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DISTRICT COURT  
CLARK COUNTY, NEVADA

Oct 15 10 15 AM '01

*Lizette L. Rainey*  
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**Original**

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
LAWRENCE SCHWIGER,  
Defendant.

Case No. No. 173970  
174784  
Dept. No. VI

REPORTER'S TRANSCRIPT  
OF  
PROCEEDINGS

BEFORE THE HONORABLE JOSEPH T. BONEVENTURE  
DISTRICT COURT JUDGE

Taken on July 19, 2001  
At 10:30 a.m.

APPEARANCES:  
For the State:

LISA LUZAICH, ESQ.  
Deputy District Attorney

For the Defendant:

DAVID C. AMESBURY, ESQ.  
JOHN P. PARRIS, ESQ.

Reported by: TOM MERCER, CCR No. 33

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COUNTY CLERK

MERCER & ASSOCIATES (702) 388-2973

1 Las Vegas, Nevada, July 9, 2001

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THE COURT: All right. Do you have an amended information?

5

6

MS. LUZAICH: I do, Judge. I thought I filed it already. I did provide a copy.

7

8

THE COURT: Any objection to filing this, other than your other objection which is preserved?

9

10

So we have the amended information, indictment to reflect count one, lewdness with a child under 14; two, the same thing, three, four, count 5 -- well, Count one, two and three, lewdness with a child under 14. Count four and five are sexual assault with a minor under 14; Count Six, lewdness with a child under 14, count seven, eight, nine, ten and 11 are solicitation to commit murder. So this is what we have for the jury.

18

This was on last week, I believe, when was it?

19

MS. LUZAICH: The 10th, Judge.

20

THE COURT: July 10th

21

and we had a motion for discovery. Did you get all those tapes?

22

23

MR. PARRIS: Yes. Yesterday we received a transcript of the tape of the wired tape conversation between Mr. McFarland and Mr. Schwiger when they were in a cell

24

25

1 together.

2 THE COURT: That was sort of garbled. Did you get  
3 an enhancement?

4 MS. LUZAICH: Yes, they also got the actual tape.

5 MR. PARRIS: Everything Mr. Schwiger says is  
6 unintelligible.

7 THE COURT: At least you got everything you wanted  
8 as far as discovery?

9 MR. PARRIS: That's correct. I did go over to  
10 Miss Luzaich's office yesterday and acquired approximately 112  
11 pages of additional discovery.

12 THE DEFENDANT: What about the tapes from  
13 Detective Roberts and myself up in the jail?

14 MS. LUZAICH: My understanding is you have that.

15 MR. PARRIS: We have the tape featuring Detective  
16 Scott. The tape with Mr. Schwiger was referring to, apparently  
17 there was a taped interview between Detective Roberts and Mr.  
18 Schwiger when he was first brought into custody.

19 THE COURT: Was that taped?

20 MR. PARRIS: It was referenced to in some of the  
21 preliminary transcripts; unfortunately we've never received any  
22 sort of confirmation of that.

23 THE COURT: Do you know anything about that?

24 MS. LUZAICH: The taped interview? You have  
25 that.

1 MR. AMESBURY: This is when Larry was first  
2 incarcerated, they came over and saw him and did a tape.

3 THE DEFENDANT: The first week I was incarcerated  
4 Roberts and Ramirez came up, they taped the conversation, it's  
5 extremely exculpatory.

6 MS. LUZAICH: Please.

7 THE COURT: In any event --

8 MR. AMESBURY: To bring us up to date, I want to  
9 thank the Court for accommodating us for this evidentiary  
10 hearing. I think you're aware of the basis of interference or  
11 conduct by the State. Mr. Parris working diligently with our  
12 investigator the last couple days, can give you an update where  
13 we are with it, but right now as we stand we have Larry, the  
14 defendant and we have a Mr. Don Savage. We've made every  
15 attempt possible on our side to locate McFarland or otherwise  
16 known as Mac, who was, in fact, the one that spoke with Larry.  
17 Now it's come to my attention he was up in the District  
18 Attorney's Office yesterday afternoon and was informed that a  
19 hearing today, he objected to that, he's not under subpoena,  
20 however he's not aware of today's date or if he's aware he's  
21 refused to come forward. However, Miss Luzaich assures me  
22 should the trial proceed Tuesday he'll be here.

23 MS. LUZAICH: No offense to Mr. Amesbury of  
24 misrepresentation. He was in my office yesterday, he never  
25 refused to come today, I did not issue a subpoena today, this

1 is not my evidentiary hearing, this is their evidentiary  
2 hearing. So it's not as if he's uncooperative. They have  
3 never served him with a subpoena, I do not know why, there's  
4 absolutely no evidence of his evading service. I just made a  
5 comment maybe he does not want to see you guys, which is very  
6 possible.

7 He was in my office yesterday, he's cooperative,  
8 he was going to testify Monday at one o'clock because he's not  
9 working Monday, they are saying Tuesday. I don't know, one day  
10 next week he'll come in and testify.

11 MR. AMESBURY: Also a Danny Barker, and he's over  
12 in the jail, your secretary informed us about nine thirty that  
13 even though he was aware he's to be present here this morning  
14 he's refusing to come over.

15 THE COURT: Mr. Parris wanted help, is that  
16 correct, in trying to find out so my secretary helped you out?

17 MR. PARRIS: Yes, Your Honor, your secretary  
18 assisted us in getting a transport order for Danny Barker. We  
19 anticipated Danny Barker would be somewhat a cooperative  
20 witness, however we found out approximately 45 minutes ago he  
21 was refusing to come over unless hog tied.

22 THE COURT: So what about Daniel Tommy Two Fingers  
23 Smith?

24 MR. PARRIS: Your Honor, we attempted to locate  
25 Mr. Smith, we were unable to do so. I spoke about the

1 situation with Miss Luzaich yesterday, she stated there were  
2 some bench warrants issued by the Court. She did not know  
3 where Mr. Smith was. Obviously the D.A.'s Office has an  
4 interest in locating him for those bench warrants. Evidently  
5 no one knows whether he's available.

6 THE COURT: What about John Michael Weible.

7 MR. PARRIS: He's apparently out of custody as  
8 well. To the best of my knowledge Mr. Thomas was not able to  
9 serve him either.

10 THE COURT: So, basically, we are down to Mr.  
11 Schwiger, I know what he's going to say, it's in your motion  
12 basically and we have this other guy.

13 MR. PARRIS: Don Savage.

14 THE COURT: I don't know if he has personal  
15 knowledge of this case. It's your burden, you have to convince  
16 me that, as I indicated, they had a prior agreement. That's  
17 your burden. I'm here, I'll give you the opportunity. I can't  
18 see how you can do it. I know what Mr. Schwiger is going to  
19 say but he doesn't really know what happened, he just knows  
20 what transpired, it's in your motion that he was persuaded into  
21 doing this. This Barker sent a letter and I gave you a copy of  
22 the letter, right?

23 MR. PARRIS: Barker or Savage?

24 THE COURT: I'm sorry, Savage sent a letter and I  
25 gave the D.A. a copy and you a copy yesterday, but I don't know

1 if he has personal knowledge of this case or not.

2 In any event, we'll do what you want to do on  
3 this. This is also calendar call, Miss Luzaich, and I  
4 indicated that Monday, I indicate now, I indicated this morning  
5 I have an emergency evidentiary sanity commission hearing in  
6 Reno on Monday at 9:30 involving the fighter and his four  
7 doctors and I have to have an evidentiary hearing, and the D.A.  
8 wanted me to fly down there along with Mr. Wright, the defense  
9 counsel. So I have to go down there and I'll be back late  
10 Monday night but I'll be back Tuesday morning. We could start  
11 this trial Tuesday morning.

12 Has any offer been made?

13 MS. LUZAICH: The State offered the defendant,  
14 pursuant to the amended information wherein there are 11  
15 counts, six of which punishable by life in prison, five of  
16 which two to 15, one count of lewdness with a minor, and two  
17 counts of solicitation. The State would agree to running the  
18 two solicitations concurrent but retain the right to argue they  
19 run consecutive to lewdness.

20 THE COURT: I don't know if you're going to take  
21 the deal or not. I always put on the record what the offer  
22 was. The defense would argue both counts should -- everything  
23 should run concurrent, whatever I give him, and basically ten  
24 to life is what he's going to get if I agree with the defense  
25 and run everything to concurrent. If he goes to trial, of

1 course, he's convicted, it's up to the jury. I always say that  
2 and I don't care what Mr. Schwiger does, but if the jury  
3 convicts him it's mandatory life.

4 MS. LUZAICH: Twenty to life.

5 THE COURT: Consecutive. Whatever it is. Have  
6 you discussed this matter?

7 MR. PARRIS: Yes, Your Honor, I discussed the  
8 matter with Mr. Schwiger. One of our main concerns is we would  
9 request certain appeal issues be preserved. We feel there's  
10 some procedural mistakes which we'd like to appeal. We do feel  
11 they implicate constitutional rights as well as state rights.  
12 However I was informed by Miss Luzaich that it was the Clark  
13 County D.A.'s Office policy not to agree that various rights --  
14 various non-constitutional rights are preserved on appeal.

15 Our main concern, assuming a deal would be taken,  
16 we would request any sort of deal be done via the Alford  
17 decision. As well we would request that those rights  
18 concerning some pretrial motions be preserved on appeal so we  
19 may appeal them, potentially have this case be remanded for  
20 proper adjudication at later date.

21 THE COURT: Miss Luzaich?

22 MS. LUZAICH: As far as the Alford, I do not have  
23 a problem with an Alford plea.

24 THE COURT: The Alford is okay with the Court and  
25 D.A.



1 MS. LUZAICH: As far as preserving rights, the  
2 D.A.s policy is we'll never, ever agree in a guilty plea that  
3 rights can be preserved. What the guilty plea agreement says,  
4 you waive your rights to appeal except for issues of  
5 constitutional nature. If there are issues of constitutional  
6 nature, then necessarily written in the guilty plea agreements  
7 you can still appeal those. If they are not of constitutional  
8 nature you cannot.

9 THE COURT: The D.A. is not to going to deviate  
10 from the policy, pursuant to the Alford decision and he's going  
11 to waive anything except constitutional rights, I'm not going  
12 to say nothing and let the supreme court, if he takes this deal  
13 and I don't care if he does or not, let the supreme court say  
14 these are such constitutional issues that they will be very  
15 happy to hear them, that's up to the supreme court. So that's  
16 the status of that.

17 MR. PARRIS: Again, Your Honor, I've done some  
18 preliminary research concerning certain appeal issues we have  
19 and they do appear to be constitutional in nature, just for the  
20 Court's awareness at this juncture.

21 THE COURT: If that's the case and the supreme  
22 court agrees with your research, he's preserving any appeal  
23 rights -- Mr. Schwiger don't like me to say "appeal," I don't  
24 want to say it, but that's what we have to do to make a record.  
25 He's reserving those rights according to your research, that he

1 could make appealable issues on these constitutional rights.  
2 So that's about as far as we can go on there.

3 I did get another letter from Mr. Schwiger dated  
4 Thursday, July 12, 2001. Again he just reiterates the other  
5 one, I wanted you to be aware of I'm innocent. It's neither  
6 here nor there to me if you're innocent. I'm a judge, I'm a  
7 gate keeper of the evidence, I just make sure the trial is  
8 presented in a fair and proper manner not prejudicial to the  
9 defendant and it's up to the jury the determine if you're  
10 guilty or innocent, not me. So my personal opinion is of no  
11 matter and, quite frankly, I never have a personal opinion as  
12 to guilt or innocence. I keep an open mind.

13 Where that comes in, of course, is the sentencing.  
14 Again, it's highly up to you, if you decide to take some deal  
15 then I would look, revisit your letters and visit any letters  
16 that you want to present from your family and everything, just  
17 things like that, I'll be very happy to hear whatever you want  
18 to say. Then as mitigation of any possible punishment that  
19 would certainly be in my domain whether or not to sentence you  
20 to the least amount or the most amount as far as sentencing.  
21 That's when I would get all the letters, read anything you  
22 want, hear from your lawyers about why I shouldn't give you  
23 consecutive time, then I'd hear from the State saying I should  
24 give you consecutive time and make a decision and do the best I  
25 can, Mr. Schwiger.

1           But before you're adjudicated guilty or found  
2 guilty by a jury or you plead guilty or pursuant to the Alford  
3 decision you're not admitting your guilt and maintain your  
4 innocence but to avoid a harsher punishment of staying in  
5 Nevada State prison the rest of your natural life you want to  
6 cut a deal, avoid that and try to get your sentencing down,  
7 that's your right to do so. I think everything is on the  
8 table. You discussed this with Mr. Schwiger.

9           MR. PARRIS: Yes, Your Honor.

10          THE COURT: Mr. Schwiger, they have discussed at  
11 least your options in this case?

12          THE DEFENDANT: Yes. What happens if Mr. Parris  
13 is wrong about the --

14          MR. AMESBURY: Just for the record, I can't sit  
15 by. I've been on your track a number of years and I've had  
16 people appeal grand larceny auto and whatever and take a copy  
17 of that plea agreement and come back with the supreme court and  
18 Mr. Amesbury, no one can waive their rights to appeal. You  
19 have a brief on my desk in 30 days or you're sanctioned. I  
20 think it's window dressing.

21          THE COURT: You know more about it than I do.  
22 You're a very experienced attorney. I stop at this level, I  
23 don't get involved in the appeal. You're saying that they  
24 always -- at least in your experience, and again, I have no  
25 opinion as to this so your opinion the supreme court would want

1 to resolve some of these issues.

2 MR. AMESBERRY: They say you -- some of the most  
3 ludicrous case where the evidence is clear, they sign a plea  
4 agreement on the record I clearly did this, waive my right to  
5 appeal, they get up there, file a pro per appeal, I'm still on  
6 the case, you can get out of it now, the supreme court is the  
7 only entity to let you out and you do an appeal and you do what  
8 they call a Sanchez brief. You just don't --

9 THE COURT: Even though he is signing a guilty  
10 plea agreement saying he's waiving, your experience --

11 MR. FARRIS: There's a case --

12 THE COURT: The supreme court says I want to be  
13 fair to everybody and hear the issues.

14 MR. AMESBERRY: That's right.

15 THE COURT: I don't know if that answers your  
16 question but that's what Mr. Amesbury is saying.

17 THE DEFENDANT: I think we can discuss that  
18 later. I would like to get the correct wording here, I don't  
19 want to misspeak. I would like to have a proper evidentiary  
20 hearing where these witnesses that I can bring forward to show  
21 what you're looking for is brought forward. There are  
22 witnesses that can testify that I know of that Mr. McFarland  
23 was an agent of the State before he even laid eyes on me. I  
24 know it, Mr. Savage I understand, I don't know the depth, also  
25 has evidence of outrageous conduct on the State's behalf.

1 THE COURT: On other cases. That's neither here  
2 nor there to me. It has to be this case.

3 THE DEFENDANT: He also has some on mine I  
4 believe. I'd like to further say, I know I said it a million  
5 times in the letters, but I'm an innocent man, I have not  
6 touched this child. I'm not that kind of a person. Therefore,  
7 I shouldn't be in jail to start with. If I wasn't supposed to  
8 be in jail to start with none of the rest of this stuff they  
9 are hammering on me would have taken place.

10 With the understanding of the Court, I respect the  
11 Court, the joinder issue is very prejudicial.

12 THE COURT: Judge Lochrer decided that.

13 THE DEFENDANT: Judge Lochrer did not decide  
14 this, Judge Lochrer said you decided it. I think this is where  
15 the problem is. I don't believe anybody read the briefs. We  
16 didn't even have a opportunity to file opposition. No  
17 arguments were heard from anybody. How can you make a decision  
18 on a brief and how to rule unless you have both sides of the  
19 story? From what I can see, I'm not a judge or attorney, but  
20 from what I can see nobody actually read anybody's briefs. I  
21 think it was a misunderstanding between Judge Lochrer and  
22 yourself, unless you read them.

23 THE COURT: I agree with Judge Lochrer. I  
24 reviewed all the briefs and I would have ruled the joinder was  
25 proper so I'll say that, for the record. I read the briefs and

1 I would think, and I've had cases, hundreds of these type of  
2 cases, the same thing, I've had these cases before, I'm  
3 familiar with the doctrines and it would be my opinion the  
4 joinder is proper. So whatever you want to say to that.

5 MR. PARRIS: Your Honor, for the record --

6 THE COURT: I don't want to belabor this. If he  
7 takes the deal, fine; if he doesn't we are going to go to trial  
8 Tuesday. I don't want to be going crazy and I have things on  
9 the Rudin matter at 11, 11:15 that if we are not done here I'll  
10 take an hour lunch and come back in an hour and finish this up.  
11 I'm not rushing anybody but I don't want to chit-chat. I think  
12 he knows his rights, he knows where he stands. If he goes to  
13 trial if the jury finds him not guilty, so be it, that's fine.  
14 If he's found guilty he's going to be convicted, apparently  
15 it's up to the jury, they can convict him of all the charges or  
16 some of the charges, then he's to be sentenced and there's no  
17 deal as to concurrent or consecutive. And the sexual assault  
18 is life in prison with 20 years minimum.

19 MS. LUZAICH: Sexual assault with minor 20 years  
20 minimum, life in prison.

21 THE COURT: Just tell me what you want to do? You  
22 need a minute, or do you want to call somebody?

23 MR. AMESBURY: Maybe -- Mr. Parris and I have  
24 spoken about this. The crux of today's hearing was Mac and if  
25 Mac is a vehicle of the State. If Mac is not here that's not

1 going to go anywhere. Savage, as Mr. Schwiger has agreed even  
2 other actions, that would lead to an entrapment defense, which  
3 is the only defense to solicitation, that would be a defense at  
4 trial. The only witness we were going to hear about that from  
5 today was Mac and he's not here. So the State would be on  
6 notice should this case go to trial we would ask for an  
7 entrapment instruction and Larry, obviously his testimony, we  
8 would anticipate is going to contradict Mac's so the jury would  
9 have to hear from these other witnesses who's believable and  
10 whether an entrapment took place. That's my opinion, maybe  
11 Miss Luzaich has a different opinion.

12 MS. LUZAICH: That's what I was arguing last  
13 week. It's not the subject of an evidentiary hearing but a  
14 trial issue. I'd love to have two shots at all their  
15 witnesses, get to cross examine them today, see what they are  
16 going to say but I think that's a waste of the Court's time.

17 THE COURT: I'll hear -- you want to withdraw the  
18 motion at this time.

19 MR. PARRIS: The only thing I can think, if  
20 Savage is brought in, sworn in, does he know anything about  
21 this? He says no, we are done. Larry seems to think he does.

22 THE DEFENDANT: I believe he does but I'm asking  
23 Tony Dotson, who's in this record, if he could be brought from  
24 the jail I know he has information that will certainly shed  
25 light on this.

1 MR. AMESBURY: Again, that's percipient, that's  
2 Mac. That's not the person you spoke with.

3 MR. FARRIS: Might you be inclined to pass this a  
4 day?

5 THE COURT: No, I have to get ready for Reno. She  
6 has to get ready. This is the time set for the evidentiary  
7 hearing. I don't even see Tony Dotson on your application for  
8 order to transport. Nothing was said about Tony Dotson.

9 MS. LUZAICH: I've had no notice of anybody named  
10 Tony Dotson.

11 THE COURT: I'll do what you want, be reasonable.  
12 I'm here giving you an opportunity but I don't see anything.  
13 As of right now I'm going to deny your motion unless you want  
14 to argue it or call one or two witnesses. I don't know what  
15 you want to do. By the way, is he here, the other guy?

16 COURT SERVICES: Mr. Savage is downstairs in the  
17 holding area.

18 MR. AMESBURY: Your Honor, Mr. Schwiger is saying  
19 they, the forces that be, are putting pressure on Don Savage.

20 MS. LUZAICH: That is bullshit. I'm sorry. Don  
21 Savage has testified for me in another case, he wrote the  
22 letter about me and other people. He's a professional witness.  
23 He keeps calling up, he has all these cases pending and he's  
24 like I'll do this for you, this for you, this for you on a  
25 bunch of different cases. Nobody is putting pressure. In



1 fact, we are ignoring his phone calls and he's pissed off.

2 THE DEFENDANT: I was downstairs, they have his  
3 cuffs so tight they are cutting off circulation. Intake is  
4 harassing him and he feels his life is in jeopardy. He called  
5 my attorney on the phone yesterday.

6 THE COURT: Please, you have to tell me what you  
7 want to do. I don't want to sit here like a bump on an a log.

8 MR. PARRIS: Would it be possible to pass  
9 calendar call tomorrow morning?

10 MR. AMESBURY: There was some talk Tuesday  
11 afternoon.

12 MS. LUZAICH: I've got kids, if I'm going to work  
13 this weekend --

14 THE DEFENDANT: Why don't I just take the death  
15 penalty right now and save the State money. This is  
16 ridiculous.

17 THE COURT: What's ridiculous is I'm sitting here  
18 ready to do something and I'm not doing something. Let me take  
19 a recess and if you tell me you want Savage we'll bring him  
20 down. Let me take a few minutes.

21 Just come in my chambers in a few minutes.

22

23 (Recess)

24

25 THE COURT: Mr. Amesbury?

1 MR. AMESBURY: Yes, Your Honor.

2 After a short recess I've spoken to our client,  
3 Mr. Schwiger, and I said well, you know, basically with regard  
4 to the evidentiary hearing today the only witness would be  
5 himself and I wouldn't want to subject himself to cross  
6 examination, as well as Mr. Savage, which is real peripheral to  
7 the evidentiary hearing, so I don't see any point in going  
8 forward today.

9 Furthermore, I said if we don't strike a deal this  
10 morning we are looking at trial. The Court has made us aware  
11 it's Tuesday. He made mention to me he's interested in taking  
12 the negotiation.

13 THE DEFENDANT: No, absolutely not, not that one.  
14 We need some more time.

15 MR. AMESBURY: Your Honor, my recollection is the  
16 Court said we have a firm trial setting on Tuesday?

17 THE COURT: Right, 9:30 Tuesday.

18 THE DEFENDANT: Can we get that extended 30 days?

19 THE COURT: There's no motion in front of me. If  
20 you want to make a motion I'll hear from the State.

21 MR. AMESBURY: Your Honor, Mr. Schwiger indicated  
22 if the Court would accommodate us by putting it on at 11  
23 o'clock tomorrow, let Mr. Schwiger reconsider tonight, we'd  
24 have a guilty plea tomorrow.

25 On behalf of my client we are asking for a 30 day

1 continuance for Mr. Schwiger to reconsider his, I guess,  
2 opposition to taking the plea.

3 MS. LUZAICH: Can I just get a little  
4 clarification. Does he want 30 days to just think about  
5 whether he wants to plead or 30 days to further prepare for  
6 trial? There's a big difference there.

7 THE COURT: There ain't no difference. This Court  
8 is not continuing this case. This Court already continued this  
9 case, I'm ready to go, you're ready to go. Any motion to  
10 continue for whatever, and it wasn't a good reason, Mr.  
11 Amesbury, it's denied. This case is going to be resolved or go  
12 to trial Tuesday, nine thirty that panel will be in here, we  
13 are going to be picking a jury nine thirty Tuesday.

14 MR. AMESBURY: It's my understanding, speaking  
15 with Miss Luzaich, she would begin preparing this afternoon,  
16 working through the weekend, Monday get all the witnesses lined  
17 up and pre-trialed and as of 11 o'clock tomorrow any offer  
18 would be withdrawn.

19 THE COURT: That's up to the State. I'm ready to  
20 go. If Miss Luzaich says, and I've seen them say a lot of  
21 times if he doesn't take the negotiations by Friday before 12  
22 noon, the deal is off the table and go to trial. Me, I could  
23 care less, I'm going to be in trial or a deal, doesn't matter  
24 to me, so it's up to Miss Luzaich to make that decision, not  
25 me.

1 MS. LUZAICH: Tomorrow, he can take the deal up  
2 until tomorrow, then that's it.

3 THE COURT: It's withdrawn?

4 MR. PARRIS: That's it.

5 MR. AMESBURY: For the record, we'll visit Mr.  
6 Schwiger. As I understand the negotiation is lewdness ten to  
7 life, two counts of solicitation, they have the right to argue  
8 for consecutive but we may have some inroads to get the Court  
9 to agree.

10 THE COURT: Two counts of solicitation will be  
11 concurrent but it's up to me to determine if I run the  
12 solicitation consecutive to the lewdness. I can run them all  
13 concurrent, let him do his time, that's fine, or the State's  
14 going to argue I should give him the sentence on the lewdness  
15 but run one of the solicitations consecutive, that's their  
16 argument. You're going to argue judge, it's enough time, run  
17 everything at the same time concurrent and I'll hear all the  
18 arguments.

19 MR. AMESBURY: The other thing, of course, is  
20 again, I think the Court indicated all the letters and maybe  
21 Larry's parents might be able to come out and speak on his  
22 behalf as well.

23 THE COURT: Fine. If they need to be out.

24 MR. PARRIS: Before we adjourn I'd like to file  
25 our list of witnesses for trial.

1 THE COURT: Certainly.

2 MS. LUZAICH: Judge, can I clean up the  
3 information?

4 THE COURT: Sure.

5 MS. LUZAICH: The Court, the collective court,  
6 Judge Loebner actually granted the motion to consolidate the  
7 cases, therefore they got consolidated into the lower case  
8 number. If the Court wants to dismiss the higher case number  
9 at this point just so the record is clean that's fine.

10 THE COURT: Any objection?

11 MR. AMESBURY: No opposition.

12 THE COURT: What case is that, 174 -- which one  
13 you want me to dismiss.

14 MS. LUZAICH: The higher number.

15 THE COURT: 174784?

16 MS. LUZAICH: Correct.

17 THE COURT: That's dismissed because it's  
18 consolidated between 173970. So I don't need to see that file  
19 anymore.

20 MS. LUZAICH: Just so it's clear, also, when I  
21 filed the amended my secretary wrote information slash  
22 indictment. Can we just cross out indictment? It's an amended  
23 information because the original charging document was an  
24 information.

25 THE COURT: Any objection?

1 MR. AMESBURY: No objection.

2 In speaking to Mr. Schwiger earlier on, and the  
3 Court graciously gave us the services of a psychologist to  
4 interview him, he's now indicating to me he wants to end his  
5 life. Hopefully he'll be cooperative with us this afternoon,  
6 we'll go over and visit him and he was on suicide watch at one  
7 time.

8 THE DEFENDANT: I'm not talking about suicide I'm  
9 just talking about if there's a way you can give me the death  
10 penalty, end all this. Evidently it's a cost issue.

11 THE COURT: There's no cost, I could care less  
12 about cost, there's no cost issue involved. This happens all  
13 the time. You have to make your decision. You want to take a  
14 chance on trial, so be it, I don't care, I like trials. We'll  
15 go to trial, you have a right to present witnesses, to cross  
16 examine and let the jury decide. If you're convicted and I'm  
17 sure your lawyers have told you that you'll never get out of  
18 prison, that's it. If you want to take a deal to cut your  
19 losses, plead guilty pursuant to Alford at least you'll see  
20 some daylight outside but that's up to you. It's a tough  
21 decision. If I was in your shoes it would be a tough decision  
22 for anybody to make, but you got to make it. There comes a  
23 time where you have to bite the bullet and make it. You can't  
24 be saying stupid things like give me the death penalty, Judge,  
25 that's nonsense. You're an intelligent man, it goes in one ear

1 and out the other. I can't give you the death penalty if I  
2 want to.

3 THE DEFENDANT: Can I ask you a question?

4 What's the purpose of a joinder? My understanding  
5 is it's judicial economy, money, the other is to further the  
6 cause of justice.

7 THE COURT: This case is joined, so get that in  
8 your mind, it's joined.

9 THE DEFENDANT: I understand.

10 THE COURT: It's joined period. That's a fact of  
11 life for you right now, it's joined. So you can say all you  
12 want about cost and death penalty, it's joined, here we are,  
13 you make a decision. I'm not working tomorrow because I have  
14 to go to Reno but I could come in before I go at 11 o'clock if  
15 you want me to. I'll put it on at 11 o'clock tomorrow for  
16 further proceedings. If he's going to plead, I don't care if  
17 he does or not. If he's going to plead I'll come in. If he's  
18 not I'll be called at home. Don't let me come in, Mr. Parris,  
19 you understand that?

20 MR. PARRIS: Yes, Your Honor.

21 MR. AMESBURY: Also, with regard to the trial, if  
22 it doesn't revolve it would be a little hearing.

23 THE COURT: I can always take a few minutes  
24 outside the presence of the jury and say what do you want to  
25 say for the record. I'm going to deny your motion because I

1 have nothing front of me, deny your motion to dismiss for the  
2 reasons you mentioned in your motion without prejudice. If for  
3 some reason you think Mac is going to say something different  
4 you can always renew it. But for the record, it's denied  
5 without prejudice.

6 MR. FARRIS: Also, for the record our office will  
7 contact your secretary before nine o'clock tomorrow morning to  
8 inform you whether or not you have to come in.

9 THE COURT: Please do so.

10 MR. FARRIS: We'll contact Miss Luzaich as well.

11 THE COURT: Anything else?

12 THE CLERK: The motion to suppress.

13 THE COURT: Denied without prejudice. Whatever  
14 the motion is denied without prejudice.

15 THE CLERK: July 20, 11:00 a.m.

16  
17  
18 ATTEST: Full, true and accurate transcript of  
19 proceedings.

20  
21   
22 THOMAS D. MERCER, C.C.R. No. 33  
23  
24  
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