

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANET SOLANDER,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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)
)
)

Case No. 76228

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Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENT'S APPENDIX
Vol. 1**

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CERTIFICATE OF SERVICE

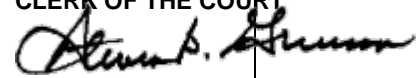
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,)	CASE NO.	C-14-299737-3
)	DEPT. NO.	XXI
Plaintiff,)		
)		
vs.)		
)		
JANET SOLANDER)		
)		
Defendant.)		

DEFENSE'S NOTICE OF WITNESSES
[NRS 174.234]

TO: THE STATE OF NEVADA, Plaintiff; and
TO: JACQUELINE BLUTH, Chief Deputy District Attorney, Attorney for Plaintiff;
TO: LISA LUZAICH, Chief Deputy District Attorney, Attorney for Plaintiff;
TO: CRAIG MUELLER, ESQ., Attorney for Defendant, DWIGHT SOLANDER; and
TO: JEFFREY RUE, Deputy Public Defender, Attorney for Defendant, DANIELLE
HINTON;

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the
DEFENSE intends to call the following witnesses in its case in chief:

<u>NAME</u>	<u>ADDRESS</u>
ABRAHIM, FAZIA	DFS/CPS, 601 S. Pecos Rd., LV, NV 89101
ANDERSON, GAIL	DFS/CPS, 601 S. Pecos Rd., LV, NV 89101
BERNAT, KRISTINA	DFS/CPS, 601 S. Pecos Rd., LV, NV 89101
BLANKENSHIP, STEVEN	3111 Zepp Ln., Pace, FL 32571

CETL, DR. SANDRA	Sunrise Hospital, 3186 S. Maryland Pkwy., LV, NV 89109
DAVIDSON, CHERINA	DFS/CPS, 601 S. Pecos Rd., LV, NV 89101
DEHOYOS, DOMINIQUE	c/o 550 E. Charleston Blvd., Ste. A, LV, NV 89104
DIAZ, AREHIA	8025 Secret Ave., LV, NV 89131
FINNEGAN, JAN	Unknown
GONZALES, YVETTE	DFS/CPS, 601 S. Pecos Rd., LV, NV 89101
HAMMACK, LAURA	DFS/CPS, 601 S. Pecos Rd., LV, NV 89101
HENRY, JACKIE	3643 N. Stewart St., Milton, FL 32570
HINTON, KIMBERLY	c/o 550 E. Charleston Blvd., Ste. A, LV, NV 89104
MCCLAIN, DEBORAH	7771 Spindrift Cove St., LV, NV, 89149
NELSON, RICHARD	DFS/CPS, 601 S. Pecos Rd., LV, NV 89101
OCLOO, NONA	DFS/CPS, 601 S. Pecos Rd., LV, NV 89101
ORENICK, AYA	DFS/CPS, 601 S. Pecos Rd., LV, NV 89101
RICHARDSON, HEATHER	DFS/CPS, 601 S. Pecos Rd., LV, NV 89101
ROSAS, CRYSTAL	DFS/CPS, 601 S. Pecos Rd., LV, NV 89101
SHAW, LISA	DFS/CPS, 601 S. Pecos Rd., LV, NV 89101
STARK, AUTUM	3629 Tuscany Ridge, NLV, NV 89032
WELLS, LORI	2921 N. Tenaya Wy., LV, NV 89128

These witnesses are in addition to those witnesses endorsed on the Information or Indictment and any other witness for which a separate Notice of Witness and/or Expert Witnesses has been filed by any party to the case.

DATED this 22nd day of January, 2018.

Respectfully Submitted by:

/s/: Caitlyn McAmis
CAITLYN MCAMIS, ESQ.
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1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, hereby certify that on the 23rd day of January, 2018, a true copy of
3 **DEFENSE'S NOTICE OF WITNESSES** was served upon interested parties by way of
4 facsimile transmission as follows:

5 1. TO BE SERVED BY THE COURT VIA ELECTRONIC FILING: On January
6 23, 2018, the foregoing document was served by the court's electronic filing system, Odyssey
7 File & Serve, via courtesy copy and hyperlink to the document at the email addresses below:

8 JACQUELINE BLUTH, ESQ.

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17 2. SERVED BY FACSIMILE TRANSMISSION: I served the following persons
18 and/or entities by facsimile transmission as follows:

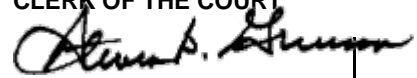
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27 /s/: Caitlyn McAmis
28 An Employee of The Law Offices of
Kristina Wildeveld, Esq.



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C299737-3
)	
vs.)	DEPT NO. XXI
)	
JANET SOLANDER,)	
)	
Defendant.)	Transcript of
)	Proceedings

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 3

WEDNESDAY, FEBRUARY 14, 2018

APPEARANCES:

FOR THE STATE:

JACQUELINE M. BLUTH, ESQ.
CHRISTOPHER S. HAMNER, ESQ.
Chief Deputy District Attorneys

FOR THE DEFENDANT:

CAITLYN L. McAMIS, ESQ.
DAYVID J. FIGLER, ESQ.

RECORDED BY: SANDRA PRUCHNIC/SUSIE SCHOFIELD, COURT RECORDERS
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

RA 000004

1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 14, 2018, 10:11 A.M.

2 (Outside the presence of the prospective jury)

3 THE COURT: A couple things. Did the woman with the
4 class issue, did she say anything else to you, the schooling?

5 THE MARSHAL: She didn't say anything leaving
6 yesterday, and I haven't seen her this morning, but we did have
7 the gentleman also that has the doctor's appointment --

8 THE COURT: All right. I lost --

9 THE MARSHAL: -- today.

10 THE COURT: Oh, the doctor's appointment for 1:00.

11 THE MARSHAL: And then are you saying you lost the one
12 with the guy that his son --

13 THE COURT: Yeah, you put that on --

14 THE MARSHAL: -- his son was seeing one of the
15 witnesses?

16 THE COURT: Is it down on Jill's thing? Did it fall
17 off?

18 THE MARSHAL: I don't see it.

19 THE COURT: That's so weird. Where did it go? It was
20 just right here a minute ago.

21 THE MARSHAL: Did you take it back into your office
22 with you?

23 THE COURT: No, I wouldn't have done that. Shoot.

24 THE MARSHAL: It was No. --

25 THE COURT: Somebody wrote down one of the jurors,

1 number -- which one? That his son had seen Dr. Mathes or
2 Mathias.

3 THE MARSHAL: Oh, you have the note?

4 THE CLERK: I was just cleaning and putting stuff away
5 and it's right here.

6 THE COURT: What did the student say to you, Kenny?

7 THE MARSHAL: She had paid for her classes and they
8 started this week or something like that, and she was going to
9 miss out on her class or something like that. She wasn't very
10 informative exactly. She was kind very broad on what she was
11 doing.

12 THE COURT: All right. Juror No. 10 wrote us a note.
13 Are we on the record?

14 THE RECORDER: Yes.

15 THE COURT: He has a son who saw Dr. Alfreda Maller,
16 pediatric neurologist. This was about six visits between 2014
17 and 2015. And he says I was not able to remember Dr. Maller's
18 name until I looked at my phone. So is Dr. Maller going to be
19 even a witness?

20 MR. HAMNER: I don't believe so. I'll double check
21 with Jacqueline.

22 THE COURT: Okay.

23 MR. HAMNER: But I think the answer is no.

24 THE COURT: Does anyone want me to follow up with him?

25 MS. McAMIS: In an abundance of caution, yes.

1 THE COURT: Okay. But you don't think you're even
2 going to call him?

3 MR. HAMNER: No.

4 MS. McAMIS: Yeah.

5 THE MARSHAL: Oh, the gentleman with the doctor's
6 appointment gave me a little bit more information. I guess he's
7 on diabetes medication that has a class action lawsuit or
8 something filed for that medication.

9 THE COURT: Uh-huh.

10 THE MARSHAL: So he's trying to get to the doctor to
11 get off that medication and get something else.

12 THE COURT: Is that Avandia?

13 THE MARSHAL: He was not specific on what -- what it
14 was, but there are attorney commercials about the medication.

15 THE COURT: Do you anticipate calling Dr. Alfreda
16 Maller, the neurologist?

17 MS. BLUTH: No.

18 MR. HAMNER: No.

19 THE COURT: Okay. Because one of the jurors, juror in
20 Chair 10, wrote a note that his son saw him, six visits between
21 2014 and 2015.

22 MS. BLUTH: Oh. No.

23 THE COURT: All right. Everybody ready?

24 MS. BLUTH: Yes.

25 MR. FIGLER: Yes, Your Honor.

1 THE COURT: Bring them in.

2 (Inside the presence of the prospective jury)

3 THE COURT: All right. Court is now back in session.
4 The record should reflect the presence of the State through the
5 Deputy District Attorneys, the presence of the defendant and her
6 counsel, the officers of the court, and the ladies and gentlemen
7 of the prospective jury panel.

8 And, Ms. McAmis, you may resume your questioning of
9 the panel.

10 MS. McAMIS: Thank you, Your Honor.

11 Good morning, again, everyone.

12 PROSPECTIVE JURY PANEL: Good morning.

13 MS. McAMIS: Thank you. So when I left off yesterday
14 I had been speaking with you, and it's Ms. -- don't tell me.
15 Ms. Samuels.

16 Okay. I'd actually like to spend a little bit of time
17 this morning speaking with you. It's Mr. Chanla; right?

18 PROSPECTIVE JUROR NO. 072: Yes.

19 MS. McAMIS: Okay. Excellent. So part of what we
20 were discussing yesterday just very broadly parenting practices
21 and what happens when our children act out and what kinds of
22 acceptable conduct parents can do to kind of reign in that
23 behavior that is undesirable in our children. You've got two
24 boys; right?

25 PROSPECTIVE JUROR NO. 072: Yes. Uh-huh.

1 MS. McAMIS: And they are 10 and 12 about?
2 PROSPECTIVE JUROR NO. 072: Yeah.
3 MS. McAMIS: Do they always behave?
4 PROSPECTIVE JUROR NO. 072: Yes.
5 MS. McAMIS: They always behave? How do you get --
6 how do you get them to stay behaving all the time?
7 PROSPECTIVE JUROR NO. 072: Well --
8 THE MARSHAL: Just make sure you guys are speaking up
9 so the recording picks you up, please.
10 PROSPECTIVE JUROR NO. 072: Well, during the daytime
11 I'm working. My wife is with them all the time, so I get to see
12 them after work.
13 MS. McAMIS: Okay. But you're still absolutely part
14 of their parent after work; right?
15 PROSPECTIVE JUROR NO. 072: Yes. Yes.
16 MS. McAMIS: So you have a lot of responsibilities.
17 Do the kids ever, you know, resist trying to do their homework?
18 PROSPECTIVE JUROR NO. 072: Sometimes.
19 MS. McAMIS: What do you do then?
20 PROSPECTIVE JUROR NO. 072: I try to take the phone
21 away or the games, stuff like that.
22 MS. McAMIS: Okay. What about when they're a little
23 bit younger?
24 PROSPECTIVE JUROR NO. 072: It's harder.
25 MS. McAMIS: It's harder? Why?

1 PROSPECTIVE JUROR NO. 072: Because they don't
2 understand what we try to tell them, but as they grow up they
3 have more mentality to understand.

4 MS. McAMIS: Okay. So what happens when they didn't
5 want to do like a chore or homework when they were younger?
6 What did you do?

7 PROSPECTIVE JUROR NO. 072: Well, usually I give them
8 time out and talk to them, say why are you not doing this, and
9 then talk to them and give them 30 minutes time out or an hour.

10 MS. McAMIS: Okay. What about when you were growing
11 up? What was discipline like in your home if your parents, you
12 know, determined that they didn't like something you were doing
13 and they wanted to stop it?

14 PROSPECTIVE JUROR NO. 072: I don't remember that much
15 because my mom passed away when I was five and I lived with my
16 sister almost my whole life.

17 MS. McAMIS: Okay. Can you tell me about that
18 experience? Did she step in and act like a mother to you?

19 PROSPECTIVE JUROR NO. 072: Yes.

20 MS. McAMIS: How much older was she?

21 PROSPECTIVE JUROR NO. 072: We're ten years apart.

22 MS. McAMIS: Oh, okay. All right. So what would she
23 do when she was trying to like impose structure or discipline?
24 Like let's say you did something she didn't like, you acted out,
25 what did she do?

1 PROSPECTIVE JUROR NO. 072: I don't remember. It's
2 been awhile.

3 MS. McAMIS: Okay. Okay. That's fair enough. Let me
4 ask you this. You've -- you've just heard very generally
5 information about the charges. As Mrs. Solander sits here in
6 front of you today, she is presumed innocent. And the Judge
7 will explain all of the law, but there's this general
8 presumption that the law says someone is innocent. Do you have
9 an issue with that?

10 PROSPECTIVE JUROR NO. 072: No.

11 MS. McAMIS: Do you have any opinion about whether or
12 not she is guilty at this time?

13 PROSPECTIVE JUROR NO. 072: No.

14 MS. McAMIS: And why not?

15 PROSPECTIVE JUROR NO. 072: Because I have to hear
16 both sides. I mean, there's --

17 MS. McAMIS: Because you haven't heard anything yet;
18 right?

19 PROSPECTIVE JUROR NO. 072: Right. Right. Exactly.

20 MS. McAMIS: So I understand you made a comment about
21 you want to hear both sides. The Judge will, again, instruct
22 you on this area of the law, so I'm not trying to put words into
23 anyone's mouth, but the burden of proof rests entirely on the
24 State. So it's the prosecution that has to prove beyond a
25 reasonable doubt that Mrs. Solander is guilty of each and every

1 single element of each and every one of the counts. So Mrs.
2 Solander is under no burden to prove anything to you. Do you
3 have an issue with that?

4 PROSPECTIVE JUROR NO. 072: No.

5 MS. McAMIS: Okay. Now, it is someone's
6 constitutional right to determine whether or not they want to
7 take the stand in their own defense or not. And part of that,
8 you know, just really goes to the issue of burden. Again, the
9 defense doesn't have a burden. If Mrs. Solander decides not to
10 take the stand in this case, are you going to infer anything
11 from that?

12 PROSPECTIVE JUROR NO. 072: No.

13 MS. McAMIS: Why not?

14 PROSPECTIVE JUROR NO. 072: Because I didn't hear
15 anything from it. I --

16 MS. McAMIS: I'm sorry. Can you say that again?

17 PROSPECTIVE JUROR NO. 072: I don't get it. What --

18 MS. McAMIS: I can ask the question a little
19 differently. If Mrs. Solandar decides not to take the stand,
20 are you going to think she's guilty just because she didn't take
21 the stand?

22 PROSPECTIVE JUROR NO. 072: I don't think so.

23 MS. McAMIS: Okay. Why not? You said I don't think
24 so. Help me understand where you're coming from.

25 PROSPECTIVE JUROR NO. 072: Well, I mean, how could

1 you -- I'm trying to say -- what's a good way to put it?

2 MS. McAMIS: Any way you want. It's --

3 PROSPECTIVE JUROR NO. 072: I mean, you cannot judge a
4 person yet because you don't hear from the other side what
5 you're going to say or tell.

6 MS. McAMIS: Okay. Do you understand that there may
7 be reasons why someone chooses not to testify and it has nothing
8 to do with, you know, guilty or not guilty?

9 PROSPECTIVE JUROR NO. 072: Yeah, that's their own
10 freedom to speak.

11 MS. McAMIS: Okay. What about anybody else in the
12 panel? Are there reasons why someone may choose not to testify
13 and it doesn't have anything to do with whether or not they're
14 guilty or not guilty? Would you mind passing the microphone to
15 Ms. Fecko in the front row in the red sweater.

16 What do you think?

17 PROSPECTIVE JUROR NO. 053: Mostly just because of the
18 fact that sometimes you, even when you say something, especially
19 if you don't necessarily have the ability to easily express
20 oneself, you can say something and it may sound one way to you,
21 but it definitely sounds one way to another person. You know,
22 obviously, as a lawyer or, you know, as a professional, you have
23 a lot of vocabulary, you have a lot more experience on how to
24 speak in such a way that you know you don't accidentally
25 incriminate oneself. Whereas, you know, with a citizen,

1 especially if you don't have, you know, a lawyer level of
2 education you might accidentally use one word and to a juror it
3 might sound one way, and then in your mind it says something
4 else completely different.

5 MS. McAMIS: Okay.

6 PROSPECTIVE JUROR NO. 053: And that's mostly my
7 reason why I would, you know, be very nervous to speak up if I
8 was, you know, charged with a crime.

9 MS. McAMIS: Okay. Because public speaking can be
10 kind of difficult; right?

11 PROSPECTIVE JUROR NO. 053: Yeah, it can be very
12 difficult, and especially when you're trying to, obviously,
13 prove yourself innocent and --

14 MS. McAMIS: And you -- and I appreciate you having
15 this dialogue with me. And you understand that there is no
16 burden for Mrs. Solander to prove herself innocent?

17 PROSPECTIVE JUROR NO. 053: No, I understand that, you
18 know, she has no -- she, you know, that's the State's job to
19 collect the evidence and to present the case. But, obviously,
20 you know, just speaking from, you know, how I could imagine if I
21 was, you know, in her footsteps, I would, you know, probably
22 feel just my own personal burden to want to, you know, speak up
23 from my, you know, my, you know, hey, I'm innocent.

24 MS. McAMIS: Right.

25 PROSPECTIVE JUROR NO. 053: Yeah.

1 MS. McAMIS: All right. So I notice a couple of us,
2 we keep getting called the quiet ones. Are there reasons why
3 you don't necessarily want to speak up? Are you just kind of
4 shy? Is public speaking kind of difficult? I'm seeing at least
5 one nod. I appreciate that. And, Ms. Fecko, when you were
6 explaining yourself, I noticed you kind of -- you absolutely
7 articulated yourself very well, but you seemed just a little
8 nervous; right?

9 PROSPECTIVE JUROR NO. 053: I do. I -- I am just
10 generally very nervous in formal situations, especially if I'm
11 surrounded by a bunch of people who I really just don't know. I
12 often very well think about what they think of me, even though I
13 generally do understand the fact that I have to project who I
14 am. It's, obviously, still very uncomfortable to be judged.

15 MS. McAMIS: So you can imagine that, you know, if you
16 were facing a trial that it may be very difficult to speak in
17 front of a room of people --

18 PROSPECTIVE JUROR NO. 053: Sure.

19 MS. McAMIS: -- particularly because you've all gone
20 through this experience and it's been at times a little
21 uncomfortable. We've gotten kind of personal, is that fair to
22 say?

23 PROSPECTIVE JUROR NO. 053: Uh-huh.

24 MS. McAMIS: Is that a yes?

25 PROSPECTIVE JUROR NO. 053: Yeah, that's yes. Yes,

1 that's probably just kind of where I, you know, why I spoke up
2 the way I did because, you know, I can empathize with, you know,
3 I would be absolutely afraid. I would, you know, just probably
4 hand everything to the lawyers and be like, you know, look, I'm
5 going to say something wrong.

6 MS. McAMIS: Now, you also shared with us that if you
7 were in a similar position that you would want to, you know,
8 testify so you could prove your innocence. But, again, you
9 understand that Mrs. Solander is under no obligation, and, in
10 fact, she's protected by the constitution from not having to
11 testify if she doesn't want to?

12 PROSPECTIVE JUROR NO. 053: Uh-huh.

13 MS. McAMIS: Or there, again, are there reasons why
14 someone may choose not to testify? And I'm just seeing no
15 response from the panel. That's fine.

16 PROSPECTIVE JUROR NO. 108: Lots of them.

17 MS. McAMIS: Lots of reasons. Would you mind
18 elaborating?

19 PROSPECTIVE JUROR NO. 108: Some people don't trust
20 judges, they don't trust lawyers, they don't trust all of us
21 because they don't know us, they've had previous bad experiences
22 or friends and family that have had bad experiences in court
23 that have influenced their thinking. We don't know all the
24 reasons, and that's the point. There's lots of emotional
25 reasons why they might not want to talk.

1 MS. McAMIS: And that's why the constitution protects
2 us so that way, you know what, there are lots of reasons, and as
3 jurors, or potential jurors, and the law will instruct you,
4 there's -- there's just nothing to be drawn from that. There's
5 lots of reasons a person may choose to testify or not choose to
6 testify. I saw a hand raised, I thought. No? Okay. I didn't
7 want to ignore someone. I think it was just maybe moving.

8 So yesterday, just returning to this dialogue of
9 parenting, yesterday we were talking, and a lot of you
10 generously raised your hands. Can I have, again, another raise
11 of hands of everyone who is a parent? Excellent. And please
12 lower your hands.

13 By a show of hands, all of the parents in the room,
14 have you ever had to discipline a child when they acted out?
15 Seeing generally the same amount of hands raised. And is that
16 part of your job as a parent to discipline a child when they act
17 out? I'm seeing lots of nods.

18 Thank you. I love it. Actually, if you don't mind,
19 you've been so interactive, is it Ms. --

20 PROSPECTIVE JUROR NO. 135: No, no, no.

21 MS. McAMIS: Yeah. And can I confirm, it's Ms.
22 Cesena?

23 PROSPECTIVE JUROR NO. 135: Cesena.

24 MS. McAMIS: Cesena. Okay. Excellent. Now, forgive
25 me, but you have -- I'm trying to read my own handwriting. You

1 have two sons and two granddaughters and you babysit your
2 grandkids?

3 PROSPECTIVE JUROR NO. 135: Yes.

4 MS. McAMIS: Excellent. How old are your sons now?

5 PROSPECTIVE JUROR NO. 135: 31 and 29.

6 MS. McAMIS: Okay. Did they grow up in the home with
7 you?

8 PROSPECTIVE JUROR NO. 135: Yes.

9 MS. McAMIS: Can you tell me what your experience was
10 like with two sons growing up in your home?

11 PROSPECTIVE JUROR NO. 135: It was loud, rambunctious,
12 but it was good.

13 MS. McAMIS: All right. Excellent. So was there ever
14 a time when the boys got loud and rambunctious to a point where
15 it just -- it was either escalating to a point where you weren't
16 approving of it or you just wanted to keep them safe from
17 themselves?

18 PROSPECTIVE JUROR NO. 135: Of course.

19 MS. McAMIS: Could you share an experience like that
20 that you've had?

21 PROSPECTIVE JUROR NO. 135: Well, they wrestled a lot.

22 MS. McAMIS: Okay.

23 PROSPECTIVE JUROR NO. 135: And sometimes they fought.

24 MS. McAMIS: Sure. What did you do when they fought?
25 Was that okay to you?

1 PROSPECTIVE JUROR NO. 135: No.

2 MS. McAMIS: And why not?

3 PROSPECTIVE JUROR NO. 135: Because they might hurt
4 each other.

5 MS. McAMIS: Right. And you don't want to have to
6 take them to the hospital if they're just rough housing and --

7 PROSPECTIVE JUROR NO. 135: Right.

8 MS. McAMIS: -- and hurting each other. So what did
9 you do?

10 PROSPECTIVE JUROR NO. 135: Separate them.

11 MS. McAMIS: Okay.

12 PROSPECTIVE JUROR NO. 135: Put them in their rooms.

13 MS. McAMIS: Okay. So kind of like a time out?

14 PROSPECTIVE JUROR NO. 135: Yes.

15 MS. McAMIS: Did you ever have to do anything else
16 with them?

17 PROSPECTIVE JUROR NO. 135: Maybe when they were
18 little I swatted their butts once in awhile, but not that often.

19 MS. McAMIS: Now, when you swatted their butts, did
20 they ever, you know, like cry out in pain or fuss because they
21 didn't like that contact?

22 PROSPECTIVE JUROR NO. 135: Well, they didn't like it.
23 I never caused pain. It was just a little tap.

24 MS. McAMIS: Well, sure. And do you think that's
25 child abuse?

1 PROSPECTIVE JUROR NO. 135: No.

2 MS. McAMIS: Do you see that as a valid form of
3 discipline based on their conduct at the time and the age at the
4 time?

5 PROSPECTIVE JUROR NO. 135: Yes.

6 MS. McAMIS: And why?

7 PROSPECTIVE JUROR NO. 135: Because they wouldn't
8 stop. They were generally good boys, so I really didn't have to
9 discipline them that much, but --

10 MS. McAMIS: But because --

11 PROSPECTIVE JUROR NO. 135: Sometimes they were mad
12 and they were fighting, so I had to step in or whatever.

13 MS. McAMIS: Okay. And based on, you know, your
14 experience as a parent and having that ability to kind of have
15 some leeway or some discretion about what appropriate
16 consequences for the bad behavior, did you ever feel like that
17 crossed into an area where you needed to call the police on
18 yourself?

19 PROSPECTIVE JUROR NO. 135: No.

20 MS. McAMIS: Okay. Now, I know you shared with us
21 that you've -- you may have swatted or just, you know, spanked
22 your sons, but you've not had to do that with your grandkids.
23 Is there a reason why you've chosen a different approach? Do
24 you just -- just what's your reasoning?

25 PROSPECTIVE JUROR NO. 135: I think more patience as

1 you get older.

2 MS. McAMIS: Okay.

3 PROSPECTIVE JUROR NO. 135: And they're girls and they
4 were boys and --

5 MS. McAMIS: Okay. And they don't live with you
6 primarily; right?

7 PROSPECTIVE JUROR NO. 135: Exactly. They go home at
8 night.

9 MS. McAMIS: They go home at night. Okay. So there's
10 just a difference in, I guess, basically your time of contact
11 with the children, is that fair to say?

12 PROSPECTIVE JUROR NO. 135: Yes.

13 MS. McAMIS: Okay. When you were growing up what were
14 your parents like as far as imposing structure or order in the
15 home?

16 PROSPECTIVE JUROR NO. 135: I basically -- she
17 basically, my mom and dad just did the grounding thing most of
18 the time, and my mom would like last a day and then she'd say
19 go, go play.

20 MS. McAMIS: Okay.

21 PROSPECTIVE JUROR NO. 135: So, yeah. No hitting
22 really. My dad spanked me once with a belt.

23 MS. McAMIS: Okay.

24 PROSPECTIVE JUROR NO. 135: But that was it.

25 MS. McAMIS: All right.

1 PROSPECTIVE JUROR NO. 135: I remember that.

2 MS. McAMIS: Why was that so memorable for you?

3 PROSPECTIVE JUROR NO. 135: Because he only did it one
4 time and it was scary.

5 MS. McAMIS: Do you have an opinion about whether or
6 not that was abuse?

7 PROSPECTIVE JUROR NO. 135: No, it wasn't.

8 MS. McAMIS: Why not?

9 PROSPECTIVE JUROR NO. 135: I don't know. I guess
10 because it was my dad. I don't know. He didn't do it out of
11 anger, either. He, you know, sent me to my room and waiting,
12 you know, for like 20 minutes before he came up and made me
13 sweat it out.

14 MS. McAMIS: All right. And just, you know, in your
15 -- your experience from that and knowing your father, do you
16 have any opinion about whether or not there is a place for just
17 physical or even corporal punishment if that's what you want to
18 call it in the home?

19 PROSPECTIVE JUROR NO. 135: I don't think so. I don't
20 agree with it.

21 MS. McAMIS: Okay.

22 PROSPECTIVE JUROR NO. 135: I don't think you should
23 use any type of weapon or belt or anything to --

24 MS. McAMIS: Is corporal --

25 PROSPECTIVE JUROR NO. 135: -- hit a child.

1 MS. McAMIS: Okay. Is corporal punishment using an
2 implement on a child to you?

3 PROSPECTIVE JUROR NO. 135: That or a fist or leaving
4 bruises. You know, you can talk to a child and use your voice
5 to try to discipline them and not, you know, hit.

6 MS. McAMIS: Okay. And you don't consider the swats
7 on the butt to your own sons corporal punishment; right?

8 PROSPECTIVE JUROR NO. 135: No.

9 MS. McAMIS: Okay. So --

10 PROSPECTIVE JUROR NO. 135: Am I disagreeing with
11 myself?

12 MS. McAMIS: Well, and there is -- there is an
13 interesting point. I think we all kind of have our own ideas of
14 what's acceptable or what's limits or, you know, I mean, just
15 the difference between how you approached your sons and how you
16 approach your grandkids and, you know, the time that you spend,
17 which is different, of course. But still you understand that
18 there may be people who hold different opinions about what's
19 acceptable forms of physical discipline for a child.

20 PROSPECTIVE JUROR NO. 135: Of course.

21 MS. McAMIS: Do you -- would you have an opinion about
22 whether or not there are acceptable physical forms of
23 discipline?

24 PROSPECTIVE JUROR NO. 135: I don't really have an
25 opinion about it. I --

1 MS. McAMIS: But you did have a tricky -- you
2 definitely had an opinion about if there was an implement used.
3 You believe that to be corporal punishment.

4 PROSPECTIVE JUROR NO. 135: Well, I just -- I can't
5 see a child doing something so bad that you would need to use,
6 you know, a stick or a spoon or a shoe, you know what I mean.

7 MS. McAMIS: Okay. If you were to hear evidence that
8 an implement was used in this case, would you automatically
9 consider that to be child abuse?

10 PROSPECTIVE JUROR NO. 135: No, I would have to hear
11 the evidence, the -- you know, what happened in the situation.
12 I mean, if the child is physically hurting themselves and you
13 can't stop them or they're hurting you, you know, there's -- I
14 don't know what the situation is.

15 MS. McAMIS: Okay. And you had your boys, you know,
16 from their whole lives; right? You raised them from growing
17 up --

18 PROSPECTIVE JUROR NO. 135: Yes.

19 MS. McAMIS: -- is that right? Okay. So have you
20 ever had children from like the foster care system or other
21 children from difficult pasts, abusive pasts ever in your home?

22 PROSPECTIVE JUROR NO. 135: No.

23 MS. McAMIS: Have you ever had to have any encounters
24 where you had to discipline or impose structure for those kinds
25 of children?

1 PROSPECTIVE JUROR NO. 135: No.

2 MS. McAMIS: Okay. Let me ask you this. You -- and,
3 again, I appreciate that you're here. I really do. You said
4 that you would have basically -- or you have a personal
5 philosophical problem against any kind of implement being used?

6 PROSPECTIVE JUROR NO. 135: Yes, for myself.

7 MS. McAMIS: Correct.

8 PROSPECTIVE JUROR NO. 135: Yes.

9 MS. McAMIS: Sorry. You were just nodding.

10 PROSPECTIVE JUROR NO. 135: I'm sorry.

11 MS. McAMIS: Just a reminder, for the recording it
12 just doesn't pick it up.

13 PROSPECTIVE JUROR NO. 135: Okay.

14 MS. McAMIS: Okay. As part of that opinion, I mean,
15 that's pretty -- it's a pretty strongly held opinion; right?
16 You came to it after a lot of thought?

17 PROSPECTIVE JUROR NO. 135: Well, for myself, yeah.

18 MS. McAMIS: Okay.

19 PROSPECTIVE JUROR NO. 135: I mean, I don't know other
20 people's situations.

21 MS. McAMIS: Okay.

22 PROSPECTIVE JUROR NO. 135: I would hope that they
23 wouldn't have to do that, but that's their home, not mine.

24 MS. McAMIS: Okay. If you heard evidence presented to
25 you that there was physical discipline used that incorporated

1 some sort of implement, would you stop listening to the evidence
2 afterwards? Would that offend you so much?

3 PROSPECTIVE JUROR NO. 135: No.

4 MS. McAMIS: And why not?

5 PROSPECTIVE JUROR NO. 135: I don't know. I just
6 think I could listen to both sides, try to form an opinion.

7 MS. McAMIS: Okay. All right.

8 PROSPECTIVE JUROR NO. 135: Is it her turn now?

9 MS. McAMIS: Again, thank you for raising your hand
10 and being so interactive, but, sure, we can ask [inaudible]. If
11 you would, would you please hand the microphone just to over
12 this direction to Ms. Mulvey.

13 PROSPECTIVE JUROR NO. 135: Oh, this way.

14 MS. McAMIS: Is that pronounced correctly?

15 PROSPECTIVE JUROR NO. 083: Yes.

16 MS. McAMIS: Okay. Excellent. Hi. We've not had an
17 opportunity -- I didn't get to the back rows at all.

18 PROSPECTIVE JUROR NO. 083: Good morning.

19 MS. McAMIS: Good morning. So you have three kids?

20 PROSPECTIVE JUROR NO. 083: I do.

21 MS. McAMIS: You have two that were twins?

22 PROSPECTIVE JUROR NO. 083: Yes.

23 MS. McAMIS: Excellent. So talk to me about how --
24 what -- why don't you talk to me about a time when maybe one of
25 your kids acted up in a way that you weren't pleased with, where

1 you had to discipline them.

2 PROSPECTIVE JUROR NO. 083: Which many times do I pick
3 from? There was a difference in the way my husband and I would
4 discipline the children, and he did tend to be angered quickly,
5 so he knew to let me be the one to step in. And there were a
6 time -- a time or two I had to spank one of the boys, but most
7 of the time it was the time outs, being grounded, taking away
8 special privileges and such.

9 MS. McAMIS: Okay. So you talked about how your
10 husband and you just had different kind of approaches or
11 responsibilities as far as how you wanted to split up
12 disciplining your children. And you acknowledge that sometimes
13 children act up; right?

14 PROSPECTIVE JUROR NO. 083: Oh, yes.

15 MS. McAMIS: And it's okay to discipline them; right?

16 PROSPECTIVE JUROR NO. 083: Yeah.

17 MS. McAMIS: Why is it okay to discipline them?

18 PROSPECTIVE JUROR NO. 083: I think if you don't, then
19 they just have no guidelines, no clue as to the right ways to
20 act and to proceed. I mean, they need those guidelines. The
21 discipline is the guideline to show them the right path.

22 MS. McAMIS: Okay. So you -- you talked about how
23 your husband was just angered a little more quickly than you, or
24 maybe just annoyed. I think you said angered.

25 PROSPECTIVE JUROR NO. 083: Yeah.

1 MS. McAMIS: Which is fine. Can children be very
2 frustrating at times?

3 PROSPECTIVE JUROR NO. 083: Yeah.

4 MS. McAMIS: Why?

5 PROSPECTIVE JUROR NO. 083: I think --

6 MS. McAMIS: Do they always listen to you?

7 PROSPECTIVE JUROR NO. 083: No.

8 MS. McAMIS: Do they want to talk back sometimes?

9 PROSPECTIVE JUROR NO. 083: Oh, yes.

10 MS. McAMIS: Do they want to do things on their own
11 and not listen to the rules?

12 PROSPECTIVE JUROR NO. 083: Very independent little
13 people. Yes.

14 MS. McAMIS: Okay. Did you have any concern about
15 your husband when he got angry?

16 PROSPECTIVE JUROR NO. 083: Yeah, because at one point
17 he actually did retaliate by throwing something on the table at
18 my son, and it hit him on the ear. And I wasn't there. I
19 didn't know about it until the next day when he had come home
20 from school and there were police at the door inquiring about
21 what had happened. And this was so long ago, but I just
22 remember his name got put on a register. This was in Colorado.

23 MS. McAMIS: Okay.

24 PROSPECTIVE JUROR NO. 083: And for seven years his
25 name was on some kind of list as to, you know, just being

1 watched and making sure. So that's when I took over the
2 reprimanding of the children.

3 MS. McAMIS: Okay. Did you see a need to call the
4 police on your husband after that?

5 PROSPECTIVE JUROR NO. 083: No, I had never really
6 seen him act out toward the kids, but it surprised me when I had
7 heard he'd thrown this, I think it was a lighter or something,
8 at Evan.

9 MS. McAMIS: Okay. Did you have -- I mean, did you
10 have a problem, did you leave him after that?

11 PROSPECTIVE JUROR NO. 083: We had problems, and it
12 took several years after that, well, many years, but, yeah, we
13 just got divorced five years ago.

14 MS. McAMIS: Okay. I see. Again, getting super
15 personal. I understand that's uncomfortable. But there were
16 times where you still left your husband alone with your
17 children; right?

18 PROSPECTIVE JUROR NO. 083: Actually, not so much
19 because at that time, when they were younger, I was staying at
20 home with them all day, and then I would go to work at night
21 when they were all in bed. So, yeah, he was home alone with
22 them, but they were pretty much in bed.

23 MS. McAMIS: Okay. All right. Let me ask you this.
24 When you were a child, how did your parents impose structure or
25 discipline for you?

1 PROSPECTIVE JUROR NO. 083: I had a mom raise three
2 kids by herself. She was a single mom, and she was the mom and
3 dad. And I remember there were times where she's get really
4 angry and say the classical, you know, I brought you into this
5 world, and I can take you out.

6 MS. McAMIS: My dad did that, too, actually.

7 PROSPECTIVE JUROR NO. 083: I think I've said that
8 myself.

9 MS. McAMIS: Right. But you never took your own
10 children out; right?

11 PROSPECTIVE JUROR NO. 083: Right. Exactly.

12 MS. McAMIS: Because that's --

13 PROSPECTIVE JUROR NO. 083: And she never did, either.
14 It was just like, okay, mom, I know I'm pushing it. And so she
15 was never really physical with us, either. But I had heard a
16 story about her mother breaking a hair brush over her bottom
17 spanking her with it, and that always kind of shocked us. It's
18 like -- and that was so long ago, of course. Nowadays, that
19 would have ended up being in court probably, but --

20 MS. McAMIS: So you understand that there is kind of
21 this -- this spectrum, and even a generational shift in what's
22 kind of how children used to be disciplined and how they're
23 disciplined now?

24 PROSPECTIVE JUROR NO. 083: Absolutely.

25 MS. McAMIS: Okay.

1 PROSPECTIVE JUROR NO. 083: Yes.

2 MS. McAMIS: But you don't consider yourself to be
3 abused by your own mother; right?

4 PROSPECTIVE JUROR NO. 083: Right.

5 MS. McAMIS: And -- and she had -- she had three kids
6 all on her own?

7 PROSPECTIVE JUROR NO. 083: Yeah.

8 MS. McAMIS: Were you guys always perfect little
9 angels for her?

10 PROSPECTIVE JUROR NO. 083: Oh, no.

11 MS. McAMIS: Why not? What did you do?

12 PROSPECTIVE JUROR NO. 083: Well, the older brothers
13 -- I was -- I was kind of a young kid in my shell, so actually I
14 wasn't a problem. I was just in my own little world, but my
15 brothers were a handful for her. And I remember when the oldest
16 brother had to go and live with the grandmother for a couple
17 years. He was probably about 16 when he had to move out and
18 live with his grandma.

19 MS. McAMIS: Okay. All right. I'd like to ask a
20 little bit more about that, if you don't mind. Was that -- did
21 your mom just feel kind of overwhelmed and so she had to send
22 him somewhere where she thought he would just get helped?

23 PROSPECTIVE JUROR NO. 083: Yeah, because --

24 MS. McAMIS: Okay.

25 PROSPECTIVE JUROR NO. 083: Of course, this wasn't her

1 mother. This was my father's mother who was the salt of the
2 earth and very stern but loving. And my mom and brother were
3 always just arguing a lot, so she just finally said, you know,
4 this isn't working, I think you're going to be much happier.
5 And, actually, he was because then he ended up moving in with my
6 dad who, they had been divorced, my mom and dad, but Todd and
7 dad were chums then, so --

8 MS. McAMIS: Okay. And you didn't see anything wrong
9 with that in retrospect; right?

10 PROSPECTIVE JUROR NO. 083: I didn't. Back then I was
11 just like, oh, okay, that's how it is. And I knew I'd still get
12 to see him --

13 MS. McAMIS: Sure.

14 PROSPECTIVE JUROR NO. 083: -- because we were all
15 close as kids.

16 MS. McAMIS: Sure. But sometimes parents have to do
17 things that are designed to help their kids, and maybe it's not
18 the most common thing; right?

19 PROSPECTIVE JUROR NO. 083: Yeah. I'm sure it was
20 hard on her in a way, too, but she would call it tough love.

21 MS. McAMIS: Tough love.

22 PROSPECTIVE JUROR NO. 083: Yeah.

23 MS. McAMIS: And there's a place for tough love in
24 parenting; right?

25 PROSPECTIVE JUROR NO. 083: Yes, absolutely.

1 MS. McAMIS: You talked about how one of the
2 grandparents was strict; right?

3 PROSPECTIVE JUROR NO. 083: Yeah.

4 MS. McAMIS: Yeah. And, again, that's also something
5 that's okay in parenting; right?

6 PROSPECTIVE JUROR NO. 083: Yes, it's needed.

7 MS. McAMIS: Let me ask the rest of the panel. Are
8 there things like taking away privileges that are okay as far as
9 parenting skills? I see lots of nodding. Has anyone ever had
10 an experience where they sent their child to bed because they
11 just wouldn't finish their dinner, they wouldn't comply with the
12 rule, and you just said, okay, that's it, you're done? I'm
13 seeing a couple of nodding.

14 And because you have the microphone, Ms. Mulvey, could
15 you share that experience with us?

16 PROSPECTIVE JUROR NO. 083: There were several times
17 where, you know, either acting out or being noncompliant they
18 would get sent to their room, or if it was close to bed time,
19 okay, you know, no movie for you, you're off to bed. And, of
20 course, it was stomping and gruffing all the way, but they would
21 go. And I would peek in on them and the light was out and they
22 were asleep. Go figure.

23 MS. McAMIS: All right. So lesson learned; right?

24 PROSPECTIVE JUROR NO. 083: Yeah.

25 MS. McAMIS: And that's valid parenting.

1 PROSPECTIVE JUROR NO. 083: I hope so, yeah.

2 MS. McAMIS: Well, they turned out okay; right?

3 PROSPECTIVE JUROR NO. 083: They did.

4 MS. McAMIS: Okay.

5 PROSPECTIVE JUROR NO. 083: They sure did.

6 MS. McAMIS: Now, other people kind of raised their
7 hands where they said, yeah, I had to send a child to bed.
8 Could you re-raise your hands? Is someone willing to share that
9 experience with us? Would you please pass the microphone to Ms.
10 Samuels.

11 What was that like?

12 PROSPECTIVE JUROR NO. 129: Well, I had a daughter
13 that just she didn't want to eat anything. You know, she only
14 wanted the certain hot dogs, chicken nuggets, and French fries,
15 so that was always a battle. But once you learn that you can't
16 fight, you can't force a kid to eat, that's just -- you can't.
17 It's just kind of impossible to make them swallow or chew or --
18 you just can't do it.

19 MS. McAMIS: What kinds of things did you do to try to
20 get her to eat?

21 PROSPECTIVE JUROR NO. 129: Well, I remember sending
22 her to bed before. She just wouldn't eat, you know. But then
23 guilt forces you to figure it out. So then I would always just
24 have like those little dollar meals with like the chicken
25 nuggets, fries, and the brownie, or, you know, hot dogs or -- I

1 would always just have food that I know she would eat. You have
2 to just figure it out.

3 MS. McAMIS: Okay.

4 PROSPECTIVE JUROR NO. 129: And then she had her
5 choice, and I would cook regular dinner, but she'd have to
6 figure out what she was going to eat on her own, kind of, you
7 know, like here's your options.

8 MS. McAMIS: Okay. Thank you for sharing that.

9 Does anyone else have an experience where they're --
10 they had to, you know, say if you don't finish your dinner, you
11 know, you've got to go to bed, they have school the next day,
12 anything like that? I see -- I think it's Ms. Dehesa kind of
13 nodding her head. Yeah.

14 Would you mind talking to us about that? I know
15 you're one of our moms.

16 PROSPECTIVE JUROR NO. 089: Yeah.

17 MS. McAMIS: What happened?

18 PROSPECTIVE JUROR NO. 089: It happens it all the
19 time. I mean, they're five and seven. They're -- you know,
20 I've got them busy with sports and school, so it's, you know,
21 they have their chores and their responsibility. So if they
22 don't do what they're supposed to do, then, you know, they have
23 the option either you do this or you go to bed, or you do this
24 or you lose this privilege. And, you know, sometimes they --
25 that's what they choose. They're going to choose to go to bed.

1 Okay, lose out on their privilege. You don't get Pokémon cards,
2 you don't get to watch Paw Patrol. I mean, it's -- you just try
3 to reason with them. And if they don't do what they're supposed
4 to do, bed is an option depending on the time of day it is.

5 MS. McAMIS: Sure. So of all the parents who have had
6 an experience like this, and I imagine it's everyone, is that
7 child abuse? Does anyone think that that's bordering on
8 unacceptable parenting behavior?

9 PROSPECTIVE JUROR NO. 092: Depends.

10 MS. McAMIS: Depends? All right. Would you mind
11 sharing with us? And I will look. It's Ms. --

12 PROSPECTIVE JUROR NO. 092: Kay. It just depends, I
13 mean, how often, how early, what would they be punished for, was
14 it -- you know, was it a realistic punishment for that crime?
15 Like, you know, did they just not finish their peas and you put
16 them to bed at 5:00?

17 MS. McAMIS: Okay. And so you understand that there
18 is basically a spectrum of acceptable conduct and you have to be
19 able to identify what behavior is acceptable for your child and
20 what's not, and --

21 PROSPECTIVE JUROR NO. 092: Yeah.

22 MS. McAMIS: -- impose that structure. And you're a
23 parent; right?

24 PROSPECTIVE JUROR NO. 092: Yes.

25 MS. McAMIS: And so you have --

1 PROSPECTIVE JUROR NO. 092: Two.

2 MS. McAMIS: -- experience --

3 PROSPECTIVE JUROR NO. 092: -- Yeah, two kids.

4 MS. McAMIS: So you have experience actually doing
5 that; right?

6 PROSPECTIVE JUROR NO. 092: Yep.

7 MS. McAMIS: Okay. And you understand that there may
8 be other parents who have a different parenting approach than
9 you; right?

10 PROSPECTIVE JUROR NO. 092: Right.

11 MS. McAMIS: If it's different than yours, does that
12 automatically make it wrong?

13 PROSPECTIVE JUROR NO. 092: No.

14 MS. McAMIS: Okay. Thank you.

15 All right. So let me ask the panel. If your personal
16 beliefs lead you to believe that something that a parent does is
17 excessive, would you stop listening to the discussion of the
18 other jurors who are seated with you deliberating who say it's
19 not excessive?

20 PROSPECTIVE JUROR NO. 092: Repeat that.

21 MS. McAMIS: Of course. So my question was if you --
22 if your personal beliefs are that you hear evidence and you
23 think that that's personal parenting conduct that's excessive
24 just to you, but other jurors say, well, it's not excessive to
25 me, are you able to listen to that? Are you able to have a

1 dialogue with them?

2 JURY PANEL: Yes.

3 MS. McAMIS: Okay. And just for the record, that was
4 a lot of yeses. Does anyone have -- thank you. Does anyone
5 have an opinion that, no, that's not something I can do, I can't
6 have that conversation or dialogue with the rest of the jurors?
7 Seeing no responses in the negative on that.

8 Can I talk to you, Mr. Del Carmen? He's in the corner
9 in the back in the black jacket. You shared --

10 PROSPECTIVE JUROR NO. 108: Hi.

11 MS. McAMIS: Hi. You shared with us that you have
12 experience actually with the foster care system. You foster
13 children yourself; right?

14 PROSPECTIVE JUROR NO. 108: Yes.

15 MS. McAMIS: Did you know their background before they
16 came to you?

17 PROSPECTIVE JUROR NO. 108: Yes. The case manager
18 told us exactly what -- what's wrong with each of those two,
19 and, yeah, they explained everything.

20 MS. McAMIS: Okay. What kind of background did they
21 come from?

22 PROSPECTIVE JUROR NO. 108: Well, both came from
23 families that are drug addicts. And like I explained yesterday,
24 the older one was -- she was hurting herself when she doesn't
25 get what she wants.

1 MS. McAMIS: How did she hurt herself?

2 PROSPECTIVE JUROR NO. 108: Just bang her head on the
3 door, on the wall. And we were also warned that she tried to
4 loop a belt around her neck.

5 MS. McAMIS: Wow.

6 PROSPECTIVE JUROR NO. 108: Yes. And the other one is
7 speech challenged and -- and that little girl has siblings, but
8 they didn't have a place to put them together, so they
9 temporarily put them with us.

10 MS. McAMIS: The siblings were with you or were not
11 with you? I'm sorry.

12 PROSPECTIVE JUROR NO. 108: Excuse me?

13 MS. McAMIS: You said that the younger one had
14 siblings. Were they placed with your or not --

15 PROSPECTIVE JUROR NO. 108: Oh, no. No.

16 MS. McAMIS: -- placed with you?

17 PROSPECTIVE JUROR NO. 108: They were not placed with
18 us.

19 MS. McAMIS: Did she have a hard time with that?

20 PROSPECTIVE JUROR NO. 108: Oh, yes. Yeah, she missed
21 them. She always tells us about how she -- how the little one
22 missed her siblings.

23 MS. McAMIS: So as a foster parent, you had to take
24 care of them; right?

25 PROSPECTIVE JUROR NO. 108: Yes.

1 MS. McAMIS: So you had to make sure that they got
2 food and clothes and --

3 PROSPECTIVE JUROR NO. 108: Everything.

4 MS. McAMIS: -- they made all of their appointments?

5 PROSPECTIVE JUROR NO. 108: Yes.

6 MS. McAMIS: Okay. They had appointments for things
7 like therapy; right?

8 PROSPECTIVE JUROR NO. 108: Absolutely.

9 MS. McAMIS: Unfortunately, they came from very
10 damaged backgrounds.

11 PROSPECTIVE JUROR NO. 108: Yes. They also have
12 weekly family -- when they get together with their siblings
13 every --

14 MS. McAMIS: Oh, their visits.

15 PROSPECTIVE JUROR NO. 108: At CPS, yes.

16 MS. McAMIS: Okay. So there were a lot of people, it
17 sounds like, in and out of your home.

18 PROSPECTIVE JUROR NO. 108: Oh, no.

19 MS. McAMIS: -- just checking on their children?

20 PROSPECTIVE JUROR NO. 108: The -- the -- what do you
21 call this? There was this lady who takes the older one to her
22 -- to her sessions.

23 MS. McAMIS: Okay. So there were different kinds of
24 workers who would come and --

25 PROSPECTIVE JUROR NO. 108: Yes.

1 MS. McAMIS: -- and pick up the child and --
2 PROSPECTIVE JUROR NO. 108: Yes.
3 MS. McAMIS: Or children. Sorry. You had two at that
4 time.
5 PROSPECTIVE JUROR NO. 108: Yes.
6 MS. McAMIS: How long did they live with you, again?
7 PROSPECTIVE JUROR NO. 108: Oh, less than three
8 months.
9 MS. McAMIS: Okay. And you -- you shared with us the
10 unfortunate experience that your wife had where she had a mental
11 breakdown because of this?
12 PROSPECTIVE JUROR NO. 108: Yes.
13 MS. McAMIS: Why did she have a mental breakdown
14 because of that?
15 PROSPECTIVE JUROR NO. 108: Well, our family, between
16 her and me, we grew up in families that are not used to seeing
17 things like that. You know, her -- because they're girls, two
18 different girls, and they play and sometimes they get hurt, they
19 get into fights. And when they get hurt sometimes and the older
20 one has to be -- has to be told to go to her room and stay there
21 for a while. Before you know it you can hear banging. And we
22 can't -- she can't handle that because we're not used to -- even
23 with our own son, he didn't grow up with us spanking him. So
24 we're not used to doing those kinds of things. So in the middle
25 of the night we would call the agency, the people who put them

1 in our care, to ask them to help, come over and help until the
2 time that we can no longer handle it.

3 MS. McAMIS: Okay.

4 PROSPECTIVE JUROR NO. 108: Yeah.

5 MS. McAMIS: So the experience was just very different
6 than raising your own child; right?

7 PROSPECTIVE JUROR NO. 108: Yeah, it's very different.
8 And in our culture, we don't -- we don't hit our kid. Even we
9 have a son, he's in his 30s now, we never had to hit him or
10 spank him, you know. And we grew up and we were told that to
11 discipline our kid, other than -- anything other than the open
12 palm of your hand on a behind, that is abuse.

13 MS. McAMIS: Okay.

14 PROSPECTIVE JUROR NO. 108: Because you have to -- you
15 have to feel the pain yourself.

16 MS. McAMIS: Let me ask you this. The things that you
17 did to discipline your son, did they work on the foster
18 children?

19 PROSPECTIVE JUROR NO. 108: Excuse me?

20 MS. McAMIS: The methods that you used to discipline
21 your son, did they always work on the foster children?

22 PROSPECTIVE JUROR NO. 108: Oh, no.

23 MS. McAMIS: Why not?

24 PROSPECTIVE JUROR NO. 108: Well, sometimes you can't
25 calm them down.

1 MS. McAMIS: Oh, they just had a hard time?

2 PROSPECTIVE JUROR NO. 108: You know, that's -- that's

3 the reason why we had to call in the agency.

4 MS. McAMIS: I see.

5 PROSPECTIVE JUROR NO. 108: Yeah.

6 MS. McAMIS: Okay.

7 PROSPECTIVE JUROR NO. 108: We're not used to seeing

8 those kinds of behaviors, I guess. That's what -- that's what

9 led us to ultimately stop.

10 MS. McAMIS: Thank you. Thank you for sharing that

11 experience. Would you mind passing the microphone to just right

12 next to you.

13 Ms. Garth; right?

14 PROSPECTIVE JUROR NO. 131: Yes.

15 MS. McAMIS: Okay. I can barely read my own

16 handwriting. Sorry.

17 PROSPECTIVE JUROR NO. 131: It's okay.

18 MS. McAMIS: Now, you joined us a little bit later

19 yesterday. You have two sons; right?

20 PROSPECTIVE JUROR NO. 131: I have three sons.

21 MS. McAMIS: Three sons. Oh, yeah.

22 PROSPECTIVE JUROR NO. 131: We have a 48, a 46, and

23 an, oops, 29.

24 MS. McAMIS: How was that, raising them and then

25 having the third?

1 PROSPECTIVE JUROR NO. 131: It's like he had four
2 parents.

3 MS. McAMIS: Okay. Did that make it kind of easier?

4 PROSPECTIVE JUROR NO. 131: Well, it was different
5 having a child after that many years, but --

6 MS. McAMIS: Okay.

7 PROSPECTIVE JUROR NO. 131: -- it was -- it was fun.

8 MS. McAMIS: It was fun?

9 PROSPECTIVE JUROR NO. 131: All my boys have turned
10 out great.

11 MS. McAMIS: Excellent. Let me ask you this. What
12 about when the boys acted up? Because kids can be kids; right?
13 Sometimes you have to reign them in. What did you do when they
14 needed reigning in?

15 PROSPECTIVE JUROR NO. 131: The time out process and
16 the, you know, that type of discipline. When they got sent to
17 their room, this is the two older ones, they didn't have a TV in
18 their room, we didn't have cell phones, there was no computer.
19 So when they went to their room, all they could do was read.

20 MS. McAMIS: Is there anything wrong with that?

21 PROSPECTIVE JUROR NO. 131: No.

22 MS. McAMIS: Why not?

23 PROSPECTIVE JUROR NO. 131: There's consequences for
24 when you're acting up.

25 MS. McAMIS: Okay.

1 PROSPECTIVE JUROR NO. 131: That was what they had to
2 do.

3 MS. McAMIS: Okay. What about when you were growing
4 up? Did your parents discipline you differently or the same?

5 PROSPECTIVE JUROR NO. 131: Okay. Both of my parents
6 were both alcoholics.

7 MS. McAMIS: I see.

8 PROSPECTIVE JUROR NO. 131: So we had a lot of mental
9 abuse.

10 MS. McAMIS: Okay.

11 PROSPECTIVE JUROR NO. 131: Not necessarily physical,
12 but it was not a good childhood for myself. So that's why I
13 tried to make it good for my children.

14 MS. McAMIS: Sure. So they didn't do any kind of
15 spanking, just --

16 PROSPECTIVE JUROR NO. 131: Who, my parents? Oh,
17 yeah, they would spank us, but not to the point where we would
18 be bruised and battered like that. It was just all the
19 emotional.

20 MS. McAMIS: Sure.

21 PROSPECTIVE JUROR NO. 131: Yeah.

22 MS. McAMIS: Sure. And I'm sorry to pry. I know
23 it's --

24 PROSPECTIVE JUROR NO. 131: That's okay.

25 MS. McAMIS: Do you have a problem with the fact that

1 your parents spanked? I appreciate --

2 PROSPECTIVE JUROR NO. 131: No.

3 MS. McAMIS: -- that you have a problem with the
4 mental abuse, but --

5 PROSPECTIVE JUROR NO. 131: No, I have no problem with
6 that. I mean, we would pop our kids on the butt, but with, you
7 know, the palm of your hand, nothing serious.

8 MS. McAMIS: Okay. So you appreciate that there's a
9 difference between like a pop on the butt versus child abuse;
10 right?

11 PROSPECTIVE JUROR NO. 131: Oh, yeah.

12 MS. McAMIS: Okay. All right. Let me ask anyone --
13 or everyone a little more broadly. Is there someone who
14 believes that there is no place for a physical punishment like
15 corporal punishment in the home? And I'm not meaning corporal
16 punishment to mean child abuse, but physical spanking, either
17 with or without an implement. Does anyone believe that there is
18 no place for that in the home? Would you mind passing the
19 microphone to Ms. Fryman.

20 PROSPECTIVE JUROR NO. 105: Yes.

21 MS. McAMIS: Okay. Tell us about your thoughts on
22 that.

23 PROSPECTIVE JUROR NO. 105: Well, I -- first of all, I
24 think, unfortunately, when we become parents we're not given
25 manuals, and so most of us learn from what we learned. I had a

1 unique opportunity, however, to be in a career where I was
2 educated prior to becoming a parent, like I said before, when I
3 worked in the day treatment program. So I had gone through
4 parent training, anger management classes, and so forth, so I
5 believe there are other ways to discipline children. And if you
6 understand their development and how -- what to expect and how
7 to ask, you know, to present choices and let them pick choices
8 and so forth, you can discipline them without using corporal
9 punishment. And so I'm not saying that people don't lose their
10 temper, of course, but I just don't -- I mean, I raised both my
11 kids. I never spanked them. They're both great kids. Were
12 they perfect? Of course not. But I don't know, I just don't
13 believe in corporal punishment.

14 MS. McAMIS: Okay. You understand that there may be
15 testimony that physical discipline was used in this case. Would
16 you stop listening to any testimony afterwards if there was
17 physical discipline as far as your determination if that meets
18 child abuse?

19 PROSPECTIVE JUROR NO. 105: I know people who use
20 corporal punishment, and I even know someone who used a wooden
21 spoon. It was part of her culture, she was Korean, and I
22 believe her children are happy, healthy children and not abused
23 when it's used in the proper way. Do I believe in it? No.
24 Would I listen to the testimony? Of course. Would I listen to
25 and follow the law? Of course. But you asked if I believe

1 there is a place for it, and I don't think there is.

2 MS. McAMIS: And I appreciate that. All this is is
3 just a dialogue of trying to -- getting to know you all a little
4 better. If you wouldn't mind passing it just one more next to
5 you with the young lady with the blonde hair.

6 Ms. Bark?

7 PROSPECTIVE JUROR NO. 104: Yes.

8 MS. McAMIS: Okay. So you raised your hand on my
9 question is there no place for physical or corporal punishment
10 in a home. Can you share your response with us?

11 PROSPECTIVE JUROR NO. 104: Yes. I was raised that
12 you don't put your hands on other people --

13 MS. McAMIS: Okay.

14 PROSPECTIVE JUROR NO. 104: -- and that you don't hit.
15 And so my parents never hit me, and I don't hit anybody. And
16 that's the way I was raised and that's the way my husband and I
17 -- that's how we live.

18 MS. McAMIS: Okay. So it sounds like you came to that
19 after a whole lot of thinking and a whole lot of reasoning on
20 that position.

21 PROSPECTIVE JUROR NO. 104: Yeah. I mean, you know,
22 with children, you have to be patient and it's difficult, but
23 you have to remember that you're the adult. And if we tell
24 children that it's not okay to hit other people, but then we hit
25 them, that's very confusing. So that's kind of our philosophy,

1 I guess, and that's what, for me, I don't believe that you
2 should hit people, anybody.

3 MS. McAMIS: Okay. If you were to hear information
4 that a child was hit in this case, like spanked, just any kind
5 of physical touching, is that automatically child abuse to you?

6 PROSPECTIVE JUROR NO. 104: No, I think that people
7 come from different places. I know that not everybody was
8 raised the way I was or as fortunate as I was, and so I
9 understand that. I understand that there's a lot of different
10 cultures, that every culture is not the same. My husband is
11 from Sweden and they have a very different culture. And in
12 Sweden it is actually illegal to hit your children. But my
13 parents were raised where they were hit, so --

14 MS. McAMIS: Like spanked; right?

15 PROSPECTIVE JUROR NO. 104: Spanked, hit, belt,
16 paddle, switches.

17 MS. McAMIS: Okay.

18 PROSPECTIVE JUROR NO. 104: So they would make jokes
19 to us as kids like, oh, we'll have you go pick out a switch.
20 And that was enough to kind of scare us.

21 MS. McAMIS: Okay.

22 PROSPECTIVE JUROR NO. 104: But they -- they never did
23 anything like that, and so I understand that everyone is
24 different and that everyone comes from a different place.

25 MS. McAMIS: Okay. Let me ask you this. When your

1 parents were saying things like, oh, knock it off or I'll go get
2 the switch or something to that effect, is that child abuse?

3 PROSPECTIVE JUROR NO. 104: No.

4 MS. McAMIS: Are there -- are there reasons why
5 parents may make threats they don't actually intend to follow up
6 on?

7 PROSPECTIVE JUROR NO. 104: Yes.

8 MS. McAMIS: Like why?

9 PROSPECTIVE JUROR NO. 104: I think that that's just
10 people.

11 MS. McAMIS: Is it to try to get the child to actually
12 conform to acceptable behavior?

13 PROSPECTIVE JUROR NO. 104: Yeah.

14 MS. McAMIS: Without having to actually go the
15 additional step of being physical?

16 PROSPECTIVE JUROR NO. 104: Yes.

17 MS. McAMIS: Okay. All right. Let me ask you this.
18 If you hear that a child was spanked in this case, would you
19 stop listening to any other evidence about -- just any other
20 evidence and determine that to be child abuse?

21 PROSPECTIVE JUROR NO. 104: No, I would not stop
22 listening.

23 MS. McAMIS: Okay. All right. Could you pass the
24 microphone just next to you to Mr. Kearney.

25 You have no kids, but you were a child once.

1 PROSPECTIVE JUROR NO. 126: Yes.

2 MS. McAMIS: How were your parents disciplining you?

3 PROSPECTIVE JUROR NO. 126: Pretty lenient. I don't
4 think I was that bad.

5 MS. McAMIS: You weren't a bad kid?

6 PROSPECTIVE JUROR NO. 126: Yeah, no.

7 MS. McAMIS: You didn't break any rules?

8 PROSPECTIVE JUROR NO. 126: No.

9 MS. McAMIS: You never threw a temper tantrum?

10 PROSPECTIVE JUROR NO. 126: I was stubborn, but I just
11 -- I wouldn't do what they said sometimes and --

12 MS. McAMIS: Okay.

13 PROSPECTIVE JUROR NO. 126: -- that was it.

14 MS. McAMIS: What did they do when you were stubborn
15 and they needed you to do something else?

16 PROSPECTIVE JUROR NO. 126: I don't recall. I know my
17 dad always said me and my mom just butted heads. We're both --
18 we're stubborn and so we just kind of -- I don't know.

19 MS. McAMIS: Your parents never disciplined you?

20 PROSPECTIVE JUROR NO. 126: Not that I remember.

21 MS. McAMIS: What does discipline mean to you?

22 PROSPECTIVE JUROR NO. 126: Like I think it's used as
23 a deterrent. I know one story, it wasn't discipline, but like I
24 think my brother was reaching for the stove and he got hit with
25 the spoon. He stopped reaching for the stove to get burned. He

1 didn't want to get burned.

2 MS. McAMIS: Is that child abuse to you?

3 PROSPECTIVE JUROR NO. 126: No, I think it was used in
4 the correct way to deter him from doing something that could
5 hurt him.

6 MS. McAMIS: Do you think it hurt him even just for a
7 second when he was hit with the spoon?

8 PROSPECTIVE JUROR NO. 126: Oh, a little bit, but not
9 bad.

10 MS. McAMIS: Okay. Because ultimately your mother
11 just didn't want him burned --

12 PROSPECTIVE JUROR NO. 126: Yes.

13 MS. McAMIS: -- right? Because a serious burn is a
14 very serious injury; right?

15 PROSPECTIVE JUROR NO. 126: Uh-huh.

16 MS. McAMIS: And so sometimes it's okay for parents to
17 use a little bit of physical force to protect a child from
18 itself?

19 PROSPECTIVE JUROR NO. 126: Sure. Yeah.

20 MS. McAMIS: Okay. Let me ask you this. What are
21 your thoughts on physical forms of discipline used by other
22 people?

23 PROSPECTIVE JUROR NO. 126: I think if it works, like
24 I feel the same thing, I was watching a show, a nun, the kid was
25 doing something and got slapped with a ruler. If it works, if

1 he stops doing it, it can be used effectively.

2 MS. McAMIS: Okay. You said you were watching a TV
3 show where a nun like slapped a student?

4 PROSPECTIVE JUROR NO. 126: Yeah, it was some old
5 something or other.

6 MS. McAMIS: Okay. All right. Do you have a problem
7 with how -- it's fair enough. There's lots of stuff on TV. I
8 did not mean to make fun.

9 PROSPECTIVE JUROR NO. 126: No, no.

10 MS. McAMIS: I just wanted to make sure I heard you
11 right.

12 PROSPECTIVE JUROR NO. 126: Sure.

13 MS. McAMIS: Do you have a problem with people who may
14 rely on their religious views to impose discipline on a child?

15 PROSPECTIVE JUROR NO. 126: No, I don't think so.

16 MS. McAMIS: Does anyone have an opinion or a problem
17 with people who may rely on religion as far as guiding some of
18 their discipline methods? Would you please pass the microphone
19 to the gentleman in the blue.

20 PROSPECTIVE JUROR NO. 101: Kaehler.

21 MS. McAMIS: It's Mr. --

22 PROSPECTIVE JUROR NO. 101: Kaehler.

23 MS. McAMIS: Kaehler. Thank you.

24 PROSPECTIVE JUROR NO. 101: So, you know, we have laws
25 and everybody has to follow the laws. And I'm sure there are

1 some religions who allow fathers to abuse their kids in ways
2 that would be illegal in this country, and so they should not be
3 allowed to do that.

4 MS. McAMIS: Okay. Can you give me an example of what
5 you think the fathers being able to use religious practices that
6 you have the problem with?

7 PROSPECTIVE JUROR NO. 101: I don't know very much
8 about this, but, you know --

9 MS. McAMIS: Okay.

10 PROSPECTIVE JUROR NO. 101: -- I just imagine it would
11 be true.

12 MS. McAMIS: You just imagine it would be true?

13 PROSPECTIVE JUROR NO. 101: I mean, you know, let's
14 see. I don't know any details, but occasionally you hear about
15 situations where, you know, people recently arrive from another
16 country with a different religion, have, you know, practices
17 that are just not acceptable here and not legal.

18 MS. McAMIS: Okay. All right. We had a hand, if you
19 wouldn't mind passing directly all the way to the front row.

20 It's Ms. Schwartz; right? You raised your hand. What
21 were your thoughts?

22 PROSPECTIVE JUROR NO. 057: Well, you asked if
23 somebody could use religion in order to discipline?

24 MS. McAMIS: Well, if did you have an opinion or a
25 problem if someone relies on their religious beliefs to kind of

1 make a frame work for their discipline.

2 PROSPECTIVE JUROR NO. 057: Not as long as it falls
3 within the law and as long as they're not using it as an excuse
4 to abuse a child.

5 MS. McAMIS: Okay.

6 PROSPECTIVE JUROR NO. 057: Because if you say, oh,
7 I'm -- hold this certain priesthood so I get to enforce this in
8 an inappropriate way. No. Or if you -- we live in the United
9 States of America. We have laws.

10 MS. McAMIS: Sure.

11 PROSPECTIVE JUROR NO. 057: And so I don't know if --
12 what the laws are according to abuse or not abuse, but I'm sure
13 we'll be guided when we're told about it.

14 MS. McAMIS: Sure.

15 PROSPECTIVE JUROR NO. 057: And so I could listen to
16 that. But if somebody is using their religion to be able to do
17 something that the rest of us is not acceptable for, that's not
18 okay with me.

19 MS. McAMIS: Okay. Let me ask it this way to -- to
20 everyone. And, again, thank you to the people who are actually
21 sharing. I appreciate that. Does anyone have such a strong
22 opinion about religion, for example, that if a child is put in
23 bible study and said, you know, learn your scripture and
24 practice your scripture, is that child abuse? Does anyone have
25 a problem with that if that was a parenting practice? I'm

1 seeing no one agreeing that that's a problem.

2 Thank you. Ms. Fecko. Tell me your problem or your
3 concern.

4 PROSPECTIVE JUROR NO. 053: It's not so much that I
5 would report somebody for doing it, I just personally think
6 that, you know, each -- your spiritual journey is your spiritual
7 journey. And I feel like, you know, as parents you just should
8 not -- if you're a parent, if your kid just obviously does not
9 believe in what you believe, you should just not keep on forcing
10 yourself on them, you know, forcing your viewpoints on, you
11 know, especially such a matter that you just -- you can't prove
12 to be true one way or another.

13 MS. McAMIS: Okay.

14 PROSPECTIVE JUROR NO. 053: I just think that you -- I
15 mean, I can't say that I would report somebody who I heard they
16 were doing such a thing. I just think personally it's wrong to
17 force somebody to believe something or even to practice
18 something that they do not hold true in their own spirituality.

19 MS. McAMIS: Okay. Is that something that you would
20 consider child abuse if you heard a child had to do bible study?

21 PROSPECTIVE JUROR NO. 053: No, I wouldn't think it
22 was child abuse. I just would -- I would feel personally that I
23 would probably think negative of them, but I wouldn't, you know,
24 report them into the law or, you know, say, oh, you have to go
25 to jail for it. I would just probably maybe look slightly down

1 on the parenting practice for it, but I wouldn't, you know, say
2 that they're a criminal for it.

3 MS. McAMIS: If you heard information about bible
4 study practices in this case for --

5 MS. BLUTH: Judge, can we approach, please?

6 MS. McAMIS: Yes.

7 THE COURT: I'm sorry?

8 MS. BLUTH: Can we approach, please?

9 THE COURT: Sure.

10 (Off-record bench conference)

11 THE COURT: Ladies and gentlemen, we're going to go
12 ahead and take just a brief recess, just a little over ten
13 minutes. It'll put us at 11:30.

14 During the brief recess you're reminded that you're
15 not to discuss the case or anything relating to the case with
16 each other or with anyone else. You're not to read, watch, or
17 listen to any reports of or commentaries on the case, person, or
18 subject matter relating to the case. Do not do any independent
19 research by way of the Internet or any other medium, and please
20 don't form or express an opinion on the trial.

21 And please follow the bailiff through the double
22 doors. We'll see everyone back at 11:30.

23 (Prospective jury recessed at 11:19 a.m.)

24 THE COURT: Before we take our break, refresh my
25 memory. What were the dates that the Diaz-Burnett children were

1 in the Solander care?

2 MS. McAMIS: One sec.

3 THE COURT: I'm giving the defense all records of the
4 Diaz-Burnett children concerning health issues. And there's
5 more than I -- there's a number of references in here to
6 Areahia's weight and a referral to a nutritionist and she got
7 put in tap dancing classes. All of that is going to
8 everybody --

9 MR. FIGLER: I have May --

10 THE COURT: -- regardless of the dates --

11 MR. FIGLER: May 31 --

12 THE COURT: -- because that's an ongoing --

13 MR. FIGLER: -- 2013.

14 THE COURT: -- concern.

15 MR. FIGLER: Thank you, Your Honor.

16 THE COURT: So what are the exact dates?

17 MS. BLUTH: May 31st.

18 MR. FIGLER: May 31, 2013. That's the start date.

19 THE COURT: Through?

20 MS. BLUTH: They're taken out in March of 2014.

21 THE COURT: All right. And then the names of the
22 children again?

23 MS. BLUTH: Areahia Diaz.

24 THE COURT: Right.

25 MR. FIGLER: February 27th. I'm sorry, Your Honor.

1 Ms. Solander remembered it being in February. February 27,
2 2014, is when --

3 THE COURT: Okay.

4 MR. FIGLER: -- the siblings were removed.

5 THE COURT: It's Areahia, Keshia.

6 MS. BLUTH: Kaeshia.

7 THE COURT: Kaeshia.

8 MS. BLUTH: K-A-E-S-H-I-A. Demyer, D-E-M-Y-E-R.

9 THE COURT: Okay.

10 MS. BLUTH: And Novaleih, N-O-V-A -- I've seen it
11 spelled both ways, N-O-V-A-L-E-E and N-O-V-A-L-E-I-H. And the
12 last three kids are Burnett. Areahia is the only Diaz.

13 THE COURT: Right. Sorry it's taking me so long, but
14 there's -- I'm reading -- I'm having to read every page to find
15 medical things. I'm giving you all the dental stuff, too.

16 MS. BLUTH: And then --

17 THE COURT: All the referrals because there's an issue
18 with tooth decay --

19 MS. BLUTH: Right.

20 THE COURT: -- and that, so you're getting any
21 reference to the dental. There was other sexual abuse of -- of
22 an infant that wasn't covered in the testimony. You're not
23 getting that because the infant won't be testifying, so I don't
24 think that's relevant to anything.

25 MS. BLUTH: To Novaleih?

1 THE COURT: Right.

2 MS. BLUTH: Okay.

3 THE COURT: Where the mom puts the baby between her
4 and the natural father. Well --

5 MS. BLUTH: Got it.

6 MS. McAMIS: But they come from a very --

7 THE COURT: I mean, I'm not sure the baby would have
8 even known what the heck was going on.

9 MS. BLUTH: Sure.

10 THE COURT: But it appears to be sexual in nature or
11 just plain weird, so that you're not getting because it's not
12 really germane to anything. It kind of was glossed over. But
13 -- and then things with the parent's drug use and their therapy
14 and other family members' emails regarding possible placement
15 with those family members. I don't think any of that is
16 relevant to anything. So anyway, it's a lot.

17 MS. BLUTH: And then, Judge, if I remember correctly,
18 the way DFS had sent them was --

19 THE COURT: Oh, I'm sorry to interrupt you, but while
20 I think of it.

21 MS. BLUTH: That's okay.

22 THE COURT: Also, the reports from UMC about the birth
23 of the newborn and all of that you're not getting, because I
24 didn't think that was really relevant to anything.

25 MS. McAMIS: Okay.

1 MS. BLUTH: And the way that DFS sent over the
2 records, if I remember, they sent them Diaz-Burnett children
3 with Solanders and Diaz-Burnett children with bio family; is
4 that right? Are they still like that?

5 THE COURT: Well, we gave the Diaz-Burnett with the
6 Solanders already.

7 MS. BLUTH: Okay.

8 THE COURT: Okay.

9 MS. BLUTH: So you right now are just --

10 THE COURT: So what I am looking through, I guess,
11 would predate all of that.

12 MS. BLUTH: Got it. Okay.

13 THE COURT: And what -- what grade was Areahia in when
14 she went with the Solanders?

15 MS. BLUTH: She was nine. I don't know what grade
16 that is.

17 THE COURT: So that would have been like third or
18 fourth grade?

19 THE DEFENDANT: She was in the third, but going into
20 fourth.

21 THE COURT: Right, third or fourth. Okay. So the
22 weight issues and the referral to the nutritionist and all of
23 that that you're getting are from the first grade and a
24 different foster parent. And then so any -- basically anything
25 medical or dental I'm giving.

1 MR. FIGLER: So approximately how many pages are you
2 giving us right now?

3 THE COURT: So far it's not that many, and I still
4 have this big stack that I'm going through. Anyway, I just
5 wanted to say that's why it's taking me so long because I'm
6 having to read everything to see if there's any mention about
7 anybody's weight or about diet or about -- that's what I'm
8 looking for.

9 MS. BLUTH: Sure.

10 THE COURT: Or about going to the doctor or dental
11 issues or anything like that. I mean, if it's just like along,
12 you know, foster parent confirmed dental appointment, I don't
13 really think that's germane to anything. But anything relating
14 -- the other thing, I don't know if you knew this, Areahia had a
15 dark patch around her neck, did you know that, at six, that was
16 being investigated? I know that can sometimes relate to -- I
17 don't -- they don't talk about it. It could relate to blood
18 sugar issues, hormonal issues. I don't know. I don't know if
19 that was ever diagnosed. That was an issue back when she was
20 like six and there is a focus on the weight dating, you know,
21 from --

22 MR. FIGLER: Which child? I'm sorry.

23 MS. McAMIS: Areahia.

24 MS. BLUTH: Areahia.

25 MR. FIGLER: Areahia. Thank you.

1 THE COURT: So anyway.

2 MR. FIGLER: Well, I mean, I don't want to belabor it.
3 It will just be a continuing objection based on the status of
4 the record and status of the release of the documentation that
5 it -- it does complicate and confuse the issues of the case and
6 impact upon the right to present a defense through investigation
7 to allow any testimony of any of the foster children related to
8 their own treatment. And so that is going to be just a
9 continuing objection from the defense. I understand anything
10 percipient --

11 THE COURT: I kept out the diabetic issue, unless
12 somehow the door is opened on that. I also said the weight
13 issue is problematic because clearly the child was overweight
14 and I felt like Ms. Solander's steps regarding diet and
15 exercise --

16 MS. BLUTH: But that's not even a bad act, though.

17 THE COURT: -- might have been appropriate. Well,
18 they can still object on the grounds of more prejudicial than
19 probative or --

20 MR. FIGLER: Correct.

21 THE COURT: -- not relevant --

22 MR. FIGLER: Correct.

23 THE COURT: -- or whatever. But I --

24 MR. FIGLER: And that is --

25 THE COURT: -- said that they --

1 MR. FIGLER: -- our objection.

2 THE COURT: -- can get into what they observed as
3 percipient witnesses living in the home and how everybody was
4 fed and treated when they were all in the home together. So a
5 lot of these records, I'm just giving them to you. I don't know
6 if they're really going to be germane to anything or not germane
7 to anything, but you're still getting them.

8 MR. FIGLER: Right. So --

9 THE COURT: To the extent that --

10 MR. FIGLER: And I appreciate --

11 THE COURT: And I already said, too, you know, some of
12 this may be for their rebuttal case depending on what you
13 present, which they could have done anyway.

14 MR. FIGLER: Right. And I appreciate where the Court
15 went with that. We understand the Court's prior rulings. The
16 continuing objection is that when the State attempts to use any
17 of that -- not the percipient what they observe, but any of the
18 information about pattern or similar treatment to the other
19 children as either propensity or likelihood that abuse was
20 committed against the Solander kids, that is where we highly
21 object to the receipt of that type of evidence for that reason
22 and that type of argument. So the State does it at their own
23 chagrin, but we're asking the Court in the abundance of caution
24 and making a clean record to just disallow any of that to occur.
25 And I understand the Court's rulings. That's just my record,

1 okay.

2 THE COURT: Right.

3 MR. FIGLER: So that's my objection.

4 THE COURT: Well, I'm saying, too, you know, clearly
5 the children can say, all right, when all seven of us or nine of
6 us or whatever it was were in the home, this is how we were fed
7 or this is what was done or this is how we did our homework or
8 this is how, you know, we were bathed or this is how whatever.
9 And I think that that's not really a bad act. That's almost
10 like really kind of more percipient. This is what was happening
11 in the home at the time.

12 MR. FIGLER: Well, we're concerned is that so some of
13 these other children, the Diaz-Burnett children, had some
14 bathroom issues. What we're anticipating based on everything --

15 THE COURT: There's a bathroom issue mentioned
16 relating to, I guess it's Kaeshia, back -- it's hard to tell. I
17 think there's some overlap in these records.

18 MS. BLUTH: I think it would make things easier if I
19 could put on the record what I plan to get into.

20 THE COURT: Right. Right.

21 MS. BLUTH: And then we could have some, you know --
22 because a lot of the things that I think the defense is worried
23 about we don't plan on getting into. Your Honor's ruling about
24 the diabetes, I recognize that that is off. I'm not even
25 talking about that. And then my witnesses -- our witnesses have

1 been instructed not to.

2 In regards to, however, the one part about the eating
3 and the treatment at school, Your Honor did say that we could
4 get into in regards to they had her separated from other
5 students, accused her of stealing other food, had her backpack
6 checked, and had her sit in the nurse's office, which is exactly
7 what she did to the Solander girls, which is exactly what she
8 did to the Stark girls.

9 That, I think, is fair game. It's not even -- I don't
10 even think it's another bad act, but it's something that is
11 completely relevant and I don't see how it's more prejudicial
12 than probative. So that is the only thing we were planning on
13 getting into with the school type situation.

14 In regards to the toileting and eating at the home,
15 the two things Your Honor told me that I could not get into were
16 the diabetes thing and the cold shower. So I plan on getting
17 into the eating, that they were timed when they ate, that they
18 -- the toileting, the toilet paper, the fact that they would get
19 mad if they opened their mouths, but if they didn't open their
20 mouths and had an accident, then they would get mad. And so the
21 kids became confused, like when do I go to the bathroom?

22 The fact that she would, after accidents, discipline
23 her brother and sister by dragging them by their hair, kicking
24 them up and down the stairs, which is exactly what happened to
25 the Solander girls, so those things. So the eating, the

1 toileting. Yeah, and then with the Stark girls, again, that
2 there was these representations to CPS that the Stark girls were
3 -- that the toileting was out of control and she didn't know
4 what to do, but that from Autumn herself, she was like I didn't
5 -- I didn't have a problem, Ivy had some minor bed wetting
6 issues when we got there.

7 THE COURT: Right. Now, and as I brought up
8 yesterday, Ivy was the victim of sexual abuse, and so, I mean,
9 the toileting is -- can be consistent with sexual abuse.

10 MS. BLUTH: But I don't think it's necessarily that it
11 was happening is that she would make it this ginormous deal to
12 Cherina Davidson.

13 THE COURT: All right. So you're not going to allege
14 it wasn't happening.

15 MR. HAMNER: Correct.

16 THE COURT: You're just going to say the treatment was
17 consistent because, like I said, the bedwetting and the
18 bathrooming issues are consistent with the sexual abuse that we
19 know from these records was happening to this Ivy Stark. I
20 can't remember the facts of that sexual abuse, and now we know
21 to Areahia Stark. I'm sorry, Areahia --

22 MS. BLUTH: Diaz.

23 THE COURT: -- Diaz. And now there was something with
24 an infant, but I don't think that's --

25 MS. BLUTH: But if Areahia Diaz --

1 THE COURT: -- germane to anything because I don't
2 even think the infant is an issue and would have known really
3 even what was going on.

4 MS. BLUTH: But Areahia Diaz, when she gets to the
5 Solander house, she's nine years old. I mean, she's potty
6 trained, her --

7 THE COURT: Right.

8 MS. BLUTH: You know, she doesn't have any issues with
9 -- she doesn't have any issues before she gets to that house and
10 she talks about that and she talks about her sister not
11 having --

12 THE COURT: Well, I'm giving anything in these records
13 that show anybody's issues with toileting --

14 MS. BLUTH: Yeah.

15 THE COURT: -- medical issues, anything -- dental
16 issues, anything like that. You can do what you want with them.
17 I'm just giving them to you.

18 MS. BLUTH: But --

19 THE COURT: So if there shows a history. I do note
20 here the first time any toileting is mentioned in the records is
21 Kaeshia and Demyer, and that is when they're already placed in
22 the Solander home. And then you probably already knew this, but
23 Kaeshia was at Montevista for headbanging.

24 MS. BLUTH: So I get --

25 THE COURT: So that's all in the records you're

1 getting.

2 MS. BLUTH: But what I'm -- I guess what I need to
3 make clear for the record is, for Mr. Figler's record, is that
4 the stuff we plan to get into was absolutely provided to the
5 defense a day or two days after the file review as part of the
6 CPS emails and unity notes that we originally had. So this idea
7 that they are -- that they just got them or that they still
8 don't have them is not true because they had those weeks before
9 the trial started.

10 MR. FIGLER: And I need to make that distinction.
11 We're not claiming that the new records that we're receiving are
12 about the Burnett-Diaz children's time in Solander. We're
13 talking about all the stuff before, before they came to
14 Solanders. And therein lies the defense's core objection.
15 Because everything that the State just indicated, I cannot see a
16 pathway on how that makes more likely than not any of the
17 elements of any of the offenses charged against Ms. Solander
18 other than propensity.

19 THE COURT: Isn't it -- well, it's corroborative,
20 though, if the girls were in the home at the same time that the
21 Solander girls were in the home and everyone is being treated
22 consistently. It's propensity, but it's also not propensity
23 because -- I mean, I'm going to make a poor analogy here, but if
24 you're trying to prove everybody ate with a red table cloth and
25 they said -- you know, the Solanders said the table cloth was

1 red, and the Diaz girls said, well, when we sat down the table
2 cloth was red, it makes it more likely that the table cloth is
3 red. And so if everybody is saying the same, they're observing
4 the same behavior and treatment, then it's corroborative.

5 MS. BLUTH: But in my --

6 MR. FIGLER: But -- I'm sorry.

7 MS. BLUTH: Just one second, Dayvid.

8 MR. FIGLER: Go ahead Jacqueline.

9 MS. BLUTH: In my motion what I -- what we really
10 honed in on, though, was intent, knowledge, and common scheme or
11 plan.

12 MR. FIGLER: Right.

13 MS. BLUTH: I don't think I need to get into common
14 scheme or plan because they can pretty much talk -- you know, it
15 says it for itself. But in regards to the knowledge and the
16 intent, those are very important because you know that there are
17 no -- you know that these children don't have these issues. And
18 this idea that you're continuing to have the same conduct,
19 taking them to the same doctors or the intent.

20 So if your intent was purely, you know, that there was
21 nothing wrong with what she was doing, then why are these
22 children who didn't have issues before coming in and then
23 developing the same issues as the Solander girls?

24 Because the defense, and the defendant's own statement
25 and her co-defendant's statement, they both talk about this is

1 what we had to do, they are medically fragile, they're special
2 needs children, they have physical issues, they have mental
3 issues, and so this is how we have to treat them, we have no
4 other -- we have no other way to treat them.

5 But then here comes all these other kids and it's the
6 exact same thing, but those kids don't have these special needs
7 and issues. So it's absolutely a knowledge and intent issue.

8 MR. FIGLER: And that goes to the new records. We
9 don't know if they did or didn't have these issues when they
10 came in to Solander because we're just now getting this
11 information which has not been investigated and not been
12 explored. So we can't counter it saying, why, yes, the
13 Diaz-Burnett kids, the Stark kids also had similar issues and so
14 it was absolutely appropriate to treat them consistently, not
15 that this is sort of machination to show criminal intent, which
16 it can't be. And so this is the problem for the defense and
17 why --

18 THE COURT: And I'm hearing two different things. My
19 concern with the information is we don't know enough about what
20 the medical records were on these kids. So my under -- and we
21 do know they were the subject of abuse and neglect. We know
22 that. Some of it is sexual abuse. Now, my question to the
23 State is, though, you're not denying that there was -- were
24 issues with bedwetting and things like that; correct?

25 MS. BLUTH: With who?

1 THE COURT: With Ivy Stark. I mean, you said you
2 weren't -- you weren't denying that, so --

3 MS. BLUTH: Well, that would be on --

4 THE COURT: -- which -- I mean, first of all, we've
5 only heard from Autumn Stark and we've heard from Areahia.
6 That's all we heard from in our evidentiary hearing. So what
7 exactly do you intend to introduce with respect to the
8 Diaz-Burnett children and with respect to the Stark?

9 MR. FIGLER: And with what witness would be the other
10 question.

11 THE COURT: All right.

12 MS. BLUTH: Okay. So with Autumn and Ivy, what we're
13 saying is that Autumn said to herself she did not have any
14 issues when she got there, and that Ivy would have -- would have
15 issues. What we're saying with the Stark girls is that the
16 defendant would constantly, constantly make it this huge issue
17 that the toileting and the eating were these ginormous issues to
18 Cherina.

19 THE COURT: Okay. But you're not denying that --

20 MS. BLUTH: That Ivy would wet her bed sometimes? No.

21 THE COURT: Okay.

22 MR. HAMNER: And --

23 MS. BLUTH: Now -- sorry, Chris, go ahead. Because he
24 has the Stark girls, so I should let him.

25 MR. HAMNER: And I would say as an added note, and

1 Autumn testified to this, too, that she did have like a hard
2 stool when she came into the house, and her memory of it was I
3 might have pooped my bed maybe one time a month. But when you
4 compare that to the representations that the defendant made to
5 the CPS worker, it wasn't, you know, a month to month thing. It
6 was this persistent every single day soiling, had to wear two
7 Pull-ups at a time. And what you have is a representation from
8 the defendant that's not an accurate reflection of what was
9 really going on with that particular child.

10 THE COURT: Okay. I don't remember. Did that come in
11 at the evidentiary hearing --

12 MS. BLUTH: Yes.

13 THE COURT: -- at all?

14 MS. BLUTH: Cherina --

15 MR. FIGLER: No.

16 MR. HAMNER: Cherina did.

17 MS. BLUTH: Cherina Davidson absolutely testified to
18 that.

19 MR. HAMNER: Yes.

20 MS. BLUTH: I did her direct.

21 THE COURT: How would Cherina know whether or not Ivy
22 was --

23 MR. HAMNER: Because Janet was telling her that and --

24 THE COURT: No, no. She would know what Janet said
25 and that's admissible, but how would she know whether Ivy was

1 really having bedwetting?

2 MS. BLUTH: No, she was saying that about Autumn. She
3 -- she was --

4 THE COURT: Oh, you said Ivy.

5 MS. BLUTH: -- saying that about Autumn.

6 MR. HAMNER: I misspoke. It was --

7 THE COURT: Okay. Because -- now on the stool, I
8 mean, to me, we don't really know if she was having hard stools
9 or not having hard stools, so I don't know that that's really a
10 bad act or indicative of anything.

11 MS. BLUTH: No.

12 THE COURT: Because she may have been having hard
13 stools. We don't really know.

14 MS. BLUTH: And we agree with she came to the home
15 with a hard stool issue. We're not even making --

16 THE COURT: Okay. All right.

17 MS. BLUTH: -- a point out of that.

18 THE COURT: Because we've spent a lot of time talking
19 about hard stools, so it sounds like that's not going to be an
20 issue. You're conceding she had hard stools.

21 MR. HAMNER: Yeah.

22 MS. BLUTH: Yeah.

23 THE COURT: And if she had hard stools, then a stool
24 softener would be an appropriate remedy.

25 MR. HAMNER: Correct.

1 MS. BLUTH: Yeah. No big deal.

2 MR. HAMNER: So okay. That's off the table.

3 MR. FIGLER: Well, it is but it isn't because the way
4 that the State is even characterizing it to Your Honor now, if
5 they do this in front of the jury, we're going to ask for a
6 mistrial, that there's these ginormous issues with bathroom that
7 Janet is saying every single day, which is not supported by the
8 evidence, okay. That is not supported by the evidence that
9 Janet told anyone that every single day. She said that there
10 were consistent problems.

11 So these mischaracterizations of this non-germane
12 evidence is going to cause the defense to not only ask for a
13 mistrial, but that we are, with our hands and ears, saying,
14 look, we did not have the opportunity to explore the entire --

15 THE COURT: Okay. They're --

16 MR. FIGLER: -- medical history of these children.

17 THE COURT: Okay. They're not bringing up the
18 diabetes unless somehow the door is opened. They're not
19 bringing up the weight loss unless somehow the door is opened.
20 And, again, there is weight issues and referrals to a
21 nutritionist and tap dancing and everything else that's
22 predating Areahia's arrival with the Solanders, and Areahia's
23 own, according to the CPS records, Areahia's own concern with
24 her weight and not fitting in because of her weight. And, I
25 mean, that's why I needed to pin down the dates. It looks like

1 if she was six it would have predated her --

2 MS. BLUTH: But we can't bring up that she lost 34
3 pounds in the first four months?

4 THE COURT: You can bring that up, but, I mean, what's
5 the relevance of the 34 pounds, that she wasn't being fed?

6 MS. BLUTH: That -- that -- yeah, that she was on a
7 very strict diet that she --

8 THE COURT: I'm concerned about that looking at these
9 records because there's referrals to, and unless I'm looking at
10 the time period wrong, there's talk about referring her to a
11 nutritionist and feeling isolated at school and her being
12 concerned about -- I mean, look, the girl was obese. I don't
13 know what she looked like at six, seven, eight, or nine, but I'm
14 going off the CPS records. They're talking about her weight in
15 these CPS records and being referred to a nutritionist.

16 MS. BLUTH: Sure.

17 THE COURT: You'll see. And so --

18 MS. BLUTH: I mean, the issue is --

19 THE COURT: I just -- here's my problem. Look, if
20 this were -- if this were a trial about abuse of the
21 Diaz-Burnett girls, okay, if that were the case, we wouldn't be
22 dumping these records on the defense at the eleventh hour. Now,
23 again, there's nothing like exculpatory or Brady or whatever in
24 them, only that the obesity issue seems to predate, I could be
25 looking at it wrong, but it seems to predate the arrival with

1 the Solanders.

2 MS. BLUTH: Agreed.

3 THE COURT: And so there is a concern about the
4 weight, and so I don't want this portrayed as somehow all of the
5 sudden Ms. Solander is obsessed with the weight because they're
6 concerned about the weight, and -- and Areahia's own concern
7 with her weight.

8 MS. BLUTH: And I don't think that --

9 THE COURT: Which is, you know --

10 MS. BLUTH: But there's nobody --

11 THE COURT: -- that's not remarkable for a girl in
12 school to be concerned about her weight.

13 MS. BLUTH: No, I agree, but it is remarkable to lose
14 34 pounds in four months. I mean, that's -- for a child, that's
15 a crazy amount of weight.

16 MR. FIGLER: Well, and here's the thing is that none
17 of that has been investigated or explored as to other reasons
18 for it and perhaps there are benign explanations for every
19 single allegation that the State is going to paint in broad
20 strokes as the misconduct or the, you know, the treatment of Ms.
21 Solander to suggest that they should find her guilty of --

22 THE COURT: Let's do this.

23 MR. FIGLER: -- the charges she's actually charged
24 with.

25 THE COURT: Let's take our break --

1 MS. BLUTH: Okay.

2 THE COURT: -- and finish up with jury selection, or
3 at least go until lunch time, and then revisit some of these
4 issues. And we --

5 MS. BLUTH: But, Judge, just for the -- sorry.

6 THE COURT: What?

7 MS. BLUTH: I am a little -- are we going to -- are we
8 relitigating this entire issue or --

9 THE COURT: Well, I don't think there was anything
10 that specific.

11 MS. BLUTH: Judge, you were so specific to the point
12 where I said, Your Honor, would you like me to write out an
13 order, and you said no. I think we've been pretty clear today.
14 So I wrote down everything that we could get into, and I wrote
15 down what we couldn't on a yellow piece of paper.

16 THE COURT: One comment. I don't know that I said
17 anything about her weight loss, the 34-pound weight loss in two
18 or three months.

19 MS. BLUTH: I agree that you did not say anything
20 about the weight loss. I didn't realize that that was an OBA.
21 I didn't realize that it was a bad act for --

22 THE COURT: But if you're using it as a bad act, the
23 idea that she's starving the girl. I mean, that's the
24 implication, that she lost 34 pounds in -- I wish I could lose
25 34 pounds in three or four months, but --

1 MS. BLUTH: Not that she's starving her, but that
2 there was an obsession with toileting and eating and that she
3 was put on a strict diet and that she was not allowed to eat
4 with other children at the school, eat their food, and put in a
5 private office. If you don't want me to get into the 34 pounds,
6 I wouldn't get into the 34 pounds.

7 I feel like -- I think the issue that I'm having is I
8 feel like a) we're relitigating this, and b) you know, there was
9 a ton of stuff we could have asked to get into and we have -- I
10 really feel like I narrowed it to just toileting and eating.
11 And now I feel like I was being reasonable and now we're
12 relitigating on the things that we already talked about were
13 coming in.

14 THE COURT: Well, my only comment would be as the
15 records become available and may show new things. I mean,
16 they're allowed to make new arguments based on the records.
17 Now, I'm telling you there's nothing really exculpatory in these
18 records, which means that there's no, you know, in my opinion,
19 issue with the late disclosure.

20 The only thing that I thought was noteworthy is the
21 fact that it seems to be the issue with Areahia's weight
22 predates her placement with the Solanders. And, you know, you
23 don't refer somebody to a nutritionist, we don't know what the
24 orders were, but you don't refer somebody to -- and I don't
25 remember the exact dates, I just noticed it in there.

1 MS. BLUTH: No, there's for sure an issue with her
2 weight.

3 THE COURT: You don't -- you don't refer somebody to a
4 nutritionist unless they're going to put them on some kind of a
5 diet, whether it's a healthy -- quote, healthy foods diet or a
6 calorie-based diet. We don't know. We don't know what that
7 was. But that was my sole point on that, that there was concern
8 about Areahia's weight and exercise and eating prior, it looks
9 like, or at six. I thought I saw that she was six, so that
10 would predate, but I could be mistaken. But that's what I think
11 I saw.

12 MS. BLUTH: Okay.

13 THE COURT: So at some point there was a referral to a
14 nutritionist and concern, again, about it, and then there was
15 mention of a tap class. And that's all consistent with wanting
16 her to lose weight, so that's all I'm saying.

17 MS. BLUTH: Okay.

18 THE COURT: Anyway, let's take our break --

19 MR. FIGLER: Thank you.

20 THE COURT: -- and then let's resume jury selection.
21 And how much -- I mean, I'm not, you know, like holding you to
22 this, but how much more do you think you have?

23 MS. McAMIS: I would estimate an hour, honestly.

24 THE COURT: Okay. That's fine. The diabetic who
25 wants to get off the prescription has an appointment at 1:00, so

1 I'm just going to let him go.

2 MS. BLUTH: Yeah. Agreed.

3 THE COURT: We still have, then, three women, plus
4 Dayvid's band mate as potential jurors. So he has the
5 appointment at 1:00.

6 MS. BLUTH: That's fine.

7 THE COURT: I'm just going to excuse him.

8 MS. BLUTH: But may I ask defense if you believe you
9 have any causes for kicks right now?

10 MS. McAMIS: I don't have any.

11 THE COURT: I didn't see any.

12 MS. BLUTH: I just wanted to make sure while we're --

13 THE COURT: Right.

14 MS. BLUTH: -- trying to figure out the numbers, but
15 okay.

16 THE COURT: I'm going to follow up. Have him check, I
17 guess, telephonically with you, Kenny, after his appointment in
18 case there's an issue that we need another juror.

19 THE MARSHAL: Okay.

20 THE COURT: Okay. And I have to follow up with the
21 doctor. And the woman with the class, she hasn't said anything
22 else to you?

23 THE MARSHAL: She kind of looked at me yesterday, and
24 I go I let the Judge know.

25 THE COURT: Should we call her in separately and

1 follow up on whatever her issue is with the class?

2 MS. BLUTH: I think so.

3 THE COURT: What?

4 MS. BLUTH: I think so.

5 THE COURT: Well, also, you want to know if she's
6 going to be so distracted --

7 MS. BLUTH: Right.

8 THE COURT: -- and stressed out about her class.

9 MS. BLUTH: Right.

10 THE COURT: So let's take our break, and then I'll
11 have Kenny just bring the student in and I'll follow up, and
12 then I'll follow up with the doctor.

13 MR. HAMNER: What's the name of that juror that we're
14 letting go, the diabetes? Do we remember?

15 THE COURT: He's the guy sitting --

16 MS. McAMIS: Sorensen.

17 MR. HAMNER: Oh, he's in the back.

18 THE COURT: Yeah, he's in the --

19 MR. FIGLER: I believe he's second to last.

20 THE COURT: Yeah. No, no. He's -- so he's not even
21 up yet.

22 MR. HAMNER: Conrad Sorensen.

23 MR. FIGLER: Yes.

24 MR. HAMNER: Okay.

25 (Court recessed at 11:47 p.m., until 11:54 p.m.)

1 (Outside the presence of the prospective jury)
2 THE COURT: Is everyone ready?
3 MS. McAMIS: Yes, Your Honor.
4 THE MARSHAL: So you want Ms., I believe, Bellino? I
5 think that's who it is.
6 THE COURT: How does he say his name, Kaehler?
7 MS. McAMIS: Yes.
8 MS. BLUTH: Yes.
9 THE COURT: Kaehler. Kaehler.
10 MS. McAMIS: Kaehler.
11 MS. BLUTH: I accidentally said Kaehlen yesterday.
12 MS. McAMIS: Oh, he didn't like that.
13 MS. BLUTH: No, he didn't.
14 (Inside the presence of Prospective Juror No. 76)
15 THE COURT: Just in your usual seat. And, ma'am, the
16 reason I brought you in is I wanted to inquire about something
17 you said to my bailiff, I think, yesterday.
18 PROSPECTIVE JUROR NO. 076: Uh-huh.
19 THE COURT: Something about a class. Can you tell me
20 about that?
21 PROSPECTIVE JUROR NO. 076: So I had said on the first
22 day how I'm a student, I go to school full-time. So I had to
23 miss school yesterday, and then I have school again tomorrow. I
24 have an exam, actually. And I had talked to a couple of my
25 professors, and they said there's no way you could miss four

1 weeks of school and finish this semester.

2 THE COURT: Okay. And so your exam is when?

3 PROSPECTIVE JUROR NO. 076: Tomorrow at 8:30.

4 THE COURT: Okay. And you're -- if we release you,
5 you're prepared to take the exam, or --

6 PROSPECTIVE JUROR NO. 076: Yeah. I study during our
7 breaks.

8 THE COURT: Okay. And they do have to -- they allow
9 you to make up the work if you serve as a juror, but you talked
10 to which professors?

11 PROSPECTIVE JUROR NO. 076: I'm in biomechanics --

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 076: -- so that's pretty
14 complicated. It wouldn't be feasible to miss that many
15 classes --

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 076: -- and still do good. And
18 then a sociology class based on kinesiology.

19 THE COURT: Okay. And are these lecture classes or --

20 PROSPECTIVE JUROR NO. 076: Uh-huh. I go in person.

21 THE COURT: I'm sorry?

22 PROSPECTIVE JUROR NO. 076: I go in person.

23 THE COURT: But they're lecture classes?

24 PROSPECTIVE JUROR NO. 076: Yeah.

25 THE COURT: How many students in the classes?

1 PROSPECTIVE JUROR NO. 076: Biomechanics probably has
2 like 100. The other class, probably 50 to 80.

3 THE COURT: Okay. And then you have the one exam
4 tomorrow morning. What other exams do you have scheduled?

5 PROSPECTIVE JUROR NO. 076: That's the only one coming
6 up. I'm not sure if we have like midterms, because it's week
7 five, or anything like that.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 076: I haven't really looked.

10 THE COURT: Okay. Which class is the exam in?

11 PROSPECTIVE JUROR NO. 076: Biomechanics.

12 THE COURT: Okay. So you have the two classes?

13 PROSPECTIVE JUROR NO. 076: Yeah. So I go Tuesday,
14 Thursday. Tuesday go 8:30 to 1:00, Thursday I go 8:30 to 3:00.

15 THE COURT: Okay. And then each -- so you have two
16 different professors, is that right?

17 PROSPECTIVE JUROR NO. 076: No. It's the same teacher
18 every day.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 076: It's just you have to go
21 twice a week.

22 THE COURT: Okay. But is it one professor for both
23 classes or --

24 PROSPECTIVE JUROR NO. 076: Uh-huh.

25 THE COURT: It's the same professor and he teaches

1 both classes?

2 PROSPECTIVE JUROR NO. 076: Uh-huh.

3 THE COURT: So that professor said what to you about
4 making up the work?

5 PROSPECTIVE JUROR NO. 076: That it would be hard to,
6 because so much of it he demonstrates it. Like we're not
7 required to have a textbook or anything like that.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 076: So it's just strictly from
10 lecture.

11 THE COURT: Okay. Now, when I was in college 100
12 years ago, they used to video tape the lectures. They don't do
13 that at UNLV?

14 PROSPECTIVE JUROR NO. 076: There's some -- there's
15 like some new law, I guess, where you have to have permission to
16 even record your teacher talking --

17 THE COURT: No, no. I mean the school would -- would
18 video tape the --

19 PROSPECTIVE JUROR NO. 076: No.

20 THE COURT: -- lectures. They don't do that at UNLV?

21 PROSPECTIVE JUROR NO. 076: No.

22 THE COURT: Really?

23 PROSPECTIVE JUROR NO. 076: Huh-uh.

24 THE COURT: All right. Any follow up?

25 MS. McAMIS: No, Your Honor.

1 MS. BLUTH: Not on behalf of the State.

2 THE COURT: All right. Go ahead and go back out into
3 the hallway and please don't discuss with the other jurors what
4 we just discussed in here.

5 PROSPECTIVE JUROR NO. 076: Uh-huh.

6 THE COURT: All right. Thank you.

7 PROSPECTIVE JUROR NO. 076: Thank you.

8 THE MARSHAL: Right this way, ma'am.

9 (Outside the presence of Prospective Juror No. 76)

10 THE COURT: I don't know why she didn't say all that
11 before, number one. And, number two, I don't know, don't they
12 video -- I mean, when I was in college, they videotaped
13 lectures. So I don't know why she can't make up the lecture
14 classes. I mean, if he's just demonstrating something, let's be
15 mindful of her exam, though.

16 MS. BLUTH: Yeah, I mean, we --

17 MR. HAMNER: I don't have a problem --

18 MS. BLUTH: The only thing is --

19 MR. HAMNER: -- letting her go.

20 MS. BLUTH: -- we let all those other full-time
21 students go. I just -- I -- she must just be shy because how
22 does she have those -- that -- a full-time student, and we're
23 hearing about it on day 3 to that degree, you know what I mean?

24 THE COURT: Well, she said a full-time student, but
25 she never raised her hand --

1 MS. BLUTH: Right.

2 THE COURT: -- to be excused for hardship.

3 MS. BLUTH: Right.

4 MR. FIGLER: And she never said anything about she
5 having an exam next -- this week, or anything like that.

6 THE COURT: Right.

7 MR. FIGLER: I mean, that's the first time we're
8 hearing of it --

9 MS. McAMIS: Right.

10 MR. FIGLER: -- and she could have brought that up on
11 Monday --

12 THE COURT: Right. I mean, I'm inclined not to excuse
13 her, but if you guys -- but if we -- if she doesn't get excused
14 to let her do her exam tomorrow and start later, or something
15 like that. What do you guys think?

16 MS. BLUTH: Well you have -- did she say her exam's at
17 8:30?

18 THE COURT: Yeah.

19 MS. BLUTH: Oh. And you have criminal calendar
20 tomorrow; right?

21 THE COURT: Right.

22 MS. BLUTH: I mean, am I too much of a softy? If I
23 were in her shoes, I'd be having a panic attack missing that
24 much school. Am I too nice?

25 MS. McAMIS: No. I would probably --

1 THE COURT: I was thinking --
2 MS. McAMIS: -- be the same.
3 THE COURT: -- more of a nerd, but whatever.
4 MR. HAMNER: They're not mutually exclusive.
5 MS. BLUTH: I also brought it up --
6 MR. HAMNER: They're not mutually exclusive. She can
7 be a --
8 MS. McAMIS: But I would have brought it up --
9 MR. HAMNER: -- panicky person --
10 MS. McAMIS: -- the first day --
11 MR. HAMNER: -- and a nerd.
12 MS. McAMIS: -- like, and I -- I would know my exam
13 schedule, also.
14 MS. BLUTH: Yeah.
15 THE COURT: Well, also, I would be freaked out about
16 not studying for the exam. Not be like, oh, I'm just studying
17 in the hallway for my --
18 MS. McAMIS: Yeah.
19 THE COURT: -- exam.
20 MS. BLUTH: I know. It's bizarre. But, you guys, I
21 think we should let her go.
22 MR. HAMNER: I don't have a problem letting her go.
23 MS. McAMIS: I'll submit it.
24 MR. HAMNER: Here's the thing, we still have three
25 left, and that's if we're doing a full ten strikes.

1 THE COURT: Right.

2 MR. HAMNER: So even if we shrink it down, down to 32,
3 we're still in the clear by another three people. And it sounds
4 like --

5 THE COURT: So you're saying we should let her go?

6 MR. HAMNER: I would let her go. I would -- I mean,
7 that -- that would suck if I was a student and I'm trying to
8 take midterms. And I would hate to have to not be able to
9 finish my classes within a semester on time because of jury duty
10 for -- for --

11 THE COURT: Yeah, but now we have to qualify a whole
12 other person.

13 MS. McAMIS: That's correct.

14 MS. BLUTH: We'll be quick.

15 MR. HAMNER: We'll be quick with it. I mean they --
16 they've been listening. They know the drills.

17 THE COURT: All right. I guess we'll excuse her,
18 then. Kenny, bring her to the --

19 THE MARSHAL: Side?

20 THE COURT: -- side.

21 THE MARSHAL: Okay. Her, as well as Mr. Sorensen?

22 THE COURT: Right, the diabetic.

23 THE MARSHAL: Okay. Will do.

24 THE CLERK: So Sorensen is leaving for good, though.

25 THE COURT: Right.

1 THE CLERK: Okay.

2 THE COURT: But make Sorensen call you in case we run
3 out of people and need him to come back after his doctor's
4 appointment because he doesn't need to listen to all this.

5 MS. McAMIS: Okay.

6 THE COURT: Okay. And then Kenny, bring them all in.

7 THE MARSHAL: Yes, Judge.

8 MR. HAMNER: Her name is Chelsea; right?

9 MS. BLUTH: Yeah, Chelsea Bellino.

10 (Prospective jury reconvened at 12:03 p.m.)

11 THE COURT: All right. Court is now back in session.
12 The record should reflect the presence of the State, the
13 defendant and her counsel, the officers of the court, and the
14 ladies and gentlemen of the prospective jury panel.

15 And I just wanted to follow up with Mr. Kaehler. And,
16 sir, you had indicated that you had recognized in hindsight, or
17 you later recognized the name of Dr. Maller; is that right?

18 PROSPECTIVE JUROR NO. 101: Yes.

19 THE COURT: Okay. And your son had seen Dr. Maller a
20 few times in 2014, 2015 period; is that correct?

21 PROSPECTIVE JUROR NO. 101: Yes.

22 THE COURT: Is there anything about that that would
23 cause you to automatically consider the testimony of Dr. Maller
24 differently from any other witness, or can you keep an open mind
25 and listen to it and evaluate it for credibility, just like you

1 would the testimony of any other witness?

2 PROSPECTIVE JUROR NO. 101: Yes, I can keep an open
3 mind.

4 THE COURT: All right. Thank you. Thank you for
5 bringing that to our attention.

6 PROSPECTIVE JUROR NO. 101: Uh-huh.

7 THE COURT: And if the court clerk would please call
8 up the next prospective juror.

9 THE CLERK: Sara Leishman.

10 THE COURT: I know. It's like a bad horror movie.
11 They just keep getting picked off.

12 PROSPECTIVE JUROR NO. 137: Right here?

13 THE MARSHAL: Yes, ma'am.

14 THE COURT: And it's now afternoon. Good afternoon,
15 ma'am. What do you do for a living?

16 PROSPECTIVE JUROR NO. 137: Hi. I'm a cosmetologist.

17 THE COURT: A cosmetologist?

18 PROSPECTIVE JUROR NO. 137: Yes.

19 THE COURT: Okay. And where do you work?

20 PROSPECTIVE JUROR NO. 137: I actually don't
21 currently. I am looking for a new job.

22 THE COURT: Okay. And are you married, domestic
23 partner, significant other?

24 PROSPECTIVE JUROR NO. 137: Significant other.

25 THE COURT: What does that person do?

1 PROSPECTIVE JUROR NO. 137: He works at Bimbo Bakery,
2 which is like a bread company.

3 THE COURT: Okay. And do you have any children?

4 PROSPECTIVE JUROR NO. 137: No children.

5 THE COURT: Have any children ever lived in your home,
6 like nieces and nephews --

7 PROSPECTIVE JUROR NO. 137: No.

8 THE COURT: -- anything like that? And have you ever
9 been a juror before?

10 PROSPECTIVE JUROR NO. 137: I haven't.

11 THE COURT: Have you or anyone close to you been
12 arrested, charged or accused of a crime, or the victim of a
13 crime?

14 PROSPECTIVE JUROR NO. 137: I have.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 137: I -- I have two
17 misdemeanors that are underage alcohol tickets.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 137: And I pled guilty to them.

20 THE COURT: Okay. So you had to go down to -- was
21 that here in Clark County?

22 PROSPECTIVE JUROR NO. 137: It wasn't. It was in Utah
23 County.

24 THE COURT: Okay. Did you -- was -- I'm assuming they
25 have a juvenile court?

1 PROSPECTIVE JUROR NO. 137: I honestly don't remember.

2 THE COURT: Okay. But you showed up and you pled
3 guilty?

4 PROSPECTIVE JUROR NO. 137: Yeah.

5 THE COURT: All right. And were you like at a party
6 or something like that when you --

7 PROSPECTIVE JUROR NO. 137: Yeah. It was just a
8 party, yeah.

9 THE COURT: Okay. Any feelings as to how you were
10 treated in the system in connection with those misdemeanors?

11 PROSPECTIVE JUROR NO. 137: I feel like I was treated
12 fair.

13 THE COURT: Okay. Any connection in your past with
14 CPS or the foster care system, anything like that?

15 PROSPECTIVE JUROR NO. 137: No.

16 THE COURT: Okay. You've been sitting, this is now
17 our third day, you've been sitting over there in the audience.
18 Have you heard the questions that I've asked, Ms. Bluth has
19 asked, and Ms. McAmis has asked?

20 PROSPECTIVE JUROR NO. 137: Yes.

21 THE COURT: Okay. Did you hear any of us ask a
22 question that as you've sat in the audience you thought I'd have
23 to raise my hand and answer that question?

24 PROSPECTIVE JUROR NO. 137: Honestly, no.

25 THE COURT: Okay. Do you feel like any of us have

1 asked any questions or said anything that you had strong
2 feelings about, one way or the other?

3 PROSPECTIVE JUROR NO. 137: No. I kind of, you know,
4 I'm just the same as everybody else, I guess, where I'm just in
5 the middle. I don't really know anything --

6 THE COURT: Okay.

7 PROSPECTIVE JUROR NO. 137: -- without like the
8 evidence.

9 THE COURT: All right. So if you're selected as a
10 juror, can you keep an open mind, listen to all the evidence
11 that's presented and base your verdict just upon the law that --

12 PROSPECTIVE JUROR NO. 137: Yes.

13 THE COURT: -- I read to you --

14 PROSPECTIVE JUROR NO. 137: Yes.

15 THE COURT: -- and the evidence in this case?

16 PROSPECTIVE JUROR NO. 137: Yes.

17 THE COURT: Do you feel like you're the kind of person
18 that would make a good juror?

19 PROSPECTIVE JUROR NO. 137: I think so.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR NO. 137: I would try.

22 THE COURT: Okay. Anything else, based on our
23 questions and discussions that we've had with all of the other
24 prospective jurors, that we ought to know about you in making a
25 determination as to whether or not you would be the right person

1 to be a juror on this case?

2 PROSPECTIVE JUROR NO. 137: Not that I can think of.

3 THE COURT: Okay. And how long have you lived here in
4 Clark County?

5 PROSPECTIVE JUROR NO. 137: I've been here for almost
6 four years.

7 THE COURT: Okay. And you moved from Utah; is that
8 right?

9 PROSPECTIVE JUROR NO. 137: Correct. Yes.

10 THE COURT: Ms. Bluth, or the State, you can follow up
11 just with this one prospective juror.

12 MR. HAMNER: Okay. Thank you very much.

13 How are you?

14 PROSPECTIVE JUROR NO. 137: I'm good, thank you.

15 MR. HAMNER: I finally get to talk now. So I'll --
16 I'll kind of cut to the chase on some of these questions. Do
17 you have any kids or anything like that?

18 PROSPECTIVE JUROR NO. 137: No, no kids.

19 MR. HAMNER: Okay. So any thoughts on the criminal
20 justice system, whether you think it works, if it doesn't,
21 things like that?

22 PROSPECTIVE JUROR NO. 137: I think it definitely has
23 its flaws, but I can't pinpoint like a certain thing, you know,
24 like I wouldn't know how to fix it, so --

25 MR. HAMNER: Okay. Let me ask you about the CSI

1 question, you know, have you ever watched any of those type of
2 shows?

3 PROSPECTIVE JUROR NO. 137: I do. I forget what it's
4 called, but just -- just a show, like CIS or something.

5 MR. HAMNER: Okay. Well, I guess the big thing is,
6 look, can you kind of come in with an open mind and really just
7 listen to what these witnesses have to say about the way they
8 collected evidence in this case rather than maybe having the
9 expectation with, well, that's now how they did it on CSI?

10 PROSPECTIVE JUROR NO. 137: Yeah, I can't definitely
11 have an open mind.

12 MR. HAMNER: Okay. Cool. Let me turn to the
13 following the law question. Jacqueline kind of posed that
14 question about marijuana. You know, some people really believe
15 in it, some people don't, but the bottom line is if there was a
16 law out there that you just personally really didn't agree with,
17 you personally didn't agree with it, if you're selected as a
18 juror, could you still follow it? If you're instructed that's
19 what the law is, even if you personally don't agree with it,
20 will you follow the law if selected?

21 PROSPECTIVE JUROR NO. 137: Yes.

22 MR. HAMNER: Okay. So you can -- you can apply those
23 facts, and even if you think the outcome is totally wrong
24 because you don't agree with the law, you would still apply the
25 -- the facts to the law as you were instructed?

1 PROSPECTIVE JUROR NO. 137: Yeah, based on the law.

2 MR. HAMNER: Do you have any expectations about how a
3 child would kind of talk with strangers or in a group about
4 something like child abuse or sexual abuse, anything like that?

5 PROSPECTIVE JUROR NO. 137: Any expectations of the
6 children?

7 MR. HAMNER: Yeah. Like earlier Jacqueline was
8 talking about, you know, do you have an expectation that they'd
9 be sobbing or super shy or is every case different?

10 PROSPECTIVE JUROR NO. 137: I think definitely
11 nervous.

12 MR. HAMNER: Okay.

13 PROSPECTIVE JUROR NO. 137: You know, because it's
14 like the court can be intimidating, especially for a child.

15 MR. HAMNER: Okay.

16 PROSPECTIVE JUROR NO. 137: So nervous.

17 MR. HAMNER: Could you see, though, another kid
18 behaving totally differently given the fact that maybe every --

19 PROSPECTIVE JUROR NO. 137: Yeah, every child might
20 act different --

21 MR. HAMNER: Okay.

22 PROSPECTIVE JUROR NO. 137: -- you know.

23 MR. HAMNER: Did you grow up with siblings or
24 anything --

25 PROSPECTIVE JUROR NO. 137: Yes.

1 MR. HAMNER: -- like that? Were you guys all the same
2 personality, or were you guys a little different?

3 PROSPECTIVE JUROR NO. 137: Different. Different.

4 MR. HAMNER: Okay. Did you kind of share things with
5 your parents in different ways, you know --

6 PROSPECTIVE JUROR NO. 137: Yes.

7 MR. HAMNER: Okay. Any negative experiences with law
8 enforcement that -- I mean, aside from kind of mentioning, I
9 guess, getting --

10 PROSPECTIVE JUROR NO. 137: Not --

11 MR. HAMNER: -- the drinking --

12 PROSPECTIVE JUROR NO. 137: Not anything like out of
13 control, maybe here and there, but not anything, you know, I
14 don't know, not anything crazy.

15 MR. HAMNER: Okay. I know you're not a parent, but
16 you've heard us kind of talk a lot about this -- this line.

17 PROSPECTIVE JUROR NO. 137: Yeah.

18 MR. HAMNER: You know, do you think kids' parents can
19 do whatever they want with their kids, or is there some point --
20 is there a line where --

21 PROSPECTIVE JUROR NO. 137: There's a line.

22 MR. HAMNER: Okay. Okay. All right. I have no
23 further questions. I'll pass for cause.

24 THE COURT: All right. Thank you. Ms. McAmis, you
25 may follow up with this prospective juror, as well as the rest

1 of the panel.

2 MS. McAMIS: Thank you.

3 Ms. Leishman; right?

4 PROSPECTIVE JUROR NO. 137: Yes, ma'am.

5 MS. McAMIS: Thank you. You can correct me if I'm
6 wrong.

7 PROSPECTIVE JUROR NO. 137: Okay.

8 MS. McAMIS: Okay. You were just asked about is there
9 a line for parents. What -- what's that line, to you?

10 PROSPECTIVE JUROR NO. 137: I definitely think like
11 how you were asking everybody like implements, I don't think
12 that those should be used at all. Just -- just the same as
13 everybody, just swats, nothing more than that.

14 MS. McAMIS: Okay. If you -- or let me ask it this
15 way. If a child is spanked and there is an implement used, is
16 that automatically child abuse to you?

17 PROSPECTIVE JUROR NO. 137: I don't know. That's kind
18 of a hard one because it just depends on how severe, I guess, it
19 is, you know?

20 MS. McAMIS: What do you mean by that?

21 PROSPECTIVE JUROR NO. 137: Like bruises, maybe.
22 Yeah, just bruises or welts or anything like that.

23 MS. McAMIS: Okay.

24 PROSPECTIVE JUROR NO. 137: But I guess that can be
25 the same as someone using their hands, you know, so I don't

1 know. Yeah.

2 MS. McAMIS: Okay. Let me ask you this. When you
3 were growing up, you and your siblings, your parents wanted to
4 impose structure or discipline, they didn't like what you were
5 doing, how did they discipline you?

6 PROSPECTIVE JUROR NO. 137: Yeah, I guess they -- my
7 parents kind of would like smack us with the back of a brush,
8 but not, I mean, not like hard or super aggressive, not to like
9 leave welts, just --

10 MS. McAMIS: Like a hairbrush?

11 PROSPECTIVE JUROR NO. 137: Yeah.

12 MS. McAMIS: Oh, okay. Okay. Sorry, I just
13 [inaudible]. Okay. Did you think that was child abuse?

14 PROSPECTIVE JUROR NO. 137: I mean, at the time I did,
15 but now I don't, you know. I mean, I look back and I'm like
16 it's -- it really wasn't that bad.

17 MS. McAMIS: Okay. So you had a little more
18 perspective --

19 PROSPECTIVE JUROR NO. 137: Yeah.

20 MS. McAMIS: -- as you got older. Okay. Did you ever
21 call the police on your parents about it?

22 PROSPECTIVE JUROR NO. 137: No. No.

23 MS. McAMIS: Nothing that serious?

24 PROSPECTIVE JUROR NO. 137: No.

25 MS. McAMIS: Okay. All right. Let me ask you this.

1 I asked a few other people this. As Mr. Solander sits, she's
2 just charged with -- with things. That's it. Charges. Do you
3 have an opinion about whether she's guilty or not guilty?

4 PROSPECTIVE JUROR NO. 137: No. I don't have an
5 opinion.

6 MS. McAMIS: Okay. Do you have an opinion about, you
7 know, she must be guilty of something because she's charged with
8 46 different counts?

9 PROSPECTIVE JUROR NO. 137: I mean, when you put it at
10 like that, it kind of makes me think that just because you said
11 it --

12 MS. McAMIS: Okay.

13 PROSPECTIVE JUROR NO. 137: -- but I didn't think that
14 prior.

15 MS. McAMIS: Okay. Now, that that's out there, do you
16 have an opinion about her -- her guilt or innocence as she sits
17 before you?

18 PROSPECTIVE JUROR NO. 137: Not really. I think I
19 just have to hear both sides.

20 MS. McAMIS: Okay. Let me ask you this. If you
21 listen to the evidence that the State presents and you are
22 convinced beyond a reasonable doubt as to one count, does that
23 mean that Mrs. Solander is going to be guilty of all the
24 remaining counts?

25 PROSPECTIVE JUROR NO. 137: No.

1 MS. McAMIS: Why not?

2 PROSPECTIVE JUROR NO. 137: I guess if they're -- they
3 have evidence and -- I don't know how to explain what I'm trying
4 to say, but I don't know --

5 MS. McAMIS: I appreciate --

6 PROSPECTIVE JUROR NO. 137: -- how to say it.

7 MS. McAMIS: -- you trying. Just --

8 PROSPECTIVE JUROR NO. 137: Yeah. I can't think of --

9 MS. McAMIS: -- honestly what you think.

10 PROSPECTIVE JUROR NO. 137: I guess it's just because
11 like if there's evidence just for that one count and I agree
12 with that she might be guilty for that one count, that doesn't
13 mean that there's evidence for every single one of those counts.
14 You know what I mean?

15 MS. McAMIS: Okay. So you're comfortable holding the
16 State to their burden of proof beyond a reasonable doubt as to
17 every single element of every single count that she's charged
18 with?

19 PROSPECTIVE JUROR NO. 137: Yeah.

20 MS. McAMIS: Okay. Let me ask you this. As far as,
21 you know, you may be asked to assess and -- and weigh different
22 evidence in this case if you're selected as a juror, meaning
23 listen to different testimony, and you may hear from child
24 witnesses in this case. Are you going to hold it against the
25 defense if I cross-examine a child witness to potentially

1 inquire if they're exaggerating or lying about something? Is
2 that something you'll hold against me or Mrs. Solander?

3 PROSPECTIVE JUROR NO. 137: No, because that would
4 just be like questioning them. It's just part of the process.

5 MS. McAMIS: Okay. And although you don't have
6 children, you've certainly been around children; right?

7 PROSPECTIVE JUROR NO. 137: Yes.

8 MS. McAMIS: And you were a child at one point; right?

9 PROSPECTIVE JUROR NO. 137: Uh-huh.

10 MS. McAMIS: Do children sometimes exaggerate?

11 PROSPECTIVE JUROR NO. 137: Yes.

12 MS. McAMIS: Why?

13 PROSPECTIVE JUROR NO. 137: Imagination, sometimes
14 they might be scared, maybe they heard it from somebody, so I
15 don't know.

16 MS. McAMIS: They might just be repeating something
17 else they've --

18 PROSPECTIVE JUROR NO. 137: Yeah.

19 MS. McAMIS: -- read once?

20 PROSPECTIVE JUROR NO. 137: Yeah.

21 MS. McAMIS: Okay. All right. Now, if they
22 exaggerate one thing, does that mean that -- let me ask it this
23 way. If you believe one thing that a person says, does that
24 mean everything else they say is true?

25 PROSPECTIVE JUROR NO. 137: No.

1 MS. McAMIS: Okay. What kinds of things factor into
2 your determination about when someone is exaggerating versus
3 telling the truth or even just outright lying?

4 PROSPECTIVE JUROR NO. 137: Just like facts or
5 evidence.

6 MS. McAMIS: Okay. And so you're -- if you were
7 selected as a juror, you would be comfortable in -- in holding
8 the State to their burden of proof beyond a reasonable doubt, to
9 present facts and evidence out of every single one of the
10 counts --

11 PROSPECTIVE JUROR NO. 137: Yes.

12 MS. McAMIS: -- is that fair?

13 PROSPECTIVE JUROR NO. 137: Yes.

14 MS. McAMIS: Okay. All right. Thank you, Ms.
15 Leishman.

16 PROSPECTIVE JUROR NO. 137: You're welcome.

17 MS. McAMIS: If you would, would you please pass it
18 right next to you, this direction, to Mr. Pistana.

19 PROSPECTIVE JUROR NO. 077: Pistana.

20 MS. McAMIS: Pistana.

21 PROSPECTIVE JUROR NO. 077: Close. Good enough.

22 MS. McAMIS: What's the -- actually, do you mind,
23 what's the origin of that? What is that?

24 PROSPECTIVE JUROR NO. 077: It's -- it's Portuguese
25 and Italian.

1 MS. McAMIS: Okay. Just curiosity.

2 PROSPECTIVE JUROR NO. 077: There's some Irish in
3 there somewhere. I don't know.

4 MS. McAMIS: All right. Interesting. You shared with
5 us you have two kids. They're still at home.

6 PROSPECTIVE JUROR NO. 077: Yes.

7 MS. McAMIS: You shared with us you've spanked your
8 kids before; right?

9 PROSPECTIVE JUROR NO. 077: Yeah, a couple times.

10 MS. McAMIS: Sure. And you were spanked as a child;
11 right?

12 PROSPECTIVE JUROR NO. 077: A couple times, yeah.
13 Yeah. Yeah, I mean nothing, probably like everyone said,
14 probably deserved it. But I don't really remember, but I do
15 know I was spanked a little bit.

16 MS. McAMIS: Okay. Do you have any philosophical
17 problem with -- with spanking in general as a discipline method?

18 PROSPECTIVE JUROR NO. 077: No. Not with -- not with
19 like an open hand, slight tap, but you know, pretty consistent,
20 I think, with a lot of -- you know, once -- if -- you know,
21 there should be no bruising or anything like that. I mean it's,
22 to me it's like a warning shot, really.

23 MS. McAMIS: Okay.

24 PROSPECTIVE JUROR NO. 077: It's like -- that's kind
25 of the way I --

1 MS. McAMIS: Okay. Because you don't want --
2 PROSPECTIVE JUROR NO. 077: -- I would discipline.
3 MS. McAMIS: -- to see children going --
4 PROSPECTIVE JUROR NO. 077: Yeah.
5 MS. McAMIS: -- to the hospital --
6 PROSPECTIVE JUROR NO. 077: Right.
7 MS. McAMIS: -- with broken bones or -- or things like
8 that; right?
9 PROSPECTIVE JUROR NO. 077: Correct.
10 MS. McAMIS: Okay. That's a fair enough point. Let
11 me ask you this. I'm sorry, he's smiling.
12 PROSPECTIVE JUROR NO. 077: I've been talked three
13 days, so they're like, what?
14 MS. McAMIS: Fair enough. Is it kind of uncomfortable
15 to speak up in -- in a public setting like this?
16 PROSPECTIVE JUROR NO. 077: No.
17 MS. McAMIS: No?
18 PROSPECTIVE JUROR NO. 077: No.
19 MS. McAMIS: You're okay with it?
20 PROSPECTIVE JUROR NO. 077: Yeah, I mean, I -- I --
21 for what I do for work. I do presentations in groups and, you
22 know.
23 MS. McAMIS: Okay. I --
24 PROSPECTIVE JUROR NO. 077: Hundreds of -- yeah, I
25 have no problem with public speaking.

1 MS. McAMIS: So you were asked questions about how you
2 would expect a child witness to testify, and if they might
3 testify in a number of different ways. My question to you is
4 Mrs. Solander has a constitutional right to choose whether or
5 not she chooses to testify. Are you going to hold it against
6 her if she chooses not to testify?

7 PROSPECTIVE JUROR NO. 077: No.

8 MS. McAMIS: And why not?

9 PROSPECTIVE JUROR NO. 077: It's her -- it's her
10 right. I mean, that's why we have laws, so, yeah, I mean,
11 it's --

12 MS. McAMIS: Do you recognize there might be reasons
13 why people who perhaps don't have your public speaking
14 experience may not want to testify?

15 PROSPECTIVE JUROR NO. 077: Yeah. I mean --

16 MS. McAMIS: People get nervous?

17 PROSPECTIVE JUROR NO. 077: Nervous, they're shy.

18 MS. McAMIS: Like do people sometimes not come across
19 very well?

20 PROSPECTIVE JUROR NO. 077: Yep. Sure.

21 MS. McAMIS: Okay.

22 PROSPECTIVE JUROR NO. 077: Yeah.

23 MS. McAMIS: And do you understand Mrs. Solander has
24 no burden of proof, so she has no legal obligation to get up
25 onto the stand if she chooses not to if the State has not met

1 their burden? Would you hold that against her if she chooses
2 not to take the stand if the State's not met their burden of
3 proof as to every single count?

4 PROSPECTIVE JUROR NO. 077: No, I would not.

5 MS. McAMIS: All right. Do you have anything else
6 that you wanted to, you know, respond, did I say or ask a
7 question to somebody else where you had any kind of additional
8 thoughts?

9 PROSPECTIVE JUROR NO. 077: No.

10 MS. McAMIS: Okay. Fair enough. Would you mind
11 passing the microphone to the gentleman right next to you on the
12 end.

13 It's Mr. Gilbert; right?

14 PROSPECTIVE JUROR NO. 081: Yes, ma'am.

15 MS. McAMIS: Okay. I hadn't had an opportunity to
16 speak with you. Let me ask you this. You've had some
17 experience in raising children; right?

18 PROSPECTIVE JUROR NO. 081: Yes.

19 MS. McAMIS: Did you also have experience in potty
20 training your children?

21 PROSPECTIVE JUROR NO. 081: I changed a lot of
22 diapers.

23 MS. McAMIS: Okay. Any --

24 PROSPECTIVE JUROR NO. 081: Yes, I did.

25 MS. McAMIS: All right. Tell me about your experience

1 in potty training your children.

2 PROSPECTIVE JUROR NO. 081: You just keep showing them
3 how and encourage them to -- to do it. You -- you can't force a
4 kid to be potty trained. I mean --

5 MS. McAMIS: Okay.

6 PROSPECTIVE JUROR NO. 081: -- so, you know, you just,
7 like I say, you just be persistent.

8 MS. McAMIS: After -- well, let me ask you this. When
9 you were teaching your children to potty train, did they
10 automatically get it?

11 PROSPECTIVE JUROR NO. 081: No.

12 MS. McAMIS: Did they have accidents afterwards,
13 even --

14 PROSPECTIVE JUROR NO. 081: Yes.

15 MS. McAMIS: -- when they did learn? And is there
16 anything wrong with that?

17 PROSPECTIVE JUROR NO. 081: No. It's going to happen.
18 I mean, that's just human nature, or biological nature,
19 actually.

20 MS. McAMIS: That's a fair point. By a show of hands,
21 how many people have had to potty train children? Thank you.
22 And if you would just relax now.

23 By a show of hands, was it really easy to -- who had a
24 really easy time potty training their children? Okay. So we
25 had -- there's a significant difference in the show of hands;

1 right? Is it fair to say that potty training children is kind
2 of a -- an ongoing task? I'm seeing lots of nods and -- and
3 yesses.

4 Do you expect the children to be, you know, accident
5 free immediately? Okay. And let me ask the panel this -- just
6 for the record, that was lots of noes, no one was disagreeing
7 with that.

8 Let me ask you -- let me ask you this. Of the people
9 who engaged in the potty training of their children, did any of
10 your children suffer previous abuse? Seeing no hands.

11 So no one has any experience with how any prior abuse
12 and neglect may impact their -- a child's ability to be potty
13 trained or remain potty trained? That was, just for the record,
14 that was a lot of noes. Fair enough. Thank you.

15 Let me -- Court's brief indulgence. Would you please
16 pass the microphone behind you to the gentleman in the blue
17 shirt, just in this row?

18 Mr. Lombardo?

19 PROSPECTIVE JUROR NO. 094: Yes.

20 MS. McAMIS: Okay. Thank you. I've asked a fair
21 amount of questions about just different kinds of parenting
22 methods, and now I've started asking about potty training. Were
23 you at all involved in the potty training of your daughters?

24 PROSPECTIVE JUROR NO. 094: Yes.

25 MS. McAMIS: Okay. Can you tell me about that?

1 PROSPECTIVE JUROR NO. 094: Just, you know, I
2 encouraged them and rewarded them when they -- when they went to
3 the toilet. And you know, it was just normal, you know, raising
4 of children.

5 MS. McAMIS: Okay.

6 PROSPECTIVE JUROR NO. 094: I went through it when I
7 was a baby, so I -- I didn't find it to be overly difficult.

8 MS. McAMIS: All right. And you -- it was -- well,
9 strike that. That's actually very nice. It's encouraging.
10 Would you pass the microphone to Mr. Martinez right next to you
11 in the red shirt?

12 Good morning, Mr. Martinez.

13 PROSPECTIVE JUROR NO. 093: Hello.

14 MS. McAMIS: How many children do you have, if any?

15 PROSPECTIVE JUROR NO. 093: Three.

16 MS. McAMIS: How old are they?

17 PROSPECTIVE JUROR NO. 093: 14, 5, and 4.

18 MS. McAMIS: Excellent. Your four year old, is your
19 four year old potty trained?

20 PROSPECTIVE JUROR NO. 093: He goes to the bathroom.
21 He does not stand up when he pees. He's still sitting down.

22 MS. McAMIS: Okay. Well, is there anything wrong with
23 that?

24 PROSPECTIVE JUROR NO. 093: No. Again, he's a little
25 guy, so he doesn't want to stand there and -- he'd -- we don't

1 have a little potty anymore, so we -- he's using the regular
2 potty with his little potty seat, so he's sitting on the potty
3 right now.

4 MS. McAMIS: Okay. But part of potty training is --
5 is having toilets for them, or little potties --

6 PROSPECTIVE JUROR NO. 093: Correct. And I've had
7 those for all of them, it's just we got rid of it to make it
8 easier for him to use the stool and stand and -- and try to pee
9 on -- using the regular toilet. I don't like the little
10 potties. I thought they were disgusting, so as soon as I -- I
11 got rid of it. He's using the regular potty, so I got rid of
12 the little one.

13 MS. McAMIS: Okay. All right. But -- but potty
14 training is -- is kind of a task; right? You've had three --

15 PROSPECTIVE JUROR NO. 093: Yes, correct.

16 MS. McAMIS: -- kids now?

17 PROSPECTIVE JUROR NO. 093: Uh-huh.

18 MS. McAMIS: And it takes a little while to actually
19 potty train a child?

20 PROSPECTIVE JUROR NO. 093: Correct.

21 MS. McAMIS: And it's -- forgive me for just assuming,
22 but doesn't sound like your kids have any abuse or neglect in
23 their past; right?

24 PROSPECTIVE JUROR NO. 093: No.

25 MS. McAMIS: So they didn't have any additional

1 barriers to learning how to use the potty or --

2 PROSPECTIVE JUROR NO. 093: Correct.

3 MS. McAMIS: -- or -- okay. All right. But you have
4 some experience in -- in dealing with abuse and neglect with
5 children you shared with us; right?

6 PROSPECTIVE JUROR NO. 093: Yes. I'm not -- I don't
7 know the extent of their abuse or anything, but I did volunteer
8 for foster children, yes.

9 MS. McAMIS: Okay. And your experience was that the
10 kids had a really hard time being separated from their siblings;
11 right?

12 PROSPECTIVE JUROR NO. 093: Correct.

13 MS. McAMIS: And that's one of the things that you
14 were so generous about volunteering is being able to have that
15 time for the kids to actually be together --

16 PROSPECTIVE JUROR NO. 093: Yes.

17 MS. McAMIS: -- right?

18 PROSPECTIVE JUROR NO. 093: Uh-huh.

19 MS. McAMIS: Is it -- is it fair to say that it's
20 really important for siblings to actually be together?

21 PROSPECTIVE JUROR NO. 093: Yes, especially when
22 they're having a hard time in those situations. I think it's --
23 it's more -- they don't have anybody around that they can take
24 -- that you know, will listen to them. I feel like the reason I
25 had to volunteer was because some of the foster parents were

1 just doing it to get a paycheck --

2 MS. McAMIS: Uh-huh.

3 PROSPECTIVE JUROR NO. 093: -- so I don't think they
4 were really worried about the best interest of the child,
5 unfortunately. And I know that's also not the case for all of
6 them. I do know foster parents that are taking care of children
7 and they're great parents. So I know the difference -- there is
8 two different -- differences.

9 MS. McAMIS: Sure. And it's very admirable for a
10 foster parent to actually be able to take in a -- a sibling
11 group and keep them together; right?

12 PROSPECTIVE JUROR NO. 093: Yes.

13 MS. McAMIS: Because otherwise then they have to rely
14 on generous volunteers like yourself --

15 PROSPECTIVE JUROR NO. 093: Uh-huh.

16 MS. McAMIS: -- and try to have visitation with the --
17 their siblings; right?

18 PROSPECTIVE JUROR NO. 093: Right.

19 MS. McAMIS: Okay. All right. All right. So I have
20 a question for everyone, if you would indulge me. When you
21 potty trained your children and you were going through that
22 process, did anybody have any children who continued to wet the
23 bed during that process? Okay. You did as well?

24 PROSPECTIVE JUROR NO. 092: Yes.

25 MS. McAMIS: Okay. So, Mr. Martinez, what did you do

1 when your child wet the bed even though they were still learning
2 to do the potty training?

3 PROSPECTIVE JUROR NO. 093: Oh. Right now my younger
4 son still does wet the bed. His mother bought him like wee-wee
5 pads --

6 MS. McAMIS: Okay.

7 PROSPECTIVE JUROR NO. 093: -- that she would put on
8 the bed. He sleeps in his own bed, but that's just to protect
9 the --

10 MS. McAMIS: Mattress.

11 PROSPECTIVE JUROR NO. 093: -- the mattress and
12 everything, yes. He's four, so I don't have a problem with him
13 doing that. It's just before that, we would take his diapers
14 off and give him underwear, or put that over his diaper so he
15 would feel the -- the pee when it came out so you know, it
16 didn't get soaked in the diaper and he would actually be
17 uncomfortable, so he would not want to pee his pants anymore.
18 So he doesn't do it during the day, just at -- at night time. I
19 think we take him -- his mother wakes up twice, three times
20 sometimes, in the night just to prevent him from wetting the
21 bed. She'll take him to the bathroom and -- and have him go
22 potty.

23 MS. McAMIS: Okay. Of the other people who raised
24 their hands who -- who had a similar experience, did anyone deal
25 with bed wetting when the child was older than four? All right.

1 Would you mind passing the microphone to perhaps the young lady
2 next to you?

3 How old is your child?

4 PROSPECTIVE JUROR NO. 092: My son -- I -- I'm trying
5 to remember, he was probably around seven and he was still
6 having on or off, you know, wetting the bed issues. Yeah, it
7 was a while.

8 MS. McAMIS: How did you handle that?

9 PROSPECTIVE JUROR NO. 092: He was an extremely deep
10 sleeper, so it was almost impossible to wake him up. I tried to
11 wake him up in the middle of the night to pee, but he -- to this
12 day, he's 15, I can't wake him up. So it -- it was difficult.
13 Just changed sheets, you know, try again tomorrow. Eventually,
14 it concerned me enough where I ended up talking to the
15 pediatrician about it. She recommended an alarm, the undies
16 that have the little device in there that would set off an alarm
17 when they peed, and it was a miracle worker because I think it
18 was a couple weeks of that and that was it.

19 MS. McAMIS: Okay. That's excellent.

20 PROSPECTIVE JUROR NO. 092: Uh-huh.

21 MS. McAMIS: So you went through, you know, trying to
22 figure it out on your own, give him the time --

23 PROSPECTIVE JUROR NO. 092: Yeah.

24 MS. McAMIS: -- try your at home remedies, and then
25 you ultimately got to have some help and you -- you sought

1 doctor's advice.

2 PROSPECTIVE JUROR NO. 092: Right.

3 MS. McAMIS: Is there anything wrong with that
4 approach?

5 PROSPECTIVE JUROR NO. 092: No. Huh-uh.

6 MS. McAMIS: Okay. Would you mind passing the
7 microphone to the -- to the lady in the pattern? Oh, it's
8 leaves. It's really pretty.

9 How old was your child when --

10 PROSPECTIVE JUROR NO. 131: He was probably about six.

11 MS. McAMIS: Okay.

12 PROSPECTIVE JUROR NO. 131: Yeah. And he was a deep
13 sleeper, but it's kind of hereditary in my family. My older
14 brother also had that same problem. You don't embarrass them,
15 you just change the sheets, then you start over the next day.
16 You know, you don't want to -- they're already embarrassed --

17 MS. McAMIS: Okay.

18 PROSPECTIVE JUROR NO. 131: -- to the fact that
19 they're wetting the bed.

20 MS. McAMIS: Okay.

21 PROSPECTIVE JUROR NO. 131: So it -- he eventually
22 outgrew it.

23 MS. McAMIS: How old was he when he outgrew it?

24 PROSPECTIVE JUROR NO. 131: Probably about seven --

25 MS. McAMIS: Okay. So it just --

1 PROSPECTIVE JUROR NO. 131: -- when he -- yeah, and it
2 wasn't every night. It was just --

3 MS. McAMIS: Sure.

4 PROSPECTIVE JUROR NO. 131: -- off and on. You could
5 vacuum in there and he wouldn't wake up, you know.

6 MS. McAMIS: Sounds like we got a lot of deep sleeping
7 boys --

8 PROSPECTIVE JUROR NO. 131: Yeah. Yeah.

9 MS. McAMIS: -- at home. Who else raised their hands,
10 if -- if you wouldn't mind. We -- could we please pass the
11 microphone to the lady in the blue long sleeve sweater, Ms.
12 Dehesa.

13 How old was yours?

14 PROSPECTIVE JUROR NO. 089: Well my son is seven --

15 MS. McAMIS: Okay.

16 PROSPECTIVE JUROR NO. 089: -- and he's -- he's still
17 having issues. And I have a daughter who's five, potty training
18 for her was like literally one week, done, never had an
19 accident. She's never had an accident to this day. And my son,
20 it's just been a continuous problem. He was probably 4 before
21 he was truly potty trained, and then he's -- he's having
22 additional -- aside from wetting the bed, he's also having some
23 GI issues where he's having constipation --

24 MS. McAMIS: Uh-huh.

25 PROSPECTIVE JUROR NO. 089: -- and unable to go to the

1 restroom and have bowel movements. So that's also causing the
2 additional, you know, having to, you know, wetting himself and
3 just constantly we're like did you go to the bathroom, did you
4 go to the bathroom, sit down, sit down. And to this day, we're
5 still having the issue.

6 I picked him up from school last week because he peed
7 on himself. And it was so bad where I'm like, yep, he's got an
8 extra change of clothes in his backpack, it happens. You just
9 have to be patient. They're embarrassed. You work with them
10 and say, hey, let's try it another day. You remember you have
11 to continuously go, you have to go before recess, you have to go
12 after recess, you have to go before lunch, you have to go after
13 lunch. We tell the teachers, we work with them on it, but it's
14 going to happen.

15 And he is at the point where we had to seek medical
16 assistance and is under the care of a GI doctor because it's
17 gotten to the point where it's no longer he -- it -- it's no
18 longer a physical thing, it's -- or I mean, it is a physical
19 thing where we're seeking help with that. So you just work with
20 it.

21 MS. McAMIS: Sounds like you're quite an active parent
22 in a very admirable way. So you have been working with your son
23 who is -- you said seven; right?

24 PROSPECTIVE JUROR NO. 089: Uh-huh.

25 MS. McAMIS: Okay. Excellent. Thank you. I'm not

1 always good with numbers. And just bed wetting happens, or
2 accidents happen with children; right?

3 PROSPECTIVE JUROR NO. 089: Yeah.

4 MS. McAMIS: And so you've actually taken the
5 initiative. You had your own at home remedies, but you
6 identified look, it's not working, so you are being more active.
7 You're proactive, in fact, you're going to the school and
8 identifying with the teachers; right?

9 PROSPECTIVE JUROR NO. 089: Yeah.

10 MS. McAMIS: You are, in fact, going a step further
11 and you are exhausting a kind of medical clearance to see if
12 there's another issue; right?

13 PROSPECTIVE JUROR NO. 089: Correct.

14 MS. McAMIS: And that's all something that reasonable
15 prudent parent would do; right? And you would expect that.

16 PROSPECTIVE JUROR NO. 089: I think so.

17 MS. McAMIS: Okay. All right. I appreciate that. Do
18 we have a few other hands raised? Would you mind passing this
19 -- the microphone to the front row to Ms. -- Ms. Schwartz.

20 How old was your eldest?

21 PROSPECTIVE JUROR NO. 057: I have a son that's old
22 right now. He's 15, and probably once every other week, he
23 still wets the bed.

24 MS. McAMIS: Okay. Do you know why?

25 PROSPECTIVE JUROR NO. 057: The -- so the -- the

1 doctors have told us that he is missing a hormone that, when we
2 sleep, our pee gets more concentrated in our kidneys, his does
3 not. So that, in combination with being a very deep sleeper, he
4 can have accidents. And so they have given me, for when he goes
5 on overnights for scouts or things, desmopressin is a drug
6 that you can use that can mimic that hormone that we need.

7 Previously, we've tried alarms and things that -- and
8 it's gotten way better but -- so even when he was 9 and 10, it
9 was almost every night. So we would use alarms, we would wake
10 him up, things like that, just really try and work with him.
11 He's not trying to -- he's not trying to be bad or anything.

12 He's a really smart kid, and it's very weighing on him
13 emotionally, you know. He's now in high school and -- but
14 things -- things like this happen. And so we just kind of
15 worked through it and figure it out and it's gotten way way way
16 better, but still just enough to where a volleyball tournament
17 can make him nervous because they -- they share rooms with other
18 boys, so --

19 MS. McAMIS: The other teammates.

20 PROSPECTIVE JUROR NO. 057: Uh-huh. Yeah. So --

21 MS. McAMIS: Okay.

22 PROSPECTIVE JUROR NO. 057: Yeah.

23 MS. McAMIS: But as a parent, you -- you sought out
24 medical advice, you sought out different alternatives --

25 PROSPECTIVE JUROR NO. 057: Absolutely.

1 MS. McAMIS: -- you tried different approaches.

2 PROSPECTIVE JUROR NO. 057: And alarms did really --
3 as the other mother said, the alarms really did help for him
4 recognizing when he is. And so -- and he takes very good care
5 of -- of things himself now. He -- he used to allow me to help
6 change sheet and things now he's, no, no, mom, I've got it, just
7 -- just pretend that nothing is -- is happening. And so he'll
8 -- he just called me one time from a volleyball tournament and
9 said can you please call housekeeping for me, and I said, yep,
10 no problem. And -- but other than that, he doesn't really talk
11 to me about it anymore, but --

12 MS. McAMIS: Okay.

13 PROSPECTIVE JUROR NO. 057: -- just at the doctor's
14 appointment.

15 MS. McAMIS: Great. Did I have any other hands?
16 Okay. So let's talk about something a little more fun. The
17 prosecution got to ask you about TV shows and if you like those
18 TV shows. My question's going to be a little bit different.
19 You were asked, you know, do you expect DNA and bloodwork in
20 every case? Well, on the flip side, isn't it helpful to have
21 some scientific evidence before you to kind of corroborate,
22 meaning like confirm, something that someone is saying?

23 THE PROSPECTIVE JURY: It can be.

24 MS. McAMIS: It can be helpful, is that what someone
25 said? Is that something that -- if you want, I can hold that.

1 No one wants to hold the microphone. And in fact, if that
2 evidence is available, is that something that you would be
3 willing to consider?

4 THE PROSPECTIVE JURY: Yes.

5 MS. McAMIS: And is that something that would be very
6 helpful as far as, you know, making a determination about
7 whether or not someone is saying something truthful or
8 untruthful? Seeing lots of yesses to that.

9 Let me ask this. You were asked about the TV show
10 being very -- or the types of TV shows being very, you know,
11 entertaining, and it's interesting to watch because of the
12 different investigation. Is it fair to say that defense
13 attorneys are not always portrayed very positively in those
14 shows?

15 PROSPECTIVE JUROR: Depends on the show.

16 MS. McAMIS: That's -- that's fair. One of our jurors
17 volunteered that it -- it depends on the show. Are there shows
18 that like, you know, the Law and Orders where the defense
19 attorneys are shown playing games, or being unethical, is that
20 real life? Okay. So I said, the first -- just for the record,
21 people did confirm, yes, sometimes attorneys are portrayed that
22 way, and no, it's not in real life.

23 If I could, I would like to pass the microphone to --
24 and I think it's Ms. Bartkus, you've been very generous in
25 responding to these questions. Would you please pass the

1 microphone directly behind you to the lady in the blue shirt
2 with the red layer

3 So talk to us about some of these -- these portrayals
4 of defense attorneys on TV shows.

5 PROSPECTIVE JUROR NO. 087: Well, I'm probably not the
6 best person to ask because I haven't watched TV in about 15
7 years.

8 MS. McAMIS: Congratulations.

9 PROSPECTIVE JUROR NO. 087: Yeah. But just through my
10 life experience, defense attorneys are often portrayed as, how
11 could you do that, how could you defend a guilty person? You
12 know, I've heard that throughout my life.

13 MS. McAMIS: And everyone knows I'm a defense
14 attorney; right?

15 PROSPECTIVE JUROR NO. 087: Uh-huh.

16 MS. McAMIS: Does anyone have any opinion or -- yeah,
17 just opinion, about whether or not I am like those people
18 portrayed on the TV shows? Does anyone think that --

19 PROSPECTIVE JUROR: TV shows are fiction.

20 MS. McAMIS: I'll ask it this way. TV shows are
21 fiction.

22 PROSPECTIVE JUROR: They're entertainment.

23 MS. McAMIS: They're entertainment. Okay. Does
24 anyone have a problem with the fact that I am representing
25 someone who's been accused of a crime? Okay. Now on these same

1 TV shows, how's the prosecution portrayed? They're portrayed as
2 the good guys usually.

3 PROSPECTIVE JUROR NO. 053: They generally get better
4 looking actors to play them.

5 MS. McAMIS: I'm not even going to touch that, okay.

6 PROSPECTIVE JUROR NO. 053: No, I'm saying like they
7 -- they obviously, you know, do try to like use cues like, you
8 know, the actor's appearance to, you know, make obviously the
9 distinction of one person being a good guy and one person being
10 the bad guy.

11 MS. McAMIS: Uh-huh. Okay. And -- and we're in real
12 life now.

13 PROSPECTIVE JUROR NO. 053: Yeah. No, obviously,
14 you're good looking.

15 MS. McAMIS: I told you it was the more fun series of
16 questions, the TV. My question to you is just because of that
17 dichotomy, this good versus bad, does that actually exist in
18 real life?

19 THE PROSPECTIVE JURY: No.

20 MS. McAMIS: Does anyone have a strong opinion about
21 defense attorneys? Does anyone have any opinion about a defense
22 attorney?

23 PROSPECTIVE JUROR: I think it's an admirable job.

24 PROSPECTIVE JUROR: They're expensive.

25 MS. McAMIS: They're expensive? Okay. Do you -- does

1 anyone have a strong opinion about defense attorneys' roles in
2 the criminal justice system?

3 PROSPECTIVE JUROR: They're needed.

4 PROSPECTIVE JUROR: They're necessary.

5 MS. McAMIS: They're necessary? Would you mind
6 passing the microphone -- talk about why they're necessary.

7 PROSPECTIVE JUROR NO. 111: Because somebody has to
8 speak for the person that can't speak themselves.

9 MS. McAMIS: Okay. And why is that so important?

10 PROSPECTIVE JUROR NO. 111: To get to -- to get their
11 full story out.

12 MS. McAMIS: Okay.

13 PROSPECTIVE JUROR NO. 111: It's -- not all of us have
14 the ability to present ourselves in the right manner.

15 MS. McAMIS: Okay.

16 PROSPECTIVE JUROR NO. 111: Which is why we need you.

17 MS. McAMIS: Okay. All right. Thank you for sharing
18 that, Ms. Aquilla.

19 PROSPECTIVE JUROR NO. 111: Perfect.

20 MS. McAMIS: All right. I remember that from last
21 time. All right.

22 PROSPECTIVE JUROR NO. 111: Oh. May I say one more
23 thing?

24 MS. McAMIS: Of course.

25 PROSPECTIVE JUROR NO. 111: TV shows.

1 MS. McAMIS: TV shows?

2 PROSPECTIVE JUROR NO. 111: They always, always tell
3 of the person on trial never to get on the stand.

4 MS. McAMIS: And, again, we're in real life; right?

5 PROSPECTIVE JUROR NO. 111: We are, but they do always
6 say that.

7 MS. McAMIS: Does that make it true?

8 PROSPECTIVE JUROR NO. 111: No.

9 MS. McAMIS: Okay.

10 PROSPECTIVE JUROR NO. 111: But interesting.

11 MS. McAMIS: Makes it interesting. Just
12 entertainment --

13 PROSPECTIVE JUROR NO. 111: Entertainment.

14 MS. McAMIS: -- right? There is absolutely a
15 difference between TV and reality. Okay. So let me ask the
16 panel this. You may hear some testimony from police officers.
17 Is anyone more likely to believe a police officer's testimony
18 over anyone else's? You're not -- I think I saw a nod of the
19 head yes. Ms. -- oh, two. All right. If we could pass the
20 microphone to Ms. Dehesa. Blue shirt in the middle. Tell us
21 about that, Ms. Dehesa.

22 PROSPECTIVE JUROR NO. 089: Well, I mean, I -- I've
23 been open about my family being in law enforcement, so they're
24 -- I mean, I try to keep an open mind, but I think naturally, as
25 from my upbringing and my current situation with my husband and

1 my brother and my -- I mean, there's so much -- so many people
2 that are in law enforcement. And when you have people in law
3 enforcement, that's your family. I mean, we're -- you know,
4 it's -- we're a blue family. I mean, it's -- those are the
5 events that you go to. I mean, I would say 80% of everybody
6 that we socialize is in some type of law enforcement.

7 MS. McAMIS: Okay.

8 PROSPECTIVE JUROR NO. 089: And it's just, to me, like
9 a natural instinct for me, because I'm around that, that I'm
10 going to maybe hold that testimony to be truer, or to be truth.

11 MS. McAMIS: So a police officer starts out being more
12 credible to you?

13 PROSPECTIVE JUROR NO. 089: I think a little bit, yes.
14 He's taken an oath, he's gone through the training. You know,
15 there's his -- he's been trained to -- to uphold the law.
16 That's what he does. That's what -- the position that we put
17 him in. So when he's going to testify, I would expect that he
18 continue to uphold his oath.

19 MS. McAMIS: Okay. Who has to prove that a police
20 officer's testimony that's being offered is truthful?

21 PROSPECTIVE JUROR NO. 089: The --

22 MS. McAMIS: Don't look for answers.

23 PROSPECTIVE JUROR NO. 089: The State. I mean, you.
24 Like to be truthful would be the State.

25 MS. McAMIS: Okay. Does anyone have to prove to you

1 that it's untruthful?

2 PROSPECTIVE JUROR NO. 089: Yeah. The -- you.

3 MS. McAMIS: Okay. So you've identified that it's my
4 duty to prove that a police officer's testimony is untruthful;
5 right?

6 PROSPECTIVE JUROR NO. 089: Yes, that's what I think.

7 MS. McAMIS: Okay. Now -- sorry, thought I heard
8 something.

9 MR. FIGLER: No, it's me. Sorry, Caitlyn.

10 THE COURT: Let me ask you this. Do you feel like, or
11 do you accept as a true statement that some police officers are
12 maybe more credible than other police officers?

13 PROSPECTIVE JUROR NO. 089: Yes.

14 THE COURT: Do you think that some police officers may
15 be untruthful?

16 PROSPECTIVE JUROR NO. 089: I think when they're under
17 oath --

18 THE COURT: Uh-huh.

19 PROSPECTIVE JUROR NO. 089: -- I -- I would find it
20 hard to believe that they would jeopardize their career and be
21 untruthful.

22 THE COURT: Let me ask you this. Do you think it's
23 fair that some police officers just may not -- I mean, they may
24 be well intended, but they may not remember things correctly?
25 Do you think that's a fair statement?

1 PROSPECTIVE JUROR NO. 089: That is a fair statement.

2 THE COURT: And do you think that sometimes police
3 officers, regardless of how well intended, may perceive things
4 incorrectly?

5 PROSPECTIVE JUROR NO. 089: Their perception is their
6 perception. I don't think it's incorrect, it's their
7 perception.

8 THE COURT: Well, let's just say they say, well, I saw
9 something at, you know, 200 yards and it was a person of a
10 particular race, but maybe the lighting was poor, something like
11 that. Do you accept that that perception might have been
12 incorrect? For example, I saw a Hispanic male, and it turns out
13 to be an African American male or a white male. Do you think
14 that happens sometimes?

15 PROSPECTIVE JUROR NO. 089: Yes, that happens.

16 THE COURT: Okay. Go on, Ms. McAmis.

17 MS. McAMIS: Thank you. Ms. Dehesa, if you had a
18 police officer testifying to one thing, and just a non-police
19 officer testifying to something differently, who are you going
20 to believe?

21 PROSPECTIVE JUROR NO. 089: Well, it depends on the
22 questioning, their answers, but I would have a heavier weight on
23 the officer.

24 MS. McAMIS: Okay. Does anyone else share that
25 opinion? Would you mind passing the microphone first to the

1 gentleman behind you? I did see your hand though, he just did
2 it quicker.

3 Sir, what -- you share that opinion, a police
4 officer's testimony starts out just as more credible for you?

5 PROSPECTIVE JUROR NO. 101: Right. The -- I think
6 police officers get a lot of training, training in how to
7 interview someone, training in how to tell if a person is
8 telling the truth, training in gathering evidence, and also they
9 have sworn an oath that they're looking for the truth, they have
10 a commitment to the truth. And -- and you know, another person
11 who just happened to be there might not have the same commitment
12 to the truth.

13 MS. McAMIS: Okay. So same question to you. There's
14 a police officer testifying to one thing, and there is a
15 non-police officer testifying just completely the opposite or
16 differently, who are you putting more weight to?

17 PROSPECTIVE JUROR NO. 101: It depends on what they
18 say.

19 MS. McAMIS: Okay.

20 PROSPECTIVE JUROR NO. 101: It depends on the details,
21 it depends on the circumstances as you were alluding to before.

22 MS. McAMIS: Does the police officer start out ahead,
23 though? Is it an uneven playing field as far as --

24 PROSPECTIVE JUROR NO. 101: I think in -- in simple
25 believability, I think they do.

1 MS. McAMIS: Okay. Would you mind passing the
2 microphone just to the -- three rows in front of you to the lady
3 with the -- the black exposed sleeves, the really pretty shirt.
4 Yeah. Hi.

5 PROSPECTIVE JUROR NO. 074: Hi.

6 MS. McAMIS: Would you share. You had a response
7 to --

8 PROSPECTIVE JUROR NO. 074: Yeah.

9 MS. McAMIS: -- the question.

10 PROSPECTIVE JUROR NO. 074: Just growing up in a
11 family with mostly police officers in my family and -- and just
12 the way I was raised, I believe the same thing. I believe that
13 you still have to hear the testimony, but if it was two
14 completely opposite opinions, yes, I would lean more towards the
15 police officer giving them a little bit more credibility just
16 because that's the way I was raised.

17 MS. McAMIS: Okay.

18 THE COURT: Let me ask you this. Do you think
19 sometimes a police officer has more of an interest in the
20 outcome of a case because it's his case than just, say, a lay
21 witness that happened to be at the scene of a particular
22 occurrence?

23 PROSPECTIVE JUROR NO. 074: Yes and no.

24 THE COURT: Okay. And what do you mean?

25 PROSPECTIVE JUROR NO. 074: So it -- I would -- I

1 would imagine that, yes, it's his case, and so -- but he's not
2 gaining anything from it. The way I -- the way I look at it,
3 he's up there to tell what he believes is the truth. And so to
4 their point he's been through the training, he's been through
5 all this stuff, and he knows where he's going, what -- what he's
6 supposed to be doing. He's supposed to be upholding the law.
7 He's supposed to be doing that. And as I said, you know, and I
8 know especially from my dad and hearing stories about when he
9 used to testify and stuff, you know, it -- I had believed that
10 they're doing their best to tell the truth, yes.

11 THE COURT: What about just -- say, just a witness
12 that happens to see an occurrence that has no interest one way
13 or the other in the outcome of the case? Do you think the
14 police officer is automatically being more credible than the,
15 say, disinterested witness?

16 PROSPECTIVE JUROR NO. 074: No.

17 THE COURT: And let's just say, you know, a witness
18 arrives at a McDonald's in the middle of a robbery, do you feel
19 like the police officer is being more -- has a greater interest
20 in truth than the just ordinary witness that happens upon a
21 scene?

22 PROSPECTIVE JUROR NO. 074: Well, no, but I'm -- what
23 I'm saying is that that witness could, to your point before, he
24 may have seen something he did or did not understand he saw. So
25 he could have seen something 200 feet away and thought he saw

1 one thing and he's going to tell his story about what he saw,
2 but a police officer who is trained to look at certain things
3 and look for certain things and -- and the way he does his job
4 is totally different.

5 THE COURT: Okay. So you -- if you and a police
6 officer were to observe something at 200 yards, let's say, and
7 you saw one thing and the police officer something -- saw
8 something else, you would defer to the police officer, is that
9 what you're saying?

10 PROSPECTIVE JUROR NO. 074: That's a -- that's a hard
11 question because I know what I see, but I don't know what -- I
12 don't know what somebody else is going to see, but I would know
13 what I see. So --

14 THE COURT: Right.

15 PROSPECTIVE JUROR NO. 074: -- putting me up against a
16 police officer, I don't -- I don't know. I couldn't answer that
17 question.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 074: I'd have to go by what I
20 see, and I could have seen different because I don't see too --

21 THE COURT: Right. And I mean --

22 PROSPECTIVE JUROR NO. 074: -- too good far away.

23 THE COURT: -- I guess --

24 PROSPECTIVE JUROR NO. 074: So, yeah --

25 THE COURT: -- my point would be --

1 PROSPECTIVE JUROR NO. 074: -- I probably would say it
2 could have been --

3 THE COURT: -- would your perception be better than
4 the perception of any other lay witness, or do you think it's
5 fair that there are various factors you need to consider to
6 determine who's perception is more accurate?

7 PROSPECTIVE JUROR NO. 074: I would like to say yes,
8 but I also would like, you know, in the back of my mind, I still
9 have that -- just because it's been imprinted in my -- in who I
10 am for so long, that I would try to do my best, but I'm not sure
11 that it wouldn't always be there, that why would he lie, what --
12 you know, he's been sworn to this, he's been doing this. And,
13 you know, I don't know the other person. I don't know what
14 training they've had. I don't know what -- what their situation
15 is, you know. Who knows. Maybe they have -- they could have a
16 problem with the law, and so they just want to see him wrong.
17 You just don't know.

18 THE COURT: Okay.

19 MS. McAMIS: Don't be sorry. She just mouthed sorry.
20 I want everyone to actually take a moment and recognize that
21 this is just actually part of selecting a jury. And I really
22 want to commend the people who are being honest. Everyone is,
23 but --

24 THE COURT: Right.

25 MS. McAMIS: -- I just asked three --

1 THE COURT: This isn't a math test.

2 MS. McAMIS: -- people.

3 THE COURT: It's not like we get to certain number and
4 that's the right answer. We're just interested in people
5 sharing their opinions and feelings with us, so there's no right
6 or wrong answer.

7 Go on, Ms. McAmis.

8 MS. McAMIS: Thank you. Thank you, Your Honor.

9 Ms. Samuels, can I ask you? We've had a couple of
10 people who've had strong relationships with Metro, and you have
11 a relationship with Metro, at least by virtue of a lot of your
12 volunteer work. Do you share this opinion that police officers
13 have an advantage --

14 PROSPECTIVE JUROR NO. 129: No.

15 MS. McAMIS: -- when they -- and that's a no?

16 PROSPECTIVE JUROR NO. 129: No. That's a no.

17 MS. McAMIS: Okay. Because I was over talking you.
18 So I wanted to --

19 PROSPECTIVE JUROR NO. 129: Oh, I'm sorry.

20 MS. McAMIS: -- just --

21 PROSPECTIVE JUROR NO. 129: I probably interrupted.

22 MS. McAMIS: No, I'm sorry.

23 PROSPECTIVE JUROR NO. 129: I feel that every
24 individual is -- I'm not going to put the fact that the person's
25 -- that the person's a police officer. I want to hear the

1 testimony and what they have to say, and the fact that they're a
2 police officer would not hold any bearing above -- above and
3 beyond their testimony.

4 MS. McAMIS: Okay. All right.

5 Your Honor, can we approach?

6 THE COURT: Sure.

7 (Off-record bench conference)

8 MS. McAMIS: All right. And just to give everyone a
9 heads up, I am actually almost done with my questions. I know I
10 talk a lot. I wanted to ask everyone, has anyone ever had to be
11 a whistleblower? Do you know what that means? I'm seeing a lot
12 of --

13 THE COURT: What was the question?

14 MS. McAMIS: Has anyone ever had to act as a
15 whistleblower?

16 THE COURT: Oh, okay.

17 MS. McAMIS: Okay. So I had a bunch of nods about
18 confirming they know what whistleblowing means. Has anyone had
19 to actually do it or had an experience with that?

20 PROSPECTIVE JUROR: You mean like calling CPS?

21 MS. McAMIS: Sure, like calling CPS. And you -- you
22 very generously shared that with us, so I won't make you, you
23 know, retell a story; right?

24 Would you please -- it's Ms. Mulvey; right?

25 PROSPECTIVE JUROR NO. 083: Yes.

1 MS. McAMIS: Would you please share, how did you have
2 to have an experience with that?

3 PROSPECTIVE JUROR NO. 083: Well, it was a job I
4 actually did. This was years ago. I was an asset protection
5 officer and had to bust shoplifters, which was most unusual for
6 somebody that spent most of their time being a hair stylist and
7 a caregiver, but that was an interesting job.

8 MS. McAMIS: Okay. Tell me about how that -- what you
9 had to do or how that worked.

10 PROSPECTIVE JUROR NO. 083: It was with Mervyns in
11 Colorado, and I would be back in the back office manning cameras
12 and just watching people as they come in, and if there was any
13 suspicious activity watching to see if they'd stolen anything.
14 And I'd actually found one of the employees had stolen a lot of
15 money.

16 MS. McAMIS: And you had to report that? That's a
17 yes?

18 PROSPECTIVE JUROR NO. 083: Yes. Yes.

19 MS. McAMIS: It's okay. Did you ever receive any
20 backlash for that?

21 PROSPECTIVE JUROR NO. 083: I was a little anxious
22 about that, because --

23 MS. McAMIS: Uh-huh.

24 PROSPECTIVE JUROR NO. 083: -- when we were in the
25 office with my boss and the police grilling this person, she was

1 shooting daggers at me with her eyes. And a couple years later,
2 my husband and I had gone out to a restaurant and she was the
3 waitress there. And I got very nervous and I snuck out before I
4 figured she saw me.

5 MS. McAMIS: Did you ever fear about losing your job
6 because of reporting the -- the bad conduct?

7 PROSPECTIVE JUROR NO. 083: No, I mean, because I knew
8 I was doing what I had to do, and --

9 MS. McAMIS: Okay.

10 PROSPECTIVE JUROR NO. 083: -- I actually got kudos
11 for --

12 MS. McAMIS: Okay. Excellent. Is there another hand
13 raised that I just overlooked about being a whistleblower or
14 having that experience? Okay. Seeing no hands.

15 Is anyone a member of any kind of child advocacy
16 groups? Okay. Seeing no hands raised.

17 So after all of the evidence is presented to you, you
18 will start to deliberate on the case. Each one of you must make
19 your own determination about whether the State has met its
20 burden of proof beyond a reasonable doubt. And you understand
21 this is a decision that you must come to on your own after, you
22 know, reviewing everything, being thoughtful about all of that.

23 My question to the whole panel is, if after you looked
24 at all of the evidence, and you make a determination that Mrs.
25 Solander is not guilty beyond a reasonable doubt, but there are

1 other jurors that don't agree with you, would you be able to
2 respect another juror's opinion? Does anyone have an issue with
3 not being able to respect another juror's opinion if it -- if it
4 differs from your own? Okay. Seeing lots of noes, just for the
5 record.

6 What about this. Let's say we get the -- it's 4:30 on
7 a Friday, and everybody except for a couple of people are all in
8 agreement about one thing, of guilt or not guilty. It doesn't
9 matter which one, really. The people who are not in agreement,
10 let me ask -- who's got the microphone, actually? Ms. Mulvey.
11 Mulvey?

12 PROSPECTIVE JUROR NO. 083: Mulvey, yes.

13 MS. McAMIS: Thank you. It's 4:30 on a Friday and
14 you've come to a decision, but your opinion is different than
15 the rest of the groups. Are you going to be the person who
16 changes their opinion on 4:30 on a Friday just so you can go
17 home?

18 PROSPECTIVE JUROR NO. 083: Oh, no. Absolutely not.

19 MS. McAMIS: Why not?

20 PROSPECTIVE JUROR NO. 083: Because that can affect
21 the outcome and everybody involved. I mean, the time of day
22 doesn't matter, it's what is presented and everybody in
23 agreement on --

24 MS. McAMIS: Okay.

25 PROSPECTIVE JUROR NO. 083: -- the facts.

1 MS. McAMIS: Okay. So it's important for individual
2 jurors to be able to make your own determination; right?

3 PROSPECTIVE JUROR NO. 083: Absolutely.

4 MS. McAMIS: And to be able to voice that opinion
5 respectfully to the others; right?

6 PROSPECTIVE JUROR NO. 083: Yes.

7 MS. McAMIS: Even if that opinion is -- is not shared;
8 right?

9 PROSPECTIVE JUROR NO. 083: Yes.

10 MS. McAMIS: Okay. Lastly, I want to ask about just
11 an issue that is always a touchy issue. Everyone has been able
12 to look at my client, she's Mrs. Solander, and she is African
13 American. Is there anything about the fact that she is a
14 different race that -- than perhaps some of you, is that an
15 issue for anybody? Is anyone making any -- drawing any opinions
16 about that? I'm seeing lots of noes.

17 If I could, could we please pass the microphone just
18 right next to you, I guess that's your left. Ms. Cirincione.

19 PROSPECTIVE JUROR NO. 082: Yes.

20 MS. McAMIS: I haven't had an opportunity to be able
21 to interact and meet you. Let me ask you this. Are you a
22 person who believes that there is no racism left in America now?

23 PROSPECTIVE JUROR NO. 082: Oh, no. There's racism
24 for sure.

25 MS. McAMIS: Okay. Why do you say that?

1 PROSPECTIVE JUROR NO. 082: I think we see it all the
2 time. You see, you know, unfortunately, it's not -- I think
3 we're getting better at it, but I definitely believe that there
4 are people who -- who are racist.

5 MS. McAMIS: Okay. Does anyone -- open to the rest of
6 the panel. Does anybody believe that there is no racism in
7 America now? I'm seeing no hands raised. Court's brief
8 indulgence.

9 All right. Just a few more questions. Did anyone
10 have any experiences with racism in their home growing up?
11 Okay. Seeing a few more hands. Could we please pass the
12 microphone to -- let's start with the front row, to Ms. Fecko.
13 What was that experience?

14 PROSPECTIVE JUROR NO. 053: My family is very
15 conservative, and my also being in the military. And so I have,
16 you know, I've had to correct my grandma because she's referred
17 to -- and, I'm sorry, I'm going to use a very horrible term as
18 [indiscernible].

19 MS. McAMIS: Her term.

20 PROSPECTIVE JUROR NO. 053: Yeah.

21 MS. McAMIS: So everyone understands.

22 PROSPECTIVE JUROR NO. 053: Yeah. You know, and it's
23 -- it's -- obviously, you know, I've had to deal with, you know,
24 a lot of racial terms being used by family members. And it's
25 very hard for me personally just because I've met a lot of scope

1 of people in my time, and, you know, just having to somehow find
2 a way to make them see that, you know, this obviously is wrong.
3 Yeah.

4 MS. McAMIS: Thank you for sharing.

5 PROSPECTIVE JUROR NO. 053: Sorry, it's kind of a --
6 it's a -- yeah.

7 MS. McAMIS: Would you please pass the microphone to
8 Ms. Samuels.

9 You raised your hand. Could you talk to us about your
10 experience?

11 PROSPECTIVE JUROR NO. 129: So my mother's white and
12 my father is black. My mother, her family was not always
13 accepted -- acceptable -- accepting of her dating African
14 American men, and so we felt that, you know, as a younger age
15 growing up. It wasn't until probably like 10 years ago that my
16 grandmother came to live with my mom when she got older, and you
17 can tell that for the last 10 years of her life she spent trying
18 to make up for that. Some of -- my mom is like one of seven, so
19 some of my aunts and uncles were okay, but you can always tell
20 who wasn't.

21 MS. McAMIS: What do you mean by that?

22 PROSPECTIVE JUROR NO. 129: Okay with us being black.

23 MS. McAMIS: Oh, okay. I understand that.

24 PROSPECTIVE JUROR NO. 129: Yeah.

25 MS. McAMIS: Was that difficult for you and your

1 siblings?

2 PROSPECTIVE JUROR NO. 129: I think I recognize it
3 more than my siblings. I'm the oldest of five, but hey, we just
4 dealt with it. I don't know.

5 MS. McAMIS: Okay.

6 PROSPECTIVE JUROR NO. 129: Or we just didn't deal
7 with it at all. I just didn't deal with those certain family
8 members.

9 MS. McAMIS: Okay. We had a -- oh, we had another
10 hand. Would you please pass the microphone to Ms. Dehesa in the
11 blue.

12 PROSPECTIVE JUROR NO. 089: Yeah. So I grew up in a
13 very Hispanic, Catholic, you know, my -- my parents were born in
14 -- in Mexico and then came to the United States, so they -- they
15 have a certain way of thinking. My husband's Creole, but looks
16 black. You can tell that he's black. And when I first started
17 dating him, I was completely disowned by the family, from my mom
18 and dad.

19 And so, you know, you just have to accept the fact
20 that people are close-minded. Some of it is cultural, some of
21 it is generational, and that's their opinion. That's their
22 view. You're either going to -- they're either going to be a
23 part of your life or they're not. And that's kind of how I view
24 things, is either you're going to be a positive person in my
25 life or you're not. And guess what, you're going to miss out,

1 not me.

2 So I mean we've -- we've struggled through it, and now
3 that I've had kids, they're -- they're better. But, you know,
4 there's still some comments where you're like, really? We're
5 still there? But you know, I don't blame them so much as it's a
6 cultural thing. It's a generational thing and the way they were
7 raised and, you know, it -- it just is what it is. But I mean
8 for many years, I mean I didn't speak to my parents. I moved
9 out at 17 and I didn't speak to them again for five years so,
10 you know, it is what it is.

11 MS. McAMIS: Okay. We had one more hand raised if,
12 Ms. Dehesa, you wouldn't mind passing to Ms. Fryman; right?

13 PROSPECTIVE JUROR NO. 105: Yes.

14 MS. McAMIS: Okay. What is your experience?

15 PROSPECTIVE JUROR NO. 105: My biological father is, I
16 guess you could say, old school, too, Filipino. And so it
17 wasn't just other races, necessarily, but dark skin. So, for
18 example, I didn't really meet him until I was older because my
19 mom moved to Las Vegas.

20 MS. McAMIS: Uh-huh.

21 PROSPECTIVE JUROR NO. 105: And then I think I was
22 about 9 when we were court ordered to start having visits. And
23 I live in Las Vegas. You can see my skin is dark. And he would
24 always complain about being too dark. So it wasn't -- it was
25 within our race, too. Because it was said that if you were a

1 dark skin in the Philippines, you are not educated, you are --
2 you work the rice fields or whatever. My biological father was
3 a physician.

4 MS. McAMIS: Okay.

5 PROSPECTIVE JUROR NO. 105: So he expected us all to
6 be educated, and my brother is a psychiatrist and my sister is a
7 nurse. And they're all much lighter skinned because they -- I
8 don't know, I'm only half Filipino. I don't know why I'm darker
9 than they are. I'm not sure. My mom is white and blue-eyed.
10 But his -- he always made comments about being dark.

11 MS. McAMIS: Okay. Thank you for sharing that.
12 Pardon me, I just want to -- all right. So if I could ask
13 anyone in the panel, is there anyone who has had a traumatic or
14 negative experience with an African American person?

15 PROSPECTIVE JUROR NO. 087: Personally?

16 MS. McAMIS: Yeah. Personally.

17 PROSPECTIVE JUROR NO. 087: It was just my husband
18 when he was robbed at gunpoint. It was two black males.

19 MS. McAMIS: Okay. And --

20 PROSPECTIVE JUROR NO. 087: They were prosecuted and
21 sent to prison, I'm assuming. I know they were prosecuted and
22 found guilty.

23 MS. McAMIS: Okay. Based on, you know, that
24 interaction, do you have any lingering issues with people of
25 African American race?

1 PROSPECTIVE JUROR NO. 087: No, not at all.

2 MS. McAMIS: Okay. We have one other hand raised. I
3 actually think it was Ms. Fryman. What was your negative
4 experience?

5 PROSPECTIVE JUROR NO. 105: It wasn't really me
6 personally, but my experience with my daughter who had an
7 experience where she was molested. The person who assaulted her
8 was African American.

9 MS. McAMIS: Okay.

10 PROSPECTIVE JUROR NO. 105: But it could have been
11 anybody. I just think it had more to do with the fact that he
12 was in the Marines, to be honest.

13 MS. McAMIS: Okay. Did I see any other hands trying
14 to get my attention? Okay. Is there anyone who thinks that
15 there is too much made of racism in today's society?

16 PROSPECTIVE JUROR: Too much what?

17 MS. McAMIS: Too much made, like a big deal made of
18 racism in society. Okay. Ms. -- it's Ms. Bartkus; right?

19 PROSPECTIVE JUROR NO. 087: Yes.

20 MS. McAMIS: Would you mind sharing your thoughts on
21 that?

22 PROSPECTIVE JUROR NO. 087: Well, I was born in 1951,
23 and when I was a child growing up in Seattle, I wasn't aware of
24 any racism whatsoever. We interacted -- my whole family is
25 white, but we interacted with black people and they were so kind

1 and so friendly and I was happy. And then when the civil rights
2 movement started, all of a sudden we had these problems that I
3 was never aware of before.

4 So I was probably 13 or 14 the first time I was aware
5 of racism. And I was in middle school walking down the hall at
6 the end of the school day, and this girl that I had been going
7 to school with all year long, all of a sudden -- and she was a
8 black girl, pulled a knife on me. And I said why are you doing
9 that? And she says, you know, all of this with Martin Luther
10 King and my parents are mad. And -- and so I went to the office
11 and I told the principle and the principle didn't do anything.
12 And I was really upset, because I was in that age where I wanted
13 justice, you know, this person pulled a knife on me.

14 And so to me, having watched it progress, I still
15 don't understand, you know, why, just because of the color of
16 somebody's skin, why are we fighting each other? To me, it's
17 ludicrous. So, you know, I have a hard time understanding it,
18 even as long as I've lived and as much as I've seen, to me, it's
19 just so stupid.

20 MS. McAMIS: Okay. Does anyone else share Ms.
21 Bartkus's statements?

22 Ms. Mulvey, looks like you nodded.

23 PROSPECTIVE JUROR NO. 083: Absolutely.

24 MS. McAMIS: What's your thinking on that?

25 PROSPECTIVE JUROR NO. 083: I think that the racism

1 fear, it stems from fear of somebody that's different than
2 themselves. And I was never brought up in a racist family. I
3 mean, I even grew up on the other side of the tracks because my
4 mom was a single mom raising three kids, so I was the only
5 blonde-haired blue-eyed kid in the neighborhood back then. But,
6 you know, I just have to agree with my friend here that, why,
7 after all these years, you'd think by now it wouldn't be the way
8 it is. Yeah.

9 MS. McAMIS: Can I ask the panel, is there anyone who
10 is upset with me asking about just different kind of race
11 issues? Is -- okay. Seeing lots of noes. Just very briefly,
12 would you mind passing the microphone to the gentleman in the
13 glasses who I've not had an opportunity to speak with.

14 Hello, sir.

15 PROSPECTIVE JUROR NO. 073: Hello.

16 MS. McAMIS: It's Mr. Shulte; right?

17 PROSPECTIVE JUROR NO. 073: Shulte. Yep.

18 MS. McAMIS: Do you have any problem with any of the
19 race questions I've asked? I've -- I just haven't seen a lot of
20 interaction from you.

21 PROSPECTIVE JUROR NO. 073: I -- I don't have any -- I
22 don't have any problems with it, no

23 MS. McAMIS: Okay. Do you have any issues with, you
24 know, some of the questions I've asked about disciplining
25 children, providing structure for children, or even

1 cross-examining children?

2 PROSPECTIVE JUROR NO. 073: No. No issues with your
3 questions.

4 MS. McAMIS: Okay. All right. Thank you. Just
5 wanted to --

6 PROSPECTIVE JUROR NO. 073: Uh-huh.

7 MS. McAMIS: -- make sure I -- actually, honestly, I
8 just wanted to make sure you're awake. I asked a lot of
9 questions. This Court's brief indulgence.

10 All right. So one last question for the panel. And
11 this actually should be my last one, but you know how lawyers
12 are, and I'm one of the worst offenders. There was -- it's
13 anticipated that there's going to be testimony from children who
14 the State is going to identify as victims. My question to the
15 panel is do they start from a position of their testimony is
16 believable? Okay. Seeing one yes. Okay. And then let me ask
17 you, again, of the panel, is it on the defense to disprove their
18 believability to you?

19 PROSPECTIVE JUROR: No. I think it's the -- I don't
20 know, I guess I just feel like -- I work with children, I think
21 children are very innocent and I don't know why they would lie
22 about something. I mean, I don't know. Sorry. I think it's up
23 to the prosecutor to present them and I -- I just -- no, I think
24 children are usually innocent and tell the truth. I don't know
25 why they wouldn't. I guess maybe it depends on the age, a

1 teenager, maybe not. My own son, I've caught him in lies.

2 MS. McAMIS: Okay.

3 PROSPECTIVE JUROR: But if they're young and something
4 has happened to them, I would think they would tell the truth.

5 MS. McAMIS: Okay. Do you think it's the defense's
6 burden to change your mind otherwise? Is that a yeah?

7 PROSPECTIVE JUROR: Yes.

8 MS. McAMIS: Oh, okay. Sorry. It's a little hard to
9 hear sometimes. Now, you understand -- I'm -- you were about to
10 say something.

11 PROSPECTIVE JUROR: No. I'm just decided to use the
12 mic so you can hear me.

13 MS. McAMIS: Now, you understand the defense doesn't
14 have any burden of proof in this case; right?

15 PROSPECTIVE JUROR: I understand that, but I -- so I
16 guess if the prosecution puts on -- puts the children up there
17 and I'm probably going to believe them, yes.

18 MS. McAMIS: Okay. Are we -- do you hold the defense
19 to a burden to disprove their believability?

20 PROSPECTIVE JUROR: You mean through your questioning
21 of them?

22 MS. McAMIS: In any way.

23 PROSPECTIVE JUROR: Yes, I think so.

24 MS. McAMIS: Okay. Does anyone else share this --
25 this opinion? Okay. Would you --

1 PROSPECTIVE JUROR NO. 081: To a point, yes. Because
2 if nothing else it -- it's to your advantage to because, you
3 know, they're going to be up there, I'm going to look at them,
4 they're kids. And with a kid, I think sometimes it can be -- it
5 can be easy or it can be really hard.

6 And the prosecutor, obviously, has a reason to put
7 them up there. Because she believes them, which means that at
8 least part of the group feels that they're -- they're telling
9 the truth. And, you know, obviously, if the kid's obviously
10 lying, I'll hope you figure it out. And I've got kids who lied
11 more than once, and sometimes, obviously, you can tell the
12 truth. But if there's the middle issue then -- then how do you
13 decide.

14 MS. McAMIS: Okay.

15 PROSPECTIVE JUROR NO. 081: I guess the way you would
16 have to decide is that well, this isn't a reliable witness, so I
17 shouldn't take anything they said into -- into account. But I
18 would think you would want to encourage that, you know.

19 MS. McAMIS: Okay.

20 PROSPECTIVE JUROR NO. 081: So do you have a burden?
21 No, but you have good reasons.

22 MS. McAMIS: So you start from a position that the
23 children who are testifying are going to be believable to you,
24 that's your starting position?

25 PROSPECTIVE JUROR NO. 081: Again, along with the lady

1 in the back, the older they get, the less that I become positive
2 about that.

3 MS. McAMIS: Okay.

4 PROSPECTIVE JUROR NO. 081: Well, seriously. I mean
5 when a 6th grader lies to you, it's usually pretty obvious. A
6 15-year-old can do a pretty good job.

7 MS. McAMIS: Little more sophisticated?

8 PROSPECTIVE JUROR NO. 081: Way more sophisticated.

9 MS. McAMIS: Okay. All right. Yes, Ms. Fryman?

10 PROSPECTIVE JUROR NO. 105: I just feel like when -- I
11 don't know, my own children say sometimes I have rose-colored
12 glasses on. So I'm at the belief if somebody tells me
13 something, I'm going to believe them unless otherwise -- unless
14 I have some other reason not to believe them. And so if they're
15 put on the stand, they're telling me something, unless you've
16 given me a reason not to believe them, I'm going to believe
17 them.

18 MS. McAMIS: Okay. And so it's just --

19 PROSPECTIVE JUROR NO. 105: You know what I mean? And
20 I would think the same as an adult witness, as well. If they've
21 been sworn under oath, I'm going to believe what they're telling
22 me is true, unless I've been -- have some reason not to believe
23 them.

24 MS. McAMIS: Okay. Did -- oh, yes, Ms. Bartkus.

25 PROSPECTIVE JUROR NO. 087: I've had a different

1 experience in education. I taught in a [indiscernible] school.
2 My children came from very poor backgrounds, and so the students
3 that I worked with, a lot of times there was drug abuse, there
4 was different kinds of emotional, mental abuse. Some of these
5 children were born with mental problems because of lack of
6 deficient inner nutrition and they weren't taken to the doctor
7 when they were sick, and this kind of thing. And -- and some of
8 my students really didn't know the difference between the truth
9 and a lie.

10 And so it was a different experience for me, working
11 with children that had come from such a deprived background.
12 Because, you know, if I'm comparing this to my own children that
13 had all these benefits and, you know, good nutrition and took
14 them to the doctor when they were sick and took them to the
15 playground to play and out in the sunshine and swimming lessons,
16 that's one thing.

17 But, you know, since I had this experience working
18 with these children that came from a totally different
19 environment then I'd ever been exposed to before, I actually had
20 to learn how to relate to them because it was so different from
21 anything I had personally experienced. And once I learned about
22 coming from poverty and -- you know, like I would have a student
23 falling asleep because her mother had a party all night long and
24 the people didn't leave until 5:00 in the morning and she had to
25 get up at 6:00 to come to school. Well, of course, she couldn't

1 keep her eyes open.

2 So see, these were all things that were new to me, so
3 I would want to keep that in perspective when we're listening to
4 children. These aren't my children, these aren't children that
5 I have raised and I have cared for. These children may have
6 been disadvantaged, and it's possible that they don't know a
7 truth from a lie.

8 I would -- you know, I love children. I absolutely
9 love children. And I fall in love with them when I see them and
10 they're cute and I want to believe them, but I also want to be
11 realistic. So I would want to have an open mind when I'm
12 listening and know that that's a -- that's a -- that's a
13 possibility.

14 MS. McAMIS: Okay. Oh, yes. Could you please pass
15 this to the gentleman in the sweater behind you.

16 Yes?

17 PROSPECTIVE JUROR NO. 122: It's Malcom. I haven't
18 speak too much.

19 MS. McAMIS: No.

20 PROSPECTIVE JUROR NO. 122: But for me, I would not
21 believe a child testament right away. I mean, whatever -- I
22 mean, for me, a child can learn behavior. They can be
23 influenced with someone or with their fear or with their anger
24 with what could they say. I mean, it's -- I mean, I would
25 always look for a basis also on -- on however it would be

1 presented. Even if you're a child or -- I mean, I'm -- I'm
2 speaking of like toddler because I have a nephew who is five
3 years old and I can say that they can lie. I'm not excluding
4 myself when I was a kid, so --

5 MS. McAMIS: Okay. All right. But of the people who
6 -- who did say that, you know, if a child comes in and is
7 presented as a victim and they start from a position of
8 believability, it's fair to say, Ms. Fryman, you believe that
9 the burden is on the defense to disprove that credibility; is
10 that right?

11 PROSPECTIVE JUROR NO. 105: Yeah. I mean, it's just
12 like when you're charged with a crime, you're innocent until
13 proven guilty. I mean, I believe that they're going to tell me
14 the truth, unless you prove otherwise.

15 MS. McAMIS: And then remind me of your -- oh, Mr.
16 Gilbert, right. Didn't you also share that, do you also believe
17 it's the defense's burden to disprove the credibility of any
18 child witness?

19 PROSPECTIVE JUROR NO. 081: Somewhat.

20 MS. McAMIS: What do you mean by somewhat?

21 PROSPECTIVE JUROR NO. 081: And -- and I'm kind of
22 recalling as I'm listening to this lady back here --

23 THE COURT: He needs the microphone.

24 MS. McAMIS: Oh, thank you, Your Honor.

25 THE COURT: I've been discouraging the microphone use,

1 but you actually need it --

2 MS. McAMIS: Thank you.

3 THE COURT: -- because you're far away from the --

4 PROSPECTIVE JUROR NO. 081: Right.

5 THE COURT: -- our microphones.

6 PROSPECTIVE JUROR NO. 081: Right. I kind of -- I
7 still, basically, believe what I said. But some real food for
8 thought from what she said. My wife has been a school teacher.
9 She's retired now for four years, pretty close, and she mostly
10 taught 3rd grade, a few 2nd grades. And an incident happened,
11 she mentioned to me, two years ago just before she retired. She
12 had a little boy, and the school she teaches in is -- mostly the
13 students are Hispanic, and some African Americans and some
14 Asians, but the majority is Hispanic.

15 And this little kid who doesn't come from a wonderful
16 family, just like she said, he fell asleep constantly in class.
17 And she asked him several times, oh, no, everything's fine at
18 home, I have my bed. Well, one day he finally broke down, just
19 told her, well, no, we have a lot of people living in the house,
20 and I sleep on the floor with a blanket every night. And I go
21 to bed when I go to bed, you know, nobody puts me there. And so
22 it gives you food for thought.

23 MS. McAMIS: Okay.

24 PROSPECTIVE JUROR NO. 081: Okay. So I don't know how
25 that really affects my answer to you, but -- but I still believe

1 somebody may start with a little bit of a head start, but what
2 happens with the witnesses themselves is what's the main factor
3 in determining their credibility.

4 MS. McAMIS: Okay.

5 PROSPECTIVE JUROR NO. 081: And I would think that
6 there's somebody who would benefit from him not being credible,
7 maybe. It might be part of your duty to your client to prove
8 that or --

9 MS. McAMIS: So --

10 PROSPECTIVE JUROR NO. 081: -- make the suggestion.

11 MS. McAMIS: -- it would be part of my duty --

12 PROSPECTIVE JUROR NO. 081: Yeah.

13 MS. McAMIS: -- to -- to prove or disprove --

14 PROSPECTIVE JUROR NO. 081: Yeah. Not --

15 MS. McAMIS: -- credibility?

16 PROSPECTIVE JUROR NO. 081: -- not to me, but -- yes.

17 MS. McAMIS: Okay.

18 PROSPECTIVE JUROR NO. 081: Okay. To your client --

19 MS. McAMIS: Okay.

20 PROSPECTIVE JUROR NO. 081: -- mainly, okay. So --

21 MS. McAMIS: All right. Thank you.

22 THE COURT: Let -- let me ask you --

23 PROSPECTIVE JUROR NO. 081: -- that's my modified
24 opinion.

25 THE COURT: Okay. Let me ask you this, though. If

1 you heard testimony from a child that just didn't appear
2 credible, because you know, of the circumstances --

3 PROSPECTIVE JUROR NO. 081: Well, see, that's the
4 problem with child -- children.

5 THE COURT: You know, I drove to -- he drove me to
6 California and it took 10 minutes, or something that --

7 PROSPECTIVE JUROR NO. 081: Right.

8 THE COURT: -- you would know to be untrue, would
9 those be things that you'd look for, or would you automatically
10 discount those portions of testimony that seemed maybe not
11 credible, or incredible even.

12 PROSPECTIVE JUROR NO. 081: Depending on whether I
13 heard it from a 5-year-old or a 15-year-old, or even a
14 10-year-old.

15 THE COURT: Okay. And can you expound on that?

16 PROSPECTIVE JUROR NO. 081: Yes. We drove to
17 California it took 10 minutes, but a young kid, what's 10
18 minutes? What's his --

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 081: -- definition of 10
21 minutes? By the time you're 10, or 12, or 15, you know what 10
22 minutes is.

23 THE COURT: Okay. So it would -- you'd think about
24 their ability to perceive time --

25 PROSPECTIVE JUROR NO. 081: Right. I think it --

1 THE COURT: -- and -- and understand --

2 PROSPECTIVE JUROR NO. 081: -- that's going to be
3 really important when children are up there.

4 THE COURT: Okay. So would age be one of the factors
5 that you might consider in evaluating inconsistencies in a -- in
6 a witness's testimony?

7 PROSPECTIVE JUROR NO. 081: Yes.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 081: As applied to children.

10 THE COURT: I'm sorry?

11 PROSPECTIVE JUROR NO. 081: I said as applied to
12 children --

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 081: As applied to children.
15 I'm sorry.

16 THE COURT: Right. So for an adult, whether they're
17 40 or 60 --

18 PROSPECTIVE JUROR NO. 081: Right.

19 THE COURT: -- that would -- that would be irrelevant
20 to you --

21 PROSPECTIVE JUROR NO. 081: Yeah.

22 THE COURT: -- is that -- okay.

23 PROSPECTIVE JUROR NO. 081: I mean, yes. Yes, ma'am.

24 MS. McAMIS: Thank you. Would you pass the microphone
25 to Ms. Bark in the nice peach light colored sweater?

1 MS. BLUTH: No, Ms. Delulio.

2 PROSPECTIVE JUROR NO. 106: I'm -- I'm Delulio.

3 MS. McAMIS: Oh. I'm sorry.

4 PROSPECTIVE JUROR NO. 104: It's fine. I'm Bark.

5 MS. McAMIS: I'm sorry. I was learning your names.

6 Ms. Bark. I -- yes. And, you know, just briefly. If I saw
7 correctly, it seemed like you might have been nodding in
8 agreement with some of Ms. Fryman's statements about children
9 start from believable.

10 PROSPECTIVE JUROR NO. 104: I mean, I think that
11 whoever they're calling, just like how she said someone who's
12 accused of a crime, they're supposedly innocent until proven
13 guilty. And that's why we have this process to call people as
14 witnesses --

15 MS. McAMIS: Okay.

16 PROSPECTIVE JUROR NO. 104: -- to tell us what
17 happened. So --

18 MS. McAMIS: Will the defense have a burden on you to
19 disprove believability of like a child witness?

20 PROSPECTIVE JUROR NO. 104: I don't think that you
21 have to disprove it, but if every person that came up we didn't
22 believe, then what's the point of this whole process?

23 MS. McAMIS: Okay.

24 PROSPECTIVE JUROR NO. 104: It -- we're supposed to
25 believe that people come to the stand and swear that they're

1 telling us the truth under oath. There would be no point for us
2 to be here if we didn't believe anybody.

3 MS. McAMIS: Okay. Thank you. And then just finally,
4 if I could ask Ms. -- Ms. --

5 PROSPECTIVE JUROR NO. 106: Delulio.

6 MS. McAMIS: Delulio?

7 PROSPECTIVE JUROR NO. 106: Yes

8 MS. McAMIS: Okay. I apologize for completely
9 butchering that.

10 PROSPECTIVE JUROR NO. 106: No, that's okay.

11 MS. McAMIS: That's very generous of you. Did you --
12 I thought I might have seen you also nodding in agreement with
13 some of Ms. Fryman's statements. Do you start from a position
14 where child witnesses are going to be credible, just
15 automatically believable to you?

16 PROSPECTIVE JUROR NO. 106: No, not automatically.

17 MS. McAMIS: Okay.

18 PROSPECTIVE JUROR NO. 106: You know, when you have a
19 small child that all of us, you know, most of us have, you know,
20 a 2-year-old that spilled the cereal and you -- how did that
21 happen, you know, and they're like, I don't know. Well, they
22 know, and that's kind of like a little bit of a lie.

23 MS. McAMIS: Okay.

24 PROSPECTIVE JUROR NO. 106: You know, so I don't know
25 that they intend to lie, but they can even at a very young age.

1 MS. McAMIS: And so all of the witnesses that, if you
2 were selected as a juror, all of the witnesses, you would expect
3 to just be able to compare, see who's telling the truth, look at
4 the different testimony, look at different -- the way that
5 people testify and just take all of the information in; right?

6 PROSPECTIVE JUROR NO. 106: Yes, that's correct. But
7 also, you know, when -- when we go up on the stand as a witness,
8 we're under oath. So we are really, you know, at that point,
9 we're expected to tell the truth.

10 MS. McAMIS: That's right.

11 PROSPECTIVE JUROR NO. 106: So --

12 MS. McAMIS: Yep. You are expected to tell the truth
13 if you are under oath. That's right.

14 THE COURT: Does -- does everybody accept that there's
15 a difference between people willfully not telling the truth and
16 people being mistaken or confused or not remembering accurately?

17 THE PROSPECTIVE JURY: Yes.

18 THE COURT: Does anyone think that, I guess, not
19 accept that there's a difference between someone trying to tell
20 the truth, but being confused about things or remembering things
21 imperfectly or perceiving things incorrectly? Does anyone not
22 agree that -- that there is that difference? Okay. I see no
23 hands. Maybe we --

24 PROSPECTIVE JUROR NO. 106: Well --

25 THE COURT: -- should take our -- oh, I'm sorry.

1 PROSPECTIVE JUROR NO. 106: Well, I was just going to
2 say, it's not that I'm saying that they're always going to tell
3 the truth, but I'm saying that when you put them on the stand,
4 I'm under the assumption they're going to tell the truth, unless
5 I've been shown otherwise not to believe them. It's obvious not
6 everybody tells the truth.

7 And I'll just give a quick example. My son, when he
8 was a teenager, told me he was going to the movies. And then a
9 friend called and said, hey, I just wanted to double check, you
10 know, Tyler said that he was going to be staying at Aaron's
11 house, and I'm like, that's not what I heard. And I literally
12 drove around until I found his car.

13 And I wrote on a sticky note, funny thing, I didn't
14 know there was a theater in this neighborhood. So as soon as he
15 came to his car, of course, he's on the phone, calling me, and
16 coming home. Now when he tells me something, I'm not
17 necessarily going to believe him. But before I caught him in a
18 lie, my assumption was he was telling me the truth.

19 THE COURT: Right.

20 PROSPECTIVE JUROR NO. 106: So I guess that's the
21 point I was trying to make. I thought that's what you were
22 asking me.

23 MS. McAMIS: Absolutely.

24 PROSPECTIVE JUROR NO. 106: My assumption is whoever
25 is on the stand is telling me the truth unless I've been proven

1 otherwise.

2 THE COURT: All right. Let's go ahead and take our
3 lunch break. I had hoped to finish with jury selection before
4 lunch, but it doesn't look like we're going to.

5 MS. BLUTH: Judge, may we approach right before --

6 THE COURT: Sure.

7 MS. BLUTH: -- you say something.

8 THE COURT: All right. Hold on.

9 (Off-record bench conference)

10 THE COURT: I was being untruthful. Before we take
11 our lunch -- I would misperceiving. Before we take our lunch
12 break, Ms. Bluth just has some brief follow-up --

13 MS. BLUTH: Okay.

14 THE COURT: -- and then we'll take our lunch break.

15 MS. BLUTH: Ms. Fryman, will you keep the mic for a
16 sec. You have it; right?

17 PROSPECTIVE JUROR NO. 105: I have it.

18 MS. BLUTH: Okay. So it really comes down to this. I
19 think I understand what you're saying. So when anybody gets up
20 there, whether it be a child or an adult, you think because they
21 get up there and they swear to tell the truth, you expect that
22 that's what they're going to do?

23 PROSPECTIVE JUROR NO. 105: Yes.

24 THE COURT: Does it matter who calls the witness?

25 Does it matter whether Ms. Bluth calls the witness or Ms. McAmis

1 calls the witness, would that make a difference to you?

2 PROSPECTIVE JUROR NO. 105: No.

3 THE COURT: Okay.

4 MS. BLUTH: So, if through my questioning, let's say
5 -- let's pick a child's, since that's what we were talking
6 about. If through my questioning a child starts being
7 inconsistent, starts having different answers to the same
8 question, are you going to be able to judge their credibility
9 just like you would an adult?

10 PROSPECTIVE JUROR NO. 105: Well, I would hope so. I
11 have other 30 years' experience with children, so yes.

12 MS. BLUTH: So -- and when you keep saying that --
13 when Ms. McAmis was asking you questions, you were saying that,
14 you know, it -- you thought that it could potentially be their
15 job to prove that the witness isn't telling the truth.

16 PROSPECTIVE JUROR NO. 105: Well, either -- either
17 attorney that's questioning. If they ask questions that -- then
18 the answers are inconsistent, then I would have reason to
19 believe that maybe they weren't telling the truth.

20 MS. BLUTH: Right. And so that was going to be my
21 next question. And so are you saying through maybe them asking
22 questions, and then the child starts saying a different story,
23 then that is what you mean?

24 PROSPECTIVE JUROR NO. 105: Of course.

25 MS. BLUTH: But you understand that it's my job and

1 Mr. Hamner's job to prove this case to you beyond a reasonable
2 doubt?

3 PROSPECTIVE JUROR NO. 105: Yes.

4 MS. BLUTH: And that the defense really doesn't have
5 to do anything? I know it sounds silly, but they could really
6 sit there and text on their phone all day, read magazines, and
7 if we didn't do our job, then you have to come in here and you
8 have to find them not guilty.

9 PROSPECTIVE JUROR NO. 105: Well, of course.

10 MS. BLUTH: Okay.

11 PROSPECTIVE JUROR NO. 105: Yeah.

12 MS. BLUTH: So even though it's a child, you still
13 have the ability, because of your 30 years in teaching, to, hey,
14 if this kid isn't telling the truth, you have a certain skill
15 set and you think that you could figure that out?

16 PROSPECTIVE JUROR NO. 105: Yes.

17 MS. BLUTH: Okay. Thank you. If you could pass it to
18 Mr. Gilbert.

19 And Mr. Gilbert, I'm going to keep this brief with
20 you, because I think your answers warrant that. You will hear
21 from children; right? And now these little -- these little
22 girls who we've been talking about, and you've heard when I
23 opened up this case, this started in 2011, '12, '13, '14. So
24 they are teenagers now. And so simply because I -- we have a
25 teenager on the stand, are you just going to believe them?

1 PROSPECTIVE JUROR NO. 081: No.

2 MS. BLUTH: If, through my questioning --

3 PROSPECTIVE JUROR NO. 081: In fact, I might believe
4 them less.

5 MS. BLUTH: Now I don't like you as much. No. But do
6 you know what I mean? Like --

7 PROSPECTIVE JUROR NO. 081: Yes, I do.

8 MS. BLUTH: -- simply because they are a kid, but now
9 that you're saying now that they're teenagers, and I remember
10 you saying that you have a granddaughter who's 15 and --

11 PROSPECTIVE JUROR NO. 081: Yes.

12 MS. BLUTH: -- you wish she came with a manual; right?

13 PROSPECTIVE JUROR NO. 081: Oh, yes. And she -- and
14 actually, she's -- would be considered a pretty close to a mild
15 child, but, you know, things like, well, she's on a couple of
16 committees with her school, telling her mom, well, I have
17 committee meeting tonight. Well, there was no committee
18 meeting. Her and her boyfriend were wherever, you know.

19 MS. BLUTH: So just because we bring in here
20 teenagers, are you going to lower our burden --

21 PROSPECTIVE JUROR NO. 081: No.

22 MS. BLUTH: -- because it's a child on the stand?

23 PROSPECTIVE JUROR NO. 081: No, I'm not.

24 MS. BLUTH: Okay. You think you can use a skill set
25 to figure out whether or not a child is telling the truth or

1 not?

2 PROSPECTIVE JUROR NO. 081: As much as humanly
3 possible, yes.

4 MS. BLUTH: Okay. Thank you. Could you pass the
5 phone up to Mr. Kaehler?

6 MR. FIGLER: Mic.

7 MS. BLUTH: Mic. What did I say?

8 MS. McAMIS: You shortened it. The phone. That's
9 fine.

10 MS. BLUTH: I'm hungry, people. I'm tired. Okay.
11 There you are. When you were asking questions -- or when you
12 were answering questions, you were talking about that police
13 have a certain amount of training.

14 PROSPECTIVE JUROR NO. 101: Uh-huh.

15 MS. BLUTH: And that because of that, you hold them to
16 a certain level of respect.

17 PROSPECTIVE JUROR NO. 101: Yes.

18 MS. BLUTH: Do you think that if a police officer came
19 here and swore to tell the truth, but during questioning, either
20 by myself or by the defense, that you would have the ability to
21 say hey, that's not making sense to me, and just because they're
22 a police officer doesn't mean they're always going to come in
23 here and tell the 100 percent truth?

24 PROSPECTIVE JUROR NO. 101: Yes, of course.

25 MS. BLUTH: Okay.

1 PROSPECTIVE JUROR NO. 101: Yes.

2 MS. BLUTH: Okay. So can you judge a police -- or --
3 yeah, can you judge a police officer's credibility the same as
4 anyone else?

5 PROSPECTIVE JUROR NO. 101: Yes.

6 MS. BLUTH: Okay. Thank you so much. If you could
7 pass it to Ms. Dehesa.

8 So same thing for you, Ms. Dehesa, because I know it's
9 a little bit different of an element because you're basically
10 blue bloods; right?

11 PROSPECTIVE JUROR NO. 089: Yeah.

12 MS. BLUTH: Like, you come from a family of blue. But
13 do you think that you think so highly of police officers that if
14 during my questioning, Mr. Hamner's questioning, Ms. McAmis, Mr.
15 Figler, if they started to be inconsistent or they started not
16 to be credible, you would just think they're police officers,
17 I'm going to give them the benefit of the doubt?

18 PROSPECTIVE JUROR NO. 089: No. I think through
19 questioning, if they're inconsistent in their answers, there's
20 some credibility to that, too. So you'd have to look at the
21 questioning, how they're answering the question, you know, what
22 type of inconsistency it is, and then make a judgement based off
23 that.

24 MS. BLUTH: If you were selected as a juror, could you
25 look at their testimony and judge it just like you would any

1 other person that walked into the room? Does that question make
2 sense?

3 PROSPECTIVE JUROR NO. 089: Yeah. I mean, I -- I'd
4 like to say I will, and I can, but, you know, like we -- you've
5 asked me before, do -- do their -- does their testimony or them
6 walking in automatically hold a little more weight. And, for
7 me, it does until proven otherwise or in -- in through
8 questioning. It's -- it's -- there's that inconsistency where,
9 for me, it shows okay, well, maybe their -- you know, their
10 answers aren't to what they have reported or believed or, you
11 know, if there's time that's gone by. I mean --

12 MS. BLUTH: Sure.

13 PROSPECTIVE JUROR NO. 089: -- there's a lot of
14 circumstances where there might be inconsistencies in some of
15 those answers, as well. So I'd have to take all of that into
16 consideration.

17 MS. BLUTH: And one of the things you talked about is,
18 that, you know, as officers, they take an oath --

19 PROSPECTIVE JUROR NO. 089: Uh-huh.

20 MS. BLUTH: -- to uphold the laws, even, you know,
21 just themselves. And so that was one of the things you listed
22 when, you know, finding them credible. But kind of what Judge
23 was saying is, could they also be fallible, could they also
24 think that they saw something and really believe that they saw
25 something, but you know what, they were wrong?

1 PROSPECTIVE JUROR NO. 089: Yeah, I think it happens.

2 MS. BLUTH: Okay. So I guess at the end of the day,
3 you know, if you -- if you believe that, you know, officers mean
4 to tell the truth and that they take an oath to do the right
5 thing, but you still believe you have the skill set to look at
6 their testimony and say I'm not going to believe you simply
7 because you're a police officer, you still have to use a skill
8 set to figure out --

9 PROSPECTIVE JUROR NO. 089: Yes.

10 MS. BLUTH: You have that ability?

11 PROSPECTIVE JUROR NO. 089: Yeah.

12 MS. BLUTH: Thank you. Could you pass it forward to
13 Ms. Digrandi -- Digrandi. Hi.

14 PROSPECTIVE JUROR NO. 074: Hi.

15 MS. BLUTH: And it's kind of the similar questions for
16 you in regards to police officers because you, like Ms. Dehesa,
17 do have a long familiar line of police officers.

18 PROSPECTIVE JUROR NO. 074: Uh-huh.

19 MS. BLUTH: And so when I was asking these questions
20 about, you know, when a police officer walks in and -- and they
21 take the stand, swear to tell the truth, if at times during
22 their questioning you feel like there's either inconsistencies,
23 or what they're saying is completely different than another
24 witness who had testified, are you going to automatically think,
25 well, a cop always -- you know, a cop is a cop, and they always

1 tell the truth, and I'm going with him or her?

2 PROSPECTIVE JUROR NO. 074: If I had to pick one or
3 the other, I -- I don't know. I'd have to know what was said.

4 MS. BLUTH: And that -- I mean, that's kind of the
5 point; right?

6 PROSPECTIVE JUROR NO. 074: Yeah.

7 MS. BLUTH: It's like you --

8 PROSPECTIVE JUROR NO. 074: But I wouldn't just simply
9 pick that person just because he's a policeman, but I would like
10 to think that I could hear both sides of it.

11 MS. BLUTH: Right.

12 PROSPECTIVE JUROR NO. 074: But somebody is going to
13 be right and somebody is going to be wrong.

14 MS. BLUTH: Right. And that's up to you, as a
15 witness --

16 PROSPECTIVE JUROR NO. 074: Right.

17 MS. BLUTH: -- to figure out who that is.

18 PROSPECTIVE JUROR NO. 074: Right.

19 MS. BLUTH: But simply because someone's a police
20 officer doesn't mean they're 100 percent believable?

21 PROSPECTIVE JUROR NO. 074: Right.

22 MS. BLUTH: And do you have the skill set to listen to
23 what police officers say and judge their credibility like you do
24 any other witness that comes in here?

25 PROSPECTIVE JUROR NO. 074: I'd like to think so.

1 MS. BLUTH: Okay.

2 THE COURT: What -- what kind of things would you look
3 for in judging and assessing not necessarily just the
4 credibility of a police officer, but the accuracy of a police
5 officer?

6 PROSPECTIVE JUROR NO. 074: Well, like I said, I know
7 that they're -- in their training they're trained to look for
8 certain things, they're trained to see people a certain --
9 whatever is going on. So I would look to see that what they're
10 talking about and what -- what the scene was or, you know, what
11 evidence they had, as opposed to some lay person that might say
12 yeah, I know that was -- that it was this way.

13 But they didn't have any training in that, so how
14 would I know if what they're seeing isn't -- to your point like,
15 if I saw something and a policeman saw something 200 yards away,
16 yeah, I know I'm telling the truth and he could be wrong, but
17 it's just because I know myself. So I -- I'd hope that I could
18 see the difference, but I'd have to see what was -- what was
19 said.

20 MS. BLUTH: But you're talking in that situation,
21 you're talking about training --

22 PROSPECTIVE JUROR NO. 074: Uh-huh.

23 MS. BLUTH: -- the -- the -- the ability to observe
24 things, the ability to maybe interview people, things like that.

25 PROSPECTIVE JUROR NO. 074: Right.

1 MS. BLUTH: But when we're talking about -- I'm not
2 talking about observations or things that they're trained in,
3 I'm just talking about being a human being and the ability to
4 lie. Do police officers have the ability to lie?

5 PROSPECTIVE JUROR NO. 074: I think everybody has the
6 ability to lie, yes.

7 MS. BLUTH: And while they may be trained in observing
8 things, would you be able -- and I'm not talking about observing
9 things; right? I'm just talking about their ability to tell the
10 truth, to be consistent.

11 PROSPECTIVE JUROR NO. 074: Uh-huh.

12 MS. BLUTH: Do you have the ability to look at them
13 and say okay, you know, do they have good eye contact, are they
14 answering questions, are they consistent, will -- will you be
15 able to look at those things, just like you would any other
16 witness?

17 PROSPECTIVE JUROR NO. 074: Yes, I think so.

18 MS. BLUTH: Okay. Thank you.

19 May we approach, Your Honor?

20 THE COURT: Sure.

21 (Off-record bench conference)

22 THE COURT: All right. Ladies and gentlemen, we're
23 now going to take our lunch break. As you know, as you can see,
24 it's 1:40. We will be in recess for the lunch break until 2:40.

25 During the lunch break, you are reminded you're not to

1 discuss the case or anything relating to the case with each
2 other or with anyone else. You're not to read, watch, or listen
3 to any reports or commentaries on the case, person, or subject
4 matter relating to the case. Do not do any independent research
5 by way of the Internet or any other medium. Please don't form
6 or express an opinion on the trial.

7 And please follow bailiff through the double doors.
8 We'll see everyone back at 2:40.

9 (Prospective jury recessed at 1:43 p.m.)

10 THE COURT: All right. Let's all of us lawyer types
11 take a two or three-minute break and then we'll come back on the
12 record.

13 MS. BLUTH: Yes, Judge.

14 (Court recessed at 1:44 p.m., until 1:49 p.m.)

15 (Outside the presence of the prospective jury)

16 THE COURT: For cause challenges on the record.

17 MS. BLUTH: Okay.

18 MR. FIGLER: I'll do the ones on --

19 THE COURT: Just for the record, you did indicate some
20 at the bench. Ms. Bluth was given the opportunity to traverse.

21 MR. FIGLER: So let's focus on --

22 THE COURT: There's two general categories. I would
23 say the always believing children category --

24 MR. FIGLER: Slash, burden shift.

25 THE COURT: -- and the always believing police

1 officers category.

2 MR. FIGLER: Right.

3 MS. McAMIS: Correct.

4 THE COURT: And I appreciate the -- I'm going to talk
5 about the police officers, and Ms. McAmis is going to talk about
6 the burden shift with regard to the children's credibility or
7 instant credibility from taking the stand.

8 So I think with regard to, Your Honor, the cause
9 challenges on the three individuals with regard to giving police
10 automatic deference, or if it comes down to all things else,
11 consider it that the police are going to get the benefit of the
12 doubt. And the ability of the defense to actually and
13 effectively be able to cross-examine or assign motive or
14 fallibility to those particular police officers, especially as
15 it relates to Ms. Dehesa and Ms. Digrandi because of their
16 closely held beliefs they're like --

17 THE COURT: Is Ms. Digrandi the woman with the
18 peek-a-boo sleeves?

19 MR. FIGLER: Yes, Your Honor.

20 MS. BLUTH: Yes. Good job, Judge.

21 MR. FIGLER: They're right in front of each other.

22 THE COURT: I knew that from watching QVC. I had just
23 forgotten.

24 MR. FIGLER: Correct. So the peek-a-boo person and
25 the blue line person, they have deeply held experiences, deeply

1 held beliefs based on their life experiences, their immersion in
2 police culture.

3 All their testimony that they gave or their responses
4 that they gave, especially to Ms. McAmis's questioning,
5 suggested that there was always an equivocation, that even when
6 pressed on the traverse by Ms. Bluth that there was still a
7 "but" that was placed out there by Ms. Dehesa in full commitment
8 to the concept, and that the questions weren't asked in a way
9 that suggested that if there was all things else considered or a
10 playing field, etcetera, that the police would either start
11 ahead or would get that credibility.

12 Certainly, any witnesses subject to cross-examination
13 may be subject to, you know, a tax on their credibility, but it
14 does seem that because of the closely held beliefs of these
15 individuals that they are always going to give the benefit of
16 the doubt to the police officers no matter the situation because
17 of their experiences and that they could not commit to treating
18 them like any other witness.

19 I think Mr. Kaehler in the back firmly believes that.
20 He just doesn't have the ingrained culture that the other two
21 potential jurors have. And so I think when he answered the
22 questions on traverse, while I don't feel that he was being
23 genuine to himself, he did answer in a way that was less
24 concerning, perhaps, for a cause challenge than Ms. Dehesa and
25 Ms. Digrandi.

1 So for those reasons, Your Honor, we just don't
2 believe that the traverse sufficiently rehabilitated those
3 venire people and that they should be removed for cause. That's
4 -- that's it on that.

5 THE COURT: Just to be clear, a witness -- I'm sorry,
6 a juror doesn't have to say that they don't believe a police
7 officer is more credible because they've had training on
8 perception and things like that. That's not the standard.

9 Ms. Bluth.

10 MS. BLUTH: Okay. So in regards to Mr. Kaehler --

11 THE COURT: I don't -- I think Mr. Figler is --

12 MR. FIGLER: We're submitting Mr. Kaehler.

13 THE COURT: -- submitting on Mr. Kaehler.

14 MS. BLUTH: Okay. So I don't need to go there.

15 THE COURT: Yeah, he feels like you sufficiently
16 rehabilitated him. So the only other two are --

17 MS. BLUTH: Dehesa and Digrandi.

18 THE COURT: -- Ms. DeJesus (sic), who, by the way,
19 she's the one in the blue; right?

20 MR. FIGLER: Dehesa.

21 MS. BLUTH: Yes.

22 THE COURT: Okay. Dehesa. She approached my bailiff
23 at this last break and stated that nobody -- I guess nobody had
24 asked her, but she does have two --

25 What is it? What did she tell you?

1 THE MARSHAL: Her two brother-in-laws had foster
2 children and adopted them. Also, her cousin adopts and fosters
3 children.

4 MS. BLUTH: Okay.

5 MR. FIGLER: Did we not ask if they've had any contact
6 with foster or foster care close?

7 MS. BLUTH: Well, them personally.

8 THE MARSHAL: I think her confusion was she didn't
9 have direct access to them or --

10 MS. BLUTH: Yeah.

11 MR. FIGLER: Fair enough.

12 THE MARSHAL: -- direct interaction.

13 THE COURT: Right.

14 MS. BLUTH: So --

15 THE COURT: Anyway, we can follow up with that if we
16 keep her, but, you know, probably no one asked her directly, you
17 know, do you have any family that have been involved in the
18 foster system.

19 MS. BLUTH: My question was -- yeah, and I think --
20 well, I don't want to speak for you.

21 THE COURT: I think you said have you had any contact
22 with the foster care system or something like that. I wasn't
23 specific enough.

24 Go on, Ms. Bluth.

25 MS. BLUTH: Thank you. Okay. So Ms. Dehesa and Ms.

1 Digrandi I feel like are different. Ms. Dehesa was more talking
2 about how, you know, she said we're lines of officers. But I
3 asked her if just because an officer came in here would she
4 automatically believe him, and I also asked her if during
5 questioning either by myself or the defense if she started to
6 see inconsistencies or if she started to see things that weren't
7 making sense to her if she would just automatically believe them
8 just because she was a police officer.

9 And she said, no, she believed she could use her skill
10 set to figure out whether or not someone was telling the truth,
11 just like she would any other witness. So I believe she
12 rehabilitated herself simply because you start with, you know, I
13 believe a police officer is going to tell the truth doesn't
14 automatically exclude them from the group. And at the end of
15 the day, she did say that she would be able to judge their
16 credibility and their testimony like anybody else.

17 Now, Ms. Digrandi was different because hers wasn't
18 really about her family as much as she said it was about she
19 believed that they received training and that she trusts what
20 they say in regards to observations. When I turned it into but
21 let's put observations and the types of things they're trained
22 on on the back burner and we talk about, you know, just being
23 able to tell the truth or talk about an interview that they did,
24 she said, no, in that regard I can look at them just like I can
25 look at --

1 THE COURT: I don't remember her saying that,
2 actually.

3 MS. BLUTH: What do you remember?

4 THE COURT: I remember it the other way around.

5 MS. BLUTH: In what way?

6 THE COURT: I don't remember her saying, well, in an
7 interview or something else she could look at them like any
8 other witness.

9 MS. BLUTH: Yeah, because I said let's take your --
10 the observation of stuff that they're absolutely trained on --

11 THE COURT: Right.

12 MS. BLUTH: -- and talk about things like a regular
13 human like, you know, an interview of someone, or I used another
14 like just a regular human interaction. And she said in those
15 situations, training aside, she could assess their credibility
16 just like she could anybody else.

17 THE COURT: Mr. Figler, how do you remember it? I'm
18 going to look back because I don't remember it that way, but --

19 MS. BLUTH: Okay.

20 MR. FIGLER: I appreciate that. I mean --

21 THE COURT: Do you remember it that -- look, the disc
22 will speak for itself. The JAVS will speak for itself. So if
23 you remember it the same way as Ms. Bluth remembers it, then you
24 can save me the time of trying to watch it and eat lunch.

25 MR. FIGLER: I wish I did on the --

1 THE COURT: So it's going to -- it's going to be what
2 it is.

3 MR. FIGLER: On the fine point of the interview, I
4 don't recall specifically and so I don't want to misspeak. It
5 did seem, though, however, that this -- this overarching thing
6 of a super credibility based on their personal experiences with
7 police officers as opposed to something very detached that they
8 just feel in general never -- they never faltered from that.

9 So based on their training and experience is one
10 thing, but based on their personal interactions and the fact
11 that they know they have all this super training and that they
12 have this oath and they're going to do this, that they have --
13 that they're imbued with some manner of super credibility in
14 interview situations that they would have done it right.

15 So if Ms. McAmis or I suggest that they could have
16 done a better job or a different job in interviewing witnesses
17 or the children or if they were assigning some additional motive
18 as to why they would shade or testify in a particular way, Ms.
19 McAmis and I have no chance with those witnesses. They have
20 assigned this -- this super credibility based on their personal
21 deep-felt feelings about these police officers.

22 And so I think that whichever one said about the --
23 the skill level of the officer during the interviews, etcetera,
24 it only reveals this deep alignment with the police that we are
25 not going to be able to shake through normal questioning and

1 normal cross-examination. And so with those two witnesses --
2 and I would agree that based on the responses, I think Ms. Bluth
3 has them in the hierarchy alignment with the defense that Ms.
4 Dehesa was far deeper into it than even Ms. Digrandi, but that
5 both --

6 THE COURT: So you think Ms. Dehesa is more aligned
7 with the police than Ms. Digrandi?

8 MR. FIGLER: Based on the responses after her
9 traverse, I think that you can -- you can --

10 THE COURT: See, I saw it maybe the other way.

11 MR. FIGLER: Well, that's interesting because they
12 both seem to characterize it in that way, so maybe they're
13 indistinguishable. Maybe I'm parsing hairs with regard to the
14 difference between the two.

15 THE COURT: Well, maybe I heard it wrong from Ms.
16 Digrandi.

17 MS. BLUTH: Yeah. And I just want to make clear, I'm
18 the one who said -- because I was trying to think of something
19 an officer could testify to that wouldn't have to do with their
20 observations that -- you know, because a couple of people have
21 said, well, they're trained to observe things in a way.

22 And the thing I thought of was like, well, if they're
23 talking to you simply about an interview they did or -- I was
24 trying to think of just human conduct. So I think you're -- not
25 that I should tell you what to do, but I think you're just going

1 to look at it over lunch because we kind of see it differently,
2 and so --

3 THE COURT: Well, I'm saying I may not remember it
4 correctly.

5 MS. BLUTH: Right. No, I get it. So --

6 THE COURT: And I wish, you know, if Mr. Figler
7 remembered it the same way that you did, then I -- okay. Then
8 moving -- anything else on the police issue?

9 MR. FIGLER: No, Your Honor.

10 THE COURT: All right. Moving on to the believing the
11 children issue.

12 MS. McAMIS: Well, and -- and --

13 THE COURT: I saw the --

14 MS. McAMIS: -- defense burden shift. That was our
15 big issue.

16 THE COURT: -- lady, I think she's in Chair 13, the --

17 MS. BLUTH: Fryman.

18 THE COURT: -- who described herself as mixed race,
19 Filipino and white, I saw her responses a little more
20 problematic than --

21 MS. McAMIS: Mr. Gilbert in this chair.

22 THE COURT: -- the other fellow who then said, no, you
23 know, kids lie. And in any event.

24 MS. McAMIS: And I understand. It was with respect to
25 Ms. Fryman, we started from a position that children start from

1 a position of credibility and that it's the defense's burden to
2 disprove that to her.

3 THE COURT: Right.

4 MS. McAMIS: And despite the fact that we had a
5 conversation about no burden of proof, she said I would still
6 expect you -- I would still look to you to disprove that. And
7 then even after traverse, she really -- she wasn't really
8 rehabilitated because she started from a position of, look,
9 they've been, you know, they've been alleged to be victims or
10 whatever, they're coming in to testify, they're subjecting
11 themselves to these proceedings and being under oath, promise to
12 tell the truth, I'm still going to look to the defense.

13 And that's our issue is we don't want any improper
14 burden shifting, particularly from a prospective juror. To some
15 extent initially Mr. Gilbert absolutely adopted that. He did --
16 it's my memory that he relented off of that, but he still took a
17 position that, you know, younger child witnesses are more
18 believable. He didn't really relent from that. And that's our
19 position is these are cause challenges based on the improper
20 burden shifting. It's not the defense's burden to disprove
21 anything.

22 MS. BLUTH: In regards to the burden shifting, and I
23 kind of went over that again, they're not -- they were saying
24 like --

25 THE COURT: But burden shifting, and I meant to

1 interject and I didn't, burden shifting doesn't mean they
2 necessarily have to put on a witness. It can also mean that
3 they have to discredit a witness through cross-examination.
4 Because the whole idea is that you have to prove it, so they
5 don't have to do anything, including artful cross-examination.

6 So although maybe burden shifting isn't as precise in
7 that context, they don't have to do anything. So you can't have
8 a -- have a juror who says, well, if they bring it out on
9 cross-examination, then -- because they don't have to do
10 cross-examination.

11 MS. BLUTH: Right.

12 THE COURT: They don't have to do anything.

13 MS. BLUTH: And that's what I said to her. I said
14 they literally don't have to do anything. They can read a
15 magazine, they can be --

16 THE COURT: Right.

17 MS. BLUTH: -- on their cell phones --

18 THE COURT: Right.

19 MS. BLUTH: -- the whole time, and if I don't do my
20 job, and you don't believe those kids, then it's not guilty, do
21 you have any problem with that? And she said absolutely not.
22 And I don't remember her ever saying anything about why would
23 they put them through these proceedings, why would the
24 children --

25 THE COURT: Yeah. I don't remember --

1 MS. BLUTH: -- put themselves through this.
2 THE COURT: -- anything about the proceeding. It was
3 more --
4 MS. McAMIS: She's talking about the rose --
5 THE COURT: -- about under oath.
6 MS. McAMIS: -- she had the rose-colored glasses and
7 they promise to take an oath.
8 MS. BLUTH: Right. And so she said that goes for
9 everybody who walks into this room. It doesn't matter who calls
10 them, that if they come here and they swear to tell the truth,
11 that she's automatically going to believe it. And then it's
12 through questioning that she decides whether or not they're
13 credible.
14 THE COURT: Yeah, I'm more -- I mean, honestly, I'm
15 more concerned about her. I'm not concerned at all about the
16 Mr. Gilbert. I think he cleared it up. He said, you know, I --
17 MS. BLUTH: But --
18 MR. FIGLER: I don't disagree, Your Honor.
19 THE COURT: Because, again, you know, we can't have a
20 juror who says, well, if they bring it out on cross-examination
21 that she's not credible or he's not credible --
22 MS. BLUTH: Right.
23 THE COURT: -- because that is burden shifting. They
24 don't have to bring anything out on cross-examination.
25 MR. HAMNER: And I don't mean to interject, but an

1 important thing that Ms. Fryman said with respect to her
2 questions was Ms. Bluth specifically asked her, listen, what if,
3 for example, through just my questioning alone I was asking her
4 things and the child began to become inconsistent based on my
5 questioning alone, could you determine that that child is not
6 being consistent and it doesn't make sense? And she
7 acknowledged that, yes, I could do that.

8 MS. BLUTH: I'm actually skilled at doing that. I've
9 been doing it for 30 years.

10 MR. HAMNER: Right. And so the point is is that if
11 the concern is that there's an expectation --

12 MS. BLUTH: Check the tape.

13 THE COURT: They should be watching all of us because
14 then they'd realize how people perceive things differently.

15 MS. BLUTH: But she did say that.

16 THE COURT: I believe you.

17 MS. BLUTH: But I guess my thing is with her, though,
18 Judge, is she ultimately, at the end of it, the problem I have
19 with -- I think it's a confusing question for jurors who don't
20 understand the system to say I don't have to do anything.
21 Because if I get up there and I put all of my witnesses on, it's
22 very rare that a witness is going to fall apart when I'm asking
23 the questions; right?

24 I think what they're thinking is, obviously, you know,
25 through cross-examination or through, even though they don't

1 have to do anything, there's going to be different tools that
2 both sides use. So I think it's confusing to the jurors when
3 we're asking, well, how would you know if they're telling the
4 truth or not? And they're saying, well, obviously, through the
5 process, through you asking questions. I don't think that is
6 burden shifting. How else --

7 THE COURT: Well, it is if they say that they bring it
8 out on cross-examination. I mean, that's why I used the drive
9 to L.A. in 10 minutes example. Because if a child testifies to
10 something that's just not credible --

11 MS. BLUTH: Right.

12 THE COURT: -- you know, then they should discount
13 that testimony --

14 MS. BLUTH: Sure.

15 THE COURT: -- if it comes out on direct examination,
16 you know, he took me to the moon and molested me, then they
17 should be discrediting that.

18 MR. FIGLER: Correct, Your Honor.

19 THE COURT: Not through anything in cross-examination.

20 MR. HAMNER: But that's what Ms. Fryman said. She
21 said that if, through your questioning and your questioning
22 alone, this child is saying things that don't make sense --

23 THE COURT: Well, she didn't say that.

24 MS. BLUTH: Well --

25 THE COURT: Okay. I'm going to watch.

1 MS. BLUTH: Okay.

2 THE COURT: I'm concerned about her and I'm concerned
3 about --

4 MS. BLUTH: Digrandi.

5 THE COURT: -- Digrandi. But I'm more concerned
6 about, of all of them, I'm more concerned about her. And, you
7 know, this case hinges on the credibility of the children
8 because it's really not a -- this isn't a drug case, it's not a
9 meth lab, it doesn't concern so much the credibility of the
10 investigating officers.

11 MS. BLUTH: No, it doesn't.

12 THE COURT: And, really, it's more the CPS people and
13 the, you know, I mean --

14 MS. BLUTH: But there's a ton of circumstantial
15 evidence to corroborate the children. I mean, a ton.

16 THE COURT: Yeah, but that just -- that doesn't mean
17 that -- I mean, like I said, it's -- the case hinges more on the
18 testimony of the children than on any police officer --

19 MS. BLUTH: Oh, I agree.

20 THE COURT: -- as opposed to other types of cases,
21 like a drug case, for example --

22 MS. BLUTH: Sure. I agree.

23 THE COURT: -- where it's all the police officers and
24 nobody else.

25 MS. BLUTH: I agree.

1 THE COURT: You know, so I mean -- or even a
2 confession case where it's all, you know --

3 MS. BLUTH: Yeah.

4 THE COURT: -- it's really critical maybe where it's
5 not -- hasn't been all recorded or something like that. So
6 that's -- that was my point.

7 MR. FIGLER: And the other point that we want to make
8 is that it's important for all the jurors to have the ability to
9 withhold the credibility analysis until they've heard all the
10 evidence and not to have an inclination to start from a position
11 of credibility and believability because there's a child coming
12 in. And it seemed like --

13 THE COURT: I mean, I think --

14 MR. FIGLER: -- Ms. Fryman was inclined to start from
15 that position and then see what happens, as opposed to what all
16 the other jurors are requested to do, which is withhold your
17 judgment until you receive the evidence.

18 THE COURT: Right. But I think if a juror just says
19 generally, well, I don't think somebody, you know, children
20 generally lie about serious things or I don't think a child
21 would have a motive to lie --

22 MR. FIGLER: That's different.

23 THE COURT: -- then that's not a for cause.

24 MR. FIGLER: Right. That's not what we're
25 suggesting --

1 THE COURT: All right.

2 MR. FIGLER: -- with Ms. Fryman.

3 THE COURT: Let me -- I'm going to think about those
4 two. Let me just say this, though. If I strike one or both, do
5 we want to qualify these next two people and be here another
6 five hours, or do we want to just go with two alternates?

7 MS. BLUTH: I just want to go with two alternates.

8 MR. FIGLER: We'll defer to the Court.

9 MS. McAMIS: I agree.

10 MR. FIGLER: It's your call how many alternates you
11 want to give us.

12 THE COURT: Right. Well, the only reason I was giving
13 the three alternates is counsel's request.

14 MS. BLUTH: Right.

15 THE COURT: As well as it's a three-week trial and
16 it's flu season and blah blah blah.

17 MS. BLUTH: Yeah. No, I -- well, I personally, I'm
18 okay with going with the two. The thought of qualifying more
19 people, I want to stab myself in the eye.

20 MR. FIGLER: Or make a good offer. So here's the
21 thing. We'd ask the Court to just review Dehesa, too. There
22 was a point in her testimony where she gave an emphatic or a
23 problematic "but" to us in the response to the State's question.
24 If the -- if the Court can just take a look at that, too, when
25 -- when she -- during the traverse where she goes, but, but, but

1 I would tend to. If you could look at that, as well. That was
2 the concern of the defense.

3 MS. BLUTH: Who are you talking about, Digrandi?

4 MR. FIGLER: Dehesa.

5 MS. BLUTH: Oh, Dehesa?

6 MR. FIGLER: Yeah.

7 MS. BLUTH: Okay. You said you're going to look at
8 them both; right?

9 THE COURT: Well, no, I was going to look at the --
10 I'll just sit in here and watch everything. It was only like
11 five or ten minutes. It wasn't very long; right?

12 MS. McAMIS: Okay.

13 MR. FIGLER: Okay.

14 MS. BLUTH: So but going forward, just so we know,
15 Judge --

16 THE COURT: I mean, the only other thing, let's say I
17 strike one of them, then if the State waives its tenth
18 challenge, you can have, knowing that the highest number will be
19 your third alternate --

20 MS. BLUTH: We could probably do that.

21 THE COURT: -- we could still have three alternates,
22 knowing that the highest number is your third alternate. You
23 know, and I can't ask the defense to waive their tenth --

24 MS. BLUTH: I know.

25 THE COURT: -- for obvious reasons.

1 MS. BLUTH: Right. Let me just think about it. But
2 we do have witnesses here, so should I let -- that's not
3 happening today?

4 MR. FIGLER: We're not going to get to witnesses
5 today, are we?

6 THE COURT: I don't see it, us getting to them today.
7 Oh. Also, I have the remaining records. It's thicker than I
8 thought it would be.

9 MR. FIGLER: These are Diaz-Burnett records?

10 THE COURT: These are Diaz-Burnett records. Some of
11 these --

12 MR. FIGLER: And you still have Solanders' to go
13 through? I just want to -- it's on the record.

14 THE COURT: I know.

15 MS. BLUTH: You already went through them.

16 THE COURT: I did, but Mr. Figler wants me to go
17 through them again. On those records, some of them may be
18 duplicative of Diaz-Burnett records you already got because some
19 of those are calls and things like that from the Solander foster
20 parents, in which case I gave them to you. Everything else
21 concerns, like I said before, you know -- and I think most of it
22 is not even really relevant. I gave it to you for all of the
23 kids.

24 MS. BLUTH: Okay.

25 THE COURT: Dentist, dental issues, doctor visits, any

1 medical things. There's a little bit about Areahia being
2 bullied. I put that in there just because, I don't know, it
3 could go to eating alone or whatever. I just put it in there
4 out of an abundance of caution. I don't really think it's
5 relevant. It was just one comment about her being bullied.
6 There may have been something in another record about her weight
7 and bullying, I don't know, but I gave you that. Like I said, a
8 lot of dental issues, and anything that were involving the
9 Solanders.

10 MS. BLUTH: Sounds good.

11 THE COURT: And so some of that may be duplicative of
12 what you already got. Most of it, like I said, I don't think is
13 relevant, but I gave it to you anyway just in case --

14 MS. BLUTH: Okay.

15 THE COURT: -- something should come up. So it's
16 about all of the kids' medical and dental, anything that was
17 referenced to that.

18 MS. BLUTH: So the only other thing I have to ask Your
19 Honor in regards to scheduling is this. So we were talking with
20 the defense. There's a few things that we want to make sure are
21 decided before we go into openings.

22 THE COURT: Okay.

23 MS. BLUTH: So I guess we could --

24 THE COURT: Tell us, I guess, maybe -- why don't you
25 tell us what you want to reference in opening and then I'll tell

1 you if that's okay.

2 MS. BLUTH: Okay.

3 THE COURT: That might be the easiest way to do it.

4 MS. BLUTH: I guess my question is do you want us to
5 open today?

6 THE COURT: Yeah, I mean, if we have -- if -- okay.
7 If everybody is passed for cause, then when we come back from
8 lunch, you're just going to do the sheet back and forth. And
9 you're either going to have two alternates or you're going to
10 have three alternates. So there's nothing left to do, right,
11 with the panel? I'm going to make the decision.

12 MS. BLUTH: Right. That's fine. We just need to know
13 about the -- the -- the decision on the -- you guys help me out.
14 It's your motion.

15 MR. FIGLER: Motion to suppress.

16 MS. McAMIS: It's our motion to suppress.

17 MR. FIGLER: If you want to receive any moderate
18 argument on that.

19 THE COURT: Well, I passed that over if you wanted to
20 make argument on it.

21 MS. McAMIS: We do.

22 MR. FIGLER: Ms. McAmis would.

23 THE COURT: Okay.

24 MR. FIGLER: And then there's just a couple little
25 other outstanding issues. I don't mean to hide the ball. I was

1 just saying that the defense has some concerns about the Amended
2 Information that they wanted to go over. And then with regard
3 to Ms. Bluth's -- we understand Ms. Bluth is going to use a
4 PowerPoint. Some Courts direct, you know, the -- the State to
5 review that with the Court and the defense ahead just to make
6 sure that there's --

7 THE COURT: My --

8 MR. FIGLER: -- no issue or, in the alternative, we
9 all need to --

10 THE COURT: Mr. Figler, we don't have to hear what
11 other courts do. I'm going to tell you what I do.

12 MR. FIGLER: Okay.

13 THE COURT: Okay. Fair enough?

14 MR. FIGLER: Yes, of course.

15 THE COURT: What I do is if there's exhibits that are
16 going to be used in the PowerPoint, you have to show the
17 exhibits ahead of time. And if there's a reasonable basis for
18 an objection to the exhibits, you can make the objection and
19 I'll make a ruling on it.

20 MR. FIGLER: Perfect.

21 THE COURT: In terms of the PowerPoint's just general
22 content, I don't make them disclose that to you, but I do like
23 you to give us a printout of your PowerPoint so that we can make
24 it a Court's exhibit.

25 MR. FIGLER: You anticipated my comment.

1 THE COURT: I make everything a Court's exhibit, Mr.
2 Figler.

3 MR. FIGLER: I appreciate it.

4 THE COURT: So that's why I don't need to -- I don't
5 care what, you know, Judge Earley is doing or Judge --

6 MR. FIGLER: Okay.

7 THE COURT: -- Scotti did or whatever. In any event,
8 so that's my policy. That's what I do.

9 MS. BLUTH: I'll do that.

10 THE COURT: So if you have exhibits in there, you
11 know, photos or whatever, diagrams, show it to them ahead of
12 time.

13 MS. BLUTH: You got it.

14 THE COURT: Same goes for the defense. If you have --

15 MR. FIGLER: We're not using a PowerPoint.

16 THE COURT: Okay.

17 MR. FIGLER: And I just want to make sure it's clear,
18 if there's an excerpt from a statement or an excerpt from what
19 intends to be an exhibit, that would also need to be disclosed
20 to us right now; right?

21 MS. BLUTH: What do you mean? I'm sorry. Can you be
22 more specific like --

23 MR. FIGLER: Well, like say if you're going to make
24 reference to Janet's book and you pulled out a segment verbatim,
25 I'd like to see what that is ahead of time. If they're going to

1 pull out a statement from something that, you know, Hinton said,
2 like, you know, verbatim from a statement, I think that is
3 something that we should see. If it's just argument or points,
4 I agree with Your Honor.

5 THE COURT: All right. She says she's not doing that.
6 She's shaking her head.

7 MS. BLUTH: So I don't have -- well, I mean, this is
8 so broad to me. So --

9 THE COURT: What Mr. Figler means is in Danielle
10 Hinton's --

11 MS. BLUTH: Nothing from Danielle.

12 THE COURT: -- transcribed statement, he doesn't want
13 you to put up the statement. You can say --

14 Is that what you're saying? You want to --

15 MR. FIGLER: That would be an example, yes.

16 THE COURT: Right. Because it's not going to be an
17 exhibit. That's what he --

18 Is that what you're saying?

19 MR. FIGLER: That -- yeah.

20 THE COURT: Okay.

21 MS. BLUTH: So do I have anything that's --

22 THE COURT: But you can say like I expect Ms. Hinton
23 is going to tell you, you know --

24 MS. BLUTH: Yeah, that's fine.

25 THE COURT: -- my mother hit the child with a spoon,

1 and then mother hit child with spoon.

2 MS. BLUTH: Yeah, I'm not opening with Danielle Hinton
3 at all.

4 THE COURT: Okay. And then the next thing is
5 obviously before opening I'm going to have to read the
6 introductory remarks which includes the indictment. So if
7 there's changes to the indictment, we need to do that now
8 because that's going to be read by the clerk before we do
9 anything else.

10 MR. FIGLER: All right. So --

11 THE CLERK: I have the one that's filed on February
12 6th.

13 MS. BLUTH: Yeah, the one that you agreed to.

14 MR. FIGLER: No, we didn't agree to it. We
15 appreciated the changes with regard to the mental abuse or
16 emotional suffering because there was no evidence of that. And
17 the State conceded that they would change that in their -- in
18 their -- in their motion -- I'm sorry, in their Amended
19 Information. But, I mean, if we want to hit this right now and
20 have a little time --

21 THE COURT: Well, my point is we have to hit it right
22 now because it's one of the first things we're going to read --

23 MR. FIGLER: Okay.

24 THE COURT: -- is that. So we have to have decided
25 that because that precedes the opening statement.

1 MS. BLUTH: Yeah.

2 MR. FIGLER: It does.

3 THE COURT: We're not being filmed right now, are we?

4 UNKNOWN SPEAKER: I'm just doing a camera check.

5 THE COURT: Okay. All right.

6 UNKNOWN SPEAKER: So yes and no.

7 THE COURT: But it's not being broadcast right now?

8 UNKNOWN SPEAKER: No, no, no, no, no. No.

9 MR. FIGLER: So the defense has had the opportunity

10 now since the -- I mean, look, I appreciate that I came onto the

11 case a little late, but, you know, there are some things that

12 need to be raised at any time before we get under way with the

13 trial. In looking at some of the counts, there was a concern

14 with regard to notice as it related to those counts of child

15 abuse that suggest an unclarified or unspecified, quote,

16 unquote, extended period of time.

17 In other words, in quite a few, and I've outlined

18 which ones and I can tell you which ones, in some of the counts

19 it -- it alleges conduct that would not otherwise be unlawful

20 except, ostensibly, for the State's suggestion that it was for

21 an extended period of time. That's a very ambiguous statement

22 and it doesn't put the defense on notice as to what the extended

23 period of time is that crosses the line into child abuse.

24 And so while there is a constitutional concern of

25 vagueness as that statute applies to this defendant with these

1 allegations, there is also a notice requirement as it applies to
2 all of the counts and there's probably over ten of them that
3 just talk about this ambiguous extended period of time.

4 THE COURT: I'm sorry to interrupt you, but to be
5 clear, that term was in the original indictment; correct? Not
6 in the --

7 MR. FIGLER: I believe it was, as well, Your Honor,
8 yes. And so I'm raising it because it needs to be preserved.
9 If Your Honor feels it's untimely, you can make a record of
10 that. But if I don't raise it at all, then someone in the
11 future perhaps would look and say to me why didn't you raise it
12 at all? And, you know, when I came onto the case, I've done my
13 best to prepare for the case, to do everything we need to do, to
14 deal with the new records that come in, to deal with the
15 exigencies that occur.

16 I did indicate to the Court that there were some
17 concerns that I wanted to bring to the Court's attention. And I
18 appreciate the position that puts me in, but I am making a
19 record to whatever end that that is not in comport, and I can
20 give the Court case law and I can give the Court statute, but
21 that those particular averments are not in comport with the --
22 with the requirements in the State of Nevada or under the
23 Constitution.

24 And then the second one is that in looking at this and
25 going over it, there is an allegation that all the conduct

1 occurred between January 19, 2011, and November 11, 2013, that
2 applies to all 46 counts. While I understand that in child
3 abuse cases or child --

4 THE COURT: Sex cases or whatever.

5 MR. FIGLER: -- victim cases, especially sex cases,
6 that specificity to dates is often very difficult because of the
7 nature of the child -- the child witness or child victim, that
8 it doesn't come without limitations, that the Supreme Court has
9 repeatedly admonished to try to find the exact dates if at all
10 possible.

11 But beyond that, the Nevada Supreme Court has often
12 said that when time is of the essence that there needs to be a
13 specific factual allegation, and certainly that the State has
14 made extended period of time an element of the offense of child
15 abuse and so that specificity will be required. That said,
16 there's also a concern with a few of the charges as being
17 outside the statute of limitations. And that, I know, can be
18 raised all the way up until the verdict.

19 THE COURT: Well, so can constitutional issues.

20 MR. FIGLER: Well, of course, and that's what we're
21 kind of trying to say right now. You know, one way or another,
22 as much as statute of limitation has been determined in Nevada
23 to be somewhat of an affirmative defense, we can bring it up at
24 any time. Specifically, I want to talk about the assault and
25 the battery charges.

1 The assault charges were first filed in the justice
2 court as part of a criminal complaint on May 22, 2014, and the
3 battery charges were first filed as a second amended complaint
4 in the justice court at July 23, 2014. It's our position, based
5 on statutory of limitation of actions, that the rule, unless
6 there's an exception, is that those would have had to have been
7 filed within three years, and that January 19, 2011, is outside
8 the statute of limitations for those offenses.

9 I appreciate that there -- the offenses themselves are
10 not child abuse, which may or may not be a continuous offense.
11 These are specific instances that would be able to be completed
12 in one day and that are not being pled as part of an ongoing
13 pattern or an ongoing continuous offense because they are
14 separately pled as separate counts.

15 I also understand that there is an exception when
16 things are done in secret, but that burden is on the State to
17 show to the Court by a preponderance of evidence that it was
18 done in secret. And that there is not sufficient case law that
19 would suggest that these specific offenses were done in a secret
20 way given the case law that interprets that as opposed to some
21 -- the sexual assault cases and the lewdness cases and things of
22 that nature, that the physical injury was not done in secret by
23 any stretch of the case law that suggests what that is so that
24 there would be no exception and that those counts should be
25 stricken because they are violative of the statute of

1 limitations because they were not pled in a timely fashion,
2 which would have been January 19, 2014.

3 THE COURT: Well, first of all, I find that your, I
4 guess, oral motion is untimely. I get that you were brought on
5 the case late, but Ms. Wildeveld, who is appointed, and is
6 obviously a very experienced attorney, for whatever reason did
7 not raise this. So to raise it now, I think, is completely
8 untimely. On the issue of notice and unconstitutional
9 vagueness, if you look at the evidence which has been presented
10 before the Grand Jury --

11 MS. BLUTH: Preliminary hearing.

12 MR. HAMNER: Preliminary hearing.

13 THE COURT: Preliminary hearing. Excuse me.
14 Everybody knows what time period the State is talking about. So
15 I don't find that it's vague to the extent that she's being
16 deprived of sufficient notice or due process or anything like
17 that.

18 MR. FIGLER: I just want to make clear what our
19 argument was.

20 THE COURT: And you're talking about the charging
21 document.

22 MR. FIGLER: The charging document and the phraseology
23 extended period of time. That -- that phraseology is the
24 averment.

25 THE COURT: But they put the period -- they put the --

1 so you're saying, oh, what is an extended period of time. Is it
2 an hour? Is it --

3 MR. FIGLER: 15 minutes.

4 THE COURT: -- five hours?

5 MR. FIGLER: Is it two days?

6 THE COURT: Is it 15 minutes? First of all, I don't
7 think they have to specifically allege 10 minutes or an hour or
8 five hours. Number two, I think from the evidence that's been
9 presented thus far, you can ascertain what period of time
10 they're talking about. And number three, when you're talking
11 about children, their ability to -- just like one of the
12 potential jurors said, the ability of a young child to say 15
13 minutes or an hour is somewhat impaired.

14 And so I think when you're dealing with child
15 victims/witnesses, there's less of an ability to be precise.
16 And so I think extended period of time is really a determination
17 in terms of is this excessive or extended, you know, five
18 minutes versus two hours or whatever. But I don't think it's
19 unconstitutionally vague.

20 And I think, you know, all of these objections could
21 have been made not just months ago, but years ago, and they
22 weren't made. And so, you know, I get it, Ms. Wildeveld may
23 have looked at this case differently than you're looking at it,
24 but you're still bound by decisions of co-counsel.

25 MR. FIGLER: I'm making my record, Your Honor.

1 THE COURT: Yeah. Well, and I'm making the record on
2 behalf of the Court, which is, again, it's not months ago, it's
3 years ago these issues. And, as you know, this case was heavily
4 litigated, you know, at the writ level and additional motions
5 could have been filed. And so that's all I have to say.

6 Ms. Bluth.

7 MS. BLUTH: In regard --

8 THE COURT: What have you got to say?

9 MS. BLUTH: So in charging documents, I'm damned if I
10 do and I'm damned if I don't. Because if I would have put 60
11 minutes and I didn't get the child to say exactly 60 minutes,
12 then it would have been stricken because I didn't get the child
13 to say the exact minute. So I put extended period of time
14 because under the statute of negligent treatment or
15 maltreatment, when you look at the definition it talks about
16 reasonable.

17 This is a factual determination for the jury to make.
18 If they don't think sitting on a bucket for an hour or for, you
19 know, I guess it would be like not allowing them to urinate or
20 use the bathroom for extended periods of time. If they think an
21 hour is sufficient, then factually they can say that that's not
22 -- you know, that we didn't meet our burden. But this was a
23 five-day prelim where we know exactly what time periods we are
24 talking about. It's a notice pleading. And I think that what
25 we did was sufficient.

1 In regards to the dates and the statute of
2 limitations, the children testified that this stuff was ongoing
3 every day of their life. So, you know, the abuse started in
4 January of 2011 and it continued until the very day they left in
5 November of 2013. If we want to get more specific we can ask
6 specific dates or time periods, but the -- the remedy would be
7 for me to ask the Court for leave to amend the Information and
8 add a specific day period, it wouldn't be to completely dismiss
9 the charge.

10 MR. FIGLER: And the statute of limitations argument
11 was not averred as being problematic with regard to the child
12 abuse charges.

13 THE COURT: Just say what counts you're talking about,
14 Mr. Figler.

15 MR. FIGLER: The assault and -- I have them if the --

16 MS. BLUTH: The AWDW and the bat with intent.

17 MR. FIGLER: That's correct, Your Honor.

18 MS. BLUTH: Right. So with those, the girls were
19 talking about that every time -- sorry, excuse me -- that when
20 the defendant would use the catheter, she would, if they would
21 struggle or try to fight her, she would take a razorblade, hold
22 it to them, and tell them if you squirm one more time, I'll cut
23 your p-word out, and then show them videos of tribes in other
24 countries where they were mutilating body parts. And so the
25 children talked about that this was something that happened in

1 multiple rooms of the house and multiple times that they were
2 living there.

3 So I definitely think that we gave sufficient notice
4 and that we were within the statute of limitations. If we --
5 again, if the Court wishes us to -- leave to amend the
6 Information, we can do so. But I think that with the evidence
7 we presented at the preliminary hearing in the five days that
8 these children were cross-examined, they discussed the fact that
9 these things were regularly being done to them.

10 MR. FIGLER: I would disagree with that
11 characterization. The way that it is pled and is put on notice
12 that these seem to be singular events, not ongoing events or on
13 a regular basis, and it would be prejudicial to allow them to
14 amend at this time.

15 THE COURT: The only one that I think was a singular
16 event, if I'm not mistaken, was the paint stick.

17 MS. BLUTH: That's the only thing --

18 THE COURT: The sexual assault --

19 MS. BLUTH: -- that happened one time.

20 THE COURT: -- with the paint stick.

21 MR. FIGLER: Well, that is within the --

22 THE COURT: Everything else was part of an ongoing
23 event.

24 MR. FIGLER: And, again, I don't know that the
25 razorblade or the bat was pled as an ongoing event. Certainly,

1 those counts that we have issue with as far as statute of
2 limitations because they are beyond the January 19, 2011, date
3 are specifically Counts 13, 23, 38, 39, and 46.

4 And just for the Court's notes, the allegations of the
5 broad pleading or the unconstitutional as applied to this
6 defendant pleadings, if I'm going to give you those numbers real
7 quick, Your Honor, that use that extended period of time or
8 similar averment are Counts 3, 4, 5, 6, 10, 15, 16, 17, 18, 21,
9 26, 27, 28, 29, 41, 44, and 45.

10 THE COURT: All right. Well, I think their pleading
11 is fine, sufficient based on the record that's already been
12 made, so I don't think I really need to say anything else about
13 that.

14 In terms of scheduling, obviously, none of us have
15 eaten lunch yet, including my staff, which we're going to wolf
16 down some food right now, and I'm guessing you folks will do
17 that. So we may be a little bit behind schedule, that we then
18 have to go through with the perempts. And I have to read the
19 introduction, and Jill has to read the Information.

20 MS. BLUTH: Oh. That's going to take --

21 THE COURT: Are we even going to get to opening
22 statements today?

23 MS. BLUTH: This is what I think.

24 MS. McAMIS: Well, and, Your Honor --

25 I am so sorry for interrupting.

1 -- we still have our motion to suppress.

2 MS. BLUTH: I think this is what my two cents is, what
3 it's worth. We tend to argue lengthy, these two sides on
4 issues. We still have to argue the motion to suppress, and we
5 still have to argue exactly what conduct we're getting into. So
6 my two cents would be for us to get the jury, pick the jury,
7 instruct them, admonish them, whatever we have to do, read the
8 Information, which I think is going to take 30 to 45 minutes.

9 THE COURT: I think so. Easily.

10 MS. BLUTH: We let them go, and then we argue out
11 these motions, come back, openings, witnesses. Because,
12 otherwise, I don't think we're going to be -- I think the jury
13 is going to be out there for an hour and a half while we argue
14 stuff.

15 MR. HAMNER: Right.

16 THE COURT: Okay. Yeah, let's do that. Now, I'm
17 trying to think.

18 MR. FIGLER: The scheduling issue, I'm going to ask
19 the Court to help me on that one.

20 THE COURT: Okay. Well, tell me your scheduling
21 issue, and then I'll tell you what I'm pondering.

22 MR. FIGLER: If we're going to do openings first thing
23 tomorrow morning, I have an evidentiary hearing --

24 THE COURT: Okay.

25 MR. FIGLER: -- in a capital case set for 10:00 in

1 front of Judge Leavitt with three witnesses. I was hoping to be
2 able to swap out with Ms. Wildeveld who would be available for
3 the morning session until 1:00.

4 THE COURT: Okay. Well, then, I'll do my own
5 calendar. Judge Smith had volunteered to do my calendar so we
6 could start at 9:00. But if you're not going to be here at
7 10:00 anyway, it doesn't make any sense for him to do my
8 calendar. I'll just do it myself.

9 MR. FIGLER: But if it's going to back it up, I mean,
10 maybe we can move that evidentiary hearing. I don't want to,
11 necessarily, but if it's backing everyone up --

12 THE COURT: Can you be done with --

13 MR. FIGLER: -- I can't imagine that it's --

14 THE COURT: Can you be done with the evidentiary
15 hearing by 11:00?

16 MR. FIGLER: I don't know.

17 MS. BLUTH: There's no way. With three defense
18 attorneys and three witnesses?

19 MR. FIGLER: And Mr. Von Buskirk has exhibits to
20 introduce and --

21 MS. BLUTH: And you're Dayvid Figler.

22 MR. FIGLER: Well, we try to make a thorough record
23 because it is a capital case.

24 THE COURT: So do we think we should start in here at
25 9:00, then, and you should move your evidentiary hearing or --

1 MS. BLUTH: Do you want to contact Leavitt, Dayvid?

2 MR. FIGLER: I've been in communication with Mr. Von

3 Buskirk throughout these proceedings just to let him know where

4 we are.

5 THE COURT: Isn't it Van Buskirk?

6 MR. FIGLER: Is it Van? I'm sorry.

7 MR. HAMNER: I think it's Van Buskirk.

8 THE COURT: It's Van Buskirk.

9 MR. FIGLER: That's correct. Thank you.

10 THE COURT: An important distinction.

11 MR. FIGLER: It is. The Vans and the Vons have been

12 enemies for so long.

13 THE COURT: Well, you know, the Vans are Dutch and the

14 Vons are German.

15 MR. FIGLER: Right.

16 THE COURT: And that would imply that Mr. Van Buskirk

17 was some kind of German aristocrat.

18 MR. FIGLER: Interesting.

19 THE COURT: Or Austrian.

20 MR. FIGLER: Well, he has that air about him. That

21 said, I will communicate with him right now and --

22 MS. BLUTH: This is why I need to open tomorrow.

23 MR. FIGLER: -- see what we can do.

24 MR. HAMNER: Said like a true Van Figler.

25 THE COURT: I'm actually a fan of Mr. Van Buskirk.

1 MS. BLUTH: I love Mr. Van Buskirk.
2 MR. FIGLER: I am, too. I like him a lot.
3 THE COURT: Mr. Van Buskirk is very smart.
4 MR. FIGLER: I like him a lot.
5 THE COURT: And he's a very good writer, and he's very
6 thorough.
7 MR. FIGLER: No disagreement.
8 THE COURT: As a district court judge, I appreciate
9 that because sometimes when we're reversed, not that I hardly
10 ever am, but occasionally, no, I'm serious --
11 MS. BLUTH: I know.
12 THE COURT: -- the fault is inadequate record, not in
13 the written findings, or on the appeal, the appeal isn't maybe
14 as well done as it could have been, and I appreciate the
15 thoroughness of Mr. Van Buskirk.
16 MS. BLUTH: It is very much appreciated.
17 MR. FIGLER: He's good at what he does.
18 THE COURT: We had a case where they -- the DA's
19 office, we got reversed, didn't cite to the record and then they
20 petitioned for a rehearing, which was done. And I was told that
21 then they failed to attach the exhibit of the transcript. And
22 so the -- so that's why it's important to me. So I appreciate
23 -- and, obviously, the defense doesn't get to do anything
24 because the State is never appealing.
25 MR. FIGLER: Right.

1 THE COURT: Except in this case, oddly. I guess Ms.
2 McAmis got fed up and left, so --
3 MR. FIGLER: She did. She's ready to be done.
4 MS. BLUTH: No, she wouldn't.
5 THE COURT: All right. Let's go to lunch.
6 MS. BLUTH: Okay. What time did you tell them?
7 THE COURT: I told them 2:40.
8 MS. McAMIS: They're already here.
9 MS. BLUTH: Oh, my gosh.
10 MS. McAMIS: I had to step out because I had my staff
11 drop something off. They're here.
12 THE COURT: Do you guys need to eat? I mean, can we
13 take like 20 minutes for all of us?
14 MS. BLUTH: Look at Jill.
15 THE CLERK: I'm ready to eat.
16 THE COURT: Well, can we take -- why don't --
17 MR. HAMNER: 3:00?
18 THE COURT: Huh?
19 MR. HAMNER: 3:00? 30 minutes?
20 THE COURT: Yeah, let's just take -- everybody be back
21 and ready to go at 2:55. How's that?
22 MS. BLUTH: Got it.
23 MR. HAMNER: Yes, Your Honor.
24 (Court recessed at 2:32 p.m., until 3:09 p.m.)
25 (Outside the presence of the prospective jury)

1 MR. FIGLER: We can -- we can move that if it needs to
2 be moved. I mean, it's just a tenuous thing, but it's not --
3 it's understood that we're in trial and that my obligation is to
4 be here because we have a jury and that can be moved, so --

5 THE COURT: Okay.

6 MR. FIGLER: -- I think we'll be fine with that.

7 THE COURT: Okay. So maybe we'll start, then, at
8 10:30 tomorrow.

9 MS. BLUTH: Sounds good.

10 THE COURT: Okay. So we've got the Information for
11 the clerk to read.

12 MR. HAMNER: Do you want to queue off before we let
13 the jury in.

14 THE COURT: Oh, yeah. We have to shut the monitor
15 off.

16 THE RECORDER: Oh, sure.

17 THE COURT: And then do we -- you each have your
18 papers to pass back and forth.

19 MS. BLUTH: Do you mind printing that, Jill?

20 THE CLERK: Yeah, I've got them.

21 MS. BLUTH: So we need the ten one.

22 THE CLERK: There's lots of papers.

23 THE COURT: And then what I'm going to do is you pass
24 your papers back and forth with -- you only need one paper.

25 THE CLERK: Yeah.

1 THE COURT: And then I'll read, you know, we're going
2 to excuse Badge 126 or whatever. All right. If everyone is
3 ready, Kenny, bring them in.

4 (Prospective jury reconvened at 3:12 p.m.)

5 THE COURT: All right. Court is now back in session.
6 The record should reflect the presence of the State through the
7 Deputy District Attorneys, the presence of the defendant and her
8 counsel, the officers of the court, and the ladies and gentlemen
9 of the jury. And as the -- I'm sorry, the prospective jurors.

10 And as the prospective jurors were walking in, the
11 gentleman in Chair No. 4 indicated he had thought of something
12 he wanted to add. And what is that?

13 PROSPECTIVE JUROR NO. 128: I had a brother that 35
14 years ago was convicted, I don't know if it was a misdemeanor or
15 not, of selling drugs or something. He got probation.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 128: It hasn't affected me. It
18 doesn't -- I barely even remember him. I see him like once
19 every 15 years.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR NO. 128: I get along with him, but,
22 you know.

23 THE COURT: So you're not close.

24 PROSPECTIVE JUROR NO. 128: He's a loner.

25 THE COURT: Okay. Thank you for disclosing that. Any

1 follow up by either side?

2 MS. BLUTH: Not on behalf of the State, Your Honor.

3 MS. McAMIS: None, Your Honor.

4 THE COURT: All right. Ladies and gentlemen, the
5 questioning of the prospective jurors is now concluded.

6 MR. FIGLER: Your Honor, we had that one area for that
7 one disclosure to follow up on.

8 THE COURT: Oh. Yes, I'm sorry.

9 (Off-record bench conference)

10 THE COURT: And I also wanted to follow up with Ms.
11 Dehesa.

12 PROSPECTIVE JUROR NO. 089: Yeah.

13 THE COURT: You indicated that to my bailiff that you
14 wanted to bring up a situation or situations involving family
15 members who had experience with the foster care system; is that
16 right?

17 PROSPECTIVE JUROR NO. 089: Correct.

18 THE COURT: And can you just tell us about that,
19 please?

20 PROSPECTIVE JUROR NO. 089: So my husband is one of
21 the youngest of five children. His brother, one of his
22 brothers, was a foster parent, ended up fostering for several
23 years. This was, a lot of it was prior to us dating, but then
24 his last -- he ended up adopting four of -- four children that
25 he ended up fostering, ended up adopting.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 089: So now they're part of the
3 family.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 089: And then his other brother
6 who is a police officer is -- did the same thing, fostered and
7 ended up adopting two of the kids that he fostered.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 089: And then stopped fostering
10 once he did those adoptions.

11 THE COURT: Okay. Now, the brother that adopted the
12 four children, were that -- was that a sibling group, or were
13 they unrelated?

14 PROSPECTIVE JUROR NO. 089: Yeah, there was one, it's
15 a boy and girl that are siblings, and then the other two are --
16 actually, it's five, the other three are not related.

17 THE COURT: Okay. And then the police officer brother
18 who adopted two children, are those siblings?

19 PROSPECTIVE JUROR NO. 089: No.

20 THE COURT: Okay. And so now all of the children are
21 part of your extended family; correct?

22 PROSPECTIVE JUROR NO. 089: Correct.

23 THE COURT: Okay. Were any of the children, to your
24 knowledge, victims of abuse or neglect?

25 PROSPECTIVE JUROR NO. 089: Yes.

1 THE COURT: Okay. And do you have any awareness of
2 how, if at all, the abuse and neglect has manifested, meaning
3 have there been any behavioral issues or psychological issues or
4 health issues or anything like that with any of the children?

5 PROSPECTIVE JUROR NO. 089: They're all now teenagers.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR NO. 089: As kids they all had --
8 they all had multiple issues. One of them was, you know, born
9 and addicted to heroin, the other one was born and addicted to
10 crack. The other two, one is autistic, the other two -- the
11 other little girl has, you know, like developmental delays.
12 They're all about two years younger developmentally than what
13 their current age should be.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 089: And then I -- we also have
16 -- he also has a cousin here that fosters children, and she's
17 got a set of four siblings right now.

18 THE COURT: Okay. And do you, you know, see the
19 foster children at family gatherings and interact with them at
20 all?

21 PROSPECTIVE JUROR NO. 089: Yeah, we do. I mean,
22 they're in California, so --

23 THE COURT: Oh, okay.

24 PROSPECTIVE JUROR NO. 089: -- there's not a lot of
25 interaction --

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 089: -- with the California
3 family. You know, two, three times a year when we all get
4 together for, you know, those mandated family gatherings. And
5 then -- and then the cousin that lives here we, you know, see
6 for birthday parties. You know, we -- we're in two different
7 stages of our lives, but we do socialize with them and have
8 interactions with the children.

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

10 May I see counsel.

11 (Off-record bench conference)

12 THE COURT: All right. Any follow-up by either side?

13 MS. McAMIS: No, Your Honor.

14 MS. BLUTH: No, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, this
16 concludes the questioning of the prospective jurors. Each side
17 is given ten peremptory challenges, which may be exercised for
18 any reason. If you are excused pursuant to one of the
19 peremptory challenges, please don't be offended or anything like
20 that. They are simply part of the process designed to ensure
21 that both sides have a completely fair and impartial jury.

22 We're just going to all sit here at ease while the
23 attorneys pass a paper back and forth, and on that paper each
24 side will list their ten peremptory challenges. And once that
25 paper has been completed, the Court will excuse those jurors who

1 have been challenged.

2 Yes, ma'am?

3 PROSPECTIVE JUROR NO. 105: I know you asked the first
4 day is being on the jury a hardship financially.

5 THE COURT: Right.

6 PROSPECTIVE JUROR NO. 105: So, of course, I didn't
7 speak up because it's not a financial hardship. However, after
8 being here three days I would like to point out that because I'm
9 in education, as you know, CCSD is short teachers, short subs.

10 THE COURT: Right.

11 PROSPECTIVE JUROR NO. 105: So out of the three days
12 I've been here, my students have had no sub for two of the three
13 days.

14 THE COURT: Right. I mean, I'll just tell you as a
15 former County employee, I know that County employees are
16 compensated for being jurors, whereas many of the other jurors
17 are not compensated. So I find that it's less of a hardship
18 whether people work for the school district, other county or
19 state agencies that do pay for jury service. So --

20 PROSPECTIVE JUROR NO. 105: Well, it's not a financial
21 hardship at all for me.

22 THE COURT: No, I understand that, ma'am.

23 PROSPECTIVE JUROR NO. 105: But it is for my students.

24 THE COURT: Right. Ma'am, again, I typically do not
25 excuse people who are employees of the County because overall I

1 find that the hardship is much less overall than it is to those
2 people -- as I said, we have many people in our community that,
3 obviously, work in the casino business and other aspects of the
4 service industry that are suffering somewhat of a financial
5 hardship and we make them be here anyway. So, you know, I
6 understand the -- the school district does have an issue with a
7 teacher shortage, but, you know, again, evaluating the impact.

8 (Peremptory challenges exercised)

9 THE COURT: All right. At this time, Badge No. 92,
10 Jamie Kay, is excused. Thank you very much for being here and
11 your willingness --

12 PROSPECTIVE JUROR NO. 092: Do I just leave now?

13 THE COURT: -- to serve as a juror.

14 Badge No. 100, Julian Lopez, is excused. And, sir,
15 thank you very much for being here and your willingness to serve
16 as a juror.

17 Badge No. 122, Malcolm Aquino, is excused. Sir, thank
18 you very much for being here and your willingness to serve as a
19 juror.

20 Badge No. 82, is it Magdalen?

21 PROSPECTIVE JUROR NO. 082: Yes, Cirincione.

22 THE COURT: Yes, ma'am. Thank you for being here and
23 your willingness to serve as a juror.

24 Badge No. 72, Boonhom Chanla. Thank you, sir, very
25 much for being here and your willingness to serve. You are

1 excused.

2 Badge No. 91, Alfred Le. Thank you, sir, for being
3 here, and you are excused.

4 Badge No. 128, Gerald Crocker. Thank you very much
5 for being here, sir, and your willingness to serve.

6 Badge No. 111, Linda Aquilla. Thank you -- Aquilla.

7 PROSPECTIVE JUROR NO. 111: Aquilla.

8 THE COURT: Aquilla. Well, whoever you are. Thank
9 you for being here for three days and your willingness to serve
10 as a juror, ma'am. We appreciate it.

11 Badge No. 81, Michael Gilbert. You are excused at
12 this time, sir, and thank you for being here.

13 Badge No. 134, Gilbert Buco. Thank you, sir, for
14 being here and your willingness to serve as a juror, sir.

15 PROSPECTIVE JUROR NO. 134: Thank you, Your Honor.

16 THE COURT: You are excused.

17 Badge No. 89, Elizabeth Dehesa. Thank you, ma'am, for
18 being here and your willingness to serve.

19 Badge No. 105, Melissa Fryman. Thank you, ma'am, for
20 being here. You're excused.

21 Badge No. 74, Laurie Digrandi. Thank you for being
22 here, and you are excused.

23 Badge No. 101, Edmond -- I'm sorry, Edwin Keahler.
24 Sir, thank you for being here and your willingness to serve as a
25 juror. You are excused.

1 Badge No. 116, Joanne Duff. Ma'am, thank you for
2 being here and your willingness to serve. You are excused.

3 Badge No. 93, Benjamin Martinez. Where is Mr.
4 Martinez?

5 PROSPECTIVE JUROR NO. 093: Oh. Here.

6 THE COURT: Sir, thank you very much for being here
7 and your willingness to serve as a juror. You are excused.

8 Badge No. 104, Evelyn Bark. Ma'am, thank you for
9 being here. You are excused at this time.

10 Badge No. 94, Vincent Lombardo. Thank you, sir, for
11 being here, and you are excused.

12 Badge No. 129, Brenna Samuels. Thank you, ma'am, for
13 being here, and you are excused.

14 And Badge No. 53, Deanna Fecko. Where is Deanna
15 Fecko? Thank you, ma'am, for being here, and you are excused at
16 this time.

17 And to those of you that we left in the audience,
18 thank you all for being here and sitting through this process
19 for the past three days. You folks are excused.

20 THE MARSHAL: If you would wait outside for me, ladies
21 and gentlemen, I'll be out there momentarily to give you some
22 further information.

23 THE COURT: All right. Ladies and gentlemen, we're
24 going -- you are the 15 members of our jury. We are going to
25 take just a quick recess, and then Kenny, our bailiff, is going

1 to line you up in order and seat you all in the jury box when we
2 come back from the break.

3 I know it's almost 4:00. Following the break, I'm
4 going to read some introductory remarks to you. At the
5 conclusion of the trial I give you detailed instructions in
6 writing, but for right now I just give you some introductory
7 remarks. And at that point in time we'll be taking our evening
8 recess. When we reconvene tomorrow morning, we'll begin with
9 the opening statement from the State, all right. So we'll
10 probably be ending right around 5:00.

11 So if all of you would just please follow Officer
12 Hawkes through the double doors. As I said, he'll line you up
13 in order after the break.

14 (Jury recessed at 3:52 p.m.)

15 (Off-record bench conference)

16 THE COURT: Okay. So did I tell you this already? I
17 instructed Kenny to line them up in order of badge number so
18 that the lowest badge number will be seated in Chair 1 and the
19 three highest badge numbers will be seated in 12, 13, and -- or
20 13, 14, and 15.

21 MS. BLUTH: All right.

22 THE COURT: So that'll make it all easier for us.

23 MS. McAMIS: Thank you, Your Honor.

24 (Pause in the proceedings)

25 (Court recessed at 4:01 p.m., until 4:03 p.m.)

1 (Outside the presence of the jury)

2 THE COURT: -- the clerk's office, and everything in
3 the folder was given to you.

4 MR. FIGLER: Okay.

5 THE COURT: So I don't have any records that weren't
6 distributed.

7 MS. BLUTH: Okay. And what I gave to you is what CPS
8 gave to me, so --

9 MR. FIGLER: Okay. And, Your Honor, with the Court's
10 permission, I'd just like to file what I call the bench brief
11 that outlined in writing the issues that I had raised to the
12 Court at the last break just so it's there in written form.
13 There's nothing that needs to be disposed of here. It's just
14 the general concerns of the defense with regard to the issue
15 primarily about the constitutionality and the vagueness and the
16 statute of limitations.

17 There's -- I can just tell you exactly what it is and
18 you can tell me if I'm okay to file it. It's a brief averment
19 of facts, the pleading unconstitutionality argument that I had
20 already made that was ruled upon, the statute of limitations
21 which I already made which was ruled upon, some just general
22 concerns about some arguments that might come from the State,
23 which will have to be made contemporaneous anyway, the questions
24 about whether or not we have all the CPS/DFS records. I think
25 Your Honor has settled that now. I just put into writing the

1 request for severance of counts, which Your Honor has already
2 ruled upon, which was made orally, the severance of the sexual
3 counts.

4 THE COURT: No, I know what you're talking about.

5 MR. FIGLER: Right. And then that the -- we're hoping
6 to settle the instructions early because the defense wants to
7 make sure that there's some instructions that relate to corporal
8 punishment in the mix.

9 THE COURT: Okay. Well, before --

10 MR. FIGLER: It's your call. I mean, if not, I'll
11 make it an exhibit, but I'd like to file just so it's -- it's --
12 the written reasons for the oral motions that were made.

13 THE COURT: No, I understand what it is. I was going
14 to say maybe you could let Ms. Bluth have a look at it and see
15 if she objected to filing it.

16 MS. BLUTH: Yeah. No, I can tell you right now
17 without looking at it I'm going to object to the filing of it.
18 I mean, it's a bench memo with a bunch of things that should
19 have been filed years ago. So I don't -- there's -- there's no
20 need for a bench brief. The Court wasn't unclear on anything.

21 Normally, when I've done a bench memo or a bench
22 brief, the Court says I'm unclear on a certain thing, can you
23 guy research it and prepare a bench memo, which I actually did
24 in this case in regards to the sexual assault charges. And I --
25 and I understand why Mr. Figler is doing this, but he made an

1 oral record of all of these issues. I don't understand why we
2 now need a bench brief.

3 THE COURT: Ready?

4 THE MARSHAL: Yeah.

5 THE COURT: Bring them in.

6 (Jury reconvened at 4:06 p.m.)

7 THE COURT: All right. Did you hand out notepads?

8 THE MARSHAL: Yes.

9 THE COURT: All right. Ladies and gentlemen of the
10 jury, if you would all please rise. The clerk will now
11 administer the oath to you.

12 (Jury panel sworn)

13 THE COURT: All right. Ladies and gentlemen, as I
14 told you before the brief recess, I'm now going to take a few
15 minutes to talk to you about what to expect in this case. My
16 comments are intended to serve as an introduction to the trial.
17 As I've already said, at the conclusion of the trial I will give
18 you more detailed instructions in writing, and those detailed
19 instructions will control your deliberations.

20 This is a criminal case brought by the State of Nevada
21 against the defendant. The case is based on an Amended
22 Information. The clerk will now read the Amended Information
23 and state the plea of the defendant.

24 (Information read)

25 Ladies and gentlemen, you should distinctly understand

1 that the Amended Information just read to you is simply a
2 description of the charges made by the State against the
3 defendant. It is not evidence of anything. It does not prove
4 anything; therefore, the defendant starts out with a clean
5 slate. The defendant has pled not guilty and is presumed
6 innocent.

7 This is a criminal case, and there are two basic rules
8 you must keep in mind. First, the defendant is presumed
9 innocent unless and until proved guilty beyond a reasonable
10 doubt. The defendant is not required to present any evidence or
11 prove his innocence. The law never imposes upon a defendant in
12 a criminal case the burden of calling any witnesses or
13 introducing any evidence. Second, to convict, the State must
14 prove beyond a reasonable doubt that the crime was committed and
15 that the defendant is the person who committed the crime.

16 It will be your duty to decide from the evidence to be
17 presented whether the defendant is guilty or not guilty. You
18 are the sole judges of the facts. You will decide what the
19 facts are from the evidence which will be presented. The
20 evidence will consist of testimony of witnesses and documents
21 and other things received into evidence as exhibits.

22 You must apply the facts to the law which I shall give
23 you and in that way reach your verdict. It is important you
24 perform your duty of determining the facts diligently and
25 conscientiously for ordinarily there is no way of correcting an

1 erroneous determination of facts by the jury.

2 You should not take anything I may say or do during
3 the trial as indicating my opinion as to how you should decide
4 the case or to influence you in any way in your determination of
5 the facts. At times, I may even ask questions of witnesses. If
6 I do so, it is for the purpose of bringing out matters which
7 should be brought out and not in any way to indicate my opinion
8 about the facts or to indicate the weight or value you should
9 give to the testimony of a witness.

10 There are two kinds of evidence, direct and
11 circumstantial. Direct evidence is testimony about what the
12 witness personally saw, heard, or did. Circumstantial evidence
13 is indirect evidence; it is proof of one or more facts from
14 which one can find another fact.

15 By way of example, if you wake up in the morning and
16 see that the ground, the sidewalks, and the streets are all wet
17 and water is running down the gutters, you may find from those
18 facts that it rained during the night. It is proof of one or
19 more facts from which you can find another fact. Conversely, if
20 you are awake during the night and saw the rain fall, that would
21 be direct evidence, which is something you personally saw.

22 You may consider both direct and circumstantial
23 evidence in deciding this case. The law permits you to give
24 equal weight or value to both, but it is for you to decide how
25 much consideration to give to any evidence.

1 Certain things are not evidence, and you must not
2 consider them as evidence in deciding the facts of this case.
3 They include statements and arguments by the attorneys,
4 questions and objections of the attorneys, testimony I instruct
5 you to disregard, and anything you may see or hear if the court
6 is not in session, even if what you see or hear is done or said
7 by one of the parties or by one of the witnesses. Remember,
8 evidence is sworn testimony by a witness while court is in
9 session and documents and other things received into evidence as
10 exhibits.

11 There are rules of law which control what can be
12 received into evidence. When a lawyer asks a question or offers
13 an exhibit into evidence and the lawyer on the other side thinks
14 it is not permitted by the rules, that lawyer may object. If I
15 overrule the objection, the question may be answered or the
16 exhibit received.

17 If I sustain the objection, the question cannot be
18 answered, and the exhibit cannot be received. Whenever I
19 sustain an objection to a question, ignore the question and do
20 not guess what the answer might have been.
21 Sometimes I may order evidence stricken from the record and tell
22 you to disregard or ignore such evidence. This means that when
23 you are deciding the case you must not consider the evidence
24 which I have told you to disregard.

25 It is the duty of a lawyer to object to evidence which

1 the lawyer believes may not be permitted under the rules. You
2 should not be prejudiced in any way against the lawyer who makes
3 objections on behalf of the party the lawyer represents. Also,
4 I may find it necessary to admonish a lawyer. If I do, you
5 should not be prejudiced towards the lawyer or client because I
6 have found it necessary to admonish him or her.

7 You are not to concern yourself in any way with the
8 sentence which the defendant might receive if you should find
9 the defendant guilty. Your function is to decide whether the
10 defendant is guilty or not guilty of the charges. If and only
11 if you find the defendant guilty, then it becomes the duty of
12 the Court to pronounce sentence.

13 At the end of the trial you will have to make your
14 decision based on what you recall of the evidence. You will not
15 have a written transcript to consult, and it is difficult and
16 time-consuming for the court recorder to play back lengthy
17 testimony. Therefore, I urge you to pay close attention to the
18 testimony as it is given.

19 If you wish, you may take notes to help you remember
20 what witnesses said. If you do take notes, please keep them to
21 yourself until you and your fellow jurors go to the jury room to
22 decide the case. Do not let note taking distract you so that
23 you do not hear other answers by witnesses. You should rely
24 upon your own memory of what was said and not be overly
25 influenced by the notes of other jurors.

1 Until this case is submitted to you, do not talk to
2 each other about it or about anyone having anything to do with
3 it until the end of the case when you go into the jury room to
4 decide on your verdict. Anyone else includes members of your
5 family and your friends. You may tell them that you are a juror
6 in a criminal case, but please do not discuss anything else
7 about this case with them until after you have been discharged
8 by me.

9 Do not let anyone talk to you about the case or about
10 anyone having anything to do with it. If someone should try to
11 talk to you, please report it to me immediately by contacting
12 the bailiff.

13 Do not read any news stories, listen to any radio
14 broadcasts, or watch any television reports about the case or
15 about anyone having anything to do with it. Do not do any
16 research or make any investigation about the case on your own.
17 You may be tempted to visit the location. Please do not do so.
18 In view of the time that has elapsed since this case has come to
19 trial, substantial changes may have occurred.

20 Do not make up your mind about what the verdict should
21 be until after you have gone to the jury room to decide the case
22 and you and your fellow jurors have discussed the evidence. It
23 is important that you keep an open mind.

24 A juror may not declare to a fellow juror any fact
25 relating to this case of which the juror has knowledge. If any

1 juror discovers during the trial or after the jury has retired
2 that that juror or any other juror has personal knowledge of any
3 fact in controversy in this case, that juror shall disclose that
4 situation to me in the absence of the other jurors.

5 This means that if you learn during the course of the
6 trial that you have personal knowledge of any fact which is not
7 presented by the evidence in this case you must declare that
8 fact to me. You communicate to the Court through the bailiff

9 During the course of this trial, the attorneys for
10 both sides and all court personnel other than the bailiff are
11 not permitted to converse with members of the jury. These
12 individuals are not being antisocial. They are bound by ethics
13 and the law not to talk to you. To do so might contaminate your
14 verdict.

15 The trial will proceed in the following manner. The
16 deputy district attorney will make an opening statement which is
17 an outline to help you understand what the State expects to
18 prove. Next, the defendant's attorney may, but does not have
19 to, make an opening statement. Opening statements serve as an
20 introduction to the evidence which the party making the
21 statement intends to prove.

22 The State will then present its evidence, and counsel
23 for the defendant may cross-examine the witnesses. Following
24 the State's case, the defendant may present evidence, and the
25 deputy district attorney may cross-examine those witnesses.

1 However, as I have already said, the defendant is not obligated
2 to present any evidence or call any witnesses.

3 After all of the evidence has been presented, I will
4 instruct you on the law. After the instructions on the law have
5 been read to you, each side has the opportunity to present oral
6 argument. What is said in closing argument is not evidence.
7 The arguments are designed to summarize and interpret the
8 evidence. Since the State has the burden of proving the
9 defendant guilty beyond a reasonable doubt, the State has the
10 right to both open and close the arguments. After the arguments
11 have been completed, you will retire to deliberate on your
12 verdict.

13 Jurors are permitted to ask questions of witnesses.
14 So if you have a question for one of the witnesses, I ask that
15 you write it down using a full sheet of your notebook paper, and
16 then wait until the attorneys for both sides have had an
17 opportunity to question the witness because very often one of
18 the lawyers will ask your question. If not, get my attention or
19 the bailiff's attention, and he will retrieve the question from
20 you.

21 Please do not be offended if I don't ask one of your
22 questions. That doesn't mean it's not an interesting question
23 or something like that, but the questions from the jurors are
24 governed by the same rules of evidence that control what the
25 lawyers can ask. So your question could call for hearsay or

1 some type of other inadmissible evidence, and for that reason I
2 may not ask it.

3 That concludes my introductory remarks. We're going
4 to go ahead and take our evening recess. I have a calendar on
5 various unrelated matters in the morning, so we will reconvene
6 tomorrow at 10:30. You have been given blue badges that
7 identify you as Department 21 jurors. It's important that you
8 wear those badges when you're in and around the building so that
9 people recognize you as jurors and somebody doesn't
10 inadvertently talk about the case in your presence.

11 Any questions on where to meet tomorrow and where to
12 park tomorrow and everything like that can be addressed to
13 Officer Hawkes out in the hallway. So if you would all please
14 place your notepads in your chairs and follow Officer Hawkes
15 through the double doors, we'll see everybody back at 10:30
16 tomorrow.

17 (Jury recessed at 4:54 p.m.)

18 (Off-record colloquy)

19 THE COURT: Okay. So moving along. There is the
20 issue with the motion to suppress, as well as covering what is
21 going to be stated in the opening statements to the extent there
22 may be some objections. So do you want to start with the motion
23 to suppress?

24 MS. McAMIS: Yes, Your Honor.

25 THE COURT: All right.

1 MS. McAMIS: All right. Now, Your Honor recognizes we
2 did join in the motion, but we fully adopted that motion and so
3 we reincorporated all of the points and authorities set forth in
4 that motion.

5 And the basic position that the defense is in is that
6 the Fourth Amendment protects a parent's right to privacy in the
7 home. And in this situation DFS unlawfully inquired about the
8 foster kids -- or they lawfully inquired, rather, about the
9 foster kids, but the -- the sisters, the sibling group, the
10 Solander sibling group, were not lawfully part, they were not
11 still foster children. They were legally adopted and within the
12 legal custody and care and parameters of the Solanders.

13 Without notice to either of the Solander parents, CPS
14 conducted two different interviews of the Solander children,
15 beginning in Florida and another in Nevada. The Solanders were
16 given no opportunity to object or to be present. Moreover, the
17 Fourteenth Amendment guarantees parents and children will not be
18 separated by a state actor or agency without due process of law,
19 except in emergency situations, and that's supported by Ninth
20 Circuit case law, *Wallis versus Spencer*, 202 F.3d 1126, specific
21 pages 1138.

22 So there are limitations that apply to all government
23 action. Police and likewise, any other government actor like
24 CPS/DFS cannot seize children suspected of being abused or
25 neglected unless there are reasonable avenues of investigation

1 first pursued, particularly where it is not clear that a crime
2 has been committed or will be committed. Again, that's
3 referencing the *Wallis versus Spencer* decision.

4 So the State in this case was constrained by
5 substantive and procedural due process guarantees that were not
6 followed. A state official cannot -- or a state official may
7 not remove children from parents unless that official has
8 reasonable belief the children are in imminent danger. And
9 that's referencing their decision *Ram versus Rubin*, 118 F.3d
10 1306. That's a Ninth Circuit case decision.

11 Here there was no information presented to -- by CPS
12 or DFS that the Solander siblings were in imminent danger,
13 warranting emergency intervention. When -- when DFS inquired of
14 Mrs. Solander where are your children, well, they actually
15 already knew because Mrs. Solander had been explaining all of
16 her different hurdles and barriers to the children to DFS.

17 She had said for a long time, I'm looking into
18 behavioral schools, I'm looking into things to help them,
19 they've been peeing and pooping, I'm looking into things that
20 will help them, so I'm considering boarding school. Then when
21 the department asked, she said, well, it's none of your
22 business. When they contacted Mr. Solander, he said, well,
23 they're over at Marvelous Girls Grace Academy in Florida, here's
24 all the contact information. And all of that information was
25 correct. They were able to use that to reach out.

1 And then when they reached out to Mr. Blakenship at
2 Marvelous Girls Grace Academy, Mr. Blankenship reported that the
3 girls were doing well. He didn't disclose that they had ever
4 disclosed any instances of abuse or neglect. He didn't disclose
5 that he was, you know, fearful or suspicious that they were in
6 imminent danger. The report was they were doing well, they have
7 some behavioral issues, they've been working on it, and they
8 seemed to be doing better. It was a positive progress report.

9 Additionally, I would point out that the -- the
10 academy that the girls were attending was a private boarding
11 school. And the Seventh Circuit, while it's, of course, not
12 binding on this Court, it is -- it's a persuasive authority.
13 The Seventh Circuit held that a state statute allowing
14 government entry to investigate potential child abuse and
15 neglect on private property absent a warrant or absent probable
16 cause was an unconstitutional statute. And that was the *Doe*
17 *versus Heck* decision, which is set forth in the motion.

18 We are asking this Court to adopt that same reasoning
19 based on the similarity of circumstances and based on the
20 absence of any exigency as to the Solander sibling group. There
21 was no warrant in this case. There was no probable cause for
22 the Florida CPS to intervene to actually remove the girls from
23 the school, ask them questions.

24 We are asking that -- there just were no emergent
25 circumstances, so we're asking that all of the Florida

1 statements be suppressed and all subsequent statements that
2 followed that Florida investigation be suppressed pursuant to
3 Fourth Amendment protections, Fourteenth Amendment protections,
4 and all of the case law set forth -- set forth by the Ninth
5 Circuit. Alternatively, if you're not inclined to just outright
6 suppress those statements, we would ask for an evidentiary
7 hearing. With that I would submit.

8 THE COURT: Ms. Bluth or Mr. Hamner.

9 MR. HAMNER: Thank you, Your Honor. The statute that
10 the State cites in its opposition is completely on point in this
11 case. I believe it's 432B authorizes members of CPS or the
12 police that if they suspect children are being abused physically
13 or sexually, they may interview these children without the
14 permission of the parents, without the parents' consent. The
15 factual description given by the defense doesn't really reflect
16 a proper understanding of kind of what happened in this case.

17 Yvette Gonzales was a CPS investigator who is
18 examining the facts related to the Burnett-Diaz children. She
19 felt that based off of what was being reported that there was
20 suspected child abuse going on in that home. In addition to
21 that, Ms. Gonzales, when she was reviewing and making this
22 decision, reviewed the litany of prior reports that were made by
23 people, not just with respect to the Burnett-Diaz kids, but also
24 to the Solander children. And she made a decision that she was
25 going to remove all of these children from the home.

1 So the idea that an investigation hadn't been
2 completed by CPS is just simply not correct. It had been done.
3 The decision for removal had been made, and the Solander
4 children were children in the custody of the Solanders. So
5 accordingly, pursuant to this statute, they were entitled to
6 investigate and interview these children without their consent.
7 And with that, the State will submit. So there's no violation
8 here under their facts, as well as the statute. They were
9 entitled to speak to the kids.

10 MS. McAMIS: And any previous allegations were
11 thoroughly investigated, and they were all unsubstantiated.
12 There were significant CPS/DFS --

13 THE COURT: Wasn't there new allegations at that point
14 regarding the Burnett-Diaz children?

15 MR. HAMNER: Yes.

16 MS. McAMIS: And it's our position --

17 THE COURT: That were coming from Ms. Wells; right?

18 MR. HAMNER: That is correct. And so there were all
19 these new allegations. They made a decision --

20 THE COURT: Or Diaz-Burnett.

21 MR. HAMNER: -- that removal was appropriate. And Ms.
22 Gonzales, also when reviewing all these other things, took that
23 also as a factor that the Solander children were in danger
24 because, yes, when in a vacuum each individual person said it
25 was unsubstantiated, when Ms. Gonzales looked at everything and

1 said, no, there's a real problem that's happening in this house
2 and all these children need to be removed.

3 So it was substantiated with respect to the
4 Diaz-Burnett children, these adopted children were in the home.
5 So just even based on that they would be entitled pursuant to
6 statute to speak to the children about whether or not there was
7 suspected abuse.

8 But when you look at the totality of everything, the
9 decision by Ms. Gonzales was proper and it was appropriate under
10 the statute. They're entitled to ask children if there's
11 suspected abuse going on in the home. And there had already
12 been a formal decision to remove the Diaz-Burnett children out
13 of the home, as well as Ms. Solander's adopted children.

14 MS. McAMIS: Ms. Solander's adopted children were not
15 in the home at that time.

16 THE COURT: Right, because they were in Florida. All
17 right. I think that the statute is on point. The motion to
18 suppress is denied. I don't see a need for an evidentiary
19 hearing, frankly, so that request is denied, as well.

20 All right. The next issue, I guess, is the opening
21 statements.

22 MS. BLUTH: Yes. I'm going through the exhibits right
23 now with Mr. Figler to see if he has any objections. We're
24 actually at the very end. That was it.

25 MR. FIGLER: There's -- Your Honor, there's about 94

1 slides, I think, in the presentation. I would like the Court to
2 review it in camera, at least. It did appear, as we were going
3 through it, there's a couple that jumped out. There was some
4 verbiage that was placed superimposed over the faces, it
5 appears, of the Solander -- of the Solander children as being
6 victims of abuse or something like that or used the words world
7 of abuse or something like that.

8 There was the mugshots used of Mr. Solander and Mrs.
9 Solander side by side, which I don't think is appropriate.
10 There's plenty of pictures of them, not those that appear to be
11 mugshots. There were a lot of documents that were seized from
12 Mr. Solander's computer, ostensibly, but I don't know if there's
13 going to be an appropriate chain of custody through
14 appropriately noticed witnesses or not for that. I'm not sure.
15 But it has the actual physical --

16 THE COURT: Well, did the -- did the -- are these
17 emails or is this the ordering of the catheters?

18 MS. BLUTH: Both.

19 THE COURT: Okay. So I'm assuming that those are
20 going to be authenticated by someone from Metro.

21 MS. BLUTH: So --

22 THE COURT: Was it seized pursuant to a search warrant
23 or --

24 MS. BLUTH: It was seized pursuant to a search
25 warrant. We have the detectives who did the search warrant.

1 They then took the computer to the vault that was taken out by
2 the lab, the computer forensic lab specialist who is Detective
3 Zachary Johnson. He is noticed.

4 He will talk about the extraction and the emails that
5 he recovered between the -- between defendant Janet Solander and
6 defendant, previous co-defendant, I guess he's still a
7 co-defendant but not int this case, Dwight Solander, where they
8 had a constant communication stream of the children's toileting
9 issues each and every day where they would take photos of them,
10 you know, send messages to each other laughing about it, how
11 they showed them in front of the other foster children with
12 their pants down, and they would communicate this stuff all day
13 long with pictures of these kids peeing and pooping all over
14 themselves. So, yeah, it's coming in.

15 I, of course, understood the -- that we would have to
16 provide all of that to the defense, which we did a long time
17 ago, with all of the emails and pictures that were taken
18 pursuant to the search warrant on Dwight Solander's email. And
19 then in regards to Janet's email, she communicated with several
20 members of CPS from that email address, which is Janet Hinton
21 Solander. So it's -- I mean, I can authenticate it however many
22 which ways, but it's coming in.

23 THE COURT: It sounds like she can authenticate it,
24 Mr. Figler.

25 MR. FIGLER: Well, I mean, I guess through the expert

1 witness who was still not properly endorsed to give their expert
2 opinion as to whether or not they're authentic or not and I will
3 be objecting because that is not a properly endorsed witness.

4 THE COURT: Although, the --

5 MS. BLUTH: Who is the expert?

6 THE COURT: -- the emails coming --

7 MR. FIGLER: Whoever this --

8 THE COURT: -- from Ms. Solander --

9 MR. FIGLER: -- tech is.

10 THE COURT: -- to CPS, those can be authenticated by
11 CPS. Those can be -- and they're in the CPS -- some are in the
12 -- from -- maybe not the emails, but --

13 MS. BLUTH: Wait. Zachary Johnson isn't -- I mean, I
14 noticed him as an expert, but he's not an expert. He's not
15 giving opinions. He's somebody who takes a computer and does a
16 search warrant on it. How -- I mean, I did notice him as an
17 expert.

18 THE COURT: Well, setting that aside, on the emails
19 that Ms. Solander sent to CPS, those can all clearly be
20 authenticated by CPS.

21 MR. FIGLER: Okay. I mean, that's --

22 THE COURT: And then if you get the address on the Mr.
23 Solander emails to CPS, then that would have his address. So, I
24 mean --

25 MR. FIGLER: Well, that's just up to the State to

1 whether or not they get those witnesses that are appropriate to
2 be able to testify to that. I am of the -- of the old school
3 where exhibits can be talked about, but not shown to juries
4 during opening statements. And so it is always going to be a
5 general objection.

6 But specifically, if they're going to be using
7 witnesses as, again, who they notice as an expert but there was
8 a deficiency in the notice -- expert notice list, and that
9 witness who they just indicated with regard to him testifying as
10 to the expertise of how he knew that this was actually Janet's
11 or Dwight's or whatever --

12 THE COURT: I think she was talking about CPS on
13 Janet's emails.

14 MS. BLUTH: Yeah.

15 MR. FIGLER: Okay. But --

16 THE COURT: That they could say this, she -- and based
17 on the content and everything like that, they would know it was
18 from her.

19 MR. FIGLER: Okay. And that may be very true, but,
20 you know, when we start getting into Dwight's emails and Dwight
21 is not here and --

22 THE COURT: Well, he's a co-conspirator during the
23 time of the emails being sent, so they could come in that way.

24 MR. FIGLER: Well, at least they'll have a burden to
25 prove to get to co-conspirator liability and, etcetera,

1 etcetera. You know, it's not going to be a cake walk for the
2 State on any single issue --

3 THE COURT: No, I understand.

4 MR. FIGLER: -- whether it's chain of custody or
5 authentication or anything else. There's no leeway that the
6 defense is going to give the State. They have to dot every I
7 and cross every T and they know that. We are going to make a
8 record and challenge every aspect of it.

9 So that's why we would ask the Court to review the
10 entirety of the PowerPoint in camera, and if Your Honor sees
11 anything that you feel is objectionable, it should be removed.
12 But just from the scant looking at it, it did look like words
13 superimposed over about abuse that the mug shots and that there
14 was a letter from --

15 MS. BLUTH: Lori Wells.

16 MR. FIGLER: -- Lori Wells, the therapist, which
17 admittedly can probably not be read, but it's used in this sort
18 of demonstrative way. You know, we're going to be challenging
19 all of that stuff. It's -- it's just there. There's 94 slides.

20 THE COURT: Yeah, I don't know if a letter from Lori
21 Wells would be admissible, so --

22 MS. BLUTH: How would it not be admissible? I mean,
23 she's -- she's going to be here. She's going --

24 THE COURT: Right. But it would be hearsay, any
25 letter she wrote. What's the relevance of the letter?