

No. 71348

IN THE SUPREME COURT OF THE STATE OF NEVADA

---

Electronically Filed  
Oct 15 2018 01:10 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

EMILIA GARCIA,  
Appellant,

v.

ANDREA AWERBACH,  
Respondent.

---

**APPELLANT'S APPENDIX  
VOLUME X, BATES NUMBERS 2251 TO 2500**

---

D. Lee Roberts, Jr., Esq.  
Nevada Bar No. 8877  
Jeremy R. Alberts, Esq.  
Nevada Bar No. 10497  
Marisa Rodriguez, Esq.  
Nevada Bar No. 13234  
WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC.  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
Telephone: (702) 938-3838  
lroberts@wwhgd.com  
jalberts@wwhgd.com  
mrodriguez@wwhgd.com

Corey M. Eschweiler, Esq.  
Nevada Bar No. 6635  
Craig A. Henderson, Esq.  
Nevada Bar No. 10077  
GLEN J. LERNER & ASSOCIATES  
4795 South Durango Drive  
Las Vegas, Nevada 89147  
Telephone: (702) 877-1500  
ceschweiler@glenlerner.com  
chenderson@glenlerner.com

## ALPHABETICAL INDEX

<b>Vol</b>	<b>Page Numbers</b>	<b>Description</b>	<b>Date Filed</b>
I	22 – 28	Amended Complaint	01/14/2013
V	1031 – 1282	Appendix of Exhibits to Plaintiff's Motion for New Trial or, in the Alternative, for Additur	05/26/2016
V, VI	1304 – 1486	Appendix of Exhibits to Plaintiff's Renewed Motion for Judgment as a Matter of Law	05/26/2016
I	1 – 6	Complaint	03/25/2011
III	642 – 646	Decision and Order Denying Defendant Andrea Awerbach's Motion for Relief from Final Court Order	04/27/2015
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
I	164 – 165	Defendant Andrea Awerbach's Correction to Her Responses to Plaintiff's First Set of Requests for Admission	10/20/2014
III	630 – 641	Defendant Andrea Awerbach's Motion for Relief from Final Court Order	03/13/2015
I	96 – 163	Defendant Andrea Awerbach's Motion for Summary Judgment	11/08/2013
I	13 – 21	Defendant Andrea Awerbach's Responses to Request for Admissions	06/05/2012
I	29 – 35	Defendants' Answer to Amended Complaint	02/07/2013
I	7 – 12	Defendants' Answer to Complaint	01/23/2012
I	36 – 60	Defendants' Second Supplement to List of Witnesses and Documents and Tangible Items Produced at Early Case Conference	07/22/2013
I	61 – 95	Deposition of Andrea Awerbach [Vol. 1]	09/12/2013
I, II	166 – 391	Deposition of Andrea Awerbach [Vol. 2]	10/24/2014

## ALPHABETICAL INDEX

<b>Vol</b>	<b>Page Numbers</b>	<b>Description</b>	<b>Date Filed</b>
XXVI, XXVII	6441 – 6942	Deposition of Jared Awerbach	
III	581 – 616	Deposition of Teresa Meraz	01/08/2015
IV	948 – 997	Jury Instructions	03/08/2016
IV	998 – 1000	Jury Verdict	03/10/2016
VI, VII	1499 – 1502	Minute Order	08/22/2016
VII	1513 – 1554	Notice of Appeal	09/19/2017
III	647 – 649	Notice of Department Reassignment	08/27/2015
VII	1508 – 1512	Notice of Entry of Judgment Upon the Verdict	08/21/2017
III	617 – 622	Order Granting, in Part, and Denying, In Part, Plaintiff's Motion for Partial Summary Judgment that Defendant Jared Awerbach was Per Se Impaired Pursuant to NRS 484C.110(3); and Denying Defendant Jared Awerbach's Motion for Partial Summary Judgment on Punitive Damage Claims	01/28/2015
IV	946-947	Order Modifying Prior Order of Judge Allf	02/12/2016
VI	1487 – 1498	Order Re: Post –Trial Motions	08/12/2016
VII	1503 - 1507	Order Vacating Judgment as to Jared Awerbach only	08/21/2017
V	1001 – 1030	Plaintiff's Motion for New Trial or, in the Alternative, for Additur	05/26/2016
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
II, III	392 – 580	Plaintiff's Motion to Strike Defendant Andrea Awerbach's Answer	12/02/2014
V	1283 – 1303	Plaintiff's Renewed Motion for Judgment as a Matter of Law	05/26/2016
IV	933 – 945	Plaintiff's Trial Brief Regarding	02/10/2016

ALPHABETICAL INDEX

<b>Vol</b>	<b>Page Numbers</b>	<b>Description</b>	<b>Date Filed</b>
		Permissive Use	
IV	901 – 932	Reporter’s Transcript of Proceedings	09/15/2015
VII, VIII	1555 – 1765	Trial Transcript – 02/08/2016	11/10/2017
VIII	1766 – 1996	Trial Transcript – 02/09/2016	11/10/2017
VIII, IX, X	1997 – 2290	Trial Transcript – 02/10/2016	11/10/2017
X	2291 – 2463	Trial Transcript – 02/11/2016	11/10/2017
X, XI	2464 – 2698	Trial Transcript – 02/12/2016	11/10/2017
XI, XII	2699 – 2924	Trial Transcript – 02/16/2016	11/10/2017
XII, XIII	2925 – 3177	Trial Transcript – 02/17/2016	11/10/2017
XIII, XIV	3178 – 3439	Trial Transcript – 02/18/2016	11/10/2017
XIV, XV	3440 – 3573	Trial Transcript – 02/19/2016	11/10/2017
XV, XVI	3574 – 3801	Trial Transcript – 02/22/2016	11/10/2017
XVI, XVII	3802 – 4038	Trial Transcript – 02/23/2016	11/10/2017
XVII, XVIII	4039 – 4346	Trial Transcript – 02/24/2016	11/10/2017
XVIII, XIX	4347 – 4586	Trial Transcript – 02/25/2016	11/10/2017
XIX, XX	4578 – 4819	Trial Transcript – 02/26/2016	11/10/2017
XX, XXI	4820 – 5045	Trial Transcript – 03/01/2016	11/10/2017
XXI, XXII	5046 – 5361	Trial Transcript – 03/02/2016	11/10/2017
XXII, XXIII	5362 – 5559	Trial Transcript – 03/03/2016	11/10/2017
XXIII, XXIV	5560 – 5802	Trial Transcript – 03/04/2016	11/10/2017

ALPHABETICAL INDEX

<b>Vol</b>	<b>Page Numbers</b>	<b>Description</b>	<b>Date Filed</b>
XXIV	5803 – 5977	Trial Transcript – 03/07/2016	11/10/2017
XXIV, XXV	5978 – 6203	Trial Transcript – 03/08/2016	08/23/2018
XXV, XXVI	6204 – 6422	Trial Transcript – 03/09/2016	08/23/2018
XXVI	6423 – 6440	Trial Transcript – 03/10/2016	08/23/2018



## ALPHABETICAL INDEX

<b>Vol</b>	<b>Page Numbers</b>	<b>Description</b>	<b>Date Filed</b>
I	22 – 28	Amended Complaint	01/14/2013
V	1031 – 1282	Appendix of Exhibits to Plaintiff's Motion for New Trial or, in the Alternative, for Additur	05/26/2016
V, VI	1304 – 1486	Appendix of Exhibits to Plaintiff's Renewed Motion for Judgment as a Matter of Law	05/26/2016
I	1 – 6	Complaint	03/25/2011
III	642 – 646	Decision and Order Denying Defendant Andrea Awerbach's Motion for Relief from Final Court Order	04/27/2015
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
I	164 – 165	Defendant Andrea Awerbach's Correction to Her Responses to Plaintiff's First Set of Requests for Admission	10/20/2014
III	630 – 641	Defendant Andrea Awerbach's Motion for Relief from Final Court Order	03/13/2015
I	96 – 163	Defendant Andrea Awerbach's Motion for Summary Judgment	11/08/2013
I	13 – 21	Defendant Andrea Awerbach's Responses to Request for Admissions	06/05/2012
I	29 – 35	Defendants' Answer to Amended Complaint	02/07/2013
I	7 – 12	Defendants' Answer to Complaint	01/23/2012
I	36 – 60	Defendants' Second Supplement to List of Witnesses and Documents and Tangible Items Produced at Early Case Conference	07/22/2013
I	61 – 95	Deposition of Andrea Awerbach [Vol. 1]	09/12/2013
I, II	166 – 391	Deposition of Andrea Awerbach [Vol. 2]	10/24/2014

## ALPHABETICAL INDEX

<b>Vol</b>	<b>Page Numbers</b>	<b>Description</b>	<b>Date Filed</b>
XXVI, XXVII	6441 – 6942	Deposition of Jared Awerbach	
III	581 – 616	Deposition of Teresa Meraz	01/08/2015
IV	948 – 997	Jury Instructions	03/08/2016
IV	998 – 1000	Jury Verdict	03/10/2016
VI, VII	1499 – 1502	Minute Order	08/22/2016
VII	1513 – 1554	Notice of Appeal	09/19/2017
III	647 – 649	Notice of Department Reassignment	08/27/2015
VII	1508 – 1512	Notice of Entry of Judgment Upon the Verdict	08/21/2017
III	617 – 622	Order Granting, in Part, and Denying, In Part, Plaintiff's Motion for Partial Summary Judgment that Defendant Jared Awerbach was Per Se Impaired Pursuant to NRS 484C.110(3); and Denying Defendant Jared Awerbach's Motion for Partial Summary Judgment on Punitive Damage Claims	01/28/2015
IV	946-947	Order Modifying Prior Order of Judge Allf	02/12/2016
VI	1487 – 1498	Order Re: Post –Trial Motions	08/12/2016
VII	1503 - 1507	Order Vacating Judgment as to Jared Awerbach only	08/21/2017
V	1001 – 1030	Plaintiff's Motion for New Trial or, in the Alternative, for Additur	05/26/2016
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
II, III	392 – 580	Plaintiff's Motion to Strike Defendant Andrea Awerbach's Answer	12/02/2014
V	1283 – 1303	Plaintiff's Renewed Motion for Judgment as a Matter of Law	05/26/2016
IV	933 – 945	Plaintiff's Trial Brief Regarding	02/10/2016



ALPHABETICAL INDEX

<b>Vol</b>	<b>Page Numbers</b>	<b>Description</b>	<b>Date Filed</b>
		Permissive Use	
IV	901 – 932	Reporter’s Transcript of Proceedings	09/15/2015
VII, VIII	1555 – 1765	Trial Transcript – 02/08/2016	11/10/2017
VIII	1766 – 1996	Trial Transcript – 02/09/2016	11/10/2017
VIII, IX, X	1997 – 2290	Trial Transcript – 02/10/2016	11/10/2017
X	2291 – 2463	Trial Transcript – 02/11/2016	11/10/2017
X, XI	2464 – 2698	Trial Transcript – 02/12/2016	11/10/2017
XI, XII	2699 – 2924	Trial Transcript – 02/16/2016	11/10/2017
XII, XIII	2925 – 3177	Trial Transcript – 02/17/2016	11/10/2017
XIII, XIV	3178 – 3439	Trial Transcript – 02/18/2016	11/10/2017
XIV, XV	3440 – 3573	Trial Transcript – 02/19/2016	11/10/2017
XV, XVI	3574 – 3801	Trial Transcript – 02/22/2016	11/10/2017
XVI, XVII	3802 – 4038	Trial Transcript – 02/23/2016	11/10/2017
XVII, XVIII	4039 – 4346	Trial Transcript – 02/24/2016	11/10/2017
XVIII, XIX	4347 – 4586	Trial Transcript – 02/25/2016	11/10/2017
XIX, XX	4578 – 4819	Trial Transcript – 02/26/2016	11/10/2017
XX, XXI	4820 – 5045	Trial Transcript – 03/01/2016	11/10/2017
XXI, XXII	5046 – 5361	Trial Transcript – 03/02/2016	11/10/2017
XXII, XXIII	5362 – 5559	Trial Transcript – 03/03/2016	11/10/2017
XXIII, XXIV	5560 – 5802	Trial Transcript – 03/04/2016	11/10/2017

## ALPHABETICAL INDEX

<b>Vol</b>	<b>Page Numbers</b>	<b>Description</b>	<b>Date Filed</b>
XXIV	5803 – 5977	Trial Transcript – 03/07/2016	11/10/2017
XXIV, XXV	5978 – 6203	Trial Transcript – 03/08/2016	08/23/2018
XXV, XXVI	6204 – 6422	Trial Transcript – 03/09/2016	08/23/2018
XXVI	6423 – 6440	Trial Transcript – 03/10/2016	08/23/2018

1 of -- now, when you say "back," was it mid back, lower  
2 back?

3 PROSPECTIVE JUROR NO. 146: Lower back.

4 MR. MAZZEO: Okay. And do you recall what  
5 injuries he sustained?

6 PROSPECTIVE JUROR NO. 146: I'm not  
7 specifically -- we were just dating at the time, so I  
8 don't know exactly what it was. I know that he saw a  
9 chiropractor for several months afterwards.

10 MR. MAZZEO: And then did -- did his  
11 condition heal after a while?

12 PROSPECTIVE JUROR NO. 146: Yes.

13 MR. MAZZEO: Okay. He didn't -- did he have  
14 any -- if I was to say X-rays or MRIs --

15 PROSPECTIVE JUROR NO. 146: Yes, he did.

16 MR. MAZZEO: -- did he have imaging studies  
17 done?

18 PROSPECTIVE JUROR NO. 146: Yes.

19 MR. MAZZEO: And do you know if that showed  
20 any injury to his spine, vertebrae, the disks or --

21 PROSPECTIVE JUROR NO. 146: I know that he  
22 had images done at the beginning, and then again toward  
23 the end of his treatment. So I don't know if there was  
24 an injury that showed up originally and then they were  
25 checking for it to be done. I don't -- it's -- it's

1 been at least 15 years. And I -- like I said, we were  
2 dating at the time. So I don't remember. I don't  
3 really.

4 MR. MAZZEO: Okay. And -- and during the  
5 time that he had received the treatment for the time  
6 that he experienced the -- the back pain, did it affect  
7 his activities of daily life at all?

8 PROSPECTIVE JUROR NO. 146: Yes. He was  
9 working as a pizza delivery driver at the time, and he  
10 couldn't carry as much.

11 MR. MAZZEO: And was that limited? Did there  
12 come a time when he could go back to his regular  
13 activities?

14 PROSPECTIVE JUROR NO. 146: Yes.

15 MR. MAZZEO: About how much time passed?

16 PROSPECTIVE JUROR NO. 146: I'm not sure. I  
17 mean, I know that initially it severely limited and  
18 that it got better over time until it was no longer a  
19 factor.

20 MR. MAZZEO: Okay. Sure. Didn't need  
21 treatment after a while?

22 PROSPECTIVE JUROR NO. 146: Yes.

23 MR. MAZZEO: All right. Fine. And didn't  
24 complain to you, as far as you recall, about having --  
25 having any limitations or aches or pains from that

1 accident?

2 PROSPECTIVE JUROR NO. 146: No.

3 MR. MAZZEO: Okay. And -- and then you said  
4 that you were in, I guess, couple too?

5 PROSPECTIVE JUROR NO. 146: I've been in a  
6 couple fender benders where nobody was injured.

7 MR. MAZZEO: Any property damage to your car?

8 PROSPECTIVE JUROR NO. 146: One, my car was  
9 totaled.

10 MR. MAZZEO: Okay.

11 PROSPECTIVE JUROR NO. 146: But it was a  
12 2-mile-an-hour impact where I was stopped at a turn  
13 signal and somebody backed into my car because she  
14 didn't see it and completely crushed the front end.

15 MR. MAZZEO: And that totaled the car.

16 PROSPECTIVE JUROR NO. 146: Yeah. Geo Metros  
17 do not survive 2-mile-an-hour crashes, especially when  
18 you have a very large truck backing into you.

19 MR. MAZZEO: Or if you kick them, I guess.

20 PROSPECTIVE JUROR NO. 146: Got great gas  
21 mileage.

22 MR. MAZZEO: Okay. There you go. Positives  
23 and negatives. Yeah. Okay.

24 And so -- and then your mom was involved  
25 in -- in a serious accident.

1 PROSPECTIVE JUROR NO. 146: Yeah. Well, it  
2 was before I was born, actually. She was in a very  
3 serious car accident that had her in the hospital for  
4 several months in traction and leg braces and has  
5 caused lasting back problems and leg problems.

6 MR. MAZZEO: Permanent problems for --  
7 chronic problems that she's had.

8 PROSPECTIVE JUROR NO. 146: Yeah. She has to  
9 wear special shoes.

10 MR. MAZZEO: And that happened years ago?

11 PROSPECTIVE JUROR NO. 146: In the '60s.  
12 That long.

13 MR. MAZZEO: Okay. And -- and the way the  
14 cars were built back in the '60s, I don't know if you  
15 remember, but --

16 PROSPECTIVE JUROR NO. 146: I wasn't there  
17 then.

18 MR. MAZZEO: I was. And so they were built  
19 differently. They had these bench seats instead of  
20 buckets seats, and they didn't have the shoulder  
21 harness. They just had the seat belts, lap belt --

22 PROSPECTIVE JUROR NO. 146: And whether or  
23 not she was wearing it even --

24 MR. MAZZEO: Right. That's -- yeah that's  
25 true.

1           PROSPECTIVE JUROR NO. 146: Wasn't required  
2 back then so much. Yeah, I don't know what the  
3 particular conditions were at the accident. I just  
4 know that she was in a car accident, and the result was  
5 pretty severe.

6           MR. MAZZEO: Sure. Okay. And anything about  
7 those accidents that you're familiar with, that you  
8 were involved in and -- or that you're familiar with  
9 that would play any role in your ability to sit on a  
10 case like this?

11           PROSPECTIVE JUROR NO. 146: No, I don't think  
12 so.

13           MR. MAZZEO: Okay. And I meant to ask the  
14 same question of Mr. Brandon, Mr. Jensen, Mr. Foerstel.

15           Anything about the accidents that you were  
16 involved in or familiar with that might impact your  
17 ability to sit on this case? Okay. Just wanted to  
18 make sure. Thank you.

19           Moving on to Ms. Golden. I think you raised  
20 your hand.

21           PROSPECTIVE JUROR NO. 036: No, I didn't. I  
22 just had fender benders. No injuries.

23           MR. MAZZEO: No injuries. Okay.

24           When you say "fender bender," how would you  
25 characterize that? As -- in terms of property damage.

1 PROSPECTIVE JUROR NO. 036: Yeah, just mainly  
2 it's been my daughter running into the garage door.

3 MR. MAZZEO: Literally her body running into  
4 it. Okay.

5 PROSPECTIVE JUROR NO. 036: One time she  
6 pulled -- pulled away from the gas tank with without  
7 pulling out the nozzle. That kind of property damage.  
8 So it hasn't really been major.

9 MR. MAZZEO: Oh, okay. All right. Thank  
10 you.

11 Mr. Cyganek, did you raise your hand  
12 regarding that?

13 PROSPECTIVE JUROR NO. 106: Yes, I did.  
14 December 21, 1997 -- Badge 106 -- I was involved in a  
15 rollover accident.

16 MR. MAZZEO: A rollover?

17 PROSPECTIVE JUROR NO. 106: Yeah, rolled  
18 about 75 miles an hour. I wasn't driving. My wife  
19 was. Only had two of the kids. The other four were at  
20 home. We were coming back from Arizona to Vegas, and  
21 at the time we flipped and rolled, we were in Kingman  
22 in the two-lane highway doing 75, 80, you know, the  
23 speed limit. By the time the truck stopped, we're  
24 flipping facing back going towards Arizona.

25 So I was obviously in shock because I had my



1 seat belt on, and I don't know what window I went out  
2 of. But it totaled a \$40,000 vehicle that had  
3 brand-new tires, everything on it, top of the line, you  
4 name it. So from that day on, it made me realize, made  
5 me slow down a little bit. Somebody upstairs was  
6 looking out for me.

7           So other than that, I broke my femur bone, my  
8 pelvic bone. I have artificial hip replacement,  
9 titanium plate, so -- but I get up every day. I think  
10 it was five days later -- I was in traction right away,  
11 flown in Flight For Life, didn't enjoy the helicopter  
12 ride, me or my little son because we were probably in  
13 shock or whatever. But they put me back together, and  
14 about five days later right after surgery, I'm up  
15 walking the next day. High tolerance of pain. Don't  
16 blame nobody because it was a single-car accident.

17           I -- I have to make my wife understand that  
18 she did nothing wrong, but she was the only one that  
19 was awake through the whole thing.

20           MR. MAZZEO: Wow. Okay.

21           PROSPECTIVE JUROR NO. 106: So other than  
22 that, it's just -- I'm okay. I'm good with it.

23           MR. MAZZEO: So you -- you had your hip  
24 replaced.

25           What else did you say?

1 PROSPECTIVE JUROR NO. 106: The pelvic, the  
2 femur bone.

3 MR. MAZZEO: Femur?

4 PROSPECTIVE JUROR NO. 106: Yes.

5 MR. MAZZEO: Wow.

6 PROSPECTIVE JUROR NO. 106: So I don't know  
7 where I went out, but obviously I was in shock because  
8 when you go into something like that, your body  
9 automatically goes into shock.

10 MR. MAZZEO: But you said the next day, you  
11 were up and walking --

12 PROSPECTIVE JUROR NO. 106: Five days later  
13 because I was in traction. My boss called me, and I  
14 remember answering -- this is what they told me, Oh,  
15 I'll be into work, I'll be a little bit late. So I'm  
16 very dedicated to working and doing the right thing,  
17 setting an example, whatever.

18 So with that said, I had hip surgery.  
19 Wonderful doctor. He's in Boise, Idaho, Roman  
20 Schwartzman and his father put together that -- you can  
21 picture that thing that goes on the leg with the  
22 needles, he invented that. But I learned from that,  
23 that never had an injury -- you know, you roll your  
24 ankle playing basketball, jumping high, trying to grab  
25 the rim and dunk over somebody that's a foot taller

1 than you. But all that said and done, it made you  
2 realize, slow down a little bit.

3 And -- and the biggest thing is always -- is  
4 my wife, making her understand she did nothing wrong.  
5 Tire experts came out, checked out brand-new tires that  
6 didn't even have 1,000 miles on it. Everything done  
7 right. But there's just -- they couldn't figure what  
8 caused the accident.

9 MR. MAZZEO: Oh, okay.

10 PROSPECTIVE JUROR NO. 106: So all I remember  
11 is waking up. And obviously, you're flipping and  
12 rolling, you're not -- you know, you're waking up and  
13 it's like, Wow. I remember kind of grabbing the wheel  
14 because you're fishtailing, a big Suburban, 454 engine,  
15 every option on it, beautiful, you name it. And that's  
16 all I remember.

17 MR. MAZZEO: Okay. Well, thanks for sharing.

18 PROSPECTIVE JUROR NO. 106: Absolutely.

19 MR. MAZZEO: How did -- now, the injuries  
20 that you did sustain from that, did that affect your  
21 activities of life in any way?

22 PROSPECTIVE JUROR NO. 106: Not at all,  
23 because somebody upstairs was looking out for me, and  
24 the rest of the family that was there. We had my  
25 youngest son and my fourth oldest son with us. He was

1 seven at the time. My youngest son was about three.

2 And like I said, just -- I was flown in  
3 Flight For Life. That's funny because I was 43 years  
4 old at the time, and the officer -- Arizona Highway  
5 Patrol was trying to talk to me, and I'm saying I'm 23.  
6 I live back in Griffith, Indiana, and, you know -- so  
7 it was 20 years different. My wife's going, He's in  
8 shock. They were going to send out the ranger. The  
9 ranger did come out, send out the Flight For Life. My  
10 wife and my youngest son went to Kingman, a medical  
11 center. I'm sorry -- my next -- me and the youngest  
12 son flew in Flight For Life. My next oldest son went  
13 with my wife to Kingman. Everything was handled great.

14 All I remember is sitting on the side of the  
15 road. I can't move. No pain. I knew something was  
16 wrong. Covered me up with the blanket. You got a semi  
17 blocking the highway so I don't get run over. But  
18 other than that, I'm grateful. I'm blessed. I feel it  
19 wasn't my time.

20 And basically it just -- I don't want say it  
21 brought the family closer together. But you can do  
22 everything right in that particular situation, and  
23 there's nothing you can do but deal with the  
24 consequences after that.

25 MR. MAZZEO: Tragedy sometimes does bring

1 people closer together. So -- but with the -- I just  
2 wanted to ask you about the hip replacement and the  
3 femur replacement.

4 Did that -- did you require a certain period  
5 of physical therapy?

6 PROSPECTIVE JUROR NO. 106: Yeah, I had that.  
7 But what happened is usually -- I want to say about  
8 seven months out of work, it reached a point where they  
9 couldn't do anything more for me because when you pinch  
10 your sciatic nerve from your hip all the way down to  
11 wherever it stops at, it can take years to generate  
12 back. Okay. That's something a great doctor can't  
13 forecast that. I accept that. I wear a little brace  
14 on my ankle, so I'm not walking like Frankenstein or  
15 trip myself.

16 I'm okay with it. I have a high tolerance of  
17 pain. I blame nobody. It just happened. I could have  
18 been driving the vehicle and it happened.

19 MR. MAZZEO: Of course. Of course.

20 And you said it didn't impede your ability to  
21 play basketball?

22 PROSPECTIVE JUROR NO. 106: Well, after that,  
23 I couldn't really jump because I'm small. I'm  
24 five-foot-eight, but I like playing guys about a foot  
25 taller than me, because --

1           MR. MAZZEO: Mr. Roberts wants to take you  
2 on.

3           PROSPECTIVE JUROR NO. 106: He's too big.  
4           What I'm saying is you play according to your  
5 competition, but you play the right way.

6           MR. MAZZEO: You want to be challenged.

7           PROSPECTIVE JUROR NO. 106: Exactly. So I'm  
8 a big-time sports watcher. I don't really participate  
9 because -- I wish we had all three sports here in  
10 Vegas, but we don't because of the gambling. UNLV  
11 graduate, big-time UNLV. That's my relaxation. I work  
12 a lot. Other than that, whatever other time I have  
13 left, besides sleeping and work.

14          MR. MAZZEO: Great. Thank you. Thank you  
15 for your answer. Appreciate it.

16          Moving on to the next row. Ms. Abeles.

17          PROSPECTIVE JUROR NO. 043: I'm going to ask  
18 you, and I might not be able to ask the question. What  
19 was your initial question when you were just asking us?

20          MR. MAZZEO: Oh, okay. Yeah, no, that's  
21 fine.

22          PROSPECTIVE JUROR NO. 043: I'm sorry.

23          MR. MAZZEO: And, you know, I didn't repeat  
24 it every time. They kind of -- some of the jurors up  
25 there just went with it.

1 But the question was: Were you ever  
2 involved -- you or yourself or family member or close  
3 friend involved in a motor vehicle accident? If so, I  
4 wanted to know kind of the circumstances surrounding  
5 it.

6 PROSPECTIVE JUROR NO. 043: Okay. Yes, when  
7 I was very young. And I don't know if that was on the  
8 questionnaire. If it was, I don't know if I answered  
9 it right. I was probably five or six years old. Mom  
10 got a brand new Volvo. Dad got the Mercedes. Mommy  
11 got the Volvo. I was young, you know, back in the  
12 early '70s. You know, you're sitting in the front  
13 seat. We were tapped. Those cars were made of steel.  
14 Nothing happened. No nothing. And I -- my father's  
15 not alive right now. He never knew about it, so ...

16 MR. MAZZEO: Other than -- and no injuries,  
17 no -- you didn't --

18 PROSPECTIVE JUROR NO. 043: Nothing.

19 MR. MAZZEO: Other than that, any other  
20 accidents that you yourself or a family member were  
21 involved in?

22 PROSPECTIVE JUROR NO. 043: No.

23 MR. MAZZEO: Okay. Thank you.

24 Mr. Gallegos.

25 PROSPECTIVE JUROR NO. 160: Yes. 160. Two

1 minor accidents. Got rear-ended by a little pickup,  
2 four guys in the cab of this pickup rear-ended me at a  
3 stoplight and then took off. So it was a  
4 rear-end-and-run. And the second time, I wasn't paying  
5 attention and I rear-ended someone. No injuries in  
6 either -- in either case.

7 MR. MAZZEO: What kind of property damage in  
8 the second one?

9 PROSPECTIVE JUROR NO. 160: None in the  
10 second one, miraculously. But the first one, my whole  
11 bed of my little truck got pushed in and crunched,  
12 so ...

13 MR. MAZZEO: Okay. And you -- and they took  
14 off, so you didn't have any recourse for that. Okay.  
15 All right. Thank you.

16 And, Mr. Evans, I'm not sure -- I don't  
17 remember who raised their hand in the second row but --

18 PROSPECTIVE JUROR NO. 053: Yeah. I had a  
19 very minor fender bender.

20 MR. MAZZEO: Okay.

21 PROSPECTIVE JUROR NO. 053: And you never  
22 asked me about the marijuana.

23 MR. MAZZEO: I didn't? Okay. My apologies,  
24 and I can get back to that. Well, I'll ask you now  
25 since you raised it.



1           Are there any concerns we should have with  
2 regard to anything that you've heard in this case about  
3 a finding of -- of impairment by marijuana metabolite?

4           PROSPECTIVE JUROR NO. 053: Aside from not  
5 knowing what metabolite is -- I know you can't  
6 answer -- I'd have difficulty with somebody using  
7 marijuana and then driving.

8           MR. MAZZEO: And then driving. Okay.

9           PROSPECTIVE JUROR NO. 053: But -- or  
10 alcohol, but that's not the case here.

11          MR. MAZZEO: Okay. And -- and why don't you  
12 since -- and then I'll continue with the questioning  
13 about motor vehicle accidents. And I apologize.  
14 Thanks for letting me know. That's exactly what I want  
15 jurors to do. If I missed something with someone or if  
16 you -- if an idea pops in your mind, Oh, I wanted to  
17 say this, please do that. Just tell me, you know.

18          So tell me what -- what -- why should we have  
19 concerns about your -- your opinion about that?

20          PROSPECTIVE JUROR NO. 053: Well, I guess I  
21 would have more problems on the -- on the punitive  
22 damages part of the case.

23          MR. MAZZEO: Okay.

24          PROSPECTIVE JUROR NO. 053: If I got put on.

25          MR. MAZZEO: The punitive damages. Sure.

1           And -- and why -- what problems would you  
2 have? Let me just see my notes here.

3           PROSPECTIVE JUROR NO. 053: Just because I  
4 have a very strong, I guess, prejudice against people  
5 that drink or drive or smoke and drive.

6           MR. MAZZEO: So do you have -- and I  
7 appreciate your candor. Thank you very much.

8           PROSPECTIVE JUROR NO. 053: Yeah.

9           MR. MAZZEO: So do you have a -- do you have  
10 any fixed ideas in your mind or -- or preconceptions in  
11 your mind about punishing someone without hearing any  
12 evidence?

13          PROSPECTIVE JUROR NO. 053: Well, I have to  
14 hear some evidence.

15          MR. MAZZEO: Okay. Okay. But you think that  
16 you might bring your -- your predisposition into the --  
17 into this case --

18          PROSPECTIVE JUROR NO. 053: Yeah.

19          MR. MAZZEO: -- when the evidence is  
20 presented and -- and not base a decision simply on the  
21 evidence. But you're going to base it on your own  
22 preconceived feelings about driving.

23          PROSPECTIVE JUROR NO. 053: Well, you said  
24 earlier, you know, like the starting line.

25          MR. MAZZEO: Yes.

1 PROSPECTIVE JUROR NO. 053: Well, I guess you  
2 would start, like, one or maybe two steps behind.

3 MR. MAZZEO: The plaintiff.

4 PROSPECTIVE JUROR NO. 053: Yeah.

5 MR. MAZZEO: Okay. And -- and, again, I  
6 appreciate you saying that. Anything that you say or  
7 anyone says doesn't offend. I mean, we've heard it.  
8 Both sides have heard jurors say various things. It  
9 doesn't offend -- offend us, but we have a job to do to  
10 kind of figure this out and -- and ask you to be candid  
11 with us. So certainly appreciate it. Yeah.

12 So -- and -- and I use that analogy because  
13 it's something that, you know, it's easy to visualize,  
14 starting line. And if we're starting behind, then that  
15 puts the defense at a disadvantage before you hear any  
16 evidence; right?

17 PROSPECTIVE JUROR NO. 053: Yeah.

18 MR. MAZZEO: Okay. All right. And is  
19 that -- is that -- the defense starting behind the  
20 plaintiff -- just with regard to that issue of punitive  
21 damages or with respect to any evidence with respect to  
22 the start of this case?

23 PROSPECTIVE JUROR NO. 053: The damages.

24 MR. MAZZEO: Any damages?

25 PROSPECTIVE JUROR NO. 053: Well, the

1 punitive.

2 MR. MAZZEO: Punitive damages?

3 PROSPECTIVE JUROR NO. 053: Okay. Now,  
4 they're seeking punitive and compensatory.  
5 Compensatory are for the injuries that were sustained,  
6 medical, et cetera.

7 PROSPECTIVE JUROR NO. 053: Yeah. I don't  
8 think I would have a problem with that part.

9 MR. MAZZEO: Okay. And now, my -- my  
10 concern, since you brought this up, is whether you  
11 because of this preconceived notion about knowing  
12 that -- that a driver on the defendant's side has a  
13 finding of driving while impaired by marijuana --  
14 marijuana metabolite, will that -- do you think that  
15 might affect the way you look at the evidence that's  
16 presented during the compensatory stage? Because --  
17 and I ask you -- let me ask you this -- let me -- let  
18 me try to clarify.

19 The evidence that you're going to receive  
20 during the compensatory stage is going to have an  
21 impact and will cross over to both the injuries as well  
22 as it will be evidence concerning the circumstances of  
23 the accident. So it's going to cover both punitive and  
24 compensatory damages.

25 So in your mind, since you offered that and

1 brought that up, should we have reason to be concerned  
2 that as you're listening to the evidence from  
3 witnesses, you already have -- plaintiff is already  
4 starting a foot ahead of the defendant?

5 PROSPECTIVE JUROR NO. 053: Yeah.

6 MR. MAZZEO: With respect to the overall  
7 case?

8 PROSPECTIVE JUROR NO. 053: Yeah, I would  
9 agree with that one.

10 MR. MAZZEO: And I thank you and appreciate  
11 your candor in telling us that.

12 And -- and along the same lines, so you're  
13 giving the plaintiff almost the benefit of the doubt  
14 with respect to --

15 PROSPECTIVE JUROR NO. 053: Yes.

16 MR. MAZZEO: -- the way you're going to view  
17 the evidence in the case?

18 PROSPECTIVE JUROR NO. 053: Yes.

19 MR. MAZZEO: And do you think that because of  
20 that notion and -- and the bias that you have with  
21 respect to that one issue, that it -- it might be  
22 better for you to sit on a different case than -- than  
23 on this case?

24 PROSPECTIVE JUROR NO. 053: Yes.

25 MR. MAZZEO: Okay. And do you think that

1 you -- I mean, you -- you would carry that bias in any  
2 case in the court system that involves driving while  
3 impaired; right?

4 PROSPECTIVE JUROR NO. 053: Yes.

5 MR. MAZZEO: Whether by alcohol, marijuana  
6 metabolite --

7 PROSPECTIVE JUROR NO. 053: It doesn't really  
8 matter.

9 MR. MAZZEO: Doesn't matter. Okay. I  
10 certainly appreciate it. Thank you.

11 Judge, can we approach please?

12 THE COURT: Yep.

13 (A discussion was held at the bench,  
14 not reported.)

15 THE COURT: All right. Mr. Roberts is going  
16 to ask you just a couple of questions, sir.

17 PROSPECTIVE JUROR NO. 053: Okay.

18

19 VOIR DIRE EXAMINATION

20 MR. ROBERTS: Hi, Mr. Evans.

21 PROSPECTIVE JUROR NO. 053: Hi.

22 MR. ROBERTS: So the -- the bias that you're  
23 discussing --

24 PROSPECTIVE JUROR NO. 053: Yes.

25 MR. ROBERTS: -- and that you just discussed

1 with counsel, are you biased generally toward people  
2 who drive while impaired, or do you hold any bias  
3 toward the defendant, Mr. Awerbach, personally?

4 PROSPECTIVE JUROR NO. 053: Not personally.  
5 But just in general.

6 MR. ROBERTS: Just in general.

7 PROSPECTIVE JUROR NO. 053: I don't know his  
8 client at all, so ...

9 MR. ROBERTS: Do you consider your bias  
10 against people that drive impaired to be irrational, or  
11 do you think it's based on some very rational thought  
12 process that you've gone through?

13 PROSPECTIVE JUROR NO. 053: I just have real  
14 strong opinions about smoking or -- and driving  
15 or -- or smoking and drinking then driving. You  
16 shouldn't do one or the other.

17 MR. ROBERTS: And your opinions are people  
18 shouldn't do it.

19 PROSPECTIVE JUROR NO. 053: Yeah.

20 MR. ROBERTS: So it's fair to say you agree  
21 with the law.

22 PROSPECTIVE JUROR NO. 053: Yeah.

23 MR. ROBERTS: Okay. Now, now that you're in  
24 this case --

25 PROSPECTIVE JUROR NO. 053: Yeah.

1           MR. ROBERTS:  -- you're going to be asked to  
2 award damages for medical bills and pain and suffering,  
3 compensatory damages.

4           PROSPECTIVE JUROR NO. 053:  Yeah.

5           MR. ROBERTS:  Now, you're probably going to  
6 be instructed by the Court that you're only supposed to  
7 consider the amount of money it takes to balance any  
8 harms or damages that are shown and proven by the  
9 evidence, and you're not going to consider outside  
10 factors, who the -- who the defendants are, whether you  
11 you're happy about their conduct, whether you have  
12 sympathy for my client.  You can't consider those  
13 factors.  You can just consider the harms and losses  
14 and balance them.

15           Are you going to be able to set aside your  
16 balance -- your bias and just consider the harms and  
17 losses and weigh them out fairly and impartially, or do  
18 you think you're going to award extra money because  
19 you're mad at what the defendants did?  Which -- which  
20 one of those are you closest to?  And then explain to  
21 me why.

22           MR. STRASSBURG:  Objection.  Defendants --

23           MR. MAZZEO:  Objection.  It's a misstatement,  
24 Judge.  May we have a sidebar?

25           THE COURT:  Come on up.



1 (A discussion was held at the bench,  
2 not reported.)

3 THE COURT: All right. We're going to strike  
4 that question. Mr. Roberts is going to try again.

5 MR. ROBERTS: I was plural. The judge looked  
6 it up. I said defendants. I'm just talking about --  
7 we're talking about someone who used marijuana and  
8 drove.

9 So just singular defendant, Mr. Awerbach. So  
10 going back to my question, and I'll try to be -- you  
11 know, make it a little shorter and easier to  
12 understand.

13 MR. STRASSBURG: Judge, objection.  
14 Permission.

15 THE COURT: Okay.

16 (A discussion was held at the bench,  
17 not reported.)

18 THE COURT: Okay. That will be stricken as  
19 well. He's going to try again.

20 MR. ROBERTS: You know every time this  
21 happens, it's after 4:45, so ...

22 PROSPECTIVE JUROR NO. 003: It's all right.  
23 We made arrangements. We're good till 6:00.

24 MR. ROBERTS: You've talked about bias. Let  
25 me ask this really simply.

1           Are you going to be able to set aside those  
2 biases when it comes time to determine the amount of  
3 compensatory damage?

4           PROSPECTIVE JUROR NO. 053: No, I won't have  
5 any problem with that.

6           MR. ROBERTS: You won't have any problem with  
7 that? You'll be able to set it aside?

8           PROSPECTIVE JUROR NO. 053: Yeah.

9           MR. ROBERTS: Second thing, punitive damages,  
10 you said they might cause a problem.

11          PROSPECTIVE JUROR NO. 053: Yes.

12          MR. ROBERTS: I'm not going to tell you what  
13 they are, but I'm going to tell you that they're  
14 additional things the judge is going to tell you I will  
15 have to prove in order for you to consider to award  
16 punitive damages. In addition to the mere fact that he  
17 was found to have a certain level of marijuana  
18 metabolite in his blood, I'm going to have to prove  
19 some additional things.

20          Now, is your bias that you've expressed going  
21 to prevent you from fairly and impartially considering  
22 whether I meet my burden of proof on those additional  
23 things?

24          PROSPECTIVE JUROR NO. 053: No, it won't have  
25 no effect on that.

1           MR. ROBERTS: And if -- if I don't meet my  
2 burden of proof, do you think you might want to award  
3 punitive damages anyway? Or can you follow the  
4 instructions of the Court?

5           PROSPECTIVE JUROR NO. 053: I would follow  
6 the instructions of the Court.

7           MR. ROBERTS: Do you think that the bias that  
8 you have against -- or that you've expressed, without  
9 me characterizing it, would prevent you or  
10 substantially impair you from following the  
11 instructions of the Court and applying that to the  
12 facts of the case as you hear them?

13           PROSPECTIVE JUROR NO. 053: I don't think so.

14           MR. ROBERTS: Okay. Thank you, sir.

15           Thank you, Your Honor, that's all I have.

16           THE COURT: I'm going to ask you a question.  
17 Okay?

18           PROSPECTIVE JUROR NO. 053: Sure.

19           THE COURT: There's a difference between  
20 having a bias against a person and against an action.  
21 The question I guess I have for you: Do you have a  
22 bias against individuals who are found to have exceeded  
23 the legal limit by marijuana metabolites, or are you --  
24 do you have a bias against the action that that person  
25 did that resulted in that finding?

1 PROSPECTIVE JUROR NO. 053: The action.

2 THE COURT: Okay. All right. Folks, we're  
3 going to call it a night. I'm going to -- I have a  
4 calendar in the morning. It's actually about this  
5 thick (indicating). So we're not going to be able to  
6 start till about 10:30.

7 During the break this evening, you're  
8 instructed not to talk with each other or with anyone  
9 else about any subject or issue connected with the  
10 trial. You're not to read, watch, or listen to any  
11 report of or commentary on the trial by any person  
12 connected with the case or by any medium of  
13 information, including, without limitation, newspaper,  
14 television, the Internet, or radio. You're not to  
15 conduct any research on your own which means you cannot  
16 talk with others, Tweet others, text others, Google  
17 issues, or conduct any other kind of book or computer  
18 research with regard to any issue, party, witness, or  
19 attorney involved in the case. You are not to form or  
20 express any opinion on any subject connected with the  
21 trial until the case is finally submitted to you. You  
22 are.

23 We thought we would have a jury by the end of  
24 the day today. That didn't happen. I'd like to  
25 guarantee you it's going to happen tomorrow, but I

1 thought I could guarantee you it would happen today.  
2 So I'm pretty sure it's going to happen tomorrow. But  
3 I need everybody to come back one more day. All right?  
4 So we'll see you at 10:30. Have a good night.

5 PROSPECTIVE JUROR NO. 043: Am I allowed to  
6 ask you a question?

7 THE COURT: Ask Tom.

8 PROSPECTIVE JUROR NO. 043: My marshal.  
9 Okay. I'm going back where I belong.

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

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

14 Go ahead.

15 MR. MAZZEO: Can I just address this with  
16 this juror. So -- okay. I don't think that  
17 Mr. Roberts rehabilitated him. Mr. Roberts did the  
18 typical close-ended question, Can you do this? Yes.  
19 Can you assure me of this? Yes. Can you do this?  
20 Yes. That does not -- according to Sanders and  
21 according to the other case, that does not satisfy or  
22 rehabilitate this juror from prior statements that he  
23 made. Taken as a whole with what this -- Mr. Evans  
24 said earlier when I was questioning him with  
25 information that he volunteered, he actually said that

1 he would -- we would be starting -- he used a reference  
2 that I used earlier with other jurors, that the  
3 defendants would be starting behind the plaintiff, that  
4 he would give the plaintiff the benefit of the doubt,  
5 that -- and it's not with respect to Mr. Roberts had a  
6 question to him about in deciding compensatory damages,  
7 can you listen to the rule from -- the instructions  
8 from the Court and render a decision and -- in an  
9 amount that's fair? That wasn't the question that I  
10 asked him.

11 My question to Mr. Evans was, Will your bias  
12 affect your ability to look at the evidence during the  
13 compensatory stage which involves evidence concerning  
14 compensatory damages as well as punitive damages? And  
15 he said, yes, it would affect his ability to view the  
16 evidence.

17 So taken all these factors into  
18 consideration, this satisfies Sanders case. And  
19 this -- this witness -- this juror is not rehabilitated  
20 with the few questions that Mr. Roberts asked, and he  
21 needs to be excused.

22 MR. STRASSBURG: Judge, we join in requesting  
23 his excusal. He testified that he has a prejudice  
24 against people who smoke and drive. Now, you talked  
25 him out of that. But when left to his own natural

1 devices, the way he saw it initially, until he got  
2 schooled by everybody, was that he's prejudiced against  
3 those people. And that -- he admitted that we're  
4 starting behind.

5           And, Judge, you know, punitive damages is --  
6 is one of those areas where the legal test are kind of  
7 murky. So it's -- it's not like punitives where  
8 there's hard-and-fast stuff. The punitive damages, the  
9 jurors are being called upon more to exercise their  
10 discretion. And to pollute those waters with this kind  
11 of prejudice, based upon his -- his view of people who  
12 do this, this class of people, that satisfies the --  
13 the legal test that he should be excused, Judge.  
14 That's our concern. It's just not fair.

15           THE COURT: Okay.

16           MR. ROBERTS: In a case where someone was  
17 seeking damages for child abuse, you don't have to have  
18 a jury full of people who think it's okay for people to  
19 abuse children. Under the law, a juror's opinions or  
20 views for or against a party do not without more  
21 establish the type of bias that is -- justifies  
22 excusing them for cause. Only if the juror's views  
23 would prevent or substantially impair the juror's  
24 ability to apply the law and the instructions of the  
25 Court. In citing Thompson, bias only if it were

1 irrational or unshakeable so the prospective juror  
2 would be unable to faithfully and impartially apply the  
3 law.

4           He has a problem with people who drive under  
5 the influence. Everyone should. It's against the law.  
6 But he volunteered when Mr. Mazzeo was questioning him  
7 that that wouldn't affect his ability to be fair on  
8 compensatory damage. But he -- he said it might. I  
9 may have a problem with it, with punitives. But as we  
10 discussed earlier in the day, up at one of the bench  
11 conferences, the juror didn't know yet that there was  
12 more that they would have to find to award punitives  
13 than just that someone was driving while impaired by  
14 marijuana and metabolites.

15           And he said that despite his bias, he could  
16 weigh the evidence, and he wouldn't award punitives  
17 unless I proved the things that you told him I had to  
18 prove to him.

19           So he has not made a record that he would be  
20 unable to follow the instructions of the Court. He has  
21 not made a record that he can't set aside bias. And I  
22 think -- I don't think the Court was -- was  
23 cross-examining him or suggesting the answer to him  
24 when you asked if his bias was against the person or  
25 the action, and he said it was against the action.



1           And I also asked him whether his bias was  
2 against this defendant or whether it was just a general  
3 bias against people driving under the influence while  
4 impaired. And he said it was -- it was just a general  
5 bias, that he held no personal bias or enmity against  
6 this defendant.

7           So I don't think they've met their burden,  
8 Judge. And -- and I don't think the fact that someone  
9 feels strongly that people shouldn't drive impaired is  
10 a reason to kick them off a jury and deny -- because he  
11 does have civil rights. And civil rights include the  
12 right to serve. That's the whole basis of Batson.  
13 It's not the parties' rights that are being violated in  
14 the Batson challenge. It's the juror's right to serve.  
15 And jurors who believe strongly that people shouldn't  
16 endanger society by driving under the influence  
17 shouldn't be denied the opportunity to serve in a case  
18 involving someone who has violated that law.

19           MR. MAZZEO: Judge, you know, he did make  
20 several unqualified statements.

21           THE COURT: All right, guys. You can say the  
22 same thing over and over again. Right now, I'm not  
23 inclined to let him go. If you want to show me some  
24 specific statements tomorrow that he made, you want me  
25 to look at them, I'm happy to do that.

1           At this point, I -- I don't think that he --  
2 he stated the kind of bias that is required under the  
3 Sears-Page case or the Jitnan case. I think the  
4 totality of his statements are that he has a bias  
5 against somebody that drives while impaired. But I  
6 don't think that it's a bias against the individual  
7 defendant in this case. And I think -- I think that --  
8 that that's just a bias that I think people in general  
9 have, so ...

10           MR. MAZZEO: And I agree -- I agree with you.  
11 It's not a bias against an individual defendant. But  
12 it is a bias to view the evidence objectively and  
13 fairly. And he said that -- he said that he would give  
14 the benefit of the doubt to the plaintiff, that the  
15 defendants standing behind the line further than the  
16 plaintiff, and that it would affect his ability to  
17 evaluate the evidence during the compensatory stage.  
18 Notwithstanding the yeses that he gave to Mr. Roberts  
19 with regard to will your compensation be fair on the  
20 compensatory stage. That's not -- that doesn't satisfy  
21 a finding of no bias or -- or rehabilitate him.

22           So overall, the statements he made, taken as  
23 a whole, show that he made un -- or unqualified -- or  
24 qualified statements with regard to his inability to  
25 sit on this case.

1           MR. STRASSBURG: Judge, I don't --

2           THE COURT: I know you guys want to keep  
3 arguing. Can you just give me what you think I need to  
4 look at tomorrow morning?

5           MR. STRASSBURG: That's reasonable, Judge.  
6 Sure.

7           THE COURT: I'm happy to look at it. I  
8 just -- you're saying the same things over and over.

9           MR. STRASSBURG: May I take one stab at  
10 saying something different?

11          THE COURT: Okay.

12          MR. STRASSBURG: Jared has been adjudicated  
13 liable because he has been adjudicates negligent based  
14 upon the criminal conviction. He has not been  
15 adjudicated as liable for punitive damages. So I can  
16 see, Judge, where your astute observation of bias  
17 against illegal activity is, in a sense, not a problem  
18 where the -- the defendant has already been adjudicated  
19 responsible, at least for the activity that -- that is  
20 involved in some level. But that's not this -- all of  
21 this case.

22          When it comes to punitive damages, Jared has  
23 not been adjudicated as responsible for punitives, and  
24 we're just talking about the amount. He has been -- he  
25 has a right to have a jury -- a juror who's not

1 prejudiced against him on a matter about which he's  
2 presumed innocent. And he is presumed -- I mean, the  
3 statute does not mandate punitive damages, 42.010. It  
4 says they may if they decide it's appropriate.

5 So the issue of whether he should stand  
6 liable for punitive damages is open. And that's why  
7 this kind of prejudice is so toxic. It's because the  
8 issues are on different -- they're on different levels.

9 I'm hoping that's a different top -- that's a  
10 different point.

11 THE COURT: I think it was addressed by  
12 Mr. Roberts' question, though. As I said, I'm happy to  
13 look at it.

14 MR. STRASSBURG: Thank you, Judge.

15 THE COURT: You guys give me whatever  
16 specific statements you think I need to look at that  
17 might change my opinion, I'll look at it.

18 MR. MAZZEO: I'm not precluded from asking  
19 him further questions.

20 THE COURT: No. At this point, he's still on  
21 the panel.

22 MR. ROBERTS: For the purpose of our witness  
23 planning, could we give estimates as far as how much  
24 longer you think you have and just a general estimate  
25 from -- from Roger.

1           MR. MAZZEO: I'm apparently off with my  
2 estimate today. So we're starting at 10:30 in the  
3 morning, which means 10:50, probably, by the time the  
4 jury gets in here, we start questioning.

5           THE COURT: I'll be ready at 10:30.

6           MR. MAZZEO: Okay. Well, that's what I meant  
7 10:30, if we start at 10:30 and we're going till 12:00.  
8 That's an hour and a half. I think I'm -- I could  
9 finish up in an hour and a half to two hours and a  
10 half.

11          THE COURT: You said you had two and a half  
12 hours total today.

13          MR. MAZZEO: Well, no. I thought I said  
14 four. At least four or five.

15          THE COURT: All right.

16          MR. MAZZEO: Lot of breaks and bathroom  
17 breaks and interruptions. And long lunches.

18          MR. ROBERTS: So this would be my question,  
19 Judge, and -- so if -- if we -- if it's an hour and a  
20 half then we start back at 1:00 with an hour to take us  
21 to 2:00 -- if it's two and a half hours.

22          THE COURT: Doesn't sound like you're getting  
23 any witnesses on tomorrow. We're going to be lucky to  
24 get openings.

25          MR. ROBERTS: Well, I got an hour.

1 Mr. Mazzeo has represented an hour and 45 minutes. So  
2 we're already can't complete closings -- before  
3 openings before 5:00. So I was just wondering, given  
4 that it seems unlikely we can fit them all in tomorrow  
5 anyway, maybe we could just say that we're going to  
6 start with openings Friday morning. And if we finish  
7 an hour early or two hours early, we'll just take that  
8 time. But that would give us some certainty with our  
9 witness scheduling.

10 MR. MAZZEO: Judge, I wouldn't be opposed to  
11 the plaintiff starting -- doing his opening tomorrow,  
12 as long as I get to start my opening tomorrow as well.  
13 Even if I don't complete it, I can complete it Friday  
14 morning. I'm fine with that, but I don't want to be  
15 left hanging not having started my opening at all. If  
16 they're going to go tomorrow. I just don't want to  
17 waste court time either. So I'd like to use the -- as  
18 much courtroom time.

19 THE COURT: I prefer to use the time up too.  
20 So I think maybe you should try to shorten up the voir  
21 dire if possible. Not going to tell you you have to.  
22 Ask the questions that you need to. But I don't want  
23 to end a couple hours early tomorrow.

24 MR. ROBERTS: I hate to be a broken record,  
25 though, Your Honor, but you -- we still got an order in

1 place. You've told us it's going to be modified. I  
2 haven't even seen it yet. And I would like to be able  
3 to have at least, you know, overnight to modify my  
4 closing [sic] to match your order, and I don't have  
5 your order yet, Judge, and you're asking me to close  
6 when --

7 THE COURT: Open.

8 MR. ROBERTS: -- opening when -- sometimes I  
9 do close during opening.

10 MR. MAZZEO: We're going to object  
11 beforehand.

12 MR. STRASSBURG: Judge, I don't understand  
13 him suggesting that we -- we stop short tomorrow. I  
14 thought what he was saying is for purposes of figuring  
15 out when to call witnesses. Is it if we get through  
16 all the openings and -- on Friday, then maybe it makes  
17 sense to start the witnesses on Monday -- Tuesday.

18 THE COURT: Okay, guys. Stop, stop. We're  
19 going to go as long as we can tomorrow. I know that  
20 plaintiff had witnesses scheduled for tomorrow. The  
21 witnesses can't be called tomorrow.

22 MR. ROBERTS: They've been called off, yes.

23 THE COURT: That's not going to happen. So  
24 I'm hoping that we get through voir dire, and we'll get  
25 through hopefully as much as we can of openings. I'll

1 try to make you guys all happy, but I don't want to  
2 waste a couple hours.

3 MR. MAZZEO: I agree.

4 MR. STRASSBURG: Understood, Judge.

5 MR. MAZZEO: Thank you.

6 THE COURT: Plan on being prepared to do  
7 openings tomorrow. If we get through all the openings,  
8 then we'll stop. If we have to stop before 5:00, we'll  
9 do that.

10 You have a question?

11 THE MARSHAL: Yes, sir. The jury on the way  
12 out, multiple people have so-called meetings tomorrow.  
13 They have -- one person has a job interview tomorrow.  
14 They're going to let me know. I said, Just remind me  
15 in the morning, again, what their names and what they  
16 have. And I'll give them to you and -- because the one  
17 guy back here whose got the -- remember the no-job guy,  
18 he has a job interview tomorrow at I think he said  
19 2:30. Somebody's going a mandatory meeting for  
20 business meeting at 3:00 o'clock. Somebody else has  
21 got something going on at 4:00.

22 THE COURT: Give me a list in the morning.

23 THE MARSHAL: The basketball player has  
24 business stuff he has to take care of.

25 THE COURT: Give me a list in the morning.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE MARSHAL: All right, sir.

THE COURT: Thanks, Tom.

Have a good night, guys. Off the record.

(Thereupon, the proceedings  
concluded at 5:16 p.m.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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  
Wednesday, February 10, 2016, at 9:08 o'clock a.m.

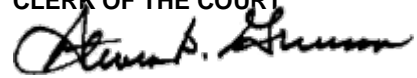
That I thereafter transcribed my said  
shorthand notes into typewriting and that the  
typewritten transcript is a complete, true, and  
accurate transcription of my said shorthand notes.

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  
10th day of February, 2016.



KRISTY L. CLARK, CCR #708



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 THURSDAY, FEBRUARY 11, 2016  
23

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

1 APPEARANCES:

2 For the Plaintiff:

3 GLEN J. LERNER & ASSOCIATES  
4 BY: ADAM D. SMITH, ESQ.  
4795 South Durango Drive  
Las Vegas, Nevada 89147  
5 (702) 977-1500  
asmith@glenlerner.com

6 - AND -

7 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL,  
8 BY: D. LEE ROBERTS, JR., ESQ.  
BY: TIMOTHY MOTT, ESQ.  
9 BY: MARISA RODRIGUEZ-SHAPOVAL, ESQ.  
6385 South Rainbow Boulevard  
10 Suite 400  
Las Vegas, Nevada 89118  
11 (702) 938-3838  
lroberts@wwhgd.com

12  
13 For the Defendant Andrea Awerbach:

14 MAZZEO LAW, LLC  
15 BY: PETER MAZZEO, ESQ.  
BY: MARIA ESTANISLAO, ESQ.  
631 South 10th Street  
16 Las Vegas, Nevada 89101  
(702) 382-3636

17  
18 For the Defendant Jared Awerbach:

19 RESNICK & LOUIS  
20 BY: ROGER STRASSBURG, ESQ.  
BY: RANDALL W. TINDALL, ESQ.  
5940 South Rainbow Boulevard  
21 Las Vegas, Nevada 89118  
(702) 997-3800

22  
23

24 \* \* \* \* \*

25

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 11, 2016;  
2 10:51 A.M.

3  
4 P R O C E E D I N G S  
5 \* \* \* \* \*  
6

7 THE MARSHAL: Jury entering.

8 (The following proceedings were held in  
9 the presence of the jury.)

10 THE MARSHAL: Jury is present, Judge.

11 THE COURT: Thank you. Go ahead and be  
12 seated, folks. Good morning, ladies and gentlemen.  
13 Sorry for the delay. Actually, it wasn't because we  
14 were in here arguing. It was because my calendar went  
15 longer than I anticipated. So sorry about that.

16 I've got notes here on four different jurors.  
17 One of you moved your job interview to Monday. Thank  
18 you. One of you has a job interview this afternoon at  
19 4:00. It would be nice if we were out of here at 4:00.  
20 It's a possibility, but not a probability. That's all  
21 I can tell you. We have two other people that need to  
22 be at work. Sorry. That's part of the problem of  
23 doing jury duty. I apologize. But I can't let you go.  
24 Everybody's got to work. Everybody else needs to also.  
25 So we're going to go for about another hour. We're

1 going to take lunch at 12:00, and I'm hoping that we  
2 are done a little bit early today. But I can't tell  
3 you exactly when that's going to be. I'm hoping that  
4 we have a jury picked, but I can't guarantee you that  
5 either because I thought we would yesterday.

6 I think at this point we are still in  
7 Mr. Mazzeo's questioning; right?

8 MR. MAZZEO: Yes, Your Honor. Thank you.

9 THE COURT: Go ahead.

10

11 VOIR DIRE EXAMINATION

12 MR. MAZZEO: Good morning, ladies and  
13 gentlemen for Day 4.

14 IN UNISON: Good morning.

15 MR. MAZZEO: So -- and I -- you know, we  
16 certainly appreciate your patience with this process.  
17 Four days is a bit longer than usual to go through jury  
18 selection. As you can see, there were -- there were a  
19 number of issues that to have to be discussed at the  
20 bench, and -- and let me ask you this, because I want  
21 to address a certain topic: How many people watch law  
22 shows on TV? *CSI*, you know, you -- and that's where  
23 the trial takes place within a course of an hour and  
24 then it's over, you know. Objections, the attorneys  
25 might object and the ruling is given from the --

1 directly from the bench. You don't have sidebars.  
2 Typically when we get into the trial, you -- you won't  
3 have as many sidebars. A lot of rulings will come from  
4 the bench. So it is a long process.

5 But with objections the attorneys need to do  
6 that in order to preserve the record. It's our  
7 obligation. We have an obligation to do that. And I  
8 know how sitting there, it might be frustrating for you  
9 all. So I just want to ask -- you -- you're going to  
10 hear objections throughout the trial from -- from both  
11 sides.

12 So just a show of hands, how many -- I know  
13 it might be a little bit annoying, but how many people  
14 would -- would that affect so that it would impair your  
15 ability to sit as jurors in this case? If you -- you  
16 know, if one side objects more than the other, you  
17 going to hold that against any side? Just a show of  
18 hands. No? Okay.

19 Yeah, this is not like a TV show as you now  
20 have learned after four days. So thanks for being  
21 patient and bearing with us.

22 You've -- you've heard about the standard for  
23 compensatory preponderance of the evidence, a little  
24 bit more than 50 percent. You heard that from  
25 Mr. Roberts the other day. There is a different

1 standard. The judge will give it to you with regard to  
2 punitive damages. It's actually a higher standard.  
3 And it's what's called "clear and convincing evidence."  
4 You will get an instruction about that, and you'll be  
5 given guidance as to how to apply that standard when  
6 you receive evidence in this case. So don't assume  
7 that, oh, we have to apply the same standard to  
8 compensatory and punitive damages. No, that's not the  
9 case, so ...

10 Oh, one other housekeeping matter. You've  
11 heard that -- that liability has been established for  
12 the accident; however, as you can see, I have my own  
13 client, Andrea Awerbach. She's the owner and mother of  
14 Jared and the owner of the car. We are contesting  
15 liability. So don't sit there and assume that you're  
16 just making a decision about compensatory damages.  
17 With respect to Andrea's case, we are contesting  
18 liability with respect to the claim against her. I  
19 can't discuss that with you at this point. So keep  
20 that in mind as well. Don't -- I just don't want you  
21 to sit there and think, Oh, all we have to do here is  
22 make a decision on damages. No, there's a -- we're  
23 contesting both liability and damages, both, so ...

24 Okay. With that, I know I was in the middle  
25 of speaking about motor vehicle accidents, and I think



1 I -- I was in the second row, and I may have just  
2 finished with Ms. Abeles?

3 PROSPECTIVE JUROR NO. 043: Abeles.

4 MR. MAZZEO: Abeles.

5 PROSPECTIVE JUROR NO. 043: It's good.

6 MR. MAZZEO: Sorry. I keep doing that.  
7 Hopefully by the end of today, I will fix that. I  
8 won't be going till the end of today, so -- but I think  
9 we -- you had talked about the -- an accident you had  
10 when you were a child, no injuries; right?

11 PROSPECTIVE JUROR NO. 043: (Nods head.)

12 MR. MAZZEO: Okay. Before I move on with the  
13 accidents in the second row here, I just wanted to -- a  
14 couple of questions that I had, taking out of order,  
15 Ms. Klein. There were a couple of questions.  
16 You talked about Gary Presswood -- Presswood.  
17 You used to work for him.

18 PROSPECTIVE JUROR NO. 146: Yes.

19 MR. MAZZEO: He's an accident  
20 reconstructionist?

21 PROSPECTIVE JUROR NO. 146: He's a forensic  
22 engineer. Was. I don't know if he's still in practice  
23 or not. Did a number of things that included accident  
24 reconstruction.

25 MR. MAZZEO: Okay. And biomechanical

1 engineer or just accident reconstruction?

2 PROSPECTIVE JUROR NO. 146: Mostly just the  
3 accident reconstruction is all.

4 MR. MAZZEO: And you had said that he has  
5 primarily worked for one firm in town?

6 PROSPECTIVE JUROR NO. 146: Correct.

7 MR. MAZZEO: What was that firm?

8 PROSPECTIVE JUROR NO. 146: At the time it  
9 was only Benson and Bertoldo. Now it's Benson,  
10 Bertoldo, Baker & Carter. They've expanded quite a bit  
11 in the last 20 years.

12 MR. MAZZEO: And when you worked with  
13 Mr. Presswood, was it mostly for plaintiffs or for  
14 defendants?

15 PROSPECTIVE JUROR NO. 146: At the time, I  
16 didn't know if it was either side. It was just these  
17 are the facts on the vehicles, do an accident  
18 reconstruction.

19 MR. MAZZEO: Okay. And -- and you had shared  
20 with us yesterday your husband's experience with the  
21 motor vehicle accident --

22 PROSPECTIVE JUROR NO. 146: Correct.

23 MR. MAZZEO: -- years ago, 1998.

24 PROSPECTIVE JUROR NO. 146: I want to say it  
25 was probably early '98, yeah.

1           MR. MAZZEO: And then did that go into  
2 litigation?

3           PROSPECTIVE JUROR NO. 146: I don't think so.  
4 I think it was settled out of court. But I'm not sure.  
5 Like I said, we were only dating at the time, so ...

6           MR. MAZZEO: Sure. That's fine. Thank you.

7           Mr. Franco, I do have another question for  
8 you following up on yesterday. Good morning.

9           PROSPECTIVE JUROR NO. 096: Good morning.  
10 096.

11           MR. MAZZEO: And the question is: Would you  
12 hold it against Andrea Awerbach just because she's the  
13 mother of a young adult driving while impaired by  
14 marijuana metabolite? Would you hold anything against  
15 her?

16           PROSPECTIVE JUROR NO. 096: No, I will not  
17 hold anything against her. I would be fair throughout  
18 the trial.

19           MR. MAZZEO: And we certainly appreciate  
20 that, but with the statements you made yesterday,  
21 you -- you seemed to indicate unequivocally that you  
22 would still kind of attribute the actions of a -- of a  
23 troubled teenager or a teenager that's acting out to  
24 the parent. And in this case, we have Jared who's the  
25 son of Andrea Awerbach. So merely because of the fact

1 that he was driving while -- while impaired by  
2 marijuana metabolite, would you in any way hold Andrea  
3 responsible for his actions?

4 PROSPECTIVE JUROR NO. 096: The parent?

5 MR. MAZZEO: Yes.

6 MR. ROBERTS: I'm going to object, Your  
7 Honor.

8 MR. MAZZEO: Just based on that fact.

9 THE COURT: Come on up, guys.

10 (A discussion was held at the bench,  
11 not reported.)

12 THE COURT: Go ahead, Mr. Mazzeo.

13 MR. MAZZEO: Thank you, Judge.

14 Mr. Franco --

15 PROSPECTIVE JUROR NO. 096: Yes. 096.

16 MR. MAZZEO: So based on your -- the  
17 responses that you gave to us yesterday about the  
18 responsibility of parents in raising their kids, and  
19 to -- to a large extent, being responsible for the  
20 actions of kids, and I think you said yesterday that  
21 they're our kids, you know, up until 60 years old;  
22 right?

23 So do you think you might be inclined in a  
24 case like this to hold the mother responsible for the  
25 actions of her child simply because she is the mom?

1 PROSPECTIVE JUROR NO. 096: I haven't seen  
2 any evidence. I haven't heard anything about the case.  
3 I don't know anything about the case. I have to see  
4 and hear the evidence --

5 MR. MAZZEO: Well --

6 PROSPECTIVE JUROR NO. 096: -- before I make  
7 my decisions. I just can't answer that. Depend on  
8 what you present.

9 MR. MAZZEO: So -- so it depends on the  
10 evidence. And you have heard something about the case.  
11 You have heard it's a motor vehicle accident; right?  
12 And you've heard that there's been a ruling finding  
13 Jared as being impaired by marijuana metabolite causing  
14 the accident. And so you know this -- you -- you know  
15 that much.

16 What you haven't heard is actual evidence  
17 being presented at trial.

18 PROSPECTIVE JUROR NO. 096: Right. There's a  
19 lot more to that. I mean, I can't make my decision on  
20 just what is told to me.

21 MR. MAZZEO: Oh, and I appreciate that. But  
22 based on what you told us yesterday, we may have some  
23 concerns about whether you -- whether you're going to  
24 just assume or -- or not just assume, but you're going  
25 to hold the mom responsible merely because Jared acted

1 out or merely because he's been found responsible.

2 PROSPECTIVE JUROR NO. 096: Well, if there's  
3 a concern, then I want her to have a fair trial, and I  
4 want to give her that chance.

5 MR. MAZZEO: You don't want to give her that  
6 chance?

7 PROSPECTIVE JUROR NO. 096: I want to give  
8 her that chance. I just don't want to be part of the  
9 concerns that she's not going to get a fair trial  
10 because of what I said or what I think. If there's a  
11 concern, then she needs to get a fair trial. And if  
12 there's a concern about me being on the jury, then we  
13 need to correct it.

14 MR. MAZZEO: Okay. And that's -- and that's  
15 why I broach it again with you today, because that's  
16 what we need to find out.

17 So when I asked yesterday whether -- you  
18 know, on the starting line, whether plaintiff is  
19 starting a little bit ahead of -- just let's talk about  
20 my client. Is the plaintiff starting a bit ahead of my  
21 client, or is my client starting a little bit behind  
22 the starting line if we're on the same line?

23 PROSPECTIVE JUROR NO. 096: No, way. You  
24 guys are starting on the same line. In my eyes, you're  
25 going to start on the same start line.

1           MR. MAZZEO: Notwithstanding the beliefs you  
2 expressed yesterday?

3           PROSPECTIVE JUROR NO. 096: No, I have to see  
4 the whole thing before I make up my mind or talk to the  
5 jury or have them decide. But both of you are starting  
6 on the same line and will continue from there. Now, if  
7 you fall behind somewhere or they fall behind  
8 somewhere, that's not my fault.

9           MR. MAZZEO: No. And I appreciate -- I  
10 appreciate -- I appreciate you -- I appreciate you  
11 expressing that notwithstanding your conviction because  
12 it seemed like you had some very strong beliefs  
13 yesterday about --

14           PROSPECTIVE JUROR NO. 096: I still have them  
15 today.

16           THE COURT REPORTER: You guys are talking on  
17 top of each other.

18           PROSPECTIVE JUROR NO. 096: Sorry.

19           MR. MAZZEO: And you still have them. So  
20 because you have those strong beliefs about the  
21 responsibility of the parent, that's why I'm following  
22 up with you. So I don't know if there's a  
23 contradiction or an inconsistency. So on the one hand,  
24 you're saying that the parents are responsible for the  
25 actions of the kid. You -- I think you were the only

1 one that raised your hand when I asked a question about  
2 that. And now today you're saying that, well, you  
3 haven't heard anything and you're -- you would have an  
4 open mind, and you would be fair to both sides.

5 PROSPECTIVE JUROR NO. 096: Okay. I'll be  
6 fair to both sides. I still stick to my opinion that I  
7 said about parents. They're responsible for their kids  
8 to a certain age. They'll always be my kids. I'll  
9 always be Mom and Dad. So if there's a concern of you  
10 or them starting behind one another, then we have to  
11 give her a fair trial. That's all I'm saying.

12 MR. MAZZEO: So we don't need -- from what  
13 you're telling us, we don't need to have a concern  
14 based on the statements you made yesterday.

15 PROSPECTIVE JUROR NO. 096: No. It's  
16 totally -- you have no concerns. Both of you start at  
17 the same point. We'll hear the evidence. And those  
18 are my beliefs. That's my opinion. That's how I  
19 raised my kids.

20 MR. MAZZEO: Okay. I appreciate that,  
21 Mr. Franco.

22 And -- and when you said "to a certain age,"  
23 what is -- what is that age? Do you have a --

24 PROSPECTIVE JUROR NO. 096: Can you tell me  
25 what age this happened?



1 MR. ROBERTS: I have no objection, Your  
2 Honor.

3 MR. MAZZEO: Okay. Eighteen. Eighteen.

4 MR. STRASSBURG: Nineteen.

5 MR. MAZZEO: Nineteen years old.

6 PROSPECTIVE JUROR NO. 096: This is when the  
7 accident happened?

8 MR. MAZZEO: The -- yeah, when the accident  
9 happened, Jared was 19 years old.

10 PROSPECTIVE JUROR NO. 096: Okay. I need  
11 more than that. I mean --

12 MR. MAZZEO: Okay. Well, you said a moment  
13 ago that you would hold parents responsible to a  
14 certain age. If he's 19 years old at the time of the  
15 accident, what's the cutoff for you for holding Andrea  
16 responsible for his actions?

17 PROSPECTIVE JUROR NO. 096: Is there a law  
18 pertaining to the age?

19 MR. MAZZEO: For -- for what, responsibility  
20 of parents?

21 PROSPECTIVE JUROR NO. 096: Right.

22 MR. MAZZEO: No, in your mind, because you --  
23 you're the one that said --

24 PROSPECTIVE JUROR NO. 096: Right. I  
25 don't -- I don't know the -- the child. I don't know

1 the kid. I don't know the adult. I don't know what he  
2 was going through. I don't know what's going on behind  
3 this whole incident. Nineteen is you're on your own.

4 MR. MAZZEO: Pretty -- okay.

5 PROSPECTIVE JUROR NO. 096: You're on your  
6 own. You have responsibilities on your head, not your  
7 mom and dad.

8 MR. MAZZEO: Okay. Thank you. I appreciate  
9 that. Thank you.

10 So we're going to -- I know we're in the  
11 second row, and I think there were a number yesterday.  
12 We were talking about motor vehicle accidents, so I'm  
13 going to continue with that line of questioning at this  
14 point, and I think we're with Mr. Evans.

15 PROSPECTIVE JUROR NO. 053: I think you  
16 finished.

17 MR. MAZZEO: We finished with you.

18 PROSPECTIVE JUROR NO. 053: Yeah.

19 MR. MAZZEO: Okay. Mr. Evans, with you, was  
20 there -- did you raise your hand regarding motor  
21 vehicle accident or --

22 PROSPECTIVE JUROR NO. 053: Yeah.

23 MR. MAZZEO: -- you tell us about --

24 PROSPECTIVE JUROR NO. 053: I had a minor  
25 fender bender when I was about 19 years old.

1 MR. MAZZEO: Okay.

2 PROSPECTIVE JUROR NO. 053: About 40 years

3 ago.

4 MR. MAZZEO: Okay. Long time ago. No

5 injuries.

6 PROSPECTIVE JUROR NO. 053: No.

7 MR. MAZZEO: No? Okay.

8 PROSPECTIVE JUROR NO. 053: Very little

9 damage.

10 MR. MAZZEO: Okay. All right. Thank you.

11 Mr. Roberts.

12 PROSPECTIVE JUROR NO. 058: Yes.

13 MR. MAZZEO: I think you raised your hand

14 yesterday about -- how many --

15 PROSPECTIVE JUROR NO. 058: 058. I was in an

16 accident about probably two years ago, two and a half

17 years ago. Hit-and-run driver decided to take me out

18 and total my car.

19 MR. MAZZEO: What were the circumstances for

20 the accident?

21 PROSPECTIVE JUROR NO. 058: I was driving --

22 I and the other party were driving northbound on Fort

23 Apache, and for whatever reason, driver in the middle

24 lane decided to turn right across the bow and slammed

25 me into a curb -- and slammed me in a curb and took

1 off. I don't ...

2 MR. MAZZEO: So the contact between the two  
3 cars was he -- he struck your passenger side?

4 PROSPECTIVE JUROR NO. 058: No. He hit my --  
5 she hit my front left and then went all the way across  
6 the front end of the car. So it was a sedan to a  
7 truck. So she hit me and went across. It looks like I  
8 hit her -- I caught the rear -- right rear wheel well  
9 of hers. I think it jacked her up.

10 MR. MAZZEO: Okay. And then she took off  
11 after.

12 PROSPECTIVE JUROR NO. 058: She took off.

13 MR. MAZZEO: You were in a truck?

14 PROSPECTIVE JUROR NO. 058: No. I was in the  
15 sedan.

16 MR. MAZZEO: In a sedan. Okay.

17 What kind of damage did your car sustain?

18 PROSPECTIVE JUROR NO. 058: Totaled it. Bent  
19 the tie rods, significant impact damage to the front  
20 and front left. The insurance company's assessment was  
21 they would rather pay me out for my damages than to try  
22 to repair it.

23 MR. MAZZEO: Sure. And -- and companies have  
24 different percentages for -- for what they'll deem  
25 totaled versus, you know, let's fix it. Or if it's

1 above 50 percent or 60 percent, we'll just deem it  
2 totaled. Okay.

3 Did you sustain any injuries as a result of  
4 that accident?

5 PROSPECTIVE JUROR NO. 058: I had a minor --  
6 I shouldn't say minor. I had a knee -- tweaking of my  
7 knee. It was the way the impact took place. But other  
8 than that, come back, so ...

9 MR. MAZZEO: The tweaking, did your knee hit  
10 the dashboard, if you know?

11 PROSPECTIVE JUROR NO. 058: I'm not sure what  
12 it hit. I have -- obviously, you can tell I'm tall, so  
13 I'm already pretty much squeezed into most cars I get  
14 into. I don't whether I hit the steering wheel or the  
15 center console or something like that. But my knee  
16 blew up and -- direct result of the -- the impact.

17 MR. MAZZEO: Did you receive treatment as a  
18 result of that?

19 PROSPECTIVE JUROR NO. 058: I did get some  
20 treatment for that.

21 MR. MAZZEO: What kind?

22 PROSPECTIVE JUROR NO. 058: I had to have  
23 some physical therapy, sought out a therapist, put me  
24 through a regime of different things to try to get me  
25 back to strength and reduce the swelling in there and

1 the need for the whole thing.

2 MR. MAZZEO: Sure. Following that accident,  
3 how soon after the accident or the impact did you first  
4 feel any symptoms or pain?

5 PROSPECTIVE JUROR NO. 058: Well, the  
6 swelling took place -- I noticed the swelling as soon  
7 as I got home. I -- probably took me two or three  
8 hours before the whole accident scene was resolved, and  
9 when I finally got home, I was aware that my knee had  
10 blown up and swollen. I was like, Where did that come  
11 from?

12 MR. MAZZEO: Sure. Okay. Thank you.

13 Mr. Berkery, good morning.

14 PROSPECTIVE JUROR NO. 063: Good morning.

15 MR. MAZZEO: Did you raise your hand  
16 regarding motor vehicle accidents?

17 PROSPECTIVE JUROR NO. 063: Yes, sir.

18 MR. MAZZEO: Okay. Would you tell us about  
19 that, please.

20 PROSPECTIVE JUROR NO. 063: Sure. When I was  
21 in my -- I'm sorry. 063. When I was in my teens, my  
22 father was hit from behind. He was driving a 1970  
23 Plymouth Fury and was hit from behind by a 280Z at a  
24 traffic light. Nothing happened to his car. No  
25 injuries. Hers was totaled.

1 MR. MAZZEO: Really? To the 280Z.

2 PROSPECTIVE JUROR NO. 063: Yeah, so -- and  
3 then when I was a driver for my ambulance squad, there  
4 were two occasions where I destroyed property on calls.

5 MR. MAZZEO: I'm sorry. Where you did what?

6 PROSPECTIVE JUROR NO. 063: Destroyed  
7 property.

8 MR. MAZZEO: Destroyed property on calls.

9 With the --

10 PROSPECTIVE JUROR NO. 063: Ambulance.

11 MR. MAZZEO: -- ambulance?

12 PROSPECTIVE JUROR NO. 063: Yes, sir.

13 MR. MAZZEO: Okay. What -- what were the  
14 circumstances for that?

15 PROSPECTIVE JUROR NO. 063: One was an officer  
16 down call. So we cut through the town park straight  
17 across, took out some benches, some brush, some --

18 MR. MAZZEO: Like you see on TV.

19 PROSPECTIVE JUROR NO. 063: You know what,  
20 just a lot of things blew up in front of my face. I  
21 couldn't really -- so ...

22 And the other time was -- and it's the only  
23 time it ever happened in -- in that volunteering was  
24 the paramedic told us that the woman that was in labor,  
25 we couldn't do anything for her, we had to get her to

1 the hospital and I had minutes. We had kind of an  
2 awkward five-way intersection, and I had to cut one of  
3 the points. So I took out an awning, some newspaper  
4 boxes. I think there was at least one, if not two,  
5 parking meters. And it damaged the ambulance pretty  
6 good too.

7 MR. MAZZEO: Sure.

8 PROSPECTIVE JUROR NO. 063: But so we -- we  
9 had to -- that was --

10 MR. MAZZEO: Right. That's -- I mean,  
11 that's -- that's justified. I mean, property versus  
12 human life.

13 PROSPECTIVE JUROR NO. 063: That was what I  
14 did.

15 MR. MAZZEO: Yeah, sure. Thank you.

16 As a result of either of those two incidents  
17 were you --

18 PROSPECTIVE JUROR NO. 063: Nobody was  
19 injured.

20 MR. MAZZEO: Nobody? Okay. Good.

21 PROSPECTIVE JUROR NO. 063: Oh, no, no.

22 THE COURT: You guys need to try not to talk  
23 over each other, please.

24 PROSPECTIVE JUROR NO. 063: Sorry.

25 MR. MAZZEO: Thank you. Appreciate it.



1 Ms. Bias.

2 PROSPECTIVE JUROR NO. 066: 066. I wasn't  
3 personally in any accident, but I had my cousin; he was  
4 in the fatal motorcycle accident two years ago, and he  
5 obviously didn't make it. He was going east on Carey  
6 Avenue, and a truck pulled out in front of him, and he  
7 had no time to stop. Just T-boned him. Went right  
8 over. That was it.

9 MR. MAZZEO: He went right over --

10 PROSPECTIVE JUROR NO. 066: Right over the  
11 truck. He -- the motorcycle hit, and he just flew  
12 over.

13 MR. MAZZEO: Oh, wow.

14 PROSPECTIVE JUROR NO. 066: So he had no time  
15 to stop. No time to, like, lay down his bike. So he  
16 knew. He didn't walk away.

17 MR. MAZZEO: That's -- and that's pretty  
18 tragic when that happens in a family, of course.

19 You were close with your cousin?

20 PROSPECTIVE JUROR NO. 066: Yeah, very.

21 MR. MAZZEO: And that's pretty recent still,  
22 two years ago.

23 PROSPECTIVE JUROR NO. 066: Yes.

24 MR. MAZZEO: And anything about that accident  
25 that might affect your ability because of any feelings

1 that -- that you still -- residual that you still feel  
2 about the -- the incident that might affect your  
3 ability to sit on a case which involves a motor vehicle  
4 accident with claimed injuries?

5 PROSPECTIVE JUROR NO. 066: No. Because he  
6 was -- he was at fault. He was speeding. So if you  
7 have a -- he was on a Kawasaki Ninja, and they get  
8 really fast. And he knew so it won't affect my  
9 judgment either way.

10 MR. MAZZEO: And you hear that in the news  
11 with these motorcycle accidents, they're usually on  
12 these sport bikes that they happen way too often.

13 PROSPECTIVE JUROR NO. 066: Yeah, he was --  
14 it was -- his accident was on the news.

15 MR. MAZZEO: Okay. Any other accidents,  
16 though, of any -- aside from your cousin --

17 PROSPECTIVE JUROR NO. 066: No.

18 MR. MAZZEO: -- that you're familiar with?  
19 Okay. Thank you.

20 Good morning, Mr. Avilaroa.

21 PROSPECTIVE JUROR NO. 078: Yes. Good  
22 morning. 078. Well, back in 2011, I think I was about  
23 18, I was with my mom. We were driving on the 95. I  
24 was the passenger. She was the driver. And she was  
25 driving on the 95. It was around 6:00 o'clock in the

1 afternoon, and so I think there was -- there was a lot  
2 of traffic. And we were about to get off on -- off  
3 Craig -- off Craig. We were on the far right lane, and  
4 there was a cone, like one of those big construction  
5 cones, right in the middle of the lane, like, laying  
6 down. And my mom, she froze up. She didn't know what  
7 to do.

8               So she put on the brakes, and the truck --  
9 there was a truck behind us. It was a black truck, and  
10 it was pretty big. I think it was like a -- like a  
11 Ram, I think, like, a Dodge Ram. It was a pretty big  
12 truck. He didn't have time to not hit us. So he hit  
13 us pretty good. I think he was going, like, 70.

14               MR. MAZZEO: Wow.

15               PROSPECTIVE JUROR NO. 078: So he hit us  
16 very -- like, pretty bad. So I just -- all I remember  
17 is just hitting my head on the -- on the dashboard, and  
18 the glass just flew. And I just remember, you know, it  
19 hitting, you know, covering us, covering my mom and  
20 covering me. And my mom was in shock and -- you know.  
21 Yeah, that's all I pretty much remember.

22               MR. MAZZEO: Okay. And I know that you had  
23 indicated in your questionnaire that you had injuries  
24 from that accident.

25               PROSPECTIVE JUROR NO. 078: Yes, sir.

1 MR. MAZZEO: To your -- was it to your low  
2 back?

3 PROSPECTIVE JUROR NO. 078: Yes, my lower  
4 back. I had two bulging disks in my lower back.

5 MR. MAZZEO: Do you recall the levels?  
6 L4-L5, L5-S1?

7 PROSPECTIVE JUROR NO. 078: No, I don't -- I  
8 don't recall. I don't remember.

9 MR. MAZZEO: Sure. And -- and you also  
10 indicated that you had some treatment in terms of  
11 injections --

12 PROSPECTIVE JUROR NO. 078: Yes, sir.

13 MR. MAZZEO: -- in your lower back?  
14 Can you tell us who the doctor was?

15 PROSPECTIVE JUROR NO. 078: I don't remember.  
16 I think I have -- I think it was yesterday I heard the  
17 mention of Dr. Cash.

18 MR. MAZZEO: Okay.

19 PROSPECTIVE JUROR NO. 078: I think it sounds  
20 familiar.

21 MR. MAZZEO: Would it have been with a pain  
22 management doctor or an orthopedic surgeon?

23 PROSPECTIVE JUROR NO. 078: I think -- this  
24 is so long ago it was like pain management, I think, or  
25 something.

1           MR. MAZZEO:   Okay.   And Dr. Cash, Andrew  
2 Cash, will be coming here to testify.   He's an  
3 orthopedic surgeon.

4           PROSPECTIVE JUROR NO. 078:   Yeah.

5           MR. MAZZEO:   So it might have -- if you  
6 received injections, it might have been from a pain  
7 management doctor.   But if you don't recall, that's  
8 fine.

9           PROSPECTIVE JUROR NO. 078:   Yes, I think -- I  
10 think it was from a pain management --

11          MR. MAZZEO:   Okay.

12          PROSPECTIVE JUROR NO. 078:   -- doctor.   It  
13 just, so long ago.

14          MR. MAZZEO:   In addition to the shots, did  
15 you receive any -- initially any conservative  
16 treatment?

17          PROSPECTIVE JUROR NO. 078:   What do you mean,  
18 like --

19          MR. MAZZEO:   Chiropractic care, physical  
20 therapy, hot and cold packs?

21          PROSPECTIVE JUROR NO. 078:   Yes.   Yes, sir.

22          MR. MAZZEO:   Okay.   Who did you go to for  
23 that treatment, if you recall?

24          PROSPECTIVE JUROR NO. 078:   It was -- I  
25 forgot the name.   But it's on -- it's on Buffalo --

1 Buffalo and -- forgot. Decatur I think. No, no, no.  
2 Yeah, Buffalo and Decatur. I think I might be wrong,  
3 but I forgot the name of it.

4 MR. MAZZEO: That's okay.

5 One of the treating physicians in this case,  
6 it's The Neck and Back which is a chiropractic  
7 facility. You nodded your head, is that --

8 PROSPECTIVE JUROR NO. 078: Yes, Neck -- it  
9 sounds familiar, Neck and Back, yeah.

10 MR. MAZZEO: Just so happens.

11 So -- and how long did you get treatment for?

12 PROSPECTIVE JUROR NO. 078: I think it took,  
13 like, about a year.

14 MR. MAZZEO: Of chiropractic treatment?

15 PROSPECTIVE JUROR NO. 078: Yeah,  
16 chiropractic treatment. I think it took almost -- the  
17 whole process and everything, like shots and  
18 everything, it took about a year.

19 MR. MAZZEO: But there came a point -- you  
20 initially received chiropractic treatment and then  
21 after some time, you -- you then received the shots;  
22 would that be correct?

23 PROSPECTIVE JUROR NO. 078: Yes.

24 MR. MAZZEO: Because why? The chiropractic  
25 treatment wasn't helping your condition?

1 PROSPECTIVE JUROR NO. 078: Yes, sir.  
2 There -- my back started to hurt pretty bad. You know,  
3 I couldn't do a lot of different things. So it just --  
4 you know, they asked me if I would decide to do that,  
5 you know. So I was like, Yeah, why not?

6 MR. MAZZEO: Did you -- and that was in 2011.  
7 Do you -- so about five years ago.

8 Do you have any residual pain or symptoms  
9 from that accident?

10 PROSPECTIVE JUROR NO. 078: No, not as much.  
11 No.

12 MR. MAZZEO: Okay. And did you hire an  
13 attorney to pursue a claim after that?

14 PROSPECTIVE JUROR NO. 078: Personally, me,  
15 no. My mom, I think she did -- I think -- yeah, we  
16 did. But we eventually settled out of court, so ...

17 MR. MAZZEO: And do you know what attorney  
18 was hired on your behalf or what law firm?

19 PROSPECTIVE JUROR NO. 078: It was -- I  
20 forgot. I forgot the name of it.

21 MR. MAZZEO: That's okay. No, I appreciate  
22 it. Thank you for sharing.

23 And then, Mr. Retzlaff, I know we spoke with  
24 you yesterday, and you shared with us your story.

25 Aside from that accident involving -- and

1 yesterday I think I was asking at that point about DUI  
2 accidents, and you had a personal experience with it.  
3 Aside from that accident that occurred where your four  
4 friends were killed, do you have any other experience  
5 with yourself, family member, or close friend that was  
6 involved in an accident not necessarily related to  
7 drugs or alcohol?

8 PROSPECTIVE JUROR NO. 088: Yeah. 088. I've  
9 got a couple, actually. Not like I'm a magnet for bad  
10 stuff, but seems like it sometimes.

11 So aside from the one where my friends were  
12 taken, I did have in the questionnaire that I  
13 mentioned, when we were rear-ended by the drunk driver.  
14 That one I think we already discussed how I did  
15 chiropractor and everything for that one. That one  
16 wasn't too bad.

17 The one I actually sustained the most injury  
18 from, I wasn't personally hit, but I was coming back  
19 into town from college with one of my friends, and if  
20 you're familiar with the area of the high desert in  
21 California near Edwards Air Force base in California  
22 City, there's a long, maybe -- I don't know, maybe 3-,  
23 4-mile stretch of road where it's just two lanes.  
24 There are some houses that are on some hills off to the  
25 left which are about, like, a quarter mile up, and



1 that's where we were headed because that's where he  
2 lived.

3           So on this two-lane, you can see clearly  
4 about a mile each way. You know, just open road. I  
5 come to a complete stop because there was a Jeep coming  
6 and also turning up to go into the neighborhood, and I  
7 was at a complete stop. And I remember looking in my  
8 rearview mirror and seeing this big black Suburban, and  
9 she was coming screaming down the road.

10           And I -- I remember looking at my friend Pete  
11 and telling him, Oh, she's not going to miss us.  
12 There's no way. So you better brace for it. I  
13 remember grabbing the steering wheel and within seconds  
14 of hitting me she actually went off to the side into  
15 the dirt, and her vehicle kind of fishtailed and then  
16 rolled about three times.

17           Then I pulled off. We ran over to the  
18 Suburban to make sure she was okay. And I guess from  
19 the impact of rolling, the doors could not open -- any  
20 of the four doors couldn't open. She had two children  
21 in the back, both in car seats. And the vehicle was  
22 upside down at that point. So in order to get her out  
23 and get her safely, I remember asking her, you know,  
24 about three or four times yelling to her if it was okay  
25 if I broke the window to get her out.

1           So wrapped my elbow in a T-shirt and broke  
2 the -- broke the window and ended up fracturing my  
3 elbow. I had lacerations and glass inside. Had to get  
4 skin grafts. But as far as actually being involved in  
5 an accident, the only one was when we got hit by the  
6 drunk driver.

7           MR. MAZZEO: Sure. And -- and both -- did  
8 you say both your father and yourself got chiropractor  
9 treatment?

10           PROSPECTIVE JUROR NO. 088: Yes, he ended up  
11 going longer. I think it was okay for me just because  
12 I was in preschool at the time. So I was still  
13 growing. My bones were, you know, able to heal  
14 themselves a lot faster and stuff, so ... But I  
15 remember he went for about a year, year and a half, he  
16 was receiving treatments for his back because he had  
17 bulging disks as well.

18           MR. MAZZEO: Sure. Okay. Thank you.  
19 Appreciate it.

20           Do you recall the name of the chiropractor?

21           PROSPECTIVE JUROR NO. 088: I don't. I can  
22 barely remember what I was doing other than naptime.

23           MR. MAZZEO: That's true.

24           PROSPECTIVE JUROR NO. 088: That happened  
25 actually in Virginia, so ...

1 MR. MAZZEO: Anything about that -- about  
2 that particular accident -- I know I asked you about  
3 the other one yesterday, but about that one where you  
4 were rear-ended with your father that would affect your  
5 ability to sit on a case like this?

6 PROSPECTIVE JUROR NO. 088: No, sir.

7 MR. MAZZEO: Okay. Mr. Avilaroa, I wanted to  
8 ask you the same question: Is there anything about the  
9 accident you described for us that would affect your  
10 ability to sit on a case like this?

11 PROSPECTIVE JUROR NO. 078: 078. No, sir.

12 MR. MAZZEO: Okay. Moving on to the first  
13 row.

14 Good morning, Mr. Inglett.

15 PROSPECTIVE JUROR NO. 091: Good morning.  
16 091.

17 MR. MAZZEO: Did you -- and I wasn't sure  
18 if -- if you had indicated -- raised your hand  
19 yesterday about having family member or close friend or  
20 yourself that's been involved in a prior accident.

21 PROSPECTIVE JUROR NO. 091: Just my father.  
22 He was hit on my motorcycle a few years ago.

23 MR. MAZZEO: Okay. Can you describe that for  
24 us, that incident?

25 PROSPECTIVE JUROR NO. 091: I don't know too

1 many details. I was traveling. I know he took my bike  
2 out. It's -- it was a 52 panhead. So the longer it  
3 sits, the worse it gets. He was pulling out of a  
4 driveway, and an elderly woman struck him on the side,  
5 so ...

6 MR. MAZZEO: And what kind of injuries did he  
7 sustain?

8 PROSPECTIVE JUROR NO. 091: I know he  
9 sustained some injuries and he had treatment, but I  
10 don't know the specifics. Like I said, I was  
11 traveling. I was actually outside of the country,  
12 so ...

13 MR. MAZZEO: Okay. Do you know anything  
14 about whether he still has any residual symptoms from  
15 the injuries that he sustained?

16 PROSPECTIVE JUROR NO. 091: No.

17 MR. MAZZEO: No? Okay. All right.

18 Any other accidents that you're familiar --

19 PROSPECTIVE JUROR NO. 091: (Shakes head.)

20 MR. MAZZEO: Okay. Thank you. Appreciate  
21 it.

22 Mr. Corum, good morning.

23 PROSPECTIVE JUROR NO. 093: Good morning.

24 MR. MAZZEO: I know you had -- I know you  
25 indicated -- in your questionnaire, you were -- you

1 referenced and disclosed a workers' comp accident where  
2 you injured your neck and back.

3 PROSPECTIVE JUROR NO. 093: Oh, yeah.

4 MR. MAZZEO: Now, before we talk about that,  
5 I wanted to ask you about any -- if you're familiar  
6 with any -- yourself, family members, or close friends  
7 that were involved in a motorcycle or motor vehicle  
8 accident.

9 PROSPECTIVE JUROR NO. 093: Badge No. 093.  
10 Yeah. I was in an accident when I was, like, fifth,  
11 sixth grade, and it was kind of bad but no injuries. I  
12 was young. So my grandmother was driving. It was a  
13 couple other kids in the car. Somebody -- it was a  
14 Suburban or something. I don't know. Big white SUV.  
15 I think it hit us this way or something. But we ended  
16 up spinning and facing the other way on the road.

17 MR. MAZZEO: So just for -- just for the  
18 record, you used your hands, and, just so the record is  
19 clear, you were hit on the driver's side of your  
20 vehicle?

21 PROSPECTIVE JUROR NO. 093: I don't quite  
22 remember what happened. When it did happen, you know,  
23 I kind of -- it's fuzzy. I can't remember too much.

24 MR. MAZZEO: Sure.

25 PROSPECTIVE JUROR NO. 093: I think we went

1 on two wheels and spun around in a half circle.

2 MR. MAZZEO: Okay. And what about, did you  
3 sustain any injuries or anyone else in the vehicle as a  
4 result of that accident?

5 PROSPECTIVE JUROR NO. 093: Cuts. My head  
6 hurt. I think I got hit by some glass, but not,  
7 like -- like, a big chunk of it. But I wasn't -- I  
8 didn't go to the hospital. Nobody was injured.

9 MR. MAZZEO: Okay. Did you receive any first  
10 aid treatment for the cuts and abrasions that you  
11 sustained?

12 PROSPECTIVE JUROR NO. 093: No. There was no  
13 ambulance called.

14 MR. MAZZEO: Okay. Anything -- when was that  
15 accident, by the way?

16 PROSPECTIVE JUROR NO. 093: When I was, like,  
17 fifth, sixth grade. I think fifth.

18 MR. MAZZEO: Long time ago.

19 PROSPECTIVE JUROR NO. 093: Yes, a very long  
20 time ago.

21 MR. MAZZEO: Anything about that accident  
22 that would affect your ability to be fair and impartial  
23 in this case?

24 PROSPECTIVE JUROR NO. 093: (Shakes head.)

25 MR. MAZZEO: No? And since I'm on you, still

1 with you, why don't you tell us about the workers' comp  
2 accident where you sustained injuries to your neck and  
3 back.

4 PROSPECTIVE JUROR NO. 093: Oh, that one, I  
5 was on foot. I was actually loading a vehicle up with  
6 a -- a box tree. It was kind of a big box tree. I  
7 shouldn't have been doing it. So it's about this big  
8 (witness indicating), about that tall maybe, full of  
9 dirt and, you know, a big old tree in there. And I was  
10 trying to just kind of shimmy it a little further into  
11 the truck so the weight distribution.

12 MR. MAZZEO: Okay. So it was already in the  
13 back of the truck.

14 PROSPECTIVE JUROR NO. 093: Yes.

15 MR. MAZZEO: You were just trying to move it,  
16 and that's -- from the way you described it with your  
17 arms, like a 50-gallon box or --

18 PROSPECTIVE JUROR NO. 093: Oh, no. No.  
19 It's a 36-inch.

20 MR. MAZZEO: Oh, okay. And -- and then --  
21 so, you said -- I think you said to your -- you had  
22 injuries to your neck and back as a result of that?

23 PROSPECTIVE JUROR NO. 093: Yeah, because I  
24 was shifting this way (witness indicating). I -- like,  
25 right in between -- I don't know what -- what you call

1 it.

2 MR. MAZZEO: Right between your shoulder  
3 blades?

4 PROSPECTIVE JUROR NO. 093: Yeah, right in  
5 between my shoulder blades and my neck basically is  
6 where -- I couldn't turn my head to drive. So I had to  
7 go. I had to leave work.

8 MR. MAZZEO: So you were shifting it back and  
9 forth, side to side?

10 PROSPECTIVE JUROR NO. 093: Pretty much,  
11 yeah.

12 MR. MAZZEO: Okay. And then you -- you --  
13 you said that you also got chiropractic treatment as a  
14 result of that?

15 PROSPECTIVE JUROR NO. 093: Um, no. That was  
16 a different incident.

17 MR. MAZZEO: Okay. Tell us -- okay.

18 Did you receive any treatment after that  
19 workers' comp incident?

20 PROSPECTIVE JUROR NO. 093: I don't believe  
21 so. I know I was on -- I couldn't lift too much weight  
22 or pull too much weight, so I was kind of on -- I don't  
23 know how to say it. Restrictive -- I was allowed to go  
24 to work, but I had -- I didn't -- I had restrictions.  
25 I couldn't do certain things. You know, I couldn't



1 lift a certain amount of weight or pull a certain  
2 amount of weight.

3 MR. MAZZEO: Okay. And were you examined  
4 after that accident?

5 PROSPECTIVE JUROR NO. 093: Yes. For  
6 workers' comp, you have to be -- go to a doctor,  
7 and ...

8 MR. MAZZEO: Okay. And do you know if you  
9 were -- do you recall if you were diagnosed with what's  
10 called myofascial sprain or strain of muscles in your  
11 back, or was it -- did it pertain to a disk or  
12 something else?

13 PROSPECTIVE JUROR NO. 0093: They really  
14 didn't get too far into it with me.

15 MR. MAZZEO: Okay. Fair enough.

16 And you said you had another incident where  
17 you were injured?

18 PROSPECTIVE JUROR NO. 093: I don't recall.

19 MR. MAZZEO: Okay. Tell us about the time  
20 when you received chiropractic treatment.

21 PROSPECTIVE JUROR NO. 093: Oh, that was  
22 just -- I was on break. I was at work, but I ended up  
23 just doing it myself because I didn't see the point. I  
24 just was on break, sat down kind of -- there was a  
25 table about this high (witness indicating) above the

1 ground that sometimes we just kind of chill under. And  
2 when I did that, kind of bumped my head. And when I  
3 did that, it -- it started hurting. And over time it  
4 got worse, so I had to go home, and I ended up going to  
5 a chiropractor.

6 MR. MAZZEO: For how long did you go?

7 PROSPECTIVE JUROR NO. 093: I think I went  
8 three or four treatments and that's it.

9 MR. MAZZEO: And did you have any -- after  
10 you finished the treatments, did you have any residual  
11 symptoms after that?

12 PROSPECTIVE JUROR NO. 093: Not really. But  
13 my back's always, you know, giving me problems, so if I  
14 did, I don't notice.

15 MR. MAZZEO: Sure, sure. Okay. Thank you.  
16 And thank you. Appreciate you sharing.

17 So, Ms. Sako, hi. Good morning.

18 PROSPECTIVE JUROR NO. 159: Good morning.

19 MR. MAZZEO: Not sure if you had indicated in  
20 your questionnaire whether you -- did you have a family  
21 member or close friend involved in an accident or  
22 yourself?

23 PROSPECTIVE JUROR NO. 159: I was involved in  
24 an accident. I was not injured, but I guess it's  
25 something I should bring up. So I -- on Maryland,

1 there's that park that's sort of -- that's right before  
2 you get to Charleston. It's right next to the  
3 Huntridge. It's like a circle park and the line of  
4 traffic goes around it. It splits -- it splits from  
5 the four-way to two-way, and then it comes back  
6 together. So I was coming back at night from school  
7 around 10:00 o'clock. We were having production, so I  
8 was coming home late. First car. Barely got my  
9 license. I was 16. And I was going down the side -- I  
10 was going down the road. It was very dark because  
11 there wasn't a lot of streetlights at that time.

12           And so I see this tiny light coming towards  
13 me. And I'm not sure -- it was probably just a  
14 streetlamp or whatnot. But I saw it getting bigger and  
15 bigger, and I realized it was a moped that was going  
16 down the wrong side of the road, completely wrong side  
17 of the road. So I had no time for myself to, Oh, it's  
18 moped, and then it sort of hit.

19           So he hit my car. He -- the bike was  
20 totaled. The moped was completely totaled. He --  
21 blood spattered everywhere, all over my hood. He  
22 dented my AC unit. He dented the hood. The glass was  
23 fine. But no injuries to me. No sudden thump or  
24 anything, but he obviously had some injuries. So his  
25 bike was totaled. His moped was totaled. And we

1 called the ambulance. And I come out, and I talked to  
2 him a little bit, and his nose is completely broken.  
3 I'm not sure. He doesn't seem like it's hurting -- he  
4 doesn't seem like he was hurting.

5 From what I could understand, I didn't see if  
6 he was impaired or not. I couldn't really determine  
7 that at that time if he was, since I was just so young.  
8 I just didn't know what the -- what the -- with -- I  
9 couldn't -- I just didn't know.

10 MR. MAZZEO: You couldn't assess it.

11 PROSPECTIVE JUROR NO. 159: Exactly. And so  
12 he was an older gentleman, and he said he was coming  
13 back from welding school, but his -- his moped was  
14 completely totaled. And -- and so there was injuries  
15 to -- or there was damage to my car, but not to myself.  
16 But I just can -- I talked to him. He said he -- he  
17 didn't have insurance. He didn't have this and that.  
18 And so I just couldn't bring myself to really pursue  
19 that or to pursue suing him or anything like that.  
20 Just -- I just couldn't. For some reason, I just -- I  
21 just couldn't do it just because I knew he was already  
22 in a situation where he probably didn't have a lot of  
23 money. And so I just couldn't impact his life like  
24 that trying to sue him for damages that I knew I could  
25 take care of myself.

1 MR. MAZZEO: Sure.

2 PROSPECTIVE JUROR NO. 159: So once the --  
3 the police came, I just left. I'm not sure if they  
4 arrested him. I'm not sure if anything like that  
5 happened, but I just left.

6 MR. MAZZEO: Okay. Thanks for -- thanks for  
7 sharing.

8 Anything about that incident that might  
9 affect your ability to sit on this case?

10 PROSPECTIVE JUROR NO. 159: No. I don't  
11 think so, no.

12 MR. MAZZEO: Thank you.

13 Mr. Franco, again, good morning. And I know  
14 in your questionnaire, you had disclosed an incident, a  
15 car accident involving your wife?

16 PROSPECTIVE JUROR NO. 096: Right.

17 MR. MAZZEO: And --

18 PROSPECTIVE JUROR NO. 096: 096.

19 MR. MAZZEO: Thanks. If you could just tell  
20 us about the circumstances regarding that.

21 PROSPECTIVE JUROR NO. 096: We were standing  
22 at a red light, and I think it was in '85. And a drunk  
23 driver came up from behind and hit us. And kind of  
24 give her that whiplash effect. So she ended up having  
25 treatment for about two and a half years with shots and

1 therapy and chiropractor.

2 MR. MAZZEO: Okay.

3 PROSPECTIVE JUROR NO. 096: And Molly Maids,  
4 they call them, they would come and clean her house.  
5 So she had all that for about two and a half years.

6 MR. MAZZEO: And how long did she --  
7 initially, she had chiropractic? Was that the initial  
8 treatment she received?

9 PROSPECTIVE JUROR NO. 096: Well, no. They  
10 took her to the hospital and they, you know, evaluated  
11 her. And she had whiplash, and she had stuff to her  
12 neck.

13 MR. MAZZEO: Okay. So she had conservative  
14 treatment or, I should say, chiropractic treatment,  
15 and -- and then injections?

16 PROSPECTIVE JUROR NO. 096: Injections and  
17 physical therapy, and I think they even gave her some  
18 pills for the pain.

19 MR. MAZZEO: For the pain and swelling?

20 PROSPECTIVE JUROR NO. 096: Right, all that.

21 MR. MAZZEO: Sure. And you indicated no  
22 worth -- no orthopedic -- she didn't see an orthopedic  
23 surgeon?

24 PROSPECTIVE JUROR NO. 096: No. She had no  
25 surgery. She just had physical therapy and

1 chiropractor and shots outpatient.

2 MR. MAZZEO: And no -- no consultation with  
3 an orthopedic surgeon as well?

4 PROSPECTIVE JUROR NO. 096: No.

5 MR. MAZZEO: Okay. Did that result in a  
6 claim after that accident?

7 PROSPECTIVE JUROR NO. 096: There was a  
8 claim. About a year later, they settled out of court.

9 MR. MAZZEO: Sure. And do you recall, did  
10 you hire an attorney?

11 PROSPECTIVE JUROR NO. 096: Yes, we did. I  
12 don't recall the name. It was it was in Colorado too,  
13 so ...

14 MR. MAZZEO: Oh, okay.

15 PROSPECTIVE JUROR NO. 096: I have no idea  
16 what the guy's name is.

17 MR. MAZZEO: Sure. Thank you.

18 Yes, Mr. Roberts.

19 PROSPECTIVE JUROR NO. 058: 058. I -- while  
20 we were talking, I just recall another accident I was  
21 involved in, and it may have some relevance, but I just  
22 thought I'd bring it up to you.

23 Twelve years ago, ten years ago, somewhere in  
24 that range, I got hit by a driver. I was stopped at a  
25 stop sign exiting my subdivision, and a vehicle going

1 slow, wasn't going fast -- are you familiar with the --  
2 the white lines that -- that are extended from the curb  
3 that kind of create a -- an additional buffer for the  
4 curbing? Well, he started drifting over those lines  
5 and literally ran into my car at the stop sign.

6 So he was going eastbound on -- on Warm  
7 Springs, and I was coming off of a subdivision at a  
8 stop sign, and he literally drifted all the way over  
9 and ran into the front end of my car while I was  
10 stopped there. But the reason I brought it up is  
11 because he was DUI.

12 MR. MAZZEO: Oh, he was.

13 PROSPECTIVE JUROR NO. 058: And he fell  
14 asleep.

15 MR. MAZZEO: Okay. Okay.

16 PROSPECTIVE JUROR NO. 058: So I -- I was  
17 listening and she said, DUI, then it triggered me. I  
18 said, Oh, yeah, I had something that -- where I had no  
19 control over it. I just --

20 MR. MAZZEO: No, I know.

21 PROSPECTIVE JUROR NO. 058: There were no  
22 injuries. He wasn't really going fast. I think he was  
23 coming from someplace, bar or something like that. And  
24 he was trying to go home, but he just passed out.

25 MR. MAZZEO: Right. Anything about that



1 incident being that it's -- involved a DUI that might  
2 affect your ability to sit on this case?

3 PROSPECTIVE JUROR NO. 058: Well, I mean  
4 obviously you've been hit by a DUI, you're a little  
5 upset that -- I was thankful that he wasn't going fast.  
6 I mean, it was just a small property damage claim at  
7 the time, you know.

8 MR. MAZZEO: Sure.

9 PROSPECTIVE JUROR NO. 058: He dented my car.  
10 I think he did had about 6- or \$700 worth of damage.  
11 It wasn't that much. But obviously if he had been  
12 flying down the highway, anything could have happened.

13 And, you know, the other one was a  
14 hit-and-run. So I'm not too excited about people who  
15 do hit-and-run either.

16 MR. MAZZEO: And that's why we ask you about  
17 similar experiences because we want to know whether  
18 that will affect anyone's ability to sit on a case that  
19 has similar facts, similar issues, so ...

20 PROSPECTIVE JUROR NO. 058: I ended up  
21 getting -- when she said DUI or potentially on the  
22 moped, all of a sudden, it triggered. I forgot about  
23 that.

24 MR. MAZZEO: And it was a while ago and it  
25 didn't --

1 PROSPECTIVE JUROR NO. 058: There was no  
2 injuries, minor injuries. But the fact that -- and it  
3 was -- it was, like, 8:00 o'clock in the morning. So  
4 that was another thing. It was like drunk off your  
5 butt at 8:00 o'clock in the morning in a residential.  
6 That was kind of -- yeah.

7 MR. MAZZEO: Sure. Right. Thank you.  
8 Appreciate it.

9 PROSPECTIVE JUROR NO. 058: Uh-huh.

10 MR. MAZZEO: What I'm going to -- the next  
11 topic, ladies and gentlemen, is I want to talk about --  
12 talk about conditions that we have not related --  
13 injuries or conditions of -- of specific --  
14 specifically the neck, the back, or the lower  
15 extremities, the legs and hips, which are not related  
16 to an accident. So may be part of the aging process,  
17 may be from the work -- type of work that we do. But  
18 aches and pains that we've developed from -- from, you  
19 know, from our life. And I noticed that a number of  
20 the jurors have indicated such in their questionnaires.

21 And I'd like to start with Mr. Blurton. Good  
22 morning.

23 PROSPECTIVE JUROR NO. 150: Uh-huh. Good  
24 morning.

25 MR. MAZZEO: Mr. Blurton, and you're

1 Badge 150.

2 PROSPECTIVE JUROR NO. 150: Yes, Badge 150.

3 MR. MAZZEO: Okay. And you had shared with  
4 us that you have back pain, and that your -- it's -- it  
5 states that you were unable to move due to back pain.

6 Can you tell us about where that back pain  
7 came from?

8 PROSPECTIVE JUROR NO. 150: It was -- when I  
9 turn the wrong way. It -- it relates to my worst pain  
10 I ever felt.

11 MR. MAZZEO: Okay.

12 PROSPECTIVE JUROR NO. 150: And that was --  
13 that was just kind of -- there's no residuals there.  
14 It's -- it's -- but it was, you know -- and I'm a big  
15 guy; right? So because of my weight and -- and things  
16 like that, I sit at a desk all day, that also affects  
17 my back; right? So I also have things like that.

18 But I can say that -- that, you know, as long  
19 as I'm careful and I don't it again, I think I'll be  
20 all right, right, as far as -- as far as back pain goes  
21 and, you know, so ...

22 MR. MAZZEO: That was a one-time incident?

23 PROSPECTIVE JUROR NO. 150: That was the  
24 one -- that was it.

25 MR. MAZZEO: Okay.

1 PROSPECTIVE JUROR NO. 150: And that was all.  
2 MR. MAZZEO: And you indicated that the  
3 symptoms subsided within a few days; right?  
4 PROSPECTIVE JUROR NO. 150: Yes.  
5 MR. MAZZEO: So it fair to say you didn't get  
6 any treatment ever after that?  
7 PROSPECTIVE JUROR NO. 150: Yeah. That is  
8 fair to say, yes.  
9 MR. MAZZEO: Okay. By the way, as a result  
10 of -- of your -- that -- that condition where you  
11 turned and you experienced that pain, is that -- do you  
12 feel aches and pains because of the -- what you  
13 described to us, the nature of your the work, sitting?  
14 PROSPECTIVE JUROR NO. 150: Sometimes. I  
15 mean, I work a lot. I work, you know, 16, 18 hours a  
16 day.  
17 MR. MAZZEO: Wow.  
18 PROSPECTIVE JUROR NO. 150: And I work in  
19 computers, so it's not very physical; right? So  
20 sitting -- sitting can -- can cause me back pains  
21 and -- but they're minor back pains. It's, you know,  
22 things related to sitting all day.  
23 MR. MAZZEO: And believe it or not, we  
24 attorneys are actually in the office more than we are  
25 in the courtroom. So we're sitting at a desk, and

1 we're hunched over, and we're dealing with working on a  
2 computer, the shoulders are crunched in, so I can --  
3 after a few hours, I know what that feels like to get  
4 up and to stretch and to move about, so --

5 PROSPECTIVE JUROR NO. 150: And that usually  
6 helps. But, you know, it happens.

7 MR. MAZZEO: Right. Okay. Thank you.  
8 Appreciate it.

9 Mr. -- Mr. Brandon, good morning.

10 PROSPECTIVE JUROR NO. 003: Good morning.

11 MR. MAZZEO: Mr. Brandon, you had indicated  
12 that you had received chiropractic treatment for back  
13 pain, I guess related to work?

14 PROSPECTIVE JUROR NO. 003: No. As I was  
15 little, I was overweight. So the weight was getting to  
16 me and making me slouch over a lot. But now I'm more  
17 active and losing all the weight. So now all the pain  
18 that I have is just from me being stupid.

19 MR. MAZZEO: Residual or from age related?

20 PROSPECTIVE JUROR NO. 003: Residual.

21 MR. MAZZEO: Sure.

22 PROSPECTIVE JUROR NO. 003: I'm still young,  
23 so I don't --

24 MR. MAZZEO: You are. That's true. Okay.

25 And when you were younger, you -- is that

1 when you received chiropractic treatment?

2 PROSPECTIVE JUROR NO. 003: Yeah.

3 MR. MAZZEO: Okay. How long did you receive  
4 that for?

5 PROSPECTIVE JUROR NO. 003: It was maybe  
6 couple of weeks. He cracked my back a couple of times,  
7 cracked my neck. I felt good, said, See you later, not  
8 coming back.

9 MR. MAZZEO: That's it. Okay. That's good.  
10 Okay. Thank you.

11 Ms. Flores, I know you shared with us that  
12 you had an uncle, and this is an accident, but he fell  
13 off of a ladder at work?

14 PROSPECTIVE JUROR NO. 010: At work in  
15 California. I don't know what happened. All I knew  
16 was that he fell off a ladder. He -- something about  
17 his lower back. It was, like, years ago. I was  
18 little. I would just hear it from, you know, my uncles  
19 and my aunts and my parents talking.

20 MR. MAZZEO: Okay.

21 PROSPECTIVE JUROR NO. 010: But it was a long  
22 time ago. I just knew he fell off and he hurt his  
23 back, and after that, I didn't know anything about it.

24 MR. MAZZEO: But I think you indicated that  
25 he had a problem with his disks and had surgery as a

1 result?

2 PROSPECTIVE JUROR NO. 010: Yeah, and I know  
3 he did do chiropractic, but this is back in California.  
4 It was, like, years ago. I don't really recall a lot  
5 from it.

6 MR. MAZZEO: And as a result of that, does he  
7 have any residual symptoms or aches or pains?

8 PROSPECTIVE JUROR NO. 010: I don't really  
9 talk to him, so I don't know.

10 MR. MAZZEO: Fair enough. Thank you.

11 Mr. Jensen, good morning.

12 PROSPECTIVE JUROR NO. 015: Good morning.

13 MR. MAZZEO: And you shared with us as well  
14 in your questionnaire that you yourself experience back  
15 pain which you refer to as age related?

16 PROSPECTIVE JUROR NO. 015: 015. That's  
17 correct. Just stupidity in younger years.

18 MR. MAZZEO: Okay. When playing sports or  
19 just being active, overactive I guess?

20 PROSPECTIVE JUROR NO. 015: That's correct.  
21 I used to, in high school, be a competitive golfer.  
22 And then I did a lot of backpacking where I would carry  
23 60-pound packs for a few weeks out in the middle of  
24 nowhere.

25 MR. MAZZEO: And you had seen an orthopedic

1 surgeon for, you said, your left shoulder and right  
2 wrist?

3 PROSPECTIVE JUROR NO. 015: That's correct.

4 MR. MAZZEO: Torn ligaments?

5 PROSPECTIVE JUROR NO. 015: Torn ligaments in  
6 both cases.

7 MR. MAZZEO: How did that happen?

8 PROSPECTIVE JUROR NO. 015: Left shoulder was  
9 golfing, believe it or not, and the right wrist was  
10 bowling.

11 MR. MAZZEO: Okay.

12 PROSPECTIVE JUROR NO. 015: Yeah, don't  
13 smile.

14 MR. MAZZEO: No. It's -- no, it's not funny,  
15 but I have my share --

16 PROSPECTIVE JUROR NO. 015: Because everyone  
17 says bowling is a noncontact sport. How can you hurt  
18 your wrist?

19 MR. MAZZEO: Well, it's all -- it's all  
20 mechanics, though. You know, when you're lifting the  
21 ball, it's a heavy ball and the way --

22 PROSPECTIVE JUROR NO. 015: The worst case is  
23 if you accidentally hop over the foul line and hit the  
24 oil and try to stop your fall. That's how it happened.

25 MR. MAZZEO: That will certainly -- yeah,



1 that will. And I smile because I had my own share of  
2 accidents -- injuries with sports, so I -- I can  
3 identify with that.

4 So with the back pain that you have, do  
5 you -- do you have residual symptoms that you feel  
6 on -- like, daily aches and aches and pains?

7 PROSPECTIVE JUROR NO. 015: The lower back  
8 is, you know, on a daily basis. It's generally sore.  
9 I mean, very low. If I sit there and think about it, I  
10 can feel it. As long as I try to sit properly, I mean,  
11 it doesn't hurt.

12 MR. MAZZEO: Okay.

13 PROSPECTIVE JUROR NO. 015: Just every now  
14 and then, I'll twist wrong or do something, and I'm on  
15 the floor.

16 MR. MAZZEO: And are you actively seeking any  
17 medical treatment for the aches and pains that you  
18 have?

19 PROSPECTIVE JUROR NO. 015: No, it's not that  
20 bad.

21 MR. MAZZEO: Okay. Thank you. Appreciate  
22 it.

23 Mr. Foerstel.

24 PROSPECTIVE JUROR NO. 023: Yes.

25 MR. MAZZEO: Hi. Good morning.

1 PROSPECTIVE JUROR NO. 023: 023.

2 MR. MAZZEO: And I believe you indicated that  
3 your father had a bulging disk in --

4 PROSPECTIVE JUROR NO. 023: Yes.

5 MR. MAZZEO: That was -- what part of his  
6 back was that in?

7 PROSPECTIVE JUROR NO. 023: I think it's mid,  
8 but I'm not exactly sure.

9 MR. MAZZEO: Mid back.

10 Mid back -- you're going to hear terms,  
11 ladies and gentlemen. Cervical is the neck, mid back  
12 is thoracic, low back is lumbar and sacral.

13 So in the middle of the back?

14 PROSPECTIVE JUROR NO. 023: Yeah.

15 MR. MAZZEO: Okay. And what was the bulging  
16 disk from?

17 PROSPECTIVE JUROR NO. 023: Just -- I think,  
18 just, he's older.

19 MR. MAZZEO: Just age.

20 PROSPECTIVE JUROR NO. 023: Yeah, it was just  
21 mostly age related and maybe stuff he did when he was  
22 young, but ...

23 MR. MAZZEO: And you're going to hear in the  
24 trial, ladies and gentlemen, age-related changes with  
25 the disks take place in the 30s and 40s, so it's --

1 it's not just when -- it's not just --

2 PROSPECTIVE JUROR NO. 023: I got my share.

3 MR. ROBERTS: Objection, Your Honor.

4 PROSPECTIVE JUROR NO. 023: My back is  
5 sore -- I'm sorry -- sore from time to time. When I  
6 was younger, I had a bicycle crash where I went over  
7 the handlebars, bounced on my back a couple of times.  
8 And once again, I played golf for years and years. So  
9 I've had back -- just back spasms, occasionally. But  
10 never -- never really sought treatment. Just usually a  
11 couple of days, couple Advil, and -- and it's usually  
12 good to go.

13 THE COURT: Mr. Mazzeo --

14 MR. MAZZEO: Yes.

15 THE COURT: -- the objection is sustained.

16 Let's limit it to questions.

17 MR. MAZZEO: Thank you, Judge.

18 And do you actively seek out -- I know you  
19 said you -- you don't get treatment. Withdrawn.

20 How often do you now experience any symptoms  
21 in your back?

22 PROSPECTIVE JUROR NO. 023: Rarely. You know  
23 from time to time, I'll get, like, a little tweak under  
24 a shoulder blade or maybe my lower back might be a  
25 little bit sore, but it could be from sleeping wrong

1 or.

2 And I did see a chiropractor a couple years  
3 ago for -- I don't know if I put that on my -- on my  
4 questionnaire, but I did seek a chiropractor only  
5 because it was free. It wasn't -- I didn't have to pay  
6 for it or I would have just -- because it was nothing  
7 out of the ordinary with my back issues over the past  
8 20 years. But I was able to go, like, 60 visits, so  
9 get some physical therapy for free as well.

10 MR. MAZZEO: Sure. And as -- as an athlete,  
11 you're pretty active. So you probably do a lot of  
12 stretching through some of those sore muscles?

13 PROSPECTIVE JUROR NO. 023: Yeah, not as much  
14 as I should.

15 MR. MAZZEO: I second that. I don't do  
16 enough either. So thank you. Appreciate it.

17 Moving on to Ms. Gold -- oh, Ms. Klein.

18 PROSPECTIVE JUROR NO. 146: 146. I had my  
19 ACL tear and had an ACL replacement. I've also  
20 sprained my ankle. For both of those, I received  
21 medical care, obviously. And for my knee, I received  
22 physical therapy after the surgery. Probably six  
23 months worth of physical therapy.

24 MR. MAZZEO: And you -- you have a -- well,  
25 you mentioned a cousin who had back surgery from --

1 PROSPECTIVE JUROR NO. 146: My mother?

2 MR. MAZZEO: -- from gymnastics?

3 PROSPECTIVE JUROR NO. 146: Yes. One of my  
4 cousins was a competitive -- in competitive gymnastics  
5 had suffered some injuries, has had to have several --  
6 she's received injections and surgeries to deal with  
7 that.

8 MR. MAZZEO: With -- with --

9 PROSPECTIVE JUROR NO. 146: Nerve damage and  
10 some injuries. I'm not quite certain on if her disks  
11 are injured or if it's just nerve damage.

12 MR. MAZZEO: Sure. That was just -- and that  
13 was from -- gymnastics is a very rough discipline.

14 PROSPECTIVE JUROR NO. 146: Very. She was  
15 competitive at a national level.

16 MR. MAZZEO: Wow. Okay. Getting up at 3:00  
17 or 4:00 in the morning.

18 PROSPECTIVE JUROR NO. 146: Traveling and  
19 very -- yeah.

20 MR. MAZZEO: How did you tear your ACL?

21 PROSPECTIVE JUROR NO. 146: My very first and  
22 last time skiing.

23 MR. MAZZEO: Oh, okay. Wow. Not a good  
24 experience the first time out.

25 PROSPECTIVE JUROR NO. 146: No. Actually, I

1 was still on the training slope.

2 MR. MAZZEO: Okay. Going moderately fast?

3 PROSPECTIVE JUROR NO. 146: Not even hardly  
4 moving. And somebody crashed in front of me and I fell  
5 over them, and that didn't end well.

6 MR. MAZZEO: Okay. All right. Do you have  
7 any residual pain from -- I know you had surgery. Do  
8 you have residual pain or symptoms from that?

9 PROSPECTIVE JUROR NO. 146: I can feel when  
10 the weather changes. I have a nice 9-inch scar, and I  
11 can feel changes in pressure. If I do excessive  
12 amounts of exercise, if I know I'm going to be walking  
13 a couple of miles, I have a knee brace to support it a  
14 little bit extra.

15 MR. MAZZEO: Okay.

16 PROSPECTIVE JUROR NO. 146: Or it will ache  
17 if I don't.

18 MR. MAZZEO: Sure. Thank you. Appreciate  
19 it.

20 Ms. Gold.

21 PROSPECTIVE JUROR NO. 036: Yeah.

22 MR. MAZZEO: Good morning.

23 PROSPECTIVE JUROR NO. 036: Good morning.  
24 036.

25 MR. MAZZEO: And I know you had also

1 disclosed some information about both your -- I believe  
2 your wrist and a -- a strained back while you were in  
3 the box.

4 PROSPECTIVE JUROR NO. 036: Yes.

5 MR. MAZZEO: Can you tell us about that?

6 PROSPECTIVE JUROR NO. 036: I was working for  
7 a workers' comp judge, and I had to move a box of files  
8 into his desk, and it just kind of popped a little bit.  
9 It was a strain-sprain. There was no surgery involved  
10 in the rehabilitation.

11 MR. MAZZEO: Was there any diagnosis that you  
12 had injured a disk in your spine?

13 PROSPECTIVE JUROR NO. 036: Oh, no.

14 THE COURT: And did you receive treatment  
15 ever after that?

16 PROSPECTIVE JUROR NO. 036: Yes, for several  
17 years because I -- I kept getting flare-ups and  
18 continued to get them probably even still because of  
19 the aging process. But yeah, I received chiropractic  
20 care.

21 MR. MAZZEO: Okay. And -- and then -- and  
22 then you indicated you had seen a chiropractor for  
23 straining your back and for -- was that for lifting the  
24 box?

25 PROSPECTIVE JUROR NO. 036: Yes.

1 MR. MAZZEO: Oh, okay. And then there was an  
2 overuse syndrome for your wrist. Can you tell us about  
3 that?

4 PROSPECTIVE JUROR NO. 036: Same job. Just  
5 doing a lot of typing and just clerical/secretarial  
6 type of work that you have to do with your hands.

7 MR. LASSART: Okay. And so you -- and I  
8 guess you made -- processed industrial claims or  
9 pursued industrial claims --

10 PROSPECTIVE JUROR NO. 036: Yes.

11 MR. MAZZEO: -- for that?

12 PROSPECTIVE JUROR NO. 036: Yes.

13 MR. MAZZEO: Any problem getting it passed  
14 through your boss?

15 PROSPECTIVE JUROR NO. 036: Not at all.

16 MR. MAZZEO: Okay. Do you still currently  
17 experience any -- any symptoms in your lower back?

18 PROSPECTIVE JUROR NO. 036: Yes.

19 MR. MAZZEO: Okay.

20 PROSPECTIVE JUROR NO. 036: Yes.

21 Occasionally, when I lift something, if I lift my  
22 grandbabies, I can -- or if I'm just standing there  
23 holding them, I can feel the twinge.

24 MR. MAZZEO: Sure, sure. Okay. Thank you.  
25 Appreciate it.



1                   Mr. Cyganek.   Hi.   Good morning.

2                   THE COURT:   You at a good breaking point,  
3 Mr. Mazzeo?

4                   MR. MAZZEO:   It is, Judge.

5                   THE COURT:   Let's go ahead and take our lunch  
6 recess, folks.

7                   During our break, you're instructed not to  
8 talk with each other or with anyone else about any  
9 subject or issue connected with this trial.  You are  
10 not to read, watch, or listen to any report of or  
11 commentary on the trial by any person connected with  
12 this case or by any medium of information, including,  
13 without limitation, newspapers, television, the  
14 Internet, or radio.  You are not to conduct any  
15 research on your own, which means you cannot talk with  
16 others, Tweet others, text others, Google issues, or  
17 conduct any other kind of book or computer research  
18 with regard to any issue, party, witness, or attorney  
19 involved in this case.  You're not to form or express  
20 any opinion on any subject connected with this trial  
21 until the case is finally submitted to you.

22                   Going to give you till 1:15 today.  1:15.

23                   MR. STRASSBURG:  Was that in one breath,  
24 Judge?

25                   THE COURT:   I can almost get it in one

1 breath.

2 (The following proceedings were held  
3 outside the presence of the jury.)

4 THE COURT: All right. We're outside the  
5 presence of the jury.

6 Anything we need to put on the record,  
7 Counsel?

8 MR. TINDALL: No, Your Honor.

9 MR. ROBERTS: Not us, Your Honor.

10 MR. MAZZEO: No, Your Honor.

11 MR. MOTT: Do you want the order now or still  
12 waiting?

13 THE MARSHAL: Remain seated. Come to order.

14 THE COURT: I didn't know if anybody was in  
15 here.

16 THE MARSHAL: Jury's present.

17 THE COURT: We ready to go?

18 MR. MAZZEO: We're ready to go, and I have  
19 one question, Judge.

20 THE COURT: Back on the record. We're  
21 outside the presence.

22 Go ahead.

23 MR. MAZZEO: Judge, I know the other day we  
24 were talking use of peremptory challenges, 4 for the --  
25 for the 8 jurors and -- and one for the alternate, and

1 you said that we would have to separate them and use  
2 the one for the alternates at the end. And I know  
3 different departments do it differently, and I would  
4 just ask if you would consider allowing us to use all 5  
5 indiscriminately as we wish for the entire 20 and then  
6 whatever 2 are left would be the alternates at the end.  
7 So the last 2 would be the alternates. Kind of like  
8 that way -- that -- that system better.

9 MR. ROBERTS: I have no objection to them  
10 using them indiscriminately, but I think we should  
11 follow the statute and have the extra strike limited to  
12 the alternates at the end.

13 MR. TINDALL: I agree with Mr. Roberts, Your  
14 Honor, to strike as to the alternates.

15 THE COURT: Doesn't sound like you have a  
16 stipulation. I don't know how I can change statute.

17 MR. MAZZEO: You're the judge. I'll respect  
18 your decision if you agree with me.

19 MR. ROBERTS: We'll talk about the  
20 constitution later, Judge.

21 MR. MAZZEO: I'm ready to go.

22 THE COURT: I think you guys are going to  
23 have to get together on the last one.

24 MR. MAZZEO: Okay. No, we're fine. We're  
25 fine.

1 MR. STRASSBURG: I don't think we're worried  
2 about that happening, Judge.

3 MR. MAZZEO: I'm ready to proceed.

4 THE COURT: Okay. Ready?

5 MR. ROBERTS: Yes, Your Honor.

6 THE COURT: Let's bring them back. We're  
7 still working towards 4:15 guys. Mr. Mazzeo.

8 MR. MAZZEO: I'm sorry.

9 THE COURT: We're still working towards 4:15.

10 MR. MAZZEO: I'm going to start to speed  
11 things up at this point. Yes, I'm working with that in  
12 mind to give Roger plenty of time to question. I'm --  
13 yeah, I'm going to get to the trial.

14 THE COURT: Kristy's happy about you speeding  
15 things up.

16 THE MARSHAL: Jury entering.

17 (The following proceedings were held in  
18 the presence of the jury.)

19 UNIDENTIFIED SPEAKER: Hello, my friends.

20 THE MARSHAL: Jury is present, Judge.

21 THE COURT: Thank you. Go ahead and be  
22 seated. Welcome back, folks. We're back on the  
23 record, Case No. A637772.

24 Mr. Mazzeo, you may proceed.

25 MR. MAZZEO: Yes. Thank you, Judge.

1           Good afternoon once again, ladies and  
2 gentlemen.

3           IN UNISON: Good afternoon.

4           MR. MAZZEO: If -- I'm going to try to speed  
5 this up because my goal is to make sure that I'm done,  
6 and I have -- Roger Strassburg has plenty of time to  
7 question you as well so that we can actually finish  
8 with and have a jury picked today. That's the --  
9 that's the idea. So I may speed things up. Is anyone  
10 opposed to that? Okay. Okay. I have to be mindful of  
11 the court reporter. She can only type so fast, so ...

12           THE COURT: She types pretty fast.

13           MR. MAZZEO: So we were -- we were talking  
14 about degenerative conditions and conditions of the  
15 neck, the back, and the lower extremities, and I  
16 believe we were at Mr. Cyganek? Yes.

17           So -- and -- and, Mr. Cyganek, I know you  
18 told us yesterday that about the accident you were in  
19 years ago, the rollover. You had sustained injuries to  
20 your -- to your body, including your hip. And I think  
21 I asked you yesterday about the residuals, if you had  
22 any residual pain or symptoms from that.

23           PROSPECTIVE JUROR NO. 106: Not so much. If  
24 I do a lot of walking, I'll get sore or stiff. I got  
25 to get up and just move around. I have a high

1 tolerance of pain, so that's not really a problem,  
2 so ...

3 MR. MAZZEO: Right. Okay. And so is this  
4 something, the stiffness that you get, is that  
5 something that happens on a daily basis, weekly basis,  
6 or something else?

7 PROSPECTIVE JUROR NO. 106: No. I'm pretty  
8 active every day. It's just if I get overly active in  
9 walking. In my job, I do a lot of sitting, but I can  
10 also do a lot of walking, stuff like that. But for the  
11 most part, I'm okay.

12 MR. MAZZEO: Okay. Great. Thank you.  
13 Appreciate it.

14 Moving on down to the second row.  
15 Ms. Abeles -- Abeles.

16 THE COURT: Abeles.

17 PROSPECTIVE JUROR NO. 043: Abeles.

18 MR. MAZZEO: Abeles.

19 PROSPECTIVE JUROR NO. 043: Number 043. No  
20 complaints.

21 MR. MAZZEO: No complaints. Okay. Thank  
22 you.

23 Mr. Gallegos.

24 PROSPECTIVE JUROR NO. 160: Very good.

25 MR. MAZZEO: Okay.

1 PROSPECTIVE JUROR NO. 160: 160. No, I --  
2 really no complaints. I've had two hernia surgeries,  
3 but that's about it. And that was quite a few years  
4 ago and 110 percent better.

5 MR. MAZZEO: Okay. And -- and if not  
6 yourself, what about -- what about a family member, a  
7 parent, an uncle who might have conditions of the neck  
8 or back where they have experienced symptoms on a  
9 regular basis?

10 PROSPECTIVE JUROR NO. 160: No, no one in the  
11 immediate family.

12 MR. MAZZEO: Okay. Thank you.

13 Mr. Evans, just give me a moment to turn to  
14 your page.

15 And, Mr. Evans, you had mentioned to us in  
16 your questionnaire about back -- you have back pain.

17 PROSPECTIVE JUROR NO. 053: Sometimes.

18 MR. MAZZEO: Okay. And -- and you had  
19 indicated that that's from lifting weights?

20 PROSPECTIVE JUROR NO. 053: Yes. At my work.

21 MR. MAZZEO: At what? I'm sorry.

22 PROSPECTIVE JUROR NO. 053: At my work.

23 MR. MAZZEO: At your work. Okay.

24 And how -- is this a chronic condition that  
25 you have?

1 PROSPECTIVE JUROR NO. 053: No, just  
2 sometimes.

3 MR. MAZZEO: Okay. So -- so it's  
4 intermittent, sometimes you'll have pain flare-ups and  
5 it goes away?

6 PROSPECTIVE JUROR NO. 053: Yeah.

7 MR. MAZZEO: Okay. And what do you do for it  
8 when you have the flare-ups?

9 PROSPECTIVE JUROR NO. 053: Usually just  
10 tough it out.

11 MR. MAZZEO: You tough it out?

12 PROSPECTIVE JUROR NO. 053: Yeah.

13 MR. MAZZEO: Sure. Do you get treatment for  
14 it?

15 PROSPECTIVE JUROR NO. 053: No.

16 MR. MAZZEO: No? Okay. All right.

17 And, Mr. Roberts -- and I know, Mr. Roberts,  
18 you had shared with us, I think even the first day,  
19 we're now in the fourth day, about the -- the aches and  
20 pains you've had with your -- with your knees from  
21 being a professional basketball player.

22 PROSPECTIVE JUROR NO. 058: Just goes with  
23 the territory.

24 MR. MAZZEO: And you guys at a professional  
25 level, you -- you subject your bodies to a lot of --



1 lot of workouts and a lot of stress, so you kind of  
2 accept it for what it is; right?

3 PROSPECTIVE JUROR NO. 058: Generally  
4 speaking, yeah. I mean, unless it's an injury that  
5 takes place while in performance. You still accept it,  
6 but that's -- that's atypical for get -- you know,  
7 having an injury while you're performing. Aches and  
8 pain and stiffness and bruises daily.

9 MR. MAZZEO: Okay. Do you do anything to  
10 handle or to decrease or minimize the aches and pains?

11 PROSPECTIVE JUROR NO. 058: Yeah. I take  
12 anti-inflammatories, occasionally over-the-counter  
13 Aleve or Tylenol or something like that to help relieve  
14 if it's -- if there's a flare-up. I think somebody  
15 earlier mentioned that when the weather changes,  
16 that's -- that's, generally speaking, when you -- all  
17 of a sudden, you feel, okay, there's something -- I can  
18 tell you when a storm's coming before the storm comes,  
19 that kind of stuff.

20 MR. MAZZEO: Yeah. I can -- I generally  
21 sense it a day or two before as well. Something  
22 changes, I feel something in the body, so ...

23 PROSPECTIVE JUROR NO. 058: Something about  
24 the knees when there's humidity or it goes up or  
25 whatever, you know, and there's something brewing,

1 yeah.

2 MR. MAZZEO: Sure. Do you -- aside from  
3 maybe anti-inflammatories once in a while, do you seek  
4 out any treatment, physical therapy or --

5 PROSPECTIVE JUROR NO. 058: No.

6 MR. MAZZEO: No?

7 PROSPECTIVE JUROR NO. 058: I mean, try to  
8 stretch and -- I'm still -- I'm still semi active. I  
9 mean, I think I told you I'm a coach, so I still try to  
10 get out and do some activities and run a little bit and  
11 try to -- try to maintain a semblance of conditioning.

12 MR. MAZZEO: Okay.

13 PROSPECTIVE JUROR NO. 058: Yeah.

14 MR. MAZZEO: And as -- as a result -- in  
15 addition to the -- the conditions of your knees, have  
16 you ever had any issues with your back?

17 PROSPECTIVE JUROR NO. 058: Again, just the  
18 normal stuff. I mean, I -- during my playing time in a  
19 professional career, I've been sidelined a couple of  
20 times with minor back strain or something like that.  
21 Nothing that one of my physios or -- we didn't have  
22 chiros, but they were trained with similar  
23 capabilities, put us on a stretching machine, do some  
24 manipulation and, you know, one or two days later  
25 you're okay, goes away.

1 MR. MAZZEO: Sure. Okay. Thank you. I  
2 appreciate it.

3 PROSPECTIVE JUROR NO. 058: Uh-huh.

4 MR. MAZZEO: Mr. Berkery, you had shared with  
5 us that your dad had a -- a back -- back pain, I guess,  
6 not related to a specific event, though --

7 PROSPECTIVE JUROR NO. 063: Yeah.

8 MR. MAZZEO: -- right?

9 PROSPECTIVE JUROR NO. 063: No, it's been  
10 chronic for a couple of decades now.

11 MR. MAZZEO: Okay. And it's -- you said it  
12 might be related to a weak or, I guess, a herniated  
13 disk or ...

14 PROSPECTIVE JUROR NO. 063: Yeah, he had --  
15 he had some fusion surgery done on his spine. And now  
16 he's facing compression of the nerves in the lumbar  
17 area.

18 MR. MAZZEO: Okay. Because there's some  
19 bulging? He has bulges or ...

20 PROSPECTIVE JUROR NO. 063: The compression  
21 is -- is arthritis and age related.

22 MR. MAZZEO: Okay. Sure. What kind of --  
23 and I imagine your dad with the arthritis, it's  
24 something he experiences on a daily basis?

25 PROSPECTIVE JUROR NO. 063: Yes.

1           MR. MAZZEO:   Okay.   And how does he -- how  
2 does he handle that?   How does he treat it?

3           PROSPECTIVE JUROR NO. 063:   We're kind of in  
4 a quandary right now.   On the one hand, they'd like to  
5 do surgery, but his cardiologist won't let him.

6           MR. MAZZEO:   So he's kind of just dealing  
7 with it on a day-to-day basis the best he can?

8           PROSPECTIVE JUROR NO. 063:   Yes.

9           MR. MAZZEO:   Okay.   Thank you.

10          Ms. -- Ms. Bias, hi.

11          PROSPECTIVE JUROR NO. 066:   Hello.

12          MR. MAZZEO:   You had shared with us that you  
13 were actually born with spina bifida?

14          PROSPECTIVE JUROR NO. 066:   Yes.

15          MR. MAZZEO:   Can you tell us what that is?

16          PROSPECTIVE JUROR NO. 066:   066.   It's  
17 actually it's -- it's a light case of -- I was born  
18 with spina bifida occulta.   It's where a part of your  
19 vertebrae is not fully developed like normal.   So I  
20 have like a -- kind of, like, a hole in one of my  
21 lumbar disk.   And not knowing I had it until maybe  
22 three years ago, so all of a sudden -- I wasn't born  
23 three years, but I had no idea I had it.

24          MR. MAZZEO:   And how did you find out that  
25 you had it, from an imaging study?

1 PROSPECTIVE JUROR NO. 066: Well, actually,  
2 it was experiencing pinched nerves in my back  
3 constantly. So I -- it just happened. So I was like,  
4 you know what, I'm just going to go get it checked out,  
5 and that's when they found it through an X-ray.

6 MR. MAZZEO: Okay. And did they determine  
7 that or diagnose you with the pinched nerves and the  
8 pain in your back stemming from the spina bifida  
9 oculate?

10 PROSPECTIVE JUROR NO. 066: Yes.

11 MR. MAZZEO: And what -- how do you handle  
12 the pain? How do you treat it?

13 PROSPECTIVE JUROR NO. 066: Well, it's not  
14 every day. So there's just like on certain things that  
15 I do, like bending down or turning too quickly. And if  
16 I start getting the pinched nerve feeling, I just put  
17 cold compresses or warm compresses on the disk or pain  
18 medicine.

19 MR. MAZZEO: Okay.

20 PROSPECTIVE JUROR NO. 066: That's it.

21 MR. MAZZEO: All right. Thank you.

22 Mr. Avilaroa, and I'm not sure -- you had  
23 described the -- the accident you had, so we don't need  
24 to go over that again.

25 Do you have any family members that

1 experience any chronic conditions in their neck, back,  
2 or lower extremities?

3 PROSPECTIVE JUROR NO. 078: 078. Just my mom  
4 from the car accident.

5 MR. MAZZEO: Oh, which you told us about;  
6 right?

7 PROSPECTIVE JUROR NO. 078: Yeah, just my  
8 mom. She still feels it today. And, you know, she  
9 can't really do as much. She can't even walk as well.  
10 And, you know, she -- it's -- she says it's gotten a  
11 lot worse, so -- I don't really have a -- too much  
12 contact with my mom. But last time I saw her, she's  
13 been the same, you know, her -- her pain. She has --  
14 she -- she won't -- she can't sit for long periods of  
15 time. She'll stand up in the middle of conversations,  
16 so ...

17 MR. MAZZEO: Okay. And so it's a chronic  
18 degenerative condition that she has at this point?

19 PROSPECTIVE JUROR NO. 078: Yes, sir.

20 MR. MAZZEO: Okay. And -- okay. Appreciate  
21 it. Thank you.

22 Mr. Retzlaff, aside from what we discussed  
23 about your injuries, your father's, do you have any  
24 other family members who have any chronic conditions of  
25 the neck, back, or lower extremities?

1 PROSPECTIVE JUROR NO. 088: 088, and not that  
2 I can recall.

3 MR. MAZZEO: Okay. Thank you.

4 We're going to go to this side.

5 Mr. Inglett, same question.

6 PROSPECTIVE JUROR NO. 091: 091. My dad has  
7 chronic pain, stems from multiple issues ranging from  
8 diabetes to arthritis to not caring for himself well.  
9 So he -- he deals with it every day. He has good days  
10 and bad days.

11 MR. MAZZEO: Sure. And how does he deal with  
12 it overall? What are the different modalities that he  
13 uses?

14 PROSPECTIVE JUROR NO. 091: He's in the care  
15 of a pain management doctor. I know he's going through  
16 procedure after procedure. As far as the specifics on  
17 him and all that, I'm not really familiar. My parents  
18 have decided to keep the kids out of it, just because  
19 it's kind of tough dealing with someone who deals with  
20 chronic pain. So they want to just update us when  
21 there's improvements rather than all negative.

22 MR. MAZZEO: Sure. Okay. All right. Thank  
23 you.

24 Mr. Corum. And -- and, Mr. Corum, is there  
25 anyone in your family or yourself that has any

1 conditions with the neck, back, or lower extremities?

2 PROSPECTIVE JUROR NO. 093: Badge No. 093.

3 My grandma's had, you know, problems. She has  
4 scoliosis and arthritis and stuff like that. I mean,  
5 she's -- the scoliosis looks like it's kind of getting  
6 bad, but I don't know.

7 MR. MAZZEO: Okay. Age-related degenerative  
8 changes?

9 PROSPECTIVE JUROR NO. 093: Age related  
10 and -- I'm not sure.

11 MR. MAZZEO: Okay. All right. Thank you.

12 Hi, Ms. Sako.

13 PROSPECTIVE JUROR NO. 159: Other --  
14 Badge No. 159. Other than that isolated incident where  
15 my lower back muscles were tense, which I just sort of  
16 blamed it on lack of stretching, nothing else. None of  
17 my family members or anything like that.

18 MR. MAZZEO: And is that -- that isolated  
19 incident that's just one time where you --

20 PROSPECTIVE JUROR NO. 159: Yes, that only  
21 happened one time.

22 MR. MAZZEO: Okay. All right. Thank you.

23 And, Mr. Franco, same question: Do you  
24 yourself, your wife, or any other family members have  
25 any conditions of the neck, lower back, or lower



1 extremities?

2 PROSPECTIVE JUROR NO. 096: My wife went  
3 through that -- 096 -- went through that accident, and  
4 she got better through physical therapy and all that  
5 other stuff.

6 I have rotator cuff surgery, right, but not  
7 from golfing because that sounds like it's a really  
8 hard sport, golfing.

9 MR. MAZZEO: And bowling.

10 PROSPECTIVE JUROR NO. 096: I haven't done  
11 that. And bowling. So just rotator cuff, but physical  
12 therapy for six months.

13 MR. MAZZEO: Okay.

14 PROSPECTIVE JUROR NO. 096: Good to go.

15 MR. MAZZEO: And how about in your job as a  
16 postman, with the -- I don't know your -- the  
17 activities that you have to engage in on a regular  
18 basis?

19 PROSPECTIVE JUROR NO. 096: Oh, a lot can  
20 happen over time. You know, they got carpal tunnel  
21 going on, your knees go out, hips go out, shoulders.  
22 I'm not there yet, so ...

23 MR. MAZZEO: Still young --

24 PROSPECTIVE JUROR NO. 096: I'm still hanging  
25 in there, still fighting, so we're good.

1 MR. MAZZEO: Okay. Great. Thank you.

2 Show of hands, general question: Has anyone  
3 heard the term -- I know a couple have already  
4 mentioned this term. Has anyone heard the term "sprain  
5 or strain" referring to the neck or back? Okay. A  
6 number of you.

7 Mr. Roberts, when you hear that term, "neck  
8 or back sprain" or "strain," what does that mean to  
9 you?

10 PROSPECTIVE JUROR NO. 058: Generally, it  
11 refers to some kind of impingement or pain that is --  
12 is associated with some kind of activity, whether it's  
13 overlifting, traumatic hit, or something like that.

14 MR. MAZZEO: What -- sure. Thank you.

15 And what's your opinion regarding the  
16 severity -- your own personal opinion regarding the  
17 severity of a sprain or strain?

18 PROSPECTIVE JUROR NO. 058: That's a hard one  
19 because with the stuff I've done in my own life,  
20 that's -- a lot of times I think things are, you know,  
21 minor, not a big deal. But --

22 MR. MAZZEO: Sure.

23 PROSPECTIVE JUROR NO. 058: -- other people  
24 might not feel the same way.

25 MR. MAZZEO: Okay. And I know in the top row

1 a couple of people raised their hand. Ms. Gold, you  
2 did.

3 What is -- when you hear the term "sprain"  
4 and "strain," what does that mean to you?

5 PROSPECTIVE JUROR NO. 036: It means that you  
6 hurt yourself but nothing's broken.

7 MR. MAZZEO: Okay.

8 PROSPECTIVE JUROR NO. 036: It's just kind of  
9 strained or sprained.

10 MR. MAZZEO: Okay. And -- and before asking  
11 anyone else about that, how many -- how many people  
12 here have actually sustained a sprain or strain? Okay.  
13 Yeah, a number of you. Okay. All right.

14 And, Ms. Klein, can you tell us about that?

15 PROSPECTIVE JUROR NO. 146: I had sprained my  
16 ankle in high school, was on crutches for several  
17 months, soft tissue damage, and it -- ice, rest,  
18 elevate, compression. And it -- it really depends --  
19 it's a very wide range of -- of possible injuries,  
20 depending on the location of the injury and how it  
21 was -- you know, how it occurred, and personal, you  
22 know, fortitude of that person. It -- it can be  
23 everything from having to wear, you know, the  
24 inflatable cast. I've seen, you know, people who had  
25 really bad sprains, ankle sprains that had to wear

1 inflatable cast or other people would just put an Ace  
2 bandage on it and get on with their life. It's a  
3 really wide spectrum.

4 MR. MAZZEO: Sure. Thank you. Appreciate  
5 it.

6 Who here -- let me narrow that -- that  
7 question down a little bit. Who here has sustained a  
8 sprain-strain to either the neck or the back? Can we  
9 have a show of hands? Okay. Fewer. Okay.

10 Mr. Berkery, how did you sustain a  
11 sprain-strain to your neck or back?

12 PROSPECTIVE JUROR NO. 063: 063. The same  
13 injury I had discussed previously with carrying  
14 somebody downstairs, my back popped.

15 MR. MAZZEO: Oh, yes. Oh, that's right, and  
16 I wanted to -- actually wanted to ask you about that.

17 Yeah, you were with another -- I guess you  
18 were an EMT.

19 PROSPECTIVE JUROR NO. 063: Yes, firefighter  
20 EMT.

21 MR. MAZZEO: And you were going down a pretty  
22 narrow staircase, only enough room for one of you on  
23 either side?

24 PROSPECTIVE JUROR NO. 063: Yeah, we were --  
25 the responding police officer backed us up, so I had

1 somebody behind me --

2 MR. MAZZEO: Okay.

3 PROSPECTIVE JUROR NO. 063 -- as we were going  
4 down the stairs.

5 MR. MAZZEO: Were you on the lower end of  
6 the --

7 (Clarification by the Reporter.)

8 MR. MAZZEO: Were you on the lower end of  
9 whatever it was you were carrying?

10 PROSPECTIVE JUROR NO. 063: Yes, I was. It  
11 was a stair not a stretcher.

12 MR. MAZZEO: Thank you.

13 And as you were descending the stairs, you  
14 had told us yesterday that your back had popped.

15 PROSPECTIVE JUROR NO. 063: Yes, sir.

16 MR. MAZZEO: What -- what do you mean by that  
17 when you say "popped"?

18 PROSPECTIVE JUROR NO. 063: I just -- I  
19 literally felt pain everywhere. Everything went white.  
20 I was sweating profusely. I just had -- couldn't  
21 breathe. I couldn't move. I couldn't -- you know,  
22 that's what I had to do, but that was what the feeling  
23 was at the time.

24 MR. MAZZEO: Sure. Did you have any X-rays  
25 or MRIs imaging studies performed of your back

1 afterward?

2 PROSPECTIVE JUROR NO. 063: At the emergency  
3 room, yeah. Once -- once -- once we -- actually, once  
4 we got the patient down the stairs, some -- some of the  
5 firefighters took the patient from me because then they  
6 could, and I just kind of stood there till they boarded  
7 me and brought me in. There was no -- there was no  
8 major damage. It was just the strain of what was going  
9 on. This big shot of morphine and got me home, and I  
10 stayed down for a couple of days and then I was fine.

11 MR. MAZZEO: Okay. So -- so the injury was  
12 more specific to the myofascial tissues not to a disk  
13 in your back.

14 PROSPECTIVE JUROR NO. 063: No, not to a  
15 disk, no, sir.

16 MR. MAZZEO: Okay. Thank you. Appreciate  
17 it.

18 Okay. This next topic -- as you can see, I'm  
19 starting to move a little bit faster at this point,  
20 so -- but this next topic is important, ladies and  
21 gentlemen. And -- and, again, it's a sensitive issue.  
22 It's -- but it's something that has to be -- that I  
23 have to discuss. I need to know your thoughts and  
24 feelings about this. And we were talking about health  
25 issues. This case involves claimed injuries and

1 conditions, so -- and I think -- and I think I will  
2 start with Mr. Blurton, because -- or I'll ask a  
3 general question, then I'll start with Mr. Blurton  
4 because Mr. Blurton gave us an answer regarding this  
5 anyway.

6           So who -- who here has their own personal  
7 experience or a family member who has health issues due  
8 to excess weight or deconditioning? All right. Just a  
9 show of hands if you would. Okay. And I know  
10 Mr. Blurton had indicated earlier. Ms. Bias,  
11 Ms. Klein, Ms. Gold. Okay. Thank you.

12           Mr. Blurton, I just wanted to follow up on  
13 something you told us earlier in your -- in a statement  
14 you made about conditioning. And do you have any  
15 opinions about how excess weight or deconditioning can  
16 cause symptoms or pain in your own life?

17           PROSPECTIVE JUROR NO. 150: So -- 150. My  
18 weight causes my back to hurt sometimes. And that's --  
19 that's generally for me. I -- and I know that's -- I  
20 know that's definitely true and that happens a lot.  
21 And I know that once the weight goes down, my back  
22 issues will probably go away.

23           MR. MAZZEO: And in what way, if at all, does  
24 that affect -- when you have the pain, does that affect  
25 your ability to engage in activities of -- of living?

1 PROSPECTIVE JUROR NO. 150: I don't -- I  
2 don't think so. It's -- I've kind of learned to tough  
3 it out. I've been overweight for a while now and kind  
4 of been able to deal with it. And it's -- you know,  
5 it's my -- to me, it feels like mild issues; right?

6 MR. MAZZEO: Okay.

7 PROSPECTIVE JUROR NO. 150: To be honest,  
8 sitting at a computer -- because when I sit at a  
9 computer, I have to be close to the screen; right? So  
10 this far (witness indicating), maybe 10 inches at the  
11 most from the monitor to see what I'm doing. So I'm  
12 always sitting like this (witness indicating).

13 MR. MAZZEO: Forward.

14 PROSPECTIVE JUROR NO. 150: Yes, I'm always  
15 sitting forward. So that actually causes more  
16 problems, right, because I have to do this (witness  
17 indicating), so it hurts my back to sit like this for  
18 many, many hours; right? And, you know -- so out of  
19 the two, I would say that's probably worse.

20 MR. MAZZEO: Okay. Okay. Thank you.

21 Ms. Klein.

22 PROSPECTIVE JUROR NO. 146: Badge No. 146.  
23 Both my father and mother-in-law have weight-related  
24 health issues that have -- they're both diabetic. And  
25 it's also caused other problems and pain.



1 Specifically, I noticed with my father-in-law, his feet  
2 frequently pain him because of the excess weight. He  
3 had to have both knees replaced, and that at the time  
4 of his -- his doctor told him, you know, the excess  
5 weight would cause it to deteriorate faster and cause  
6 more pain.

7 MR. MAZZEO: And how does -- how does that  
8 affect his ability to move about and -- and perform  
9 normal activities?

10 PROSPECTIVE JUROR NO. 146: He doesn't.

11 MR. MAZZEO: Does not at all?

12 PROSPECTIVE JUROR NO. 146: He's very  
13 sedentary.

14 MR. MAZZEO: Oh, okay.

15 PROSPECTIVE JUROR NO. 146: And that's part  
16 of the problem that has caused the weight issue is the  
17 sedentary lifestyle.

18 MR. MAZZEO: Okay. Sure. Thank you.

19 Ms. Gold.

20 PROSPECTIVE JUROR NO. 036: Yes. I was very  
21 overweight. I had gastric bypass surgery. I had  
22 several morbidities, where they assessed to see if  
23 you're -- if you would benefit from gastric bypass  
24 surgery. Sleep apnea, fatty liver. I had problems  
25 with my feet, so ...

1           MR. MAZZEO: And do any of those problems  
2 affect or have they affected or do they affect when --  
3 when, let's say, the symptoms arise, do they affect  
4 your ability to engage in normal activities?

5           PROSPECTIVE JUROR NO. 036: They have, yes,  
6 in the past. My daughter's also quite overweight, and  
7 when she gets pregnant, she has to take special  
8 medications to help her, and she has problems with her  
9 daily activities too.

10          MR. MAZZEO: Okay. Thank you.

11          Ms. Bias, I know you raised your hand as  
12 well.

13          PROSPECTIVE JUROR NO. 066: 066. Well, I  
14 used to be a lot bigger than what I was or, well, that  
15 I am now. But I notice that doing Zumba has helped my  
16 knees and my back very, very -- in a good way. But my  
17 husband, he's overweight. He's diabetic, and he has  
18 knee issues. And I tried to get him to go to Zumba,  
19 but he's embarrassed so -- but yeah. But he's my  
20 husband.

21          MR. MAZZEO: And -- and how does -- how does  
22 with your husband, are his activities of whether work  
23 related or -- or leisure related, are they affected in  
24 any way when he has symptoms?

25          PROSPECTIVE JUROR NO. 066: No. Because he

1 he's a houseman at the Cosmo, so he's always running  
2 and doing. It's just his eating habits which kind  
3 of -- how do you say it? Doesn't help to exercise  
4 because he eats more than he exercises I guess, so --  
5 but other than that, he does pretty good.

6 MR. MAZZEO: Okay.

7 PROSPECTIVE JUROR NO. 066: Just needs to  
8 exercise more.

9 MR. MAZZEO: And -- and, ladies and  
10 gentlemen, because of the issues and the -- and the  
11 sensitivity of the topic of weight and conditioning,  
12 will questions of witnesses during trial with regard to  
13 weight and conditioning, will that unnerve or bother  
14 anyone or affect anyone adversely if that's brought up?  
15 No? Okay. Thank you.

16 Now, I -- I did mention yesterday that I  
17 would get into the topic of I want to know about  
18 whether anyone has any medical training and knowledge,  
19 and I know, Mr. Berkery, I know you do have training in  
20 the field of medicine as an EMT. So I wanted to ask  
21 you about that.

22 But before I do, show of hands, who has  
23 training in the field of medicine? Any sort of  
24 training. Okay. Mr. Foerstel, Mr. Jensen, Ms. Klein,  
25 Mr. Cyganek. All right. Okay. Thank you.

1           Mr. Berkery, if we can start with you.

2           PROSPECTIVE JUROR NO. 063: Sure. 063.

3           MR. MAZZEO: And can you tell us something  
4 about the training that you received to become an EMT?

5           PROSPECTIVE JUROR NO. 063: It was years ago.  
6 I was an EMT firefighter. I learned my initial EMT  
7 training in Massachusetts in 1988, a number of weeks of  
8 training. It's -- it's street training. It's not --  
9 it's not high-level medical training by any means. You  
10 look at what you're faced with and go through your  
11 procedures and treat and get them to the hospital so  
12 they can get treatment that they need. And it's simple  
13 stuff, make sure their airway breathing, circulation,  
14 you know, stabilize them and get them to the hospital.

15           I later became an EMT I, which for Northern  
16 New Jersey was the ability to run an intravenous line,  
17 no meds, just the line.

18           MR. MAZZEO: How long were you an EMT for?

19           PROSPECTIVE JUROR NO. 063: Ten years.

20           MR. MAZZEO: Okay. So -- and -- and I think  
21 we touched upon it the other day, maybe yesterday, that  
22 you have -- you've responded to the scene of a number  
23 of motor vehicle accidents.

24           PROSPECTIVE JUROR NO. 063: Yes. I don't  
25 know the number.

1           MR. MAZZEO: I imagine it's a big -- in ten  
2 years, it's many.

3           PROSPECTIVE JUROR NO. 063: Probably.

4           MR. MAZZEO: Okay. So -- and as the first  
5 responder, you're the primary medical provider when  
6 responding to a scene to keep a person alive and to  
7 check out the vitals of a person.

8           Do you -- you've been in a position to make  
9 assessments. You're required, actually, as an EMT, to  
10 make preliminary assessments as to the condition of --  
11 of a person who's involved in an accident; right?

12          PROSPECTIVE JUROR NO. 063: Yes, sir.

13          MR. MAZZEO: Okay. And -- and then, I guess,  
14 as an EMT, you have -- there's certain requirements you  
15 have for securing a person that you deemed necessary  
16 to -- to -- needs further treatment, and they're going  
17 to transport them to an emergency room, there's certain  
18 procedures for securing the patient for transport; is  
19 that right?

20          PROSPECTIVE JUROR NO. 063: Yeah.

21          MR. MAZZEO: What are some of the procedures?

22          PROSPECTIVE JUROR NO. 063: I can't speak to  
23 today. At the time we had to do the best that we could  
24 to bring their spine into alignment and -- and move  
25 them as a unit, longboard them and get them to the

1 hospital.

2 MR. MAZZEO: Okay. Okay. Thank you.

3 And moving on to the back row at this point,  
4 Mr. Jensen, I believe you indicated you have some  
5 training in the field of medicine?

6 PROSPECTIVE JUROR NO. 015: 015. Basic first  
7 aid, Red Cross CPR, and AED usage.

8 MR. MAZZEO: And what was the reason for  
9 becoming trained in -- I guess, certified in those  
10 disciplines?

11 PROSPECTIVE JUROR NO. 015: I was the safety  
12 focal point at the office, and it was just part of our  
13 training program.

14 MR. MAZZEO: This was at the National --

15 PROSPECTIVE JUROR NO. 015: National Weather  
16 Service.

17 MR. MAZZEO: -- Weather Service.

18 And was that expected of all of the  
19 meteorologists to have training in that?

20 PROSPECTIVE JUROR NO. 015: We tried to have  
21 one person on shift at all times that had basic  
22 training.

23 MR. MAZZEO: Okay. And what is the reason  
24 for that? Because I -- I -- when I'm thinking of an  
25 office setting, typically, most office settings don't

1 have someone like that.

2 PROSPECTIVE JUROR NO. 015: Because we're a  
3 24-hour operation and at 3:00 o'clock in the morning  
4 when you're working with one other person, if that  
5 person can't get to a phone to call 911, we hopefully  
6 have someone else that could help them out till a first  
7 responder got there.

8 MR. MAZZEO: Makes sense.

9 Have you ever had to use any of the training  
10 that you received to examine a person and -- and/or  
11 treat someone?

12 PROSPECTIVE JUROR NO. 015: No, I have not.

13 MR. MAZZEO: Okay. Thank you.

14 Mr. Foerstel.

15 PROSPECTIVE JUROR NO. 023: Yes.

16 MR. MAZZEO: Hi.

17 PROSPECTIVE JUROR NO. 023: 023.

18 MR. MAZZEO: And you had indicated, I  
19 believe -- you raised your hand.

20 PROSPECTIVE JUROR NO. 023: Yeah, a  
21 wilderness first responder course. It's about a  
22 two-week first aid course for, like, the outdoor  
23 environment. And once again, I never put any of the  
24 practice to use. I just thought I needed it for all my  
25 outdoor activities and -- and pursuits that I do

1 to -- to be safe.

2 The only time I ever used something is at the  
3 school that I worked at, one of the students dislocated  
4 his little finger, and I pulled it back straightened it  
5 out. That was about it.

6 MR. MAZZEO: And was it dislocated?

7 PROSPECTIVE JUROR NO. 023: Yeah, it was  
8 pointing out to the side, yeah.

9 MR. MAZZEO: And you had to push it back into  
10 place?

11 PROSPECTIVE JUROR NO. 023: You actually pull  
12 it, yeah. It was tough, tough kid.

13 MR. MAZZEO: Wow. Thank you.

14 Ms. Klein.

15 PROSPECTIVE JUROR NO. 146: Badge No. 146.  
16 CPR, first aid, AED. I first got the certification  
17 when I was working as an engineering intern for the  
18 water district. They require all of their employees to  
19 go out into the field to have first aid, CPR, and AED  
20 training. I maintained it as an engineer because a lot  
21 of times we had to go out into undeveloped areas to do  
22 field surveys and on construction sites. And it was  
23 not required but heavily suggested by almost all of my  
24 employers that we have that training and certification.

25 And now I'm a teacher, they offer it for free



1 for teachers, at least at all the schools I've been at  
2 to maintain your certification.

3 MR. MAZZEO: Okay. Great. Thank you.

4 Who else in the top row indicated? Oh,  
5 Mr. Cyganek.

6 PROSPECTIVE JUROR NO. 106: Again, CPR, AED,  
7 first aid 'cause in security -- I'm in a corporate  
8 environment and a lot of people are exercising  
9 throughout their work schedules. And, you know, a lot  
10 of people in and out of three different buildings, so  
11 you just never know what kind of problems.

12 MR. MAZZEO: Okay. Have you ever used  
13 your -- no, you haven't?

14 PROSPECTIVE JUROR NO. 106: Never have.  
15 Badge 106.

16 MR. MAZZEO: Thank you. Thank you.

17 Anyone else in the back row who has  
18 medical -- yeah, medical training? No?

19 Okay. In the middle row, Mr. Roberts, I know  
20 you raised your hand.

21 PROSPECTIVE JUROR NO. 058: As a coach, I'm  
22 CPR-certified also. We have -- we have to carry the  
23 same thing. As a claims adjustor, I don't know if it's  
24 medical training, but we go through courses on medical  
25 terminology, physiology, and stuff like that. So I

1 don't know if that's what you're looking for.

2 MR. MAZZEO: Yeah, any sort of training.

3 PROSPECTIVE JUROR NO. 058: So I have that  
4 background.

5 MR. MAZZEO: And also do you have any --  
6 as -- as in your -- when you were adjusting, did you  
7 have any training with CPT coding or any sort of bill  
8 coding?

9 PROSPECTIVE JUROR NO. 058: Yeah, I'm also  
10 familiar with as I used to be administration in the  
11 home health agency.

12 MR. MAZZEO: I'm sorry.

13 PROSPECTIVE JUROR NO. 058: I used to be in  
14 administration in the home health agency also. So I've  
15 been in the medical -- I have been quasi in the medical  
16 environment for a few years.

17 MR. MAZZEO: Okay. And your CPR training,  
18 have you ever had to render assistance to anyone?

19 PROSPECTIVE JUROR NO. 058: I have not.

20 MR. MAZZEO: Okay. Anyone else in the second  
21 row who has medical training that --

22 Mr. Berkery, anything in addition to what we  
23 talked about?

24 PROSPECTIVE JUROR NO. 063: I was a burn  
25 technician for a year at New Jersey's critical care

1 burn unit.

2 MR. MAZZEO: Oh, okay. And can you tell us  
3 something -- a little bit more about that, what are  
4 your -- the scope of your duties as a burn technician  
5 and what training did you receive?

6 PROSPECTIVE JUROR NO. 063: Because I came in  
7 with my EMT, that -- they considered that a base  
8 training. The technicians' jobs were to undress, wash  
9 and debride, evaluate, provide that information to the  
10 nurse and the doctor. Once they made their decisions  
11 on treatment, we bandaged them back up and got them  
12 back to their beds. The nurses in the room were  
13 responsible for airways and other -- other life vitals  
14 to make sure that they stayed with us.

15 MR. MAZZEO: And how did you -- how did you  
16 get involved in that field as a burn technician?

17 PROSPECTIVE JUROR NO. 063: You know what, I  
18 don't really remember other than it was a good paid job  
19 at the time.

20 MR. MAZZEO: Sure. And I didn't mean to  
21 pass -- you know, not ask you about any other training  
22 you had. Thank you for offering that, so ...

23 And anyone else? How about in this first row  
24 here? No. Okay. All right. Thank you.

25 Does anyone have any training and

1 experience -- and you might have suggested this already  
2 with my prior question -- but in X-rays and diagnostic  
3 testing, sonograms, any sort of imaging procedures?

4 No? Okay.

5 Does anybody -- has everyone heard of X-rays  
6 and MRIs? Okay. I'd say -- I think everybody has  
7 raised their hand.

8 No? Mr. Inglett.

9 PROSPECTIVE JUROR NO. 091: I have.

10 MR. MAZZEO: You have as well. Just assumed  
11 that everybody has. Okay.

12 And so just randomly, Mr. -- Mr. Brandon,  
13 random. I haven't spoken to you for a while.

14 PROSPECTIVE JUROR NO. 003: That's a good  
15 thing.

16 MR. MAZZEO: I want to catch you all before  
17 the afternoon lull, before the energy from the lunch  
18 and everybody getting tired.

19 PROSPECTIVE JUROR NO. 003: That's already  
20 started.

21 MR. MAZZEO: That clock is crazy right now.

22 So, Mr. Brandon, what -- what is your  
23 understanding of what X-rays and/or MRIs are used for?

24 PROSPECTIVE JUROR NO. 003: Looking at your  
25 body, checking for broken bones, and ...

1           MR. MAZZEO: Looking at -- right, diagnosing  
2 the structures of our body basically; right?

3           PROSPECTIVE JUROR NO. 003: Seeing our  
4 insides.

5           MR. MAZZEO: That's right. Okay.

6           PROSPECTIVE JUROR NO. 003: What we ate,  
7 what's stuck inside our stomachs.

8           MR. MAZZEO: Sure.

9           PROSPECTIVE JUROR NO. 003: We'll leave it at  
10 that.

11           MR. MAZZEO: Okay. Okay. And would you --  
12 the findings that come from an MRI or from an X-ray --  
13 which are basically pictures, right, basically  
14 pictures? -- would that be subjective information or  
15 objective information about the structure of the body  
16 that's being photographed?

17           PROSPECTIVE JUROR NO. 003: I think  
18 subjective.

19           MR. MAZZEO: Okay. How many people think  
20 that X-rays and the images from X-ray -- X-rays and  
21 MRIs are objective information? Raise -- show of  
22 hands. And -- thank you. And -- and -- or subjective  
23 information? Or a combination of both. Ah,  
24 interpretation right of the film? Okay. Okay. Right,  
25 it's a combination?

1 PROSPECTIVE JUROR NO. 146: You can see a  
2 break.

3 MR. MAZZEO: I want to get back to a general  
4 question. I had mentioned something prior to lunch  
5 about my client, Andrea, contesting liability, and --  
6 and I wasn't sure to what extent anyone was aware of  
7 that prior to me saying it this morning.

8 So now that you know that Andrea's contesting  
9 liability and damages, for those who indicated that  
10 they could not be -- that -- that they would be biased  
11 or they could not be impartial with respect to a  
12 driving-while-impaired-type claim, which you don't have  
13 to decide, how many people feel that they might --  
14 knowing that Andrea's contesting liability, that they  
15 might hold that against her for contesting liability?  
16 Anyone? Okay.

17 And in considering -- I'm going to start with  
18 you, Mr. Blurton. In considering compensation -- and  
19 of course you haven't heard any evidence yet -- but  
20 would you have any problem returning a verdict for \$1  
21 if justified by the evidence?

22 PROSPECTIVE JUROR NO. 150: No.

23 MR. MAZZEO: I'm sorry?

24 PROSPECTIVE JUROR NO. 150: No. 150. No.

25 MR. MAZZEO: Mr. Brandon, same question.

1 PROSPECTIVE JUROR NO. 003: No.  
2 MR. MAZZEO: No? Okay.  
3 Ms. Flores, same question.  
4 PROSPECTIVE JUROR NO. 010: No.  
5 MR. MAZZEO: Okay. Mr. Jensen.  
6 PROSPECTIVE JUROR NO. 015: No.  
7 MR. MAZZEO: Okay. Mr. Foerstel.  
8 PROSPECTIVE JUROR NO. 023: No.  
9 MR. MAZZEO: All right. Ms. Klein.  
10 PROSPECTIVE JUROR NO. 146: No.  
11 MR. MAZZEO: Ms. Gold.  
12 PROSPECTIVE JUROR NO. 036: No.  
13 MR. MAZZEO: Mrs. Cyganek.  
14 PROSPECTIVE JUROR NO. 106: No.  
15 MR. MAZZEO: Ms. Abeles.  
16 PROSPECTIVE JUROR NO. 043: No.  
17 MR. MAZZEO: Ms. Gallegos.  
18 PROSPECTIVE JUROR NO. 160: Mr. Gallegos,  
19 yeah. No, I wouldn't.  
20 MR. MAZZEO: Mr. Evans.  
21 PROSPECTIVE JUROR NO. 053: No.  
22 MR. MAZZEO: Mr. Roberts.  
23 PROSPECTIVE JUROR NO. 058: My ability, no.  
24 MR. MAZZEO: Mr. Berkery.  
25 PROSPECTIVE JUROR NO. 063: No.

1 MR. MAZZEO: Ms. Bias.  
2 PROSPECTIVE JUROR NO. 066: 066. No.  
3 MR. MAZZEO: Ms. -- Mr. Avilaroa.  
4 PROSPECTIVE JUROR NO. 078: 078. Negative.  
5 MR. MAZZEO: Mr. Retzlaff.  
6 PROSPECTIVE JUROR NO. 088: 088. No.  
7 MR. MAZZEO: Mr. Inglett.  
8 PROSPECTIVE JUROR NO. 091: Can you repeat  
9 the question?  
10 MR. MAZZEO: Sure. Would you have any  
11 problem -- in considering compensation, would you have  
12 any problem returning a verdict for \$1 if justified by  
13 the evidence?  
14 PROSPECTIVE JUROR NO. 091: No.  
15 MR. MAZZEO: Okay. Mr. Corum.  
16 PROSPECTIVE JUROR NO. 093: No.  
17 MR. MAZZEO: Ms. Sako.  
18 PROSPECTIVE JUROR NO. 159: 159. No.  
19 MR. MAZZEO: Mr. Franco.  
20 PROSPECTIVE JUROR NO. 096: 096. No.  
21 MR. MAZZEO: Thank you.  
22 And -- now, during the trial, both sides have  
23 experts that we've retained, and they're going to be --  
24 they're going to come in here. They're going to  
25 testify. And sometimes jurors, people think that



1 because the experts hired by, you know, the parties --  
2 and in this case by both parties, they -- they think  
3 that, well, maybe they don't look at their -- their  
4 testimony the same way they will as -- as a witness  
5 who's not being paid to render services.

6 Does anybody -- show of hands. Question for  
7 everyone -- believe that experts are -- are more or  
8 less credible than an ordinary witness? Anyone? In  
9 other words, will everyone give the experts who testify  
10 in this case the same weight you would give any -- any  
11 witness that will testify?

12 I see a nod of heads. Is that for everybody?  
13 Okay. Great.

14 We're moving right along now. What time is  
15 it?

16 Is there anything -- I know that Mr. Roberts  
17 touched upon this, and I just for my own satisfaction,  
18 I -- I want to touch upon it as well a little bit,  
19 briefly actually.

20 Does anybody feel because the plaintiff  
21 brought a claim in here and she's claiming she was  
22 injured as a result of this accident, does anybody feel  
23 sorry for her? At all? Does anybody feel sympathy for  
24 her at all before you hear any evidence? No?

25 Mr. Roberts.

1 PROSPECTIVE JUROR NO. 058: No. She hasn't  
2 even been here, so ...

3 MR. MAZZEO: Okay. Does anybody have -- with  
4 respect to what you've heard so far, and you -- you  
5 know that my client, Andrea's the owner of the car, you  
6 know that Jared was the driver of the car.

7 Does anybody have any -- any -- any  
8 preconceived or -- not preconceived necessarily, but  
9 has -- have you developed any feelings because of what  
10 you've heard about the ruling on -- on the -- regarding  
11 the marijuana metabolite and the impairment, does  
12 anybody have any feelings that makes you ill at ease  
13 for sitting on this case with respect to the  
14 defendants, Andrea or Jared? Anyone? Okay. All  
15 right.

16 And I need an assurance. Will everyone be  
17 fair and just in compensating the plaintiff in this  
18 case only for the injuries and damages that she proves  
19 that she sustained from this accident? Can everyone  
20 assure me of that? Show of hands. And it looks like  
21 the entire panel has raised their hand. Okay. Thank  
22 you.

23 And I'm going to take a moment to look at  
24 some notes because I am just about done.

25 Okay. All right. And I have -- it's another

1 general question for all of you. And just a show of  
2 hands, please. So yesterday, maybe it was the day  
3 before as well, but many of you had said or there were  
4 a number of you, and I don't know how many, and I'm not  
5 pointing anyone out at this point, said you can't be  
6 impartial if liability is an issue in a DUI case.

7 Now that you know that Andrea is contesting  
8 liability, do any of you have strong opinions about  
9 drug use or DUI that might affect your impartiality  
10 with respect to Andrea or Jared? No show of hands?  
11 No? Okay. Okay.

12 With that, ladies and gentlemen, I am done.  
13 Thank you for your -- thank you for your time and  
14 attention.

15 THE COURT: Pass the panel for cause,  
16 Mr. Mazzeo?

17 MR. MAZZEO: I do, Your Honor.

18 THE COURT: Mr. Strassburg.

19 MR. STRASSBURG: Judge, I wonder if this  
20 would be an appropriate time to take the afternoon  
21 break?

22 THE COURT: Only been an hour, but we can  
23 take a break if you want. We'll take a quick break,  
24 folks.

25 During our break, you're instructed not to

1 talk with each other or with anyone else about any  
2 subject or issue connected with this trial. You are  
3 not to read, watch, or listen to any report of or  
4 commentary on the trial by any person connected with  
5 this case or by any medium of information, including,  
6 without limitation, newspapers, television, the  
7 Internet, or radio. You are not to conduct any  
8 research on your own, which means you cannot talk with  
9 others, Tweet others, text others, Google issues, or  
10 conduct any other kind of book or computer research  
11 with regard to any issue, party, witness, or attorney  
12 involved in this case. You're not to form or express  
13 any opinion on any subject connected with this trial  
14 until the case is finally submitted to you.

15 See you in about ten minutes.

16 (The following proceedings were held  
17 outside the presence of the jury.)

18 THE COURT: We're outside the presence.

19 Anything on the record?

20 MR. MAZZEO: No, Your Honor.

21 MR. TINDALL: No, Your Honor.

22 THE COURT: All right. Off the record.

23 (Whereupon a short recess was taken.)

24 THE COURT: Back on the record. We're  
25 outside the presence.

1           Okay. Go ahead.

2           MR. SMITH: I'm finally going to say  
3 something since the trial started.

4           THE COURT: Okay. I've been waiting.

5           MR. SMITH: We received some demonstrative  
6 exhibits from Mr. Strassburg with respect to his  
7 opening, and we wanted to discuss them.

8           THE COURT: Let's do it at the end of the  
9 day.

10          MR. SMITH: Okay. Then let me discuss one  
11 other issue related to the same thing. Mr. Mazzeo has  
12 told us he's not going to give us his demonstrative  
13 exhibits until after our opening. That's not going to  
14 give us sufficient time to review those. And in  
15 particular as an example, some of the exhibits we got  
16 from Mr. Strassburg that we're going to object require  
17 a significant amount of time going through the 100 and  
18 some motions in limine, various medical records,  
19 et cetera, in order to determine whether the things in  
20 there are accurate, appropriate, in line with the  
21 Court's orders. And if we don't get them until after  
22 our opening, we're not going to have sufficient time in  
23 order to review them. I want to give him some notice  
24 now, so we can discuss it now.

25          MR. MAZZEO: Most of the exhibits I have are

1 actually diagrams or illustrations of the spine,  
2 different parts of the spine. So I don't have a  
3 problem disclosing that.

4 But there might be some exhibits that are  
5 attorney work product, and I'm certainly not going to  
6 disclose that until after. They're not going to use my  
7 work product in their opening to undermine my case. So  
8 they're not going to get that. But I can certainly --  
9 I have two -- two exhibits, trial boards over there  
10 which are from plaintiff's exhibits. So I don't have  
11 no problem with them looking at those boards in  
12 advance.

13 But it's not something that I'm going to show  
14 them until after my -- after their opening statement  
15 because I don't -- that's -- I don't want my opening to  
16 be sabotaged by the plaintiff.

17 THE COURT: That's fair.

18 MR. SMITH: I understand his point. I think  
19 we may end up -- depending on what he gives us, we may  
20 end up having some longer break than you would like in  
21 order for us to review that and go through the Court's  
22 orders.

23 MR. MAZZEO: And -- and I will just say this,  
24 and I appreciate what Mr. Smith is saying. I know what  
25 Mr. Strassburg had disclosed the Gantt charts.

1 (Clarification by the Reporter.)

2 MR. STRASSBURG: G-a-n-t-t.

3 MR. MAZZEO: And I don't have any charts of  
4 that nature. So there's nothing that -- most of them  
5 are either -- they're photographs that have been  
6 stipulated into evidence, medical records that are  
7 stipulated into evidence, or otherwise illustrations or  
8 diagrams of body part, facet joints.

9 THE COURT: I'm not going to make him do it  
10 today because I think he makes a good point that you  
11 could use his slides or whatever during your opening.  
12 That's not fair.

13 MR. SMITH: Okay.

14 MR. MAZZEO: Thanks, Judge.

15 THE COURT: We'll have to deal with it  
16 tomorrow.

17 MR. TINDALL: Your Honor, we request that  
18 when Mr. Strassburg's done and it's time for jury  
19 selection, if the jurors be excused rather than waiting  
20 in the room.

21 THE COURT: You guys all want to do that?  
22 Sometimes people like to be able to see the jurors that  
23 they're excusing as they're exercising their rights.  
24 You guys want to leave the jury here, or you want to  
25 excuse them while you're exercising your peremptories?

1           MR. ROBERTS: It's just going to go back and  
2 forth silently, and then they're going to be told?

3           THE COURT: Yep.

4           MR. ROBERTS: I'm fine with them staying in  
5 the box for that. I didn't want to exercise it in  
6 front of the panel.

7           THE COURT: He's asking that they be excused.  
8 So I mean, I understand the -- at least part of the  
9 reason on the defense side is because they're going to  
10 have to at least talk about one of them.

11          MR. ROBERTS: I've got no objection.

12          THE COURT: You want to let them go. We'll  
13 just have them wait in the hallway while you exercise  
14 your perempts? Everybody okay with that?

15          MR. ROBERTS: We might have some discussion  
16 ourselves amongst the team.

17          THE COURT: Okay. All right. So we'll get  
18 through the voir dire, and then we'll have them wait in  
19 the hall until the perempts are exercised, and we'll  
20 bring them back in and tell them who's staying, who's  
21 going.

22          All right. Let's bring them back. Once we  
23 have a jury and we've excused them, we can talk about  
24 whatever else you guys want to talk about for tomorrow.

25          MR. ROBERTS: Thank you, Your Honor.



1 THE COURT: If there's time tomorrow.

2 MR. ROBERTS: That was what we were talking  
3 now because 4:15.

4 THE MARSHAL: Jury entering.

5 (The following proceedings were held in  
6 the presence of the jury.)

7 THE MARSHAL: Jury is present, Judge.

8 THE COURT: Thank you. Go ahead and be  
9 seated, folks. Back on the record, Case No. A637772.  
10 Mr. Strassburg.

11 MR. STRASSBURG: Thank you, Judge.

12 THE COURT: Time is yours.

13

14 VOIR DIRE EXAMINATION

15 MR. STRASSBURG: Good afternoon.

16 IN UNISON: Good afternoon.

17 MR. STRASSBURG: I wanted you to walk around  
18 a little to get the blood going again. Again, I want  
19 to thank you for your service and the time that you've  
20 devoted to this. I know it -- it wasn't all  
21 scintillating, and there may be more of that to come.  
22 But thank you. I know you've tried to pay attention,  
23 and I appreciate that. And so does Mr. Awerbach.

24 Same to you. Thank you for your attention  
25 and the time that you've invested. What you do is very

1 important too, even though you may not make it into the  
2 box. So thank you for doing your duty. We appreciate  
3 that.

4 I want to introduce to you my guy, Jared  
5 Awerbach.

6 Jared, do you mind standing up? Thank you.

7 He's 24 years old, and this is his birthday.

8 I'm being assisted in this case by Mr. Randy  
9 Tindall, my partner.

10 Randy, do you mind standing up?

11 MR. TINDALL: I almost fell over there.

12 Sorry.

13 PROSPECTIVE JUROR NO. 003: He needs a break  
14 to move his blood around.

15 MR. STRASSBURG: We didn't plan the jacket  
16 thing. That's not ...

17 Let's start, Ms. Abeles. I remember -- do  
18 you remember the first day way back when?

19 PROSPECTIVE JUROR NO. 043: Yeah.

20 MR. STRASSBURG: You described yourself as  
21 happily divorced.

22 PROSPECTIVE JUROR NO. 043: Yes, sir.

23 MR. STRASSBURG: Do you remember that?

24 PROSPECTIVE JUROR NO. 043: Yes, sir.

25 MR. STRASSBURG: I wondered -- I have a

1 couple of questions --

2 PROSPECTIVE JUROR NO. 043: Uh-huh.

3 MR. STRASSBURG: -- about one of the aspects  
4 in this case are punitive damages; it is contrition, a  
5 person who is sorry for a mistake. And, again, I don't  
6 mean to pry, but I -- I wondered if -- if perhaps you  
7 might have some experience in matters of the heart,  
8 human relations, and people who may have made a mistake  
9 that hurt you and have sought to renew the relationship  
10 with you by saying they're sorry. Would I be close on  
11 that?

12 PROSPECTIVE JUROR NO. 043: Like, in my  
13 relationship with the ex?

14 MR. STRASSBURG: Or anywhere -- or anyone?

15 PROSPECTIVE JUROR NO. 043: Yeah. I mean,  
16 people have said sorry and stuff. I say it a lot.

17 MR. STRASSBURG: Say again.

18 PROSPECTIVE JUROR NO. 043: I'm sorry. 043.  
19 I'm sorry. I'm sorry.

20 MR. STRASSBURG: See, it's not so hard.

21 PROSPECTIVE JUROR NO. 043: Someone else had  
22 said you could forgive, but maybe not to forget. So  
23 that's not to let things happen again if it's very  
24 negative.

25 MR. STRASSBURG: Let me try it this way.

1 PROSPECTIVE JUROR NO. 043: Yeah.  
2 MR. STRASSBURG: No, you're fine. That's  
3 fine.  
4 PROSPECTIVE JUROR NO. 043: If you could  
5 rephrase. I mean --  
6 MR. STRASSBURG: Now you sound like me.  
7 Is there anything -- let's say,  
8 hypothetically, that your ex came to you and wanted you  
9 to take him back.  
10 PROSPECTIVE JUROR NO. 043: Yeah, that  
11 happened. Okay.  
12 MR. STRASSBURG: Okay. And he said he was  
13 sorry and he had changed, he wasn't the same guy.  
14 PROSPECTIVE JUROR NO. 043: Uh-huh.  
15 MR. STRASSBURG: What kind of -- what would  
16 he have to show you? See, now, my wife's from  
17 Missouri, the Show Me state, and she's one of these,  
18 Oh, yeah, yeah, yeah, yeah, Mr. Lawyer, blah, blah, but  
19 you gotta show me. And that's a good way to be.  
20 So what -- what would your ex have to show  
21 you to get you to think that his saying sorry was  
22 genuine?  
23 PROSPECTIVE JUROR NO. 043: Oh, that's a good  
24 one.  
25 MR. STRASSBURG: You think about it. You

1 think about it.

2 Anybody else -- has anybody else had  
3 experience with somebody coming to you that maybe you  
4 had a beef with, who had wronged you on the job, in  
5 your family, and said, I'm sorry. I messed up. And  
6 you had to decide whether to buy it or not? Anybody?

7 Ms. Klein.

8 PROSPECTIVE JUROR NO. 146: Yes. 146. I had  
9 some problems with my brother-in-law who has made some  
10 serious bad life choices and apologized and was not  
11 able to show that he actually had changed to my  
12 satisfaction. As a result, I now have custody of his  
13 child.

14 MR. STRASSBURG: Okay. Any experience with  
15 people who were able to show you sufficient evidence of  
16 change --

17 PROSPECTIVE JUROR NO. 146: Yes.

18 MR. STRASSBURG: -- that you felt you could  
19 take them at their word?

20 PROSPECTIVE JUROR NO. 146: Oh, yeah. My --  
21 his sister -- his wife, my sister --

22 MR. STRASSBURG: Was that the addiction  
23 matter you talked about?

24 PROSPECTIVE JUROR NO. 146: Yes. She was  
25 able to, you know, complete a -- a rehabilitation

1 program and tried to get her life back on track. And  
2 her only problem now is that she won't leave him, and  
3 that's why she can't have custody of her kid.

4 MR. STRASSBURG: I understand -- well, I  
5 understand some of that. And I don't want to pry. Can  
6 I ask, though, what kind of program did your sister  
7 complete?

8 PROSPECTIVE JUROR NO. 146: It was one of the  
9 state-mandated drug rehab programs.

10 MR. STRASSBURG: And she completed it  
11 successfully?

12 PROSPECTIVE JUROR NO. 146: Yes.

13 MR. STRASSBURG: And how long ago was that?

14 PROSPECTIVE JUROR NO. 146: Within the last  
15 year.

16 MR. STRASSBURG: And -- and how long did it  
17 take after she successfully completed the program  
18 before you thought she was for real, she really had  
19 changed?

20 PROSPECTIVE JUROR NO. 146: Before she was  
21 even fully complete, the fact that she was fully  
22 committed to it and acknowledged the mistakes and tried  
23 to make recompense and tried to correct the problems,  
24 even before she was fully complete with the program, I  
25 knew she was committed to it and really did -- trying

1 to make things right.

2 MR. STRASSBURG: Do you think that people can  
3 change, or do you think that it's really, you know, you  
4 can't teach an old dog new tricks?

5 PROSPECTIVE JUROR NO. 146: If they really  
6 want to for themselves. It's very difficult for people  
7 to change for other people. If you want to change  
8 yourself, you can. And it's hard. But if they're  
9 willing to work at it, they can.

10 MR. STRASSBURG: Okay. Ms. Abeles, you  
11 ready?

12 PROSPECTIVE JUROR NO. 043: I have an answer.  
13 Juror No. 043. And I apologize to everyone for this  
14 one. So my first boyfriend -- and I was in my early  
15 20s -- my first love of my life, I'm in Nevada because  
16 I was the runaway bride. So before we were getting  
17 married, I had this epiphany, like, I don't think --  
18 seriously, I wanted to get married because I wanted a  
19 child. So everyone has a reason why we do everything.  
20 Everyone has their own agenda. That's my feeling. I  
21 wanted always -- I was brought up, you're married, and  
22 then you have the baby. And that was my thought.

23 So my first boyfriend, I just thought at the  
24 last moment, really a couple of weeks before getting  
25 married, I was like, Ooh, I don't know if I want to

1 have a baby with you. So from the East Coast, I moved  
2 to the West Coast. Like, I just -- I just did it.  
3 He's one of my closest friends and right now, he's  
4 sickly. My son knows if he wants to come -- I think  
5 he's truly sorry. There were just things that he was  
6 doing. We were young and whatnot. And yes, he said  
7 he's sorry. He's one of my closest and dearest  
8 friends, and I will always love him in that manner.  
9 And if he wants to come and stay with my son and myself  
10 because he's sick now, absolutely.

11 I got married, truly, because I wanted to  
12 have a baby. So seriously, I was out in Vegas working  
13 billions of hours. My ex-husband was the first one I  
14 dated, and the night I met him, he was like, I want to  
15 have a family. I want to have seven to nine children.

16 MR. STRASSBURG: I'm kind -- I'm sorry losing  
17 the thread here.

18 Who said I'm sorry to you? Him to you or you  
19 to him?

20 PROSPECTIVE JUROR NO. 043: Him to me.

21 MR. STRASSBURG: And how did you know to buy  
22 it?

23 PROSPECTIVE JUROR NO. 043: I think people,  
24 if they want to, they can change. I think we would --  
25 hopefully, maybe just with me, I know I've matured with



1 time and with age and hopefully with some wisdom,  
2 making mistakes now, making mistakes, I'm definitely  
3 not a perfect human being. I'm human.

4 MR. STRASSBURG: We make more mistakes when  
5 we're young?

6 PROSPECTIVE JUROR NO. 043: No. They're  
7 different. I mean, hopefully not.

8 MR. STRASSBURG: Well, Ms. Abeles, does your  
9 kid ever lie to you, or is that just mine that do that?

10 PROSPECTIVE JUROR NO. 043: I think everyone  
11 fibs, but my son tells me, I just lied to you.

12 MR. STRASSBURG: Really?

13 PROSPECTIVE JUROR NO. 043: Yes, and he will  
14 punish himself.

15 MR. STRASSBURG: He's not going to go to law  
16 school, is he?

17 PROSPECTIVE JUROR NO. 043: No. He wants to  
18 be an orthodontist.

19 MR. STRASSBURG: Ms. Gold.

20 PROSPECTIVE JUROR NO. 036: Yes.

21 MR. STRASSBURG: How about you? Do you have  
22 experience with either you're having to be contrite and  
23 make amends, or somebody's who hurt you, has come to  
24 you that way?

25 PROSPECTIVE JUROR NO. 036: Yes.

1 MR. STRASSBURG: And -- and what did you look  
2 for in deciding whether to take that statement of I'm  
3 sorry, I messed up, as genuine?

4 PROSPECTIVE JUROR NO. 036: Once somebody has  
5 wronged you, it's really hard to trust them. I  
6 think -- I think that's kind of a general feeling.  
7 It's really, really hard to trust them. So you -- they  
8 need to kind of prove. And I think part of that proof  
9 is the passing of time to where they can show you that  
10 they -- they do have you in their number one place to  
11 forgive them.

12 Does that make sense?

13 MR. STRASSBURG: Yeah. You're saying changed  
14 behavior over time is the proof.

15 PROSPECTIVE JUROR NO. 036: Uh-huh.

16 MR. STRASSBURG: So are you from Missouri,  
17 originally?

18 PROSPECTIVE JUROR NO. 036: No.

19 MR. STRASSBURG: Oh, by the way, I grew up  
20 rooting for the Cleveland Browns, and I wondered if I  
21 could interest you in a quarterback slightly used?

22 PROSPECTIVE JUROR NO. 036: No.

23 MR. STRASSBURG: No? Anyone else?

24 Mr. Evans, have you ever been placed in a  
25 situation where you had to say, I'm sorry, or yeah,

1 okay. I renew the relationship with you because I -- I  
2 believe you understand you messed up and you're sorry  
3 too?

4 PROSPECTIVE JUROR NO. 053: Actually, I  
5 don't.

6 MR. STRASSBURG: That's never happened to  
7 you?

8 PROSPECTIVE JUROR NO. 053: No.

9 MR. STRASSBURG: Good. Nice going. Good for  
10 you.

11 Anyone else? Mr. Roberts, how about you?

12 PROSPECTIVE JUROR NO. 058: I'm sure  
13 there's -- there's things in my life that --

14 MR. STRASSBURG: You've thrown an elbow you  
15 had to apologize for?

16 PROSPECTIVE JUROR NO. 058: Oh, yeah.  
17 There's things that I think we all do in our life where  
18 you have to say I'm sorry and hope that it comes across  
19 genuine.

20 MR. STRASSBURG: Okay. But when people do it  
21 to you, they have to say I'm sorry to you, what do you  
22 look for to decide whether you are going to accept that  
23 as genuine or not?

24 PROSPECTIVE JUROR NO. 058: For me, it's --  
25 it's really just really understanding who -- who I'm

1 dealing with. So if I -- if I think I have a good  
2 understanding of who that person is at the core, I  
3 probably would respond in a positive way. If I don't  
4 think -- if I still have a good understanding of who I  
5 think that person is at the core, but I don't think  
6 they're being genuine, it's just part of what they do,  
7 I probably won't forgive them. I have the same -- I  
8 don't forget. I forgive, but I don't forget. I might  
9 just put you over there, just leave you alone.

10 MR. STRASSBURG: All right. Are there any  
11 objective telltales that would signal to you, genuine  
12 sorry, genuine contrition?

13 PROSPECTIVE JUROR NO. 058: Like I said, I  
14 think you have to know the person because each of us  
15 goes about our life in a different way, and each of us  
16 interact with people the way we're built. So if I know  
17 you and you're acting a certain way and it's not your  
18 normality, it might impress me one way. Or if it's  
19 something that's within your norm, and it seems like  
20 your genuine behavior, I might respond differently.

21 MR. STRASSBURG: So does it seem it's kind of  
22 like pain and suffering? Like, in this case, there's  
23 going to be a party giving you a subjective report on  
24 her say-so, of pain. And on the same token, but on the  
25 other side of the room, another party is going to be

1 saying to you, I'm sorry.

2 And I guess the -- one of the challenges is  
3 you'll have to look at facts and decide what's genuine,  
4 what's true, what's been proven to you. And I'm just  
5 asking if you could give us a sense of what kind of  
6 facts you might look to about this contrition.

7 Now, Ms. Klein, you mentioned a program. Has  
8 anybody else -- I mean, I know you have -- I don't want  
9 to look at the notes, but I know some of you had  
10 experience with people who have fallen into  
11 self-destructive behaviors, gambling, drugs, alcohol,  
12 the list is endless. And that they have gone through  
13 various programs, 12 steps, Genesis Life, all of those  
14 kind of things.

15 And what experiences could you -- do you feel  
16 at liberty to share with us about the products of those  
17 programs, how -- how successful those programs are?

18 Now, Mr. Corum --

19 PROSPECTIVE JUROR NO. 093: Yes.

20 MR. STRASSBURG: -- I remember you talking  
21 about that you had a family member, a friend --

22 PROSPECTIVE JUROR NO. 093: It was a distant  
23 cousin.

24 MR. STRASSBURG: -- who had done some things  
25 that had broke -- broken the relationship with you, and

1 that you were waiting for him to do something, right,  
2 that would rekindle your affection.

3 PROSPECTIVE JUROR NO. 093: Yes.

4 MR. STRASSBURG: What would it take? What  
5 would he have to do? It's a he; right?

6 PROSPECTIVE JUROR NO. 093: Yes, it is a he.

7 MR. STRASSBURG: What would he have to do  
8 before you would feel that any contrition he might have  
9 is genuine?

10 PROSPECTIVE JUROR NO. 093: Well, this is  
11 actually going on as we speak.

12 MR. STRASSBURG: I'm sorry. I don't want to  
13 pry.

14 PROSPECTIVE JUROR NO. 093: It's fine. I'll  
15 talk about it.

16 MR. STRASSBURG: Just the high stuff or the  
17 high points. That's fine.

18 PROSPECTIVE JUROR NO. 093: Well, it's about  
19 money for the most part. Also, you know, being  
20 around -- I don't want to talk about the other part.  
21 But he owes me money, so I kind of just have him pay me  
22 back each month. That's when I talk to you, that's --  
23 you know, I don't want to -- he's going to -- I think  
24 he's going to an AA meeting.

25 MR. STRASSBURG: The 12-step thing?

1 PROSPECTIVE JUROR NO. 093: Something like  
2 that.

3 MR. STRASSBURG: He's on what, 9, make amends  
4 or --

5 PROSPECTIVE JUROR NO. 093: I don't know  
6 where he's at. I don't -- he wants me to go with him,  
7 and I won't go with him to his meetings. I just told  
8 him, I want to see you once a month. You pay me what  
9 you owe me, or whatever we agreed upon on that month,  
10 and that's when I'll talk to you, and that's when --  
11 you know, it's like take that one step.

12 MR. STRASSBURG: Okay. Now, you're from  
13 Missouri.

14 PROSPECTIVE JUROR NO. 093: No, I'm not. No.  
15 I'm from here.

16 MR. STRASSBURG: Anyone else have any  
17 experience with people going through 12-step, Genesis,  
18 any of these other programs for people who decide to  
19 change, to change their lives, to set aside the old  
20 behaviors and adopt appropriate ones? Anybody?

21 Mr. Avilaroa.

22 PROSPECTIVE JUROR NO. 078: Avilaroa.

23 MR. STRASSBURG: I'm sorry.

24 PROSPECTIVE JUROR NO. 078: No, it's all  
25 right.

1 MR. STRASSBURG: Your number?  
2 PROSPECTIVE JUROR NO. 078: 078.  
3 MR. STRASSBURG: Shoot.  
4 PROSPECTIVE JUROR NO. 078: My brother, yeah  
5 he -- he changed completely. I felt like that program  
6 that he was in really changed his life. And --  
7 MR. STRASSBURG: And what program was that?  
8 PROSPECTIVE JUROR NO. 078: I'm not sure. It  
9 was after his -- after he got his license suspended.  
10 MR. STRASSBURG: Okay.  
11 PROSPECTIVE JUROR NO. 078: I forgot what  
12 program -- what program, but he was -- he talked  
13 to -- to victims that, you know, that were affected by,  
14 you know, situations where somebody was driving under  
15 the influence.  
16 MR. STRASSBURG: Of alcohol?  
17 PROSPECTIVE JUROR NO. 078: Of alcohol.  
18 MR. STRASSBURG: So this was an alcohol --  
19 PROSPECTIVE JUROR NO. 078: Yes.  
20 MR. STRASSBURG: -- kind of program.  
21 PROSPECTIVE JUROR NO. 078: Yes, and --  
22 MR. STRASSBURG: And how did you know that he  
23 had been successful? I mean --  
24 PROSPECTIVE JUROR NO. 078: His attitude.  
25 His attitude, and I saw physical --



1 MR. STRASSBURG: Can I just stop you? The  
2 attitude, tell me about that.

3 PROSPECTIVE JUROR NO. 078: His -- on his  
4 attitude or?

5 MR. STRASSBURG: Yes, what was different?

6 PROSPECTIVE JUROR NO. 078: He started, you  
7 know, being a lot nicer, and, you know, could hold a  
8 conversation and could -- dedication, you know. He was  
9 a -- he started becoming a man of his word. And I  
10 don't know, just something about him that I just knew  
11 that he changed.

12 MR. STRASSBURG: Thank you. Thank you.

13 Do any of you know the Las Vegas Rescue  
14 Mission? It's on Bonanza.

15 I'm seeing you, Ms. Bias.

16 PROSPECTIVE JUROR NO. 066: Yes, sir. 066.  
17 Are you referring to like the --

18 MR. STRASSBURG: I'm sorry?

19 PROSPECTIVE JUROR NO. 066: The homeless  
20 people, like feeding, that?

21 MR. STRASSBURG: Well, you know, that --  
22 it's -- it's that walled compound down there by the  
23 freeway just off of Bonanza, and there's a -- they call  
24 it a "dog front." Actually, it's the fences where they  
25 bring them in, and -- but it's a residence too, for

1 down-and-out men and women who have decided to turn  
2 their lives around. And -- and --

3 MR. ROBERTS: Your Honor, Your Honor, excuse  
4 me. Sorry to interrupt --

5 MR. STRASSBURG: No, that's all right.

6 MR. ROBERTS: -- Roger.

7 Can we approach a second?

8 THE COURT: Come on up.

9 (A discussion was held at the bench,  
10 not reported.)

11 THE COURT: All right. We're going to try  
12 again. Ask a new question.

13 MR. STRASSBURG: So you know about the  
14 mission. Tell me what you know about it and how you  
15 came to be become familiar with it.

16 PROSPECTIVE JUROR NO. 066: 066. Sorry. I  
17 don't know personally. It's just I've heard from my  
18 church. We used to, like, take food and necessities  
19 for people that were down in their luck, and that's how  
20 I know about it.

21 MR. STRASSBURG: Okay. Does anybody else  
22 know about the Las Vegas Rescue Mission?

23 Mr. Jensen.

24 PROSPECTIVE JUROR NO. 015: 015. I'm  
25 involved in a homeless ministry, so I -- I just know

1 very basic about the mission not per se their routine  
2 operations or anything like that, though.

3 MR. STRASSBURG: And does your ministry  
4 have -- is it a name and a building or is it like an  
5 outreach through your religious organization?

6 PROSPECTIVE JUROR NO. 015: It's through a  
7 religious organization.

8 MR. STRASSBURG: I see. And does it -- does  
9 it give programs, 12-step, and for -- for people to --

10 PROSPECTIVE JUROR NO. 015: The church that I  
11 normally go to does. This is actually a separate  
12 church that I just do the outreach so I don't really  
13 know how to answer that.

14 MR. STRASSBURG: So what's the success rate  
15 like?

16 PROSPECTIVE JUROR NO. 015: That one, I can't  
17 answer.

18 MR. STRASSBURG: Fair enough.

19 PROSPECTIVE JUROR NO. 015: I honestly don't  
20 know.

21 MR. STRASSBURG: Fair enough.

22 Anyone else?

23 Little broader, anyone have -- like  
24 Mr. Jensen have experience with programs of this nature  
25 or know someone who has?

1 Ms. Gold.

2 PROSPECTIVE JUROR NO. 036: My ex-husband

3 went through the 12-step program.

4 MR. STRASSBURG: All 12?

5 PROSPECTIVE JUROR NO. 036: Yes.

6 MR. STRASSBURG: How long ago was that?

7 PROSPECTIVE JUROR NO. 036: Probably 34,

8 35 years ago.

9 MR. STRASSBURG: And in Nevada or someplace

10 else?

11 PROSPECTIVE JUROR NO. 036: In Utah.

12 MR. STRASSBURG: I see. And what was the

13 result?

14 PROSPECTIVE JUROR NO. 036: Well, the first

15 time he went through --

16 MR. STRASSBURG: Okay. I guess that answers

17 that question.

18 PROSPECTIVE JUROR NO. 036: -- it lasted a

19 while. The second time he went through, it didn't last

20 very long. And I -- I think after I divorced him, I

21 think he kind of went along for a while, and I -- I

22 believe the last time I heard anything about him that

23 he had straightened up.

24 MR. STRASSBURG: Remember yesterday I think

25 it was -- hmm? Do you remember we had a long talk --

1 maybe it was you, Mr. Evans. We had a long talk --  
2 correct me if I'm wrong -- about that you -- it's like  
3 you described an attitude you had about people who  
4 break the law in the sense that they are convicted  
5 of -- of driving under the influence.

6 PROSPECTIVE JUROR NO. 053: Yes.

7 MR. STRASSBURG: Am I right? Was that --

8 PROSPECTIVE JUROR NO. 053: Yeah.

9 MR. STRASSBURG: And remember all the things  
10 the judge --

11 PROSPECTIVE JUROR NO. 053: Yeah.

12 MR. STRASSBURG: Right, right, right? And  
13 then he says, Is it the action or is it the person?  
14 Remember that?

15 PROSPECTIVE JUROR NO. 053: Yeah.

16 MR. STRASSBURG: Okay. Now, let me ask you:  
17 You said that -- that your bias against people who  
18 break the law in that regard is based upon those  
19 actions; right?

20 PROSPECTIVE JUROR NO. 053: Yeah.

21 MR. STRASSBURG: I wanted to know is: Would  
22 you have a similar bias in favor of people who  
23 voluntarily enroll in a treatment program and hang in  
24 there and do the hard work that it takes to change and  
25 who really do reform their lives?

1 MR. ROBERTS: Objection, Your Honor.

2 MR. STRASSBURG: Just the action.

3 THE COURT: I think it's the same issue as  
4 before. Try again.

5 MR. STRASSBURG: Would people who undertake  
6 the actions of personal rehab in a 12-step program and  
7 do it successfully, would -- would you look on them  
8 as -- would you look on them more favorably for  
9 purposes of punishing them or not as you would upon  
10 people convicted of the same offense who don't --

11 MR. ROBERTS: Objection, Your Honor.

12 THE COURT: I'm going to allow it. I think  
13 that's broad enough.

14 PROSPECTIVE JUROR NO. 053: I guess I would  
15 look more favorably on them if they did it voluntarily.

16 MR. STRASSBURG: Uh-huh. Uh-huh.

17 Mr. Jensen, it seemed to me that you were  
18 kind of thinking -- you had some of the same attitudes  
19 as Mr. Evans -- I'm not saying there's anything wrong  
20 with that -- that you would have kind of a -- you would  
21 look askance at a person who -- who had committed an  
22 act, an illegality, and operated a vehicle while deemed  
23 impaired.

24 And I simply wanted to ask you, based upon  
25 your experience that you've just given to us, would you

1 similarly look with more favor on an individual who had  
2 successfully completed a treatment program than one who  
3 had not, though, convicted of the same?

4 PROSPECTIVE JUROR NO. 015: 015. From the  
5 treatment program forward, yes. Prior to that  
6 treatment or any actions prior to that treatment, it  
7 does not change my opinion.

8 MR. STRASSBURG: Well, you know, the issue  
9 here is whether -- Mr. Awerbach, whether you should  
10 punish him with punitive damages to teach him a lesson  
11 he'll never forget. And I guess what I'm getting at  
12 is: I'm wondering that if -- if a person like  
13 Mr. Evans or maybe like you, has a bias against people  
14 who are convicted of that activity, and if you had an  
15 offsetting bias in favor of people who do a treatment  
16 program successfully and really live it, if they cancel  
17 each other out, and you would be level -- you would be  
18 a level playing field for us.

19 What do you think about that? I can come  
20 back.

21 PROSPECTIVE JUROR NO. 015: I'm --

22 MR. STRASSBURG: I know where you live.

23 PROSPECTIVE JUROR NO. 015: Cool.

24 MR. STRASSBURG: I mean in the box.

25 PROSPECTIVE JUROR NO. 015: Yeah, you have my

1 address too. That works. There's other things that  
2 have come out that, you know, it's -- I now know it's  
3 being contested. So that also has to play into it. So  
4 it's going to come into my feeling, was he actually  
5 DUI? It's getting very convoluted on where everything  
6 is going at this point in time.

7 MR. STRASSBURG: That's probably my fault.

8 PROSPECTIVE JUROR NO. 015: But to try to  
9 answer your question, I think I have to go back to my  
10 first comment that, yes, I believe a person can change.  
11 And from that change forward, that is the positive and  
12 may it continue forever.

13 Still have to look at the original, though,  
14 that a person that is -- that drove DUI, and I have to  
15 still assume that that was the case, that I still have  
16 a bias for. I don't think I can say that because he  
17 has changed that negates the original action.

18 MR. STRASSBURG: You know, maybe --

19 PROSPECTIVE JUROR NO. 015: Unless I'm not  
20 seeing the question correctly.

21 MR. STRASSBURG: Maybe I screwed up. What  
22 I'm talking about is attitudes, offsetting attitudes,  
23 does an attitude of bias against -- offset against an  
24 attitude of bias in favor? Wouldn't they counteract  
25 each other and place you in a position where you could



1 be without any reservations fair to both Ms. Garcia and  
2 Mr. Awerbach and -- and his mom?

3 PROSPECTIVE JUROR NO. 015: I guess I have to  
4 answer with I don't know. I'm not sure on that.

5 MR. STRASSBURG: All right.

6 Mr. Evans? The offsetting attitudes now.

7 Do you think that would -- once your mind,  
8 your consciousness is drawn to that -- that aspect of  
9 your mind, do you think they would offset and you would  
10 be fair?

11 PROSPECTIVE JUROR NO. 053: Yeah, I think so.

12 MR. STRASSBURG: Ms. Flores, you mentioned  
13 that -- that you had a problem with people who chose to  
14 smoke and get behind the wheel. I got that right?

15 PROSPECTIVE JUROR NO. 010: Yes, sir.

16 MR. STRASSBURG: So what do you think? Do  
17 you have a similarly offsetting attitude in favor of  
18 people who repent and who change their lives and who go  
19 straight?

20 PROSPECTIVE JUROR NO. 010: 010. I mean, I  
21 guess I agree with Ms. Gold when she said that it's  
22 over time, like forgiving people. I guess I would  
23 still not hold it against them, but have like -- have  
24 in the back of my mind that, you know, they knew what  
25 they were doing. They made a conscious decision. No

1 one told them to do it. He did it, you know, no matter  
2 what situation he was in, you know. No matter -- yeah,  
3 I know people go through different things, and they can  
4 blame it on how they were brought up or their  
5 lifestyle.

6 But, you know, I didn't have the greatest  
7 upbringing and I was around, you know, drugs, you know,  
8 friends from school and stuff, and I didn't make that  
9 decision, you know. I guess that's what I think about  
10 is I was -- I wasn't brought up -- I was brought up in  
11 a -- my mom was a single mother. My dad was, like, in  
12 and out and stuff, but I didn't --

13 MR. STRASSBURG: I'm sorry, ma'am. Your dad  
14 was what?

15 PROSPECTIVE JUROR NO. 010: Was, like, in and  
16 out. He was in and out of my life. He would come and  
17 go.

18 MR. STRASSBURG: There's a lot of things you  
19 can be in and out of. Okay.

20 PROSPECTIVE JUROR NO. 010: But, like, I  
21 didn't make -- you know, I was conscious of all my  
22 decisions, you know. Like, I didn't -- do you  
23 understand what I'm saying?

24 MR. STRASSBURG: Do you understand what I'm  
25 saying?

1 PROSPECTIVE JUROR NO. 010: No, yeah.  
2 MR. STRASSBURG: I'll meet you halfway.  
3 Did you grow up here in Vegas?  
4 PROSPECTIVE JUROR NO. 010: Yeah. I moved to  
5 Vegas when I was ten.  
6 MR. STRASSBURG: Okay. So that was what, a  
7 couple of years ago?  
8 PROSPECTIVE JUROR NO. 010: Ten years ago.  
9 MR. STRASSBURG: And where -- what  
10 neighborhood? I mean, Vegas is broken up into  
11 neighborhoods; right? Which one did you grow up in?  
12 PROSPECTIVE JUROR NO. 010: Henderson.  
13 MR. STRASSBURG: Henderson neighborhood.  
14 Now, there's a neighborhood called Naked  
15 City. Are you familiar with that?  
16 PROSPECTIVE JUROR NO. 010: I've heard about  
17 it.  
18 MR. STRASSBURG: What have you heard?  
19 PROSPECTIVE JUROR NO. 010: That it's a bad  
20 neighborhood. It's pretty general.  
21 MR. STRASSBURG: Have you formed any  
22 preconceptions about people from the Naked City part of  
23 Vegas?  
24 PROSPECTIVE JUROR NO. 010: Would it be like  
25 Compton, kind of, in California, like Los Angeles area?

1 MR. STRASSBURG: I'm from Ohio. I don't  
2 know.

3 PROSPECTIVE JUROR NO. 010: Does anybody else  
4 know?

5 MR. STRASSBURG: Does anybody else know?  
6 Good question. Who knows something about my local guys  
7 that grew up here?

8 Naked City, what do you know about that?  
9 Mr. --

10 PROSPECTIVE JUROR NO. 091: It's not  
11 comparable to Compton. It's -- Compton's much worse.  
12 The Naked City in the late '80s, early '90s outside of  
13 North Las Vegas was pretty rough.

14 MR. STRASSBURG: Rough in what way, sir?

15 PROSPECTIVE JUROR NO. 091: It was -- it was  
16 high in crime.

17 MR. STRASSBURG: Anything else? Dangerous.

18 PROSPECTIVE JUROR NO. 091: (Nods head.)

19 MR. STRASSBURG: Dangerous.

20 Anyone else have any ideas on the Naked City  
21 area?

22 Ms. Klein.

23 PROSPECTIVE JUROR NO. 146: I've lived here  
24 quite a while, and it's just a place that you don't go  
25 after dark. Or -- it's gotten much better recently.

1 But for a while, it was, you don't go after dark, and  
2 if you do have to go through, you don't stop. You --  
3 you just keep going, and if you run out of gas, you  
4 keep going until -- you make sure you don't have to  
5 stop there, and if you can go around it, you do. It's  
6 not a place to wind up.

7 MR. STRASSBURG: Thank you, ma'am.

8 And -- and while I'm on you, maybe I should  
9 ask you this question: Do you have any bias against  
10 people from there?

11 PROSPECTIVE JUROR NO. 146: No. There are  
12 negative situations in that neighborhood, and I know  
13 the statistics of growing up in that kind of  
14 neighborhood. I worked at inner city schools. I'm a  
15 teacher. I see a lot of the results of that. But I  
16 have also seen some really great kids come out of  
17 there. And, you know, I know it can happen both ways.  
18 And it's a -- a lot of the negative things are very  
19 publicized and, you know, there are regular people who  
20 live there just because that's where they can afford to  
21 live. And they live their lives the best they can and  
22 try to avoid the negative the best they can, and  
23 families live, they raise their kids as best they can.

24 MR. STRASSBURG: Anyone else have any  
25 preconceptions, any feelings associated with people

1 from that part of town? How about Compton, people from  
2 Compton?

3 PROSPECTIVE JUROR NO. 091: (Shakes head.)

4 MR. STRASSBURG: Okay. Good. Thank you.

5 If you're keeping score, I'm -- I'm almost  
6 there.

7 Now, let me ask you about another -- this is  
8 a sensitive issue, and I understand that. And I -- I  
9 don't mean to offend anybody of any race. There's been  
10 a lot of press coverage about interactions between  
11 white police officers and people of color, African  
12 Americans, Hispanics, people who are different in skin  
13 color from the officer. You saw it in Ferguson,  
14 Baltimore, other places.

15 Has any of that press coverage created in any  
16 of your minds preconceptions about what it must be like  
17 when a Hispanic or a white police officer confronts a  
18 teenager who's a person of color?

19 Yes, Mr. Roberts, how about you? Can you  
20 shed any light on that dynamic?

21 PROSPECTIVE JUROR NO. 058: I can tell you  
22 personal experiences but not from the perspective you  
23 just said.

24 MR. STRASSBURG: Okay. Whatever you can  
25 share. I'm dying out here, so whatever you can share.

1 PROSPECTIVE JUROR NO. 058: I'll throw you a  
2 bone. Okay?

3 MR. STRASSBURG: Yeah, a big one.

4 PROSPECTIVE JUROR NO. 058: As a teenager  
5 myself, I grew up in the L.A. area in a couple of good  
6 community. Myself and two of my closest friends, both  
7 very successful people today, were driving through  
8 Beverly Hills on the way to our friend's house which is  
9 just on the border of Beverly Hills. We were pulled  
10 over by LAPD, thrown to the ground, spread eagle, with  
11 no intent other than that we were driving through the  
12 neighborhood. They happened to do it on the corner two  
13 houses from my friend's house and his mother came out.  
14 We were 17, 16 years old.

15 So I've had experiences on the flip. Let's  
16 just say that. And it was no reason to pull us over  
17 other than the fact we were black, driving in Beverly  
18 Hills.

19 MR. STRASSBURG: Driving while black.

20 PROSPECTIVE JUROR NO. 058: In Beverly Hills.

21 MR. STRASSBURG: And does that experience  
22 color how you see interactions today, years later?

23 PROSPECTIVE JUROR NO. 058: It does,  
24 actually. I have a hypersensitivity. I don't have a  
25 negatively -- I don't know how to explain this. I

1 don't -- I don't feel comfortable when cops are behind  
2 me. And I -- and I can't -- I can't get it out of  
3 my -- my system. And I can be driving doing nothing.  
4 I know I'm okay, but if there's a cop behind me, I'm  
5 like, Why is he following me?

6 MR. STRASSBURG: Oh, God, you too?

7 PROSPECTIVE JUROR NO. 058: Yeah. I -- I  
8 understand. But it just -- it just is, and -- and I  
9 shouldn't have to go in a free society, like that --  
10 that's my opinion.

11 MR. STRASSBURG: I hear you. But what about  
12 when they stop you, and as the officer is walking --  
13 you know, how they do it. They walk up to the car.  
14 They come from your blind side with the hand on the  
15 belt.

16 PROSPECTIVE JUROR NO. 058: So I do three  
17 things. First, I turn the engine off. Secondly, I put  
18 the windows down. Third, I put --

19 MR. STRASSBURG: Both hands --

20 PROSPECTIVE JUROR NO. 058: -- both hands --  
21 I put my hand out the window.

22 MR. STRASSBURG: Out the window. How smart.

23 PROSPECTIVE JUROR NO. 058: I want to make  
24 sure that they're aware that I have nothing in my  
25 hands, and I don't want them to think that I'm trying



1 to conceal something.

2 MR. STRASSBURG: And did somebody have to  
3 teach you that, or is that something that you know from  
4 your life experiences?

5 PROSPECTIVE JUROR NO. 058: I would say that  
6 it comes with life experience, but it's also within  
7 my -- our community's color. I think if you're  
8 experience is as I've had in my cities I've lived in,  
9 it's taught to you by your parents or your cousins or  
10 your uncles or whoever who -- who want to see you safe.

11 MR. STRASSBURG: All right. How does it feel  
12 inside on when a white police officer appropriates your  
13 vehicle?

14 PROSPECTIVE JUROR NO. 058: If he's just  
15 being straightforward -- if he comes at me with -- with  
16 a legitimate, if I did something and I deserve to be  
17 pulled over, I don't have a problem. It's just if he  
18 comes at me for no reason, or doesn't appear to be any  
19 reason, then I have concern. I -- I -- I take -- I  
20 think that in my mind he's probably biased in some way,  
21 and he's got something out for me for whatever reason.

22 MR. STRASSBURG: All right. And -- and I'm  
23 sorry that those experiences --

24 PROSPECTIVE JUROR NO. 058: You didn't do it.  
25 It doesn't make me negative to all people.

1 MR. STRASSBURG: This is both our countries.

2 PROSPECTIVE JUROR NO. 058: Yeah, it is.

3 MR. STRASSBURG: Let me ask you: Those of  
4 you who haven't had these experiences, what do you  
5 think about the legitimacy of these reports we get  
6 about people who have them, like Mr. Roberts, who  
7 because of what's happened in their lives, that there's  
8 an inherent coerciveness in that encounter? Do you  
9 think it's -- and you could -- there's a bunch of  
10 attitudes. You could think it's baloney. You could  
11 say, Eh, there's something to it.

12 Ms. Klein.

13 PROSPECTIVE JUROR NO. 146: I put this on my  
14 questionnaire -- sorry, 146. Almost all of my male  
15 relatives on my mother's side of the family are police  
16 officers. And so having been exposed to that all of my  
17 life, I know a lot of that side of the coin, shall we  
18 say. And that they receive specific training or  
19 specific orders on targeting or profiling. And it was  
20 rampant here in the valley for a long time to the point  
21 where --

22 MR. STRASSBURG: May I just interrupt you?

23 PROSPECTIVE JUROR NO. 146: Yes.

24 MR. STRASSBURG: You said it was rampant?

25 PROSPECTIVE JUROR NO. 146: Profiling.

1 MR. STRASSBURG: And was that white profiling  
2 black?

3 PROSPECTIVE JUROR NO. 146: Not necessarily  
4 white profiling black, but just all officers profiling  
5 minorities.

6 MR. STRASSBURG: I see.

7 PROSPECTIVE JUROR NO. 146: And even black  
8 officers were ordered to profile other --

9 MR. STRASSBURG: And when did that stop?

10 PROSPECTIVE JUROR NO. 146: Fairly recently  
11 there was a -- at a federal level where it was  
12 investigated specifically here in the valley, and  
13 special training has been done to counteract the  
14 previous bad treatment.

15 MR. STRASSBURG: When did that happen?

16 PROSPECTIVE JUROR NO. 146: Like I said,  
17 fairly recently, within the last -- I want to say  
18 within the last ten years. I'm not sure exactly when.  
19 But I know it's -- it's been fairly recently that the  
20 federal measure were taken to counteract the negative  
21 trend.

22 MR. STRASSBURG: So what attitudes has that  
23 experience of living here under those circumstances,  
24 what attitudes has that created in you that -- that  
25 might make it -- give you pause when you're looking at

1 him?

2 PROSPECTIVE JUROR NO. 146: Well, having  
3 grown up here for quite a while, I saw it, you know. I  
4 knew other people who had been targeted or profiled,  
5 and I knew it was happening. I knew that I wasn't  
6 going to be profiled. It was -- but I also knew that  
7 at the time, I couldn't do anything about it, being a  
8 minor when that was a problem. And then by the time I  
9 moved back after college, the issue was being addressed  
10 at a higher level.

11 MR. STRASSBURG: So did you ever know  
12 anything about the -- the response of people in the  
13 minority communities when this practice was going on,  
14 did -- did you ever come across articles, information  
15 that -- that gave you attitudes about how this practice  
16 of the police was perceived by people in the  
17 minority --

18 PROSPECTIVE JUROR NO. 146: Yes.

19 MR. STRASSBURG: -- communities.

20 Would you share that with us. How would you  
21 characterize it?

22 PROSPECTIVE JUROR NO. 146: I know a lot  
23 of -- there were several movements to -- especially  
24 with the progression of cell phones and recording  
25 devices, people would record either interactions with

1 others or interactions that they themselves had with  
2 police officers, and there was a movement to make those  
3 interactions more public instead of having them swept  
4 under the rug as they had been previously, which is  
5 part of the reason why it's become more nationally  
6 aware.

7 MR. STRASSBURG: And what was being swept  
8 under the rug that was on these videotapes?

9 PROSPECTIVE JUROR NO. 146: The racial  
10 profiling and singling out, and specifically  
11 aggravating behavior toward minorities that would cause  
12 them to -- the police, in some instances, would try to  
13 aggravate a situation to cause a suspect to react in a  
14 way that they could then escalate. Even when there was  
15 nothing initially for them that had been done wrong,  
16 they would escalate a situation until something did go  
17 wrong, and then -- then be able to take them to jail  
18 or -- or press charges of some sort.

19 MR. STRASSBURG: Okay. Bear with me one  
20 second. I want to approach the bench because I want to  
21 be entirely fair to Mr. Roberts here and make sure that  
22 the next question is -- is appropriate.

23 THE COURT: Come up.

24 (A discussion was held at the bench,  
25 not reported.)

1           MR. STRASSBURG: Thank you very much. I  
2 appreciate it.

3           Does anybody else have any -- I don't want to  
4 pass somebody else over. I'm going as fast as I can  
5 really. Does anybody have anything else that they want  
6 to share on that? Okay.

7           Let me ask you about justice. You were asked  
8 about your values, and I'm not going to replay that  
9 walk down the Hallmark card aisle. Those are all good  
10 values. And we appreciate you sharing them. But I  
11 want talk to you about justice, your attitudes about  
12 justice.

13           When you're asked to punish somebody who made  
14 a mistake that is sorry for it and he's done what he  
15 can to make amends by changing, can you -- do you  
16 see -- your attitudes about punishment and mercy, I  
17 want to ask: Does anybody have an attitude other than  
18 the punishment should fit the offense?

19           Sir, I see you shake -- nodding -- or shaking  
20 your head. That's a shake. You with me? Okay.

21           Now, how do you make -- in this case, you'll  
22 be wanting to make whatever punishment seems  
23 appropriate to you, if any. And I'm going to tell you  
24 it shouldn't be any. But how do you make it fit? Do  
25 you just make it the maximum? How do you tailor to the

1 facts of this case? And I want to ask you: Isn't that  
2 where mercy comes in?

3 MR. ROBERTS: Objection, Your Honor.

4 THE COURT: Sustained. Sounds like a closing  
5 argument. Ask a question.

6 MR. STRASSBURG: Thank you, Judge. Thank  
7 you. And, Mr. Roberts, I apologize to you, sir.

8 Tell me what you feel. If you have feelings  
9 that mercy's appropriate, how would you make use of  
10 that attitude in assessing the evidence in this case.

11 Mr. Brandon. You don't want this one?

12 PROSPECTIVE JUROR NO. 003: I'm just going to  
13 stick with mercy everything. I'm going to be fair with  
14 it. I'm going to deem it as necessary. How I'm going  
15 to -- if punishment or anything, I just -- yeah, we'll  
16 leave it at that.

17 MR. STRASSBURG: Well, are you open to the  
18 idea of no punishment at all?

19 PROSPECTIVE JUROR NO. 003: I'm open. I  
20 mean --

21 MR. STRASSBURG: I get it, but, you know,  
22 we've heard people say, and I -- and, you know, I've  
23 heard this before. This isn't new, that, Boy, look at  
24 all this; right? Who goes through all of that?

25 MR. ROBERTS: Your Honor may we approach?

1 THE COURT: Come on up.

2 (A discussion was held at the bench,  
3 not reported.)

4 MR. STRASSBURG: Uh-oh. Yeah. Shoot.

5 PROSPECTIVE JUROR NO. 015: 015. As I put on  
6 my questionnaire, I'm hard of hearing. When you drop  
7 down to your soft voice, I'm having an incredibly hard  
8 time hearing you.

9 MR. STRASSBURG: I am so sorry that you have  
10 had to sit through an hour. And I just -- you know, I  
11 was afraid for the first couple of days that I was  
12 coming on too strong because, you know, I feel like I'm  
13 buried back there, and I got to jump up and make some  
14 noise to get heard. And so they told me to soften it  
15 up. So I will work on it. I will work on that, but  
16 thank you for telling me that. Wish you would have  
17 told me at 2:10. I get it.

18 And, again, I want to be entirely clear. Let  
19 me ask you about this. You've heard the term  
20 "marijuana metabolite." Okay? Remember? Okay. Now,  
21 I'm just wondering -- I just want to take baby steps.  
22 Baby steps.

23 Is -- let's first start with do any of you --  
24 now, some of you have said, I don't know -- I don't  
25 know what that is. All right. But I was wondering if



1 maybe some of you have come across information about  
2 marijuana -- marijuana metabolite.

3 Mr. Franco, I see you smiling. You look like  
4 the cat that ate the canary.

5 PROSPECTIVE JUROR NO. 096: 096. I have no  
6 idea what it is.

7 MR. STRASSBURG: None.

8 PROSPECTIVE JUROR NO. 096: I don't know what  
9 it is. I don't know what it means or what it does.

10 MR. STRASSBURG: Not at all. Ms. Perreida,  
11 she's nodding her head. Him too.

12 PROSPECTIVE JUROR NO. 096: I don't know if  
13 you inject it, or I don't know what you do with it.

14 MR. STRASSBURG: I get it.

15 Does anybody else have any knowledge or  
16 because you -- you know, like, you work or -- anybody  
17 have any information about that?

18 Ms. Klein.

19 PROSPECTIVE JUROR NO. 146: Having worked in  
20 the public school system and inner city schools, I have  
21 had some exposure to information about that.

22 MR. STRASSBURG: And has that exposure to  
23 information come from your personal, you know, sight,  
24 see-type stuff, or does it come from government  
25 training or teacher training they put you through or

1 some other source?

2 PROSPECTIVE JUROR NO. 146: I think it was a  
3 teacher presentation on things to watch for in your  
4 students.

5 MR. STRASSBURG: All right.

6 PROSPECTIVE JUROR NO. 146: Along with, you  
7 know, signs of abuse and signs of neglect and other  
8 things like that.

9 MR. STRASSBURG: Okay. And so in your  
10 teacher training programs, it sounds like they give you  
11 some information about, it sounds like a variety of  
12 stuff since marijuana metabolite was one of them.

13 PROSPECTIVE JUROR NO. 146: Like I said, it  
14 was probably listed in a -- in a long list of things  
15 that could be -- you know, produced certain symptoms or  
16 could be present.

17 MR. STRASSBURG: Okay. So I mean, after you  
18 got out of the training, what did you think marijuana  
19 metabolite was?

20 PROSPECTIVE JUROR NO. 146: So after  
21 marijuana is ingested, either smoked in or consumed as  
22 a food substance, some of it remains in the system over  
23 time and it metabolizes as the -- you know, your body  
24 metabolizes things over time. Similarly, to how  
25 alcohol remains in your system over time, the duration

1 for marijuana metabolite is longer than some other  
2 substances, where it will remain in the system and can  
3 be tested for after a longer period of time since the  
4 initial consumption than other substances.

5 MR. STRASSBURG: You mean like alcohol?

6 PROSPECTIVE JUROR NO. 146: Right.

7 MR. STRASSBURG: Okay. Now, is there  
8 anything about the information that you got in your  
9 teacher training program that would cause you to prefer  
10 that information to any information that you got in the  
11 courtroom?

12 PROSPECTIVE JUROR NO. 146: No. The  
13 information that I got was very summary and --

14 MR. STRASSBURG: Okay.

15 PROSPECTIVE JUROR NO. 146: -- just as a heads  
16 up to watch out for.

17 MR. STRASSBURG: Okay. Thank you.

18 Any -- anyone else have any -- okay.

19 Now, let me ask you about this: Have any of  
20 you come across newspaper accounts, website, maybe some  
21 of you read websites of news and current events  
22 involving a traffic accident that took place on  
23 Las Vegas Strip during the Miss Universe Pageant in  
24 December, late December? Okay. Okay. Is this ringing  
25 a bell?

1           Now, I want to ask you -- can I tell the  
2 name? I mean, the name; right? The name of the  
3 individual? Or do we have to talk about it in general?

4           MR. ROBERTS: I don't know. Why don't you  
5 ask the judge that question. I don't know if that's  
6 appropriate for privacy interest.

7           THE COURT: We don't know what your question  
8 is, Mr. Strassburg.

9           MR. STRASSBURG: That's fair, Judge. No,  
10 that's fair. Yeah, that's fair.

11           Has the press coverage of that accident --  
12 well, to call it an accident, the driver on the  
13 Las Vegas Strip intentionally rammed her car up on the  
14 curb and caused death and injuries to 38 people.

15           What have you guys heard about that -- and  
16 they found marijuana in her system. What have you  
17 heard about that? And has it caused you to form any  
18 prejudices, biases against people like my guy in this  
19 kind of case?

20           Yes, ma'am.

21           PROSPECTIVE JUROR NO. 159: Badge No. 159.  
22 Not necessarily a prejudice. I would say it's just to  
23 be more aware that no matter what substance it is, it  
24 can alter your ability to drive or to operate a vehicle  
25 no matter what the substance is.

1 I guess the stigma behind marijuana is that  
2 it relaxes or it somehow makes you -- people say it's  
3 not as worse as drinking alcohol is. And so, you know,  
4 growing up throughout high school, that's -- I never  
5 partaked in the matter or anything, but that was just  
6 the stigma behind it.

7 But actually, after that incident, because I  
8 was getting live feed from it because it was during  
9 the -- the pageant, it really came to me that it's not  
10 okay --

11 MR. STRASSBURG: Can I stop you for a minute?

12 You were getting, you said, live feed from  
13 the pageant?

14 PROSPECTIVE JUROR NO. 159: Yes. Actually  
15 when the pageant --

16 MR. STRASSBURG: In the Starbucks or?

17 PROSPECTIVE JUROR NO. 159: No, no. I was  
18 actually at the gym and I was watching the Miss  
19 Universe Pageant, and because it was delayed, you know,  
20 it's delayed, like, an hour, two hours to come to us,  
21 it was Breaking News kept popping up during the  
22 pageant. That's what I mean by "live feed."

23 And so after seeing that, it made me really  
24 take that, well, being under the influence, no matter  
25 what substance it is, is still -- can be very deadly no

1 matter what it is, even if it has a better stigma than  
2 other substances.

3 MR. STRASSBURG: Now, has -- has that  
4 information that you've received, I mean, has it caused  
5 any, like, shortcuts to -- to form on your desktop of  
6 your mind? You know, those icons that my secretary  
7 keeps putting on there. You don't have to go through  
8 all this stuff. You just hit the icon and, boom, it  
9 goes right to it. Like, it doesn't go through all the  
10 folders, it just goes right to the place.

11 PROSPECTIVE JUROR NO. 159: No, not  
12 necessarily. I still won't judge a person based on  
13 those -- those actions because you never know what's  
14 happening behind the scenes. It just made me realize  
15 that it's -- that no matter what some -- substance it  
16 is, it can still cause a very great damage when  
17 operating a machinery or anything. Just something that  
18 I learned from that situation. But, again, I don't  
19 judge the individual if they want to partake in any  
20 sort of recreational or what not.

21 MR. STRASSBURG: Thank you, ma'am.

22 Anyone else? She's the only one at the gym?  
23 Anyone else have any -- got that information, have any  
24 ideas about what happened there?

25 Again, I don't want to pry. I just want to

1 ask you if -- if you would -- in searching your hearts,  
2 if there is anything there that might cause you to  
3 shortcut the process of the evidence in this case and  
4 just say, Oh, you know, it's another one; right?  
5 That's not fair; right?

6 Thank you. Thank you. You know, I just got  
7 one more thing, and then I'm going to stop. All right?

8 Mr. Foerstel.

9 PROSPECTIVE JUROR NO. 023: Yes. 023.

10 MR. STRASSBURG: I don't want to leave you  
11 out. Do you remember -- I think it was in the value  
12 thing, you know, what are your values and that kind of  
13 thing, and you said, yeah, people -- the Golden Rule;  
14 right? And you said I got the Platinum Rule. Remember  
15 that?

16 PROSPECTIVE JUROR NO. 023: Yes.

17 MR. STRASSBURG: And your rule was, I try to  
18 do to people as they want me to; right?

19 PROSPECTIVE JUROR NO. 023: Yes.

20 MR. STRASSBURG: And I wanted to ask you, how  
21 do you apply that Platinum Rule when you have two  
22 people that want contradictory stuff? What do you do  
23 then?

24 PROSPECTIVE JUROR NO. 023: You have to find  
25 out -- I mean, you can't just assume what people want.

1 You have to investigate, ask questions, talk to the  
2 people, and find out the information.

3 MR. STRASSBURG: Okay. Look --

4 PROSPECTIVE JUROR NO. 023: If you got two  
5 people that want two different things, then you just  
6 have to find out more information.

7 MR. STRASSBURG: I totally understand and  
8 well put. I mean, after three days, you guys are  
9 really showing a flare for this.

10 I guess what I'm asking you is: Would your  
11 Platinum Rule cause you to depreciate --

12 PROSPECTIVE JUROR NO. 023: It's not my rule.

13 MR. STRASSBURG: It's not yours?

14 PROSPECTIVE JUROR NO. 023: It was in a  
15 training. I used to be an instructor and a trainer in  
16 a business environment and they gave it to us. So I  
17 didn't create it.

18 MR. STRASSBURG: Okay. But you said it was  
19 yours, didn't you?

20 PROSPECTIVE JUROR NO. 023: I like to use the  
21 Platinum Rule, yeah.

22 MR. STRASSBURG: All right. All right.  
23 Would there be anything about your, you know, habitual  
24 use of the Platinum Rule that would cause you to, like,  
25 disregard or depreciate the rules that come from



1 Judge Wiese?

2 PROSPECTIVE JUROR NO. 023: Oh, absolutely  
3 not.

4 MR. STRASSBURG: Okay. Does anybody else  
5 have any rules of thumb, shortcuts, icons on the  
6 desktop in their mind that might cause them to  
7 depreciate or treat lightly -- with less than complete  
8 gravity a law that's given to you by the Court simply  
9 because you don't like it? Okay.

10 Thank you very much.

11 THE COURT: Pass the panel for cause?  
12 Mr. Strassburg? Pass the panel?

13 MR. STRASSBURG: No, sir. Pass the panel.

14 THE COURT: All right. What that means,  
15 folks, is all the attorneys have passed the panel for  
16 cause. So likely our jury is sitting over here. Okay?  
17 What I'm going to do is I'm going to excuse everybody  
18 for about 15 minutes, okay, while the attorneys  
19 exercise their peremptory challenges. And we're going  
20 to bring you back, and we'll tell you who our jurors  
21 are, and everybody else will be excused. All right.  
22 So be patient with us.

23 PROSPECTIVE JUROR NO. 043: Today.

24 THE COURT: Today.

25 PROSPECTIVE JUROR NO. 043: 043.

1           THE COURT: I'm just going to send you out in  
2 the hall for about fifteens minutes.

3           Yes, sir.

4           PROSPECTIVE JUROR NO. 058: But there's only  
5 going to be ten people; right. So there's still a few  
6 people over here that --

7           THE COURT: Some of those people over here  
8 are going to be going too. We're going to take a quick  
9 break.

10           During our break, you're instructed not to  
11 talk with each other or with anyone else about any  
12 subject or issue connected with this trial. You are  
13 not to read, watch, or listen to any report of or  
14 commentary on the trial by any person connected with  
15 this case or by any medium of information, including,  
16 without limitation, newspapers, television, the  
17 Internet, or radio. You are not to conduct any  
18 research on your own, which means you cannot talk with  
19 others, Tweet others, text others, Google issues, or  
20 conduct any other kind of book or computer research  
21 with regard to any issue, party, witness, or attorney  
22 involved in this case. You're not to form or express  
23 any opinion on any subject connected with this trial  
24 until the case is finally submitted to you.

25           Fifteen minutes.

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

3 THE COURT: All right. We're outside the  
4 presence of the jury.

5 Tom, you want to hand them this form here. I  
6 hope it has five blanks on each side so the last  
7 challenge on each side can only be used on one of the  
8 last two people who are going to be the -- one of the  
9 last four people that are going to be alternates.  
10 Okay? If you waive one, you don't waive the rest. But  
11 I'm going to ask you guys to try to do this quickly so  
12 we can get done by about 4:00 o'clock. We still need  
13 to swear the jury in, excuse the rest of them. All  
14 right? Off the record.

15 (Whereupon a short recess was taken.)

16 THE COURT: All right. We're back on the  
17 record, Case No. A637772. We're outside the presence  
18 of the jury. I just want to make sure that I  
19 understand correctly. We agreed that the last two  
20 jurors were going to be our alternates. So based on  
21 the preempts that have been exercised, I understand  
22 that to be Austin Corum and Shanel Sako; is that  
23 correct?

24 MR. MAZZEO: Yes, Judge.

25 THE COURT: So everybody agrees?

1 MR. ROBERTS: We agree, Your Honor.

2 THE COURT: All right. Let's bring -- we'll  
3 bring the jury back in. I'll excuse everybody else.  
4 We'll swear in our new jury. And I'll reseal them, and  
5 then probably excuse them for the day.

6 What I'd like to do is I know that you guys  
7 have things that you need to address with me before  
8 openings. I know that there's -- there's issues about  
9 some demonstrative exhibits, and I know there's issues  
10 about the some of the deposition language that's part  
11 of it. We're not going to have time today to do that.  
12 So what I'm going to suggest is maybe we bring the  
13 attorneys back at 9:00 tomorrow. We bring the jury in  
14 at 10:00.

15 MR. ROBERTS: Sounds good to us, Your Honor.

16 THE COURT: Everybody okay with that?

17 MR. MAZZEO: That's fine, Judge.

18 THE COURT: We can take care of anything we  
19 need to in that hour. Hopefully, that's enough time to  
20 go through everything we need to go through. And that  
21 should hopefully give you guys a couple of minutes  
22 before we start to put your stuff together.

23 MR. ROBERTS: Will we have an order before  
24 opening, Your Honor?

25 THE COURT: Sure. It's not something I'm

1 going to let you show to the jury anyway, but yeah,  
2 you'll have something.

3 MR. ROBERTS: Okay. Thank you.

4 MR. STRASSBURG: And the schedule for  
5 tomorrow?

6 THE COURT: We'll bring the jury in at 10:00.  
7 I don't know that we're going to get much past opening  
8 statements tomorrow, are we?

9 MR. TINDALL: Doubt it.

10 MR. STRASSBURG: Do you have a limit --

11 THE MARSHAL: Reentering.

12 MR. STRASSBURG: Do you have a limit on time?

13 THE COURT: I usually let you guys do your  
14 thing.

15 MR. STRASSBURG: Thank you, sir.

16 THE MARSHAL: Jury's present, Judge.

17 (The following proceedings were held in  
18 the presence of the jury.)

19 THE COURT: Thank you. Go ahead and be  
20 seated. Back on the record, Case No. A637772. All  
21 right, ladies and gentlemen, as I read your names, I'm  
22 going to ask you to please stand. Mr. Blurton, Badge  
23 150; Ms. Flores, Badge 010; Ms. Klein, Badge 146;  
24 Mr. Evans, Badge 053; Mr. Berkery, Badge 063; Ms. Bias,  
25 Badge 066; Mr. Avilaroa, Badge 078; Mr. Retzlaff,

1 Badge 088; Mr. Corum, Badge 093; and Ms. Sako,  
2 Badge 159.

3 Okay. Now I'm going to have all you folks  
4 sit back down, and everybody else is going to stand up.  
5 I do that just to screw with you. All right.

6 Everybody that's standing, pick up all your stuff and  
7 head back toward to the door. Don't leave yet. Okay.

8 Counsel, before everybody else leaves, is the  
9 jury that's sitting over here in the box the jury that  
10 you picked?

11 MR. ROBERTS: Yes, Your Honor.

12 MR. MAZZEO: Yes, Your Honor.

13 MR. STRASSBURG: Yes, sir.

14 THE COURT: All right. Does any party have a  
15 challenge to the use of the peremptory challenges by  
16 the opposing party?

17 MR. ROBERTS: No, Your Honor.

18 MR. MAZZEO: No, Your Honor.

19 MR. STRASSBURG: No, Judge.

20 THE COURT: All right. Everybody that's in  
21 the back now, I'm going to thank and excuse you. We  
22 appreciate the time you spent here. I know it's been a  
23 long time. Thank you for being here. Thank you for  
24 doing your duty. And you are now excused. You can go  
25 back down to the third floor, let them know you've been

1 excused by Department 30. Thank you, folks.

2 Mr. Blurton, I'm going to ask you to move  
3 over one seat, if you would, please.

4 Ms. Klein, if you'd move down and fill in  
5 that seat.

6 And, Mr. Evans and Mr. Berkery, I'm going to  
7 have you move up on the back row. Mr. Evans next to  
8 Ms. Klein. Perfect.

9 You three that are in the middle row, if  
10 you'd move all the way down here. Just leave the last  
11 seat open. Stay in the same order that you are.

12 And on the front row, Mr. Corum and Ms. Sako,  
13 if you'd move back in the seats right behind where you  
14 are now. No. Switch spaces. Switch places. Got to  
15 stay in order. All right. Perfect thank you.

16 Go ahead and be seated. These are the seats  
17 that I want you to guys to remain in for the remainder  
18 of the trial. Okay? Remember where you are. I'm  
19 going to leave the last seats open. I do that for --  
20 for a reason, because as you -- as attorneys show you  
21 things on the TV screen, it's a little bit easier to  
22 see if you're a little bit away from that wall. I keep  
23 you away from that table a little bit because I don't  
24 want you to see what's going on their table. So these  
25 are the seats that I want you to stay in for the rest

1 of the trial.

2           You were all sworn in earlier when we started  
3 to tell the truth in response to the questions that  
4 were asked during voir dire. You are now going to be  
5 our jury. So you have to take a new oath, so I'm going  
6 to ask you all to stand and raise your right hands,  
7 please.

8           THE CLERK: You and each of you do solemnly  
9 swear that you will well and truly try the case at  
10 issue and a true verdict render according to the  
11 evidence, so help you God.

12           IN UNISON: I do.

13           THE COURT: Thank you. Go ahead and be  
14 seated.

15           What's going to happen now is I'm going to  
16 excuse you guys in just a minute. I'm going to send  
17 you home. Before you leave, you're going to -- Tom's  
18 going to give you each a hard blue badge. That blue  
19 badge indicates you're a juror in Department 30. That  
20 will replace the badges that you have now. He will  
21 also give you information about parking, okay, because  
22 you get to park in a closer place now, I believe.

23           When you come back tomorrow morning, there  
24 will be a notepad and a pen on your -- on each of your  
25 chairs that you can use. I'll talk to you a little bit



1 more about that. When you come in tomorrow, I'm going  
2 to have the attorneys come in at 9:00. We're going to  
3 take care of some stuff before you come in. Hopefully  
4 if you come in at 10:00 o'clock, we will have all of  
5 our business out of the way before you come in, and we  
6 can get you going right at 10:00 o'clock.

7           Attorneys will do their opening statements  
8 tomorrow. I don't know if we'll get past that into any  
9 evidence or not. But you folks that are here, I need  
10 you to be here whenever we're going to start and be  
11 here till we're going to end. I know for some of you  
12 that may be little bit of an inconvenience with work  
13 and other obligations that you have. But you folks are  
14 our jury for the next several weeks. So hopefully it's  
15 a good experience for you.

16           I don't know if I have anything else to tell  
17 you right now. I -- I will give you some pretrial  
18 instructions when we meet tomorrow morning before  
19 the -- the attorneys do their opening statements. That  
20 will only take about 20 minutes. And then we'll get  
21 into opening statements and get going. But let's plan  
22 on 10:00 o'clock tomorrow morning.

23           During our break this evening, you're  
24 instructed not to talk with each other or with anyone  
25 else about any subject or issue connected with this

1 trial. You are not to read, watch, or listen to any  
2 report of or commentary on the trial by any person  
3 connected with this case or by any medium of  
4 information, including, without limitation, newspapers,  
5 television, the Internet, or radio. You are not to  
6 conduct any research on your own, which means you  
7 cannot talk with others, Tweet others, text others,  
8 Google issues, or conduct any other kind of book or  
9 computer research with regard to any issue, party,  
10 witness, or attorney involved in this case. You're not  
11 to form or express any opinion on any subject connected  
12 with this trial until the case is finally submitted to  
13 you.

14 See you tomorrow at 10:00. That's about as  
15 fast as I can do it.

16 (The following proceedings were held  
17 outside the presence of the jury.)

18 THE COURT: All right. Thank you, Counsel.  
19 I'm going to give the peremptory list to my clerk. She  
20 can file that, make it part of the record.

21 Is there anything else we need to talk about  
22 today before we come back at 9:00 o'clock tomorrow?

23 MR. ROBERTS: No, Your Honor.

24 MR. MAZZEO: No, Your Honor.

25 THE COURT: Okay.

1 MR. TINDALL: No, Your Honor.

2 THE COURT: I'll work on trying to get the  
3 order for you. We'll meet, we'll talk about the  
4 depositions. We'll talk about anything else that you  
5 guys want to talk about as far as what's going to be  
6 allowed during opening statements.

7 Like I said, I have about 20 minutes of  
8 pretrial instructions that I give them, and then we  
9 should be able to get into opening statements before  
10 10:30. I don't know how long you guys have.

11 Do you think we're going to get to witnesses  
12 tomorrow or not?

13 MR. ROBERTS: We might have an hour, hour and  
14 a half at the end the day.

15 THE COURT: How long do you anticipate for  
16 your opening?

17 MR. ROBERTS: I anticipate an hour, but I  
18 sometimes run long, so I don't want to make  
19 representations, but certainly no longer than an hour  
20 and a half.

21 THE COURT: All right. So that maybe takes  
22 us to lunchtime, take lunch maybe at 12:00.

23 How long, Mr. Mazzeo?

24 MR. MAZZEO: An hour and a half, but it  
25 runs -- but it will run longer than that.

1 THE COURT: Mr. Strassburg?

2 MR. STRASSBURG: An hour.

3 THE COURT: All right. It sounds to me like  
4 we're probably going to get openings done tomorrow and  
5 probably not much more. If you guys are done with  
6 openings by 4:00 o'clock, I say we give them the hour  
7 off. It's Friday. It's been a long week for them. So  
8 I don't think we worry about getting one witness on for  
9 the first hour. I don't know if we're going to get  
10 through a witness that fast.

11 So anybody have a problem with that?

12 MR. ROBERTS: That will help us plan, Your  
13 Honor. That's fine with us.

14 MR. STRASSBURG: Thank you, Judge.

15 THE COURT: I think we start with witnesses  
16 on Monday.

17 MR. STRASSBURG: Tuesday, Tuesday.

18 THE COURT: Tuesday. I'm sorry. Monday's a  
19 holiday.

20 MR. MAZZEO: I know one of the witnesses  
21 Mr. Roberts is going to call initially -- or early on  
22 would be the -- Police Officer Figueroa by way of  
23 deposition. So I mean, that might fill in some of  
24 the -- if we're not tired, if the jurors aren't tired  
25 that might fill in some of the time Friday afternoon.

1 THE COURT: We'll see how early we get done.

2 MR. ROBERTS: That's probably only going to  
3 take 20 minutes maybe.

4 MR. MAZZEO: And then we have -- our  
5 cross-examination of Figueroa, we're going to have our  
6 own -- at that same time, after they present Figueroa  
7 on their direct, we're going to present Figueroa on  
8 cross at the same time.

9 THE COURT: Well, whatever you guys are going  
10 to do by way of deposition, usually that's -- that's  
11 done and figured out before the calendar call. You  
12 guys haven't done that in this case, so --

13 MR. ROBERTS: I don't think we --

14 THE COURT: -- make sure you're disclosing it  
15 to each other and that we're ruling on whatever  
16 objections need to be ruled on before we do it, because  
17 we don't -- I don't want to -- if we're having somebody  
18 up here reading, we don't read the objections. It's  
19 either been ruled on or -- and it's either moot or the  
20 question and answer doesn't get asked, so we got to  
21 figure that out before it's done.

22 MR. MAZZEO: I'm going to exchange the  
23 anticipated testimony for Figueroa to plaintiff's  
24 counsel when I get back to the office.

25 THE COURT: Okay. Thanks, guys. We'll see

1 you tomorrow morning at 9:00. Off the record.

2 (Thereupon, the proceedings

3 concluded at 4:10 p.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

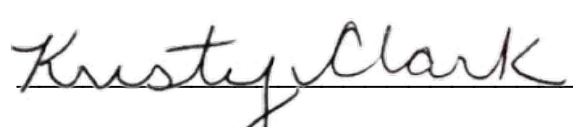
STATE OF NEVADA )  
COUNTY OF CLARK ) ss:

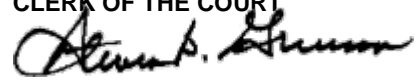
I, Kristy L. Clark, a duly commissioned  
Notary Public, Clark County, State of Nevada, do hereby  
certify: That I reported the proceedings commencing on  
Thursday, February 11, 2016, at 10:51 o'clock a.m.

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  
11th day of February, 2016.

  
KRISTY L. CLARK, CCR #708



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 FRIDAY, FEBRUARY 12, 2016  
23  
24 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,  
25 CA CSR #13529



1 APPEARANCES:

2 For the Plaintiff:

3 GLEN J. LERNER & ASSOCIATES  
4 BY: ADAM D. SMITH, ESQ.  
4795 South Durango Drive  
Las Vegas, Nevada 89147  
5 (702) 977-1500  
asmith@glenlerner.com

6 - AND -

7 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL,  
8 BY: D. LEE ROBERTS, JR., ESQ.  
BY: TIMOTHY MOTT, ESQ.  
9 BY: MARISA RODRIGUEZ-SHAPOVAL, ESQ.  
6385 South Rainbow Boulevard  
10 Suite 400  
Las Vegas, Nevada 89118  
11 (702) 938-3838  
lroberts@wwhgd.com

12  
13 For the Defendant Andrea Awerbach:

14 MAZZEO LAW, LLC  
15 BY: PETER MAZZEO, ESQ.  
BY: MARIA ESTANISLAO, ESQ.  
631 South 10th Street  
16 Las Vegas, Nevada 89101  
(702) 382-3636

17  
18 For the Defendant Jared Awerbach:

19 RESNICK & LOUIS  
20 BY: ROGER STRASSBURG, ESQ.  
BY: RANDALL W. TINDALL, ESQ.  
5940 South Rainbow Boulevard  
21 Las Vegas, Nevada 89118  
(702) 997-3800

22  
23  
24 \* \* \* \* \*

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

OPENING STATEMENTS

PAGE

By Mr. Roberts

82

By Mr. Mazzeo

153

1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 12, 2016;

2 9:10 A.M.

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

5 \* \* \* \* \*

6  
7 THE COURT: All right. Back on the record,  
8 Case No. A637772. We're outside the presence of the  
9 jury.

10 Just so you guys know, from now on, now that  
11 we have a jury, every time that we reconvene, I'm just  
12 going to ask you to stipulate to the presence of the  
13 jury so we don't have to do a roll call or anything  
14 like that, and it makes good record that we have  
15 everybody here. Okay? I'll just say, Do all the  
16 parties stipulate to the presence of the jury, just  
17 everybody say yes. Unless the jury's not here, then  
18 let me know.

19 So what do we need to take up first?

20 MR. SMITH: Well, I think we would like to  
21 discuss the order that you left on counsel -- that you  
22 left on counsels' table this morning.

23 THE COURT: Okay.

24 MR. SMITH: I'm sure Your Honor expected that  
25 we have some serious concerns with the order, and I

1 want to talk about some of the specifics in it and what  
2 might be a potential solution. Because Your Honor says  
3 in the order that this is what the fair solution is,  
4 and I want to explain to the Court why it is not the  
5 fair solution and what a more fair solution might be.

6           Your order admits that we did not have an  
7 opportunity to conduct appropriate discovery because of  
8 the withholding of this evidence and then the testimony  
9 afterwards that fabricates evidence in relation to the  
10 same thing. Your Honor asked us in court on the day  
11 you sprung it on us that you're going to change an  
12 order that had been in place for a year, you asked us  
13 what discovery we would want to do during the trial  
14 because of the five-year rule. So the only discovery  
15 that we mentioned was the only thing we could think of  
16 that might take a short period of time, and the only  
17 thing we could think of on the spot that would take a  
18 short period of time, and that was deposing the  
19 adjustor.

20           That doesn't mean -- and I think we need to  
21 make a clear record of this. That doesn't mean had  
22 this information been timely disclosed, that is the  
23 only discovery that we would have done. For example,  
24 I'm sure Your Honor imagines that we would want to  
25 redepose Ms. Awerbach. We would want to know, is she

1 going to testify that she told these things to her  
2 insurance adjustor. If she offers that testimony, is  
3 she going to have an explanation for why she told those  
4 things to the insurance adjustor and then she told us  
5 in two lengthy depositions something completely  
6 different? If she's going to say that she didn't tell  
7 these things to her insurance adjustor, we would need  
8 to inquire of her why this note exists.

9           We would also take depositions of other  
10 people who had driven with Mr. Awerbach by -- by the  
11 testimony of Mr. Awerbach so that we can corroborate  
12 the testimony that Mr. Awerbach is going to give that  
13 he had previously driven the car, had access to the  
14 car, and that the keys were left out on the counter.

15           We're not going to have any of that  
16 information at trial, and we are very hamstrung. And  
17 we're not only hamstrung by the Court's order, but  
18 we're hamstrung because of the actions of a party. And  
19 I know I've said this before, but fair is not the  
20 standard in this situation. This was a sanction.

21           What we are going to end up doing is taking a  
22 deposition of a party during trial. This isn't a  
23 deposition of an independent witness who we had an  
24 opportunity to depose and we chose not to. This is a  
25 deposition of a person who we deposed at length, and

1 now we're going to have to redepose her in front of the  
2 jury. And that's -- that's a very terrible position to  
3 have put us in.

4           This is also going to inject the issue of  
5 insurance into trial. Your Honor's aware that  
6 trying -- to think of it off the top of my head. I  
7 think it's NRS 48.135, which is the rule excluding  
8 insurance from trial. That rule only excludes  
9 insurance if -- if it's going to prove negligence. We  
10 are going to have to introduce the issue of insurance  
11 into trial in order to prove bias. And the next  
12 subsection in that rule allows us to use insurance to  
13 prove bias.

14           So, for example, we're going to have to ask  
15 Ms. Awerbach during her trial deposition what her  
16 insurance is going to cover, whether it's going to  
17 cover less or how her rates are going to change if the  
18 jury does not find that Mr. Awerbach had permission to  
19 use the vehicle.

20           We're going to have to potentially, depending  
21 on her testimony, put the insurance adjustor on the  
22 stand, explain who she is, why Ms. Awerbach was making  
23 the statements to her, and have her explain to the jury  
24 the lack of bias that she has in corroborating the  
25 statement. In other words, if what she wrote in the

1 note is true, then the company that she works for and  
2 has worked for for at least the last five years is  
3 going to owe a lot more money. There's no reason to  
4 have thrown these issues of insurance into the trial  
5 just because information was improperly whited out and  
6 withheld from us.

7           And I told you at the beginning that I'm  
8 going to give you a different solution, and I don't  
9 think it's a perfect solution. And I think it still  
10 really sets our side behind the curb based upon the  
11 redaction of this and the withholding of evidence. But  
12 if Your Honor's looking to be fair, I think there's  
13 certainly an appealable issue, but I'd like the trial  
14 to go forward as best we can.

15           And the most fair solution that we can come  
16 up with at this point, given Your Honor's unwillingness  
17 to adhere to the order Judge Allf entered and the order  
18 that we've abided by for over a year -- for about a  
19 year, would be that the Court instructs the jury of  
20 Ms. Awerbach's statements. Ms. Awerbach on  
21 January 17th, 2011, admitted -- and I didn't write them  
22 all down -- but she left the keys out on the counter.  
23 She had given Mr. Awerbach the keys earlier in the day.  
24 He had not given them back. And whatever else is in  
25 the note. And that can include her statement that she

1 did not expressly tell him that day that he could drive  
2 the car, however it is worded in that note. Then  
3 Ms. Awerbach will have to rebut the statements that are  
4 now told to the jury that she had made. She can rebut  
5 those with additional evidence or testimony should she  
6 have it.

7 But Ms. Awerbach should not be able to come  
8 into court at this point and continue what we know to  
9 be a misstatement. And the misstatement is that she  
10 didn't tell the adjustor any of these things 15 days  
11 after the accident. She should not be allowed to do  
12 that. And -- and we are then forced, like I said, to  
13 take a trial deposition of a party who has an  
14 incredible interest in testifying consistently with her  
15 false statements in her deposition.

16 So we would ask the Court to -- to revisit  
17 the way that this is done, because the position that we  
18 are in is patently unfair and puts us in a position  
19 starting on halfway into the first day of voir dire  
20 where we can't try the case that any of the parties,  
21 including Ms. Awerbach, expected to be trying.

22 THE COURT: Tell me what -- what benefit or  
23 what the purpose would be of the Court telling the jury  
24 that she made those statements? Isn't that going to  
25 come out through the trial anyway?



1           MR. SMITH: It would come out through the  
2 trial, but it would come out in the context of  
3 insurance, which I don't think any of the parties want  
4 to do. What the Court could do is explain that these  
5 statements were made, and -- and we could avoid giving  
6 the context of an insurance adjustor taking the  
7 statement from her, an insurance adjustor testifying.  
8 And the other thing it would do is preclude  
9 Ms. Awerbach from disputing that she made the  
10 statements. So those statements would be admit --  
11 essentially, admitted into evidence. Nobody can  
12 dispute that they were made, and we don't have to  
13 provide the insurance context of the statements to  
14 inject an issue that I'm sure Mr. Mazzeo is about to  
15 tell you is a very prejudicial issue.

16           THE COURT: Okay.

17           MR. MAZZEO: Okay. Well, I didn't expect  
18 this to be continuously argued after it was discussed  
19 since Monday. This may be the fourth time. And now  
20 this morning, I saw that you had -- that an order has  
21 been drafted signed by the Court. And I'm fine with --  
22 let me just address the order initially. I'm fine with  
23 the wording of the order, except with regard to the end  
24 of it.

25           Counsel discussed the issue and decided that

1 the -- that redeposition of the claims adjustor was  
2 unnecessary. And it was unnecessary because Adam Smith  
3 had the opportunity to question the claims adjustor,  
4 Teresa Merez, who was the author of the claims note in  
5 question. He questioned her about permissive use. So  
6 that's why there was no need for them to take -- take  
7 another deposition of her.

8           And I think that's important to put in the  
9 order for purposes of appeal, or for purposes of if --  
10 if -- if they're posturing this case for a mistrial. I  
11 certainly want that reference in here so -- to show  
12 that they weren't prejudiced, that they actually had  
13 this opportunity and they, in fact, did depose her over  
14 a year ago now. That's number one.

15           Number two, Mr. Smith lost me when he started  
16 talking about coverage, and -- and I wasn't sure if he  
17 was suggesting that he would have to get into the  
18 coverage issues, and does he want the policy limits  
19 exposed to the jury? Does he -- does he want them to  
20 know how much coverage is in this case?

21           I mean, if that's how he -- where he wants to  
22 go -- or does he want the Court to know that if -- that  
23 if the -- if Andrea Awerbach prevails on -- in  
24 defending on negligent entrustment and the other claim,  
25 that Jared may not be covered by any policy? Is that

1 what he's suggesting? If he is, that may not work to  
2 his benefit.

3 And then he offers an alternative solution.  
4 Well, I mean, I don't think -- and I'm not sure how  
5 seriously the Court is considering Mr. Smith's  
6 suggestion. I'm sitting here and I'm thinking, Why are  
7 we continuing to argue this? It seems as though you've  
8 already given a solution that satisfies the concerns of  
9 the parties, satisfies the -- the concerns of certainly  
10 Andrea Awerbach who -- who should be able to defend  
11 against punitive damages, so --

12 THE COURT: You're the only one happy with  
13 it.

14 MR. MAZZEO: I'm sorry?

15 THE COURT: You're the only one happy with  
16 it.

17 MR. MAZZEO: Just make that one change in the  
18 order. If you want to add that one part to the order  
19 and I'll be happy. But yeah, I'm satisfied with it.  
20 I'm actually was -- dissatisfied with the initial  
21 ruling, so -- so I can join the group of -- of the  
22 unsatisfied people here.

23 But in any event, it was a solution because  
24 otherwise, what is -- what do we do on punitive  
25 damages? You did find a solution for us -- for Andrea

1 to be able to defend against it. So I don't think  
2 anything has changed since Monday, Tuesday, Wednesday,  
3 however many times this has been argued. Mr. Smith's  
4 suggestion is -- I think is -- is not serious. And --  
5 and there's no reason for it. They have the  
6 presumption that -- that -- that's against -- that  
7 works against Andrea. So I don't think any changes  
8 need to be made to the order, Judge.

9 MR. STRASSBURG: Judge, my guy's the victim  
10 here. I had this all worked out with Mr. Mazzeo, that  
11 she was going to stipulate to liability and we were  
12 just going to try damages and I was going to move to  
13 keep out all the parade of horrors about what she  
14 might have or might have not known about Jared's  
15 misbehavior. Then you came along and modified the  
16 order, okay, and all that fell apart. And so now  
17 Mr. Mazzeo, as is his right as, you know, an  
18 independent professional defending an independent  
19 client, has decided to fight on liability as well.

20 So the plaintiffs -- I mean, you can see the  
21 gleam in Mr. Roberts' eye from here -- have decided  
22 that they're going to show all the rotten stuff Jared  
23 was doing right in the house that she had to know  
24 about, so everything she says is baloney.

25 Now -- so really, if there's anybody whose ox

1 is gored here, it's me. Now -- so I object to your  
2 order as well. I mean, I think I understand why you  
3 did it. I'm not that happy about -- of all the  
4 judicial minds in this building, you had to consult  
5 with the one who's admitted she's prejudiced against  
6 him, my guy, Tindall. And so, therefore, she couldn't  
7 be fair and impartial and she had -- she booted herself  
8 off -- off this case so she didn't have to sit in the  
9 room with my partner, Tindall, here.

10 Of all the people to consult -- I mean, I  
11 wish you would have picked maybe the chief judge or  
12 something like that to talk about what the order  
13 objectively says. Be that as it may, I -- I credit you  
14 with the transparency of your order, so it's open and  
15 obvious what has gone on here, and I appreciate that --  
16 that conduct on your part.

17 That being said, I also object to  
18 Mr. Mazzeo's proposed solution. Number one, because  
19 I'm not sure I really understand it. And number two, I  
20 think that if he wants to prove that the statements  
21 that Andrea made to the adjustor conflict --

22 THE COURT: You're not talking about  
23 Mr. Mazzeo's proposed solution. You're talking about  
24 Mr. Smith's.

25 MR. STRASSBURG: Did I say that out loud? I

1 meant Smith. Thanks for reading my mind there, Judge.

2 I think that if -- if Smith and Roberts, they  
3 want to prove that Andrea's talking out of both sides  
4 of her mouth depending on whether it's to the insurance  
5 adjustor or to the lawyer examining her in deposition,  
6 I think they got to just prove that the old-fashioned  
7 way, which is you put the witness on the stand, she  
8 says whatever it's going to be, and then you impeach  
9 her with the prior inconsistent statement. But you got  
10 to identify who it's from, that it's from an insurance  
11 adjustor. And, you know, I'm okay with that, so long  
12 as I get to ask what the limits are under the policy.  
13 And, you know, Mr. Roberts wants to put the policy in  
14 evidence because if memory serves, it's a trial  
15 exhibit.

16 So that being the way it sets up, I -- I'm  
17 willing -- or I think it's most appropriate to just do  
18 this the way the rules of evidence provide in light of  
19 the order that you made. So thank you, Judge.

20 THE COURT: I don't like the idea of putting  
21 all this insurance information in here. I think that  
22 you could probably get it in by just saying, Did she  
23 make the statement to somebody, and it said this. I  
24 don't know that you need to necessarily say who it was  
25 made to, but if you guys want to agree to put all the

1 insurance stuff in, I mean, that's between you, I  
2 guess.

3 Does everybody want to put all this insurance  
4 information in here?

5 MR. SMITH: Absolutely not, and that's why  
6 I'm proposing an alternative solution. The problem  
7 is -- where you leave us is we don't know what's going  
8 to happen. So we are unsure when a party gets up here,  
9 what she's going to say. Is she going to deny it, what  
10 her explanation's going to be, and then that may inject  
11 the issues of insurance, and then we may be seeking,  
12 for example, to put on an insurance expert to explain  
13 why the insurance company has to pay the judgment which  
14 they're seeking to claim that they don't have to pay.

15 And this -- this is an entirely collateral  
16 issue that is only brought about by a party making  
17 false statements under oath. And then what Your Honor  
18 has done -- and I don't mean this in an offensive  
19 fashion, but what Your Honor has done is let that party  
20 and only that party off scot-free. She is the only one  
21 who gets a benefit out of this, by her own actions.  
22 And had they not withheld that note, we would be back  
23 at the beginning of -- take it back in time, back to  
24 the beginning of the discovery, I would have that note,  
25 I could have shown it to Ms. Awerbach. She could have

1 explained that, yes, I said that and here's why I said  
2 it and maybe I -- maybe something different is true.  
3 Or yes, I said that, and that's really what the truth  
4 was. But that didn't happen.

5           And -- and we didn't have the opportunity for  
6 that to happen -- to happen because she withheld  
7 evidence in a very sneaky way that we only discovered  
8 it through an independent subpoena. And -- and the  
9 position that it puts us in, as I said before, is  
10 patently unfair. And it's only fair to the party who  
11 did the bad act. And the message that that sends to  
12 the parties in this case and to the parties in any  
13 other case in the Eighth Judicial District Court is --  
14 is not a good message. That says you can withhold  
15 evidence, and even if you get caught, we're not going  
16 to hold you to it, and we're going to let you off  
17 scot-free. And then as an alternative solution, we're  
18 going to offer the parties an opportunity to have a  
19 complete circus in our courtroom that injects issues  
20 that should never be part of the trial and that, again,  
21 are primarily beneficial to the party who did the wrong  
22 thing.

23           And Mr. Mazzeo made me think of another  
24 thing, and I'll give you a second potential solution in  
25 case you don't like mine. I know Mr. Roberts sort of



1 brought this up the other day, but I want to present to  
2 you in a different fashion.

3           We could have the initial phase of the trial  
4 where Judge Allf's order is in place. In other words,  
5 permissive use is a finding for the compensatory  
6 damages phase. The jury, based upon the permissive use  
7 finding for the compensatory damages phase, can decide  
8 whether punitive damages are appropriate. If the jury  
9 determines punitive damages are appropriate against  
10 Ms. Awerbach, we can have a second phase, and during  
11 that second phase, the jury can be instructed in this  
12 phase, You are to determine the amount of punitive  
13 damages, and in this phase Ms. Awerbach is entitled to  
14 rebut the presumption that we gave you in the first  
15 phase that she gave permission to her son to drive the  
16 car.

17           Mr. Mazzeo claimed that -- and he's claimed  
18 throughout this discussion from Day 1 when he brought  
19 up the permissive use finding that his problem is with  
20 the punitive damages phase. So if we want to fix that  
21 problem, let's fix it for the punitive damages phase.  
22 Let's not have this trial deposition and the complete  
23 circus in your courtroom that injects all of these  
24 issues that we don't want to inject. I'm not up here  
25 asking the Court to inject issues of insurance, to

1 allow the adjustor to testify, to allow the note into  
2 evidence, all things that have been excluded and  
3 probably should be excluded.

4           What we want is if you want something fair,  
5 let's come up with something fair. But letting the  
6 party who destroyed evidence and never told us about it  
7 until we found it on our own, and lied about it under  
8 oath, that party shouldn't get any benefit in your  
9 courtroom to the detriment of all the other parties.

10           THE COURT: You don't get to keep arguing.

11           MR. MAZZEO: No, no, no, Judge. I know. I  
12 realize, Judge. I just wanted to bring up one point.  
13 Mr. Smith's up here with his righteous indignation  
14 about being injured by this ruling. Fact of the matter  
15 is, they never brought a claim for punitive damages  
16 against Andrea. They never intended to seek malice or  
17 oppression. They brought a specific damages claim  
18 against Jared Awerbach not against Andrea, and then in  
19 some motion, they said punitive damages against  
20 defendants plural. And I said, Wait a minute. Let me  
21 call plaintiff's counsel. It's a mistake. He says,  
22 No, we're seeking it against them.

23           And nowhere in their opposition, even though  
24 I addressed 42.005, 007, which is for employment,  
25 and -- and 010, plaintiff's opposition didn't address

1 42.005. They didn't think that they had grounds to  
2 pursue punitive damages against her for that. I had to  
3 file another motion and voila. They get the benefit of  
4 the Court now with this punitive damages claim. That's  
5 why we're here with this order and -- and this  
6 controversy regarding this issue.

7           Why don't they dismiss the punitive damages  
8 claim against Andrea, and then I'll reconsider  
9 stipulating to negligent entrustment. It's a  
10 consideration. I don't know. I will have to speak  
11 with my client about it, though.

12           THE COURT: Okay, guys. So you're going to  
13 talk again too? Go ahead.

14           MR. STRASSBURG: Not necessarily.

15           THE COURT: I don't -- I don't think we need  
16 to just keep going around in circles, guys. The  
17 order's going to stand the way it is. I'm not going to  
18 modify the last paragraph. It's already been filed and  
19 eServed. You've made a record on why the agreement was  
20 made. That's fine. It's part of the record.

21           I don't think I'm going to take any of your  
22 suggestions either, Mr. Smith. I think that whatever  
23 Ms. Awerbach says when she's on the stand, I think you  
24 have evidence that you can use to impeach her because  
25 she apparently said different things at different

1 times. It's an impeachment issue. You impeach her  
2 with it if there's a prior inconsistent statement.

3 I don't think we need to get into all the  
4 whole insurance issue. I mean, if -- if there's a  
5 statement to an insurance adjustor, you say, Did you  
6 make a statement to somebody? Yes, I made the  
7 statement. Or no, I didn't make the statement. Then  
8 you bring the adjustor in. Said, Did this person make  
9 the statement to you? Yes. What did she say? It's a  
10 statement by a party. So it's probably subject to the  
11 hearsay objection. I don't think you need to go into  
12 all the insurance information, so ...

13 MR. SMITH: What about the opportunity to  
14 depose Ms. Awerbach, then, this weekend?

15 THE COURT: What's that going to get you?

16 MR. SMITH: As I stand here today, Your  
17 Honor, I don't know if she's going to say she even made  
18 that statement. And I don't have admissible evidence  
19 yet because presently Your Honor has excluded the  
20 claims note, you've excluded the testimony of  
21 Ms. Merez, you've excluded any discussion of insurance.  
22 I don't know whether those things are overturned.  
23 We're going to have --

24 THE COURT: Who's Ms. Merez?

25 MR. SMITH: The insurance adjustor. We're

1 going to have to ask the Court to overturn those  
2 things. And even if those things are overturned, I  
3 don't know whether we need put on, for example,  
4 Ms. Merez in our case-in-chief. Do we need her to come  
5 in and testify to the statements made so when, in the  
6 defense case, Ms. Awerbach comes up there, I have  
7 evidence to impeach her, instead of having to rebut it  
8 with another witness after we've cross-examined her?

9           We just don't have any idea what's going to  
10 happen, and this isn't just -- this isn't just making  
11 things up because I'm disappointed in the Court's  
12 order. This is attempting to come up with an entirely  
13 new strategy on the fly at trial without having any  
14 idea what's going to happen.

15           And, you know, I can imagine that Your Honor  
16 does not get a lot of people in a case this size coming  
17 to trial in your court where they haven't asked a party  
18 a key question that's going to be one of the primary  
19 issues at trial. And I haven't had an opportunity to  
20 ask her any of that. I don't know any of the stuff we  
21 want to ask. What her knowledge of insurance is, why  
22 she thinks that it might help her or not help her, if  
23 permissive use is found, why she testified  
24 inconsistently or why the adjustor might have made up  
25 what she wrote in her note. I don't know any of those

1 things. We're going to be asking those things in front  
2 of the jury. It is patently unfair to us to put us in  
3 that position.

4           Again, I said -- I said earlier, I think no  
5 matter what the Court does today, this is an appealable  
6 issue. But I'm not here to try and set up an  
7 appealable issue. I think that already exists. While  
8 we have an appealable issue, I would like to try and  
9 get us the best trial so maybe we don't have to do  
10 that. And at least at a minimum --

11           You know, I disagree with Mr. Mazzeo that the  
12 deposition I took of the insurance adjustor was a full  
13 and complete deposition. It wasn't. We had a  
14 discovery hearing on it. There's -- there's a lot of  
15 things that I'm not going to waste the Court's time  
16 with. Given the timing of things and, you know, other  
17 reasons, it's not -- it's not appropriate, and it's  
18 not -- it's not necessary -- it is necessary to take  
19 her deposition again. I don't want to say that. But  
20 we don't have the time and the effort to put in for the  
21 benefit that we get out of it versus if we could depose  
22 Ms. Awerbach again on the claims note. Unless -- you  
23 know, Mr. Mazzeo wants to say that she's going to  
24 testify, I told these things to the insurance adjustor.  
25 And then maybe I would reconsider that request.

1           But I don't know what's going to happen,  
2 and -- and, you know, to -- to do this to us on the --  
3 on the first day of voir dire, and -- you know, I agree  
4 we've argued about it every day because every day the  
5 situation has been different. And now today, we  
6 finally have your order, and we see the position we're  
7 in, and it is very unenviable.

8           THE COURT: It's the same position that I  
9 told you on Monday. All I did was put it in writing.

10           MR. SMITH: It's not because we didn't know  
11 what was going to be in the order. I didn't understand  
12 what your basis was. You told me that you spoke to  
13 Judge Allf, but you didn't explain anything about  
14 punitive damages. You didn't explain about being fair,  
15 which is what's in your order. And so now I'm  
16 appealing to the Court to be fair.

17           THE COURT: I think everything that's in the  
18 order is pretty much what I said.

19           MR. MAZZEO: I believe it is, Your Honor.

20           And -- and I'm not sure if Mr. Smith is  
21 approaching cross-examination of a witness at trial as  
22 a discovery -- as you would for discovery in a  
23 deposition.

24           THE COURT: You have a problem making your  
25 client available for deposition over the weekend?

1           MR. MAZZEO: I do have a problem with it.  
2 I'm going to object to it. He wants to ask about  
3 knowledge of insurance and whether it will help her?  
4 What does that have to do with permissive use? I don't  
5 understand what he wants to do with this. And they  
6 took two depositions of Andrea. They -- he asked her  
7 questions about the keys and permission and where she  
8 was and where she left the keys.

9           If there are inconsistencies in what she told  
10 the claims adjuster, inconsistencies with her  
11 deposition, that's a prior inconsistent statement. Lay  
12 the foundation with a witness, and then confront her  
13 with it.

14           THE COURT: Were there questions asked about  
15 this claims note?

16           MS. ESTANISLAO: Not specifically.

17           MR. MAZZEO: Not -- in her deposition? I  
18 don't think so.

19           MR. SMITH: I didn't have it. They had  
20 withheld it from us.

21           THE COURT: That's what I thought.

22           MR. MAZZEO: But I don't understand why we're  
23 talking about insurance and whether insurance will help  
24 her. Why does he -- I'm wondering here, as I stand  
25 here, if they're -- if they're setting this up for a



1 mistrial. Because if they do, I'm moving for fees and  
2 costs against them. That's what I think they're going  
3 to do.

4           They're going to say something improper  
5 during the course of the trial, something that should  
6 be inadmissible pursuant to a statute or to an order,  
7 and then they're -- and then we're going to have to  
8 move for a mistrial. And then they get another trial  
9 shot at it, after they pay our bills for fees and  
10 costs. That's inappropriate.

11           So we should avoid that prior to them -- we  
12 should know what they're going to question her about  
13 and preclude the plaintiffs from questioning --  
14 questioning my client about things that are  
15 inadmissible and that would be prejudicial to our side.

16           THE COURT: All right. I think I understand  
17 the plaintiff's desire to redepose your client about  
18 the claims note. I think that's fair. So make your  
19 client available over the weekend. We'll limit it to  
20 an hour. It's about the claims note.

21           MR. MAZZEO: Alternatively, Judge -- and  
22 nothing about insurance; right? Limit it to the claims  
23 note?

24           THE COURT: You know what, they can ask  
25 questions about insurance. I don't see it coming in at

1 the time of trial.

2 MR. MAZZEO: But what's the purpose, though?  
3 Why do they want to even go there? We're at trial now.  
4 This is a trial -- this is a trial deposition not a  
5 discovery deposition. So it would only be things that  
6 would be admissible at trial. So why would they waste  
7 my time, my client's time, their own time to elicit  
8 information that's never going to be used at during --  
9 during -- during trial?

10 MR. SMITH: I would be happy to explain that.  
11 Under the statute I cited before, NRS 48.135  
12 subsection 2, evidence of insurance is relevant to  
13 prove bias. And that is an issue that could prove  
14 bias. I don't know what her answers are going to be.  
15 But why wouldn't the Court and Mr. Mazzeo want us to  
16 discover what her answers are going to be outside the  
17 presence of the jury and then we can determine whether  
18 or not it's admissible evidence? Why would you ask  
19 us -- why would you ask us to set up -- what he thinks  
20 we're trying to do to set up a mistrial. If I wanted  
21 to set up a mistrial, I wouldn't be asking the Court to  
22 do it outside the presence of the jury. I want to do  
23 it outside the presence of the jury so we can figure it  
24 out. And if we need to argue about it in front of Your  
25 Honor before we put on the evidence, we can. But at

1 least give us the opportunity to talk to her.

2 MR. MAZZEO: Then I'll certainly consider  
3 Mr. Smith's -- the other option that he -- that he  
4 conveyed -- that he suggested, Judge. I'll speak with  
5 my client. I'll ask her about the claims note. I'll  
6 ask her if she said the things that are contained in  
7 the claims note to the best of her recollection, and if  
8 she agrees and acknowledges that she did, we don't need  
9 a deposition. Then he has that information and it's  
10 not an issue anymore.

11 THE COURT: Maybe.

12 MR. MAZZEO: I could ask -- do we have a copy  
13 of the claims note? I could ask her -- I could find  
14 out today.

15 THE COURT: All right. At this point, make  
16 her available for an hour during the weekend. Okay?  
17 That resolves the issue for now. He can ask her about  
18 insurance. Whether it comes in at the time of trial is  
19 another issue.

20 MR. MAZZEO: Alternatively, though, if she  
21 agrees to the -- to the statements that were made as  
22 Mr. Smith had suggested a few minutes ago, if she  
23 acknowledges that she made those statements at the time  
24 that she spoke to the claims adjustor, 15 days after  
25 the accident, then the issue is moot.

1 THE COURT: Might be.

2 MR. MAZZEO: Okay.

3 THE COURT: Right?

4 MR. SMITH: I think we would waive the right  
5 to take the deposition if she admits she made the  
6 statements.

7 MR. MAZZEO: Okay.

8 THE COURT: What else? Let's talk about  
9 depositions. You guys -- you guys want to use  
10 deposition testimony during openings and there's  
11 apparently objections; right?

12 MR. ROBERTS: Just one objection, I think,  
13 Your Honor, that was provided a couple of days ago.  
14 Is there more than one objection?

15 MR. MAZZEO: No, we don't have an objection.

16 MR. TINDALL: Oh, yeah we have several. I  
17 did not understand we were providing those. I thought  
18 we were arguing them. Same objections we made all the  
19 way through, though.

20 MR. ROBERTS: In the part we marked, I only  
21 saw one objection that's -- that's in the portion I  
22 designated. If I missed one, I apologize, but that's  
23 all I remember seeing.

24 MR. TINDALL: There's objections.

25 THE COURT: On page 19 of Jared's deposition,

1 there's an objection to the whole line of questioning.  
2 The objection is that it won't reasonably lead to the  
3 admissibility of evidence.

4 MR. ROBERTS: Isn't that a discovery  
5 objection and not a trial objection? And -- and on the  
6 merits, the issue is whether his mom knew he was  
7 unsafe. The fact that he had failed 75 percent of his  
8 drug tests and she knew that is evidence that she knew  
9 he was unsafe and knew that he constantly used drugs.  
10 Or specifically in this instance, marijuana.

11 THE COURT: Did you guys want to make --  
12 where did Mr. Mazzeo go?

13 MR. TINDALL: Yes, Your Honor.

14 THE COURT: Did you guys want to make a  
15 record on that?

16 MR. TINDALL: Yes. Regarding the snippets  
17 that they proposed they play during opening, at 16:24  
18 through 17:02, "What age did you start smoking weed?"  
19 And we object to this on the grounds of relevance and  
20 prejudice outweighs probative value.

21 MR. ROBERTS: They've already moved to  
22 exclude evidence of marijuana use, and the Court  
23 granted their motion, but only as to use and addiction  
24 prior -- excuse me, after the accident. So the Court's  
25 already allowed evidence of his marijuana use and

1 addiction into evidence. So that's -- that's why we  
2 marked this and thought it was allowable under the  
3 Court's order.

4 THE COURT: I'm going to allow it.

5 MR. TINDALL: You said his addiction is not  
6 relevant to even the negligent entrustment.

7 THE COURT: You're not talking about  
8 addiction. You're just talking about him using  
9 marijuana when he was 12.

10 MR. TINDALL: The additional objection, also,  
11 is it lacks foundation because there's no tie-in to the  
12 mom knowing about that.

13 MR. ROBERTS: It's on the very next page:  
14 "Did your mom know that you were smoking  
15 weed since you were 12?"

16 "ANSWER: Yes, sir."

17 THE COURT: I'm going to allow the stuff.

18 Let's go up through 54. Page 54, you talk  
19 about, How long were you at the Gowan Street address.

20 MR. TINDALL: Yes. Our objection to this,  
21 Your Honor, is this is where the SWAT raid took place.  
22 The Court's disallowed this in a previous motion in  
23 limine. It's irrelevant and the prejudice outweighs  
24 probative value.

25 THE COURT: I just don't know what the

1 relevance is of these five lines dealing with him  
2 living at the Gowan Street address.

3 MR. ROBERTS: It's tied in, Judge, at  
4 page 149, line 14, and necessary to give that later  
5 testimony context:

6 "QUESTION: Did you ever consume marijuana  
7 at the Gowan apartment?

8 "ANSWER: Yeah.

9 "QUESTION: Where?

10 "ANSWER: Outside."

11 Continued on the next page:

12 "QUESTION: How often?

13 "Often.

14 "QUESTION: Every day?

15 "(Witness nods head).

16 "QUESTION: Yes?

17 "ANSWER: Yes, sir."

18 So we know he lived at Gowan on the date of  
19 the incident. We know he lived there for four years,  
20 and we know that he therefore smoked marijuana every  
21 day for four years, including his time immediately  
22 preceding and the day of the accident. It -- it's  
23 necessary to tie it in because if the jury doesn't know  
24 how long he's been at Gowan Street, they don't know how  
25 long every day is or what time frame it is.

1 THE COURT: Okay. You're right.  
2 MR. ROBERTS: Thank you.  
3 THE COURT: All right. I'll allow it.  
4 What's the next one? Page 1 -- is it 103?  
5 MR. TINDALL: No objection to that one, Your  
6 Honor.  
7 THE COURT: Okay. 104.  
8 MR. TINDALL: No objection.  
9 THE COURT: Okay. 105.  
10 MR. TINDALL: Relevance and prejudice  
11 outweighs probative value. There's no relevance to the  
12 kids potentially being in the car.  
13 MR. ROBERTS: The relevance goes to the  
14 punitives which are going to be considered in the first  
15 phase in which the jury may award punitives, and it  
16 also goes to punitives against Ms. Awerbach, because  
17 she not only knows he's unsafe, she's allowing an  
18 unsafe driver to take kids in the car.  
19 MR. TINDALL: And that also lacks foundation.  
20 That's further objection.  
21 MR. ROBERTS: If you look at the -- at the  
22 statute, I don't remember the first, but it's the same  
23 one the metabolites are in. I think it's 110.1400 and  
24 something. I apologize, Your Honor. I read it. I  
25 didn't think it was relevant. But the -- driving a car



1 is -- turns into an aggravated offense if someone is  
2 under 15. So the legislature has itself decided that  
3 driving under the influence is more reprehensible if  
4 someone under 15 is in the car. So it should go to the  
5 punitives and the amount of punitives and whether  
6 they're liable that Mom not only knew he was doing  
7 this, he knew he had kids in the car when she knew he  
8 was smoking every day.

9 THE COURT: I'm going to allow it. I don't  
10 know that I'm going to allow you to talk about that  
11 other statute.

12 Page 106, "How often were you running  
13 errands?" I think that's fair.

14 MR. TINDALL: 106, 21 through 25, it lacks  
15 foundation. There's no relevance to the percentages.  
16 When --

17 THE COURT: I think there is.

18 MR. TINDALL: -- we've already established in  
19 a different paragraph that she knows he's using the  
20 car, what does it matter?

21 THE COURT: Well, I think it -- it goes to  
22 explain how -- how much she's letting him use the car.  
23 She says it's 15 percent of the time, basically. I  
24 think that's fair.

25 MR. TINDALL: 15 percent of what time,

1    though?  It lacks foundation.  The time that the car  
2    sits idle --

3               THE COURT:  Bring it up through the witnesses  
4    when they testify.

5               I think 107 is fair.

6               121, is this discussion at the accident  
7    scene?

8               MR. ROBERTS:  It is.

9               MR. TINDALL:  Our objection is relevance,  
10   prejudice outweighs probative value.  He's already been  
11   adjudicate impaired, so we don't need to know any of  
12   the specifics of failing the test allegedly or what his  
13   comments about that might be.

14              MR. ROBERTS:  If they'll withdraw their  
15   defense to punitives of he wasn't that impaired and I  
16   didn't smoke marijuana on the day of the incident, then  
17   we anticipate that he's going to deny telling  
18   Officer Figueroa that he was high, and -- or he's going  
19   to say, I told him, but I was lying, and this is the  
20   explanation he gave under oath for lying, and if he's  
21   going to dispute this, I'm entitled to talk about how  
22   he's going to dispute it to the jury.  They -- they  
23   shouldn't be able to tell the jury this for the first  
24   time.

25              MR. TINDALL:  And when I objected, Your

1 Honor, I -- I misspoke. What I meant to object to was  
2 simply the part about, "He pulled me" -- from 17 to 19,  
3 "He pulled me out of the car to perform the sobriety  
4 test." There's no relevance to that and the prejudice  
5 would outweigh the probative value. He's been  
6 adjudicated impaired. The sobriety test shouldn't come  
7 in at all.

8 MR. ROBERTS: The sobriety tests were marked  
9 in our proposed deposition -- deposition of  
10 Officer Figueroa. I know that Pete also included the  
11 sobriety test description and the results of all the  
12 tests in what he had designated.

13 THE COURT: Yeah, but how is it relevant  
14 based on the fact that there is already a finding of  
15 impairment?

16 MR. ROBERTS: Because Judge Allf reserved to  
17 them the right to dispute the degree of impairment.  
18 They could argue he was impaired, but he wasn't that  
19 impaired, so you shouldn't assess high punitives  
20 against him. That's what the motion in limine says.  
21 If they want to withdraw it, all of that, but even if  
22 they -- even if they did, the jury may award punitive  
23 damages if they find he consumed marijuana knowing he  
24 was going to drive a car. And I think -- I don't see  
25 how the jury can decide how much and if punitives

1 should be awarded if they don't know that he was almost  
2 ten times the legal limit for marijuana metabolite, and  
3 that he failed 17 out of 18 indicators for impairment  
4 when he was tested by the officer. It would --

5 MR. TINDALL: May I speak? Are you done?

6 MR. ROBERTS: I am. I'm done.

7 MR. TINDALL: This is one of the first issues  
8 that Your Honor had to deal with when you took over the  
9 case.

10 Do you recall what your ruling was?

11 THE COURT: No.

12 MR. TINDALL: Okay. Your ruling was that we  
13 could not offer evidence of partial impairment, and we  
14 could only if they brought in THC. And then that's how  
15 you ruled from the bench, but when the order came  
16 around, it didn't read that. So if -- if Mr. Roberts  
17 is saying that we get to offer evidence that he wasn't  
18 impaired to a certain degree, we take that.

19 MR. ROBERTS: No. Either I misspoke or you  
20 misunderstood. The Court order said, Evidence of  
21 slight impairment is admissible, but defendants may not  
22 argue Defendant Jared Awerbach was unimpaired.

23 MR. SMITH: That's Defendant Jared Awerbach's  
24 Motion in Limine 42.

25 MR. TINDALL: What I'm saying is that's