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Tracie K. Lindeman
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD ERNEST LAKEMAN

Supreme Court No. 64609

Appellant,

District Court No. C265107

vs.

THE STATE OF NEVADA

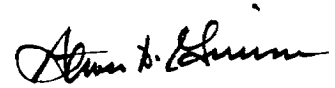
Respondent.

APPELLANT'S FIRST SUPPLEMENT TO APPENDIX

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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C265107-1,2
)	CASE NO. C283381-1,2
vs.)	DEPT NO. XXI
)	
DIPAK KANTILAL DESAI, RONALD)	
E. LAKEMAN,)	
)	
Defendants.)	TRANSCRIPT OF
)	PROCEEDING

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 6

WEDNESDAY, MAY 1, 2013

APPEARANCES:

FOR THE STATE:	MICHAEL V. STAUDAHER, ESQ. PAMELA WECKERLY, ESQ. Chief Deputy District Attorneys
FOR DEFENDANT DESAI:	RICHARD A. WRIGHT, ESQ.
	MARGARET M. STANISH, ESQ.
FOR DEFENDANT LAKEMAN:	FREDERICK A. SANTACROCE, ESQ.

RECORDED BY JANIE OLSEN COURT RECORDER
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UNCERTIFIED ROUGH DRAFT

1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 1, 2013, 9:47 A.M.

2 * * * * *

3 (Outside the presence of the prospective jury panel.)

4 THE COURT: Okay. We'd agreed to start early this
5 morning because we had a couple of for-cause challenges that
6 had been made at the bench; but to, you know, move jury
7 selection along while [inaudible] waiting in the hall, I said
8 we'd do those later. The first one is -- I can't say her name
9 -- Bhawna Provenzano.

10 And who wants to put that on the record? Mr.
11 Santacroce?

12 MR. SANTACROCE: I think it was very clear that Ms.
13 Provenzano came into this with preconceived ideas of guilt or
14 innocence of Dipak Desai and Mr. Lakeman. She expressed that
15 guilt on her sworn jury questionnaire and then reiterated it
16 in questioning. She said she wouldn't forget even if the
17 information she heard was wrong.

18 She heard that the clinic used dirty needles. I
19 asked her if I would have to prove to her that the clinic
20 didn't use dirty needles. She said yes. She said that that
21 the doctor should have known better, he deserves to go to
22 jail; and then she sort of retracted that and said, Well, they
23 deserve some punishment.

24 Regardless, her mind was already made up and is
25 already made up. I don't care -- and then she clearly

UNCERTIFIED ROUGH DRAFT

1 expressed that both of them were guilty. I don't care that
2 the State lead her down the road of rehabilitation where she
3 said, Yeah, I could put it aside; but when she was asked by me
4 after that, she reiterated the points that I just mentioned.
5 I -- I don't think there's any clear cause for a challenge
6 other than Mr. Herman and I think that the for-cause challenge
7 should stand.

8 THE COURT: Who would like to go for -- Mr. Wright,
9 would you like to be heard?

10 MR. WRIGHT: Yeah. First on --

11 THE COURT: We're doing Ms. --

12 MR. WRIGHT: -- Provenzano.

13 THE COURT: Right, Ms. Provenzano.

14 MR. WRIGHT: Yeah, Provenzano.

15 THE COURT: We're just going to deal --

16 MR. WRIGHT: -- my -- the -- my problem with her is
17 we have many jurors who have heard about the case. I mean,
18 the majority of them by my count, the vast --

19 THE COURT: I don't know that that's true, but --

20 MR. WRIGHT: Well, I counted up the statistics of
21 the --

22 THE COURT: Okay.

23 MR. WRIGHT: -- of the 500 and --

24 THE COURT: Well, of the ones, though, that are in
25 our pile, there were a lot of young people who hadn't heard

1 anything about that and I think probably an inordinate amount
2 of very young people for that very reason that a lot of people
3 we excluded because they had heard and had already formed
4 strong opinions or knew people. And I think, you know, older
5 people are more likely to know people who are getting
6 colonoscopies than young people, you know.

7 MR. WRIGHT: Right.

8 THE COURT: So, in any event, I -- I think, you know,
9 you have to look at who's been selected, not necessarily --

10 MR. WRIGHT: Okay.

11 THE COURT: -- the -- the broader pool.

12 MR. WRIGHT: Okay. Well, my -- that was just a
13 general overview because my problem is with a juror who has
14 extensively read and watched the story, which she stated that
15 she had because she took particular interest because where she
16 worked for eight years, her boss, who she is close with and
17 socializes with, including her husband, her husband got a
18 letter and essentially was a victim of the clinic --

19 THE COURT: Her boss's husband --

20 MR. WRIGHT: -- one of the -- correct.

21 THE COURT: -- to be clear.

22 MR. WRIGHT: One of the 63,000 who will be victims in
23 this, and because of that the -- she took particular interest
24 in the news, she stated, and she read it, and followed it.
25 And then she filled out the questionnaire. And in the

1 questionnaire she said she'd followed the news, and I think
2 she talked about dirty needles reused, et cetera, in
3 colonoscopies or in procedures; and then she went ahead to
4 give her opinion that she thinks they're guilty based upon her
5 knowledge.

6 Then we questioned her and she says she will do her
7 best to set that aside; but we -- we shouldn't have to be in a
8 position where we're having to ask somebody: Can you really
9 try to come in with a presumption of innocence? Because this
10 isn't about: Can you be fair, can you be biased -- I mean,
11 can you remove bias? This is starting without any -- I don't
12 have --

13 THE COURT: Starting at zero.

14 MR. WRIGHT: -- an instinctive feeling. Right. Even
15 better than zero, I am supposed to presume it's a false
16 accusation, that is the presumption of innocence. I presume
17 going in that it is unfounded. It isn't: I presume they're
18 here for good reason, but I'm going to start at zero and wait
19 to prove it. It is a presumption of innocence. She does not
20 have it. She admits she does not have it.

21 On top of that, she vicariously lived the experience
22 through her boss who was -- I can't remember what she said --
23 upset, off the wall, or something at the beginning, and then
24 they were very concerned about it, boss and boss's husband,
25 until it came back. She's going to hear evidence presumably

1 about those same type things.

2 We have a juror, I mean, who not only has a great
3 deal of media knowledge by which she's formed an opinion, but
4 this association with her former boss in which she lived it.
5 And her -- her answers were problematic because she said, I
6 don't know if I can set it aside, I believe I could. The --
7 she -- she simply does not, even by her own recognition, come
8 in with the presumption of innocence.

9 She comes in presuming they did something wrong and
10 health care professionals should receive punishment if what
11 she heard on the news is accurate, and they would be guilty.
12 And, basically, she said, Well, how do you reconcile this?
13 She said she would do her best. Well, that -- that isn't --
14 that isn't someone who -- who is saying I -- I presume the
15 people innocent, my opinion is they are innocent, and we will
16 go forward. So I do challenge for cause on Provenzano.

17 THE COURT: Does the State wish to respond?

18 MS. WECKERLY: Yes, Your Honor. When this
19 prospective juror first came into the courtroom she was
20 actually trying to get out of serving as a juror, as I recall,
21 because of some of the things she had going on at work. She
22 was, obviously, very intelligent and articulate. I do not
23 agree with Mr. Wright's definition of the presumption of
24 innocence or what is required for a juror.

25 THE COURT: I don't agree with that either. I don't

1 think -- I mean, I've never seen it defined that the
2 presumption is that you have to assume that they're wrongfully
3 accused and somehow, I think, kind of along with that what
4 you're suggesting is that the State has done something wrong.
5 I think what it means is you're to assume that they're
6 innocent --

7 MS. WECKERLY: Unless and until --

8 MR. WRIGHT: What's innocent mean?

9 THE COURT: -- proven guilty. Well, I think that
10 you're not supposed to -- I mean, to me, I've never seen it
11 defined that way. You're adding another layer that wrongfully
12 accused -- I mean, I understand what you mean is if they're
13 innocent they have to be wrongfully accused. But I think
14 "wrongfully accused" is a loaded term, and within that loaded
15 term I think, then, maybe you're asking other assumptions be
16 made about what the State has done and the investigation and
17 things like that, and I don't think that that's what the
18 starting point is.

19 I think what the starting point is is that they're
20 innocent and there has been no evidence, and until and unless
21 there's evidence at a very high amount, it doesn't matter all
22 these other things that they've been through a probable cause
23 determination, that there's been a police investigation, that
24 there's been an accusation and things like that, that
25 notwithstanding all of those things you are still innocent

1 until you get to this very high threshold. I think that's
2 what it means; not that the assumption has to be made that
3 those things were done wrongfully in some way.

4 Maybe we're parsing words here; but, you know, I
5 think when I heard what you said, wrongfully accused, I think
6 that's a loaded term. And, so, again, maybe it's all
7 semantics and we're parsing -- parsing words here a little
8 bit; but I think what it does mean is you disregard whatever
9 findings have been made and whatever beliefs people may have
10 and you start at -- you start at nothing, you start at -- at
11 the bottom, you know, at nothing. And then the layers of
12 proof have to be added until you get to wherever beyond a
13 reasonable doubt is and at that point, and only at that point,
14 is someone guilty and that's what the presumption of innocence
15 in my view means. So, again, you know, I think some of this
16 is somewhat semantic, but -- anyway.

17 MS. WECKERLY: In -- in addition, I would just add,
18 by my unofficial time, she was questioned for almost an hour,
19 I think 50 minutes, and as the Court pointed out yesterday,
20 you know, this -- the State, I mean, I secured that she'd hold
21 us to our burden and that, you know, she wouldn't -- she would
22 return a not guilty verdict if the evidence wasn't there. The
23 Defense asked her different questions in a different way; but
24 her answers, in my mind, were generally consistent except for
25 one answer by Mr. Santacroce.

1 THE COURT: That's what I counted.

2 MS. WECKERLY: And in addition to that, the Court
3 questioned her as well, and as the Court pointed out, in a --
4 in a more neutral, open-ended fashion, and she still answered
5 appropriately in order to serve as a juror.

6 Regarding the relationship, it was her former boss's
7 husband, who she doesn't even work with anymore, and that she
8 indicated she wouldn't communicate with that person regardless
9 of what the verdict was, and I don't see how that indicated
10 that it would play into her decision-making at all.

11 This is obviously a -- a young woman who was very
12 forthright and candid in her questionnaire, and she didn't
13 distance herself from it, and she explained that if what the
14 media reported was true, they would be guilty of something or
15 they would deserve to be punished. But she also allowed that
16 she didn't hear anything, and she didn't know anything, and
17 that she would wait and hear the evidence before making a
18 decision.

19 And I guess I'm not sure why we trust her when she
20 fills out her questionnaire and she's candid, but when she
21 comes into court, she knew she could get out of it if she
22 answered, you know, I can't put it aside; but instead I think
23 she was fairly thoughtful and said that she could, and that's
24 what's required to be a juror. And I think under all that
25 questioning -- I mean, it's certainly the Court's discretion;

1 but what I took from it is she will hold us to our burden and
2 she can serve as a juror and she does not meet the standard
3 for a for-cause challenge.

4 THE COURT: All right. Yes.

5 MR. WRIGHT: Holding it to the burden and being fair
6 doesn't address walking in with not possessing the presumption
7 of innocence, which is: I have a feeling as I walk in that
8 the person isn't innocent. Strike from the record wrongly
9 accused. That -- I don't want to use loaded words. I believe
10 it's the same instruction that's given as to the meaning of an
11 accusation. This is a mere accusation and the person is to be
12 presumed innocent.

13 THE COURT: Exactly, it's a mere accusation.

14 MR. WRIGHT: What --

15 THE COURT: We'll see whether it's a correct
16 accusation or wrongful accusation --

17 MR. WRIGHT: We'll do more --

18 THE COURT: It is a mere accusation.

19 MR. WRIGHT: Right.

20 THE COURT: We're in agreement.

21 MR. WRIGHT: And we'll do more than that, we'll as a
22 matter of law presume the person innocent, and innocent means
23 they did nothing, and that has to be my mindset as I'm walking
24 in. And she said, If I went to surgery I want them to take
25 all the precautions necessary. Can you set aside that and

1 still presume innocence? She said, I don't see it as being
2 innocent because what they did is not right. That's a quote
3 from her. Now if --

4 THE COURT: Did -- I was just -- sorry to interrupt
5 you. Ms. Weckerly, do you remember that quote the same way
6 or --

7 MS. WECKERLY: I remember her saying she wouldn't
8 want to be treated by Dr. Desai; but I remember the Court
9 questioning her about that. That's not the same as being
10 charged with a criminal act and it's -- it's separate and
11 apart from that; and she certainly answered that in the
12 criminal context she would decide the case based on what she
13 heard in this courtroom and apply the proper standard and
14 instructions that the Court issued.

15 MR. WRIGHT: Well, that -- this is my recollection of
16 exactly the way I wrote it down. I don't see it as --

17 THE COURT: I mean, to me, I -- I see it as different
18 to say, Well, I haven't heard any good things about Dr. Desai,
19 I wouldn't pick him as a physician because no -- who -- I
20 mean, who would pick him really as a physician whether you
21 believed he was guilty or not guilty? Why would you -- why
22 would you trust your healthcare to someone that had -- you had
23 only heard negative things about? I think the average person,
24 you know, it's like when you look on -- I don't know -- you
25 know, some of these web sites that rate doctors and things

1 like that. You know, people probably aren't going to pick a
2 guy that consistently has one star.

3 MR. WRIGHT: But --

4 THE COURT: And [inaudible] fact goes to the
5 presumption of innocence.

6 MR. WRIGHT: The problem is she didn't state what you
7 just stated. What she stated is, I feel as if they should
8 have known better as a trained physician and probably deserve
9 to go to jail. She wasn't talking about choosing a doctor to
10 go see or anything. That is a presumption and opinion. And
11 when asked: Can you set it aside, ignore your own heartfelt
12 beliefs from your own experience and say, I presume the man
13 innocent right now? She said, I believe I could.

14 THE COURT: I believe I could, I mean, that's yes. I
15 don't -- I mean, you know.

16 MR. WRIGHT: Submit it.

17 MR. SANTACROCE: Your Honor, I just have one last
18 point.

19 THE COURT: Sure.

20 MR. SANTACROCE: It seems to me that we have excused
21 people for less for a cause challenge. For example, the
22 second to last lady, Colleen Clayton.

23 THE COURT: Well --

24 MR. SANTACROCE: And in this particular case, it
25 boggles my mind that we aren't protecting the record and

1 erring in an abundance of caution in this matter when we have
2 a pool of so many people that come in here without
3 preconceived ideas, which is actually very surprising to me
4 that we have this many people that haven't heard anything
5 about this case and don't have preconceived ideas. So, you
6 know, out of fairness to both sides it would seem to me that
7 we don't need this lady, why are we --

8 THE COURT: Well, the standard, Mr. Santacroce, is
9 whether we -- isn't whether we need this lady or not. Or, the
10 standard isn't: Well, if we excuse her then I definitely
11 won't get reversed on appeal because, as we know, the State
12 doesn't get to go back later and say, Wait a minute, you know,
13 you shouldn't have granted these for-cause challenges or you
14 didn't grant the State's for-cause challenge, as we know.
15 It's always the Defendants as -- you know, I'm not saying not
16 rightfully so, but that's our system.

17 And so, you know, the standard isn't: Oh, well, we
18 have enough people; or, Well, if you don't excuse her now
19 you're going to create an appellate issue. That's what I'm
20 hearing from you. That's not the standard. The standard is
21 whether or not she can be fair and impartial and give the
22 Defendants their presumption of innocence.

23 MR. SANTACROCE: And her statements indicate that she
24 can't both on her questionnaire and questioning in court.
25 I'll submit it, Your Honor.

1 THE COURT: All right.

2 MS. WECKERLY: Can I just add --

3 THE COURT: Sure.

4 MS. WECKERLY: -- Colleen Clayton, she was the lady
5 that was the executive --

6 THE COURT: Second to the last lady, she's the
7 executive --

8 MS. WECKERLY: -- [inaudible] and she said she
9 couldn't put it aside. She said the exact opposite.

10 THE COURT: Right.

11 MS. WECKERLY: That's the distinction.

12 THE COURT: Right. She said, Well, I -- something
13 was very --

14 MR. SANTACROCE: She said, Maybe, I think --

15 THE COURT: Yeah, maybe, I think --

16 MR. SANTACROCE: -- I might be able to.

17 THE COURT: -- I -- I don't know.

18 MS. WECKERLY: I don't think so.

19 THE COURT: Or -- I'm trying to remember. I don't
20 think so. But, well, there was a lot of hesitation and
21 whether or not she could put it aside, she wasn't coming right
22 out being forthcoming or being -- that's the wrong word -- but
23 she wasn't strong in her opinion that she could put it aside.
24 So that's why Ms. Clayton was excused, and that was agreed to;
25 and I think the State actually wasn't that crazy about

1 excusing her, but they agreed to excuse her.

2 And, you know, with Ms. Clayton, let me just be
3 candid here. It was the end of the day and Ms. Clayton
4 clearly didn't want to be here; and I think it was pretty
5 obvious that Ms. Clayton it wouldn't be, you know, another
6 long period of time until finally she said something that
7 would get her excused. I think that was fairly evident from
8 her attitude and everything like that.

9 The only comment that Ms. Provenzano made out of all
10 of the hour-long questioning, the only comment she made that
11 causes the Court concern is the question Mr. Santacroce asked
12 about the presumption of innocence and if they really started
13 with the presumption of innocence. And she kind of said,
14 Well, no, they didn't, or, no, you know, she had these
15 opinions already.

16 And I think, you know, at the time I kind of thought,
17 Well, part of it is, you know, that's why I like to ask the
18 open-ended questions because I think those elicit the best
19 answers because you're all skilled attorneys. You know, the
20 State, they can cross-examine her to say she's going to be
21 fair and impartial, and you guys can cross-examine her to say,
22 Well, maybe not this and that.

23 That's why I like to say, you know, What do you feel,
24 What's your opinion, Let's hear from your own words. Because
25 I think, as I just said, that elicits the most truthful and

1 accurate response. When I first heard her say that I thought,
2 Well, maybe she was confused by Mr. Santacroce's kind of
3 continuous, somewhat aggressive posture -- nothing against Mr.
4 Santacroce -- and she said that.

5 At the end of the day it is in the record. So while
6 I discount the friend, the former boss, husband that she now
7 communicates with on Facebook that she wouldn't even tell that
8 she's going to be a juror in this case, I discount that. She
9 did say that, you know, she could be fair to both sides. She
10 would hold the State to its burden of proof. I think that
11 conflicts with, then, her comment on the presumption of
12 innocence. So out of an abundance of caution I'll grant the
13 for-cause challenge.

14 On Mr. Herman I'm going to hear from the State first
15 because I'll just tell you he said the right things. But
16 here's what I'm concerned about, and I'm just going to cut
17 right to the chase, he says: Well, subjectively I think they
18 did it or, you know, subjectively I have this negative
19 opinion, but objectively I'm going to put it aside. I don't
20 know that you can recognize such a distinction between your
21 own subjective opinions and your objective desire to follow
22 the law.

23 I do believe that Mr. Herman was trying to be honest.
24 I believe that he would try to discharge his duties as a juror
25 ethically and follow the law, including the burden of proof;

1 but I just don't know how you can separate a juror's confessed
2 subjective viewpoint with their, you know, purported objective
3 viewpoint. So that's my problem with Mr. Herman.

4 MR. STAUDAHER: I think that in part it gets to the
5 type of questioning that has been done -- probably will be
6 done in the future regarding the issue of the presumption of
7 innocence or do you think that these people are here because
8 of something they've done?

9 THE COURT: Right. And that question --

10 MR. STAUDAHER: I -- I object --

11 THE COURT: -- just so you know, I never let them ask
12 that question --

13 MR. STAUDAHER: Well, they're doing it, though.

14 THE COURT: -- or -- well, nobody objected -- or I
15 don't grant a for-cause because, of course, they're here for a
16 reason. We don't go and drag out two people from the street,
17 and more sophisticated people or television watchers, they
18 know there's been a probable cause determination. They know
19 that the police don't submit cases to the DA's office unless
20 they believe they've got the right people or the DA's office
21 doesn't file charges.

22 So when people say, yeah, there might be something
23 here, whatever, you know, or there must have been something,
24 why else would they be here, I never excuse for that because,
25 as I said, anybody who's sophisticated knows that, of course,

1 the police did an investigation. The DA's office did
2 something and either a JP or Grand Jury has found that there's
3 probable cause. So that I agree, I never, ever.

4 MR. STAUDAHER: Well, the reason I'm raising that
5 specific issue is because I think it goes to the heart of
6 actually the one we just -- the Court just let go, as well as
7 this witness now that we're talking -- or excuse me --
8 potential juror now that we're talking about, those questions
9 about, Well, do you think they were here for, you know, we
10 just drug them off the street, or do you think that they're
11 here for a reason? He even said the reason they're here is
12 because there's been a cause finding. He is sophisticated
13 enough in the system to know that you don't just pull people
14 off the street and sit them over here to prosecute them.

15 THE COURT: Yeah. And that's not what I'm concerned
16 about.

17 MR. STAUDAHER: I know.

18 THE COURT: The only thing is I think it came at the
19 very end, and it may have even been in response to a question
20 from me where I say, you know, Tell me in your own -- and I
21 don't remember, maybe it wasn't in response to a question from
22 me, but -- you know, whereas I said -- I say, Okay, just tell
23 me in your own words what your feelings are about this or what
24 your opinion is about this. And I remember, I wrote it down,
25 he says that subjectively he thinks that he's guilty, but

1 objectively not guilty.

2 And I don't know that we can say, Okay, well, we're
3 going to -- I think he wants to set aside his subjective
4 viewpoints and decide this case objectively. Like I said, I
5 think he's -- he would discharge his duties as ethically as he
6 possibly could. But I -- you know, that was his quote, and I
7 thought about it, and I thought, well, I don't know that you
8 can separate the subjective from the objective --

9 MR. STAUDAHER: This is why --

10 THE COURT: -- much as he would want to.

11 MR. STAUDAHER: This is why I think especially if
12 there was --

13 THE COURT: See, I think the other gal was actually
14 less of a for-cause, the last gal, than this guy.

15 MR. STAUDAHER: Of all jurors that we've had come in
16 and give testimony or statements in this case and answer the
17 questions and so forth, of everybody, he was the most
18 absolutely unequivocal about his ability to listen to the
19 evidence, to hold us to our burden, to only come back with a
20 guilty verdict, to only come back with a guilty verdict if he
21 felt that we had met our burden and not until we had done so.

22 That his issue of this subjectivity means -- I think
23 went to exactly those lines of questions that I raised earlier
24 is that he knows that the people are here for a reason, that
25 there was a cause determination so something is there.

1 Subjectively he knows that; but because he has heard no
2 evidence he's not going to rely upon that. He's only going to
3 rely upon what comes in at court. We went over and over
4 that --

5 THE COURT: Here's my -- and you may remember it
6 differently -- but I don't think he said, Well, subjectively
7 -- that would be to me the guy that comes in on a robbery case
8 and somebody says or, you know, a juror who's here on maybe a
9 robbery case, and somebody says, Well, do you think maybe
10 there's a reason they're here? And they would say, Well,
11 yeah, there's been a cause determination. Of course there's a
12 reason that they're here as opposed to this guy and I got the
13 feeling his subjective opinion was based on the media. It
14 wasn't based on, Oh, yeah, there had to be a cause
15 determination of why would these two be sitting here. It
16 wasn't that.

17 It was based on: Here's what I've read and here's
18 the opinion I formed and that's my subjective belief; but I'm
19 going to set that aside. And I'm going to -- and I really
20 believe as you do that Mr. Herman would try to do that. I
21 really do believe that he would do that; but I think the state
22 of the record is such that he's, you know, tried to draw this
23 distinction between subjective and objective. And, you know,
24 my concern is, Well, much as he might try, much as he might be
25 an ethical, honest person, you know, can you really do that?

1 Can you really say that that's what, you know, you're going
2 to, like, separate the things?

3 And, you know, other jurors who read about this, they
4 said, you know, Yeah, I would set it aside, I wouldn't think
5 about it -- but he -- you know, I -- I would just put it
6 aside; but he wasn't -- he never got to that point that some
7 of the other jurors have gotten to. He kept saying, well,
8 this is my subjective opinion. Now part of that, again, I'm
9 discounting the whole: there must have been cause and all that
10 stuff. I'm just looking at what I wrote down --

11 MR. STAUDAHER: Without --

12 THE COURT: -- and what I remember.

13 MR. STAUDAHER: I'm sorry to interrupt, Your Honor.
14 Without question, he did indicate that he had heard about this
15 in the media.

16 THE COURT: Right.

17 MR. STAUDAHER: And that he said -- I think -- and
18 even in his statement he said they're arrogant, greedy and --
19 and careless; that was what his impression was from what he
20 had read in the media, clearly. But there wasn't a single
21 person that came in that I believe was more, I mean, defined
22 in what he said he felt the prior information he had and what
23 his feeling was, which we don't divorce any witness -- or any
24 potential juror, rather, from their feelings. It's whether or
25 not they can put those aside. He did not answer a single

1 question sort of in a waffly kind of way in the sense that,
2 well, you know, I think I could, or, maybe I could --

3 THE COURT: Right. That's true, but --

4 MR. STAUDAHER: -- because he said, Absolutely, I
5 will only look upon what comes in here --

6 THE COURT: The one quote I was concerned about was
7 when he said, Well, my subjective opinion is this; but
8 objectively it's that. And so really what he's saying, unlike
9 the other jurors, is or what I'm afraid he's saying is, Well,
10 yeah, you know, I have an opinion that they're guilty, but I
11 can put that aside and just consider the evidence. And try as
12 he might and, like, while I said I think he would try to be a
13 very ethical juror, my concern is: Well, can he really do
14 that? Is that really something that he would be able to do?

15 And I have to tell you, hundred of jurors, thousands
16 maybe -- feels like thousands -- I've never had a single juror
17 say it like that: Well, subjectively this is how I feel, but
18 I can be objective, and this is how I feel objectively. I've
19 never heard that before and I think it's because he was trying
20 to be precise and he was trying to be honest.

21 But at the end of the day, you know, he -- he --
22 unlike many others, he came right out and said, Subjectively I
23 think they're guilty, but I can set that aside and follow my
24 oath. Do I believe he would do everything in his power to
25 follow his oath? Yes, I do; I believe he would try to do

1 that. But I don't know, you know, legally if I can say, Well,
2 when someone comes in and says under oath, I have a subjective
3 belief that they're guilty, that, you know --

4 MR. STAUDAHER: But the -- and I'm going to say just
5 this last part and then I'll sit down.

6 THE COURT: Yeah, I just --

7 MR. STAUDAHER: But -- but -- under oath --

8 THE COURT: I think, like I said, Ms. -- Ms.
9 Provenzano, I was -- yesterday I was going to keep Ms.
10 Provenzano. But as I thought about Mr. Herman yesterday and
11 the quote I wrote down, I thought, You know what? I just -- I
12 just can't -- you know, this is one really where I would say a
13 reviewing court would look at this, to me, black-and-white,
14 and they'd say, Well, what is this? His subjective versus
15 objective? We're all looking at this and his apparent
16 earnestness that was -- that was manifest by his demeanor and
17 everything else, but the black-and-white pages of the -- of
18 the record are going to be, well, subjectively he's guilty but
19 objectively he's not.

20 MR. STAUDAHER: I'll submit it, Your Honor.

21 THE COURT: You know, I -- I just -- that's how I
22 thought about this yesterday. I was really going to keep Ms.
23 Provenzano. I thought she was -- but, you know, as we argued
24 it today, I guess, Mr. Wright and Mr. Santacroce -- Mr.
25 Santacroce's question, Mr. Wright's argument convinced me

1 otherwise.

2 Is the jury up?

3 THE MARSHAL: Yes, Your Honor.

4 THE COURT: Let's take two minutes. If anyone needs
5 to use the restroom --

6 MR. SANTACROCE: Well, what are you going to do --
7 what are you going to do with Herman?

8 THE COURT: He's -- it's granted.

9 MR. SANTACROCE: Okay. Thank you.

10 MR. STAUDAHER: And, Your Honor, I would just on the
11 record --

12 THE COURT: [Inaudible.]

13 MR. STAUDAHER: -- since the Court's said this, I --
14 I'm putting out an objection to that line of questioning if
15 that's the issue because it is objectionable in my mind.

16 THE COURT: Right. I agree, it is objectionable when
17 you say, Well, do you think that there must be something, you
18 know, here because they're here? Now you can say: Do you
19 think because they've been charged with a crime they must be
20 guilty or that -- you know, something like that. I think
21 that's appropriate.

22 But what I don't like is the question: Well, you
23 know, they're here, do you think there must -- you know,
24 there's a reason they're here? That's a question that I -- of
25 course there's a reason they're here. But if you say: Do you

1 think just because they've been charged with a crime they must
2 be guilty? Or, do you think just because these fine Deputy
3 District Attorneys are bringing this case they must be guilty?
4 Those are all appropriate questions.

5 It's more the idea, like, well, something must have
6 -- you know, you guys don't do this, but other -- another
7 lawyer does -- well, do you think just because they're here
8 something must have happened? Well, of course something
9 happened. You know, those kinds of questions where the
10 answers are obviously yes, I just think those take a lot of
11 time and they don't go anywhere. But, again, you're free to
12 ask, you know: Just because someone's charged with a crime or
13 the police submitted, you know, put a case that they're
14 guilty?

15 If anyone needs to use the restroom, do it right this
16 minute.

17 MR. WRIGHT: [Inaudible] minute.

18 THE COURT: And then we'll go into jury selection.
19 So I count five more people are needed. Is that what you guys
20 count?

21 MR. STAUDAHER: I don't know, Your Honor. I -- I
22 actually left my pad --

23 MR. SANTACROCE: I have no idea.

24 THE COURT: All right. Well --

25 MR. STAUDAHER: I [inaudible] have the numbers, so

1 I'm going to rely on co-counsel completely.

2 THE MARSHAL: Right. We only had -- twenty-one's
3 what we had yesterday.

4 THE COURT: I've been making a pile here.

5 MS. WECKERLY: There's more than that.

6 THE COURT: The size [inaudible] I've had a stroke
7 and I can count these.

8 THE MARSHAL: We need six -- I'm told that we need
9 six --

10 THE COURT: Okay. I'm counting Mr. Archuletta, Sage
11 Shadley, Daniel Jones, Lisa Manley, Aja Walker, Steven Brown,
12 Margaret Sutko, Lisa Curro, Tommie Woolley from yesterday.

13 MS. WECKERLY: Right. I thought all those were in.

14 THE COURT: Right. So that's 21, 22, 23, 24, 25, 26,
15 27, 28, 29, 30.

16 MR. WRIGHT: Okay. But I thought there were, like,
17 some of those in there that were still tentative hardships.

18 THE COURT: No. The tentative hardship ones are in a
19 different pile.

20 MR. WRIGHT: Okay.

21 THE COURT: So this is our good -- this is our good
22 pile. I mean, I kept a lady -- the lady with the -- the
23 women's conference thing in this pile.

24 MR. SANTACROCE: Woolley?

25 THE COURT: Yeah.

1 MR. WRIGHT: I forgot to put something on the record
2 regarding Mr. Herman. The -- the -- Dr. Desai has never been
3 to Mesa restaurant in his life and hasn't been -- he's the
4 fellow who said his wife --

5 THE COURT: Right, his wife was a waitress and --

6 MR. WRIGHT: That's -- that's a misunderstanding
7 within the family or a different Desai or something. I spoke
8 -- I just wanted to put it on the record because he's --

9 THE COURT: Well, according to your client he hasn't
10 been to the Mesa.

11 MR. WRIGHT: No, according to his two daughters and
12 his wife he hasn't been out to eat, okay? But on top of that,
13 they've never been to Mesa Grill, right. And all I can
14 represent is --

15 THE COURT: Is that they told you.

16 MR. WRIGHT: -- according to the information I know.

17 THE COURT: State? I mean --

18 MS. WECKERLY: Okay.

19 THE COURT: I mean --

20 MS. WECKERLY: [Inaudible] on that record.

21 MR. WRIGHT: I forgot to say it.

22 THE COURT: What's that?

23 MS. WECKERLY: I mean, he can make that record, but
24 he --

25 THE COURT: Well, I understand why he wants to put it

1 on the record because if Dr. Desai has been eating at the Mesa
2 Grill within the last month and his wife didn't come home and
3 say, gee, that poor Dr. Desai, he seems really out of it, he
4 wasn't, you know, he was non-communicative and normally, you
5 know, he's a friendly guy because she did say whoever this guy
6 she thinks is Dr. Desai is a nice guy and a good tipper. So,
7 of course, you know, they need to stay -- and I'm not saying
8 it's not true, I don't know if it's true or not true -- but of
9 course they need to stay consistent with the claims of
10 incompetency that Dr. Desai hasn't been to the Mesa Restaurant
11 in the last month.

12 Now, again, it's not sworn. It's not -- I'm not
13 evaluating as truthful or not truthful. I have no idea if
14 it's truthful or not truthful. All I'm saying is I understand
15 and recognize why that's important for you to put on the
16 record. That's all I'm saying because it's --

17 MR. WRIGHT: Well, I -- I don't mind putting it --

18 THE COURT: -- because it's -- because if he's out
19 there eating at the Mesa Restaurant and the wife doesn't think
20 -- notice anything different, then that's inconsistent with
21 the claims that have been made thus far in this case. So I'm
22 not -- I'm neither accepting nor rejecting the representations
23 of his family because they're not coming from the witness
24 stand and I'm not assessing the credibility or anything else.
25 So that's what they informed you of and, again, without me

1 evaluating their testimony under oath subject to
2 cross-examination and the Court's own questions, I can't
3 assess whether that's true or not true.

4 So that's the state of the record; but I understand
5 why you have to say that because right now we have a record
6 that this guy's eating at the Mesa Grill and being a nice guy
7 and a good tipper. So it may be somebody else. It may be
8 that, you know, for a lot of people a month really is six
9 months. It may be somebody different or not. I mean, so, who
10 knows? All I'm saying is in terms of the Court I'm making no
11 findings. I'm not making any findings one way or the other
12 because I don't have any sufficient information to make a
13 finding. That's all I'm saying.

14 (Court recessed at 10:26 a.m. until 10:30 a.m.)

15 (Outside the presence of the prospective jury panel.)

16 THE COURT: -- trying to, you know, put one person
17 above another person since we're only left with five. We may
18 not get through everybody, so we're going to go strictly in
19 numerical order, that way the Court doesn't have anything to
20 do with who makes the cut.

21 MR. SANTACROCE: Appreciate it.

22 MS. WECKERLY: Do we have the no-shows?

23 THE COURT: And just for the record, obviously taking
24 them out of order the other days had no impact because we went
25 completely through all of the prospective jurors the other

1 days -- I just want this clear -- so that it didn't matter the
2 order we did them. For the list, as I said before, we will
3 put them in numerical order. So, like, Mr. Archuletta who
4 showed up three days late, whatever, he will still go
5 according to where his number is.

6 MS. STANISH: Are there any no-shows?

7 THE MARSHAL: I have that, Counselor, if you want it.
8 Juror 66 --

9 MS. STANISH: Wait, wait. Go ahead.

10 THE MARSHAL: Juror 660 showed yesterday is here
11 today. And then Juror No. 1673, who should not be here today
12 is here.

13 MS. STANISH: Juror 1673.

14 THE COURT: When are they supposed to be here?

15 THE MARSHAL: They're on page 12.

16 THE COURT: So, like, never. On Karen Parnell,
17 Jurist 660, she had indicated it was difficult for her to
18 serve. I can either put her at the front of the list or the
19 back of the list. My suggestion would be to put her at the
20 back of the list, at the end of the list, but I need that
21 agreed to by Counsel.

22 MR. SANTACROCE: I agree.

23 MS. WECKERLY: She had a -- she had a procedure.

24 THE COURT: Right, she had some issues. Is she the
25 one with the heart thing?

1 MS. WECKERLY: No, she got a notification --

2 THE COURT: Right. So, I mean, I guess we could just
3 call her in --

4 MR. SANTACROCE: You can just --

5 THE COURT: -- and excuse her right away. Okay.

6 MR. SANTACROCE: I'd stipulate just to excuse her.

7 MR. WRIGHT: I'd agree.

8 THE COURT: State?

9 MS. WECKERLY: She was a patient at the clinic, so
10 we'll --

11 THE COURT: Okay. Let's just call her in then and
12 [inaudible] first.

13 MR. SANTACROCE: Are we going to do introductions to
14 this group?

15 THE COURT: Yeah. We're going to do -- it's just a
16 deja vu. Is everyone ready?

17 I would -- just to complete the Mesa Grill record,
18 you know, I suspect that regardless of the ability to go to
19 the Mesa Grill, Dr. Desai probably wouldn't go to the Mesa
20 Grill because who knows who could be there. Ms. Weckerly
21 could be there, I could be there, if, in fact, he had that
22 ability. I'm just saying just the only point was not whether
23 I think he was at the Mesa Grill or not at the Mesa Grill,
24 just that I'm not making a -- I don't know if he was there or
25 not. Like I said, I would suspect, regardless, somebody

1 wouldn't go to the Mesa Grind or the Mesa Grill [inaudible]
2 is, but wouldn't go to the Mesa Grill during this time period
3 anyway; but, who knows?

4 MR. WRIGHT: I just point out there are other Dr.
5 Desai's in town.

6 THE COURT: Right. It's a relatively, I'd say,
7 common Indian name. We, in fact, had an extern here with the
8 surname Desai.

9 THE MARSHAL: Juror No. 1135 did not show. No. 1178
10 did not show. No. 1185 did not show. Am I going too fast,
11 Counsel?

12 MS. STANISH: Yeah, I missed the first one, actually.
13 Who was that?

14 THE MARSHAL: 1135. 1178. 1185. 1188. And 1248,
15 all the way at the bottom.

16 THE COURT: So how many does that leave us with?

17 THE MARSHAL: We have 22 today.

18 THE COURT: Okay. All right. Bring them in.

19 (Prospective jury panel reconvened at 10:35 a.m.)

20 THE COURT: All right. Court is now in session.
21 This is the time for Case No. C265107, Plaintiff, State of
22 Missouri, versus Dipak Desai, and Ronald Lakeman, Defendants.
23 Let the record reflect the presence of the State through the
24 Chief Deputy District Attorneys Pam Weckerly and Mike
25 Staudaher; the presence of the Defendant, Dipak Desai, along

1 with his attorneys, Margaret Stanish and Richard Wright; the
2 presence of the Defendant, Ronald Lakeman, along with his
3 attorney, Frederick Santacroce; the officers of the Court, and
4 the ladies and gentlemen of the partial jury panel.

5 Good morning, ladies and gentlemen. You are in
6 Department 21 of the Eighth Judicial District Court for the
7 State of Nevada. My name is Valeria Adair and I am the
8 presiding judge. As you know, you have been summoned here
9 today to potentially serve as jurors in a criminal jury trial.

10 You've all filled out these questionnaires in jury
11 services. The purpose of today is for the Court as well as
12 the lawyers to follow up with you individually on some of your
13 answers to the questionnaires. In a moment counsel for the
14 State will introduce themselves to you and they will tell you
15 briefly the nature of the State's case.

16 Mr. Staudaher.

17 MR. STAUDAHER: Thank you, Your Honor. Ladies and
18 gentlemen, my name is Michael Staudaher. I'm the Deputy
19 District Attorney, as well as Pam Weckerly, my co-counsel.
20 She's also a District Attorney working for the State of
21 Nevada, Clark County. We are the deputies assigned to
22 prosecute the State of Nevada versus Dipak K. Desai and Ronald
23 Ernest Lakeman.

24 The charges in this case are as follows: Insurance
25 fraud, performance of an act in reckless disregard of persons

1 or property resulting in substantial bodily harm, criminal
2 neglect of patients resulting in both substantial bodily harm
3 and death, obtaining money under false pretenses, theft, and
4 murder.

5 The events in question that you will hear about if
6 you are selected as a juror in this case took place on two
7 specific days back in 2007, July 25th of 2007 and September
8 21st of 2007. While those are the incident days where there
9 are victims that we'll be talking about, the time period
10 related to the case and which you will hear evidence is much
11 more expansive covering a period of years during the clinic
12 prior to those dates. In this particular instance it relates
13 to a Hepatitis C outbreak; a viral outbreak that occurred at
14 that clinic back in 2007 on those two particular days.

15 The victims in this case, and you'll hear there are
16 source patients, which were the source of the virus on the
17 days in question, as well as victims in which transmission
18 occurred to them on those days. Seven different victims, two
19 different source patients, with some other people that were
20 involved as well.

21 You will hear testimony related to all of that and
22 related to subsequent patient notification that came about as
23 a result of a subsequent investigation by both the Southern
24 Nevada Health District, as well as the Center for Disease
25 Control in Atlanta. In conjunction there was subsequently a

1 notification in Clark County of approximately 63,000 residents
2 to have to go in and be tested for the Hepatitis C virus based
3 on what took place at that clinic.

4 The evidence that you will hear relates to not just
5 the general things during the years up to those days, but the
6 actual conditions and things that were happening and the
7 people, how they treating patients at those particular clinics
8 on those days or that clinic on those dates. I submit.

9 THE COURT: All right. Thank you. Ladies and
10 gentlemen, in a moment, Counsel for the defense will introduce
11 themselves to you, along with their clients. An accused in a
12 criminal case is never required to present any evidence or to
13 call any witnesses.

14 Mr. Wright?

15 MR. WRIGHT: Yes. Thank you, Your Honor. My name is
16 Richard Wright, I'm a criminal defense attorney here in Las
17 Vegas. I represent Dr. Dipak Desai. He used to be a
18 practicing physician here. I represent him along with my
19 partner, Margaret Stanish.

20 And we're going to talk to you a little bit about
21 this case because this is the jury selection time, and all of
22 you filled out one of these questionnaires way back, and so
23 we're going to call you in individually to ask you about your
24 answers to these questions. And we're doing it with this
25 individual voir dire or questioning of you all because this

1 case has received a great deal of notoriety and publicity
2 because this -- this Hepatitis outbreak occurred back in 2007
3 on two dates, and Hepatitis outbreak meaning some patients
4 contracted Hepatitis C, I think six of them on the September
5 25th date, one of them on July 25th of 2007.

6 And then the investigation commenced as to how could
7 the Hepatitis C, which is a blood-borne virus, meaning blood
8 to blood, how could it have been transmitted at this clinic
9 and that resulted in CDC, Southern Nevada Health District,
10 various agencies investigating to determine the causation of
11 the outbreak. And after that investigation or investigations
12 were completed starting -- they started in January, 2008, and
13 then by the end of February, 2008, notifications occurred; and
14 the notifications mean 63,000 approximately letters were sent
15 out to former patients of the clinic.

16 I want to talk about the clinic. It's Dr. Desai was
17 a gastroenterologist. He gives colonoscopies. And Mr.
18 Lakeman, Co-defendant, was a nurse anesthetist, gives you the
19 stuff that puts you to sleep and you have the colonoscopy.
20 And so this clinic was operating with doctors and CRNAs, what
21 Mr. Lakeman is, and so 63,000 people who had been prior
22 patients from 2004 to 2008 were sent letters saying there
23 could have been a breach in health care practices, so get
24 tested, get a blood test to see if you have Hepatitis C. So,
25 like, six percent of the population here could have received a

1 letter like that, so we'll be asking: Did you get a letter,
2 anybody you know get a letter. Those type of questions.

3 And we'll be asking you about the publicity. And I'd
4 just like to end up by pointing out this is the criminal
5 portion of this case. Previously or ongoing there have been
6 civil litigation, civil lawsuits. You have various -- you got
7 seven victims, people who contracted Hepatitis C, so you can
8 sue the doctors, the clinics, the manufacturers and
9 distributors of healthcare supplies, and those have been going
10 on and in the media.

11 But this is the criminal case and it's basically two
12 -- even though the accusations as Mr. Staudaher read them to
13 you sound kind of complex and daunting, it's really two kinds
14 of offenses. One is: Was there criminal negligence? In
15 other words, was someone -- was Dr. Desai and Mr. Lakeman
16 criminally doing bad medical practices. That's what this case
17 is about. And different than civil, this is a case where
18 proof has to be beyond a reasonable doubt for a criminal
19 standard.

20 And then the other half or component of the case is
21 billing practices. On these seven patients, were their bills
22 right or did -- or were they cheated on their bills? So
23 that's -- that's what this case is basically about. And I
24 gave you that overview so that if it rings any bells, if it
25 comes back to you, Oh, now I remember that Hepatitis outbreak

1 thing, we're going to question you all about that to make sure
2 you can be fair and impartial. Thank you.

3 THE COURT: All right. Thank you, Mr. Wright. Mr.
4 Santacroce?

5 MR. SANTACROCE: Thank you, Your Honor. Good
6 morning, ladies and gentlemen. My name is Frederick
7 Santacroce. I'm a criminal defense attorney here in Las
8 Vegas. I represent Mr. Ronald Lakeman. Mr. Lakeman is what's
9 known as a CN -- CRNA, certified registered nurse anesthetist.
10 He is not a doctor; but he did work with Dr. Desai as well as
11 many other doctors in that clinic in performing over thousands
12 of procedures at the clinic.

13 I'm not going to go over the -- over with you the
14 case, my colleagues have done that sufficiently; but I did
15 want to talk to you a minute about what's going to happen here
16 today and the Judge will explain this in more detail to you.
17 In a few minutes we're going to call you in, each
18 individually. We're going to ask you some questions. The
19 only thing we ask of you is be open, honest, and candid.

20 We know that many of you come into this court today
21 with strong opinions about this case and we understand that;
22 and it's okay to have those opinions, whether they're positive
23 or negative. It doesn't matter. But it does matter that you
24 express those opinions to us. We're not going to judge you if
25 you have a negative impression of Dr. Desai or Mr. Lakeman;

1 but we need to know about that. So we ask you to do your best
2 and bear with us. Some of you are going to be here for a
3 while, some of you will get called in right away. And we
4 thank you for your patience and we're certainly glad you're
5 here today. Thank you.

6 THE COURT: All right. Thank you, Mr. Santacroce.
7 Ladies and gentlemen, in a moment, the Clerk is going to call
8 the roll of the panel of prospective jurors. When your name
9 is called, please answer "present" or "here." Please be aware
10 that everything that is said during these proceedings is
11 recorded.

12 The lady at the end here in the striped blouse is Ms.
13 Janie Olson. Ms. Olson is our official court recorder. It is
14 her job to make sure that everything that is said is
15 accurately recorded and that a transcript is prepared
16 thereafter. I tell you this so that when you're speaking, you
17 make sure you speak up so we can be sure that you're
18 accurately recorded.

19 Our Court Clerk, Ms. Denise Husted [phonetic], is now
20 going to call the roll of the panel of prospective jurors.

21 THE CLERK: Badge 1135, Areonta Shepherd-Williams.
22 1137, Raegan Harsanyi.

23 PROSPECTIVE JUROR NO. 1137: Present.

24 THE CLERK: 1151, Jmon --

25 PROSPECTIVE JUROR NO. 1151: Nadonga.

1 THE CLERK: Nadonga. Did I say the first name right?
2 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.
3 THE CLERK: Thank you. 1154, Erica Conti.
4 PROSPECTIVE JUROR NO. 1154: Present.
5 THE CLERK: 1158, Jonathan-al Orzal.
6 PROSPECTIVE JUROR NO. 1158: Present.
7 THE CLERK: 1162, Cheryl Conner.
8 PROSPECTIVE JUROR NO. 1162: Present.
9 THE CLERK: 660, Karen Parnell.
10 PROSPECTIVE JUROR NO. 660: Present.
11 THE CLERK: 1672 -- I mean -- I'm so sorry. Yeah,
12 1672. Is that the one [inaudible]? I didn't get the name
13 here.
14 MS. STANISH: [Inaudible.]
15 THE CLERK: Is that the number?
16 THE COURT: Just go through them like you have and
17 we'll ask [inaudible].
18 THE CLERK: Okay. 1673.
19 THE COURT: You have to say their name.
20 THE CLERK: Would you tell me your name, please?
21 PROSPECTIVE JUROR NO. 1673: Linda Beorse.
22 THE CLERK: Okay. Badge 1170, Otilia McGovern.
23 PROSPECTIVE JUROR NO. 1170: Here.
24 THE CLERK: 1172, Margaret Stevens?
25 PROSPECTIVE JUROR NO. 1172: Here.

1 THE CLERK: 1178, Susanne Salami.
2 PROSPECTIVE JUROR NO. 1178: Here.
3 THE CLERK: 1185, Juan Jimenez. 1188, Leneard
4 Benson. 1189, Amand Keller.
5 PROSPECTIVE JUROR NO. 1189: Present.
6 THE CLERK: 1192, Chandra Frampton.
7 PROSPECTIVE JUROR NO. 1192: Present.
8 THE CLERK: 1197, John Stoberski.
9 PROSPECTIVE JUROR NO. 1197: Present.
10 THE CLERK: 1200, Zhao Wang.
11 PROSPECTIVE JUROR NO. 1200: Here.
12 THE CLERK: 1209, Mark Connors.
13 PROSPECTIVE JUROR NO. 1209: Present.
14 THE CLERK: 1216, Chris Hammond.
15 PROSPECTIVE JUROR NO. 1216: Present.
16 THE CLERK: 1217, David Bees.
17 PROSPECTIVE JUROR NO. 1217: Here.
18 THE CLERK: 1227, Charles Lawson.
19 PROSPECTIVE JUROR NO. 1227: Here.
20 THE CLERK: 1230, Edward Woolery.
21 PROSPECTIVE JUROR NO. 1230: Here.
22 THE CLERK: 1242, Shelley McGinn.
23 PROSPECTIVE JUROR NO. 1242: Here.
24 THE CLERK: 1244, Charity Arriola.
25 PROSPECTIVE JUROR NO. 1244: Present.

1 THE CLERK: 1245, Duncan F. Pate.

2 PROSPECTIVE JUROR NO. 1245: Present.

3 THE CLERK: 1246, Reynaldo Del Los Santos.

4 PROSPECTIVE JUROR NO. 1246: Here.

5 THE CLERK: 1248, Marissa Torrez.

6 THE COURT: Is there anyone whose name was not
7 called? All right. No one.

8 Ladies and gentlemen, the questioning of the jury at
9 the beginning of the case is done under oath. If you would
10 all please stand so that the Clerk could administer the oath.

11 (The Clerk administered the oath.)

12 THE COURT: Ladies and gentlemen, we are about to
13 commence examination of prospective jurors in this case.
14 During this process you will be asked questions bearing on
15 your ability to sit as fair and impartial jurors. The Court,
16 the lawyers, the Defendants, and everyone involved in this
17 case are all deeply interested in having this matter tried by
18 a jury composed of open-minded people who are completely
19 neutral and who have no bias or prejudice toward or against
20 either side.

21 As you heard, in order for us to accomplish this it
22 is necessary for me to ask you some questions. The attorneys
23 will also be given the opportunity to ask you some questions.
24 Please understand that it is not our desire to pry
25 unnecessarily into your personal lives, although the

1 questioning can at times become quite personal.

2 Our only objective is to ascertain whether there is
3 any reason why any of you cannot sit as completely fair and
4 impartial jurors if you are selected to serve in this case.
5 It is important that you know the significance of full,
6 complete and honest answers to all of the questions we are
7 about to ask you. I caution you not to try to hide or
8 withhold anything touching upon your qualifications to serve
9 as a juror in this matter.

10 Before we go into the individual questioning, I want
11 to just ask all of you as a group a couple of preliminary
12 questions. If you wish to answer any of the questions I'm
13 about to ask in the affirmative, please raise your hand, and
14 when I call on you, please stand, and state your name and your
15 badge number for the record.

16 Is there anyone who believes they may know or be
17 acquainted with either of the Deputy District Attorneys,
18 either Mr. Michael Staudaher or Ms. Pam Weckerly? Does
19 anybody believe they may know them? All right.

20 Does anyone believe they may be acquainted or know
21 any of -- any -- excuse me -- any of the Defense attorneys;
22 either Ms. Margaret Stanish, Mr. Richard Wright, or Mr.
23 Frederick Santacroce? Does anybody recognize them from their
24 personal lives? Personal? Professional? No, no one. Okay.

25 Now obviously today this morning you've had the

1 opportunity to see the Defendants, Mr. Ronald Lakeman and Dr.
2 Dipak Desai. Does anyone think they may recognize them from
3 their personal or professional lives? Anything like you see
4 them in the barber shop or they're a customer at the
5 convenience store where you may work? Anything like that?
6 All right. For the record, no one. All right.

7 Ladies and gentlemen, in a moment I'm going to have
8 you exit the courtroom following our bailiff, Officer Kenny
9 Hawks. Before I do that, I must give you an admonishment, and
10 that admonishment is this: You are not to discuss anything
11 relating to this case with each other or with anyone else.
12 Anyone else includes members of your family and your friends.
13 You may, of course, tell them that you are participating in
14 jury selection for a criminal jury trial; but please do not
15 discuss anything else relating to this matter.

16 Additionally, you are not to read, watch or listen to
17 any reports of or commentaries on this case, any person or
18 subject matter relating to the case by any medium of
19 information. Do not do any independent research by way of the
20 Internet or any other medium. You are instructed that you are
21 not to engage in any social networking concerning this case;
22 that means posting anything on Facebook or Twitter or anything
23 of that nature. Additionally, you are not to form or express
24 an opinion on the trial at this time.

25 One final thing, court personnel, other than the

1 uniform bailiffs, the Defendants and the attorneys for both
2 sides are precluded from speaking directly with members of the
3 jury and the prospective jurors. So if you see one of these
4 individuals in the hallway or something like that during a
5 break, please do not think that they are being unfriendly or
6 anti-social. They are simply precluded from speaking directly
7 with members of the jury. If they did that, that could tend
8 to contaminate your verdict.

9 Having said all of that, I'd ask you folks just to
10 rise and follow Officer Hawks through the double doors.

11 (Prospective jury panel recessed at 10:55 a.m.)

12 THE COURT: All right. It's an eager group. They're
13 raising their hands. Badge 660, Karen Parnell.

14 (Prospective Juror No. 660 entered.)

15 THE COURT: Ms. Parnell, come on in and have a seat
16 there in the jury box. Good morning.

17 PROSPECTIVE JUROR NO. 660: Good morning.

18 THE COURT: What happened to you the other day?

19 PROSPECTIVE JUROR NO. 660: I was ill yesterday.

20 THE COURT: Oh, okay. I'm sorry. You feel better
21 today?

22 PROSPECTIVE JUROR NO. 660: Yes.

23 THE COURT: Okay. So you knew you were supposed to
24 come in, it wasn't a problem with the tape or anything like
25 that?

1 PROSPECTIVE JUROR NO. 660: Yes.

2 THE COURT: Okay. I wanted to just follow up on your
3 questionnaire. You say that you had had a colonoscopy done at
4 the clinic; is that correct?

5 PROSPECTIVE JUROR NO. 660: Yes, ma'am.

6 THE COURT: And when was that?

7 PROSPECTIVE JUROR NO. 660: Well, I'm going to guess.
8 It's been quite a few years; but around 2006.

9 THE COURT: Okay. And who did your colonoscopy?

10 PROSPECTIVE JUROR NO. 660: Dr. Frank Faris.

11 THE COURT: Okay. Are you one of the people that got
12 a letter?

13 PROSPECTIVE JUROR NO. 660: Yes, ma'am.

14 THE COURT: Okay. So you actually had to go and get
15 tested?

16 PROSPECTIVE JUROR NO. 660: Yes.

17 THE COURT: All right. Stipulated? All right.

18 MR. WRIGHT: Yes.

19 THE COURT: Ma'am, in view of the fact that you got a
20 letter and had to be tested, we're going to go ahead and
21 excuse you.

22 PROSPECTIVE JUROR NO. 660: I sort of thought so.

23 THE COURT: You know, unfortunately, you had to come
24 in because we do have to go through a lot of these
25 questionnaires with people here; but I thank you for being

1 here today.

2 One final thing, though. You're admonished you're
3 not to discuss anything that's transpired in the courtroom
4 with anyone else, meaning my questions and your answers and so
5 forth, all right?

6 PROSPECTIVE JUROR NO. 660: Okay.

7 THE COURT: Thank you. You're excused. Check out
8 through Jury Services on the third floor.

9 PROSPECTIVE JUROR NO. 660: Thank you very much.

10 (Prospective Juror No. 660 exited.)

11 THE COURT: All right. Next up is 11135.

12 THE MARSHAL: No show, Your Honor.

13 THE COURT: Okay. Well, that's good because I didn't
14 know how to say the name. How about Raegan Harsanyi?

15 (Prospective Juror No. 1137 entered.)

16 THE COURT: Ma'am, just go ahead and have a seat.
17 And good morning to you. I wanted to follow up on some of
18 your answers in the questionnaire. You say that you heard
19 about the case, but only talk at work?

20 PROSPECTIVE JUROR NO. 1137: Correct.

21 THE COURT: Okay. And you're a security guard?

22 PROSPECTIVE JUROR NO. 1137: I'm a security officer.

23 THE COURT: Okay. And what kind of talk was it at
24 work? Was it other security officers or can you tell me a
25 little bit more about kind of what went on in your work place?

1 PROSPECTIVE JUROR NO. 1137: Yeah. As far as I can
2 remember at the time that there was some coverage on it, I was
3 graveyard, that's 11:00 at night until 7:00 in the morning, so
4 I didn't follow anything; but I do remember comments made in
5 our break room very briefly about just that something had
6 happened and a clinic here, and that's about all I remember.

7 THE COURT: Okay. And so you -- do you have any
8 opinion based -- you have no opinion based on that talk?

9 PROSPECTIVE JUROR NO. 1137: No, because I don't know
10 any facts, so I have no opinion either way.

11 THE COURT: Okay. Okay. And let me ask you this:
12 Is your break room at work, is it just for the security
13 officers or are you mixed with other --

14 PROSPECTIVE JUROR NO. 1137: No. Our break room is
15 for all of Green Valley Ranch.

16 THE COURT: Okay. So you --

17 PROSPECTIVE JUROR NO. 1137: All departments.

18 THE COURT: -- dealers, housekeeping, all that stuff?

19 PROSPECTIVE JUROR NO. 1137: Correct.

20 THE COURT: Do you recall who was talking about the
21 case?

22 PROSPECTIVE JUROR NO. 1137: I do not.

23 THE COURT: Okay. All right. Thank you. That's all
24 the questions I have for you. I'm going to let Ms. Stanish
25 follow up at this point.

1 MS. STANISH: Thank you, Your Honor. Good morning.
2 How are you?

3 PROSPECTIVE JUROR NO. 1137: Good morning.

4 MS. STANISH: Yeah, lean back. You didn't see any
5 television or media reports on this case?

6 PROSPECTIVE JUROR NO. 1137: No. At -- working
7 graveyard you go to work, come home, try to sleep during the
8 day, get up, and go to work again. No, there was -- I didn't
9 watch any; very little. Any television I watched actually was
10 the Food Network so.

11 MS. STANISH: Do you know anyone else from Station
12 Casino who was summoned in this case?

13 PROSPECTIVE JUROR NO. 1137: I do not.

14 MS. STANISH: And you have some medical training, but
15 it appears to be more emergency care in nature; is that
16 correct?

17 PROSPECTIVE JUROR NO. 1137: Well, I'm HHA certified
18 instructor for AED, CPR, and life-saving, yes.

19 MS. STANISH: What is --

20 PROSPECTIVE JUROR NO. 1137: And in Michigan I did
21 have -- I was certified to administer medications, injections,
22 trachs, stuff like that.

23 MS. STANISH: And what is HHA, by the way? What does
24 that mean?

25 PROSPECTIVE JUROR NO. 1137: That's the -- it's AHA,

1 American Heart Association.

2 MS. STANISH: Oh, okay. It looked like an H here.

3 PROSPECTIVE JUROR NO. 1137: I'm sorry. It's AHA.

4 MS. STANISH: All right. And when you were back in
5 Michigan, what -- describe for me a bit more detail --

6 PROSPECTIVE JUROR NO. 1137: I was a home health
7 aide, but I specialized in quadraplegics.

8 MS. STANISH: Okay. And what years did you do that
9 kind of work?

10 PROSPECTIVE JUROR NO. 1137: That was -- did that for
11 five and a half years.

12 MS. STANISH: About when? Can you give us an idea of
13 what year that was?

14 PROSPECTIVE JUROR NO. 1137: Yeah, I've been here
15 five years, so it would have been five and a half years
16 previous.

17 MS. STANISH: All right.

18 PROSPECTIVE JUROR NO. 1137: Yeah, I'm not doing the
19 math, am I?

20 MS. STANISH: Yeah, you and me both. You left
21 Michigan in 2009, according to your questionnaire, and the --
22 and so you would have worked there around -- before 2009? I
23 mean, when you left Michigan were you doing that kind of work?

24 PROSPECTIVE JUROR NO. 1137: Right. I left Michigan
25 in January, it was '09 or '08, 2009 or 2008, and came here;

1 and a week before I left Michigan is when I stopped working at
2 my job.

3 MS. STANISH: And you did that for five and a half
4 years?

5 PROSPECTIVE JUROR NO. 1137: Correct.

6 MS. STANISH: Got it. And what kind of -- what kind
7 of training did you have in connection with that job?

8 PROSPECTIVE JUROR NO. 1137: To be certified?

9 MS. STANISH: Correct.

10 PROSPECTIVE JUROR NO. 1137: It's a home health aide
11 certification. It's because I also worked in an
12 assisted-living home and we had to give medications,
13 injections. Because I specialized in quadraplegics, we had to
14 be trained in catheters, foleys, trachs, and stuff like that.

15 MS. STANISH: Where did you receive your training?

16 PROSPECTIVE JUROR NO. 1137: The certification was
17 through the assisted-living home.

18 MS. STANISH: So in order to -- before you could do
19 those kind of procedures --

20 PROSPECTIVE JUROR NO. 1137: Correct.

21 MS. STANISH: -- and get your certification, you had
22 to be trained by the facility where you worked?

23 PROSPECTIVE JUROR NO. 1137: It was by a nurse that
24 was associated with the facility.

25 MS. STANISH: And can you tell us in Michigan who

1 does the -- who's the certifying agency?

2 PROSPECTIVE JUROR NO. 1137: I don't remember.

3 MS. STANISH: Something government-like?

4 PROSPECTIVE JUROR NO. 1137: Probably.

5 MS. STANISH: All right. And I see here that you
6 indicated that you had family and close friends who worked in
7 the area of risk management. Could you elaborate on that,
8 please?

9 PROSPECTIVE JUROR NO. 1137: In the risk management
10 as far as?

11 MS. STANISH: The name -- the question read: Has any
12 member of your immediate family or close friends ever worked
13 or had any training in any of the occupations and fields that
14 were listed above? And one of the fields was risk management,
15 and you wrote risk management down.

16 PROSPECTIVE JUROR NO. 1137: Okay. I do work closely
17 with Mia, which is one of the ladies that are -- for Station
18 Casinos, Green Valley Ranch, specifically our risk management,
19 and that's basically for trips and falls and -- and stuff like
20 that, Workmen's Comp. She also is an instructor with the HHA
21 also for CPR and first aid and ADDs [phonetic].

22 MS. STANISH: Have you ever had to administer CPR?

23 PROSPECTIVE JUROR NO. 1137: Yes, I did. As a matter
24 of fact, it's a little over a month ago, yeah.

25 MS. STANISH: It work?

1 PROSPECTIVE JUROR NO. 1137: Absolutely did. He's
2 doing very well right now.

3 MS. STANISH: That makes you a hero in the casino.
4 All right. You have two children. They live in the Vegas
5 area or are they back in Michigan?

6 PROSPECTIVE JUROR NO. 1137: No, they live here.

7 MS. STANISH: Do they live with you or are you by
8 yourself?

9 PROSPECTIVE JUROR NO. 1137: No, they're older. They
10 live on their own.

11 MS. STANISH: That's nice. And you indicated that
12 you have a boyfriend. And can you tell us what he does?

13 PROSPECTIVE JUROR NO. 1137: He's retired. He worked
14 for Apex Electric, in Michigan. It was Motor City. He was a
15 -- I don't remember what it's called -- like a project
16 manager, and now he's retired; but he does do some consulting
17 for Geiser Gallagher and they do -- they build buildings.

18 MS. STANISH: Okay. So something with the
19 construction?

20 PROSPECTIVE JUROR NO. 1137: Correct.

21 MS. STANISH: I understand. Just a few legal
22 concepts I want to discuss with you and this somewhat connects
23 to your experiences, someone who has cared for people and done
24 injections and so on. As a juror, you have to decide this
25 case only on the evidence that's presented in this courtroom

1 and so if there's evidence that's presented that conflicts
2 with something that you did in your own experience as a -- as
3 a provider of care, you have to rely on the evidence and not
4 your personal evidence, if you will.

5 PROSPECTIVE JUROR NO. 1137: Right.

6 MS. STANISH: Do you understand what I'm saying about
7 that?

8 PROSPECTIVE JUROR NO. 1137: Absolutely, absolutely.

9 MS. STANISH: And you can agree to do that, I assume?

10 PROSPECTIVE JUROR NO. 1137: Yes.

11 MS. STANISH: Great. You heard earlier that Judge
12 Adair mentioned a couple legal concepts that are important to
13 our legal system. One of them being that the two gentlemen
14 here, they're presumed innocent; even though they're charged
15 they're presumed innocent.

16 PROSPECTIVE JUROR NO. 1137: Right.

17 MS. STANISH: Is that a concept that as you sit there
18 you can agree with that?

19 PROSPECTIVE JUROR NO. 1137: Absolutely. I can't
20 make any judgment until I hear facts. I know nothing really
21 about the case, so absolutely.

22 MS. STANISH: Great. And then somewhat related to
23 that, as Judge Adair pointed out, the Defense is not obligated
24 to present evidence. We have the presumption of innocence.
25 But the State over there, they must prove guilt beyond a

1 reasonable doubt. Is that a concept that you can agree with
2 that the Defense is not obligated to prove to you that they're
3 innocent; but the State has to prove guilt beyond a reasonable
4 doubt?

5 PROSPECTIVE JUROR NO. 1137: Yeah.

6 MS. STANISH: Kind of complicated question.

7 PROSPECTIVE JUROR NO. 1137: Well, that's how our
8 legal system works.

9 MS. STANISH: That's correct. You don't have any
10 philosophical or religious opinions that conflict with those
11 conflicts -- or those concepts, rather?

12 PROSPECTIVE JUROR NO. 1137: No, ma'am.

13 MS. STANISH: Thank you. And have you had any
14 negative experiences with anybody in the medical profession?

15 PROSPECTIVE JUROR NO. 1137: Me, personally? No.

16 MS. STANISH: And anyone close to you?

17 PROSPECTIVE JUROR NO. 1137: No, no. I do have a
18 grandson that has a lot of medical problems and -- in
19 Michigan, and even here we've had no bad experiences.

20 MS. STANISH: All right. Thanks very much. Pass for
21 cause, Your Honor.

22 THE COURT: All right. Thank you. Mr. Santacroce.

23 MR. SANTACROCE: Thank you, Your Honor. Good
24 morning, Ms. Harsanyi. Is that how you pronounce it?

25 PROSPECTIVE JUROR NO. 1137: That's fine, yeah.

1 MR. SANTACROCE: Harsanyi?
2 PROSPECTIVE JUROR NO. 1137: You're very good.
3 MR. SANTACROCE: You work for Station Casinos,
4 correct?
5 PROSPECTIVE JUROR NO. 1137: Correct.
6 MR. SANTACROCE: And you've worked there for two and
7 a half years?
8 PROSPECTIVE JUROR NO. 1137: Correct.
9 MR. SANTACROCE: Is it a good company to work for?
10 PROSPECTIVE JUROR NO. 1137: Yes, it is.
11 MR. SANTACROCE: If there were other members on the
12 jury that were employed by Stations Casinos, would you be
13 uncomfortable going against those people if you had a
14 different viewpoint than them?
15 PROSPECTIVE JUROR NO. 1137: Absolutely not.
16 MR. SANTACROCE: So it doesn't appear to me that you
17 would have a problem voicing your opinion?
18 PROSPECTIVE JUROR NO. 1137: Absolutely not.
19 MR. SANTACROCE: Even if your opinion was contrary to
20 the other people on the jury, correct?
21 PROSPECTIVE JUROR NO. 1137: Correct.
22 MR. SANTACROCE: And you would be an active
23 participant in that jury process; am I correct about that?
24 PROSPECTIVE JUROR NO. 1137: Absolutely.
25 MR. SANTACROCE: Great. You're a security officer.

1 I'm sure in your line of work you've had to deal with some
2 unruly people, correct?

3 PROSPECTIVE JUROR NO. 1137: Yes.

4 MR. SANTACROCE: Have you dealt with Metropolitan
5 Police Department before?

6 PROSPECTIVE JUROR NO. 1137: Henderson Police
7 Department.

8 MR. SANTACROCE: Henderson?

9 PROSPECTIVE JUROR NO. 1137: Correct.

10 MR. SANTACROCE: Oh, that's right. They're here in
11 Green Valley.

12 PROSPECTIVE JUROR NO. 1137: Yeah.

13 MR. SANTACROCE: And what's your experience been like
14 with police officers from Henderson?

15 PROSPECTIVE JUROR NO. 1137: Very good.

16 MR. SANTACROCE: Very good?

17 PROSPECTIVE JUROR NO. 1137: Uh-huh.

18 MR. SANTACROCE: If there were police officers that
19 testified in this case, would you give them any kind of extra
20 treatment or would they -- would they have some kind of extra
21 credibility in your mind because they were police officers?

22 PROSPECTIVE JUROR NO. 1137: Probably not. I would
23 just go on facts.

24 MR. SANTACROCE: So you would base all the testimony
25 on the facts, correct?

1 PROSPECTIVE JUROR NO. 1137: Correct.

2 MR. SANTACROCE: And you would hold the State to
3 their burden of proving each and every element beyond a
4 reasonable doubt?

5 PROSPECTIVE JUROR NO. 1137: Yes, sir.

6 MR. SANTACROCE: And do you know what that means?
7 Each and every element, do you have -- can you tell me what
8 that means to you?

9 PROSPECTIVE JUROR NO. 1137: To me, personally? That
10 I would have no reasonable doubt, that I would know absolutely
11 for sure these are the facts, this is what's presented, and
12 this is what it is.

13 MR. SANTACROCE: Okay. Well, when I specifically say
14 "each and every element of the crime."

15 PROSPECTIVE JUROR NO. 1137: Okay.

16 MR. SANTACROCE: What does that mean to you?

17 PROSPECTIVE JUROR NO. 1137: Good question.

18 MR. SANTACROCE: I don't mean to put you on the spot.

19 PROSPECTIVE JUROR NO. 1137: That's okay.

20 MR. SANTACROCE: Each -- each crime --

21 PROSPECTIVE JUROR NO. 1137: Just means each element,
22 everything that --

23 MR. SANTACROCE: Each crime has --

24 PROSPECTIVE JUROR NO. 1137: -- everything that he's
25 being charged with?

1 MR. SANTACROCE: Yes.

2 PROSPECTIVE JUROR NO. 1137: Okay.

3 MR. SANTACROCE: Yeah, each crime has subparts to it.

4 PROSPECTIVE JUROR NO. 1137: Okay.

5 MR. SANTACROCE: So you would have to find that the
6 State met their burden for each one of those subparts.

7 PROSPECTIVE JUROR NO. 1137: Okay.

8 MR. SANTACROCE: Okay? And you're comfortable doing
9 that?

10 PROSPECTIVE JUROR NO. 1137: Yes.

11 MR. SANTACROCE: And you understand that the burden
12 never switches to the Defense? We don't have to do anything;
13 you understand that?

14 PROSPECTIVE JUROR NO. 1137: Yes, I do understand
15 that. Yes, I do.

16 MR. SANTACROCE: And if we did nothing, you wouldn't
17 hold that against us, would you?

18 PROSPECTIVE JUROR NO. 1137: No.

19 MR. SANTACROCE: Okay. You were asked about your
20 children; but what do they do for a living?

21 PROSPECTIVE JUROR NO. 1137: My one youngest daughter
22 is a home health aide; and my other daughter is a stay-at-home
23 mother.

24 MR. SANTACROCE: What does a home health aide do?

25 PROSPECTIVE JUROR NO. 1137: She takes care of people

1 in their home, elderly, dementia, quadraplegics; same thing,
2 just providing care.

3 MR. SANTACROCE: Is there, like, some medical
4 training that goes along with it?

5 PROSPECTIVE JUROR NO. 1137: There is. She was also
6 certified in Michigan the same as I was. She worked for an
7 assisted home and she was certified also. She can give
8 injections. She can give medications. In Michigan, not here.
9 We are not certified here in Nevada.

10 MR. SANTACROCE: Okay. And have -- you haven't
11 talked to her about this case or anything like that?

12 PROSPECTIVE JUROR NO. 1137: Absolutely not.

13 MR. SANTACROCE: On your questionnaire you said that
14 -- and I'm paraphrasing so forgive me, correct me if I'm wrong
15 -- but you -- you said that if mistakes are made, someone's
16 always responsible for those mistakes, correct?

17 PROSPECTIVE JUROR NO. 1137: Right.

18 MR. SANTACROCE: Go ahead.

19 PROSPECTIVE JUROR NO. 1137: Accidents do happen and
20 -- and that's part of life and it's not meant. Mistakes that
21 are made over and over again, yes, someone is held responsible
22 for those mistakes because you can't make a mistake, know
23 about it, and then do it again. It's not a mistake, it's
24 intentional.

25 MR. SANTACROCE: Okay. So you recognize that some

1 mistakes are made that aren't intentional?

2 PROSPECTIVE JUROR NO. 1137: Absolutely.

3 MR. SANTACROCE: I have no further questions. Thank
4 you very much.

5 PROSPECTIVE JUROR NO. 1137: My pleasure.

6 MR. SANTACROCE: I'm going to reserve.

7 THE COURT: All right. Mr. Staudaher.

8 MR. STAUDAHER: I have just a couple.

9 PROSPECTIVE JUROR NO. 1137: I'm very nervous.

10 MR. STAUDAHER: No.

11 THE COURT: Well, you know, we're all lawyers so
12 we're used to speaking --

13 PROSPECTIVE JUROR NO. 1137: Okay.

14 THE COURT: -- you know, publicly like this. And we
15 understand that, you know, people who don't do it every day,
16 it's tough to be, you know, asked all these questions and, you
17 know, have to discuss these things in an open forum like this.

18 PROSPECTIVE JUROR NO. 1137: Yeah.

19 THE COURT: Mr. Staudaher.

20 MR. STAUDAHER: Because of that I'm just going to ask
21 you a couple questions because I've heard all of your answers
22 before. Mr. Santacroce just got up and he asked you about,
23 you know, if the State proves its case, all the subparts,
24 whatever. I want to just explore that with you just one
25 moment.

1 PROSPECTIVE JUROR NO. 1137: Okay.

2 MR. STAUDAHER: There are different charges in the
3 case. You heard me read those out.

4 PROSPECTIVE JUROR NO. 1137: Right.

5 MR. STAUDAHER: Each one of the charges has what are
6 called elements, that means what constitutes that charge, that
7 a charge of theft has these pieces.

8 PROSPECTIVE JUROR NO. 1137: Okay.

9 MR. STAUDAHER: And we have to prove those pieces,
10 each -- you know, we have to prove those pieces beyond a
11 reasonable doubt for you to be able to come back with a
12 verdict on that charge.

13 PROSPECTIVE JUROR NO. 1137: Correct.

14 MR. STAUDAHER: Does that make sense?

15 PROSPECTIVE JUROR NO. 1137: Yeah.

16 MR. STAUDAHER: Okay. So if at the end of the trial
17 -- you know, you haven't heard anything.

18 PROSPECTIVE JUROR NO. 1137: Right.

19 MR. STAUDAHER: You said that right now you
20 understand you have to vote not guilty if you were asked to do
21 it right now, right? Because there's no --

22 PROSPECTIVE JUROR NO. 1137: I know nothing about it.

23 MR. STAUDAHER: No evidence, right?

24 PROSPECTIVE JUROR NO. 1137: Right, right.

25 MR. STAUDAHER: But at the end of the trial, if you

1 were one of the jury members, you're going to have heard all
2 of the evidence, the testimony, the pictures, physical
3 evidence, whatever it is.

4 PROSPECTIVE JUROR NO. 1137: Right.

5 MR. STAUDAHER: And you're going to use that and then
6 apply that to the law or the instructions kind of given to you
7 by the Judge. At the end of the trial if in your mind the
8 State has met its burden, meaning we've proved all of the
9 elements of each crime beyond a reasonable doubt, can you come
10 back with a guilty verdict?

11 PROSPECTIVE JUROR NO. 1137: Absolutely.

12 MR. STAUDAHER: Would you have any reason,
13 philosophical, religious, or otherwise where that might be
14 difficult for you to do?

15 PROSPECTIVE JUROR NO. 1137: No.

16 MR. STAUDAHER: Conversely, if you're back in the
17 jury room and they're -- sift through all the evidence with
18 your fellow jury members and you have two juror members that
19 just say they're not going to participate and they turn around
20 and face the other direction and pull out their books and read
21 and will not participate; would you feel comfortable enough to
22 alert the bailiff so that he could alert the judge that there
23 was something like that happening in the jury room and you
24 couldn't go forward?

25 PROSPECTIVE JUROR NO. 1137: Yes.

1 MR. STAUDAHER: Okay. The last question: Can you be
2 fair and impartial in this case?

3 PROSPECTIVE JUROR NO. 1137: Absolutely.

4 MR. STAUDAHER: Pass for cause, Your Honor.

5 THE COURT: All right. Thank you. Ma'am, in a
6 moment I'm going to excuse you for today. You may be selected
7 as a juror in this case so make sure our bailiff, Officer
8 Hawks, has a phone number where you could be reached because
9 we may be contacting you and then you must report when we tell
10 you to to begin serving as a juror. For that reason, the
11 admonition about discussing the case, reading, watching
12 [inaudible] reports of or commentaries on any subject matter
13 relating to the case and forming or expressing an opinion on
14 the case, everything I said before, is still in effect; do you
15 understand that?

16 PROSPECTIVE JUROR NO. 1137: Yes, I do.

17 THE COURT: Additionally, you are directed that at
18 this time you're not to discuss anything that's transpired in
19 the Court with anybody else, meaning my questions, the
20 lawyers' questions, and your answers; do you understand?

21 PROSPECTIVE JUROR NO. 1137: Yes, I do.

22 THE COURT: All right. Thank you, ma'am. If you
23 would please place the microphone in the chair. Officer Hawks
24 will direct you from the courtroom and check out through Jury
25 Services on the third floor. All right. Thank you.

1 (Prospective Juror No. 1137 exited.)

2 MR. WRIGHT: Take a moment, Your Honor.

3 THE COURT: You may, but first -- for the record, Mr.
4 Santacroce, do you pass for cause?

5 MR. SANTACROCE: Yes, ma'am.

6 THE COURT: All right. You may have a moment.

7 MR. WRIGHT: Thank you.

8 THE COURT: Oh, just before we do that. Next up is
9 Jmon Nadonga, who -- he may be a hardship because he's a
10 security guard at an MGM property, so he probably won't be
11 paid, so we'll get into that right away and we'll see. Thank
12 you.

13 (Court recessed at 11:17 a.m. until 11:21 a.m.)

14 THE COURT: I can tell doing the roll call and my
15 introduction who is going to be a good juror and who is not
16 just by the reaction. Like, some people, you know, they're
17 nodding and when I'm talking and then other people, you know,
18 just kind of glare and look really unhappy; don't you think?

19 I mean, we predict who's going to be like a -- when I
20 say a problem, you know, the people that are disrespectful of
21 the system or they're surly or they just, you know, every
22 excuse in the book, you know, I don't, you know -- you know,
23 whatever they think, oh, yeah, police are always liars or, you
24 know, I hate lawyers, or I'm a white supremacist, or, you
25 know, whatever excuse they can come up with. My favorite was

1 he had people of color claim to be that in order to get out of
2 jury service. We've actually had two.

3 MR. STAUDAHER: You're kidding me.

4 THE COURT: No. Right? Two people of color.

5 MR. STAUDAHER: Is that even remotely possible? I
6 didn't --

7 THE COURT: What's that?

8 MR. STAUDAHER: I said is that even remotely
9 possible?

10 THE COURT: They're either like -- well, not really
11 schizophrenic; but maybe they have multiple personality
12 disorder, what used to be called incorrectly schizophrenia
13 where they have -- that was their white personality and they
14 didn't know.

15 MR. STAUDAHER: Somehow I think that would have been
16 [inaudible].

17 THE COURT: We've had an Asian claim to be a white
18 supremacist. And then remember that African-American guy when
19 George was here that claimed to be a member of, like, a white
20 supremacy group? I mean, obviously we had to get rid of those
21 people because, you know. All right.

22 Next up, Kenny, is Badge No. 1151. I'm not sure how
23 to say this. Jmon?

24 THE CLERK: I don't remember what he said.

25 THE COURT: I don't remember what he said either.

1 Oh, darn. I guess Jeff German didn't want to sit through the
2 compelling --

3 (Prospective Juror No. 1151 entered.)

4 THE COURT: Sir, come on in and have a seat in the
5 jury box there. This one right here. Good morning, sir.

6 PROSPECTIVE JUROR NO. 1151: Good morning.

7 THE COURT: I wanted to follow -- you can sit down.
8 I wanted to follow up on some of your answers here in your
9 questionnaire. You indicated that you were concerned about
10 serving because you wouldn't be able to make your bills and
11 that you're a security officer; is that correct?

12 PROSPECTIVE JUROR NO. 1151: That's correct, ma'am.

13 THE COURT: At the Mandalay Bay?

14 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

15 THE COURT: What hours and what shift do you normally
16 work?

17 PROSPECTIVE JUROR NO. 1151: Day shift from 7:30 to
18 3:30.

19 THE COURT: Okay. Do you know if your employer pays
20 you?

21 PROSPECTIVE JUROR NO. 1151: Yeah, I -- I know it
22 already that they're going to pay it.

23 THE COURT: They're going to pay you?

24 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

25 THE COURT: So you can serve?

1 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.
2 THE COURT: You checked with them and you can serve?
3 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.
4 THE COURT: Okay. Terrific. Where are you from
5 originally?
6 PROSPECTIVE JUROR NO. 1151: I'm from the
7 Philippines, Manila.
8 THE COURT: Oh. How long have you lived in the
9 United States?
10 PROSPECTIVE JUROR NO. 1151: I came here since 1988.
11 THE COURT: Okay. Did you come directly to Las
12 Vegas?
13 PROSPECTIVE JUROR NO. 1151: No, ma'am. I stay at
14 the Los Angeles for ten years and then I move here in 1999.
15 THE COURT: And what type of work did you do in Los
16 Angeles?
17 PROSPECTIVE JUROR NO. 1151: I work at the Bank of
18 America as a clerk.
19 THE COURT: As a clerk?
20 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.
21 THE COURT: So like a teller clerk or were you --
22 PROSPECTIVE JUROR NO. 1151: No. Like a -- a data
23 entry clerk.
24 THE COURT: Okay.
25 PROSPECTIVE JUROR NO. 1151: In the mail room.

1 THE COURT: Okay. In the mailroom?

2 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

3 THE COURT: And I happen to have heard that they

4 teach English in the Philippines. Did you take English in the

5 Philippines?

6 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

7 THE COURT: So you went to school in English?

8 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

9 THE COURT: All the way through from, like, the first

10 grade through high school?

11 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

12 THE COURT: Okay. And then how long have you been --

13 when did you become naturalized as a citizen?

14 PROSPECTIVE JUROR NO. 1151: I think it's 1992.

15 THE COURT: 1992.

16 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

17 THE COURT: All right. That concludes -- let's see.

18 And you -- as you sit here today and you heard talk about what

19 the case is about, did that trigger any memory in your mind

20 that you've heard about this case or seen anything on the news

21 or anything like that?

22 PROSPECTIVE JUROR NO. 1151: I seen it on TV, ma'am.

23 THE COURT: Oh, you have seen it on TV?

24 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

25 THE COURT: Do you remember when you saw something on

1 TV?

2 PROSPECTIVE JUROR NO. 1151: That was a long time
3 ago.

4 THE COURT: Long time ago?

5 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

6 THE COURT: Is there a particular station that you
7 like to watch for the local news?

8 PROSPECTIVE JUROR NO. 1151: Just CNN.

9 THE COURT: Okay. Do you remember what station you
10 saw something relating to this case on?

11 PROSPECTIVE JUROR NO. 1151: I -- I can't remember;
12 but I know it's the local news.

13 THE COURT: Okay. And then what do you remember
14 hearing on the news?

15 PROSPECTIVE JUROR NO. 1151: I think somebody die or
16 something.

17 THE COURT: Okay. Do you think it's a fair statement
18 that the news often reports things either inaccurately or
19 incompletely?

20 PROSPECTIVE JUROR NO. 1151: I -- I don't believe
21 everything that I heard.

22 THE COURT: Okay. If you're selected as a juror, do
23 you understand that you have to base your verdict solely upon
24 the evidence in the case?

25 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

1 THE COURT: Which means what's presented there, the
2 testimony under oath from the witness stand and the exhibits
3 that are admitted?

4 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

5 THE COURT: Could you do that?

6 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

7 THE COURT: Okay. Now what that means is if you're a
8 juror and you remember hearing something, Oh, I heard this on
9 the news or you're driving here and inadvertently you hear
10 something on the radio, you can't consider that. You got to
11 -- you know, we can't erase your mind, but you have to put it
12 out of your mind; can you do that?

13 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

14 THE COURT: As you sit here today, do you have any
15 opinion about this case, whether Dr. Desai and Mr. Lakeman are
16 guilty?

17 PROSPECTIVE JUROR NO. 1151: No.

18 THE COURT: Okay. Can you be fair and impartial to
19 both sides if you're selected to serve?

20 PROSPECTIVE JUROR NO. 1151: I think so.

21 THE COURT: Okay. When you came to the United
22 States, did you take any English classes or did you feel your
23 English was good enough?

24 PROSPECTIVE JUROR NO. 1151: I think my English is
25 good enough. I can understand Americans talk.

1 THE COURT: Okay. Well, as I said, I know in the
2 Philippines, you know, you go to school the whole time in
3 English or take English, you know, the whole academic time.

4 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

5 THE COURT: So, Ms. Stanish or Mr. Santacroce, who
6 would like to follow up?

7 MS. STANISH: Thank you, Your Honor. Good morning,
8 sir.

9 PROSPECTIVE JUROR NO. 1151: Good morning, ma'am.

10 MS. STANISH: I'm just going to follow up on a few of
11 your questions here. First I see that you're a member of the
12 Army National Guard?

13 PROSPECTIVE JUROR NO. 1151: Yes, ma'am, in
14 [inaudible], California.

15 MS. STANISH: Okay. So you're in the State of
16 California?

17 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

18 MS. STANISH: All right. And how long have you been
19 in the Guard?

20 PROSPECTIVE JUROR NO. 1151: In the Guard? 1989 to
21 '92, ma'am.

22 MS. STANISH: And this trial is expected to last
23 through the month of May and probably into the month of June.
24 Is there going to be any interference with your service with
25 the National Guard?

1 PROSPECTIVE JUROR NO. 1151: I'm not in the National
2 Guard anymore.

3 MS. STANISH: Oh, I misunderstood that. I thought
4 you still were.

5 PROSPECTIVE JUROR NO. 1151: No, in 1992.

6 MS. STANISH: Oh, that's when you got out. I'm
7 sorry. Headache. You were a member of the Philippine police
8 force. Could you tell us what years you served there?

9 PROSPECTIVE JUROR NO. 1151: From 1978 to 1988.

10 MS. STANISH: And was that in Manila?

11 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

12 MS. STANISH: Can you tell us -- what's the name of
13 the agency? What is it actually officially called?

14 PROSPECTIVE JUROR NO. 1151: It's -- they call it
15 National -- Philippine Integrated National Police.

16 MS. STANISH: You had mentioned to Judge Adair that
17 you recalled hearing something in the news about somebody
18 dying in this -- in connection with this case; is that
19 correct?

20 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

21 MS. STANISH: And can you give me a little bit more
22 detail on that?

23 PROSPECTIVE JUROR NO. 1151: I can't remember, it's a
24 long time ago. And they said that somebody got sick and
25 somebody died; but I cannot remember when.

1 MS. STANISH: I anticipate that we're going to have
2 evidence that comes from the Philippines because the -- as you
3 heard this morning, these two gentlemen are charged with
4 murder, and that's in connection with the story that you
5 probably heard about with someone dying. So there's going to
6 be evidence that comes from law enforcement, I believe, in the
7 Philippines because the individual passed away in the
8 Philippines, okay? Is there anything about that fact and your
9 connection with the Philippine police that would influence you
10 to serve as a fair juror?

11 PROSPECTIVE JUROR NO. 1151: I don't think so.

12 MS. STANISH: And so you -- and also along these same
13 lines, you're obligated as a juror to follow the -- to base
14 your decision only on the evidence that's presented here in
15 this courtroom, and not anything that you may have experience
16 with in the Philippines many years ago when you were a police
17 officer, and so could you agree to put aside --

18 PROSPECTIVE JUROR NO. 1151: I understand that, yes,
19 ma'am.

20 MS. STANISH: Thank you. You indicated that you had
21 a member of your family or a close friend who works in a
22 surgery clinic. Can you tell us about that, please?

23 PROSPECTIVE JUROR NO. 1151: Yeah, that's my wife.
24 She works with the Plaza Surgery Clinic as a accountant clerk
25 and work at human resources.

1 MS. STANISH: And, I'm sorry, I didn't catch the name
2 of where she works.

3 PROSPECTIVE JUROR NO. 1151: Plaza Surgery clinic.

4 MS. STANISH: Oh, a plastic surgery clinic.

5 THE COURT: Plaza.

6 PROSPECTIVE JUROR NO. 1151: Plaza.

7 MS. STANISH: Plaza. Got it. Okay. And so she's
8 more in administration?

9 PROSPECTIVE JUROR NO. 1151: Yes, ma'am. Human
10 resources [inaudible].

11 MS. STANISH: Is she involved in the billing of
12 procedures at all?

13 PROSPECTIVE JUROR NO. 1151: I don't think so, ma'am.

14 MS. STANISH: You have a college degree in marketing;
15 is that correct?

16 PROSPECTIVE JUROR NO. 1151: Yes, ma'am, bachelor of
17 science in commerce.

18 MS. STANISH: And your community college, what did
19 that involve?

20 PROSPECTIVE JUROR NO. 1151: Gunsmithing.

21 MS. STANISH: Pardon me?

22 PROSPECTIVE JUROR NO. 1151: Gunsmithing.

23 MS. STANISH: Oh, gunsmithing. Where did you study
24 that?

25 PROSPECTIVE JUROR NO. 1151: In [inaudible] college,

1 and I took some course in [inaudible] electronics
2 communication.

3 MS. STANISH: And your daughter, Joyce, is a medical
4 billing clerk?

5 PROSPECTIVE JUROR NO. 1151: Yes, ma'am. In L.A.

6 MS. STANISH: In L.A., all right. And what kind of
7 facility does she work in, do you know?

8 PROSPECTIVE JUROR NO. 1151: I'm sorry, ma'am.

9 MS. STANISH: Not sure. Okay. You checked that you
10 listen to a number of different television news stations. Do
11 you frequently watch TV news?

12 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

13 MS. STANISH: I see you have an elderly mother who's
14 bedridden. Does she live with you or do you take care of her
15 at all?

16 PROSPECTIVE JUROR NO. 1151: No. She's in the
17 Philippines.

18 MS. STANISH: Have you or anybody close to you had
19 any negative experience with anybody in the medical
20 profession?

21 PROSPECTIVE JUROR NO. 1151: No.

22 MS. STANISH: And can you -- as Judge Adair explained
23 earlier this morning, these two gentlemen are presumed
24 innocent as they sit here despite the fact that they have
25 charges lodged against them. Can you abide by that concept of

1 -- that these men are presumed innocent?

2 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

3 MS. STANISH: And do you understand as the Judge
4 explained earlier that it's up to the State of Nevada, the
5 prosecutors, to overcome that presumption beyond a reasonable
6 doubt; that the Defense doesn't have to present any evidence?

7 PROSPECTIVE JUROR NO. 1151: I understand that,
8 ma'am.

9 MS. STANISH: Is that different from what your system
10 was in the Philippines when you were in law enforcement there?

11 PROSPECTIVE JUROR NO. 1151: [Inaudible] is almost
12 the same, but judging system is different. We don't have the
13 jury. We only have presiding judge, so the judge take care of
14 everything.

15 MS. STANISH: Must go quicker there. All right.
16 Thank you, sir. Nothing further.

17 THE COURT: Mr. Santacroce, go ahead.

18 MR. SANTACROCE: Thank you, Your Honor. Mr. Nadonga,
19 how are you today?

20 PROSPECTIVE JUROR NO. 1151: Very good, sir.

21 MR. SANTACROCE: Were you ever in the Philippines
22 military?

23 PROSPECTIVE JUROR NO. 1151: No, sir. Just police
24 officer, sir.

25 MR. SANTACROCE: So your military service was here in

1 the United States?

2 PROSPECTIVE JUROR NO. 1151: As a National Guard,
3 yes, sir.

4 MR. SANTACROCE: And how old were you when you became
5 a police officer in the Philippines?

6 PROSPECTIVE JUROR NO. 1151: Twenty-two years old,
7 sir.

8 MR. SANTACROCE: You did that for ten years?

9 PROSPECTIVE JUROR NO. 1151: Yes, sir.

10 MR. SANTACROCE: Tell me a little bit about what you
11 did.

12 PROSPECTIVE JUROR NO. 1151: On the first, second
13 year I was assigned in the [inaudible] unit; but after that I
14 was assigned on plain clothes, like [inaudible] narcotics.

15 MR. SANTACROCE: That must have been interesting.

16 PROSPECTIVE JUROR NO. 1151: Very interesting, sir.

17 MR. SANTACROCE: So the first two years you were in,
18 like, a police car?

19 PROSPECTIVE JUROR NO. 1151: Yes, sir.

20 MR. SANTACROCE: And you patrolled an area?

21 PROSPECTIVE JUROR NO. 1151: Yes, sir.

22 MR. SANTACROCE: And you arrested people?

23 PROSPECTIVE JUROR NO. 1151: Most of the time, sir.

24 MR. SANTACROCE: And then you became a plain clothes
25 officer?

1 PROSPECTIVE JUROR NO. 1151: Yes, sir.

2 MR. SANTACROCE: And what kinds of crimes would you
3 investigate as a plain clothes officer?

4 PROSPECTIVE JUROR NO. 1151: Mostly [inaudible]
5 narcotics, anti-vice, prostitution.

6 MR. SANTACROCE: Prostitution, drugs, all of that?

7 PROSPECTIVE JUROR NO. 1151: Yes, sir.

8 MR. SANTACROCE: Did you ever testify in court?

9 PROSPECTIVE JUROR NO. 1151: A lot of times, sir.

10 MR. SANTACROCE: And did you ever participate in any
11 kind of an autopsy in the Philippines?

12 PROSPECTIVE JUROR NO. 1151: No, sir.

13 MR. SANTACROCE: Did you ever participate in any
14 murder investigations?

15 PROSPECTIVE JUROR NO. 1151: A lot of times, sir.

16 MR. SANTACROCE: Now I expect that they're going to
17 be police officers testifying here.

18 PROSPECTIVE JUROR NO. 1151: Yes, sir.

19 MR. SANTACROCE: I don't know if they're going to be
20 from Metro or the Philippines or wherever, but it doesn't
21 matter. What does matter is your feelings about police
22 officers testifying in this court. Would you give them more
23 weight and credibility because they were police officers?

24 PROSPECTIVE JUROR NO. 1151: I don't think so, sir.

25 MR. SANTACROCE: You don't think so or you know so?

1 PROSPECTIVE JUROR NO. 1151: I -- I don't judge them
2 by the way they -- they're [inaudible] and not, you know, I --
3 my opinion would be based on -- on what evidence when I see.

4 MR. SANTACROCE: And I think one of your questions --
5 you recognize mistakes happen whether you're a police officer
6 or a regular person, right?

7 PROSPECTIVE JUROR NO. 1151: Of course.

8 MR. SANTACROCE: And in that answer that you gave in
9 your questionnaire you answered cause and effect. What did
10 that mean?

11 PROSPECTIVE JUROR NO. 1151: In -- in -- in every
12 cause there's always -- there's always -- in every action
13 there's always a opposite reaction.

14 MR. SANTACROCE: Okay. So if there's a mistake, then
15 there's an effect to that mistake?

16 PROSPECTIVE JUROR NO. 1151: Yes, sir.

17 MR. SANTACROCE: Is somebody always responsible for
18 that mistake?

19 PROSPECTIVE JUROR NO. 1151: I'm not -- no, sir,
20 responsible; but I believe that when you do something, there's
21 always behind it that will be effected or something like that.

22 MR. SANTACROCE: When you were a police officer there
23 was a lot of rules and regulations, correct?

24 PROSPECTIVE JUROR NO. 1151: Yes, sir.

25 MR. SANTACROCE: And you were aware of those rules

1 and regulations?

2 PROSPECTIVE JUROR NO. 1151: Not all of it, but most
3 of it.

4 MR. SANTACROCE: So there was -- even in your job at
5 Mandalay Bay I'm sure there's a huge handbook, correct?

6 PROSPECTIVE JUROR NO. 1151: Yes, sir.

7 MR. SANTACROCE: Are you familiar with all the rules
8 and regulations of the Mandalay Bay?

9 PROSPECTIVE JUROR NO. 1151: Most of it.

10 MR. SANTACROCE: But not all of it?

11 PROSPECTIVE JUROR NO. 1151: Not all of it.

12 MR. SANTACROCE: And you recognize as a police
13 officer in the Philippines or as an employee of the Mandalay
14 Bay that sometimes rules and regulations change, correct?

15 PROSPECTIVE JUROR NO. 1151: Yes, sir.

16 MR. SANTACROCE: I think the most interesting answer
17 you gave on your questionnaire was what do you like to do in
18 your spare time, and you said housework.

19 PROSPECTIVE JUROR NO. 1151: Yes, sir.

20 MR. SANTACROCE: You like to do housework?

21 PROSPECTIVE JUROR NO. 1151: Yes, sir.

22 THE COURT: Your wife is a very lucky woman.

23 PROSPECTIVE JUROR NO. 1151: I do repair in the
24 house, I love to do it.

25 MR. SANTACROCE: I appreciate your honesty and I

1 thank you for your answers today.

2 PROSPECTIVE JUROR NO. 1151: Thank you, sir.

3 THE COURT: Thank you, Mr. Santacroce. Ms. Weckerly?

4 MS. WECKERLY: Just briefly. How are you, sir?

5 PROSPECTIVE JUROR NO. 1151: Pretty good, ma'am.

6 MS. WECKERLY: In your -- I understand that you
7 testified when you were working as a police officer. When you
8 worked here as a security guard, have you had to come to court
9 and testify?

10 PROSPECTIVE JUROR NO. 1151: No, not yet.

11 MS. WECKERLY: Not so far. Okay. And -- and the
12 only other thing I wanted to ask you is I know you were
13 comfortable in your role as a -- as a police officer and you
14 participated in the judicial process there. As a juror do you
15 have any concerns about sitting in judgment with someone or is
16 that a different role that you can play now?

17 PROSPECTIVE JUROR NO. 1151: Well, it's a different
18 role.

19 MS. WECKERLY: Okay. Is it hard for you to judge the
20 actions of someone else?

21 PROSPECTIVE JUROR NO. 1151: What do you mean?

22 MS. WECKERLY: Well, if -- if you -- if you're
23 selected to be a juror and you hear all the evidence.

24 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

25 MS. WECKERLY: And you believe that we have proven

1 the case beyond a reasonable doubt, would it be -- would you
2 be able to come in with a guilty verdict?

3 PROSPECTIVE JUROR NO. 1151: Of course, beyond a
4 reasonable doubt I will.

5 MS. WECKERLY: Okay. And it's -- some people based
6 on their religion or their philosophical beliefs just don't
7 want to serve in that role; but you're saying you can do that?

8 PROSPECTIVE JUROR NO. 1151: Yes, ma'am.

9 MS. WECKERLY: Great. Thank you, sir. State will
10 pass for cause.

11 THE COURT: All right. Thank you. Mr. Nadonga,
12 we're going to let you go home and excuse you for today, but
13 you may be selected as a juror in this case, so for that
14 reason make sure Kenny has a good phone number where you can
15 be reached. And if you're selected -- sit down, I'm not done
16 -- you must report back when we tell you to to begin your jury
17 service. The admonition I read earlier is still in effect not
18 to discuss the case, read, watch or say anything relating to
19 the case and form or express an opinion on the case. Also,
20 you are not to discuss what's just gone on in the courtroom,
21 meaning my questions, the lawyers' questions, and your answers
22 and so forth; do you understand?

23 PROSPECTIVE JUROR NO. 1151: I understand that.

24 THE COURT: All right. You're free to go home today
25 and check back out through Jury Services on the third floor.

1 PROSPECTIVE JUROR NO. 1151: All right. Thank you.

2 THE COURT: All right. Thank you, sir.

3 (Prospective Juror No. 1151 exited.)

4 THE COURT: I didn't hear from the Defense. Does the
5 Defense pass for cause?

6 MR. WRIGHT: Yes.

7 MR. SANTACROCE: Yes, Your Honor.

8 THE COURT: All right. It's a pity these people are
9 all going to be alternates because I think we got a good batch
10 today, but because of the numbers they're going to -- whatever
11 happens, they're going to fall as alternates.

12 MR. SANTACROCE: Well, we can go back --

13 THE COURT: Well, I mean, unless you -- huh?

14 MR. SANTACROCE: We can go back and excuse some of
15 the other ones for cause if you like.

16 THE COURT: Get rid of -- well, Ms. -- the one you
17 fought with, the one you got in a fight with, she's not
18 getting excused.

19 MR. SANTACROCE: Oh, no. I wasn't even thinking of
20 her.

21 THE COURT: Next up is Ms. Conti.

22 (Court recessed at 11:43 a.m. until 11:48 a.m.)

23 THE COURT: Kenny, next up is Erica Conti, Badge No.
24 11154.

25 (Prospective Juror No. 1154 entered.)

1 THE COURT: Ma'am, just have a seat over there in the
2 jury box, please. Good morning.

3 PROSPECTIVE JUROR NO. 1154: Good morning.

4 THE COURT: It says here in your questionnaire that
5 you would be available to serve and probably your -- your
6 school is on just a regular nine-month academic?

7 PROSPECTIVE JUROR NO. 1154: Yeah, that's correct.

8 THE COURT: You're correct. And it also says here
9 that you don't recall seeing anything in the media about this
10 case. Now that you've kind of heard more about it, did
11 anything jog in your memory that you --

12 PROSPECTIVE JUROR NO. 1154: I mean, like, the name;
13 but I don't really watch the news, so I don't know any of the
14 details or anything. Like, what they told us when we sat down
15 was the most that I've heard.

16 THE COURT: Okay. And you don't read the Review
17 Journal or anything like that?

18 PROSPECTIVE JUROR NO. 1154: No, no.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 1154: I get the news
21 [inaudible] on Sunday, but just for, like, the ads and stuff.
22 I don't actually read the newspaper.

23 THE COURT: Okay. Like coupons?

24 PROSPECTIVE JUROR NO. 1154: Yeah, exactly.

25 THE COURT: Okay. If you're selected to serve and,

1 you know, you hear something inadvertently or you remember,
2 oh, yeah, I did hear something, would you be able to set that
3 aside and base your verdict solely upon the evidence that's
4 presented during this trial?

5 PROSPECTIVE JUROR NO. 1154: Yeah, I think so because
6 I think as a teacher it's like I'm also getting this side of
7 the story and this side of the story and this side of the
8 story, and it's like, okay, we need to get down to the facts,
9 and that's how I make my decision based on the facts. So I --
10 I think so.

11 THE COURT: Yeah. Do you have any opinion as you sit
12 here today about the guilt or innocence -- well, let me ask --

13 PROSPECTIVE JUROR NO. 1154: Okay.

14 THE COURT: -- rephrase. Do you have any opinions
15 about this case as you sit here today?

16 PROSPECTIVE JUROR NO. 1154: You know, I've been
17 thinking about it because I knew I was coming back. I mean,
18 it's horrible that the people got Hepatitis; but, I mean, I
19 don't know the facts so I -- I've been thinking, like, I don't
20 know how it happened, and I don't know who would be
21 responsible because I know, like, when I go to the doctor I've
22 never -- anytime I've ever gotten a shot or blood drawn it's
23 never actually been, like, a doctor doing it. So then I
24 think, Well, it's always been a nurse so I don't know how it
25 all ties back so.

1 THE COURT: Okay. And do you understand this is a
2 criminal case? This isn't a civil case which is about, you
3 know, somebody suing a doctor for malpractice and trying to
4 get money. And it's a much higher standard than a civil case,
5 which is just preponderance of the evidence. This is a
6 criminal case and it's the same standard of proof beyond a
7 reasonable doubt as any other criminal case in this country,
8 do you understand that, whether it be a sexual assault or a,
9 you know, a theft or -- or, you know, whatever?

10 PROSPECTIVE JUROR NO. 1154: Yes, I believe I do,
11 yes.

12 THE COURT: Okay. Is there any concern on your part
13 with whether or not you can be fair and impartial to both
14 sides, the State of Nevada and the Defendants in this case?

15 PROSPECTIVE JUROR NO. 1154: No, I don't think so.

16 THE COURT: Okay. Thank you. Who would like to
17 follow up first? Ms. Stanish?

18 MS. STANISH: Thank you, Your Honor. Good morning.

19 PROSPECTIVE JUROR NO. 1154: Good morning.

20 MS. STANISH: So you're about done with school?

21 PROSPECTIVE JUROR NO. 1154: Yes.

22 MS. STANISH: When is --

23 PROSPECTIVE JUROR NO. 1154: One more month.

24 MS. STANISH: One more month and counting. And this
25 trial is expected to probably go through the month of May and

1 perhaps into June. Will that present any problems for you?

2 PROSPECTIVE JUROR NO. 1154: You know, I spoke with
3 my principal. I, obviously, I didn't say any details or
4 anything; but I told her that I had been called back as a
5 potential juror, and we spoke about it. And, honestly, like,
6 our State testing, all of our testing is finishing this week,
7 so not to say that the last month in school is not important,
8 but it really is just like preparing for the next school year
9 and everything. So she said that, you know, she understood if
10 I was picked and everything, that's obviously my duty, but,
11 no, no, not really.

12 MS. STANISH: And your -- you indicated that your
13 spouse is an IT technician?

14 PROSPECTIVE JUROR NO. 1154: Yes.

15 MS. STANISH: And where is that?

16 PROSPECTIVE JUROR NO. 1154: At Silver State School's
17 credit union.

18 MS. STANISH: You're good at math?

19 PROSPECTIVE JUROR NO. 1154: I hope so, since I teach
20 math.

21 MS. STANISH: I say that because I see that you have
22 an MS in math.

23 PROSPECTIVE JUROR NO. 1154: Yes.

24 MS. STANISH: Do -- you're a fifth grade teacher,
25 correct?

1 PROSPECTIVE JUROR NO. 1154: Yes, I teach fifth grade
2 math.

3 MS. STANISH: You moved around a little bit in your
4 time. You're from the great Midwest?

5 PROSPECTIVE JUROR NO. 1154: Yeah, from Chicago,
6 suburbs.

7 MS. STANISH: And you moved to Vegas when?

8 PROSPECTIVE JUROR NO. 1154: It was about maybe nine
9 years ago.

10 MS. STANISH: Yeah, you -- you said full time since
11 January of '06.

12 PROSPECTIVE JUROR NO. 1154: Yes.

13 MS. STANISH: And you're going to move into a new
14 house in mid-August?

15 PROSPECTIVE JUROR NO. 1154: Yes, we're getting it
16 built now so.

17 MS. STANISH: Okay. Have you or anybody close to you
18 had any negative experience with anybody in the medical
19 profession?

20 PROSPECTIVE JUROR NO. 1154: No. One time, like a
21 few years ago, I went to the doctor for some symptoms that I
22 was having and it was, like, misdiagnosed but -- and then I
23 ended up having, like, an allergic reaction to the medicine,
24 but, I mean, I wasn't, like, I hate that doctor or anything.
25 You know, I mean, it happens.

1 MS. STANISH: Yeah, it happens. All right. You
2 heard Judge Adair talk about this morning some legal concepts,
3 the main one being that these two gentlemen are presumed to be
4 innocent. Is that a concept that you can agree to?

5 PROSPECTIVE JUROR NO. 1154: Yeah. I mean, going
6 back to the teacher thing again, I mean, it's always this
7 person did this and this kid did this to me and this kid did
8 this to me. And it's, like, okay, we got to stop, we got to
9 -- I can't -- you know, I can't just prejudge them based on
10 what somebody is saying, got to stop and listen to the facts
11 so.

12 MS. STANISH: And that's good. Probably one of the
13 main differences, though, when you have the fifth graders with
14 five different stories, as Judge Adair pointed out, the
15 Defendants aren't obligated to tell their side of the story.

16 PROSPECTIVE JUROR NO. 1154: Yes.

17 MS. STANISH: We don't have to present any evidence
18 to overcome that presumption of innocence. It's entirely up
19 to the State of Nevada to prove beyond a reasonable doubt that
20 these gentlemen are guilty of the elements of the offense.
21 And by that I mean kind of the ingredients of the crime, the
22 mental element as well as the action that's connected with
23 each of those offenses.

24 PROSPECTIVE JUROR NO. 1154: Okay. And, I mean, I
25 don't know how it works, so, like, it could be -- it's not

1 like guilty for everything or innocent for everything. I
2 mean, it's -- it's -- individual.

3 MS. STANISH: And the Judge is going to -- the Judge
4 is going to give you really detailed instructions that will
5 explain the procedures, but, you know, you've heard that there
6 are several offenses and you'll have to listen to evidence on
7 each and every offense and make a decision on each and every
8 offense. What I wanted to distinguish for you and make sure
9 you were clear on it was we're not obligated to tell a side of
10 the story. It's entirely up to the government to prove the
11 case beyond a reasonable doubt.

12 PROSPECTIVE JUROR NO. 1154: Okay.

13 MS. STANISH: You understand that?

14 PROSPECTIVE JUROR NO. 1154: Yes, that they have to
15 prove -- they have to provide all of the proof of guilt and
16 you don't have to rebuttal anything. It's just all up to
17 them, right?

18 MS. STANISH: Correct. You get an A.

19 PROSPECTIVE JUROR NO. 1154: Okay.

20 MS. STANISH: Do you watch television, police or law
21 enforcement like TV shows?

22 PROSPECTIVE JUROR NO. 1154: Once in a while, not a
23 lot, but once in a while I'll watch -- not really cops or
24 anything, but, like, in the summer when I'm home I'll watch,
25 like, court shows and stuff and stuff like that.

1 MS. STANISH: And is there anything we haven't asked
2 you that you think will bear on your ability to be fair in
3 this case?

4 PROSPECTIVE JUROR NO. 1154: No, not that I can think
5 of.

6 MS. STANISH: Okay. Thanks.

7 PROSPECTIVE JUROR NO. 1154: You're welcome.

8 MR. SANTACROCE: Good morning, Mrs. Conti.

9 PROSPECTIVE JUROR NO. 1154: Good morning.

10 MR. SANTACROCE: Slash good afternoon.

11 PROSPECTIVE JUROR NO. 1154: Yeah.

12 MR. SANTACROCE: You teach at Dean Petersen
13 Elementary School?

14 PROSPECTIVE JUROR NO. 1154: Yes, that's correct.

15 MR. SANTACROCE: Where's that at?

16 PROSPECTIVE JUROR NO. 1154: It's Maryland and Twain.
17 It's across from the Boulevard Mall on the east side.

18 MR. SANTACROCE: And how long have you been teaching
19 there?

20 PROSPECTIVE JUROR NO. 1154: Seven years.

21 MR. SANTACROCE: At the same school?

22 PROSPECTIVE JUROR NO. 1154: Same school, yeah.

23 [Inaudible.]

24 MR. SANTACROCE: And you enjoy that?

25 PROSPECTIVE JUROR NO. 1154: I do. It's really

1 challenging, but, I enjoy it.

2 MR. SANTACROCE: Challenging in what way? Because of
3 the student population or?

4 PROSPECTIVE JUROR NO. 1154: Yeah, just student
5 population, parental involvement. Yeah, stuff like that,
6 exactly.

7 MR. SANTACROCE: You're -- you're going to be off for
8 the summer here pretty quickly?

9 PROSPECTIVE JUROR NO. 1154: Yes.

10 MR. SANTACROCE: What -- do you have plans for the
11 summer?

12 PROSPECTIVE JUROR NO. 1154: No. My only plans are
13 to pack up and get ready to move to my new house, that's it.

14 MR. SANTACROCE: Sounds good. And in your spare time
15 what do you like to do?

16 PROSPECTIVE JUROR NO. 1154: Really, just relax,
17 watch movies.

18 MR. SANTACROCE: What kind of movies? What's the
19 last movie you saw?

20 PROSPECTIVE JUROR NO. 1154: Last movie I saw?
21 Probably -- on TV or at the movie theater?

22 MR. SANTACROCE: Movie theater.

23 PROSPECTIVE JUROR NO. 1154: I don't know that it
24 makes a difference. I think my husband made me go see The
25 Hobbit, that's the last one.

1 MR. SANTACROCE: Your husband made you go?

2 PROSPECTIVE JUROR NO. 1154: Made me go see it, yes.

3 It's a long movie.

4 MR. SANTACROCE: You made a statement earlier that I
5 want to kind of explore a little bit.

6 PROSPECTIVE JUROR NO. 1154: Okay.

7 MR. SANTACROCE: You said that it was horrible that
8 all those people got Hepatitis; and I think everyone in this
9 room would agree with that statement, it is horrible. My
10 question to you is: We probably will or anticipate that some
11 of these people will come and testify. Are you going to base
12 your decision on sympathy for those people or the facts of the
13 case?

14 PROSPECTIVE JUROR NO. 1154: No. I mean, I would
15 like to hope -- to be honest, I would like to hope that I
16 would base it on the facts. I mean, I feel bad for those
17 people because, obviously, it wasn't any of their behavior
18 that caused them to get that.

19 MR. SANTACROCE: Right.

20 PROSPECTIVE JUROR NO. 1154: But I would like to
21 think that I could just base it on the facts.

22 MR. SANTACROCE: Well, we need a little bit more than
23 you would like to think --

24 PROSPECTIVE JUROR NO. 1154: Yes.

25 MR. SANTACROCE: -- that. We need a little bit

1 more --

2 PROSPECTIVE JUROR NO. 1154: Yes.

3 MR. SANTACROCE: -- definitive answer. Can you do it
4 or not?

5 PROSPECTIVE JUROR NO. 1154: Yeah, I -- I think I
6 can.

7 MR. SANTACROCE: Okay. On your questionnaire you
8 said that you were a victim of an attempted home invasion.

9 PROSPECTIVE JUROR NO. 1154: Yes.

10 MR. SANTACROCE: But that they had not gained entry?

11 PROSPECTIVE JUROR NO. 1154: Yes, that's correct.

12 MR. SANTACROCE: Was there -- were the people caught?

13 PROSPECTIVE JUROR NO. 1154: One of the two people
14 were caught. As far as, it was a few years ago, as far as I
15 know I never heard anything about the other person was caught.
16 So I know the one person was caught, and my husband and I, we
17 were subpoenaed to go to the court case; but then we never had
18 to testify or anything because I think he had, like, some
19 warrants out or something and he took, like, a plea so we
20 didn't --

21 MR. SANTACROCE: In that process did you work with
22 the District Attorney's Office?

23 PROSPECTIVE JUROR NO. 1154: No, not really. Just
24 the day that we got subpoenaed, the person -- I don't even
25 remember who it was. I remember it was a guy. He was just,

1 like, okay, sit there, they might call you, they might not
2 call you.

3 MR. SANTACROCE: And was your experience with that
4 sort of the criminal justice system, was it favorable or
5 unfavorable, the way the case was handled?

6 PROSPECTIVE JUROR NO. 1154: I mean, I believe it was
7 favorable because, I mean, something -- I don't know what his
8 sentence was or what actually happened to him; but, as far as
9 I knew, something -- he was sentenced to something for some
10 crime that he had committed at some time. So I felt, like,
11 okay, well, it's good that he's not out on the street.

12 MR. SANTACROCE: And you were satisfied with the
13 outcome?

14 PROSPECTIVE JUROR NO. 1154: Yes, I was satisfied.

15 MR. SANTACROCE: Treated fine?

16 PROSPECTIVE JUROR NO. 1154: Yeah.

17 MR. SANTACROCE: You never served on a jury before,
18 correct?

19 PROSPECTIVE JUROR NO. 1154: No.

20 MR. SANTACROCE: Either here or Chicago?

21 PROSPECTIVE JUROR NO. 1154: Correct, no.

22 MR. SANTACROCE: Or anywhere?

23 PROSPECTIVE JUROR NO. 1154: No.

24 MR. SANTACROCE: Do you want to be on this jury?

25 PROSPECTIVE JUROR NO. 1154: I think it would be

1 really interesting, I do, because, I mean, I think it would be
2 -- not that the case itself would be interesting; but I think
3 being on a jury would be interesting and I wouldn't mind.

4 MR. SANTACROCE: You could be fair and impartial to
5 both sides?

6 PROSPECTIVE JUROR NO. 1154: Yes.

7 MR. SANTACROCE: You could give the Defense an even
8 chance as you would the prosecution?

9 PROSPECTIVE JUROR NO. 1154: Yes.

10 MR. SANTACROCE: You don't come into this courtroom
11 with any kind of preconceived biases or opinions that might
12 alter your view one way or the other?

13 PROSPECTIVE JUROR NO. 1154: No, but, like I said, I
14 don't really know, like, any of the facts of the case other
15 than what you guys said when we were sitting there, so, no.

16 MR. SANTACROCE: Thank you very much.

17 PROSPECTIVE JUROR NO. 1154: You're welcome.

18 THE COURT: All right. Thank you. Mr. Staudaher.

19 MR. STAUDAHER: Thank you, Your Honor. Just a couple
20 questions for you.

21 You mentioned in your -- in your questionnaire
22 something about your father was involved in some issue
23 withholding of his oxygen and him not being able to work
24 because of that, something along those -- can you explain that
25 a little bit more?

1 PROSPECTIVE JUROR NO. 1154: Oh, yeah. He was
2 working at a casino and he had -- he was supposed to wear an
3 oxygen tank, but I guess his supervisor wouldn't let him wear
4 it, so he quit because of it because he couldn't -- he had to
5 have the oxygen; and then it all settled out of case -- or out
6 of court.

7 MR. STAUDAHER: So it was a civil case?

8 PROSPECTIVE JUROR NO. 1154: Yes.

9 MR. STAUDAHER: Okay. And were you involved in that
10 at all?

11 PROSPECTIVE JUROR NO. 1154: No, not at all.

12 MR. STAUDAHER: You had mentioned earlier when you
13 were kind of asking will you have to -- have to make a
14 decision, you know, proof beyond a reasonable doubt on every
15 charge to say guilty or is it then not guilty, that kind of
16 thing. I want to make sure you're clear on something, and the
17 Judge is, at the end, is going to give you the law.

18 PROSPECTIVE JUROR NO. 1154: Okay.

19 MR. STAUDAHER: Which you will have to take the facts
20 and the evidence and apply to.

21 PROSPECTIVE JUROR NO. 1154: Okay.

22 MR. STAUDAHER: That's going to be your road map or
23 your -- or your instructions, so to speak. The State is
24 required to prove the essential elements or the subparts of
25 each crime beyond a reasonable doubt --

1 PROSPECTIVE JUROR NO. 1154: Okay.

2 MR. STAUDAHER: -- and you have to make a
3 determination separately and distinctly on each crime, not
4 collectively --

5 PROSPECTIVE JUROR NO. 1154: Okay.

6 MR. STAUDAHER: -- up or down, but individual crime.
7 So there might be some that you say, you know, the State did
8 it; some that you say the State didn't do it. Would you be
9 able to come back with individual verdicts of guilty or
10 innocent or rather -- not guilty, rather, on each and every
11 charge as it's presented?

12 PROSPECTIVE JUROR NO. 1154: Yeah, I think that would
13 be easier, that's why I asked that because I think it would be
14 easier to say individually, okay, we presented enough facts
15 where I can say, yes, guilty or innocent, other than just -- I
16 think that's easier than proving them all together, that's why
17 I asked.

18 MR. STAUDAHER: I just want to make sure you're
19 clear --

20 PROSPECTIVE JUROR NO. 1154: Yes.

21 MR. STAUDAHER: -- that that's the way it would be
22 presented to you and you could do that?

23 PROSPECTIVE JUROR NO. 1154: Okay. Yes.

24 MR. STAUDAHER: Any problem with that, religious,
25 philosophical reasons, anything that might be difficult for

1 you to do that?

2 PROSPECTIVE JUROR NO. 1154: No.

3 MR. STAUDAHER: You can stand and actually take the
4 evidence and judge another person, or at least their actions
5 or inactions, based on what you hear and what the Judge gives
6 to you as far as the law's concerned?

7 PROSPECTIVE JUROR NO. 1154: Yes.

8 MR. STAUDAHER: Pass for cause, Your Honor.

9 THE COURT: All right. Thank you. Ma'am, you may be
10 selected as a juror in this case. I'm not going to make you
11 wait around today while we question all of the other jurors,
12 so you're free to leave for today. But because you still may
13 be selected to serve, you have to make sure that Kenny has a
14 good number for you, and if we call you and tell you -- tell
15 you that you have been selected, obviously you have to come
16 back when we tell you to come back.

17 PROSPECTIVE JUROR NO. 1154: Okay.

18 THE COURT: Also because you may be a juror in this
19 case the prohibition about speaking about the case, read,
20 watch or listen to anything relating to the case, forming,
21 expressing an opinion, still in effect. Additionally, I must
22 admonish you that you're not to discuss what just transpired
23 in the courtroom with anyone else, meaning my questions, the
24 lawyers' questions, your answers in our discussions, so forth.

25 PROSPECTIVE JUROR NO. 1154: Okay.

1 THE COURT: All right. Thank you, ma'am.
2 PROSPECTIVE JUROR NO. 1154: Thank you.
3 THE COURT: You are excused for today. Please check
4 back out through Jury Services.
5 PROSPECTIVE JUROR NO. 1154: Thank you.
6 (Prospective Juror No. 1154 exited.)
7 THE COURT: Defense passes for cause?
8 MR. WRIGHT: Yes.
9 MR. SANTACROCE: Yes.
10 MS. STANISH: Yes.
11 THE COURT: All right. This next guy, Mr. Orzal, may
12 have a hardship, I don't know, other things, other issues.
13 (Court recessed at 12:08 p.m. until 12:13 p.m.)
14 THE COURT: All right. Well, find out what number he
15 is. Next up is Jonathan Orzaz.
16 THE CLERK: Orzal.
17 THE COURT: Huh? Orzal. Oh. Maybe we'll have five
18 before lunch.
19 (Prospective Juror No. 1158 entered.)
20 THE COURT: Sir, come on in and have a seat there in
21 the jury box. Good afternoon, sir. Have a seat. I wanted to
22 follow up on your questionnaire. It says here that it would
23 be a hardship for you to serve because your father's a stroke
24 patient and you're his care giver; is that right?
25 PROSPECTIVE JUROR NO. 1158: Correct.

1 THE COURT: And who watches your father or who cares
2 for him when you're at work?

3 PROSPECTIVE JUROR NO. 1158: My sister and I take
4 turns. When I'm at work -- she also -- she also works so we
5 try to keep it within a couple of hours of them being left
6 alone.

7 THE COURT: Okay. When you say "them," who are you
8 talking about? Your mom and dad?

9 PROSPECTIVE JUROR NO. 1158: I'm sorry. No, no.
10 It's just my father.

11 THE COURT: Okay. And then what -- when do you
12 normally work?

13 PROSPECTIVE JUROR NO. 1158: I'm sorry?

14 THE COURT: What's your normal work shift?

15 PROSPECTIVE JUROR NO. 1158: I'm a project
16 superintendent in construction, so I work 24/7. I'm on-call
17 24/7.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 1158: Usually from 6:00 to
20 6:00, 6:00 a.m. to 6:00 p.m.

21 THE COURT: Daytime work?

22 PROSPECTIVE JUROR NO. 1158: Yes.

23 THE COURT: And is that Monday through Friday that
24 you're normally working?

25 PROSPECTIVE JUROR NO. 1158: Saturdays and Sundays

1 also.

2 THE COURT: Okay. So fair to say your sister
3 typically has to watch your father during the daytimes and you
4 watch your father at the nighttime?

5 PROSPECTIVE JUROR NO. 1158: Correct.

6 THE COURT: So if you were serving that would not be
7 any different because we're -- we're 9:00 to 5:00 operation
8 here. Occasionally a little bit longer, but, you know,
9 definitely not 6:00 a.m. and we try to finish by 5:00. So
10 that would not be a change, fair to say?

11 PROSPECTIVE JUROR NO. 1158: Okay.

12 THE COURT: Okay. And then do you know if your
13 employer pays you if you're going to be -- as a supervisor I
14 would imagine so?

15 PROSPECTIVE JUROR NO. 1158: I don't know.

16 THE COURT: You didn't ask?

17 PROSPECTIVE JUROR NO. 1158: No.

18 THE COURT: Okay. You said your personal friend was
19 a patient of the clinic; and how do you know that? He told
20 you or he or she --

21 PROSPECTIVE JUROR NO. 1158: Actually, my
22 father-in-law, my ex-father-in-law, but we're still really
23 close and we still work together and we talk on a --

24 THE COURT: Okay. What did he tell you?

25 PROSPECTIVE JUROR NO. 1158: I'm sorry.

1 THE COURT: Microphone closer.

2 PROSPECTIVE JUROR NO. 1158: I'm sorry.

3 THE COURT: What did your ex-father-in-law tell you
4 relating to the fact that he was a patient?

5 PROSPECTIVE JUROR NO. 1158: Well, it's, you know, he
6 had to go through all the testing, you know, afterwards. And
7 this is before, you know, I found out about this -- this jury
8 duty and what was involved, who was involved here.

9 THE COURT: Right. So he told you he had to go
10 through the testing. Did he tell you anything else?

11 PROSPECTIVE JUROR NO. 1158: Yeah, yeah.

12 THE COURT: Well, what did he tell you?

13 PROSPECTIVE JUROR NO. 1158: He told me --

14 THE COURT: That's why we're in here all by
15 ourselves --

16 PROSPECTIVE JUROR NO. 1158: No, I -- I understand.
17 I'm just --

18 THE COURT: -- because --

19 PROSPECTIVE JUROR NO. 1158: -- trying to think of
20 what --

21 THE COURT: -- because basically we just want the
22 truth from you --

23 PROSPECTIVE JUROR NO. 1158: Sure. Oh, absolutely.

24 THE COURT: -- whatever he told you, you know, that's
25 why the other jurors aren't sitting here. It's just, you

1 know, the lawyers, the Defendants, me, the staff, and, you
2 know, a few -- a few other people who are here.

3 PROSPECTIVE JUROR NO. 1158: Right, right.

4 THE COURT: So what exactly did your father-in-law or
5 ex-father-in-law tell you, just as near as you can remember?

6 PROSPECTIVE JUROR NO. 1158: As much as I remember,
7 he said that, you know, he'd have to go in for his colon deals
8 all the time. He doesn't have insurance so it's like every
9 time he'd go in there they'd always ask him for, you know,
10 other -- you know, a few hundred dollars or whatever just to,
11 you know, be seen, so, you know. And then, of course, the
12 testing that followed after that for the --

13 THE COURT: Hepatitis.

14 PROSPECTIVE JUROR NO. 1158: -- the Hepatitis, yeah.

15 THE COURT: Was he impacted by having to get tested?

16 PROSPECTIVE JUROR NO. 1158: That I really don't know
17 because he has, you know, so many things have happened after
18 that. Like, he has something with his eye, and I don't know
19 if it's tied into anything like that; but he didn't have these
20 problems until after, you know, this whole thing happened, so,
21 you know.

22 THE COURT: So is he blaming the eye problems on the
23 endoscopy center?

24 PROSPECTIVE JUROR NO. 1158: I have no idea.

25 THE COURT: Okay. All right. But he's had a lot of

1 other medical problems?

2 PROSPECTIVE JUROR NO. 1158: Not prior to that, no.

3 THE COURT: Okay. Are you close with this person?

4 PROSPECTIVE JUROR NO. 1158: Yes. Like I said, we
5 talked -- in fact, I saw him on Saturday.

6 THE COURT: Okay. Anything about your relationship
7 with this person who did have to go and get tested and get the
8 Hepatitis test that would cause you to automatically be biased
9 toward or against -- for or against either side?

10 PROSPECTIVE JUROR NO. 1158: Well, we -- we both
11 actually -- his daughter, my ex-wife, we -- to be honest with
12 you, we don't like doctors at all. We don't like the, you
13 know, the medical field here, you know, in Las Vegas, only
14 because her previous experience with doctors. We try to avoid
15 them like the plague only because of what we've all
16 experienced here.

17 THE COURT: So you've had your own bad experiences
18 with doctors?

19 PROSPECTIVE JUROR NO. 1158: Oh, absolutely, yeah.

20 THE COURT: Okay. Counsel, approach?

21 (Off-record bench conference.)

22 THE COURT: Mr. Orzal, is it?

23 PROSPECTIVE JUROR NO. 1158: Yes.

24 THE COURT: Okay. We're going to go ahead and excuse
25 you at this point. Before I do that I must admonish you that

1 you're not to discuss anything that's transpired in the
2 courtroom with anybody else, meaning my questions, your
3 answers, and so forth; do you understand?

4 PROSPECTIVE JUROR NO. 1158: I understand. Like I
5 said, even before I found out --

6 THE COURT: That's okay.

7 PROSPECTIVE JUROR NO. 1158: -- what was involved
8 here --

9 THE COURT: That's okay.

10 PROSPECTIVE JUROR NO. 1158: -- my father-in-law, he
11 just told me --

12 THE COURT: That's why we're excusing you because
13 your ex-father-in-law was a patient.

14 PROSPECTIVE JUROR NO. 1158: But also my boss --

15 THE COURT: Oh, okay.

16 PROSPECTIVE JUROR NO. 1158: -- is actually a patient
17 also.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 1158: Or was a patient.

20 THE COURT: That's even more reason. But, luckily
21 for you or unluckily, I don't know, maybe you wanted to serve,
22 we are going to excuse you at this point, okay?

23 PROSPECTIVE JUROR NO. 1158: All right. Thank you.

24 THE COURT: I just don't want you to talk to the
25 other jurors or anybody else about the reason you were

1 excused, you understand?

2 PROSPECTIVE JUROR NO. 1158: I understand, that's why
3 I really didn't know what to say much because of the -- the
4 doctor-patient thing or the confidentiality thing. I didn't
5 know what to say.

6 THE COURT: Oh, I see. You were concerned about
7 that. That's okay because, you know, it was pursuant to a
8 judicial -- essentially an order that you had to complete
9 these honestly, so I wouldn't worry about it if I were you.

10 PROSPECTIVE JUROR NO. 1158: I understand.

11 THE COURT: Do you understand it's not like you just
12 volunteered the information? You were placed under oath and
13 you were asked the questions, so you have to answer us
14 truthfully.

15 PROSPECTIVE JUROR NO. 1158: I understand.

16 THE COURT: Okay. Thank you, sir, for being here.
17 You can put the microphone down in the chair and check out
18 through the third floor in Jury Services again, okay?

19 PROSPECTIVE JUROR NO. 1158: Okay. Thank you.

20 THE COURT: Thank you, sir.

21 (Prospective Juror No. 1158 exited.)

22 THE COURT: Did you find out who the diabetic is?

23 THE MARSHAL: Yes.

24 THE COURT: Which one?

25 THE MARSHAL: 1217.

1 THE COURT: Which one?
2 THE MARSHAL: Juror No. 1217.
3 THE COURT: Okay. He's way at the end. He can go to
4 lunch. We have a diabetic who's -- what's his name?
5 THE CLERK: David Bees.
6 THE COURT: So he's at the end pretty close, right?
7 THE MARSHAL: Yes, Judge.
8 THE COURT: Pull him aside and tell him he can go to
9 lunch. I'm not finding him, but --
10 MS. STANISH: What was the number on him?
11 THE CLERK: 1217.
12 MS. STANISH: Thank you.
13 THE COURT: I'm not finding it.
14 MR. STAUDAHER: David Bees.
15 THE COURT: Oh, okay. 1217. Yeah, he's -- he's
16 pretty -- yeah, he can go now if he needs to.
17 THE MARSHAL: What time would you like me to have him
18 report back?
19 THE COURT: Probably never for him; but tell him
20 2:00, 1:45 or 2:00.
21 THE MARSHAL: Okay.
22 THE COURT: Okay. Pull him to the side, though.
23 THE MARSHAL: I will. Would you like me to bring
24 Conner in?
25 THE COURT: Not yet. For the record, the Defense

1 indicated that they were going to challenge for cause because
2 of the fact that his ex-father-in-law had been treated at the
3 clinic and had to have testing for Hepatitis; is that correct?

4 MR. WRIGHT: Yes, plus he's a doctor-hater.

5 THE COURT: Well, and usually we get lawyer-haters
6 and that was submitted by the State, correct?

7 MS. WECKERLY: Correct.

8 THE COURT: All right. Off the record.

9 (Pause in proceedings.)

10 THE COURT: All right. Conner is next, Cheryl
11 Conner.

12 (Prospective Juror No. 1162 entered.)

13 THE COURT: Ma'am, just have a seat there, please, in
14 the jury box. Over here. Anywhere you're comfortable. Good
15 afternoon.

16 PROSPECTIVE JUROR NO. 1162: Good afternoon.

17 THE COURT: I wanted to follow up on a couple of
18 answers here in your questionnaire. And you indicated that
19 you had met a former patient of the clinic, but that you don't
20 really remember this person's name. Can you elaborate on that
21 a little bit? How did you meet the person and what were you
22 told?

23 PROSPECTIVE JUROR NO. 1162: Well, the person that I
24 met that had attended, I was in a -- in a class at the gym in
25 the aqua class, and a woman came in and we got to talking

1 about, you know, just life's issues, and she just had told me
2 that she had been involved with this latest clinic and she had
3 been called back and she was going to have to go through some
4 testing and recalling it once again to have some additional
5 testing, blood testing done.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR NO. 1162: I don't really remember
8 her name. I really couldn't even tell you who she was.

9 THE COURT: Okay. Is this somebody that you see
10 pretty regularly or still see in the aqua class --

11 PROSPECTIVE JUROR NO. 1162: No.

12 THE COURT: -- or kind of more like you saw her that
13 one time?

14 PROSPECTIVE JUROR NO. 1162: That's correct.

15 THE COURT: Okay. Anything about that interaction
16 with this woman in your aqua class that would impact your
17 ability to be fair and impartial to both sides in this case?

18 PROSPECTIVE JUROR NO. 1162: Probably not.

19 THE COURT: Okay. Any hesitation? Because it took
20 you a minute to answer.

21 PROSPECTIVE JUROR NO. 1162: Well, I do hesitate, I
22 do, because I've kind of gotten this outlook on medical
23 procedures and it's personal because of my own father and he's
24 had some really horrible experiences based on some of the
25 testing that he's done, some of the results, some of the

1 medications that he's taken, some of the surgeries that he's
2 been involved with that have gotten me more involved in
3 pharmaceuticals, for example, and, you know, the over-
4 prescribing for his particular case; and so I've become quite
5 adamant about the healthcare system and kind of staying within
6 parameters of good health for an elderly person.

7 THE COURT: Okay. So you have kind of a negative
8 opinion of the healthcare system?

9 PROSPECTIVE JUROR NO. 1162: I do.

10 THE COURT: Okay. And is that relating to the
11 over-prescription of pharmaceutical drugs?

12 PROSPECTIVE JUROR NO. 1162: That's correct.

13 THE COURT: Is it also related to maybe over -- over
14 treating, so to speak, or is it more relating to -- when I say
15 over-treating, performing procedures that aren't necessary --

16 PROSPECTIVE JUROR NO. 1162: Absolutely.

17 THE COURT: -- and performing expensive tests that
18 aren't necessary, that sort of thing?

19 PROSPECTIVE JUROR NO. 1162: That's correct.

20 THE COURT: Okay. And this is a result of what?
21 Your father's experience, as well as what else?

22 PROSPECTIVE JUROR NO. 1162: Well, I personally, back
23 in the '90s, had -- I had a health issue arise where I was put
24 eventually into a hospital and I was misdiagnosed with Crohn's
25 disease; Crohn's disease being, you know, colonoscopy-related.

1 And so I had one test where the gastroenterologist gave me a
2 medication, which actually accelerated the symptoms that I was
3 having, which lead me to have another colonoscopy. And they
4 told me, No, you don't have Crohn's, you have irritable bowel
5 syndrome, which lead me [inaudible] year to have another
6 colonoscopy, which they said, No, you don't have irritable
7 bowel syndrome, you have something else.

8 And each time I was given a different drug, it -- it
9 -- it almost accelerated the condition, you know, it caused me
10 to have extreme diarrhea. And so, you know, little by little
11 I decided personally for me that that wasn't a good -- a good
12 situation. The last doctor that gave me the colonoscopy,
13 about a year and a half ago, said, You've got a healthy colon,
14 I don't know what's going on, but everything is fine for you.
15 So that was good news. And then my father, you know, he's
16 just -- he was on --

17 THE COURT: That was a local gastroenterologist?

18 PROSPECTIVE JUROR NO. 1162: It was.

19 THE COURT: Who was it?

20 PROSPECTIVE JUROR NO. 1162: Dr. Frank Nemec.

21 THE COURT: And so you're personally familiar with
22 Frank Nemec?

23 PROSPECTIVE JUROR NO. 1162: I am.

24 THE COURT: Okay. If Mr. or Dr. Nemec were called as
25 a witness in this particular matter, based on your contact

1 with him, would you tend to automatically believe or
2 disbelieve his testimony? Would you give it more weight kind
3 of automatically than you would the testimony of anybody else?

4 PROSPECTIVE JUROR NO. 1162: I do; I have a lot of
5 respect for the man.

6 THE COURT: Okay. I see Counsel up here?

7 (Bench conference off record.)

8 THE COURT: Ma'am, since you've been treated by
9 someone who may be a witness or is likely to be a witness in
10 this case, I'm going to go ahead and excuse you at this point.
11 I must admonish you, however, that you're not to discuss
12 anything that's transpired in the court with anybody else,
13 meaning my questions, your responses, and our discussion; do
14 you understand?

15 PROSPECTIVE JUROR NO. 1162: I understand.

16 THE COURT: All right. Thank you, ma'am.

17 PROSPECTIVE JUROR NO. 1162: Thank you.

18 THE COURT: And please check out through Jury
19 Services on the third floor.

20 PROSPECTIVE JUROR NO. 1162: Thank you.

21 (Prospective Juror No. 1162 exited.)

22 THE COURT: And for the record, at the bench it was
23 agreed that she be excused because she's been treated by Dr.
24 Nemec for whom she has very favorable opinions. All right.
25 Otilia McGovern, Badge -- who's next? Maybe today won't be as

1 easy as we thought.

2 (Prospective Juror No. 1170 entered.)

3 THE COURT: Ma'am, if you'd have a seat there in the
4 jury box. Good afternoon, ma'am.

5 PROSPECTIVE JUROR NO. 1170: Good afternoon, Your
6 Honor.

7 THE COURT: I wanted to follow up on a couple of
8 answers in your questionnaire. First of all, you indicated
9 that you may know of Satish Sharma?

10 PROSPECTIVE JUROR NO. 1170: Yes.

11 THE COURT: How is it that you think you might have
12 -- I guess heard of this person?

13 PROSPECTIVE JUROR NO. 1170: Because my former boss,
14 I'm a retired teacher now, he was called to -- to be tested.
15 I don't know all the details, I just remember the case; and I
16 knew a little bit more because he was called to be tested and
17 he --

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 1170: -- he didn't have any
20 problems, but we in the school would talk about it, you know,
21 and that was pretty much it.

22 THE COURT: Okay. And -- and why is it that you --
23 you --

24 PROSPECTIVE JUROR NO. 1170: And I think Sharma is
25 also a -- a cancer doctor that tested my husband at one time.

1 THE COURT: Okay. And so when you saw the name
2 Satish Sharma you thought, well, maybe this is the cancer
3 doctor that tested your husband?

4 PROSPECTIVE JUROR NO. 1170: Yeah.

5 THE COURT: Okay. When you say "tested your
6 husband," what test was performed?

7 PROSPECTIVE JUROR NO. 1170: Colonoscopy.

8 THE COURT: So you think this doctor did a
9 colonoscopy on your husband?

10 PROSPECTIVE JUROR NO. 1170: Yes.

11 THE COURT: Okay. And, well, a colonoscopy is never
12 a positive --

13 PROSPECTIVE JUROR NO. 1170: No, no.

14 THE COURT: -- you know, experience.

15 PROSPECTIVE JUROR NO. 1170: Uh-huh.

16 THE COURT: Did you form any opinions or impressions
17 about this Dr. Sharma?

18 PROSPECTIVE JUROR NO. 1170: It's been a while and,
19 I'm sorry, I don't remember all the details.

20 THE COURT: Well, that's fine if you don't. I mean,
21 if you don't remember or --

22 PROSPECTIVE JUROR NO. 1170: No, I don't know the
23 details. All I remember is in general the case and my husband
24 was in with one of those doctors, and that's it.

25 THE COURT: Okay. Did your husband go to the

1 colonoscopy -- or, I'm sorry, the Endoscopy Center on Shadow
2 Lane to have his procedure; do you know?

3 PROSPECTIVE JUROR NO. 1170: Shadow Lane?

4 THE COURT: Shadow Lane is kind of --

5 PROSPECTIVE JUROR NO. 1170: Yeah, I know where it
6 is. Shadow Lane, I'm trying to think. He -- he was there, he
7 was on the Desert Inn office. I don't think it was the Shadow
8 Lane because I drove him to --

9 THE COURT: Okay. You drove him to the procedure?

10 PROSPECTIVE JUROR NO. 1170: Yes.

11 THE COURT: Okay. Any opinions about -- okay. Let
12 me ask you this: You took your husband for the procedure.
13 Did you, like, go in the back and see the doctor or did you
14 just sit out in the waiting room and then, like, a nurse or
15 somebody comes --

16 PROSPECTIVE JUROR NO. 1170: I -- he wouldn't let me
17 go at that time, so I just left and I said, Call me when
18 you're done; and I went and picked him up.

19 THE COURT: Okay. So you didn't even go in the
20 building?

21 PROSPECTIVE JUROR NO. 1170: No, just --

22 THE COURT: So --

23 PROSPECTIVE JUROR NO. 1170: Just in the entrance
24 there, but not in the --

25 THE COURT: Okay. So if you saw, you know, this

1 Satish Sharma, you wouldn't recognize this person?

2 PROSPECTIVE JUROR NO. 1170: I don't think so, no,
3 no, because I didn't see the doctor.

4 THE COURT: Okay. All right. And then have you --
5 do you have any opinions of this Satish Sharma one way or the
6 other or do you even know it's the same person because, I
7 mean --

8 PROSPECTIVE JUROR NO. 1170: No, I don't know. I --
9 all it is is the names came to me like this doctor that is in
10 question now, the name came to my mind for some reason that
11 has been a while, I don't remember. To tell you the truth --

12 THE COURT: Okay. All right.

13 PROSPECTIVE JUROR NO. 1170: -- I wouldn't be able
14 to.

15 THE COURT: Okay. Now if this doctor -- you say you
16 won't recognize him, but if some Dr. Sharma testifies, would
17 you automatically believe or disbelieve that certain person's
18 testimony or could you listen to it with an open mind like you
19 would the testimony of anybody else, anybody off the street
20 that you didn't know or didn't think you had heard of?

21 PROSPECTIVE JUROR NO. 1170: Would I testify?

22 THE COURT: No, no. Where are you from?

23 PROSPECTIVE JUROR NO. 1170: Mexico.

24 THE COURT: Oh, okay. And how long -- you've been in
25 the United States how long?

1 PROSPECTIVE JUROR NO. 1170: For about fifty years.

2 THE COURT: Fifty years?

3 PROSPECTIVE JUROR NO. 1170: Forty -- no, forty,
4 forty years, yeah.

5 THE COURT: Okay. Let me ask you this: If someone,
6 a Dr. Sharma testifies, you wouldn't recognize the person, but
7 would you automatically believe or disbelieve that person's
8 testimony or could you listen to it with an open mind like you
9 would anybody else's testimony?

10 PROSPECTIVE JUROR NO. 1170: I think I'm a little
11 biased with his situation. I'm sorry. Not biased, but -- I
12 don't know. I think it's -- it's --

13 THE COURT: Just tell me. There's no right or wrong
14 answer. That's why we bring you in here --

15 PROSPECTIVE JUROR NO. 1170: I know, but --

16 THE COURT: -- individually because we want people to
17 be open.

18 PROSPECTIVE JUROR NO. 1170: No, I'm going back to
19 the philosophy [inaudible], you know, administrators stand for
20 administrators. So I'm thinking if this doctor is familiar
21 with this other doctor, well, you know, is he going to testify
22 fairly or honestly or he's going to -- I don't know. I have
23 to listen to the doctor or listen to --

24 THE COURT: Okay.

25 PROSPECTIVE JUROR NO. 1170: -- you know, it's --

1 it's --

2 THE COURT: Well, that's all we want. We just want
3 somebody who will listen to it the way -- open-minded. I
4 don't know what he's going to say.

5 PROSPECTIVE JUROR NO. 1170: Uh-huh.

6 THE COURT: Can you -- can you do that?

7 PROSPECTIVE JUROR NO. 1170: I don't know. I --

8 THE COURT: May I see Counsel up here?

9 (Bench conference off record.)

10 THE COURT: We're going to go ahead and excuse you at
11 this time.

12 PROSPECTIVE JUROR NO. 1170: Okay.

13 THE COURT: Before I let you go, I must tell you
14 you're not to discuss anything that's transpired in the
15 courtroom with anybody else, okay?

16 PROSPECTIVE JUROR NO. 1170: Yes.

17 THE COURT: That means my questions, your answers,
18 and so forth. Microphone in the chair and check out through
19 the third floor.

20 PROSPECTIVE JUROR NO. 1170: All right.

21 THE COURT: Thank you.

22 PROSPECTIVE JUROR NO. 1170: Thank you very much.

23 THE COURT: What did you teach in school? What do
24 you teach?

25 PROSPECTIVE JUROR NO. 1170: Bilingual education.

1 THE COURT: Okay. So do you get recent immigrants
2 and help them learn English?

3 PROSPECTIVE JUROR NO. 1170: Yes, yes. English as a
4 second language, and also the little ones, teach them
5 academics in Spanish so they understand the --

6 THE COURT: So they keep up?

7 PROSPECTIVE JUROR NO. 1170: Yeah, keep up, yes.

8 THE COURT: Okay. Thank you.

9 PROSPECTIVE JUROR NO. 1170: You're welcome.

10 (Prospective Juror No. 1170 exited.)

11 THE COURT: For the record, it was agreed that she
12 could be excused because her husband was treated by Dr.
13 Sharma. There may be a bit of a language issue to be
14 explained by the fact she's teaching in Spanish all day long.

15 MS. WECKERLY: That's correct.

16 THE COURT: So Margaret Stevens is next?

17 MR. SANTACROCE: How long are we going to go in this
18 session, Your Honor?

19 THE COURT: Until I can't stand it one more minute.
20 Are you super hungry?

21 MR. SANTACROCE: I'm at that point right now.

22 THE COURT: Well, let's do her. Can we do her and
23 then we'll take our lunch break?

24 MR. SANTACROCE: Okay.

25 THE COURT: So bring her in. Oh, I should have

1 excused everybody else for lunch. I wasn't thinking. See,
2 this is why I'm a fat person because I go forever without
3 eating.

4 (Prospective Juror No. 1172 entered.)

5 THE COURT: Ma'am, come on in and just have a seat
6 there in the jury box.

7 Kenny, just lead her in. Good afternoon, Ms.
8 Stevens. I wanted to follow up on some of your answers here
9 in the questionnaire. You indicated that you saw -- seen, I'm
10 sorry -- seen something about this case on the news; is that
11 correct?

12 PROSPECTIVE JUROR NO. 1172: Yes.

13 THE COURT: Can you tell me what you remember hearing
14 or seeing on the news about this case?

15 PROSPECTIVE JUROR NO. 1172: Just that it -- there
16 was a Hepatitis scare and they thought that people might be
17 getting Hepatitis from surgeries that they got.

18 THE COURT: Okay. Do you remember when you saw
19 something about this case? Was it a long time ago? Recently?
20 Or have you seen several things over time?

21 PROSPECTIVE JUROR NO. 1172: It's been a while.

22 THE COURT: Okay. A while meaning six months? A
23 year? More than that?

24 PROSPECTIVE JUROR NO. 1172: Probably a year or more.
25 I'm not sure.

1 THE COURT: Okay. And you say here in your
2 questionnaire that you haven't formed any opinion as a result;
3 is that true?

4 PROSPECTIVE JUROR NO. 1172: Yes, that's true.

5 THE COURT: Okay. Do you accept the statement or do
6 you think it's a fair statement that often the news media
7 reports things either incorrectly or inaccurately?

8 PROSPECTIVE JUROR NO. 1172: Yeah. I think that's
9 possible. I think it's one-sided sometimes.

10 THE COURT: Okay. If you're selected as a juror do
11 you understand that your duty would be to base your decision
12 upon only the evidence that's presented during the trial, and
13 by that I mean the testimony from the witness stand and the
14 documents and other things that are admitted into evidence as
15 exhibits?

16 PROSPECTIVE JUROR NO. 1172: Yes.

17 THE COURT: Could you do that if you remember, Hey, I
18 think I saw something on the news or I may have heard
19 something about that, can you set that out of your mind and
20 base your verdict solely upon what's presented here in the
21 courtroom?

22 PROSPECTIVE JUROR NO. 1172: Yes.

23 THE COURT: Okay. As you sit here today, do you have
24 any concern about whether or not you can be completely fair
25 and impartial to both sides if you are selected as a juror in

1 this matter?

2 PROSPECTIVE JUROR NO. 1172: No, I think that I can
3 do that.

4 THE COURT: You can be fair and impartial?

5 PROSPECTIVE JUROR NO. 1172: Yes.

6 THE COURT: All right. Thank you. Ms. Stanish,
7 would you like to follow up with Ms. Stevens?

8 MS. STANISH: Thank you, Your Honor. I was going to
9 say good morning, but good afternoon. How are you? All
10 right. So you -- you saw this on the news about a year ago,
11 you think?

12 PROSPECTIVE JUROR NO. 1172: It -- it might be
13 longer. I'm trying to remember and I think it's maybe more
14 than two, but I'm not sure because we -- I've moved since then
15 and I'm thinking it was in the old house.

16 MS. STANISH: All right. And are you -- were you
17 familiar with some of the -- what you heard earlier with civil
18 litigation going on in connection with this case?

19 PROSPECTIVE JUROR NO. 1172: Meaning do I understand
20 what civil litigation is or --

21 MS. STANISH: No. Maybe we should talk about that
22 later. But do you -- do you -- were you familiar based on
23 what you saw on the news with there being civil litigation
24 involved in this case?

25 THE COURT: I think the questions is: Were you aware

1 from anything you saw --

2 PROSPECTIVE JUROR NO. 1172: No.

3 THE COURT: -- in the news that there was some civil
4 lawsuits that had some trials, things like that? Were you
5 aware of that?

6 PROSPECTIVE JUROR NO. 1172: No, I wasn't aware that
7 was going on. I -- I'm not surprised that that happened, but
8 I didn't -- wasn't aware of it.

9 MS. STANISH: Is what -- is what you saw on TV, was
10 it in connection with the criminal case?

11 PROSPECTIVE JUROR NO. 1172: No. It was kind of like
12 when it happened and they were just saying, you know, that
13 people had to get tested or checked and that kind of thing.

14 MS. STANISH: All right. And did you talk to anyone
15 or know anyone who had any -- who went to the clinic or got
16 one of those notices from the health district?

17 PROSPECTIVE JUROR NO. 1172: I think my friend's
18 sister-in-law did; but I don't know whatever came of that and
19 I haven't talked to her in a long time either. Our kids went
20 to school together.

21 MS. STANISH: Anything about that relationship and
22 the fact that the sister -- your sister-in-law's friend or
23 whatever that person was --

24 PROSPECTIVE JUROR NO. 1172: She was the mom of my --
25 my son's best friend, so we talked on the playground; and then

1 when we moved we were in different schools so I don't -- I
2 really don't -- that's all I knew was that she might have to
3 go get a test.

4 MS. STANISH: Okay. And was -- was there anything
5 about that encounter with her that would cause you difficulty
6 in being fair in this case?

7 PROSPECTIVE JUROR NO. 1172: No. I don't know her
8 sister-in-law. I know a lot of people had to get tests. I --
9 I don't even know how it came out. It probably came out well
10 because I didn't hear about it again.

11 MS. STANISH: Looks like you've been in the property
12 management business for some time?

13 PROSPECTIVE JUROR NO. 1172: Yes, a long time.

14 MS. STANISH: As well as doing eviction work?

15 PROSPECTIVE JUROR NO. 1172: Yes.

16 MS. STANISH: Did that involve you having to go to
17 court?

18 PROSPECTIVE JUROR NO. 1172: Yes.

19 MS. STANISH: And so you understand that's all civil
20 proceedings?

21 PROSPECTIVE JUROR NO. 1172: Yes, I understand the
22 difference between civil and criminal.

23 MS. STANISH: Okay. And one of those main
24 differences is what Judge Adair mentioned earlier this
25 morning, that these two gentlemen are presumed innocent and

1 the Defense doesn't have to submit -- present evidence to show
2 that they're innocent. It is presumed. Is that a concept you
3 can accept and agree with?

4 PROSPECTIVE JUROR NO. 1172: Yes. I understand that
5 in a civil court has to be more likely than not; but in a
6 criminal court that's not the rule. It's totally different
7 there. It's presumed innocent until proven guilty.

8 MS. STANISH: Correct. And then there's -- I think
9 Judge Adair mentioned this too. The State has to prove beyond
10 a reasonable doubt that these two gentlemen are guilty of each
11 and every part of the crime, the mental element of the crime
12 and the physical part of the crime; do you understand that?

13 PROSPECTIVE JUROR NO. 1172: Yes.

14 MS. STANISH: And I see that you mentioned your
15 mother and sister worked in the hospital, St. Rose, I believe?

16 PROSPECTIVE JUROR NO. 1172: Uh-huh.

17 MS. STANISH: Can you tell me what they both do
18 there?

19 PROSPECTIVE JUROR NO. 1172: Right now my mom's the
20 administrative assistant to the head of nursing. She's always
21 worked in the hospital setting since I was little. She's been
22 a CNA, a ward clerk. She's just always been -- a telemetry
23 technician. She's always worked in a hospital. And my sister
24 started in hospitals too and she started working -- she works
25 in medical records, and she's also been a unit secretary, and

1 right now I think she does their -- works in their payroll.

2 MS. STANISH: Either one -- do either one of them or
3 have either one of them worked in the billing area?

4 PROSPECTIVE JUROR NO. 1172: No.

5 MS. STANISH: Looks -- looks to me like you went to
6 -- you have some college. Can you tell us what you studied in
7 college?

8 PROSPECTIVE JUROR NO. 1172: It was just general,
9 nothing -- no -- no specific area.

10 MS. STANISH: Are you from Vegas originally?

11 PROSPECTIVE JUROR NO. 1172: I've been here over 26
12 years.

13 MS. STANISH: Well, you practically are. Where are
14 you from?

15 PROSPECTIVE JUROR NO. 1172: I was born in Tucson,
16 Arizona, and then I lived in Elko, Nevada for a little while,
17 and then here.

18 MS. STANISH: What did you do up in Elko?

19 PROSPECTIVE JUROR NO. 1172: I was in school. My dad
20 worked at the gold mines. He was supervisor of mechanics.

21 MS. STANISH: It looks like you have your hands full
22 with four kids.

23 PROSPECTIVE JUROR NO. 1172: Four boys.

24 MS. STANISH: Are all of them at home?

25 PROSPECTIVE JUROR NO. 1172: No. Two are still home.

1 The older two are out and gone. I have a 15 and a 13-year-old
2 boy.

3 MS. STANISH: Okay. This trial's expected to go
4 through the month of May. We're already in May, aren't we?
5 And then probably go into the month of June a bit. Is there
6 anything about the length of that trial that is going to
7 create an issue for you?

8 PROSPECTIVE JUROR NO. 1172: Work, I guess. It
9 would, you know, it wouldn't be good to miss that much work;
10 but I don't know if that's a reason or not.

11 MS. STANISH: How are you -- how are you compensated
12 at your job?

13 PROSPECTIVE JUROR NO. 1172: I'm paid salary, so I
14 probably still would be paid.

15 MS. STANISH: Did you check with your employer on
16 that?

17 PROSPECTIVE JUROR NO. 1172: No, because my boss has
18 been out of town; but they're pretty liberal about things like
19 that, so I don't see it being a problem.

20 MS. STANISH: All right. You were an alternate on a
21 jury -- on a jury; is that correct?

22 PROSPECTIVE JUROR NO. 1172: Yes. The Federal
23 building, that's where they had that trial.

24 MS. STANISH: And when was that?

25 PROSPECTIVE JUROR NO. 1172: Two or three years ago.

1 MS. STANISH: And what kind of case was it?

2 PROSPECTIVE JUROR NO. 1172: The guy did not want to
3 have his bag checked to go through security and so they told
4 him he couldn't take the bag if they didn't check it, so he
5 decided to grab the bag and run through security on his own
6 and then was upset when the police arrested him; and he
7 defended himself.

8 THE COURT: Don't tell us what the verdict was.

9 MS. STANISH: All right. But you didn't -- you
10 didn't render the verdict? You were --

11 PROSPECTIVE JUROR NO. 1172: No.

12 MS. STANISH: -- booted before you got into the --
13 the deliberation room?

14 PROSPECTIVE JUROR NO. 1172: No, I honestly thought
15 he was kind of crazy, but.

16 THE COURT: But you didn't get to deliberate on that
17 jury?

18 PROSPECTIVE JUROR NO. 1172: No.

19 THE COURT: How did you feel about that?

20 PROSPECTIVE JUROR NO. 1172: I -- I don't know. I
21 guess it was good. I get that it's important that you be
22 there. I was kind of frustrated that I sat through it and
23 didn't get to help; but I understood.

24 THE COURT: You understood that that's in case, like,
25 somebody gets sick or something like that?

1 PROSPECTIVE JUROR NO. 1172: Right, or for whatever
2 reasons.

3 THE COURT: Okay.

4 MS. STANISH: All right. All right. Looks like you
5 didn't circle any of the many, many names that are listed
6 here.

7 PROSPECTIVE JUROR NO. 1172: I do not see anybody
8 that I knew on there.

9 MS. STANISH: I have nothing further, Your Honor.

10 THE COURT: All right. Thank you. Mr. Santacroce?

11 MR. SANTACROCE: Hello, Ms. Stevens.

12 PROSPECTIVE JUROR NO. 1172: Hi.

13 MR. SANTACROCE: How are you?

14 PROSPECTIVE JUROR NO. 1172: Good.

15 MR. SANTACROCE: I just have a couple of questions.

16 PROSPECTIVE JUROR NO. 1172: Sure.

17 MR. SANTACROCE: Which homeowner's association do you
18 manage?

19 PROSPECTIVE JUROR NO. 1172: I manage 15 right now,
20 so you want all the names?

21 MR. SANTACROCE: I just want to make sure I don't
22 live in one of them.

23 PROSPECTIVE JUROR NO. 1172: I work for the
24 management trust, so would that be your management company?

25 MR. SANTACROCE: I don't think so. I get notices

1 about my [inaudible] stuff, but it's never from that,
2 something else, so.

3 PROSPECTIVE JUROR NO. 1172: Well, it would be from
4 your management company that you get the notices; probably
5 says your manager's name on there.

6 MR. SANTACROCE: All right. So what do you do -- how
7 do you manage 15?

8 PROSPECTIVE JUROR NO. 1172: Some of them are
9 smaller, which helps. Like, I have some that are 18 homes;
10 those are normally easy. And it's just -- it's portfolios, so
11 I don't work on something for every community every day.

12 MR. SANTACROCE: Okay. So what -- what are your job
13 responsibilities?

14 PROSPECTIVE JUROR NO. 1172: We would do compliance.
15 Not all of my associations do compliance because they're
16 smaller, so a lot of times when you have smaller communities
17 they tend to knock on the neighbor's door and talk to them.
18 We also have bookkeeping who does all the assessments,
19 collecting of that. But I would talk to homeowners, they
20 would get a late notice, they would call, I would be the one
21 that they talked to. I set up board meetings. I get bids or
22 whatever the board wants me to do. So basically I work at the
23 direction of the board. I think there's kind of a
24 misconception that HOA managers make decisions. They do not.
25 They follow what the board wants to do.

1 MR. SANTACROCE: What the board --

2 PROSPECTIVE JUROR NO. 1172: And then I would try and
3 help the board to stay within, like, the laws for NRS 116.
4 Hopefully they listen to me; but they can make their own
5 decisions. And, of course, I'm not an attorney, I can't give
6 them legal advice; but I do have to know what those rules are
7 and I can advise them it's probably not a good idea. But --
8 and then, of course, if -- if legal or something comes up then
9 I would submit that for them to an attorney who does HOA law.

10 MR. SANTACROCE: You weren't -- I'm mean, you're
11 familiar or heard of some of these Federal prosecutions on the
12 HOA things?

13 PROSPECTIVE JUROR NO. 1172: You mean with Nancy --
14 [inaudible] about them?

15 MR. SANTACROCE: Well, I don't want -- yeah, I don't
16 want to mention any names.

17 PROSPECTIVE JUROR NO. 1172: I know about them. I
18 don't know any of the people really involved with them.

19 MR. SANTACROCE: So you weren't involved with any of
20 those attorneys?

21 PROSPECTIVE JUROR NO. 1172: I had just started
22 working at my first property management company and was
23 getting ready to go to school to get my license when all of
24 that came down, so I really didn't have any concept of what
25 was happening. As time has gone on I've learned more of what

1 happened.

2 MR. SANTACROCE: Okay. But your developments, your
3 boards, your attorneys aren't involved in that, right?

4 PROSPECTIVE JUROR NO. 1172: I don't know who their
5 attorneys are; but I don't think so.

6 MR. SANTACROCE: Okay. Sounds like you got a big
7 job. Just briefly about your eviction work. Can you tell me
8 what you did in that regard?

9 PROSPECTIVE JUROR NO. 1172: Well, I managed
10 properties for quite a while and I learned how to do evictions
11 through that. And then after I had my third child I wanted to
12 stay home more so I started my own business where I would post
13 the notices and -- and file the evictions for single owners,
14 personal owners, or apartment complexes; and then I would
15 follow through if they had an answer and they had to go to
16 court.

17 MR. SANTACROCE: And you would go to court on that?

18 PROSPECTIVE JUROR NO. 1172: Yep, I sure did.

19 MR. SANTACROCE: And you would -- you know, I've sat
20 through some of those things, and you would go up to the
21 bench --

22 PROSPECTIVE JUROR NO. 1172: Yes.

23 MR. SANTACROCE: -- and talk to the judge?

24 PROSPECTIVE JUROR NO. 1172: Uh-huh.

25 MR. SANTACROCE: How did you feel about that? I

1 mean, the whole process of the eviction, you think it was
2 fair?

3 PROSPECTIVE JUROR NO. 1172: Yeah, I do.

4 MR. SANTACROCE: You think it was fair to the
5 tenants?

6 PROSPECTIVE JUROR NO. 1172: There's very few tenants
7 that I've ever evicted that I felt bad about. I mean, usually
8 if you're getting evicted, you've done something to deserve
9 it. Not always, sometimes you just can't pay your rent. But
10 usually there's -- most people will work with you if you're a
11 good resident and you want to pay your rent but you're having
12 a hard time, they will normally work with you. Of course,
13 there's always going to be a few landlords that don't; but I
14 really didn't have that. I -- a lot of the ones I did too
15 would be on three-day nuisances and, no, I never really felt
16 bad about those.

17 MR. SANTACROCE: Okay. I don't have any further
18 questions. Thank you.

19 THE COURT: All right. Mr. Staudaher.

20 MR. STAUDAHER: Just a couple. You mentioned that
21 you work and in your capacity of the job you do that you deal
22 with the NRS, the Nevada Revised Statutes, at least pertaining
23 to your sort of neck of the woods?

24 PROSPECTIVE JUROR NO. 1172: My area, yes.

25 MR. STAUDAHER: So you're familiar with how the

1 statutes are laid out and --

2 PROSPECTIVE JUROR NO. 1172: Uh-huh.

3 MR. STAUDAHER: -- you could go look up a statute if
4 you needed to, for example?

5 PROSPECTIVE JUROR NO. 1172: Sure.

6 MR. STAUDAHER: You do know that in this criminal
7 case that at the end of the trial after all the evidence is
8 presented that the Judge is going to instruct you on the law?

9 PROSPECTIVE JUROR NO. 1172: Uh-huh.

10 MR. STAUDAHER: I just want to make sure that you
11 wouldn't take it upon yourself to then go to the Nevada
12 Revised Statutes yourself and figure out what you thought the
13 interpretation of the law should be pertaining to any
14 individual charge?

15 PROSPECTIVE JUROR NO. 1172: No, because even with
16 the NRS that I use, sometimes my interpretation of what it
17 says and another manager's is different, and we end up going
18 to an attorney for them to clarify, and it could be something
19 that neither of us even thought.

20 MR. STAUDAHER: So you would take what the -- the law
21 that the Judge gives you in this case and apply it?

22 PROSPECTIVE JUROR NO. 1172: Yes, because when we do
23 that we have to go by what our attorney says too. No matter
24 if I think they're right or wrong, that's the -- that's the
25 way we're going to do it.

1 MR. STAUDAHER: Sure. And I appreciate your answer
2 on that. The other issue that I wanted to ask you about --
3 and then I'll sit down -- is just, you know, the State at the
4 end of the case after the Judge gives you the law and you've
5 heard all of the evidence if you were a juror, we're required
6 to prove beyond a reasonable doubt each part -- you know,
7 you've seen the statutes, how they're laid out at times --
8 every subpart of the crimes beyond a reasonable doubt. If at
9 the end of the trial if you were seated as a juror and you
10 believe the State had met its burden, in your mind proved each
11 element of the crimes charged beyond a reasonable doubt, could
12 you come back with a guilty verdict?

13 PROSPECTIVE JUROR NO. 1172: Yes.

14 MR. STAUDAHER: Do you have any reason, philosophical
15 or religious or otherwise, where that might be difficult for
16 you to do it?

17 PROSPECTIVE JUROR NO. 1172: No.

18 MR. STAUDAHER: Pass for cause, Your Honor.

19 THE COURT: All right. Thank you. Ma'am, in a
20 moment I'm going to excuse you for today. You may be selected
21 as a juror in this case, so for that reason I must remind you
22 of the admonition that I gave earlier about discussing the
23 case, reading or watching or listening to any reports of or
24 commentaries on anything relating to the case and forming and
25 expressing an opinion on the case; do you understand?

1 PROSPECTIVE JUROR NO. 1172: Yes.

2 THE COURT: Also I must admonish you not to discuss
3 anything that's transpired in the courtroom with anyone else,
4 meaning my questions, the attorneys' questions, your answers;
5 do you understand?

6 PROSPECTIVE JUROR NO. 1172: Yes.

7 THE COURT: All right. Thank you, ma'am. If you
8 place the microphone in the chair. Make sure Kenny has a good
9 number for you and please check out for today through the
10 third floor, back to Jury Services.

11 PROSPECTIVE JUROR NO. 1172: Go back and tell them?

12 THE COURT: Yeah.

13 PROSPECTIVE JUROR NO. 1172: Okay. Thank you.

14 THE COURT: Thank you, ma'am.

15 (Prospective Juror No. 1172 exited.)

16 THE COURT: Okay. Does the Defense pass for cause?

17 MR. WRIGHT: Yes.

18 MR. SANTACROCE: Yes.

19 THE COURT: All right. She will be -- although we
20 all feel terrible about the fact that if she's chosen she's
21 going to be an alternate again. She goes in the pile.

22 MR. STAUDAHER: Well, she might not be. You never
23 know.

24 THE COURT: Right. If -- if she's --

25 MR. STAUDAHER: That's why she's an alternate.

1 THE COURT: What's that?

2 MR. STAUDAHER: I said that's why she's an alternate.
3 There's a possibility that she could actually be deliberating.

4 THE COURT: Right, exactly; but, I mean, I -- we
5 would all feel bad if this poor woman --

6 MR. STAUDAHER: Yeah.

7 THE COURT: -- sits through six weeks of this thing
8 and then gets excused like she did in the other case. And
9 sometimes they take it, like, personally. Like they think,
10 like, we designated them alternates because somehow we don't
11 like them as much or they weren't as -- because I've had them
12 ask, you know, say things later when I've seen them and
13 [inaudible]. Okay.

14 We're going to take our lunch break in a moment. We
15 already -- Kenny already excused the jury and told them to
16 come back at 2:00, so if we go right now we get an hour.
17 Before we reconvene, though, I do want to discuss scheduling
18 issues and if you want to do that now or after the lunch
19 break. Are you diabetic or something?

20 MR. SANTACROCE: I feel like I'm diabetic right now.

21 MS. STANISH: After is fine with us.

22 MR. WRIGHT: After.

23 THE COURT: All right. We'll --

24 MR. WRIGHT: I don't want him falling over.

25 THE COURT: We'll go ahead and take our lunch break.

1 You can leave your stuff out.

2 (Court recessed at 12:59 p.m. until 1:59 p.m.)

3 (Outside the presence of the prospective jury panel.)

4 THE COURT: Shall we discuss scheduling? The State
5 had indicated through Mr. Staudaher -- we're all in agreement
6 definitely Thursday, we're going to be dark tomorrow.

7 MR. STAUDAHER: Correct. I believe so.

8 THE COURT: Mr. Staudaher had indicated or I think
9 Mr. Santacroce was here, you guys may have been in the
10 vestibule or not here yet, that I think Ms. Stanish or Mr.
11 Wright had requested a Monday start.

12 MR. STAUDAHER: Which the State's fine with if that's
13 the case.

14 THE COURT: Okay. And so what's the reason for
15 Friday -- I mean, a Monday start?

16 MR. WRIGHT: My request and reason?

17 THE COURT: Yeah. Because the State, I think you
18 would be fine starting Friday.

19 MR. WRIGHT: No.

20 THE COURT: We're off Thursday no matter what because
21 we agreed to that and both sides said we need time, so I'm
22 totally fine with Thursday and that was all agreed to. So
23 basically, State, my understanding is you're not requesting a
24 Monday start, but you're fine with giving the Defense a Monday
25 start, is that the --

1 MR. STAUDAHER: Right. I mean, we could -- we could
2 start on Friday if we needed to.

3 THE COURT: -- the gist of it?

4 MR. STAUDAHER: We'd actually prefer on Monday as
5 well based on our conversations. Well, our concern is the
6 issue with regard to the evidence and the pretrial issues that
7 we still need to go through --

8 THE COURT: I was wondering -- sorry to interrupt --
9 I was wondering how long is your opening? I mean, have you
10 kind of done it --

11 MR. STAUDAHER: I don't know.

12 THE COURT: -- Power Pointed it yet or anything?

13 MS. WECKERLY: The other thing I would say just in
14 terms of why we prefer Monday is there are a number of
15 witnesses in the case and just it gives them a little bit
16 longer to kind of get organized. It's not like we're saying,
17 Okay, we have a jury and you got to be here Friday.

18 THE COURT: Well, see, here's kind of what I was
19 thinking is if we started, like, say Monday at 10:00, you
20 know, I read them a little introduction and all of that, so
21 that's probably about 10:20, and you did your openings, and
22 that's why I wanted to know how long do you anticipate -- I
23 mean, is this going to be, like, a two-hour opening or
24 something like that because I could see it being --

25 MR. STAUDAHER: I don't anticipate --

1 THE COURT: -- a long opening.

2 MR. STAUDAHER: Yeah. I think it will not be -- it

3 won't be short, but I don't anticipate two hours.

4 THE COURT: Like what do you -- the opening in the

5 Binion case, I think, took all day or maybe two days. So, you

6 know, this certainly is more complicated than that case.

7 MR. STAUDAHER: Right. I know the closing was about

8 four days long.

9 THE COURT: Obviously -- obviously different lawyers,

10 but you know what I'm saying?

11 MS. WECKERLY: We're less [inaudible].

12 THE COURT: How long do you anticipate for your

13 opening?

14 MR. STAUDAHER: I would think it would be around an

15 hour.

16 THE COURT: Okay. That means -- that means at least

17 an hour and a half. I've never -- no, not you -- no, it's --

18 am I right? Ladies, back me up here.

19 THE CLERK: Yes.

20 THE COURT: No, I've never had a lawyer under

21 estimate the time ever.

22 MR. WRIGHT: One hour.

23 THE COURT: Ever have I had a lawyer under estimate

24 the time.

25 MR. STAUDAHER: Okay.

1 THE COURT: Who will open for Mr. or Dr. Desai? Do
2 you intend to open before you present your case-in-chief?

3 MR. WRIGHT: Yes.

4 THE COURT: And what do you think for your opening?
5 I mean, obviously, you know --

6 MR. WRIGHT: An hour and a half to two hours.

7 THE COURT: So two hours there. So now we're at
8 three hours. I mean, using your estimate, three hours plus 20
9 minutes for my little blurb.

10 And then, Mr. Santacroce, how long for your opening?

11 MR. SANTACROCE: I don't anticipate being long. I
12 would say 45 minutes.

13 THE COURT: Okay. Now we're at four hours. So what
14 I was thinking of doing is maybe starting Friday, just doing
15 openings on Friday because that's going to take almost a full
16 day. I mean, a good day is six hours basically of court time
17 in here. And as you've seen, when I say a five-minute break,
18 that means a five-minute break. I don't take long breaks. I
19 don't, you know, go and get ice cream or anything like that
20 like some other judges do on these five- or ten-minute breaks.
21 So that was kind of what I was thinking, like if we started at
22 10:00, you know, I'll do my thing, the State can do their
23 opening, that would probably put us to about lunch time, you
24 know, taking like an hour or so for lunch, and then coming
25 back and having the Defenses' openings.

1 MS. WECKERLY: I think we'd still prefer on Monday.

2 MR. STAUDAHER: I think we still prefer on Monday.

3 MR. WRIGHT: I -- I -- I would too. I mean,
4 Thursday, we have a lot to do on hopefully stipulations on
5 records and documents.

6 THE COURT: Okay.

7 MR. WRIGHT: I mean, so it isn't going to be that
8 we're not doing a lot.

9 THE COURT: Well, okay. Let me throw this out there.

10 MR. WRIGHT: Also other issues, I mean, I am going to
11 raise on the -- and -- and whether -- I presume it would be
12 tomorrow.

13 THE COURT: Right.

14 MR. WRIGHT: Maybe it would be Friday.

15 THE COURT: Here's -- that's what I was going to
16 throw out then. Why don't we -- okay. So we'll have the jury
17 then Monday; and Friday then have a session for pretrial
18 issues, stipulations, something like that. Can we do that?

19 MR. STAUDAHER: I think that would be fine.

20 MR. WRIGHT: Yes.

21 MR. STAUDAHER: Because that -- I was just worried
22 about not being done on Thursday.

23 THE COURT: So at least we're in session, it doesn't
24 look like -- you know what I mean? It's not like two days of
25 nothing but dead time.

1 MR. STAUDAHER: No, I don't think there will be two
2 days.

3 THE COURT: I don't want to do dead time. My point
4 is I don't want to have two days of dead time. I don't want a
5 day of dead time, but I think two days of dead time is a
6 little excessive when everybody's known this is coming up and,
7 you know, you should have been getting ready ahead of time.
8 But if we devote Friday to pretrial motions and stipulations,
9 I'm fine with that as long as we're doing something productive
10 and moving forward, okay?

11 MR. WRIGHT: Yes.

12 MR. STAUDAHER: That's fine.

13 THE COURT: So you want to make Friday at 9:30 or
14 10:00 for pretrial issues?

15 MR. STAUDAHER: I think 10:00 would be fine.

16 MR. WRIGHT: Yes.

17 THE COURT: Okay. All right. Let's -- in that case
18 the reason I wanted to do all that is the gal at the women's
19 conference, she was already in the pile, but now there's
20 absolutely no issue with respect to Tommie Woolley or whatever
21 her name was at the women's conference. All right.

22 Kenny, bring in the next one. It's Salami.

23 MR. SANTACROCE: Your Honor, I just have one issue.
24 There's some --

25 THE COURT: [Inaudible.]

1 MR. SANTACROCE: There was something raised yesterday
2 about elevator conversation, which I know nothing about.

3 THE COURT: Oh, thank you. Yeah.

4 MR. SANTACROCE: And I don't know if we need to put
5 something on the record.

6 THE COURT: All right. Kenny, you had mentioned that
7 you were taking -- this wasn't yesterday, but it was the day
8 before, you were taking some jurors up in the elevator. You
9 saw Mr. Tennell [phonetic] from the DA's Office, and two
10 jurors from apparently another department had made a comment.
11 And so can you just tell us all exactly what happened?

12 THE MARSHAL: Well, Mr. Tennell came in and informed
13 me that a group of jurors had got on the elevator without
14 myself because I was with the other group of jurors. Random
15 civilian citizens inside the elevator said, "guilty, guilty,"
16 just jokingly, that's what he described in a joking matter.

17 THE COURT: This is in the back elevator, of course?

18 THE MARSHAL: These are public elevators.

19 THE COURT: Okay.

20 MR. SANTACROCE: Were any of our jurors present for
21 that?

22 THE MARSHAL: Part of her jurors were present.

23 MR. SANTACROCE: They were present?

24 THE COURT: How many jurors did you have in the
25 elevator at that time?

1 THE MARSHAL: I believe five.

2 THE COURT: Only five.

3 THE MARSHAL: Only five of our potential jurors.

4 THE COURT: Why so few jurors in the elevator?

5 THE MARSHAL: Because there was already an abundance
6 of people on the elevator.

7 MR. STAUDAHER: And, Your Honor, the only issue I
8 have with that is when I talked with Mr. Tennell, told me
9 about this, when I raised it with the Court was he said that
10 -- I believe he said that they got on and said, "not guilty,
11 not guilty."

12 THE MARSHAL: Okay. I could have been mistaken on
13 that.

14 THE COURT: Well, whether they said "guilty, guilty"
15 or "not guilty, not guilty" doesn't really matter. I mean,
16 the point is that something was said. Did Mr. Tennell
17 mention, I don't believe he did, what badge juror ID?

18 THE MARSHAL: He did not.

19 THE COURT: And as I said yesterday, of course they
20 wouldn't know what they were talking -- if they were talking
21 about this case or any other case. Clearly misconduct for the
22 jurors from the other department to be saying anything. Did
23 it appear -- well, maybe, you know, I mean, this is all
24 hearsay now coming from Mr. Tennell to both of you; but did
25 Mr. Tennell happen to mention whether it appeared that they

1 were talking to the prospective jurors or whether they were
2 talking about their own case?

3 MR. STAUDAHER: From what I -- he told me when I was,
4 you know, getting on the elevator myself was that they got on
5 the elevator and generally just said to the group of people,
6 I'm not sure if they were just jurors or there were other
7 people there or not, in a joking manner is the way he took it,
8 and I thought he said, "not guilty, not guilty." And he -- he
9 thought it was odd, he goes down, he gets off the elevator.
10 Then he decides he's going to go up and at least make sure
11 that we're aware of that, comes up and tells the marshal, and
12 I believe the marshal informed you; and then I came into court
13 when I heard that and made sure the Court was aware as well.
14 So I'm not sure it's an issue --

15 THE COURT: Yeah, I -- I don't think it's really an
16 issue. You know, they obviously were wearing their juror
17 badges, which means that they would be readily recognizable,
18 not as court staff or lawyers or anybody who might actually
19 know something about this case, but they would be readily
20 identifiable -- that's why we make them wear them -- as jurors
21 in another department.

22 So to me, you know, it's not like a Deputy District
23 Attorney with a big badge gets on the elevator, you know,
24 identifying him as so and so from, you know, or a county badge
25 or something like that where it would be -- could be inferred

1 that that person had some kind of knowledge about anything and
2 said guilty or not guilty or something like that.

3 If they were wearing juror badges then again they're
4 clearly identified not as jurors in the department, but jurors
5 in a different department, not anybody in authority, not
6 anybody with -- you know, I -- I mean, if a court clerk did
7 that then I'd think, oh, you know, they see a court clerk,
8 what does this person know, this or that. And by that I mean
9 -- I don't have one -- but you know the badges, the DA's have
10 the badges, court staff has the badges that say Clark County,
11 that would be more -- much more concerning to the Court
12 because, again, that could indicate some kind of special
13 knowledge or something like that.

14 Mr. Santacroce?

15 MR. SANTACROCE: What day was this?

16 THE COURT: It wasn't yesterday. It was the day
17 before.

18 MR. SANTACROCE: And it was late in the afternoon?

19 THE MARSHAL: No. It was when we brought the first
20 potential jurors.

21 MR. WRIGHT: Monday morning.

22 MR. SANTACROCE: Well, I'm concerned. I think at
23 least those ones, if we could narrow down who was selected and
24 passed for cause in that group, at least question them as to
25 whether or not it had an effect on them.

1 THE COURT: Well, I don't believe it would -- again,
2 I don't know if anyone wants to weigh in -- I don't believe it
3 would have an effect. Also every single juror was questioned
4 regardless of what they checked in their questionnaire, every
5 single person was questioned, you know, do you understand it's
6 the evidence presented during the trial from the witness
7 stand, blah-blah-blah. You know, if you -- for those people
8 who hadn't heard anything, I said if you do inadvertently hear
9 something, will you promise to set that aside or can you set
10 that aside; and every single person that's been passed for
11 cause said yes, they could.

12 So to me even if they heard something and weren't
13 explicitly questioned on what these people wearing blue juror
14 badges that clearly identify them as jurors said, to me we
15 kind of implicitly covered that because we already made them
16 promise that they're not going to rely on anything other than
17 -- and that question I asked specifically of each and every
18 person, you know, do you understand you have to rely on the
19 evidence that's presented in the trial, and I told them what
20 it was, that it's the sworn testimony and it's the exhibits
21 that are admitted. So to me, you know, they said, yes, and
22 that kind of encompasses anything they must have -- could have
23 heard in the elevator, number one.

24 And, number two, to reiterate, you know, these people
25 are wearing badges that identify them as jurors and just two

1 or three random people saying "not guilty," to me that doesn't
2 suggest anything. That's not going to make them think, oh,
3 you must not be guilty. You know, if these are people who can
4 -- to the extent people had seen it in the media, that to me
5 is much more compelling than anything a couple of random
6 jurors said in the elevator. So I don't see that there's a
7 problem here.

8 I think again without explicitly covering it, we
9 covered the general topic and, you know, these people are
10 selected, you know, they're not being sequestered. Now
11 they're going to obviously be told not to listen to anything;
12 but just, you know, they could be sitting in the doctor's
13 office over the weekend at the Quick Care and somebody may be
14 talking about the case.

15 I mean, it's impossible to make sure nobody ever
16 talks about a case that's this high profile. They could be,
17 you know, at the gym and it could be on the TV, or even
18 sitting at the airport or, you know, other things that they
19 would have no control over, so I just don't see it as a
20 problem. And, you know, again, they're going to have to
21 disregard everything and they promised they could, so I'm --
22 I'm fine with it. How about Juan Jimenez?

23 THE MARSHAL: Judge, the next one that was on the
24 no-show was Amand Keller.

25 THE COURT: Okay. So let's go through these.

1 Susanne Salami is not here?

2 THE MARSHAL: Not here.

3 THE COURT: Juan Jimenez, is he here?

4 THE MARSHAL: No show, Judge.

5 THE COURT: How about Leneard Benson?

6 THE MARSHAL: No show, Judge.

7 THE COURT: So Amand Keller is the next one?

8 THE MARSHAL: Yes, Judge.

9 THE COURT: Thank you. This could be our last one.

10 (Prospective Juror No. 1189 entered.)

11 THE COURT: Sir, come on in and have a seat there in
12 the jury box, please. Good afternoon. Just have a seat there
13 where you're comfortable. I wanted to follow up on some
14 answers in your questionnaire, okay?

15 PROSPECTIVE JUROR NO. 1189: Okay.

16 THE COURT: It says here that you don't recollect
17 seeing anything in the media about this case. As you heard
18 about the case today, did that jar any memory of anything that
19 you may have seen or heard in the media?

20 PROSPECTIVE JUROR NO. 1189: No, it hasn't.

21 THE COURT: Okay. So as you sit here today you don't
22 know anything about the case?

23 PROSPECTIVE JUROR NO. 1189: Don't know anything
24 about the case.

25 THE COURT: Okay. And you work for Levi Strauss as a

1 production supervisor?

2 PROSPECTIVE JUROR NO. 1189: Yes, I do.

3 THE COURT: And is your -- is your employer going to

4 pay you for jury service?

5 PROSPECTIVE JUROR NO. 1189: Yes.

6 THE COURT: Oh, terrific. And how many people do you

7 supervise in your job?

8 PROSPECTIVE JUROR NO. 1189: Thirty to forty.

9 THE COURT: Thirty to forty. Okay. And as you sit

10 here today, is there anything that concerns you regarding your

11 ability to be completely fair and impartial to both sides?

12 PROSPECTIVE JUROR NO. 1189: Nothing.

13 THE COURT: So as you sit here, can you promise me

14 that you are completely fair and impartial and neutral?

15 PROSPECTIVE JUROR NO. 1189: Yes, I can.

16 THE COURT: All right. Thank you, sir. Ms. Stanish,

17 would you like to follow up with Mr. Keller?

18 MS. STANISH: Thank you, Your Honor. Good afternoon.

19 PROSPECTIVE JUROR NO. 1189: Good afternoon.

20 MS. STANISH: How are you?

21 PROSPECTIVE JUROR NO. 1189: Great. How are you?

22 MS. STANISH: Good. I'm just going to flip through a

23 lot of blank pages that you fortunately left here.

24 PROSPECTIVE JUROR NO. 1189: Okay.

25 MS. STANISH: What did you do before you worked at

1 Levi Strauss?

2 PROSPECTIVE JUROR NO. 1189: I worked in trade show
3 conventions, Global Exposition Services.

4 THE COURT: And, sir, can you hold the microphone
5 closer to your mouth because it doesn't pick it up otherwise?

6 PROSPECTIVE JUROR NO. 1189: Okay. Global Exposition
7 Service, GES; did trade shows here in Nevada.

8 MS. STANISH: All right. And you were an operation
9 manager at that --

10 PROSPECTIVE JUROR NO. 1189: Yes, that's correct.

11 MS. STANISH: And your spouse is a dental assistant?

12 PROSPECTIVE JUROR NO. 1189: Yeah, she's a
13 periodontist assistant.

14 MS. STANISH: All right.

15 THE COURT: All right. While we fix the microphone,
16 just talk really loud and right there maybe turn a little bit.
17 That's a microphone right there on the -- on the ledge.

18 MS. STANISH: And I -- I see, sir, that you're
19 currently enrolled in the University of Phoenix?

20 PROSPECTIVE JUROR NO. 1189: Yes, online.

21 MS. STANISH: Online. All right. So, by the way,
22 this trial is expected to go through the month of May, which
23 is today -- I keep -- I lost a month there -- and go into the
24 month of June, probably. Is there any -- any issue at all,
25 whether it's with school or work, vacation plans, what have

1 you, anything that would be an issue for you with that kind of
2 length of trial?

3 PROSPECTIVE JUROR NO. 1189: Nothing would be at
4 issue.

5 MS. STANISH: Great. All right. How long have you
6 been in Nevada, by the way?

7 PROSPECTIVE JUROR NO. 1189: Got here in 2002.

8 MS. STANISH: From the great Midwest?

9 PROSPECTIVE JUROR NO. 1189: Yeah, by way of Chicago.

10 MS. STANISH: And you heard this morning so long ago
11 the description of this case that the State and Mr. Wright
12 gave. Did this -- did this case sound familiar to you? Ring
13 a bell?

14 PROSPECTIVE JUROR NO. 1189: No, I don't watch media
15 news.

16 MS. STANISH: Do you watch television shows at all?

17 PROSPECTIVE JUROR NO. 1189: Wrestling with the kids.

18 THE COURT: Is that real wrestling or big-time
19 wrestling?

20 PROSPECTIVE JUROR NO. 1189: WWE real wrestling.

21 THE COURT: Okay. I think when I was a kid they
22 called it big-time wrestling. I'm dating myself here.

23 MS. STANISH: Have you or anybody in your family or
24 someone who's close to you had any negative experience with
25 anyone in the medical field?

1 PROSPECTIVE JUROR NO. 1189: No.

2 MS. STANISH: And just to summarize a couple things
3 that Judge Adair mentioned earlier in the morning. These two
4 men are considered innocent as they sit here despite the fact
5 that they are under criminal charges. Is that a concept that
6 you can accept and abide by that they are presumed innocent?

7 PROSPECTIVE JUROR NO. 1189: Absolutely.

8 MS. STANISH: And kind of a companion to that golden
9 rule is the rule that as the Judge said the Defense doesn't
10 have to present evidence, the State does, and they have to do
11 so beyond a reasonable doubt. Is that a concept you can abide
12 by and agree to?

13 PROSPECTIVE JUROR NO. 1189: I can abide by that
14 also.

15 MS. STANISH: Is there anything that you think
16 impacts on your ability to serve as a fair juror in this case?

17 PROSPECTIVE JUROR NO. 1189: Nothing. I'm pretty
18 fair.

19 MS. STANISH: Thank you. I'll pass for cause, Your
20 Honor.

21 THE COURT: All right. Thank you. Mr. Santacroce?

22 MR. SANTACROCE: Thank you. Good afternoon, Mr.
23 Keller.

24 PROSPECTIVE JUROR NO. 1189: Good afternoon.

25 MR. SANTACROCE: You work for Levi Strauss?

1 PROSPECTIVE JUROR NO. 1189: Yes.

2 MR. SANTACROCE: They have a plant here?

3 PROSPECTIVE JUROR NO. 1189: In Henderson, Executive
4 Airport Drive.

5 MR. SANTACROCE: Really.

6 PROSPECTIVE JUROR NO. 1189: The distribution
7 facility.

8 MR. SANTACROCE: It's distribution. They don't
9 manufacture there?

10 PROSPECTIVE JUROR NO. 1189: Yeah, that's right.

11 MR. SANTACROCE: The manufacturing is done in San
12 Francisco or somewhere?

13 PROSPECTIVE JUROR NO. 1189: We have a slight -- a
14 slight one in San Francisco, but not a big one.

15 MR. SANTACROCE: Okay.

16 THE COURT: So overseas nowadays where they
17 manufacture --

18 PROSPECTIVE JUROR NO. 1189: It's all overseas, and
19 whatever you take off, like the pair of jeans, like the
20 hangers, the mini-markers we put on. So the stores do not put
21 anything on. We put them on ourselves.

22 THE COURT: So all the price tags and the things that
23 are --

24 PROSPECTIVE JUROR NO. 1189: Yeah, yeah.

25 THE COURT: Those dreadful things that say your size?

1 MS. STANISH: That you forget to take off sometimes.

2 THE COURT: Right.

3 MR. SANTACROCE: So you distribute mostly in Clark
4 County?

5 PROSPECTIVE JUROR NO. 1189: No, all over the world.

6 MR. SANTACROCE: All over the world?

7 PROSPECTIVE JUROR NO. 1189: All over the world.

8 MR. SANTACROCE: Wow.

9 PROSPECTIVE JUROR NO. 1189: Yes. We're going to
10 start Russia this August.

11 MR. SANTACROCE: Big job. You're a supervisor,
12 production supervisor?

13 PROSPECTIVE JUROR NO. 1189: Yes, I am.

14 MR. SANTACROCE: How many people do you supervise?

15 PROSPECTIVE JUROR NO. 1189: Thirty to forty.

16 MR. SANTACROCE: Gosh, big responsibility.

17 PROSPECTIVE JUROR NO. 1189: On a good day,
18 thirty-three.

19 MR. SANTACROCE: You -- you mentioned some of your
20 job duties and I just wanted to take them individually. You
21 said you managed. Tell me what that entails.

22 PROSPECTIVE JUROR NO. 1189: Well, I actually manage
23 a process getting out the door, making sure our customers our
24 -- make sure our customer orders are out on time.

25 MR. SANTACROCE: Okay.

1 PROSPECTIVE JUROR NO. 1189: And I manage that
2 process as well as the mini-markers being on certain -- on
3 certain clients. Maybe Kohl's wants mini-markers or JC
4 Penneys may wants some price tickets. I just make sure that
5 everything that they need is on there because if we don't,
6 everything is a charge-back. If they have to touch the
7 garments again, they have to charge us back.

8 MR. SANTACROCE: And you said you -- you're
9 responsible for some discipline?

10 PROSPECTIVE JUROR NO. 1189: Oh, yeah, absolutely.

11 MR. SANTACROCE: Tell me about that.

12 PROSPECTIVE JUROR NO. 1189: Discipline, I maintain a
13 professional work environment. I hold my associates to a
14 higher standard as well, you know.

15 MR. SANTACROCE: Are there some written guidelines or
16 handbook that each employee --

17 PROSPECTIVE JUROR NO. 1189: Oh, yes. It's a union
18 facility, so I have to follow by union guidelines, and plus
19 also Levi Strauss and Company company's policies as well.

20 MR. SANTACROCE: And what happens when an employee
21 violates one of those policies?

22 PROSPECTIVE JUROR NO. 1189: A couple of things could
23 happen. I have to -- I have to ask them if they have union
24 representation. I have to gather my facts first and get with
25 the -- with the union representation and make sure that I'm

1 not violating any parts of the union contract and also being
2 in line with the Levi Strauss and Company policy.

3 MR. SANTACROCE: How do you gather the facts?

4 PROSPECTIVE JUROR NO. 1189: Sometimes if it -- if it
5 has to do with witnesses I have to get statements; and then we
6 just have to make sure we're fair in the discipline.

7 MR. SANTACROCE: And if you have, like, two
8 conflicting witnesses' statements, do you have to determine
9 who's credible and who's not credible?

10 PROSPECTIVE JUROR NO. 1189: We go -- we go with
11 pretty much with the union -- union management partnership,
12 then we come with a fair and consistent discipline behavior,
13 if so. If not, then it would just be a regular coaching, a
14 verbal coaching.

15 MR. SANTACROCE: So you gather the facts. And is
16 there a formal process, a hearing process where --

17 PROSPECTIVE JUROR NO. 1189: Yeah.

18 MR. SANTACROCE: -- you present the facts and the
19 union maybe presents facts --

20 PROSPECTIVE JUROR NO. 1189: Yeah, exactly.

21 MR. SANTACROCE: -- and a mediator?

22 PROSPECTIVE JUROR NO. 1189: Exactly, exactly. We
23 start off with the first step. First step is generally done
24 with the -- with the supervisors and a union shop steward.
25 After union shop steward hears everything, if it goes to the

1 second set -- usually I resolve everything on the first step.
2 I don't let it get to the second step. The second step goes
3 to my manager. I try to resolve everything on the -- on the
4 first step. Anything that's over my head as far as union
5 policies and procedures then the business agent gets involved;
6 and then the shop steward and myself, we write our statements
7 and we hand it over to the part of upper management.

8 MR. SANTACROCE: What happens if an employee violates
9 a policy, but perhaps they weren't aware of the policy?

10 PROSPECTIVE JUROR NO. 1189: That's when the coaching
11 becomes involved.

12 MR. SANTACROCE: Tell me about that.

13 PROSPECTIVE JUROR NO. 1189: Well, we'll look and see
14 if the policies and procedures described by Levi Strauss and
15 Company, see if they signed them, see if they understood them,
16 seeing if they really did it maliciously or not, or did they
17 do it trying to get the work out or did they actually do it
18 maliciously. So if they did it just to get the work out, we
19 understand what you was trying to do, but these are the
20 factors that could lead into it: Here's your coaching.
21 Coaching usually lasts for 30 days, 30 working days, and it
22 falls off. It's really no discipline. It's just letting you
23 know -- we're letting you know exactly what's going on. If it
24 happens again then it could be up -- it could be disciplined
25 up to and including termination.

1 MR. SANTACROCE: So if they were trying to get the
2 work out, perhaps were following the instructions of the
3 supervisor, it would sort of mitigate the problem a little
4 bit?

5 PROSPECTIVE JUROR NO. 1189: Oh, absolutely,
6 absolutely. That change -- that changes it drastically. It
7 won't even be a coaching. It will just be a simple
8 conversation that we'd have.

9 MR. SANTACROCE: And tell me about what you do about
10 the mentorship. Is that like coaching?

11 PROSPECTIVE JUROR NO. 1189: No, no.

12 MR. SANTACROCE: Or do you actually assign somebody
13 to mentor that person?

14 PROSPECTIVE JUROR NO. 1189: Well, I'll -- I'll grab
15 a couple of associates that I feel that is going over and
16 above, and if they want to be coordinators -- I have
17 coordinators, just like when I was dealing with the union
18 place here like the Teamsters and IBW, they have -- they have
19 foremens. We call them coordinators.

20 So I will get them in the program, which I have
21 called my coordinator development program that I came up with
22 this year, and I get them involved in management's decisions.
23 Little management decisions, nothing big like take over the
24 world or anything, just to get them understanding exactly
25 what's going on in the world of Levi and how they impact what

1 our customer is doing and how to keep the Levi brand, you
2 know, going.

3 We talk about financials, little parts of financials.
4 We talk about health and safety. We talk about stuff
5 overseas. We get them involved in town hall meetings that we
6 have overseas and let them know exactly what's going on
7 because that feedback gets right back to the associates
8 letting them know that they have a voice in that company and
9 it can grow in this company.

10 MR. SANTACROCE: And then, finally, you say you
11 insure safe work environment. What does that entail?

12 PROSPECTIVE JUROR NO. 1189: That entails I want you
13 to come into work as well as you can come out to work. If you
14 have five fingers and five toes, you better go out with five
15 fingers and five toes. I didn't do my job if that's the case.

16 MR. SANTACROCE: I think you're a man of a lot of
17 responsibility.

18 PROSPECTIVE JUROR NO. 1189: I am.

19 MR. SANTACROCE: Well, you're to be commended for
20 that. One last thing I want to talk about that was on your
21 questionnaire. You said you belong to the Freemasons.

22 PROSPECTIVE JUROR NO. 1189: Yes, I am.

23 MR. SANTACROCE: And, you know, I hear a lot of
24 rumors about the Freemasons.

25 PROSPECTIVE JUROR NO. 1189: Yeah, yeah.

1 MR. SANTACROCE: I don't know anything about them.
2 PROSPECTIVE JUROR NO. 1189: It's a lot of rumors.
3 MR. SANTACROCE: Not like the Illuminati or anything,
4 are they?
5 PROSPECTIVE JUROR NO. 1189: No, illuminate, no.
6 I've been doing it for 18 years.
7 MR. SANTACROCE: Okay. And you know the things I
8 heard about it and just like this case you can't believe
9 everything you hear.
10 PROSPECTIVE JUROR NO. 1189: Can't believe everything
11 you hear.
12 MR. SANTACROCE: It purports to be some secret
13 organization and has its roots way back to the, you know, the
14 early times and things like that. Enlighten me.
15 PROSPECTIVE JUROR NO. 1189: Enlighten you? What do
16 you want to know?
17 THE COURT: Well, here's the deal. You don't have to
18 show us the secret handshake or anything.
19 PROSPECTIVE JUROR NO. 1189: Yeah, yeah, yeah.
20 THE COURT: Anything like that.
21 PROSPECTIVE JUROR NO. 1189: Okay. Well --
22 MR. SANTACROCE: What do you guys do?
23 PROSPECTIVE JUROR NO. 1189: We do a lot of stuff in
24 Nevada. We did a bikes [inaudible] books. We just did the
25 Shriner's Circus. I'm [inaudible] elder Shriner. Also we're

1 -- we're doing -- we're doing something with John B. Bell,
2 that's in a couple of weeks.

3 MR. SANTACROCE: What's that?

4 PROSPECTIVE JUROR NO. 1189: It's a foundation out
5 here that helps young kids grow and mentor. Also we do a lot
6 of stuff with the YMCA.

7 MR. SANTACROCE: Okay. I understand you do a lot of
8 good things. What if I wanted to join the Freemasons, what
9 would you be looking for?

10 PROSPECTIVE JUROR NO. 1189: It's --

11 MR. SANTACROCE: Can I just join and apply?

12 PROSPECTIVE JUROR NO. 1189: It's an organization
13 that make good men better.

14 THE COURT: Do you have to be sponsored by a current
15 member of the Masons?

16 PROSPECTIVE JUROR NO. 1189: Well, you have to have
17 your application signed by -- by a member, but not really.
18 You got to be an upstanding citizen.

19 THE COURT: There you go.

20 PROSPECTIVE JUROR NO. 1189: Well, I can give you
21 back your application, correct?

22 MR. SANTACROCE: Okay. So it isn't cloaked in all
23 that secrecy that you hear about --

24 PROSPECTIVE JUROR NO. 1189: No, no.

25 MR. SANTACROCE: -- and, you know, you look at the

1 dollar bill and it has the eye that's supposed to be the
2 Freemasons, is that it? Is that true?

3 PROSPECTIVE JUROR NO. 1189: That's not true.

4 MR. SANTACROCE: Okay.

5 PROSPECTIVE JUROR NO. 1189: None of that's true.

6 MR. SANTACROCE: So there's a lot of bull about it?

7 PROSPECTIVE JUROR NO. 1189: There's a lot of bull
8 about it. And it really -- and it really tarnish what we try
9 to do in this society as well.

10 MR. SANTACROCE: Kind of like this case. Thank you,
11 sir.

12 THE COURT: Mr. Santacroce. State?

13 MR. STAUDAHER: Just an objection just for the
14 record.

15 THE COURT: And that's sustained.

16 MR. SANTACROCE: I'll withdraw that.

17 THE COURT: And you're not allowed to ask Mr. Keller
18 to sign your Mason application.

19 MR. SANTACROCE: Thank you.

20 MR. STAUDAHER: Freemasons essentially are a service
21 organization where you try to do the things that you talked
22 about, correct?

23 PROSPECTIVE JUROR NO. 1189: Yes, that's correct.

24 MR. STAUDAHER: And no secret issues necessarily,
25 it's just you guys try to -- it's a fellowship thing where you

1 try to minister and help the community or good causes; is that
2 fair?

3 PROSPECTIVE JUROR NO. 1189: That's correct.

4 MR. STAUDAHER: With regard to your role as a -- at
5 Levi Strauss, you've already kind of laid out how you kind of
6 deal with problems that might come up with people below you;
7 is that right?

8 PROSPECTIVE JUROR NO. 1189: That's correct.

9 MR. STAUDAHER: Would you consider yourself a person
10 who when you walk into the pool of employees that you
11 supervise, that everybody all of a sudden is, you know, backs
12 are straight, they're very nervous to be around you kind of
13 thing?

14 PROSPECTIVE JUROR NO. 1189: No. They're pretty
15 comfortable. They're pretty comfortable.

16 MR. STAUDAHER: So you try to keep it that way?

17 PROSPECTIVE JUROR NO. 1189: I do. I do.

18 MR. STAUDAHER: Do you think that it's -- you can get
19 more out of your subordinates if you keep sort of a cordial
20 atmosphere? I know you want to keep a professional sort of
21 structure as you said; but to keep it in that sense so you can
22 get the best production out of your people.

23 PROSPECTIVE JUROR NO. 1189: Yeah. I'll give you an
24 example on that one. It's a new facility and I get grieved
25 [sic] at least about every two months because I'm out there

1 actually working with the employees. I can't help direct
2 employees if I don't know exactly what they do, so that's how
3 they feel comfortable with me.

4 I have an open-door policy. You got to ask your
5 coordinator to come see me first, but that's the chain of
6 command that I have so you just don't run into my office.
7 Schedule an appointment with me. I do one-on-one's every
8 month with all my associates: You're doing good here, you got
9 to do this a little bit better, I understand you're trying,
10 let's try something else differently. You know, I got the
11 ergonomics going this month so that everybody in Levi Strauss
12 and Company by the end of this month will be stretching every
13 five minutes everyday.

14 MR. STAUDAHER: All right. Do you think you could be
15 a fair person?

16 PROSPECTIVE JUROR NO. 1189: Absolutely.

17 MR. STAUDAHER: Just listen to the evidence as it
18 comes in, take that evidence, and apply it to the law as given
19 to you by the Judge and render your verdict?

20 PROSPECTIVE JUROR NO. 1189: Absolutely.

21 MR. STAUDAHER: At the end of the trial, the State
22 has the total burden in this case. We have to prove each and
23 every crime, all the elements of the crime, you know, the
24 parts of the crimes beyond a reasonable doubt to prevail on
25 any one charge; does that make sense?

1 PROSPECTIVE JUROR NO. 1189: That makes sense to me.

2 MR. STAUDAHER: The Defense doesn't have to do
3 anything. It's our burden, the State's. You're okay with
4 that?

5 PROSPECTIVE JUROR NO. 1189: I'm okay with that.

6 MR. STAUDAHER: If at the end of the trial in your
7 mind we have met that burden, we have proved the essential
8 elements, the subparts of the crimes beyond a reasonable
9 doubt, could you come back with a guilty verdict?

10 PROSPECTIVE JUROR NO. 1189: I'm sorry. Say that
11 again? I lost you.

12 MR. STAUDAHER: Sometimes that's confusing. But each
13 crime has parts or, you know, like subparts, and we have to
14 prove these subparts in order to prove the charge; does that
15 make sense?

16 PROSPECTIVE JUROR NO. 1189: That makes sense.

17 MR. STAUDAHER: If at the end of the trial you feel
18 that we have met our burden, we have proved those subparts of
19 the crime beyond a reasonable doubt in your mind, could you
20 come back with a guilty verdict?

21 PROSPECTIVE JUROR NO. 1189: Well, it's kind of hard
22 for me to answer your question without an example, you know
23 what I mean? Without some type --

24 MR. STAUDAHER: I'll give you an example.

25 THE COURT: What Mr. Staudaher means is, you know,

1 right now you don't know anything about the case. You've just
2 heard a lot of talking in here today. You haven't seen any
3 evidence, correct?

4 PROSPECTIVE JUROR NO. 1189: That's correct.

5 THE COURT: Okay. Now if after, you know, if you're
6 selected to serve and you sit and listen throughout the trial
7 and you hear everything that's presented, and you go back in
8 the jury deliberation room with your fellow jurors and you'll
9 bring the exhibits with you, and I'll have instructed you on
10 the law, and you look at everything and you and your fellow
11 jurors discuss it all. And then you think, You know what? I
12 think the State proved that these Defendants are guilty beyond
13 a reasonable doubt. Would you at that point be able to raise
14 your hand and say, I vote guilty?

15 PROSPECTIVE JUROR NO. 1189: If the burden of proof
16 is there, yeah, absolutely.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 1189: Absolutely, if the
19 burden of proof is there, absolutely.

20 THE COURT: Okay. Conversely, if you hear the
21 testimony and you go in the back and you discuss it and you
22 consider it and you think, you know what? There was some
23 evidence, but it wasn't proof beyond a reasonable doubt in
24 your mind, you know, after -- because part of the process is
25 to state your opinion, listen to other people's opinions. If

1 you think they're right then you can change your mind, that's
2 fair. So you've done all that. If you think, You know what?
3 There was some evidence here, but they didn't prove it to me
4 beyond a reasonable doubt; would you be able to raise your
5 hand and vote not guilty?

6 PROSPECTIVE JUROR NO. 1189: Oh, absolutely.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 1189: Absolutely.

9 THE COURT: Go on, Mr. Staudaher.

10 PROSPECTIVE JUROR NO. 1189: I'm sorry.

11 MR. STAUDAHER: And you answered that part really
12 fast. And when you were asked the other way around, you
13 hesitated a long time and then your answer was, well, if the
14 burden of proof was met, which is -- which is accurate, and
15 that's what your job is as a juror. But I wanted to know -- I
16 mean, did you not understand that question initially?

17 PROSPECTIVE JUROR NO. 1189: I didn't understand the
18 way -- the way you presented I didn't understand, yeah.

19 MR. STAUDAHER: Yeah, because sometimes I do a bad
20 job. Okay. So but you do understand that if -- that we have
21 a burden and if you feel we have met that burden, we've proved
22 the charges beyond a reasonable doubt, could you come back
23 with a guilty verdict?

24 PROSPECTIVE JUROR NO. 1189: Yes.

25 MR. STAUDAHER: You have any reason, philosophical,

1 religious, any reason whatsoever why that might be difficult
2 for you to do?

3 PROSPECTIVE JUROR NO. 1189: No, absolutely not.

4 MR. STAUDAHNER: Pass for cause, Your Honor.

5 THE COURT: All right, sir.

6 MR. WRIGHT: Can I ask one question?

7 THE COURT: All right.

8 MR. WRIGHT: You have five children?

9 PROSPECTIVE JUROR NO. 1189: I have five children,
10 correct.

11 MR. WRIGHT: You get an employee discount?

12 PROSPECTIVE JUROR NO. 1189: No. But what I do is
13 some of my -- some of my old stock that I have at Levi's, you
14 know, not the fast movers, what I do is I have a five-dollar
15 sale to all the associates, that way I write it off and
16 everybody gets some Levi jeans for five dollars.

17 THE COURT: Fair to say your kids wear a lot of jeans
18 to school?

19 PROSPECTIVE JUROR NO. 1189: Yes.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR NO. 1189: With holes in them.

22 MS. STANISH: I wanted to ask him if he could do
23 something about making it more stretchy in the waist, maybe
24 jeans that grow with you.

25 THE COURT: Lycra jeans. No asking for Levi's

1 discounts either. Mr. Keller, I'm going to excuse you for
2 today.

3 PROSPECTIVE JUROR NO. 1189: Okay.

4 THE COURT: You may be selected as a juror in this
5 case, so for that reason I need to admonish you and remind you
6 of the admonition that I've already stated that you're not to
7 discuss the case, you're not to read, watch or listen to any
8 reports of or commentaries on anything relating to the case
9 and you're not to form or express an opinion on the case; do
10 you understand that, sir?

11 PROSPECTIVE JUROR NO. 1189: I understand.

12 THE COURT: All right. Also I must admonish you that
13 you're not to discuss anything that's transpired in the
14 courtroom with anyone else. By that I mean, of course, my
15 questions, the questions from the lawyers, and your answers
16 and so forth; do you understand?

17 PROSPECTIVE JUROR NO. 1189: I understand.

18 THE COURT: All right. Make sure Kenny has a number
19 where you can be reached. If you are selected then you must
20 report when we tell you to report to begin your jury service;
21 do you understand?

22 PROSPECTIVE JUROR NO. 1189: I understand.

23 THE COURT: All right. When you leave today, just
24 check back out through Jury Services on the third floor.

25 PROSPECTIVE JUROR NO. 1189: Okay.

1 THE COURT: All right. Thank you. Please place the
2 microphone in the chair, any chair.

3 (Prospective Juror No. 1189 exited.)

4 THE COURT: All right. Before I count 35, before we
5 excuse anybody, we're going to all make sure we're on the same
6 page. So, Kenny, just leave them sitting out there. We're
7 going to go over some of the ones that kind of are unclear and
8 were held in abeyance.

9 We're going to excuse Michael Contreras for cause.
10 He was the one whose wife was a patient and had to get tested
11 and she was very dismayed about the whole thing, that was a
12 for-cause challenge made by the Defense. That is granted.
13 She is excused.

14 THE CLERK: What number?

15 MS. STANISH: 152.

16 MR. SANTACROCE: 152.

17 THE COURT: 152. We are going to excuse Badge No.
18 140, Cynthia Zambarno. That was a for-cause challenge by the
19 Defense. She was the gal who kind of waffled back and forth.
20 She could be fair; well, then no, she was concerned. That was
21 a for-cause challenge by the Defense, which is granted.

22 We're going to excuse Badge 298, Valery Lizarbe, who
23 was the young gal with the hair job and she cried, correct?

24 MR. SANTACROCE: Yes.

25 THE COURT: Is that -- okay. She is excused as a

1 hardship.

2 We're going to excuse Badge No. 253, Urana Wiley, who
3 is also a hardship, although I don't remember exactly her
4 circumstances.

5 We're going to excuse Badge No. 241, Joselyn Blanche,
6 who is a hardship.

7 Did we ever hear back from Miguel Perez?

8 THE MARSHAL: No, Judge.

9 THE COURT: I wrote on Miguel, and he was the one
10 that was going to be at Disneyland from June 6th to June 15th,
11 so I'm going to excuse him as a hardship because of his
12 vacation.

13 MR. SANTACROCE: What number?

14 THE COURT: That's Badge No. 153. Have you made the
15 determination if you're going to call Dr. Patel or not, State?

16 MS. WECKERLY: I'm sorry, Your Honor.

17 THE COURT: Have you made the determination if you're
18 going to call Dr. Patel or not?

19 MR. STAUDAHNER: Yes, I think he will be called. I
20 think it's likely.

21 THE COURT: All right. We're going to excuse Badge
22 No. 633, Ms. Young, who may know Dr. Patel. I don't think
23 anybody made a sufficient record that she could listen to his
24 testimony in an unbiased fashion, so she is excused. She was
25 also a potential hardship.

1 We're going to excuse Badge No. 353, Christopher
2 Franco, the parks and rec employee as a financial hardship.

3 We're going to excuse Badge No. 454 -- well, have we
4 ever heard from Jason Tomboc?

5 THE MARSHAL: No, Your Honor.

6 THE COURT: This was the guy who -- I don't remember
7 what CDW was, but he made \$10 an hour and he was afraid he
8 wouldn't get paid. I'm going to go ahead and --

9 MR. STAUDAHER: CDW is an organization that supplies
10 electronics and various things, and you can buy things -- the
11 County buys things from CDW, so I -- computers and things like
12 that.

13 THE COURT: All right. I was going to dismiss him as
14 a hardship.

15 MS. STANISH: Your Honor, I'm sorry. What was the
16 badge number for him?

17 THE COURT: 454. And then, finally, Badge No. 441,
18 Ms. Lisa Ruiz.

19 I was going to dismiss her as a hardship because her
20 -- she's the one her son's on leave from the military in Japan
21 coming home in May and so she would kind of miss out on that
22 if she had to serve in this case.

23 So now we're going to go through -- I arranged these
24 in numerical order -- we're going to go through them. We're
25 going to make sure we all have the same people and we're going

1 to make sure we have 35 names. All right.

2 I have as the first name Badge No. 126, Bryan Wentz.

3 Badge No. 129, Cory Johnson. Badge No. 130, Melenda

4 Pomykal.

5 MS. STANISH: Your Honor, could I ask you to slow
6 down. I'm trying to take all these. I can't write that fast.

7 Oh, you have a list.

8 THE COURT: But they're not in numerical order.

9 MS. STANISH: Okay.

10 THE COURT: Yeah, but they're not in numerical order.
11 I put this in order because this is going to tell us who would
12 be chair 1, 2, 3. We kind of know the ones from today would
13 be the alternates, but still this will tell you where they're
14 going to be in terms of -- so, okay.

15 221, La Forest, Gregory. If I've made a mistake and
16 somehow put somebody in here that doesn't -- shouldn't be in
17 here, then let me know.

18 MS. WECKERLY: I just -- that was 130 and then the
19 next one is 221, right?

20 THE COURT: Right. La Forest, Gregory. 224, Rachel
21 Robinson. 249, Cindy Ennon-Wilson. 276, Darren Heller. 291,
22 Todd Nash. 304, Mack Brown. 306, Edward Simpson. 370,
23 Charles Archuletta. 374, Jared Billotte. 378, Todd Hargett.
24 385, Mr. Santacroce's friend, Angela Valente-Libanotis.

25 MR. WRIGHT: Was that 385?

1 THE COURT: 385. 386, Xavier Figueroa. 397, James
2 McIntosh. 426, Deana Safronov. 458 -- or -- yeah, Joseph
3 Sandifer. 485, Regyna Trotter. 538, Rhonaree Habil
4 [phonetic], also known as Rhonaree Mayo. 573 --

5 MR. STAUDAHER: Your Honor, could you give me the
6 last one again?

7 THE COURT: She's the one she got married, now she's
8 Rhonaree Habil, but she used to be Rhonaree Mayo.

9 MR. STAUDAHER: Got it.

10 THE COURT: Okay. 573, Philip Chavis. 604, Lora
11 Hendrickson. 650, Lisa Curro. 656, Tommie Sue Woolley. 718,
12 Margaret Sutko. 723, Steven Brown. 725, Aja Walker. 796,
13 Lisa Manley. 806, Daniel Jones. 808, Sage Shadley. Now
14 we're at the ones from today. I'm just going to give the last
15 three digits. 137, Raegan Harsanyi. 151, Jmon Nadonga. 154,
16 Erica Conti. 172, Margaret Stevens. And 189, Amand Keller.
17 Does that sound right to everyone?

18 MR. WRIGHT: I've got to take a break and pull all
19 mine out.

20 THE COURT: No, I know. I just -- we're going to
21 make a list for you. We're going to do it this afternoon.

22 MR. SANTACROCE: What was Nadonga's badge number,
23 fourth from the last?

24 THE COURT: 151. He was the second guy today. Does
25 that sound right to everybody?

1 MR. SANTACROCE: Yes, to me it does.

2 THE COURT: Does that sound right to you, Ms.
3 Weckerly?

4 MS. WECKERLY: Yes, Your Honor.

5 THE COURT: Like, I haven't named anybody that we
6 excused and I accidentally stuck their thing in a wrong pile
7 or anything?

8 MS. WECKERLY: I think it's right.

9 THE COURT: Okay. And does any -- do we count --
10 okay. Let's just count them.

11 MR. SANTACROCE: I don't count 35, though.

12 THE COURT: One, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
13 13, 14, 15 -- that's not why I'm laughing -- 16, 17, 18, 19,
14 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 -- making sure
15 nothing's caught together -- 32, 33, 34, 35. I count 35.
16 Does that comport with what you folks count?

17 MR. SANTACROCE: Yes.

18 MS. WECKERLY: Yes.

19 THE COURT: All right. That's it. Nine challenges a
20 side. Yes.

21 MR. WRIGHT: Before you excuse them or anything, I
22 intend to make a challenge to this venire -- pardon? Okay --
23 a challenge to the venire as constituted and then make a
24 change of venue motion.

25 THE COURT: Okay. Well, we can excuse the ten or

1 twelve people sitting in the hall, right?

2 MR. WRIGHT: Right. I just didn't -- I need to
3 somehow -- my -- I -- I'm saying we can do better than what
4 we've got and there are others out there, and so I just didn't
5 want them released in the event I made some headway.

6 THE COURT: Okay. Well then, that's fine. I guess I
7 didn't understand your challenge. So what's your challenge?

8 MR. WRIGHT: Did I say it right?

9 THE COURT: You've basically had every single for-
10 cause challenge granted except for one, which was the African
11 American -- well, she checked African-American Caucasian, so
12 the mixed-race woman that got the -- had a little disagreement
13 with Mr. Santacroce; so every single for-cause as I
14 recollected has been granted, except for that one. So I don't
15 understand the basis for the motion, other than that, perhaps.

16 MS. STANISH: If I'm not mistaken, and this is just
17 rough notes, I think the people who expressed bias and in the
18 questionnaire and we went on and on with them you did take two
19 of those off a moment ago. I believe who still remains is we
20 had a denial for cause on Cory Johnson.

21 THE COURT: Okay. Then my memory's faulty. I
22 apologize.

23 MS. STANISH: Of course, denial for cause for Mr.
24 Santacroce's friend, Ms. Valente; and then another denial for
25 cause for Deana Safronov.

1 THE COURT: Okay.

2 MS. STANISH: And I think that's it. And I -- so I
3 -- so the objection is, Your Honor, that, you know, you went
4 through great lengths to get the jury questionnaires out there
5 to 500 people so that we could, you know, discern who had
6 preconceived notions when they walked through --

7 THE COURT: Among other things.

8 MS. STANISH: Yeah.

9 THE COURT: Including listing the witnesses and
10 finding that out as opposed to reading off all these names,
11 you know, getting some background that we wouldn't have to sit
12 through asking --

13 MS. STANISH: Correct.

14 THE COURT: -- I mean, there's a number of reasons.
15 I'll just put that out there.

16 MS. STANISH: Correct, but we have limited number of
17 peremptories, of course, and the people who remain on this
18 panel who have expressed bias is, in our opinion, what taints
19 the venire; that even one person on that jury who comes -- who
20 has bias taints the whole panel.

21 So, and I -- you know, we feel like, as you observed
22 this morning, gee, this panel seems pretty sharp, we have this
23 today. And so we would have -- we would prefer to have a
24 panel that doesn't have these issues which we think could be
25 so easily avoided by continuing with the voir dire process,

1 even though no one's jumping up and down to make it a more
2 lengthy day. But for the sake of fairness, we don't need to
3 struggle with these people who have come in and expressed bias
4 when there's plenty of candidates who probably weren't
5 tainted.

6 THE COURT: Mr. Santacroce, do you want to weigh in?

7 MR. SANTACROCE: I just want to join in.

8 THE COURT: All right. Mr. Staudaher.

9 MR. STAUDAHER: Well, first of all, when we had the
10 panel, meaning the 500 plus people that everybody got ahold
11 of, that is the time to bring a motion to strike the panel if
12 you think that it's constituted of people that are a problem
13 or that you have an issue with. We never heard any motion at
14 the beginning of the trial indicating that the pool of
15 individuals that we were going through the jury questionnaires
16 was in any way an unrepresentative panel, or that it was a
17 skewed or biased panel, or that we couldn't get a group out of
18 that.

19 And then, conversely, when we go through the process,
20 as the Court's pointed out, virtually all of the for-cause
21 challenges that both sides raised, with the exception of a
22 couple, if that's the case, have been granted. So the
23 Court --

24 THE COURT: Yeah, I think the Court's actually been
25 pretty generous, in my view. I know that's not -- not agreed

1 with, that position; but I think the Court's been pretty
2 generous in granting the for-cause challenges that have been
3 made by -- made by the Defense. And to me, you know, the
4 issue is whether or not I should have granted the for-cause
5 challenges. If I didn't grant them, I didn't grant them.

6 Not to say, well, we have some better people today
7 because then I'm sure the State could say, Well, you know,
8 these people, they didn't seem, you know -- I mean, that's not
9 the way we do it. We get the basic 35 that have passed for
10 cause. And I understand you're saying -- that's why we held
11 some in abeyance; and I understand you're saying, Well, maybe
12 we could get another group that's never heard any -- anything
13 that would be good jurors. And, you know, that may be, but I
14 don't think that's the standard.

15 The standard is whether or not, you know, they can be
16 fair and impartial, set aside anything they've heard in the
17 media and blah-blah-blah, like that. And I just as an aside,
18 I would remark, you know, a lot of times when people fill
19 these out, they kind of put the first thing in their head. We
20 see this a lot, as you know, with death penalty cases where
21 people write something down and then when you start
22 questioning them, you know, somebody that you thought you
23 would strike, either side, on a death case because they
24 couldn't consider life with or they couldn't consider death,
25 once they start thinking about it and talking about it,

1 they're -- they're fine as a juror.

2 And so a lot of times, you know, even though it's
3 under oath and I'm sure they're trying to do a good job, you
4 know, their first thought without having any context at all
5 about the process, the burden of proof, how it works, is
6 different than what they say when they're questioned about it
7 and some of these concepts are explained to them. I'm not
8 saying that they're being more or less honest in either form.
9 What I'm saying is their answers may change because then they
10 understand really what's being asked of them and everything
11 like that. So, you know, to me, I didn't grant those as
12 for-cause challenges. If that was a mistake, then obviously
13 if Dr. Desai or Mr. Lakeman are convicted, then that's an
14 issue for the appellate court to say, No, you should have
15 granted those as for-cause challenges.

16 But, to me, the remedy isn't to say, Well, let's keep
17 going and see if we can find more people who've never read
18 anything or haven't heard of Dr. Desai, or whatever. So, you
19 know, I think the panel is what it is. Again, you know, if I
20 was wrong in not granting those three for-cause challenges
21 that I didn't grant, then -- then that's an issue for the
22 appellate court.

23 MR. STAUDAHER: And which ones are those, just so I
24 -- again --

25 THE COURT: For the record, yeah. It was the gal --

1 well, Ms. Stanish, you're organized on this point so why don't
2 you say?

3 MR. STAUDAHER: What are the badge numbers, please?

4 MS. STANISH: Badge 249, Cindy Ennon-Wilson. Badge
5 129, Cory Johnson. Badge 385, Angela Valente-Libanotis. And
6 Badge 426, Deana Safronov. And just to clarify a few points,
7 I don't think we -- we had to wait until the venire panel got
8 to this section. You know, obviously as Mr. Wright said,
9 we're looking at the change of venue issue and that does
10 require us to go to this length --

11 THE COURT: No.

12 MS. STANISH: -- because we have a concern with using
13 our limited number of peremps to clear -- potentially clear
14 out some of these people who have expressed bias. That's why
15 we raised it at this juncture so that Your Honor could
16 consider that; and I understand you're saying no.

17 THE COURT: Right.

18 MS. STANISH: We need to preserve it.

19 THE COURT: And there's no basis for change of venue
20 because, first of all, we went through a number of people that
21 hadn't even heard anything about this case or if they did,
22 they heard, Well, some people got Hepatitis C, and that's all
23 they knew. As you pointed out, you know, we have more
24 questionnaires where people, you know, hadn't heard anything
25 and we could keep going about that.

1 MS. STANISH: Well, Your Honor, we --

2 THE COURT: You know, and I -- I don't know. I want
3 to see where the peremps go because I think I, you know,
4 there's a little bit of a pattern here on racial make up and
5 things that I was perceiving so. You know, like the one
6 woman, Ms. Ennon-Smith [sic], all she wrote is first do no --
7 you know, the oath, you know, first do no harm or something
8 like that. Well, to me that's not a big statement of any kind
9 of bias or anything like that.

10 Now I understand you could say, Well, she assumes
11 that they did something wrong and that's what it is; but I
12 don't think that's indicating a strong opinion, you know, so I
13 would just -- I would just say that. But, like I said, you
14 know, if I was wrong in not granting those few remaining
15 for-cause challenges then I think that that's an issue for
16 appeal, not that we keep going until we -- because that's not
17 the standard that we have to find 35 people who never watch
18 the news or read the paper or, you know, had just like a
19 passing thing at the gym, like one person I think said, you
20 know, she may have been on the treadmill or whatever when she
21 heard it.

22 So I don't know if the State wants to weigh in more
23 on this?

24 MR. SANTACROCE: Can I just for the record join Mr.
25 Wright and Ms. Stanish's motion for change of venue?

1 THE COURT: Yeah. I mean, I just see no basis for a
2 change of venue because we could keep going and get
3 absolutely, you know, we could do this another four days or
4 five days and, you know, find people and there's plenty of
5 people so far in the group that haven't, you know, read, seen
6 or heard anything, but that's not the standard.

7 To me the standard is whether or not they can, you
8 know, set that aside and be fair and impartial or if their
9 opinion in some way, like the guy I excused today, Mr. -- I
10 can't remember his name that we argued about. You know, I
11 said, How can you separate the subjective view from the
12 objective view? But the people remaining, none of them said
13 anything like that, and so, you know, I was pretty confident
14 in passing those people on a for-cause challenge.

15 The ones I wasn't so confident with I kind of held
16 off on and have granted those today. That was the gal who was
17 kind of wishy-washy and the gentleman -- although as it
18 progressed I, as you know, did excuse everybody who had a
19 close friend or family member, wife, spouse, something like
20 that. So, you know, the record is what it is and -- and --

21 MR. SANTACROCE: May I be heard on that, Your Honor,
22 just --

23 THE COURT: Sure.

24 MR. SANTACROCE: The problem -- the problem I have,
25 and I don't know how this works out [inaudible], the fact that

1 we took some of those people out of order because we felt they
2 may have been a hardship and then they weren't a hardship so
3 we went on to question them --

4 THE COURT: Here's the thing, Mr. Santacroce --

5 MR. SANTACROCE: -- can I just finish this record?

6 THE COURT: Oh, sorry.

7 MR. SANTACROCE: So we went on to question them, and
8 then we ended up passing them for cause, and now they were put
9 into the batch of 35. And I don't know, for example, if Mr.
10 Libanotis was one of those that we questioned because --

11 THE COURT: Ms. Libanotis came in and I started with,
12 Oh, it says here that you would have difficulty serving
13 because of your job; and then she said, Oh, no, that's not an
14 issue anymore as I recall --

15 MR. SANTACROCE: Correct.

16 THE COURT: -- because I lost my job. So there went
17 the hardship thing.

18 MR. SANTACROCE: And then we went on.

19 THE COURT: And then we went on; but at that point
20 you knew she wasn't going to be a hardship. The other of --
21 the first day every hardship was excused when they raised the
22 issue, except for the first day when we weren't sure how many
23 people we would have in the pool. Mr. Staudaher objected to
24 excusing some of these hardship people, like the young woman
25 who was making \$80 a day as a shampoo -- pardon my expression

1 -- you know, haircare assistant, shampoo girl, or whatever.
2 Those people I wrote hardship and I placed in a separate pile.

3 The point -- and everybody questioned that -- and the
4 point being -- and everybody agreed that they could be -- you
5 folks, Defense, agreed they could be hardships. Mr.
6 Staudaher was the one on the first day that was opposing
7 releasing all those people as hardships. The point was, as I
8 explained, I would hold them in abeyance. If it looked like
9 we would have enough potential jurors I would be more generous
10 on excusing these hardship people. If it looked like we were
11 really going to be tight on jurors, we probably wouldn't be so
12 generous.

13 And then as I thought about it -- like I keep using
14 the shampoo girl, but she was really never well because she
15 started to cry. And you know what I thought? Look, I don't
16 care, no disrespect, I don't care what Mr. Staudaher says.
17 I'm not going to make some gal serve even if she lives with
18 her parents, in-laws, or whatever, you know, who is so upset
19 about missing work she's going to sit here crying. So, you
20 know, that was part of that; but that was all very clear that
21 those people were potential hardships and we needed to see
22 where we were.

23 Following that first day I started just releasing
24 people as hardships as they came up ignoring what the State's
25 wishes were because I thought, you know what? We're going to

1 have enough people and, like I said, I -- you know, I'm not
2 going to make these people suffer with their hardships through
3 this. So I think that was abundantly clear. And, again, the
4 Defense was agreeing to all of the hardship situations when I
5 called you folks up here and as we continued to question it
6 was very obvious that they were going to be possibly selected
7 as jurors. So whatever for-cause questions and other things
8 should have been pursued, I mean, I --

9 MR. SANTACROCE: I'm not challenging dismissal for
10 the hardships, that's not my point.

11 THE COURT: Okay. I don't understand what you're
12 challenging at that point.

13 MR. SANTACROCE: I agree -- I agree that -- what I'm
14 saying procedurally should have been done since we're
15 questioning them or what I feel --

16 THE COURT: Well, let me interrupt you because
17 procedurally today I went in order because I said I'm going in
18 order today because we may not get through the stack and I
19 don't want any perception, or allegation, or anything like
20 that that the Court is trying to control who makes it to the
21 pool.

22 So we went in order today; the other days we
23 exhausted every single person who showed up. So it didn't
24 matter if I did them, you know, back to front, front to back,
25 middle, even numbers, odd numbers, you know, fat people,

1 skinny people, tall people, short people, it didn't matter.
2 They were all questioned. So and now the numbers are in order
3 so it doesn't matter how they were questioned on the other
4 days. They're all in order. I don't understand what you're
5 complaining about.

6 Can you translate that, Mr. Wright?

7 MR. WRIGHT: No, I just want to be sure because your
8 numbers are all different. I kept them in the number we did
9 them and --

10 THE COURT: Okay. And I explained repeatedly --

11 MR. WRIGHT: -- okay -- I -- I understand.

12 THE COURT: -- that they wouldn't be in the number
13 that we kept them in. That they would go back to the original
14 numbers.

15 MR. WRIGHT: Right. That's what I'm asking.

16 THE COURT: Yes.

17 MR. WRIGHT: So as I understand it --

18 THE COURT: Right. It doesn't really matter anyway
19 because the lower numbers are all going to be the jurors. The
20 higher numbers, the people today, and the last two people or
21 some of the last yesterday, the only ones that would matter is
22 a couple of people from yesterday, whether they would be
23 alternates or not. For all the first people it doesn't matter
24 what order we put them in because they're all going to be part
25 of the 12. So whether you're part of the 12 and you sit in

1 chair 2 or you're part of the 12 and you sit in chair 8,
2 really doesn't matter. It's just for our simplicity.

3 So I don't understand what you all are complaining
4 about. I mean, I still don't understand what you're
5 complaining about. I explained this and they're in numerical
6 order. Now if I mis-numbered for some reason, then, let's put
7 it in correct order. But, I mean, I don't know how many times
8 I have to say it. I kept saying, I'm going to put these in
9 numerical sequence. It doesn't matter when we call them.
10 They're going to go in numerical sequence and that's what I
11 tried to do here. Like I said, if I made a mistake, let's
12 redo it.

13 What am I not understanding here, Mr. Santacroce?

14 MR. SANTACROCE: I am not going to --

15 THE COURT: No, I mean, I don't mean to yell at you.

16 MR. SANTACROCE: -- I'm not going to take an
17 aggressive posture. I've been down that road.

18 THE COURT: But I just don't know how many different
19 ways I could say the same thing. I mean, it's been a long
20 day --

21 MR. SANTACROCE: Our point was --

22 THE COURT: And I'm -- I'm not really yelling at you.
23 I'm yelling with you.

24 MR. SANTACROCE: [Inaudible.]

25 THE COURT: And so, you know, I just don't know how

1 many other ways I could try to say the same thing. We talked
2 about it in chambers, and I said it several times, and the way
3 we did it the other day had no impact because we got through
4 everybody. The one day we're not getting through everybody I
5 did it in order for that reason. I stated that this morning.
6 I'm doing it in order so that there can be no accusation that
7 the Court is trying to impact who's going to be in the panel.
8 I don't know how else to say it.

9 I mean, I said it. I -- I thought it was clear. I'm
10 sorry if it wasn't clear, but, really, I don't know how many
11 other ways to say what I've just said. So, you know, maybe
12 I'm -- you know, you're speaking Korean and I'm speaking
13 Chinese here. They kind of sound the same but we're not
14 communicating, so, you know.

15 MR. SANTACROCE: I have nothing else to say on that,
16 Your Honor, [inaudible].

17 THE COURT: All right. Would it assist the attorneys
18 for the Court to prepare a list --

19 MR. STAUDAHER: Yes, Your Honor.

20 THE COURT: -- in order?

21 MR. STAUDAHER: Yes.

22 THE COURT: Numerical order. We will do that, Mr.
23 Wright.

24 MS. STANISH: And, I'm sorry, there was --

25 THE COURT: He lets Ms. Stanish goes, I'm not going

1 to yell as much.

2 MS. STANISH: I just -- I neglected to mention one
3 other person that we had an issue that was denied for cause
4 relating to bias. It was Mr. Chavis, Badge No. 573, whose
5 ex-wife was a patient of the clinic.

6 THE COURT: Okay. I think we made a record
7 previously, but if the State would like to add anything on
8 that.

9 MR. STAUDAHER: No, Your Honor.

10 THE COURT: Mr. Wright.

11 MR. WRIGHT: I'm back to the venire issue and simply
12 asking for the record because of the amount of publicity that
13 was in the case that created the problems by which we have
14 ended up with a list of 35 in which, by my count, I have to
15 use my four and a half peremptories just to remove those
16 people who came in with a media-generated bias to begin with,
17 so I have to use all of my peremptories to do that and I don't
18 even have enough. I -- I -- we've already asked about
19 challenging the venire, no.

20 So my next request is to get, because of the 35 that
21 have come and the 111 that we've heard, additional peremptory
22 to both sides so that I can get enough peremptories to remove
23 those who walked in here with an opinion from the media, and
24 then they get rehabilitated and say the magic words and can
25 stay on, and I'm asking for more people to be qualified for

1 more peremptory.

2 MR. SANTACROCE: And I join that.

3 THE COURT: Well, to me, the rationale there is for
4 the Court to say, Oh, yes, you're right, there are people who
5 are biased or tainted and so we have to call in even more
6 people to remove those people. Obviously, I don't agree with
7 that premise. I think this is a fair panel.

8 What does the State want to say, if anything?

9 MS. WECKERLY: Your Honor, the standard isn't 35
10 people that have never been challenged for cause. Cause
11 challenges are made all the time in jury selection. The Court
12 made the call on all the ones that were presented. Most of
13 them were granted at the Defense request; some of them
14 weren't, as Ms. Stanish has indicated. But the standard
15 isn't: we never raised a challenge for cause, that's who we
16 need in our panel of 35. It's just not the standard. The
17 people that are left that are in the panel all convince the
18 Court that they were suitable jurors and that they could be
19 fair for both sides, and that's all that's required.

20 And just one thing on the -- I hope that the record
21 is clear on the numbering. The Court clearly put everybody
22 back into their original order as they would have been on the
23 original jury list because when I wrote it down I noticed Mr.
24 Archuletta, who didn't show up until day three, is way early
25 in the panel where he would have been originally and he was

1 the one that showed up a couple days late. So this is who we
2 would have had if we went straight in order and the order that
3 we questioned the prospective jurors in had no impact.

4 THE COURT: No impact. You know, again, either these
5 people passed for cause or they didn't. In my view they did,
6 that's the issue. So, you know, you're asking me to address a
7 problem I don't believe exists.

8 MR. WRIGHT: But -- but I'm not -- and I'm not -- and
9 I'm not rearguing.

10 THE COURT: No, because what you're -- I'm sorry.

11 MR. WRIGHT: All I'm saying is you have the
12 discretion --

13 THE COURT: Right.

14 MR. WRIGHT: -- to grant additional --

15 THE COURT: Of course I do.

16 MR. WRIGHT: -- okay. And so I'm asking --

17 THE COURT: But then we could wind up with four more
18 people that you've challenged for cause ad nauseam. I mean,
19 here's -- here's the thing: As you know, you know, every day
20 capital murder cases, other things, people are challenged for
21 cause and they're not granted. That doesn't mean, you know,
22 it's always discretionary of the Court to extend the peremps.
23 We have a lot of capital murder cases where we have two
24 defendants.

25 I myself have tried some where they have been

1 affirmed by the Nevada Supreme Court. I have not given
2 additional peremps and, you know, I don't remember who was
3 challenged or what in those cases; but, you know, all the time
4 people challenge for cause, it's denied.

5 The remedy is not to say, Oh, gee, I may have made a
6 mistake, let's give you some more peremps. And, to me, if
7 it's good enough for a death penalty, it's good enough for
8 this. So that's my position on this. You know, is it a big
9 deal to, you know, qualify two more people? Probably not,
10 but, you know, it's either -- it is or it isn't.

11 MS. STANISH: Understood, Your Honor. I just wanted
12 to bring to your attention the Seacore [phonetic] versus
13 Hutchinson case, which is --

14 THE COURT: Civil, obviously.

15 MS. STANISH: -- one of the civil spinoffs from this
16 where the -- one of the manufacturers took the civil case up
17 on -- on an appeal and it was an interesting case and it
18 really did address this issue that we're discussing. You
19 know, granted, I understand you have experience in death
20 penalty cases and such --

21 THE COURT: As we all do.

22 MS. STANISH: Correct. But because of the very
23 strong and disparaging publicity that's been going on in this
24 case for years and close in time to this that has influenced
25 some of the attorneys -- or jurors, the Hutchinson's case does

1 address this issue of peremptories and even mentions as a
2 factor that the defendants ought to request more peremptories
3 in these high-profile cases. So it's an interesting case. It
4 actually details more than the older criminal case --

5 THE COURT: Is this published?

6 MS. STANISH: Yes, ma'am.

7 THE COURT: And the cite? I mean, I'm happy to look
8 at it right now.

9 MS. STANISH: I don't have it with me, but --

10 THE COURT: I'm sure the State would like to look it
11 up as well. Look, if I look at that right now and say, Oh,
12 wow, yeah, I better give you two or three more, I'll do it.
13 You know, and I -- just on this whole -- yes, this did receive
14 an inordinate amount of publicity, that is true.

15 To say that it received inordinately negative
16 publicity for a criminal case is not true. By that I mean any
17 high-profile criminal case by definition pretty much is going
18 to receive very negative publicity against the suspect,
19 whether it's a murder case or a -- you know, we've had some,
20 you know, kid sexual assault cases that have been high
21 profile, or bisexual assault, you know, child pornography kind
22 of things. You know, so I don't -- I wouldn't say, yes, this
23 has had -- received a lot of publicity; but I can't say, no,
24 it's more negative than what you would typically see in any
25 other case because by definition when a criminal case that's,

1 you know, more or less high profile, pretty much, I would say,
2 not all the time, but the vast majority of the time the
3 publicity against a suspect is going to be negative. That's
4 the nature of the beast.

5 MR. SANTACROCE: By way of distinction, Your Honor,
6 this --

7 THE COURT: I'm going to look at this case. Can you
8 look it up?

9 MR. STAUDAHER: You know, Your Honor, this is the one
10 day I --

11 MR. WRIGHT: We'll file --

12 MR. STAUDAHER: -- one time I left it back at my
13 office.

14 THE COURT: You don't have your computer.

15 MR. WRIGHT: We'll file the media attention, but I --
16 I have never seen a case with the amount -- I've never seen
17 editorials written about it, even in the last two months, that
18 it's -- it's Dr. Desai who's guilty, not Baxter or whoever
19 just got the \$500 million judgment.

20 THE COURT: The HMO, his health plan.

21 MR. WRIGHT: Editorials in the newspaper announcing
22 his guilt and they shouldn't be going after the manufacturers
23 and producers of the pharmaceuticals. I have never seen ever
24 editorials written by the biggest newspaper in the State about
25 any murderer, tax -- child molester, anything else. It is a

1 different degree of animosity.

2 THE COURT: I don't think it's a different degree of
3 animosity. I mean, like I said, I think it's clearly a
4 high-profile case; but I don't accept that there's more
5 animosity towards these Defendants than other defendants in
6 high-profile cases, particularly sex-type cases. I don't
7 accept that.

8 MR. SANTACROCE: [Inaudible] --

9 THE COURT: I think what is unusual is that -- and
10 there's some actually anger, not by the RJ -- well, but by a
11 lot of people that, you know, if you read comments or, you
12 know, the rant, that kind of stuff, you know, there's anger
13 towards the victims and the patients here for going for the
14 deep pockets, you know, suing these pharmaceutical companies
15 and suing the HMO, and people are worried, you know, are my
16 insurance rates going to go up.

17 So while there is negative, obviously, publicity on
18 that, there's also a lot of negative press that's been written
19 about the plaintiffs and their attorneys and, you know, like,
20 Oh, these greedy plaintiffs, you know, they're trying to
21 capitalize on their -- their -- this situation by suing
22 anybody with deep pockets and stuff like that. And, you know,
23 I can't say that was an editorial in the RJ. Although there
24 -- I think there was a -- you know, if you read the Peter
25 Bernhard special to the RJ article, you know, I think there is

1 a bit of that in more official ways; but, certainly, you know,
2 that -- there's that perception out there as well that's anti
3 -- anti-victim because of the civil litigation and the idea,
4 Well, they're just greedy and, you know, you know, even some
5 of the comments, you know, why should Dr. Desai pay when --
6 you know, be found guilty when a jury has already said it's,
7 you know, Tetta [phonetic] that's guilty or it's, you know,
8 Health Plan of Nevada that's guilty, or whatever.

9 I want to look at this case before I excuse the jury.

10 MS. STANISH: I -- I have a cite, Your Honor. It's
11 127 Nevada advanced opinion 82, and there was a companion
12 case, I think it's Seacore v. Sachs, that -- one of these two
13 cases that summarizes the publicity up to the year 2010. And
14 it's interesting because it more or less --

15 THE COURT: Yeah, I mean --

16 MS. STANISH: -- addresses how the publicity focused
17 on Dr. Desai and not the manufacturers, but it's -- but the
18 Hutchinson case has an interesting discussion.

19 THE COURT: Yeah. Well, I think that that's fair and
20 if you attended the trial lawyers dinner where Bob [Inaudible]
21 got an award along with Will Kemp, you would have heard that
22 that was something the lawyers came up with, you know, how can
23 we sue the pharmaceutical company. So it makes sense that the
24 publicity was focused on the immediate actors, not on, you
25 know, the more far-reaching theory of the, you know, insurance

1 HMO where the -- the pharmaceutical manufacturer or whatnot.

2 MS. STANISH: Right, but the defense of the
3 manufacturers was to dump on Dr. Desai.

4 THE COURT: Well, actually, it wasn't in the court as
5 I understand it, at least in one trial that affirmative
6 defense was stricken.

7 MR. SANTACROCE: Your Honor, can I just make a brief
8 statement on that?

9 THE COURT: Sure.

10 MR. SANTACROCE: The point I wanted to make is that
11 the taint that the media has on this case has poisoned this
12 jury to the extent that many of the people believe that the
13 mechanism for transmission in this case was dirty needles and
14 that is part of the media's coverage of this case
15 disseminating false and wrong information in the case --

16 THE COURT: I don't --

17 MR. SANTACROCE: -- which makes it an impossible
18 hurdle for the Defense to get over.

19 THE COURT: Yeah. Well, first of all, you know,
20 these media issues were present prior to jury selection and,
21 if anything, I've learned during jury selection that there are
22 an awful lot of people who remarkably knew nothing about this
23 case. I think that that may be one reason why we have such a
24 young -- young group of prospective jurors because, I mean, I
25 know when I was a young person, you know, I wasn't reading the

1 paper all the time or watching the news because, frankly, you
2 didn't know anybody personally like you do now as an -- as an
3 older person. You just weren't as interested in those things
4 when you're younger. And so I think I was really kind of
5 surprised how many people hadn't. I want to look this case
6 up.

7 Does anyone need a copy from the Court?

8 MR. STAUDAHER: Yes.

9 MS. WECKERLY: Yes, please.

10 THE COURT: All right. Do you guys want copies or
11 you're familiar enough?

12 MS. STANISH: I'd like to have a copy. My memory's
13 not that good.

14 (Court recessed at 3:19 p.m. until 3:31 p.m.)

15 (Outside the presence of prospective jury panel.)

16 THE COURT: Again, you know, I feel that the people
17 that -- the remaining three people, you know, I think based on
18 the standard of for-cause, they expressed that they could, you
19 know, be fair and impartial and decide this case on the
20 evidence and -- and what have you.

21 So if there's nothing else, the Court's prepared to
22 bring in the remaining jurors and excuse them.

23 Kenny, you want to get Denise? Did Sherry give you
24 -- do you guys have a list now of all 35?

25 MR. SANTACROCE: Not yet.

1 MR. WRIGHT: Are we -- I'm -- I'm part face-ologist.
2 I have to see these. We're bringing the 35 in?

3 THE COURT: No. We were just going to do it off the
4 list.

5 MR. WRIGHT: I've never done it without looking at
6 it.

7 THE COURT: Well, because we've never taken seven
8 days --

9 MR. WRIGHT: Well, I'm just telling you, I never have
10 and I --

11 THE COURT: I thought I explained that last time.

12 MR. WRIGHT: You -- I -- if you did, it didn't sink
13 into me, I mean, because I just asked everyone: When are they
14 coming in or when are we going to do this? Because I -- I --
15 I'm sorry, I'm a visual person. I have to look at the people
16 to connect them.

17 THE COURT: I thought that was clear because the
18 whole talk about --

19 MR. WRIGHT: I didn't write down their descriptions.

20 THE COURT: The whole part about Ms. Tommie Joe [sic]
21 Woolley and she's going to be in Provo; and then remember I
22 told her --

23 MR. WRIGHT: I remember her.

24 THE COURT: -- and I told her if you're selected you
25 got to drive back and I know it's a full day, but you'll be

1 given the full day. Well, if we were going to select -- make
2 her drive back for jury selection then --

3 MR. WRIGHT: I remember her. I don't need to see
4 her.

5 THE COURT: Well --

6 MR. WRIGHT: No, I'm telling you I'm trying to make
7 it easier. I thought I was going to get to be able to see
8 them. When I look at them I can remember them.

9 MS. WECKERLY: Our -- our understanding was it was
10 going to be an open proceeding --

11 MR. WRIGHT: That's what I thought.

12 MS. WECKERLY: -- but we would just be passing the
13 list back and forth and the jurors wouldn't be here, but it
14 would be on the record like a short hearing.

15 THE COURT: Yeah, that's what -- that's what I said.

16 MR. WRIGHT: Well, what didn't click to me is they
17 weren't going to be here because I thought, Boy, this is going
18 to be something where I'd get up and actually excuse them
19 right in their presence and I'd never done that before.

20 THE COURT: But didn't I -- about the list and --
21 well, you have done it before because you did it in here when
22 you did the bad check case about the Israeli guy with the ice
23 cream truck.

24 MR. WRIGHT: Stand up and thank and excuse --

25 THE COURT: Yeah, because normally I don't do this

1 whole new-fangled really long way of qualifying all these
2 extra people. Normally I do it the old-fashioned way. You
3 sit in the box, you qualify the 12 or 14, or whatever it is,
4 and then the peremps are exercised publicly. You know, State
5 thanks and excuses Juror No. 2, and then they trot out, and
6 then the next in the audience sits in chair No. 2, and then
7 everybody questions, and then you do your peremp. Normally I
8 do it that way because it's a million times faster because a
9 lot of times the State waives their challenges once you get
10 past, like, the first three or four; so I never do this way.

11 The only reason I did it this way this time was
12 because I didn't want people to have to sit here for, you
13 know, would have now been -- well, they probably would have --
14 you know, it would have now been, what, four days last week --
15 or three days last week and three days this week that people
16 would have had to take a full week off work regardless of
17 whether or not they were chosen, so that's why I didn't do it
18 that way. Not to mention the fact you can't fit 400 people in
19 the courtroom, so you still would have had to do shifts with
20 65 people.

21 MR. WRIGHT: I understand all that. I just thought
22 the 35 were coming back and we were in open court going to do
23 them.

24 THE COURT: No, no, because remember I initially said
25 in chambers I was going to do the list back and forth. And

1 then I said, you know what? To me it will make it easier for
2 me as well as for Batson issues if we do it publicly off the
3 list. By publicly, you know, Ms. Weckerly stands up and says,
4 okay, I'm going to get rid of Darren Heller. And everybody
5 can look and say, Okay, yeah, well, Mr. Heller, he's a white
6 guy, he's challenged there. And then you guys decide, okay,
7 well, we're going to get rid of Mack Brown and, you know,
8 then, okay, that's, you know, or whatever.

9 MR. WRIGHT: Okay.

10 THE COURT: That's why I wanted it done publicly
11 because if there was a Batson challenge it would become more
12 immediately -- I thought more immediately evident if it was
13 public.

14 MR. WRIGHT: Sure, it would be more evident to me
15 because I can't remember the black ones from the white ones.

16 THE COURT: Well, it's on their questionnaire. I
17 can't necessarily say I can go through and remember, you know,
18 everybody's race and all that stuff; but it's here on the
19 questionnaire, so that was -- that was explained.

20 MR. WRIGHT: Well, okay. It didn't sink into me.

21 THE COURT: I'm sorry.

22 MR. WRIGHT: And the -- so what is the -- what is
23 envisioned as to when this will occur --

24 THE COURT: Well, my --

25 MR. WRIGHT: -- your plan?

1 THE COURT: My -- what I had envisioned is right now
2 court staff is preparing a list of the 35 who made the cut.
3 And then basically this afternoon, you know, everybody gets a
4 list, and the State goes first and they say, okay, well, we're
5 going to challenge, you know, badge 129, Mr. Johnson; and
6 then that's crossed out just like in other departments
7 nowadays, Mr. Wright, and I know everyone's familiar with the
8 new practice. A lot of times the jurors are all excused and
9 people just pass a list back and forth. Isn't that how you,
10 you know --

11 MS. WECKERLY: Some departments do that.

12 THE COURT: -- younger deputies are doing it in some
13 of the other departments?

14 MR. STAUDAHER: Yes, some of the departments.

15 THE COURT: I think I'm the last traditionalist left.
16 I know Doug Smith as well does it publicly because our -- in
17 our experience it's much faster to do it that way, the
18 old-fashioned way, because of the number of waivers. And I
19 know you did it in here because you did the bad check case,
20 the ice-cream guy.

21 MS. STANISH: Mr. Sahavi [phonetic]. Your Honor, can
22 we do that on Friday so that we have an opportunity to --

23 MR. WRIGHT: We have to discuss --

24 THE COURT: Yeah. Okay. Here's the deal, though.
25 You have to do it on Friday because we have to call these

1 people and tell them they've got to be here Monday.

2 MR. WRIGHT: Friday morning.

3 MR. STAUDAHER: That's fine.

4 THE COURT: And just for the record, Ms. Weckerly,
5 Mr. Staudaher, did you understand the way the Court was going
6 to do it?

7 MS. WECKERLY: Yes.

8 MR. STAUDAHER: Yes, Your Honor.

9 MR. WRIGHT: I didn't, I'm just telling you.

10 THE COURT: I -- well, I just wanted to be clear that
11 I'm not making stuff up or --

12 MR. WRIGHT: I'm not saying you were. I'm telling
13 you I -- I thought, Boy, we're going to knock them off right
14 in front of them.

15 THE COURT: No, because I'm not going to make them
16 come back just to be told you're rejected, go home.

17 MR. WRIGHT: Just to see them, I'm telling you, I'm
18 visual.

19 THE COURT: I thought that was the whole point -- is
20 this on the record? Okay. Good. I thought that was the
21 whole point of taking Dr. Desai into the vestibule at the end
22 of each questioning of a juror that we were likely to keep and
23 discussing it with him so that he would remember it. I mean,
24 if they were going to be sitting back in here it would be a
25 lot easier for everybody to remember. I mean, this whole time

1 I thought, Well, that's the whole reason they're going in the
2 vestibule so they can make notes and say, Okay, remember, you
3 know, this is the heavy-set young gal or this is the, you
4 know, young Latino man or whatever.

5 MR. WRIGHT: No, that -- no, that absolutely wasn't
6 my purpose.

7 THE COURT: Well, that's how --

8 MR. WRIGHT: I mean, to describe my purpose was to go
9 in and interview and discuss with him what he perceived and
10 understood because if I went to others it got mixed up.

11 THE COURT: Okay.

12 MR. WRIGHT: I mean, so I wasn't saying, the fat one,
13 the black one. I mean, I didn't. It never dawned on me.

14 THE COURT: Well, I mean, I kind of assumed that's
15 what was going on in there as part of your discussion because
16 you said it's going to be really difficult for him to keep
17 track of who all these people were and everything. And I
18 thought, Well, that's because they're not coming back, so that
19 was my, I guess, misassumption. But, honestly, I thought
20 that's what -- what's been part of the -- part of the
21 discussion this, you know, this whole time at the breaks.
22 But, you know, I thought I made it plain and clear and we
23 discussed it in chambers. We discussed it again on the
24 record.

25 MR. WRIGHT: Okay. Just went over my head. So we

1 can do it Friday -- I mean, just our peremptories in open
2 court.

3 THE COURT: Yeah.

4 MR. WRIGHT: Okay. I appreciate it.

5 THE COURT: And, you know, like I said, just we'll do
6 it first thing so my staff can start calling these people.
7 All right.

8 Kenny, bring in the rest of the jury. Yeah, they can
9 have their list, but I was going to excuse everybody.

10 (Prospective jury panel reconvened at 3:41 p.m.)

11 THE COURT: All right. Good afternoon, ladies and
12 gentlemen. We have now after six days gone through enough
13 prospective jurors so that we have enough jurors to make up
14 our jury in this case, therefore, all of you are excused. You
15 will not need to serve as jurors in this matter. Before you
16 leave today you do need to check out through Jury Services.
17 Thank you for being here.

18 I'm sorry that you had to spend the whole day here;
19 but obviously this is a very important part of our process and
20 it does take a long -- a long time as I'm sure you can
21 appreciate. Having said that, if all of you would just follow
22 our bailiff through the double doors. You are excused.

23 (Prospective jury panel recessed at 3:43 p.m.)

24 THE COURT: All right. Are there any other matters
25 that we need to address this afternoon?

1 MR. STAUDAHER: No, Your Honor. I believe we've
2 agreed to meet with -- on Friday to deal with some of the
3 issues, the pretrial motions and the discovery issues and so
4 forth, and we're going to try to work out some things in
5 advance of that with Defense counsel, so I don't think there's
6 any other issue, at least from the State's perspective this
7 afternoon.

8 THE COURT: We agreed that -- yes.

9 MR. WRIGHT: Were you done?

10 THE COURT: I was just going to say we agreed that we
11 were going to do the jury selection on Friday morning --

12 MR. WRIGHT: Yes.

13 THE COURT: -- and right before we get into the
14 pretrial motions and the stipulations and all of that. And
15 what I did tell the State, I think you guys were in the
16 vestibule, Mr. Santacroce is here, is what I require -- maybe
17 you already were planning on doing this. I don't require
18 either side to actually give a copy of their Power Point for
19 opening to the other side. It will be made a Court's exhibit
20 so I expect it printed out. However, if you're going to use
21 any exhibits in the Power Point, you know, other than just
22 language, then you do have to disclose the exhibits in advance
23 to the other side and you'll need to get a pretrial ruling
24 ahead of time that those exhibits can be used. So that's my
25 policy in here.

1 MR. STAUDAHER: Sounds fair.

2 MR. WRIGHT: The -- an -- an issue I intend to raise
3 Friday, so the Court can think about it --

4 THE COURT: Well, I appreciate any heads up because
5 that way if there's any research I need to do --

6 MR. WRIGHT: -- it's on --

7 THE COURT: -- I appreciate any heads up that I can
8 get because --

9 MR. WRIGHT: -- on the accommodations I'm going to be
10 requesting --

11 THE COURT: Okay.

12 MR. WRIGHT: -- how to accommodate and I -- and it's
13 going to be -- and I'm going to make a record on Friday
14 morning as to my interactions and what my results have been
15 and how at various times on the time of day and the length of
16 day how responsive he is; and so I'll make a record on that.

17 And then I -- do you have the -- do you remember that
18 case you gave me? It has to do with accommodations that are
19 made; and I'm going to be asking for recesses at the end of
20 witnesses, et cetera, on direct. There's a whole list of
21 things that a court did on a -- after a two-day hearing on a
22 case in New York involving expressive aphasia and what
23 accommodations were made.

24 THE COURT: Okay. And do you have --

25 MR. WRIGHT: And I'll get you the --

1 THE COURT: Thanks.

2 MR. WRIGHT: -- I'll call right as soon as I get back
3 with the cite. I didn't bring it with me.

4 THE COURT: That's fine.

5 MR. WRIGHT: But that's what I intend to raise and
6 ask about and --

7 THE COURT: Okay. Yeah, we're happy to make any
8 accommodations, you know, as we have been with the Defense,
9 Mr. Wright, Ms. Stanish, and Dr. Desai going into the
10 vestibule at all of the -- or after a juror who's likely or
11 potentially going to be in the 35 that hasn't been excused as
12 a hardship or for cause to discuss, you know, whatever it was
13 you discussed in the vestibule. So we have been doing that.

14 You know, I don't see a problem with taking a break
15 between the witnesses; you know, the only thing I would say is
16 within reason. If it's like a, you know, like some
17 patrol-cop-type that says, like, three things, then I -- I
18 wouldn't know that we'd need to take a break, a break on that.

19 There are other accommodations too that I normally
20 don't make, but could make. For example, you know, let's just
21 say there's some issue as to recalling who a witness was.
22 Well, they're going to be filmed from the witness stand so
23 that can be released as part of a JAVS tape or something like
24 that. Normally I don't release the JAVS because I don't
25 consider that to be the record. But I'm saying if there's

1 some issue with refreshing Dr. Desai's memory on who somebody
2 was, we can take it just a bit from the testimony so, you
3 know, you can see, okay, this was the witness --

4 MR. WRIGHT: How do you get it? Where --

5 THE COURT: -- those aren't -- those aren't -- I can
6 get them.

7 MR. WRIGHT: Oh, I mean, is there a film right now?

8 THE COURT: Right now you're on film.

9 MR. WRIGHT: Oh, I didn't know that.

10 MS. STANISH: And you can get [inaudible]?

11 THE COURT: Yeah, right now you're being filmed
12 because you're talking.

13 MR. WRIGHT: I didn't know that.

14 THE COURT: Yeah, it's part of the JAVS system. Now
15 if Mr. Staudaher were to start talking, he would be filmed.
16 When the witness is speaking -- when the witness is up we do
17 -- typically they focus on the witness because that's the
18 testimony. So what I'm saying is that's -- that's visually
19 recorded.

20 It is not the official record in this case. The
21 official record is the transcript. That's why we don't
22 release the JAVS because there's been situations where lawyers
23 like to prepare their own transcripts, which isn't the
24 official transcript, so for that reason it's this department's
25 policy not to release the JAVS. But if there's an issue, you

1 know, we can't remember who this guy was or whatever, we can
2 give you part of that, that would show that person on camera,
3 so that's the way that works.

4 And then, basically, of course, the jury box is never
5 on JAVS, which, Ms. Stanish, you know, if you're here on a
6 criminal calendar and they're sitting in the box, the
7 Defendants, that would never be filmed. So the jurors are
8 never on camera, so there's really no way for us to assist you
9 trying to remember who these people are because they're not
10 filmed in the box. Now I wished we put them here because then
11 we could have pulled -- that would be hard for Janie to do,
12 but --

13 MR. WRIGHT: Okie-dokie.

14 THE COURT: -- you know, and again, I'm happy to make
15 any reasonable accommodation that the Court can make. That
16 doesn't seem like a big deal to me taking a break or, you
17 know, whatever like that.

18 One other kind of logistical thing. As you know,
19 during jury selection you all have been using the bathrooms in
20 the back and everything like that. Obviously, we don't want
21 you folks using the same bathrooms as the jury. Depending on
22 what's out here in the media and stuff like that, we were
23 thinking of maybe keeping the jury in the back at the breaks
24 and lunch and stuff like that. Yeah, well, whatever -- if we
25 do the jury back there, then you folks will be using the

1 public bathrooms out in the hallway.

2 You know, our thinking was if there's a lot of media
3 here, we don't want them milling around in the hallways, so we
4 would be taking them back at all the breaks. Now obviously we
5 can't buy lunch for them for all these weeks, so they would be
6 out on their own for lunch, but -- so either way we'll decide
7 that Monday where we're going to keep the jury, so just be
8 mindful of that. It's back there. You folks need to use the
9 public bathroom. Okay.

10 Is there anything else we need to discuss?

11 MS. WECKERLY: Not on behalf of the State.

12 MR. STAUDAHER: No, Your Honor.

13 MS. STANISH: You're not going to miss us tomorrow?

14 THE COURT: What's that?

15 MS. STANISH: You're not going to miss us tomorrow?

16 THE COURT: I wanted to start right away tomorrow.

17 I'm trying to think how we could remind Mr. Wright of who all
18 these people are. I could probably go through and say, okay,
19 this was the tall, bald guy.

20 MR. WRIGHT: I mean, I told you I haven't done it --
21 I mean, Friday, that's fine. I mean, for now, maybe when I
22 will go back it will come back. I'm just not used to it.

23 THE COURT: Well, we can -- we can, you know, again,
24 you have to --

25 MR. WRIGHT: I think between Margaret and Santacroce

1 I'll figure out who they were.

2 MS. STANISH: We'll figure it out.

3 THE COURT: Well, we've got Mr. -- you know, and the
4 Desai family --

5 MR. WRIGHT: Yep.

6 THE COURT: -- who I'm sure will help you out.

7 MR. WRIGHT: Yep.

8 MS. STANISH: Yes.

9 THE COURT: We've got our prospective -- our pool of
10 35. Yeah, these are the 35. The rest of them I don't care
11 what you do with them.

12 (Court recessed for the evening at 3:52 p.m.)
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ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT