

In the
Supreme Court
for the
State of Nevada

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WYNN LAS VEGAS, LLC d/b/a WYNN LAS VEGAS,
Appellant and Cross-Respondent,

v.

YVONNE O'CONNELL,

Respondent and Cross-Appellant.

*Appeal from Judgment on Jury Verdict,
Eighth Judicial District Court, State of Nevada in and for the County of Clark
District Court Case No. A-12-671221-C · Honorable Jennifer P. Togliatti*

APPELLANT'S APPENDIX
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12 d/b/a Wynn Las Vegas

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

15 YVONNE O'CONNELL, individually,

Case No. A-12-655992-C
Dept. No. V

16 Plaintiff,

17 v.

**DEFENDANT'S PROPOSED
JURY INSTRUCTIONS
(WITHOUT CITATIONS)**

18 WYNN LAS VEGAS, LLC, a Nevada
19 Limited Liability Company, doing
20 business as WYNN LAS VEGAS;
21 DOES I through X; and ROE
22 CORPORATIONS I through X;
23 inclusive;

24 Defendants.

25 Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas ("Defendant")
26 hereby submits the following jury instructions for the Court's consideration.
27 References to the Nevada Pattern Jury Instructions, Civil 2011 (Nev. J.I.), the
28 Eighth Judicial District Court Civil Jury Instructions (EJDC CJI) and the California
Jury Instructions Civil by Charles A. Loring (7th ed. 1986) (BAJI)

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1 are abbreviated as indicated.

2 DATED this 28th day of October, 2015.

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10 Las Vegas, Nevada 89145

11 Attorneys for Defendant Wynn Las Vegas, LLC
12 d/b/a Wynn Las Vegas

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GENERAL INSTRUCTION 1GL4:

ORDER OF TRIAL

The trial will proceed in the following order:

1. First, the parties have the opportunity to make opening statements.

The plaintiff makes the first opening statement. Then the defendant will be given an opportunity to make an opening statement. What is said by the attorneys in their opening statements is not evidence. The statements simply serve as an introduction or guide for you so you will know what to look for as the witnesses testify. Whether or not the attorneys present the evidence which they say they will in their opening statements will be for you to determine.

2. After the opening statements, each side will be given the opportunity to present evidence. The plaintiff goes first. Evidence presented by the plaintiff in support of the plaintiff's complaint is called the plaintiff's "case in chief."

3. After the plaintiff presents evidence, the defendant may present evidence but is not obligated to do so. This is the defendant's case in chief.

4. If the defendant does present evidence, the plaintiff may then present rebuttal evidence.

5. If the plaintiff presents rebuttal evidence the defendant may then present surrebuttal evidence.

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6. After the evidence is concluded, I will instruct you on the law that applies in this case. You must not be concerned with the wisdom of any rule of law stated in my instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given to you by the court.

7. After the instructions on the law are read to you, each party will have the opportunity to present closing arguments. Just as what is said by the attorneys in their opening statements is not evidence, what is said in closing arguments is not evidence. However, unlike opening statements, during their closing arguments the attorneys are permitted to argue to you what they think the evidence has shown, what witnesses should be believed and what inferences they think you should draw from that evidence. The plaintiff has the right to both begin and end closing arguments.

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JURY INSTRUCTION NO. _____

GENERAL INSTRUCTION IGI.9:

DISCUSSION OF TRIAL AND MEDIA COVERAGE

1. Do not talk to each other or anyone else about it or about anyone who has anything to do with it until the end of the case when you go to the jury room to decide on your verdict.

2. "Anyone else" includes members of your family and your friends. You may tell them that you are a juror in a civil case, but don't tell them anything else about it until after you have been discharged as jurors by myself.

3. Do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone should try to talk to you, please report it to me immediately by contacting the bailiff/marshal.

4. Do not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with it.

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JURY INSTRUCTION NO. ____

GENERAL INSTRUCTION IGL.8:

NO TRANSCRIPT AVAILABLE TO JURY

The jury will not have a transcript to consult at the close of the case. However, the jury will be furnished note pads and pencils and will be allowed to take notes. I caution you, however, not to allow copious notetaking to interfere with your ability to consider the evidence as it is presented.

If you cannot hear a witness, please raise your hand as an indication. Also, if you need to go to the restroom or if you feel ill, please also raise your hand as an indication. I tend to take a short break every few hours or so, along with a lunch break of at least an hour.

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JURY INSTRUCTION NO. _____

MEMBERS OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the court.

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JURY INSTRUCTION NO. _____

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

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JURY INSTRUCTION NO. _____

The Masculine form as used in these instructions, if applicable as shown by the text of the instruction and the evidence, applies to a female person or a limited liability company.

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JURY INSTRUCTION NO. _____

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

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JURY INSTRUCTION NO. _____

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not make any independent investigation of the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments, or consult reference works for additional information.

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JURY INSTRUCTION NO. _____

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

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JURY INSTRUCTION NO. _____

One of the parties in this case is a limited liability company. A limited liability company is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and you should decide the case with the same impartiality you would use in deciding a case between individuals.

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JURY INSTRUCTION NO. _____

If, during this trial, I have said or done anything which has suggested to you that I am inclined to favor the claims or position of any party, you will not be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inferences should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

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JURY INSTRUCTION NO. _____

Certain testimony may have been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing.

You are to consider that testimony as if it had been given in court.

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JURY INSTRUCTION NO. _____

The credibility or "believability" of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of this testimony which is not proved by other evidence.

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JURY INSTRUCTION NO. _____

Discrepancies in a witness's testimony or between his testimony and that of others, if there were any discrepancies, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

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JURY INSTRUCTION NO. _____

GENERAL INSTRUCTION IGI.1:

PURPOSE OF THE TRIAL

The purpose of the trial is to ascertain the truth.

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JURY INSTRUCTION NO. ____

GENERAL INSTRUCTION IGL.2:

ADMONITION

You are admonished that no juror may declare to a fellow juror any fact relating to this case as of his or her own knowledge, and if any juror discovers during the trial or after the jury has retired that he, she or any other juror has personal knowledge of any fact in controversy in this case, he or she shall disclose such situation to myself in the absence of the other jurors.

This means that if you learn, during the course of the trial, that you were acquainted with the facts of this case or the witnesses and you have not previously told me of this relationship, you must then declare that fact to me. You communicate to the court through the bailiff/marshal.

During the course of this trial, the attorneys for both sides and court personnel, other than the bailiff/marshal, are not permitted to converse with members of the jury. These individuals are not being anti-social; they are bound by ethics and the law not to talk to you. To do so might contaminate your verdict. You are admonished, additionally, that you are not to visit the scene of any of the acts or occurrences made mention of during this trial, unless specifically directed to do so by the court.

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Do not undertake any investigation of the case on your own, or endeavor to research legal or factual issues on your own.

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JURY INSTRUCTION NO. ____

GENERAL INSTRUCTION IGL.3:

PLEADINGS

This is a civil case commenced by:

Yvonne O'Connell, the plaintiff, against Wynn Las Vegas, LLC d/b/a Wynn Las Vegas, the defendant. The case is based upon a Complaint to which the defendant has filed a response, which we call an Answer.

Court: Does counsel for the plaintiff or defendant desire to have the Complaint and Answer read?

(If the pleadings are read:)

Court: Ladies and gentlemen, you should distinctly understand that the pleadings in this case are not in any sense evidence of the allegations that they contained. Each party has the burden of proving their respective claims or defenses by preponderance of the evidence. The purpose of the trial is to determine whether they will meet the burden.

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JURY INSTRUCTION NO. ____

GENERAL INSTRUCTION IGI.5 (MODIFIED):

EVIDENCE, STATEMENTS OF LAWYERS AND RULINGS

Your purpose as jurors is to find and determine the facts. Under our system of civil procedure, you are the sole judge of the facts. You determine the facts from the testimony you hear and the other evidence, including exhibits introduced in court. It is up to you to determine the inferences which you feel may be properly drawn from the evidence. It is especially important that you perform your duty of determining the facts diligently and conscientiously, for ordinarily, there is no means of correcting an erroneous determination of facts by the jury.

The parties may sometimes present objections to some of the testimony or other evidence. It is the duty of a lawyer to object to evidence which he or she believes may not properly be offered and you should not be prejudiced in any way against the lawyer who makes objections on behalf of the party he or she represents. At times I may sustain objections or direct that you disregard certain testimony or exhibits. You must not consider any evidence to which an objection has been sustained or which I have instructed you to disregard.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

1 Statements, arguments and opinions of counsel are not evidence in the case.
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3 However, if counsel for the parties have stipulated to any fact, you will regard that
4 fact as being conclusively proved as to the party or parties making the stipulation.

5 You must not speculate to be true any insinuations suggested by a question
6 asked the witness. A question is not evidence and may be considered only as it
7 supplies meaning to the answer.
8

9 No statement, ruling, remark or comment which I may make during the
10 course of the trial is intended to indicate my opinion as to how you should decide
11 the case or to influence you in any way in your determination of the facts. At times,
12 I may even ask questions of witnesses. If I do, it is for the purpose of bringing out
13 matters which I feel should be brought out and not in any way to indicate my
14 opinion about the facts or to indicate the weight I feel you should give to the
15 testimony of the witness. I may, during the trial, take notes of the witness'
16 testimony. You are not to make any inference from that action. I am required to
17 prepare for legal arguments of counsel during this trial and, for that reason, I may
18 take notes.
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22 You must not be influenced in any degree by any personal feeling of
23 sympathy for or prejudice against the plaintiff or defendant. Both sides are entitled
24 to the same fair and impartial consideration.
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JURY INSTRUCTION NO. ____

GENERAL INSTRUCTION IGI.7 (MODIFIED):

EVIDENCE; BURDEN OF PROOF; PREPONDERANCE OF EVIDENCE

There are two kinds of evidence, direct and circumstantial. Direct evidence is proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence; that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence. It is for you to decide whether a fact has been proved by circumstantial evidence.

Whenever in these instructions I state that the burden, or the burden of proof, rests upon a certain party to prove a certain allegation made by him, the meaning of such an instruction is this: That unless the truth of the allegation is proved by a preponderance of the evidence, you shall find the same to be not true.

The term "preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein.

Plaintiff is seeking damages based upon her claims. Plaintiff has the burden of proving by a preponderance of the evidence all of the facts necessary to establish her claims.

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In determining whether a party has met this burden, you will consider all the evidence, whether produced by the plaintiff or defendant.

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JURY INSTRUCTION NO. _____

EVIDENCE INSTRUCTION 2EV.6:

EVIDENCE ADMITTED FOR LIMITED PURPOSE

Certain evidence was admitted for a limited purpose. At the time this evidence was admitted you were admonished that it could not be considered by you for any purpose other than the limited purpose for which it was admitted. Do not consider such evidence for any purpose except the limited purpose for which it was admitted.

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JURY INSTRUCTION NO. _____

EVIDENCE INSTRUCTION 2EV.7:

EVIDENCE APPLICABLE TO ONE PARTY

During the trial, I explained that certain evidence could be considered as to only one party. You may not consider that evidence as to any other party.

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JURY INSTRUCTION NO. _____

EVIDENCE INSTRUCTION 2EV.8:

DEPOSITION AS SUBSTANTIVE EVIDENCE

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing.

You are to consider that testimony as if it had been given in court.

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JURY INSTRUCTION NO. _____

EVIDENCE INSTRUCTION 2EV.9:

USE OF INTERROGATORIES OF A PARTY

During the course of the trial, you have heard references made to the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. You are to consider interrogatories and the answers to them the same as if the questions had been asked and answered here in court.

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JURY INSTRUCTION NO. ____

EVIDENCE INSTRUCTION 2EV.10:

REQUESTS FOR ADMISSIONS

As permitted by law, the parties served upon each other a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the parties or which the parties failed to deny.

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JURY INSTRUCTION NO. ____

EVIDENCE INSTRUCTION 2EV.14:

CHARTS AND SUMMARIES

Certain charts and summaries have been received into evidence to illustrate facts brought out in the testimony of some witnesses. Charts and summaries are only as good as the underlying evidence that supports them. You should therefore give them only such weight as you think the underlying evidence deserves.

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JURY INSTRUCTION NO. _____

EVIDENCE INSTRUCTION 2EV.15:

ATTORNEY'S RIGHT TO INTERVIEW WITNESS

An attorney has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney and told that attorney what she would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

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JURY INSTRUCTION NO. _____

EVIDENCE INSTRUCTION 2EV.16:

JURORS NOT TO CONDUCT INDEPENDENT INVESTIGATION

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not make any independent investigation of the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments or consult reference works for additional information.

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JURY INSTRUCTION NO. _____

EXPERTS INSTRUCTION 3EX.1:

EXPERT WITNESS: GENERAL

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his or her opinion as to any matter in which he or she is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

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JURY INSTRUCTION NO. _____

EXPERTS INSTRUCTION 3EX.3:

EXPERT WITNESS: RELIANCE UPON MATTERS NOT ADMITTED IN EVIDENCE

An expert witness has testified about his reliance upon books, treatises, articles, and statements that have not been admitted into evidence. Reference by the expert witness to this material is allowed so that the expert witness may tell you what he relied upon to form his opinions. You may not consider the material as evidence in this case. Rather, you may only consider the material to determine what weight, if any, you will give to the expert's opinions.

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JURY INSTRUCTION NO. _____

EXPERTS INSTRUCTION 3EX.4:

EXPERT WITNESS: HYPOTHETICAL QUESTION

A hypothetical question has been asked of an expert witness. In a hypothetical question, the expert witness is told to assume the truth of certain facts, and the expert witness is asked to give an opinion based upon those assumed facts. You must decide if all of the facts assumed in the hypothetical question have been established by the evidence. You can determine the effect of that admission upon the value of the opinion.

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JURY INSTRUCTION NO. _____

NEGLIGENCE INSTRUCTION 4NG.3:

NUMBER OF WITNESSES

The preponderance, or weight of evidence, is not necessarily with the greater number of witnesses.

The testimony of one witness worthy of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary. If, from the whole case, considering the credibility of witnesses, and after weighing the various factors of evidence, you believe that there is a balance of probability pointing to the accuracy and honesty of the one witness, you should accept his or her testimony.

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JURY INSTRUCTION NO. _____

NEGLIGENCE INSTRUCTION 4NG.9 (MODIFIED):

INTRODUCTORY INSTRUCTION; SINGLE LEGAL BASIS

The plaintiff seeks to establish a claim of negligence. When I use the word "negligence" in these instructions, I mean the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, to avoid injury to themselves or others, under circumstances similar to those shown by the evidence. I will now instruct on the law relating to this claim.

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JURY INSTRUCTION NO. _____

NEGLIGENCE INSTRUCTION 4NG.7:

**RESPECTIVE BURDENS OF PLAINTIFF AND DEFENDANT;
GENERAL**

The plaintiff has the burden of proving by a preponderance of the evidence all of the facts necessary to establish the following:

That defendant owed a duty to plaintiff;

That defendant breached that duty;

That defendant's breach was the proximate cause of plaintiff's injuries;

That plaintiff suffered damages.

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JURY INSTRUCTION NO. _____

NEGLIGENCE INSTRUCTION 4NG.20:

COMPARATIVE NEGLIGENCE: DEFINITION; EFFECT

The plaintiff may not recover damages if her comparative negligence is greater than the negligence of the defendant. However, if the plaintiff is negligent, the plaintiff may still recover a reduced sum so long as her comparative negligence was not greater than then the negligence of the defendant.

If you determine that the plaintiff is entitled to recover, you shall return by verdict the total amount of damages sustained by the plaintiff without regard to her comparative negligence and you shall indicate the percentage of negligence attributable to each party.

The percentage of negligence attributable to the plaintiff shall reduce the amount of such recovery by the proportionate amount of such negligence and the reduction will be made by the Court.

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JURY INSTRUCTION NO. _____

NEGLIGENCE INSTRUCTION 4NG.8:

**RESPECTIVE BURDENS OF PLAINTIFF AND DEFENDANT;
NEGLIGENCE AND COMPARATIVE NEGLIGENCE**

The plaintiff has the burden to prove:

1. That the defendant was negligent,
2. That the plaintiff sustained damage, and
3. That such negligence was a proximate cause of the damage sustained

by the plaintiff.

The defendant has the burden of proving, as an affirmative defense:

1. That the plaintiff was negligent, and
2. That plaintiff's negligence was a proximate cause of any damage

plaintiff may have sustained.

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JURY INSTRUCTION NO. _____

NEGLIGENCE INSTRUCTION 4NG. 13

NEGLIGENCE: PROXIMATE CAUSE: DEFINITION

When I use the expression "proximate cause," I mean a cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury complained of and without which the result would not have occurred. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.

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JURY INSTRUCTION NO. _____

NEGLIGENCE INSTRUCTION 4NG.17:

CONCURRENT CAUSE

More than one person may be to blame for causing an injury. If you decide that the defendant was negligent and that its negligence was a proximate cause of injury to the plaintiff, it is not a defense that some third person who is not a party to the suit may also have been to blame. However, if you decide that the sole proximate cause of injury to the plaintiff was the conduct of some person other than the defendant, then your verdict should be for the defendant.

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JURY INSTRUCTION NO. _____

NEGLIGENCE INSTRUCTION 4NG.15:

ORDINARY CARE: ADULT: DEFINITION

When I use the words "ordinary care," I mean the care a reasonably careful person would use under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

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JURY INSTRUCTION NO. _____

PREMISES LIABILITY INSTRUCTION 8PML.1 (MODIFIED):

LANDOWNER LIABILITY: OWNER REASONABLE CARE

An owner of land must exercise reasonable care not to subject others to an unreasonable risk of harm. An owner of land must act as a reasonable person under all the circumstances including the likelihood of injury to others, the probable seriousness of such injuries, and the burden of reducing or avoiding the risk.

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JURY INSTRUCTION NO. _____

PREMISES LIABILITY INSTRUCTION 8PML.6:

**LANDOWNER LIABILITY: FOREIGN SUBSTANCE ON FLOOR:
FAILURE TO REMEDY**

Where the foreign substance is the result of the actions of persons other than the business or its employees, liability will lie only if the business had actual or constructive notice of the condition and failed to remedy it, or failed to reasonably prevent or inspect or discover the condition.

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JURY INSTRUCTION NO. _____

PREMISES LIABILITY INSTRUCTION 8PML.3 (MODIFIED):

LANDOWNER LIABILITY: OWNER EXERCISE OF REASONABLE CARE

The owner or occupier of property is not liable to one injured on the property where the injury resulted from a danger which was obvious or should have been observed in the exercise of reasonable care. In addition, a person should exercise reasonable self-protection in encountering the danger.

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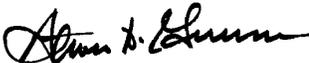
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JURY INSTRUCTION NO. _____

PERSONAL INJURY DAMAGES INSTRUCTION SPID.9:

CLOSING INSTRUCTION

Whether any of these elements of damage have been proven by the evidence is for you to determine. Neither sympathy nor speculation is a proper basis for determining damages. However, absolute certainty as to the damages is not required. It is only required that plaintiff prove each item of damage by a preponderance of the evidence.


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

YVONNE O'CONNELL,	.	CASE NO. A-12-655992-C
	.	
Plaintiff,	.	DEPT. V
	.	
vs.	.	
	.	TRANSCRIPT OF
WYNN RESORTS LIMITED, et al.,	.	PROCEEDINGS
	.	
Defendants.	.	
.	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

**PLAINTIFF'S EMERGENCY MOTION TO CONTINUE TRIAL AND FOR
SANCTIONS ON ORDER SHORTENING TIME;
SUPPLEMENTAL BRIEF ON MOTION IN LIMINE**

THURSDAY, OCTOBER 29, 2015

APPEARANCES:

FOR THE PLAINTIFF: CHRISTIAN MORRIS, ESQ.

FOR THE DEFENDANTS: LAWRENCE J. SEMENZA, III., ESQ.
CHRISTOPHER D. KIRCHER, ESQ.

COURT RECORDER:

LARA CORCORAN
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

1 LAS VEGAS, NEVADA, THURSDAY, OCTOBER 29, 2015, 8:57 A.M.

2 (Court called to order)

3 THE COURT: Good morning.

4 MR. SEMENZA: Good morning.

5 MR. KIRCHER: Good morning.

6 MS. MORRIS: Good morning.

7 MR. SEMENZA: We may be it.

8 THE COURT: Yep, you're it. It's like federal
9 court. There's only one matter on. All right. Case number
10 A-12-655992, Yvonne O'Connell vs. Wynn Resorts, LLC.

11 MR. SEMENZA: Good morning, Your Honor. L.J.
12 Semenza and Christopher Kircher on behalf of the defendants.

13 MR. KIRCHER: Good morning.

14 MS. MORRIS: Good morning, Your Honor. Christian
15 Morris on behalf of the plaintiff.

16 THE COURT: Good morning. Good to see you all.

17 MS. MORRIS: Good to see you, too.

18 THE COURT: All right. So, I guess we've got
19 several things. First, we've got the Emergency Motion to
20 Continue the Trial. I've reviewed the documents. I'm not
21 inclined to continue this trial. I don't see that there's any
22 basis for it. I'm looking at, you know, the main Complaint,
23 that you didn't know about this Silvia -- Ana Silvia
24 Hernandez, but she was disclosed in answers to interrogatories
25 in June -- June of 2014. Discovery didn't close until over a

1 year later on July 8th, 2015, so.

2 MS. MORRIS: Your Honor, if I may address it.

3 THE COURT: Sure.

4 MS. MORRIS: Okay. The 16.1 requirement is very
5 clear. Any witness who may have knowledge regarding this
6 should be listed in a 16.1 with the basis of what they may
7 know and the basis of that testimony. It is clear. They knew
8 who that person was and never disclosed it in a 16.1.

9 It was also very clear that I was trying to
10 ascertain who the porter was that was assigned to that area.
11 It was very clear. I kept asking it in every deposition. And
12 I asked it in a 30(b)(6) deposition just recently to determine
13 who the identity was. And we battled over that 30(b)(6)
14 deposition --

15 THE COURT: Why didn't you take her deposition?

16 MS. MORRIS: I'm not -- I'm not inclined to take the
17 deposition of every single person that they list in an Answer
18 to an Interrogatory.

19 THE COURT: Well, if you wanted to take the --

20 MS. MORRIS: I am obligated --

21 THE COURT: If you wanted to take the deposition --
22 you want to know who cleaned, it's going to be a porter, okay?
23 It's not going to be --

24 MS. MORRIS: Which one?

25 THE COURT: -- the head of --

1 MS. MORRIS: Which one? They listed multiple.

2 THE COURT: The person that they designated as a
3 porter in their Answer to Interrogatory.

4 MS. MORRIS: They designated two people as a porter.

5 THE COURT: Okay, so.

6 MS. MORRIS: And they didn't list them in a 16.1
7 Disclosure, which is required under the rules. And I, as an
8 attorney who is trying to ascertain who the witnesses are,
9 look to a 16.1 Disclosure to see who the witnesses are that
10 have relevant information.

11 And I kept asking it to them personally and in
12 depositions, who is the identity of the person who is assigned
13 to that area, who inspected it prior to the plaintiff's fall?
14 It goes directly to the issue that we need to look into for
15 this trial to go forward on the merits.

16 And the person they had was Ana Silvia Hernandez,
17 not Ana Rivas, whoever that other lady was, or the other
18 person that they listed. I did not know the identity of the
19 porter who was assigned to the area, which is the exact
20 question that I asked.

21 And in my 30(b)(6) deposition, I asked on the area
22 of when the -- when the floor was last inspected prior to the
23 plaintiff's fall. The 30(b)(6) deposition witness was not
24 prepared. They could not tell me, they did not know. They
25 knew that Ana Silvia Hernandez had been assigned to the area,

1 but they've never spoken to her about it. They've never
2 disclosed her as a witness in a 16.1. They knew about this
3 person for years and never listed them as a witness, allowing
4 me the opportunity to depose them. The law is clear. 16.1
5 says --

6 THE COURT: Okay, wait, wait. I'm puzzled. I don't
7 understand. When they -- you asked that direct question in an
8 interrogatory and she was identified --

9 MS. MORRIS: I did not ask that --

10 THE COURT: -- on June 3rd.

11 MS. MORRIS: -- direct question in an interrogatory.
12 I asked for people who have knowledge. And that wasn't -- and
13 that -- and they listed multiple people. So if I'm supposed
14 to list every single person that they list in an answer to an
15 interrogatory, I could spend hundreds of thousands of dollars
16 doing that. I list the -- I depose the witnesses that are
17 listed in a 16.1 disclosure who may have information relevant
18 to the case.

19 THE COURT: Well, first of all, they didn't give you
20 hundreds of thousands of people. They gave you the names of
21 two porters.

22 MR. SEMENZA: And Your Honor, I can explain the
23 roles of these two individuals that we identified. Terry Ruby
24 -- it is our understanding that Terry Ruby, who provided a
25 statement, was the individual who cleaned the location after

1 the fall. That information is identified in the Incident
2 Report.

3 So in reviewing their Emergency Motion, I was a bit
4 confused as to what they were specifically looking for, and
5 asking for, and the basis of their motion. That's my
6 understanding, that it was Terry Ruby that cleaned the floor.
7 Yanet Elias was the manager at that location who directed
8 individuals to clean the floor.

9 Your Honor, opposing counsel and the plaintiff have
10 had the information relating to the two porters now for
11 obviously well over a year, and had the opportunity, if they
12 had desired to do so, to depose them.

13 Ana Silvia Hernandez is the individual who was
14 assigned to the general area where the fall took place.
15 That's it. She wasn't on the scene at the time of the fall.
16 And we don't believe that, frankly, she's going to have any
17 pertinent knowledge relating to this particular case.

18 And it's simply semantics as far as whether it was
19 specifically identified in a 16.1 disclosure or any
20 interrogatory responses where it was located. So, again,
21 we're not calling Ms. Silvia Hernandez as part of our case.
22 We don't believe she has any pertinent information relating to
23 this.

24 With regard to Ana Rivas, there are essentially two
25 locations that the porters switch off on. One is, I guess,

1 the north and one is the south. Ms. Hernandez was at the
2 location where the fall took place, and Ms. Rivas was the
3 other porter further on down the line towards the mall and the
4 restaurants. That was her responsibility. So, Ms. Rivas
5 doesn't have anything to do with anything, as far as we're
6 concerned. But again, they've had this information.

7 What we believe this to be is nothing more than
8 essentially a smoke screen to get an additional continuance,
9 and to go back and then try and get additional treating
10 physicians or medical experts into this particular case, which
11 they've failed to do so.

12 So, on that basis, we obviously believe that there
13 is no good cause to continue this trial.

14 MS. MORRIS: If I might respond. The information
15 that was just shared by defense counsel is news to me. I did
16 not know that Terry Ruby was the one who cleaned up the
17 liquid. He wasn't listed in a 16.1 disclosure. I didn't know
18 that there were two porters assigned to different areas.

19 THE COURT: Did you not get --

20 MS. MORRIS: I asked it in a 30(b)(6), and I did not
21 get an answer. And this is not a smoke screen. I just took
22 the 30(b)(6) deposition on October 7th. I just took it. I
23 just learned this information.

24 THE COURT: Okay. Did you --

25 MS. MORRIS: If this was a smoke screen --

1 THE COURT: Could you -- I asked a question.

2 MS. MORRIS: I'm sorry.

3 THE COURT: Did you get the Incident Report that
4 reflects that that's the person that cleaned it up?

5 MS. MORRIS: The Incident Report does not reflect
6 that he is the person that cleaned it up. It reflects that he
7 was in the area. Terry Ruby, we have attempted to locate.
8 I've tried to do a skip trace on him. He's no longer employed
9 by Wynn. I can't locate him.

10 Therefore, it's even more important, that I am able
11 to take the deposition of Ana Silvia Hernandez, who's not
12 listed on any incident report. Her name appears nowhere,
13 except for embedded in an answer to an interrogatory. If
14 we --

15 THE COURT: Embedded? Embedded? I mean, it's --

16 MS. MORRIS: Embedded.

17 THE COURT: You -- I presume that when you
18 promulgate interrogatories, it's to get information.

19 Now, what I see here is you're complaining in your
20 motion, well, they didn't -- they didn't give me all the
21 Answers to my Interrogatory that I wanted. Well, okay, then
22 the answer isn't to wait for over a year, and then come on the
23 eve -- the eve of trial and say, I have an emergency motion to
24 continue this case. It's to go -- if you don't think that
25 their objection that they made to your interrogatory is

1 proper, then you file a Motion to Compel after consulting with
2 counsel to see if you can resolve it. But you didn't do any
3 of that. You had this woman's name. The 16.1 says you have
4 to provide people that you believe may have evidence --

5 MS. MORRIS: Correct.

6 THE COURT: -- that's relevant. That doesn't mean
7 you have to list every employee in the world.

8 MS. MORRIS: But the porter assigned to that --

9 THE COURT: If they don't think --

10 MS. MORRIS: -- area is essential.

11 THE COURT: Well, if they don't think that she has
12 any information, then they don't have to list her. But you
13 asked, and they gave it to you, and they gave that information
14 to you, the name of the people in the area, because that's
15 what you asked for; who participated in any way in the
16 inspection, upkeep, cleaning, and/or maintenance of the
17 premises on the day of the incident.

18 So she may not know anything about the specific
19 incident, but she may know something about the area that she
20 cleaned. Now, whether she remembers it now that you've, you
21 know, waited nearly -- I mean, this has been like five years
22 ago, more than that, since this happened, right?

23 MS. MORRIS: Your Honor, all I --

24 THE COURT: It seems unlikely that she's going to
25 remember on a particular day at a particular time --

1 MS. MORRIS: All I ask --

2 THE COURT: -- where she was.

3 MS. MORRIS: If I might; if you would allow me to
4 bring this issue before Commissioner Bulla.

5 THE COURT: No. Done. This case is not being
6 continued. You've had plenty of time. The trial is going
7 forward, so end of story. This case is old. It's nearly
8 four-years-old. It's -- this is ridiculous. There has been
9 plenty of time, and you've had plenty of time to do the
10 discovery. This is a very straightforward case, and that you
11 didn't do that is not -- I know you're the third lawyer on
12 this case.

13 MS. MORRIS: I am; I came on in February.

14 THE COURT: But that's -- you -- you know, you
15 inherit a case. You decide -- make a decision to take a case
16 that two other lawyers have withdrawn from, you do that --

17 MR. SEMENZA: Three.

18 THE COURT: Three? All right, I thought it was just
19 two. But if you've done that, then you're doing that with
20 your eyes wide open, okay? You get what you get. And if you
21 decided that you didn't want to take the deposition of the
22 person who was disclosed to you in interrogatories over a year
23 ago, maybe you didn't look at those answers --

24 MS. MORRIS: I did look at the answers.

25 THE COURT: Well, then --

1 MS. MORRIS: I also looked at the 16.1 Disclosure.

2 THE COURT: -- then okay, even more reason why -- no,
3 no continuance.

4 So the next issue I want to discuss is that this
5 matter -- there was no Jury Demand ever made in this matter.
6 The fact that it got a -- that when the Amended Trial Order
7 was prepared by the JEA, she made a clerical error and hit the
8 button generating the Trial Order for a jury trial, but no
9 Demand has been filed by either party.

10 There was no demand in the Complaint, because I went
11 and looked again. There was no -- in the Joint Case
12 Conference Report, it showed no jury trial was demanded, and
13 both counsel signed off. And so, I have no Jury Demand in
14 this case. So what do you want to do?

15 MS. MORRIS: I would like a jury trial.

16 THE COURT: And?

17 MS. MORRIS: I will file a Jury Demand.

18 THE COURT: No, that's not how you do it. Would you
19 have a motion?

20 MS. MORRIS: I will file a motion.

21 THE COURT: Okay. So you need -- you need to make an
22 oral motion right now.

23 MS. MORRIS: Okay. I'd like to do an oral Motion for
24 a Demand for a Jury Trial in this matter.

25 THE COURT: Okay, and tell me your reasons.

1 MS. MORRIS: I believe that this is a case that would
2 be best decided by the members of the community here in Las
3 Vegas. I feel like the issue of notice, the issue of damages
4 to Yvonne O'Connell is one that would be best evaluated by the
5 members of the community --

6 THE COURT: No, no, no. Under the rule, you need to
7 say why you think that, despite the fact that no demand was
8 timely made, that the Court should nonetheless grant the
9 motion. It really doesn't have to do with that you -- you
10 know, it needs to -- you need to say why, despite the fact
11 that no Jury Demand was ever made, now you think it would be
12 okay for the Court to grant your motion for --

13 MS. MORRIS: I think that in order for this case to
14 be tried fairly before a jury, that, at this time, because no
15 jury trial -- no Jury Demand was made, I think at this time,
16 it would be the best option for this case to be heard before a
17 jury. I'm not -- I don't have the rule in front of me. I
18 apologize. If there's some language that I need to look up, I
19 can file an emergency motion as soon as I get back to the
20 office --

21 THE COURT: No, no.

22 MS. MORRIS: -- but I don't have the rule in front of
23 me.

24 THE COURT: No, it's basically -- all right. Do you
25 object?

1 MR. SEMENZA: Yes.

2 THE COURT: All right, tell me why.

3 MR. SEMENZA: I object because, well, frankly, this
4 is a new issue that I wasn't aware of. But if there was no
5 Jury Demand filed, then it's absolutely untimely at this point
6 in time.

7 THE COURT: Okay, but haven't you -- are you in any
8 way prejudiced by this request?

9 MR. SEMENZA: I would say, yes.

10 THE COURT: How?

11 MR. SEMENZA: And the basis of that is, it is our
12 position and belief that this particular case is bordering on
13 the frivolous. That the --

14 THE COURT: Okay. But haven't you not been preparing
15 all along for a jury trial?

16 MR. SEMENZA: Yes, I have, Your Honor.

17 THE COURT: Haven't you submitted proposed voir dire
18 instructions --

19 MR. SEMENZA: I have, Your Honor.

20 THE COURT: -- believing it to be a jury trial? Did
21 you not say, whoa, Judge -- I mean, you didn't say to me when
22 we had our calendar call, hey --

23 MR. SEMENZA: No.

24 THE COURT: -- this isn't a jury trial.

25 MR. SEMENZA: No, Your Honor. And that was an

1 oversight apparently on my part. And, obviously, I appreciate
2 the Court raising the issue with us here and now. I think
3 that from a judicial economy standpoint, it will be
4 substantially less expensive and less time consuming to have
5 this matter heard before Your Honor, as opposed to the time,
6 money, and effort that will be required in order to present
7 this case to a jury. If there has been no Demand filed, then
8 I think the rule is that, essentially, it needs to be a bench
9 trial, and we would request that, obviously, it go forward in
10 front of you, Your Honor, as opposed to before a jury.

11 MS. MORRIS: Your Honor, at this time --

12 THE COURT: All right, so --

13 MS. MORRIS: -- based on the fact that both parties
14 have prepared for a jury trial and submitted proposed voir
15 dire, to change that to a bench trial on the eve of trial
16 would severely prejudice the parties because it is a change in
17 strategy so close to the date of trial.

18 THE COURT: All right. So, Rule 39 provides that, in
19 actions not -- this would be 39(b) -- "issues not demanded for
20 trial by jury as provided in Rule 38 shall be tried by the
21 court. But notwithstanding the failure of a party to demand a
22 jury in an action in which such a demand might have been made
23 of right, the court in its discretion, upon motion, may order
24 a trial by jury of any or all issues."

25 //

1 And the court has -- the Supreme Court has looked at
2 this issue. It has held, it is not an abuse of the court's
3 discretion to allow a jury trial when in fact the parties
4 would not be prejudiced. So, in exactly the type of
5 circumstances we're looking at here where through a clerical
6 error which no one -- none of the parties picked up on --

7 MR. SEMENZA: Well --

8 THE COURT: -- it was -- there was an order set. But
9 then counsel went on about their business, preparing as if it
10 was a jury trial. So there's no prejudice here to the
11 defense.

12 MR. SEMENZA: Your Honor --

13 THE COURT: If she'd come in, never having filed a
14 jury trial on the eve of trial, and it was always said -- it
15 was a bench trial, bench trial, bench trial, then, okay, you
16 would be prejudiced by that, because it's a completely
17 different way of doing a trial.

18 But I don't think that -- I mean, there is a jury
19 trial of right that could have been demanded. It wasn't at
20 the time, but I don't see that there's any prejudice. And in
21 my discretion which I have, I'm going to allow the jury trial.

22 MR. SEMENZA: That's fine, Your Honor.

23 THE COURT: All right, so that issue is -- but I need
24 an order, okay? Because this case -- people have not been
25 doing their orders. I have no orders on the Motions in Limine

1 that were heard and decided on October 1st.

2 MR. SEMENZA: You're correct, Your Honor. And we
3 have provided those to opposing counsel and have not received
4 any comments. I have them here today. I have e-mails. My
5 paralegal has sent them over numerous, numerous times.

6 THE COURT: All right.

7 MR. SEMENZA: And I don't know if Ms. Morris has
8 actually reviewed them.

9 MS. MORRIS: I was out of the office last week, so.

10 THE COURT: All right. Well, the rule is ten days,
11 you know, and so if the other side doesn't respond, you've
12 prepared an order within ten days and the other side hasn't
13 responded then you just send them and say --

14 MR. SEMENZA: I understand, Your Honor.

15 THE COURT: -- we tried to get the other side to look
16 at them and sign off, but they wouldn't, so.

17 MR. SEMENZA: And we wanted --

18 THE COURT: We need to have those in place.

19 MR. SEMENZA: -- to make sure that Ms. Morris had an
20 opportunity to do that and so that's -- I understand Your
21 Honor's position though with regard to that.

22 THE COURT: And I have looked high and low and we
23 cannot -- apparently the last Report and Recommendation by the
24 Discovery Commissioner on that hearing that was held on, I
25 think it was September 18th, we show it being logged into our

1 department on the 21st. And, you know, it was the last one;
2 the very last. It -- it came in. I have this -- a
3 recollection of signing it, although I think I signed three on
4 that same day but -- but I thought I had signed it. At any
5 rate, we cannot locate it.

6 MR. SEMENZA: Okay.

7 THE COURT: I mean, it's like missing. I've gone
8 through -- it's not in any of my orders that I haven't -- you
9 know, that are waiting on my desk for a signature. I went
10 through today and sought to see if it was the paperclip, you
11 know, issue, that it somehow got attached to something else.

12 My JEA went down yesterday and checked your bins.
13 We've checked the outbox. We don't -- it could have been
14 picked up by a runner and clipped to something else.
15 Sometimes that happens, you know, when the runner comes and
16 they're taking everything out of the -- I don't know.

17 MR. SEMENZA: And I'm assuming this is the
18 30(b) (6) --

19 MS. MORRIS: Yes.

20 MR. SEMENZA: -- Report and Recommendation? We can
21 get that taken care of. We can address that issue promptly.

22 THE COURT: So that there's a complete --

23 MR. SEMENZA: Yes.

24 MS. MORRIS: Yes.

25 THE COURT: -- record?

1 MR. SEMENZA: Absolutely, Your Honor.

2 THE COURT: Okay. All right. Now, the last thing
3 though was the Motion in Limine which was trying to exclude
4 Dr. Dunn and Dr. Tingey; is that right?

5 MR. SEMENZA: Correct, Your Honor.

6 THE COURT: Okay. And everybody did some additional
7 briefing on Dr. Tingey.

8 MR. SEMENZA: Yes, Your Honor.

9 THE COURT: And I got that, so.

10 MR. SEMENZA: Your Honor, our position is obviously
11 very simple --

12 THE COURT: Yeah.

13 MR. SEMENZA: -- with regard to Dr. Tingey, and then
14 I'll jump into Dr. Dunn as well.

15 Dr. Tingey was not timely disclosed; well past the
16 initial expert disclosure deadline, well past the discovery
17 deadline in this particular case. We still don't know what
18 Dr. Tingey is purportedly going to testify to based on the
19 lack of specificity in the disclosure that was made, the
20 boilerplate disclosure that we had discussed at the last
21 hearing. And so on that basis, I think Dr. Tingey should be
22 excluded from testifying in this particular matter.

23 Dr. Dunn is slightly different. Dr. Dunn was timely
24 disclosed in a 16.1 disclosure, but we did not receive Dr.
25 Dunn's CV or fee schedule until well after the close of

1 discovery, well after -- it is my understanding, after the
2 filing of the Motions in Limine in this particular case. And
3 I think, most importantly, we go back to this issue of the
4 disclosure and what Dr. Dunn is purportedly going to testify
5 to.

6 As I stand here today, I have 20-something pages of
7 medical records from Dr. Dunn, but I do not know what he is
8 going to be testifying to, or what he is going to be allowed
9 to testify to. And I know that --

10 THE COURT: So, I've got the disclosure language --

11 MR. SEMENZA: Yes.

12 THE COURT: -- in front of me, because we -- we've
13 talked about this before. So -- so, basically, treating
14 physicians, it's very clear under, frankly, the rule and the
15 subsequent case law that treating physicians don't need to do
16 expert reports. They do need to be disclosed if they're going
17 to -- because they will give expert testimony, but they can be
18 disclosed in, you know, during the timing that's ordered by
19 the court without doing a separate expert report.

20 And the notes to 16.1, the comments section say, "In
21 the context of a treating physician, appropriate disclosure
22 may include that the witness will testify in accordance with
23 his or her medical chart," okay, "even if some records
24 contained therein were prepared by another healthcare
25 provider."

1 Of course, what they're talking about is where in the
2 actual treatment, you know, say you refer somebody out for an
3 x-ray and the report comes back, obviously, that's part of
4 that particular treating physician's medical records in
5 diagnosing and treating the patient.

6 And so that -- the Disclosure here says, "This expert
7 is expected to testify consistent with the medical records
8 related to the treatment of the plaintiff." Okay, so that
9 Disclosure, basically, I mean, it doesn't use the exact
10 language, but I don't think it has to use the exact language.
11 It says that the treating physician's going to testify in
12 accordance with his or her medical record. So, Dunn is going
13 to testify in accordance with his medical record.

14 And then it says, so beyond that, "If a treating
15 physician is not a retained" -- the comment says, "A treating
16 physician is not a retained expert," a retained expert,
17 "merely because the witness will opine about diagnosis,
18 prognosis, or causation." But if that happens, you know,
19 obviously, then the opinions and any documents that are
20 supporting opinions need to be disclosed.

21 Okay. So the Disclosure goes on and says that, "The
22 facts and opinions to which the expert is expected to testify
23 include any and all facts and opinions in said medical
24 records." So, you know, you have the medical records, so if
25 there are any opinions -- now, I looked through the medical

1 records that were attached. I had to read them online because
2 I never did get a courtesy copy but, I did, and I didn't see,
3 frankly, any opinions really --

4 MR. SEMENZA: And that's our --

5 THE COURT: -- but --

6 MR. SEMENZA: -- that's our issue.

7 THE COURT: Wait, wait. There's more. It's not
8 steak knives. And it says, okay, "And that the medical
9 treatment the plaintiff received was reasonable, necessary,
10 and caused by the incident set forth in the Complaint," then
11 it goes on, "and would rebut any opinions rendered by any
12 witness disclosed by any party in this action that contradict
13 the same."

14 So that last -- after the last "and" -- no, that's --
15 that is outside the treating physician's scope for rebuttal of
16 any -- so, that doesn't save you. But the -- if the opinion
17 is that the -- the doctor's going to say that the treatment
18 was reasonable, necessary, and caused by the incident set --
19 the incident that's set forth in the Complaint, then they've
20 disclosed that. They don't have to say --

21 MR. SEMENZA: And I understand Your Honor's point,
22 but there's nothing in the medical chart -- and this is the
23 disconnect I have with regard to this. Ms. O'Connell goes to
24 Dr. Dunn; there is a limited history performed.

25 THE COURT: Yep.

1 MR. SEMENZA: The preexisting conditions, the medical
2 issues that she has had are not disclosed to Dr. Dunn.

3 THE COURT: Right.

4 MR. SEMENZA: Right? And so, Dr. Dunn says, she has
5 all of these back issues. Nothing in that medical chart or
6 medical record says, coming from Dr. Dunn, that the back
7 issues she has, and that she was treated for by him are
8 causally connected to the incident.

9 THE COURT: Okay.

10 MR. SEMENZA: And that's -- that's the point that we
11 have here, is that there's no relationship in the medical
12 chart between the back injury and the fall in those medical
13 records. And so, Dr. Dunn should be precluded from testifying
14 as to any --

15 THE COURT: No, because --

16 MR. SEMENZA: -- causation issues.

17 THE COURT: -- because it says here that he is going
18 to say that it was reasonable, necessary, and caused by the
19 incident. Now, the fact that it's not in the medical records,
20 there's not a complete history, all those things, that's
21 cross.

22 MR. SEMENZA: Okay.

23 THE COURT: That's for you to say, well, you know,
24 did you know these things, did you know this, would it change
25 your opinion? I mean, assuming that the good doctor is

1 actually going to so opine. I don't know. I mean --

2 MR. SEMENZA: And that's fair, Your Honor. I mean,
3 when we were here at the last hearing we had a discussion that
4 I would have an opportunity to voir dire Dr. Dunn prior to him
5 taking the stand. And if that's still the case, and I'm able
6 to question him relating to those particular issues, not in
7 front of the jury, in preparation for whatever testimony he
8 may offer or give, then I'm certainly comfortable with Your
9 Honor's ruling in that respect.

10 THE COURT: Response?

11 MS. MORRIS: Yes. My understanding was I think that
12 you were going to do the voir dire of the doctor so you were
13 comfortable as to when he came to his decision regarding
14 causation; was it during his course of treatment and diagnosis
15 of Ms. O'Connell. That was already decided at the last
16 hearing. I think that that is -- that's great and it stands.

17 I've spoken with Dr. Dunn, and I'm aware of what his
18 testimony is; it's consistent with the way I've disclosed him.
19 And I think that, you know -- pardon me -- moving forward with
20 the way that we had already decided to do that is appropriate.

21 THE COURT: All right. Okay, so Dunn will testify.
22 Now, Tingey was not disclosed before close of
23 discovery?

24 MS. MORRIS: Correct. She had been treating with Dr.
25 Martin, who subsequently left Desert Orthopedic. And then she

1 went and saw Dr. Tingey on May 11th of this year, 2015. We
2 were consistently gathering her medical records and disclosing
3 them, as we do when we have a plaintiff who continues to
4 treat. Defense counsel was also gathering medical records,
5 aware that she had been treating with Dr. Martin, that he
6 suspected that she had a meniscus tear, had sent her to get an
7 MRI.

8 And so, when we got the medical records in from Dr.
9 Tingey, we immediately disclosed them. May 28th, they made a
10 disclosure of Desert Orthopedic's medical records as well, and
11 Dr. Tingey's records weren't in there because they simply
12 hadn't been created yet.

13 As soon as we got the information that he existed,
14 that he was taking over the treatment from Dr. Martin, we
15 disclosed him in a 16.1 disclosure with the testimony that he
16 was going to be giving, and it was consistent with the
17 treatment that she had been getting from Dr. Martin. So, he
18 simply looked at her MRIs and realized she has two meniscus
19 tears that need to be repaired, put that in his report, which
20 was disclosed.

21 THE COURT: Okay. And your argument is that he
22 wasn't timely disclosed?

23 MR. SEMENZA: He wasn't timely disclosed as a
24 witness. Correct. Now, if the situation had been -- if we
25 had received a Disclosure within the time frame, within the

1 discovery parameters, that said that she is also treating with
2 Dr. Tingey, and that we do not have those medical records as
3 of yet, then that issue could have been addressed. But Dr.
4 Tingey was not disclosed until August 27th, and his CV, his
5 fee schedule, and trial history weren't disclosed until
6 September 28th, right before trial.

7 And again, the meniscus tears in the knees have
8 nothing to do with this particular case. So, I think we are
9 prejudiced in that. And I certainly would have been in a
10 better position had I known that Dr. Tingey was at issue well
11 before when he was disclosed on August 27th.

12 THE COURT: When did she start treating with him?

13 MS. MORRIS: She complained of knee pain on her first
14 visit to the doctors at UMC Urgent Care after she fell and had
15 consistent complaints.

16 THE COURT: No, no, no. When did she start treating
17 with Dr. Tingey?

18 MS. MORRIS: She had her -- she was treating with
19 Desert Orthopedic. They switched out the doctor --

20 THE COURT: I know.

21 MS. MORRIS: -- Dr. Martin --

22 THE COURT: When was she -- did she start --

23 MS. MORRIS: May 11th, 2015. Discovery closed June
24 13th. We disclosed his records in July when we got them in,
25 and then we supplemented his name, understanding that she had

1 changed her knee doctor, because we assumed it was still Dr.
2 Martin, not understanding he had left, and realized that Dr.
3 Tingey was the one who was now treating her at Desert
4 Orthopedic.

5 There's no prejudice because there's no surprise.
6 It's just the identify of the doctor. The treatment remained
7 consistent. They had -- Dr. Martin suspected she had a
8 meniscal tear and sent her for -- meniscus tear, and sent her
9 for an MRI. Dr. Tingey simply read the MRI and diagnosed her
10 with the meniscus tears. So, they were well aware of the
11 course of treatment and that she had suspected meniscus tears
12 all during discovery.

13 They chose not to take Dr. Martin's deposition, and
14 they chose not to take any doctor deposition. And now Dr.
15 Tingey has been disclosed because he is her treating
16 physician, and he is the one who is treating her now at Desert
17 Orthopedic.

18 We did not in any way try to hide him or not disclose
19 him in a timely fashion. She started in May. By the time we
20 got the records, we disclosed it as soon as we got them, and
21 then supplemented his name as her current treating physician
22 for her knees.

23 MR. SEMENZA: And, Your Honor, here's the problem. I
24 specifically asked to depose Dr. Dunn, and I believe Dr.
25 Tingey as well, after the discovery deadline; that request was

1 denied. So, we are prejudiced.

2 THE COURT: Really?

3 MR. SEMENZA: Because the Disclosure took place after
4 the discovery deadline, I did make that request, and that was
5 met with a, no.

6 MS. MORRIS: If I might, discovery had closed, and I
7 -- he asked to take late depositions. I had asked to take
8 late depositions, I wasn't allowed, so I did a motion in front
9 of Commissioner Bulla, my 30(b)(6), which she granted. They
10 easily could have done a motion, just like I did --

11 THE COURT: But -- but the difference --

12 MS. MORRIS: -- to reopen discovery.

13 THE COURT: The difference would be --

14 MS. MORRIS: Say it again.

15 THE COURT: Wouldn't the difference be that you
16 hadn't properly disclosed those?

17 MS. MORRIS: He didn't tell me that was the reason
18 why. He simply blanket asked, and at that -- and it didn't
19 click in my head. Had he said, I didn't know about this
20 person; this was a surprise, Christian; let me take this
21 deposition, I absolutely would have. But he didn't say that.
22 He just said, I want to take Dr. Dunn and Dr. Tingey.

23 Never said, it's because they weren't disclosed, and
24 I don't know what they're going to say, or anything like that.
25 It was simply, we're not allowing depositions to happen past

1 the close of discovery deadline. I wanted to, I wasn't
2 allowed, I had to file a motion to do so. Had he explained to
3 me, I need to take Dr. Tingey's because he wasn't properly
4 disclosed, I would have.

5 THE COURT: But why wouldn't you know that he wasn't
6 properly disclosed?

7 MS. MORRIS: It just didn't --

8 THE COURT: I mean, you knew he wasn't.

9 MS. MORRIS: Well, it just didn't click in my head at
10 the time that he asked, because he was asking for two doctors
11 at the same time. Had he said, I'm going to walk into court
12 and say I'm prejudiced if you don't let me do this, I would
13 have said, absolutely.

14 But at the time, we were both asking for depositions
15 past the close of discovery, and I had to file my motion. So,
16 I did not realize that that was what he was going to be saying
17 about Dr. Tingey. Dr. Dunn was properly disclosed. He was
18 asking for him, too, but didn't make any kind of distinction.

19 MR. SEMENZA: And Your Honor understands the point
20 here. I mean, Dr. Tingey was disclosed after the discovery
21 deadline. We made the request to depose him; that request was
22 denied. So we're now -- trial is next week, and I think that
23 we've been prejudiced in that regard, and so I would request
24 that Dr. Tingey be struck.

25 MS. MORRIS: If I might say, prejudice comes from

1 surprise. There's no surprise in what her injuries are,
2 because they were already suspected and she was being treated
3 for them.

4 THE COURT: Well, she -- she gets treatment for lots
5 of things that -- many -- she has many ailments, from what I
6 can see.

7 MS. MORRIS: True, but --

8 THE COURT: So --

9 MS. MORRIS: -- a meniscal tear after -- complaining
10 of knee pain directly after the fall and consistently through
11 all of her treatment, and the diagnosis of her meniscus tears
12 are not a surprise, and it's incredibly relevant to the
13 damages that she suffered from the fall.

14 THE COURT: What is it you anticipate Dr. Tingey is
15 going to testify about? Because, I mean, are you going to try
16 and reach back and have him cover all of Dr. Martin's
17 treatment? Because --

18 MS. MORRIS: I'm only going to have Dr. Tingey
19 testify as to the information contained in his medical
20 records, and his diagnosis and treatment of the patient,
21 period.

22 THE COURT: And when you say medical records, what do
23 you mean?

24 MS. MORRIS: The ones signed electronically by him.
25 Just his medical records. Just what he treated her for.

1 THE COURT: All right. Because you have the medical
2 records from Tingey, they're not very voluminous, I'm going to
3 allow her to call him, but I'm also going to allow you to --
4 before he takes the stand and testifies for them, to depose
5 him.

6 MR. SEMENZA: Thank you.

7 THE COURT: Right here.

8 MR. SEMENZA: Okay.

9 THE COURT: He'll be here anyway. You're going to be
10 limited, obviously. I mean, you --

11 MR. SEMENZA: I understand.

12 THE COURT: Because we only have a certain amount of
13 time. But that way, you'll know what he's going to say before
14 he takes -- you know, before he then testifies.

15 MR. SEMENZA: Okay.

16 THE COURT: All right?

17 MR. SEMENZA: That's fine, Your Honor. A couple
18 quick other issues, if --

19 THE COURT: Um-hum.

20 MR. SEMENZA: -- we're finished with those.

21 Going back to Dr. Dunn. It was my understanding that
22 I would have the opportunity to voir dire him. Ms. Morris
23 identified that you would be the one to do that. Based upon
24 the last hearing, I thought --

25 THE COURT: No, I just -- I don't care really --

1 MR. SEMENZA: Okay.

2 THE COURT: -- who does it. It's outside --

3 MR. SEMENZA: Okay, that's fine.

4 THE COURT: -- the presence of the jury.

5 MR. SEMENZA: That's fine.

6 THE COURT: So, you know, just to -- that's fine, you
7 can do it.

8 MR. SEMENZA: That's fine, Your Honor.

9 And then, last evening, we did receive -- and I just
10 want to make sure that we are all on the same page on this --
11 we had narrowed down our exhibits, our witness list to be as
12 concise as possible at this point in time.

13 We received a filing from the plaintiff last evening.
14 And in addition to Dr. Tingey and Dr. Dunn, the plaintiffs
15 have identified additional medical providers. And I just want
16 to make sure that I understand that the only medical providers
17 that will be testifying at trial are arguably Dr. Dunn and Dr.
18 Tingey.

19 MS. MORRIS: I'm also going to call Dr. Sorelle, as
20 well. He's a properly disclosed medical expert in my 16.1,
21 timely. She treated with him directly after the accident.

22 MR. SEMENZA: He was not properly disclosed. We've
23 never received a CV. At the previous hearing, she identified
24 that she was going to have two treating physicians. We've
25 relied on that. Now, more witnesses --

1 THE COURT: I asked you --

2 MR. SEMENZA: -- are coming in.

3 THE COURT: I remember saying, who are you going to
4 call, who do you want to call, which doctors are you going to
5 call, and you named the two.

6 Now, the problem is, when -- I mean, because you --
7 they have the CVs and everything of these other experts. But
8 the rule is very clear about what you need to do for a
9 treating physician that's going to testify as an expert.

10 So, it says that the qualifications of the witness to
11 be presented is supposed to be covered in your Disclosure, and
12 it says, "Which may be satisfied by the production of a resume
13 or curriculum vitae, and the compensation of the witness for
14 providing testimony and deposition at trial, which is
15 satisfied by the production of his fee schedule."

16 So, then you -- you know, you put this thing in here
17 saying, "Pursuant to 16.1 (2) (b), the said witness being an
18 expert witness who is also a treating physician and thereby
19 not retained or specially employed, will not be submitting a
20 CV."

21 Well, you can't just misstate the rule in a
22 Disclosure, and then say, oh, and if you disagree, it's -- you
23 know, the now the burden shifts to you. No, that's not how it
24 works. I mean, the rule is very clear what you have to do.
25 You don't have to do a report, but you do have to do these

1 things. And that's why last time we were here, which was,
2 what, back in -- a month ago almost.

3 MR. SEMENZA: Yeah.

4 THE COURT: October 1st, I said, okay, which --
5 because there are -- and that was the complaint. You know,
6 this is a boilerplate disclosure. We don't have CVs on
7 anybody, so it wasn't properly complied with. And so -- and
8 there's this whole raft of treating physicians

9 MS. MORRIS: And that's fine, then I'll just call Dr.
10 Tingey and Dr. Dunn. It was my trial strategy, but if --
11 that's fine. If I'm limited to them, I'm limited to them.
12 That's fine.

13 THE COURT: All right.

14 MR. SEMENZA: Thank you, Your Honor.

15 THE COURT: All right. Now, let's see. I wanted to
16 talk to you about how I pick a jury. So, we're going to put
17 -- we've got -- we've got eight jurors, and I think we'll pick
18 two alternates, okay?

19 So, that gives you each four peremptory challenges to
20 the jury itself, and one each for the alternates. So, we'll
21 put 20 people in the box and then we'll clear them all for
22 cause. I start out and I ask general questions of the panel
23 to try and speed things along.

24 And I got proposed the voir dire questions from the
25 defense, and I've gone through those this morning, and so I

1 will be asking a lot of those in my general questioning, a
2 show of hands, and then I'll follow up with those that answer.
3 And then, when I get done with the general questions, then I
4 will go to seat number 1, which will be over here. We keep
5 them in order. We always keep the venire in order, too, so
6 you know who's next, you know, coming up if we get a vacant
7 seat for cause.

8 MS. MORRIS: Is 1 in the front, or in the back?

9 THE COURT: So, 1 start -- seat 1 starts back row,
10 right hand side. So, I'd say to seat number 1, tell me about
11 yourself, having prefaced that question with, I'm going to be
12 asking you to tell -- tell us about yourself. What I want you
13 to cover in that is, how long have you lived in Clark County.
14 What do you do for a living. Are you married, single,
15 divorced, significant other, partner, et cetera, et cetera.
16 If you have such a person, what does that person do for a
17 living. Do you have any children, what are their ages. If
18 they're adult children, what do they do for a living. What's
19 your education background.

20 Okay. So, and then when I finish with that -- and if
21 they say something, you know, that needs follow up, I'll ask
22 them -- or that I think needs follow up, I'll ask them. Then
23 I will say, and would the plaintiff like to inquire further?
24 This is your time for your one on one with the person. Okay?

25 MR. SEMENZA: Okay.

1 THE COURT: And then, when you're done, defense.
2 Okay? When you're done -- and it goes -- if it goes to the
3 next person, that means you're passing that juror for cause.
4 So if you want to challenge for cause, ask to approach the
5 bench, and we will address it at the bench.

6 MR. SEMENZA: Understood.

7 THE COURT: After -- so, after we get all 20 cleared
8 for cause, then you'll exercise your peremptory challenges on
9 the first 16, and thereby end up with your jury. Then you'll
10 have the four and you'll exercise your peremptory challenges
11 on -- on those and the two remaining, and say, you know,
12 there's -- then we're only going to have two, so that's who it
13 is. And, let's see.

14 MR. SEMENZA: If we do not utilize our peremptories,
15 how do you deal with that issue?

16 THE COURT: If you -- you're going back and forth.
17 If you're -- you waive -- say you waive, and then, the -- you
18 hand the paper back, and that person says waive in the box,
19 well, then that means you're both happy and you're good --

20 MR. SEMENZA: Okay.

21 THE COURT: -- good to go, right? Because nothing
22 changes. So, if you both waive consecutively, then -- because
23 obviously, there will be more --

24 MR. SEMENZA: 1 through 8, yeah.

25 THE COURT: -- so it will be the first eight.

1 MR. SEMENZA: Thank you.

2 THE COURT: Right? Okay.

3 MS. MORRIS: So, if I understand correctly --

4 THE COURT: Or whoever's left, right, in order.

5 MS. MORRIS: So, there's no general voir dire; it's
6 one on one questioning of each juror?

7 THE COURT: Okay. I --

8 MR. SEMENZA: No.

9 MS. MORRIS: Just so I'm clear.

10 THE COURT: Okay.

11 MR. SEMENZA: I think there is general questioning,
12 and then she will specifically go seat by seat.

13 MS. MORRIS: But for us --

14 THE COURT: I'm going to do general questioning --

15 MS. MORRIS: Right.

16 THE COURT: -- first. Now, okay, every time I do
17 this, I keep trying to tweak it a little more to make it go
18 smoother and more quickly, and I've tried different methods.
19 So, I'll let you know, and you can weigh in on this, because
20 I'm open to whatever is going to get this jury picked as
21 quickly as possible, because you don't have much time, right?

22 MS. MORRIS: Right.

23 THE COURT: Okay. So, in the past, I have allowed,
24 after I finish my general questioning, asked -- or allowed the
25 lawyers to do general questions that just call for a show of

1 hand, you know, but hold the follow up until they get them one
2 on one, right? And then, if they want to do follow up, you
3 know, on somebody, they've made notes. And if we do it that
4 way, I always tell them, give the lawyers long enough to keep
5 the note, especially when you're -- you're not going to have
6 co-counsel at all?

7 MS. MORRIS: I will, yes.

8 THE COURT: Oh, okay. So, good. So, co-counsel will
9 be taking the notes about, oh, this person said something
10 we'll want to follow up on. So, we can do it that way.

11 The other way I did the last trial, because it didn't
12 -- it was going -- it took us four days to get a jury in a
13 med-mal case. I said, okay, they didn't want to do that.
14 They didn't want to do that that way. So, I said, okay, well,
15 then you'll do your general -- you'll ask your questions when
16 you get them individually.

17 But it was going so slowly that I said, okay, I'll
18 let you do general questions and then follow up, thinking that
19 that would work. But again, this requires that you frame your
20 questions so that they can be answered with this.

21 And what I got instead was long prefatory statements
22 that aren't questions, followed by, you know, followed by a
23 question that doesn't call for -- that can't be answered with
24 a show of hands, right? So you can't ask a question in a way
25 that requires people to talk, right? Because the idea is, you

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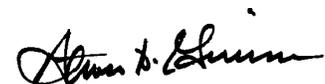
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CLERK OF THE COURT

1 **ORDER**
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7 Attorneys for Defendant Wynn Las Vegas, LLC
8 d/b/a Wynn Las Vegas

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 YVONNE O'CONNELL, individually,
12 Plaintiff,
13 v.
14 WYNN LAS VEGAS, LLC, a Nevada
Limited Liability Company, d/b/a WYNN
15 LAS VEGAS; DOES I through X; and ROE
CORPORATIONS I through X; inclusive;
16 Defendants.
17

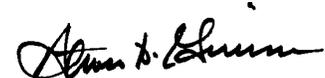
Case No. A-12-655992-C
Dept. No. V

**ORDER GRANTING DEFENDANT'S
MOTION IN LIMINE [#1] TO
EXCLUDE PURPORTED EXPERT
WITNESS GARY PRESSWOOD**

LAWRENCE J. SEMENZA, III, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

18 This matter having come before the Court on October 1, 2015, with Christian Morris, Esq.
19 of the Nettles Law Firm appearing on behalf of Plaintiff Yvonne O'Connell ("Plaintiff") and
20 Lawrence J. Semenza, III, Esq. and Christopher D. Kircher, Esq. of Lawrence J. Semenza, III,
21 P.C. appearing on behalf of Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas
22 ("Defendant"), regarding Defendant's Motion in Limine [#1] to Exclude Purported Expert Witness
23 Gary Presswood (the "Motion"), with Plaintiff having filed an Opposition to the Motion and
24 Defendant having filed a Reply thereto.

25 The Court, having reviewed the records and pleadings on file, as well as the oral argument
26 of counsel, with good cause appearing, hereby orders as follows:
27
28


CLERK OF THE COURT

1 **ORDER**
Lawrence J. Semenza, III, Esq., Bar No. 7174
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9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 YVONNE O'CONNELL, individually,
12 Plaintiff,
13 v.
14 WYNN LAS VEGAS, LLC, a Nevada
Limited Liability Company, d/b/a WYNN
15 LAS VEGAS; DOES I through X; and ROE
CORPORATIONS I through X; inclusive;
16 Defendants.
17

Case No. A-12-655992-C
Dept. No. V

**ORDER DENYING WITHOUT
PREJUDICE DEFENDANT'S MOTION
IN LIMINE [#2] TO EXCLUDE
UNRELATED MEDICAL
CONDITIONS AND DAMAGES
CLAIMED BY PLAINTIFF**

LAWRENCE J. SEMENZA, III, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

18 On October 1, 2015, the Court held a hearing on Defendant Wynn Las Vegas, LLC's d/b/a
19 Wynn Las Vegas ("Defendant") Motion in Limine [#2] to Exclude Unrelated Medical Conditions
20 and Damages Claimed by Plaintiff (the "Motion"). Plaintiff Yvonne O'Connell ("Plaintiff") filed
21 an Opposition to the Motion as well as a Motion for Sanctions for Violation of HIPAA Protected
22 Information. Defendant filed a Reply brief and an Opposition to Plaintiff's Motion for Sanctions,
23 seeking an award of its attorney's fees and costs relating to Plaintiff's Motion for Sanctions.
24 Christian Morris, Esq. of the Nettles Law Firm appeared on behalf of Plaintiff and Lawrence J.
25 Semenza, III, Esq. and Christopher D. Kircher, Esq. of Lawrence J. Semenza, III, P.C. appeared
26 on behalf of Defendant.
27
28

LAWRENCE J. SEMENZA, III, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

1 The Court, having reviewed the papers and pleadings on file and the oral argument of
2 counsel at the hearing in the matter, finds as follows:

3 1. Plaintiff has identified that she intends to call at trial two of Plaintiff's treating
4 physicians, Dr. Dunn and Dr. Tingey;

5 2. The Court has not reviewed the medical records from Dr. Dunn or Dr. Tingey
6 related to the Plaintiff;

7 3. The parties dispute whether Dr. Tingey was properly disclosed;

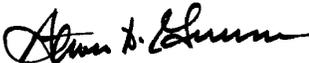
8 4 Therefore, at this time the Court does not have sufficient information before it to
9 make a ruling on Defendant's Motion.

10 Based on the foregoing, with good cause appearing:

11 **IT IS HEREBY ORDERED** that Defendant's Motion in Limine [#3] to Exclude
12 Unrelated Medical Conditions and Damages Claimed by Plaintiff is hereby DENIED without
13 prejudice as it relates to Dr. Dunn. The Court will defer any decision on the issues raised in
14 Defendant's Motion until after it hears Dr. Dunn's proposed testimony outside the presence of the
15 jury at the trial in this matter.

16 **IT IS HEREBY FURTHER ORDERED** that the Court will continue the hearing as it
17 relates to Dr. Tingey until October 29, 2015 at 9:00 a.m. The parties may file supplemental briefs
18 related to Dr. Tingey by no later than October 27, 2015.

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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

YVONNE O'CONNELL, . CASE NO. A-12-655992-C
Plaintiff, . DEPT. V
vs. .
WYNN RESORTS LIMITED, et al., . **TRANSCRIPT OF**
Defendants. . **PROCEEDINGS**
.

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 1

WEDNESDAY, NOVEMBER 4, 2015

APPEARANCES:

FOR THE PLAINTIFF: CHRISTIAN MORRIS, ESQ.
EDWARD J. WYNDER, ESQ.
FOR THE DEFENDANTS: LAWRENCE J. SEMENZA, III., ESQ.
CHRISTOPHER D. KIRCHER, ESQ.

COURT RECORDER:

LARA CORCORAN
District Court

TRANSCRIPTION BY:

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INDEX

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
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STATE'S EXHIBITS:

Exhibits 1 through 13..	15
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1 LAS VEGAS, NEVADA, WEDNESDAY, NOVEMBER 4, 2015, 1:26 P.M.

2 (Outside the presence of the prospective jurors)

3 THE COURT: All right, let me call the case. It's
4 A-12-655992, and it's Yvonne O'Connell vs. Wynn Resorts
5 Limited.

6 MR. SEMENZA: Let me start with I think the
7 relatively simpler argument and issue that has arisen. We
8 filed our Motion to -- I'm sorry, Motion in Limine to exclude
9 any evidence relating to the failure to preserve evidence, and
10 specifically relating to the issue of photographs, and when
11 the security officer took the photographs, and when the
12 flooring was ultimately cleaned.

13 And our position was and is that Mr. Prowell, the
14 security officer, arrived on the scene after the flooring had
15 already been cleaned up, and that's, simply put, the reason
16 why there were no photographs taken of the particular scene.
17 And I believe, and I don't want to mischaracterize opposing
18 counsel's argument, but I understood her argument to be that
19 that is still an issue outstanding as to whether the liquid
20 substance had or had not been cleaned up at the point when
21 Security Officer Prowell arrived on scene.

22 And in preparing for trial, and having had an
23 opportunity to go back through and look at various discovery
24 documents, I did find in Ms. O'Connell's interrogatory
25 responses -- and specifically, I'll reference it to opposing

1 counsel. It's response to interrogatory number 7, and
2 interrogatory number 7 reads, "Please describe the events that
3 occurred on February 8th, 2010 from the time you entered
4 defendant's property until the time you departed defendant's
5 property that purportedly give rise to your Complaint."

6 And in response to that interrogatory was a
7 narrative provided by Ms. O'Connell, the pertinent portion of
8 which reads -- and again, I'll give you a little bit more, and
9 a little bit further down beyond her response that's relevant.

10 She says, "The spill was in the walkway and wrapped
11 around the diagonal shaped corner. The entire spill was --
12 covered more than a seven-foot area. The spill had been left
13 near the planter for such a long time that a three-foot part
14 of it had already almost dried, become sticky, and accumulated
15 many footprints.

16 As Wynn's porter was positioning his machine, a
17 short cleaning lady came from my right and hurriedly mopped
18 the liquid between me and the porter. As the cleaning lady
19 was finishing mopping the liquid, Wynn's female employee, who
20 was in a dark uniform/suit, came and called security. I told
21 her that the cleaning lady already mopped up the liquid,
22 except for the part that I was standing on.

23 She saw that I was standing on a sticky substance
24 with many footprints on it. Several minutes later, a male
25 employee with a dark uniform/suit, dark mustache, and stocky

1 arrived. I told him that they had already cleaned up the
2 liquid. He pointed and assured me that they had everything on
3 camera. I looked up and saw the camera," and then it goes
4 from there.

5 So, from Wynn's perspective, there is no dispute in
6 this case that Mr. Prowell -- Security Officer Prowell arrived
7 on scene after the liquid had already been cleaned up. So, I
8 want to make sure that the evidence that's elicited in this
9 trial, there isn't any reference to spoliation or the failure
10 to preserve as it specifically relates to the photographic
11 evidence.

12 Obviously, the security cameras are a different
13 issue, and Your Honor's already ruled on that particular
14 issue. But I don't think it's appropriate for plaintiff's
15 counsel to get into any of those issues concerning the taking
16 of the photographs, the timing of the photographs, and those
17 sorts of things.

18 MS. MORRIS: As much as I appreciate everything that
19 was just addressed, one, I'm not quite sure why we're
20 addressing it again at this time; and two, there are security
21 reports, there are incident reports, and there's deposition
22 transcript, all which lays out what exactly the Security Guard
23 Prowell saw and what he said. His deposition's been taken and
24 he wrote a report. And then there's Yanet Elias. Her
25 deposition has been taken, and she handwrote a report, which

1 states what she saw. I think that's where the evidence lies.

2 I don't think that the rendition of Yvonne O'Connell
3 is all that much different from what they said, and so, I
4 don't think there's any reason to preclude -- I don't know
5 exactly what he's asking for, because the evidence is what's
6 in their incident reports and what's in their deposition
7 transcript, and that's what will remain.

8 THE COURT: Well, I'm not sure what you're asking
9 for either. Basically, spoliation only becomes an issue at
10 the end of a case where, you know, one side or the other can
11 ask for a jury instruction. And if the evidence would support
12 that, then perhaps such an instruction would be given, but, I
13 mean, it doesn't sound as if that's going to be the case. I
14 don't think that -- I mean, are you worried that she's going
15 to get up in opening statement and tell the jury that -- that
16 they're going to be later instructed that they can infer?
17 Because --

18 MR. SEMENZA: I'm not --

19 THE COURT: -- that would be improper, because
20 that's not an opening statement. That's argument, and --

21 MR. SEMENZA: I'm not so concerned with that. And I
22 understand Your Honor's point as far as whether there's a jury
23 instruction that is going to come in to address that point,
24 but what I am concerned about are questions that opposing
25 counsel may pose to imply or infer that there is a spoliation

1 issue with regard to the photographs, and using those
2 questions to ultimately prejudice the jury and create an issue
3 that isn't there.

4 THE COURT: Well, if you feel that a question that's
5 asked is irrelevant, then make an objection and I'll rule on
6 it.

7 MR. SEMENZA: That's fine.

8 THE COURT: Because, really, until I hear, I can't
9 say, well, you can't ask -- what? I mean, there's nothing
10 really specific there, so --

11 MR. SEMENZA: And I understand Your Honor's point,
12 and that's fine. We'll reserve it for the particular
13 questions, and if we think that plaintiff's counsel is going
14 beyond what we believe would be permitted, then we'll address
15 it in the form of an objection. That's fine. I did want to
16 raise the issue for Your Honor.

17 The second issue that I am concerned with and I want
18 to raise now out of an abundance of caution, not necessarily
19 believing that plaintiff's counsel would do this or not, but I
20 want to make sure that plaintiff's counsel is not going to go
21 beyond the damages calculation for purposes of the evidence
22 that's presented in this case, beyond what her 16.1 disclosure
23 has identified, and specifically, whether there are any future
24 medical specials that either Dr. Tingey or Dr. Dunn are going
25 to discuss during their testimony.

1 The 16.1 disclosure in this particular case
2 identifies -- and I have a copy, if Your Honor would like it.
3 I also have a copy for opposing counsel. And this computation
4 of damages is dated September 28th of 2015, and it begins on
5 page 19. It notes medical damages, and then provides a grid
6 that identifies a number of medical expenses that she's
7 claiming as damages. One of those entries is for Dr. Dunn,
8 and that is in the amount of \$1,640. That's been disclosed.
9 I understand that that's fair game.

10 In addition to that, there were two additional
11 charges, one for Las Vegas Radiology in the amount of \$3,300,
12 and one related to OpenSided MRI of Las Vegas for \$3,290.
13 Again, it's my understanding that those two particular charges
14 relate to the care and treatment that Dr. Dunn had and Dr.
15 Tingey, and again, these were disclosed.

16 But what I don't want to have happen at trial is for
17 Dr. Dunn or Dr. Tingey to get up on the stand and say she's
18 going to need future surgery in the form of X, whatever that
19 might very well be, and then turn around and attempt to claim
20 those future medical expenses and damages in this particular
21 case, because they have never been disclosed, and to allow
22 them to do that would be exceptionally prejudicial to us.

23 And I have some case law that, obviously, I can
24 identify and provide to the Court if in fact it is plaintiff's
25 intention to get beyond the damages calculation that was set

1 forth in her 16.1 disclosure.

2 MS. MORRIS: Your Honor, we are here for jury
3 selection. I have a bunch of motions in limine I would have
4 liked to have discussed as well. That's -- this is not the
5 time or the place. This is a motion in limine.

6 Here is what I will help Mr. Semenza understand.
7 The doctors have -- have put in their medical records that
8 Yvonne O'Connell needs surgery. They did not put an amount.
9 I will not elicit an amount from them while they're on the
10 stand, but they certainly can testify in accordance with their
11 medical records as to what they recommended that she need.

12 THE COURT: Well, maybe. The problem will be that
13 if they can't state what the amount would be, it will be
14 speculation to allow the jury to, you know --

15 MR. SEMENZA: Well, that's not really --

16 MS. MORRIS: Well, they can state the amount. It's
17 just, he's saying he doesn't want them to. They certainly
18 can; they can tell you how much it's going to cost. Dr. Dunn
19 does it all the time, but he doesn't want them to, is his
20 issue.

21 MR. SEMENZA: My issue is that the damages -- the
22 special damages that Ms. O'Connell is claiming in this case
23 have been set forth in her 16.1 disclosures. That's the
24 \$37,000 amount, \$37,946.98. Because of Dr. Tingey and Dr.
25 Dunn's, what we would argue, late disclosure, I want to make

1 sure that the plaintiff is not going to be claiming any
2 special future medical damages in this particular case,
3 because they are not specified in the 16.1 disclosure.

4 And if that's the representation that Ms. Morris is
5 prepared to make at this point in time, then I'm fine with the
6 issue. But if it is their intention to have Dr. Dunn and Dr.
7 Tingey get up on the stand and say, well, her future medical
8 treatment is going to cost \$200,000, then that's prejudicial,
9 because it was never disclosed, and it shouldn't be allowed in
10 and can't be allowed in. That's the issue I have.

11 THE COURT: So, you're fine with having them get up
12 and say she's going to need surgery in the future?

13 MR. SEMENZA: I don't have an issue with that, so
14 long as it's in the medical file, and I know we already
15 addressed that particular issue as part of the motions in
16 limine. So, I'm going to obviously reserve my right to raise
17 those kinds of issues later on.

18 What I'm most concerned about is that, at some point
19 in the trial, at the conclusion of the trial, perhaps closing
20 arguments, when Ms. Morris is getting up and identifying how
21 much Ms. O'Connell is seeking in damages, that there is no
22 additional number provided beyond the special damages
23 identified in the 16.1. That's the issue I've got.

24 MS. MORRIS: Dr. Dunn has put in his medica records
25 that he has recommended Yvonne O'Connell get a cervical fusion

1 from C4 to C7, stated right in his medical records. That's no
2 surprise. I will not be eliciting a number, unless you would
3 like me to, as to the cost of that future surgery, but he is
4 going to testify that she needs it and that he recommend that
5 she have it.

6 THE COURT: All right, so you need to brief that,
7 because I don't see how -- if the jury -- I don't see how the
8 jury does -- how that's relevant if the jury is then, what,
9 asked to speculate about what the cost of this would be? In
10 other words, to prove up future damages, you've got to have --
11 you know, you've got to show that it's -- it was caused by the
12 incident that it's related, it's necessary, and you've got to
13 -- you can't just allow them to grossly speculate about --

14 MR. SEMENZA: No, no, no, Your Honor, and I agree
15 with that point. I'm talking about what I perceive to be two
16 specifically distinct issues. One issue is what Mr. -- Dr.
17 Dunn and Dr. Tingey are going to be allowed to testify to as
18 to their care and treatment of the plaintiff. That's one
19 issue. The second issue is the issue I'm discussing now,
20 which is that Ms. O'Connell is not permitted to claim --

21 THE COURT: Future damages.

22 MR. SEMENZA: -- future damages as specials because
23 they have not been disclosed in the 16.1 disclosure.

24 THE COURT: Okay. So, we'll -- you'll brief that as
25 a trial brief, because you said you've got case law, so go

1 ahead and do that so we have a full record on that.

2 MR. SEMENZA: And we -- okay.

3 THE COURT: Be prepared to do that. So, obviously,
4 in opening statement, you don't want to talk about that at
5 this point, because I won't have ruled on that, okay?

6 MS. MORRIS: Don't want to talk about what?

7 THE COURT: Don't be talking about, we're going to
8 be asking you -- or the doctors are going to say that she
9 requires future surgery, and et cetera, et cetera, you know,
10 in this amount. I don't know that where you haven't disclosed
11 an amount that it's even proper, and so that may be something
12 that you need to brief, because, otherwise, you're asking a
13 jury, basically, to get up and speculate about the amount of
14 the future damages. There wouldn't be any support for that,
15 right?

16 MS. MORRIS: And I've submitted my verdict form in
17 which I am asking for past pain and suffering and future pain
18 and suffering, in which no special damages are listed -- no
19 general damages are listed upon that. I'm not going to stand
20 up and say that she needs \$300,000 in future medical expenses.
21 That information correctly hasn't been disclosed. But the
22 fact that she needs a surgery, and a doctor has opined as to
23 that and believes it's related is certainly evidence for the
24 jury to consider in whether she's going to have future pain
25 and suffering.

1 THE COURT: Maybe. Okay, so that's why I want --

2 MR. SEMENZA: That's fine, Your Honor. I
3 understand.

4 THE COURT: Okay. So, I don't know what the answer
5 to that question is, so --

6 MR. SEMENZA: And I think to --

7 THE COURT: -- a brief would be helpful.

8 MR. SEMENZA: At least to some extent, Ms. Morris
9 has answered the question, and that she is not at this point
10 in time, and this was my immediate concern is that she's not
11 going to be seeking future special damages relating to the
12 medical treatment of Ms. O'Connell.

13 MS. MORRIS: Unless it's required after our
14 briefing, and the Judge has made a decision regarding that. I
15 think that we'd need to keep it open, because we need to brief
16 the issue and have the decision from the bench.

17 MR. SEMENZA: I think that's what you just --

18 THE COURT: Okay.

19 MR. SEMENZA: -- represented though, that you
20 weren't seeking that.

21 MS. MORRIS: I think we need to withhold our
22 decisions on that after the brief.

23 THE COURT: All right. Well, you'll brief it, and
24 then I'll be able to tell.

25 MR. SEMENZA: Okay.

1 THE COURT: All right. Now, I just wanted to ask,
2 because I got the plaintiff's PowerPoint, and I just want to
3 make sure that everything -- because there are things in here
4 that normally would not come into evidence, like voluntary
5 statements, you know. Usually, reports and things don't come
6 into evidenced. Did you stipulate that you're going to put
7 these things into evidence?

8 MR. SEMENZA: We have stipulated to --

9 THE COURT: Okay.

10 MR. SEMENZA: -- a number of proposed exhibits.

11 MS. MORRIS: Yes, and I have the binder here. It's
12 the instant report, it's the photographs, and it's the
13 voluntary statements.

14 THE COURT: Okay. All right, just want to make sure
15 of that, so --

16 MR. SEMENZA: For the court clerk's reference, and
17 Ms. Morris can correct me if I'm wrong, but the binder labeled
18 Joint Stipulated Exhibits and Exhibits 1 through 13 have been
19 stipulated to be admitted in this case.

20 THE COURT: Okay.

21 MS. MORRIS: Correct.

22 THE CLERK: 1 through 13 is in the joint --

23 MR. SEMENZA: Yes, only those exhibits in the Joint
24 Stipulated binder.

25 THE COURT: Okay. All right. So, everything that

1 was marked Joint Stipulated in your PowerPoint is --

2 MS. MORRIS: Correct.

3 THE COURT: -- going to be admitted via stipulation.

4 (Exhibits 1 through 13 are admitted)

5 THE COURT: All right, good. Anything else before
6 we -- let's -- we need to get that jury in here.

7 MS. MORRIS: I just have your order granting the
8 oral motion for jury demand. It's been signed by defense
9 counsel.

10 THE COURT: Thank you.

11 MS. MORRIS: Approach?

12 THE COURT: All right. I'll send the marshal down
13 though to retrieve our jury. Thanks.

14 THE COURT RECORDER: Off the record?

15 THE COURT: Yes.

16 (Court recessed at 1:44 P.M. until 2:08 P.M.)

17 (Within the presence of the prospective jurors)

18 THE COURT: All right. And this is case number
19 A-12-655922, Yvonne O'Connell vs. Wynn Resorts Limited. Good
20 afternoon, ladies and gentlemen. We are here, and you've been
21 invited to department 5 to see if you are qualified to serve
22 as jurors in a civil case that is going to trial. We are here
23 this afternoon to get a jury selected between now and 5:00
24 o'clock, so that's what we're about. We do that -- we do
25 questioning of the jury; we do that under oath. I'm going to

1 have the clerk swear you all in right now.

2 THE CLERK: Could everybody please, excuse me, rise
3 and raise your right hand?

4 PROSPECTIVE JURORS SWORN

5 THE CLERK: You may be seated.

6 THE COURT: All right. Thank you, ladies and
7 gentlemen. And the record will reflect that the plaintiff is
8 present with her counsel, the defendant is present by and
9 through its counsel as well, all officers of the court are
10 present, and we are now in the presence of the venire panel.
11 We've ordered up 50 jurors as prospective -- prospective
12 jurors as part of the venire panel.

13 So, ladies and gentlemen, as I said, we're looking
14 to select eight jurors who will serve as fair and impartial
15 jurors in this case, and two alternate jurors who would be
16 prepared to serve, if called upon, if necessary. We do this
17 process through what is known as the voir dire of the jurors
18 -- or prospective jurors. We ask questions. That's the only
19 way we can get to know you at all and make a determination as
20 to whether you would be suited to be fair and impartial jurors
21 in this case.

22 This case is a slip and fall personal injury lawsuit
23 brought by the plaintiff in this case against Wynn Resorts
24 Limited, which is the -- does business as the Las Vegas Wynn
25 -- Wynn Las Vegas. And the incident that gives rise to the

1 Complaint that is the charging -- or is the document in this
2 case making the allegations against the defendant alleges that
3 the incident happened on February 8th, 2010 here in Las Vegas
4 at the Wynn.

5 So, the allegations essentially are that it took
6 place at that time, that the plaintiff slipped and fell, that
7 the defendant was negligent in causing that, and that the
8 plaintiff suffered injuries. I'm only telling you that so you
9 have just a general idea of what the claims are in this case,
10 all right?

11 So, I'm also going to ask the lawyers to read off a
12 list of witnesses to you that they anticipate calling or may
13 be called, and I need you to listen up when those names are
14 called, because you're going to be asked at some point whether
15 you recognize the names of any of those people. And so, start
16 with plaintiff's counsel. And Ms. Morris, would you like to
17 introduce yourself, your co-counsel, and your client, please?

18 MS. MORRIS: I would. My name's Christian Morris.
19 I work at the Nettles Law Firm. In the Nettles Law Firm, we
20 have four attorneys. There's Brian Nettles, there's Joel
21 Hengstler, there is William or Bill Killip, and there's Ed
22 Wynder, who's here with me today.

23 This is Yvonne O'Connell. And the witnesses who I
24 am going to be calling in this case is a man named Salvador or
25 Sal -- Salvatore Risco, there is a Dr. Craig Tingey, there is

1 a Dr. Dunn, there is a Victor Klausner, DO, there is a Yanet
2 Elias, and a Corey Prowell. It's good to meet you.

3 THE COURT: Okay. And DO, for the jury's
4 edification, is a doctor of osteopathy, so it's a doctor. All
5 right? And defense counsel, Mr. Semenza.

6 MR. SEMENZA: Good afternoon, ladies and gentlemen.
7 My name is L.J. Semenza. I'm with the law firm of Lawrence J.
8 Semenza, III, P.C. With me at counsel table is Chris Kircher,
9 her with my office, who's an attorney, and our client
10 representative from Wynn Las Vegas, Ms. Christian (sic)
11 Steinbach is here as well. Sitting here behind counsel table
12 is Jarrod Rickard, who will be joining my firm sometime at the
13 end of November.

14 As far as the witnesses in this particular case, Ms.
15 Morris has already identified a number of them, but a couple
16 of additional potential witnesses are Trish Matthieu with
17 Wynn. Trevor Maxwell, also with Wynn. An individual by the
18 name of Anil Fotedar. And an individual by the name of Arcy
19 Macias as well. I believe that is the totality of potential
20 witnesses in this particular case.

21 THE COURT: All right, thank you. Counsel approach
22 briefly.

23 (Off-record bench conference)

24 THE COURT: All right, thank you. So, ladies and
25 gentlemen, is there -- show of hands, is there anyone here who

1 is not a citizen of the United States? And the record will
2 reflect a negative response.

3 Is there anyone here who is 70 years of age or older
4 and does not wish to serve on this jury? All right. And is
5 there anyone here who is 65 years of age or older and lives at
6 least 65 miles one way from the courthouse who does not wish
7 to serve? And the record will reflect a negative response as
8 well.

9 Okay. Ladies and gentlemen, let me give you a
10 schedule of the trial so that will inform you as to what we're
11 looking at here. So, today is just jury selection. As I say,
12 it's our goal to get a jury selected by 5:00 o'clock this
13 evening, and then we will be in recess until next week, so you
14 wouldn't be required to be back until next Monday.

15 Our schedule on Monday would be from 1:30 until
16 5:00, because on Mondays and Wednesdays, usually, I have a
17 criminal calendar that takes all morning, so we can't start
18 until 1:30, and we would go until 5:00 o'clock in the evening.
19 On Tuesday, that would be the 10th, we'll start at either 8:30
20 or 9:00. And we may go that day as late as 7:00 -- no, later
21 than that. We have -- we're trying to accommodate a doctor's
22 schedule and get him on the stand and off the stand.

23 Obviously, if we anticipate that we're going to go
24 that late, you know, you're getting breaks. We'll take always
25 at least an hour, if not longer. On that day, we might take a

1 little longer for lunch break. And we always take, if it's a
2 full day, a morning break of 10 to 15 minutes, and an
3 afternoon break of 10 to 15 minutes. So, don't think that
4 it's -- you know, you're going to be sitting in that chair for
5 ten hours or something. That won't happen.

6 Wednesday is a court holiday. The courthouse is
7 closed for Veteran's Day in honor of our veterans, and so we
8 won't have court at all on Wednesday the 11th. Thursday the
9 12th, I would anticipate starting as early as 8:30 and going
10 until 5:00, and Friday, as early as 8:30 and going until 5:00.

11 These -- I'm trying to give you the outside
12 predictions here. The case may take a little less time, but
13 we also have to factor in jury deliberation time, because even
14 once the lawyers finish presenting their cases, jury still has
15 to deliberate, look at all the evidence, and make a thoughtful
16 and well-reasoned decision, so it's not something that you're
17 asked to go and make a decision on in a minute.

18 So, we are telling you as an outside end of trial
19 date as the following week, which would be starting on the
20 16th, and obviously, we would be off for the weekend. So,
21 Saturday and Sunday, there would be no court, and the 16th and
22 17th would be 9:00 to 5:00 days, because we're anticipating
23 the trial portion would be over, and if you haven't rendered a
24 verdict, that would be deliberation time, and it could be less
25 time than that.

1 So, basically, we're looking to get this case tried
2 in four days, because we're going to have an intervening
3 holiday in the middle of the week and starting next week, so
4 your time here today is just to get the jury picked.

5 This is not a lengthy trial. There are trials in
6 this courthouse going on that go weeks. That's not unusual in
7 civil cases or criminal cases. So, if you can finish your
8 jury service in this short of time, you should get that --
9 grab that opportunity, because if you're -- if you cannot
10 serve in this slot, what's going to happen is you're going to
11 be returned back to the jury commissioner, and you could have
12 to get -- you could get picked for another case that will go
13 longer than this one. So, I'm just letting you know that
14 before we get much further.

15 All right. Is there anyone who believes that they
16 know any of the parties? Ms. O'Connell? Does anyone believe
17 they know Ms. O'Connell? And the record will reflect a
18 negative response. Does anyone know any of the plaintiff's
19 lawyers? Again, the record will reflect a negative response.
20 Is there anyone who believes they know any of the defendant's
21 lawyers or the representative of the Wynn that's here in
22 court?

23 PROSPECTIVE JUROR NO. 014: I work for the Wynn.

24 THE COURT RECORDER: Okay.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR NO. 014: So --

2 THE COURT RECORDER: Wait, wait.

3 PROSPECTIVE JUROR NO. 014: -- does it matter?

4 THE COURT: Wait. All right, so this -- these
5 questions just call for a show of hands. Before anybody
6 speaks, what we're going to do is we've got a handheld
7 microphone. Everything that happens in this courtroom is
8 recorded. That's how the record is kept. This is a court of
9 record. The court recorder is taking down everything we say
10 through an audio and visual recording system in the courtroom.

11 So, before you speak, you need to state the last
12 three digits of your badge number and your full name, and then
13 speak into the microphone. And if you're speaking into the
14 microphone, and you happen to be a person who gestures a lot,
15 then don't hold the microphone in the hand that you gesture
16 with. Hold the microphone in the other hand. So, if you're a
17 person that gestures with your right hand, do this.
18 Otherwise, this, okay? None of this, because we can't get it
19 down.

20 All right. So, we had a gentleman who indicated
21 that he worked for the Wynn, but before we hear anything more
22 from him, is there anyone else who works for the Wynn that's
23 present here, besides the one gentleman? All right, let's
24 give it to the man in the front row.

25 THE MARSHAL: Full name and last three digits.

1 THE COURT: Sir?

2 THE MARSHAL: Remain seated is fine.

3 PROSPECTIVE JUROR NO. 014: Can I stand up?

4 THE COURT: You can -- no, just remain seated.

5 PROSPECTIVE JUROR NO. 014: 014, and James Hebert.

6 THE COURT: James what?

7 PROSPECTIVE JUROR NO. 014: Hebert.

8 THE COURT: Okay. Mr. Hebert, how long have you
9 worked for the Wynn?

10 PROSPECTIVE JUROR NO. 014: About ten years.

11 THE COURT: And what do you do for them?

12 PROSPECTIVE JUROR NO. 014: I work on the golf
13 course.

14 THE COURT: On the golf course? All right. And do
15 you -- do you think that you could be a fair and impartial
16 juror in this case, given that your employer is the defendant?

17 PROSPECTIVE JUROR NO. 014: Yeah. Yes.

18 THE COURT: You do? All right. Okay. And you --
19 so, you don't think that if somebody found out you were on a
20 jury where the Wynn was the defendant that they might put some
21 pressure on you, or ask you questions, or anything like that?

22 PROSPECTIVE JUROR NO. 014: Well, I -- I guess they
23 could. I don't know.

24 THE COURT: All right. Would it -- would it affect
25 you in your ability to be fair and impartial?

1 PROSPECTIVE JUROR NO. 014: No.

2 THE COURT: So, you don't feel like you have any
3 bias towards the Wynn?

4 PROSPECTIVE JUROR NO. 014: No.

5 THE COURT: Do you have any bias against the Wynn?

6 PROSPECTIVE JUROR NO. 014: No.

7 THE COURT: All right, thank you. Okay. Is there
8 anyone who has ever served as a juror before? Let's start on
9 the top there.

10 THE MARSHAL: Full name and last three, please.

11 PROSPECTIVE JUROR NO. 001: 001, Juan Torres.

12 THE COURT: And sir, have you been a juror before
13 here in Clark County?

14 PROSPECTIVE JUROR NO. 001: No, Elko County.

15 THE COURT: Elko? Okay, how long ago was that?

16 PROSPECTIVE JUROR NO. 001: 14 years.

17 THE MARSHAL: Wait, put the microphone back.

18 PROSPECTIVE JUROR NO. 001: 14 years.

19 THE COURT: 14 years. Do you recall if that was a
20 criminal case or a civil case?

21 PROSPECTIVE JUROR NO. 001: I think it was civil
22 case.

23 THE COURT: Okay. Without telling us what the
24 verdict was, did the jury reach a verdict?

25 PROSPECTIVE JUROR NO. 001: No, I was -- no.

1 THE COURT: Were you on the jury?

2 PROSPECTIVE JUROR NO. 001: Yes.

3 THE COURT: And the jury did not reach a verdict?

4 PROSPECTIVE JUROR NO. 001: No.

5 THE COURT: Okay. Did the jury deliberate?

6 PROSPECTIVE JUROR NO. 001: Yes.

7 THE COURT: Were you the foreperson of the jury?

8 PROSPECTIVE JUROR NO. 001: No.

9 THE COURT: Anything about that experience that
10 makes you think you could not be a fair and impartial juror in
11 this case?

12 PROSPECTIVE JUROR NO. 001: No, not really.

13 THE COURT: All right. Who's next on the top row?

14 THE MARSHAL: Pass it down, please.

15 PROSPECTIVE JUROR NO. 005: Hi. Ben Godfrey, 005.

16 THE COURT: And you've been a juror before? Tell us
17 about that.

18 PROSPECTIVE JUROR NO. 005: Yes, twice. It was like
19 20 years ago, the last one. And I -- I was an alternate on
20 the jury, so I didn't go back into deliberation; I just sat
21 out.

22 THE COURT: Okay. And so that was the most recent,
23 and what about the other time you served?

24 PROSPECTIVE JUROR NO. 005: The other one was about
25 40 years ago, and it was -- the El Cortez parking lot fell

1 down.

2 THE COURT: Okay, so a civil case again?

3 PROSPECTIVE JUROR NO. 005: Civil case.

4 THE COURT: All right. And did the jury deliberate?

5 Were you on the jury that --

6 PROSPECTIVE JUROR NO. 005: They settled.

7 THE COURT: They settled, so didn't reach a verdict

8 because --

9 PROSPECTIVE JUROR NO. 005: No verdict.

10 THE COURT: -- the case settled? All right, thank

11 you.

12 PROSPECTIVE JUROR NO. 008: Brandon Snyder, 008. I

13 was a juror last year here in Clark County at the other

14 courthouse.

15 THE COURT: At the federal courthouse?

16 PROSPECTIVE JUROR NO. 008: Yes.

17 THE COURT: Okay. And was that a criminal case or a

18 civil case?

19 PROSPECTIVE JUROR NO. 008: It was a civil.

20 THE COURT: Without telling us, again, what the

21 verdict was, did the jury reach a verdict?

22 PROSPECTIVE JUROR NO. 008: Yes.

23 THE COURT: Were you the foreperson?

24 PROSPECTIVE JUROR NO. 008: No.

25 THE COURT: All right, thank you. Anybody in the

1 next row? More jurors? Okay.

2 PROSPECTIVE JUROR NO. 013: Brenda Nigro, 013.

3 THE COURT: Okay. Where were you a juror?

4 PROSPECTIVE JUROR NO. 013: Here.

5 THE COURT: How long ago?

6 PROSPECTIVE JUROR NO. 013: Probably two years, I
7 think.

8 THE COURT: Criminal case, or civil case?

9 PROSPECTIVE JUROR NO. 013: Civil.

10 THE COURT: Okay. Without telling us what the
11 verdict was, did the jury reach a verdict?

12 PROSPECTIVE JUROR NO. 013: Yes.

13 THE COURT: Were you the foreperson?

14 PROSPECTIVE JUROR NO. 013: No.

15 THE COURT: Okay, thank you. Anyone in the very
16 front row? One.

17 PROSPECTIVE JUROR NO. 021: Bridget Hamilton, 021.

18 THE COURT: And where were you a juror before?

19 PROSPECTIVE JUROR NO. 021: Here. Well, not this
20 building, but the other courthouse.

21 THE COURT: The old courthouse?

22 PROSPECTIVE JUROR NO. 021: Yes.

23 THE COURT: Okay, and how long ago was that?

24 PROSPECTIVE JUROR NO. 021: Two to three years ago.
25 I'm sketchy on the date.

1 THE COURT: Well, it was more than that, because
2 that courthouse has not been in use for --

3 PROSPECTIVE JUROR NO. 021: Okay, maybe not that --

4 THE COURT: The one that they tore down and made a
5 parking lot out of?

6 PROSPECTIVE JUROR NO. 021: Judge Earl, whatever
7 courthouse he was at. I can't remember.

8 THE COURT: Oh, okay.

9 PROSPECTIVE JUROR NO. 021: Yeah.

10 THE COURT: So, the CLC, the --

11 PROSPECTIVE JUROR NO. 021: Yes, okay.

12 THE COURT: -- Complex Litigation Center. It's kind
13 of part of this --

14 PROSPECTIVE JUROR NO. 021: Yeah.

15 THE COURT: -- but it's an extension. All right, so
16 did you actually deliberate?

17 PROSPECTIVE JUROR NO. 021: Yes.

18 THE COURT: And without telling us what the verdict
19 was, did the jury reach a verdict?

20 PROSPECTIVE JUROR NO. 021: Yes.

21 THE COURT: And that was a civil case, right?

22 PROSPECTIVE JUROR NO. 021: Um-hum.

23 THE COURT: And were you the foreperson?

24 PROSPECTIVE JUROR NO. 021: No.

25 THE COURT: Okay, thank you. Okay, starting on this

1 side.

2 THE MARSHAL: Anybody else? Anybody in the front
3 row?

4 PROSPECTIVE JUROR NO. 044: Mark Ting, 044.

5 THE COURT: Okay. Where were you a juror?

6 PROSPECTIVE JUROR NO. 044: Right here.

7 THE COURT: How long ago?

8 PROSPECTIVE JUROR NO. 044: Less than three years
9 ago.

10 THE COURT: Was the case a civil case, or a
11 criminal?

12 PROSPECTIVE JUROR NO. 044: Civil case.

13 THE COURT: Civil case. And were -- did the jury
14 reach a verdict?

15 PROSPECTIVE JUROR NO. 044: Yes, we did.

16 THE COURT: Okay. Were you the foreperson?

17 PROSPECTIVE JUROR NO. 044: Oh, no.

18 THE COURT: Thank you.

19 PROSPECTIVE JUROR NO. 044: Thank you.

20 THE MARSHAL: Anybody else?

21 THE COURT: Got one on this side. Two.

22 PROSPECTIVE JUROR NO. 058: Paul Washington, 058.

23 THE COURT: Mr. Washington, where were you a juror?

24 PROSPECTIVE JUROR NO. 058: Dallas, Texas.

25 THE COURT: How long ago?

1 PROSPECTIVE JUROR NO. 058: Eight years ago.

2 THE COURT: Was it a criminal case or a civil case?

3 PROSPECTIVE JUROR NO. 058: A criminal case.

4 THE COURT: Without telling us what the verdict was,
5 did the jury reach a verdict?

6 PROSPECTIVE JUROR NO. 058: Yes.

7 THE COURT: Were you the foreperson?

8 PROSPECTIVE JUROR NO. 058: No.

9 THE COURT: Now, you understand that the burden of
10 proof in a criminal case is different than in a civil case?
11 In other words, in a criminal case, the burden is a higher
12 burden than what the plaintiff has to prove in a civil case.
13 Will you be able to follow the law as I instruct you in this
14 case, and forget about what you might have heard in the
15 criminal case?

16 PROSPECTIVE JUROR NO. 058: I've already forgot
17 about it. Yes.

18 THE COURT: All right. Thank you very much.

19 PROSPECTIVE JUROR NO. 058: All right.

20 THE COURT: Anyone else? No, no prior jury service.
21 Okay, thank you. All right.

22 Okay. All right. Is there anyone here who has any
23 medical training?

24 THE MARSHAL: Last three, please.

25 PROSPECTIVE JUROR NO. 001: Diabetes and high blood

1 pressure.

2 THE COURT: No, no, no, not medical conditions.

3 PROSPECTIVE JUROR NO. 001: Oh, I'm sorry.

4 THE COURT: Medical training.

5 PROSPECTIVE JUROR NO. 001: Oh, no.

6 THE COURT: Training? No, okay.

7 THE MARSHAL: Full name, last three, please.

8 PROSPECTIVE JUROR NO. 006: Heather C. Cooper, 006.

9 I work in an emergency room --

10 THE COURT: In what --

11 PROSPECTIVE JUROR NO. 006: -- as an RN.

12 THE COURT: An RN? Okay, how long have you been
13 doing that?

14 PROSPECTIVE JUROR NO. 006: 23 years.

15 THE COURT: Okay, and have you worked in numerous
16 hospitals here in the Valley?

17 PROSPECTIVE JUROR NO. 006: About four here in the
18 Valley, and then I also worked across the country as a travel
19 nurse.

20 THE COURT: Okay. Have you always been in the ER,
21 or have you been an RN in different capacities?

22 PROSPECTIVE JUROR NO. 006: Other capacities as
23 well.

24 THE COURT: Okay. All right. So, obviously, there
25 will be some medical testimony in this case. Do you have any

1 problem in listening to that and making your decisions based
2 upon what you're told about from the witnesses, and listening
3 to what they have to say?

4 PROSPECTIVE JUROR NO. 006: I have no problem with
5 that.

6 THE COURT: Okay. I'm sure the lawyers will want to
7 ask you some additional questions about that in follow up, but
8 at this point in time, is there anyone else seated in the box
9 there that has medical training? No, okay. Anyone back here?
10 Okay, got one.

11 PROSPECTIVE JUROR NO. 045: My name is Daniel Jones,
12 badge 045. I'm CPR, first aid, and first responder certified.

13 THE COURT: All right. And have you ever actually
14 been employed in the medical field?

15 PROSPECTIVE JUROR NO. 045: No, I have not, but I
16 was a first responder for Cirque du Soleil when the accident
17 happened two years ago, so I was vividly a part of that.

18 THE COURT: Okay. How were you a first responder
19 for that?

20 PROSPECTIVE JUROR NO. 045: Our rescue teams are
21 made up of regular technicians when an artist is injured, and
22 we all take training on a yearly basis to be ready for any
23 kind of injury, or even an illness that could happen during
24 the course of the show.

25 THE COURT: Okay. All right, thank you. Anyone

1 else, medical training? Yes, we have a gentleman over on the
2 other side.

3 THE MARSHAL: Who is this? Here you go.

4 PROSPECTIVE JUROR NO. 055: Mike Peterson, badge
5 number 55. Pharmacist. Prior EMT training back in the 70s,
6 which has expired and not been in use.

7 THE COURT: Okay. So, you are currently a
8 pharmacist?

9 PROSPECTIVE JUROR NO. 055: Correct.

10 THE COURT: Okay. So, you have a degree in pharmacy
11 then?

12 PROSPECTIVE JUROR NO. 055: Yes.

13 THE COURT: All right, so you're familiar with all
14 the medications and what have you? All right. Where are you
15 employed?

16 PROSPECTIVE JUROR NO. 055: CVS Pharmacy.

17 THE COURT: Did -- you didn't recognize the names of
18 any of the doctors?

19 PROSPECTIVE JUROR NO. 055: Dr. Dunn, but only by
20 name.

21 THE COURT: Only by name, because --

22 PROSPECTIVE JUROR NO. 055: Don't know him
23 personally.

24 THE COURT: Okay, so you may have processed some
25 prescriptions --

1 PROSPECTIVE JUROR NO. 055: Correct.

2 THE COURT: -- written by him? Okay, thank you very
3 much. All right. Is there anyone who has legal training?
4 Okay, we have two. Let's start up here.

5 THE MARSHAL: Full name and last three digits.

6 PROSPECTIVE JUROR NO. 029: Cheryl Becnel, 029. I
7 am a legal assistant for Marquis Aurbach Coffing.

8 THE COURT: Okay. What type of work do you do for
9 them?

10 PROSPECTIVE JUROR NO. 029: I do a lot of civil
11 litigation.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 029: Just drafting,
14 secretarial work, filing, things like that.

15 THE COURT: Included in your duties do you do
16 paralegal work as well, like discovery things?

17 PROSPECTIVE JUROR NO. 029: Sometimes.

18 THE COURT: Sometimes? Okay. All right.

19 PROSPECTIVE JUROR NO. 029: Can I -- I'm sorry, can
20 I also state, I think that the Wynn might be one of our
21 clients in a few cases.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 029: But I've never --

24 THE COURT: You don't know?

25 PROSPECTIVE JUROR NO. 029: I know. I've never met

1 any representative or anybody from there. I just think I've
2 worked on a few cases on --

3 THE COURT: Okay. Do you feel that you could set
4 that aside and decide the case on the evidence, or would you
5 be biased in this case?

6 PROSPECTIVE JUROR NO. 029: I believe I could set it
7 aside.

8 THE COURT: All right, thank you.

9 PROSPECTIVE JUROR NO. 042: I have some legal
10 experience as well.

11 THE MARSHAL: Legal experience? Okay.

12 PROSPECTIVE JUROR NO. 042: Yeah.

13 THE MARSHAL: Full name and badge number.

14 PROSPECTIVE JUROR NO. 042: Sure. Name's Thomas
15 Hong, 042. Worked as a paralegal for Andrews and Kurth Law
16 Firm.

17 THE COURT: Okay. What kind of law were you doing?

18 PROSPECTIVE JUROR NO. 042: It was mainly
19 derivatives, or bank debt trading.

20 THE COURT: Okay. So, obviously, not any personal
21 injury work and --

22 PROSPECTIVE JUROR NO. 042: No litigation, ma'am,
23 no.

24 THE COURT: -- no litigation? All right, thank you.

25 THE MARSHAL: Anybody else?

1 PROSPECTIVE JUROR NO. 068: 068, Carolyn Marinello.
2 I work for the city attorney's office, except that I work in
3 the transactional department, so I don't do litigation, but I
4 have worked for other attorneys that have done litigation in
5 the past, so.

6 THE COURT: But none of the lawyers involved in this
7 case; is that right?

8 PROSPECTIVE JUROR NO. 068: No.

9 THE COURT: Okay. And you do paralegal work,
10 secretarial work?

11 PROSPECTIVE JUROR NO. 068: Secretarial work.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 068: Um-hum.

14 THE COURT: All right, thank you.

15 PROSPECTIVE JUROR NO. 068: Um-hum.

16 THE COURT: All right. Is there anyone here -- I've
17 already asked you if any of you work for the Wynn. Have there
18 -- are there any of you who in the past have worked for the
19 Wynn? And the record will reflect -- oops.

20 PROSPECTIVE JUROR NO. 038: Sorry.

21 THE COURT: We've got one.

22 PROSPECTIVE JUROR NO. 038: Does that include
23 third-party?

24 THE COURT RECORDER: Wait.

25 THE MARSHAL: Hold on. Can you grab that for me?

1 PROSPECTIVE JUROR NO. 038: Oh, yeah, sure.

2 THE COURT: Okay, sir?

3 PROSPECTIVE JUROR NO. 038: Alejandro Hernandez,
4 038. Does that include third-party?

5 THE COURT: No.

6 PROSPECTIVE JUROR NO. 038: The company I work for
7 provides services for the Wynn.

8 THE COURT: Okay, so -- and a lot of other places,
9 too, or just the Wynn?

10 PROSPECTIVE JUROR NO. 038: No, but, I mean, you did
11 ask, so --

12 THE COURT: No, I asked if any of you had in the
13 past worked for the Wynn.

14 PROSPECTIVE JUROR NO. 038: No.

15 THE COURT: Been employed by the Wynn.

16 PROSPECTIVE JUROR NO. 038: No.

17 THE COURT: Okay, thank you. Anyone who has a
18 family member currently employed with the Wynn? We have one.

19 PROSPECTIVE JUROR NO. 012: Sabrina Russell, 012.
20 My father's a management engineer at the Wynn.

21 THE COURT: He's in management?

22 PROSPECTIVE JUROR NO. 012: He's one of the
23 engineering management. He works on the shows and the
24 technicians there.

25 THE COURT: Okay. All right. So, he's not involved

1 in security, any of the cleaning or maintenance for the
2 hotel --

3 PROSPECTIVE JUROR NO. 012: No.

4 THE COURT: -- anything like that? No? Okay. All
5 right, thank you. All right.

6 Has -- have -- have any of you ever been to the Wynn
7 in Las Vegas? All right, so a lot of people. Of those who
8 raised their hands, are there any of you who have had a
9 negative experience at the Wynn? Record will reflect a
10 negative response. Okay.

11 Is there anyone who has any negative feelings, or
12 attitudes, biases at all against gaming companies, casinos, or
13 gambling in general? And the record will reflect a negative
14 response. All right.

15 Is there anyone who has any negative attitudes,
16 prejudices, ill feelings towards security guards in general?
17 And the record will reflect a negative response. Has anyone
18 here ever had a negative experience with a security guard?
19 Record will reflect a negative response.

20 Okay. All right. Okay. Has anyone here -- does
21 anyone here currently suffer from arthritis? All righty.
22 Let's keep your -- keep your hands up so we can get -- okay, I
23 just want you to state your name, your badge number, and
24 that's all. This is for the lawyers to know that you've had
25 arthritis, and they can follow up if they want to.

1 PROSPECTIVE JUROR NO. 005: Ben Godfrey, 005.
2 THE COURT: All right.
3 PROSPECTIVE JUROR NO. 019: Sue Kovach, 019.
4 PROSPECTIVE JUROR NO. 015: Regina Young, 015.
5 PROSPECTIVE JUROR NO. 012: Sabrina Russell, 012.
6 PROSPECTIVE JUROR NO. 020: Susan Berg, number 20.
7 PROSPECTIVE JUROR NO. 024: Adrienne Gomez, 024.
8 THE COURT: Thank you.
9 THE MARSHAL: Anybody?
10 PROSPECTIVE JUROR NO. 059: Noel Bailog, 059.
11 THE COURT: Thank you. Is there anyone who answered
12 that they suffer from arthritis that their arthritis is
13 debilitating to them to the extent that it interferes with
14 their daily life activities? All right.
15 PROSPECTIVE JUROR NO. 005: Ben Godfrey, 005.
16 THE COURT: All right.
17 PROSPECTIVE JUROR NO. 015: Regina Young, 015.
18 THE COURT: Thank you.
19 PROSPECTIVE JUROR NO. 020: Susan Berg, number 20.
20 THE COURT: And no one else back here? Okay, thank
21 you. All right. Is there anyone here who has ever been
22 required to use a cane or a walker? All right.
23 PROSPECTIVE JUROR NO. 005: Ben Godfrey, 005.
24 THE COURT: And what was the circumstance that you
25 needed to use -- was it a cane or a walker?

1 PROSPECTIVE JUROR NO. 005: A cane.

2 THE COURT: And what was that for?

3 PROSPECTIVE JUROR NO. 005: Achilles tendon repair,
4 and then a bad back -- bad lower back, and hips.

5 THE COURT: Okay, thank you.

6 THE MARSHAL: Full name, last three.

7 PROSPECTIVE JUROR NO. 061: It's David Henry, 061.

8 THE COURT: Yes.

9 PROSPECTIVE JUROR NO. 061: 061.

10 THE COURT: Okay. Cane or walker?

11 PROSPECTIVE JUROR NO. 061: It was -- I had
12 crutches, a cane, a wheelchair.

13 THE COURT: Okay, and what was --

14 PROSPECTIVE JUROR NO. 061: All through the 80s and
15 90s, I was -- had a bad back, and I was in and out of
16 wheelchairs, and just in bad shape.

17 THE COURT: Okay. Was that due to --

18 PROSPECTIVE JUROR NO. 061: Just a bad back when I
19 was younger. I don't know what -- just most of my life, I had
20 that preexisting condition that nobody would pay my bills.
21 You know, I just had to -- I had to pay my insurance and all
22 that myself.

23 THE COURT: Uh-huh.

24 PROSPECTIVE JUROR NO. 061: And then I had to --
25 they wouldn't pay for the operation; I had to pay for it on my

1 own. Just, you know, most of my teenage years, and 20s, and
2 30s, I was jacked up in the lower back.

3 THE COURT: Okay, so you had an operation on your
4 back?

5 PROSPECTIVE JUROR NO. 061: Yeah.

6 THE COURT: When did that --

7 PROSPECTIVE JUROR NO. 061: In 2002 or something,
8 and after that, I golfed, bowling, the whole nine yards I'm
9 doing now.

10 THE COURT: Okay, great. Thank you.

11 PROSPECTIVE JUROR NO. 061: So, I'm in pretty good
12 shape now, so.

13 THE COURT: Okay. All right. Nobody else on this
14 side, cane or walker? We got a healthy side over here. No
15 arthritis, no canes, no walkers. Okay.

16 Is there anyone here who has ever been diagnosed or
17 believes that they suffer from fibromyalgia? And the record
18 will reflect a negative response. Is there anyone who has
19 been diagnosed with anxiety disorder or stress disorder? I
20 have one. Yes, ma'am.

21 PROSPECTIVE JUROR NO. 024: I have --

22 THE COURT: Name and --

23 PROSPECTIVE JUROR NO. 024: Adrienne Gomez, 024.

24 THE COURT: Okay. You've been diagnosed with some
25 kind of --

1 PROSPECTIVE JUROR NO. 024: Anxiety.

2 THE COURT: All right.

3 PROSPECTIVE JUROR NO. 024: And you said
4 fibromyalgia, but I also suffer from lupus. I don't know if
5 -- because they are closely related.

6 THE COURT: Well, that's a different -- lupus is a
7 different diagnosis than fibromyalgia, which is, you know,
8 something different. But so, do you believe that -- the fact
9 that you suffer from anxiety disorder, does that affect your
10 daily living at all?

11 PROSPECTIVE JUROR NO. 024: As long as I take my
12 medication, I'm fine.

13 THE COURT: Okay. So, you'll be fine through the
14 trial?

15 PROSPECTIVE JUROR NO. 024: Yes.

16 THE COURT: Okay. All right. And how about your
17 lupus? You okay as far as --

18 PROSPECTIVE JUROR NO. 024: Same thing. I'm in a
19 flare-up, and I'm -- and I'm on meds. It's been a couple of
20 months, but.

21 THE COURT: Okay, but you're doing okay today?

22 PROSPECTIVE JUROR NO. 024: Yeah, I'm okay today.

23 THE COURT: Okay. All right, thank you. All right.
24 Is there anyone who has ever themselves been diagnosed with,
25 or anyone in their family or closely associated with them been

1 diagnosed with Marfan syndrome? And the record will reflect a
2 negative response. Is there anyone here who has ever been
3 diagnosed, or had a family member, close associate diagnosed
4 with Ehlers-Danlos syndrome? No. Record will again reflect a
5 negative response.

6 All right. Has anyone here ever been diagnosed with
7 or believe that they currently suffer from chronic fatigue
8 syndrome, or sleep disorder, or memory or mood issues? Okay,
9 I've got two, so I'll start here.

10 THE MARSHAL: Full name and last three, please.

11 PROSPECTIVE JUROR NO. 045: Daniel Jones, badge
12 number 045. I have minor sleep insomnia caused by depression.

13 THE COURT: Okay, so you have minor sleep insomnia.
14 What does that mean?

15 PROSPECTIVE JUROR NO. 045: It comes in phases,
16 mainly border on when I -- I'm taking the right amount of
17 Zoloft for my depression that it will cause my brain not to be
18 able to go to sleep.

19 THE COURT: Okay. So, you've also been diagnosed
20 with, what, chronic depression?

21 PROSPECTIVE JUROR NO. 045: No, just -- when the
22 accident happened, I was given a diagnosis, quote, unquote,
23 "borderline PTSD" from witnessing my friend die. And from
24 that, I was put on Zoloft, and from that, I've had some
25 trouble sleeping.

1 THE COURT: Okay. And this was the accident you're
2 talking about at the Cirque show?

3 PROSPECTIVE JUROR NO. 045: The Cirque show where
4 the artist died, yes.

5 THE COURT: Correct. The fall?

6 PROSPECTIVE JUROR NO. 045: Yes, ma'am.

7 THE COURT: Okay. All right, thank you. Oh, let me
8 ask you, before we take that. Sorry, just want to make sure,
9 have you been sleeping okay lately?

10 PROSPECTIVE JUROR NO. 045: No, not really.

11 THE COURT: All right. So, as a result of this, do
12 you have -- do you have difficulty staying awake during the
13 daytime?

14 PROSPECTIVE JUROR NO. 045: No, ma'am.

15 THE COURT: Okay, thank you. And we had somebody
16 else on this side with --

17 PROSPECTIVE JUROR NO. 055: Mike Peterson, badge
18 number 055. I work graveyards and have for quite a while, so
19 switching back and forth between days and nights, sometimes I
20 end up sleeping four hours nights, four hours days. I don't
21 think I'd have a problem switching over. Usually, enough
22 adrenaline rush that I can stay awake.

23 THE COURT: Okay. And so, you know that if you're
24 selected for the jury, you can't work; try and pull a
25 graveyard shift, and then come and -- because --

1 PROSPECTIVE JUROR NO. 055: Familiar with that, yes.

2 THE COURT: Okay, because as scintillating as we try
3 and make it, sometimes, it's not as entertaining as one would
4 hope.

5 PROSPECTIVE JUROR NO. 055: I can't fall asleep
6 under certain circumstances no matter what.

7 THE COURT: Okay. All right, thank you. All right.
8 All right, is there anyone who suffers from carpal tunnel
9 syndrome? Okay, we have one in the back, looks like.

10 PROSPECTIVE JUROR NO. 057: Eric Sutta, 057.

11 THE COURT: Okay. Are you currently suffering from
12 carpal tunnel?

13 PROSPECTIVE JUROR NO. 057: Yes.

14 THE COURT: And is it bilateral?

15 PROSPECTIVE JUROR NO. 057: I'm not sure the -- I'm
16 not sure what that means. I have it in both my left and right
17 wrists.

18 THE COURT: Okay, that's bilateral.

19 PROSPECTIVE JUROR NO. 057: Okay.

20 THE COURT: Both.

21 PROSPECTIVE JUROR NO. 057: Got it.

22 THE COURT: All right. And have you been told, or
23 do you have a belief as to why you have this condition?

24 PROSPECTIVE JUROR NO. 057: Occupational.

25 THE COURT: Okay, what do you do?

1 PROSPECTIVE JUROR NO. 057: I'm a stagehand.

2 THE COURT: All right. Are you seeking any
3 treatment?

4 PROSPECTIVE JUROR NO. 057: I see a chiropractor
5 once or twice a week, I wear wraps on my wrists when I sleep,
6 and take painkillers and Ibuprofen.

7 THE COURT: All right. What kind of painkillers?

8 PROSPECTIVE JUROR NO. 057: Norco.

9 THE COURT: All right, thank you. All right. Is --
10 let's see. Has anyone here ever heard of symptom
11 magnification syndrome? Record will reflect a negative
12 response. Have -- let's see. Has anyone here ever had
13 surgery on one of their limbs; arms or legs? Oh my goodness.
14 Okay. I'm just going to go through and tell me your name and
15 number, so the --

16 PROSPECTIVE JUROR NO. 002: 002, Oscar Alfaro.
17 Right knee meniscus.

18 THE COURT: Right -- right knee? Okay.

19 PROSPECTIVE JUROR NO. 002: Yeah.

20 THE COURT: Next?

21 PROSPECTIVE JUROR NO. 003: Amanda Wallace, 003. My
22 right shoulder.

23 THE COURT: Thank you.

24 PROSPECTIVE JUROR NO. 005: Ben Godfrey, 005.
25 Achilles tendon repair and left knee.

1 THE COURT: All right, thank you.

2 PROSPECTIVE JUROR NO. 007: Rosa Madrigal,
3 cero-cero-siete. My replace two knees (sic).

4 THE COURT: Okay. When you said your number, you
5 said it in Spanish, and though I do speak Spanish --

6 PROSPECTIVE JUROR NO. 007: 007.

7 THE COURT: Thank you.

8 PROSPECTIVE JUROR NO. 007: I'm sorry.

9 THE COURT: All right, great. And anybody else?

10 PROSPECTIVE JUROR NO. 011: Kelly Harms, badge
11 number 011. Titanium rod put in my knee to ankle, tibia and
12 fibula break.

13 THE COURT: All right, thank you. Okay. Anyone
14 else on this side? Oh, we've got some folks on this side.

15 PROSPECTIVE JUROR NO. 026: Amy Mejia, 026. Right
16 knee.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 045: Daniel Jones, badge 045.
19 Left knee.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR NO. 049: Daniel Miranda, 049.
22 Multiple on my right knee.

23 THE COURT: And I think we had some over here. One,
24 anyway.

25 PROSPECTIVE JUROR NO. 058: Paul Washington, 058.

1 Multiple surgeries on both knees.

2 THE COURT: All right, thank you. And is there
3 anyone here who has ever sued someone or been sued? Raise
4 your hand. Okay, we have 1, 2, 3, 4.

5 PROSPECTIVE JUROR NO. 003: Amanda Wallace, 003.

6 THE COURT: Okay. Sued or been sued?

7 PROSPECTIVE JUROR NO. 003: Sued. It was a car
8 accident.

9 THE COURT: Okay. Did the matter go to trial?

10 PROSPECTIVE JUROR NO. 003: No, it did not.

11 THE COURT: Okay. So, you actually though did file
12 a lawsuit; you had a lawyer?

13 PROSPECTIVE JUROR NO. 003: Correct.

14 THE COURT: Okay. And anything about that
15 experience that makes you think you could not be a fair and
16 impartial juror in this case?

17 PROSPECTIVE JUROR NO. 003: No, ma'am.

18 THE COURT: Thank you.

19 PROSPECTIVE JUROR NO. 015: Regina Young, 015. It
20 was a car accident also.

21 THE COURT: And were you sued, or did you sue?

22 PROSPECTIVE JUROR NO. 015: We were suing the person
23 that hit me, but they never found them.

24 THE COURT: Okay. So --

25 PROSPECTIVE JUROR NO. 015: It went to court, and I

1 guess I had to go against my insurance company for the
2 damages.

3 THE COURT: I see. Okay. All right, thank you.

4 PROSPECTIVE JUROR NO. 024: Adrienne Gomez, 024.
5 Car accident.

6 THE COURT: Okay. And you were sued, or you --

7 PROSPECTIVE JUROR NO. 024: I sued.

8 THE COURT: -- brought a suit?

9 PROSPECTIVE JUROR NO. 024: I brought a suit. And
10 then, also sued my former employer for a workers' comp issue.

11 THE COURT: Okay. And the lawsuit that you filed,
12 how long ago was that?

13 PROSPECTIVE JUROR NO. 024: I want to say probably
14 1998, 1999, around there.

15 THE COURT: Did the case go to trial?

16 PROSPECTIVE JUROR NO. 024: They settled.

17 THE COURT: Okay. And what about your workers'
18 compensation? Did you retain a lawyer for that?

19 PROSPECTIVE JUROR NO. 024: Yes.

20 THE COURT: And you went through the administrative
21 law hearing process?

22 PROSPECTIVE JUROR NO. 024: I believe so. I didn't
23 -- I don't think I had to go to court for that. He did that.

24 THE COURT: You didn't -- you don't remember going
25 to testify about anything?

1 PROSPECTIVE JUROR NO. 024: Didn't have the testify.
2 I got the workers' comp, and --

3 THE COURT: Okay. All right, and what was -- what
4 was the injury that you suffered in that?

5 PROSPECTIVE JUROR NO. 024: My left index was
6 severed, finger, in the safe.

7 THE COURT: In a safe? Oh, you closed the safe door
8 on your finger? Oh.

9 PROSPECTIVE JUROR NO. 024: Um-hum.

10 THE COURT: Okay, thank you.

11 THE MARSHAL: Anybody else?

12 PROSPECTIVE JUROR NO. 026: Amy Mejia, 026.
13 Currently in the process of suing due to a car accident.

14 THE COURT: Okay. And you -- have you filed a
15 complaint in court?

16 PROSPECTIVE JUROR NO. 026: No.

17 THE COURT: Okay. So, your lawyer is -- you have a
18 lawyer?

19 PROSPECTIVE JUROR NO. 026: Correct.

20 THE COURT: Okay. All right. How long ago did the
21 accident occur?

22 PROSPECTIVE JUROR NO. 026: On September 1st.

23 THE COURT: Are you suing for property damage to
24 your car, or injuries?

25 PROSPECTIVE JUROR NO. 026: Injuries.

1 THE COURT: And what are you -- what's your claim
2 regarding your injuries? What are you saying is wrong with
3 you?

4 PROSPECTIVE JUROR NO. 026: My left shoulder and
5 right knee.

6 THE COURT: Okay, what's wrong with them?

7 PROSPECTIVE JUROR NO. 026: And my lower head, just
8 constant off and on headaches. My right knee, my surgery was
9 back in '09, but the current accident caused reoccurring pain
10 again in my knee, causing it to lock off and on.

11 THE COURT: Okay. All right, thank you.

12 THE MARSHAL: Anybody else?

13 THE COURT: There's somebody on this side.

14 PROSPECTIVE JUROR NO. 061: 061, David Henry. Same
15 thing with the -- my lower back. Back in 1980, it happened.
16 My -- the cement company I was working for, I stepped over the
17 sidewalk and I slipped, and I was suing his company. I had a
18 lawyer. We never went to court. We went into some room and
19 had a meeting, and they were going to give me a settlement and
20 everything, and they hired an investigator and took pictures
21 of me lifting paint buckets up the stairs because I couldn't
22 afford what they were giving me to live on.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 061: So, they had pictures of
25 me when I got into the court, and it just all went, either I

1 go to -- you know, either -- they were going to prosecute me
2 then.

3 THE COURT: Okay, and that was a workers'
4 compensation claim?

5 PROSPECTIVE JUROR NO. 061: Yeah, it was like a
6 workman's compensation thing. So, I had to work to make money
7 to live on, so they caught me taking pictures -- they took
8 pictures of me lifting buckets of paint up the stairs.

9 THE COURT: Okay, so --

10 PROSPECTIVE JUROR NO. 061: And I wasn't supposed to
11 lift more than 50 pounds or something.

12 THE COURT: Okay, so --

13 PROSPECTIVE JUROR NO. 061: So, basically --

14 THE COURT: So, basically, they said, you're making
15 a claim --

16 PROSPECTIVE JUROR NO. 061: Either you get out of
17 here, or you --

18 THE COURT: -- for workers' comp saying you can't
19 work, but here we have pictures of you working?

20 PROSPECTIVE JUROR NO. 061: Exactly. So, I -- that
21 was the end of the settlement.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 061: Basically.

24 THE COURT: Okay. All right. All right. Is there
25 anyone here who's ever received medical treatment from Desert

1 Orthopedic Center? I think we have a tentative hand.

2 PROSPECTIVE JUROR NO. 005: Ben Godfrey, 005. I'm
3 recalling that one of my doctors was at that.

4 THE COURT: Okay. Do you remember your doctor's
5 name?

6 PROSPECTIVE JUROR NO. 005: Dr. Payne.

7 THE COURT: Dr. Payne? Okay. I think that's
8 spelled P-a-y-n-e, maybe, huh?

9 PROSPECTIVE JUROR NO. 005: Yes.

10 THE COURT: All right. Did -- did you feel like you
11 got good treatment, bad treatment --

12 PROSPECTIVE JUROR NO. 005: Good.

13 THE COURT: -- from -- good treatment? Okay.

14 PROSPECTIVE JUROR NO. 005: He did my surgeries.

15 THE COURT: Oh, he did your surgeries? All right,
16 thank you. And anyone else believe that they've received
17 treatment from Desert Orthopedic? Okay. How about has anyone
18 here -- no one else I think said that they recognized any of
19 the names, but has anyone ever received treatment -- medical
20 treatment from Dr. Craig Tingey? Oh, we have somebody with
21 their hand up here.

22 PROSPECTIVE JUROR NO. 053: You had asked about
23 knowing the --

24 THE MARSHAL: Full name and last three.

25 PROSPECTIVE JUROR NO. 053: Matt Wheelus, 053. You

1 had asked about knowing any of the attorneys, but you didn't
2 ask about the witnesses. I work with Dr. Tingey and Dr. Dunn
3 at the hospital I work at.

4 THE COURT: Okay. I thought I'd asked that, but if
5 I didn't -- so, you work with Dr. Tingey and Dr. Dunn at the
6 hospital, but you didn't -- what do you do?

7 PROSPECTIVE JUROR NO. 053: I'm a hospital
8 administrator.

9 THE COURT: Okay. So, you didn't really think that
10 was the medical field?

11 PROSPECTIVE JUROR NO. 053: Well, I'm -- I don't
12 have any medical training.

13 THE COURT: Okay. All right.

14 PROSPECTIVE JUROR NO. 053: I'm on the
15 administrative operations side.

16 THE COURT: No medical training. Right. I didn't
17 ask it in the way I usually do. I asked training. Okay.

18 PROSPECTIVE JUROR NO. 053: I'm sorry.

19 THE COURT: So, you're just an administrator at the
20 hospital. What -- what is your -- what are your job duties?

21 PROSPECTIVE JUROR NO. 053: I have the ancillary and
22 support departments that report to me.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 053: So, pharmacy, plan
25 operations, dietary EBS.

1 THE COURT: How is it that you work with Dr. Dunn
2 and Dr. Tingey?

3 PROSPECTIVE JUROR NO. 053: Well, I -- a lot of my
4 departments in my role crosses over into the OR, operating
5 room, and also focus on, you know, making sure they have the
6 supplies and resources to have successful surgeries.

7 THE COURT: Okay. Do you know either of them
8 socially?

9 PROSPECTIVE JUROR NO. 053: Not socially, no.

10 THE COURT: Do you think that you could be fair and
11 impartial in this case to both sides, given that you do have a
12 knowledge of the two -- those two doctors who are potentially
13 going to be witnesses in this case?

14 PROSPECTIVE JUROR NO. 053: Yes.

15 THE COURT: Okay. All right, thank you. All right.
16 So, is there anybody else who recognized the name of any of
17 the witnesses? The record will reflect a negative response.
18 Okay. Anyone else who works in the medical field for -- no
19 one else. Okay. Even if it's an administrative role? And
20 the record will reflect a negative response.

21 All right. So, the next question I'm going to ask
22 you requires some prefatory comments, because I'm going to be
23 asking you if -- how many of you feel, if any, that you could
24 not possibly serve during the time frame that I've outlined
25 that this trial will take. So, let me kind of tell you what

1 I'm looking for here when I ask that kind of question.

2 I know that most people do work for a living, so the
3 fact that you just -- that you work for a living, or that your
4 boss doesn't really want you to be on jury duty doesn't
5 necessarily mean that you can be excused from jury duty. Many
6 of the employers in this town, large employers pay their
7 employees for jury service. So, you -- before you think that
8 you're not going to get paid, you better have checked on that
9 first, because I would be asking you about that if that's your
10 reason; if it's a financial hardship type of reason.

11 Additionally, there are things that I do need to
12 know about. For instance, if you are going to have a baby
13 next week, then I need to know about that. If you are going
14 to be expected to attend the birth of a baby because a
15 significant other is having a baby next week, and your -- that
16 person would be very upset if you were in court and not there,
17 I need to know about that.

18 If you're scheduled for surgery next week, I need to
19 know about that. If you have -- you don't have surgery next
20 week or as late as the 17th of November, I need to know about
21 that. If you're scheduled for surgery sometime after, but
22 you've got to have some pre-op work-ups for your surgery that
23 you need to attend to during this time, I need to know about
24 that.

25 //

1 If you have a fabulous prepaid vacation where you're
2 scheduled to leave town during this time, then I need to know
3 about that. And obviously, prepaid vacations generally mean
4 reservations, which, in turn, generally means that you should
5 have the proof of that on your phone. So, be prepared to cue
6 up your phone and show that to the marshal so he can show it
7 to me.

8 Those are not all-inclusive things. You may have
9 some other reason that you'll need to express to me, but as I
10 say, it's -- it's every citizen's responsibility to serve on
11 jury duty. If they can be fair and impartial jurors, they
12 should make every effort, because it's one of the things that
13 we hold dear in this country is the right to a jury trial.
14 And so, as citizens, I would think that everybody would want
15 to serve and make their very best effort to do so.

16 All of that being said then -- oh. One other thing
17 would be if you're a full-time student, then I need to know
18 about that.

19 All right. So, the question to now pose, is there
20 anyone who believes for -- that they cannot possibly attend
21 during the schedule that I've outlined previously for you?
22 And we'll start with the box. And, oh, by the way, I'm going
23 to take your excuses, and so I'll take notes, and then I will
24 consult with the lawyers and decide whether any of you or
25 which of you would be excused. Okay, go ahead.

1 PROSPECTIVE JUROR NO. 002: Oscar Alfaro, 0002.
2 Financial hardship. I'm working two days solid, and then, the
3 rest of the week, on-call, so I have to be ready to go to work
4 at 5:00 o'clock.

5 THE COURT: Okay. I'm sorry, what was your badge
6 number again? 01?

7 PROSPECTIVE JUROR NO. 002: 0002.

8 THE COURT: 02? Okay. 002 in seat 1.

9 (Pause in the proceedings)

10 THE COURT: Okay, Oscar. Okay. So, where do you
11 work?

12 PROSPECTIVE JUROR NO. 002: Just I work [inaudible]
13 at Aria.

14 THE COURT: You work at the Aria?

15 PROSPECTIVE JUROR NO. 002: Yes.

16 THE COURT: What's your position with them?

17 PROSPECTIVE JUROR NO. 002: Food server.

18 THE COURT: And you work part-time, you said?

19 PROSPECTIVE JUROR NO. 002: Yes.

20 THE COURT: So, what are your days right now?

21 PROSPECTIVE JUROR NO. 002: Right now, I'm working
22 solid on the schedule Saturday, Sunday, and then, the rest of
23 the week, I'm just on-call.

24 THE COURT: Okay. So, you can work on Saturday and
25 Sunday because we won't have court --

1 PROSPECTIVE JUROR NO. 002: Yes.

2 THE COURT: -- on Saturday and Sunday. Okay.

3 PROSPECTIVE JUROR NO. 002: They call me two or
4 three times during the week in order to make a living.

5 THE COURT: Okay. And obviously, we won't have
6 court either on Wednesday of next week, so we're not talking
7 about -- and what hours do you work when you work?

8 PROSPECTIVE JUROR NO. 002: 5:00 to 10:00, 11:00.

9 THE COURT: Okay, thank you. Next?

10 PROSPECTIVE JUROR NO. 003: Amanda Wallace, 00 --
11 003. The only issue I would have, I'm a full-time student, so
12 if the trial were to go -- exceed into the third week, I would
13 be dropped from my class, which would push my graduation date.

14 THE COURT: Okay. So, you're a full-time student
15 where?

16 PROSPECTIVE JUROR NO. 003: At ITT Technical
17 Institute in Henderson.

18 THE COURT: So, when do you attend class?

19 PROSPECTIVE JUROR NO. 003: I have class on Tuesday
20 evenings. My other class is online, so that one doesn't
21 matter.

22 THE COURT: Okay. So, Tuesday evenings is the only
23 time you're concerned? Is that what you said?

24 PROSPECTIVE JUROR NO. 003: Correct. As I said, my
25 only issue would be if the trial were to go into the third

1 week and make me miss that third class. Because I'm on
2 financial aid, I'd automatically be dropped, which I spoke to
3 my dean, and we can appeal it, but the appeal process takes 30
4 to 45 days, which would then push my graduation date from
5 December to March.

6 THE COURT: When you say into the third week, are
7 you meaning the 16th and 17th?

8 PROSPECTIVE JUROR NO. 003: No, for -- if -- if it
9 for whatever reason were to go longer and make me miss the
10 class on the 24th.

11 THE COURT: Oh, no, that's not going to happen.

12 PROSPECTIVE JUROR NO. 003: Okay.

13 THE COURT: No, that will never happen. That -- no.
14 All right. So, you're fine then?

15 PROSPECTIVE JUROR NO. 003: Correct.

16 THE COURT: Okay. Who's next?

17 PROSPECTIVE JUROR NO. 004: Jacklyn Schumacher, 004.
18 And my worry is just financial reasons, because I'm 21 and I
19 live by myself, and I have bills to pay, and I can't really
20 afford to take off of work.

21 THE COURT: Where do you work?

22 PROSPECTIVE JUROR NO. 004: I work at European Wax
23 Center.

24 THE COURT: What do you do for them?

25 PROSPECTIVE JUROR NO. 004: I'm a wax specialist.

1 THE COURT: So, like waxing as in pulling out
2 everybody -- people's hair with wax? Okay.

3 PROSPECTIVE JUROR NO. 004: Exactly.

4 THE COURT: Okay. So, what hours do you work? What
5 days?

6 PROSPECTIVE JUROR NO. 004: It varies. I work --
7 Wednesdays and Thursdays are my days off. Friday, I work from
8 7:30 to 2:30. Saturday, I work from 7:30 to 6:30. Sunday, I
9 work from 9:30 to 5:30. Monday, I work from 1:30 to 8:30.
10 Tuesday is also 1:30 to 8:30.

11 THE COURT: Okay. So, is your schedule flexible?

12 PROSPECTIVE JUROR NO. 004: Unfortunately, no,
13 because it's all booked appointments that are from advance
14 with our clients, so it doesn't really move around much.

15 THE COURT: Okay. All right. And how much are you
16 paid? Are you paid by the hour?

17 PROSPECTIVE JUROR NO. 004: We are paid by the hour,
18 and then we also make retail commission, and we make service
19 commission, and then tips.

20 THE COURT: Okay. So, how much would you -- money
21 would you lose if you miss a day of work?

22 PROSPECTIVE JUROR NO. 004: One day -- it depends on
23 the day as well because the hours are all different, but one
24 day, average 200.

25 THE COURT: Okay. Okay, next.

1 PROSPECTIVE JUROR NO. 005: Ben Godfrey, 005. My
2 problem is sitting for an hour-and-a-half, two hours at a
3 time. These chairs are great --

4 THE COURT: Oh.

5 PROSPECTIVE JUROR NO. 005: -- but --

6 THE COURT: They're much better than the old ones, I
7 can tell you that.

8 PROSPECTIVE JUROR NO. 005: Yeah, these are great,
9 but I might have trouble concentrating when -- if I get into
10 pain.

11 THE COURT: Okay. Would standing help?

12 PROSPECTIVE JUROR NO. 005: Yes, standing does help.

13 THE COURT: Okay. So, anyone can feel -- that feels
14 like they need to stand up, the best thing to do is to do
15 that, to stand up. That won't really cause any disruption. I
16 had that in my last trial. We had a person who needed to
17 stand occasionally, and then they'd just stand up. I had one
18 gentleman who needed to stand up in order to stay awake, so
19 that was okay, too. So, how are you doing thus far?

20 PROSPECTIVE JUROR NO. 005: Fine. I'm okay.

21 THE COURT: Okay. All right.

22 PROSPECTIVE JUROR NO. 005: That's fine.

23 THE COURT: Okay, next.

24 PROSPECTIVE JUROR NO. 007: Rosa Madrigal, 007. My
25 problem is my language. No speak English.

1 THE COURT: Okay. How long have you lived here in
2 Las Vegas?

3 PROSPECTIVE JUROR NO. 007: 20 years.

4 THE COURT: Do you work?

5 PROSPECTIVE JUROR NO. 007: No.

6 THE COURT: So, what do you do all day?

7 PROSPECTIVE JUROR NO. 007: Run my house.

8 THE COURT: Okay. You're a housewife?

9 PROSPECTIVE JUROR NO. 007: Yes.

10 THE COURT: Do you have children?

11 PROSPECTIVE JUROR NO. 007: No, grandchildren.

12 THE COURT: Grandchildren?

13 PROSPECTIVE JUROR NO. 007: Yes.

14 THE COURT: Okay. Do you take care of your
15 grandchildren?

16 PROSPECTIVE JUROR NO. 007: Uh-huh, yes.

17 THE COURT: How many children -- how many
18 grandchildren do you have?

19 PROSPECTIVE JUROR NO. 007: I take two.

20 THE COURT: Two?

21 PROSPECTIVE JUROR NO. 007: Um-hum.

22 THE COURT: How old are they?

23 PROSPECTIVE JUROR NO. 007: Three years and ten
24 months.

25 THE COURT: And how often do you stay with them?

1 PROSPECTIVE JUROR NO. 007: I take -- I -- I take
2 the boy in school.

3 THE COURT: Okay. And the boy -- is the boy three?

4 PROSPECTIVE JUROR NO. 007: Yes, in kinder --

5 THE COURT: So, he goes to --

6 PROSPECTIVE JUROR NO. 007: The -- the -- you know,
7 the -- no kinder -- I don't know. I take four hours.

8 THE COURT: Okay. All right. So, are you married?

9 PROSPECTIVE JUROR NO. 007: Yes.

10 THE COURT: Does your husband work?

11 PROSPECTIVE JUROR NO. 007: Yes.

12 THE COURT: What does he do?

13 PROSPECTIVE JUROR NO. 007: He work in the -- he --
14 I have a company.

15 THE COURT: Oh, okay.

16 PROSPECTIVE JUROR NO. 007: Company.

17 THE COURT: What is the company?

18 PROSPECTIVE JUROR NO. 007: Lunas Construction.

19 THE COURT: And what kind of construction work does
20 your company do?

21 PROSPECTIVE JUROR NO. 007: Clean the houses,
22 demolition.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 007: Yeah.

25 THE COURT: But you don't work in the company?

1 PROSPECTIVE JUROR NO. 007: No. Sometimes, I walk
2 to the office. No.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 007: Not too much.

5 THE COURT: Okay. How long have you had that
6 business?

7 PROSPECTIVE JUROR NO. 007: More than 20 years.

8 THE COURT: Okay. All right.

9 PROSPECTIVE JUROR NO. 007: Yeah.

10 THE COURT: All right, well, it sounds like your
11 English is pretty good. I mean, you've been able to answer --

12 PROSPECTIVE JUROR NO. 007: Sometimes, no
13 understand.

14 THE COURT: Yeah, uh-huh. Well --

15 PROSPECTIVE JUROR NO. 007: I understand --

16 THE COURT: You've been --

17 PROSPECTIVE JUROR NO. 007: -- a little bit.

18 THE COURT: All the questions I've just asked you,
19 you were able to answer -- understand and answer immediately.
20 So, we'll check back on you and see what you think --

21 PROSPECTIVE JUROR NO. 007: Okay.

22 THE COURT: -- but right now, it seems like your
23 English is great.

24 PROSPECTIVE JUROR NO. 007: Okay.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR NO. 018: Ester Vigil, 18.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR NO. 018: I don't know if this
4 matters. I had a bladder surgery in February, and I have to
5 go to the bathroom all the time, like right now.

6 THE COURT: Okay, well --

7 PROSPECTIVE JUROR NO. 018: I don't know if I can --

8 THE COURT: -- we probably need to take a break.

9 PROSPECTIVE JUROR NO. 018: I don't know if I can
10 stand a trial without going to the bathroom all the time.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 018: I have paperwork with me
13 if you need, too.

14 THE COURT: Okay. What, an excuse from your doctor
15 or something?

16 PROSPECTIVE JUROR NO. 018: No, just from the
17 surgery, just showing that I had the surgery done.

18 THE COURT: Oh, you had surgery. I thought you said
19 you were having surgery in February.

20 PROSPECTIVE JUROR NO. 018: No, no.

21 THE COURT: Oh, you had surgery.

22 PROSPECTIVE JUROR NO. 018: I had surgery February.
23 I had a full hysterectomy and a bladder sling, and because of
24 that, I have an inflammation in my bladder, and I have to go
25 to the bathroom all the time.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 018: I've probably gone like
3 five times since I've been here, downstairs.

4 THE COURT: Okay. All right. So --

5 PROSPECTIVE JUROR NO. 018: So, I don't know if
6 that's going to interrupt this trial.

7 THE COURT: Okay, let me make a note of that. And
8 let's take a break right now.

9 PROSPECTIVE JUROR NO. 018: Yes, that would be
10 great.

11 THE COURT: All right. So, ladies and gentlemen,
12 before we take breaks, I have to admonish you about talking
13 about the case. So, ladies and gentlemen, we're going to take
14 a ten-minute recess.

15 During this recess, it is your duty not to converse
16 among yourselves or with anyone else on any subject connected
17 with the trial, or to read, watch, or listen to any report of
18 or commentary on the trial by any person connected with the
19 trial, or by any medium of information, including, without
20 limitation, newspaper, television, radio, or internet, and you
21 are not to form or express an opinion on any subject connected
22 with this case until it's finally submitted to you.

23 Additionally, please do not try and engage any of
24 the lawyers, the court officers, except the marshal, who you
25 are free to talk to, if you see them in the halls, because

1 they can't talk to you. Don't make them feel bad by trying
2 to, you know, greet them, or smile at them, and engage them in
3 small chat, because then they're going to feel terrible that
4 they have to be rude to you and walk away, so please don't
5 make them feel bad and try and engage them. We're going to be
6 in recess for ten minutes.

7 THE MARSHAL: All rise for the jury, please.

8 (Outside the presence of the prospective jurors)

9 THE COURT: And the record will reflect that the
10 venire has departed the courtroom. Any matters outside the
11 presence?

12 MS. MORRIS: No.

13 THE COURT: All right.

14 MR. SEMENZA: No, Your Honor.

15 THE COURT: Feel free.

16 (Court recessed at 3:16 P.M. until 3:28 P.M.)

17 (Within the presence of the prospective jurors)

18 THE MARSHAL: Remain standing, please. All present,
19 Your Honor.

20 THE COURT: Thank you. And please be seated. The
21 record will reflect that we're back within the presence of the
22 venire, all parties are present with their respective counsel,
23 all officers of the court are present as well. And I think we
24 left off -- we'd finished with Ms. Vigil. And who is next,
25 can't serve? Was there somebody else in this row?

1 THE MARSHAL: Did you raise your hand?

2 PROSPECTIVE JUROR NO. 012: Yeah.

3 THE MARSHAL: Okay.

4 THE COURT: Oh.

5 PROSPECTIVE JUROR NO. 012: Sabrina Russell, 012.

6 I'm a full-time engineering student at UNLV.

7 THE COURT: How many units are you carrying?

8 PROSPECTIVE JUROR NO. 012: 15.

9 THE COURT: All right. And I take it you have class
10 between now --

11 PROSPECTIVE JUROR NO. 012: Yeah. On Tuesday, I
12 have class from 8:00 to 8:00 at night.

13 THE COURT: Oh, that's a bad day. 12-hour day?

14 PROSPECTIVE JUROR NO. 012: Yeah.

15 THE COURT: Okay. Okay. Who's next?

16 PROSPECTIVE JUROR NO. 010: Laurie Prince, number
17 10. I have to be in family court 9:00 o'clock Tuesday morning
18 the 10th.

19 THE COURT: What? I'm --

20 THE CLERK: Seat number 9, zero -- badge number 010.

21 THE COURT: I'm showing -- what was your name again?

22 PROSPECTIVE JUROR NO. 010: Laurie Prince.

23 (Pause in the proceedings)

24 THE COURT: Laurie Prince. Okay, why do you need to
25 be in family court?

1 PROSPECTIVE JUROR NO. 010: To support my daughter.

2 THE COURT: You don't have a case?

3 PROSPECTIVE JUROR NO. 010: My daughter has a case
4 there.

5 THE COURT: Okay, but you -- you're not -- you're
6 not a witness in the case? Okay. And when is that, did you
7 say?

8 PROSPECTIVE JUROR NO. 010: Tuesday morning the
9 10th.

10 THE COURT: Okay. Who else?

11 THE MARSHAL: In the back?

12 THE COURT: Okay, what happened? We're supposed to
13 be in order.

14 THE MARSHAL: Yeah.

15 THE COURT: You know, when you raise your hands, we
16 go in -- we're supposed to be in order, and now we're jumping
17 all around. Did you forget before?

18 PROSPECTIVE JUROR NO. 008: I just -- yeah. Brandon
19 Snyder, number 8. I just want -- you asked earlier about
20 surgeries.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR NO. 008: I just wanted to mention
23 that I'd had a --

24 THE COURT: Wait a minute. 008, Brian Snyder. I'm
25 trying to --

1 PROSPECTIVE JUROR NO. 008: Brandon.

2 THE COURT: -- stay in order, and that's why I would
3 like to stay in order. Wait a minute. Okay.

4 PROSPECTIVE JUROR NO. 008: I just want --

5 THE COURT: You're having surgery?

6 PROSPECTIVE JUROR NO. 008: I had open surgery just
7 over two weeks ago.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 008: So, you'd asked about
10 surgeries earlier, but I wanted to --

11 THE COURT: Oh, different question. You're not
12 saying you can't serve; you're saying you had --

13 PROSPECTIVE JUROR NO. 008: Correct.

14 THE COURT: -- a surgery? On what?

15 PROSPECTIVE JUROR NO. 008: My pelvis. I had a
16 hernia.

17 THE COURT: Oh, okay. So, we only asked about
18 surgery on extremities, limbs.

19 PROSPECTIVE JUROR NO. 008: Okay.

20 THE COURT: So, that's probably why you didn't
21 answer before.

22 PROSPECTIVE JUROR NO. 008: Gotcha.

23 THE COURT: All right.

24 THE MARSHAL: Anybody else, first, second row? Yes?

25 PROSPECTIVE JUROR NO. 021: Thank you. Bridget

1 Hamilton, 021. Yes. I flew to Chicago on Saturday, because
2 my father-in-law, he had open heart surgery Monday, and I got
3 back last night for this. But I can serve, as long as his
4 health is going good, but if something were to happen, you
5 know, I would have to go home, but --

6 THE COURT: All right. So, it's your -- did you say
7 your father --

8 PROSPECTIVE JUROR NO. 021: Father-in-law, yes.

9 THE COURT: Father-in-law. So, if he suddenly
10 expired, you're talking about you'd need to go?

11 PROSPECTIVE JUROR NO. 021: He had the surgery
12 Monday and, you know, it's still under, you know, the
13 ventilator today.

14 THE COURT: Okay. All right. Okay, thank you.

15 PROSPECTIVE JUROR NO. 024: Adrienne Gomez, 024. I
16 have a preplanned, prepaid vacation for Friday the 13th.

17 THE COURT: And where are you going?

18 PROSPECTIVE JUROR NO. 024: Legoland.

19 THE COURT: I'm -- Legoland?

20 PROSPECTIVE JUROR NO. 024: Legoland, yeah, taking
21 my daughter.

22 THE COURT: That's a great place. I haven't been
23 there since --

24 PROSPECTIVE JUROR NO. 024: I've --

25 THE COURT: -- my son was five.

1 PROSPECTIVE JUROR NO. 024: -- never been.

2 THE COURT: He's 17 now. It was nice then.

3 PROSPECTIVE JUROR NO. 024: Everyone told me it was
4 boring, but.

5 THE COURT: Well, are you going just with yourself,
6 or?

7 PROSPECTIVE JUROR NO. 024: Well, no. My
8 boyfriend's taking me and my daughter, so.

9 THE COURT: Okay. Little daughter?

10 PROSPECTIVE JUROR NO. 024: My daughter. She's 11.

11 THE COURT: Yeah, she'll probably still like it.
12 She like Legos?

13 PROSPECTIVE JUROR NO. 024: Yep.

14 THE COURT: And you're driving?

15 PROSPECTIVE JUROR NO. 024: Yeah.

16 THE COURT: Okay. Who's next?

17 THE MARSHAL: Down there? Yes, no? All the way
18 down, please.

19 PROSPECTIVE JUROR NO. 028: Natasha Montano, 208.
20 I'm the only one working in my family.

21 THE COURT: Wait a minute.

22 PROSPECTIVE JUROR NO. 028: My father's laid off, my
23 mom's --

24 THE COURT: It's not 208.

25 PROSPECTIVE JUROR NO. 028: It's --

1 THE COURT: Is it --

2 PROSPECTIVE JUROR NO. 028: -- 028.

3 THE COURT: 028, okay. Natasha. Okay, go ahead.

4 PROSPECTIVE JUROR NO. 028: I'm the only one working
5 in my family. My father's been laid off for two months, and
6 my mother does not work.

7 THE COURT: Okay. Where do you work?

8 PROSPECTIVE JUROR NO. 028: I work at Pearl Vision
9 for the eye doctor.

10 THE COURT: And they won't pay you if you're at jury
11 duty?

12 PROSPECTIVE JUROR NO. 028: No, just because I
13 haven't been there a year.

14 THE COURT: Okay. Do you work there full-time?

15 PROSPECTIVE JUROR NO. 028: I do.

16 THE COURT: And what hours do you work, and what
17 days?

18 PROSPECTIVE JUROR NO. 028: Next week, I work Monday
19 through Saturday from 8:30 to 6:00 P.M.

20 THE COURT: Okay. Okay, next. Bless you.

21 PROSPECTIVE JUROR NO. 026: Amy Mejia, 026. I just
22 thought I'd state it now for a hardship, just in case. I
23 honestly don't know if my job would pay or not. I am a single
24 mom, sole provider for my one-year-old.

25 THE COURT: Okay. Where do you work?

1 PROSPECTIVE JUROR NO. 026: Mandalay Bay.

2 THE COURT: Oh, yeah, they'll pay.

3 PROSPECTIVE JUROR NO. 026: Okay.

4 THE COURT: But you can check on a break, but yeah,
5 they're one of the good corporate citizens that do that for
6 their employees, because they understand that it's important.
7 Okay. What do you do for them? Sorry. What do you do for
8 them? What's your job?

9 PROSPECTIVE JUROR NO. 026: Front desk agent.

10 THE COURT: Okay. Okay, who's next?

11 THE MARSHAL: Down here.

12 PROSPECTIVE JUROR NO. 034: Cindy Huang, 0034. And
13 I cannot serve because I'm not understand all the medical
14 words, and either like -- like you ask for the question
15 [inaudible], I'm not -- I don't know what's that mean.

16 THE COURT: What -- which word you said you didn't
17 mean --

18 PROSPECTIVE JUROR NO. 034: Before, you asked all
19 the people for all the medical word, and I'm not sure what's
20 that mean.

21 THE COURT: Oh, okay, well --

22 PROSPECTIVE JUROR NO. 034: So, I did not even --

23 THE COURT: -- a lot of them probably didn't know
24 either.

25 PROSPECTIVE JUROR NO. 034: Yeah.

1 THE COURT: Yeah. So, medical terms get explained.
2 Are you having trouble with anything else?

3 PROSPECTIVE JUROR NO. 034: All the critical words,
4 I -- I don't know. But regular conversation, yes, I
5 understand.

6 THE COURT: Okay. What's your first language?

7 PROSPECTIVE JUROR NO. 034: Chinese.

8 THE COURT: Okay. And how long have you been here?

9 PROSPECTIVE JUROR NO. 034: 15 year.

10 THE COURT: 15 years? Do you work?

11 PROSPECTIVE JUROR NO. 034: Yes.

12 THE COURT: Where do you work?

13 PROSPECTIVE JUROR NO. 034: Sysco.

14 THE COURT: What do you do for them?

15 PROSPECTIVE JUROR NO. 034: Sales.

16 THE COURT: So, you have to go out and make sales
17 calls on customers?

18 PROSPECTIVE JUROR NO. 034: Yes, but most, it's an
19 Asian -- a Chinese account.

20 THE COURT: Okay. Is that your exclusive clientele,
21 just Asian customers, or Chinese? I mean, because --

22 PROSPECTIVE JUROR NO. 034: Chinese.

23 THE COURT: Okay, Chinese?

24 PROSPECTIVE JUROR NO. 034: Uh-huh.

25 THE COURT: And what dialect do you speak?

1 PROSPECTIVE JUROR NO. 034: Cantonese and Mandarin
2 also.

3 THE COURT: Oh, very good. Okay. All right. Well,
4 I've got it noted about your concern about the language, and
5 we'll see how it goes, all right, from here. Okay.

6 PROSPECTIVE JUROR NO. 034: Thank you.

7 PROSPECTIVE JUROR NO. 037: Vuong Nguyen, 037. I'm
8 a sole proprietor, a preset schedule every week, and that's
9 the only thing I'm worried about.

10 THE COURT: Sole proprietor of what, did you say?

11 PROSPECTIVE JUROR NO. 037: I teach tennis, so --

12 THE COURT: Oh.

13 PROSPECTIVE JUROR NO. 037: Yeah. I don't get paid
14 when I'm off.

15 THE COURT: So, do you work every day teaching
16 tennis, or --

17 PROSPECTIVE JUROR NO. 037: Yes, I do.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 037: Like three to six hours
20 a day.

21 THE COURT: Okay. And so, you know. So, for
22 instance, Monday, we're only working half-day. Tuesday, we'll
23 be here, but then, Wednesday, you got a full day off that you
24 could --

25 PROSPECTIVE JUROR NO. 037: I don't really have a

1 day off.

2 THE COURT: I'm sorry?

3 PROSPECTIVE JUROR NO. 037: I don't really have a
4 day off. I work (indecipherable) three hours --

5 THE COURT: No, I mean, you could work those days.
6 That's what I'm saying is you could work Monday morning all
7 morning, you could work -- do you give evening lessons at all?

8 PROSPECTIVE JUROR NO. 037: I give both day and
9 evening.

10 THE COURT: Okay, so -- but, you know. So, you
11 could work in the evenings. And do you have a regular
12 schedule?

13 PROSPECTIVE JUROR NO. 037: Yes, I do.

14 THE COURT: Okay. So, do you know what it is?

15 PROSPECTIVE JUROR NO. 037: It's from 8:00 to 11:00,
16 and then usually from 3:00 to 7:00.

17 THE COURT: Okay. Is that every day?

18 PROSPECTIVE JUROR NO. 037: Pretty much every day,
19 yes.

20 THE COURT: Okay. Next?

21 PROSPECTIVE JUROR NO. 041: Mike Vaubel, 041.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 041: Okay. My major problem
24 is my health. I've got a breathing problem. Some days, it's
25 good, and sometimes not. I am coughing a lot. So, I got --

1 about 18 years ago, I breathed in ammonia and bleach, and it
2 damaged my throat. They're trying to give me an inhaler once
3 a day to help out, and so far, it's not helping that much.

4 THE COURT: Okay. So, are you having -- does this
5 go in spurts, or is it constant?

6 PROSPECTIVE JUROR NO. 041: Sometimes spurts.
7 Sometimes I have decent days; sometimes I have really bad days
8 where I'm more like choking.

9 THE COURT: Okay. All right.

10 PROSPECTIVE JUROR NO. 041: And so far, today's eh.

11 THE COURT: I heard you coughing earlier. Yeah.

12 PROSPECTIVE JUROR NO. 041: Yeah.

13 THE COURT: Did the water help a little?

14 PROSPECTIVE JUROR NO. 041: It helps sometimes,
15 yeah.

16 THE COURT: Yeah.

17 PROSPECTIVE JUROR NO. 041: Because sometimes, it
18 gets clogged up, and I can't breathe.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 041: And mostly like perfume,
21 cologne, stuff like that (indecipherable) real strong, I can't
22 breathe at all.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 041: And that's when I got to
25 down water.

1 THE COURT: All right, thank you.

2 PROSPECTIVE JUROR NO. 050: Carlos Barragan, badge
3 050.

4 THE COURT: Okay, go ahead.

5 PROSPECTIVE JUROR NO. 050: Your Honor, I'm
6 requesting the Court to be excused due to military deployment.
7 I'm scheduled to depart on the 14th. And I will start on
8 Monday with my pre-deployment briefing, some medical checks,
9 so I can get my orders by Friday.

10 THE COURT: Okay. So, you're actually deploying on
11 the 14th, you said?

12 PROSPECTIVE JUROR NO. 050: Yes, ma'am.

13 THE COURT: So, that's a Saturday. And before that,
14 you've got to do some --

15 PROSPECTIVE JUROR NO. 050: On Monday, I start all
16 the paperwork, and the in-processing, and medical, and
17 everything.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 050: I can fax a copy of the
20 orders by Friday once everything is cleared through them. And
21 I have my military badge with me so you --

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 050: -- can check on that,
24 too.

25 THE COURT: What service are you with?

1 PROSPECTIVE JUROR NO. 050: I work as a private
2 contractor for Battlespace. It's a subcontracting company for
3 the Air Force. I'm a veteran, I work in the logistics field,
4 and I do the same for them.

5 THE COURT: Okay. So, you're working on a private
6 contract; you're not in the military anymore?

7 PROSPECTIVE JUROR NO. 050: I am not.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 050: Yeah.

10 THE COURT: All right. Okay, thank you.

11 PROSPECTIVE JUROR NO. 052: Scott Stephens, 052.
12 Just a family friend funeral on Friday at noon. That would be
13 my only -- she passed away Monday.

14 THE COURT: I'm sorry to hear that. Okay, thank
15 you.

16 PROSPECTIVE JUROR NO. 052: Thank you.

17 THE MARSHAL: Here you go.

18 PROSPECTIVE JUROR NO. 053: Matt Wheelus, 053. At
19 the hospital, we have a building project that's supposed to be
20 completed in the next week or so, and I've been working on the
21 project as the facility representative for the last 12 months,
22 and it's critical for the hospital's capacity issues in our ER
23 to be able to open this new unit. As well as I have three of
24 my departments that are without leaders, and going through
25 interviews right now. I have several interviews scheduled

1 next week of candidates that I have to interview as well.

2 THE COURT: Okay. When did you get your jury
3 summons?

4 PROSPECTIVE JUROR NO. 053: Well, I originally got
5 it in October, and I had to fly out to my corporate office for
6 our annual budget presentations that I couldn't miss.

7 THE COURT: So, you got an excuse for this month?

8 PROSPECTIVE JUROR NO. 053: This month, and then our
9 project got delayed, and the state inspection is scheduled for
10 the 18th, and we have the state fire marshal scheduled next
11 week.

12 THE COURT: Okay. And what would happen, you know,
13 if you got hit by a bus? Would they not open the hospital
14 project?

15 PROSPECTIVE JUROR NO. 053: It could be delayed,
16 just because I've been a critical component working on it for
17 the last 12 months. And so, that would impact operations, and
18 ER holds, and capacity issues in our ER.

19 THE COURT: And which hospital is it, did you say?

20 PROSPECTIVE JUROR NO. 053: Spring Valley.

21 THE COURT: Okay, next.

22 PROSPECTIVE JUROR NO. 054: Javier Jimenez, 054.
23 I'm a full-time student at CSN.

24 THE COURT: Okay. When are your classes?

25 PROSPECTIVE JUROR NO. 054: Mondays and Wednesdays,

1 8:00 through 12:30; Tuesdays and Thursdays, 9:30 to 10:30.

2 THE COURT: All right, thank you.

3 PROSPECTIVE JUROR NO. 057: Eric Sutta, 057. My
4 work schedule does not permit me to be here beyond 5:00
5 o'clock each day. I work at one of the shows on the Strip,
6 and currently, I'm the only one trained to do what I do, so
7 they've yet to find a replacement to allow me to take time off
8 from work.

9 THE COURT: What do you do?

10 PROSPECTIVE JUROR NO. 057: I'm an automation
11 operator.

12 THE COURT: A what?

13 PROSPECTIVE JUROR NO. 057: An automation operator.

14 THE COURT: Automation? Okay.

15 PROSPECTIVE JUROR NO. 057: In addition to that, I
16 also have a medical condition in my hip that makes it
17 difficult to sit for long periods of time.

18 THE COURT: So, when you operate this equipment, are
19 you sitting, or are you standing?

20 PROSPECTIVE JUROR NO. 057: I'm sitting and
21 standing.

22 THE COURT: Standing? Okay. So, you can stand
23 okay, it's just --

24 PROSPECTIVE JUROR NO. 057: Correct.

25 THE COURT: -- sitting a long time?

1 PROSPECTIVE JUROR NO. 057: Yep.

2 THE COURT: Okay. And so, you're saying that if you
3 get sick, they can't have the show?

4 PROSPECTIVE JUROR NO. 057: That's very possible.

5 THE COURT: What show is it?

6 PROSPECTIVE JUROR NO. 057: Mat Franco. He's a
7 magician at The Linq. And so far, I have been sick, and I've
8 shown up to work sick.

9 THE COURT: Okay. Okay, who's next?

10 PROSPECTIVE JUROR NO. 059: Noel Bailog, 059. I'm a
11 full-time student at Centennial High School. I was pushed
12 back a year -- held back a year in third grade because of
13 medical reasons. But next week, I have a couple important
14 meetings involving financial aid for college next year, and
15 also, school fundings for clubs that I'm in. We have
16 SolarCity representatives coming in for our environmental
17 club, and I am vice president and treasurer of the club, so
18 I'm like one of the big people that have to be at that
19 meeting to --

20 THE COURT: Okay, but you also have school --

21 PROSPECTIVE JUROR NO. 059: Well, yeah.

22 THE COURT: -- every day, right?

23 PROSPECTIVE JUROR NO. 059: Yeah.

24 THE COURT: Okay. Your club meetings mean nothing
25 to me, but school, that's something different. Okay. Who

1 else?

2 PROSPECTIVE JUROR NO. 061: David Henry, 061. I'm a
3 sole proprietor of a business for 30 years, and I work seven
4 days a week, 24 hours a day on emergency calls for electrical,
5 plumbing, and water damage. And I'm always on-call, so it's
6 pretty much impossible for me to show up at a court.

7 And this is the only day I can get. I missed the
8 other meeting because I was -- I had to reschedule it because
9 I was working them days, too. I already missed one of them
10 and rescheduled until now, and I ask him over the phone -- I
11 says, I ain't going to be able to show up at a trial more than
12 a day, and your trial's three days, so -- and I work emergency
13 jobs all over town.

14 THE COURT: Okay, so who do you work for?

15 PROSPECTIVE JUROR NO. 061: It's my own company.
16 It's Maximum Maintenance. I told the lady over the phone; she
17 don't believe me.

18 THE COURT: Okay. And are you your -- your -- is
19 this business -- do you have any employees?

20 PROSPECTIVE JUROR NO. 061: I have one employee now.
21 I just got rid of the other guy. It's hard to find people who
22 want to work my hours. Sometimes, I don't work all day long,
23 then I got -- I get a call at 10:00 o'clock at night or 1:00
24 in the morning, then I'll get -- I'll go to sleep, and I get
25 calls at 10:00 in the morning, and at 11:00 in the morning. I

1 never know when they're going to call in. These -- I work on
2 probably 1,500 to 2,000 properties in town here, you know,
3 homes that people rent and stuff, and I just -- I can't take
4 off time to go to these things.

5 THE COURT: So, this is like emergency things that
6 happen?

7 PROSPECTIVE JUROR NO. 061: I work emergencies in
8 case, you know, your toilet blows out, or the water heater
9 floods the house, I'm the one that goes there and fixes it at
10 2:00 in the morning.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 061: So, it's just hard for
13 me to get off of these things.

14 THE COURT: So, do you have cards for everyone?

15 PROSPECTIVE JUROR NO. 061: Yeah, every -- well,
16 it's going to be hard for them when their -- everything floods
17 and I can't get there.

18 THE COURT: All right.

19 PROSPECTIVE JUROR NO. 061: Like, if your toilet
20 overflows and you live upstairs, the people downstairs ain't
21 going to like it. If I don't get there by the morning, it's
22 over with. You got ceilings falling in and everything else.

23 THE COURT: Okay. All right. Is that it?

24 THE MARSHAL: Anybody else?

25 PROSPECTIVE JUROR NO. 064: Holly Fulton, 064.

1 Mine's more of a limitation. I'm able to serve. I'm a -- I
2 am a new mother of a four-month-old, so I exclusively breast
3 feed, and I need to pump. As we are approaching three hours
4 now, it's getting uncomfortable, but that's my only
5 limitation.

6 THE COURT: Okay. I remember those days. Long ago,
7 but I remember. Okay. So, how often?

8 PROSPECTIVE JUROR NO. 064: I would prefer before
9 three hours. I usually go every two hours. That's when she
10 feeds. She's in daycare currently, and she feeds through the
11 expressed milk in bottles.

12 THE COURT: Right, okay. And how long a break do
13 you require for that?

14 PROSPECTIVE JUROR NO. 064: I usually pump 15
15 minutes, and maybe two to three minutes to clean up, because I
16 have the parts.

17 THE COURT: All right.

18 PROSPECTIVE JUROR NO. 064: That's what I do at work
19 currently.

20 THE COURT: Okay, thank you. Anybody else? All
21 right. Counsel approach.

22 (Off-record bench conference)

23 THE COURT: All right. I'm going to read the names
24 of the people that are excused. If you hear your name, please
25 get up and depart the courtroom. You'll need to go down to

1 the third floor, and check out with the jury commissioner, and
2 let them know you were excused.

3 So, badge number 18, Ester Vigil. Badge number 012,
4 Sabrina Russell. Badge number 024, Adrienne Gomez. Badge
5 number 028, Natasha Montano. Badge number 041, Mike Vaubel.
6 Badge number 050, Carlos Barragan. Badge number 052, Scott
7 Stephens. Badge number 053, Matthew Wheelus. Badge number
8 054, Javier Jimenez. Badge number 059, Noel Bailog -- or Noel
9 Bailog. Badge number 061, David Henry. And that's all.

10 All right. Okay, let's fill in the empty seats in
11 the box.

12 THE CLERK: Badge 026, Amy Mejia.

13 THE COURT: And she'll be in?

14 THE CLERK: Seat 11.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 026: Seat 11?

17 THE CLERK: Uh-huh. Badge 029, Cheryl Becnel in
18 seat 15. And badge 030, Fernando Velasquez for seat 20.

19 THE COURT: All right, thank you. I'm going to let
20 -- the lawyers will be asking you general questions, and
21 directed basically at the box at this -- at this time. So,
22 plaintiff's counsel, would you like to ask general questions?

23 MS. MORRIS: Yes, thank you. Do I need the
24 microphone?

25 THE COURT: Yeah, we'll get you the microphone, and

1 then the handheld.

2 (Pause in the proceedings)

3 MS. MORRIS: All right. Again, my name's Christian
4 Morris. I'm just going to be asking you a few general
5 questions to everyone as well, and I'm sorry if I didn't
6 introduce myself to the back of the room earlier when I stood
7 up. I'm just going to ask you a few questions, and I'm happy
8 to hear any response that you have. Just so you know a little
9 bit about me, I'm originally from Maine. I grew up there with
10 my sisters.

11 THE COURT: No, no. This is not -- you don't
12 introduce yourself. The jury doesn't need to know anything
13 about your personal life.

14 MS. MORRIS: So, I'm just going to ask you a few
15 basic questions, and I just want to hear what you have to tell
16 me. And I don't want anyone to feel as if any answer would be
17 the wrong answer in any way.

18 I would like to talk to you a little bit about
19 understanding what you think about our civil justice system,
20 whether you think that there are too many frivolous lawsuits
21 that are filed. Does anyone in the room feel as though there
22 are too many frivolous civil lawsuits that are filed here in
23 Las Vegas? If I could hear from you, sir.

24 THE MARSHAL: Full name, last three, please.

25 PROSPECTIVE JUROR NO. 002: Oscar Alfaro, 002. I

1 think that people nowadays through social media, they get too
2 -- they think they know what the law entitles to, and they're
3 suing for any little -- for whatever reason. Case in point,
4 the place I used to work, one of my coworkers decided to sue
5 the whole company for something that passed, you know, many
6 years ago. And I think it's not right, but then again, it's
7 part of the law.

8 MS. MORRIS: Does anyone agree with what he just
9 said? Feel similar? I know we had another comment in the
10 back of the room as well.

11 THE MARSHAL: Full name, last three, please.

12 PROSPECTIVE JUROR NO. 038: Alejandro Hernandez,
13 038. I agree with the gentleman. I work for a scaffolding
14 contractor in town. We've worked up and down Las Vegas
15 Boulevard. We constantly get people claiming, you know, that
16 they've been injured by our scaffolding.

17 Just two weeks ago, case in point, we were working
18 overhead, tearing down some stuff over at the Harmon project,
19 and a person just happens to walk by at 2:00 o'clock in the
20 morning. Wood chips fell on her foot, and now she wants to
21 turn around -- she made it a big thing. Security came out,
22 you know, they collected some evidence, and all we saw that
23 was out on site was a few wood chips, some cigarette butts,
24 and she requested, you know, to be taken off to the hospital.
25 //

1 That's maybe just one of many that I've encountered
2 personally. You know, I also -- I happen to run the business.
3 I have a lot of employees that, because they know that we're
4 insured, they feel that it's an open checkbook at that point,
5 and -- you know, and it's -- frankly, it's a waste of time and
6 it's a waste of money. So, yes, I do.

7 MS. MORRIS: I think we have another --

8 PROSPECTIVE JUROR NO. 040: Can I say something,
9 please? Yes.

10 MS. MORRIS: Of course.

11 PROSPECTIVE JUROR NO. 040: Alvin Encarnacion. It's
12 040. And I also do agree with these two gentlemen. I do work
13 in a casino. I work in the surveillance department, and I do
14 see a lot of claims with slip and falls. I work with slip and
15 falls like mostly every day. And after reviewing video,
16 usually, the claims are not accurate, so to speak.

17 THE COURT: Anyone else that feels -- okay, got a
18 hand over on the other side.

19 PROSPECTIVE JUROR NO. 055: Michael Peterson, badge
20 number 55. If I could have you restate your --

21 MS. MORRIS: Absolutely.

22 THE COURT RECORDER: Ms. Morris, you just are going
23 to have to be facing the mic.

24 MS. MORRIS: Yeah, sorry about that.

25 THE COURT RECORDER: It's okay.

1 MS. MORRIS: Do you feel that there are too many
2 frivolous civil lawsuits filed here in Las Vegas?

3 PROSPECTIVE JUROR NO. 055: Okay, so it was a
4 feeling is what you're going for, and general perception is I
5 would say, yes, there are too many. I can't state to a
6 specific instance, but I'm sure as people have read and
7 through the different media, we have seen where there's
8 instances where I think everybody would feel like it was
9 unjust one way or the other. Does that mean I could be
10 unjust? No, I'd hope I'd be fair, but yes, there are a lot of
11 frivolous ones.

12 MS. MORRIS: Thank you. And there's actually a hand
13 behind you.

14 PROSPECTIVE JUROR NO. 064: Holly -- excuse me.
15 Holly Fulton, 064. I actually am a regulatory compliance
16 manager for Station Casinos, and I see -- I have to do the
17 investigations for our key employees, our tenants, our
18 lobbyists, our consultants, and our professional advisors.
19 And there are so many civil cases that we have to go through.
20 We have to just -- a lot of them just seem like, oh, I stubbed
21 my toe, I'm going to sue the whole company, and that's -- just
22 my personal opinion, I don't think that's correct.

23 MS. MORRIS: Thank you.

24 PROSPECTIVE JUROR NO. 067: Beverly Neff, 067. In
25 the past, I have worked with coworkers who I saw them working

1 day in and day out, not seeming to complain about anything,
2 but they had a previous car accident, and were trying to get a
3 lawyer and get what they could from the insurance company, so.

4 MS. MORRIS: Thanks. Does anyone feel any different
5 from anything that they've heard here today?

6 THE MARSHAL: Raise your hand, please.

7 PROSPECTIVE JUROR NO. 015: Regina Young, 015. I do
8 feel like the others do, like these people were saying, but
9 everybody's different. I've actually taken a fall at my job,
10 but I -- you know, and it was a hard fall. But I bruised
11 myself, whatever, I got up, I went on, there was no permanent
12 damage, but somebody else who's more frail could take maybe
13 the same fall as me and really hurt themselves.

14 So, until you have medical or whatever to, you know,
15 rule out, I wouldn't just go by what you see, because it's not
16 always there, all what you see. And I've hurt myself several
17 times on the job, but I've just gone -- gone through it. So,
18 to -- every person's different.

19 MS. MORRIS: Has anyone here ever heard of the
20 McDonald's hot coffee case? Is anyone willing to tell me what
21 they know about it?

22 MR. SEMENZA: Your Honor, I'm going to object. I
23 don't --

24 THE COURT: Yeah. I don't think that we have enough
25 time to get that kind of answer. That's too broad.

1 MS. MORRIS: How much time are you going to allow
2 me?

3 THE COURT: Well, you told me that you thought you
4 could pick this jury today, this afternoon, so we've got 45
5 minutes until it's 5:00 o'clock. I mean, to ask everybody in
6 the room -- because pretty much everybody that reads a paper
7 probably heard something about that. So, could you maybe
8 narrow your question?

9 MS. MORRIS: If you could give me a time frame, and
10 then I'll just stop in that time frame, if that works, and --

11 THE COURT: No, I don't want to do that, but if you
12 want to ask this question, I think you could spend the next
13 hour-and-a-half on that. Maybe you could narrow your question
14 to get more at what you're asking, or what you want to know
15 from that question.

16 MS. MORRIS: Yeah, and I will keep it narrow. If I
17 could just finish with this question, and then I'll --

18 THE COURT: Okay, but I thought you'd asked the
19 question already.

20 MS. MORRIS: Correct, but I had a response that I
21 wanted to hear, if that's okay with the Court.

22 THE COURT: No -- okay, approach. Approach.

23 (Off-record bench conference)

24 MS. MORRIS: Did you want to make a record of it?

25 THE COURT: Not now. Go ahead.

1 MS. MORRIS: Okay. I'm going to move on to another
2 question. How about the term "tort reform"? Has anyone heard
3 that term before?

4 PROSPECTIVE JUROR 005: Say it again.

5 UNKNOWN PROSPECTIVE JUROR: Say it --

6 MS. MORRIS: Sorry. The term "tort reform," has
7 anyone heard that term before?

8 PROSPECTIVE JUROR NO. 003: I have heard it in my
9 business law class 6, 7 months ago. I'm not 100 percent
10 positive I still remember exactly what it means, but I know it
11 has to do with the way that laws are handled and how cases are
12 heard.

13 THE MARSHAL: What was your last three --

14 PROSPECTIVE JUROR NO. 003: Oh, I'm sorry. Amanda
15 Wallace, 0003.

16 MS. MORRIS: Did anyone else have a response to that
17 that I missed?

18 THE COURT: The record will reflect a negative
19 response to --

20 MS. MORRIS: Thank you.

21 THE COURT: -- the further inquiry.

22 MS. MORRIS: Does anyone here -- and I know we've
23 kind of gone over general questions. Does anyone here, aside
24 from the people that I've spoken to already, work in a casino?

25 PROSPECTIVE JUROR NO. 013: Brenda Nigro, 013. I'm

1 the casino controller at the Mirage.

2 MS. MORRIS: How long have you worked there, Brenda?

3 PROSPECTIVE JUROR NO. 013: Over six years.

4 MS. MORRIS: Do you like your job?

5 PROSPECTIVE JUROR NO. 013: Yes, I do.

6 MS. MORRIS: Okay, thank you.

7 PROSPECTIVE JUROR NO. 023: John Martin, 023.

8 Caesars Palace, shift manager in the poker room.

9 MS. MORRIS: And how long have you worked there?

10 PROSPECTIVE JUROR NO. 023: Ten years. Well, I've
11 been with the company for ten years.

12 MS. MORRIS: Do you like what you do?

13 PROSPECTIVE JUROR NO. 023: Yes.

14 MS. MORRIS: Do you have any opinion or thoughts on
15 casinos in Las Vegas? Do you like the casinos here in Las
16 Vegas?

17 PROSPECTIVE JUROR NO. 023: There's pros and cons to
18 the casino industry.

19 MS. MORRIS: Does anyone here have any kind of
20 distrust of the casino industry? How about our civil justice
21 system --

22 THE COURT: Record will reflect a negative response
23 to that.

24 MS. MORRIS: Thank you.

25 THE COURT: Okay, go ahead.

1 MS. MORRIS: How about our civil justice system?
2 Does anyone here feel as though the civil justice system is
3 broken? And I know I originally asked about frivolous
4 lawsuits, but the process in which you're in, the jury
5 selection, and the trial that you're going to sit through, and
6 I know some of you have prior juror experience, does anyone
7 feel like the system that we're working within is broken?

8 THE COURT: The record will reflect a negative
9 response.

10 MS. MORRIS: Now, I know a number of you have been
11 to the Wynn Casino, and one even works with the Wynn. Has
12 anyone specifically been to the atrium area, which is in the
13 south entrance of the Wynn Casino?

14 THE COURT: Some people in the back. Oh, there's
15 one person here.

16 PROSPECTIVE JUROR NO. 023: John Martin, 023.
17 That's I'm guessing by Tryst Night Club, the area right
18 outside there --

19 MS. MORRIS: It's the other side. The south --

20 PROSPECTIVE JUROR NO. 023: The other side?

21 MS. MORRIS: Yeah, it's the more -- it's like the
22 garden area in the --

23 PROSPECTIVE JUROR NO. 023: Okay, maybe I'm not --
24 maybe I'm not that familiar then.

25 THE MARSHAL: Anybody in the back?

1 PROSPECTIVE JUROR NO. 045: Daniel Jones, badge 045.
2 Yes, I've been in the atrium as a guest.

3 MS. MORRIS: I'm sorry about that.

4 PROSPECTIVE JUROR NO. 045: I was saying, yes, I've
5 been in the atrium just as a guest when -- around like in the
6 Christmastime when they do the decorations in the garden
7 areas.

8 MS. MORRIS: Did you like what you saw? Was it
9 attractive?

10 PROSPECTIVE JUROR NO. 045: Yeah.

11 MS. MORRIS: How often have you been to the Wynn?

12 PROSPECTIVE JUROR NO. 045: Whenever I -- whenever I
13 have friends or relatives in town, we may or may not make it
14 to the casino. On my normal time, not very often.

15 MS. MORRIS: When's the last time you were at the
16 Wynn Casino? Can you remember?

17 PROSPECTIVE JUROR NO. 045: February, probably.

18 MS. MORRIS: Thank you.

19 THE COURT: And sir, just so we get your name and
20 badge number, could you give it to us again?

21 PROSPECTIVE JUROR NO. 045: Oh, I'm sorry. One more
22 time. Daniel Jones, badge number 045.

23 THE COURT: Thank you.

24 PROSPECTIVE JUROR NO. 038: Alejandro Hernandez,
25 038.

1 THE COURT: So, have you been to the --

2 PROSPECTIVE JUROR NO. 038: I have. Yes, I have.

3 Sorry.

4 THE COURT: All right.

5 MS. MORRIS: You've been to the atrium area in the
6 south entrance?

7 PROSPECTIVE JUROR NO. 038: Yes, over by where the
8 gardens are at and the big butterflies?

9 MS. MORRIS: Yeah, I think it changes, but --

10 PROSPECTIVE JUROR NO. 038: Yeah. Yes.

11 MS. MORRIS: And have you seen the displays that
12 they have up in the atrium area?

13 PROSPECTIVE JUROR NO. 038: Periodically when they
14 change them, yeah. I mean, I do take notice.

15 MS. MORRIS: How often do you go to the Wynn?

16 PROSPECTIVE JUROR NO. 038: I mean, sometimes, you
17 know, for pleasure, or sometimes for work. If I had to say,
18 at least -- probably at least, I don't know, once a month or
19 so.

20 MS. MORRIS: Thank you. Was there anyone --

21 PROSPECTIVE JUROR NO. 057: Eric Sutta, 057. I have
22 been to the Wynn as well, to the same area that you're
23 speaking of.

24 MS. MORRIS: The atrium area?

25 PROSPECTIVE JUROR NO. 057: Yes.

1 MS. MORRIS: And have you gone to it more than one
2 time?

3 PROSPECTIVE JUROR NO. 057: I've probably passed
4 through there maybe once or twice.

5 MS. MORRIS: And have you seen the decorations that
6 are up there?

7 PROSPECTIVE JUROR NO. 057: Yes.

8 MS. MORRIS: Thank you.

9 PROSPECTIVE JUROR NO. 062: Linda Brinkman, 062.
10 Yes. Two years ago, I went there for Christmas for their
11 Christmas display, had dinner, went on a tour, and it was
12 quite wonderful.

13 MS. MORRIS: Thank you. Does anyone here gamble?
14 Does anyone here have an opinion about gambling, whether it's
15 a good thing or a bad thing?

16 PROSPECTIVE JUROR NO. 013: It's a big industry, and
17 it's entertainment, and --

18 THE MARSHAL: Need the last three and your full
19 name.

20 PROSPECTIVE JUROR NO. 013: Oh, I'm sorry. Brenda
21 Nigro, 013. It's a big industry, it's entertainment, and I
22 think it's a good thing for the State of Nevada.

23 MS. MORRIS: Thank you.

24 PROSPECTIVE JUROR NO. 015: Regina Young, 015. I
25 also agree with that. Plus, it's how I make my living. So, I

1 work at a bar, so it's good for -- it's a good industry.

2 MS. MORRIS: Thank you.

3 PROSPECTIVE JUROR NO. 019: Susan Kovach, 019. I
4 love to gamble. I think it's a lot of fun. As an industry
5 locally, obviously, a lot of people make their livings off of
6 it. I have non-immediate family who work in the casinos, and
7 they've been very well supported by it. I think it's great
8 for the state. I think it should be legalized everywhere,
9 which might not make it so great for this state.

10 MS. MORRIS: Right.

11 PROSPECTIVE JUROR NO. 019: But yeah, I don't see
12 anything wrong with it. I enjoy it.

13 MS. MORRIS: What about it is fun for you?

14 PROSPECTIVE JUROR NO. 019: Well, the types of
15 things I play, I get to use my brain. You know, poker, things
16 like that where there's some strategy involved. I just enjoy
17 it.

18 MS. MORRIS: Thank you. I think we [inaudible].

19 THE MARSHAL: Any in the front?

20 PROSPECTIVE JUROR NO. 021: Bridget Hamilton, 021.
21 I'm not a fan of gambling. I have a lot of family members who
22 have lost a lot of money; almost lost their homes. Yeah, so I
23 don't -- not a big fan.

24 MS. MORRIS: Thank you.

25 PROSPECTIVE JUROR NO. 023: John Martin, 023. Just

1 to sort of expound on her comment, some people gamble
2 responsibly, some people don't. You know, it's all in who the
3 person is, you know? Some people can control themselves, some
4 people can't. I've seen -- you know, since I've been in the
5 industry, I've seen both sides of it, you know. I think it's
6 a good thing overall, but, you know, some people can't handle
7 it.

8 MS. MORRIS: Thank you.

9 PROSPECTIVE JUROR NO. 030: Fernando Velasquez, 030.
10 I think it's a good thing, but it's a bad habit. If you
11 gamble too much, you're going to lose money.

12 THE COURT: Don't gesture with that microphone.

13 PROSPECTIVE JUROR NO. 030: If you gamble, you're
14 going to lose money. You got to know that. So, I think it's
15 a good -- it's -- for entertainment, it's a good thing, but
16 it's a bad habit. But if you take it like a habit, it's going
17 to -- you're going to lose your money, you're going to lose
18 your --

19 UNKNOWN FEMALE SPEAKER: I can't hear what he said,
20 so.

21 PROSPECTIVE JUROR NO. 030: Yeah.

22 MS. MORRIS: Thank you.

23 THE MARSHAL: Anybody in the back?

24 PROSPECTIVE JUROR NO. 038: Alejandro Hernandez,
25 038. I think it's bad for my pocket personally, but it's

1 great for Southern Nevada.

2 MS. MORRIS: Thank you.

3 THE MARSHAL: Anybody in the back?

4 PROSPECTIVE JUROR NO. 048: Charlene Baker, 048.

5 And I think gambling is a nice, fun pass time, as long as
6 you're not addicted to it. But there's other things to do
7 here in Las Vegas, but I think gambling is a very good pass
8 time.

9 MS. MORRIS: Thank you.

10 THE MARSHAL: Anybody over here?

11 MS. MORRIS: Has anyone here ever worked as a
12 security guard?

13 PROSPECTIVE JUROR NO. 011: Kelly Harms, badge
14 number 011. I am currently employed with SOA Security. I've
15 been with them for a year-and-a-half now.

16 MS. MORRIS: What's SOA?

17 PROSPECTIVE JUROR NO. 011: It's Special Operations
18 Associate. Right now, I'm -- my post regularly is the Clark
19 County Government Center right at 500 South Grand Central
20 Parkway.

21 MS. MORRIS: And what do you have to do as a
22 security guard?

23 PROSPECTIVE JUROR NO. 011: I'm in charge of
24 receiving phone calls of other Clark County buildings that
25 have facility problems, and then I have to report them to

1 individual maintenance companies, like elevator companies, you
2 know, plumbers, things like that.

3 I'm also in charge of lock-up, lock-down. If
4 there's a major alarm going off at another county facility, my
5 monitor will start to go off, and I have to report that to my
6 supervisor, and then call the place where the alarm's going
7 off and see if everything's okay, and if no one answers, I'm
8 in charge of calling Metro dispatch out.

9 MS. MORRIS: Is this your first time ever working as
10 a security guard?

11 PROSPECTIVE JUROR NO. 011: Yes, it is.

12 MS. MORRIS: Did you get training when you were
13 hired?

14 PROSPECTIVE JUROR NO. 011: Yes, I did. It was a
15 full week of hands-on training, and videos, and stuff like
16 that.

17 MS. MORRIS: Do you like what you're doing for work?

18 PROSPECTIVE JUROR NO. 011: Oh, yeah.

19 MS. MORRIS: Okay. Did I miss anyone else?

20 PROSPECTIVE JUROR NO. 045: Daniel Jones, badge 045.
21 I used to work concert security.

22 MS. MORRIS: And where did you work concert
23 security?

24 PROSPECTIVE JUROR NO. 045: In San Antonio, Texas
25 for a company called Southwest Event Systems.

1 MS. MORRIS: And how long did you work for them?

2 PROSPECTIVE JUROR NO. 045: I did concert security
3 with them for about a year, but I worked three years with --
4 in other capacities.

5 MS. MORRIS: Was it primarily event work; crowd
6 control?

7 PROSPECTIVE JUROR NO. 045: Yes.

8 MS. MORRIS: Okay, thank you. Has anyone here ever
9 had a surgery to their spine, either their neck or their back?

10 PROSPECTIVE JUROR NO. 057: Eric Sutta, 057. I've
11 had procedures on my lower back, not necessarily a surgery. I
12 have two torn discs in my lower back, and I receive regular
13 injections in my back for that issue, but not -- I haven't
14 gone any further with actual surgery on it yet.

15 MS. MORRIS: Thank you. How --

16 PROSPECTIVE JUROR NO. 002: Oscar Alfaro, 0002. I
17 didn't have a surgery, I just have a biopsy of the bone
18 marrow.

19 THE COURT: In your spine?

20 PROSPECTIVE JUROR NO. 002: In the spine, yes.

21 MS. MORRIS: And was that your back or your neck?

22 PROSPECTIVE JUROR NO. 002: No, no, no, lower back.
23 They have to take samples of the bone marrow to see if -- I
24 was misdiagnosed with leukemia, so they have to go and do the
25 procedure -- still have to go through a procedure, so.

1 MS. MORRIS: So, do you have a procedure coming up?

2 PROSPECTIVE JUROR NO. 002: No, no, no, no. I had
3 it back in 2002. Yes.

4 MS. MORRIS: Okay. And they had misdiagnosed you?

5 PROSPECTIVE JUROR NO. 002: They -- yes. There was
6 that, and then, doing the procedure, I was -- I was not aware
7 that I was allergic to Demerol, and right before the actual
8 shaving of the bone, I started having convulsions, so they
9 have to wash the stuff out of my system. Thank God they
10 didn't -- the doctor said that the needle doesn't go actually
11 into the bone. Otherwise, could be terrible if they
12 (indecipherable).

13 MS. MORRIS: Thank you. Has anyone here ever heard
14 of the term "malingering"?

15 THE COURT: Record will reflect a negative response.

16 MS. MORRIS: Does anyone here have anyone who is a
17 member of their family or themselves who they feel is overly
18 anxious about their health?

19 PROSPECTIVE JUROR NO. 004: Jacklyn Schumacher,
20 number 004. My mom is.

21 MS. MORRIS: Would you be willing to share a little
22 bit more about that?

23 PROSPECTIVE JUROR NO. 004: She has a lot of medical
24 conditions. Names, I don't remember specifically, but she's
25 had -- she's actually a body waxer, too. She was waxing for

1 eight years, and a lot of things have gone wrong because of
2 that. She's done a lot of procedures. She's been -- one
3 time, she just went to the emergency room for one pain, and
4 then she ended up getting surgery that day for something else.
5 She just has a lot of reoccurring medical problems.

6 MS. MORRIS: Thank you. And I think there was
7 [inaudible].

8 PROSPECTIVE JUROR NO. 008: Brandon Snyder, 008. My
9 father is a cancer survivor, has a lot of anxiety about
10 symptoms, and cancer returning, and things like that. I care-
11 take for him.

12 MS. MORRIS: Thank you.

13 THE MARSHAL: Anybody else?

14 PROSPECTIVE JUROR NO. 021: Bridget Hamilton, 021.
15 My sister and my sister-in-law, they like to do Web MD, and
16 they Google everything, and they will search until they find
17 something wrong.

18 MS. MORRIS: And you said your sister and your
19 sister-in-law?

20 PROSPECTIVE JUROR NO. 021: Yes.

21 MS. MORRIS: Do they live here in Vegas?

22 PROSPECTIVE JUROR NO. 021: No.

23 MS. MORRIS: Okay. So, do you hear about it from
24 them?

25 PROSPECTIVE JUROR NO. 021: Every day.

1 MS. MORRIS: Thank you. Has anyone here ever been a
2 swing dancer, or ever been a swing dancer, gone to swing
3 dancing events?

4 THE COURT: The record will reflect a negative
5 response.

6 MS. MORRIS: Has anyone here ever been to the
7 Rampart Casino?

8 PROSPECTIVE JUROR NO. 002: Oscar Alfaro, 002. Yes.
9 When I moved here from Chicago, it used to be called the
10 Summerlin Resort. It was one building. We opened a
11 restaurant out there.

12 MS. MORRIS: And why would you go there? For
13 entertainment?

14 PROSPECTIVE JUROR NO. 002: Well, you know, once
15 again, when I have relatives, obviously, that's the closest.
16 I live five minutes away from that. So, it's one of the
17 first. Then my wife will drive them there, and -- but I don't
18 gamble. I mean, I think, you know, I cannot afford it. But
19 yes, just go there.

20 It's -- I think the concept when they -- it was one
21 of the first casinos that actually implemented the casino away
22 from the hotel in order to accommodate the no smoking crowd,
23 that you have to go through the whole casino in order to get
24 to your room, so it was a great concept in the beginning.

25 MS. MORRIS: Thank you.

1 THE MARSHAL: Go ahead and pass it down.

2 PROSPECTIVE JUROR NO. 005: Ben Godfrey, 005. I
3 think I've been there to eat. I know one of the restaurants;
4 wouldn't know the name.

5 MS. MORRIS: Thanks.

6 PROSPECTIVE JUROR NO. 006: 006, Heather Cooper.
7 Like him, to eat, and entertainment.

8 MS. MORRIS: Thank you.

9 PROSPECTIVE JUROR NO. 008: Brandon Snyder, 008. I
10 go there multiple times a week. I belong to the gym. There's
11 a gym spa there that I go to frequently.

12 MS. MORRIS: Thank you.

13 PROSPECTIVE JUROR NO. 019: Susan Kovach, 019. I go
14 there to meet friends, to eat, and gamble when I'm there.

15 MS. MORRIS: Thanks.

16 PROSPECTIVE JUROR NO. 029: Cheryl Becnel, 029. I
17 just go there sometimes for the buffet.

18 THE MARSHAL: One in the back?

19 PROSPECTIVE JUROR NO. 048: Charlene Baker, 048. I
20 go there for entertainment and line dancing.

21 MS. MORRIS: Could I just follow up? The line
22 dancing, is that an event they have where there's line
23 dancing, times that you can go?

24 PROSPECTIVE JUROR NO. 048: Yes. When we know
25 there's a certain group there, there's a group of us that goes

1 there to line dance.

2 MS. MORRIS: How long have you been line dancing?

3 PROSPECTIVE JUROR NO. 048: About nine years.

4 MS. MORRIS: Did you have to take lessons to learn
5 how?

6 PROSPECTIVE JUROR NO. 048: Yes. There's a group
7 that meets every Tuesday.

8 MS. MORRIS: Is that when you usually go line
9 dancing, on Tuesdays?

10 PROSPECTIVE JUROR NO. 048: No, on the weekends.

11 MS. MORRIS: Do you like line dancing?

12 PROSPECTIVE JUROR NO. 048: Love it.

13 MS. MORRIS: Yeah. Thank you. Has anyone here ever
14 been at their job, and they have seen someone, a customer or a
15 guest at their job fall?

16 PROSPECTIVE JUROR NO. 003: Amanda Wallace, 003.
17 And yeah, there's been several times.

18 MS. MORRIS: Have you ever physically -- you've
19 actually personally seen them fall?

20 PROSPECTIVE JUROR NO. 003: A couple of times, yes.

21 MS. MORRIS: And where has that been?

22 PROSPECTIVE JUROR NO. 003: Once was when I worked
23 at Pizza Hut. The other time was at my current job where I
24 work, Best Buy.

25 MS. MORRIS: And when the fall happened at Pizza

1 Hut, was it some -- a guest there?

2 PROSPECTIVE JUROR NO. 003: It was a customer, yes.

3 MS. MORRIS: And what were you -- what did you do
4 for work at Pizza Hut?

5 PROSPECTIVE JUROR NO. 003: I was a -- at the time
6 that this incident happened, I was a shift manager.

7 MS. MORRIS: Do you know what made the person fall
8 at Pizza Hut? Did you see?

9 PROSPECTIVE JUROR NO. 003: They -- yeah, they
10 tripped over the entryway coming in through the door.

11 MS. MORRIS: And were they injured, do you know?

12 PROSPECTIVE JUROR NO. 003: They hurt their leg,
13 yes.

14 MS. MORRIS: And the other time, you said --

15 PROSPECTIVE JUROR NO. 003: It was -- I worked at
16 Best Buy. They were in the store. I don't remember the exact
17 thing. I was a -- was I -- at the time, a cashier, and they
18 tripped in the middle of one of the isles. I'm not sure what
19 they tripped over.

20 MS. MORRIS: Okay. Have you ever personally slipped
21 and fallen?

22 PROSPECTIVE JUROR NO. 003: All the time.

23 MS. MORRIS: Where do you slip and fall?

24 PROSPECTIVE JUROR NO. 003: Where don't I? I'm just
25 clumsy.

1 MS. MORRIS: Have you ever hurt yourself when you've
2 slipped?

3 PROSPECTIVE JUROR NO. 003: Not horribly, no.

4 MS. MORRIS: And have you fallen at home?

5 PROSPECTIVE JUROR NO. 003: Yeah.

6 MS. MORRIS: And are you slipping on things, or are
7 you tripping on them?

8 PROSPECTIVE JUROR NO. 003: Tripping, slipping, I
9 don't know. Everything.

10 MS. MORRIS: But you're okay right now?

11 PROSPECTIVE JUROR NO. 003: Yes.

12 MS. MORRIS: Okay. Thank you very much, I
13 appreciate that.

14 THE MARSHAL: Anybody in the front row?

15 PROSPECTIVE JUROR NO. 013: Brenda Nigro, 013. Yes,
16 I've seen a guest fall.

17 MS. MORRIS: And where were you working at the time?

18 PROSPECTIVE JUROR NO. 013: At the Mirage.

19 MS. MORRIS: Did you see how -- what happened?

20 PROSPECTIVE JUROR NO. 013: Yes, I did.

21 MS. MORRIS: Can you tell us, if you're comfortable?

22 PROSPECTIVE JUROR NO. 013: It was a slip and fall.

23 MS. MORRIS: And did they slip on something, if you
24 know?

25 PROSPECTIVE JUROR NO. 013: I think that there was.

1 It looked like liquid that was on the floor.

2 MS. MORRIS: Do you know if they were injured?

3 PROSPECTIVE JUROR NO. 013: No, I don't.

4 MS. MORRIS: Did you go over to them and help them
5 up in any way?

6 PROSPECTIVE JUROR NO. 013: I went over to them and
7 I got them help. Not lift them up or help them up, but got
8 them help.

9 MS. MORRIS: You called -- did you call for help?

10 PROSPECTIVE JUROR NO. 013: Yes.

11 MS. MORRIS: Okay. Thank you.

12 PROSPECTIVE JUROR NO. 015: Regina Young, 015. I
13 also witnessed a guest of ours fall at the casino.

14 MS. MORRIS: And I'm sorry, what casino was it
15 again? I know you told me.

16 PROSPECTIVE JUROR NO. 015: Stations Casino I work
17 for.

18 MS. MORRIS: Thank you. And did you see what caused
19 the guest to fall?

20 PROSPECTIVE JUROR NO. 015: She actually kind of
21 like tripped over her slipper. It was kind of her own -- but
22 she wasn't able to -- I went by her, we called for security,
23 security came, and she slowly got up. We were told not to
24 assist her up, so I just called for security, and he just
25 waited for her to get up on her own.

1 MS. MORRIS: Thank you.

2 PROSPECTIVE JUROR NO. 015: Um-hum.

3 MS. MORRIS: Was there anyone --

4 PROSPECTIVE JUROR NO. 023: John Martin, 023. I
5 mean, being on the casino floor for a little over ten years,
6 I've seen probably dozens of people fall. Most -- mostly,
7 it's, you know, women in high heels, you know, maybe drinking
8 a little bit too much, maybe not. You know, just general, you
9 know, people falling. I can't really recall exact incidents,
10 but yes, I've seen numerous people just fall.

11 MS. MORRIS: Have you ever personally slipped and
12 fallen, or tripped and fallen?

13 PROSPECTIVE JUROR NO. 023: I'm sure I have. Not
14 necessarily at work, but, you know, at my house, maybe slipped
15 on the stairs, or, you know, I got carpeted stairs, so, you
16 know, maybe slipped on the stairs, or, you know, going up the
17 stairs, or, you know, maybe slipped coming out of the bathtub
18 or something like that, or out of the shower.

19 MS. MORRIS: Thank you.

20 THE MARSHAL: Anybody?

21 PROSPECTIVE JUROR NO. 040: Alvin Encarnacion, 040.
22 And like I said earlier, being that I work at a surveillance
23 department, I see it every day. I see the incidents live. I
24 see them after doing a review, so, yeah, I see a lot of them.
25 Get a lot of guest accidents at the casino I work at.

1 MS. MORRIS: Thank you.

2 PROSPECTIVE JUROR NO. 047: Vittorio Esposito,
3 number 47. Yeah, about 14 years ago, I was working retail,
4 and I had just mopped one of the floors. And while I was
5 checking out, a lady, she -- she -- well, she fell down. And
6 yeah, quickly, you know, got her back up on her feet, and then
7 that was kind of where that ended.

8 MS. MORRIS: Do you know what she fell on?

9 PROSPECTIVE JUROR NO. 047: Yeah, I just mopped the
10 floor, so it was kind of a water, soapy liquid.

11 MS. MORRIS: Was she injured, do you know?

12 PROSPECTIVE JUROR NO. 047: No, she was able to walk
13 it off, so that was -- that was good for me.

14 MS. MORRIS: Thank you. And has anyone here ever
15 suffered from a torn meniscus?

16 PROSPECTIVE JUROR NO. 002: Oscar Alfaro, 002.
17 Being half Brazilian, I guess I got soccer in my genes. Yes,
18 I was playing soccer, tore my meniscus, and then couldn't play
19 soccer. I picked up running, and during the St. George
20 Marathon, which is one of the most appealing courses to
21 qualify for Boston, and I completely ruptured the meniscus, so
22 I have surgery right after that. Straight after the finish
23 line, go straight to the hospital.

24 MS. MORRIS: And you had a meniscus tear repair? Is
25 that --

1 PROSPECTIVE JUROR NO. 002: They have to remove,
2 clean it, so they pretty much take all the meniscus out. Yes.

3 MS. MORRIS: Thank you.

4 THE MARSHAL: Anybody else?

5 PROSPECTIVE JUROR NO. 026: Amy Mejia, 026. My
6 right knee. I, running on a treadmill, tripped forward. It
7 was either between that -- shortly after, just a couple weeks
8 after, wearing heels, walking down the stairs and falling
9 forward. So, it was between the two that, shortly after, I
10 had surgery to repair it.

11 MS. MORRIS: And did the surgery help?

12 PROSPECTIVE JUROR NO. 026: No.

13 MS. MORRIS: Do you still have pain in your knee?

14 PROSPECTIVE JUROR NO. 026: Yes.

15 MS. MORRIS: Did you have to have physical therapy
16 after your surgery?

17 PROSPECTIVE JUROR NO. 026: Yes.

18 MS. MORRIS: Does it cause you problems in
19 functioning, or is it just the pain that you feel?

20 PROSPECTIVE JUROR NO. 026: It does cause problems.
21 Can't run the same anymore.

22 MS. MORRIS: Thank you.

23 PROSPECTIVE JUROR NO. 026: You're welcome.

24 THE MARSHAL: Anybody else? Hands, please.

25 PROSPECTIVE JUROR NO. 045: Daniel Jones, badge 045.

1 Yeah, I tore my meniscus in my left knee from a load-out when
2 I was on tour with Disney on Ice.

3 MS. MORRIS: And did you have it repaired?

4 PROSPECTIVE JUROR NO. 045: Yes, I did.

5 MS. MORRIS: And how did the surgery go? Do you
6 have pain still in your knee?

7 PROSPECTIVE JUROR NO. 045: No. It actually went
8 quite well.

9 MS. MORRIS: All right, thank you.

10 PROSPECTIVE JUROR NO. 049: Daniel Miranda, 049. I
11 tore my meniscus and my ACL in my right knee, and I had
12 surgery to fix that.

13 MS. MORRIS: How did you tear it? Do you remember?

14 PROSPECTIVE JUROR NO. 049: The first time I tore my
15 ACL, I was just horsing around, and it ended up tearing my
16 meniscus along with it. So, they -- I had the surgery, and
17 what it is is they just shaved what they could, and then tried
18 healing what they could.

19 MS. MORRIS: And how are you now?

20 PROSPECTIVE JUROR NO. 049: It hurts still, but, I
21 mean, they did the best they could. It's just, they told me
22 ahead of time that, you know, it's going to hurt a lot more
23 especially the older I get, you know, it's just wear and tear.
24 And then, when it gets cold, it's going to ache, so, yeah.

25 MS. MORRIS: Thank you.

1 PROSPECTIVE JUROR NO. 049: Um-hum.

2 MS. MORRIS: So, we're getting low on time because
3 it's getting toward the end of the day, but I have more
4 questions that I would like to ask. But I specifically have
5 two people, and I don't want to point you out, but I want to
6 ask you just a couple of questions.

7 Laurie, you mentioned that your daughter has a
8 hearing in family court?

9 PROSPECTIVE JUROR NO. 010: Yes.

10 THE COURT RECORDER: Need the mic.

11 MS. MORRIS: And I -- we didn't hear what it was
12 about and how you were going to be there for her.

13 PROSPECTIVE JUROR NO. 010: It's a custody case for
14 my grandson. He's five-weeks-old.

15 THE MARSHAL: We need your full name and your last
16 three.

17 PROSPECTIVE JUROR NO. 010: Sorry. Laurie Prince,
18 10.

19 MS. MORRIS: And you were going to be there for your
20 daughter?

21 PROSPECTIVE JUROR NO. 010: Support for my daughter,
22 yes.

23 MS. MORRIS: Do you feel as though if you aren't
24 there for her, you won't be able to focus on the trial when
25 we're here having it?

1 PROSPECTIVE JUROR NO. 010: Possibly, yes.

2 MS. MORRIS: Do you think that you could put that
3 distraction aside and focus on the trial if you do remain
4 here?

5 PROSPECTIVE JUROR NO. 010: I would have to.

6 MS. MORRIS: Thank you. And the other person I just
7 wanted to check with was Mr. Hebert.

8 THE MARSHAL: Raise your hand, sir. Full name and
9 last three, please.

10 PROSPECTIVE JUROR NO. 014: James Hebert, 014 -- 14.

11 MS. MORRIS: James, you work for the Wynn, right?

12 PROSPECTIVE JUROR NO. 014: Yes.

13 MS. MORRIS: Do you feel like you would have any
14 fear of any kind of backlash if you were to sit on a jury and
15 come to a verdict, and it would either go, you know, one way
16 or another?

17 THE COURT: I asked him that question, and he said
18 no. Are you -- have --

19 PROSPECTIVE JUROR NO. 014: Yeah, she's right.

20 MS. MORRIS: Do you feel like you wouldn't have any
21 difficulty deliberating to come to a verdict and have any
22 concern that it would be against your employer?

23 PROSPECTIVE JUROR NO. 014: No, I'd be all right.

24 MS. MORRIS: Thank you. And I'm just going to pick
25 on one more person. Susan, I'm going to pick on you.

1 PROSPECTIVE JUROR NO. 020: Okay.

2 MS. MORRIS: I haven't heard from you. I was
3 wondering if you could tell me a little bit about how you feel
4 being here today.

5 THE MARSHAL: Full name and last three, please.

6 PROSPECTIVE JUROR NO. 020: Susan Berg, number 20.
7 I'm not happy, but who cares?

8 MS. MORRIS: Why aren't you happy?

9 PROSPECTIVE JUROR NO. 020: I work 10 or 12 hours
10 every day. I run an office for three psychologists and one
11 licensed clinical social worker. The office doesn't run very
12 well when I'm not there, and I'm going to have a whole lot of
13 stuff to do when I get back.

14 MS. MORRIS: Does anyone kind of relate to what
15 Susan's saying? The process that we're here for today, are
16 you comfortable with what we're doing?

17 PROSPECTIVE JUROR NO. 020: Yes and no. I mean,
18 everybody has their opinions. I know that a lot of deals are
19 made outside the courtroom. I don't always think -- when I
20 hear stuff on the news, let's take O.J. Simpson, for example,
21 I don't think he should have got off. What kind of justice is
22 that?

23 MS. MORRIS: Does everyone agree with Susan's
24 thoughts? Does anyone have any different feeling about what
25 she said?

1 THE MARSHAL: Last name.

2 PROSPECTIVE JUROR NO. 005: Ben Godfrey, 005. The
3 jury came up with it. That's -- that was the decision.

4 MS. MORRIS: All right, I've had my time speaking
5 with you. Thank you all very much, and Mr. Semenza will talk
6 with you now.

7 MR. SEMENZA: Your Honor, may we approach for a
8 moment?

9 THE COURT: Yes.

10 (Off-record bench conference)

11 THE COURT: All right. Mr. Semenza -- just to --

12 MR. SEMENZA: Yes, Your Honor.

13 THE COURT: -- let you all know, we're not obviously
14 going to finish today, and so we're going to just go until
15 5:00, and then you'll all have to be back tomorrow. So --

16 THE CLERK: Tomorrow?

17 THE COURT: Tomorrow at 11:00.

18 THE CLERK: Oh, okay. I thought [inaudible]. Okay.
19 Do we need --

20 THE COURT: Okay. Mr. Semenza.

21 THE CLERK: -- more jurors? Okay.

22 MR. SEMENZA: Your Honor, may we approach one more
23 time?

24 THE COURT: Yes.

25 (Off-record bench conference)

1 THE COURT RECORDER: Mr. Semenza, you can move that
2 if you need to.

3 MR. SEMENZA: No, it's okay. Thank you. Good
4 afternoon, ladies and gentlemen. Once again, I'm L.J.
5 Semenza, and I think when I introduced my group over here, I
6 identified Kristen as Christian, so I apologize. Christian is
7 opposing counsel.

8 So -- and let me just preface my questions with
9 this. I'm not intending to single anyone out, but I am going
10 to ask individual questions relating to a number of you, just
11 to get additional information relating to your background,
12 your employment, those sorts of things. So, could I start
13 with Mr. Torres, please?

14 THE MARSHAL: Last three, full name.

15 PROSPECTIVE JUROR NO. 001: 001, Juan Torres.

16 MR. SEMENZA: Okay. And are you currently employed?

17 PROSPECTIVE JUROR NO. 001: Eureka Hotel and Casino
18 in Mesquite, Nevada.

19 MR. SEMENZA: And what do you do at the Eureka?

20 PROSPECTIVE JUROR NO. 001: Sous-chef.

21 MR. SEMENZA: And do you reside in Mesquite?

22 PROSPECTIVE JUROR NO. 001: No.

23 MR. SEMENZA: You reside here in Las Vegas and
24 drive, or?

25 PROSPECTIVE JUROR NO. 001: Yes.

1 MR. SEMENZA: Okay. And how long --
2 PROSPECTIVE JUROR NO. 001: Oh, sorry.
3 MR. SEMENZA: Go ahead.
4 PROSPECTIVE JUROR NO. 001: Yeah, I reside in
5 Mesquite.
6 MR. SEMENZA: Okay. And so, every day, if you were
7 going to remain on this jury, you would have to commute back
8 and forth from Mesquite?
9 PROSPECTIVE JUROR NO. 001: Yes.
10 MR. SEMENZA: Is that approximately 90 miles?
11 PROSPECTIVE JUROR NO. 001: Yes.
12 MR. SEMENZA: How long have you worked as a
13 sous-chef for the Eureka Casino?
14 PROSPECTIVE JUROR NO. 001: About seven years
15 already.
16 MR. SEMENZA: And do you enjoy working for the
17 Eureka Casino?
18 PROSPECTIVE JUROR NO. 001: Yes.
19 MR. SEMENZA: Okay. Could I have you pass the mic
20 one over to Mr. Alfaro? Have I got that --
21 PROSPECTIVE JUROR NO. 002: Yes.
22 MR. SEMENZA: -- correct? Okay.
23 PROSPECTIVE JUROR NO. 002: Oscar Alfaro, 002.
24 MR. SEMENZA: And are you an athlete?
25 PROSPECTIVE JUROR NO. 002: In my younger years,

1 yes, yes.

2 MR. SEMENZA: Okay. And I thought I understood that
3 you ran marathons?

4 PROSPECTIVE JUROR NO. 002: I used to do it
5 semi-professionally, but now I do it for fun.

6 MR. SEMENZA: Tell me a little about when you were
7 running semi-professional.

8 PROSPECTIVE JUROR NO. 002: There was a program with
9 Adidas. They won't pay me a salary, but they will provide me
10 with all the equipment. All I have to do is finish in the two
11 hours and 45 minutes the 26.2 miles, and that's how they will
12 get the exposure with Adidas's name flashing all over the
13 place.

14 MR. SEMENZA: What's your best time running a
15 marathon?

16 PROSPECTIVE JUROR NO. 002: 2:37:53.

17 MR. SEMENZA: Wow. And you had briefly mentioned I
18 think that you had a knee injury? You had torn --

19 PROSPECTIVE JUROR NO. 002: Yes.

20 MR. SEMENZA: -- your meniscus?

21 PROSPECTIVE JUROR NO. 002: It was soccer. During
22 my soccer days, I injured it. I used to hate running, but I
23 was very -- well, I was decent with the ball in my feet, so my
24 coaches always spared me the running drills. After having the
25 surgery -- oh, oh. The injury on the knee, I could not

1 obviously play. Have to give up ski, American football,
2 because my knee will come off, you know, when I do lateral
3 movement; but going up and down, no problem. But because of
4 that, always trying to improve on my -- on my time.

5 Once again, I ran Boston several times but the
6 appealing of running St. George, for whatever reason, being
7 downhill, which is when you actually cause more damage to your
8 extremities; to your joints specifically because of the
9 pounding.

10 I rush into -- prior to that, my doctor tried me to
11 get into the surgery to try to clean it before actually to a
12 major surgery, but early 90s, they were the procedure that
13 they have to open your knee, completely open, work on your
14 knee, and then sew it back on, and then you have to wait
15 anywhere from four to six months before you can start rehab.
16 So, I was afraid to do that.

17 I've been doing the restaurant work for close to 28
18 years. So, without me not being able to work, I was not able
19 to support my family. After that injury in St. George, then I
20 was forced to have the surgery, which lasted almost five
21 hours. Rush back into the training. Three weeks after the
22 surgery, I start rehab.

23 And three months after that, I was pushing to 15
24 miles a day running again, so I went sideline again for a year
25 until I actually learned the lesson that I have to rest it.

1 And then, ever since, I've been -- today, I'm averaging
2 anywhere from 12 to 18 miles a day before going to work.

3 MR. SEMENZA: And that's currently?

4 PROSPECTIVE JUROR NO. 002: That's currently.

5 MR. SEMENZA: Okay, and that's after your surgery?

6 PROSPECTIVE JUROR NO. 002: Yes.

7 MR. SEMENZA: Have you had one surgery, or more than
8 one?

9 PROSPECTIVE JUROR NO. 002: Just one.

10 MR. SEMENZA: Okay.

11 THE COURT: All right. Mr. Semenza --

12 MR. SEMENZA: Yes.

13 THE COURT: -- this is a good stopping point. It's
14 5:00 o'clock, and --

15 MR. SEMENZA: That's fine, Your Honor.

16 THE COURT: -- you had answered -- the last question
17 answered. So, ladies and gentlemen, sorry that you all have
18 to return tomorrow. I've got a calendar at 9:00, my civil
19 calendar, but I hope to be done with that so we can start at
20 11:00 and get the jury picked tomorrow.

21 So, ladies and gentlemen, during this overnight
22 recess, it is your duty not to converse among yourselves or
23 with anyone else on any subject connected with the trial, or
24 read, watch, or listen to any report of or commentary on the
25 trial by any person connected with the trial, or by any medium

1 of information, including, without limitation, newspaper,
2 television, radio, or internet. You are not to form or
3 express an opinion on any subject connected with this case
4 until it's finally submitted to you.

5 What does that mean? That means do not go home and
6 do research into the Wynn, slip and falls, medial meniscus,
7 whatever, and whatever. The things that you've heard about,
8 don't try and do research about it. Everything that you will
9 need to know about this case if you are selected to be on the
10 jury, you will learn in this courtroom and noplacelse. So,
11 thank you for abiding by that instruction, and I'll see you
12 tomorrow at 11:00.

13 THE MARSHAL: All rise for the jury, please.

14 (Outside the presence of the prospective jurors)

15 THE COURT: All right, the record will reflect that
16 the venire has left the courtroom. And did you want to make a
17 record about being able to ask the jury to express their
18 knowledge about the McDonald's case that was more than a
19 decade ago?

20 THE COURT RECORDER: Okay, can you turn the
21 microphone around --

22 MS. MORRIS: Yeah, sure.

23 THE COURT RECORDER: -- to yourself, please? I'm
24 sorry.

25 MS. MORRIS: Yes, just a brief record. I wanted to

1 ask the jury what they knew about the McDonald's hot coffee
2 case. I originally asked who knew. Their hands went up. I
3 asked if anyone was comfortable expressing to me what they
4 knew about it, and a lady did raise her hand. And at that
5 point, we had a sidebar in which I was instructed to move onto
6 another question.

7 THE COURT: Right, because that question is -- it
8 has no relevance to what this jury is going to be asked to do,
9 whether they could be fair and impartial jurors. So, I asked
10 you several times at the bench to please try and narrow your
11 question to get more at what you were trying to discover,
12 rather than just have people express what they believe they
13 knew, because that was the question.

14 It was because it was so broad, virtually every
15 single person in the courtroom on the venire raised their
16 hand, positive response to that. And so, to have them all
17 tell us about what they heard or read in the newspaper about
18 the case doesn't serve the purpose of finding out if these
19 people are qualified to sit as jurors in this case. It's not
20 a burn case; it's a slip and fall case.

21 It's -- there's -- and you'd already asked -- we'd
22 already asked them about whether they had -- they believed in
23 -- you know, that people had -- were filing frivolous
24 lawsuits, so it was cumulative in that regard. So, I could
25 not figure out any need for that question when we're trying to

1 get a jury selected in a time that's going to allow you, in
2 fact, to attend your short trial. Okay. Was there anything
3 else you wanted to say on that?

4 MR. SEMENZA: No, not really, Your Honor. I -- my
5 issue with the question was how broad it was, and how generic
6 it was. And given the time constraints that we have to pick
7 this jury, get this case moving, I thought that there were
8 other ways that Ms. Morris could elicit the information that I
9 think she wanted to, and I think she had already done that in
10 asking about frivolous lawsuits and those sorts of things.
11 That's the only thing I'd like to put on the record.

12 MS. MORRIS: Yes, and I'll just -- Mr. Semenza
13 stated that when we were up at the -- at the bench, and I just
14 expressed that I found that it would be a question that I
15 would like to hear the responses to, and I would find value in
16 the response to that question.

17 THE COURT: Okay. All right, and so the record's
18 made. Anything else before we recess for the evening?

19 MR. SEMENZA: No, Your Honor. We'll see you
20 tomorrow.

21 THE COURT: All right, see you tomorrow.

22 MR. SEMENZA: Thank you.

23 MR. KIRCHER: Thank you.

24 (Court recessed at 5:05 p.m. until Thursday,
25 November 5, 2015, at 11:05 a.m.)

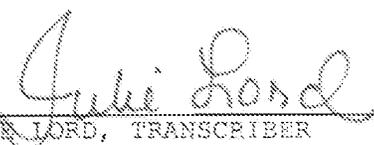
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