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Exhibit 1, Docket Entries, November 1, 2012 Entry.

Near the end of his voir dire examination, counsel for Amrine inquired of the panel as follows:

Now, my last topic is, is one that is always difficult for a Plaintiff's lawyer in these cases. When you walk in to these chambers in this case, when you look at me, you see I'm a man. When you walk in here and you look at Mr. Leyshock and you see he's a man. Some of you, when you walk in here and look at Mr. Amrine, may see a black man. And there may be a difference and there may not be a difference. So I'm asking you to think about this and I'm going to ask you a few questions about it. Because there is probably nothing more troubled in American history than race and everybody knows about it and it cannot help but play a role in many of our human interactions, to say nothing of a trial, and so knowing the importance of having a fair and impartial jury, I'm going to ask you a few questions about this and I beseech you to search your heart.

Do any of you see Joseph Amrine as being different because of his race in any way other than his race? You see that he's black by looking at him, but do any of you feel or believe in your heart that a black man is different than other men you know? It could be anything . . . basketball, rhythm, dancing, music. I mean, those are some of the common stereotypes. If any of you feel that when you look and you saw the Plaintiff in this case was black, something happened in your brain, something clicked, would you search your hearts and be honest with us? I see no hands.

When you look at Joseph Amrine as a black man, an African American man, do any of you feel that he would value his liberty any less than you would? I see no hands or paddles.

As you look at Joseph Amrine, an African American male, age 57 by the way, do any of you feel that he would miss his mother any less than you would miss your mother if you were separated from her?

When you look at Joseph Amrine, a black man, plaintiff in a lawsuit, do any of you feel that he deserves less competent lawyering than anybody else?

If you are selected to serve on this jury, by your silence each one of you will be telling us all, the court, the lawyers, the parties, especially Mr. Amrine, that I can be fair and I can render blind justice irrespective of race, is there anybody who feels that would not be possible for them, they would have difficulty rendering fair, equal and blind justice irrespective of race?

Thank you. I have no further questions, Your Honor.

Exhibit 2, Transcript of Benson Voir Dire Examination at 50:11-52:6. Although after each of the last three questions, counsel does not reiterate that there were no hands or paddles raised by any venireperson, counsel's affidavit to that effect is evidence of that fact which, no doubt, the Court will also recall. Exhibit 3, Benson Affidavit at ¶¶ 4-7. Certainly, the transcript would also have reflected whether there was any response by any juror and there is none transcribed. Exhibit 2, at 51:13-52:6. In any event, Juror Griggs remained silent throughout this line of questioning.

On the following morning, after the jury was empaneled and sworn, the Court read M.A.I. 2.01 to the jury, instructing them that the jury's "decision must be based only on the evidence presented to you in the proceedings in this courtroom . . ." and prohibiting jury members from conducting "your own research or investigation into any of the issues in this case." Exhibit 1, November 2, 2012 Entry; Exhibit 4, Instructions Given, Instruction No. 1. The trial proceeded with the customary opening statements and the presentation of evidence. *Id.* On November 8, 2012, the evidence concluded and, the Court's instructions were read to the jury. Exhibit 1, November 8, 2012 Entry. Among the instructions read to the jury was M.A.I. 3.01 by which the jurors were further instructed that in "determining whether or not you believe any proposition, you must consider only the evidence and the reasonable inferences derived from the evidence." Exhibit 4, Instructions Given, Instruction No. 4. After closing arguments, the case was submitted to the jury at 2:16 p.m. Exhibit 1, November 8, 2012 Entry.

During its deliberations that afternoon, the jury sent a note to the Court inquiring as to the source of funds that would be used to satisfy any judgment in Plaintiff's favor, *i.e.*,

Defendant Ossman or the State of Missouri. Exhibit 5, Jury Note. To respond, the Court prepared what was denoted "Instruction No. 10", a verbatim recitation of M.A.I. 2.07, which read as follows:

The existence or non-existence of any type of insurance, benefit, right or obligation of repayment, public or private, must not be considered or discussed by any of you in arriving at your verdict. Such matters are not relevant to any of the issues you must decide in this case.

Exhibit 6, Instruction No. 10. Counsel for both parties agreed to this language and the instruction, specifically directing the jury not to consider or discuss the question of who would pay, was taken to the jury. Deliberations continued until 9:00 p.m. Exhibit 1, November 8, 2012 Entry.

The following morning, November 9, the jury returned at 9:00 a.m. and resumed deliberations. Exhibit 1, November 9, 2012 Entry. At 2:35 p.m., the jury returned a verdict in favor of Defendant Ossman. *Id.*; Exhibit 12. Defense counsel was directed to prepare a judgment, *id.*, which this Court entered on November 26, 2012. Exhibit 1, November 26, 2012; Exhibit 14, Judgment.

After the jury was discharged, Amrine's counsel discovered that, despite the fact that no venireperson had responded to Amrine's counsel's questions regarding race and whether it would make it difficult for any juror to "render[] fair, equal and blind justice irrespective of race", there had been juror misconduct during deliberations in the form of remarks that were racist. On Friday, November 9, late in the morning, the jurors took a break from deliberations to make lunch orders and use the restroom. Exhibit 7, Earl Affidavit, November 14, 2012 at ¶ 2. As the break was ending and the jurors took their seats around the table, they were engaged in several conversations. *Id.* at ¶ 3. Earl saw Juror Curt Griggs

look to his right, toward Juror Rodney Griffin, who is African-American, and then toward Juror Denny Linhardt, and then heard Griggs say, "I am not giving that nigger anything." *Id.* at ¶ 4.

As counsel undertook investigation of Griggs' comments, it also became apparent that, despite having been instructed (1) to base their decision "only on the evidence presented to you in the proceedings in this courtroom"; (2) not to do "any research or investigation into any of the issues" in the case; (3) to "consider only the evidence and the reasonable inferences derived from the evidence" in determining whether or not to believe propositions of fact posited in the verdict director; and, (4) upon the jury's inquiry, that the source of funds to satisfy any judgment not relevant to any of the issues the jury was to decide and was not be considered or discussed by any of them in arriving at a verdict, the jury disregarded these instructions.

Upon receiving the Court's Instruction No. 10, Foreperson Louie Delk read it aloud to the jury. Exhibit 8, Delk Sworn Statement at ¶ 5; Exhibit 9, Peters Sworn Statement at ¶ 3. Even though the instruction specifically told the jury not to consider or discuss the "existence or non-existence of any type of insurance, benefit, right or obligation of repayment, public or private" and that [s]uch matters [were] not relevant to any of the issues you must decide in this case", the topic of who would pay any damages nevertheless was again discussed after the instruction had been read. Exhibit 8, Delk Statement at ¶ 6; Exhibit 9, Peters Statement at ¶ 4; Exhibit 8, Earl Affidavit, December 4, 2012, at ¶ 4. One juror suggested that because Ossman had been working as a public defender, any judgment in favor of Plaintiff Amrine would be paid from a State fund. Exhibit 10, Peters Sworn Statement, December 5, 2012, at

¶ 4. The other jurors considered that information to be accurate and believed it. Exhibit 8, Earl Affidavit, December 4, 2012, at ¶ 7 (several people on the jury confirmed that the state had a fund that would cover any pay out to Mr. Amrine).¹

In further derogation of the Court's instruction, the jurors continued to discuss who would pay any judgment as deliberations proceeded. *Id.* at ¶ 4 ("The discussion of money continued to pop up a few times after Mr. Delk [the foreperson] told us we weren't supposed to be talking about money"; ¶ 7 (the jury came to the consensus that the state had a fund; inference is that a discussion was had to reach the consensus); ¶ 8 (Griggs and Harwood "badgered the undecided jurors with the idea that 'our tax money' would be going to pay Mr. Amrine"; they "really hit heavy on the idea that the money was our tax dollars"); and, ¶ 10 ("Griggs clearly stated that he didn't want his tax dollars or anything at all going to Joe Amrine"); Exhibit 9 at ¶ 4 ("We as a jury asked ourselves, if we were to award Joe Amrine money, would it come out of our tax dollars?"). As the jury continued deliberating, it became apparent that, although there was concern that "this old man would have to pay out of his pocket", some members of the jury were upset that tax dollars would satisfy any judgment for Amrine. Exhibit 10 at ¶¶ 6, 8. Two jurors in particular, Griggs and Harwood,

¹This is not surprising in view of the number of current or former State employees on the jury. Juror No. 2, a female, was a retired accountant for the Department of Elementary and Secondary Education. Juror No. 3, a female, is a Fiscal and Administrative Manager for the Missouri Department of Health and Senior Services. Juror No. 6, a male, is a tax auditor for the State of Missouri. Juror No. 7, a male, is employed by the Missouri Department of Natural Resources and his spouse works in the Missouri State Office of Administration. Juror No. 12, a male, is an Operator II for the Missouri Department of Conservation. Exhibit 11, Juror Qualification Forms (juror numbers appear at the top of each form). Comparison of the Juror Qualification Forms with the Verdict (Exhibit 12) reveals that all five current or former State employees signed the verdict in favor of Defendant Ossman, which is indicia of prejudice to Amrine. *See infra* at II, p. 24.

verbalized their displeasure with the fact that their tax dollars would be used to satisfy a judgment in favor of Amrine – Griggs clearly stating that he did not want his tax dollars or anything at all going to Amrine² – and the two of them repeatedly drove home the point to the undecided jurors that “their tax money” would go to Amrine. *Id.* at ¶¶ 8, 10. Two of the female jurors who were relatively reticent and, in the view of Juror Arthur Earl, were reluctant to be challenged or interrupted, were swayed by what Earl characterized as bullying by Griggs and Harwood on that issue. *Id.* at ¶ 9. Ultimately, a defense verdict, signed by nine jurors was returned. Exhibit 12, Verdict Form.

I. NEW TRIAL IS WARRANTED BECAUSE OF JUROR MISCONDUCT BY NONDISCLOSURE AND IN THE FORM OF RACIAL REMARKS THAT DEPRIVED AMRINE OF HIS RIGHT TO A TRIAL BY FAIR AND IMPARTIAL JURORS

This Court should grant a new trial on the grounds of juror nondisclosure during voir dire, *Johnson v. McCullough, M.D.*, 306 S.W.3d 551 (Mo. banc 2010), because of Juror Griggs’ failure to respond honestly to counsel’s questions regarding race, especially the last question, in light of his having stated in the jury room, “I am not giving that n***** anything.” Alternatively, this Court should grant a new trial (after hearing evidence) because Grigg’s juror misconduct in the jury room, *i.e.*, stating, “I am not giving that n***** anything” deprived Amrine of his right to a trial by a fair and impartial jury. *Fleshner v. Pepose Vision Institute, P.C.*, 304 S.W.3d 81, 86-90 (Mo. banc 2010).

Standard for a New Trial Based on Juror Misconduct

A grant of new trial based on juror misconduct will not be disturbed on appeal unless

²Indeed, as recited *supra* at 4-5, Earl heard Griggs tell Linhardt, “I am not giving that n***** anything.”

this Court abuses its discretion. *Fleshner*, 304 S.W.3d at 86-87 (citing *Alcorn v. Union Pac. R.R. Co.*, 50 S.W.3d 226, 246 (Mo. banc 2001)). A trial court abuses its discretion if its ruling “is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration.” *Id.* at 87 (quoting *Wingate by Carlisle v. Lester E. Cox Med. Ctr.*, 853 S.W.2d 912, 917 (Mo. banc 1993)).

Juror Nondisclosure

A member of the venire has the duty during voir dire examination to give full, fair, and truthful answers to all questions asked to him or her specifically, as well as those asked of the panel generally, so that his or her qualifications may be determined and challenges may be posed. *Johnson v. McCullough, M.D.*, 306 S.W.3d at 555 (citing *Williams by Wilford v. Barnes Hosp.*, 736 S.W.2d 33, 36 (Mo. banc 1987)). The duty to disclose is triggered only after a clear question has been asked that clearly and unambiguously triggers the juror’s obligation to disclose the information requested. *Id.* (citing *Brines by Harlan v. Ibis*, 882 S.W.2d 138, 139 (Mo. banc 1994)). The record must demonstrate that, from an objective standpoint, the question was sufficiently clear in the total applicable context to have elicited the undisclosed information. *Id.* at 555 (citing *Brines* 882 S.W.2d at 139); at 556 (citing *McBurney v. Cameron*, 248 S.W.3d 36, 46 (Mo. App. 2008)). The issue is whether a reasonable venire member would have understood what counsel intended. *Id.* (citing *McBurney*, 248 S.W.3d at 42). If the question is clear, the duty to disclose is triggered. *Id.* at 555. Failure to answer a clear question is considered a nondisclosure. *Id.* at 557 (citing *Massey v. Carter*, 238 S.W.3d 198, 201-02 (Mo. App. 2007)).

There can be no doubt that Amrine's counsel's questions were clear. *See supra* at 2; Exhibit 2 at 51:2-52:6. There was nothing ambiguous about what was being asked. A reasonable venire member would have understood that counsel was asking if they could be fair and impartial to Amrine despite the fact that he is African-American. Counsel spoke at length about why he was asking the questions about race, putting the questions into context, and was impassioned about the fact that it was important to have a fair and impartial jury and that the verdict be the product of blind justice, irrespective of race. *Id.*; Exhibit 2 at 50:11-51:1; 51-24-52:6.

One might suggest that unlike in the past when people were comfortable and self-righteous about blatantly engaging in, employing, and admitting to what are now recognized as racist behaviors and language, in 2012, asking potential jurors to disclose, in a courtroom full of people, that they could not be fair and impartial because the plaintiff was black was not likely to have elicited the undisclosed information. As noted in *Fleshner*:

Ideally, the potential jurors' answers to questioning during voir dire would reveal every bias or prejudice. Those potential jurors expressing biases or prejudices would be stricken, while those venirepersons who did not reveal any biases or prejudices would be impaneled to hear and decide the case. In reality, potential jurors are not likely to admit their biases or prejudices, especially those concerning ethnicity and religion, in open court proceedings like voir dire.

Fleshner, 304 S.W.3d at 87 n. 3. Of course, the *Fleshner* court was not presented with whether there had been nondisclosure by the juror who made the anti-Semitic remarks. And, in handing down *Johnson* and describing a venireperson's duty within a few weeks of issuing the *Fleshner* opinion, the Missouri Supreme Court did not carve out any exceptions for difficult or embarrassing questions regarding attitudes about race, religion, ethnicity, or gender: the duty is to "give full, fair, and truthful answers to *all* questions." *Johnson*, 306

S.W.3d at 555. Arguably, it is full, fair, and truthful answers to the most difficult questions that serve best to cull out the biased and prejudiced and, thus, are most useful in selecting a fair and impartial jury.

Moreover, rather than being required to disclose a “politically incorrect” bias or prejudice in open court, as posited in the *Fleshner* footnote, here, the Court offered (and counsel reiterated the Court’s offer) to permit venirepersons who had responses to questions that were pertinent, but potentially embarrassing, to discuss those responses with the Court and counsel outside the hearing of the other venirepersons. Exhibit 2 at 40:10-19.³ And, Griggs’ use of a racial epithet to refer to Amrine when addressing another juror and in earshot of still more jurors suggests that he was hardly embarrassed about his views. Doubtless if he was comfortable enough to say the n-word aloud, he was surely thinking it, too. There can be no doubt that there was a duty to disclose and Griggs remained silent even though he had to have known that he was capable of using the n-word to refer to Amrine as he did when saying he would never “give that n***** anything”; thus, there was nondisclosure.

Griggs’ Nondisclosure Was Intentional

But the inquiry does not end there. This Court must also determine whether the nondisclosure was intentional or unintentional. *Johnson*, 306 S.W.3d at 557. If a juror intentionally withholds material information, bias and prejudice are presumed. A finding of

³Indeed, Exhibit 2 contains an example of a venireperson responding to inquiry out of the hearing of the other venirepersons. Exhibit 2 at 45:10-46:9. The name of the venireperson, who was ultimately removed from the panel, has been redacted from the transcript.

intentional concealment of material information has “become tantamount to a per se rule mandating a new trial.” *Id.* (quoting *Brines*, 882 S.W.2d at 140 (quoting *Wilford*, 736 S.W.2d at 37)). On the other hand, if the nondisclosure was unintentional, a new trial is not warranted unless prejudice resulted from the nondisclosure. *Id.* (citing *Wilford*, 736 S.W.2d at 37). In *Johnson*, the trial court determined that the juror’s nondisclosure of her litigation history was intentional and inferred prejudice. The determination of whether concealment is intentional or unintentional is within the discretion of this Court. *Id.* (citing *Wilford*, 736 S.W.2d at 36).

Intentional nondisclosure occurs: 1) where there exists no reasonable inability to comprehend the information solicited by the question asked of the prospective juror, and 2) where it develops that the prospective juror actually remembers the experience or that it was of such significance that his purported forgetfulness is unreasonable. *Wilford*, 736 S.W.2d at 36 (citing *Anderson v. Burlington Northern Railroad Co.*, 651 S.W.2d 176, 178 (Mo. App. 1983) (“analysis [of decisions on failure to respond about experiences with claims and litigation] reveals that the courts have almost universally ordered a new trial where the failure to disclose was made with the juror’s understanding of the question and his then present awareness of the prior experience”). In *Johnson*, the trial court was not provided with any direct evidence explaining why Juror Mims failed to answer the pertinent questions as to a material matter, but the Missouri Supreme Court still found no abuse of discretion in the trial court’s determination that the concealment was intentional. The record established that Mims did not respond to the question and that her experiences were recent and extensive, and, thus, of such significance that forgetfulness was unreasonable. Thus, there was no abuse

of discretion in finding intentional nondisclosure and ordering a new trial. *Johnson*, 306 S.W.3d at 557-58.

Measured against this standard, with a modification of the second factor to fit the subject of the questions he did not answer, Griggs' nondisclosure was intentional. As to the first factor, there is absolutely no reasonable inability on the part of Griggs to not understand Amrine's counsel's questions, especially in light of the efforts counsel made to explain the importance of what was being asked. To the contrary, his juror qualification form indicates he is a 41-year-old high school graduate employed by the State Department of Conservation, and Amrine's counsel's questions were posed fairly and in simple English. As to the second, because the questions about race were not related to a forgotten event or claim, strictly speaking, that factor is not and cannot be present. But, given that the issue is not about something he might or might not presently remember, but, rather, asks him to examine his attitudes about people of other races and say whether he could be fair and impartial when the plaintiff was African-American – highly material information – the factor to be satisfied is whether he had a present awareness of those attitudes and how strongly he held them. With that subject-based modification of the second factor, the test is met and this Court would be within its discretion to determine that Griggs' nondisclosure was intentional and order a new trial.

Even If Unintentional, Griggs' Nondisclosure Demands a New Trial

Unintentional nondisclosure exists where, for example, the experience forgotten was insignificant or remote in time, or where the venireperson reasonably misunderstands the question posed. *Wilford*, 736 S.W.2d at 36. Griggs' nondisclosure falls within neither of

these descriptions. As explained, counsel's question was not about remote events but about presently held attitudes. And, as before, it is inconceivable that Griggs could have reasonably misunderstood counsel's questions. Amrine does not concede that Griggs' nondisclosure is anything other than intentional, but even if this Court concludes his nondisclosure was unintentional, this instance is one that demands a new trial because Amrine establishes the requisite bias and prejudice. Here, bias against Amrine is practically self evident in that Griggs' choice of the n-word as he says to Linhardt that he was "not giving that n***** anything" demonstrates a bias against Amrine because of race.

And, Amrine is prejudiced. First, had Griggs honestly admitted that he would have a difficult time being fair and impartial to Amrine because of Amrine's race, Amrine's counsel would have had the opportunity to move to strike him for cause, and had that motion been denied, would have used a peremptory strike to remove him from the panel. Additionally, as more fully developed, *infra*, Griggs' comment deprived Amrine of his right to trial by a fair and impartial jury. Even if Griggs, realizing that other jurors found the argument persuasive (leaving aside for the moment the disregard of the Court's instruction on the subject of whose funds would satisfy a judgment, discussed, *infra* at II), also seized upon the use of tax dollars to pay Amrine – what could be characterized as his attempt at articulating a "legitimate, nondiscriminatory reason" to not decide the case in Amrine's favor – and that, more than his racist reference to Amrine was the argument that tipped the scales with the others, prejudice is still shown. Griggs' nondisclosure that Amrine's race would play a role was a contributing factor in denying Amrine a trial by fair and impartial jury.

Juror Misconduct in the Jury Room in the Form of Racial Comment

The United States Constitution and the Missouri Constitution provide that “no person shall be deprived of life, liberty, or property without due process of law.” U.S. CONST. amend. V; MO. CONST. art. I, § 10. “It is axiomatic that ‘a fair trial in a fair tribunal is a basic requirement of due process.’” *Caperton v. A.T. Massey*, 556 U.S. 868, 876 (2009) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)) (quoted in *Fleshner*, 304 S.W.3d at 87). And, the Missouri Constitution provides for the right to a trial by jury for civil cases. MO. CONST. art. I, § 22(a). The Missouri Supreme Court has recognized that the right to a trial by jury does not simply provide that twelve jurors will decide the case. Rather, all twelve jurors must be “fair and impartial”. *Id.* (citing *Catlett v. Ill. Cent. Gulf R.R. Co.*, 793 S.W.2d 351, 353 (Mo. banc 1990); *Lee v. Balt. Hotel Co.*, 136 S.W.2d 695, 698 (Mo. 1939)). Each juror must “enter the jury box disinterested and with an open mind, free from bias or prejudice.” *Id.* (quoting *Catlett*, 793 S.W.2d at 353). Voir dire is the tool for trial courts to weed out those potential jurors who are not fair and impartial. *Id.* 793 S.W.2d at 353 n. 3.

The “Mansfield Rule” Is Inapplicable

The general rule in Missouri, known as the Mansfield Rule, is that a juror’s testimony regarding jury misconduct allegedly affecting deliberations may not be used to impeach the jury’s verdict. *Fleshner*, 304 S.W.3d at 87 (citing *Joy v. Morrison*, 254 S.W.3d 885, 889 (Mo. banc 2008)). “A juror who has reached his conclusions *on the basis of evidence presented for his consideration* may not have his mental processes and innermost thoughts put on a slide for examination under the judicial microscope.” *Id.* (quoting *Baumle v. Smith*,

420 S.W.2d 341, 348 (Mo. 1967)) (emphasis added by movant⁴). Thus, it is said that juror testimony is improper if it merely alleges that jurors acted on improper motives, reasoning, beliefs, or mental operations, also known as “matters inherent in the verdict.”⁵ *Id.* (quoting *Neighbors v. Wolfson*, 926 S.W.2d 35, 37 (Mo. 1996)). The two major policy considerations for this rule are that (1) there would be no end to litigation if verdicts could be set aside because one juror reportedly did not correctly understand the law or accurately weigh the evidence, and (2) there is no legitimate way to corroborate or refute the mental process of a particular juror. *Id.* at 87-88 (citing *Baumle*, 420 S.W.2d 348).

Neither of these policy considerations is implicated here. This is not an instance of a juror not understanding the law or failing to accurately weigh the evidence. This is an instance in which a juror committed misconduct in (1) failing to honestly admit a prejudice or bias he harbored that was so strong it prompted or allowed him to use racist language – perhaps the most offensive epithet that could be used to express antipathy toward an African-American – and in (2) openly expressing to another juror and in earshot of other jurors his refusal to return a verdict awarding damages to Amrine. Nor is this an instance in which the Court is left to speculate about the mental process of a particular juror. The comment Juror

⁴As argued, *infra* at II, here there is reason to believe that the jury’s decision was tainted because extraneous evidence as to what the source of fund for any judgment would be was interjected into the jury’s deliberations, despite the Court’s instruction that such was irrelevant to the issues before the jury and was not to be considered or discussed by them.

⁵*Baumle* explains that matters inherent in the verdict include such things as a juror not understanding the law as stated in the instructions, a juror not joining in the verdict, a juror voting a certain way due to misconception of the evidence, a juror misunderstanding the statements of a witness, and a juror being mistaken in his calculations. *Baumle*, 420 S.W.2d at 348.

Griggs made plainly reveals his bias and raises the specter that he harbored negative stereotypes about African-Americans sufficient to have prevented him from deciding the case based solely on the evidence. Although Griggs also objected to “his tax dollars or anything at all going to Joe Amrine” – something he should not have been considering in any event, based on the Court’s instruction – he might have been less tight-fisted about that money had Amrine not been African-American.

However, over the years, an exception to the rule prohibiting juror testimony has been adopted. *Fleshner*, 304 S.W.3d at 88. Prior to *Fleshner*, the Missouri Supreme Court had already held that jurors may testify about juror misconduct occurring outside the courtroom. *Id.* (citing *Travis v. Stone*, 66 S.W.3d 1, 4 (Mo. banc 2002)). In *Travis*, the exception was used to allow jurors to testify as to gathering and consideration of evidence independent to that presented at trial. *Travis*, 66 S.W.3d at 3. See also, *Middleton v. Kansas City Pub. Serv. Co.*, 152 S.W.2d 154, 156 (Mo. 1941) (juror visited car dealership to measure the type of car involved in the accident). When a juror obtains extrinsic or extraneous evidence, the trial court conducts a hearing to determine whether that evidence prejudiced the verdict.

Fleshner, 304 S.W.3d at 88 (citing *Travis*, 66 S.W.3d at 4).⁶

⁶In *State v. Stephens*, 88 S.W.3d 876 (Mo. App. 2002), the Western District of the Missouri Court of Appeals interpreted *Travis* to mean that evidence of misconduct occurring outside the jury room could be received into evidence, despite a timely and proper objection. *Id.* at 882-83.

Despite what appears to be clear and unambiguous language of the opinion that the Court was recognizing an exception to the general rule prohibiting juror testimony to impeach a jury’s verdict, the State contends that the language immediately following the quoted portion of the Court’s opinion in *Travis*, upon which we rely for the exception, would indicate that the Court, in allowing the consideration of the juror’s testimony for purposes of granting the motion for new trial in *Travis*, was not

In *Fleshner*, the request for a new trial was based on juror misconduct occurring inside the jury room, and the contention was that comments made by a juror revealing religious and ethnic bias or prejudice during deliberations⁷ prevented appellant PVI from

recognizing an exception to the general rule, but was simply recognizing that the State in failing to object to such evidence at the hearing had waived any objection thereto. The language of *Travis* cited by the State in that regard reads:

Even where the purpose of the testimony regarding the misconduct (whether it occurred inside or outside the jury room) is to impeach the verdict, the party complaining of the testimony must make a timely and proper objection or else the issue is waived. Here the defendants . . . failed to make any objection to [the] juror[’s] . . . testimony, nor do they now argue on this appeal that it would be improper to consider that testimony, and, in fact, they rely on that testimony to support their contention that there was no evidence of prejudice. Accordingly, the testimony is properly before this Court.

66 S.W.3d at 4 (citation omitted). Contrary to the contention of the State, we fail to see how that language would modify the Court’s intent with respect to the express language immediately preceding it. To interpret the Court’s opinion as argued for by the State, we would have to totally ignore the express language of the opinion that it is permissible to use juror testimony to impeach a jury verdict where the alleged juror misconduct occurred outside the jury room. Any fair reading of the portion of the opinion in question would lead us to conclude that in including the language championed by the State, the Court was simply recognizing an alternative basis for allowing the juror testimony in question in *Travis* to impeach the jury’s verdict and did not intend to cut down the exception it had just recognized in the same paragraph. Having determined that the *Travis* exception is just that, an exception to the general rule prohibiting the use of juror testimony to impeach a jury’s verdict, we now turn to the issue of whether that exception would apply here so as to entitle the appellant to the appellate relief he seeks.

Stephens, 88 S.W.3d at 882-83. Despite the reservations of the Southern District (*see Williams v. Daus*, 114 S.W.3d 351, 366-67 (Mo. App. 2003)), any doubt about the propriety of accepting juror affidavits and testimony where, as here, the right to trial by a fair and impartial jury is at stake has been put to rest by *Fleshner*.

⁷The comments were: “She is a Jewish witch.”; “She is a Jewish bitch.”; “She is a penny-pinching Jew.”; “She was such a cheap Jew that she did not want to pay Plaintiff unemployment compensation.” *Fleshner*, 304 S.W.3d at 88.

receiving its constitutional right to trial by a fair and impartial jury. Here, of course, the contention is that comments made by Griggs revealing *racial* bias or prejudice during deliberations deprived Amrine of his constitutional right to trial by a fair and impartial jury. Acknowledging that jurors' mental processes and innermost thoughts or beliefs may not be examined, the Missouri Supreme Court saw the question presented as one it had not previously considered: whether the trial court may hear testimony about juror statements during deliberations evincing ethnic or religious bias or prejudice. *Id.*

The *Fleshner* court examined several decisions in which courts determined that juror testimony about statements during deliberations was permissible. *Id.* (citing *After Hour Welding, Inc. v. Laneil Management Co.*, 324 N.W.2d 686, 689-90 (Wis. 1982) (corporation's officer, a witness, called "a cheap Jew"; rule against impeachment of a jury verdict is strong and necessary, but not written in stone nor a door incapable of being opened; rule "competes with the desire and duty of the judicial system to avoid injustice and to redress grievance of private litigants"; interest in privacy of juror discussion yields to the right to a fair trial when right to trial by impartial jury is impaired by a juror's material prejudice); *Powell v. Allstate Ins. Co.*, 652 So.2d 354, 355 (Fla. 1995) (plaintiffs were black citizens of Jamaican birth; foreperson "joked", "There's a saying in North Carolina, hit a [n*****] and get ten points, hit him when he's moving, get fifteen."); jurors may testify about "overt acts" that might have prejudicially affected verdict; "appeals to racial bias . . . made openly among jurors constitute overt acts and court may hear juror testimony to impeach the verdict); *Marshall v. State*, 854 So.2d 1236, 1240-41 (Fla. 2003) (racial jokes told during deliberations do not inhere in the verdict and remanding for evidentiary hearing); *Wright v.*

CTL Distrib., Inc., 650 So.2d 641, 642-43 (Fla. Dist. Ct. App. 1995) (remanding for evidentiary hearing where juror stated that plaintiff was “a fat black woman on welfare”); *Sanchez v. Int’l Park Condo. Ass’n*, 563 So.2d 197, 198-99 (Fla. Dist. Ct. App. 1990) (remanding for new trial where juror made derogatory remarks about persons of Cuban descent)). The Court also found *Evans v. Galbraith-Foxworth Lumber Co.*, 31 S.W.2d 496, 500 (Tex. Civ. App. 1929), persuasive. In *Evans*, a juror stated that one of the plaintiffs was “a Jew”, that one of the jurors was “a Jew,” but that he could not understand why other jurors would be “partial to a Jew.” The court explained that given the comments during deliberations, the verdict should have been set aside on motion for new trial:

It may be clear that eleven (or a lesser number) of the jurors were not, to any degree, influenced by the improper conduct; yet if it remains reasonably doubtful whether one (or a larger number) was, or was not, influenced, the vice remains and the verdict must be set aside because each juror can rightly agree to the verdict only when guided solely by the instructions of the trial judge and the evidence heard in open court.

Id. (quoted in *Fleshner*, 304 S.W.3d at 89 (internal citations omitted)).

Fleshner governs here, mandating that, under the circumstances, at a minimum, a hearing is required, and if this Court finds that the misconduct occurred, a new trial is required. The Missouri Supreme Court could hardly have been more zealous in protecting the right to trial by a fair and impartial jury than it was in *Fleshner*:

When a juror makes statements evincing ethnic or religious bias or prejudice during deliberations, the juror exposes his mental processes and innermost thoughts. What used to “rest alone in the juror’s breast” has now been exposed to the other jurors. See *Baumle*, 420 S.W.2d at 348. The juror has revealed that he is not fair and impartial. Whether the statements may have had a prejudicial effect on other jurors is not necessary to determine. Such statements evincing ethnic or religious bias or prejudice deny the parties their constitutional rights to a trial by 12 fair and impartial jurors and equal protection of the law. See *Powell*, 652 So.2d at 358. The Florida Supreme Court, in criticizing a juror’s expression of racial bias, commented, “neither

a wronged litigant nor society itself should be without a means to remedy a palpable miscarriage of justice.” *Id.* at 356.

Accordingly, if a party files a motion for a new trial alleging there were statements reflecting ethnic or religious bias or prejudice made by a juror during deliberations, the trial court should hold an evidentiary hearing to determine whether any such statements occurred. Juror testimony about matters inherent in the verdict should be excluded. *See Baumle*, 420 S.W.2d at 348. If the trial court finds after conducting a hearing that such biased or prejudicial statements were made during deliberations, then the motion for a new trial should be granted as the parties would have been deprived of their right to a trial by 12 fair and impartial jurors.

Jurors are encouraged to voice their common knowledge and beliefs during deliberations, but common knowledge and beliefs do not include ethnic or religious bias or prejudice. The alleged anti-Semitic comments made during deliberations in this case are “not simply a matter of ‘political correctness’ to be brushed aside by a thick-skinned judiciary.” *Powell*, 652 So.2d at 358. As stated in *United States v. Heller*, “A racially or religiously biased individual harbors certain negative stereotypes which, despite his protestations to the contrary, may well prevent him or her from making decisions based solely on the facts and law that our jury system requires.” 785 F.2d 1524, 1527 (11th Cir. 1986). Such stereotyping has no place in jury deliberations.

The ethnicity or religion of any party or witness unrelated to the evidence should have no bearing on the outcome of a trial. To allow the verdict to stand without holding a hearing to determine whether the alleged comments were made undermines public confidence in the justice system. The courts must zealously guard the right to a fair and impartial trial and equal protection under the law.

The trial court abused its discretion in failing to hold an evidentiary hearing to determine whether the alleged juror misconduct occurred. The trial court’s judgment is reversed, and the case is remanded.

Fleshner, 304 S.W.3d at 89-90.

Fleshner Extends to Racial Bias

Although the holding of *Fleshner* expressly refers to ethnicity or religion of a party or witness, there can be no doubt that it also extends to race. First, because the issue is whether the constitutional right to trial is violated, any constitutionally impermissible ground is implicated, as the Southern District of the Missouri Court of Appeals has recognized:

Though not expressly addressed in *Fleshner*, we believe the reasoning of *Fleshner* would extend to statements that reflected a juror was biased based on gender or other constitutionally impermissible ground.

Ledure v. BNSF Ry. Co., 351 S.W.3d 13, 23 (Mo. App. 2011) (emphasis added).

Second, this Court should apply *Fleshner* here, where the juror's comments reflect racial bias or prejudice as opposed to a religious or ethnic bias or prejudice, because some of the cases which the Missouri Supreme Court found persuasive (and quoted) in *Fleshner* were based on comments that were based on race as opposed to religion or ethnicity or were based on race as well as religion and/or ethnicity. In *Powell*, the remarks were about black citizens of Jamaican birth. *Powell*, 652 So.2d at 355-56. In *Marshall*, the jurors told racial jokes and stated they were going to vote for a guilty verdict so that the defendant could return to prison to kill more black inmates. *Marshall*, 854 So.2d at 1240. In *Wright*, the misconduct took the form of racial slurs and comments that they did not want to award anything to the African-American plaintiff because she was a fat black woman on welfare who would simply blow the money on liquor, cigarettes, jai alai, bingo, or the dog track. *Wright*, 650 So.2d at 642. And, as reflected above, the *Fleshner* opinion quotes *United States v. Heller* in which there were ethnic, religious, and racial slurs and comments.

Finally, no rationale supports limiting *Fleshner*'s holding to ethnicity or religion. And to exclude race would be to undermine the guarantee of the Fourteenth Amendment to due process and equal protection of the laws.

Juror Misconduct Warrants a New Trial or Hearing to Determine Whether a New Trial Should Be Granted

In summary, juror misconduct in the form of intentional nondisclosure by Griggs warrant a new trial. However, if the Court concludes that the nondisclosure by Griggs was

unintentional, a new trial is still warranted because Amrine has shown bias and has demonstrated prejudice resulting from the nondisclosure. And, even if this Court is not persuaded to award a new trial based on Griggs' nondisclosure misconduct, the alleged racial comments he made during the jury's deliberation require a hearing to determine if they were made. If the Court finds they were made, the motion should be granted because Amrine "would have been deprived of [his] right to a trial by 12 fair and impartial jurors." *Fleshner*, 304 S.W.3d at 89-90.

II. AMRINE WAS PREJUDICED BY JUROR MISCONDUCT IN INTERJECTING EXTRANEOUS INFORMATION INTO THE JURY'S DELIBERATIONS AND CONSIDERING THAT INFORMATION IN DEROGATION OF THE COURT'S INSTRUCTIONS

It is axiomatic that a jury's verdict must be based only on the evidence presented in the courtroom. In voir dire, venirepersons are routinely and repeatedly asked if they can render a verdict based solely on the evidence. After being sworn in as a juror, and before any further proceedings in a civil trial occur, every civil juror in Missouri state courts is instructed, by M.A.I. 2.01, that his or her "decision must be based only on the evidence presented to you in the proceedings in this courtroom . . ." That instruction continues with a prohibition against conducting "your own research or investigation into any of the issues in this case." In addition, before deliberations, jurors are further instructed that in "determining whether or not you believe any proposition, you must consider only the evidence and the reasonable inferences derived from the evidence." M.A.I. 3.01. This jury, too, received both of these instructions. But, when a jury considers extraneous evidence and prejudice is demonstrated, it is within the discretion of the trial court to order a new trial. *Travis*, 66 S.W.3d at 3 (citing *Middleton*, 152 S.W.2d at 159). Moreover, an appellate court may

reverse the lower court's denial of a new trial if it appears that the trial court abused its discretion in ruling on the issue of extraneous evidence or the issue of prejudice. *Id.* Once it is apparent that extrinsic or extraneous facts bearing on trial issues but not properly introduced at trial are interjected into the jury's deliberations, prejudice will ordinarily be presumed and the burden is on the party opposing the new trial to overcome the presumption of prejudice. *Id.*

Here, extrinsic or extraneous evidence bearing on trial issues, but not properly introduced at trial, was interjected into the jury's deliberations. During the deliberations in this case, the jury sent a note to the Court inquiring as to the source of funds that would be used to satisfy any judgment in Plaintiff's favor, *i.e.*, Defendant Ossman or the State of Missouri. To respond, the Court prepared what was denoted "Instruction No. 10", a verbatim recitation of M.A.I. 2.07, which read as follows:

The existence or non-existence of any type of insurance, benefit, right or obligation of repayment, public or private, must not be considered or discussed by any of you in arriving at your verdict. Such matters are not relevant to any of the issues you must decide in this case.

The instruction, specifically directing the jury not to *consider or discuss* the question of who would pay, was taken to the jury and read aloud to them by the foreperson.

Although the Court's response to the jury question was the correct one, not surprisingly, the jury was frustrated by the Court's response. Exhibit 9 at ¶ 4 ("The judge's response didn't really give us an answer to our question."). The affidavit of Juror Earl and the sworn statements of Jurors Peters and Delk (who would testify to same at a hearing on Plaintiff's Motion for New Trial) establish that, in complete disregard of Instruction No. 10, a juror suggested that because Ossman had been a public defender, any judgment in favor of

Plaintiff Amrine would be paid from a State fund. The other jurors considered this information to be accurate and believed it. Exhibit 8 at ¶ 7 (several people on the jury confirmed that the state had a fund that would pay a judgment for Amrine). The affidavit and sworn statements also confirm that after Delk read the Court's instruction there were additional discussions during which the jurors continued to discuss who would pay any judgment as deliberations proceeded. As deliberations continued, it became apparent that some members of the jury were upset that tax dollars would satisfy any judgment for Amrine. Juror Earl's affidavit establishes that not only were jurors considering matters outside of the evidence presented in the courtroom even after having been told that the source of funds was irrelevant and not to be considered, but also establishes that Amrine was prejudiced by this juror misconduct because jurors used that knowledge to persuade undecided jurors that Ossman should win because they did not want their tax dollars going to Amrine. Further indicia of prejudice to Amrine resulting from the prohibited consideration of the source of funds to pay a judgment lies in the fact that, as noted, *supra* at 6 n. 1, the five current or former State employees on the jury voted in favor of Ossman. According to Earl, Griggs and Harwood did not like the idea of their tax dollars being used to satisfy a judgment in favor of Amrine and the two of them repeatedly drove home the point to the undecided jurors that "their tax money" would go to Amrine.

There can be no doubt that the juror who suggested that any judgment would be paid from State funds because Ossman had been a public defender injected into the jury's deliberations personal knowledge bearing on trial issues, knowledge not even admissible at trial. This is not an instance in which a juror permissibly applies common sense or has some

general familiarity with the location of an accident. This is more akin to a juror informing other jurors of personal knowledge of the circumstances of the case or a juror conducting an independent examination of the facts and communicating that knowledge in deliberations. *Cook v. Kansas City*, 214 S.W.2d 430, 433 (1948) (personal knowledge, *i.e.*, recollection that blasting shook the earth shared during deliberation); *Middleton*, 152 S.W.2d at 159-160 (juror visited at least two used car lots and measured cars similar to the model mentioned in the evidence). This is an instance in which knowledge of a fact (*i.e.*, the existence of a State fund that would satisfy any judgment since Ossman was working as a public defender) that had bearing on trial issues (*i.e.*, the jury was considering the issue of who would pay a judgment even in conjunction with whether Ossman was liable at all as well as in conjunction with whether to award damages), but which were not properly introduced nor even admissible at trial (as the Court correctly determined and communicated to the jury in Instruction No. 10), was interjected by one juror's suggestion and confirmed by other jurors.

Given that it is shown that extrinsic or extraneous facts bearing on trial issues but not properly introduced at trial were interjected into the jury's deliberations and considered and discussed in violation of an explicit instruction, prejudice is ordinarily presumed and the burden shifts to the party opposing the new trial to overcome the presumption of prejudice. *Travis*, 66 S.W.3d at 3 (quoting *Middleton*, 152 S.W.2d at 159). But as set forth *supra* at 23-24, there is ample reason for this Court to find that Amrine was prejudiced by interjection of knowledge and juror consideration of the issue of who would pay any judgment for Amrine. In short, the information was discussed, considered, and used by jurors to persuade undecided jurors to return a defense verdict, all to the detriment of Amrine.

Upon hearing the evidence as outlined herein, this Court should grant a new trial based on juror misconduct in interjecting extraneous information into the jury's deliberations and in considering that information in derogation of the court's instructions.

III. THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE

Standard for New Trial Based on the Verdict Being Against the Weight of the Evidence

This Court has the widest discretion to grant a new trial on the ground that the verdict is against the weight of the evidence, *Ray v. Gabbard*, 886 S.W.2d 696, 697 (Mo. App. 1994), and such grant of new trial will be affirmed on appeal unless there is a manifest abuse of discretion. *Robertson v. Cameron Mut. Ins. Co.*, 855 S.W.2d 442, 446 (Mo. App. 1993). Ruling that a verdict is against the weight of the evidence is peculiarly within the discretion of the trial court. *Resco Const. Co. v. Dawson Cabinet Co.*, 656 S.W.2d 324, 326 (Mo. App. 1983). Discretion is not abused in granting a new trial because the jury verdict for defendant was against the weight of the evidence where there was sufficient substantial evidence to sustain a verdict for the plaintiff. *Day v. Mayberry*, 421 S.W.2d 34, 38 (Mo. App. 1967) (*cited in Resco*, 656 S.W.2d at 326). A trial court stating that a new trial is granted on the ground that the verdict was against the weight of the evidence is not required to further set forth its reasons for that conclusion or the mental process by which it made that determination. *Resco*, 656 S.W.2d at 326-27 (citing *Burr v. Singh*, 243 S.W.2d 295, 300 (Mo. 1951)).

Instruction No. 8 told the jury its verdict must be for Amrine if it was believed:

First, Defendant Ossman either:

- a) failed to conduct thorough investigations into the backgrounds of the

State's witnesses, Russell, Poe, or Ferguson; or,

b) failed to prepare thoroughly for the depositions and trial testimony of the State's witnesses, Russell, Poe, or Ferguson; or,

c) failed to prepare thoroughly for and conduct meaningful cross examinations and impeachments of the State's witnesses, Russell, Poe, or Ferguson; and,

Second, Defendant Ossman, in any one or more of the respects submitted in Paragraph First was thereby negligent; and,

Third, as a direct result of such negligence, Plaintiff Amrine sustained damage.

Exhibit 4, Instruction No. 8. Instruction No. 6 explained that "negligent" or "negligence" meant the "failure to use that degree of skill and learning ordinarily used under the same or similar circumstances by the members of defendant's profession." Here, as to each of these propositions, there was sufficient substantial evidence to sustain a verdict for Amrine.

As to the first alternative in the first proposition, Amrine's expert witnesses testified that investigations needed to be thorough, independent, and exhaustive or complete, and emphasized that for that standard to be met, the defense lawyer's investigation cannot stop with knowledge of what the State has found and disclosed. Rather, a lawyer must undertake an *independent* investigation. Question by question, Ossman essentially conceded that he had not conducted thorough investigations into the backgrounds of Russell, Poe, or Ferguson. The list of investigatory failures is too long to recount in full but a few examples will show there was sufficient substantial evidence of such failure. Albeit it appeared that he may have been aware that Poe had been prescribed medication, Ossman had done nothing in terms of investigation into Poe's background, institutional, or medical history to put that information to use in a way that advanced Amrine's defense. He had not interviewed corrections officers

to gain background on Poe and insight into possible motives Poe might have had to fabricate a story. Ossman did nothing to investigate Ferguson's homosexuality or credibility, or his relationship to Clifford Valentine, a high-ranking Moor, even though Valentine had been allowed to sit in when Ferguson was interviewed during the Barber murder investigation. Even though Officer Noble saw Russell being chased by Barber, knife in hand, before Barber dropped, and if Russell could be made out to be the murderer it would get the charges against Amrine dropped, Ossman did not try to unravel the conflicting evidence as to Russell's whereabouts at the time of the stabbing. Nor did he explore what motive could be ascribed to Russell as an "in-preparation" Moor who might have been doing the bidding of a ranking Moor.

As to the second alternative in the first proposition, the failure of Ossman to conduct thorough investigations into the backgrounds of Russell, Poe, or Ferguson of necessity means that his preparation for their depositions and trial testimony was insufficiently thorough because, as Amrine's expert witnesses explained, a lawyer thoroughly prepared for deposition of a State's witness would go into that deposition or courtroom armed with not only the extensive background about that individual (that Ossman had not obtained, or to the extent he had it, did not use it) but having also read all law enforcement investigative reports and other materials, and having seen or reviewed or otherwise tested the State's physical evidence relevant to that deponent/witness in addition to having information generated by the defense lawyer's own thorough, independent, and exhaustive investigation. A telling moment as to the thoroughness of Ossman's preparation for the depositions was when Amrine's expert Sean O'Brien was able to read the depositions of the State's key witnesses in

five minutes or less. Although there are occasions when depositions are taken to verify just one point, gain one admission, or authenticate records and are quite brief, the failure to prepare to depose and examine these witnesses about crucial issues in a capital murder case was clearly before the jury.

As to the third alternative, just as Ossman's failure to conduct thorough investigations set the stage for his failure to prepare thoroughly for the depositions and trial testimony of the State's witnesses, the failure to thoroughly investigate and to thoroughly prepare for depositions lead to the conclusion that there was no thorough preparation for cross examination nor did Ossman conduct meaningful cross examinations as Amrine's experts explained.

In summary, there is sufficient substantial evidence to sustain a verdict for Amrine as to any of the three respects posited in the first proposition of Instruction No. 8.

As to the second proposition – that in any of those three respects, Ossman was negligent – Amrine's experts explained at length what the standard of care was for lawyers engaged in defending capital murder cases in 1985-1986. Expert Cynthia Short even testified that in looking back at the standards applicable in 1985-1986, she was impressed with how close they came to standards applicable today. As to each of those three alternatives, the experts testified as to what the duty was – what the standard of care required of a lawyer. And, as to each of those three alternatives, Amrine's experts explained how Ossman had failed to use that degree of skill and learning ordinarily used under the same or similar circumstances, *i.e.*, he had been negligent. There was sufficient substantial evidence to sustain a verdict for Amrine as to the second proposition.

The third proposition is that as a direct result of Ossman's negligence, Amrine sustained damage, and there was sufficient substantial evidence to sustain a verdict for Amrine on that proposition as well. First, as to the primary thrust of the third proposition – causation – there was evidence that Amrine sustained damage as a result of Ossman's negligence. Cynthia Short told the jury that Amrine more than likely would not have been convicted; she opined that had Ossman met the standard of care, and dismantled the case against Amrine by making the case against Russell, the charges against Amrine would most likely have been dismissed. Sean O'Brien told the jury, “. . . at the end of the day I would convince the jury that [this was a frame up of Joe Amrine, that the real killer is Terry Russell, that he is being protected by Clifford Valentine, and that Clifford Valentine has a relationship with George Brooks who is the officer who is in charge of the investigation . . .] is what happened.” Exhibit 13, Transcript Excerpt, O'Brien Testimony, at 75:25-76:9. Both Prosecutor Brown in his closing argument to the jury in the original trial and Ossman's expert, Mark Komoroski, agreed that without the testimony of Russell, Poe, and Ferguson, Amrine would never have been convicted of Barber's murder.

And, at trial, Ossman's defense focused on causation – Amrine's damages evidence really was not disputed. But, nevertheless, there is sufficient substantial evidence that Ossman's negligence caused Amrine to suffer damages. In addition to having to spend seventeen years on Death Row for a murder he did not commit, and losing his liberty and the loss of enjoyment of freedom, there was separation from family. There was uncontroverted testimony by forensic psychiatrist Dr. Stephen Peterson explaining that Amrine sustained psychological damages after being sentenced to death; that his condition worsened after the

United States Supreme Court denied federal habeas relief; and, that he has ongoing need for therapy and medication. There was evidence from Amrine himself about how difficult it was to have received a warrant for execution and know that your execution could happen the next day.

In sum, as to each of the propositions necessary to return a verdict for Amrine, there was sufficient substantial evidence to sustain a verdict in his favor. The conclusion to be reached, especially in view of the juror misconduct described *supra* at I and II, is that the verdict was the result of prejudice and bias and therefore, was against the weight of the evidence.

To say that the verdict was the result of prejudice and bias is to say that it was not the result of a due consideration of the evidence. It is only another way of saying that the jury did not give heed to the evidence, or that the verdict was against the weight of the evidence.

Reissman v. Wells, 258 S.W. 43, 45 (Mo. App. 1924).

CONCLUSION

An order granting a new trial on the grounds of juror misconduct by intentional nondisclosure is warranted here. Even if the nondisclosure is found by this Court to be unintentional, a new trial is still required because Amrine has shown bias and prejudice. Alternatively, Griggs' juror misconduct requires a hearing and, if the Court finds that the comments were made, Amrine has not had a fair trial and a new trial must be ordered. A new trial is required, too, because extraneous information was interjected into the jury's deliberations and prejudice is presumed. Although Ossman is allowed to attempt to overcome the presumption of prejudice, here he cannot do so. The extraneous information

considered by the jury and used to persuade undecided jurors meant that Amrine did not receive a fair trial decided by a fair and impartial jury of twelve based solely on the evidence presented in the courtroom and the instructions of this Court. Finally, a new trial is warranted because the verdict was against the weight of the evidence and was a product of bias and prejudice.

Respectfully submitted,

ARTHUR BENSON & ASSOCIATES

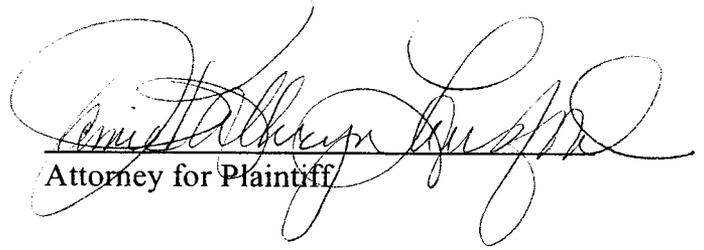
By 
Arthur A. Benson II Mo. Bar #21107
Jamie Kathryn Lansford Mo. Bar #31133
4006 Central Avenue (Courier Zip: 64111)
P.O. Box 119007
Kansas City, Missouri 64171-9007
(816) 531-6565
(816) 531-6688 (telefacsimile)
abenson@bensonlaw.com
jlansford@bensonlaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via electronic mail this 12th day of December 2012, to:

Doug Leyshock
Assistant Attorney General
Office of the Missouri Attorney General
221 West High Street, 7th Floor
P.O. Box 899
Jefferson City, Missouri 65102
(573) 751-3321
(573) 751-9456 (telefacsimile)
doug.leyshock@ago.mo.gov


Attorney for Plaintiff



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08AC-CC00340 - JOSEPH D AMRINE V JULIAN J OSSMAN

- | | | | | | | | | |
|-----------------------------|-----------------------------------------|--------------------------------|----------------------------------------------------|-------------------------------------|-----------------------------|-------------------------------------------------|---------------------------------|-----------------------------------------|
| Case Header | Parties & Attorneys | Docket Entries | Charges, Judgments & Sentences | Service Information | Filings Due | Scheduled Hearings & Trials | Civil Judgments | Garnishments/ Execution |
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Sort Date Entries: Descending Ascending Display Options: All Entries

- 11/26/2012** **Judgment Entered**
 It is Ordered and Adjudged Verdict returned in favor of Defendant Julian Ossman. JEB/mj
 Tried by Court-Civil
- 11/09/2012** **Jury Trial Conducted**
 Jury returns to Court are to deliberations. Jury returns verdict at 2:35 pm. Verdict reads as follows: On the claims of Plaintiff Joseph Amrine against Defendant Julian Ossman, we the undersigned jurors find in favor of Defendant Julian Ossman. Jury discharged with thanks of Court. Counsel for Defendant directed to prepare final judgment in conformation with verdict. JEB/mj
- 11/08/2012** **Jury Trial Conducted**
 Court reconvenes. Additional evidence for defendant. Defendant rests. Plaintiff waives rebuttal. Jury recessed after admonition. Instruction continuance held and record made. Jury returns. Instructions read to jury. Closing argument for Plaintiff. Closing argument for Defendant. Rebuttal for Plaintiff. Bailiff sworn and Jury sent to deliberation at 2:16 pm. Jury recessed at 9:00 pm after admonition to return at 9:00 am. JEB/mj
- 11/07/2012** **Motion Filed**
 Motion for Directed Verdict. mj
 Filed By: DOUGLAS GERARD LEYSHOCK
Jury Trial Conducted
 Court reconvenes outside the presence for the jury. Plaintiff rests. Defendant files motion for directed verdict at close of Plaintiff's evidence. Argument presented and considered by the Court. Motion denied. Jury returns to Courtroom, Evidence for Defendant. Recess after admonition. Additional evidence for Defendant. Recess for lunch, Court reconvenes after lunch. Additional evidence for defendant, recess after admonition. Additional evidence for defense. Recess after admonition. Additional evidence for defendant. Recess for evening. Jury to return at 9:00 am. JEB/mj
 Scheduled For: 11/07/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit
- 11/06/2012** **Jury Trial Conducted**
 Court reconvenes. Additional evidence for Plaintiff. Recess after admonition. Additional evidence for Plaintiff. Recess for lunch after admonition. Court resumes after lunch. Additional evidence for Plaintiff. Recess for evening after admonition. Jury to return at 9:00 am. JEB/mj
 Scheduled For: 11/06/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit
- 11/05/2012** **Jury Trial Conducted**
 Court reconvenes. Stipulation as to exhibits 12 and 13 entered into by the parties. Jury returns. Additional evidence for Plaintiff. Recess after admonition. Additional evidence for Plaintiff. Recess for evening after admonition. Court to resume at 8:30 am on 11-6-12. JEB/mj
 Scheduled For: 11/05/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit
- 11/02/2012** **Jury Trial Conducted**
 Plaintiff in person and by Attorneys Benson and Lansford. Defendant in person and by Attorney Leyshock. 2 additional jurors struck for cause. Premptory strikes made by Plaintiff. Premptory strikes made by Defendant. Jury of 12 and 2 alternates panel and sworn. Instruction 2.01 read the jury including paragraph 12 re: note taking. Opening statement by Plaintiff. Opening statement by Defendant. Evidence for the Plaintiff. Recess after admonition. Additional evidence for Plaintiff. Recess for lunch after admonition. Additional evidence for Plaintiff. Recess after admonition. Additional evidence for Plaintiff. Recess for weekend after admonition. Jury to return 8:30 am on 11-5-12. JEB/mj
 Scheduled For: 11/02/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit
- 11/01/2012** **Jury Trial Conducted**

Plaintiff in person and by Attorneys Benson and Lansford. Defendant in person and by Attorney Leyshock. Jury summoned. Hardship inquiry made. 53 venire persons qualified and sworn. Voir Dire by Plaintiff. Voir Dire by Defendant. Strikes made for case. 1st 27 jurors admonished regarding and directed to return in morning. JEB/mj

Scheduled For: 11/01/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

10/31/2012

Hearing Held

Plaintiff in person and by Attorney Benson and Lansford. Defendant in person and by Attorney Leyshock. Venire seated, after inquiry, Court finds insufficient jurors to make a full panel. Case continued to 11-1-12, new panel to be called. JEB/mj

10/29/2012

Certificate of Service

Filed By: JAMIE KATHRYN LANSFORD

10/11/2012

Pre-Trial Conference Held

Pre-trial conference held. Plaintiff by Attorney Amrine. Defendant by Attorney Leyshock. Counsel to exchange depo designations by 10-26-12. Use of Questionnaire approved, counsel to agree upon form and same to be approved by Court. Motion in Limine required for ruling prior to Voir Dire to be ruled Tuesday afternoon or evening. JEB/mj

Scheduled For: 10/11/2012; 2:00 PM ; JON EDWARD BEETEM; Cole Circuit

09/14/2012

Counsel Status Hearing Held

Scheduled For: 09/14/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

Order

Court notes that Motions in Limine are due 10 days prior to pre-trial conference per prior order and declines to change the same. JEB/mj

Filed By: JON EDWARD BEETEM

Depositions Filed

Notice of Deposition. jb

Filed By: DOUGLAS GERARD LEYSHOCK

08/06/2012

Notice to Take Deposition

Notice to take videotaped deposition duces tecum. jw

Filed By: ARTHUR A BENSON

04/23/2012

Certification Filed

03/16/2012

Certificate of Service

Filed By: JAMIE KATHRYN LANSFORD

03/06/2012

Notice to Take Deposition

Filed By: DOUGLAS GERARD LEYSHOCK

01/19/2012

Certificate of Service

Filed By: DOUGLAS GERARD LEYSHOCK

Jury Trial Scheduled

Associated Entries: 11/07/2012 - Jury Trial Conducted 

Scheduled For: 11/07/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

Jury Trial Scheduled

Associated Entries: 11/06/2012 - Jury Trial Conducted 

Scheduled For: 11/06/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

Jury Trial Scheduled

Associated Entries: 11/05/2012 - Jury Trial Conducted 

Scheduled For: 11/05/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

Jury Trial Scheduled

Associated Entries: 11/02/2012 - Jury Trial Conducted 

Scheduled For: 11/02/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

Jury Trial Scheduled

Associated Entries: 11/01/2012 - Jury Trial Conducted 

Scheduled For: 11/01/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

Pre-trial Conference Scheduled

Associated Entries: 10/11/2012 - Pre-Trial Conference Held

Scheduled For: 10/11/2012; 2:00 PM ; JON EDWARD BEETEM; Cole Circuit

Counsel Status Hrng Scheduled

Associated Entries: 09/14/2012 - Counsel Status Hearing Held

Scheduled For: 09/14/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

Order

PRE-TRIAL ORDERS 1. Cause is set for 5 day jury trial beginning at 9:00 a.m. on November 1, 2012. Counsel to appear at 8:30 a.m. on the same date to deal with any last minute matters. 2. Voir dire will be conducted on October 31, 2012 beginning at 9:00 a.m. Counsel to appear at 8:30 a.m. on the same date to deal with any last minute matters relative to voir dire. . 3. Pre-trial conference will be held at 2:00 p.m. on October 11, 2012. Trial counsel must appear and submit proposed jury instructions as well as any motions in limine at this conference. Any motions in limine must be served upon the opposing party ten (10) days prior to the pre-trial conference as well as serving a courtesy copy of the same upon the Court. Any party wishing to respond to a motion in limine in writing shall do so prior to the pre-trial conference. Counsel shall also submit an agreed upon simple statement of facts to be read by the Court during the Court's voir dire at this conference. 4. Unless requested within fourteen (14) days from the date of this Order, no continuance of the trial date or the pretrial conference date will be given except for exceptional cause. Counsel are expected to clear this date with their intended witnesses within this time period. Counsel requesting the continuance must personally appear and present his or her request upon due notice to the opposing party and at a time convenient to the Court. 5. Parties are to exchange lists of witnesses and exhibits which may be offered at trial at least five (5) days prior to trial. If a witness is not listed by a party, that witness will not be permitted to testify absent leave of Court and then only for the purpose of unanticipated rebuttal or unanticipated impeachment An exhibit which is not listed will be denied except for a showing of good cause. Witness lists and a lexicon of technical words and phrases to be used in the trial shall be supplied to the court reporter at least one (1) day prior to voir dire. 6. Exhibits for Plaintiff shall be numbered and Exhibits for Defendant are to be lettered. The original of each exhibit is for submission to the court and a copy must be provided for the opposing party at trial. Each side shall submit exhibit lists to the court immediately prior to trial. 7. Counsel are instructed to schedule their witnesses so as to avoid delays. It is not uncommon for the court to begin at 8 a.m. and/or go until 6 p.m. with the agreement of the jury panel. 8. Plaintiff are to produce experts for deposition by March 15, 2012. 9. Defendant are to identify experts by April 15, 2012 and produce them for deposition by May 15, 2012. . 10. Plaintiff are to identify any rebuttal expert by June 15, 2012 and produce them for deposition by July 15, 2012. 11. All discovery must be completed by July 31, 2012. 12. Any dispositive motions must be filed by August 31, 2012. Responses are due by September 21, 2012 by agreement. Any replies permitted by the rules are due by October 1, 2012. Argument on dispositive motions, limited to 1 hour, is scheduled for October 11, 2012 at 1:00 p.m. 13. Unless otherwise ordered, the court hereby imposes a settlement deadline of 12:00 Noon on day before trial or voir dire if conducted on a separate day. If the case is settled after that date and time, the court may enter an order to show cause why certain costs should not be imposed on the party or parties causing the delay in settlement. 14. If the case is settled, Plaintiff shall immediately notify Division I directly in writing by fax to 573-634-2584. Failure to give notice as directed may result in an order to show cause why certain costs should not be imposed on the party failing to give proper notice. 15. Case is placed on the September 14, 2012 law day at 9:00 a.m. for status. A joint written status report may be submitted if the case remains ready for trial.

Filed By: JON EDWARD BEETEM

Conference Call Held

Phone conference held with Attorney Benson for Plaintiff and Attorney Leyschok for Defendant. Schedule discussed. Separate pre-trial order entered. JEB/mj

Scheduled For: 01/19/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

01/18/2012

Conference Call Scheduled

Associated Entries: 01/19/2012 - Conference Call Held

Scheduled For: 01/19/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

01/17/2012

Certification Filed

Certification Filed

01/13/2012

Hearing Continued/Rescheduled

Case continued to 1-19-12 at 9:00 am for telephone conference. JEB/mj

Hearing Continued From: 01/13/2012; 9:00 AM Counsel Status Hearing

11/22/2011

Notice to Take Deposition

Filed By: JAMIE KATHRYN LANSFORD

10/17/2011

Counsel Status Hrng Scheduled

Associated Entries: 01/13/2012 - Hearing Continued/Rescheduled

Scheduled For: 01/13/2012; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

10/14/2011 **Counsel Status Hearing Held**
Defendant by Attorney Leyshock. Case passed to 1-13-12 at 9:00 am for status. JEB/mj
Scheduled For: 10/14/2011; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

05/06/2011 **Notice to Take Deposition**
Filed By: DOUGLAS GERARD LEYSHOCK
Notice to Take Deposition
Filed By: DOUGLAS GERARD LEYSHOCK

05/05/2011 **Counsel Status Hrng Scheduled**
Associated Entries: 10/14/2011 - Counsel Status Hearing Held 
Scheduled For: 10/14/2011; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

04/29/2011 **Counsel Status Hearing Held**
Plaintiff by Attorney Benson. Defendant by Attorney Leyshock. Status reviewed. Case continued to 10-14-11 at 9:00 am. JEB/mj
Scheduled For: 04/29/2011; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

04/18/2011 **Certificate of Service**
Filed By: JAMIE KATHRYN LANSFORD

04/07/2011 **Certificate of Service**
Filed By: JAMIE KATHRYN LANSFORD

04/06/2011 **Order**
It is Hereby Ordered that Plaintiff is granted an enlargement of two weeks, or to and including Monday April 18, 2011, within which to serve his discovery responses to Defendant's Second Interrogatories to Plaintiff and Defendant's Second Document Production Request. JEB/mj
Filed By: JON EDWARD BEETEM

04/05/2011 **Certificate of Service**
Filed By: JAMIE KATHRYN LANSFORD

04/01/2011 **Suggestions in Support**
SUGGESTIONS IN SUPPORT OF MOTION FOR ENLARGEMENT OF TIME WITHIN WHICH TO RESPOND TO DEFENDANT'S SECOND DOCUMENT PRODUCTION REQUEST AND DEFENDANT'S SECOND INTERROGATORIES TO PLAINTIFF. JW
Filed By: JAMIE KATHRYN LANSFORD
Motion for Extension of Time
MOTION FOR ENLARGEMENT OF TIME WITHIN WHICH TO RESPOND TO DEFENDANT'S SECOND DOCUMENT PRODUCTION REQUEST AND DEFENDANT'S SECOND INTERROGATORIES TO PLAINTIFF. JW
Filed By: JAMIE KATHRYN LANSFORD

03/04/2011 **Certificate of Service**
Filed By: DOUGLAS GERARD LEYSHOCK

02/10/2011 **Counsel Status Hrng Scheduled**
Associated Entries: 04/29/2011 - Counsel Status Hearing Held 
Scheduled For: 04/29/2011; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit
Order
Case status conference set for 4-29-11 at 9:00 am. May be rescheduled if circumstances changes but not after this date and time. JEB/mj
Filed By: JON EDWARD BEETEM
Hearing Continued/Rescheduled
Hearing Continued From: 02/18/2011; 9:00 AM Counsel Status Hearing

02/09/2011 **Motion for Continuance**

Filed By: ARTHUR A BENSON

Notice to Take Deposition

Filed By: DOUGLAS GERARD LEYSHOCK

11/12/2010

Judge/Clerk - Note

Copy request completed as requested by John Robey. kv

11/04/2010

Request for Records Filed

09/24/2010

Certificate of Service

Filed By: DOUGLAS GERARD LEYSHOCK

08/25/2010

Notice to Take Deposition

DEPOSITION OF PETER STERLING. JW

08/09/2010

Certificate of Service

Filed By: ARTHUR A BENSON

07/22/2010

Notice to Take Deposition

Filed By: ARTHUR A BENSON

07/19/2010

Counsel Status Hrng Scheduled

Associated Entries: 02/10/2011 - Hearing Continued/Rescheduled

Scheduled For: 02/18/2011; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

07/16/2010

Counsel Status Hearing Held

Status conference held. Petitioner by Attorney Benson. Defendant by Attorney Leyshock. Case placed on 2-18-11 at 9:00 am for status unless alternate date scheduled. JEB/mj

Scheduled For: 07/16/2010; 11:30 AM ; JON EDWARD BEETEM; Cole Circuit

07/09/2010

Entry of Appearance Filed

ENTRY OF APPEARANCE AND WITHDRAWAL OF COUNSEL. DOUGLAS LEYSHOCK, ASSISTANT ATTORNEY GENERAL, HEREBY ENTERS HIS APPEARANCE AS COUNSEL OF RECORD ON BEHALF OF DEFENDANT. KATHLEEN ROBERTSON HEREBY WITHDRAWS HER APPEARANCE ON BEHALF OF THIS DEFENDANT. JW

Filed By: DOUGLAS GERARD LEYSHOCK

06/21/2010

Counsel Status Hrng Scheduled

Associated Entries: 07/16/2010 - Counsel Status Hearing Held 

Scheduled For: 07/16/2010; 11:30 AM ; JON EDWARD BEETEM; Cole Circuit

Trial Setting Held

Case set for status conference at 11:30 am on 7-16-10. JEB/mj

Scheduled For: 06/18/2010; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

06/11/2010

Motion Filed

DEFENDANT'S UNOPPOSED MOTION TO COUNTINUE STATUS CONFERENCE. JW

Filed By: KATHLEEN RACHAEL ROBERTSON

06/03/2010

Correspondence Filed

Received correspondence from Plaintiff's Attorney giving conflicts dates. Available on any Friday for the rest of summer for a docket call or case management conference. See attached letter. mj

Filed By: ARTHUR A BENSON

Trial Setting Scheduled

Associated Entries: 06/21/2010 - Trial Setting Held 

Scheduled For: 06/18/2010; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

06/02/2010

Order

Case placed on 6-18-10 at 9:00 am docket for status and trial setting. JEB/mj

Filed By: JON EDWARD BEETEM

05/06/2010 **Trial Setting Held**
Case removed from 5-6-10 trial setting docket at request of Plaintiff. Plaintiff to arrange conference call within next 2 weeks to discuss status of case. JEB/mj
Scheduled For: 05/06/2010; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

04/29/2010 **Stipulation Filed**
Filed By: ARTHUR A BENSON

04/23/2010 **Motion Filed**
MOTION TO CONTINUE DOCKET SETTING. JW
Filed By: ARTHUR A BENSON

04/16/2010 **Trial Setting Scheduled**
Associated Entries: 05/06/2010 - Trial Setting Held
Scheduled For: 05/06/2010; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

Order
Case placed on 5-6-10 at 9:00 am docket for trial setting.JEB/mj
Filed By: JON EDWARD BEETEM

04/14/2010 **Judge Assigned**

04/08/2010 **Order to Transfer**
Case assigned to Division I. PSJ

04/07/2010 **Hearing/Trial Cancelled**
Scheduled For: 04/12/2010; 3:30 PM ; PAUL CAMPBELL WILSON; Cole Circuit

04/05/2010 **Order to Transfer**
On Court's own motion cause transferred to presiding judge for reassignment.PCW/rd
Filed By: RICHARD G CALLAHAN

03/18/2010 **Judge/Clerk - Note**
SENT SUBPOENA'S TO ARTHUR BENSON.JW

03/15/2010 **Notice to Take Deposition**
NOTICE TO TAKE DEPOSITION DUCES TECUM.JW
Filed By: ARTHUR A BENSON

02/23/2010 **Notice**
NOTICE OF VIDEOTAPED DEPOSITION.JW
Filed By: CHERYL ANN SCHUETZE

01/25/2010 **Conference Call Scheduled**
Associated Entries: 04/07/2010 - Hearing/Trial Cancelled
Scheduled For: 04/12/2010; 3:30 PM ; PAUL CAMPBELL WILSON; Cole Circuit

Counsel Status Hearing Held
Scheduled For: 01/25/2010; 1:30 PM ; PAUL CAMPBELL WILSON; Cole Circuit

01/21/2010 **Judge Assigned**
Judge assignment per Presiding Judge due to Judge no longer in office.

11/09/2009 **Certificate of Service**
Filed By: KATHLEEN RACHAEL ROBERTSON

10/02/2009 **Order**

Plaintiff is granted an enlargement of time to and including Friday 10-30-09 w/in which to serve his Answers or Objections to Defendant Ossman's First Set of Interrogatories Directed to Plaintiff and his Responses to Objections to Defendant Ossman's First Request for Production of Documents and Things Directed to Plaintiff/s/RGC/rd

Filed By: RICHARD G CALLAHAN

09/29/2009

Suggestions in Support

Suggestions in Support of Unopposed Motion for Enlargement of Time within which to Respond to Defendant's First Request for Production of Documents and Things and First Set of Interrogatories -sh

Filed By: ARTHUR A BENSON

Motion Filed

Unopposed Motion for Enlargement of Time within which to Respond to Defendant's First Request for Production of Documents and Things and First Set of Interrogatories -sh

Filed By: ARTHUR A BENSON

09/16/2009

Counsel Status Hrng Scheduled

Associated Entries: 01/25/2010 - Counsel Status Hearing Held

Scheduled For: 01/25/2010; 1:30 PM ; PAUL CAMPBELL WILSON; Cole Circuit

09/14/2009

Counsel Status Hearing Held

Scheduled For: 09/14/2009; 1:30 PM ; RICHARD G CALLAHAN; Cole Circuit

08/31/2009

Certificate of Service

Filed By: KATHLEEN RACHAEL ROBERTSON

08/21/2009

Counsel Status Hrng Scheduled

Associated Entries: 09/14/2009 - Counsel Status Hearing Held

Scheduled For: 09/14/2009; 1:30 PM ; RICHARD G CALLAHAN; Cole Circuit

Hearing Continued/Rescheduled

Hearing Continued From: 08/24/2009; 1:30 PM Counsel Status Hearing

07/23/2009

Counsel Status Hrng Scheduled

Associated Entries: 08/21/2009 - Hearing Continued/Rescheduled

Scheduled For: 08/24/2009; 1:30 PM ; RICHARD G CALLAHAN; Cole Circuit

07/02/2009

Entry of Appearance Filed

Filed By: CHERYL ANN SCHUETZE

05/27/2009

Case Review Held

Scheduled For: 05/27/2009; 8:30 AM ; RICHARD G CALLAHAN; Cole Circuit

05/21/2009

Answer Filed

Defendant's

Filed By: KATHLEEN RACHAEL ROBERTSON

05/05/2009

Mandate from MO Ct of Appeals

Now on this day, on consideration of the Petition for writ of prohibition herein to the said Respondent, it is ordered by the Court here that the said petition be, and the same is hereby denied. Relator's motion for stay overruled as moot. THOMAS SIMON/clerk/mah

04/16/2009

Ackn Notice of Appeal Filed

SC # 70767

04/06/2009

Case Review Scheduled

Associated Entries: 05/27/2009 - Case Review Held

Scheduled For: 05/27/2009; 8:30 AM ; RICHARD G CALLAHAN; Cole Circuit

02/26/2009

Order

IT IS HEREBY ORDERED that Defendant Ossman's Motion to Dismiss is DENIED on all grounds except for collateral estoppel, is sustained as to all claims except for claims relating to the witness recantations relied on by the MO Supreme Court in State ex rel Amrine v. Roper as to such recantations claims, the Motion to Dismiss is DENIED./s/RGC/rd

Filed By: RICHARD G CALLAHAN

01/28/2009 **Hearing Held**
 Scheduled For: 01/28/2009; 3:30 PM ; RICHARD G CALLAHAN; Cole Circuit

01/13/2009 **Correspondence Filed**
 Filed By: ARTHUR A BENSON

12/15/2008 **Entry of Appearance Filed**
 Entry of Appearance and Withdrawal of Counsel -sh
 Filed By: KATHLEEN RACHAEL ROBERTSON

12/08/2008 **Hearing Scheduled**
 Associated Entries: 01/28/2009 - Hearing Held
 Scheduled For: 01/28/2009; 3:30 PM ; RICHARD G CALLAHAN; Cole Circuit
Hearing/Trial Cancelled
 Scheduled For: 12/08/2008; 1:30 PM ; RICHARD G CALLAHAN; Cole Circuit
Counsel Status Hearing Held
 Case set for oral argument on 1-28-09 at 3:30 pm.RGC/rd
 Scheduled For: 12/08/2008; 1:30 PM ; RICHARD G CALLAHAN; Cole Circuit

12/02/2008 **Motion Hearing Scheduled**
 Associated Entries: 12/08/2008 - Hearing/Trial Cancelled
 Scheduled For: 12/08/2008; 1:30 PM ; RICHARD G CALLAHAN; Cole Circuit

11/26/2008 **Notice of Hearing Filed**
 Notice of Hearing on 12-8-08 at 1:30 p.m.-sh
 Filed By: EMILY PATRICIA KALMER

11/18/2008 **Counsel Status Hrng Scheduled**
 Associated Entries: 12/08/2008 - Counsel Status Hearing Held
 Scheduled For: 12/08/2008; 1:30 PM ; RICHARD G CALLAHAN; Cole Circuit

10/09/2008 **Suggestions in Opposition**
 Suggestions in Opposition to Motion to Dismiss, filed. sh
 Filed By: ARTHUR A BENSON

07/07/2008 **Motion to Dismiss**
 Filed By: EMILY PATRICIA KALMER
Entry of Appearance Filed
 Filed By: EMILY PATRICIA KALMER

06/09/2008 **Summons Personally Served**
 Document ID - 08-SMCC-686; Served To - OSSMAN, JULIAN J; Server - COLE COUNTY SHERIFF; Served Date - 05-JUN-08;
 Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served

06/03/2008 **Summons Issued-Circuit**
 Document ID: 08-SMCC-686, for OSSMAN, JULIAN J;Summons directed to Cole County Sheriff for Service.

04/28/2008 **Pet Filed in Circuit Ct**
 Filed By: ARTHUR A BENSON

1 IN THE CIRCUIT COURT OF MISSOURI
2 19TH JUDICIAL CIRCUIT, DIVISION I
3 HONORABLE JON E. BEETEM, JUDGE

4 JOSEPH D. AMRINE,)
5)
6 Plaintiff,)
7 vs.) 08AC-CC00340
8 JULIAN J. OSSMAN,)
9 Defendant,)

10 ARTHUR BENSON VOIR DIRE EXAMINATION
11 NOVEMBER 1, 2012

12 APPEARANCES

13 For the Plaintiff:
14 ARTHUR A. BENSON, II and JAMIE KATHRYN LANSFORD
15 Arthur Benson and Associates
16 4006 Central Avenue
17 PO Box 119007
18 Kansas City, Missouri 64171-9007
19 (816) 531-6565

20 For Defendant:
21 DOUGLAS G. LEYSHOCK
22 Assistant Attorney General
23 Broadway State Office Building - Seventh Floor
24 PO Box 899
25 Jefferson City, Missouri 65102
(573) 751-3321

26 Kaye F. Asel, Certified Court Reporter
27 Official Court Reporter, 19th Judicial Circuit
28 Cole County, Missouri

1 PROCEEDINGS

2 MR. BENSON: Thank you, Your Honor.

3 Good afternoon! And the Judge previously introduced
4 me, but our memories are a little short.

5 I'm Arthur Benson and together with Jamie Lansford,
6 we're lawyers, and we now represent Joseph Amrine, our
7 client. As you know from reading the introduction of this
8 case on the questionnaire and the Judge's description, this
9 is what commonly is called a legal malpractice case.

10 Joseph Amrine has brought this lawsuit against his former
11 lawyer, Mr. Ossman, with regard to representation in 1986.

12 Thank you.

13 So it is about lawyers and up here we have a whole lot
14 of lawyers. I'm going to start with some questions about
15 lawyers. From reading the questionnaires it appears that
16 at least three of you have maybe had questionable
17 relationships with lawyers, so I would kind of like to
18 explore that a little bit. And as the Judge said, I
19 apologize in advance, we're not attempting to pry, but
20 these are important issues to make certain that we get a
21 fair and impartial jury that hears this case.

22 So in one case, Mr. Adams, who is juror number 9, had
23 a lawyer or has a lawyer, I believe you said, who is
24 currently maybe not real dependable at filing papers on
25 time.

2

1 VENIREPERSON ADAMS: That is correct.

2 Do I need to stand by the way?

3 MR. BENSON: Yes. Well, I think --

4 THE COURT: If you would, please. Thank you.

5 MR. BENSON: -- it is a good practice to get in to.

6 Even though you and I are close, it is important that
7 everyone be able to hear, especially the court reporter be
8 able to make a good record, so thank you.

9 VENIREPERSON ADAMS: Yes.

10 MR. BENSON: Can you tell us a little bit about what
11 that situation is.

12 VENIREPERSON ADAMS: Currently we're in the process of
13 purchasing some property that was on the courthouse steps.

14 We were purchasing property on the courthouse steps in
15 Pulaski County. We used a local attorney to deal with the
16 paperwork that we had to do. We have a waiting period
17 before you can actually file to get the property, so we
18 actually went the day that we purchased the property on the
19 courthouse steps, spoke to the attorney and made
20 arrangements for him to take this case later on.

21 We went back to the attorney in May of this year,
22 there is a ninety day letter that needs to go out, so it
23 has to go to any of the people that might be on the title.
24 So we spoke to the attorney, he said yes, that he was aware
25 of that and could we get names for him. We got him names.

3

1 They were doing the title search. So I contacted him in
2 like two and a half months and found out that he hadn't
3 done anything with the information that I had provided him,
4 so we pushed him until they have sent out the letters.
5 There is still paperwork that has not been filed and we're
6 going to be later in to November now as opposed to in
7 August being able to close on this property because of him
8 not filing his papers.

9 MR. BENSON: So this would be a situation where you
10 expected your lawyer to be thorough, well prepared, detail
11 oriented?

12 VENIREPERSON ADAMS: That is correct.

13 MR. BENSON: And take care of the tasks?

14 VENIREPERSON ADAMS: Right.

15 MR. BENSON: Maybe he hasn't done anything that's
16 harmed you yet, it certainly has been an inconvenience?

17 VENIREPERSON ADAMS: That's for sure.

18 MR. BENSON: In this case, Mr. Amrine, his
19 complaint against Mister -- Oh, excuse me, you wanted to
20 add something?

21 VENIREPERSON ADAMS: Let me add something. I do have
22 another instance with a different attorney in Jefferson
23 City that occurred. For full disclosure, I should probably
24 tell you about that.

25 It is listed on there as a traffic incident that I had

4

1 an attorney for my daughter. And so the attorney, I
2 contacted him, he sent me a letter, said that he would be
3 taking care of it, we didn't have to go to court or
4 anything. So on the evening of court my wife calls me
5 frantically and let's me know that there has been a warrant
6 issued for my daughter's arrest because she did not appear
7 in court because of this incident and so I quickly ran to
8 the court and took the letter and had it presented to the
9 Judge and they straightened things out. But, here again,
10 was another opportunity for an attorney.

11 MR. BENSON: In this case the lawyer dropped the ball
12 on that?

13 VENIREPERSON ADAMS: That's correct.

14 MR. BENSON: So in this case where Mr. Amrine is suing
15 his prior lawyer, and there will be evidence in this case
16 that Mr. Amrine's allegations are that his lawyer was not
17 thorough and well informed; so given your experience with
18 lawyers, would you be able to kind of set your experiences
19 aside and objectively and fairly evaluate the evidence in
20 this case?

21 VENIREPERSON ADAMS: Probably. I've had probably -- I
22 mean, I've had two incidents out of just a few that I've
23 had with attorneys.

24 MR. BENSON: This is great, as I was going to say, as
25 a beginning because it is going to apply essentially to all

5

1 the questions that we will be asking this afternoon.
2 So when you say "probably," lawyers, we listen to
3 words and we need a jury that is not just probably but that
4 is certainly fair and impartial and can say with
5 confidence, search his heart, search his brain, and say I
6 can put all those experiences behind me. Now, if you can't
7 do that, whether one side or the other might like to have
8 you as a juror, it is not fair to our system if you hold
9 something back. So --

10 VENIREPERSON ADAMS: Those are pretty prevalent
11 memories of mine, and it would be difficult for me to just
12 set that completely aside and might be swayed, yes, these
13 things happen, whether it happened or not in this instance.

14 MR. BENSON: So let me kind of ask the question
15 directly. Knowing what you know and what little you know
16 about the case so far, can you say -- and this may change
17 over the course of the afternoon, but can you say with
18 confidence that you can set those experiences aside and be
19 completely fair and impartial to Mr. Ossman and Mr. Amrine
20 in this case?

21 VENIREPERSON ADAMS: I do not feel that I could be
22 completely, you know, not recall the things that have
23 happened to me.

24 MR. BENSON: Even if the Judge says you have to
25 evaluate the case fairly and impartially, it would be

6

1 difficult for you to follow those instructions because of
2 those --

3 VENIREPERSON ADAMS: I would do that to the best of my
4 ability.

5 MR. BENSON: Yeah. But the best of the ability may
6 not be good enough for the system, so I --

7 VENIREPERSON ADAMS: I'll error on saying no, I could
8 not. I would rather say no, I couldn't, as opposed to
9 saying yes and then have those enter in to it.

10 MR. BENSON: I think I would say everyone involved in
11 this litigation appreciates your honesty, the depth and the
12 insight that you've given to this, because it is important
13 that everybody understand how important it is that we have
14 a fair and impartial jury, so that is appreciated. Thank
15 you, Mr. Adams.

16 And Norris Rutz, number 29. Right. Right. Thank
17 you. In your questionnaire you said that it appeared that
18 your lawyer just kind of went through the established
19 routine of procedures.

20 VENIREPERSON RUTZ: Yeah. My son, when he was 16, had
21 a driving with blood alcohol content, was driving, so we
22 went and seen a lawyer and, of course, he promised us that,
23 you know, we're going to do this and we're going to do
24 that, but I think when we went through -- appeared before
25 the court, my impression was, it was all pretty much

7

1 routine and he didn't really do a thing for us, so I kind
2 of had a bum feeling about that.

3 MR. BENSON: Was there something that you expected
4 that lawyer to do that he or she didn't do?

5 VENIREPERSON RUTZ: Things that he told us, none of
6 them -- What he told us, what the officer done when he
7 pulled them over, they can't do that, blah-blah, and so,
8 anyway, when we finally -- I think it was his first
9 offense, so I think it pretty much just went through the
10 system. I really don't know exactly what he did or said.
11 I really didn't appear in court with him.

12 MR. BENSON: Would it be correct to say that to some
13 degree he was not as well informed or thorough as you had
14 expected him to be?

15 VENIREPERSON RUTZ: The --

16 MR. BENSON: The lawyer.

17 VENIREPERSON RUTZ: The lawyer? He was just going
18 basically on the police report that was presented to him.
19 Beyond that, I don't know how, how well he prepared
20 himself.

21 MR. BENSON: Based on that, the same question as Mr.
22 Adams, do you think you could set that aside and be fair
23 and impartial in hearing the evidence in this case?

24 VENIREPERSON RUTZ: Probably not. I don't think I
25 can, no.

8

1 MR. BENSON: All right. Thank you.

2 And Joyce Wilson, number 7. In your case it is not
3 clear, but in a divorce case you relied on a lawyer and
4 didn't quite work out the way you had hoped?

5 VENIREPERSON WILSON: Right. And I felt that, at the
6 time, that I did a lot of the paperwork and calling and
7 follow up and at the time she was breaking away from her
8 partnership and going on her own and things had to be
9 changed and appointments changed, and I felt like maybe I
10 wasn't getting her full attention.

11 MR. BENSON: She was distracted by something?

12 VENIREPERSON WILSON: Yes.

13 MR. BENSON: So did that result in her not being as
14 well informed or thorough as you expected her to be?

15 VENIREPERSON WILSON: I expected more, right.

16 MR. BENSON: Is there anything in that experience, if
17 you were chosen as a juror in this case, that would make it
18 difficult for you to be a fair and impartial juror when you
19 hear this case, would you set that aside?

20 VENIREPERSON WILSON: No, I think it would affect my
21 opinion.

22 MR. BENSON: All right. Thank you.

23 So those are the three that gave some response to
24 questions. So now having heard of these questions, is
25 there anyone else here that it just kind of sparks

9

1 something in your memory about an experience with lawyers
2 that you would like to tell us about, where a lawyer has
3 not been as well prepared, as thorough as you had expected
4 that lawyer to be with you or some member of your family?
5 Number 49.

6 VENIREPERSON JOYCE: Yes. When I filled out the
7 questionnaire, I was thinking about my family and totally
8 forgot my husband's family.

9 MR. BENSON: We won't tell him.

10 VENIREPERSON JOYCE: Sorry. His nephew was Kevin
11 Green, I don't know if you know that name, but he was tried
12 and convicted and went to prison for 16 years for a crime
13 he did not commit, and they actually proved it, his
14 innocence after that. But here again, that all happened
15 before I was even married to my husband, so I don't really
16 have anything about it, you know, with attorneys or
17 anything, but I just wanted to make sure that that was
18 brought out.

19 MR. BENSON: So if you were chosen, do you believe you
20 could -- That was distant or not close to you?

21 VENIREPERSON JOYCE: Yeah. It really wasn't close to
22 me, other than when I married the man.

23 MR. BENSON: If you ended up being on this jury, could
24 you be fair and impartial to both sides?

25 VENIREPERSON JOYCE: I believe I could. Are you done?

10

1 MR. BENSON: Do you have something else to add?

2 VENIREPERSON JOYCE: No. I didn't know if you were
3 done.

4 MR. BENSON: Number 49 raises a question that I'm
5 going to get to later but now is probably a good time to do
6 it. She has mentioned that somebody had served time for a
7 crime that he did not commit, and that's been in the news a
8 lot, the Innocence Project, exonerations, a lot of people's
9 death penalty cases that are set aside. Do any of you,
10 from having followed that in the news, been aware of that
11 in the news, do any of you have any ideas -- and this is to
12 everybody -- do any of you have any ideas or thoughts about
13 what role lawyers played in innocent people being
14 convicted? Do any of you -- Now think about that for a
15 minute. My question is, do you have any thoughts about the
16 role lawyers play back when somebody later is exonerated or
17 found to be innocent, conviction set aside, what role the
18 lawyer at the time may have played, do you have any kinds
19 of thoughts, feelings, or beliefs? Somebody?

20 We've got to wait a minute.

21 THE COURT: All right. Mr. Benson.

22 MR. BENSON: Thank you. I'm going to come back just
23 very quickly to that question that was pending, so you've
24 had plenty time to think about what role lawyers may have
25 played in convictions where there is -- Mr. Stapleton is

11

1 giving us a signal here.

2 THE COURT: Would having water with you, would that
3 assist you, Mr. Stapleton?

4 VENIREPERSON STAPLETON: It may. I think I need to
5 step out again, right quick if possible.

6 THE COURT: My problem is, I need to have you in here.

7 VENIREPERSON STAPLETON: We will do our best, sir.
8 Allergies.

9 MR. BENSON: I'm going to come back to that question
10 in just a minute. I want to apologize to juror number 10.
11 He tried to get my attention. And there is a rule that the
12 Judge has, that everything that goes on in the courtroom
13 has to go on in front of everybody, but if any of you ever
14 has an emergency, I mean, if something is really urgent, an
15 emergency, just blurt that out, because we can't let
16 formality get in the way of emergencies. I didn't catch
17 the signal.

18 All right. So now the question, it is an important
19 question, because it kind of goes to the role of lawyers
20 and their clients. Have any of you had an opportunity to
21 think now and come up with what you believe to be some
22 reason or some role that lawyers play when people who are
23 later found to be innocent to be convicted? What was it
24 their lawyer did or didn't do, something, thoughts or ideas
25 or beliefs about that? Somebody? Number 17.

12

1 VENIREPERSON LOGAN: Are you talking about hearsay or
2 actual cases?

3 MR. BENSON: Kind of what you feel and believe,
4 because these are the thoughts and beliefs that you would
5 bring to the jury box if you were a juror, what do you feel
6 is going on in this lawyer/client relationship?

7 VENIREPERSON LOGAN: I've had a couple friends who
8 are lawyers and outside of courtroom they've stated that
9 deals are cut outside of courtroom. I don't know how just
10 that is.

11 MR. BENSON: All right. You think there is some role
12 that lawyers may in some cases be making deals that are not
13 in the best interest of their clients?

14 VENIREPERSON LOGAN: Yeah. In my opinion.

15 MR. BENSON: And that is an important belief. We will
16 come back to that in a minute.

17 Number 36.

18 VENIREPERSON REICHART: If I were to equate this to
19 any other profession, I'd just say not all lawyers are
20 equal; some aren't as skillful as others and weren't able
21 to do the job that another lawyer may have done.

22 MR. BENSON: All right. Not all lawyers are created
23 equally, some are not as skillful and wouldn't have done as
24 good a job as others?

25 VENIREPERSON REICHART: Correct.

13

1 MR. BENSON: So under that circumstance, what are your
2 feelings, your belief what a lawyer's obligation to his
3 client is, if the lawyer doesn't have the skill to take the
4 case, should he say I can't do the case?

5 VENIREPERSON REICHART: I would say his obligation is
6 to state they don't feel comfortable with the case. If
7 they do feel comfortable with the case, take all evidence
8 and fact and consideration and do the best job they can
9 representing the client.

10 MR. BENSON: So in the case where a lawyer is expected
11 to be well informed and thorough, a lawyer for some reason
12 doesn't have the skills or the experience or the self
13 confidence to perform in a well informed and thorough
14 manner, the lawyer should decline the case?

15 VENIREPERSON REICHART: I would expect that, yes.

16 MR. BENSON: All right. Thank you number 38.
17 Anyone else have views on this topic, on this thought?

18 All right. This is a question not only to number 19
19 and number 38 but to everybody. So having heard 19 and
20 38 -- Oh, 17, I'm sorry. 17. -- 17 and 38 discuss their
21 issues about deals are perhaps sometimes cut or another
22 case lawyers who are not up to the job, take the job on
23 anyway, do any of you agree with that so much so that it
24 would make it difficult for you; if you were chosen on this
25 jury, to sit and be fair and impartial, particularly to

14

1 number 17 and number 38? Do you guys -- Does anyone who
2 feels -- That is a difficult question. Anyone here, 17 or
3 38, who feel they could not sit on this case as a juror in
4 this instance and be fair and impartial because they
5 believe that jurors -- that lawyers either sometimes cut
6 deals or they take cases they are not skillful enough to
7 handle, do any of you feel that way? To whatever feelings
8 in that regard you have, set aside and be fair and
9 impartial, anybody who disagrees with that who could not be
10 fair and impartial?

11 Related topic is the death penalty. I'm going to ask
12 you a question I would like everyone to answer, and I think
13 there are three possible answers, but if you have a fourth
14 answer you would like to add, you'll have a chance to tell
15 us. So the questions about the death penalty, the first
16 question I'm going to ask is, do you -- Is it your opinion
17 that the death penalty is appropriate for some crimes and
18 circumstances? I'm going to come back. I'll ask you in a
19 minute. I'm telling you what the three answers are now in
20 case someone has a fourth answer and then we will get all
21 the numbers.

22 The second one is, no, I believe the death penalty
23 should be abolished. And the third one is, I don't know,
24 I'm not sure, I have no opinion.

25 Now, before I ask those, does anybody have a fourth

15

1 answer that is not included in this?

2 Okay. All right. So here we go, let's start in the
3 box up here, if you believe that the death penalty is
4 appropriate for some crimes and circumstances, raise your
5 paddle and we will take your numbers down. The back row,
6 1, 3, 6, 7, 9, 10, 11 and 14.

7 All right. Okay. Now, in the first two rows here,
8 the first two rows, yes, the death penalty is appropriate
9 for some crimes and circumstances?

10 Now, in the first two rows. 17, 18, 19, 20, 21, 22,
11 24, 26, 27, 28, 29, 31, 32, 33, 34. Okay. Put those down.

12 Everybody else, yes, the death penalty is appropriate
13 in some cases and circumstances? Okay. 35, 36, 37, 38,
14 39, 40, 43, 44, 45, 47, 48, 49, 50, 51, 53, 54. Thank you.

15 All right. Answer number two, no, I believe the death
16 penalty should be abolished. In the jury box, should be
17 abolished. 4, 8 and 13.

18 Okay. Everybody out here, all out here, I believe the
19 death penalty should be abolished. Okay. 23, 25, 41 --
20 30, 41, and 42.

21 Third answer, not sure, no opinion. Anybody in the
22 jury box. Number 2 and number 12. 2 and 12 not sure, no
23 opinion.

24 Out here, everybody, not sure, no opinion. 15, 16,
25 46, 52.

16

1 Now, as you know, Joe Amrine was sentenced to death in
2 this courthouse. He was convicted and the jury deliberated
3 and recommended death on May 1, 1986, and 17 years later
4 the Missouri Supreme Court reversed its conviction and he
5 was freed in July of 2003 from this jail connected right
6 here, Cole County Jail, he was let go and he has been free
7 ever since.

8 All right. So this is whether you are in favor of the
9 death penalty, opposed to the death penalty, not sure you
10 have any opinion. In other words, for everybody. Is there
11 anything about the facts of the death penalty and Joe
12 Amrine being convicted, sentenced to death that would make
13 it difficult for you to be fair and impartial in a case
14 when, after his conviction has been set aside, he is suing
15 his lawyer, anything about your belief in the death penalty
16 or your opposition to the death penalty, would any of that
17 interfere with your ability to be fair and impartial in
18 hearing his case against Mr. Ossman? I see no paddles.

19 The murder for which Mr. Amrine was convicted took
20 place inside the Walls, the old Missouri State Penitentiary
21 not far from here. Joseph Amrine was serving five, five
22 felony sentences, he had been convicted and sentenced to a
23 total of 15 years in the Missouri State Penitentiary where
24 he had entered when he was 19. He previously spent one
25 year in the Jackson County Jail in Kansas City as a 17-year

17

1 old, sentenced as an adult, spent one year in jail.
2 My question now is, knowing that Joseph Amrine went to
3 the Missouri State Penitentiary on felony charges when he
4 was there and charged with the murder of a fellow inmate,
5 the fact that he was a felon, he had these felony
6 convictions, do any of you feel that he was less entitled
7 to a competent lawyer because of his felony convictions?
8 All right. Do any of you feel that because he was in
9 the penitentiary involving a penitentiary murder that that
10 was in any way less, less important so that he did not
11 deserve a competent, well informed, thorough lawyer?
12 Does anybody feel that it was his own fault that he
13 got himself there; if he hadn't been there, it wouldn't
14 have happened and so whatever happened to him, once he got
15 there, too bad?
16 Does anybody feel like that Joe Amrine, because he had
17 committed felonies, got himself in the penitentiary
18 somehow, did not deserve well informed, thorough, competent
19 representation?
20 The murder occurred -- The murder was a stabbing of an
21 inmate, an inmate was stabbed in the back and died pretty
22 quickly. And this case, the case against Joseph Amrine,
23 involved three inmates who testified against him. One was
24 a young African American named Terry Russell. Another
25 was -- they were all pretty young -- a white named Randy or

18

1 Randall Ferguson. A third one was a white guy named Jerry
2 Poe. I don't suppose anybody knows them but just in case.
3 Does anybody know any of them?
4 In one way or another they may testify in this case by
5 deposition, they've been deposed, their testimony was taken
6 under oath, transcribed, and in some cases depositions are
7 videotaped as well as transcribed. I know you will hear
8 from Terry Russell because we're going to read his
9 deposition. So any of you know anything about Terry
10 Russell, Jerry Poe, and Randy Ferguson?
11 And the allegation in this case is that those three
12 witnesses were lying at Joe Amrine's trial. There were
13 circumstances that could have been established to show that
14 they were not telling the truth, they couldn't have been
15 where they said they were.
16 MR. LEYSHOCK: Your Honor, may we approach?
17 THE COURT: Sure.
18 (Counsel approached the bench and the following
19 proceedings were had:)
20 THE COURT: Okay.
21 MR. LEYSHOCK: I'm going to object to Mr. Benson's
22 last question. He is arguing his case to the jury,
23 depositing for them that there was information that could
24 have been discovered during the course of the investigation
25 and trial that would have led to there not being believed

19

1 at trial, that is the crux of this case, and I believe that
2 is an improper voir dire question.
3 MR. BENSON: It is the crux of this case. Well, I can
4 say it differently. I said it is the allegation.
5 THE COURT: You said allegation, that is correct.
6 MR. BENSON: I said an allegation in the case. I
7 didn't finish my question. My question was going to be
8 whether or not any of them knew anything about the
9 operation of the prisons, that they could bring any
10 knowledge, and go into some Department of Corrections
11 employees and stuff, about the operation of prisons and how
12 you would determine whether or not inmates were telling the
13 truth or not.
14 MR. LEYSHOCK: Well, I still believe he was arguing
15 the case within the context of the question, but I'll
16 withdraw the objection, wait for him to fully state his
17 question.
18 MR. BENSON: I'll tone it down a little bit.
19 THE COURT: Pardon?
20 MR. BENSON: I'll tone it down a little bit.
21 THE COURT: That is a good idea.
22 (The proceedings returned to open court.)
23 MR. BENSON: Here's the question a little more
24 succinctly. This is a prison case involving inmates who
25 testified against Mr. Amrine. My question is, do any of

20

1 you know or have information or history or experience in
2 the operation of a penitentiary that would inform you at
3 all about how inmates are controlled, or what kind of
4 records are kept, or how you would check on what inmates
5 say or don't say or claim? Anybody have any experience in
6 the operations of a prison or penitentiary?
7 All right. There are a number of players in this
8 case, including George Brooks, the late George Brooks, who
9 was the sheriff here in Cole County at the time that Gary
10 Barber was murdered in the Missouri State Penitentiary.
11 George Brooks was the principal investigator for the
12 Department of Corrections.
13 And juror number 11, Herman Grothoff, you have a
14 relationship with George Brooks, or had?
15 VENIREPERSON GROTHOFF: He married my niece.
16 MR. BENSON: He was married to your niece?
17 VENIREPERSON GROTHOFF: Yes.
18 MR. BENSON: Right. And is the fact that George
19 Brooks is one of the principal players in this case and he
20 was married to your niece, would that make it difficult for
21 you to be kind of fair when you heard the evidence in this
22 case?
23 VENIREPERSON GROTHOFF: I knowed George real well. I
24 knew him. Excuse me. But I knew George real well and what
25 George would say was true.

21

1 MR. BENSON: And so you feel that so strongly that it
2 would be difficult if you heard any, anything contrary to
3 that --
4 VENIREPERSON GROTHOFF: Yes.
5 MR. BENSON: -- you would not be able to believe that?
6 VENIREPERSON GROTHOFF: No. I believe I knew him real
7 well.
8 MR. BENSON: All right. Okay. And would that mean
9 that it would be difficult for you to be a fair and
10 impartial juror in any case in which there was any
11 criticism of George Brooks?
12 VENIREPERSON GROTHOFF: I believe if George
13 investigated something, it was done right.
14 MR. BENSON: All right. And that is a strong belief?
15 VENIREPERSON GROTHOFF: That is a strong belief.
16 MR. BENSON: It would be difficult to set that aside
17 if you heard something to the contrary?
18 VENIREPERSON GROTHOFF: Yes.
19 MR. BENSON: So the difficulty in setting aside the
20 strong belief, it is an example of how it is difficult to
21 be fair and impartial when you have strong beliefs, is that
22 something you agree with?
23 VENIREPERSON GROTHOFF: Yes.
24 MR. BENSON: So it would be difficult for you to be
25 fair and impartial because of your strong beliefs?

22

1 VENIREPERSON GROTHOFF: Yeah. It is the words that
2 can be twisted around so easy that you can make something
3 that is good sound bad. And I believe in speaking truth
4 one way, not two ways or three ways. The truth is the
5 truth for me or for you, the same for anybody.
6 MR. BENSON: All right. Thank you, sir.
7 There are, naturally being in Cole County there are
8 penitentiaries, quite a number of people that have some
9 connection with the Department of Corrections, so I want to
10 follow up on some of those. And these are not in a
11 particular order, but number 26, Luan Durham. You are a
12 nurse for the Department of Corrections?
13 VENIREPERSON DURHAM: I am now.
14 MR. BENSON: You are still now. Your husband is or is
15 retired --
16 VENIREPERSON DURHAM: He retired from the Department
17 of Corrections.
18 MR. BENSON: And he was a sergeant?
19 VENIREPERSON DURHAM: Yes.
20 MR. BENSON: Was he in custody?
21 VENIREPERSON DURHAM: Yes.
22 MR. BENSON: Which penitentiary did he work?
23 VENIREPERSON DURHAM: Algoa.
24 MR. BENSON: Algoa. All right. And so since this is
25 going to involve a lot about the Missouri State Prison, MSP

23

1 at the time, would the fact that you and your husband do or
2 did work for the Department of Corrections, would that make
3 it difficult for you to sit and be fair and impartial?
4 VENIREPERSON DURHAM: I think I would be a little
5 bias.
6 MR. BENSON: And especially if it involves calling
7 into question the honesty of, say, a guard or a sergeant,
8 would that be difficult for you?
9 VENIREPERSON DURHAM: Yes.
10 MR. BENSON: And would it be so difficult to be fair
11 and impartial to both sides that you think you could not be
12 fair and impartial, is that how you feel?
13 VENIREPERSON DURHAM: Yes.
14 MR. BENSON: All right. Thank you, Ms. Durham.
15 And number 13, Curtis -- Help me.
16 VENIREPERSON BUSCHJOST: Buschjost.
17 MR. BENSON: -- Buschjost. The way it is spelt.
18 So you have a family that is not only connected to
19 Corrections but the Highway Patrol?
20 VENIREPERSON BUSCHJOST: Correct.
21 MR. BENSON: What is the Corrections relationship?
22 VENIREPERSON BUSCHJOST: My father-in-law worked for
23 Algoa, at Algoa. He's retired.
24 MR. BENSON: How long ago was that?
25 VENIREPERSON BUSCHJOST: I think he retired in '88 or

24

1 '89.
2 MR. BENSON: And how long did he work for Corrections?
3 VENIREPERSON BUSCHJOST: 20.
4 MR. BENSON: What was he?
5 VENIREPERSON BUSCHJOST: He was a maintenance
6 supervisor.
7 MR. BENSON: The Highway Patrol connection?
8 VENIREPERSON BUSCHJOST: My dad is retired from the
9 Patrol. He was a maintenance man.
10 MR. BENSON: All right. Is there anything about
11 either of those relationships that, searching your heart,
12 you would find it difficult to be fair and impartial in a
13 case where the Department of Corrections is being
14 questioned?
15 VENIREPERSON BUSCHJOST: No.
16 MR. BENSON: You would be able to set it aside and be
17 fair?
18 VENIREPERSON BUSCHJOST: Yes.
19 MR. BENSON: Thank you, Mr. Buschjost.
20 Let's see, number 20, Marcus Backes. You have a
21 cousin who is in the Sheriff's Department?
22 VENIREPERSON BACKES: Yes. Correct.
23 MR. BENSON: And in this case it involves primarily
24 the Department of Corrections but also the Cole County
25 Sheriff, deputy sheriff and the jail to some extent. Is

25

1 your cousin still with the Cole County Sheriff's
2 Department?
3 VENIREPERSON BACKES: Yeah. His primary occupation is
4 with Houser Millard here in town, a mortician, one of Reid
5 Millard's morticians at Houser Millard. He's part time,
6 Jeff Hilke, with the Cole County Sheriff.
7 MR. BENSON: Okay. Is there anything about that your
8 cousin being a part-time deputy --
9 VENIREPERSON BACKES: No.
10 MR. BENSON: -- that would make it difficult --
11 VENIREPERSON BACKES: Not at all.
12 MR. BENSON: All right. Thank you, Mr. Backes.
13 Number 24, Charlotte Wilson. Oh, yeah. Your father
14 is with -- Is or was?
15 VENIREPERSON WILSON: Was.
16 MR. BENSON: What was his role with the Department of
17 Corrections?
18 VENIREPERSON WILSON: He worked with the prisoners,
19 was a guard, and then after awhile he went and worked in
20 the office.
21 MR. BENSON: Which institution?
22 VENIREPERSON WILSON: He was in Algoa.
23 MR. BENSON: At Algoa.
24 VENIREPERSON WILSON: He retired two years ago.
25 MR. BENSON: Do you know how long he worked for the

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1 Department of Corrections?
2 VENIREPERSON WILSON: 21 some years.
3 MR. BENSON: All at Algoa?
4 VENIREPERSON WILSON: Yes.
5 MR. BENSON: Is there anything about the fact that
6 your father worked for the Department of Corrections that
7 would make it difficult for you to be -- sit here and
8 listen to a case where the Department of Corrections
9 employees are called into question to some degree?
10 VENIREPERSON WILSON: No.
11 MR. BENSON: You would be able to set that aside and
12 be fair?
13 VENIREPERSON WILSON: Yes.
14 MR. BENSON: Thank you. Thank you, Ms. Wilson.
15 Let's see. Number 8, Delmar Brown.
16 VENIREPERSON BROWN: Yeah.
17 MR. BENSON: Oh, it is not Department of Corrections.
18 Police officer in the courts, is that right?
19 VENIREPERSON BROWN: Yes.
20 MR. BENSON: Is that what it was?
21 VENIREPERSON BROWN: Now, Judge Schollmeyer is my
22 nephew, and I had a brother-in-law that worked at Capital
23 Uncle, guarded the governor for years, and also had an
24 uncle down there that worked at Algoa for 30 plus years.
25 I've got a brother-in-law that was police force in Kansas

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1 City.
2 MR. BENSON: All right. So with that background,
3 including one relation in the Department of Corrections and
4 the others in law enforcement, would you be able to sit on
5 this case and be fair and impartial where to some degree
6 law enforcement or Corrections people, their actions are
7 questioned?
8 VENIREPERSON BROWN: Yes.
9 MR. BENSON: You would be able to be fair and listen
10 to the evidence?
11 VENIREPERSON BROWN: Yes.
12 MR. BENSON: Thank you. Thank you, Mr. Brown.
13 Number 30, Marilyn Farmer. Let's see. Grandfather
14 and cousin all with the Department of Corrections, is that
15 right?
16 VENIREPERSON FARMER: Yes. They all worked at MSP.
17 MR. BENSON: They all do now work at --
18 VENIREPERSON FARMER: Yeah, they all did.
19 MR. BENSON: They all did work at MSP. Do you know if
20 they worked there in the 1980's from your dad?
21 VENIREPERSON FARMER: My cousin may have.
22 MR. BENSON: I'm sorry?
23 VENIREPERSON FARMER: He worked in the kitchen even.
24 He was a cook.
25 MR. BENSON: Was a cook?

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1 VENIREPERSON FARMER: Uh-huh.
2 MR. BENSON: What did your dad do?
3 VENIREPERSON FARMER: He was the yard captain.
4 MR. BENSON: At MSP?
5 VENIREPERSON FARMER: (Venireperson nodded.)
6 MR. BENSON: Did he run sergeants and correction
7 officers under his supervision?
8 VENIREPERSON BROWN: I believe so.
9 MR. BENSON: And your grandfather, what was his --
10 VENIREPERSON FARMER: He was the meat processing
11 supervisor.
12 MR. BENSON: And after the old MSP closed, did he
13 continue to work for the Department of Corrections?
14 VENIREPERSON FARMER: They are all deceased.
15 MR. BENSON: Beg your pardon?
16 VENIREPERSON FARMER: They're all deceased.
17 MR. BENSON: Oh, I'm sorry. Did they ever tell you
18 kind of stories about what went on back at the Walls?
19 VENIREPERSON FARMER: Oh, yeah.
20 MR. BENSON: This is an important question, and it may
21 apply to anybody else who has had relatives that are
22 associated with the Department of Corrections. Is there
23 anything about those stories that you heard about what went
24 on in the Walls, and they could be either good things or
25 they could be bad things, they could be uplifting,

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1 honorable acts, or they could be bad corrupt acts, is there
2 anything about those stories that has left an impression on
3 you about what it was like inside the Walls?
4 VENIREPERSON FARMER: Yes. My dad worked during the
5 1954 riot.
6 MR. BENSON: Many of us who have gone in there, the
7 bullet holes were there until they tore it down --
8 VENIREPERSON FARMER: Right.
9 MR. BENSON: -- and you can see that. And so is there
10 anything about those stories that your family told you that
11 have left an impression on you that you would use to kind
12 of filter or interpret the evidence you hear in this case?
13 VENIREPERSON FARMER: Probably so.
14 MR. BENSON: And would it be difficult for you to set
15 aside those stories, those impressions and be fair to both
16 Mr. Amrine and Mr. Ossman?
17 VENIREPERSON FARMER: I would try, but, you know --
18 MR. BENSON: It is kind of like probable, Mr. Adams'
19 probable.
20 VENIREPERSON FARMER: That is true.
21 MR. BENSON: Because this is their only day in court.
22 VENIREPERSON FARMER: Right, I realize that.
23 MR. BENSON: Seven days, this is the only time Mr.
24 Amrine and Mr. Ossman get to court, so --
25 VENIREPERSON FARMER: Some of the stories I heard I

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1 don't know that I could be fair about it.
2 MR. BENSON: It would be difficult?
3 VENIREPERSON FARMER: I think it would be.
4 MR. BENSON: It would be difficult to leave those
5 stories and impressions outside the jury room?
6 VENIREPERSON FARMER: I think so.
7 MR. BENSON: All right. Thank you.
8 For any of the rest of you who have these Department
9 of Corrections relationships, do any of you have some of
10 those background stories, impressions, what went on, good
11 or bad, inside the Department of Corrections or Algoa, or
12 any of them, what goes on in the prison? If you do, now is
13 the time to tell me. So number 7.
14 VENIREPERSON WILSON: Number 7. Yes, my father was a
15 prison guard and he would tell us stories as we were
16 growing up and I feel that I would be biased.
17 MR. BENSON: All right. But what prison was he at?
18 VENIREPERSON WILSON: He was at Church Farm. He was
19 at Algoa, and he was at the main prison.
20 MR. BENSON: At MSP?
21 VENIREPERSON WILSON. Right. He retired from the main
22 prison.
23 MR. BENSON: When did he retire?
24 VENIREPERSON WILSON: I'm not sure. I think he has
25 been retired for at least 12 years.

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1 MR. BENSON: He would have been active back in the
2 seventies and eighties?
3 VENIREPERSON WILSON: Yes.
4 MR. BENSON: These impressions, these stories that he
5 has left with you, are such that it would be difficult for
6 you to leave them behind?
7 VENIREPERSON WILSON: Yes.
8 MR. BENSON: Just no matter what the lawyers or Judge
9 would ask you to do, as a human being you couldn't do it?
10 VENIREPERSON WILSON: Right. It would be hard.
11 MR. BENSON: Thank you. Number 34.
12 VENIREPERSON BROOKS: I'm a physical therapist, and
13 I've had several patients that were prison guards and were
14 injured on duty, and I've treated those patients and heard
15 their stories.
16 MR. BENSON: Thank you. That is the kind of answer I
17 was looking for generally. So now let me follow up. Do
18 those impressions and stories that were left with you, did
19 they kind of form some sort of beliefs you had about what
20 goes on in the prison?
21 VENIREPERSON BROOKS: Probably, yes.
22 MR. BENSON: So would it be difficult to leave those
23 stories and beliefs behind as you sit in the jury box,
24 listen to the evidence and deliberate?
25 VENIREPERSON BROOKS: Yes.

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1 MR. BENSON: Because we're trying to get a fair and
2 impartial jury, if the Judge says, the lawyers all ask,
3 leave everything behind and be fair, that's what we need to
4 do.
5 Number 17.
6 VENIREPERSON LOGAN: Yes. I have a mother-in-law who
7 worked twenty-some years at MSP, Algoa. Father-in-law is
8 currently at Algoa, and a sister-in-law that is currently
9 working at Algoa and stories.
10 MR. BENSON: You hear stories and things?
11 VENIREPERSON LOGAN: Yeah.
12 MR. BENSON: In the case where a juror has three
13 roles, you have to listen, listen and evaluate the evidence
14 fairly, you have to listen to the Judge's instructions to
15 carry out the law, and then you have to participate and
16 fairly deliberate. Do you think you could do that in this
17 case?
18 VENIREPERSON LOGAN: I think I could.
19 MR. BENSON: You think you could?
20 VENIREPERSON LOGAN: I think I could.
21 MR. BENSON: Again you think. Probable. Maybe. I
22 need you to sort of tell us now, this is your opportunity
23 to say to Mr. Amrine and to Mr. Ossman, either, yes, I can
24 set aside what I heard from them and be fair and listen to
25 the evidence or, no, I don't think I can, so --

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1 VENIREPERSON LOGAN: No, I don't think I could.
2 MR. BENSON: Could not?
3 VENIREPERSON LOGAN: I've heard -- Yeah, I heard a lot
4 of stories. I think I would put a spin on it no matter
5 what I heard.
6 MR. BENSON: All right. And it would be difficult to
7 set aside that spin and to listen to the evidence as it
8 comes in, evaluate it without that spin, could you or could
9 you not do it without the spin?
10 VENIREPERSON 17: No, I don't think I could.
11 MR. BENSON: All right. Thank you, sir.
12 Number 4.
13 VENIREPERSON BAX: My father was an inmate at Algoa
14 for a DWI and spent a year and a half there and during the
15 time he did not receive proper medical treatment which
16 affected him later in life.
17 MR. BENSON: So kind of the other side of the scale.
18 Your father was at Algoa and he had an experience that has
19 left an impression with you about what goes on between the
20 prison and the inmates?
21 VENIREPERSON BAX: (Venireperson nodded.)
22 MR. BENSON: Same question we've asked others, would
23 you be able to set aside the impression, listen to the
24 evidence here and be fair and impartial?
25 VENIREPERSON BAX: Yes.

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1 MR. BENSON: Good, that is important. Now, all the
2 lawyers and the parties, we believe you, because when you
3 say I searched my heart, and these are not easy questions,
4 and I cannot be fair like some do or I can be, then that's
5 what we want.
6 Number 2.
7 VENIREPERSON EARL: My fiancée back -- I've only known
8 her five years. Back in the eighties she was a nurse at
9 the Walls for several years and I've heard many stories. I
10 don't believe all of the stories she told me. I believe
11 her stories, but I don't believe it is going to affect me
12 in making these decisions.
13 MR. BENSON: All right. Whatever stories she told you
14 for whatever value, humor or whatever that they had, the
15 impression she left are not so strong that you couldn't set
16 them aside, is that what you are telling us?
17 VENIREPERSON EARL: Right. I could easily set them
18 aside and won't affect my decisions.
19 MR. BENSON: Thank you.
20 VENIREPERSON EARL: I've been in education 32 years,
21 so I think I can handle an impartial decision.
22 MR. BENSON: Thank you. All right. So anyone else
23 here having heard these exchanges, any of you have
24 anything, whether you have relatives -- Oh, number 21.
25 VENIREPERSON LINHARDT: For years I installed pay

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1 phones in like the Kansas City inmate system up there.
2 MR. BENSON: In the jail in Kansas City?
3 VENIREPERSON LINHARDT: Yeah. I was with the inmates.
4 MR. BENSON: You were what?
5 VENIREPERSON LINHARDT: With the inmates at times.
6 There would be a security issue, have a question about
7 security.
8 MR. BENSON: Did that experience leave any impressions
9 or beliefs on you that would affect your ability to be fair
10 in this case?
11 VENIREPERSON LINHARDT: No. I just wanted to state
12 that.
13 MR. BENSON: Good. Thank you. This is to everybody,
14 whether you have a relationship with anybody in Corrections
15 or jails or law enforcement or anything, is there -- now
16 having heard these exchanges, do any of you have any
17 feelings that you believe, based on your experience and
18 beliefs about what goes on in the prison, that it would be
19 difficult to be fair and impartial?
20 All right. Now, I want to ask some questions further
21 about impressions of prisons that many people may have.
22 There are a lot of people who watch a television series on
23 MSNBC, I think it is called "Locked Up." Now, I'm not
24 going to ask you if you watch "Locked Up" because there
25 might be a lot of answers from that. I want to know if

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1 anyone has watched "Locked Up" and it has left an
2 impression about how prisons are operated and guards and
3 inmates interact, has left an impression that you would
4 have difficulty leaving behind when you hear the evidence
5 in this case. All right. I see no hands.
6 All right. On the other side of that question, many
7 people may have seen the movie the "Shawshank Redemption"
8 with Tim Robbins and Morgan Freeman. It seems to play a
9 lot, so I'm not going to ask if you've seen the "Shawshank
10 Redemption," but there are a lot of themes in that movie
11 that may come up one way or the other in the evidence in
12 this case, so I want to ask you about some of those.
13 Do any of you, from having watched the "Shawshank
14 Redemption" or similar kinds of prison movies, do any of
15 you have any beliefs or impressions about what goes on in
16 prisons with respect to, let's say, gangs? Do any of you
17 have any beliefs or impressions about gangs in prisons?
18 All right.
19 Do any of you have any beliefs or impressions about
20 how the "Shawshank" -- Excuse me. "Locked Up" is more or
21 less contemporary. The "Shawshank Redemption" took place
22 earlier. I think it ran from the sixties to the eighties.
23 These incidents you are going to be hearing about took
24 place in 1985 and 1986. Do any of you have beliefs or
25 impressions about what prisons were like back in the

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1 eighties irrespective of how they may be operated today?
2 Do any of you have beliefs that things were considerably
3 different in the 1980's? And I see no hands.
4 Do any of you have any impressions about whether, from
5 the "Shawshank Redemption" or any other source, about
6 whether or not back in the 1980's to some degree prisoners
7 controlled what went on in prisons? Do any of you believe
8 back in the 1980's in prisons in America, here at MSP, that
9 to some degree prisoners controlled what went on day-to-day
10 inside the penitentiaries? Any of you have any feelings or
11 beliefs about that? I see no hands, no paddles.
12 All right. Now, this is sensitive and there is going
13 to be talk about this. Do any of you have any impression
14 or beliefs about, in the 1980's, about the incidents of
15 prison rape? There was one of those in "Shawshank
16 Redemption." Do any of you have any beliefs or impressions
17 about the extent to which prisoners raped other prisoners
18 in the 1980's?
19 And now I'll ask -- I saw no hands or paddles.
20 Now the question is about consensual same sex, sexual
21 contact, sex acts among prisoners, do any of you have any
22 impressions or beliefs about sex acts, consensual, in the
23 1980's in the prison system in Missouri? Any of you have
24 any beliefs about that?
25 Do any of you have any beliefs -- And those who have

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1 relationships with the Department of Corrections, this is
2 important to everybody, but especially to you. Do any of
3 you have any beliefs or impressions about whether or not in
4 the 1980's prison employees were ever corrupt? Do any of
5 you bring out of your experience from the "Shawshank
6 Redemption" or whatever where there's corrupt guards? Do
7 any of you have impressions that any of that was true
8 actually, that kind of thing happened in Missouri in MSP in
9 the 1980's?
10 Now there is going to be testimony about sex, rape,
11 sexual slaves in the 1980's in MSP. Do any of you, because
12 of anything in your background, your religious beliefs,
13 your morals, whatever, that it would be difficult for you
14 to sit and keep your ears open when you hear discussion
15 about sex, both consensual and not consensual, in prison?
16 Number 15.
17 VENIREPERSON SMITH: Mainly because I had it happen to
18 one of my close friends and not so much in prison but it
19 happened, and it is --
20 MR. BENSON: So let me just ask one question I must
21 ask. I can tell it is still moving to you still today. Is
22 that such that that is an emotion, a feeling or belief that
23 you would have difficulty setting aside, listening to the
24 evidence and being fair to both Mr. Ossman and Mr. Amrine?
25 VENIREPERSON SMITH: Actually no. It is not that bad.

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1 It is raw. I think I could be --
2 MR. BENSON: As you search your heart, even though it
3 was an emotional experience, it happened to a relative, you
4 could set that aside and be fair?
5 VENIREPERSON SMITH: That's the way I think, so --
6 Yes.
7 MR. BENSON: Thank you. Number 15 I believe raised her
8 paddle.
9 VENIREPERSON SMITH: I don't wish to discuss.
10 MR. BENSON: All right. I think the Judge said at the
11 beginning, offered an opportunity for you to discuss it
12 privately, and you certainly are entitled to that. Thank
13 you.
14 And just as a reminder to anybody -- number 15, that is
15 a good example -- if you have something, because it is an
16 important case and the parties are entitled to learn what
17 may be important to you, we don't want you to be needlessly
18 embarrassed about it, so if you have a similar situation,
19 tell us. Thank you.
20 Anybody else who feels that it would be difficult to
21 sit and listen to testimony about those kinds of things
22 that we talked about, sex in prison?
23 All right. There is going to be some rough language,
24 there is rough language used in prison by everybody,
25 including the "N" word. I don't think I need to spell out

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1 what the "N" word means. Would it be offensive to anybody
2 to have to sit and listen to rough language, including the
3 use of the "N" word? Would anybody find that difficult to
4 set aside whatever re-action you get to that kind of rough,
5 bad language and be fair and impartial about it? I see no
6 paddles.
7 Do any of you know anything about -- These are
8 interchangeable names that were used in prisons in the --
9 here in MSP at least in the 1980's. -- Moors, M-o-o-r-s,
10 Black Muslims and Moors Science, Moors Science of America?
11 Do any of you know anything about any of that?
12 All right. The Moors figure somewhat in the evidence
13 in this case, and there is also kind of an opposite
14 organization called the Aryan Brotherhood that existed but
15 does not play much role in this case, but they are kind of
16 counterpoints to each other. Does anybody have experience
17 with a group called the Aryan Brotherhood, either in or
18 outside of prison situations?
19 Do any of you have an impression or belief about the
20 role in which some inmates played in keeping peace and
21 order in Missouri prisons in the 1980's, especially at MSP?
22 I see no response to that.
23 Do any of you know what a snitch jacket is?
24 All right. Do any of you know or have any beliefs
25 about whether or not in the 1980's at MSP or Missouri

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1 prisons by telling some inmates that another inmate is an
2 informant, puts a snitch jacket on that inmate and
3 endangers him? Anybody heard anything like that, have any
4 experience with that?

5 There will be some testimony also about drugs and
6 alcohol used by prisoners, by inmates. Do any of you have
7 any knowledge or experience about prisoners getting access
8 to drugs and alcohol while in the penitentiary?

9 Number 45.

10 VENIREPERSON CZESCHIN: I do know it is accessible.

11 MR. BENSON: You do know it was accessible?

12 VENIREPERSON CZESCHIN: Yeah, it is. I have an
13 ex-family member in the penitentiary and I do know that he
14 is an alcoholic and he still -- they can make alcohol.

15 MR. BENSON: Is this current or something in the past?

16 VENIREPERSON CZESCHIN: You mean currently do I know
17 this?

18 MR. BENSON: The last five years or are we talking
19 about 15 or 20 years ago?

20 VENIREPERSON CZESCHIN: Five to ten years, I guess.

21 MR. BENSON: And did this person tell you anything
22 about whether or not there were other sources of drugs and
23 alcohol besides inmates manufacturing their own?

24 VENIREPERSON CZESCHIN: No. Not really, no.

25 MR. BENSON: About visitors snuggling them in or

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1 guards snuggling them in?

2 VENIREPERSON CZESCHIN: No.

3 MR. BENSON: Is there anything about this information
4 that was provided to you that you would find it difficult
5 to set aside if you were chosen to serve on this jury?

6 VENIREPERSON CZESCHIN: No. I believe that every
7 entity has good and bad.

8 MR. BENSON: I'm sorry, I couldn't hear that.

9 VENIREPERSON CZESCHIN: I believe everybody has good
10 and bad in them and then everybody decides how to act on
11 those feelings.

12 MR. BENSON: All right. And if you were chosen on
13 this jury, you would be able to set aside whatever
14 impressions or stories you heard and be fair and impartial?

15 VENIREPERSON CZESCHIN: Definitely.

16 MR. BENSON: The last question on that topic. Do any
17 of you hold the belief that really none of this could have
18 ever happened in the 1980's, could not have been consensual
19 sex, drug, alcohol use, your mind is closed, no, that just
20 didn't happen? Any of you feel that way, have that belief?
21 Thank you.

22 THE COURT: Are you done with that line of questioning
23 and we'll take a break?

24 MR. BENSON: I have the last question on that. May I
25 ask that one?

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1 THE COURT: That will be fine.

2 MR. BENSON: Now, I spent the last several minutes
3 talking about these kinds of things that go on that we
4 might broadly describe as prison culture; so my question
5 now to you about this case, this Plaintiff, Mr. Amrine, and
6 this Defendant, Mr. Ossman, is there anything about the
7 fact that Joseph Amrine found himself in the Missouri State
8 Penitentiary in the 1980's where this culture may or may
9 not have existed -- you'll hear evidence about it -- is
10 there anything about that that you say Joe Amrine, when he
11 got accused of a crime, whatever came of that, he was less
12 deserving of a well informed, competent and thorough lawyer
13 because of the culture in which the crime he was accused of
14 was committed? Any of you feel that he was less entitled
15 to the full competent defense of a lawyer? All right.

16 THE COURT: All right. Ladies and gentlemen of the
17 jury, we're going to take a break. I would just ask that
18 everybody stay close so we can get everybody back in here
19 when we come back.

20 However, before you leave, assuming we will be able to
21 do this together, it's the court's duty to instruct you
22 about a matter in which you'll be reminded about at each
23 recess and adjournment of court. Until this case is given
24 to you to decide, you must not discuss any subject
25 connected with the trial among yourselves, form or express

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1 any opinion about it, and until you are discharged as
2 jurors, you must not talk with anyone about the case,
3 permit anyone to discuss it with you in your hearing, read,
4 view or listen to any newspaper, radio or television, or
5 Internet report about the trial.

6 We will be in recess. I would like to try to get back
7 here in 15 minutes. Thank you.

8 Mr. Marshall.

9 (At this time a recess was taken.)

10 (The jury panel not present in the courtroom, the
11 following proceedings were had:)

12 THE COURT: We're back on the record. We're outside
13 the presence of the entire panel.

14 You are [REDACTED], juror number [REDACTED], is that
15 correct?

16 VENIREPERSON [REDACTED]: That's correct.

17 THE COURT: You indicated in response to a question
18 from Mr. Benson you would rather not discuss. This is as
19 good as it gets, as far as that goes.

20 VENIREPERSON [REDACTED]: Yeah.

21 THE COURT: Do you recall the question, had to do with
22 --

23 VENIREPERSON [REDACTED]: Non-consensual sex.

24 THE COURT: Right. Can you go ahead and answer Mr.
25 Benson's question?

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1 MR. BENSON: Answer to the Judge.
2 VENIREPERSON [REDACTED]: It would be very difficult for me
3 to listen to anything about non-consensual sex because I'm
4 a victim of sexual abuse.
5 THE COURT: Any questions, Mr. Benson?
6 MR. BENSON: No.
7 THE COURT: Any questions, Mr. Leyshock?
8 MR. LEYSHOCK: No.
9 THE COURT: Thank you.
10 (At this time a recess was taken.)
11 (The jury panel now present, the proceedings returned
12 to open court.)
13 THE COURT: All right. Back on the record. Mr.
14 Benson.
15 MR. BENSON: We spent some time kind of talking about
16 the play, the theme of the content of the play. Now let's
17 talk a little bit about the players. We've already
18 introduced George Brooks, the late George Brooks. There
19 also will be some discussion -- in fact, he may testify --
20 Tom Brown, former judge in this court, the prosecutor back
21 then, who prosecuted Mr. Amrine, so I'm going to go through
22 this list and then come back and ask you about all the ones
23 to try to save a little time.
24 The judge who tried the case here in this courthouse
25 is Judge Byron Kinder, who is a senior judge now in this

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1 court. And there is some corrections officers, John Noble,
2 who was a corrections officer at the time, and he will
3 testify in this case. Danny Bowers was a corrections
4 officer, who is recently deceased, and he will testify in
5 this case by video deposition that was taken. And David
6 Dobson, D-o-b, David Dobson who was a sergeant at the time
7 of this incident, later became a lieutenant, he will
8 testify.
9 Do any of you know any of them or have family, close
10 friend relationship with any of those that -- I left one
11 out. John Hemeyer, was a deputy sheriff at the time and
12 later became sheriff, and he's now a deputy sheriff in a
13 different county. Those are the names: Tom Brown, then
14 prosecutor, later Judge; Byron Kinder, Judge, John Hemeyer,
15 John Noble, Danny Bowers, David Dobson. Do any of you know
16 any of them or have any kind of family or social
17 relationship with any of them?
18 Okay. All right. We know you from what you've
19 described. Were there others that you know? Number 11.
20 I'm sorry, number 11.
21 VENIREPERSON GROTHOFF: I knew Judge Kinder, really
22 not that close, but I was an electrician and back in those
23 days you had Rippetto, Dallmeyer, Kinder, and we renovated a
24 bunch of their old buildings.
25 MR. BENSON: Thank you, sir. Any others here in the

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1 jury box? And then back here, number 15.
2 VENIREPERSON SMITH: I knew John Hemeyer. He was my
3 neighbor.
4 MR. BENSON: Your neighbor. Okay.
5 VENIREPERSON SMITH: Yeah.
6 MR. BENSON: Number 16.
7 VENIREPERSON KEMPF: Judge Brown.
8 MR. BENSON: Then Judge Brown.
9 VENIREPERSON KEMPF: He was a neighbor of ours.
10 MR. BENSON: Anybody else a neighbor of them? Okay.
11 Number 1.
12 VENIREPERSON SCHENEWERK: I knew Judge Kinder. I
13 associated with him in Missouri National Guard for years.
14 MR. BENSON: Okay. So numbers 1, 11, 15 and 16. Is
15 there anything about the relationships you've just now
16 described that would make it difficult for you to be fair
17 and impartial if you were chosen to sit on this case? I
18 see no one raising their paddle.
19 All right. I've already mentioned the prisoners,
20 Russell, Poe and Ferguson. There will be some other
21 witnesses that will testify, a Dr. Stephen Peterson, who is
22 a psychiatrist. Anybody know Dr. Stephen Peterson?
23 Sean O'Brien is a lawyer who will testify. He
24 represented Mr. Amrine at the time Mr. Amrine's conviction
25 was overturned by the Missouri Supreme Court.

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1 Cindy Short, who is a lawyer. Anybody know Cindy
2 Short?
3 Mark Komoroski, who is a lawyer in private practice.
4 Anybody know Mark Komoroski?
5 I want to ask you just a couple of questions about the
6 issue of damages. Some people have a belief, a moral
7 scruple or religious belief or something that it is not
8 appropriate for them, an individual belief, that they
9 should not sit in judgment and determine whether somebody
10 else is entitled to damages. Do any of you have those
11 kinds of religious, moral or scruple beliefs that would
12 prevent you from sitting in this case and rendering a
13 verdict? I see no hands with that.
14 Sometimes in cases that are brought -- This is a civil
15 case as you know, not a criminal case. In civil cases some
16 people feel that there are just far too many civil cases
17 brought. And I'm not going to ask if you feel that way.
18 If you do, I hope you can be fair and impartial. Let me
19 ask kind of a related question. Some people feel that they
20 are going into a case and they've read about big verdicts
21 and they are just going to put a ceiling, no matter what
22 the evidence is, they are going to put a ceiling on how
23 much damages they might give in the event they might be
24 returning a verdict for the plaintiff. Do any of you feel
25 that just so many lawsuits, so many big judgments, if you

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1 are chosen on this case, you think Mr. Amrine deserves a
2 verdict, you are going to put a ceiling, going to have a
3 closed mind as to how much it could go, there is a ceiling
4 you won't go above? I see no paddles.

5 So I'm going -- The lawyer is going to assume that
6 each of you, if you are chosen to serve on this jury, will
7 take your tasks, go to your tasks with an open mind about
8 whether or not he's entitled to damages and if so, how much
9 and that you will not bring any predisposed limits to that.
10 If that is not the case, tell me. Thank you.

11 Now, my last topic is, is one that is always difficult
12 for a Plaintiff's lawyer in these cases. When you walk in
13 to these chambers in this case, when you look at me, you
14 see I'm a man. When you walk in here and you look at Mr.
15 Leysnock and you see he's a man. Some of you, when you
16 walk in here and look at Mr. Amrine, may see a black man.
17 And there may be a difference and there may not be a
18 difference. So I'm asking you to think about this and I'm
19 going to ask you a few questions about it. Because there
20 is probably nothing more troubled in American history than
21 race and everybody knows about it and it cannot help but
22 play a role in many of our human interactions, to say
23 nothing of a trial, and so knowing the importance of having
24 a fair and impartial jury, I'm going to ask you a few
25 questions about this and I beseech you to search your

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1 the lawyers, the parties, especially Mr. Amrine, that I can
2 be fair and I can render blind justice irrespective of
3 race, is there anybody who feels that would not be possible
4 for them, they would have difficulty rendering fair, equal
5 and blind justice irrespective of race?

6 Thank you. I have no further questions, Your Honor.

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1 heart.

2 Do any of you see Joseph Amrine as being different
3 because of his race in any way other than his race? You
4 see that he's black by looking at him, but do any of you
5 feel or believe in your heart that a black man is different
6 than other men you know? It could be anything...
7 basketball, rhythm, dancing, music. I mean, those are some
8 of the common stereotypes. If any of you feel that when
9 you look and you saw the Plaintiff in this case was black,
10 something happened in your brain, something clicked, would
11 you search your hearts and be honest with us. I see no
12 hands.

13 When you look at Joseph Amrine as a black man, an
14 African American man, do any of you feel that he would
15 value his liberty any less than you would? I see no hands
16 or paddles.

17 As you look at Joseph Amrine, an African American
18 male, age 57 by the way, do any of you feel that he would
19 miss his mother any less than you would miss your mother if
20 you were separated from her?

21 When you look at Joseph Amrine, a black man, plaintiff
22 in a lawsuit, do any of you feel that he deserves less
23 competent lawyering than anybody else?

24 If you are selected to serve on this jury, by your
25 silence each one of you will be telling us all, the court,

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IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
NINETEENTH JUDICIAL CIRCUIT

JOSEPH D. AMRINE,)
)
Plaintiff,)
)
v.) Case No. 08AC-CC00340
)
JULIAN J. OSSMAN,)
)
Defendant.)

AFFIDAVIT OF ARTHUR A. BENSON II

STATE OF MISSOURI)
) ss:
COUNTY OF JACKSON)

I, Arthur A. Benson II, of lawful age, upon my oath and subject to the penalties for perjury, swear or affirm that:

1. I was lead trial counsel for Plaintiff Joseph D. Amrine during the trial of the above-captioned cause.
2. On November 1, 2012, I conducted the voir dire examination on behalf of Plaintiff Amrine, who is African American.
3. My last area of inquiry during the voir dire examination was race, and I asked six questions about race.
4. After there were no responses to the first two questions, I stated for the record that I saw no hands. Similarly, after there was no response to the third question, I stated for the record that I saw no hands or paddles (labeled with the venire person's number on it for the court reporter's convenience in identifying the speaker).

5. Although I did not state aloud for the record that there were no hands or paddles displayed by any venire person after each of the last three questions, I am confident that no hands nor paddles were raised.

6. Not only did I not observe any hands or paddles having been raised in response to my last three questions, it is my practice to inquire further of venire persons who raise a hand or paddle to indicate that he or she has a response, and record is clear that there was no follow-up inquiry of any responding venire person.

7. Moreover, especially had any venire person responded that he or she felt "that would not be possible for them, they would have difficulty rendering fair, equal and blind justice irrespective of race", I would have moved to strike that person for cause, and there were no attempts on behalf of Plaintiff to strike a venire person because of his or her answers to these questions.

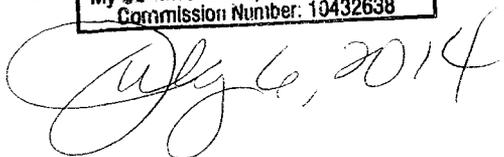
FURTHER AFFIANT SAITH NOT.


Affiant, Arthur A. Benson II

Subscribed and sworn to before me, a Notary Public in and for the County and State first above written this 11th day of December, 2012.


Notary Public

My commission expires
Notary Public - Notary Seal
State of Missouri
Commissioned for: Jackson County
My Commission Expires: July 06, 2014
Commission Number: 10432638



INSTRUCTION NO. 1

(1) GENERAL – JURY INSTRUCTIONS

This instruction and other instructions that I will read to you near the end of the trial are in writing. All of the written instructions will be handed to you for guidance in your deliberation when you retire to the jury room. They will direct you concerning the legal rights and duties of the parties and how the law applies to the facts which you will be called upon to decide.

(2) OPENING STATEMENTS

The trial may begin with opening statements by the lawyers as to what they expect the evidence to be. What is said in opening statements is not to be considered as proof of a fact. However, if a lawyer admits some fact on behalf of his client, the other party is relieved of the responsibility of proving that fact.

(3) EVIDENCE

After the opening statements, the plaintiff will introduce evidence. The defendant may then introduce evidence. There may be rebuttal evidence after that. The evidence may include the testimony of witnesses who appear personally in court, the testimony of witnesses who may not appear personally but whose testimony may be read or shown to you, and exhibits such as pictures, documents, and other objects.

(4) OBJECTIONS

There may be some questions asked or evidence offered by the parties to which objection may be made. If I overrule an objection you may consider that evidence when you deliberate on the case. If I sustain an objection, then that matter and any matter I order to be

stricken is excluded as evidence and must not be considered by you in your deliberations.

(5) RULINGS OF LAW AND BENCH CONFERENCES

While the trial is in progress, I may be called upon to determine questions of law and to decide whether certain matters may be considered by you under the law. No ruling or remark that I make at any time during the trial will be intended or should be considered by you to indicate my opinion as to the facts. There may be times when the lawyers come up to talk to me out of your hearing. This will be done in order to permit me to decide questions of law. These conversations will be out of your hearing to prevent issues of law, which I must decide, from becoming mixed with the issues of fact, which you must decide. We will not be trying to keep secrets from you.

(6) OPEN MINDS AND NO PRELIMINARY DISCUSSIONS

Justice requires that you keep an open mind about the case until the parties have had the opportunity to present their cases to you. You must not make up your mind about the case until all evidence, and the closing arguments of the parties, have been seen or heard. You must not comment on or discuss with anyone, not even among yourselves, what you hear or learn in trial until the case is concluded and then only when all of you are present in the jury room for deliberation of the case under the final instructions I give to you.

(7) OUTSIDE INFLUENCES

During the trial, you should not remain in the presence of anyone who is discussing the case when the court is not in session. Otherwise, some outside influence or comment might influence a juror to make up his or her mind prematurely and be the cause of a possible injustice. For this reason, the lawyers and their clients are not permitted to talk with you until

the trial is completed.

(8) JUROR RESEARCH PROHIBITED

Your decision must be based only on the evidence presented to you in the proceedings in this courtroom. You should not conduct your own research or investigation into any of the issues in this case. You should not visit the scene of any of the incidents described in this case. You should not conduct any independent research of any type by reference to textbooks, dictionaries, magazines, the use of the Internet, or any other means.

(9) FINAL INSTRUCTIONS

After all of the evidence has been presented, you will receive my final instructions. They will guide your deliberation of the issues of fact you are to decide in arriving at your verdict.

(10) CLOSING ARGUMENTS

After you have received my final instructions, the lawyers may make closing arguments. In closing arguments, the lawyers have the opportunity to direct your attention to the significance of the evidence and to suggest the conclusions that may be drawn from the evidence.

(11) DELIBERATIONS

You will then retire to the jury room for your deliberations. It will be your duty to select a foreperson, to decide the facts, and to arrive at a verdict. When you enter into your deliberations, you will be considering the testimony of witnesses as well as other evidence. In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude, and behavior of the witness, the interest of the witness

in the outcome of the case, the relation of the witness to any of the parties, the inclination of the witness to speak truthfully or untruthfully, and the probability or improbability of the witness' statements. You may give any evidence or the testimony of any witness such weight and value as you believe that testimony is entitled to receive.

(12) NOTETAKING

Each of you may take notes in this case, but you are not required to do so. I will give you notebooks. Any notes you take must be in those notebooks only. You may not take any notes out of the courtroom before the case is submitted to you for your deliberations. No one will read your notes while you are out of the courtroom. If you choose to take notes, remember that note taking may interfere with your ability to observe the evidence and witnesses as they are presented.

Do not discuss or share your notes with anyone until you begin your deliberations. During the deliberations, if you choose to do so, you may use your notes and discuss them with other jurors. Notes taken during trial are not evidence, You should not assume that your notes, or those of other jurors, are more accurate than your own recollection or the recollection of other jurors.

After you reach your verdict, your notes will be collected and destroyed. No one will be allowed to read them.

INSTRUCTION NO. 2

As you remember, the court gave you a general instruction before the presentation of any evidence in this case. The court will not repeat that instruction at this time. However, that instruction and the additional instructions, to be given to you now, constitute the law of this case and each such instruction is equally binding upon you. You should consider each instruction in light of and in harmony with the other instructions, and you should apply the instructions as a whole to the evidence. Words or phrases which are not otherwise defined for you as part of these instructions should be given their ordinary meaning. The order in which the instructions are given is no indication of their relative importance. All of the instructions are in writing and will be available to you in the jury room.

INSTRUCTION NO. 3

In returning your verdict you will form beliefs as to the facts. The court does not mean to assume as true any fact referred to in these instructions but leaves it to you to determine what the facts are.

INSTRUCTION NO. 4

In these instructions, you are told that your verdict depends on whether or not you believe certain propositions of fact submitted to you. The burden is upon the party who relies upon any such proposition to cause you to believe that such proposition is more likely to be true than not true. In determining whether or not you believe any proposition, you must consider only the evidence and the reasonable inferences derived from the evidence. If the evidence in the case does not cause you to believe a particular proposition submitted, then you cannot return a verdict requiring belief of that proposition.

INSTRUCTION NO. 5

The verdict form included in these instructions contains directions for completion and will allow you to return the permissible verdict in this case. Nine or more of you must agree in order to return any verdict. A verdict must be signed by each juror who agrees to it.

INSTRUCTION NO. 6

The term "negligent" or "negligence" as used in Instruction No. 8 means the failure to use that degree of skill and learning ordinarily used under the same or similar circumstances by the members of defendant's profession.

INSTRUCTION NO. 7

In these instructions, you are told to itemize any damages you award by the categories set forth in the verdict form.

The phrase "past economic damages" means those damages incurred in the past for pecuniary harm such as medical expenses for necessary drugs, therapy, legal fees and expenses incurred in setting aside the conviction, and for past lost earnings and for past lost earning capacity.

The phrase "past non-economic damages" means those damages arising in the past from non-pecuniary harm such as pain, suffering, mental anguish, inconvenience, and loss of capacity to enjoy life.

The phrase "future medical damages" means those damages arising in the future for medical expenses such as necessary drugs and therapy.

The phrase "future economic damages" means those damages arising in the future from pecuniary harm such as lost earnings and lost earning capacity.

The phrase "future non-economic damages" means those damages arising in the future from non-pecuniary harm such as pain, suffering, mental anguish, inconvenience, and loss of capacity to enjoy life.

INSTRUCTION NO. 8

Your verdict must be for Plaintiff Joseph Amrine and against Defendant Julian Ossman if you believe:

First, Defendant Ossman either:

- a) failed to conduct thorough investigations into the backgrounds of the State's witnesses, Russell, Poe, or Ferguson; or,
- b) failed to prepare thoroughly for the depositions and trial testimony of the State's witnesses, Russell, Poe, or Ferguson; or,
- c) failed to prepare thoroughly for and conduct meaningful cross examinations and impeachments of the State's witnesses, Russell, Poe, or Ferguson; and,

Second, Defendant Ossman, in any one or more of the respects submitted in Paragraph First, was thereby negligent; and,

Third, as a direct result of such negligence, Plaintiff Amrine sustained damage.

INSTRUCTION NO. 9

If you find in favor of Plaintiff Amrine, then you must award Plaintiff such sum as you believe will fairly and justly compensate Plaintiff for any damages you believe Plaintiff sustained and is reasonably certain to sustain in the future as a direct result of the conduct of Defendant Ossman mentioned in the evidence.

1) Does any award/compensation
to the Plaintiff are paid by
who?
State or Osman?

INSTRUCTION No 10

The existence or non-existence of any type of insurance, benefit, right or obligation of repayment, public or private, must not be considered or discussed by any of you in arriving at your verdict. Such matters are not relevant to any of the issues you must decide in this case.

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
NINETEENTH JUDICIAL CIRCUIT

JOSEPH D. AMRINE,

Plaintiff,

v.

JULIAN J. OSSMAN,

Defendant.

)
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Case No. 08AC-CC00340

AFFIDAVIT

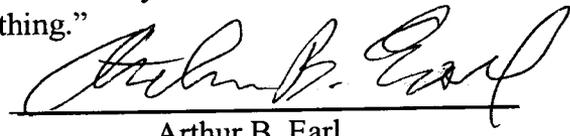
STATE OF MISSOURI)

) ss:

COUNTY OF COLE)

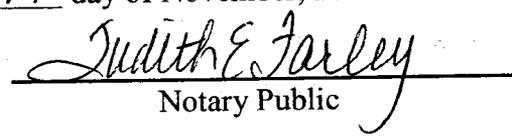
I, Arthur B. Earl, of lawful age, upon my oath and subject to the penalties for perjury, swear or affirm that:

1. I was a juror in this case and participated in the deliberations on Thursday, November 8 and Friday, November 9, 2012.
2. On Friday, November 9, late in the morning, the jurors took a break from deliberations to make their lunch orders and to use the restroom.
3. As the break was ending, the jurors were engaged in several conversations as the jurors took their seats around the table.
4. I saw Juror Curt Griggs look to his right toward Juror Rodney Griffin (an African-American) and then toward Juror Denny Linhardt and I heard him say: "I am not giving that nigger anything."



Arthur B. Earl

Subscribed and sworn to before me this 14th day of November, 2012.



Notary Public

My commission expires:

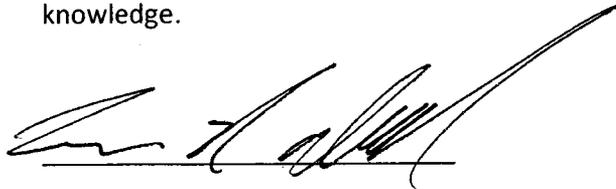
JUDITH E. FARLEY
Commission #09517633
Notary Public - Notary Seal
STATE OF MISSOURI
Callaway County
My Commission Expires: July 6, 2013

Louie Delk

12/5/12

1. My name is Louie Delk. I was a juror in the matter of Amrine v. Ossman. I participated in deliberations and was the foreperson of the jury.
2. As the foreman, I communicated with the judge when the jury had questions. I remember writing a note to the judge with a question about where the money might come from if Joe were to receive any compensation or payout.
3. I wrote the note to the judge because it seemed that several members of the jury (three or four) at once had the same question about awards and payouts.
4. I remember getting a response from the judge about our question. I recall the judge's answer being that the questions about where any potential award or payout to Mr. Amrine was not relevant to our decision-making process.
5. I read the judge's response aloud back to the group.
6. The topic of payouts, awards and damages did come up again after I read the judge's response.
7. Someone, and I do not recall who, asked if we have the option of not awarding any money to Mr. Amrine should we find Mr. Ossman negligent. I do not remember how this particular question or line of discussion came up. I do know we did not ask judge further questions about payouts.
8. I do not specifically recall a juror telling the group that money from the state would go to Mr. Amrine. There are many specifics of the deliberations that I do not recall.
9. I did not hear any juror say anything racially negative about Mr. Amrine.

I swear under penalty of perjury that this statement is true, correct and complete to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Louie Delk', written over a horizontal line.

Louie Delk

State of Missouri

County of Cole

Subscribed before me, a notary public, in and for the State of Missouri, this 5 day of December, 2012.



RONDA G. LEPAGE
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: June 01, 2016
Commission Number: 12381075

Myra Peters

12/5/12

1. My name is Myra Peters. I served as a juror in the matter of Amrine v Ossman. I participated in deliberations.
2. During deliberations, the members of the jury began asking where the money for any potential payout or awards for Mr. Amrine may come from. I don't remember any specific person asking the question initially. We discussed the issue as a jury, and the foreman wrote a note to the judge asking him where the money for any potential awards or payouts may come from.
3. The judge sent a response back to us. The foreman read the judge's response out loud to the jury.
4. The judge's response didn't really give us an answer to our question. The question about where any money to award Mr. Amrine might come from did come up again. Someone suggested that the money to pay Mr. Amrine would come from the state because Mr. Ossman was working as a Public Defender at the time of the original trial. I don't remember who made that suggestion or who told us that the money may come from the state. I don't remember any one person saying definitively that the money would come from the state. We as a jury asked ourselves, if we were to award Joe Amrine money, would it come out of our tax dollars?
5. Everyone was chiming in on the discussion, and I cannot remember specifically who made statements about 'tax dollars' or who brought up the initial questions about payouts.

I swear under penalty of perjury that the above statement is true, complete and correct to the best of my knowledge.

Myra Peters 12-5-12

Myra Peters

12/5/12

State of Missouri

County of Cole

Subscribed before me, a notary public, in and for the State of Missouri, this 5th day of December, 2012.

Danielle Kay Smith

DANIELLE KAY SMITH
Notary Public - Notary Seal
STATE OF MISSOURI
County of Cole
My Commission Expires 4/6/2016
Commission # 12524312

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
NINETEENTH JUDICIAL CIRCUIT

JOSEPH D. AMRINE,)

Plaintiff,)

v.)

JULIAN J. OSSMAN,)

Defendant.)

Case No. 08AC-CC00340

AFFIDAVIT

STATE OF MISSOURI)

) ss:

COUNTY OF COLE)

I, Arthur B. Earl, of lawful age, upon my oath and subject to the penalties for perjury, swear or affirm that:

1. My name is Arthur Earl and I served on the jury for the matter concerning Joe Amrine and Julian Ossman. I participated in deliberations, and I voted 'guilty' for Mr. Ossman.
2. The question of where the money to pay Mr. Amrine would come from should he win, came up at least three or four times during our deliberations.
3. I don't remember who first asked the question about where the money to pay Mr. Amrine would come from because it came up so often.
4. Mr. Delk may have at one point asked the judge about where the money was coming from. Mr. Delk did tell us all that we were supposed to talk about Mr. Ossman's guilt or innocence before we concerned ourselves with any money or payout. The discussion of money continued to pop up a few times after Mr. Delk told us we weren't supposed to be talking about money.
5. There were several jurors who seemed especially concerned about where the money to pay Joe would be coming from – Mr. Ossman or the State.
6. One old woman was concerned that an old man who was mentally messed-up would have to pay out of his pocket. This seemed to sway her vote. We were all concerned that this old man would have to pay out of pocket.

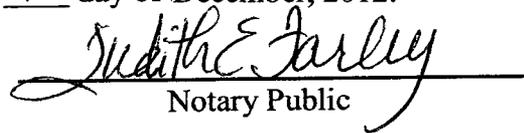
7. I remember that the basic consensus that the jury came to was that the state already had a fund that would cover any pay out to Mr. Amrine. Several people on the jury confirmed this.
8. Some members of the jury were upset that their tax money would be going to Mr. Amrine. Mr. Griggs and Mr. Harwood badgered the undecided jurors with the idea that "our tax money" would be going to pay Mr. Amrine. They really hit heavy on the idea that the money was our tax dollars.
9. It is my opinion that a couple of the female jurors who did not speak out much were swayed by the bullying of Mr. Griggs and the other man about the issue of money. I believe these ladies did not want to be challenged or interrupted, and the two bullies on the jury, Griggs and Harwood, would have interrupted them and challenged them.
10. Mr. Griggs clearly stated that he didn't want his tax dollars or anything at all going to Joe Amrine.

I swear under penalty of perjury that the above statement is true, correct and complete to the best of my knowledge.



Arthur B. Earl

Subscribed and sworn to before me this 4th day of December, 2012.



Notary Public

My commission expires:

JUDITH E. FARLEY
Commission #09517633
Notary Public - Notary Seal
STATE OF MISSOURI
Callaway County
My Commission Expires: July 6, 2013

1

JUROR QUALIFICATION FORM

COMPLETE, SIGN, AND RETURN WITHIN 10 DAYS

A random list of prospective jurors for jury service is now being selected for the term of service indicated on the reverse side of this form. Pursuant to law, you shall appear upon being summoned unless you received notice that you have been excused. Any request to be excused must be made below. Please correctly complete the following statements, sign, and return it to the Board of Jury Commissioners within 10 days of receiving it. Any prospective juror who fails to return a completed Juror Qualification Form as instructed may be directed by the Board of Jury Commissioners to appear forthwith to fill out a Juror Qualification Form. Access to jury service is available to all individuals with a disability as required by the Americans with Disabilities Act of 1990.

THIS IS NOT A SUMMONS FOR JURY SERVICE.

NOTE: Please Print

EARL → Last Name ARTHUR First Name B. Middle Initial 67 Age
3611 W. GORDON DR. Home Address JEFFERSON CITY City (573) 424-0366 Home Phone Work Phone

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. _____

- | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| 1. Are you a United States citizen? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 2. Do you live in Cole County? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6. Are you a judge of a court of record? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 3. Do you read, speak and understand English?
If no, is your inability to read, speak and understand English due to a vision or hearing impairment? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 4. Have you been convicted of a felony and not had your civil rights restored? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |

8. Are you presently employed? Yes No
 If yes, state employer and occupation _____

 If no, state your last employer and occupation
WALMART MAINTENANCE

Are you a member of the Missouri General Assembly? Yes No

9. Marital Status: Single Married Widowed
 Separated Divorced

10. Race: CAUC. WHITE

11. Gender: Male Female

12. Spouse's employer and occupation _____

13. Do you have children under the age of 18? Yes No

14. Indicate your highest grade level completed
 Grade School _____ College
 High School _____ Post Graduate _____
 Technical/Trade

15. Are you related to a law enforcement officer? Yes No

16. Have you been convicted of a crime other than a traffic ticket? Yes No

17. Have you served as a juror before? Yes No
 Type of case? Criminal Civil
 When? _____
 What county? _____

18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No

19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No

20. I am unable to serve (please explain). This does not guarantee that you will be excused. _____

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.

x Arthur B. Earl
 Juror's Signature

9-5-12

Date

JUROR QUALIFICATION FORM

COMPLETE, SIGN, AND RETURN WITHIN 10 DAYS

A random list of prospective jurors for jury service is now being selected for the term of service indicated on the reverse side of this form. Pursuant to law, you shall appear upon being summoned unless you received notice that you have been excused. Any request to be excused must be made below. Please correctly complete the following statements, sign, and return it to the Board of Jury Commissioners within 10 days of receiving it. Any prospective juror who fails to return a completed Juror Qualification Form as instructed may be directed by the Board of Jury Commissioners to appear forthwith to fill out a Juror Qualification Form. Access to jury service is available to all individuals with a disability as required by the Americans with Disabilities Act of 1990.

THIS IS NOT A SUMMONS FOR JURY SERVICE.

NOTE: Please Print

<u>RUCKER</u>		<u>CAROLYN</u>		<u>K.</u>	<u>74</u>
Last Name		First Name		Middle Initial	Age
<u>1040 CAROL STREET</u>		<u>JEFFERSON CITY</u>		<u>636-9254</u>	<u>N/A</u>
Home Address		City		Home Phone	Work Phone

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. _____

- 1. Are you a United States citizen? Yes No
- 2. Do you live in Cole County? Yes No
- 3. Do you read, speak and understand English? Yes No
If no, is your inability to read, speak and understand English due to a vision or hearing impairment? Yes No
- 4. Have you been convicted of a felony and not had your civil rights restored? Yes No
- 5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? Yes No
- 6. Are you a judge of a court of record? Yes No
- 7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. Yes No

- 8. Are you presently employed? Yes No
If yes, state employer and occupation _____
If no, state your last employer and occupation
DEPT OF ELEM & SECONDARY
EDUC - ACCOUNTANT
- Are you a member of the Missouri General Assembly? Yes No
- 9. Marital Status: Single Married Widowed
 Separated Divorced
- 10. Race: WHITE
- 11. Gender: Male Female
- 12. Spouse's employer and occupation USAF-(ret.)
MODINE MFG -(ret)
- 13. Do you have children under the age of 18? Yes No
- 14. Indicate your highest grade level completed
Grade School _____ College 13
High School _____ Post Graduate _____
Technical/Trade _____
- 15. Are you related to a law enforcement officer? Yes No

- 16. Have you been convicted of a crime other than a traffic ticket? Yes No
- 17. Have you served as a juror before? Yes No
Type of case? Criminal Civil
When? 3-5 yrs. ago
What county? COLE
- 18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No
- 19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No
- 20. I am unable to serve (please explain). This does not guarantee that you will be excused. _____

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.

x Carolyn K. Rucker
Juror's Signature

8-29-12
Date

JUROR QUALIFICATION FORM

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THIS IS NOT A SUMMONS FOR JURY SERVICE.

NOTE: Please Print

Tallman, Cynthia M.
Last Name First Name Middle Initial Age 49
1010 El Dorado Dr., Jefferson City, MO 673-761-4414 573-690-39
Home Address City Home Phone Work Phone

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. N/A

- 1. Are you a United States citizen? Yes No
- 2. Do you live in Cole County? Yes No
- 3. Do you read, speak and understand English? Yes No
If no, is your inability to read, speak and understand English due to a vision or hearing impairment? Yes No
- 4. Have you been convicted of a felony and not had your civil rights restored? Yes No
- 5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? Yes No
- 6. Are you a judge of a court of record? Yes No
- 7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. Yes No

8. Are you presently employed? Yes No
If yes, state employer and occupation
State of Missouri, Dept. of Health and Senior Services - Fiscal & Administrative Manager
If no, state your last employer and occupation _____

Are you a member of the Missouri General Assembly? Yes No

9. Marital Status: Single Married Widowed
 Separated Divorced

10. Race: Caucasian

11. Gender: Male Female

12. Spouse's employer and occupation
N/A

13. Do you have children under the age of 18? Yes No

14. Indicate your highest grade level completed
Grade School _____ College 4 yrs. Bach. Degree
High School _____ Post Graduate _____
Technical/Trade _____

15. Are you related to a law enforcement officer? Yes No

16. Have you been convicted of a crime other than a traffic ticket? Yes No

17. Have you served as a juror before? Yes No
Type of case? Criminal Civil
When? 1997 or 1998
What county? Federal Court

18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No

19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No

20. I am unable to serve (please explain). This does not guarantee that you will be excused. _____

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.

Cynthia M. Tallman
Juror's Signature

8-29-12
Date

JUROR QUALIFICATION FORM

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THIS IS NOT A SUMMONS FOR JURY SERVICE.

NOTE: Please Print

Last Name: Brown First Name: Delmar Middle Initial: R. Age: 73
Home Address: 4307 South Dr. City: Jefferson City Home Phone: 573-636-8869 Work Phone: _____

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. 15 miles

- 1. Are you a United States citizen? Yes No
- 2. Do you live in Cole County? Yes No
- 3. Do you read, speak and understand English? Yes No
If no, is your inability to read, speak and understand English due to a vision or hearing impairment? Yes No
- 4. Have you been convicted of a felony and not had your civil rights restored? Yes No
- 5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? Yes No
- 6. Are you a judge of a court of record? Yes No
- 7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. Yes No

- 8. Are you presently employed? Yes No
If yes, state employer and occupation _____
If no, state your last employer and occupation _____
Apple Construction
Carpenter
- Are you a member of the Missouri General Assembly? Yes No
- 9. Marital Status: Single Married Widowed
 Separated Divorced
- 10. Race: White
- 11. Gender: Male Female
- 12. Spouse's employer and occupation Retired
- 13. Do you have children under the age of 18? Yes No
- 14. Indicate your highest grade level completed
Grade School _____ College _____
High School Technical/Trade _____ Post Graduate _____
- 15. Are you related to a law enforcement officer? Yes No

- 16. Have you been convicted of a crime other than a traffic ticket? Yes No
- 17. Have you served as a juror before? Yes No
Type of case? Criminal Civil
When? 2002
What county? Cole
- 18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No
- 19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No
- 20. I am unable to serve (please explain). This does not guarantee that you will be excused.
Related to Judge Robert Schollmeyer

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.
x Delmar R Brown
Juror's Signature
9-30-12
Date



JUROR QUALIFICATION FORM COMPLETE, SIGN, AND RETURN WITHIN 10 DAYS

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THIS IS NOT A SUMMONS FOR JURY SERVICE.

NOTE: Please Print

Daledovich Last Name Marilyn First Name M Middle Initial 57 Age

12107 Southbend Road Home Address Jefferson City City 496-3790 Home Phone _____ Work Phone

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. 45 miles

- 1. Are you a United States citizen? Yes No
- 2. Do you live in Cole County? Yes No
- 3. Do you read, speak and understand English? Yes No
If no, is your inability to read, speak and understand English due to a vision or hearing impairment? Yes No
- 4. Have you been convicted of a felony and not had your civil rights restored? Yes No
- 5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? Yes No
- 6. Are you a judge of a court of record? Yes No
- 7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. Yes No

- 8. Are you presently employed? Yes No
If yes, state employer and occupation _____
If no, state your last employer and occupation J.C. Public School - Part time secretary
(Actively seeking employment yet with school)
Are you a member of the Missouri General Assembly? Yes No
- 9. Marital Status: Single Married Widowed Separated Divorced
- 10. Race: White
- 11. Gender: Male Female
- 12. Spouse's employer and occupation NA
- 13. Do you have children under the age of 18? Yes No
- 14. Indicate your highest grade level completed
Grade School _____ College _____
High School Post Graduate _____
Technical/Trade _____
- 15. Are you related to a law enforcement officer? Yes No

- 16. Have you been convicted of a crime other than a traffic ticket? Yes No
- 17. Have you served as a juror before? Yes No
Type of case? Criminal Civil
When? Not sure - 1980's ??
What county? Cole
- 18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No
- 19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No
- 20. I am unable to serve (please explain). This does not guarantee that you will be excused. 11-15 Grandparents Day, 12-13 Doctors appt, 1220 Doctor appt's

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.

x Marilyn Daledovich Juror's Signature

9-3-12 Date

6 ✓

JUROR QUALIFICATION FORM

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THIS IS NOT A SUMMONS FOR JURY SERVICE.

NOTE: Please Print

Last Name: Buschjost First Name: Curtis Middle Initial: L Age: 47
 Home Address: 3020 Mercedes Ln City: Jefferson City Home Phone: 893-5658 Work Phone: 751-107

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. 0

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. Are you a United States citizen? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>2. Do you live in Cole County? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>3. Do you read, speak and understand English?
If no, is your inability to read, speak and understand English due to a vision or hearing impairment? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>4. Have you been convicted of a felony and not had your civil rights restored? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | <p>5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>6. Are you a judge of a court of record? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

8. Are you presently employed? Yes No
 If yes, state employer and occupation State of MO Tax Auditor
 If no, state your last employer and occupation _____

Are you a member of the Missouri General Assembly? Yes No

9. Marital Status: Single Married Widowed
 Separated Divorced

10. Race: White

11. Gender: Male Female

12. Spouse's employer and occupation Blair Oaks School Teacher

13. Do you have children under the age of 18? Yes No

14. Indicate your highest grade level completed
 Grade School _____ College
 High School _____ Post Graduate _____
 Technical/Trade _____

15. Are you related to a law enforcement officer? Yes No

16. Have you been convicted of a crime other than a traffic ticket? Yes No

17. Have you served as a juror before? Yes No
 Type of case? Criminal Civil
 When? _____
 What county? _____

18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No

19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No

20. I am unable to serve (please explain). This does not guarantee that you will be excused. _____

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.

x Curtis Buschjost
 Juror's Signature
9/7/13
 Date

JUROR QUALIFICATION FORM
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NOTE: Please Print

Harwood Last Name Charles First Name M Middle Initial 53 Age
1411 Briar Village Ct Home Address Jefferson City City 573-632-2000 Home Phone 573-757-9113 Work Phone

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. 3-4

- 1. Are you a United States citizen? Yes No
- 2. Do you live in Cole County? Yes No
- 3. Do you read, speak and understand English? Yes No
 If no, is your inability to read, speak and understand English due to a vision or hearing impairment? Yes No
- 4. Have you been convicted of a felony and not had your civil rights restored? Yes No
- 5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? Yes No
- 6. Are you a judge of a court of record? Yes No
- 7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. Yes No

- 8. Are you presently employed? Yes No
 If yes, state employer and occupation MO - Dept of Natural Resources
 If no, state your last employer and occupation _____
- Are you a member of the Missouri General Assembly? Yes No
- 9. Marital Status: Single Married Widowed
 Separated Divorced
- 10. Race: White
- 11. Gender: Male Female
- 12. Spouse's employer and occupation MO - Office of Admin
- 13. Do you have children under the age of 18? Yes No
- 14. Indicate your highest grade level completed
 Grade School _____ College
 High School _____ Post Graduate _____
 Technical/Trade _____
- 15. Are you related to a law enforcement officer? Yes No

- 16. Have you been convicted of a crime other than a traffic ticket? Yes No
- 17. Have you served as a juror before? Yes No
 Type of case? Criminal Civil
 When? _____
 What county? _____
- 18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No
- 19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No
- 20. I am unable to serve (please explain). This does not guarantee that you will be excused. _____

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.
Charles M. Harwood
 Juror's Signature
Sept 04 2012
 Date

PLEASE RETURN COMPLETED FORM WITHIN 10 DAYS AS DIRECTED ABOVE.

8



JUROR QUALIFICATION FORM

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NOTE: Please Print

Peters Last Name Mura First Name A Middle Initial 32 Age
3714 Cork Circle Home Address Jefferson City MO City 634-5427 Home Phone 761-6107 Work Phone

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. 12

- 1. Are you a United States citizen? Yes No
- 2. Do you live in Cole County? Yes No
- 3. Do you read, speak and understand English? Yes No
If no, is your inability to read, speak and understand English due to a vision or hearing impairment? Yes No
- 4. Have you been convicted of a felony and not had your civil rights restored? Yes No
- 5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? Yes No
- 6. Are you a judge of a court of record? Yes No
- 7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. Yes No

8. Are you presently employed? Yes No
If yes, state employer and occupation
Hawthorn Bank, Asst. Electronic Banking Coordinator
If no, state your last employer and occupation _____

Are you a member of the Missouri General Assembly? Yes No

9. Marital Status: Single Married Widowed
 Separated Divorced

10. Race: white

11. Gender: Male Female

12. Spouse's employer and occupation
Morpho Trak - Customer Service Engineer

13. Do you have children under the age of 18? Yes No

14. Indicate your highest grade level completed
Grade School _____ College _____
High School _____ Post Graduate _____
Technical/Trade _____

15. Are you related to a law enforcement officer? Yes No

16. Have you been convicted of a crime other than a traffic ticket? Yes No

17. Have you served as a juror before? Yes No
Type of case? Criminal Civil
When? _____
What county? _____

18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No

19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No

20. I am unable to serve (please explain). This does not guarantee that you will be excused.

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.

x Mura Peters
Juror's Signature

9-5-12
Date

JUROR QUALIFICATION FORM

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THIS IS NOT A SUMMONS FOR JURY SERVICE.

NOTE: Please Print

Last Name: Linhardt First Name: Denny Middle Initial: W Age: 42
 Home Address: 752 Kathy Lane City: Jefferson City Home Phone: 636-4956 Work Phone: 418-902

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. 20

- 1. Are you a United States citizen? Yes No
- 2. Do you live in Cole County? Yes No
- 3. Do you read, speak and understand English? Yes No
If no, is your inability to read, speak and understand English due to a vision or hearing impairment? Yes No
- 4. Have you been convicted of a felony and not had your civil rights restored? Yes No
- 5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? Yes No
- 6. Are you a judge of a court of record? Yes No
- 7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. Yes No

- 8. Are you presently employed? Yes No
If yes, state employer and occupation Century Link Frame Attendant
If no, state your last employer and occupation _____
- Are you a member of the Missouri General Assembly? Yes No
- 9. Marital Status: Single Married Widowed
 Separated Divorced
- 10. Race: White
- 11. Gender: Male Female
- 12. Spouse's employer and occupation Housewife - stay at home mom
- 13. Do you have children under the age of 18? Yes No
- 14. Indicate your highest grade level completed
 Grade School College _____
 High School _____ Post Graduate _____
 Technical/Trade _____
- 15. Are you related to a law enforcement officer? Yes No

- 16. Have you been convicted of a crime other than a traffic ticket? Yes No
- 17. Have you served as a juror before? Yes No
Type of case? Criminal Civil
When? _____
What county? _____
- 18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No
- 19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No
- 20. I am unable to serve (please explain). This does not guarantee that you will be excused. _____

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.

X Dr. Phil
 Juror's Signature
9-1-2012
 Date

PLEASE RETURN COMPLETED FORM WITHIN 10 DAYS AS DIRECTED ABOVE.

JUROR QUALIFICATION FORM

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THIS IS NOT A SUMMONS FOR JURY SERVICE.

NOTE: Please Print

Griffin Last Name Rodney First Name J Middle Initial 64 Age
1011 Marshall St., Jefferson City Home Address Jefferson City 635-1523 Home Phone None Work Phone

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. _____

- 1. Are you a United States citizen? Yes No
- 2. Do you live in Cole County? Yes No
- 3. Do you read, speak and understand English? Yes No
If no, is your inability to read, speak and understand English due to a vision or hearing impairment? Yes No
- 4. Have you been convicted of a felony and not had your civil rights restored? Yes No
- 5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? Yes No
- 6. Are you a judge of a court of record? Yes No
- 7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. Yes No

- 8. Are you presently employed? Yes No
If yes, state employer and occupation _____
If no, state your last employer and occupation
Ameren U.E. Gas Worker
- Are you a member of the Missouri General Assembly? Yes No
- 9. Marital Status: Single Married Widowed
 Separated Divorced
- 10. Race: Black
- 11. Gender: Male Female
- 12. Spouse's employer and occupation Lincoln University Alumni affairs
- 13. Do you have children under the age of 18? Yes No
- 14. Indicate your highest grade level completed
Grade School _____ College _____
High School X Post Graduate _____
Technical/Trade _____
- 15. Are you related to a law enforcement officer? Yes No

- 16. Have you been convicted of a crime other than a traffic ticket? Yes No
- 17. Have you served as a juror before? Yes No
Type of case? Criminal Civil
When? _____
What county? _____
- 18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No
- 19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No
- 20. I am unable to serve (please explain). This does not guarantee that you will be excused. _____

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.

Rodney Griffin
Juror's Signature
9/5/12
Date

JUROR QUALIFICATION FORM

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THIS IS NOT A SUMMONS FOR JURY SERVICE.

NOTE: Please Print

11
✓

Dalk Louise R 41
 Last Name First Name Middle Initial Age
3224 Winchester Ct Jefferson City 573 415 4801 573 522 4000
 Home Address City Home Phone Work Phone

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. _____

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. Are you a United States citizen? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>2. Do you live in Cole County? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>3. Do you read, speak and understand English?
 If no, is your inability to read, speak and understand English due to a vision or hearing impairment? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>4. Have you been convicted of a felony and not had your civil rights restored? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | <p>5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>6. Are you a judge of a court of record? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

8. Are you presently employed? Yes No
 If yes, state employer and occupation Conservation Employees' Credit Union President
- If no, state your last employer and occupation _____
- Are you a member of the Missouri General Assembly? Yes No
9. Marital Status: Single Married Widowed
 Separated Divorced
10. Race: White
11. Gender: Male Female
12. Spouse's employer and occupation St. Mary's Physical Therapist
13. Do you have children under the age of 18? Yes No
14. Indicate your highest grade level completed
 Grade School _____ College
 High School _____ Post Graduate _____
 Technical/Trade _____
15. Are you related to a law enforcement officer? Yes No

16. Have you been convicted of a crime other than a traffic ticket? Yes No
17. Have you served as a juror before? Yes No
 Type of case? Criminal Civil
 When? _____
 What county? _____
18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No
19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No
20. I am unable to serve (please explain). This does not guarantee that you will be excused.
Nov 12-16, work travel to Charlotte, NC
Nov 21-23, Thanksgiving vacation to SC

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.

[Signature]
 Juror's Signature
9/5/12
 Date

JUROR QUALIFICATION FORM

COMPLETE, SIGN, AND RETURN WITHIN 10 DAYS

A random list of prospective jurors for jury service is now being selected for the term of service indicated on the reverse side of this form. Pursuant to law, you shall appear upon being summoned unless you received notice that you have been excused. Any request to be excused must be made below. Please correctly complete the following statements, sign, and return it to the Board of Jury Commissioners within 10 days of receiving it. Any prospective juror who fails to return a completed Juror Qualification Form as instructed may be directed by the Board of Jury Commissioners to appear forthwith to fill out a Juror Qualification Form. Access to jury service is available to all individuals with a disability as required by the Americans with Disabilities Act of 1990.

THIS IS NOT A SUMMONS FOR JURY SERVICE.

NOTE: Please Print

Griggs Last Name Richard First Name C Middle Initial 41 Age
4814 Rainbow Hills Rd Home Address Jefferson City City 573-690-7977 Home Phone 751-4115 ext. 3 Work Phone

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. FIVE MILES

- 1. Are you a United States citizen? Yes No
- 2. Do you live in Cole County? Yes No
- 3. Do you read, speak and understand English? Yes No
 If no, is your inability to read, speak and understand English due to a vision or hearing impairment? Yes No
- 4. Have you been convicted of a felony and not had your civil rights restored? Yes No
- 5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? Yes No
- 6. Are you a judge of a court of record? Yes No
- 7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. Yes No

8. Are you presently employed? Yes No
 If yes, state employer and occupation MISSOURI Dept. of CONSERVATION, OPERATOR II
 If no, state your last employer and occupation _____

Are you a member of the Missouri General Assembly? Yes No

9. Marital Status: Single Married Widowed
 Separated Divorced

10. Race: White

11. Gender: Male Female

12. Spouse's employer and occupation Capitol Region Medical Group, Nurse

13. Do you have children under the age of 18? Yes No

14. Indicate your highest grade level completed
 Grade School _____ College _____
 High School X Post Graduate _____
 Technical/Trade _____

15. Are you related to a law enforcement officer? Yes No

- 16. Have you been convicted of a crime other than a traffic ticket? Yes No
- 17. Have you served as a juror before? Yes No
 Type of case? Criminal Civil
 When? _____
 What county? _____
- 18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No
- 19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No
- 20. I am unable to serve (please explain). This does not guarantee that you will be excused. _____

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.

Richard Griggs
 Juror's Signature

8/30/12

Date

PLEASE RETURN COMPLETED FORM WITHIN 10 DAYS AS DIRECTED ABOVE.

1st ALT.

JUROR QUALIFICATION FORM

COMPLETE, SIGN, AND RETURN WITHIN 10 DAYS

A random list of prospective jurors for jury service is now being selected for the term of service indicated on the reverse side of this form. Pursuant to law, you shall appear upon being summoned unless you received notice that you have been excused. Any request to be excused must be made below. Please correctly complete the following statements, sign, and return it to the Board of Jury Commissioners within 10 days of receiving it. Any prospective juror who fails to return a completed Juror Qualification Form as instructed may be directed by the Board of Jury Commissioners to appear forthwith to fill out a Juror Qualification Form. Access to jury service is available to all individuals with a disability as required by the Americans with Disabilities Act of 1990.

THIS IS NOT A SUMMONS FOR JURY SERVICE.

NOTE: Please Print

Hayes
Last Name

Georgena
First Name

G
Middle Initial

69
Age

1111 Maywood
Home Address

Jefferson City
City

MO 65109 573-636-7602
Home Phone

retired
Work Phone

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. _____

- 1. Are you a United States citizen? Yes No
- 2. Do you live in Cole County? Yes No
- 3. Do you read, speak and understand English? Yes No
If no, is your inability to read, speak and understand English due to a vision or hearing impairment? Yes No
- 4. Have you been convicted of a felony and not had your civil rights restored? Yes No

- 5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? Yes No
- 6. Are you a judge of a court of record? Yes No
- 7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. Yes No

8. Are you presently employed? Yes No
If yes, state employer and occupation _____

If no, state your last employer and occupation
Unilever, Secy

Are you a member of the Missouri General Assembly? Yes No

9. Marital Status: Single Married Widowed
 Separated Divorced

10. Race: white

11. Gender: Male Female

12. Spouse's employer and occupation
Union Pacific - Conductor

13. Do you have children under the age of 18? Yes No

14. Indicate your highest grade level completed
Grade School _____ College _____
High School Post Graduate _____
Technical/Trade _____

15. Are you related to a law enforcement officer? Yes No
Retired

16. Have you been convicted of a crime other than a traffic ticket? Yes No

17. Have you served as a juror before? Yes No
Type of case? Criminal Civil
When? _____
What county? _____

18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No

19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No

20. I am unable to serve (please explain). This does not guarantee that you will be excused. _____

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.

Georgena S Hayes
Juror's Signature

8/30/12
Date

2ND ALT.

JUROR QUALIFICATION FORM

COMPLETE, SIGN, AND RETURN WITHIN 10 DAYS

A random list of prospective jurors for jury service is now being selected for the term of service indicated on the reverse side of this form. Pursuant to law, you shall appear upon being summoned unless you received notice that you have been excused. Any request to be excused must be made below. Please correctly complete the following statements, sign, and return it to the Board of Jury Commissioners within 10 days of receiving it. Any prospective juror who fails to return a completed Juror Qualification Form as instructed may be directed by the Board of Jury Commissioners to appear forthwith to fill out a Juror Qualification Form. Access to jury service is available to all individuals with a disability as required by the Americans with Disabilities Act of 1990.

THIS IS NOT A SUMMONS FOR JURY SERVICE.

NOTE: Please Print

Last Name: Brooks First Name: Heather Middle Initial: E Age: 39
Home Address: 1423 Springdale Terr. City: Jefferson City Home Phone: 573-761-4222 Work Phone: 690-7267

If you live outside the city limits of Jefferson City, please indicate the number of miles from your home to the county courthouse, round trip. N/A

- 1. Are you a United States citizen? Yes No
- 2. Do you live in Cole County? Yes No
- 3. Do you read, speak and understand English? Yes No
If no, is your inability to read, speak and understand English due to a vision or hearing impairment? Yes No
- 4. Have you been convicted of a felony and not had your civil rights restored? Yes No
- 5. Are you on active duty in the armed forces or a member of the Missouri Militia on active duty under order of the Governor? Yes No
- 6. Are you a judge of a court of record? Yes No
- 7. Do you have a physical or mental disability that would interfere with or prevent you from serving as a juror? If yes, doctor's letter must be provided. Yes No

8. Are you presently employed? Yes No
If yes, state employer and occupation: Capital Region Medical Center - physical therapist
If no, state your last employer and occupation: _____

Are you a member of the Missouri General Assembly? Yes No

9. Marital Status: Single Married Widowed
 Separated Divorced

10. Race: Caucasian

11. Gender: Male Female

12. Spouse's employer and occupation: MODOT - Civil engineer

13. Do you have children under the age of 18? Yes No

14. Indicate your highest grade level completed
Grade School _____ College _____
High School _____ Post Graduate _____
Technical/Trade _____

15. Are you related to a law enforcement officer? Yes No

- 16. Have you been convicted of a crime other than a traffic ticket? Yes No
- 17. Have you served as a juror before? Yes No
Type of case? Criminal Civil
When? _____
What county? _____
- 18. Have you ever been a party in a lawsuit (as a plaintiff or defendant, not merely as a witness)? Yes No
- 19. Have you ever made a claim or had a claim made against you to obtain or recover money, either for physical injuries or for damage to property? Yes No
- 20. I am unable to serve (please explain). This does not guarantee that you will be excused. _____

I swear/affirm under penalty of perjury that these facts are true according to my knowledge and belief.

x Heather E. Brooks
Juror's Signature
9/4/12
Date

PLEASE RETURN COMPLETED FORM WITHIN 10 DAYS AS DIRECTED ABOVE.

VERDICT

Note: Complete this form by writing in the name required by your verdict.

On the claim of Plaintiff Joseph Amrine against Defendant Julian Ossman, we the undersigned jurors, find in favor of:

Defendant Julian Ossman
(Plaintiff Joseph Amrine) or (Defendant Julian Ossman)

Note: Complete the following paragraph only if one or more of the above findings is in favor of Plaintiff Joseph Amrine.

We the undersigned jurors, assess damages of Plaintiff Joseph Amrine as follows:

For past economic damages: \$ _____
(stating the amount)

For past non-economic damages: \$ _____
(stating the amount)

For future medical damages: \$ _____
(stating the amount)

For future economic damages: \$ _____
(stating the amount)

For future non-economic damages: \$ _____
(stating the amount)

Note: All jurors who agree to the above findings must sign below.

[Signature]
[Signature]
Curtis Buschost
Dery W. Liskard
William R. Brown
Charles M. [Signature]

Carolyn Rucker
[Signature]
Cynthia M. Talley

1 Q. Now, this theory of defense, sum this one up for 10:14AM
2 me. Let's go back to the sex slave thing. Okay. So what 10:14AM
3 is your theory of defense that you are advancing that you 10:14AM
4 say that Mr. Ossman should have been pushing, just give it 10:14AM
5 to me in a nutshell? 10:14AM

6 A. Clifford Valentine was the ring leader of the 10:14AM
7 sex ring in that housing unit. He obviously had a 10:14AM
8 relationship with the staff. Much of the corruption that 10:15AM
9 happens in a prison happens with the assistance of staff. 10:15AM
10 He dominated Randy Ferguson. He is the individual, our 10:15AM
11 investigation revealed, who put out the hit on Barber and 10:15AM
12 that Russell was the one who did it because he was 10:15AM
13 affiliated with the Moors, wanted to become a member of the 10:15AM
14 Moors, and this was a way for him to get membership, 10:15AM
15 because Joe Amrine was not affiliated with the Moors. He 10:15AM
16 was -- It was permissible for everybody to frame him for 10:15AM
17 the murder. And that each of these individuals -- And part 10:15AM
18 of this also spins off of who was the confidential 10:15AM
19 informant who gives the government their theory in the 10:15AM
20 first place. 10:15AM

21 We determined that the confidential informant was 10:15AM
22 Clifford Valentine. Clifford Valentine was feeding 10:15AM
23 information to George Brooks, and George Brooks was the one 10:16AM
24 who was guiding the investigation, and so the theory of the 10:16AM
25 defense has to include the relationship between Clifford 10:16AM

1 Valentine and George Brooks. Why is the chief investigator
2 of the prison allowing the ring leader of a gang to sit in
3 on witness interviews, especially critical witness
4 interviews of a person who is a suspect in the crime, or at
5 the very minimum an eyewitness to the crime? Why would he
6 do that? And so there, and so there is a broader context
7 for, you know, why these individuals would do it.

8 And then that opened up the opportunity for Jerry Poe
9 to jump on the band wagon. And when they realized that you
10 could not carry this case on Jerry Poe and Terry Russell,
11 then the other witness who became very important was Randy
12 Ferguson. They knew that Randy Ferguson was Clifford
13 Valentine's sex slave. They knew that. They knew that for
14 a long time because it was in his records. They protected
15 him when he made a statement implicating Joe Amrine and not
16 before. They allowed it to go on until Randy Ferguson
17 decided that he would help them convict Joe Amrine to the
18 case.

19 And so, you know, when you look at the overall
20 picture, then, you know, then it becomes, you know, looking
21 at the integrity of the investigation, and looking at it
22 independently, how could they possibly have put all these
23 things together? So you would ask George Brooks how is it
24 that you -- how does paperwork flow through your office?
25 You look at the documents. And the documents that he would

1 explain in his investigation, that he has all of the
2 officers write what they call IOC's, they are inter-office
3 communications, and the inter-office communications are
4 handwritten in the first instance and they go to George
5 Brooks, and then George Brooks irons out any
6 inconsistencies between them and types them up and returns
7 them to the officers who then sign on to those and that
8 becomes their script for the rest of the proceedings. And
9 so that you can show that, you know, based on the lack of
10 an independent investigation in the first place and how the
11 first theory that they developed through Clifford Valentine
12 was that Joe Amrine allegedly ran up behind Gary Barber
13 while Barber was playing cards at the poker table, stabbed
14 him in the back and ran away. Then the second theory
15 becomes Jerry Poe's theory, and then the third theory they
16 run with becomes Randy Ferguson's theory. And if you use
17 all of the tools that are available for lawyers to conduct
18 discovery, there is a constitutional right to know who the
19 confidential informant is, so you would file a motion under
20 *Roviaro* -- that is R-o-v-i-a-r-o -- *versus United States* to
21 force the government to tell you who that confidential
22 informant is. So you get all of those interview
23 statements, you get all of that information, you can
24 conduct discovery, you investigate, and then you go in and
25 you form a theory that shows both that the prosecution's

10:17A

10:18A

10:19A

1 case lacks integrity, that this is a frameup of Joe Amrine,
2 that the real killer is Terry Russell, that he is being
3 protected by Clifford Valentine, and that Clifford
4 Valentine has a relationship with George Brooks who is the
5 officer who is in charge of the investigation. I mean,
6 that is kind of a spontaneous opening statement. It would
7 probably take me an hour or two to lay that story out for a
8 jury, but at the end of the day I would convince a jury
9 that that is what happened.

10:19A
10:19A
10:19A
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