COUNSEL: Is Denis coming--.

16 THE COURT: No, no, no. Sorry.

17 THE CLERK: --that much.

18 COUNSEL: (Inaudible).

19 *Voices from other room overpower recording*

20 THE COURT: You don't want to be (inaudible) in  
21 front of these jurors, here--

22 COUNSEL: No.

23 THE COURT: Let's bring in No. 6.

24 *Juror enters chambers*

25 All right. Ms. (Inaudible)--

1 JUROR: Yes.

2 THE COURT: I'll let you have a seat right  
3 here. And -- probably be passing around the  
4 microphone--

5 JUROR: Okay.

6 THE COURT: --in case other people have  
7 questions. We brought you in based on a response to  
8 Question No. 2, which says, "To your knowledge has any  
9 member of your family or close friend ever been the  
10 recipient of an unwanted sexual contact."--

11 JUROR: Uh-huh.

12 THE COURT: I believe your answer was yes.

13 JUROR: Yes.

14 THE COURT: And you had also indicated that you  
15 felt you could be fair and impartial--

16 JUROR: Yes.

17 THE COURT: --but I wanted to give the  
18 attorneys an opportunity to follow up on your  
19 response, and do it in a confidential--

20 *Voices from other room overpower recording*

21 JUROR: (Inaudible).

22 THE COURT: All right.

23 COUNSEL: Well, thank you, your Honor.

24 (Inaudible) family or -- close friend (inaudible).

25 JUROR: Sure. A good friend of mine who I'd

1 known since college, probably five or six years  
2 (inaudible) college, was in a relationship with a man  
3 and -- she just said one time that one of the -- on  
4 one occasion she probably didn't want to have sex, and  
5 they did have sex. And so that was -- the incident  
6 that I -- that made me check "Yes."

7 COUNSEL: (Inaudible). So that (inaudible).

8 JUROR: Right. Right.

9 COUNSEL: (Inaudible).

10 JUROR: No.

11 COUNSEL: (Inaudible)--

12 JUROR: No.

13 COUNSEL: (Inaudible)--

14 JUROR: No.

15 COUNSEL: (Inaudible) No. 5, there,  
16 (inaudible), ever known anyone -- victim of a crime,  
17 (inaudible).

18 JUROR: No. In that instance, when I was in  
19 college two people I knew, not well, but knew, were  
20 raped. So one person was a housemate of people I knew  
21 pretty well, but I didn't know the person who was  
22 raped very well. And then I was in a psychology class  
23 and someone who I knew as a classmate talked in that  
24 class about having been raped when she was a high  
25 school student. So I knew those two people not well,

1 but I knew them.

2 COUNSEL: (Inaudible).

3 *Voices from other room overpower recording*

4 JUROR: No. I think I can be fair in this  
5 case.

6 COUNSEL: (Inaudible).

7 JUROR: Yes, I would.

8 THE COURT: (Inaudible) Mr. Monson.

9 MR. MONSON: Thank you. Thank you for being  
10 here, first of all.

11 When you talked about your -- close family  
12 friend,--

13 JUROR: Uh-huh.

14 MR. MONSON: --and Mr. Tracy asked you if there  
15 were any (inaudible) part of that--

16 JUROR: Uh-huh.

17 MR. MONSON: --question I have is do you  
18 (inaudible) played a part (inaudible)?

19 JUROR: I don't believe it did.

20 MR. MONSON: And, with regard to these people  
21 that you knew but not well, did you ever speak with  
22 them about their experiences (inaudible)?

23 JUROR: The one who was a housemate of friends  
24 of mine, I never spoke to her about it. And the  
25 classmate, I might have said, you know, after she

1       talked in class I might have said something like,  
2       "That must have been a horrible experience," something  
3       like that, but certainly not in any length.

4               MR. MONSON: Do you know if -- The allegation  
5       in this particular case (inaudible) use of force  
6       (inaudible)--

7               JUROR: Uh-huh.

8               MR. MONSON: Do you know, with regard to those  
9       two individuals that you (inaudible) -- individuals,  
10       -- allegations -- part of -- their experience as well?

11              JUROR: Right. The one classmate, there was --  
12       there was no use of force that I recall in that story.  
13       The other one it was someone who broke into her house,  
14       and so it was threatening, I'm sure, though I don't  
15       know -- I don't remember one way or the other whether  
16       there was any kind of weapon or threat (inaudible)  
17       weapon.

18              MR. MONSON: All right. And with regard to the  
19       one that wasn't a break-in, do you know if (inaudible)  
20       these other two (inaudible) -- obviously --  
21       boyfriend--

22              JUROR: Yes. In the other case it was someone  
23       who that person had met at a function that (inaudible)  
24       of a -- of an assault.

25              MR. MONSON: And I'll ask the same question

1 that Mr. Tracy did. Do any of these things that  
2 you've talked about, experiences that you heard about,  
3 affect your ability in this case to look at the  
4 evidence (inaudible)?

5 JUROR: I don't believe so.

6 MR. MONSON: (Inaudible).

7 THE COURT: (Inaudible). I'll let you go  
8 back--

9 JUROR: Okay. Thank you.

10 THE COURT: --have you--. There's more  
11 waiting.

12 JUROR: Okay.

13 *Juror leaves chambers*

14 THE COURT: We'll bring in Juror No. 7.

15 *Juror enters chambers*

16 THE COURT: (Inaudible)--

17 JUROR: Yes.

18 THE COURT: --your name? Have a seat. You've  
19 responded to one of the questions here with an  
20 affirmative response. You didn't say -- had reason to  
21 believe that -- might have a problem being fair and  
22 impartial, but because of the one response I'm going  
23 to give the lawyers a chance to individually inquire  
24 -- You understand, we're trying to keep this as -- so  
25 you don't have to disclose things in front of the

1 entire panel, in the event that they're embarrassing  
2 or sensitive--

3 JUROR: Sure.

4 THE COURT: So, Mr. Tracy can have the first  
5 opportunity if he has questions.

6 MR. TRACY: Would you mind elaborating  
7 (inaudible).

8 *Voices from other room overpower recording*

9 JUROR: Yes. I have had two close friends that  
10 have been raped. (Inaudible) place -- fifties.  
11 (Inaudible). I didn't have any -- I believe in one  
12 case (inaudible). And in the other case (inaudible).  
13 You know? That's -- that's hard to judge --  
14 circumstances (inaudible). I found out about it  
15 later, -- something was wrong, (inaudible).

16 MR. TRACY: (Inaudible).

17 JUROR: I don't think involved weapon in either  
18 case. In the first case it was just the lady took --  
19 a bike ride -- dangerous (inaudible) was accosted.  
20 And in the other case (inaudible).

21 COUNSEL: (Inaudible) you had mentioned -- and  
22 I'll apologize in advance (inaudible), but you had  
23 mentioned that they confided in you. Did they talk at  
24 length or in detail about the actual experience?

25 JUROR: No. No. (Inaudible). One was a

1 situation (inaudible) -- when you become friends with  
2 someone, but, you know, we didn't share (inaudible).

3 COUNSEL: (Inaudible).

4 JUROR: She got over this. She got married.  
5 She had children. She (inaudible).

6 COUNSEL: And was there any (inaudible)?

7 JUROR: Oh. It was maybe like five years  
8 (inaudible).

9 COUNSEL: Do you know, with regard to the date  
10 rape, whether there (inaudible)?

11 JUROR: No, (inaudible).

12 *Voices from other room overpower recording*

13 MR. MONSON: (Inaudible) Mr. Tracy (inaudible)  
14 you heard, what you discussed, (inaudible) this  
15 particular case?

16 JUROR: No. (Inaudible). I don't know about  
17 this situation. I don't (inaudible).

18 MR. MONSON: (Inaudible).

19 THE COURT: All right, (inaudible), -- let you  
20 go back--

21 JUROR: Thank you.

22 THE COURT: --re-take your seat.

23 *Juror leaves chambers*

24 *Voices from other room overpower recording*

25 THE COURT: Bring in Juror No. 8, (inaudible).

1 *Juror enters chambers*

2 THE COURT: All right. --put you on the hot  
3 seat, here. Okay?

4 And you responded "yes" to a couple of the  
5 questions, here, and we wanted to -- try to preserve  
6 as much confidentiality as possible -- have some  
7 inquiries in chambers. I'm simply going to let the  
8 lawyers see if they can (inaudible) questions,  
9 starting with Mr. Tracy.

10 MR. TRACY: (Inaudible) Mr. Druffel.

11 MR. DRUFFEL: Good morning. Thanks for being  
12 here.

13 You've answered "yes" to three of these  
14 questions, (inaudible) details (inaudible).

15 In No. 2, you marked it "yes," that a member of  
16 your family or a close friend has been the recipient  
17 of unwanted sexual contact.

18 JUROR: Correct.

19 MR. DRUFFEL: (Inaudible).

20 JUROR: I had two nieces that had been --  
21 sexually contacted by -- My sister remarried so it was  
22 her -- it was -- their -- his step-(inaudible) -- at  
23 that time -- brother -- my brother in law, which is  
24 (inaudible) -- and he was charged with (inaudible).

25 MR. DRUFFEL: (Inaudible)?

1 JUROR: In (inaudible).

2 MR. DRUFFEL: (Inaudible)?

3 JUROR: (Inaudible) was found and he admitted  
4 to it, and it went -- so basically he said yeah, he  
5 did, and then the courts gave him -- four years, --  
6 something. It had no -- nothing -- no contact with  
7 anyone under eighteen within that time, (inaudible).

8 MR. DRUFFEL: (Inaudible)?

9 JUROR: Maybe that -- something like that.

10 MR. DRUFFEL: (Inaudible)?

11 *Voices from other room overpower recording*

12 JUROR: That was -- (inaudible).

13 MR. DRUFFEL: --still referring to your niece  
14 -- questions -- do you know someone who's been the  
15 victim of a crime (inaudible)?

16 JUROR: Correct. Correct.

17 MR. DRUFFEL: (Inaudible).

18 THE COURT: Mr. Monson?

19 MR. MONSON: Thank you.

20 (Inaudible), can you tell me how old your  
21 nieces were when (inaudible)?

22 JUROR: I'm thinking about -- 12 and 15, or 13  
23 and 16.

24 MR. MONSON: Teenage?

25 JUROR: Yes.

1 MR. MONSON: And, how did this impact the  
2 family?

3 JUROR: I'll be honest. We were very upset by  
4 it. We were very upset. But -- (inaudible) went  
5 through court, he admitted it, admitted what he had  
6 done wrong, and -- (inaudible).

7 MR. MONSON: Did he end up actually serving  
8 jail time?

9 JUROR: He did (inaudible) went to -- He was --  
10 work release so he could go out during the day -- come  
11 back into jail at night. And I think that  
12 (inaudible).

13 MR. MONSON: How, -- (inaudible) law  
14 enforcement (inaudible)?

15 JUROR: I think they treated him fairly enough.

16 *Voices from other room overpower recording*

17 JUROR: So I'm thinking that it (inaudible).

18 MR. MONSON: (Inaudible).

19 JUROR: As far as I -- I don't know, but as far  
20 as I know I don't think so.

21 MR. MONSON: And is there anything about  
22 (inaudible) with regard to (inaudible) court  
23 procedures, ultimate disposition -- Well, let me back  
24 up. Assuming he keeps his nose clean, -- his charges  
25 are dismissed, what are your thoughts on that? Is

1 that fair? Is that unfair? Or--?

2 JUROR: I'm fine with it now, because I feel it  
3 was fair that he'd learned his lesson and that he  
4 could move on now -- He's got his life (inaudible).  
5 Because I figure, he wouldn't be out there now if he  
6 wouldn't have gotten involved in any (inaudible).

7 MR. MONSON: So you're okay with the idea that  
8 -- come in (inaudible) the court system and then  
9 essentially (inaudible)?

10 JUROR: Right. Because I think the courts have  
11 it set up now that they watch those people real  
12 closely, and they -- watch them closely, and  
13 (inaudible).

14 MR. MONSON: I'll go back to my other question  
15 that I was right in the middle of when I (inaudible).  
16 Is there anything about what he experienced, which was  
17 a family experience, the court process, dealing with  
18 him, anything like that, that would cause you--

19 JUROR: No.

20 MR. MONSON: --pause, or cause you -- to have  
21 an inability to judge this case on its merits, and  
22 kind of separate what happened back then with what's  
23 going on right now?

24 JUROR: No, I don't believe so. In fact, --  
25 Oh, I take that back. I did see him, because we went

1 to -- my other -- In the family there are four kids.  
2 And it was the older girls. Then there is a third  
3 girl that was his daughter. And she got married about  
4 five -- four or five years ago. And he was there at  
5 the wedding. And we all saw him, (inaudible).

6 MR. MONSON: So right now (inaudible)?

7 *Voices from other room overpower recording*

8 JUROR: We've gone to a lot of things -- and  
9 we've accepted a lot, and we understand how things  
10 have happened (inaudible).

11 MR. MONSON: (Inaudible).

12 THE COURT: Okay. Thank you very much.

13 *Juror leaves chambers*

14 THE COURT: Bring in Juror No. 11, Lindsey  
15 Warner.

16 *Juror enters chambers*

17 THE COURT: Hi.

18 JUROR: Hi.

19 THE COURT: We'll let you have a seat, here,  
20 and we're going to have some questions from your  
21 responses on the questionnaire--

22 JUROR: Uh-huh.

23 THE COURT: And you had indicated your brother  
24 had been -- accused--

25 JUROR: Correct.

1 THE COURT: And -- get the impression you're  
2 indicating that that would affect your ability to be  
3 fair here--?

4 JUROR: I think that I would definitely try my  
5 hardest not to let that, but it's -- engrained in me,  
6 kind of. But there was a female that made up a very  
7 horrible story that caused a lot of heartache in my  
8 family, and to this day still affects my brother very  
9 -- very much.

10 THE COURT: How long--

11 JUROR: It was, I think in 2002.

12 THE COURT: Was that here or some other--

13 JUROR: It was in Tri-Cities. And he now lives  
14 in Montana, partly because -- how hard the process was  
15 on him -- police showing up at his place of  
16 employment, -- to do DNA testing -- the friends circle  
17 and the family circle and everything. So,--

18 THE COURT: The lawyers may have -- Mr. Tracy  
19 or Mr. Druffel do you have some questions?

20 *Voices from other room overpower recording*

21 MR. DRUFFEL: Well, you've indicated on  
22 Question 2, which indicates (inaudible).

23 JUROR: A close friend of mine, when I was -- I  
24 think probably 16, had -- consumed too much alcohol  
25 and been taken advantage of by a friend who -- who was

1       perceived as a friend at the time.

2               MR. DRUFFEL:  And--

3               JUROR:  There was no legal -- any -- there was  
4       no charges pressed in that case or anything like that,  
5       but--.

6               MR. DRUFFEL:  --you believe that alcohol  
7       (inaudible)?

8               JUROR:  Yes, sir.

9               MR. DRUFFEL:  (Inaudible)?

10              JUROR:  No.  She was -- not in and out of  
11       consciousness, but -- not there, due to her intake.

12              MR. DRUFFEL:  (Inaudible) accused or charged  
13       with a crime, (inaudible) this is the instance  
14       involving your brother?

15              JUROR:  Correct.

16              MR. DRUFFEL:  Were there any other instances?

17              JUROR:  No, sir

18              MR. DRUFFEL:  Just--

19              JUROR:  --not to memory.

20              MR. DRUFFEL:  All right.  And, you said that  
21       occurred in 2002 in Tri-Cities, (inaudible).

22              JUROR:  It was--

23              MR. DRUFFEL:  --complaining witness--

24              JUROR:  It's kind of a weird story.  What it  
25       was -- I guess I could just tell you a little bit of

1 it -- more -- details the story, was -- a close friend  
2 of my family, and a business partner of my dad, had  
3 taken in this individual because she had come from a  
4 hard past. And so, it was like a -- almost like an  
5 adopted child, with not -- no paper work.

6 She had -- made comments to other people about  
7 -- that -- that my brother Travis had raped her, and a  
8 parent had heard that comment and then called the  
9 police. The police showed up and arrested my brother  
10 at his place of employment. Then they did -- Then the  
11 police came to our house on several occasions in my  
12 neighborhood, and after doing DNA testing and  
13 everything like that the charges were dropped, but  
14 they had asked my brother to -- register as a sex  
15 offender and everything like that, and -- And  
16 everything's done with now. But she had just made  
17 comments to somebody and it had been, I think, blown  
18 out of proportion more than she had admitted to, but  
19 then I think she had thought that it was over her head  
20 so she couldn't go back.

21 So, -- Did I answer your question? Or did I  
22 kind of just--

23 MR. DRUFFEL: You're getting there, yeah.

24 JUROR: Okay.

25 MR. DRUFFEL: How old is your brother?

1 JUROR: He's 25 now.

2 MR. DRUFFEL: Okay. So he was about twenty  
3 then?

4 JUROR: I believe so. When she was a minor  
5 and--

6 MR. DRUFFEL: --complaining witness? Do you  
7 know?

8 JUROR: I think she was 16 -- 16 or 17. She  
9 was a minor at that time, and so that made it very  
10 much more even a bigger deal.

11 MR. DRUFFEL: (Inaudible).

12 JUROR: Yeah. I think that she potentially  
13 could have some mental health problems. After that  
14 she was kicked out of school, some months later, for  
15 sexual acts at school, and then she shaved her head  
16 and -- changed her sexual preferences and moved to  
17 Arizona like -- It's -- She just doesn't seem like a  
18 very stable person. And I haven't been in contact  
19 with her for many years, but -- it still affects our  
20 family, I think, definitely.

21 MR. DRUFFEL: All right. And you think that  
22 that -- that issue (inaudible) able to keep that  
23 separate and view this case on the facts (inaudible)?

24 JUROR: I think that I definitely would do my  
25 very best. And I feel like I'm a well-rounded person

1 and I know that that's -- one circumstance, and that  
2 that is not how everything goes. So, I think I could.  
3 I think I would just have to give myself some mental  
4 checks every once in a while, that -- you know, to try  
5 to leave my past behind -- focus on the facts.

6 MR. DRUFFEL: (Inaudible).

7 JUROR: That was the one I'd said previous --  
8 Oh. They weren't charged. So I guess that maybe -- I  
9 marked that incorrectly. But they never--

10 MR. DRUFFEL: Oh. So you were talking  
11 (inaudible)--

12 JUROR: The female--

13 MR. DRUFFEL: --we've already talked about.

14 JUROR: Yes, sir.

15 MR. DRUFFEL: Okay. I have nothing further.

16 THE COURT: (Inaudible) Monson?

17 MR. MONSON: You mentioned that, with regard to  
18 the -- your friend (inaudible) had too much to drink  
19 (inaudible). Is it your opinion that alcohol had  
20 played a role in what happened?

21 JUROR: Yeah. And I don't -- by any means -- I  
22 don't want to say I'd fault her, but I think that her  
23 over-consumption was at fault, which was her choice.  
24 She was young and stupid and didn't know what she was  
25 doing. So, -- I don't want to say that part of it's

1 her fault, but in my mind I think that sometimes, I  
2 guess, her decision caused that--

3 MR. MONSON: Is it fair to say it clouded her  
4 judgment (inaudible)?

5 JUROR: Yeah. Definitely fair to say that.

6 MR. MONSON: (Inaudible).

7 JUROR: Thanks.

8 THE COURT: All right. Thank you very much--

9 JUROR: Thank you.

10 THE COURT: (Inaudible).

11 *Juror left chambers*

12 THE COURT: Okay. Before we (inaudible) --  
13 Number 11 -- No; 12 will be next. Any challenges --  
14 Juror No. 11?

15 COUNSEL: (Inaudible).

16 MR. DRUFFEL: I think she's (inaudible).

17 THE COURT: Well, I'm going to take the safe  
18 course. (Inaudible) excuse (inaudible). She --  
19 expressed some reservations, and (inaudible), so--

20 COUNSEL: (Inaudible).

21 THE COURT: Shirley, we can bring in Juror  
22 No. 12.

23 Did you hear me, Shirley?

24 *Juror enters chambers*

25 JUROR: --do you want me to sit?

1 THE COURT: Well, we'll have you sit right  
2 there. And we're bringing in those that have  
3 responded to the questionnaire, and did -- you  
4 responded in the affirmative on a couple questions--

5 JUROR: Uh-huh.

6 THE COURT: --indicated you thought you could  
7 be fair--

8 JUROR: Uh-huh.

9 THE COURT: --but the lawyers may--

10 JUROR: Sure.

11 THE COURT: --want to follow up with some  
12 questions--

13 JUROR: Sure.

14 THE COURT: Mr. Tracy or Druffel, any questions  
15 for Mr. (Inaudible).

16 MR. TRACY: Good morning. So, on Question  
17 No. 2, this is -- your knowledge -- member of your  
18 family or a close friend--

19 JUROR: Uh-huh.

20 MR. TRACY: --victim of unwanted sexual  
21 contact.

22 JUROR: It was a friend.

23 MR. TRACY: A friend?

24 JUROR: Yeah.

25 MR. TRACY: Can you give us just a little bit

1 of background?

2 JUROR: She lived in Clarkston -- Yeah. It was  
3 just a -- I didn't really want to push her too much on  
4 it, 'cause it was really devastating towards her, and  
5 she didn't really want to talk about it. And it  
6 happened before I really got to know her. But it was  
7 -- All she would say -- it was forced, it was a forced  
8 rape, and -- And I just see from her -- from her -- I  
9 mean, she was really devastated by the whole  
10 situation.

11 MR. TRACY: Okay. And then on No. 5 you also  
12 (inaudible)--

13 JUROR: Yeah. Yes. Well, no; it's a different  
14 person. Different person I know. And she just -- It  
15 was -- it happened when she was 16. I think she's --  
16 she's older now; she's like in her mid to late 40s, so  
17 -- And she just -- she was just -- it's funny, 'cause  
18 we were just talking about this just last week, and  
19 she just brought it up and said -- again, she was just  
20 saying how it really affected her life.

21 MR. TRACY: (Inaudible).

22 JUROR: She's just a friend. No; she was just  
23 a friend, just someone I know -- and acquaintance.

24 MR. TRACY: And, (inaudible)--

25 JUROR: I would -- I was -- I went out with her

1 for a little while.

2 MR. TRACY: And that was (inaudible) this  
3 other--?

4 JUROR: Yeah. She -- she was just raped. It  
5 was -- Yeah. She didn't really go into detail. And  
6 again, I didn't push -- I didn't push her on it, so--.

7 MR. TRACY: Sure. Sure. Now, you know here  
8 that--

9 JUROR: Uh-huh.

10 MR. TRACY: --(inaudible)--

11 JUROR: Yeah.

12 MR. TRACY: --(inaudible) involving--

13 JUROR: Yeah. Hook up.

14 MR. TRACY: But, -- the allegation is--

15 JUROR: Uh-huh.

16 MR. TRACY: --allegation of rape--

17 JUROR: Yeah.

18 MR. TRACY: Would you able to set aside  
19 (inaudible) just decide the case -- evidence--

20 JUROR: I -- I think I can. But, you know,  
21 even right now -- I feel anger. Very--

22 MR. TRACY: (Inaudible).

23 JUROR: --just boiling up, just from that -- I  
24 just feel, you know, sometimes -- You know, if you  
25 don't want to be accused from it, don't put yourself

1 in that situation. I'm sorry, but -- I just --  
2 irritates me when I -- 'cause there's -- Yeah.

3 MR. TRACY: (Inaudible).

4 JUROR: I think I could set it aside. I'm  
5 going to be honest. I -- I -- I'm pretty sure I  
6 could. I -- But I would -- it would--

7 MR. TRACY: (Inaudible).

8 JUROR: --where I could -- you know -- it just  
9 -- just -- Yeah, (inaudible).

10 MR. TRACY: (Inaudible).

11 JUROR: Yeah.

12 THE COURT: Mr. Monson, did you have questions?

13 MR. MONSON: I do.

14 JUROR: Sure.

15 MR. MONSON: (Inaudible)--

16 JUROR: Okay.

17 MR. MONSON: --if it's okay with you--

18 JUROR: Sure.

19 MR. MONSON: And first of all, I appreciate  
20 your candor and your honesty,--

21 JUROR: (Inaudible).

22 MR. MONSON: That's exactly why we're -- we're  
23 going through this process--

24 JUROR: Yeah.

25 MR. MONSON: On either one of these individuals

1       that you--  
2                JUROR: Uh-huh.  
3                MR. MONSON: --talked about, (inaudible)--  
4                JUROR: Uh-huh.  
5                MR. MONSON: --do you know if alcohol played  
6       a--  
7                JUROR: No.  
8                MR. MONSON: --part (inaudible)?  
9                JUROR: No. Neither one drank.  
10               MR. MONSON: And Mr. Tracy asked you about your  
11       comment that you have no tolerance for sexual--  
12                JUROR: Uh-huh.  
13                MR. MONSON: --(inaudible).  
14                JUROR: Uh-huh.  
15                MR. MONSON: And again, he's correct. The  
16       circumstances here don't have anything to do with  
17       kids--  
18                JUROR: Uh-huh.  
19                MR. MONSON: Tell me about -- I mean -- if the  
20       evidence were to show that the alleged victim here  
21       consumed a lot of alcohol--  
22                JUROR: That's really no excuse, though. Is  
23       it?  
24                MR. MONSON: Well, I'm asking you--  
25                JUROR: I really--

1 MR. MONSON: --(inaudible). And if there was  
2 some evidence that maybe that -- that would give you  
3 reason to question what -- question what she's saying?

4 JUROR: I just -- Just because she's -- she  
5 drank heavily, that's still no excuse for -- if  
6 allegedly happened. -- Yeah.

7 MR. MONSON: How about if the evidence were to  
8 show that the alleged rape occurred--

9 JUROR: Uh-huh.

10 MR. MONSON: --continued to drive (inaudible)--

11 JUROR: Uh-huh.

12 MR. MONSON: --and get to a place in Whitman  
13 County, the victim exits the car, what--

14 THE COURT: --evidence. (Inaudible). --stay  
15 away from the facts of this case.

16 MR. MONSON: (Inaudible).

17 THE COURT: (Inaudible). At this time I'll let  
18 you go back and take your seat, Mr. (Inaudible)--

19 JUROR: Okay.

20 THE COURT: Thank you very much -- appreciate  
21 your candor.

22 *Juror leaves chambers*

23 THE COURT: Okay. And any -- challenge to Mr.  
24 Thomas.

25 MR. MONSON: I have a challenge for cause.

1 (Inaudible).

2 THE COURT: (Inaudible) -- Mr. Thomas.

3 And, Shirley, we can bring in No. 14.

4 *Juror enters chambers*

5 THE COURT: Mr. (Inaudible). How are you?

6 JUROR: How are you doing?

7 THE COURT: We'll let you take the comfortable  
8 seat, here.

9 JUROR: (Inaudible).

10 THE COURT: You'd responded "yes" to -- a  
11 couple questions--

12 JUROR: Yes.

13 THE COURT: The lawyers might have some follow-  
14 up. So I'll give them a chance here in chambers to  
15 ask you those questions, in case they're sensitive or  
16 embarrassing issues. Okay? Mr. Tracy, Mr. Druffel?

17 MR. DRUFFEL: Good morning, sir. Is it Mr.  
18 "Tribal" or "Triebal?"

19 JUROR: "Triebal."

20 MR. DRUFFEL: "Triebal." Thank you. And thank  
21 you for being here today.

22 You've indicated an affirmative response to  
23 three questions (inaudible). The first one is that --  
24 a member of your family or close friend was the  
25 recipient of unwanted sexual contact. Could you

1 elaborate on that situation for us, sir?

2 JUROR: It happens to be my son, yes.

3 MR. DRUFFEL: When did that occur, sir?

4 JUROR: About six years ago.

5 MR. DRUFFEL: Can you tell us just a little bit

6 about--?

7 JUROR: Well, he has served a term in

8 Washington and now he's serving a term in Idaho --

9 over a sexual--

10 MR. DRUFFEL: Okay. So he wasn't -- he was the

11 perpetrator or he--

12 JUROR: Yes.

13 MR. DRUFFEL: --(inaudible). Do you know

14 anyone that was a victim (inaudible)?

15 JUROR: Yes.

16 MR. DRUFFEL: Can you tell us about those

17 (inaudible)?

18 JUROR: It was a -- a young boy that she was

19 involved with. And -- and his mother--

20 MR. DRUFFEL: --the same case--

21 JUROR: Yes.

22 MR. DRUFFEL: --circumstance. And how

23 (inaudible)?

24 JUROR: Probably about 40.

25 MR. DRUFFEL: And, (inaudible) child--

1 JUROR: Yes.

2 MR. DRUFFEL: (Inaudible) was about years ago?

3 JUROR: Uh-huh.

4 MR. DRUFFEL: (Inaudible) also occurred in  
5 Idaho? Or (inaudible) separate incident?

6 JUROR: That occurred in Idaho.

7 *Voices from other room overpower recording*

8 MR. DRUFFEL: (Inaudible). But you also said  
9 (inaudible)--

10 JUROR: He come to Washington after (inaudible)  
11 Washington. (Inaudible). And of course, --  
12 involvement -- turned the boy over (inaudible). I'm  
13 not prejudiced in any way. I mean, the law is the  
14 law, and evidence is evidence, and -- You know,  
15 there's two sides to everything. So, I'm not biased  
16 by anything (inaudible).

17 MR. DRUFFEL: So you don't feel that those --  
18 that your experience (inaudible) has affected your  
19 ability -- not be fair and impartial here?

20 JUROR: Not (inaudible).

21 MR. DRUFFEL: (Inaudible). I don't have  
22 anything further.

23 THE COURT: Mr. Monson?

24 MR. MONSON: Thank you. Just very briefly,  
25 sir.

1           How did you feel about -- through the judicial  
2 process -- with the sex -- with a sex crime and that?  
3 Did you feel he got a fair shake? Did you feel  
4 that--?

5           JUROR: Yes. I think he did. (Inaudible).  
6           And I didn't bail him out.

7           MR. MONSON: (Inaudible).

8           *Voices from courtroom overpower those speaking*

9           MR. MONSON: Was he in court in Idaho for the  
10 same offense or a similar offense?

11          JUROR: Same.

12          MR. MONSON: For the same offense.

13          Is there anything about what he and -- family  
14 went through with your son that would cause you to  
15 have a hard time sitting in a jury in this particular  
16 case hearing allegations of rape?

17          JUROR: No, not really.

18          MR. MONSON: (Inaudible).

19          JUROR: (Inaudible) court a couple times. The  
20 law is the law. The evidence that's brought up, I  
21 feel, that's what you set your sights on.

22          I'd assume that, sir. (Inaudible). I'm 82  
23 years old. And I think there's a lot of younger, more  
24 able-bodied people than I.

25          THE COURT: All right. Anything further?

1 MR. MONSON: I have nothing further--

2 THE COURT: Okay. Thank you -- We'll let you  
3 go back and have a seat.

4 *Juror leaves chambers*

5 THE COURT: All right. Any challenges for Mr.  
6 Triebel?

7 COUNSEL: Well, (inaudible).

8 THE COURT: Mr. Monson.

9 MR. MONSON: (Inaudible).

10 THE COURT: Well, I -- I'm going to overrule --  
11 appreciate he's -- involvement, but -- didn't give any  
12 indication (inaudible) that situation. I'm going to  
13 overrule (inaudible) unnecessary.

14 And we'll bring in Joanne Damon, number  
15 (inaudible).

16 And she's got three clear statements  
17 (inaudible).

18 *Juror enters chambers*

19 THE COURT: Hi, (inaudible). Just go ahead and  
20 have a seat. We're not going to call you "Grandma,"--

21 JUROR: Okay.--

22 THE COURT: --Mr. Tracy will have some  
23 (inaudible).

24 JUROR: And I answer to--

25 THE COURT: If you don't call him "Diapers"--

1           MR. MONSON: We want to hear about Bill in  
2           diapers.

3           THE COURT: You had expressed a personal  
4           incident, and -- some concern about being involved in  
5           a case like this. Are you just flat-out telling us  
6           you'd really have problems being fair here--?

7           JUROR: Well, -- I don't know (inaudible)  
8           everything, but I -- could be a little bit biased.

9           THE COURT: Okay. The lawyers might have some  
10          follow-up questions.

11          COUNSEL: Well, not too much, I guess. I mean,  
12          -- checked a couple of "yes" boxes. Was it all  
13          related to the same incident--

14          JUROR: Well, and I also worked at school for  
15          twenty-five years, so I, you know, seen kids that went  
16          through some things. So that's -- probably all of it,  
17          yeah.

18          COUNSEL: All right. And, (inaudible) incident  
19          -- (inaudible) that might (inaudible) this case?

20          JUROR: Yeah.

21          COUNSEL: --paraphrasing--. --be able to set  
22          aside (inaudible) decide this case based on the  
23          evidence?

24          JUROR: Well, I think once, yeah, I heard all  
25          the evidence, (inaudible).

1 COUNSEL: (Inaudible).

2 There may be -- questions (inaudible).

3 MR. MONSON: I don't have any questions right  
4 now.

5 THE COURT: Okay. That makes it quick and easy  
6 right now.

7 Just have a seat. -- Not very far.

8 *Juror leaves chambers*

9 COUNSEL: Your Honor, I would (inaudible).

10 MR. MONSON: Well, your Honor, I don't  
11 (inaudible) causes great (inaudible).

12 THE COURT: Yeah. I -- I'm pretty concerned  
13 about this juror. I am going to excuse her.  
14 (Inaudible).

15 Bring in No. 20, Jane Lear. She had a lot of  
16 issues. (Inaudible).

17 COUNSEL: (Inaudible)--

18 THE COURT: What's that? Oh. Yes.

19 (Inaudible), Richard Thomas. Lindsey Warner.  
20 And the man's name (inaudible). Then -- let everyone  
21 else break until 1:30 -- other than these people?

22 COUNSEL: Oh. (Inaudible).

23 THE COURT: And we can (inaudible).

24 COUNSEL: (Inaudible)?

25 THE COURT: Well, I'd like (inaudible).

1 *Voices from other room overpower recording*

2 THE COURT: --forty-five -- half an hour.

3 Looks like --

4 MR. MONSON: I don't know how long -- I mean,  
5 we (inaudible) talk about -- do jury instructions and  
6 maybe get through (inaudible). That was the  
7 approximate time line.

8 COUNSEL: (Inaudible) questionnaires  
9 (inaudible).

10 THE COURT: We will might be able to do that.

11 THE CLERK: (Inaudible).

12 THE COURT: Now let's bring in Jane Lear.

13 *Juror enters chambers*

14 THE COURT: (Inaudible). How are you?

15 JUROR: I'm fine. Thank you.

16 THE COURT: Go ahead and have a seat.

17 You had responded to several of the questions  
18 here; we wanted to follow up on that. I'll just give  
19 the lawyers an opportunity -- they might have some  
20 follow-up questions--

21 JUROR: Okay.

22 THE COURT: So, Mr. Tracy or Druffel get the  
23 first opportunity.

24 JUROR: Okay.

25 COUNSEL: Good morning.

1 JUROR: Good morning.

2 COUNSEL: (Inaudible) unwanted sexual contact  
3 (inaudible)?

4 JUROR: Yeah. As a student. Yes. At the  
5 University of Iowa.

6 COUNSEL: (Inaudible)? Was that --  
7 undergrad'--

8 JUROR: Yes.

9 COUNSEL: (Inaudible)?

10 JUROR: My voice teacher offered me some --  
11 sexual (inaudible), that I didn't seem to think would  
12 be that good. But nothing, I mean, other than making  
13 the offer. It didn't go any further than that.

14 COUNSEL: (Inaudible).

15 JUROR: Right.

16 COUNSEL: (Inaudible) close friend or family  
17 member (inaudible).

18 JUROR: My younger sister, when she was single  
19 and living in Cincinnati, there was a man who had been  
20 observing her, and she came home one night and he was  
21 in the house -- she was able to get out, but it was  
22 clear from the ropes and things that he was going to  
23 rape her. And then he did go -- subsequently did go  
24 to jail on that.

25 And then both of my daughters say that they had

1       been victims of date rape.

2               COUNSEL: (Inaudible).

3               JUROR: --would have been (inaudible). And  
4       that was -- (inaudible).

5               COUNSEL: (Inaudible).

6               JUROR: Yes.

7               COUNSEL: (Inaudible)?

8       *Voices from other room overpower recording*

9               JUROR: --was a really long time ago. But with  
10       both daughters. One's 25 and the other one's 22. And  
11       it was -- high school, so it's been a number of years.  
12       And we've talked about it -- quite a bit. And, you  
13       know, they -- they understand that it's -- takes  
14       (inaudible) -- at that time didn't say anything, when  
15       it really happened. It was just in conversations  
16       later as adults that (inaudible). And I served on  
17       Planned Parenting board, and so I understand these  
18       things happen, and we don't want them -- happened, and  
19       educate (inaudible).

20              COUNSEL: (Inaudible) situations was there  
21       actual -- force--?

22              JUROR: Not that I know of. I think it was  
23       more that they changed their minds -- at some point in  
24       the -- in the (inaudible), but didn't -- I don't think  
25       there was a struggle with either of them. So, you

1 know, whether it was consensual or -- and just a  
2 change of heart, -- but--.

3 COUNSEL: (Inaudible).

4 THE COURT: Mr. Monson.

5 MR. MONSON: First of all, thank you for  
6 (inaudible)--.

7 JUROR: I'm usually in the back,--

8 MR. MONSON: I appreciate--

9 JUROR: so the fact that I've seen him means  
10 that he was there a lot.

11 MR. MONSON: I guess I'll have to be there more  
12 often--

13 JUROR: Yeah. Well, see, I (inaudible) back.

14 MR. MONSON: And I did see your name on there,  
15 and I didn't (inaudible).

16 I think that -- this is probably -- some  
17 questions, I would -- What happened with these two  
18 date rapes with your daughters? Was anybody ever  
19 prosecuted? Or--

20 JUROR: No. No. And we didn't find out about  
21 it until much later, (inaudible). And it really was  
22 more in -- in talking about how they deal with  
23 relationships now.

24 MR. MONSON: (Inaudible)?

25 JUROR: Unfortunately.

1           MR. MONSON: And you mentioned that alcohol  
2 might have been involved (inaudible). Was that an  
3 issue -- (inaudible)?

4           JUROR: (Inaudible).

5           MR. MONSON: What did that do -- your family?  
6 How did you react?

7           JUROR: We were already having a tough time, --  
8 (inaudible) behaviors, and -- child protective  
9 services, (inaudible). They said that it was unusual  
10 because she -- not quite a full-time student -- And  
11 she dropped out of high school. She was (inaudible).  
12 She still -- she was working full-time. She had moved  
13 out of our home the month before she was seventeen.  
14 And in talking with child protective services they  
15 said "Usually girls who do this are calling us because  
16 their parents have locked them in their rooms and they  
17 can't get out." And they said in this instance she's  
18 still being quite successful, "you're still  
19 communicating," "We're not quite sure how we can --  
20 can help."

21           And so she went through kind of a -- tough  
22 period. She spent some time at -- by her own asking,  
23 some time at the behavioral institution up in  
24 (inaudible). And now she's -- (inaudible) got through  
25 that, she (inaudible).

1 MR. MONSON: (Inaudible) -- these two --  
2 (inaudible)?

3 *Voices from other room overpower recording*

4 JUROR: Not with the older one. The younger  
5 one is really starting to deal--

6 MR. MONSON: How old (inaudible)?

7 JUROR: She's (inaudible). But she's going to  
8 get -- help (inaudible).

9 MR. MONSON: (Inaudible).

10 JUROR: It was a classmate (inaudible). But as  
11 far as we know he's not (inaudible).

12 *Voices from other room overpower recording*

13 MR. MONSON: (Inaudible). Thank. I think --  
14 (inaudible) either of those (inaudible).

15 JUROR: Right--

16 MR. MONSON: So there wasn't any police  
17 involvement--

18 JUROR: Right.

19 MR. MONSON: --court involvement.

20 JUROR: (Inaudible). And -- But while I'm  
21 thinking about it, when Rachel, the younger one, was a  
22 small child, (inaudible) father was accused of raping  
23 (inaudible), Rachel's, and Rachel was actually  
24 (inaudible) she was -- nothing came (inaudible).

25 MR. MONSON: Did you know that person?

1 JUROR: (Inaudible). And it never went -- as  
2 far as I know it never went to court or anything, and  
3 the -- the police officer said Rachel's answers, she  
4 didn't believe anything -- that Rachel had not  
5 (inaudible) anything, and we never saw any --  
6 (inaudible).

7 MR. MONSON: Did the fact that that accusation  
8 was made (inaudible)?

9 JUROR: We didn't, because they divorced --  
10 (inaudible) divorced after that and -- both actually  
11 left town--

12 MR. MONSON: Right away?

13 JUROR: Yeah. Fairly soon after that.

14 MR. MONSON: (Inaudible). And again I'll ask,  
15 is there anything that you've experienced with your  
16 family or that you've seen that would cause you  
17 (inaudible) have difficulty separating (inaudible)  
18 today versus (inaudible)?

19 JUROR: (Inaudible).

20 MR. MONSON: (Inaudible).

21 THE COURT: Okay. I'll let you re-take your  
22 seat--

23 JUROR: Thank you.

24 *Juror leaves chambers*

25 THE COURT: As a matter of fact, I think we'll

1 send everybody to lunch. I think I'll do that --  
2 (inaudible) break for lunch.

3 THE CLERK: Oh. I was going to say, -- are you  
4 going to let everybody go for lunch except the ones  
5 that are remaining? Or--

6 THE COURT: No. We'll let everybody break.

7 THE CLERK: Okay.

8 THE COURT: So, -- But let -- I'm going to  
9 excuse these three -- (inaudible).

10 *Voices from other room overpower recording*

11 *In open court:*

12 THE COURT: Please be seated.

13 Keeping the lawyers working here, I'm going to  
14 break for the noon recess. I have three jurors,  
15 however, that I will excuse, and they will not have to  
16 be back. And that will be Lindsey Warner and Richard  
17 Thomas and Joanne Damon. So the three of you are  
18 excused; you will not have to come back.

19 I don't know what happened to the bailiff.  
20 I'll buzz her. You can turn in your name badges, or  
21 your numbers, to her.

22 And then we're going to reconvene at 1:30.  
23 I'll have everyone else come back at 1:30. But I've  
24 got five exceptions that I'm going to have come back  
25 earlier, and we will -- at one o'clock.

1           So, everybody but the following five come back  
2   at one-thirty.

3           MR. MONSON: I thought that you--

4           THE COURT: We're just trying to -- give you  
5   some productive time, here.

6           Francine Stanley, Juror No. 23, one o'clock.  
7   And I'll have Galen Green (inaudible) -- (Inaudible),  
8   come back at one o'clock. And I'd better put my  
9   glasses on because I'm not reading well.

10          Is it Douglas Chambers? Chambers. One  
11   o'clock. And Margaret -- Cornish? Okay.

12          See, I'm going off your handwriting, here. So,  
13   one o'clock--

14          JUROR: Oh, I'm sorry.

15          THE COURT: No. That's all right. I'm having  
16   trouble with everybody's.

17          And Nancy Bierbaum, one o'clock. Everyone else  
18   one-thirty except Ms. Warner, Mr. Thomas and Ms.  
19   Joanne Damon are excused -- don't have to come back.

20          We get to see five of you at 1:00, the rest of  
21   you at 1:30.

22          We're in recess.

23   *Recess*

24   *Continued in Volume I-B*

