

No. 71348

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Oct 15 2018 01:04 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

EMILIA GARCIA,
Appellant,

v.

ANDREA AWERBACH,
Respondent.

**APPELLANT'S APPENDIX
VOLUME VII, BATES NUMBERS 1501 TO 1750**

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III	623 – 629	Decision and Order Denying Plaintiff's Motion to Strike Andrea Awerbach's Answer; Granting Plaintiff's Motion for Order to Show Cause; and Granting in Part and Denying in Part Plaintiff's Motion to Strike Supplemental Reports	02/25/2015
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VII	1503 - 1507	Order Vacating Judgment as to Jared Awerbach only	08/21/2017
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III, IV	650 – 900	Plaintiff's Motion to Disqualify Defendant Jared Awerbach's Counsel Randall Tindall and Motion For Reassignment to Department 27 on Order Shortening Time and Request for Leave to File Extended Memorandum of Points and Authorities	09/08/2015
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IV	933 – 945	Plaintiff's Trial Brief Regarding	02/10/2016

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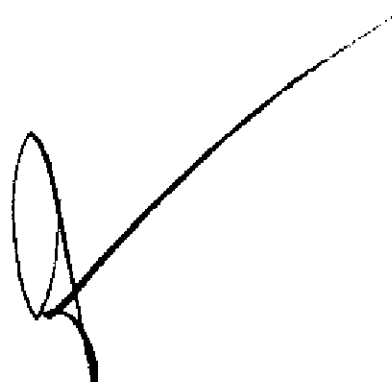
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20 Tatyana Ristic, Judicial Executive Assistant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

August 22, 2016

A-11-637772-C Emilia Garcia, Plaintiff(s)
vs.
Jared Awerbach, Defendant(s)

August 22, 2016 9:00 AM Minute Order

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Alice Jacobson

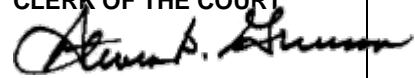
RECORDER:

REPORTER: Kristy Clark

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The above-referenced matter last came on for hearing on June 23, 2016. Subsequently, the Court issued a written Order Re: Post-Trial Motions, which was filed on 8/12/2016. It has come to the Court's attention that the Court erroneously failed to rule on the Plaintiff's Renewed Motion for Judgment as a Matter of Law. The Court now Orders that based upon the same reasoning that the Motion was denied previously, that the Plaintiff's Renewed Motion for Judgment as a Matter of Law is hereby DENIED.



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14 *Attorneys for Defendant*
15 *Jared Awerbach*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 EMILIA GARCIA,

15 Plaintiff,

16 *vs.*

17 JARED AWERBACH, individually; ANDREA
18 AWERBACH, individually; DOES I-X; and
19 ROE CORPORATIONS I- X, inclusive,

20 Defendants.

Case No. A-11-637772-C
Dept. No. 30

**NOTICE OF ENTRY OF
"ORDER VACATING JUDGMENT AS
TO JARED AWERBACH ONLY"**

21 Please take notice that on the 21st day of August, 2017, a "Order
22 Vacating Judgment as to Jared Awerbach Only" was entered in this case. A
23 copy of the order is attached.

24 Dated this 21st day of August, 2017.

25 LEWIS ROCA ROTHGERBER CHRISTIE LLP

26
27 By */s/ Joel D. Henriod*

28 DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
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Attorneys for Defendant Jared Awerbach

1 CERTIFICATE OF SERVICE

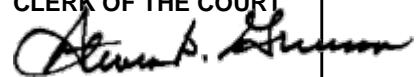
2 I hereby certify that on the 21st day of August, 2017, I served the
3 foregoing "Order Vacating Judgment as to Jared Awerbach Only" on counsel by
4 the Court's electronic filing system and by courtesy email to the persons and
5 addresses listed below:

6
7 D. LEE ROBERTS, JR.
8 TIMOTHY A. MOTT
9 MARISA RODRIGUEZ-SHAPOVAL
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11 GUNN & DIAL LLC
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19 /s/ Luz Horvath
20 An Employee of Lewis Roca Rothgerber Christie LLP
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DISTRICT COURT
CLARK COUNTY, NEVADA

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually; ANDREA
AWERBACH, individually; DOES I-X; and
ROE CORPORATIONS I- X, inclusive,

Defendants.

Case No. A-11-637772-C
Dept. No. 30

**ORDER VACATING JUDGMENT
AS TO JARED AWERBACH ONLY**

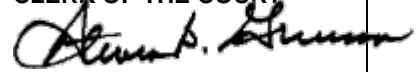
IT IS HEREBY ORDERED that the judgment in favor of plaintiff and against defendant Jared Awerbach, contained in the "Judgment Upon Jury Verdict," entered on August 18, 2017, is VACATED pursuant to this Court's order of August 12, 2016, which granted plaintiff's motion for new trial. (See August 12, 2016 "Order Re: Post-Trial Motions.")

The Court clarifies that the judgment entered in favor of defendant Andrea Awerbach and against plaintiff, contained in the "Judgment Upon Jury Verdict," entered on August 18, 2017, remains in effect. Pursuant to NRCPC 54(b), the Court determines and certifies that the August 18, 2017 "Judgment Upon Jury Verdict" constitutes a "final judgment" as to all claims between plaintiff and Andrea Awerbach. There is no just reason to delay such finality.

1 IT IS FURTHER ORDERED that Jared Awerbach's motion for new trial, filed
2 May 26, 2016, is DENIED AS MOOT, as the Court concludes that it is unnecessary
3 to reach the grounds raised in that motion as a new trial has already been
4 granted.

5 Dated this 21 day of August, 2017.

6 
7 JERRY A. WIESE
8 DISTRICT COURT JUDGE - DEPT. 30
9 EB
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NJUD
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*Attorneys for Defendant
Jared Awerbach*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually; ANDREA
AWERBACH, individually; DOES I-X; and
ROE CORPORATIONS I- X, inclusive,

Defendants.

Case No. A-11-637772-C
Dept. No. 30

**NOTICE OF ENTRY OF
“JUDGMENT UPON JURY VERDICT”**

Please take notice that on the 18th day of August, 2017, a “Judgment
Upon Jury Verdict” was entered in this case. A copy of the judgment is
attached.

Dated this 21st day of August, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By /s/ Joel D. Henriod

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Attorneys for Defendant Jared Awerbach

1 CERTIFICATE OF SERVICE

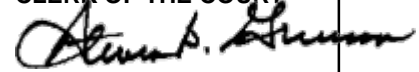
2 I hereby certify that on the 21st day of August, 2017, I served the
3 foregoing "Notice of Entry of 'Judgment Upon Jury Verdict'" on counsel by the
4 Court's electronic filing system and by courtesy email to the persons and
5 addresses listed below:

6
7 D. LEE ROBERTS, JR.
8 TIMOTHY A. MOTT
9 MARISA RODRIGUEZ-SHAPOVAL
10 WEINBERG, WHEELER, HUDGINS,
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19
20 /s/ Luz Horvath
An Employee of Lewis Roca Rothgerber Christie LLP



DISTRICT COURT
CLARK COUNTY, NEVADA

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually; ANDREA
AWERBACH, individually; DOES I-X; and
ROE CORPORATIONS I- X, inclusive,

Defendants.

Case No. A-11-637772-C
Dept. No. 30

JUDGMENT UPON
JURY VERDICT

This action proceeded to trial before the Court and a jury, the Honorable Jerry A. Wiese, district judge, presiding. The issues were duly tried and, on March 10, 2016, the jury rendered its verdict in favor of plaintiff and against defendant Jared Awerbach, but in favor of defendant Andrea Awerbach against plaintiff.

IT IS SO ORDERED AND ADJUDGED that plaintiff Emilia Garcia be given and granted judgment against defendant Jared Awerbach as follows:

1. Past medical expenses..... \$574,846.01
2. Past pain, suffering and loss of enjoyment of life..... \$250,000.00
- TOTAL..... \$824,846.01**

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff Emilia Garcia be given and granted punitive damages against Jared Awerbach in the amount of **\$2,000,000.00.**

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff Emilia Garcia take nothing from defendant Andrea Awerbach, and that judgment is entered in favor of Andrea Awerbach, based on the jury's findings that Andrea Awerbach

1 did not give express or implied permission to Jared Awerbach to use her vehicle
2 on January 2, 2011, and did not negligently entrust her vehicle to an
3 inexperienced or incompetent person on January 2, 2011.

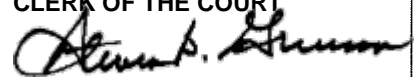
4 Dated this 17 day of August, 2017.

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7 JERRY A. WIESE
8 DISTRICT COURT JUDGE – DEPT. 30
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Electronically Filed
9/19/2017 4:57 PM
Steven D. Grierson
CLERK OF THE COURT



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DISTRICT COURT

CLARK COUNTY, NEVADA

EMILIA GARCIA, individually,

Plaintiff,

v.

JARED AWERBACH, individually; ANDREA
AWERBACH, individually; DOES I – X, and
ROE CORPORATIONS I – X, inclusive,

Defendants.

Case No.: A-11-637772-C

Dept. No.: 30

NOTICE OF APPEAL

Please take notice that Emilia Garcia hereby appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case;

2. Order denying Plaintiff's Oral Motion for Directed Verdict, entered on March 7, 2016 (Exhibit A: Trial Transcript (3/7/2016), at 146:25-148:25);

3. "Order RE: Post-Trial Motions," entered on August 12, 2016, notice of entry of which was served electronically on August 17, 2016 (Exhibit B);

4. "Order RE: Minute Order of 8/22/16," entered on August 22, 2016, notice of entry of which was served electronically on August 22, 2016 (Exhibit C);


5. "Order Modifying Prior Order of Judge Allf", entered on February 12, 2016 (Exhibit D);

6. "Judgment Upon Jury Verdict," entered on August 21, 2017, notice of entry of which was served electronically on August 21, 2017 (Exhibit E);

7. "Order Vacating Judgment as to Jared Awerbach Only," entered on August 21, 2017, notice of entry of which was served electronically on August 21, 2017 (Exhibit F); and

8. All ruling and interlocutory orders made appealable by any of the foregoing.

DATED this 19th day of September, 2017.



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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September, 2017, a true and correct copy of the foregoing **NOTICE OF APPEAL** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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EXHIBIT A

EXHIBIT A

1 CASE NO. A-11-637772-C

2 DEPT. NO. 30

3 DOCKET U

4

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 * * * * *

8

9 EMILIA GARCIA, individually,)

10 Plaintiff,)

11 vs.)

12 JARED AWERBACH, individually;)

13 ANDREA AWERBACH, individually;)

14 DOES I-X, and ROE CORPORATIONS)

15 I-X, inclusive,)

16 Defendants.)

17

18

19 REPORTER'S TRANSCRIPT

20 OF

21 JURY TRIAL

22 BEFORE THE HONORABLE JERRY A. WIESE, II

23 DEPARTMENT XXX

24 DATED MONDAY, MARCH 7, 2016

25

26 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,
CA CSR #13529

1 sitting here waiting for each other to get back
2 together again. You still can't do that. Okay? You
3 can't talk to each other until everything is done and
4 you are in the deliberation room together. All right?
5 I'm just emphasizing that to you because sometimes
6 people get confused once both sides have rested.
7 Nothing has changed. I will tell you when you can talk
8 about the case. Okay?

9 Thank you, folks. We'll see you tomorrow
10 morning at 10:00 o'clock.

11 (The following proceedings were held
12 outside the presence of the jury.)

13 THE COURT: All right. We're now outside the
14 presence of the jury. Anything we need to put on the
15 record now, Counsel?

16 MR. ROBERTS: I have got a few motions to
17 make. I don't know if -- and then we need to settle
18 jury instructions, but we can ...

19 THE COURT: Go ahead. Make your motions.

20 MR. ROBERTS: Thank you, Your Honor.

21 THE COURT: You have a few?

22 MR. ROBERTS: Well, a few. Sorry, Your
23 Honor. So many I have to get out my notes to remember
24 them all.

25 The first one is, we would request a directed

1 verdict on the issue of permissive use on whether or
2 not Mr. Awerbach had permission, express or implied, to
3 use the vehicle. Under the Court's modified order on
4 the sanctions, there is a presumption of permissive use
5 shifting the burden of proof to the defendants to
6 rebut.

7 I would submit that there was no evidence
8 from which a reasonable juror could find that they,
9 indeed, met their burden of proof. There's been
10 undisputed evidence now that she allowed Mr. Awerbach
11 to drive her car on past occasions. There's been
12 undisputed evidence that she put the keys to the car in
13 his hand on the day of the incident. And while I
14 understand that it's -- it was a close question and
15 might not otherwise have been an appropriate motion, I
16 think what pushes us over the top is the admission.
17 The -- under the rules, the admission conclusively
18 establishes permissive use as a matter of law; and,
19 therefore, we're entitled to directed verdict on that
20 motion.

21 While Counsel stated that they were going to
22 introduce into evidence an amended admission and proof
23 that this was withdrawn and later corrected, I don't
24 recall seeing that come into evidence. If I missed it
25 because I was doing something else, I apologize. I

1 don't think -- I think they rested their case without
2 putting the amended admission into evidence; therefore,
3 the only thing in evidence is an admission that he had
4 permissive use, and that's conclusive.

5 THE COURT: But didn't we just have an
6 argument on that on our last break, and I said I wasn't
7 going to allow the amendment based on the -- based on
8 the rule, but I was going to allow them to use the
9 interrogatory answer?

10 MR. MAZZEO: You did.

11 MR. ROBERTS: I guess I'm confused. Because
12 if it's conclusively established and they're not being
13 allowed to amend, how could there be an issue of fact
14 for the jury?

15 THE COURT: That goes back to Mr. Tindall's
16 argument. And -- and I said -- I read it as being
17 conclusively presumed as it related to Rule 36. That's
18 why I didn't allow the amended admission response, but
19 I was going to allow additional discovery responses
20 because I knew they were inconsistent.

21 MR. ROBERTS: Okay. Well, I still want to
22 make my motion.

23 THE COURT: That's fine.

24 MR. ROBERTS: You can deny it.

25 THE COURT: Okay. Denied.

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CERTIFICATE OF REPORTER

STATE OF NEVADA)
COUNTY OF CLARK) ss:

I, Kristy L. Clark, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify: That I reported the proceedings commencing on
Monday, March 7, 2016, at 10:05 o'clock a.m.

That I thereafter transcribed my said
shorthand notes into typewriting and that the
typewritten transcript is a complete, true and accurate
transcription of my said shorthand notes.

I further certify that I am not a relative or
employee of counsel of any of the parties, nor a
relative or employee of the parties involved in said
action, nor a person financially interested in the
action.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
7th day of March, 2016.

KRISTY L. CLARK, CCR #708

EXHIBIT B

EXHIBIT B

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually, and
ANDREA AWERBACH, individually,

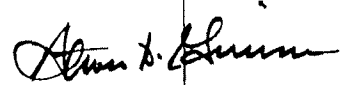
Defendants.

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CASE NO.: A637772
DEPT. XXX

NOTICE OF
ENTRY OF
ORDER RE:
POST-TRIAL
MOTIONS

Electronically Filed
08/17/2016 07:31:16 AM



CLERK OF THE COURT

NOTICE OF ENTRY OF ORDER

RE: POST-TRIAL MOTIONS

You are hereby notified that this Court entered an Order Re: Post-Trial Motions, a copy of which is attached hereto.

DATED this 16th day of August, 2016.



JERRY A WIESE
DISTRICT COURT JUDGE

Certificate of Service

I hereby certify that on the date filed, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system, or, if no e-mail was provided, mailed or placed in the Clerk's Office attorney folder for:

ADAM SMITH

CRAIG HENDERSON

DANIEL POLSENBERG

MARIA ESTANISLO

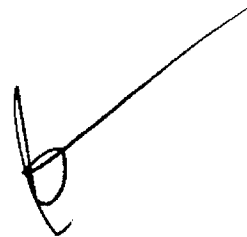
PETER MAZZEO

RANDY TINDALL

AUDRA BOONEY

GEMMA ENDOZO

TIM MOTT



Tatyana Ristic, Judicial Executive Assistant

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

Electronically Filed
08/12/2016 02:12:57 PM

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually, and
ANDREA AWERBACH, individually,

Defendants.

CASE NO.: A63777
DEPT. XXX

CLERK OF THE COURT

ORDER RE:
POST-TRIAL
MOTIONS

On June 23, 2016, the above-referenced matter came on for hearing before Judge Jerry A. Wiese II, with regard to Plaintiff's Motion for New Trial or, in the Alternative, for Additur, Plaintiff's Renewed Motion for Judgment as a Matter of Law, Jared Awerbach's Motion for New Trial, and Andrea Auerbach's Countermotion for Remittitur. The Court had previously reviewed the pleadings, and at the time of the hearing allowed oral argument on the part of all parties. The Court indicated that it would subsequently issue an Order, and the Court's Order now follows:

With regard to Plaintiff's and Jared Awerbach's Motions for New Trial, NRCP 59 provides the following standard:

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially affecting the substantial rights of an aggrieved party: (1) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at the trial; (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages appearing to have been given under the influence of passion or prejudice; or, (7) Error in law occurring at the trial and objected to by the party making the motion. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

1 [As amended; effective January 1, 2005.]¹

2 Plaintiff argues that she is entitled to a New Trial, based upon the following
3 arguments: 1) the jury engaged in improper experimentation during deliberations; 2)
4 the jury was improperly advised by the Court during deliberations that they may award
5 Ms. Garcia past medical expenses and not award future medical expenses; 3)
6 Defendants inappropriately previewed Dr. Scher's opinions, and then used them again
7 in closing argument, even though Dr. Scher's opinions were stricken; 4) defense
8 counsel violated numerous pre-trial Orders; and 5) the damages awarded to Ms. Garcia
9 were clearly inadequate, and consequently, additur is necessary. The Court will
10 address each argument in order.

11 **1) Did the jury conduct an improper experiment during deliberations,
12 which warrants a new trial?**

13 Plaintiff argues that she is entitled to a new trial because the jury conducted an
14 improper experiment during deliberations. This argument is obviously premised on
15 the Declaration of Keith Berkery, (Juror 5) in which he explained how the jury chose
16 Juror 6, Jessica Bias, to reach over the wood hand/rail/divider, to pick up a water
17 bottle, which the Jurors had apparently seen the Plaintiff do during the Trial, so they
18 could determine the effect that it had on Ms. Bias, and therefore, on the Plaintiff.

19 In *ACP Reno Assoc., ACP v. Airmotive and Villanova*,² the Nevada Supreme
20 Court affirmed its adherence to the general rule "prohibiting the use of juror affidavits
21 to impeach the jury's verdict."³ The Court has held that there is an exception to the
22 general rule, and "[w]here the misconduct involves extrinsic information or contact
23 with the jury, juror affidavits or testimony establishing the fact that the jury received
24 the information or was contacted are permitted."⁴ An extraneous influence includes,
25 among other things, publicity or media reports received and discussed among jurors
26 during deliberations, consideration by jurors of extrinsic evidence, and third-party
27 communications with sitting jurors. In contrast, intra-jury or intrinsic influences

28 ¹ NRCP 59.

² 109 Nev. 314, 849 P.2d 277 (1993).

³ *ACP Reno Assoc., ACP v. Airmotive and Villanova*, 109 Nev. 314, 318, 949 P.2d 277 (1993); See also *Weaver Brothers, Ltd. v. Misskelley*, 98 Nev. 232, 645 P.2d 438 (1982).

⁴ *Meyer v. State*, 119 Nev. 554, 80 P.3d 447, 454.

1 involve improper discussions among jurors (such as considering a defendant's failure
2 to testify), intimidation or harassment of one juror by another, or other similar
3 situations that are generally not admissible to impeach a verdict."⁵ The Court stated
4 that "proof of misconduct must be based on objective facts and not the state of mind or
5 deliberative process of the jury. Juror affidavits that delve into a juror's thought
6 process cannot be used to impeach a jury verdict and must be stricken."⁶

7 The Nevada Supreme Court has cited heavily to the case of *Meyer v. State*, for
8 the proposition that "[A] motion for a new trial may . . . be premised upon juror
9 misconduct where such misconduct is readily ascertainable from objective facts and
10 overt conduct without regard to the state of mind and mental processes of any juror."⁷
11 Additionally, *ACP Reno Assocs. v. Airmotive & Villanova, Inc.*,⁸ holds that "juror
12 affidavits [are] inadmissible to show that the jurors misunderstood the judge's
13 instructions." In order to prevail on a motion for a new trial based on juror
14 misconduct, admissible evidence must establish "(1) the occurrence of juror
15 misconduct, and (2) a showing that the misconduct was prejudicial."⁹ "Prejudice is
16 shown whenever there is a reasonable probability or likelihood that the juror
misconduct affected the verdict."¹⁰

17 Plaintiff's Motion cites to the case of *Russell v. State*,¹¹ in which the appellant's
18 counsel argued during closing argument, that the accused would not have been able to
19 get from Reno to Carson City in time to commit the alleged offense. During a recess in
20 the trial, a juror drove to Reno, and then measured the time it took him to drive to
21 Carson City from the accused's place of employment in Reno. During the jury
22 deliberations, he told the other jurors that it took him twenty-five minutes to travel that
23 distance. The District Court agreed that the juror's actions constituted "misconduct,"
24 but concluded that the misconduct was "harmless." The Nevada Supreme Court,
however, concluded that the district court's conclusion was an abuse of discretion. The

25
26 ⁵ *Meyer v. State*, 119 Nev. 554, 562, 80 P.3d 447, 454 (2003).

27 ⁶ *Id.*, at pg. 563.

28 ⁷ *Meyer* at pg. 563.

⁸ 109 Nev. 314, 318, 849 P.2d 277, 279 (1993).

⁹ *Meyer* at pgs. 563-64.

¹⁰ *Meyer* at pg. 564. (Note that the Court has taken these citations directly from a Nevada Supreme Court Order of Reversal and Remand in *Estate of William George Dyer v. Vicky Guernier, et al.*, Nev. Supreme Court Case No.: 62941, filed 2/19/2015.)

¹¹ 99 Nev. 265, 661 P.2d 1293 (1983).

1 Supreme Court noted that "juror misconduct is particularly egregious where, as here,
2 the juror has engaged in independent 'research' of the facts."¹² The Court further
3 noted that "the information disclosed by the juror related to a crucial aspect of
4 appellant's defense. Appellant's case was therefore significantly harmed by his inability
5 to cross-examine the juror, during the trial, concerning the many variables which may
6 have affected his driving time."¹³

7 This Court notes that the "experiment" conducted by the jury in the present case,
8 occurred after the jury had asked to return to the courtroom to view the steps leading
9 into the witness stand.¹⁴ The Court saw no problem with this "view" because it was
10 something that the jury had been able to view throughout the trial. There was no
11 indication that the jury intended to conduct any type of experiment, or the Court would
12 not have allowed it. Based upon Mr. Berkery's affidavit, however, the jury used the
13 opportunity to conduct an "experiment" and reenact what Mr. Berkery had apparently
14 seen the Plaintiff do (the Plaintiff leaning over the wooden rail to obtain a bottle of
15 water.) According to the Nevada Supreme Court, a juror's affidavit may only be
16 considered as it relates to establishing objective facts.¹⁵ In the present case, this Court
17 may rely on Mr. Berkery's affidavit, only to the extent that it establishes the objective
18 fact that an "experiment" was conducted, and how it was conducted. The
19 determination of whether, and to what extent, the experiment affected the jurors, must
20 be determined based on an "objective" standard, not on a juror's affidavit. This Court
21 concludes that the experiment conducted by the jurors, in the Courtroom, constituted
22 juror misconduct. The jurors had been instructed that they were to "decide all
23 questions of fact in this case from the evidence received in this trial and not from any
24 other source."¹⁶ They were instructed not to "make any independent investigation . . .
[or to] visit the scene, conduct experiments, or consult reference works for additional

25 ¹² Russell at pg. 267, citing to *Barker v. State*, 95 Nev. 308, 312, 594 P.2d 719 (1979).

26 ¹³ Russell at pg. 267.

27 ¹⁴ The actual question from the jury foreperson said, "We would like to see a courtroom to see the stairs in
the witness area and the attorney area." (See Court Exhibit 17, March 10, 2016).

28 ¹⁵ "A motion for a new trial may . . . be premised upon juror misconduct where such misconduct is readily
ascertainable from objective facts and overt conduct without regard to the state of mind and mental processes of
any juror." *Meyer v. State*, 119 Nev. 554, 563, 80 P.3d 447, 454 (2003).

¹⁶ See Jury Instruction No. 6.

1 information.”¹⁷ Clearly, the affidavit of Mr. Berkery establishes that the jury did
2 conduct an “independent investigation,” and conducted an “experiment” in violation of
3 Jury Instruction No. 6. As the Supreme Court has indicated, “juror misconduct is
4 particularly egregious where . . . the juror has engaged in independent ‘research’ of the
5 facts.”¹⁸

6 After concluding that misconduct occurred, the more important question, and
7 the one that is more difficult to answer, is whether the jury’s misconduct was
8 “prejudicial.”¹⁹ The Supreme Court has indicated that “[p]rejudice is shown whenever
9 there is a reasonable probability or likelihood that the juror misconduct affected the
10 verdict.”²⁰ This Court concludes that the experiment conducted by the jurors “related
11 to a crucial aspect” of the Plaintiff’s case – credibility of the plaintiff, and the nature
12 and extent of the plaintiff’s injuries. The Court further concludes that the Plaintiff’s
13 case was “significantly harmed by [her] inability to cross-examine the juror . . .
14 concerning the many variables which may have affected [the result of the
15 experiment].”²¹ The Court concludes that there is a reasonable probability or likelihood
16 that the juror misconduct affected the verdict.”²²

17 **Did the Court improperly advise the jury that it could award past
18 medical expenses and no future medical expenses?**

19 Plaintiff contends that it was error for the Court to advise the jury that it could
20 award the Plaintiff her past medical expenses and no future medical expenses. The
21 question posed by the jury foreperson was as follows: “Based on Instruction 25 would
22 it [be]possible to award the Plaintiff [the] entire amount of Past Medical Expenses
23 without awarding anything for Future medical expenses?” The Court responded with
24 “yes.”²³ The Plaintiff argues that the Plaintiff’s future medical expenses were “either

25 ¹⁷ See Jury Instruction No. 6 .

26 ¹⁸ *Russell* at pg. 267, citing to *Barker v. State*, 95 Nev. 308, 312, 594 P.2d 719 (1979).

27 ¹⁹ See *Meyer* at pgs. 563-64.

28 ²⁰ *Meyer* at pg. 564.

²¹ *Russell* at pg. 267.

²² *Meyer* at pg. 564.

²³ See Court Exhibit 19, March 10, 2016. Note that Instruction No. 25 read as follows: If you find that a Defendant is liable for the original injury to the Plaintiff, then Defendant is also liable for any aggravation of the original injury caused by negligent medical or hospital treatment or care of the original injury, or for any additional injury caused by negligent medical or hospital treatment or care of the original injury.”

1 undisputed or [were] disputed on the exact same grounds as her past expenses.”²⁴
2 Consequently, since the jury awarded all of Ms. Garcia’s past medical expenses
3 (\$574,846.01), Plaintiff argues that the jury had no choice but to award the Plaintiff her
4 future medical expenses.

5 This Court finds that Plaintiff’s argument lacks merit, as the jurors were
6 instructed to “bring to the consideration of the evidence [their] everyday common
7 sense and judgment as reasonable men and women;”²⁵ they were instructed that it was
8 up to them to determine the “credibility or believability” of the witnesses;²⁶ they were
9 instructed about “discrepancies in a witness’s testimony;”²⁷ they were told that they
10 were “not bound” by any expert testimony, but that they were to give such testimony
11 “the weight to which [they] deem it entitled;”²⁸ and with regard to damages, they were
12 instructed that they could award the Plaintiff the “damages [they] believe from the
13 evidence Plaintiff has sustained,” and they could award “[t]he reasonable medical
14 expenses which [they believed] Plaintiff probably will incur in the future as a result of
15 the accident;”²⁹ and finally, the jurors were instructed that “[w]hether any of these
16 elements of damage have been proven by the evidence is for [them] to determine.”³⁰
17 The jury was free to disregard the testimony of the experts, and was free to believe or
18 disbelieve the testimony of the Plaintiff, the treating doctors, etc. This Court will not
19 disturb the verdict of the Jury with regard to its award of future medical expenses, or
20 refusal to award such damages. The Court recalls that there was sufficient evidence
21 presented, through cross-examination of the medical care providers, cross-examination
22 of the Plaintiff herself, and other evidence, upon which the Jury could have based its
23 decision to deny the Plaintiff any future medical expenses. Particularly, the Court
24 recalls Facebook pictures that were presented to the Jury showing the Plaintiff
25 participating in activities which could have been interpreted as inconsistent with the
26 Plaintiff’s pain complaints. Although Plaintiff argues that the evidence supporting past
27 and future damages was “undisputed,” the Court does not agree, and the Jury was free

24 (See Motion for New Trial at pg. 7 of 30).

25 See Jury Instruction No. 7.

26 See Jury Instruction No. 15.

27 See Jury Instruction No. 16.

28 See Jury Instruction No. 18.

29 See Jury Instruction No. 33.

30 See Jury Instruction No. 37.

1 to accept or to disregard the evidence which it saw and heard, and reach the verdict
2 that it reached. A verdict that is unsupported by evidence is improper and must be
3 overturned,³¹ but in this case, the verdict was supported by the evidence, and need not
4 be overturned.

5 **2) Did the Court err in allowing Defense counsel to preview Dr. Scher's**
6 **opinions during opening statement, and then refer to such opinions**
7 **during closing argument?**

8 Plaintiff next argues that the Court erred in allowing Defense counsel to preview
9 Dr. Scher's foundationless opinions regarding forces of impact, during opening
10 statement, and then Defense counsel again referred to such evidence in Closing
11 Argument, even after Dr. Scher's testimony had been stricken. The Court allowed a
12 preview of Dr. Scher's opinions during opening statement, because the Court allows the
13 attorneys to explain what the evidence will show, and what they have a good faith belief
14 will be entered into evidence during the course of the trial. Based upon representations
15 from Defense counsel, the Court had no reason to believe at the outset, that Dr. Scher's
16 testimony would be stricken. Prior to Trial, the Court had evaluated the proposed
17 testimony of Dr. Scher, and was convinced that there was "at least arguably" sufficient
18 foundation for that testimony. During the presentation of evidence, however, it became
19 evident that there was "inadequate foundation" for Dr. Scher's opinions, and
20 consequently, his testimony was stricken from the record, and the Jury was instructed
21 to disregard it. During closing argument, Mr. Awerbach's counsel argued that the
22 Plaintiff sustained "no physical forces greater than the roller coasters she rode
23 before."³² The Court overruled an objection to that statement, indicating that the Court
24 felt that Mr. Strassburg was simply using a "common sense" argument, but later the
25 Court noted that the Court should have sustained the objection because it was a
26 conclusion that didn't have any basis in evidence.³³ The Court acknowledges that the
27 objection should have been sustained, and Defense counsel should have been
28 admonished not to "testify" or refer to Dr. Scher's opinions during closing argument,
since Dr. Scher's opinions had been stricken from the record. Although the Court
acknowledges the error, the Court is not convinced that the statement regarding the

³¹ *Arnold v. Mt. Wheeler Power*, 101 Nev. 612, 614, 707 P.2d 1137, 1139 (1985).

³² See Trial Transcript 3/9/16 at pg. 19:6-7.

³³ See Trial Transcript 3/9/16 at pg. 65:10-24.

1 "roller coasters" or the other general references to "forces" were sufficiently prejudicial
2 to have made a difference to the Jury. There is no indication that such statements
3 made a difference in the minds of the jurors, and the jurors were instructed more than
4 once that opening statements and closing arguments were "not evidence." Although
5 the Court acknowledges the error, the Court finds that such error may have been
6 harmless, and by itself such error would not justify a new trial. In combination with the
7 other irregularities during Trial, however, it may.

8 **3) Did the accumulation of juror misconduct, error, and improper**
9 **presentation of biomechanical testimony, and repeated violation of**
10 **Pre-Trial Orders prejudice the Plaintiff to the extent that a new trial**
11 **is warranted?**

12 Plaintiff's final argument in support of its Motion for New Trial is that the
13 accumulation of juror misconduct, error, and improper presentation of biomechanical
14 testimony, in addition to repeated violations of Pre-Trial Orders by Defense counsel,
15 prejudiced the Plaintiff and affected the verdict. Plaintiff argues that defense counsel
16 violated at least 15 Pre-Trial Orders. This Court acknowledges that Defense counsel did
17 walk a fine line, coming close to violating, and sometimes went past the line, actually
18 violating, some of the Pre-Trial Orders. Consequently, many of Plaintiff's counsel's
19 objections in that regard were sustained. The Court is not convinced that such
20 violations, by themselves, justify a new trial, but in combination with other
21 irregularities, they may.

22 **4) Are the damages "clearly inadequate" such that Plaintiff is entitled to**
23 **an "additur?"**

24 Plaintiff argues that as an alternative to a new trial, she is entitled to an
25 "additur." The Plaintiff correctly cites to the cases of *Drummond v. Mid-West*
26 *Growers*,³⁴ and *Lee v. Ball*,³⁵ as authority for the potential use of an additur, but those
27 cases stand for the proposition that an additur is only appropriate if 1) the damages are
28 clearly inadequate; and 2) the case would be a proper one for granting a motion for new
trial limited to damages. This Court cannot conclude that the damages awarded by the
Jury are "clearly inadequate," and consequently, the Court does not feel comfortable

31 ³⁴ 91 Nev. 698 (1975).

35 ³⁵ 121 Nev. 391, 393-94 (2005).

1 substituting its judgment regarding damages for that of the Jury. As a result, the Court
2 concludes that an "additur" in this case would not be appropriate. A similar analysis
3 would preclude the Court from granting Andrea Awerbach's request for "remittitur."

4 **CONCLUSION AND ORDER**

5 Based upon the foregoing, this Court finds that a "new trial" of all issues is
6 warranted, based upon NRCP 59(a)(2) (Misconduct of the jury – conducting an
7 experiment); NRCP 59(a)(5) (Manifest disregard by the jury of the instructions of the
8 court – specifically the instruction that the jury was prohibited from conducting its own
9 experiments or investigation); and NRCP 59(a)(7) (Error in law occurring at the trial
10 and objected to by the party making the motion – specifically the statements by
11 Defense Counsel during closing argument, improperly referencing the "forces of
12 impact" testimony of Dr. Scher, as well as the cumulative effect of multiple violations of
13 various Pre-Trial Orders). Based upon these irregularities, the Court concludes that the
14 parties were prejudiced, and were prevented from having a fair trial.


15 Based upon the foregoing, and good cause appearing therefor,

16 **IT IS HEREBY ORDERED** that Plaintiff's Motion for New Trial or, in the
17 Alternative, for Additur, is hereby **GRANTED** as it relates to a request for a new trial,
18 and **DENIED** as it relates to a requested additur.

19 **IT IS FURTHER ORDERED** that Andrea Awerbach's Countermotion for
20 Remittitur is hereby **DENIED**.

21 **IT IS FURTHER ORDERED** that a new trial will be scheduled at the Court's
22 next available date in the regular course, and a new Trial Setting Order will issue.

23 DATED this 12th day of August, 2016.
24

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26
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28

JERRY A. WIESE II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XXX

Certificate of Service

I hereby certify that on the date filed, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system, or, if no e-mail was provided, mailed or placed in the Clerk's Office attorney folder for:

ADAM SMITH

CRAIG HENDERSON

DANIEL POLSENBERG

MARIA ESTANISLO

PETER MAZZEO

RANDY TINDALL

AUDRA BOONEY

GEMMA ENDOZO

TIM MOTT

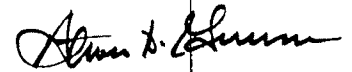


Tatyana Ristic, Judicial Executive Assistant

EXHIBIT C

EXHIBIT C

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-



CLERK OF THE COURT

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually, and
ANDREA AWERBACH, individually,

Defendants.

CASE NO.: A637772
DEPT. XXX

NOTICE OF
ENTRY OF
ORDER RE:
MINUTE ORDER
OF 8/22/16

You are hereby notified that this Court entered an Order Re: Minute Order of 8/22/16
(re: Plaintiff's Renewed Motion for Judgment as a Matter of Law), a copy of which is
attached hereto.

DATED this 22 day of August, 2016.


JERRY A WIESE
DISTRICT COURT JUDGE

Certificate of Service

I hereby certify that on the date filed, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system, or, if no e-mail was provided, mailed or placed in the Clerk's Office attorney folder for:

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☒ ☒
☒ ☒

Weinberg Wheeler Hudgins Gunn & Dial

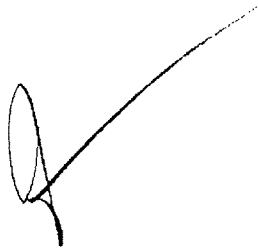
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Tatyana Ristic, Judicial Executive Assistant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

August 22, 2016

A-11-637772-C	Emilia Garcia, Plaintiff(s)
	vs.
	Jared Awerbach, Defendant(s)

August 22, 2016 9:00 AM Minute Order

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT:

JOURNAL ENTRIES

- The above-referenced matter last came on for hearing on June 23, 2016. Subsequently, the Court issued a written Order Re: Post-Trial Motions, which was filed on 8/12/2016. It has come to the Court's attention that the Court erroneously failed to rule on the Plaintiff's Renewed Motion for Judgment as a Matter of Law. The Court now Orders that based upon the same reasoning that the Motion was denied previously, that the Plaintiff's Renewed Motion for Judgment as a Matter of Law is hereby DENIED.

EXHIBIT D

EXHIBIT D

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-


CLERK OF THE COURT

EMILIA GARCIA,)	
)	
Plaintiff,)	CASE NO.: A637772
)	DEPT. XXX
vs.)	
)	
JARED AWERBACH, individually, and)	ORDER MODIFYING
ANDREA AWERBACH, individually,)	PRIOR ORDER OF
)	JUDGE ALLF
Defendants.)	

Judge Allf previously entered an Order in the above-referenced matter finding "permissive use" as a matter of law, which was a discovery sanction against the Defendant, Andrea Awerach. This sanction was issued based upon what Judge Allf obviously concluded was a deliberate attempt to conceal information in an insurance claims note. The concealment of this information prejudiced the Plaintiff's ability to discover information and establish evidence in support of the Plaintiff's claim of negligent entrustment. As trial approached, defense counsel requested on several occasions that the Court allow Defendant the opportunity to tell the jury what she believed to be the "truth," about permissive use, even though there was a finding by the Court that "permissive use" was established as a matter of law. The Court was not inclined to disturb the prior findings and orders of Judge Allf, but the Court was faced with the dilemma that Judge Allf's prior Order not only established "permission" by Andrea Awerbach to Jared Awerbach, but it also essentially established an element of the Plaintiff's claim for punitive damages against Andrea Awerbach, without allowing Ms. Awerbach the opportunity to explain herself. This Court was not comfortable with such a finding, especially as it applied to the punitive damage claim. Because this Court appreciates the difference between "permissive use" and "negligent entrustment," the Court contacted Judge Allf to question what her intention was in granting the prior sanction. She indicated that it was actually her intention that at Trial, the parties would be able to present the various contradictory statements relating to "permissive use," and it was her intention that the sanction was to be a "rebuttable presumption" of

1 "negligent entrustment." This Court believes that giving partial effect to Judge Allf's
2 "intention" is more "fair" to the parties in this case. Regardless of whether or not this
3 Court contacted Judge Allf or not, and regardless of what her opinion or intention was,
4 this Court believes that it is more "fair" to all involved parties, to modify Judge Allf's
5 prior Order, and instead of "permissive use" being established as a matter of law, this
6 Court will impose a Rebuttable Presumption that "permissive use" is established
7 against Andrea Awerbach. The presumption still serves the purpose of sanctioning the
8 Defendant for the discovery improprieties, but allows the Defendant to present
9 evidence in an effort to try to rebut the presumption, and allows the Defendant the
10 opportunity to defend against the Plaintiff's claim for punitive damages.

11 This Court acknowledges that this modification of Judge Allf's prior Order, may
12 result in the parties needing to modify how they planned to present this case to the
13 jury. Due to the fact that a continuance of the trial was not possible due to a quickly
14 approaching 5-year deadline, the Court inquired what additional preparation the
15 Plaintiff needed to prepare. Plaintiff's counsel suggested that they needed to re-depose
16 the claims adjuster. The Court ordered that the adjuster be made available within the
17 following week. Counsel thereafter discussed the issue and decided that the re-
18 deposition of the claims adjuster was unnecessary, and the trial is consequently
19 proceeding without delay.

20 Dated this 12TH day of February, 2016.

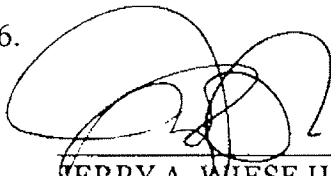
21 
22 JERRY A. WIESE II
23 DISTRICT COURT JUDGE
24 EIGHTH JUDICIAL DISTRICT COURT
25 DEPARTMENT XXX
26
27
28

EXHIBIT E

EXHIBIT E



NJUD

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RTindall@RLAttorneys.com

*Attorneys for Defendant
Jared Awerbach*

DISTRICT COURT

CLARK COUNTY, NEVADA

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually; ANDREA
AWERBACH, individually; DOES I-X; and
ROE CORPORATIONS I- X, inclusive,

Defendants.

Case No. A-11-637772-C
Dept. No. 30

**NOTICE OF ENTRY OF
“JUDGMENT UPON JURY VERDICT”**

Please take notice that on the 18th day of August, 2017, a “Judgment
Upon Jury Verdict” was entered in this case. A copy of the judgment is
attached.

Dated this 21st day of August, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By /s/ Joel D. Henriod

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
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Attorneys for Defendant Jared Awerbach

1 CERTIFICATE OF SERVICE

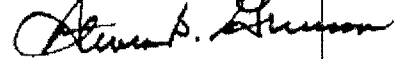
2 I hereby certify that on the 21st day of August, 2017, I served the
3 foregoing "Notice of Entry of 'Judgment Upon Jury Verdict'" on counsel by the
4 Court's electronic filing system and by courtesy email to the persons and
5 addresses listed below:

6
7 D. LEE ROBERTS, JR.
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20 /s/ Luz Horvath
An Employee of Lewis Roca Rothgerber Christie LLP



DISTRICT COURT
CLARK COUNTY, NEVADA

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually; ANDREA
AWERBACH, individually; DOES I-X; and
ROE CORPORATIONS I- X, inclusive,

Defendants.

Case No. A-11-637772-C
Dept. No. 30

JUDGMENT UPON
JURY VERDICT

This action proceeded to trial before the Court and a jury, the Honorable Jerry A. Wiese, district judge, presiding. The issues were duly tried and, on March 10, 2016, the jury rendered its verdict in favor of plaintiff and against defendant Jared Awerbach, but in favor of defendant Andrea Awerbach against plaintiff.

IT IS SO ORDERED AND ADJUDGED that plaintiff Emilia Garcia be given and granted judgment against defendant Jared Awerbach as follows:

1. Past medical expenses..... \$574,846.01
2. Past pain, suffering and loss of enjoyment of life..... \$250,000.00
- TOTAL..... \$824,846.01**

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff Emilia Garcia be given and granted punitive damages against Jared Awerbach in the amount of **\$2,000,000.00.**

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff Emilia Garcia take nothing from defendant Andrea Awerbach, and that judgment is entered in favor of Andrea Awerbach, based on the jury's findings that Andrea Awerbach

1 did not give express or implied permission to Jared Awerbach to use her vehicle
2 on January 2, 2011, and did not negligently entrust her vehicle to an
3 inexperienced or incompetent person on January 2, 2011.


4 Dated this 17 day of August, 2017.



JERRY A. WIESE
DISTRICT COURT JUDGE – DEPT. 30

EXHIBIT F

EXHIBIT F



1 **NEO**
2 DANIEL F. POLSENBERG (SBN 2376)
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Attorneys for Defendant
Jared Awerbach

DISTRICT COURT

CLARK COUNTY, NEVADA

14 EMILIA GARCIA,

15 Plaintiff,

16 *vs.*

17 JARED AWERBACH, individually; ANDREA
18 AWERBACH, individually; DOES I-X; and
19 ROE CORPORATIONS I- X, inclusive,

20 Defendants.

Case No. A-11-637772-C
Dept. No. 30

**NOTICE OF ENTRY OF
"ORDER VACATING JUDGMENT AS
TO JARED AWERBACH ONLY"**

21 Please take notice that on the 21st day of August, 2017, a "Order
22 Vacating Judgment as to Jared Awerbach Only" was entered in this case. A
23 copy of the order is attached.

24 Dated this 21st day of August, 2017.

25 LEWIS ROCA ROTHGERBER CHRISTIE LLP

26
27 By /s/ Joel D. Henriod

28 DANIEL F. POLSENBERG (SBN 2376)
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Attorneys for Defendant Jared Awerbach

1 CERTIFICATE OF SERVICE


2 I hereby certify that on the 21st day of August, 2017, I served the
3 foregoing "Order Vacating Judgment as to Jared Awerbach Only" on counsel by
4 the Court's electronic filing system and by courtesy email to the persons and
5 addresses listed below:

6
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DISTRICT COURT
CLARK COUNTY, NEVADA

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually; ANDREA
AWERBACH, individually; DOES I-X; and
ROE CORPORATIONS I- X, inclusive,

Defendants.

Case No. A-11-637772-C
Dept. No. 30

**ORDER VACATING JUDGMENT
AS TO JARED AWERBACH ONLY**

IT IS HEREBY ORDERED that the judgment in favor of plaintiff and against defendant Jared Awerbach, contained in the "Judgment Upon Jury Verdict," entered on August 18, 2017, is VACATED pursuant to this Court's order of August 12, 2016, which granted plaintiff's motion for new trial. (See August 12, 2016 "Order Re: Post-Trial Motions.")

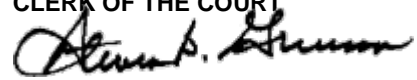
The Court clarifies that the judgment entered in favor of defendant Andrea Awerbach and against plaintiff, contained in the "Judgment Upon Jury Verdict," entered on August 18, 2017, remains in effect. Pursuant to NRCP 54(b), the Court determines and certifies that the August 18, 2017 "Judgment Upon Jury Verdict" constitutes a "final judgment" as to all claims between plaintiff and Andrea Awerbach. There is no just reason to delay such finality.

1 IT IS FURTHER ORDERED that Jared Awerbach's motion for new trial, filed
2 May 26, 2016, is DENIED AS MOOT, as the Court concludes that it is unnecessary
3 to reach the grounds raised in that motion as a new trial has already been
4 granted.

5 Dated this 21 day of August, 2017.

6 
7 JERRY A. WIESE
8 DISTRICT COURT JUDGE - DEPT. 30
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EB



1 CASE NO. A-11-637772-C
2 DEPT. NO. 30
3 DOCKET U
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * * * *

8
9 EMILIA GARCIA, individually,)
10 Plaintiff,)
11 vs.)
12 JARED AWERBACH, individually;)
13 ANDREA AWERBACH, individually;)
14 DOES I-X, and ROE CORPORATIONS)
15 I-X, inclusive,)
Defendants.)
16

17 REPORTER'S TRANSCRIPT
18 OF
19 PROCEEDINGS
20 BEFORE THE HONORABLE JERRY A. WIESE, II
21 DEPARTMENT XXX
22 DATED MONDAY, FEBRUARY 8, 2016
23

24 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,
25 CA CSR #13529

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23

24 * * * * *

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1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 28, 2016;

2 10:49 A.M.

3
4 P R O C E E D I N G S

5 * * * * *

6
7 THE COURT: Back on the record, Case
8 No. A637772, Garcia versus Awerbach. Just for the
9 record, the Court has excused the following individuals
10 due to either medical issues or out-of-town travel:
11 Badge No. 13-0597, Melanio Callorina; 13-0045, David
12 Ram; 13-0563, David P-r-o-u-l-x; 13-0412, Donald
13 Gillanders; 13-0403, Diana Wolfgram; 13-0208, Darhyl
14 Vann; 13-0102, Wendy Clements; 13-0126, Carol Haston;
15 13-0117, Brooke Perriton. There's one individual that
16 sent us information, Robert Ellison, Badge 13-0405.

17 MR. MAZZEO: What's the last -- I'm sorry,
18 Judge, the last three digits?

19 THE COURT: 405.

20 MR. MAZZEO: 405.

21 THE COURT: That individual I did not excuse.
22 They told us they have doctors' appointments and lab
23 work scheduled. That's usually stuff, in my
24 experience, that can be rescheduled. So I didn't
25 excuse that person myself.

1 MR. MAZZEO: Judge, you know, I lost track as
2 you were going through all those numbers. I have them
3 by the last three digits. Do you mind if I -- I caught
4 some of them, do you mind going through that list
5 again, just the last three digits?

6 THE COURT: That's fine. I think you guys
7 have this.

8 MR. MAZZEO: I think it's possible.

9 THE COURT: 597.

10 MR. MAZZEO: Yes.

11 THE COURT: 045.

12 MR. MAZZEO: Yes.

13 THE COURT: 563.

14 MR. MAZZEO: Yes.

15 THE COURT: 412.

16 MR. MAZZEO: 412 I didn't have.

17 THE COURT: 403, 208, 102, 126, 117.

18 MR. MAZZEO: Yeah, I didn't have a number of
19 them.

20 THE COURT: Now, can I get one of you folks
21 to go through the ones that you've stipulated to excuse
22 that aren't going to be here because of that?

23 MR. ROBERTS: If Pete's ready, you can follow
24 along, make sure I've got this right.

25 MR. MAZZEO: Sure.

1 MR. ROBERTS: 0006, Truong; 00039, Xiao;
2 0046, Medina; 0084, Klimczak; 0136, Ornelas; 0142,
3 Harper; 0153 Lara; 0188, Boonsai; 0196, Hernandez;
4 0210, Burk; 0239, Grassly; 0344, Verdejo; 0407,
5 Meldrum; 0450, Berstler; 0463, Lansang -- Lansang,
6 L-a-n-s-a-n-g; 0470, Morgan; 0497, Uphoff; 0536,
7 Moreno; 0560, Sanabria; 0576, Walker; 0577, Vargas;
8 0589, Pereyra, P-e-r-e-y-r-a; 0591, Hey; 0606, Wang;
9 0644, Ortega; 0663, Teis; 0702, Campos.

10 THE COURT: You agree with all those --

11 MR. MAZZEO: Yes, Judge.

12 THE COURT: -- Mr. Mazzeo?

13 MR. MAZZEO: Yes.

14 THE COURT: Mazzeo. It's not Mazzeo. It's
15 Mazzeo.

16 MR. MAZZEO: Mazzeo. Either one works. I'll
17 respond to both.

18 MR. ROBERTS: And I have a hard copy here if
19 the Court would like a courtesy copy of the list I just
20 read.

21 THE COURT: I have a copy.

22 MR. ROBERTS: Very good.

23 THE COURT: Okay. You ready to go? Ready?
24 Bring them in. Let's get going.

25 THE MARSHAL: Jury entering.

1 (The following proceedings were held in
2 the presence of the jury.)

3 THE COURT: I think we're going to fill in
4 most of the seats, folks, so get cozy.

5 THE MARSHAL: Jury is present, Judge.

6 THE COURT: Thank you. Go ahead and be
7 seated. Good morning, ladies and gentlemen. This is
8 the time set for the trial in Case No. A637772, Garcia
9 versus Awerbach. You've been summoned here to sit as
10 potential jurors in a civil case. This is not a
11 criminal case. It's a civil case. Some of you may
12 know the difference. Some of you may not. Criminal
13 cases are brought by the state or the federal
14 government against somebody for breaking the law.
15 Civil cases are generally one party suing another party
16 for money, and that's -- that's what this one is.

17 Before we get started, I'm going to introduce
18 myself and my court staff to you. My name's Jerry
19 Wiese. I'm the judge in Department 30. I've been
20 doing this for a little over five years. Down in front
21 of me is Kristy Clark. She's our court reporter.
22 Everything that's said by myself and everybody else in
23 the courtroom is taken down word for word by our court
24 reporter. For that reason, I'm going to ask you,
25 during the course of our jury selection process, to

1 speak up. When you're asked a question and you need to
2 give an answer, please say it loud enough that I can
3 hear you, the court reporter can hear you, the
4 attorneys can hear you, and every other juror in the
5 room can hear you. Okay. That's the goal. We have
6 microphones. Nobody likes to use the microphones. So
7 I don't break them out unless we absolutely have to.
8 Okay?

9 You folks in the back row, you have a hard
10 time hearing me? No? Everybody can hear me; right?
11 Now, I have microphones here in front of me. I unplug
12 them because I have a big mouth, and everybody can hear
13 me without the microphone. If I plug in the
14 microphones, it echos in here. So I just ask you to
15 talk loud enough that everybody can hear you.

16 One thing that you need to be aware of is
17 Kristy doesn't know everybody. Okay. She doesn't know
18 all of you in here. So when it comes time for you to
19 say something, you need to identify yourself by your
20 name and the last three digits of your badge number.
21 Okay? The last three digits should be somewhere from 0
22 to, I don't know, probably in the 500s. Okay? So
23 those last three digits, those are the numbers that we
24 need to -- to identify you because, eventually,
25 somebody's going to have to look at this transcript

1 later on -- they don't have to, but if the case gets
2 appealed or for some other reason somebody needs to
3 look back at what happened, okay, we need to be able to
4 know who it was that said something. And if she just
5 types down that somebody said something, we don't know
6 who it was, doesn't help us. So give us your name and
7 the last three digits of your badge number if you're
8 going to say anything.

9 Kristy's probably the one that works the
10 hardest during the trial, so if you have to say
11 something also, please try not to talk over each other,
12 try not to talk over the lawyers. She has a difficult
13 time trying to report two different people talking at
14 the same time. So we'll all try to be nice to her.

15 Over here on my left is Alice. Alice is my
16 court clerk. She's the one that keeps track of the
17 exhibits, swears in the witnesses, basically keeps the
18 court organized.

19 Next to her is another clerk. What's your
20 name?

21 THE COURT CLERK: Natalie.

22 THE COURT: Natalie. Natalie's training, so
23 she may actually be doing some of Alice's work, and
24 we're glad to have her with us.

25 Over to my far left is Tom. You've met him.

1 Tom is our marshal for this trial, at least for this
2 week, my understanding is. My -- my permanent marshal
3 is out of town for a little while. So Tom's going to
4 be with us for at least the first week. He's the one
5 you're going to communicate with if there's any
6 questions or problems and you need to ask a question of
7 me, it's probably going to go through Tom. Okay?

8 We will have breaks in the morning. We'll
9 have a break in the afternoon. We'll take a break for
10 lunch. During those times, if you have anything you
11 need to communicate with the Court, talk to Tom. He'll
12 probably be able to answer most of your questions. All
13 right?

14 I have a couple other people that work for
15 me. I've got a law clerk named Brittany Birnbaum, and
16 my JEA is Tatyana Ristic. I tell you that just because
17 every so often, you may see them come in here. Just
18 because I'm in trial doesn't mean that I can stop doing
19 everything else I'm responsible for. If you see me
20 sometimes on this screen, this screen does a couple of
21 things. Right now, it's showing everything that I'm
22 saying, because I'm getting the realtime feed from
23 Kristy's machine. Okay. So sometimes I may be looking
24 at the screen to see what it was that was said. Other
25 times I may be looking at this screen, you'll see me

1 typing because this is where I have emails, because if
2 my secretary or somebody needs to contact me during the
3 trial, I sometimes still have to communicate with
4 people. All right? So I try not to make it a secret
5 what we do up here.

6 I have this big black book, it's called my
7 "civil jury trial book." You're going to see me
8 referring to this during the course of the trial to
9 make sure I don't miss something that I'm supposed to
10 tell you. I have a couple of other screens up here.
11 This one is -- shows me the same thing that you're
12 going to see on the TV. Okay? And this one is the one
13 that I use to control which desk has control of the TV.
14 It also has a little button on here I can push for
15 white noise.

16 Sometimes the attorneys will come up to the
17 bench, we'll have a little discussion at the bench, and
18 I turn on the white noise so you can't hear us. When
19 you hear the white noise, don't try to listen real hard
20 so you can hear what's being said. The reason for the
21 white noise is so you don't hear. Okay?

22 Now, some people get really annoyed by the
23 white noise. Let me tell you that it saves hours of
24 jury time doing the white noise as opposed to shuffling
25 all of you outside so we can have a little conversation

1 outside your presence and then shuffling all of you
2 back in again. Okay? Trust me that it saves time by
3 using the white noise and having the attorneys come up
4 here.

5 There will also be times during the trial
6 when I tell you to be back at a certain time and you
7 guys are sitting out there in the hall and you're
8 waiting and waiting and I'm not starting when I told
9 you I was going to start. I apologize for that in
10 advance. It will happen. It will happen a lot.
11 Here's why that happens: Because it's not that we're
12 not working. It's not that we came back from lunch
13 late. We're here and usually the attorneys are in here
14 and they're arguing something that has to be done
15 outside your presence. Okay?

16 So I could bring you all in and say, Welcome
17 back, we need to do something outside your presence,
18 and shuffle you all back out in the hall. But instead
19 of doing that, I usually will leave you out there while
20 we take care of what has to be done here, and then I'll
21 bring you all in. Okay?

22 Just bear with us. My goal is to try to get
23 you guys in and out of here as fast as possible,
24 understanding that this trial is going to probably last
25 somewhere between three and four weeks. You all filled

1 out a questionnaire. You all knew that. I apologize.
2 Some -- some trials are shorter than others. Some
3 trials are longer than others. That's just what
4 happens. Bear with us. And I know some of you have
5 reasons why you can't do this jury trial. We'll get to
6 those. I know that you probably talked to the people
7 downstairs. They said we can't excuse you. You got to
8 come up and talk to the judge upstairs; right?

9 Did you have a judge come down and welcome
10 you downstairs this morning?

11 IN UNISON: No.

12 THE COURT: No? I apologize for that. We're
13 supposed to have that. It's not my week, or I would
14 have been down there. But we usually have a judge that
15 welcomes everybody and just thanks you for being here.
16 We understand that this is not your first choice of
17 places to be today. But we do appreciate you being
18 here.

19 What I'm going to do next is I'm going to
20 have the attorneys each stand. I'm going to have them
21 introduce themselves, their clients, the other
22 attorneys that are part of their firm. I'm going to
23 have them tell you again the witnesses that are
24 expected to be called. I know that when you looked at
25 the questionnaire, there was a long list of people.

1 I'm not going to have them go through that whole list
2 because some of those people were potential witnesses
3 that probably aren't going to be called now. So I'm
4 going to have them tell you who the witnesses are that
5 they plan to call during the trial.

6 I want you to listen because at the time in
7 the future -- in the near future, I'm going to ask you,
8 Were there any of those people that you knew, and --
9 and we'll talk about that. But for now, just -- just
10 keep it in the back of your mind if you know any of
11 these people. Okay?

12 Mr. Roberts, you want to go first?

13 MR. ROBERTS: Thank you, Judge. Appreciate
14 it.

15 THE COURT: And -- and I'm going to ask them
16 to give you a brief synopsis of what the case is about.

17 MR. ROBERTS: As the Judge said, my name is
18 Lee Roberts, and I represent the plaintiff in this
19 action. The plaintiff is Emilia Garcia. This is
20 Ms. Garcia right here on the second row. I'm with the
21 law firm in Las Vegas called Weinberg, Wheeler,
22 Hudgins, Gunn & Dial. None of those named guys are
23 here, and you won't see them. But this is Tim Mott.
24 He works with me at Weinberg Wheeler, and this is
25 Marisa Rodriguez-Shapoval who also works at Weinberg

1 Wheeler.

2 Our co-counsel in this case is the Glen
3 Lerner law firm, and this is Adam Smith that's here in
4 the back row. He's with the Glen Lerner firm.

5 This is Audra Bonney. Audra is my paralegal
6 at Weinberg Wheeler. She comes to trial with me, and
7 she keeps track of all the exhibits and things that I
8 need. So I would be lost without her. She'll also be
9 in charge of putting things for you to see up on the TV
10 and displaying exhibits for you to look at.

11 The -- let's see. Just to make sure that you
12 didn't miss anyone in the questionnaire, I'm going to
13 go through a list of the other attorneys in the law
14 firm so you can see if you know anyone, and these are
15 the attorneys that are also here in Las Vegas, so you
16 may recognize their names. With my firm, the other
17 attorneys are Jeremy Alberts, Scott Lachman, David
18 Larson, Kristen Maxwell, Carol Michel, Rosemary
19 Missisian Suru, Stephen Mooney, Nate Quist, Howard
20 Russell, and Adam Sinton.

21 Other lawyers in Mr. Lerner's firm are Glen
22 Lerner, Benjamin Lund, Scott Guido, Joshua Benson,
23 Corey Eschweiler, Justin Randall, Porter Allred, Joseph
24 Schmitt, Craig Henderson, Michael Kristof, Brett
25 Harris, and Randolph Westbrook.

1 And now to the witnesses. There are a long,
2 long list. Hopefully, you won't have to listen to all
3 of those people. Here are the people that you're most
4 likely to hear when we put on our part of the case.
5 Cherise Killian, Metro Officer David Figueroa,
6 Dr. Walter Kidwell, Dr. Andrew Cash, Dr. Jeffrey Gross,
7 Dr. David Oliveri, Dr. Michael Freeman, Dr. Melissa
8 Piasecki, Dr. David Fisch, Dr. Brian Lemper, and Stan
9 Smith. You're also going to hear from a representative
10 of the DMV.

11 Have they appointed someone yet, Marisa?

12 MS. RODRIGUEZ-SHAPOVAL: Jeralyn Marquez.

13 MR. ROBERTS: Jeralyn Marquez will be here
14 for the DMV. So those are all the witnesses that
15 you're likely to hear from us on.

16 Just a brief statement of the facts. Two
17 sentences: Defendant Jared Awerbach ran into Emilia
18 Garcia driving a car owned by his mother, Defendant
19 Andrea Awerbach. This trial will be about determining
20 the harms and losses to Ms. Garcia as a result of that
21 accident.

22 Thank you.

23 THE COURT: Thank you.

24 MR. ROBERTS: Thanks, Judge.

25 THE COURT: Mr. Mazzeo.

1 MR. MAZZEO: Thank you, Judge. Good morning,
2 everyone. My name is Peter Mazzeo. I'm here with my
3 partner, Maria Estanislao, and we proudly represent
4 Andrea Awerbach in this case. She's my client. She's
5 one of the defendants in this case.

6 With respect to the witnesses that we
7 anticipate calling, we anticipate calling Andrea
8 Awerbach. Jared Awerbach will testify. Police
9 Officer Figueroa, Mr. Roberts said he's calling him on
10 his case. We're going to call him on our case as well.
11 Dr. Irving Sheer; biomechanical expert, Dr. Michael
12 Klein; orthopedic surgeon, Dr. Robert Odell, pain
13 management physician; Dr. Curtis Poindexter,
14 physiatrist, physical medicine rehab doctor; Dr. Thomas
15 Ireland, an economist; Michael Frender; and also, Heidi
16 Heath, an employee -- actually, she's a former employee
17 with Aliante Casino.

18 With regard to the case, the defendants
19 dispute the nature and extent of the injuries that the
20 plaintiff, Emilia Garcia, claimed she sustained from
21 the accident. And we can contend that most of the
22 medical treatment was not necessary, it was not
23 reasonable, and it was not related to this accident.
24 Thank you.

25 Thank you, Judge.

1 THE COURT: Thank you. Mr. Strassburg.

2 MR. STRASSBURG: May it please the Court.

3 I'm Roger Strassburg, and I'll be speaking for
4 Defendant Jared Awerbach throughout this case. I'm
5 with the firm of Resnick & Louis in Las Vegas. The
6 other lawyers in the firm are Gary Call, Sia Dalacas,
7 Chatree Thongkham, Lori Jordan, Laura Boezeman-Farias,
8 Travis Dunsmoor, Cristi Barker, Paul Shindelus. Nobody
9 knows any of them?

10 All right. The witnesses we will call, I
11 want to add to Mr. Mazzeo said, but the witnesses that
12 he named, those are ours too.

13 As to the case, we will prove to you that
14 Jared is very sorry for this accident. And that not
15 everything that is claimed to have resulted from it
16 really did. Thank you.

17 THE COURT: Thank you. All right, folks,
18 what we're going to do now is I'm going to do a roll
19 call of the jurors, so our clerk's going to read off
20 everybody's name and badge number. Before -- before
21 she does that, let me just apologize in advance.

22 My name is Wiese. Everybody says Wiese. I
23 answer anyway. We are going to screw up some of your
24 names because all of your names are not Jones and Smith
25 and things that are easy to pronounce and easy to

1 understand. So if she says something that's close to
2 your name, just say, Here. It's just like you were in
3 elementary school. Say, Here, raise your right hand or
4 raise a hand so we know where you are, make sure that
5 you're in the right place. Okay? Just bear with us.

6 THE CLERK: Joshua Solomon, 001.

7 PROSPECTIVE JUROR NO. 001: Here.

8 THE CLERK: David Allen Brandon, Jr., 003.

9 PROSPECTIVE JUROR NO. 003: Here.

10 THE CLERK: Juliana Flores, 010.

11 PROSPECTIVE JUROR NO. 010: Here.

12 THE CLERK: Larry Jensen, 015.

13 PROSPECTIVE JUROR NO. 015: Here.

14 THE CLERK: David Foerstel, 023.

15 PROSPECTIVE JUROR NO. 023: Here.

16 THE CLERK: James Joyce, 029.

17 PROSPECTIVE JUROR NO. 029: Here.

18 THE CLERK: Marilyn Gold, 036.

19 PROSPECTIVE JUROR NO. 036: Here.

20 THE CLERK: Gregory Williams, 038.

21 PROSPECTIVE JUROR NO. 038: Here.

22 THE CLERK: Melissa Abeles, 043.

23 PROSPECTIVE JUROR NO. 043: Here.

24 THE CLERK: Diana Sin, 049.

25 PROSPECTIVE JUROR NO. 049: Here.

1 THE CLERK: Jeffrey Evans, 053.
2 PROSPECTIVE JUROR NO. 053:
3 THE CLERK: Hubert Roberts, 058.
4 PROSPECTIVE JUROR NO. 058: Here.
5 THE CLERK: Keith Berkery, 063.
6 PROSPECTIVE JUROR NO. 063: Here.
7 THE CLERK: Martha Diaz, 064 -- oh, sorry.
8 Jessica Bias, 066.
9 PROSPECTIVE JUROR NO. 066: Here.
10 THE CLERK: Jose Avilaroa, 078.
11 PROSPECTIVE JUROR NO. 078: Here.
12 THE CLERK: Michael Retzlaff, 088.
13 PROSPECTIVE JUROR NO. 088: Here.
14 THE CLERK: Harry Inglett, 091.
15 PROSPECTIVE JUROR NO. 091: Here.
16 THE CLERK: Austin Corum, 093.
17 PROSPECTIVE JUROR NO. 091: Here.
18 THE CLERK: John Boyle, 095.
19 PROSPECTIVE JUROR NO. 095: Here.
20 THE CLERK: Onorio Franco, 096.
21 PROSPECTIVE JUROR NO. 096: Present.
22 THE CLERK: Jennifer Turner, 0 -- 104.
23 PROSPECTIVE JUROR NO. 104: Here.
24 THE CLERK: Denny Cyganek, sorry, 106.
25 PROSPECTIVE JUROR NO. 106: (Inaudible.)

1 THE CLERK: Jessica Kirsch, 108.
2 PROSPECTIVE JUROR NO. 108: Here.
3 THE CLERK: Geraldine Biton, 113.
4 PROSPECTIVE JUROR NO. 113: Here.
5 THE CLERK: Divina Cruz, 118.
6 PROSPECTIVE JUROR NO. 118: Here.
7 THE CLERK: Jan Springer, 119.
8 PROSPECTIVE JUROR NO. 119: Here.
9 THE CLERK: Ratchatida Perreida.
10 PROSPECTIVE JUROR NO. 130: Here.
11 THE CLERK: Jolene Cabello, 131.
12 PROSPECTIVE JUROR NO. 131: Here.
13 THE CLERK: Jose Dominguez, 138.
14 I said Jolene Cabello.
15 PROSPECTIVE JUROR NO. 131: Here.
16 THE CLERK: Raquel Go, 141.
17 PROSPECTIVE JUROR NO. 141: Here.
18 THE CLERK: Janelle Klein, 146.
19 PROSPECTIVE JUROR NO. 146: Here.
20 THE CLERK: Dean Blurton, 150.
21 PROSPECTIVE JUROR NO. 150: Here.
22 THE CLERK: Cynthia Wright, 157.
23 PROSPECTIVE JUROR NO. 157: Here.
24 THE CLERK: Shanel Sako, 159.
25 PROSPECTIVE JUROR NO. 159: Here.

1 THE CLERK: Gary Gallegos, 160.
2 PROSPECTIVE JUROR NO. 160: Here.
3 THE CLERK: Tammy Duenas, 168.
4 PROSPECTIVE JUROR NO. 168: Here.
5 THE CLERK: Virginia Jordano, 169.
6 PROSPECTIVE JUROR NO. 169: Here.
7 THE CLERK: Jonathan Leo, 117.
8 PROSPECTIVE JUROR NO. 177: Here.
9 THE CLERK: Maureen Ortiz, 178.
10 THE COURT: Hold on a second. Jonathan Leo,
11 I have as 177.
12 THE CLERK: 177. Jonathan Leo, 177.
13 THE COURT: Okay.
14 THE CLERK: Maureen Ortiz, 178.
15 PROSPECTIVE JUROR NO. 178: Here.
16 THE CLERK: Jonathan Ocon, 182.
17 PROSPECTIVE JUROR NO. 182: Here.
18 THE CLERK: Sharleine Morrison, 184.
19 PROSPECTIVE JUROR NO. 184: Here.
20 THE CLERK: Steven Mori, 197.
21 PROSPECTIVE JUROR NO. 197: Here.
22 THE CLERK: Victoria Yuen, 202.
23 PROSPECTIVE JUROR NO. 202: Here.
24 THE CLERK: Francisco Fregoso, 211.
25 PROSPECTIVE JUROR NO. 211: Here.

1 THE CLERK: Michael Maute, 226.
2 PROSPECTIVE JUROR NO. 226: Here.
3 THE CLERK: Nathaniel Royal, 230.
4 PROSPECTIVE JUROR NO. 230: Here.
5 THE CLERK: Nicholas Rivadeneyra, 233.
6 PROSPECTIVE JUROR NO. 233: Here.
7 THE CLERK: Brandon Chaffee, 234.
8 PROSPECTIVE JUROR NO. 234: Here.
9 THE CLERK: Alexis Gaines, 237.
10 PROSPECTIVE JUROR NO. 237: Here.
11 THE CLERK: Kathryn Salido, 238.
12 THE COURT: No show.
13 THE CLERK: Carlos Soto, 245.
14 PROSPECTIVE JUROR NO. 245: Here.
15 THE CLERK: Annahlizah Vaquilar, 253.
16 PROSPECTIVE JUROR NO. 253: Here.
17 THE CLERK: Brent Doughty, 256.
18 PROSPECTIVE JUROR NO. 256: Here.
19 THE CLERK: Prentis Buford, 258.
20 PROSPECTIVE JUROR NO. 258: Here.
21 THE CLERK: Glen Smith, 263.
22 PROSPECTIVE JUROR NO. 263: Here.
23 THE CLERK: C L King, 264.
24 PROSPECTIVE JUROR NO. 264: Here.
25 THE CLERK: Nelson Dorantes, 266.

1 PROSPECTIVE JUROR NO. 266: Here.
2 THE CLERK: Mary Gibson, 268.
3 PROSPECTIVE JUROR NO. 268: Here.
4 THE CLERK: Elsa Rivera-Mata, 281.
5 PROSPECTIVE JUROR NO. 281: Here.
6 THE CLERK: Manuel Ladino, 282.
7 PROSPECTIVE JUROR NO. 282: Here.
8 THE CLERK: Andrew Sytsma, 288.
9 PROSPECTIVE JUROR NO. 288: Here.
10 THE CLERK: Kyle Lambert, 290.
11 PROSPECTIVE JUROR NO. 290: Here.
12 THE CLERK: Peter Migliorini, 293. Here?
13 PROSPECTIVE JUROR NO. 293: Yeah, here.
14 THE CLERK: Laurel Frahm, 296.
15 PROSPECTIVE JUROR NO. 296: Here.
16 THE CLERK: Daniel Liberty, 298. No show.
17 Margo Fletcher, 301.
18 PROSPECTIVE JUROR NO. 301: Here.
19 THE CLERK: Joseph Curry, 303.
20 PROSPECTIVE JUROR NO. 303: Here.
21 THE CLERK: Amanda Ferris, 310.
22 PROSPECTIVE JUROR NO. 310: Here.
23 THE CLERK: Juan Mendez, 326.
24 PROSPECTIVE JUROR NO. 326: (Inaudible.)
25 THE CLERK: Jeffrey Urbanski, 329.

1 THE COURT: Did we have Juan Mendez?
2 THE CLERK: Yeah, Juan Mendez.
3 PROSPECTIVE JUROR NO. 326: (Inaudible.)
4 THE CLERK: Jeffrey Urbanski --
5 PROSPECTIVE JUROR NO. 326: I was the last
6 one. That was the last one.
7 THE CLERK: Okay.
8 THE COURT: So Mendez was the last one?
9 PROSPECTIVE JUROR NO. 326: Yes.
10 THE CLERK: Katherine Baglione, 330.
11 THE COURT: Just so you folks know, I think
12 we had several hundred people fill out the
13 questionnaire. I don't have room for everybody in
14 here. So we -- we only asked for the first 70 people
15 to be brought in today. So there's more people out
16 there.
17 Is there anybody here whose name was not
18 called? Raise your hand real high. Okay. So we got
19 everybody that's supposed to be here, here.
20 Just so you folks don't think that you could
21 have done like these people that didn't show up, you're
22 thinking, How come we had to come if other people could
23 just no-show. What I do is I refer their name to the
24 chief judge, and he has a hearing to determine whether
25 or not they should be held in contempt of court and put

1 in jail. Okay? So it's a good thing you're here.

2 All right. We're now to the point where
3 we're going to begin our jury selection which means
4 you're going to be asked questions, but before we can
5 do that, what happens is you have to be put under oath
6 because you have to answer the questions truthfully.
7 So I'm going to ask everybody to stand, if you would,
8 and raise your right hand, please.

9 THE CLERK: You do solemnly swear that the --
10 that you will well and truly answer such questions that
11 may be put to you touching upon your qualifications as
12 jurors in the case at issue, so help you God.

13 IN UNISON: I do.

14 THE COURT: Okay. Go ahead and be seated.
15 Thank you, folks.

16 First couple of questions are really easy.
17 First one: In order to qualify to sit as a juror in
18 the state of Nevada, you have to be a citizen of the
19 United States.

20 Is there anybody here who's not a citizen of
21 the United States? Please raise your hand. No hands.

22 Next one: In order to serve as a juror, you
23 cannot be a convicted felon whose rights have not been
24 restored.

25 Is there anybody here who's a convicted felon

1 whose rights have not yet been restored? Please raise
2 your hand. Not seeing any hands. Good. Thank you.

3 All right. So let me just tell you,
4 ultimately, the goal is we're going to select a jury of
5 ten people. Okay. It's actually a jury of eight.
6 We're going to have two alternates. You folks will not
7 know who the alternates are until the very end of the
8 trial. Sometimes it's the last two. Sometimes it's
9 not. We have a can here, has chips in it with numbers
10 that says secret alternate. And we pull out these
11 chips. Sometimes we pull out the chips with the
12 lawyers at the beginning of the trial so we know who
13 the alternates are. Sometimes we pull out the chips at
14 the end of the trial so nobody knows who the alternates
15 are till the very end. I'm not going to tell you how
16 we're doing it in this trial, and you're not going to
17 know who the alternates are till the very end.

18 The reason I do that is because if you knew
19 you were an alternate, you wouldn't pay as close
20 attention as the rest of the people. As long as nobody
21 knows who the alternates are, hopefully you all pay
22 close attention, and then when we get to the end of the
23 trial, the people who are the alternates are always
24 really sad because they had to sit through the whole
25 trial, and they don't get to deliberate with the rest

1 of the jurors. And I apologize for that, but we have
2 to do that, especially in a trial that's going to last
3 a little while in case somebody gets in a car accident
4 or something like that on the way to trial and we have
5 to replace you. That's why we have alternates.

6 The attorneys and the parties and I are very
7 concerned with picking a jury that's going to be fair
8 and impartial. Okay. You folks have already filled
9 out a questionnaire, so you know a little bit about
10 some of the questions that are going to be relevant to
11 whether you're going to be fair and impartial in this
12 case. You're going to be asked a bunch of questions by
13 me and by the attorneys to decide whether or not you're
14 going to be a fair and impartial juror. That just
15 means that you're able to sit and listen to the
16 evidence and not make up your mind until you hear all
17 the evidence. Okay?

18 There are -- we all have different prejudices
19 and biases that make us who we are. Okay. Now,
20 usually when you hear the word "prejudice," that --
21 that kind of has a negative connotation because we
22 think of that as being somebody that's prejudiced
23 against a different race, nationality, gender, things
24 like that. And those kind of prejudices are negative.
25 But the prejudices and biases that we're going to be

1 talking about during jury selection here are not really
2 those. They may be those. But we're going to be
3 asking you questions to find out what makes you
4 different from the person sitting next to you. Okay?

5 And it's not just because you have different
6 colored skin and you're maybe a different gender. It's
7 because you grew up differently. You have different
8 family experiences. You have different employment
9 experiences. You have -- maybe you're -- you have
10 different political affiliations. All of these
11 different things make us the people that we are. We've
12 all had different experiences in our lives. And
13 because of those experiences, we have thoughts or
14 feelings or opinions about things that might make it so
15 you're not the right person for this jury. Okay?

16 Now, I need to tell you in advance, some of
17 you are here and you've talked to your friends and you
18 think you know what to say to get out of jury duty. I
19 get it. You need to be aware of this. Okay. This
20 trial is scheduled to go three to four weeks, and
21 that's a long time. I know you're all saying, We can't
22 do this for three to four weeks. Some trials are
23 shorter than that. Some trials are only, like, a week
24 long. But some trials are longer than three to four
25 weeks. Okay. The -- I've done one at the end of last

1 year that was two months. We did one a couple years
2 ago that went five months, October to February. And we
3 had the same jury on the hook the whole time.

4 So the fact that you may want to answer the
5 questions to get out of this jury doesn't mean that
6 you're excused. Okay? It means that you go back down
7 to the third floor, and they use you where they need
8 you. So if you answer the questions in a way to try to
9 get you out of this jury and then you get seated on
10 the -- on a trial that goes three or four months
11 instead of three to four weeks, I'm sorry. But just be
12 aware that they're out there. Okay?

13 We all just want you to answer the questions
14 truthfully and honestly and let the system work. Some
15 of you will get excused and some of you won't. Okay?
16 There's two different ways you can be excused. You can
17 be excused for a cause challenge, which means that for
18 some reason or another, you -- you have a bias or a
19 prejudice against or for one party or you know a
20 witness or something like that that is going to affect
21 your ability to be fair and impartial. You might get
22 excused for cause. If that happens, don't be offended.
23 Okay? It doesn't mean you're a bad person. It just
24 means you're not the right person for this jury, and
25 you may be perfect person for the jury right next door.

1 All right? So don't be offended. Don't be excited
2 either. Sometimes people get really excited when they
3 get excused for cause. I don't want you to be cheering
4 as you walk out the door either.

5 Once we get past the cause challenges, the
6 attorneys have a right to challenge people for what's
7 called "peremptory challenges." And those challenges,
8 sometimes they don't even have to have a real good
9 reason. Okay. They may not like the way you looked at
10 them in response to a question. They may not like the
11 shoes you're wearing or the way your hair's done.
12 There's all kinds of goofy reasons why they can
13 exercise a peremptory challenge. Okay? So don't be
14 offended if you get challenged for -- if you get
15 excused based on a peremptory challenge either. But
16 also, don't be too excited. Okay.

17 Eventually, we're going to whittle this group
18 down. Hopefully, we can get it with this group, but we
19 may need to bring more people in. The goal is to get
20 ten people. This area over here to my right is what we
21 call the "jury box." Okay? Sixteen of you are in the
22 jury box, and we have four in front of the box right
23 now, but for purposes of our jury selection process,
24 I'm going to refer to you all as sitting in the box.
25 Okay?

1 Just so you know, we number you 1 through 20
2 from 1 being up here in the right corner, and 1 through
3 8 goes from my right to left across the back row; 9
4 through 16 from my right to left across the middle row;
5 17 through 20 from my right to left across the front
6 row. The reason I tell you that is because that's how
7 I'm -- that's the order I'm going to use when I ask you
8 questions. Might be the order that the attorneys ask
9 when they ask you questions. But like I told you, I
10 try not to keep things secret from you. Okay? I'm
11 going to tell you how the process works. I'm going to
12 tell you why I'm doing things that I'm doing usually.

13 When you're asked questions, we talked about
14 these prejudices and biases. They're not necessarily
15 bad things. They're just what makes us who we are.
16 Please be honest and open about the questions.
17 Sometimes you're going to be asked a question, and what
18 I don't want you to do is I don't want you to sit there
19 and think, you know, If he had asked that just a little
20 bit different, I would have had to say something. But
21 because he asked it the way I did, I think I'm safe
22 sitting here not saying anything. Okay? Don't do
23 that.

24 If it's that close, raise your hand, and tell
25 us what you think the answer is that we might be

1 looking for, and let us decide if that's an answer that
2 is what we were looking for or not. Okay? Let us --
3 let us make those decisions. Please err on the side of
4 disclosure as opposed to withholding an answer.

5 Try not to be offended by any of the
6 questions that are asked. Some of the questions that
7 we -- that we may ask, you may think are a little too
8 personal. And it's -- it's not our intention to get
9 into things that are too personal. If there's
10 something that -- I'll give you an example. If this
11 was a sexual molestation of a minor case and we were --
12 and it was a criminal case and the defendant was
13 charged with sexual molestation of a minor, and you had
14 some type of an experience as a minor where you were
15 molested as a child, you don't want to talk about that,
16 that's something that I wouldn't expect you to talk
17 about in front of the rest of the jury panel. Okay?

18 If there's something that you get asked and
19 it's -- the answer is so personal that you don't want
20 to answer it in front of everybody else, just tell us
21 that. I have an answer, Judge, but I don't feel
22 comfortable giving it in front of the jury panel. What
23 we will do is we'll make sure that you can give us that
24 answer when you're by yourself. We may wait till the
25 next break and excuse everybody else and have you stay

1 back for a couple of minutes. It's not going to be a
2 big deal. Okay?

3 But most of the questions that you're going
4 to be asked are not going to be that personal in
5 nature. Okay? We are going to try to figure out who
6 you are and why you are the people that you are. Don't
7 be offended by those questions, and just try to give us
8 the best answer that you can.

9 I want to tell you real quick how important
10 jury service is because I know -- I know a lot of you
11 don't want to be here. You want to be home or you want
12 to be working. You don't want to be doing jury duty.

13 Understand that this system doesn't work
14 without jurors. You know, when our forefathers wrote
15 the Constitution of the -- of the United States, they
16 said in the beginning, We the People of the United
17 States. It wasn't written by the government. It was
18 written by the people. Some of those people later on
19 became government, but it was written by the people.
20 And they said, In order to form a more perfect union.
21 They realized it wasn't perfect. But it was more
22 perfect than what we had. Okay?

23 And the first thing that they wanted to
24 establish was justice. Okay. That was the first thing
25 that they talked about establishing was justice.

1 Justice, another word for that is fairness. The only
2 way that we have justice in our country is because of
3 the jury system. Okay. We don't have a system anymore
4 where the person with the biggest stick wins, or the
5 person with the most money or influence wins. That's
6 not the case anymore. We have a system where we have a
7 jury of your peers that decides your case.

8 And I want you to think about what a jury of
9 your peers is because many of you are sitting here
10 thinking, you know, if -- if I was in a trial, I
11 wouldn't want myself on a jury. Well, what I -- I've
12 been asked by people before, you know, Why don't you
13 just have people who are unemployed and retired and
14 homeless and have them as jurors because, you know,
15 they wouldn't have to miss out on work? Well,
16 understand, folks, that's not a jury of your peers. A
17 jury of your peers is made up of everyday working
18 stiffs like you and me, and that's why you're all here.
19 Okay. We can't have a jury of just homeless,
20 unemployed, and retired people because that's not a
21 jury of anybody's peers. Okay. So understand that.

22 Now, many of you have kids, and those kids
23 are -- they go to civics class or social studies and
24 they learn about government. They learn about the
25 importance of being a good citizen. I want you to

1 think for a minute about what it means to you to be a
2 good citizen. And some of you probably served in the
3 military. That's one way that we can show our
4 citizenship. Some of you work maybe for the government
5 or you're in the military now. Or -- I don't know.
6 There are other jobs that I know of that -- that would
7 be considered good citizens. But I want you to think
8 about the fact that how often is it that you can
9 actually do something; that you can go home at the end
10 of the day and say, I was a good citizen today. I did
11 something that showed my citizenship. Okay.

12 Our kids, every day they go to school, and
13 they pledge allegiance to this flag behind me. We
14 don't usually do that as adults. Not very often
15 anyway. I want you to think about that flag. I want
16 you to think about the importance of this flag behind
17 me.

18 I'm going to tell you a little story because
19 I don't think we understand or appreciate, sometimes,
20 the importance of living in a free country and -- and
21 the importance of the flag that's behind me. I was at
22 a track meet for one of my young children couple years
23 ago. It was at a high school. My kid was in the
24 elementary school at the time, but they all went to
25 this high school for this big track meet. And I was

1 sitting up in the bleachers along with all these other
2 parents and it was a rowdy group, and all these kids
3 were down on the field with their coaches and other
4 people on the field. And it came time to start, and
5 they announced they were going to have a flag ceremony.
6 So they had a color guard. I don't know if they were
7 from Nellis or if they were the ROTC from the high
8 school, but they had a color guard in the end zone.
9 And they started walking across the field with their
10 flags, and I stood up, and I put my hand over my heart.
11 And I looked around, and I was the only person doing
12 it. The only person in the whole stadium.

13 And I stood there and I watched that flag go
14 up to the 50-yard line, and they came up the 50-yard
15 line to the little stage, and they came up on the
16 stage, and they said, Now we're going to say the Pledge
17 of Allegiance, and then people stood up. And most of
18 the guys that were wearing hats didn't take their hats
19 off. And we said the Pledge of Allegiance and then we
20 sat down. And I thought about that and I thought, You
21 know what, people don't understand what it means to be
22 a citizen of this country anymore. We teach our kids,
23 and then we grow up to be adults, and we're not very
24 good citizens sometimes.

25 One of the ways that you can be good citizens

1 is to serve on a jury, whether you get picked or not.
2 You tell the truth in response to the questions; some
3 of you will be excused, some of you won't. As long as
4 you tell the truth and let the system play out, you've
5 been good citizens today. At the end of the day, or at
6 the end of the week, whenever it is that you go home,
7 somebody's probably going to be waiting there and --
8 that's important to you, your children or your parents
9 or somebody, and they're going to say, What did you do
10 today? And you're going to say, I went to jury duty.
11 They're going to say, Did you get picked? Some of you
12 are going to go home and say no. They're going to say,
13 Well, what happened? And you're going to say, I lied
14 to the judge.

15 I want you to think about whether or not
16 that's the message that you want to send to the people
17 that are important to you because if you're going to
18 answer the questions in a way that intentionally tries
19 to get you out of jury duty and it's a lie, you may get
20 out of jury duty. But I want you to think about how
21 you're going to feel about that when you go home at the
22 end of the day. I want you to be good citizens, folks.
23 All I want is for you to tell the truth and let the
24 system work. I'm going to release some of you. The
25 attorneys are going to agree to release some of you,

1 and that's how the system works. But let the system
2 work, please. That's my soapbox.

3 I want you to hopefully look at this as a --
4 as an opportunity rather than a burden. I can tell you
5 that I've probably done over 100 trials since I've been
6 a judge, and at the beginning of many of those trials,
7 I have jurors that are not happy to be seated on a jury
8 panel. But I can tell you that at the end of every
9 trial, I talk to all the jurors, and I have not yet had
10 a juror at the end of the trial that's told me, It was
11 a bad experience; I wish that I hadn't been here. I
12 will tell you that every juror that's ever served on a
13 jury in this department has told me at the end of the
14 jury, at the end of the trial, that they were glad that
15 they did it, that it was a good experience, that they
16 learned things, it was fun.

17 I had -- the trial that went two months, the
18 jurors are still getting together. They're having
19 reunions. They got to know each other so well, they're
20 friends. They still meet up once every month or two.
21 So it's not a bad thing to serve jury duty. Okay. I
22 want you to look at it as an opportunity because we're
23 going to start talking to some of you, and -- and we're
24 going to find out that many of you have not served on a
25 jury before.

1 So think about -- think about, okay, I
2 haven't served on a jury before, why is that? Did I
3 lie to the judge before? Maybe this time I'll tell the
4 truth. Okay? Let the system play out.

5 I told you that the case is estimated to last
6 three to four weeks. You've all filled out a jury
7 questionnaire, so we know many questions that would
8 otherwise be asked you. You're still going to be asked
9 follow-up questions based on the questions that were
10 asked you before. Bear with us. It's going to take
11 some time. There are some of you that have events in
12 your life that simply make it impossible for you to
13 serve jury duty this week. We understand that. I've
14 actually gotten -- we got information from probably
15 eight or nine people faxed in to us, and I released
16 several people based on those things. People had
17 out-of-state trips that were planned, and they couldn't
18 get out of them. Things like that, medical problems.
19 I'm going to ask you about those type of hardships, and
20 if you have those kind of things, let me know.

21 If you're going to tell me you have a trip
22 planned, be prepared to show me something. Okay. You
23 can't all just say, Yeah, I got a trip planned. I'm
24 going to Arizona next week. You can't say that because
25 everybody would say the same thing. And if I believed

1 it, you'd all just get out of jury duty. So you have
2 to show me, you know, a confirmation number or
3 something like that that you've printed out. And if
4 you have that, I'm not going to ruin your lives to come
5 do jury duty. That's not the goal of this. But we do
6 need people to sit on juries, and hopefully we can get
7 that group of those of you that are here today.

8 Just so you folks know, we're going to go
9 about another 20 minutes, and then I'm going to give
10 you a break for lunch. We're not going to be done.
11 You're all going to have to take a break, and you're
12 all going to have to come back.

13 Just so you know -- I'm going to tell you
14 this now so I don't forget: During our breaks, whether
15 it's a morning break, afternoon break, or lunch break,
16 you're going to see people in the hallway that are
17 attorneys, parties, court staff. You may see us going
18 down in the elevator together, in the bathrooms. Do me
19 a favor, don't talk to us. Okay? The attorneys and
20 the parties, they can't talk to you. So if you see
21 them in an elevator or you see them in the hallway and
22 you start saying hi to them, they're not going to say
23 hi back. They may smile at you. That's all I'm going
24 to do if I see you in the elevator is I may smile at
25 you. And then I'm going to move on because if we have

1 a conversation with you, it may -- it may taint your
2 verdict. Okay? So don't try to have a conversation
3 with us.

4 And understand that when we don't have a
5 conversation with you, it's not that we're unsociable,
6 it's not that we don't like you, it's not that we don't
7 want to be friendly, but everybody's under strict
8 orders not to talk to you.

9 What I want you to do is only talk to other
10 people who are jurors because that way you know you're
11 not talking to a witness, you know you're not talking
12 to a party, you know you're not talking to somebody
13 that you're not supposed to be talking to. Only talk
14 to other people that have those juror badges on, and
15 don't talk to them about this case. You're going to
16 get an admonition every time we break, I'm going to
17 read you the same admonition about not talking to
18 anybody about the case. Okay.

19 You can't talk to anybody, your co -- fellow
20 jurors, your parents, your -- your brothers and
21 sisters, your kids, your spouse. You can't talk to
22 anybody about the case until you're discharged. Okay?
23 For some of you, that will be sooner than later. But
24 for those of you that are seated on the jury panel, it
25 won't be until the trial is over. You can't talk to

1 anybody about the case. So just be aware of that. So
2 when we're in the hallway, please don't try to have a
3 conversation with somebody you're not supposed to.

4 I'm going to ask you some questions now. If
5 I ask you a question that you need to respond to, and
6 many of you are going to have to respond, I need you to
7 do as I asked you earlier: Give us your name and badge
8 number. Last three digits of your badge number is all
9 we need. And you heard the badge numbers read off as
10 we were doing the roll call, so give us the name and
11 badge number, and then tell us what the response is,
12 and please talk loud.

13 First question: Is there anybody that has
14 difficulty understanding the English language? Raise
15 your hand.

16 Okay. I have somebody in the front row, back
17 there. What's your name and badge number, ma'am?

18 PROSPECTIVE JUROR NO. 130: Ratchatida
19 Perreida, Badge No. 130.

20 THE COURT: 130. What's your native
21 language?

22 PROSPECTIVE JUROR NO. 130: Thai.

23 THE COURT: Thai. How long have you been in
24 the United States?

25 PROSPECTIVE JUROR NO. 130: Ten years.

1 THE COURT: Ten years. Do you work here?
2 PROSPECTIVE JUROR NO. 130: Yes.
3 THE COURT: What do you do?
4 PROSPECTIVE JUROR NO. 130: Pharmacy tech.
5 THE COURT: Pharmacy tech? In your job, do
6 you have to communicate with people in English?
7 PROSPECTIVE JUROR NO. 130: Yes.
8 THE COURT: Have you understood everything
9 that I've said so far?
10 PROSPECTIVE JUROR NO. 130: Yes.
11 THE COURT: Okay.
12 PROSPECTIVE JUROR NO. 130: If you not speak
13 too fast.
14 THE COURT: Okay. But you understood
15 everything so far.
16 PROSPECTIVE JUROR NO. 130: Yes.
17 THE COURT: All right. Great. Thank you,
18 ma'am.
19 Anybody else, difficulty with the English
20 language?
21 No other hands. I thought there was a couple
22 of other hands up. You just don't want to answer the
23 questions? They're easy questions. Come on. All
24 right. There's no other hands.
25 Are any of you acquainted with or recognize

1 any of the lawyers involved in the case or any of the
2 lawyers that they said were parts of their firms? I'm
3 going to start -- I'm going to start in the back row.

4 So let's see. You're Mr. Joyce?

5 PROSPECTIVE JUROR NO. 029: Yes, sir.

6 THE COURT: Mr. Joyce, whose name did you
7 recognize?

8 PROSPECTIVE JUROR NO. 029: Kristen Maxwell
9 and Hudgins.

10 THE COURT: Maxwell and Hudgins. Are those
11 people that -- that you recognize their name or
12 somebody that you know personally?

13 PROSPECTIVE JUROR NO. 029: Had full
14 conversations with them about six months ago.

15 THE COURT: Okay. Was that regarding a -- a
16 legal case?

17 PROSPECTIVE JUROR NO. 029: Regarding
18 something I wanted them to potentially handle for me,
19 yes.

20 THE COURT: And the fact that you've had
21 conversations with them, they're not going to be here
22 in this case, I don't think.

23 PROSPECTIVE JUROR NO. 029: Okay.

24 THE COURT: Is that going to affect your
25 ability to be fair and impartial and sit and listen to

1 the evidence in this case?

2 PROSPECTIVE JUROR NO. 29: No.

3 THE COURT: Okay. You can put that aside and
4 not worry about that and judge this case based on the
5 facts and evidence that you hear here?

6 PROSPECTIVE JUROR NO. 029: Yes.

7 THE COURT: All right. Thank you, sir.
8 Anybody else? Middle row.

9 Let's see, is it Mr. Roberts?

10 PROSPECTIVE JUROR NO. 058: Yes.

11 THE COURT: Who did you recognize?

12 PROSPECTIVE JUROR NO. 058: The Glen Lerner
13 firm.

14 THE COURT: Just from the advertising?

15 PROSPECTIVE JUROR NO. 058: I used to be a
16 claims adjustor.

17 THE COURT: Oh, you used to be a claims
18 adjustor. Okay. Bear with me. Sometimes I take
19 notes.

20 The fact that you've had -- have you had
21 dealings with their lawyers at their firm?

22 PROSPECTIVE JUROR NO. 058: I've had dealings
23 with cases involving them, whether it's through
24 correspondence or through a direct communication with
25 them.

1 THE COURT: Okay. Didn't have to do with
2 this case; right?

3 PROSPECTIVE JUROR NO. 058: No. I'm not in
4 that field now, but this is previous experience.

5 THE COURT: How long ago did you get out of
6 the claims adjusting field?

7 PROSPECTIVE JUROR NO. 058: Ten years.

8 THE COURT: All right. And the fact that
9 you've had dealings with attorneys at their firm, is
10 that going to affect your ability to be fair and
11 impartial in this trial?

12 PROSPECTIVE JUROR NO. 058: It jinxed me a
13 little bit.

14 THE COURT: It makes you think -- without
15 having heard any of the evidence because the Glen
16 Lerner firm is on one side, and I don't want you to
17 tell me whether it's for or against, but you have some
18 feelings already that you're for or against that side?

19 PROSPECTIVE JUROR NO. 058: I would say I
20 have some preperceptions.

21 THE COURT: Okay. All right. Thank you,
22 sir.

23 Who else? Nobody else in the middle?

24 Down here in the front. Is it Mr. Corum?

25 PROSPECTIVE JUROR NO. 093: Yes.

1 THE COURT: Who do you know?

2 PROSPECTIVE JUROR NO. 093: I know Glen

3 Lerner. I'm actually -- I got in an accident in July,

4 and he's been hired by the plaintiff to prosecute.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 093: Or whatever.

7 THE COURT REPORTER: Badge number.

8 PROSPECTIVE JUROR NO. 093: It is 093.

9 THE COURT: All right. So Glen Lerner's firm

10 is on the other side of a claim --

11 PROSPECTIVE JUROR NO. 093: Yes.

12 THE COURT: -- that you're involved in.

13 Is that going to affect your ability to be

14 fair and impartial, do you think?

15 PROSPECTIVE JUROR NO. 093: I'm not sure.

16 THE COURT: You understand that your case has

17 nothing to do with the case that we're here for today;

18 right?

19 PROSPECTIVE JUROR NO. 093: Yeah, I

20 understand that.

21 THE COURT: Okay. So tell me how -- what --

22 what thoughts you have about not only -- I don't want

23 you to tell me whether you're happy or mad with their

24 firm, but do you think that it would be -- it would

25 affect your ability to listen to the evidence in this

1 case and you can't put that aside.

2 PROSPECTIVE JUROR NO. 093: Not really.

3 Just -- you know, it was just something that came up.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 093: I got to go talk
6 to a private investigator tomorrow.

7 THE COURT: Okay. And -- but you could -- do
8 you think you could put that aside and listen to this
9 case based on the evidence that you hear here?

10 PROSPECTIVE JUROR NO. 093: Yes.

11 THE COURT: That's kind of a goofy way to say
12 that, hear here. They're spelled different. All
13 right. Thank you, sir.

14 Anybody else? We have a whole bunch in the
15 back.

16 Let's go with -- what's your name and badge
17 number, ma'am?

18 PROSPECTIVE JUROR NO. 104: Jenny Turner,
19 104.

20 THE COURT: Who did you recognize?

21 PROSPECTIVE JUROR NO. 104: Joseph Schmitt is
22 one of my clients.

23 THE COURT: Okay. And what kind of work do
24 you do?

25 PROSPECTIVE JUROR NO. 104: Private chef.

1 THE COURT: A chef?

2 PROSPECTIVE JUROR NO. 104: Uh-huh.

3 THE COURT: Okay. I don't think Mr. Schmitt
4 is expected to be here during the trial. So if you
5 don't see Mr. Schmitt during the trial, is that going
6 to affect your ability to be fair and impartial if
7 somebody that belongs to that same firm is here?

8 PROSPECTIVE JUROR NO. 104: I see him on a
9 weekly basis, so I don't know if I can separate that
10 from here or -- it depends.

11 THE COURT: Okay. You may not be able to see
12 him on a weekly basis if you're here serving on a jury;
13 right?

14 PROSPECTIVE JUROR NO. 104: Well, I will
15 because I have to adjust my schedule because if not, I
16 can't pay my bills.

17 THE COURT: Okay. All right. I know that
18 they don't pay you guys enough to serve jury duty. I
19 think they give you 40 bucks a day. I know it's not
20 enough. I apologize for that. I don't have any
21 control over that.

22 All right. So would you be able to -- if
23 you're going to adjust your schedule and still see
24 Mr. Smith as a private chef, are you going to be able
25 to not discuss the case with him?

1 PROSPECTIVE JUROR NO. 104: Yeah. Well,
2 you're not allowed to, so --

3 THE COURT: Right.

4 PROSPECTIVE JUROR NO. 104: -- I could go to
5 jail if I did; right?

6 THE COURT: So assuming that you don't
7 discuss the case with him, whether you see him or not,
8 is it going to affect your ability to be fair and
9 impartial in the case, you think?

10 PROSPECTIVE JUROR NO. 104: It might. Just
11 out of frustration of having to work double time, and I
12 don't know. I don't understand the law when it says --
13 it clearly states in the law that if it causes an
14 extreme hardship for you, how can you take someone who
15 just bought a house and can barely pay bills and put
16 them on a jury and pay them less than minimum wage?

17 THE COURT: I understand the concern. You
18 know, it's interesting because years ago, financial
19 hardship used to be a reason to get out of jury duty.
20 Since about 2008, we have the majority of our jurors
21 that would be able to claim financial hardship for some
22 reason or another. And if we use that as a -- a reason
23 to excuse people now, we would never -- never be able
24 to get juries. So I -- I understand that people have
25 financial difficulties because of jury duty. I feel

1 for you. We'll talk about financial hardships here
2 more in a little bit. All right. Thank you, ma'am.

3 Anybody else know any lawyers? In the back.

4 PROSPECTIVE JUROR NO. 141: Raquel Go,
5 Badge 141. Attorney Glen Lerner.

6 THE COURT: How do you know Mr. Lerner?

7 PROSPECTIVE JUROR NO. 141: I work as a
8 claims examiner for a workers' comp claim, and one --
9 some of the injured workers I refer to the risk center
10 and that's for injury.

11 THE COURT: Okay. You understand that this
12 case is different from those; right?

13 PROSPECTIVE JUROR NO. 141: Correct.

14 THE COURT: You weren't involved as a claims
15 examiner on anything having to do with this case;
16 right?

17 PROSPECTIVE JUROR NO. 141: No.

18 THE COURT: So do you think you would be able
19 to put that aside and judge this case based on the
20 evidence that you see and hear in the courtroom?

21 PROSPECTIVE JUROR NO. 141: Based on the
22 evidence, yes, I can put it aside.

23 THE COURT: The fact that you've had prior
24 dealings with Mr. Lerner's office, that's not going to
25 affect your ability to be fair and impartial in this

1 case?

2 PROSPECTIVE JUROR NO. 141: No.

3 THE COURT: All right. Thank you, ma'am.

4 Who else? Oh, we have another one in the
5 front row. You guys that are in the back, can you
6 please stand up and talk loud for us?

7 PROSPECTIVE JUROR NO. 113: My name's
8 Geraldine Biton, and my badge number is, like, 113.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 113: And yeah, Glen
11 Lerner, through advertisement. But I have an opinion
12 about all of them. They're all ambulance chasers.

13 THE COURT: About all lawyers.

14 PROSPECTIVE JUROR NO. 113: Don't care about
15 cases one way or the other.

16 THE COURT: All right. Thank you for your
17 opinion, ma'am.

18 PROSPECTIVE JUROR NO. 113: You're welcome.

19 THE COURT: The fact that you don't like
20 lawyers, this case isn't about lawyers. You understand
21 that.

22 PROSPECTIVE JUROR NO. 113: I don't care
23 about this Court. I don't care about your jury duty.
24 I don't care about any of it.

25 THE COURT: Wow.

1 PROSPECTIVE JUROR NO. 113: Because the fact
2 that -- the fact for the duration of this, I'm going to
3 be consumed with living in the street as opposed to
4 working, so I won't be able to think about nothing.

5 THE COURT: Okay. Thank you, ma'am. I'm
6 going to thank and excuse you and have you report back
7 down to the third floor. Okay? Go ahead, ma'am.

8 PROSPECTIVE JUROR NO. 113: Thank you.

9 THE COURT: Badge 113.

10 Tom, can you call jury services? Make sure
11 she's the last person that leaves the building today.

12 All right. Who else knows any lawyers?

13 UNIDENTIFIED SPEAKER: No.

14 THE COURT: I got one in the back row.

15 Go ahead, sir.

16 PROSPECTIVE JUROR NO. 226: Michael Maute,
17 226. I do recognize some of the attorneys for both of
18 the parties.

19 THE COURT: You recognize them by face or by
20 name?

21 PROSPECTIVE JUROR NO. 226: By name and face.

22 THE COURT: Okay. How do you recognize them?

23 PROSPECTIVE JUROR NO. 226: I'm sorry?

24 THE COURT: How do you recognize them?

25 PROSPECTIVE JUROR NO. 226: I've been called

1 to testify in DUI, DUI drug cases in the past because
2 of my job.

3 THE COURT: What's your job?

4 PROSPECTIVE JUROR NO. 226: I'm a paramedic
5 at Clark County Detention Center.

6 THE COURT: Okay. The fact that you
7 recognize some of these attorneys, is that going to
8 affect your ability to be fair and impartial?

9 PROSPECTIVE JUROR NO. 226: No, it won't.

10 THE COURT: Okay. Now, you don't have to
11 just say no because of that last lady.

12 PROSPECTIVE JUROR NO. 226: Trust me, Your
13 Honor, I've been -- because I have missed other cases
14 because you know where I work now, it's not just
15 walking out the front door, and sometimes I've been
16 late for cases with other judges, and I've been called
17 in front of judges saying, Why were you late, why did
18 you miss my case? And the minute I say I work at CCDC,
19 they go, Never mind, you're excused, so -- but I have
20 seen these -- couple of these attorneys in cases that
21 I've been called to.

22 THE COURT: Okay. You think that's going to
23 affect your ability to be fair and impartial?

24 PROSPECTIVE JUROR NO. 226: No, it won't.

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

1 There's somebody else in the middle row.

2 Yes, ma'am, name and badge number.

3 PROSPECTIVE JUROR NO. 169: Virginia Jordano,
4 169. I heard of Glen Lerner on the, you know,
5 billboards and TV, that's all. But since we're under
6 oath, yes, I have heard of him.

7 THE COURT: All right. I appreciate that.
8 And I'm sure probably most of you have heard of Glen
9 Lerner. I appreciate you standing up and saying that.
10 If anybody -- anybody else wants to stand up and say
11 that, if that's the only knowledge you have of Glen
12 Lerner, I only want you to stand up if you think that's
13 going to affect your ability to be fair and impartial
14 okay?

15 Anybody else? Anybody on this side know any
16 of the lawyers? No? All right. Thank you, folks.

17 Are any of you acquainted or recognize any of
18 the names of any of the witnesses that were identified?
19 Start over here.

20 Yes, sir. Let me get my -- Mr. Roberts;
21 right?

22 PROSPECTIVE JUROR NO. 058: Hubert, 058.
23 Some of the medical witnesses being called: Dr. Cash,
24 Oliveri, I forget who the DME was, I recognize those
25 names from reports that I've read before.

1 THE COURT: Okay. And I think I'm going to
2 ask you the same question again: Is that going to
3 affect your ability to be fair and impartial?

4 PROSPECTIVE JUROR NO. 058: Don't think so.
5 But just knowledgeable.

6 THE COURT: Okay. All right. Thank you.

7 Anybody else, witnesses?

8 Yes, ma'am, name and badge number again.

9 PROSPECTIVE JUROR NO. 141: Raquel Go,
10 Badge 141. Dr. Kidwell and Dr. Oliveri.

11 THE COURT: How do you know them?

12 PROSPECTIVE JUROR NO. 141: They are on our
13 contracted provider. We use them to treat the injured
14 workers.

15 THE COURT: All right. And the fact that
16 you've had dealings with them, is that going to affect
17 your ability to be fair and impartial?

18 PROSPECTIVE JUROR NO. 141: No. Depends on
19 the evidence.

20 THE COURT: Okay. Thank you, ma'am.

21 Anybody else?

22 Yes, ma'am, name and badge number.

23 PROSPECTIVE JUROR NO. 169: Virginia Jordano,
24 169. I work for a company that is in the employ for
25 bookkeeping and that sort of thing for Dr. Andrew Cash.

1 THE COURT: Okay. Are you actually the
2 bookkeeper for Dr. Cash?

3 PROSPECTIVE JUROR NO. 169: I'm the
4 bookkeeper's helper.

5 THE COURT: Okay. Is that -- that tie going
6 to affect your ability to be fair and impartial?

7 PROSPECTIVE JUROR NO. 169: I don't think so.
8 I've never met him.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 169: But I've seen his
11 receipts.

12 THE COURT: All right. I guess the question
13 is: If you know a witness and that witness comes and
14 testifies or you know of a witness, if that doctor
15 comes and testifies in the trial, are you going to give
16 him -- his testimony more weight because you know him
17 or less weight because you know him and you've seen his
18 receipts, or are you just going to judge him like every
19 other witness that you see?

20 PROSPECTIVE JUROR NO. 169: I think that I
21 would judge him just like anybody else. You know, I
22 don't know. It probably would help me be impartial
23 because I have never met him.

24 THE COURT: Okay. All right. Thank you,
25 ma'am. Appreciate that.

1 Anybody else know any of the witnesses?

2 Yes, sir, name and badge number.

3 PROSPECTIVE JUROR NO. 226: Michael Maute,
4 226. I know the Metro officer.

5 THE COURT: And that's based on the same
6 experiences you've had before with your employment?

7 PROSPECTIVE JUROR NO. 226: Yes, with
8 through -- through my employment I know him.

9 THE COURT: Okay. If he comes and testifies,
10 which we're told that he's going to come testify, are
11 you going to be able to set aside any knowledge you
12 have of him and judge the case based impartially?

13 PROSPECTIVE JUROR NO. 226: Yes.

14 THE COURT: You're going to be able to be
15 fair and impartial and listen to his testimony just
16 like you didn't know him?

17 PROSPECTIVE JUROR NO. 226: Yes.

18 THE COURT: Okay. Thank you, sir.

19 Anybody else know any of the witnesses? Not
20 seeing any other hands. All right.

21 I think it's a good time to break, folks. So
22 let's go ahead and take our lunch break. Before you do
23 that, I'm going to read this admonition to you.

24 Understand that you're going to hear this a lot. If
25 you get seated on the jury, I actually do it faster as

1 we go along. But to start out with, I'm going to do it
2 very slow. When we take a lunch break like this --
3 just so you're aware, there's a Capriotti's on the
4 first floor of this building. You don't have to go
5 through the metal detectors. If you're willing to go
6 through the metal detectors, there's a couple places
7 right across the street. There's at least one sandwich
8 shop about a half a block east of here. There's a
9 place called MTO that's about a block west of here.
10 There's -- there's a lot more choices than we used to
11 have just a few years ago. But there's not a lot of
12 choices. If you want to run to a casino, you can, but
13 you probably have to run because I'm only going to give
14 you an hour. We're going to take a break from 12:00 to
15 1:00. I'd like you all to be lined up back down at
16 1:00 o'clock in the hallway. We're on the 14th floor.
17 14A is our courtroom. Tom will give you more details
18 of where he wants you to be and stuff like that.

19 During our break, you're instructed not to
20 talk with each other or with anyone else about any
21 subject or issue connected with this trial. You are
22 not to read, watch, or listen to any report of or
23 commentary on the trial by any person connected with
24 this case or by any medium of information, including,
25 without limitation, newspapers, television, the

1 Internet, or radio. You are not to conduct any
2 research on your own, which means you cannot talk with
3 others, Tweet others, text others, Google issues, or
4 conduct any other kind of book or computer research
5 with regard to any issue, party, witness, or attorney
6 involved in this case. You're not to form or express
7 any opinion on any subject connected with this trial
8 until the case is finally submitted to you.

9 We'll see you back at 1:00 o'clock.

10 (The following proceedings were held
11 outside the presence of the jury.)

12 THE COURT: All right. We're outside the
13 presence of the jury.

14 Anything we need to put on the record yet?

15 MR. ROBERTS: Nothing from us, Your Honor.

16 MR. MAZZEO: Your Honor, just, do you have
17 a -- something other than this lecturn? Do you have a
18 smaller portable lectern because I know this is kind of
19 grounded here with the wires and --

20 THE COURT: It swivels.

21 MR. MAZZEO: It does? It turns? It does.

22 Okay. Well, that may work.

23 THE COURT: Okay.

24 MR. ROBERTS: About how much longer do you
25 think you have with your part, Judge? Not exact, but

1 just --

2 THE COURT: Probably half an hour.

3 MR. ROBERTS: Very good.

4 THE COURT: Okay? All right. Off the
5 record. See you back at 1:00.

6 (Whereupon a lunch recess was taken.)

7 THE COURT: Go back on the record, Case
8 No. A637772. We're outside the presence of the jury.
9 I know that one of the things that you guys wanted me
10 to tell you how we're going to handle is this issue of
11 permissive use. So I talked to Judge Allf this morning
12 to try to figure out what was her intention when she
13 entered that order.

14 I don't think she understood the difference
15 between permissive use and auto negligent entrustment.
16 That being said, it was her intention that her ruling
17 would result in a rebuttable presumption, not a
18 determination as a matter of law, even though that's
19 what the order says.

20 I'm not going to change from permissive use
21 to negligent entrustment, even though I think that's
22 probably what she envisioned. But I am going to make
23 it a rebuttal presumption as it relates to the
24 permissive use. So -- and that's based upon what her
25 intention was.

1 So what that means is I need both of you to
2 propose an instruction dealing with the rebuttal
3 presumption on permissive use. Because it's a rebuttal
4 presumption, the defense gets to put on whatever
5 evidence you have to try to rebut it. Okay? I know
6 that's not what everybody has prepared for.

7 MR. MAZZEO: No, but ...

8 THE COURT: It's -- I think it's the only
9 thing I can do to try to -- to try to move forward the
10 trial with the orders that are in place based on the
11 intention of the judge that issued those orders.
12 Doesn't make either of you happy; right?

13 MR. MAZZEO: Well, no, it makes the defense
14 somewhat happy. It's not --

15 MR. STRASSBURG: Doesn't make me happy,
16 Judge.

17 THE COURT: Okay.

18 MR. MAZZEO: But --

19 THE COURT: Sorry.

20 MR. MAZZEO: But it does throw a wrench in
21 the works because we didn't anticipate as -- as we're
22 preparing for trial, I'm sure both sides were not
23 looking at this case in terms of, okay, what evidence
24 do we need now to rebut the ruling on permissive use so
25 that we can fight both the joint liability, 41.440, and

1 negligent entrustment. So wow.

2 The good thing is we'll be doing jury
3 selection today and tomorrow, and I don't anticipate
4 getting to openings until Wednesday, but it may create
5 a little --

6 THE COURT: That gives you time.

7 MR. MAZZEO: It gives us some time, you know.

8 MR. ROBERTS: Look, Judge, I have to -- to
9 say that --

10 THE COURT: I know.

11 MR. ROBERTS: -- I'm somewhat taken aback by
12 this. We weren't there at the time. So I've been
13 mainly relying on the order in preparing to try the
14 case. The order says nothing about rebuttable
15 presumption. It says that permissive use is found as
16 matter of law as a sanction.

17 THE COURT: I know.

18 MR. ROBERTS: There's no rebuttal
19 presumption. The file and the admissions that were
20 made were made to an insurance adjustor. The insurance
21 adjustor was excluded as a witness because permissive
22 use has already been found as a matter of law. We
23 would have moved to reopen discovery.

24 Now, we have the burden -- I know it's not
25 really our burden, but now we have to be prepared to

1 put on evidence of permissive use when we have planned
2 for trial and governed our discovery attempts and not
3 asked for additional discovery after the claims file
4 was produced outside of discovery period.

5 THE COURT: If you want to bring the
6 adjustor, I'm going to allow you to bring them.

7 MR. MAZZEO: Well, maybe over objection.
8 There's a lot --

9 THE COURT: Okay.

10 MR. MAZZEO: -- lot to digest right now in
11 three minutes.

12 THE COURT: I know.

13 MR. MAZZEO: And -- and also, if you don't
14 mind me jumping in, but -- but also, I'm also still
15 considering thinking about not fighting liability. So
16 it's just -- it's something that's rolling around in my
17 brain that if we don't contest it, then we still need a
18 an instruction from the Court, because we certainly
19 have to defend punitive damages. You received our
20 trial brief and my argument last week as far as we have
21 to -- that -- that -- and I'm sure after speaking with
22 Judge Allf, you asked her about -- or you confirmed
23 there was a discovery sanction, so it had nothing to do
24 with the circumstances by which Andrea might have given
25 permission to Jared to use the vehicle. Facts of the

1 case are that she didn't.

2 So if we do continue to not contest
3 liability, let's say hypothetically, then you have to
4 give -- what are you prepared -- I offered up a
5 proposed stipulation last week, but we need the jurors
6 to understand that -- that that ruling -- more so in
7 light of what your discussion was with Judge Allf, that
8 that ruling was for discovery sanction and not -- did
9 not go to the circumstances surrounding --

10 THE COURT: Jury doesn't need to know why the
11 rebuttal presumption is there. They'll just be told
12 that it's there.

13 MR. MAZZEO: Okay. So then -- then I'm not
14 being precluded, then, let's say in opening statement
15 to say to the jurors, Ladies and gentlemen, the
16 evidence will show, among other things, that the
17 circumstance -- circumstances surrounding Jared's use
18 of the car was without permission. She didn't know it.
19 She was in her shower, and she didn't know about the
20 accident, about his use of the car and the accident
21 until she got a call after the accident from the cop.
22 I mean, that's -- that's --

23 THE COURT: There will be a presumption that
24 she knew and gave permission to him to use the vehicle,
25 and you can rebut that.

1 MR. STRASSBURG: Judge, may I clarify? It
2 sounds like the way this works is the plaintiff need
3 not put on any evidence as to permissive use because
4 the plaintiff is entitled to this presumption.

5 THE COURT: Correct.

6 MR. STRASSBURG: Only if the defense decides
7 to put on evidence to attempt to rebut this presumption
8 would then the plaintiff be heard to put on evidence
9 contrary to that.

10 Is that how you see this playing out?

11 THE COURT: So the plaintiff goes first.

12 MR. STRASSBURG: Yeah. So the plaintiff need
13 not put on evidence, but claim the presumption to
14 satisfy the burden of proof on permissive use.

15 THE COURT: They can, but they can put on
16 evidence if they so desire.

17 MR. STRASSBURG: I see. And if they choose
18 to put on evidence, are they not waiving the
19 presumptions?

20 THE COURT: No. No, because I think they
21 would anticipate that you're going to try to rebut it.
22 It's a rebuttable presumption. If they anticipate
23 you're going to rebut it, so they put on evidence to
24 try to strengthen their presumption, I think they can
25 do that.

1 MR. MAZZEO: Okay.

2 MR. STRASSBURG: Judge -- Judge, I don't know
3 if I need to, but I just make a record that Jared would
4 object to this change in the law of the case at this
5 late date as prejudicial. But thank you for letting me
6 make a record.

7 THE COURT: I think it helps you more than
8 hurts you.

9 MR. MAZZEO: It's not speaking --

10 THE COURT: Your objection's noted.

11 MR. MAZZEO: He's not speaking on behalf of
12 Andrea Awerbach.

13 MR. STRASSBURG: This won't be the first time
14 either.

15 MR. MAZZEO: Judge, can I have a minute to
16 huddle with co-defense counsel regarding this issue?

17 THE COURT: Sure. Is there anything else we
18 need to do on the record right now?

19 MR. MAZZEO: Maybe. I just need to speak
20 with them a moment about this issue.

21 THE COURT: That's not going to matter for
22 purposes of jury selection, is it?

23 MR. MAZZEO: No. No, it won't.

24 THE COURT: Let's get our jury going --

25 MR. ROBERTS: Well, Your Honor, there --

1 there are a few things. And before we -- we leave this
2 topic, I just reviewed the order again, and the Court
3 clearly finds permissive use. And I think in order to
4 create a rebuttal presumption, there needs to be a new
5 order because your pronouncements from the bench or
6 even minute orders can't supersede a written order of
7 the Court, I don't think. And as soon as they try to
8 put in evidence of this, I'm going to move for a
9 mistrial. We aren't ready to -- to -- to try
10 permissive use. We need a continuance.

11 If this is -- if the Court is going to change
12 Judge Allf's ruling from 2015, a year ago,
13 January 2015, I need notice and an opportunity to
14 prepare. I'd be highly prejudiced by changing the --
15 the issues to be tried when the jury's in the box.

16 And -- and there is one other thing that I
17 have to raise, Your Honor, that -- with regard to the
18 jury. This may tie it together, it might not depending
19 on the position of Mr. Mazzeo. As you know one of the
20 pretrial motions that was filed by Mr. Mazzeo was sort
21 of a preemptive strike on what he believed was
22 systematic exclusion of African-American jurors from
23 the panel, and he's reserved his right. It was denied
24 at one time.

25 MR. MAZZEO: Jared --

1 MR. ROBERTS: Oh, that's right. I'm sorry.
2 Jared filed it.

3 MR. STRASSBURG: We filed it.

4 MR. ROBERTS: I apologize.

5 And here is -- is my issue, Your Honor: We
6 now have the box, and the only person in the box who
7 has self-identified as a black juror, African-American
8 juror, is Mr. Williams, Juror 13-0038. Mr. Hubert
9 Roberts, 13-0058, might be considered. He put
10 multiracial. So we've got one or two who might qualify
11 as an African-American, and here is my concern:
12 Mr. Williams in Question 74 says he has beliefs that
13 would prevent him from returning a high verdict. I'm
14 probably going to have to move to strike him for cause.
15 If he's not struck for cause, I will exercise a
16 peremptory.

17 Mr. Roberts is a former claims adjustor for
18 State Farm, and in response to Question 37 said he
19 could not be fair and impartial based on work
20 experience in a number of accident cases handled as a
21 claims adjustor. So I'll be moving to strike him for
22 cause. And if he's not struck for cause, I will
23 exercise a peremptory.

24 So the only two jurors who are arguably
25 African American I will move to strike. And going down

1 the list after the 20 in the box, it's 25 back,
2 Mr. Nathaniel Royal, Juror 13-0230, it's going to take
3 us 25 more jurors before we put another African
4 American in the box. And Mr. Royal is the one who says
5 he has knee pain which prevents him from sitting for
6 long periods of time and physical therapy appointments
7 several times a week. So we may lose him.

8 So this is what I propose, Your Honor: I
9 propose, without agreeing that there's any merit at all
10 to their claim, I would agree to excuse this panel and
11 draw a new random panel in order for them to try to get
12 a more representative sample of the community. And if
13 they don't want to stipulate, then I'd say for the
14 record that I believe any claim that they made pretrial
15 is now -- is waived, and I should be able to exercise
16 my peremptory challenges freely without having to worry
17 about them raising this as a grounds of appeal.

18 MR. STRASSBURG: Judge, no waiver. We don't
19 waive the issues brought up by the motion. We believe
20 that the teaching of Batson is clear in this case, that
21 peremptory challenges may not be issued
22 discriminatorily based upon race. And to strike the --
23 the complete African American composition of the panel
24 strikes to me to be discriminatory and we would object
25 to that.

1 THE COURT: What do you think about his
2 suggestion of starting with a whole new panel?

3 MR. STRASSBURG: Moment.

4 MR. TINDALL: Yeah, we'd like to probably --

5 MR. STRASSBURG: We accept.

6 MR. MAZZEO: Well -- well, they accept. Hold
7 on a minute.

8 MR. TINDALL: I just wanted us to all go in
9 the hallway.

10 MR. MAZZEO: Can the defense counsel speak
11 for two minutes about -- in the back?

12 THE COURT: Sure. We'll go off the record
13 for a minute and you guys can talk.

14 MR. MAZZEO: Thank you, Judge.

15 (Whereupon a short recess was taken.)

16 THE COURT: Back on the record, we're still
17 outside the presence.

18 MR. MAZZEO: So on behalf of Andrea Awerbach,
19 we're objecting to plaintiff's motion to excuse this
20 panel for a new panel. You explained to the attorneys
21 last week when this motion was brought up, you had the
22 arguments in court, and you explained that the
23 grounds -- that it's a random process. It's done by
24 driver's license, and I think there was one other
25 registration or --

1 THE COURT: Driver's license and electric
2 bills, I think.

3 MR. MAZZEO: And electric bills. So it's
4 done randomly. They don't do it by race --

5 THE COURT: Actually, maybe it's -- it may
6 include voter registration too. I don't know.

7 MR. MAZZEO: I know voter registration is for
8 federal court. I thought state court was driver's
9 license. But what have you, it's still -- there's --
10 there's a race-neutral random process that takes place
11 here.

12 So surprisingly, I mean, I -- on other
13 jurors, there's at least 4 or 5 male and female blacks
14 of the 20. There's not many on this one, but that's
15 part of the random process. That's -- that's the way
16 it goes. So I don't think -- and also, if he gives a
17 race-neutral explanation for using a peremptory
18 challenge, then he defeats the Batson challenge and --
19 and they get excused. That's the way it is.

20 So on behalf of Andrea, I know that
21 co-defense counsel is taking a contrary view, but we
22 don't believe that we need a new panel for the reasons
23 expressed by Mr. Roberts.

24 And I think what's motivating Mr. Roberts'
25 request for a new panel is maybe not so much the race

1 issue, but it might be this -- this permissive use
2 rebuttal presumption ruling that you issued from the --
3 from the bench -- or actually you clarified
4 Judge Allf's order.

5 THE COURT: It changed it.

6 MR. MAZZEO: It changed it. Sure. So -- and
7 that's going to -- throws a wrench in the works for all
8 of us, for the defense and for the plaintiff. And we
9 still have to decide whether we're going to stipulate
10 to liability or contest it now. It's -- but -- but we
11 think the panel is fine, and we'd like to proceed
12 forward.

13 It may, though, cause this -- this issue with
14 any rebuttal presumption. It may cause a little delay,
15 though, middle of the week, later this week because of
16 evidence that in preparing opening -- we have to now
17 change our opening statement and we have to add
18 witnesses. So there's going to be some changes, Judge,
19 that we're going to have to make to the trial on both
20 sides.

21 THE COURT: Okay. I get it.

22 MR. STRASSBURG: We would -- on behalf of
23 Jared, we would accept the offer of Mr. Roberts.

24 THE COURT: Switch the whole panel?

25 MR. STRASSBURG: Yes, sir.

1 MR. ROBERTS: Send out new questionnaires,
2 and we solve the issue of the parties to prepare.

3 But, Your Honor, there's -- there's one thing
4 I just think I need to get it on the record, and I
5 wanted to confirm this and also to clarify based on
6 what you said about Judge Allf's finding of permissive
7 use and how that ties into negligent entrustment.

8 So the first thing I'd like clarification on
9 is whether the rebuttal presumption also goes to
10 permissive use or just to the entrustment element of
11 the negligent entrustment claim. Because under 41.440,
12 any liability imposed upon a wife, husband, son,
13 daughter, father, mother, brother, sister, or other
14 immediate family -- other immediate member of a family
15 arising out of his or her driving and operating a motor
16 vehicle upon a highway with the permission, express or
17 implied, of such owner is hereby imposed upon the owner
18 of the motor vehicle. So that is permissive use. And
19 there's a clear finding of permissive use with no
20 qualification.

21 So even if there's a rebuttable presumption
22 on the entrustment element of the negligent entrustment
23 claim because somehow the Court views permissive use,
24 express or implied, as different than entrustment,
25 there should still be a finding of permissive use for

1 the purposes of 41.440.

2 And it goes beyond just my interpretation of
3 Judge Allf's order and the face of the order. They
4 took a writ on this issue, and the writ was denied.
5 This is the language from the order denying petition
6 for writ of mandamus or prohibition filed
7 September 11th, 2015, and the Supreme Court of the
8 State of Nevada: "Petitioner argues that the district
9 court sanction was improper because she did not violate
10 a court order by willfully concealing an entry on her
11 insurance claim log during the discovery process. This
12 argument is unavailing." And then there's a citation to
13 the Fire Insurance Exchange upholding the imposition of
14 sanctions for discovery abuse occurring in the absence
15 of violating court order in Johnny Ribero.

16 So not only do we have the clear finding of
17 permissive use in Judge Allf's order, we've got the
18 Nevada Supreme Court saying that their argument that
19 it's improper is unavailing. So they've reached the
20 merits. It's now the law of the case. So her order of
21 a finding of permissive use, at least for the purpose
22 of 41.440, cannot be changed now by this Court because
23 it's the law of the case based on the denial of the
24 writ.

25 And -- and going on to the negligent

1 entrustment, I don't know if I've seen any case law,
2 but I don't understand how entrustment, giving someone
3 your car with permission to use it, under the negligent
4 entrustment case law in Zugel can be any different than
5 the finding of permissive use that was upheld by the
6 supreme court.

7 Thank you, Judge.

8 THE COURT: I don't think that it -- the fact
9 that the supreme court addressed that issue, I don't
10 know that that really changes anything. There's still
11 a finding. It's just not a finding as a matter of law.
12 It's not what she intended. It's not what she
13 envisioned.

14 This is part of the dilemma of inheriting a
15 case from somebody else. That's why I called to ask
16 her, and it was her understanding that the parties
17 would be able to put on evidence because she wanted the
18 jury to hear that defendant said one thing and then
19 changed her statement or said something different. So
20 she envisioned a rebuttable presumption whereby the
21 jury would be able to hear both things that were said.
22 Because I think that it's -- I don't know that I would
23 have entered the same order. I am trying to give
24 effect to what Judge Allf did based on what her
25 intention was.

1 So I don't think it's still a finding as a
2 matter of law that 41.440 is met. It's a rebuttable
3 presumption that it's met, which means that the jury
4 shall presume that she gave permission to her son to
5 drive the vehicle unless that evidence is rebutted and
6 the jury's convinced that it's been rebutted.

7 You guys can come up with the language of
8 that instruction. But I don't know that -- there's
9 prejudice to the plaintiff because, yes, it changes
10 things a little bit, but there's still a presumption.
11 You don't have to put on any evidence and there's still
12 a presumption.

13 MR. ROBERTS: But assuming, Your Honor, that
14 they put on evidence, it would be malpractice for me
15 not to put on evidence to rebut their evidence.

16 THE COURT: What do you think you need to do
17 in order to be able to put on the necessary evidence?
18 You want to take the deposition of the adjustor?

19 MR. ROBERTS: I do.

20 THE COURT: Can we schedule that quickly?

21 MR. MAZZEO: I think it's been taken already,
22 Judge. Wasn't it taken?

23 MR. TINDALL: Yes.

24 MR. MAZZEO: Yeah, of Teresa Merez. She was
25 the claims adjustor for that note. Her deposition was

1 taken. They have her deposition testimony.

2 THE COURT: But I'm hearing from Mr. Smith
3 that there was limitations on what could be asked.

4 MR. SMITH: Right, because of what is
5 clearly -- what was clearly done by Judge Allf, there
6 were limitations, and that deposition was very short
7 and on very, very limited topics. So we would
8 certainly need a nonlimited deposition to engage in the
9 discussion of all of the issues that relate to the
10 permissive use.

11 THE COURT: Okay. How long is -- is it going
12 to take you guys to put on your case, how many days?

13 MR. ROBERTS: I believe that we're going
14 through the 17th, Your Honor. But -- definitely
15 through the 17th. We may have one witness running over
16 into the 18th.

17 THE COURT: Okay. What insurance company is
18 it that we're dealing with?

19 MR. MAZZEO: Liberty Mutual.

20 THE COURT: Do we have somebody here from
21 Liberty Mutual?

22 MR. STRASSBURG: Not yet, Judge.

23 MR. MAZZEO: Not yet. We will for opening
24 statement.

25 THE COURT: Okay. Can you contact them and

1 have this adjustor available for deposition in the next
2 week?

3 MR. MAZZEO: Yes. I'm sure. They're going
4 to be in -- well, yes. There's actually going to be --
5 they're doing it in shifts so that it's not going to be
6 one person for the entire time, but someone who can be
7 here for deposition and familiarize themself with the
8 file, yes.

9 THE COURT: No. I'm talking about I want to
10 allow this adjustor's deposition to be retaken on the
11 issues dealing with negligent entrustment. And I want
12 to allow it to happen during the first part of the
13 trial. We could take a day off if we need to. We just
14 need to figure out when that is.

15 MR. MAZZEO: The deposition of Teresa Merez?

16 THE COURT: Sure.

17 MR. MAZZEO: Of that person --

18 THE COURT: That's who you want; right?

19 MR. SMITH: Yes.

20 MR. MAZZEO: I would have to contact -- I
21 mean, I can call -- I can call my adjustor right now
22 and find out if they -- if she's still there.

23 THE COURT: Okay.

24 MR. MAZZEO: And if she's able, when she's
25 able to come to Vegas for a deposition. Or telephonic.

1 Telephonic?

2 MR. ROBERTS: Yeah, in Las Vegas for a
3 deposition.

4 And, Judge, I know that you want to save this
5 because we've started, but it's not simply a matter of
6 taking one adjustor's deposition at some point during
7 the trial. I got to do opening. I got to know what I
8 can tell the jury, what I don't have to tell the jury.
9 I've already pulled my excerpt clips from the
10 defendants' depositions. I've already planned my
11 opening. And now I've got a new element of the case I
12 suddenly have to prove after jury selection started.

13 I mean, I -- with all due respect to the
14 Court, I hope if you look at Judge Allf's order, you
15 can think that my reliance on the fact that I would not
16 have to prove permissive use is somewhat reasonable.
17 In fact, just Friday we were here, and Mr. Mazzeo was
18 telling me he was going to stipulate to the first
19 element of the negligent entrustment claim if he could
20 work that out and reserve his rights. I'm just -- I'm
21 not prepared to move forward on the basis of a changed
22 burden.

23 And I use the word "burden" loosely, but I
24 have to be prepared to submit evidence. I appreciate
25 the Court's still putting the burden on them, but

1 they're opening the door to let them try to prove
2 something that I thought was resolved when I planned my
3 case.

4 THE COURT: So if I send the jurors all home,
5 we have to reschedule the trial for a time that we have
6 another three to four weeks, have to do a whole new
7 questionnaire, whole new panel, start from scratch, and
8 it'd probably be another year.

9 MR. ROBERTS: It -- hopefully, the Court can
10 find some time in the next couple of months, but I
11 would rather have a trial in a year, than -- if they'll
12 stipulate to the waiver of the five-year rule. That's
13 the problem. Might want to put on one witness.

14 THE COURT: When's your five-year rule?

15 MR. STRASSBURG: It's in March this year,
16 Judge.

17 THE COURT: Your five-year rule ends in
18 March. There's no way I can get another three, four
19 weeks between now and March. I mean, we're in
20 February.

21 MR. MAZZEO: Yeah.

22 THE COURT: You guys want to waive the
23 five-year rule? Lots of different issues we have to
24 address all at the same time. Want to waive the
25 five-year rule?

1 MR. MAZZEO: I don't think that's in my
2 client's best interest. I mean, I'm one that
3 doesn't -- I don't want to lose this panel. I like
4 this panel from the -- from the answers they gave on
5 the questionnaires. And we put a lot of effort in to
6 get to today, and a lot of money has been expended in
7 this case.

8 THE COURT: All right. So here's what we got
9 to do: There's no way I can get you a trial between
10 now and the five-year rule to do three or four weeks,
11 so --

12 MR. ROBERTS: I agree, Your Honor.

13 THE COURT: -- I think we've got to start the
14 trial, we got to go forward. I will do my best to
15 alleviate any prejudice that you may have suffered as a
16 result of my modification of Judge Allf's ruling. I
17 don't know what that would be other than allowing you
18 to take the deposition of that adjustor.

19 Is there something else that you think needs
20 to happen?

21 MR. ROBERTS: Not within the constraints of
22 the five-year rule, Your Honor.

23 THE COURT: Why don't we do this: Why don't
24 we take a break. Mr. Mazzeo, why don't you see when
25 you can make that adjustor available in the next week,

1 and come back and let us know that. Maybe we can take
2 that day off from trial. We'll let the jurors know
3 we're going to be taking that day off. We can then go
4 forward with picking our jury panel, take that day off
5 as we need to, allow that deposition to happen. I
6 understand that that -- it may make it so your opening
7 statement is not what you want it to be. Understanding
8 that opening statements are not evidence, I don't know
9 that it matters that much, at least to the Court,
10 so ...

11 MR. ROBERTS: But if I say something that's
12 not proven, then sometimes juries hold that against me.

13 THE COURT: That's true. So you got to be
14 careful. I think it works the same way for both sides.

15 MR. MAZZEO: It does. It does. And also,
16 Judge, next Monday is a holiday. So we might be able
17 to work out doing the deposition --

18 THE COURT: That would be great.

19 MR. MAZZEO: -- on Monday.

20 THE COURT: You guys okay doing it on Monday?

21 MR. ROBERTS: I assume Mr. Smith can do it
22 Monday. I'm meeting with a witness all day Monday to
23 prepare.

24 THE COURT: Kristy said, Maybe you can do it
25 after hours. She'd be willing to be your court

1 reporter if you want to do it after hours.

2 MR. MAZZEO: But we may want some time
3 constraints on the length of this deposition. I mean,
4 all that we're talking about -- and I don't -- I don't
5 recall what the scope of her deposition was. I know it
6 was limited, but maybe if you can limit it to an hour,
7 for them to explore this area. I don't see how they
8 would need more than that.

9 THE COURT: We can address that later. I'm
10 not really concerned about the limitations. I just
11 want to get a time or a date that he or she is going to
12 be available to make this happen.

13 MR. MAZZEO: Can I make a call to my adjustor
14 right now?

15 THE COURT: Let's go off the record for a
16 second. We're off.

17 (Whereupon a short recess was taken.)

18 THE COURT: Back on the record, Case
19 No. 637772. We're outside the presence.

20 I understand, Mr. Mazzeo, you made a call,
21 but you had to leave a message.

22 MR. MAZZEO: I had to leave a message. I
23 left a detailed message for her call me or text me
24 whenever she can and let me know the availability of
25 Teresa Merez for a deposition, so I mean, that's --

1 that's all at this point.

2 THE COURT: All right. So today is the 8th;
3 right? 15th is a holiday. Can you make her available,
4 do you believe, sometime between now and the 16th?

5 MR. MAZZEO: I asked if she could be made
6 available later this week or at least by Monday.

7 THE COURT: It's going to have to be by
8 Monday because these guys are thinking they would be
9 done the 17th or 18th.

10 So let's do this: She's got to be made
11 available between now and the 15th. If she's not made
12 available, I'm probably going to grant the plaintiffs a
13 mistrial. It will be after the first witness is heard,
14 so it will preserve the five-year rule. You got to
15 make her available.

16 MR. MAZZEO: Okay. And -- and at least
17 available by phone. I mean, she lives out of state, so
18 I mean, you can't impose that burden that she has to be
19 in person, Judge, or you're going to grant a mistrial.
20 So, I mean, I'm -- I'm going to have her try to -- I
21 mean, Arizona is not far away, Phoenix. So I'm going
22 to ask that -- that she be made available in person,
23 so -- but if there's some unforeseen reason why she
24 can't be, at least telephonically. I mean, I'm
25 available over the weekend to have this deposition.

1 THE COURT: She's in a hospital, I might
2 allow it telephonically.

3 MR. MAZZEO: So in the cafeteria at the
4 hospital, fine. No.

5 THE COURT: Try to get her here.

6 MR. MAZZEO: Okay.

7 THE COURT: I'll let you guys work out the
8 date between now and then.

9 MR. MAZZEO: Will do. And also, I just -- I
10 anticipate this with each jury selection that I have
11 with -- with plaintiff's attorneys, just that when
12 Mr. Roberts stands up and -- and speaks to the jurors,
13 if -- if -- if -- I don't know if he's anticipating his
14 client being here for the entire trial, needing to miss
15 days because of her disability, because of her
16 condition or because of a doctor's appointment or
17 procedure, surgery, what have you; if that's the case,
18 I would just ask that he -- he be limited to a benign
19 question, Does anybody have any objections or have any
20 feelings against my client missing days here or there,
21 but not related to a medical. I don't want to tie it
22 in. Sometimes they choreograph these procedures -- not
23 Mr. Roberts or this group in here, but I've seen it
24 done in other cases where they've choreographed
25 procedures on the very first day of jury selection or

1 on the first day of opening statement and, Oh, my
2 client's having a procedure done today. I just don't
3 want to --

4 THE COURT: Does he have to worry about that,
5 Mr. Roberts?

6 MR. ROBERTS: He does not, Your Honor.

7 THE COURT: Okay. Makes it easy.

8 MR. ROBERTS: During the break, Your Honor, I
9 did confer with Mr. Eschweiler. I wasn't comfortable
10 addressing the Court's question on the five-year rule
11 without conferring with Mr. Eschweiler. This was
12 originally his case and his client. And as you know,
13 permissive use is -- is a critical issue in this case.
14 Andrea Awerbach was the insured driver, and while
15 there's certainly arguments why Jared Awerbach has
16 coverage, even though he wasn't a permissive user, it's
17 certainly a very key part of the case that the person
18 who was driving high was not the one with the insurance
19 coverage in his name. This is a fundamental and key
20 issue for us. And I know Mr. Eschweiler was not
21 inclined to waive the five-year rule. Ms. Garcia wants
22 to get this over with. But given the choice of
23 adequate time to prepare on one of the most fundamental
24 issues in the case or waiving the five-year rule, we
25 are willing to waive the five-year rule in order to

1 either get a continuance and adequately prepare for
2 this issue.

3 THE COURT: The problem is there has to be a
4 stipulation or I can't waive it.

5 MR. ROBERTS: I understand --

6 THE COURT: And there's not.

7 MR. ROBERTS: -- Your Honor, but if
8 Mr. Mazzeo doesn't want to waive the five-year rule, he
9 shouldn't be able to both take advantage of a change to
10 an order, once the jury selection has started, and then
11 refusing to agree to a reasonable continuance to allow
12 us to prepare. And -- and I don't think the Court
13 should modify its order if he's going to use the
14 five-year rule as a technicality to deny us a chance to
15 prepare to present a proper case under changed
16 circumstances.

17 THE COURT: I'm allowing you to take the
18 deposition, so ...

19 MR. MAZZEO: I'm not objecting to that. And
20 we're in the same position, frankly, to have to prepare
21 now to rebut the -- this permissive use.

22 And -- and, Judge, also, the other issue
23 is -- is if there's a stipulation, I'm not saying there
24 is because we didn't want to waive Judge Allf's ruling,
25 we didn't want to waive our right to appeal

1 Judge Allf's ruling regarding permissive use, albeit
2 now with a rebuttable presumption. So if we stipulate
3 to the negligent entrustment, I guess with a rebuttable
4 presumption, we'd have to stipulate, not contest that
5 in order to preserve that for appeal as well.

6 Is that right?

7 THE COURT: Well, my understanding, you
8 propose a stipulation last week that the plaintiffs
9 weren't agreeable to.

10 MR. MAZZEO: Yeah, that's true.

11 THE COURT: But whatever you can get them to
12 agree to, you can stipulate to.

13 MR. MAZZEO: Well, it comes down to what the
14 Court is actually going to tell the jury as well. But
15 I guess now this opens up the door for us with
16 rebuttable presumption to talk to the jurors about the
17 circumstances surrounding the accident, so ...

18 THE COURT: Probably -- probably not anything
19 to preserve there anymore, is there?

20 MR. MAZZEO: Well, no, probably not. It's
21 either stip to everything or contest.

22 THE COURT: That's a tactical decision you
23 have to make.

24 MR. MAZZEO: Okay.

25 THE COURT: Ready? Let's bring the jury back

1 in.

2 MR. ROBERTS: Thank you, Your Honor.

3 MR. STRASSBURG: Judge, there was a motion
4 made by Mr. Roberts.

5 THE COURT: To excuse the whole panel?

6 MR. STRASSBURG: Yeah.

7 THE COURT: Not going to do that.

8 MR. STRASSBURG: Thank you, Judge.

9 THE COURT: If there's challenges used,
10 there's a Batson challenge, we'll address it at that
11 time.

12 THE MARSHAL: Jury entering.

13 (The following proceedings were held in
14 the presence of the jury.)

15 THE COURT: It doesn't matter if you're in
16 the exact same seats. I say that to the people back
17 there. People up here, it's important. You guys have
18 to be in the same seats.

19 THE MARSHAL: Jury is present, Judge.

20 THE COURT: Okay. Thank you. Go ahead and
21 be seated. Welcome back, folks. So that clock says
22 it's 4:00 o'clock. It's not. It's really only about
23 2:00 o'clock. I told you to be back at 1:00, and I
24 also apologized in advance that that was going to
25 happen; right? Told you to be back at a certain time

1 and then we didn't start. We were in here. Things
2 were happening. Certain things have to be done outside
3 your presence. That's just the way it is. So I
4 apologize for keeping you guys out there for an hour on
5 the first day. That doesn't usually happen that bad,
6 so ...

7 All right. We're going to get back to some
8 questions I'm going to ask before I turn it over to the
9 attorneys. Just be advised you're still all under oath
10 to tell the truth.

11 Last question I asked was whether or not any
12 of you were acquainted with or recognized any of the
13 witnesses, the names of the witnesses who were
14 identified. I think we went through everybody.

15 Is there anybody else who had their hand up
16 that I did not call on who recognized any of the
17 witnesses? Not seeing any other hands. Okay.

18 Are any of you acquainted with or recognize
19 any of the parties in the case? Raise your hand. Not
20 seeing any hands.

21 Are any of you in any way obligated to any of
22 the parties or any of the lawyers in the case? No
23 hands.

24 Are any of them obligated in any way to any
25 of you? No hands.

1 Do any of you know any other member of the
2 jury panel? Sometimes we have jurors that come in and
3 you work with another member of the jury panel. Any of
4 you know each other? Okay.

5 What's your name and badge number, sir?

6 **PROSPECTIVE JUROR NO. 288: Andrew Sytsma,**
7 **288. I went to high school.**

8 THE COURT: Who is it that you know, sir?

9 **PROSPECTIVE JUROR NO. 288: I forgot his name,**
10 **but we went to high school together.**

11 **PROSPECTIVE JUROR NO. 093: Right here.**

12 THE COURT REPORTER: Badge number?

13 THE COURT: Mr. Corum?

14 **PROSPECTIVE JUROR NO. 093: Yes. Mr. Corum,**
15 **it's 093.**

16 THE COURT: You went to high school together.
17 What high school?

18 **PROSPECTIVE JUROR NO. 093: Cheyenne High**
19 **School.**

20 THE COURT: Cheyenne. Very good. So here's
21 the question --

22 THE COURT REPORTER: What is his badge
23 number?

24 THE COURT: 288 is -- it's Mr. -- how do you
25 say your last name?

1 **PROSPECTIVE JUROR NO. 288: Sytsma.**

2 THE COURT: Sytsma, Badge 288.

3 Mr. Sytsma, if you were seated on the same
4 jury panel as Mr. Corum, okay, so let's say both of you
5 were -- were part of the jury, would you be able to
6 make up your own mind?

7 **PROSPECTIVE JUROR NO. 288: Yes.**

8 THE COURT: If you were both seated on the
9 panel together, do you have some feelings of respect or
10 deference to Mr. Corum that if he wanted to rule one
11 way, you would have a difficult time ruling a different
12 way?

13 **PROSPECTIVE JUROR NO. 288: No.**

14 THE COURT: Okay. So you think even if you
15 were both seated on the panel at the same time, it
16 wouldn't affect your ability to be fair and impartial
17 and make your decision based on the facts in evidence?

18 **PROSPECTIVE JUROR NO. 288: No, sir.**

19 THE COURT: Okay. Thank you.

20 Mr. Corum, going to ask you the same
21 questions. If you were seated on the same panel as
22 Mr. Sytsma, anything about that relationship that would
23 make it so you would have a difficult time making up
24 your own mind?

25 **PROSPECTIVE JUROR NO. 093: No.**

1 THE COURT: You going to defer to him because
2 of some feeling of deference or -- or respect from the
3 past that you would have a hard time making a decision
4 different from him if you felt it was necessary?

5 PROSPECTIVE JUROR NO. 093: No.

6 THE COURT: Be able to be fair and impartial
7 if you were seated on the jury?

8 PROSPECTIVE JUROR NO. 093: Pretty much, yes.

9 THE COURT: All right. Thank you.
10 Anybody else know any other member of the
11 jury panel?

12 Yes, ma'am, name and badge number.

13 PROSPECTIVE JUROR NO. 169: Virginia Jordano,
14 169. Does it have to be today or the first day, I knew
15 somebody, and she may come later on a different day.

16 THE COURT: Okay. Who was that?

17 PROSPECTIVE JUROR NO. 169: Darcie Pinkelman
18 is who I know that was here the other day.

19 THE COURT: For the record, that's Badge
20 No. 559.

21 All right. So, Ms. Jordano, if you were
22 seated on the panel with Ms. Pinkelman, Badge 559, do
23 you have such feelings of respect or deference that you
24 would have a difficult time making up your own mind?

25 PROSPECTIVE JUROR NO. 169: No. I do respect

1 her, but we have a good enough relationship that we
2 could agree to disagree.

3 THE COURT: Okay. So you would be able to be
4 fair and impartial?

5 **PROSPECTIVE JUROR NO. 169: Yes.**

6 THE COURT: You'd make up your own mind even
7 if Ms. Pinkelman had a different opinion?

8 **PROSPECTIVE JUROR NO. 169: Yes.**

9 THE COURT: All right. Thank you, ma'am.
10 Anybody else know any other member of the
11 jury panel? It's a small world when that happens. It
12 happens all the time. All right. Thank you. I know
13 that there's one.

14 Do any of you know me or any other member of
15 my court staff? Okay. We have one up there.

16 Ms. Go, for the record, how do you know me?

17 **PROSPECTIVE JUROR NO. 141: We're members of**
18 **the same church. You're my grandson's Scout leader.**

19 THE COURT: Okay. Is that going to affect
20 your ability to be fair and impartial and listen to the
21 evidence?

22 **PROSPECTIVE JUROR NO. 141: No.**

23 THE COURT: I'm going to tell you what the
24 law is that applies to the case, but the evidence that
25 you're going to hear is going to come from the witness

1 stand and any exhibits that are admitted into evidence.

2 Are you going to be able to make your
3 decisions based on the law that I give you and the
4 evidence presented during the trial?

5 **PROSPECTIVE JUROR NO. 141: Yes.**

6 THE COURT: The fact that you know me and I'm
7 your grandson's Scout leader, that's not going to
8 affect your ability to be fair and impartial?

9 **PROSPECTIVE JUROR NO. 141: No.**

10 THE COURT: All right. Thank you.

11 We have one in the back. Tell us your name
12 and badge number again, sir.

13 **PROSPECTIVE JUROR NO. 226: Michael Maute,**
14 **226. Indirectly, I know your marshal.**

15 THE COURT: Tom?

16 **PROSPECTIVE JUROR NO. 226: Yes.**

17 THE COURT: Okay. How do you know Tom?

18 **PROSPECTIVE JUROR NO. 226: Through work.**

19 **Occasionally, he does come over to visit.**

20 THE COURT: Okay. Based on the fact that you
21 know Tom -- and I -- I honestly don't know if Tom's
22 going to be here for the whole trial with us or not.
23 It would be great if he was, but he may not. We may
24 have a different marshal that you know also.

25 Whether it's Tom or a different marshal that

1 you know, is that going to affect your ability to be
2 fair and impartial if you were seated on the jury?

3 **PROSPECTIVE JUROR NO. 226: No, it's not.**

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

5 Anybody else know either myself or any member
6 of the court staff? No other hands. Thank you.

7 Understanding that the case is going to
8 probably last three to four weeks, I'll tell you what
9 the schedule that we usually have is. On Monday,
10 Tuesday, and Thursday mornings, I have what's called a
11 motion calendar where lawyers come in and they argue
12 motions. That -- that starts at 9:00, usually goes
13 till about 10:00. So Monday, Tuesday, and Thursday, we
14 will usually start at 10:00 or 10:30. Wednesday and
15 Friday, we'll usually start earlier, probably about
16 9:00, and we'll go to 4:45 or 5:00 o'clock each
17 afternoon. So that's the schedule that we try to keep.

18 If there is somebody that needs to take their
19 kid in the morning and they can't be here till 9:15 or
20 9:30, we sometimes will work around that. Same thing
21 in the evening, if you have to pick up your kid at
22 5:00 o'clock and you have to leave here by 4:45 or
23 4:30, sometimes we can work around that. But that's
24 primarily our schedule.

25 I know this next Monday is a holiday, so

1 we'll be dark on the holiday. There may be other times
2 during the course of the trial that we -- sometimes we
3 can't schedule witnesses to be here. All the witnesses
4 may refuse to be here on a certain day, so we may be
5 dark one day during the trial, something like that
6 happens. I don't know. And -- and we can't really
7 envision that ahead of time. But usually our trial
8 schedule is Monday, Tuesday, Thursday, we start at
9 10:00 or 10:30. Wednesday, Friday, we start a little
10 bit earlier, we go till about 5:00.

11 So knowing that the case is going to last
12 three to four weeks and based on that schedule, is
13 there anybody that feels that serving for that period
14 of time would present a physical or medical hardship?
15 I'm going to give you the other choices in a few
16 minutes. This is the physical or medical hardships.
17 Anybody? Raise your hand.

18 Yes, ma'am, name and badge number.

19 **PROSPECTIVE JUROR NO. 119: Name, Jan**
20 **Springer, Badge No. 119.**

21 THE COURT: Okay.

22 **PROSPECTIVE JUROR NO. 119: I have a surgery**
23 **scheduled for March 3rd.**

24 THE COURT: Is it a kind of surgery that you
25 want to talk about or is it secret?

1 **PROSPECTIVE JUROR NO. 119: No, I don't want**
2 **to talk about it.**

3 THE COURT: Okay. But it's scheduled for
4 March 3rd.

5 Is there any kind -- is it outpatient or
6 inpatient?

7 **PROSPECTIVE JUROR NO. 119: It's inpatient.**

8 THE COURT: Okay. Thank you, ma'am.

9 Anybody else, physical or medical?

10 Yes, sir, name and badge number.

11 **PROSPECTIVE JUROR NO. 326: Juan Mendez,**
12 **Badge 326.**

13 THE COURT: Okay. What's the issue, sir?

14 **PROSPECTIVE JUROR NO. 326: My wife, she's**
15 **pregnant. She's going to be giving birth in about**
16 **three weeks, three to four weeks. So I need to -- for**
17 **the next -- after next week, I have to go with her**
18 **for -- for weekly checkup to make sure everything's**
19 **fine because two years ago we lost a child.**

20 THE COURT: Okay. All right. Thank you,
21 sir.

22 Anybody else, physical or medical hardships?

23 **PROSPECTIVE JUROR NO. 049: Well, I guess I**
24 **have --**

25 THE COURT: Tell us your name and badge

1 number.

2 **PROSPECTIVE JUROR NO. 049: Diana Sin, 049. I**
3 **have prenatal visits that I have to do. There's a**
4 **couple this month.**

5 THE COURT: Okay. Are those things that you
6 could do after we get done with court?

7 **PROSPECTIVE JUROR NO. 049: One night is**
8 **scheduled at 4:30. But another one at 9:00 or 10:00.**

9 THE COURT: Okay. All right. All right.
10 Thank you, ma'am.

11 Anybody else, physical or medical hardships?
12 No other hands. All right.

13 Is there anybody that feels, for some other
14 reason, serving on the jury would present them with a
15 severe or undue hardship? This is the time that you
16 tell me if you have trips planned and you have evidence
17 of that, things like that.

18 What's your name and badge number, sir?

19 **PROSPECTIVE JUROR NO. 029: Just for trips**
20 **and --**

21 THE COURT: Pardon me?

22 **PROSPECTIVE JUROR NO. 029: This is not for**
23 **financial reasons. We're not talking about that yet?**

24 THE COURT: You can tell me about that if you
25 want.

1 PROSPECTIVE JUROR NO. 029: Okay. Badge
2 No. 2 -- 029, James Joyce. Self-employed. It's rather
3 embarrassing. I made, like, 1,100 bucks last month.
4 I'm not doing that much better this month. I know it's
5 really -- and I have nobody to take over the reigns if
6 I go anywhere, stay out of the office, and I have bills
7 to pay.

8 THE COURT: What do you do?

9 PROSPECTIVE JUROR NO. 029: You're not going
10 to believe it if I tell you. I'm an appraiser, real
11 estate appraiser.

12 THE COURT: Okay. Thank you, sir.

13 Down here in the front. What's your name and
14 badge number?

15 PROSPECTIVE JUROR NO. 095: John Boyle, 095.
16 Just, I'm a full-time student, Monday, Wednesdays, and
17 Thursdays.

18 THE COURT: Okay. Anybody else a full-time
19 student? Got one in the back.

20 What school do you go to?

21 PROSPECTIVE JUROR NO. 095: Nevada State
22 College.

23 THE COURT: Okay.

24 MR. MAZZEO: What number?

25 PROSPECTIVE JUROR NO. 095: 095.

1 THE COURT: Who else? Is there somebody else
2 in the back corner?

3 What's your name and badge number, sir?

4 **PROSPECTIVE JUROR NO. 177: Jonathan Leo,**
5 **177.**

6 THE COURT: You're a full-time student also?

7 **PROSPECTIVE JUROR NO. 177: Yep.**

8 THE COURT: Where?

9 **PROSPECTIVE JUROR NO. 177: College of**
10 **Southern Nevada.**

11 THE COURT: What days are your classes?

12 **PROSPECTIVE JUROR NO. 177: Monday and**
13 **Thursday.**

14 THE COURT: In the morning or in the evening?

15 **PROSPECTIVE JUROR NO. 177: One's in the**
16 **evening. One's in the afternoon.**

17 THE COURT: Okay. Thank you. What time are
18 your classes?

19 **PROSPECTIVE JUROR NO. 177: Monday evening,**
20 **Wednesday early afternoon, Wednesday evening, and**
21 **Thursday afternoon.**

22 THE COURT: Okay. Thank you. All right.

23 Anybody else? Any other severe or undue
24 hardships prevent you from doing jury duty?

25 Yes, ma'am, name and badge number, please.

1 PROSPECTIVE JUROR NO. 108: Jessie Kirsch,
2 108. I have a trip planned to go to San Antonio. I
3 leave on the 11th, and I come back on the 16th of
4 February.

5 THE COURT: You have confirmation?

6 PROSPECTIVE JUROR NO. 108: Yes.

7 THE COURT: Can you go check that out, Tom?

8 All right. Thank you, ma'am. Anybody else?
9 Oh, look at all those hands. All right. There was
10 somebody else in the front row over here.

11 PROSPECTIVE JUROR NO. 119: Hi, Jan Springer,
12 119. I own a business here in Las Vegas, and I am
13 opening a new business in Denver. And I've already
14 got -- I have interviews set up, and I'm leaving -- my
15 reservation is Thursday, February 11th, through Sunday
16 February, 14th.

17 THE COURT: Can you just verify what she's
18 looking at, please?

19 All right. Thank you, ma'am.

20 Who else? Go ahead.

21 PROSPECTIVE JUROR NO. 131: Jolene Cabello,
22 131. It's going to be hard to pick up my daughter at
23 4:00 o'clock for that long after school, but that's
24 about it. A couple of days is okay.

25 THE COURT: How old?

1 PROSPECTIVE JUROR NO. 131: She's in first
2 grade.
3 THE COURT: Have you ever done Safekey?
4 PROSPECTIVE JUROR NO. 131: No, I've never
5 done Safekey.
6 THE COURT: Are you interested in that?
7 PROSPECTIVE JUROR NO. 131: Huh?
8 THE COURT: Are you interested in that?
9 PROSPECTIVE JUROR NO. 131: Yes, I guess so.
10 THE COURT: It allows you to leave your kids
11 there until, I believe, 5:00 or 5:30.
12 PROSPECTIVE JUROR NO. 131: You have to pay
13 for it, though; right?
14 THE COURT: Yeah.
15 PROSPECTIVE JUROR NO. 131: I can look into
16 it.
17 THE COURT: Okay. Thank you.
18 Who else? Middle row. Oh, we have another
19 one on the front row.
20 Go ahead, ma'am.
21 PROSPECTIVE JUROR NO. 118: Divina Cruz, 118.
22 I am the sole income for my family, and I'm a single
23 mother. So I think it will be kind of hard working --
24 for me not working and getting paid only 40 dollars a
25 day, so ...

1 THE COURT: What do you do for work?

2 PROSPECTIVE JUROR NO. 118: I work at USPS as
3 a city assistant carrier.

4 THE COURT: They don't pay you for jury duty?

5 PROSPECTIVE JUROR NO. 118: No. Not for the
6 CCAs. For the regular employees, they do, but not for
7 CCAs.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 118: Thank you.

10 THE COURT: Thank you, ma'am.

11 Who else?

12 Second row. Go ahead, ma'am.

13 PROSPECTIVE JUROR NO. 157: Cynthia Wright,
14 157. My daughter and grandchildren are coming to visit
15 from Friday, February 12th, to Saturday, February 20th.
16 And these reservations were made on the 30th of
17 November, and I have paperwork to substantiate that.

18 THE COURT: They're visiting you here?

19 PROSPECTIVE JUROR NO. 157: Yes.

20 THE COURT: Okay. Thank you.

21 Anybody else on this side? No, you can keep
22 it. Do we have another one in the front row? Okay.

23 PROSPECTIVE JUROR NO. 104: Jenny Turner,
24 104. I'm self-employed. I don't have any benefit from
25 work. I don't think I have that much time off, and I'm

1 not married. I have no way to pay my bills if I'm gone
2 that long.

3 THE COURT: Are you the sole provider in your
4 home?

5 PROSPECTIVE JUROR NO. 104: I live with
6 someone else, but I still have all my own bills. So I
7 don't know how that works.

8 THE COURT: What do you do for work?

9 PROSPECTIVE JUROR NO. 104: I'm a personal
10 chef.

11 THE COURT: Oh, that's right. You told us
12 that. You said you could arrange your schedule.

13 PROSPECTIVE JUROR NO. 104: Some things, but
14 not as much as I would like it. I can't go into
15 everyone's homes at night because it's also based upon
16 their schedule, and it's a possibility of losing my
17 clients.

18 THE COURT: Okay. Thank you, ma'am.

19 Back row, sir.

20 PROSPECTIVE JUROR NO. 182: Yes, Jonathan
21 Ocon, Badge No. 182. I'm not sure whether this
22 actually falls in what you're asking, but I'd rather
23 say it. I -- just saying that I do work graveyards
24 10:00 to 6:00, Monday through Friday. So I would be --
25 be here around 7:30, 8:00 o'clock. I don't have any

1 other form of transportation other than the bus and the
2 bike. So come from Henderson. I don't know how tired
3 I will be. I don't mind doing it, but I don't know how
4 tired I'll be.

5 THE COURT: What do you do for work?

6 PROSPECTIVE JUROR NO. 182: Pardon me?

7 THE COURT: What do you do for work?

8 PROSPECTIVE JUROR NO. 182: I'm a employee at
9 Circle K. I'm a clerk.

10 THE COURT: Okay. Okay. Thank you.

11 Anybody else on this side? We got more in
12 the box. Boy, everybody is raising their hand.

13 All right. No. 1.

14 PROSPECTIVE JUROR NO. 001: Josh Solomon,
15 001. In all likelihood if I do end up on a jury for a
16 month, I'll probably get laid off from my job.

17 THE COURT: What do you do for work?

18 PROSPECTIVE JUROR NO. 001: Electrician.

19 THE COURT: Union?

20 PROSPECTIVE JUROR NO. 001: Yes.

21 THE COURT: I'll tell you that if you lose
22 your job or get laid off because of doing jury duty,
23 there are lots of lawyers that would be happy to take
24 that case.

25 PROSPECTIVE JUROR NO. 001: I understand

1 that, but it's more than likely it will be a week or
2 two after I get back, and it will be a reduction in
3 force.

4 THE COURT: All right. Thank you.
5 We had other hands over here now.
6 Yes, sir.

7 PROSPECTIVE JUROR NO. 058: Hubert --

8 THE COURT: Mr. Roberts.

9 PROSPECTIVE JUROR NO. 058: -- 058. I earn my
10 income by multiple sources and part of it is
11 self-employment. I don't know the ramifications of
12 being out. I contract with people for marketing
13 services, and if I'm not marketing and bringing --
14 bringing business to them, then I don't succeed. So I
15 don't know what the ramification is because I've never
16 had this happen before.

17 THE COURT: Okay. Thank you.
18 Yes, sir, name and badge number.

19 PROSPECTIVE JUROR NO. 038: Greg Williams,
20 038. I have small kids to pick up from school. I can
21 be here, like, two days a week, but three, it would be
22 hard to find someone to pick them up.

23 THE COURT: We're going to be here five days
24 a week.

25 PROSPECTIVE JUROR NO. 038: I know. I'm just

1 letting you know.

2 THE COURT: What time do you pick them up?

3 PROSPECTIVE JUROR NO. 038: 3:00 o'clock.

4 School gets out at 3:00, first grade and third grade.

5 THE COURT: They're your kids?

6 PROSPECTIVE JUROR NO. 038: Yes.

7 THE COURT: Okay. All right. Thank you.

8 Is there anybody that can pick them up if you
9 weren't there?

10 PROSPECTIVE JUROR NO. 038: I can get a
11 person for two days, but I'm not sure the other days.

12 THE COURT: Any other family members around?

13 PROSPECTIVE JUROR NO. 038: No, we don't have
14 family here.

15 THE COURT: Okay. Thank you.

16 Anybody else? Lots of hands. I think we've
17 exhausted the box on that side. Let's go over here.

18 Yes, sir, name and badge number.

19 PROSPECTIVE JUROR NO. 256: Brent Doughty,
20 657. I am the transportation and appointment setter
21 coordinator for a skilled nursing facility, and there's
22 nobody that is trained to cover for me while I'm not
23 there. And I'm also central supply officer. I can
24 take care of the central supply stuff at night
25 afterwards, but there's nobody available to contact the

1 doctors' offices and get the people in and out of the
2 places they need to go for the time that I would be
3 here.

4 THE COURT: Okay. Give us your badge number
5 again because the number you gave me isn't on my list.

6 PROSPECTIVE JUROR NO. 256: 657.

7 MR. MAZZEO: 256.

8 PROSPECTIVE JUROR NO. 256: I'm sorry. I'm
9 looking at the blue. Sorry. 256.

10 THE COURT: Okay. All right. Thank you,
11 sir.

12 Who else on this side?

13 Go ahead, sir, front row.

14 PROSPECTIVE JUROR NO. 245: Carlos Soto, 245.
15 I go to school in the morning, Monday, Tuesday,
16 Wednesday. And Thursday, Friday, I'm self-employed.
17 And I also have a second job at night. But school
18 Monday through Wednesday I'm in school.

19 THE COURT: Where do you go to school?

20 PROSPECTIVE JUROR NO. 245: It's called
21 iguru. It's, like, online the first three days of the
22 week.

23 THE COURT: Okay. And you're self-employed
24 also. What do you do?

25 PROSPECTIVE JUROR NO. 245: Web design and

1 digital marketing.

2 THE COURT: If you weren't able to do the
3 school online those -- Monday, Tuesday, Wednesday,
4 could you do it a different time?

5 PROSPECTIVE JUROR NO. 245: Not that I know
6 of. I could find out. But they haven't told me
7 anything like that.

8 THE COURT: All right.

9 PROSPECTIVE JUROR NO. 245: When I signed up,
10 they didn't say anything about that, so I don't know.

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

12 Anybody else in the front row? Yes?

13 PROSPECTIVE JUROR NO. 234: Brendan Chaffee,
14 234. I'm a full-time student at the Art Institute of
15 Las Vegas, and I know that I go to school Wednesday at
16 night, which wouldn't really be an issue here, but it's
17 from 6:00 p.m. to 10:00 p.m. And then Thursday
18 mornings at 8:00 a.m. to 12 noon, and then Saturdays.
19 And the main issue is that if I miss more than three
20 classes, I'll be automatically withdrawn from that
21 class.

22 THE COURT: Okay. Thank you.

23 Go ahead, back row.

24 PROSPECTIVE JUROR NO. 326: Juan Mendez, 328.
25 I run a small business that does underground water,

1 sewer, power, and telephone, and grading. I have a
2 crew of, like, 15 people.

3 THE COURT: You gave me a number that I don't
4 have on my list either.

5 PROSPECTIVE JUROR NO. 326: 326.

6 THE COURT: 326. Okay.

7 PROSPECTIVE JUROR NO. 326: And I deal with
8 day-to-day operations. I do not have the staff
9 available to replace me if I'm not there for
10 negotiations with contracts. And what I normally do is
11 I go to the projects, make sure they're all safe and
12 nobody gets hurt. We're about to start a project here
13 in another week that has a 25-foot-deep trench. So
14 my -- my presence needs -- needs to be there for sure.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 326: Because of guys
17 that I have working, and it's a dangerous trade, so ...

18 THE COURT: Thank you.

19 Who else?

20 Middle row, yes, sir.

21 PROSPECTIVE JUROR NO. 258: Hi. Prentis
22 Buford, 258. My employer does not pay jury duty.

23 THE COURT: Most don't.

24 PROSPECTIVE JUROR NO. 258: \$40 is not going
25 to cover it daily for me.

1 THE COURT: I understand. Okay. Thank you.
2 Who else?

3 Yes, sir, middle row.

4 PROSPECTIVE JUROR NO. 290: Kyle Lambert,
5 Badge No. 290. My mother is a single mother. I am
6 self-employed online, do Web development, and I'm the
7 one that picks and takes the kids to school 7:00 a.m.,
8 and then I pick them up at 2:12, I think they get out.
9 And then my little sister gets out at 2:30, and I
10 walk -- I take the bus.

11 THE COURT: So you take the bus. You pick up
12 your -- your brothers and sister?

13 PROSPECTIVE JUROR NO. 290: Uh-huh.

14 THE COURT: How do you pick them up, in a
15 bus?

16 PROSPECTIVE JUROR NO. 290: No, I walk.
17 Well, I take the bus to the school and then I walk
18 back.

19 THE COURT: Okay. How -- how old are they?

20 PROSPECTIVE JUROR NO. 290: My little brother
21 is 8, and my little sister is 12.

22 THE COURT: Is there somebody else that could
23 get them?

24 PROSPECTIVE JUROR NO. 290: No. I'm the only
25 one that can get them. Today I had -- my mom got off

1 early to pick them up.

2 THE COURT: Okay. I'll be honest with you,
3 ordinarily, if it's your children, it's one issue. If
4 it's your brother and sister, it's your mom's issue.
5 So I appreciate the dilemma.

6 But go ahead, sir.

7 PROSPECTIVE JUROR NO. 288: Andrew Sytsma,
8 288. And I'm currently unemployed but have a job
9 interview this week on Thursday. So I would prefer to
10 actually try and get a job.

11 THE COURT: All right. Thank you.

12 Middle row. Go ahead.

13 PROSPECTIVE JUROR NO. 282: My name's Manuel
14 Ladino, Badge No. 282. I have to keep up with my
15 student loans and most of my bills and making \$40 a day
16 isn't really going to work, and I'm missing work right
17 now during training to be here.

18 THE COURT: Okay. Thank you.

19 I understand, folks, that \$40 a day isn't
20 enough. I know.

21 Let's go to the back row.

22 PROSPECTIVE JUROR NO. 296: Yes. My name is
23 Laurel --

24 THE COURT: Can you stand up so we can hear
25 you?

1 PROSPECTIVE JUROR NO. 296: Laurel Frahm,
2 296.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 296: I work with the
5 county. I'm on probation. I still have a six-month
6 probation. I'm really nervous that this might
7 jeopardize my career, and I work swing shift and
8 weekends. And I'm on a 9/80 shift, so whatever I don't
9 complete during the day here I'll have to go complete
10 there afterwards.

11 THE COURT: What do you do for the county?

12 PROSPECTIVE JUROR NO. 296: I work in the
13 marriage bureau.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 296: And so I issue
16 marriage licenses and also perform marriage ceremonies.

17 THE COURT: Okay. Thank you, ma'am.

18 Go ahead. Let's go to the next one.

19 PROSPECTIVE JUROR NO. 301: Margo Fletcher,
20 301. I'm a single mom and sole provider, so I need to
21 work and be home.

22 THE COURT: What do you do for work?

23 PROSPECTIVE JUROR NO. 301: I'm a barista at
24 Coffee Been & Tea Leaf.

25 THE COURT: Say it again, a barista?

1 **PROSPECTIVE JUROR NO. 301: Yeah.**

2 THE COURT: What hours do you work?

3 **PROSPECTIVE JUROR NO. 301: I work 8:00 to**
4 **2:00.**

5 THE COURT: How many children do you have?

6 **PROSPECTIVE JUROR NO. 301: Just one.**

7 THE COURT: How old?

8 **PROSPECTIVE JUROR NO. 301: She's seven.**

9 THE COURT: Okay. All right. Thank you.

10 Anybody else? No other hands? Going once,
11 going twice. All right.

12 There's some fact-specific questions that
13 sometimes I ask, but I think they were included in the
14 jury questionnaire. I'm sure the attorneys know all
15 the answers to those, so I'm not going to worry about
16 those.

17 As jurors, you will be asked to listen to
18 witnesses, review evidence, and make a decision based
19 on the facts. You are the finders of the facts. My
20 job is to make sure that the trial is fair and to
21 instruct you on the law that -- that you will apply to
22 the facts. Some of you may disagree with how some of
23 the laws are written, but it would be a violation of a
24 juror's duty if they tried to render a verdict based on
25 what you think the law should be if it's different from

1 what my instructions are on the law as far as what the
2 law really is.

3 Do any of you feel that you would not be able
4 to follow all of the instructions of the Court on the
5 law even if the instructions differ from your personal
6 opinions or conceptions about what the law should be?
7 Any of you think that would be a problem for you? Not
8 seeing any hands.

9 I don't think I've heard anything about this
10 case in the media, but does anyone think they may have
11 heard or seen something about this case either in the
12 media or otherwise prior to coming here today? Not
13 seeing any hands.

14 Anybody have any kind of a sympathy,
15 prejudice, or bias relating to age, religion, race,
16 gender, or national origin that you feel would affect
17 your ability to be fair, open-minded, and impartial
18 jurors? Not seeing any hands.

19 Are there any of you for -- that believe
20 that, for any other reason, you would not be the best
21 juror for this trial? This is the catch-all question.
22 Anybody else think that they have a reason to get out
23 of jury duty that you haven't told me about? Not
24 seeing any other hands.

25 All right. What I'm going to do now is I'm

1 going to ask -- I'm going to focus on my -- on my
2 jurors over here in the box. I'm going to ask a bunch
3 of questions. I'm going to ask the same questions of
4 all of you. The questions are these. I'll tell you in
5 advance. First of all, I'm going to ask you your name
6 and badge number, and then I'm going to find out how
7 long you lived in the Las Vegas area; what do you do
8 for a living, if you work; if you're retired, what did
9 you do before you retired; are you married, or do you
10 have a significant other; if so, what does that person
11 do for work. Then I'm going to ask if you have any
12 children, what their ages are, and if they're old
13 enough to work outside the home, what do they do for
14 work. I'm going to ask you if you've ever been a juror
15 before; and if so, whether it was a civil or criminal
16 case. And then without telling us what the verdict
17 was, I'm going to ask you if you were able to reach a
18 verdict if you were a juror before. And then, finally,
19 whether or not you were a foreperson on the jury.
20 Okay?

21 Before we get into those, and once I get
22 about four or five people into it, you guys are going
23 to remember all the questions, and this -- this will go
24 pretty quick. But before I do that, I'm going to have
25 the attorneys come up so we can talk just for a second.

1 This is your first experience with white noise. I told
2 you that this was coming, so give us just a minute.

3 **(A discussion was held at the bench,**
4 **not reported.)**

5 THE COURT: How many of you could hear
6 through the white noise?

7 PROSPECTIVE JUROR NO. 095: Didn't hear a
8 thing.

9 THE COURT REPORTER: Badge?

10 **PROSPECTIVE JUROR NO. 095: 095.**

11 THE COURT: All right. So I'm going to
12 excuse several of you. Okay? When I excuse you, that
13 means you go back down to the third floor, let them
14 know that you've been excused by Department 30. If
15 they still need you, they'll keep you. If they don't,
16 they'll let you go. Okay. It's 3:00 o'clock in the
17 afternoon almost, so I don't know what they still have
18 going on, if they still need you or not. There's quite
19 a few of you that I'm going to excuse now.

20 First one is, Badge No. 038, Seat No. 8,
21 Gregory Williams. Thank and excuse you, sir.

22 Seat No. 10, Badge 049, Diana Sin, going to
23 thank and excuse you.

24 Mr. Boyle, Badge 095, going to thank and
25 excuse you.

1 In the back, we've got Jennifer Turner,
2 Badge 104, going to thank and excuse you.
3 Jessica Kirsch, Badge 108, going to thank and
4 excuse you.
5 Geraldine Biton's already gone.
6 Divina Cruz, 108, going to thank and excuse
7 you.
8 Jan Springer, Badge 119, thank and excuse
9 you.
10 Jolene Cabello, Badge 131, going to thank and
11 excuse you.
12 Cynthia Wright-Gozdziak --
13 PROSPECTIVE JUROR NO. 157: Gozdziaak.
14 THE COURT: -- Badge 157, thank and excuse
15 you.
16 Jonathan Leo, Badge 177, going to thank and
17 excuse you.
18 Jonathan Ocon, Badge 182, going to thank and
19 excuse you.
20 Brandon Chaffee, Badge 234, going to thank
21 and excuse you.
22 Carlos Soto, Badge 245, going to thank and
23 excuse you.
24 Margo Fletcher, Badge 301, going to thank and
25 excuse you.

1 And Juan Mendez, Badge 326, we're going to
2 thank and excuse you.

3 Now, some of you may be thinking, But, hey, I
4 said something and you're not excusing me. Yeah,
5 that's true. Sorry. All right. So now we're going to
6 fill the holes up here in our jury box.

7 So the first seat we have is Seat No. 8.
8 Who's our next juror in order?

9 THE CLERK: It would be Denny -- Denny
10 Cyganek. Badge No. 106.

11 THE COURT: Come on up, sir. You're in the
12 seat on the very back row up there. And you are, let's
13 see, 106.

14 All right. Next seat we have is over here,
15 No. --

16 THE CLERK: Ten?

17 THE COURT: -- 10.

18 THE CLERK: Ratchatida Perreida, Badge 130.
19 Please take seat No. 10.

20 THE COURT: In the middle row on this end,
21 ma'am.

22 THE CLERK: Raquel Go, Badge 141, please take
23 Seat 19.

24 THE COURT: Okay. So that's up here in the
25 front, ma'am.

1 All right. See, those of you that are
2 sitting in the back, you thought you were safe. You're
3 not safe because this will happen more than once, and
4 we'll have other challenges and people will leave for
5 different reasons. Don't get too comfortable back
6 there.

7 Here's what I want to advise everybody.
8 We're going to focus our questions, the rest of my
9 questions, and the attorneys are going to focus their
10 questions on the people over here in the panel -- in
11 the jury box. Okay? Everybody that's sitting in the
12 back, I don't want you to ignore the questions because
13 some of you may end up up here. So what I want you to
14 do is this: Listen carefully to the questions and just
15 keep in the back of your mind, If they had asked me
16 that question, I would have had to respond with,
17 whatever your response is, so that when you do come up
18 and you fill a hole in the jury box, we may be able to
19 just ask you, Were there any of the questions that
20 you've heard so far that you would have given a
21 response to, and you could just tell us, yeah, I
22 remember that we were discussing this and I would have
23 said this. Okay? That will help us to not have to go
24 back through every question with you. So just try to
25 listen to the questions because many of you, like I

1 said, will -- will end up back -- up here in the jury
2 box.

3 All right. So I'm going to go back through
4 the questions that I said I was going to ask before
5 except I'm going to start with Juror No. 1 back here
6 who is Mr. Solomon; right?

7 Mr. Solomon, your juror number is what?

8 **PROSPECTIVE JUROR NO. 001: 001.**

9 THE COURT: 001. How long in Vegas, sir?

10 PROSPECTIVE JUROR NO. 001: Twenty-eight
11 years.

12 THE COURT: And you do -- for a living,
13 you're an electrician; right?

14 PROSPECTIVE JUROR NO. 001: Yes.

15 THE COURT: And do you have a spouse or
16 significant other?

17 PROSPECTIVE JUROR NO. 001: No.

18 THE COURT: Do you have any children?

19 PROSPECTIVE JUROR NO. 001: No.

20 THE COURT: Ever served on a jury before?

21 PROSPECTIVE JUROR NO. 001: I was called but
22 not chosen.

23 THE COURT: So you've kind of done this
24 process?

25 PROSPECTIVE JUROR NO. 001: Yes.

1 THE COURT: All right. But you've never
2 seated on a jury panel.

3 PROSPECTIVE JUROR NO. 001: No.

4 THE COURT: All right. Thank you, sir.
5 Let's move on to, is it Mr. Brandon?

6 **PROSPECTIVE JUROR NO. 003: David Brandon,**
7 **003.**

8 THE COURT: How long in the Las Vegas area?

9 PROSPECTIVE JUROR NO. 003: Probably 20
10 years.

11 THE COURT: Okay. What do you do for work?

12 PROSPECTIVE JUROR NO. 003: Engineer at the
13 Rio Hotel.

14 THE COURT: Do you have a spouse or
15 significant other?

16 PROSPECTIVE JUROR NO. 003: Girlfriend with
17 kid.

18 THE COURT: What does she do?

19 PROSPECTIVE JUROR NO. 003: She's a
20 receptionist or something at Oshins law firm, I think
21 is the name of the place.

22 THE COURT: Okay. Like *Oceans 11*?

23 PROSPECTIVE JUROR NO. 003: Something Oshins
24 or O-s-h-i-n, something like that, whatever. I don't
25 know.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 003: I think they do

3 real estate.

4 THE COURT: Do you have any children?

5 PROSPECTIVE JUROR NO. 003: I have one

6 daughter.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 003: Eight years old.

9 THE COURT: Doesn't work outside the home

10 yet.

11 PROSPECTIVE JUROR NO. 003: I wish. I could

12 use the money.

13 THE COURT: If you're like me, you wish they

14 would work inside the home; right?

15 PROSPECTIVE JUROR NO. 003: Yeah, that too.

16 You know she can keep a room clean.

17 THE COURT: I can't get my kids to work

18 either.

19 All right. Ever served on a jury before?

20 PROSPECTIVE JUROR NO. 003: I was called,

21 dismissed right away. I wasn't even in this type of

22 room.

23 THE COURT: Okay. All right. Thank you,

24 sir.

25 Ms. Flores.

1 **PROSPECTIVE JUROR NO. 010: Juliana Flores,**
2 **Badge No. 010.**

3 THE COURT: How long in Vegas, ma'am?

4 PROSPECTIVE JUROR NO. 010: Ten years.

5 THE COURT: Do you work?

6 PROSPECTIVE JUROR NO. 010: Yes.

7 THE COURT: What do you do?

8 PROSPECTIVE JUROR NO. 010: At Rachel's
9 Kitchen, front of the house.

10 THE COURT: Do you have a spouse or
11 significant other?

12 PROSPECTIVE JUROR NO. 010: No.

13 THE COURT: Do you have any children?

14 PROSPECTIVE JUROR NO. 010: No.

15 THE COURT: Ever served on a jury before?

16 PROSPECTIVE JUROR NO. 010: No.

17 THE COURT: All right. Thank you, ma'am.

18 PROSPECTIVE JUROR NO. 010: You're welcome.

19 THE COURT: See how easy this is?
20 Mr. Jensen.

21 **PROSPECTIVE JUROR NO. 015: Larry Jensen,**
22 **015.**

23 THE COURT: How long in Vegas, sir?

24 PROSPECTIVE JUROR NO. 015: Twenty-two years.

25 THE COURT: Do you work?

1 PROSPECTIVE JUROR NO. 015: Retired.
2 THE COURT: From what?
3 PROSPECTIVE JUROR NO. 015: National Weather
4 Service.
5 THE COURT: You one of the people that tells
6 us what the weather is that's coming up?
7 PROSPECTIVE JUROR NO. 015: I tried to. They
8 kept on paying me which was even better.
9 THE COURT: All right. Thank you, sir.
10 Do you have a spouse or significant other?
11 PROSPECTIVE JUROR NO. 015: I'm married.
12 THE COURT: What does your wife do?
13 PROSPECTIVE JUROR NO. 015: She's retired.
14 THE COURT: What did she do?
15 PROSPECTIVE JUROR NO. 015: She -- last job
16 was a librarian.
17 THE COURT: Okay. Any children?
18 PROSPECTIVE JUROR NO. 015: Two daughters,
19 31, and 29.
20 THE COURT: What do they do?
21 PROSPECTIVE JUROR NO. 015: One works at the
22 Henderson library and one's a mother.
23 THE COURT: Okay. Ever served on a jury
24 before?
25 PROSPECTIVE JUROR NO. 015: Never.

1 THE COURT: Okay. All right. Thank you,
2 sir.
3 Foerstel?
4 PROSPECTIVE JUROR NO. 023: David Foerstel.
5 THE COURT: I said it right, Foerstel?
6 PROSPECTIVE JUROR NO. 023: Yeah, Foerstel,
7 023.
8 THE COURT: How long in Vegas?
9 PROSPECTIVE JUROR NO. 023: Thirteen months.
10 THE COURT: You're a newbie.
11 PROSPECTIVE JUROR NO. 023: Yes.
12 THE COURT: Do you like it?
13 PROSPECTIVE JUROR NO. 023: I'm familiar with
14 the area, though. I visited. My parents have lived
15 here a lot longer.
16 THE COURT: All right. Good. Do you work?
17 PROSPECTIVE JUROR NO. 023: Yes. Sprouts
18 Farmers Market.
19 THE COURT: Do you have a spouse or
20 significant other?
21 PROSPECTIVE JUROR NO. 023: No, I don't.
22 THE COURT: Any children?
23 PROSPECTIVE JUROR NO. 023: No children.
24 THE COURT: Ever served on a jury before?
25 PROSPECTIVE JUROR NO. 023: No, I haven't.

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

2 **PROSPECTIVE JUROR NO. 023: Sure.**

3 THE COURT: Mr. Joyce.

4 **PROSPECTIVE JUROR NO. 029: Yes. Badge**
5 **No. 029, James Joyce.**

6 THE COURT: I have down here that you're
7 self-employed as an appraiser; right?

8 PROSPECTIVE JUROR NO. 029: Yep.

9 THE COURT: Is that -- that's your
10 employment?

11 PROSPECTIVE JUROR NO. 029: Yes, sir.

12 THE COURT: Do you have a spouse or
13 significant other?

14 PROSPECTIVE JUROR NO. 029: A wife.

15 THE COURT: What does she do?

16 PROSPECTIVE JUROR NO. 029: She works three
17 days a week, two and a half, actually, as a dental
18 hygienist.

19 THE COURT: I didn't ask you, how long have
20 you been in Vegas?

21 PROSPECTIVE JUROR NO. 029: Eighteen years.

22 THE COURT: Okay. Ever served on a jury
23 before?

24 PROSPECTIVE JUROR NO. 029: Couple that I
25 remember. A manslaughter, attempted murder, I think it

1 might have been. Way back when.

2 THE COURT: So a couple of criminal cases?

3 PROSPECTIVE JUROR NO. 029: Uh-huh.

4 THE COURT: Did you -- without telling us
5 what the verdict was, were you able to reach a verdict
6 in both of those case?

7 PROSPECTIVE JUROR NO. 029: Yes.

8 THE COURT: Yes? And were you the foreperson
9 on either of the juries?

10 PROSPECTIVE JUROR NO. 029: No.

11 THE COURT: Okay. I don't remember if I
12 asked you, do you have children?

13 PROSPECTIVE JUROR NO. 29:
14 Thirty-two-year-old.

15 THE COURT: Thirty-two children?

16 You have a 32-year-old?

17 PROSPECTIVE JUROR NO. 029: And I had one
18 that we lost.

19 THE COURT: What does your 32-year-old do?

20 PROSPECTIVE JUROR NO. 029: He's up in Bend,
21 Oregon. He does some secret stuff.

22 THE COURT: Secret stuff? Works for the
23 government?

24 PROSPECTIVE JUROR NO. 029: Yes.

25 THE COURT: Okay. Thank you.

1 Ms. Gold.

2 **PROSPECTIVE JUROR NO. 036: Yes. Marilyn**
3 **Gold, 036.**

4 THE COURT: How long in Vegas?

5 **PROSPECTIVE JUROR NO. 036: Three and a half**
6 **years.**

7 THE COURT: And how about work?

8 PROSPECTIVE JUROR NO. 036: Retired risk
9 management claims supervisor. Commercial.

10 THE COURT: Do you have a spouse or
11 significant other?

12 PROSPECTIVE JUROR NO. 036: No.

13 THE COURT: Do you have any children?

14 PROSPECTIVE JUROR NO. 036: I have two
15 children, a son and a daughter. Thirty-eight and 40.

16 THE COURT: What do they do?

17 PROSPECTIVE JUROR NO. 036: My son's a school
18 teacher in Sacramento, California. And my daughter's a
19 stay-at-home mom.

20 THE COURT: Ever served on a jury before?

21 PROSPECTIVE JUROR NO. 036: Yes. Monterey,
22 California. It was a criminal case.

23 THE COURT: Without telling us what the
24 verdict was, were you able to reach a verdict?

25 PROSPECTIVE JUROR NO. 036: Yes.

1 THE COURT: Were you the foreperson on the
2 jury?
3 PROSPECTIVE JUROR NO. 036: No.
4 THE COURT: Okay. Great. Thank you, ma'am.
5 I don't know how you say your last name.
6 **PROSPECTIVE JUROR NO. 106: Cyganek.**
7 THE COURT: Cyganek.
8 PROSPECTIVE JUROR NO. 106: Cyganek.
9 THE COURT: Cyganek?
10 PROSPECTIVE JUROR NO. 106: Right.
11 THE COURT: All right. I got to write that
12 phonetically.
13 Mr. Cyganek, how long in Vegas, sir?
14 PROSPECTIVE JUROR NO. 106: Thirty-seven
15 years.
16 THE COURT: And do you work?
17 PROSPECTIVE JUROR NO. 106: I'm a security
18 guard for Southwest Gas Corporation.
19 THE COURT: Okay. Do you have a spouse or
20 significant other?
21 PROSPECTIVE JUROR NO. 106: I'm married, six
22 kids, twelve grandchildren.
23 THE COURT: Wow. What does your wife do?
24 PROSPECTIVE JUROR NO. 106: She is a bus
25 driver for RTC.

1 THE COURT: Okay. Six children. How many of
2 them are old enough to work outside the home?

3 PROSPECTIVE JUROR NO. 106: All of them.

4 THE COURT: All right. Let's go through
5 them.

6 PROSPECTIVE JUROR NO. 106: My oldest is 34,
7 limo driver.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 106: My next one is
10 31, security guard. Let me see here. Two -- 29 -- oh,
11 no, sorry. Two 30-year-old daughters. One is a -- is
12 a housewife. The other one works for UPS in
13 management. Got a 28-year-old son that's a salesperson
14 for Mr. Pool and Mrs. Patio. And my youngest son is
15 24, works for Buffalo Wild Wings and runs his own
16 business in landscaping.

17 THE COURT: I got four kids and I'm busy. I
18 can't even think of what six kids would be.

19 You ever served on a jury before?

20 PROSPECTIVE JUROR NO. 106: Yes, way back. I
21 want to say in the '80s. It was a Barbary Coast, a
22 criminal case.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 106: Yes, we reached a
25 verdict. I don't remember all the way back what it

1 was, it's been so long, but had the opportunity.
2 THE COURT: Were you the foreman?
3 PROSPECTIVE JUROR NO. 106: No.
4 THE COURT: All right. Great. Thank you.
5 Come down to the middle row.
6 Is it Abeles?
7 PROSPECTIVE JUROR NO. 043: Abeles.
8 THE COURT: Abeles.
9 PROSPECTIVE JUROR NO. 043: Good afternoon.
10 Melissa Abeles, No. 043.
11 THE COURT: How long --
12 PROSPECTIVE JUROR NO. 043: I've been in
13 Vegas about 17 1/2 years. I work for Clark County
14 School District student support services homebound
15 department. No significant other. Happily divorced.
16 I have one son. He is 14. And besides school and
17 outside activities, he does about ten hours of
18 volunteer work because he's too young to be paid, so we
19 do it for free.
20 THE COURT: Very nice.
21 PROSPECTIVE JUROR NO. 043: Anything else,
22 did I forget?
23 THE COURT: Ever serve on a jury?
24 **PROSPECTIVE JUROR NO. 043: Oh, no, sir.**
25 THE COURT: Okay. Thank you, ma'am.

1 I told you you guys would remember the
2 questions as we went along.

3 Is it Ms. Perreida?

4 **PROSPECTIVE JUROR NO. 130: Yes.**

5 THE COURT: Am I saying it right?

6 **PROSPECTIVE JUROR NO. 130: Yes.**

7 THE COURT: Okay. You're Badge 130; correct?

8 PROSPECTIVE JUROR NO. 130: Yes.

9 THE COURT: How long in Vegas?

10 PROSPECTIVE JUROR NO. 130: Ten years.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 130: I'm a pharmacy
13 tech. And I'm married. I have two children, two
14 daughters, six-year-old and ten years old.

15 THE COURT: What does your spouse do?

16 PROSPECTIVE JUROR NO. 130: Dealer.

17 THE COURT: Dealer? Okay.

18 Have you ever served on a jury before?

19 PROSPECTIVE JUROR NO. 130: No.

20 THE COURT: Okay. Thank you, ma'am.

21 All right. Mr. Evans.

22 **PROSPECTIVE JUROR NO. 053: Jeff Evans, 053.**

23 **And I'm a food runner at the Orleans. I've lived here**
24 **12 years. I served on a jury, we reached a verdict. I**
25 **wasn't the foreman.**

1 THE COURT: Was it a criminal or civil case?
2 PROSPECTIVE JUROR NO. 053: Criminal.
3 THE COURT: Okay. How about spouse and
4 children?
5 PROSPECTIVE JUROR NO. 053: Neither.
6 THE COURT: Neither? Okay. Thank you, sir.
7 Mr. Roberts, Badge 058.
8 PROSPECTIVE JUROR NO. 058: Yes, sir.
9 THE COURT: I'm just looking at my notes
10 here. You were a claims adjustor; right?
11 PROSPECTIVE JUROR NO. 058: Yes, sir.
12 THE COURT: But not anymore?
13 PROSPECTIVE JUROR NO. 058: Currently not,
14 no.
15 THE COURT: Okay. How long in Vegas?
16 PROSPECTIVE JUROR NO. 058: Nineteen years.
17 THE COURT: Do you have a spouse or
18 significant other?
19 PROSPECTIVE JUROR NO. 058: I do. I have a
20 spouse.
21 THE COURT: What does that person do?
22 PROSPECTIVE JUROR NO. 058: She works for the
23 Courts.
24 THE COURT: What does she do?
25 PROSPECTIVE JUROR NO. 058: She works in DUI

1 court. I think she's a tester.
2 THE COURT: Okay. Children?
3 PROSPECTIVE JUROR NO. 058: Yes. Two, 25 and
4 20.
5 THE COURT: What do they do?
6 PROSPECTIVE JUROR NO. 058:
7 Twenty-five-year-old is in sales. He's here.
8 Twenty-year-old is still in college.
9 THE COURT: Okay. Ever served on jury
10 before?
11 PROSPECTIVE JUROR NO. 058: No, I have not.
12 THE COURT: All right. Thank you, sir.
13 Mr. Berkery?
14 PROSPECTIVE JUROR NO. 063: Yes, Keith
15 Berkery.
16 THE COURT: Am I saying it right?
17 PROSPECTIVE JUROR NO. 063: Yes, 063.
18 THE COURT: How long in Vegas?
19 PROSPECTIVE JUROR NO. 063: Four and a half
20 years.
21 THE COURT: What do you do for work?
22 PROSPECTIVE JUROR NO. 063: I'm a duty
23 manager at the Nevada National Security Site.
24 THE COURT: Spouse or significant other?
25 PROSPECTIVE JUROR NO. 063: No, sir.

1 THE COURT: Any children?

2 PROSPECTIVE JUROR NO. 063: Yes. Both are
3 out of state.

4 THE COURT: How old?

5 PROSPECTIVE JUROR NO. 063: Eighteen going on
6 32 and 20 going on four.

7 THE COURT: Either of them work?

8 PROSPECTIVE JUROR NO. 063: My daughter works
9 part time. She's a student. And my son's in Job
10 Corps.

11 THE COURT: Okay. What does your daughter do
12 part time?

13 PROSPECTIVE JUROR NO. 063: She works at a
14 grocery store.

15 THE COURT: Okay. Ever served on a jury
16 before.

17 PROSPECTIVE JUROR NO. 063: No, sir.

18 THE COURT: All right. Thank you,
19 Mr. Berkery.

20 Jessica, is it Bias?

21 PROSPECTIVE JUROR NO. 066: Yeah. Bias.

22 THE COURT: Bias.

23 PROSPECTIVE JUROR NO. 066: Yes, sir.

24 THE COURT: So when we're talking about bias
25 and prejudice, you understand that.

1 PROSPECTIVE JUROR NO. 066: I understand.
2 Don't let it fool you.
3 THE COURT: You're Badge 066; right?
4 PROSPECTIVE JUROR NO. 066: Yes, sir.
5 THE COURT: How long in Vegas?
6 PROSPECTIVE JUROR NO. 066: Born and raised,
7 28 years.
8 THE COURT: All right. Do you work?
9 PROSPECTIVE JUROR NO. 066: Yes, sir. I'm a
10 price reducer at Charleston Outlet.
11 THE COURT: At what outlet?
12 PROSPECTIVE JUROR NO. 066: Charleston
13 Outlet.
14 THE COURT: Okay.
15 PROSPECTIVE JUROR NO. 066: I'm married. My
16 husband works at the Cosmopolitan Las Vegas. He's a
17 houseman. I have a three-year-old daughter. And I
18 have never been on a jury.
19 THE COURT: Great. Thank you, ma'am.
20 Jose Avilaroa?
21 PROSPECTIVE JUROR NO. 078: Avilaroa.
22 THE COURT: I was pretty close, huh?
23 PROSPECTIVE JUROR NO. 078: Yeah. Almost.
24 THE COURT: All right.
25 PROSPECTIVE JUROR NO. 078: Badge 078.

1 THE COURT: How long in Vegas?
2 PROSPECTIVE JUROR NO. 078: Twenty years.
3 THE COURT: And do you work?
4 PROSPECTIVE JUROR NO. 078: Yes, sir.
5 THE COURT: What do you do?
6 PROSPECTIVE JUROR NO. 078: I am a Brinks
7 guard. I deliver and pick up money, work on ATMs.
8 THE COURT: Okay. Do you have a spouse or
9 significant other?
10 PROSPECTIVE JUROR NO. 078: Yes, Your Honor.
11 I am married and two kids. I have two kids.
12 THE COURT: What does your spouse do?
13 PROSPECTIVE JUROR NO. 078: She works --
14 she's a preschool teacher.
15 THE COURT: How old are your kids?
16 PROSPECTIVE JUROR NO. 078: My son, he's one.
17 And my daughter, she's three.
18 THE COURT: So they're little kids.
19 PROSPECTIVE JUROR NO. 078: Oh, yeah, little
20 babies.
21 THE COURT: Awesome. Have you ever served on
22 a jury before?
23 PROSPECTIVE JUROR NO. 078: No, Your Honor.
24 THE COURT: Okay. Thank you.
25 Mr. Retzlaff, am I saying it right?

1 PROSPECTIVE JUROR NO. 088: Yes.

2 THE COURT: You're Badge 088; correct?

3 PROSPECTIVE JUROR NO. 088: Correct.

4 THE COURT: How long in Vegas?

5 PROSPECTIVE JUROR NO. 088: About five and a

6 half years.

7 THE COURT: Do you work?

8 PROSPECTIVE JUROR NO. 088:

9 A. Yes. Currently employed with Solar City.

10 I'm a field service technician.

11 THE COURT: Okay. Have a spouse or

12 significant other?

13 PROSPECTIVE JUROR NO. 088: I have a

14 girlfriend of two years. She's a hairstylist.

15 THE COURT: Any children?

16 PROSPECTIVE JUROR NO. 088: No.

17 THE COURT: Ever served on a jury before?

18 PROSPECTIVE JUROR NO. 088: I have in

19 California, in Sacramento, was a criminal case. They

20 did reach a verdict, but I was an alternate.

21 THE COURT: Okay. Great. Thank you, sir.

22 Let's move down here to the front row.

23 Mr. Inglett.

24 PROSPECTIVE JUROR NO. 091: Harry Inglett,

25 Badge 091.

1 THE COURT: How long in Vegas?
2 PROSPECTIVE JUROR NO. 091: Born and raised.
3 THE COURT: Do you work?
4 PROSPECTIVE JUROR NO. 091: Yes.
5 THE COURT: What do you do?
6 PROSPECTIVE JUROR NO. 091: R&D and
7 integration for slot machine manufacturer.
8 THE COURT: Do you have a spouse or
9 significant other?
10 PROSPECTIVE JUROR NO. 091: No, sir.
11 THE COURT: Any children?
12 PROSPECTIVE JUROR NO. 091: (Shakes head.)
13 THE COURT: Ever served on a jury before?
14 PROSPECTIVE JUROR NO. 091: No, sir.
15 THE COURT: All right. Thank you.
16 Mr. Corum, Badge 93; right?
17 PROSPECTIVE JUROR NO. 093: yes.
18 THE COURT: How long in Vegas?
19 PROSPECTIVE JUROR NO. 093: I am born and
20 raised. Twenty-four next week.
21 THE COURT: All right. Do you work?
22 PROSPECTIVE JUROR NO. 093: Yes.
23 THE COURT: What do you do?
24 PROSPECTIVE JUROR NO. 093: I work at Star
25 Nursery out of the warehouse. I cut their synthetic

1 grass.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR NO. 093: And keep
4 inventory and stuff like that.

5 THE COURT: Do you have a spouse or
6 significant other?

7 PROSPECTIVE JUROR NO. 093: No.

8 THE COURT: Any children?

9 PROSPECTIVE JUROR NO. 093: No.

10 THE COURT: Ever served on a jury before?

11 PROSPECTIVE JUROR NO. 093: No.

12 THE COURT: Thank you.

13 I think I put the sticker on the wrong one.

14 You're Ms. Go; right?

15 PROSPECTIVE JUROR NO. 141: Yes. Raquel Go,
16 Badge 141.

17 THE COURT: How long in Vegas, ma'am?

18 PROSPECTIVE JUROR NO. 141: Almost 25 years.

19 THE COURT: What do you do for work?

20 PROSPECTIVE JUROR NO. 141: Claims examiner
21 for workers' comp.

22 THE COURT: Do you have a spouse or
23 significant other?

24 PROSPECTIVE JUROR NO. 141: No.

25 THE COURT: Any children?

1 PROSPECTIVE JUROR NO. 141: Yes.

2 THE COURT: How old?

3 PROSPECTIVE JUROR NO. 141: Eighteen and 12.

4 THE COURT: Does your 18-year-old work?

5 PROSPECTIVE JUROR NO. 141: She's a full-time

6 student and a part-time employee.

7 THE COURT: What does she do part time?

8 PROSPECTIVE JUROR NO. 141: She works for a

9 company that is opening on the 11th. I'm not sure what

10 position she's going to be doing yet.

11 THE COURT: Okay. You don't know what the

12 company does?

13 PROSPECTIVE JUROR NO. 141: It's for

14 children. It's called Jump and -- or Rock and Jump.

15 It's kind of like Chuck E. Cheese, but it's different.

16 THE COURT: Okay. Sounds fun.

17 Ever served on a jury before?

18 PROSPECTIVE JUROR NO. 141: Just the same

19 situation. But not selected as the final juror.

20 THE COURT: So you went through the process,

21 but you weren't selected as a juror?

22 PROSPECTIVE JUROR NO. 141: Yes.

23 THE COURT: Okay. Thank you, ma'am.

24 PROSPECTIVE JUROR NO. 141: Welcome.

25 THE COURT: Is it Mr. Franco or Franco?

1 PROSPECTIVE JUROR NO. 096: Franco.
2 THE COURT: Franco?
3 PROSPECTIVE JUROR NO. 096: Right. First
4 name, Onorio.
5 THE COURT: Okay. Mr. Franco, you're
6 Badge 96; right?
7 PROSPECTIVE JUROR NO. 096: 096, yes.
8 THE COURT: Mr. Franco, how long in Vegas?
9 PROSPECTIVE JUROR NO. 096: Four years, Your
10 Honor.
11 THE COURT: Do you work?
12 PROSPECTIVE JUROR NO. 096: Yes, I do.
13 THE COURT: What do you do?
14 PROSPECTIVE JUROR NO. 096: Mailman up in
15 North Las Vegas.
16 THE COURT: All right. You get paid to be
17 here, don't you?
18 PROSPECTIVE JUROR NO. 096: Yes, Your Honor.
19 THE COURT: There's -- there's very few
20 people that do. I know my wife's a school teacher.
21 School teacher's get paid to be here and mailmen get
22 paid to be here.
23 PROSPECTIVE JUROR NO. 096: That's right.
24 That's why I'm here.
25 THE COURT: Glad to have you.

1 PROSPECTIVE JUROR NO. 096: Thank you.

2 THE COURT: Do you have a spouse or
3 significant other?

4 PROSPECTIVE JUROR NO. 096: Yes, I do.
5 She's -- she's at home.

6 THE COURT: Does she work?

7 PROSPECTIVE JUROR NO. 096: No, she's not.
8 She's chilling. She's enjoying it.

9 THE COURT: Housewife?

10 PROSPECTIVE JUROR NO. 096: Yes.

11 THE COURT: Sometimes housewives do more work
12 than those of us that have to work out in the work
13 field.

14 PROSPECTIVE JUROR NO. 096: Yes, probably.

15 THE COURT: Any children?

16 PROSPECTIVE JUROR NO. 096: Yes, three.

17 THE COURT: How old?

18 PROSPECTIVE JUROR NO. 096: Thirty, 24, and
19 22.

20 THE COURT: What do they do?

21 PROSPECTIVE JUROR NO. 096: The oldest is my
22 daughter. She's in the medical field in the United
23 States Air Force. My other son is graduating out of
24 dental school in May. And I have a three-year engineer
25 student.

1 THE COURT: All right. Very good.

2 Ever served on a jury before?

3 PROSPECTIVE JUROR NO. 096: No, I haven't,
4 Your Honor.

5 THE COURT: All right. Thank you.

6 All right. What I'm going to do now is I
7 know some of those questions were probably covered in
8 the questionnaire. Sometimes people are little more
9 forthcoming here than they are doing the questionnaire,
10 so that's why I ask those questions again. Sometimes
11 you get more or different information when I ask those
12 general questions here than you did when you filled
13 them out. So that's the only reason I do that.

14 What I'm going to do now is I'm going to turn
15 the time over to the attorneys to ask some questions,
16 but before we do that, I think we're going to go ahead
17 and take a quick break. Try to take, like, a
18 ten-minute break. Sometimes it ends up being a little
19 bit more than that, but we'll try to be back in about
20 ten minutes.

21 During our break, you're instructed not to
22 talk with each other or with anyone else about any
23 subject or issue connected with this trial. You are
24 not to read, watch, or listen to any report of or
25 commentary on the trial by any person connected with

1 this case or by any medium of information, including,
2 without limitation, newspapers, television, the
3 Internet, or radio. You are not to conduct any
4 research on your own, which means you cannot talk with
5 others, Tweet others, text others, Google issues, or
6 conduct any other kind of book or computer research
7 with regard to any issue, party, witness, or attorney
8 involved in this case. You're not to form or express
9 any opinion on any subject connected with this trial
10 until the case is finally submitted to you.

11 Take about ten minutes.

12 (The following proceedings were held
13 outside the presence of the jury.)

14 THE COURT: All right. We're outside the
15 presence of the jury.

16 Just for the record, I excused quite a few
17 people. They were either based on the Court's ruling
18 that I was going to excuse them for some cause that I
19 saw or the parties' stipulation. I think anybody that
20 one party or another didn't stipulate to, we kept, if I
21 recall correctly.

22 Does anybody want to make any record on
23 anybody?

24 MR. MAZZEO: No, Your Honor.

25 MR. ROBERTS: No, Your Honor.

1 MR. STRASSBURG: No, Judge.

2 THE COURT: Okay. Anything else we need to
3 make a record on?

4 MR. MAZZEO: No, Judge.

5 THE COURT: Okay. Off the record.

6 (Whereupon a short recess was taken.)

7 THE COURT: Back on the record, Case
8 No. A637772. We're outside the presence of the jury.

9 What do you got, Mr. Roberts?

10 MR. ROBERTS: Yes, Your Honor, this deals
11 with Juror No. 93, Austin Corum.

12 THE COURT: Okay.

13 MR. ROBERTS: And when we were up at the
14 bench, he's the one who Glen Lerner is adverse to him
15 in a personal suit. And you said it's close, but maybe
16 we need to hear more. I was just got out his
17 questionnaire and was looking at this because I hadn't
18 recalled it and it wasn't in my notes. And in his
19 questionnaire he said he had heard of Glen Lerner from
20 TV. So now it's a little different. It's not only is
21 he adverse to Glen Lerner, but he didn't disclose it on
22 the questionnaire and just makes me wonder if he had an
23 agenda.

24 THE COURT: It's possible -- it's possible
25 that he didn't know that the claim was being brought

1 against him when he did the questionnaire either, so I
2 think you need to ask him questions.

3 MR. ROBERTS: That's possible.

4 THE COURT: It's a valid concern. But I --
5 I -- I've seen that happen before where people's
6 answers have changed between the questionnaire and the
7 time they come to trial. So you may need to ask that
8 and find out why.

9 MR. ROBERTS: I will. That's all I had, Your
10 Honor.

11 THE COURT: Okay.

12 MR. MAZZEO: Judge, I called -- I spoke with
13 a representative at Liberty Mutual, and they can have
14 Teresa Merez here on Monday afternoon at around 11:00,
15 12 o'clock, I guess.

16 THE COURT: You guys okay with that?

17 MR. ROBERTS: As I've said, and I don't
18 believe it cures the prejudice, but we're prepared to
19 go forward with the deposition at that time.

20 MR. SMITH: And we're going to take it by
21 video. I want that on the record that we'll do it by
22 video, and we would like to take as long as we need for
23 the deposition as we talked about earlier.

24 THE COURT: Well, I don't know. How long do
25 you anticipate? You're not going to go seven hours.

1 You already took her deposition once.

2 MR. SMITH: I took her deposition for a few
3 minutes. Not very long. But I don't anticipate that
4 long. I just don't know. And -- and I -- what I
5 anticipate is that there are going to be objections and
6 attempts to obstruct my ability to take the deposition.
7 And if that's true, then I don't want to have a
8 situation where then they obstruct my ability to take
9 the deposition and then she gets on a plane.

10 MR. MAZZEO: I don't know if there's any
11 basis for -- for Mr. Adams to say that, that's -- or,
12 I'm sorry, Mr. Smith to say that. But I think if the
13 Judge defines the scope of her testimony, you know, of
14 what Mr. Smith would be allowed to ask her, then I
15 think there's no question as to what he can ask her at
16 the time of the deposition.

17 THE COURT: He can ask her anything that he
18 thinks is going to lead to the discovery of admissible
19 evidence.

20 MR. MAZZEO: Well, but it's -- it's really
21 regarding -- what are we talking about here? We're
22 talking about permissive use. So that's -- the door's
23 been opened regarding, you know, them proving or -- or
24 proving permissive use now against our attempting to
25 rebut the presumption of permissive use, so --

1 THE COURT: It's not an insurance bad-faith
2 case. You can talk to her about her claims adjusting
3 on this claim as it relates to permissive use or -- I
4 mean, just be reasonable. I mean, I'm not going to set
5 a time limit on it. But if it goes more than two or
6 three hours, call me.

7 MR. MAZZEO: Okay. Well, and do we -- well,
8 we need your cell phone number because Monday is a
9 holiday.

10 THE COURT: (702) 845-3311.

11 MR. MAZZEO: Once again, Judge.

12 THE COURT: (702) 845-3311.

13 MR. ROBERTS: Would you like that expunged
14 from the record, Your Honor?

15 THE COURT: I don't care.

16 So just be reasonable. Take the deposition.
17 If you want to videotape it, that's fine. But just get
18 it done. I don't think you're going to have that much
19 to ask her either as it relates to this issue. I don't
20 know that you need more than this issue, but ask what
21 you want to ask. Just keep it reasonable. Okay? Are
22 we ready to go?

23 MR. MAZZEO: Yes, Judge.

24 THE COURT: Bring them back in.

25 THE MARSHAL: Jury entering.

1 (The following proceedings were held in
2 the presence of the jury.)

3 THE MARSHAL: Jury is present, Judge.

4 THE COURT: Thank you. Go ahead and be
5 seated. All right, folks, before I turn it over to
6 plaintiff's counsel to ask questions, let me just
7 tell -- there's one other thing that I meant to tell
8 you earlier that I didn't. You will usually see me up
9 here with a drink, and sometimes I'm snacking on stuff
10 to keep me awake and alert. If you guys want to bring
11 stuff in here to snack on, that's fine. If you're
12 going to bring a drink, please bring something that has
13 a lid on it. My goal is to try to get you folks in and
14 out of here quickly or as quickly as we can. If you
15 bring a Big Gulp that has a little cap -- the top that
16 goes on it and when somebody kicks it over, it makes a
17 big mess, we have to delay the trial while somebody
18 comes and cleans all that mess up. Okay?

19 So I know a lot of judges don't let people
20 bring stuff in. I don't want to make you uncomfortable
21 while you're here. So if you want a drink, you want to
22 bring something, that's fine. Bring something that
23 doesn't make a mess. We had one juror one time brought
24 sunflower seeds. Not a good choice. Not a good
25 choice. Okay? So just be -- be adults about it, and

1 if you need something like that, that's fine.

2 Mr. Roberts, panel's yours.

3 MR. ROBERTS: Thank you, Your Honor.

4 THE COURT: I would ask you to limit -- both
5 of you limit your questions to the -- the box at this
6 point. That will make it go faster.

7 MR. ROBERTS: Thank you, Judge.

8

9 VOIR DIRE EXAMINATION

10 MR. ROBERTS: Good afternoon.

11 IN UNISON: Good afternoon.

12 MR. ROBERTS: So as -- as I get started, I
13 want to emphasize a point that the Judge made earlier
14 today, and that is we're -- we're talking about biases
15 and things that might affect the way you make a
16 judgment in this case. And not -- not a bad thing
17 because what biases really come down to is just the
18 things, opinions that you formed about subjects based
19 on your life experiences and the things that you've
20 been through before you arrived in the courtroom. And
21 all of those life experiences and all of those feelings
22 and opinions that you have about certain issues may
23 affect the way you make a decision in this case.

24 So that's what -- that's what the lawyers are
25 trying to find out. We're trying to find out whether

1 there's something out there that maybe makes you not
2 the best juror for this case, even though you would be
3 a good juror for another case because some experience
4 you've had in life has caused you to have a bias or a
5 prejudice.

6 And we all think of prejudice in the bad way
7 and being prejudiced against a person because of their
8 race or religion or some other reason. But the -- the
9 word actually comes from -- from two different words
10 put together. And it's to prejudge. So you're
11 prejudging something or someone or a fact before you
12 had the evidence, before you've learned enough to make
13 the judgment.

14 And so when we talk about prejudice to a
15 jury, very rarely you'll have someone who might have
16 prejudice in the traditional sense toward a person
17 that's in the courtroom or a group that's represented
18 in the courtroom. But more often, it's people that
19 have prejudged a case based on circumstances. Maybe
20 you have got someone who worked as a -- as a claims
21 adjustor for an insurance company, and based on a claim
22 that they adjusted, they may think this case is similar
23 and they formed opinions. And that's what we need to
24 know about. Because everyone has biases and prejudices
25 to some extent. We all have feelings. We all think

1 things. We react to things that we hear. The question
2 is: Do those things or those feelings and opinions
3 that you have cause one side to start a little bit
4 behind the other in this case before you've heard the
5 evidence? And it doesn't matter which side because the
6 attorneys for the defense want the same thing that we
7 do, and that's a jury that can be fair and impartial to
8 both sides and decide the case based on the facts and
9 the evidence presented in the courtroom and the law
10 that the judge is going to instruct you on at the end
11 of the case.

12 So voir dire is what this process is called.
13 Judge said -- that's actually French, and I know this
14 because I'm Norman heritage. And the Norman invasion
15 of England happened in 1066, and they brought over the
16 French language which made its way into the court
17 system. And so voir dire is a French word that's
18 remained in the -- in the court lexicon, so to speak.
19 And it just means to -- voir is to -- is true or truly,
20 and dire is to speak. So it just means to speak the
21 truth, literally translated. And that's why you took
22 an oath.

23 And so for the process to work, you just need
24 to tell us everything. Tell us the truth. Tell us how
25 you really feel about issues. Tell me, tell

1 Mr. Mazzeo, Mr. Strassburg how you feel. And there is
2 no right or wrong answer. So don't be embarrassed
3 about an opinion that you have. It's only your answer.
4 And then based on your answer, then the Judge and the
5 parties can -- can get together and decide who the best
6 jurors are in their opinion to -- to hear this
7 particular case.

8 So with that in mind, let me ask you this
9 question: If you have to make an important decision in
10 your personal life, a decision that is going to either
11 affect you or someone else in some significant way, how
12 sure do you need to be that you're right before you're
13 comfortable making that decision? Some folks say, If
14 I'm going to make an important decision, I better be
15 95 percent or higher right. They want to be
16 comfortable that they have all of the facts and that
17 they're positive before they make that decision. Some
18 people are comfortable saying, Well, you know
19 something, as long as, you know, I think what I'm about
20 to do is more likely right than wrong, then I'm okay
21 with it.

22 So in that broad spectrum, which of those two
23 people are you closer to, the person who needs to be
24 almost 100 percent sure you're doing the right thing or
25 someone who's comfortable making important decisions

1 based on just a little bit of comfort level that you're
2 more likely right than wrong?

3 Mr. Solomon, we'll start -- we'll go in order
4 on this question. Which person do you think you're the
5 most -- you're closest to?

6 PROSPECTIVE JUROR NO. 001: The 95 percent.

7 MR. ROBERTS: Tell me about that. What --
8 what -- why do you like to be certain about making a
9 decision at that level of certainty before you make the
10 decision?

11 PROSPECTIVE JUROR NO. 001: Just the way I
12 was brought up.

13 MR. ROBERTS: What if you were in a situation
14 where you had to make a decision but you -- you weren't
15 that certain yet? Would that make you uncomfortable?

16 PROSPECTIVE JUROR NO. 001: Sure.

17 MR. ROBERTS: Yeah? Thanks.

18 And -- and by the way, I've got my board
19 here, and this -- I haven't memorized everyone's name.
20 We have a lot of people, and I've got cards, and I flip
21 them back and forth because, as you see, people shift
22 around in the box. But hopefully after we talk
23 together this afternoon, I'll remember people's names
24 without having to cheat, but for now, I'm cheating.

25 So Mr. Brandon.

1 PROSPECTIVE JUROR NO. 003: 95 percent. I
2 want to make sure the decision I'm making is going to
3 be the correct way I went and it's not going to affect
4 anything. And if it was a -- you know, everything's
5 just got to be 100 percent to me. I'm not going to put
6 myself out there and make a decision just because I
7 have to.

8 MR. ROBERTS: Very good.

9 Ms. Flores, what about you?

10 PROSPECTIVE JUROR NO. 010: I'm 95 percent.
11 I need to make sure that, you know, I know what I'm
12 doing, and I have to, like, gather information and, you
13 know, just be sure about what I'm going to -- the
14 decision I'm going to take.

15 MR. ROBERTS: Okay. Does it make you
16 uncomfortable if you're put in the situation where you
17 might have to decide based on being less sure?

18 PROSPECTIVE JUROR NO. 010: No, because I
19 like knowing all the facts. I don't really make
20 decisions not knowing. I always have to know, gather
21 my information, look up things, or, you know.

22 MR. ROBERTS: Okay. And let me change it
23 just a little bit. Let's just say you've got all of
24 the facts, there are no more facts to get, but you're
25 still not 95 percent sure of which way to go. How do

1 you feel about that? Are you comfortable at that point
2 saying, I've got everything I can get, I'm going to
3 make a decision based on the right --

4 PROSPECTIVE JUROR NO. 010: Based on
5 everything, there's no more to look at, you know, I
6 just go with what I feel. You know, I just go off
7 information.

8 MR. ROBERTS: And as long as you got all the
9 information there is to get, you're uncomfortable
10 making a decision with less certainty.

11 PROSPECTIVE JUROR NO. 010: No, I'll be
12 comfortable if I have all the information.

13 MR. ROBERTS: Okay.

14 THE COURT: Okay. Before you move on, let me
15 just request, when we have a conversation with each
16 other, we sometimes tend to anticipate the end of the
17 question, and you start answering before the question
18 is done. Makes it very difficult on Kristy trying to
19 take two people -- recording two people talking at the
20 same time. Try to let him get the whole question out
21 before you answer. All right.

22 And please start giving us your badge
23 numbers. Okay. He's calling you by name. Give us
24 your badge numbers too. Thank you.

25 Go ahead.

1 MR. ROBERTS: I'm kind of bad about that too.
2 It's natural when you're trying to have a conversation.
3 So I apologize.

4 So, Mr. Jensen, tell us how you feel about
5 that.

6 PROSPECTIVE JUROR NO. 015: 015. I trend
7 toward the higher end. I'm not quite as high as that,
8 probably about 80 percent. Basically, because my
9 entire career I dealt with uncertainties on trying to
10 make decisions, and that filtered into my personal life
11 too. So there's no way you can get 100 percent. But I
12 like to get as much information as I can and then make
13 the decision.

14 MR. ROBERTS: Okay. And you say some of your
15 experience making decisions at work kind of bled over
16 into your personal life and the way you make decisions
17 there.

18 PROSPECTIVE JUROR NO. 015: Forecasting
19 weather, you're never certain.

20 MR. ROBERTS: Over 100 and sunny at least for
21 three months in a row; right?

22 PROSPECTIVE JUROR NO. 015: Working in Vegas
23 as a meteorologist is a nice job.

24 MR. ROBERTS: So when you're making decisions
25 at work, where does your comfort level stand there?

1 Are you comfortable just being on the little more right
2 than wrong?

3 PROSPECTIVE JUROR NO. 015: You always want
4 to try to be, you know, as right as you can, yes. But,
5 again, you take all the information that you can
6 knowing that you never have all of the information, and
7 you just make the best decision that you can at that
8 point.

9 MR. ROBERTS: So -- so I've seen the weather
10 forecast. It's, you know, saying rain. It's not just
11 it's going to rain, it's not going to rain. It's
12 40 percent, 50 percent, 60 percent. Sometimes by the
13 hour now.

14 So if it's 51 percent chance of rain and
15 someone says, Hey, Mr. Jensen, is it going to rain this
16 afternoon? What do you tell them?

17 PROSPECTIVE JUROR NO. 015: From a
18 professional level, I say, There's a chance. And even
19 from a personal level, I would say, Yeah, you know,
20 there's pretty good shot it's going to rain today.

21 MR. ROBERTS: It's most likely going to rain
22 at that point?

23 PROSPECTIVE JUROR NO. 015: Most likely bumps
24 it up to about 70 or 80 percent. so ...

25 MR. ROBERTS: Interesting.

1 PROSPECTIVE JUROR NO. 05: There's a chance.
2 MR. ROBERTS: Is it Foerstel?
3 PROSPECTIVE JUROR NO. 023: Yes.
4 MR. ROBERTS: Mr. Forestel?
5 PROSPECTIVE JUROR NO. 023: I think, yeah.
6 Pronounced so many different ways. 023 is my number.
7 And yeah, I pretty much like to have all the
8 information, be fairly confident, probably in the 90,
9 95 percent range. Especially on an important decision,
10 I want to know the facts before I -- before I make a
11 decision on something that's important. Depends on how
12 important that situation is, you know. If it's not as
13 important, then maybe I'll lower it down a little bit.
14 But yeah.
15 MR. ROBERTS: What percentage does it have to
16 be before you're comfortable in your personal life, the
17 way you described things, saying it's likely to happen?
18 PROSPECTIVE JUROR NO. 023: Yeah, I like to
19 be -- it's got to be in the 90s before I feel
20 comfortable to make that decision, yeah.
21 MR. ROBERTS: Thank you, Mr. Foerstel.
22 PROSPECTIVE JUROR NO. 023: That sounds good.
23 MR. ROBERTS: And -- and this is something
24 I'm going to be doing the whole trial because I can't
25 see you that well with them on, and I can't read my

1 paper with them off.

2 Mr. Joyce, what about you?

3 PROSPECTIVE JUROR NO. 029: Badge 029.

4 MR. ROBERTS: How do you make decisions?
5 What's your comfort level?

6 PROSPECTIVE JUROR NO. 029: I have morphed
7 into everything I've heard down here, 90 percent. Used
8 to be no problem. But now making decision anymore
9 just -- life decision, I'm talking about.

10 MR. ROBERTS: Right.

11 PROSPECTIVE JUROR NO. 029: I just -- I have
12 been thinking a lot lately about getting second
13 opinions before making a final decision on certain
14 things.

15 MR. ROBERTS: That's in your -- making
16 important decisions in your personal life?

17 PROSPECTIVE JUROR NO. 029: Correct.

18 MR. ROBERTS: What about when you're doing an
19 appraisal? How certain do you have to be right that
20 your appraisal is correct before you're comfortable
21 signing it, sealing it, and sending it in?

22 PROSPECTIVE JUROR NO. 029: How comfortable
23 do I have to be?

24 MR. ROBERTS: Yes?

25 PROSPECTIVE JUROR NO. 029: Very comfortable.

1 MR. ROBERTS: Again, up in the 90s?
2 90 percent sure you're right?

3 PROSPECTIVE JUROR NO. 029: I look it up and
4 down, sideways, and all around, and then I'll come to a
5 conclusion that I'm comfortable.

6 MR. ROBERTS: And Ms. Gold.

7 PROSPECTIVE JUROR NO. 036: Yes. Badge 036.
8 I like to be on the high side, but I'm with Mr. Jensen.
9 I think that 90, 95 is pretty high. I'm more likely to
10 be the 85 percent, I can make a good decision.

11 MR. ROBERTS: How uncomfortable are you if
12 you have to make a decision -- you've got all the
13 information that you're ever going to get and you're
14 just a little -- little -- little more certain of going
15 one way than the other way? How uncomfortable does
16 that make you?

17 PROSPECTIVE JUROR NO. 036: I'm not
18 uncomfortable with that. I'm pretty adventurous.

19 MR. ROBERTS: Very good.
20 Mr. Cyganek.

21 PROSPECTIVE JUROR NO. 106: Very good.
22 Badge 106.

23 MR. ROBERTS: Tell us how you feel about
24 making decisions. What comfort level do you have?

25 PROSPECTIVE JUROR NO. 106: Obviously, 90,

1 95 percent is great. You want to feel that you're not
2 second-guessing yourself. You want to feel like you
3 gathered all the information and you make the right
4 decision. I guess fairly is the best way to put it.

5 MR. ROBERTS: And that's your preference, but
6 now let's look at it the other side. How uncomfortable
7 would you be if you knew you had to make a decision,
8 there's no more information, but you're just not that
9 sure?

10 PROSPECTIVE JUROR NO. 106: Not really
11 uncomfortable because you have to make a decision and
12 with what's provided to you. That's what you have to
13 use.

14 MR. ROBERTS: Thank you, sir.

15 I'm going to go a little out of order, but
16 stay in the same range, Mr. Retzlaff?

17 PROSPECTIVE JUROR NO. 088: Retzlaff.

18 MR. ROBERTS: Retzlaff. Thank you.

19 PROSPECTIVE JUROR NO. 0988: Badge 088. And
20 I'm kind of in the same boat. I have -- I like to be
21 in the 90, 95 percent range when I make decisions.
22 Especially if -- if I have all the facts and
23 everything, I can pretty much guarantee if I'm in that
24 range and that comfortability, I can bump it to 100
25 because if I'm that comfortable already, I'm just going

1 to go with it. And in a life-changing aspect, you
2 know, or even, like, with my job and stuff, my job I
3 have to be 100 percent sure of stuff, you know. If the
4 system isn't 100 percent by the time I leave, then, you
5 know, there's a chance even -- you know, even if it's
6 small, that I have to go back on it again, and I don't
7 want to do that. It's not good for the company. It's
8 not good for my, you know, personal, you know,
9 well-being. I want to feel like I did what I was
10 required if I didn't have that 100 percent.

11 But like they were saying also, sometimes you
12 can't be 100 percent, but if I'm making a decision
13 that's, you know, life changing or, you know, a big
14 decision, I want to be as close to it as I can so I'm
15 comfortable.

16 MR. ROBERTS: So it sounds like you're a very
17 decisive person; that usually once you get all the
18 facts, you don't have a problem, you don't struggle
19 with that. You're pretty sure which way to go.

20 PROSPECTIVE JUROR NO. 088: Yes.

21 MR. ROBERTS: And at least with Solar City,
22 there's always backup power, right, so if the panel
23 goes --

24 PROSPECTIVE JUROR NO. 088: The sun doesn't
25 go anywhere except for eight to ten hours, it goes

1 behind the mountains. But other than that, yeah, it's
2 always there.

3 MR. ROBERTS: And Avilanoa?

4 PROSPECTIVE JUROR NO. 078: Avilaroa.

5 MR. ROBERTS: Avilaroa. See, I tried it
6 without my glasses.

7 PROSPECTIVE JUROR NO. 078: 078.

8 MR. ROBERTS: Yes.

9 PROSPECTIVE JUROR NO. 078: And I think I'm,
10 like, 95. I have to -- you know, I have to be
11 comfortable with what I'm doing, because I see it as,
12 you know, anything that involves human life or anything
13 or -- it's just -- it's very, very, important to be
14 100 percent sure, you know, of what I'm doing. And I
15 look at everything, you know. It just has to seem
16 right to me. And I have to look at all the evidence
17 because if -- you know, if I make -- if I kind of make
18 a decision, and, you know, not look at the details.
19 Then I could possibly most likely be wrong, and I don't
20 want to be wrong, you know. And I just want to make
21 the best decision -- the best decision, you know.

22 MR. ROBERTS: So when you're making
23 decisions, you're very thorough and want to make sure
24 you really think about and examine all of the evidence
25 before you make that decision?

1 PROSPECTIVE JUROR NO. 078: Yes, sir.

2 MR. ROBERTS: And what about when -- when
3 maybe you've looked at all the evidence and you're
4 still not quite sure? Does that happen often? And if
5 it does, have you been comfortable with that?

6 PROSPECTIVE JUROR NO. 078: Yes, I feel like
7 I would feel -- I feel like I am comfortable with that.
8 You know, I can't -- you know, obviously, I can't have
9 all the evidence, you know. I was never there, so I
10 have to just follow my gut and follow my heart. That's
11 all I can do.

12 MR. ROBERTS: Thank you. Thank you, sir.

13 Ms. Bias, Badge 66. Now -- hi. Now, when
14 Mr. Retzlaff mentioned that he was very decisive, I
15 catch you shaking your head from my peripheral vision.

16 Are you also very decisive?

17 PROSPECTIVE JUROR NO. 066: Yes, sir. Yes,
18 sir. I was brought up always to know the facts before
19 you make a decision on anything. I come from a
20 military family, so it's really important to always be
21 100 percent sure or 95 percent sure before you
22 jeopardize anything because you never know whose life
23 you're going to ruin. So I'm always the one that
24 always has to be very confident in making a decision.

25 MR. ROBERTS: Are you uncomfortable with if

1 you're put in the situation where you might have to
2 make a decision based on less certainty than you would
3 prefer to have?

4 PROSPECTIVE JUROR NO. 066: No, sir.

5 MR. ROBERTS: No. You always know what to
6 do.

7 PROSPECTIVE JUROR NO. 066: Yeah.

8 MR. ROBERTS: Tell me a little bit about the
9 military family. What --

10 PROSPECTIVE JUROR NO. 066: I have two
11 brothers that are in Marine Corps. One is a sergeant
12 major. He's up there, and he always taught me to
13 follow my heart and instincts and my gut. And my
14 father was also in the Marine Corps. He instilled it
15 in us also.

16 MR. ROBERTS: Thank you. Thank you for
17 sharing.

18 Mr. Berkery, Badge No. 63.

19 PROSPECTIVE JUROR NO. 063: Yes, sir. I tend
20 to work in the comfort zone of 95 or so percent. But
21 with decisions that I've had to make for my work and
22 such, you have to be comfortable at all levels. You're
23 not always given the luxury of 95 percent.

24 MR. ROBERTS: And I know you're duty manager,
25 and is this secret stuff that you do?

1 PROSPECTIVE JUROR NO. 063: No, sir.

2 MR. ROBERTS: Okay.

3 PROSPECTIVE JUROR NO. 063: You know, I work
4 at the test site. I work in the operations command
5 center. Our job on a day-to-day basis is to make sure
6 that the things in the air and the ground don't bump
7 into each other. They don't like that. When something
8 does not go well, it's my job to ensure life safety and
9 categorize and classify an emergency. And then bring
10 to bear the appropriate resources.

11 MR. ROBERTS: When you're trying to keep
12 things from going bump in the air, you need to have a
13 pretty high level of certainty that you're right?

14 PROSPECTIVE JUROR NO. 063: Yes, sir.

15 MR. ROBERTS: That makes sense.

16 Mr. Roberts, Badge No. 58.

17 PROSPECTIVE JUROR NO. 058: Yes, sir.

18 MR. ROBERTS: Tell me about your personal
19 decision-making. Where does your comfort level lie?

20 PROSPECTIVE JUROR NO. 058: Comfort level
21 runs about where I can get the most information. I
22 always try to have as many facts as possible. If it's
23 a significant decision that needs to be made, I'm going
24 to make a choice based on the best gut feeling on the
25 information that I have. So if I have 100 percent of

1 the information, then I'll make a decision based on
2 that analysis. But if I don't have 100 percent, then
3 I've got to go with the best decision I think is
4 plausible from the information that I have.

5 MR. ROBERTS: And that -- that makes some
6 sense, and -- because sometimes you've got all the
7 information but the information's conflicting; right?

8 PROSPECTIVE JUROR NO. 058: True.

9 MR. ROBERTS: Some would advocate for one
10 decision. Some evidence might suggest to go the other
11 way.

12 PROSPECTIVE JUROR NO. 058: Absolutely.

13 MR. ROBERTS: And where does your comfort
14 level lie as far as how certain you have to be before
15 you can pull the trigger and make a decision?

16 PROSPECTIVE JUROR NO. 058: I give it based
17 on weighting, so if something -- if more information is
18 weighting toward this side, then I'll probably go with
19 the decision that way. If it's more with weighting
20 this side -- you know, and sometimes the decision is,
21 no, I don't want to make that decision.

22 MR. ROBERTS: That's good. When you say --
23 it's an interesting choice of words. It's one we use
24 as lawyers sometimes that people sometimes have trouble
25 grasping it. When you say the weight going to one side

1 or the other, the weight of the evidence, tell us what
2 you mean by that, what does that mean to you?

3 PROSPECTIVE JUROR NO. 058: It's just -- I
4 don't know if you know, I'm a former claims adjustor.
5 Comparative negligence is based on the best knowledge
6 that you have, who may have had the more negligence, or
7 who had the less negligence. Sometimes it's just
8 your -- your gleaning of the information you get, you
9 say, I think this person had more responsibility for
10 the accident versus that person having responsibility
11 for the accident or percentage thereof.

12 MR. ROBERTS: And were you comfortable making
13 that type of analysis and decision in your job?

14 PROSPECTIVE JUROR NO. 058: Daily.

15 MR. ROBERTS: Were you good at it?

16 PROSPECTIVE JUROR NO. 058: I think I was.

17 MR. ROBERTS: And, you know, the Judge has
18 got the lady here with the -- with the scales
19 symbolizing justice and, you know, that's the -- the
20 weight -- the weight of the scales. There's evidence
21 on each side, which side does the scale go, so that --

22 PROSPECTIVE JUROR NO. 058: Yes, sir.

23 MR. ROBERTS: All right. So, Mr. Evans,
24 Badge 53.

25 PROSPECTIVE JUROR NO. 053: Yes.

1 MR. ROBERTS: Tell me about your personal
2 comfort levels in your decision-making.

3 PROSPECTIVE JUROR NO. 053: I guess I would
4 go with somewhere around 90 percent. Well, I'm a food
5 runner and I put away food and I have to judge if it's
6 safe or not. You know, like temperature and condition
7 of the food or whatnot. If it isn't good, tell the
8 receivers it's no good and, you know, we don't -- we
9 don't accept it.

10 MR. ROBERTS: That just sounds like a -- like
11 a job -- a little bit like the -- the job at -- when
12 you're keeping things from running into each other in
13 the air.

14 You want to have a pretty high level of
15 certainty if you're making a decision about whether
16 food is safe; right?

17 PROSPECTIVE JUROR NO. 053: Yeah. Then I
18 have to ask my chef, though, too.

19 MR. ROBERTS: What -- what about just in --
20 in a personal decision that -- that's important,
21 outside of work, something like this? Let's say you
22 got a job offer over in California from -- from a
23 different hotel, and you're trying to decide, Do I want
24 to move to California or stay here? That's a big
25 decision for me in my life. How certain do you have to

1 be that California is going to be better before you
2 move to California?

3 PROSPECTIVE JUROR NO. 053: Well, I moved
4 here with very little information about it. Because
5 I -- I moved from Minneapolis to here. I never was
6 here before, and a friend told me it was better out
7 here. So I would probably move if I thought it was
8 better.

9 MR. ROBERTS: As lawyers, we call that
10 hearsay evidence, you know.

11 PROSPECTIVE JUROR NO. 053: Yeah.

12 MR. ROBERTS: Thank you, sir. I appreciate
13 that.

14 Ms. Perreida.

15 PROSPECTIVE JUROR NO. 130: Yes.

16 MR. ROBERTS: Ms. Perreida, Badge No. 130.
17 Tell me about your comfort level when making important
18 decisions.

19 PROSPECTIVE JUROR NO. 130: I'm not sure.
20 Maybe between 90 to 98.

21 MR. ROBERTS: Okay.

22 PROSPECTIVE JUROR NO. 130: I -- I say
23 2 percent because sometimes after your decision,
24 decides something else, you still not sure it's going
25 to be right or wrong.

1 MR. ROBERTS: And if you're just a little bit
2 sure, are you going to go ahead and make that decision
3 and be comfortable with it?

4 PROSPECTIVE JUROR NO. 130: Not really.

5 MR. ROBERTS: No? It's going to be hard?

6 PROSPECTIVE JUROR NO. 130: Very important
7 thing.

8 MR. ROBERTS: And, Ms. Abeles --

9 PROSPECTIVE JUROR NO. 043: Yes, sir.

10 MR. ROBERTS: -- tell me about your decision.

11 PROSPECTIVE JUROR NO. 043: Juror No. 043.

12 Personally, like, if something for myself or my son, 85
13 to 95 percent. It would be a perfect world if we could
14 be 100 percent certain of things. Figuring out
15 anything professionally or personally, it's data and
16 documentation, pluses and minuses, and not always can
17 we make the best decision. We make the most informed
18 decisions in life.

19 MR. ROBERTS: But that's the best ones --

20 PROSPECTIVE JUROR NO. 043: And sometimes
21 it's not -- you're not happy making those decisions.
22 But there are decisions to make.

23 MR. ROBERTS: It's hard sometimes making
24 important decisions, isn't it?

25 PROSPECTIVE JUROR NO. 043: Yes, sir. And

1 you just do it. You pull through. And not everything
2 is perfect, so you weigh everything, and you come up
3 with what's right for right then.

4 MR. ROBERTS: Thank you so much. Thanks.

5 I really do appreciate you. The more you
6 tell us, the more, you know, we understand about you.
7 Sometimes it takes panels a while to get a comfort
8 level talking. It's awkward talking in front of a
9 group even for me a little bit the first time I get up
10 here in front of a new panel, but I appreciate everyone
11 being so forthcoming.

12 Mr. Inglett, Badge No. 091.

13 PROSPECTIVE JUROR NO. 091: 0091.

14 MR. ROBERTS: Tell me about your
15 decision-making and your comfort levels with how
16 certain you have to be before you're comfortable
17 pulling the trigger on an important decision.

18 PROSPECTIVE JUROR NO. 091: Both personally
19 and professionally, I deal with certainties. You know,
20 a lot of that comes from my professionalism. I don't
21 have the luxury of doing something at 95 percent, so I
22 have to use critical thinking skills and research and
23 knowledge to make not only the most informed decision,
24 but the right decision.

25 MR. ROBERTS: And you do R&D for a slot

1 machine manufacturer? Do you help design the slot
2 machines?

3 PROSPECTIVE JUROR NO. 091: Mechanical
4 engineering, electrical engineering, R&D, product
5 management, and integration, so ground up.

6 MR. ROBERTS: That was what I was wondering,
7 whether you dealt with the mechanical aspects or the
8 software.

9 PROSPECTIVE JUROR NO. 091: Both.

10 MR. ROBERTS: Both. Sounds like hard work.
11 Not more likely than not going to win if I put a dollar
12 in a slot machine; right? Is it less than 50 percent?

13 PROSPECTIVE JUROR NO. 091: You have better
14 odds of getting a free drink at the bar than winning on
15 a slot machine.

16 MR. ROBERTS: Mr. Corum, Badge 093.

17 PROSPECTIVE JUROR NO. 093: Yes.

18 MR. ROBERTS: Also born and raised in Vegas;
19 right?

20 PROSPECTIVE JUROR NO. 093: Yes, also born
21 and raised in Vegas. Well, at work, I'm right now, I'm
22 by myself pretty much. I -- I -- I do inventory and
23 all that for their synthetic grass. So that stuff's
24 expensive. So when I do inventory, it has to be right.
25 Otherwise, they come back and, you know, they let me

1 know if it's wrong. But I don't really do too much
2 important, you know, decision-making there. It's more
3 like just -- I don't know how to say it. Like, I can't
4 phrase it.

5 But, um, I do -- before I did that, I worked
6 as a head, you know, at a store for, like, helping
7 people up front and loading their cart and stuff like
8 that, and it was a fast-paced job. So I'm very quick
9 with decisions. But I guess I can't really describe
10 important decisions at work, so ...

11 MR. ROBERTS: Well, what about in your
12 personal life? What if you were thinking about leaving
13 your current employee and going to a new job? How
14 certain would you want to be it was going to work out
15 better for you at your new job?

16 PROSPECTIVE JUROR NO. 093: I have to be
17 certain. Ever since I left my first job, I've been in
18 the same spot for about three years now. So it does
19 take me quite -- quite a bit of certainty to make a
20 decision like that.

21 MR. ROBERTS: Thank you. I want to ask you
22 about something else as long as we're -- we're talking
23 together.

24 PROSPECTIVE JUROR NO. 093: Okay.

25 MR. ROBERTS: And you were here at the

1 beginning when I introduced myself, and I'm with a firm
2 Weinberg, Wheeler, Hudgins, Gunn & Dial, but our
3 co-counsel on the case who's also representing our
4 client, Ms. Garcia, is the Glen Lerner firm.

5 PROSPECTIVE JUROR NO. 093: Yes.

6 MR. ROBERTS: Now, when you were talking to
7 the Judge, you said that you thought Glen Lerner was
8 adverse to you in a personal matter.

9 PROSPECTIVE JUROR NO. 093: Yes.

10 MR. ROBERTS: So that means, I assume, he's
11 representing someone, so he's suing you or filed a
12 claim against you.

13 PROSPECTIVE JUROR NO. 093: Yes.

14 MR. ROBERTS: Okay. And I think, if I got
15 this right, what you told the Judge is you weren't sure
16 how it might affect you.

17 PROSPECTIVE JUROR NO. 093: Yes. Well --

18 MR. ROBERTS: So --

19 PROSPECTIVE JUROR NO. 093: You know, I
20 haven't even gone through the case yet. You know,
21 it's -- I don't even think I'm going to be, you know,
22 in any trouble or anything in the case. It's just ...

23 MR. ROBERTS: So there were two things that I
24 just wanted to talk about --

25 PROSPECTIVE JUROR NO. 093: Yeah.

1 MR. ROBERTS: -- just so I can make good
2 decisions for my client. The first is, you know, Glen
3 Lerner is representing the plaintiff in this case along
4 with me.

5 PROSPECTIVE JUROR NO. 093: Yeah.

6 MR. ROBERTS: And if you're mad at Glen
7 Lerner --

8 PROSPECTIVE JUROR NO. 093: I'm not really
9 mad at Glen Lerner. I don't know the guy.

10 MR. ROBERTS: So you're okay with the fact
11 that his firm sued you?

12 PROSPECTIVE JUROR NO. 093: Yeah. I mean, he
13 gets hired; right?

14 MR. ROBERTS: Right.

15 PROSPECTIVE JUROR NO. 093: People get hired
16 to do things.

17 MR. ROBERTS: Okay.

18 PROSPECTIVE JUROR NO. 093: I'm not really
19 holding a grudge against Glen Lerner.

20 MR. ROBERTS: The other issue would be
21 because you may be a defendant in a lawsuit, someone's
22 making a claim against you, are you going to empathize
23 or sympathize more with the defendants in this case who
24 also have a claim being made against them? Is that
25 something you might see yourself doing?

1 PROSPECTIVE JUROR NO. 093: I mean, I could.
2 I don't know.

3 MR. ROBERTS: You're not feeling that way
4 right now as we're talking?

5 PROSPECTIVE JUROR NO. 093: Not right now,
6 no.

7 MR. ROBERTS: When you said you're not sure
8 if it would affect you, tell me a little bit more what
9 you meant. What were your thoughts? How do you think
10 it might possibly affect the way you went about making
11 a decision in this case?

12 PROSPECTIVE JUROR NO. 093: I don't know.
13 Maybe -- I wouldn't know yet, you know.

14 MR. ROBERTS: Right.

15 PROSPECTIVE JUROR NO. 093: Time hasn't
16 passed. I haven't really been -- I haven't gone
17 through any real thing, other than through my
18 insurance, you know. It's -- it's a little accident.
19 My fault.

20 MR. ROBERTS: Okay. So -- so you -- you just
21 said, I haven't heard anything, I'm not feeling
22 anything yet, but you were just letting us know that it
23 was a little bit early, and you're not sure how you
24 feel.

25 PROSPECTIVE JUROR NO. 093: Pretty much,

1 yeah.

2 MR. ROBERTS: Is it going to be in the back
3 of your mind, you think, your experience, as you're
4 listening to the facts of this case?

5 PROSPECTIVE JUROR NO. 093: I mean, it might
6 if it's -- I don't know when this is going to happen.
7 So it might be. Like, if they start doing my case,
8 like, in two weeks and then we're starting to run your
9 case and then we're on the same time, it might be in
10 the back of my mind because I have two cases going on
11 at once.

12 MR. ROBERTS: Have you been told anything
13 about when your case may go to trial?

14 PROSPECTIVE JUROR NO. 093: No.

15 MR. ROBERTS: No? How long have you known
16 that Glen Lerner was adverse to you on the other side
17 of the case?

18 PROSPECTIVE JUROR NO. 093: Early I got a
19 call from my -- it's a private investigator for State
20 Farm on my behalf and called me, like, three, four days
21 ago maybe, and that's when I found out. Because he
22 mentioned -- he mentioned that he -- the lady hired
23 Glen Lerner. So that's why I told you guys that
24 instead of on the questionnaire.

25 MR. ROBERTS: So it's still early in your

1 case, and you don't have any positive or negative
2 impressions yet?

3 PROSPECTIVE JUROR NO. 093: Not really.

4 MR. ROBERTS: Okay. Thanks. I appreciate
5 you sharing that with me.

6 Ms. Go.

7 PROSPECTIVE JUROR NO. 141: Yes. Badge 141.

8 MR. ROBERTS: Thank you, ma'am.

9 Tell us about your decision-making. How
10 certain do you have to be?

11 PROSPECTIVE JUROR NO. 141: As far as
12 personal decision, I don't usually trust myself. I
13 have -- it takes a lot of convincing or evidence before
14 I can make the final decision. So it's hard to give
15 100 percent. I don't think there is 100 percent. So
16 yes, that's -- that's my opinion.

17 MR. ROBERTS: So you -- you want to be pretty
18 certain before you --

19 PROSPECTIVE JUROR NO. 141: Correct, before I
20 make that correct decision.

21 MR. ROBERTS: And how does it make you feel
22 if -- if you feel like you have to make a decision
23 before you're ready and -- and are really certain which
24 way to go?

25 PROSPECTIVE JUROR NO. 141: I guess I would

1 go by the other people. Like, they said majority wins.

2 MR. ROBERTS: So when you say "other people,"
3 do you mean in your own personal life --

4 PROSPECTIVE JUROR NO. 141: Yes.

5 MR. ROBERTS: -- and talking with your
6 family --

7 PROSPECTIVE JUROR NO. 141: Yes.

8 MR. ROBERTS: -- and other people the
9 decision would affect?

10 PROSPECTIVE JUROR NO. 141: Yes.

11 MR. ROBERTS: And when you have important
12 decisions, do you talk to friends, family, anyone else
13 that the decision is going to affect before you make
14 your decision?

15 PROSPECTIVE JUROR NO. 141: Yes.

16 MR. ROBERTS: Do you make decisions better in
17 a group than you do --

18 PROSPECTIVE JUROR NO. 141: I would say so.
19 Just like I said, I don't trust myself most of the
20 time.

21 MR. ROBERTS: Now, that's personal decision.
22 In your --

23 PROSPECTIVE JUROR NO. 141: I understand.

24 MR. ROBERTS: In your work, you have to make
25 decisions too; right?

1 PROSPECTIVE JUROR NO. 141: Yes.

2 MR. ROBERTS: And I believe you said you were
3 a workers' comp --

4 PROSPECTIVE JUROR NO. 141: Correct.

5 MR. ROBERTS: -- claims examiner?

6 PROSPECTIVE JUROR NO. 141: Yes.

7 MR. ROBERTS: And what type of decisions do
8 you have to make at work?

9 PROSPECTIVE JUROR NO. 141: Well, you have
10 to -- because for workers' comp, they -- I handle
11 medical-only claims. So I base it on the medical
12 records and -- and evidence as well.

13 MR. ROBERTS: And are you making decisions
14 about whether workers who claim to be injured at work
15 get a certain type of treatment, or are you dealing
16 with whether the cost is reasonable that's being
17 billed?

18 PROSPECTIVE JUROR NO. 141: Well, as far as,
19 like, a lost time, I don't deal with that. I don't pay
20 the injured workers when they lost more than -- or when
21 they lose five or more days. I only handle
22 medical-only claims. So I base it on medical, on their
23 medical records.

24 MR. ROBERTS: And are you determining medical
25 need --

1 PROSPECTIVE JUROR NO. 141: Correct.

2 MR. ROBERTS: -- reasonable cost or both?

3 PROSPECTIVE JUROR NO. 141: Medical needs.

4 MR. ROBERTS: Medical needs.

5 So you -- you don't review doctors' bills as

6 part of your work?

7 PROSPECTIVE JUROR NO. 141: Well, I do too,

8 yes.

9 MR. ROBERTS: You do?

10 PROSPECTIVE JUROR NO. 141: Doctor bills,

11 attorneys, yes.

12 MR. ROBERTS: Are you making decisions on

13 money, or are you just looking at medical need?

14 PROSPECTIVE JUROR NO. 141: Not money because

15 it's not from my pocket, so ... Yeah. I guess just

16 the more medical.

17 MR. ROBERTS: So -- so you're looking at

18 medical bills and medical need, and does this worker

19 need this surgery, and you're -- you're 51 percent sure

20 that he probably needs this surgery?

21 PROSPECTIVE JUROR NO. 141: When it comes to

22 surgical, I don't handle it. Yes. It's a different

23 adjustor. I give the -- the report or claim to the

24 supervisor, and she decides on whether who she going to

25 have handle the claim.

1 MR. ROBERTS: So you're just a little more
2 certain than not, a little bit more than not, are you
3 comfortable making that decision?

4 PROSPECTIVE JUROR NO. 141: I'm 95. Yes,
5 yes, 90, 95 percent.

6 MR. ROBERTS: What about 50, 60 percent?

7 PROSPECTIVE JUROR NO. 141: No. That's way
8 too low.

9 MR. ROBERTS: Thank you, Ms. Go.

10 Mr. Franco, Badge 96.

11 PROSPECTIVE JUROR NO. 096: Yes. My decision
12 is probably in the 95, 96. If all the facts and all
13 the interviews and both sides, if I know both sides of
14 the story, I'm fine. I'll make a decision, 95, 96
15 percent.

16 MR. ROBERTS: And what if -- what if you got
17 all the facts and you're just not quite sure. You're
18 right there.

19 PROSPECTIVE JUROR NO. 096: I'm comfortable
20 with the decision I make.

21 MR. ROBERTS: You're comfortable with that.

22 PROSPECTIVE JUROR NO. 096: Yes.

23 MR. ROBERTS: Do you consider yourself
24 decisive?

25 PROSPECTIVE JUROR NO. 096: Yes.

1 MR. ROBERTS: And do you prefer to make
2 decisions on your own, or do you prefer to talk them
3 through with a group?

4 PROSPECTIVE JUROR NO. 096: No, I can talk
5 with the group, and if it has to be by myself, I can
6 handle my decisions myself.

7 MR. ROBERTS: And -- and are you sometimes in
8 those group situations personally or professionally
9 when you're making decisions?

10 PROSPECTIVE JUROR NO. 096: Yes, both. Both.

11 MR. ROBERTS: You're usually the leader of
12 the group?

13 PROSPECTIVE JUROR NO. 096: Mostly the
14 leader.

15 MR. ROBERTS: Yes.

16 PROSPECTIVE JUROR NO. 096: Yes.

17 MR. ROBERTS: Okay. So one of the reasons
18 that I like to --

19 MR. TINDALL: May we approach, Your Honor?

20 THE COURT: Sure. Come on up.

21 (A discussion was held at the bench,
22 not reported.)

23 MR. ROBERTS: And I'm not going to be rude,
24 but I am going to start looking at my watch every now
25 and then. The judge wants to end about 4:45 today. So

1 I don't want to keep you over. But if I forget to
2 look, and you're not going to know what time it is
3 anyway unless you have your own watch. But you can
4 raise your hand and tell me it's 4:45 if I miss it.

5 So going back to -- to this, and this is the
6 reason why I wanted to talk to you about how you make
7 personal decisions, that the plaintiff proving a claim
8 has the burden of proving their case. And the Court is
9 going to give you an instruction at the end of the case
10 on what's called the "preponderance of the evidence."
11 And the Judge is going to explain to you how you go
12 about making that decision in this case under the law.

13 Now, my understanding, that's going to be, is
14 the more likely right than wrong, more likely true than
15 not true, that the facts we need to prove to establish
16 our case have to be more likely true than not true. So
17 we have the scale over there. As soon as the scale
18 tips, doesn't have to be 95 percent more likely true
19 than not true.

20 Now, because a lot of people like you make
21 decisions in their own life, with more certainty than
22 that, they think that may not be fair, and it's a
23 little too easy for plaintiffs to prove their case.
24 Some people are fine with it. Sounds fair to me. So
25 let's go through and talk about which of those people

1 you're closer to.

2 Does that sound like something that's too
3 easy? Or are you okay with that? Do you think that
4 sounds fair? We'll go the opposite order. And -- and
5 start with you, Mr. Franco.

6 PROSPECTIVE JUROR NO. 096: Okay. Badge
7 No. 096.

8 MR. ROBERTS: So tell me about how --
9 which -- which of those people are you closest to? You
10 think that's too easy?

11 PROSPECTIVE JUROR NO. 096: To make
12 decisions?

13 MR. ROBERTS: No. No. We're talking about
14 meeting our burden of proof in this case, proving to
15 you --

16 PROSPECTIVE JUROR NO. 096: Oh, no, no. It's
17 not going to be hard. It will be fine. I mean, having
18 the facts, and it's yes or no, right or wrong. Is it
19 fair or not fair? If it's fair, it's fair. If it's
20 wrong, it's wrong. It's not going to be hard.

21 MR. ROBERTS: And, you know, I'm sure -- I'm
22 hoping it's not going to be that close, and I'm sure
23 Mr. Mazzeo and Mr. Strassburg don't think it's going to
24 be that close. But you hear witnesses say one thing,
25 you hear another witness says a different thing, or you

1 hear conflicting evidence.

2 Are you comfortable if the scale tips and
3 it's more likely true than not true what we're saying,
4 you're comfortable --

5 PROSPECTIVE JUROR NO. 096: I'm comfortable
6 with the truth. It's true.

7 MR. ROBERTS: Very good.

8 What about you, Ms. Go?

9 PROSPECTIVE JUROR NO. 141: Same thing. I'll
10 be more comfortable with the truth than not the truth.

11 MR. ROBERTS: Okay. So even though you want
12 a lot more certainty in your personal life, you're okay
13 making a decision on that basis in the courtroom?

14 PROSPECTIVE JUROR NO. 141: Yes.

15 MR. ROBERTS: Thank you, Ms. Go.

16 And, Mr. Corum?

17 PROSPECTIVE JUROR NO. 093: What was the
18 question again? Can you restate it?

19 MR. ROBERTS: Yes. We talked about --
20 everyone here talked about what comfort level they
21 wanted with their own personal decisions in their life
22 that were important to them, and we talked to some
23 people about work decisions, and almost everyone wanted
24 to be 75, most people up around 90, 95 percent sure
25 before they made a decision.

1 And so the question is, if you're instructed
2 by the Court that we meet our burden, if -- if it's
3 more likely true than not true, if we tip that scale,
4 are you comfortable with that?

5 PROSPECTIVE JUROR NO. 093: Am I comfortable
6 with it being, say, something being more true than --
7 more likely true than not true?

8 MR. ROBERTS: Making a decision, yes, at
9 51 percent.

10 PROSPECTIVE JUROR NO. 093: Well, I probably
11 wouldn't be at first. But over time, you know, you
12 kind of work those things out. You know, you'll get --
13 you'll come to a solution, and then we'll talk it out
14 and actually make a decision upon that. So it could --
15 it could go either way.

16 MR. ROBERTS: Right. And -- and some people
17 get confused here because there's a different
18 instruction in a criminal case. In order to take away
19 someone's liberty, it has -- you have to prove their
20 case, the State proves their case beyond a reasonable
21 doubt, and that's a much higher level of certainty than
22 more likely true than not true. So in this case, it's
23 a civil case. It's about money.

24 And you -- you're comfortable applying that
25 standard?

1 PROSPECTIVE JUROR NO. 093: Yeah, just about
2 50, 60 percent, 40-60-type thing. And 60, go with 60.
3 I mean, yeah, I'm -- most likely I would be comfortable
4 with that.

5 MR. ROBERTS: Okay. Thank you, sir.
6 Appreciate that.

7 What about you, Mr. Inglett?

8 PROSPECTIVE JUROR NO. 91: 091.

9 MR. ROBERTS: Thank you, sir.

10 PROSPECTIVE JUROR NO. 091: I'm not sure I
11 quite understand the question. The more I hear, the
12 more it sounds like indecisiveness. I mean, I don't
13 feel like I would be at 51 percent. I don't feel like
14 you're going to prove a 51 percent case through that
15 process. It's either going to be, you know, one or the
16 other for me. I don't foresee being in a situation
17 like that. It's actually a little difficult for me to
18 process.

19 MR. ROBERTS: Let me explain it this way:
20 I'll give you an example. When the State is
21 prosecuting someone and seeking the death penalty, then
22 the prosecutor in voir dire is entitled to go in and
23 ask the jurors, you know, If the facts and evidence
24 justified it, could you consider the death penalty in
25 this case? Because the law allows the death penalty.

1 And so -- so then the prosecutor would -- would be able
2 to move to disqualify someone that, you're not the
3 right juror for this case if you can't even consider
4 something the law allows me to ask for. So in this
5 case, it's a civil case, and the criminal burden of
6 proof doesn't apply.

7 So if you would have trouble applying the
8 instructions that's going to be given you by the Court
9 and you would want -- you would hold the plaintiff to
10 proving its case to a higher level of certainty to be
11 beyond a reasonable doubt, that's something I want to
12 talk with you about if you think that you might be
13 inclined to do that. If you're comfortable following
14 the instructions by the Judge, and as I understand it,
15 it's going to be more likely than not, then tell me
16 about that. Just tell me how you feel about that.

17 Are you comfortable with it? Do you think
18 it's fair? Not fair? We're just talking. That help
19 at all?

20 PROSPECTIVE JUROR NO. 091: No.

21 MR. ROBERTS: No.

22 PROSPECTIVE JUROR NO. 091: You just made it
23 more murky. I mean, I appreciate you trying to draw a
24 parallel with a criminal case, but for me it's
25 plaintiff, defendant, or whether it's death penalty or

1 money. That's a big decision. It could be a
2 life-changing decision. So I mean, I'm having a hard
3 time following --

4 MR. ROBERTS: Okay.

5 PROSPECTIVE JUROR NO. 091: -- you know,
6 so ...

7 To me I'll look at the -- the case, the
8 argument objectively and, you know, make my decision.

9 MR. ROBERTS: I understand. And one thing
10 we're not allowed to do is ask you how you would decide
11 this case, because you don't have any evidence about
12 this case yet. So you can't tell me. It would be
13 wrong for you to have already decided how you're going
14 to do it. And I can't draw hypotheticals based on the
15 facts of this case because that's not proper under our
16 rules. So I've got to sort of draw analogies to
17 situations that aren't really applicable here just to
18 learn more about how you're thinking about those
19 issues.

20 Would you be a person who would have trouble
21 awarding my client damages if she had only proven her
22 case more likely than not? All of the evidence
23 weighed, not necessarily how strong your opinion was,
24 but if all of the evidence just barely tipped the
25 scale, would you be okay, well, she met her burden, I