

In the Supreme Court of Nevada

Case Nos. 58504, 59208 and 59423

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Tracie K. Lindeman
Clerk of Supreme Court

JENNY RISH,

Appellant,

vs.

WILLIAM JAY SIMAO, individually, and
CHERYL ANN SIMAO, individually and as
husband and wife,

Respondents.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable JESSIE WALSH, District Judge
District Court Case No. A539455

**APPELLANT'S APPENDIX
VOLUME 5
PAGES 936-1186**

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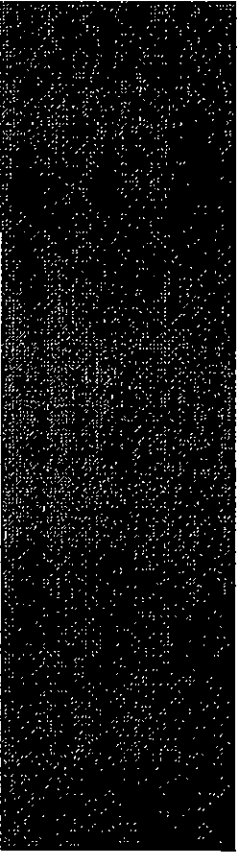
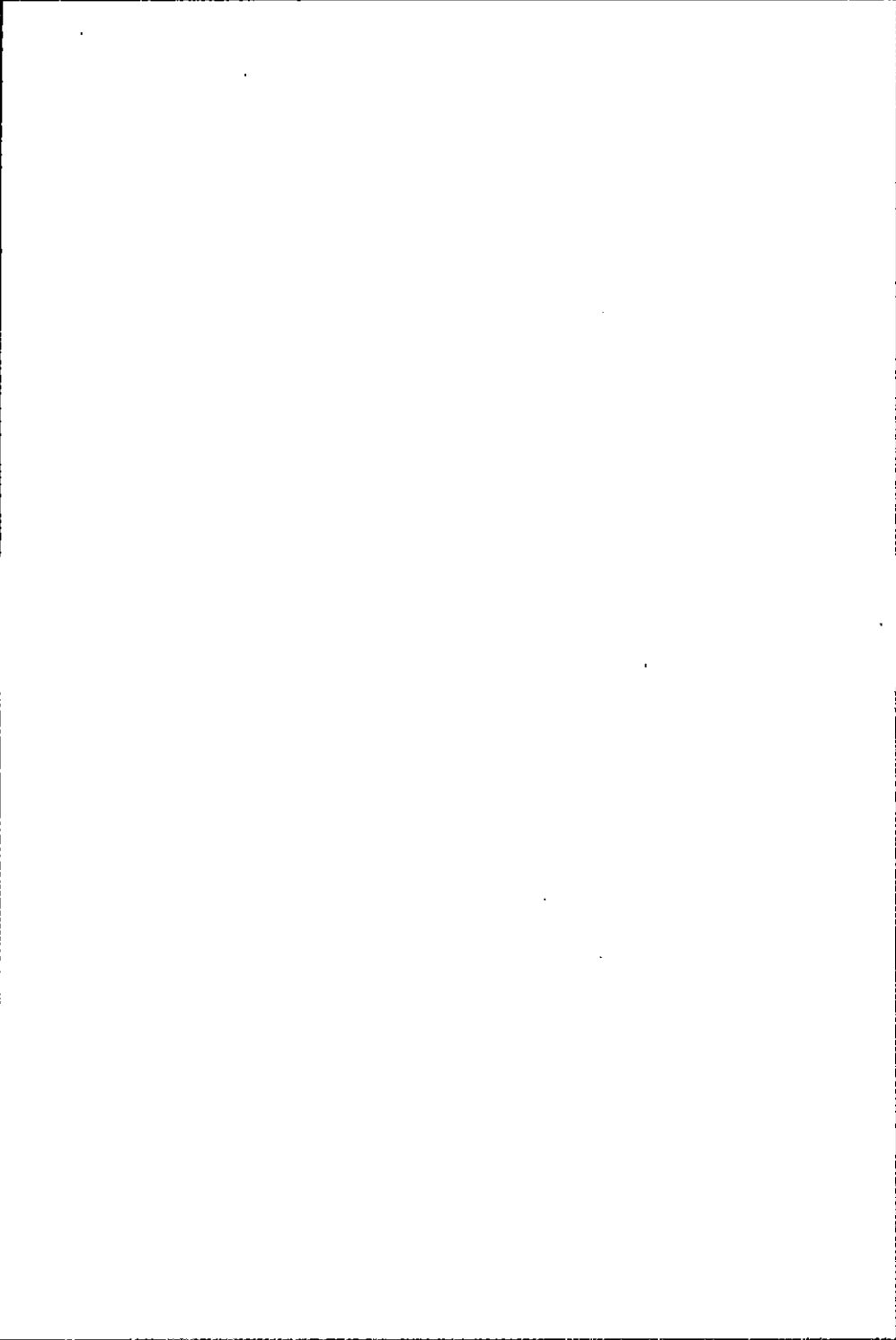
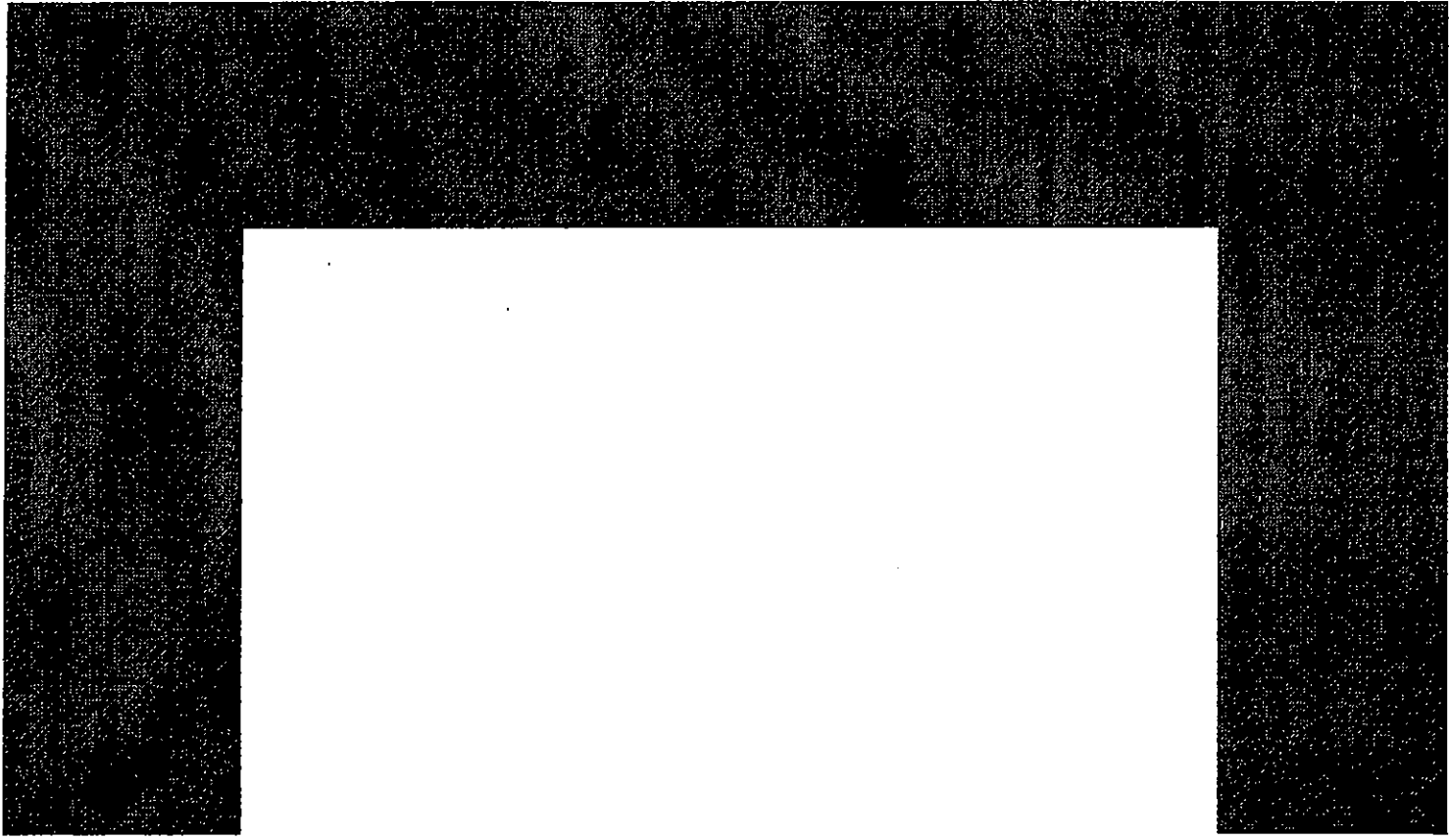
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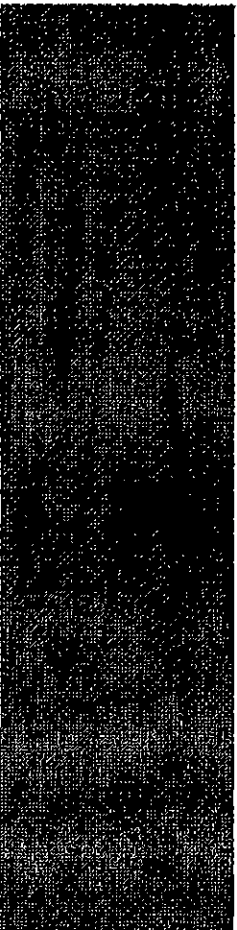
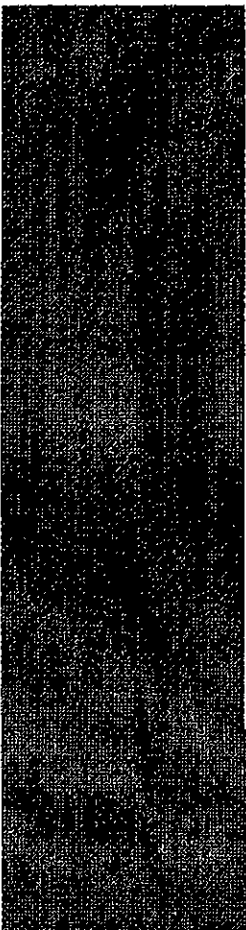


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DISTRICT COURT
CLARK COUNTY, NEVADA

Alvin D. Sullivan
CLERK OF THE COURT

CHERYL A. SIMAO and)
WILLIAM J. SIMAO,)
)
Plaintiffs,)
)
v.)
)
JAMES RISH, LINDA RISH)
and JENNY RISH,)
)
Defendants.)

CASE NO. A-539455
DEPT. X

BEFORE THE HONORABLE JESSIE WALSH, DISTRICT COURT JUDGE

WEDNESDAY, MARCH 16, 2011

REPORTER'S TRANSCRIPT
JURY PANEL VOIR DIRE

APPEARANCES:

For the Plaintiffs:	DAVID T. WALL, ESQ. ROBERT M. ADAMS, ESQ. ROBERT T. EGLET, ESQ. Mainor Eglet
For the Defendants James and Linda Rish:	BRYAN W. LEWIS, ESQ. Lewis and Associates, LLC
For the Defendant Jenny Rish:	STEVEN M. ROGERS, ESQ. CHARLES A. MICHALEK, ESQ. Hutchison & Steffen, LLC

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1 WEDNESDAY, MARCH 16, 2011 AT 1:00 P.M.

2 [Outside the Presence of the Jury]

3 THE MARSHAL: Please come to order.

4 THE COURT: Please be seated.

5 Okay. Outside the presence of the jury, I
6 understand for some reason or other.

7 MR. EGLET: Yeah. Your Honor, we -- Mr. Rogers and I
8 just wanted to bring to the Court's attention some changes in
9 the scheduling issue. The witness that Mr. Rogers had to put
10 on on Monday has had a stroke of his father-in-law, brother?

11 MR. ROGERS: I think it's his biological father --

12 MR. EGLET: His father.

13 MR. ROGERS: -- is what I heard.

14 MR. EGLET: And so he's --

15 THE COURT: Oh, no, I'm sorry to hear that.

16 MR. EGLET: -- not going to be available on Monday.
17 We're going to -- they're going to move him farther back in
18 the trial. What that does, however, is we -- we had scheduled
19 the afternoon for that witness, and so now we don't have a
20 witness scheduled for Monday. But we had that problem with
21 our expert on Friday, that we were going to move up to 12 and
22 try to get him out of here by 3:45. And instead of trying to
23 make sure within those time constraints, we're going to move
24 him to Monday.

25 That is going to be our first medical witness, and

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1 the way that jury selection is going, I -- we're not going to
2 finish today with jury selection. So we wanted to request
3 that although we don't think we're going to take the whole
4 afternoon tomorrow, if we could start openings on Friday
5 afternoon? We can just go ahead and start at 1:00. We don't
6 have to start at 12 now on Friday.

7 THE COURT: Will you finish or --

8 MR. EGLET: Well, we're still going to finish the trial
9 during the period of time, Your Honor. It's just -- we're
10 just moving this -- we're not going to get to openings
11 tomorrow; and if we did, we'd end up having openings split,
12 one on one day and one on Friday, which I don't think anybody
13 wants to do. So we'd rather just do them on -- start them on
14 Friday.

15 THE COURT: How long do you anticipate your opening
16 statement will take?

17 MR. EGLET: Mr. Wall will be giving the opening
18 statement, but I anticipate it's probably about an hour-and-a-
19 half --

20 MR. WALL: Right.

21 MR. EGLET: -- maybe two hours.

22 MR. WALL: An hour-and-a-half to two hours about right.

23 THE COURT: What about you, Mr. Rogers?

24 MR. ROGERS: Same ballpark, Your Honor.

25 MR. EGLET: So that's all -- that's all day on Friday, or

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1 all afternoon on Friday.

2 THE COURT: Okay.

3 MR. EGLET: Thank you, Your Honor.

4 THE COURT: Is that it?

5 MR. EGLET: That's it, Your Honor.

6 MR. ROGERS: Well, there -- there was a matter, and to be
7 fair to Mr. Eglet, he said he's not going to stipulate to it,
8 but yesterday we began the day by discussing hardship with
9 some jurors. And there were a couple who I saw who we didn't
10 discuss, who did write hardships on their questionnaire. I'll
11 give you just a quick capsule summary of what they wrote, and
12 then let you decide whether you think it's worth bringing them
13 individually like we did yesterday.

14 One is Ms. Frye who wrote in her questionnaire that
15 she has to pick her child up from school every day.

16 Another is Ms. Mansful who wrote that she lives
17 alone and supports herself and can't take that much time off
18 work.

19 And the last one was Mr. Bombino who wrote something
20 about testing that's coming up for his high school students.
21 I'm not clear on how that might help -- how jury service might
22 interfere with that.

23 But anyway, I observed those hardships and wondered
24 if we should give them a chance, too.

25 THE COURT: Okay. Well --

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1 MR. EGLET: Well, none of those people have really come
2 forward. The childcare one, she's in the box. She hasn't
3 mentioned it. You know, if Mr. Rogers wants to question her
4 about that when he gets up, I may do it myself. I just don't
5 see -- it's not like she's coming like the other childcare
6 issue, where she's approached the bailiff and said, "Look,
7 this is a real problem for me." And that's what happened
8 before.

9 It may be legitimate, but at this point I'm not
10 willing to stipulate to let her go on that. And I don't think
11 it's necessary for us to bring her in until she starts really
12 complaining about that she has to pick -- it doesn't mean she
13 doesn't have other family members and stuff.

14 Mr. Bombino is the high school teacher. He didn't
15 mention that. I've -- we've talked to him a great deal. And
16 that's a testing issue. I mean, all he's saying is "I" -- you
17 know, "I've got these tests for my students next week or a
18 week after," I don't remember which week it was. You know,
19 there's other teachers in the program who can do that. So I
20 don't think that's a hardship.

21 The other hardship, I don't remember the name,
22 but --

23 MR. ROGERS: Manful, and it was -- I don't recall
24 exactly --

25 MR. EGLET: What's the -- what's your --

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1 MR. ROGERS: -- but she lives alone, and --

2 MR. EGLET: What seat is she in?

3 Okay. So --

4 THE COURT: She's seat number 20.

5 MR. EGLET: And, again, she has not indicated that -- you
6 know, she hasn't complained much, and I can cover that with
7 her, but she hasn't indicated that -- you know, that she's not
8 being paid by her employer, so. And she didn't indicate it,
9 you know, that she's going to lose her house or anything like
10 that, and -- like several other people did when we were
11 questioning. And we're -- you know, quite frankly, we're
12 running low on jurors.

13 So I just don't see at this point it's appropriate
14 to bring them back in.

15 THE COURT: I have a couple questions. The first is on
16 Frye: How old is the child?

17 MR. ROGERS: We -- we don't have any idea. And we didn't
18 know about the other jurors either until we brought them in
19 individually. We just know that's what she wrote in her
20 questionnaire, that that was her hardship.

21 THE COURT: And on Manful, what kind of work does she
22 does?

23 MS. EGLET: She works --

24 MR. WALL: She's an assembler at --

25 MS. EGLET: -- laborer. Assembler.

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1 MR. WALL: -- I think a logistics plant.

2 MR. EGLET: Yeah. This is -- this is the lady, small
3 lady, older lady sitting here.

4 THE COURT: Oh, uh-huh.

5 MR. EGLET: Very pleasant, and she talks about how she
6 assembles things in this plant. And we had a lot of
7 conversation with her, and she's made no indication here that
8 she doesn't want to serve or can't serve. So I just think,
9 until she brings that up, there's no reason to bring that up.

10 THE COURT: Well, I think we can bring Frye in and
11 examine her separately apart from the others. I don't see any
12 reason to bring Manful in at this point, nor --

13 MR. EGLET: Well, Your Honor, and --

14 THE COURT: -- nor Bombino. And the reason for that is
15 because Bombino is a teacher employed by the school district.
16 He may have testing issues, but a school district is going to
17 have to send someone else in to address the testing issues.

18 MR. ROGERS: All right.

19 THE COURT: You know, frankly, it's kind of -- it's kind
20 of handy to get a county employee who's going to get paid no
21 matter what.

22 MR. EGLET: Your Honor, on Ms. Frye, I just want to point
23 -- in her -- in her questionnaire she didn't indicate, "I have
24 no one else" -- like the other people did that we let go, "I
25 have no one else to pick my child up and bring him to school,"

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1 or anything like that. All she said was, this is a quote, "I
2 have a child at home that I bring and pickup from school every
3 day." She's not saying she doesn't have other people who
4 could pick it up, and I -- I just hate to bring her in on that
5 one issue, and then encourage her that there's a way to get
6 out of jury duty when we've got -- we're starting to get real
7 limited on the people we've got left outside this panel.
8 We're down to 38 people, total.

9 THE COURT: Uh-huh.

10 MR. EGLET: I just -- I think it's -- you know, all we're
11 going to do is give her a chance to really bring that up, "Oh,
12 here's my excuse to get out," which she hasn't thought of
13 that, and it's -- in her questionnaire she didn't say, like
14 the other people did, that, "There's no one else to pickup my
15 child." Obviously somebody's picked up her child the last two
16 days, and is going to pick up her child today. So I just think
17 that's a -- I don't think it's a good idea at this point.

18 MR. ROGERS: I don't under --

19 MR. EGLET: All the other people has had specific things
20 in there that they were the only person, and they came to the
21 bailiff outside the presence and said, "Look, I've got this
22 issue." And she hasn't done that. We only did it with the
23 financial people before.

24 THE COURT: Mr. Rogers?

25 MR. ROGERS: Right. I think Your Honor acknowledged that

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1 hardships with children are at least equal to financial
2 hardships, and there's nothing to be concerned about. She may
3 well say, "Yeah, everything's fine. I've got it covered."
4 And then there's -- there's no harm in this. But we should at
5 least give her the opportunity to tell us whether she has a
6 hardship because of this.

7 MR. EGLET: And she has that opportunity, Your Honor.
8 She didn't -- she didn't say there was no one else that could
9 pick up the child or she had no other family member. She just
10 said, "I pick the child up."

11 Well, somebody's been doing that. She hasn't gone
12 to the bailiff and complained about it. And every other
13 person we brought in on the childcare issue, it was a
14 situation where they had specifically gone to the bailiff and
15 -- and expressed concerns and other points about it. We're
16 just going to give her the opportunity to say, "Oh, yeah,
17 here's my chance to get out of jury duty," when we're running
18 low on people now.

19 I mean, I understand childcare can be a hardship.
20 But when it's a really significant hardship, my experience is,
21 they do come forward. They raise their hand. They say
22 something. They bring it up when we're questioning them.
23 They go to the bailiff. That hasn't happened with this woman.
24 Why encourage her to get -- to try to get off this jury.

25 If it becomes a hardship, then, you know, let her

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1 bring it up. But we're in day 3 now, and it hasn't been an
2 issue. She hasn't mentioned it.

3 THE COURT: Any final thoughts?

4 MR. ROGERS: Yeah, that's -- that's not really a fair
5 accounting of what's happened. When we brought these other
6 jurors in, that's when they really came clean. There's nobody
7 here who will influence her one way or the other. In fact, it
8 might be best if Your Honor asks her the questions, and that
9 way you'll be certain that there's no directing and no one
10 trying to influence her answers. She can just answer
11 honestly, and it will take a moment, and we'll be done.

12 MR. EGLET: It's not a matter of influencing her. I
13 didn't use the word "influence." I said, giving her the idea
14 that this is how she gets out of jury duty. She has stood out
15 there and watched every, single -- except for one, virtually
16 every person who's come in here individually get excused.

17 We bring her in individually to get excused, and as
18 the Court asks her about that one issue, and then, oh, the
19 light bulb, poof, goes off, "Here's how I get out of jury
20 duty. And it has not been an issue to date. Why are we going
21 to encourage that? There's no reason for that.

22 THE COURT: I don't know -- I don't know that it's going
23 to be an issue, but I say we bring her in and examine her.
24 The Court will examine her briefly.

25 Is Ms. Frye outside?

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1 Is that the only issue?

2 MR. ROGERS: Yes, I believe so, Your Honor.

3 MS. EGLET: Yes, Your Honor.

4 [Prospective Juror Frye Enters Courtroom]

5 THE COURT: Good afternoon, Ms. Frye.

6 PROSPECTIVE JUROR NO. 1050: Hi.

7 THE COURT: The reason we called you in apart from the
8 others is because I wanted to ask you a question about the
9 child that you had indicated in your questionnaire that you
10 take to and from school.

11 PROSPECTIVE JUROR NO. 1050: Yes.

12 THE COURT: How old is that child?

13 PROSPECTIVE JUROR NO. 1050: He's 14.

14 THE COURT: And someone else has made the arrangements to
15 take him to and from school the last couple of days?

16 PROSPECTIVE JUROR NO. 1050: Yes.

17 THE COURT: And will that be the case for the rest of the
18 trial assuming you're selected as a juror?

19 PROSPECTIVE JUROR NO. 1050: Yes.

20 THE COURT: So that's not an issue for the Court to be
21 concerned about?

22 PROSPECTIVE JUROR NO. 1050: No, not really.

23 THE COURT: Okay. Thank you, ma'am. Appreciate your
24 time.

25 PROSPECTIVE JUROR NO. 1050: Okay.

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1 [Prospective Juror Frye Exits Courtroom]

2 THE COURT: I guess we're ready for the whole panel then.

3 MR. EGLET: Just a disclosure, the juror on the way out
4 said to me, "Yes, we do know Scott Clemmons."

5 MS. EGLET: Scott -- Jeff Clemmons?

6 MR. EGLET: Although it's not -- it's not Scott Clemmons.
7 It's Jeff Clemmons. I had asked her that question yesterday
8 of jurors -- juror voir dire, and as she was walking by she
9 said, "Yes, we do know Scott Clemens," just so that's full
10 disclosure, she said that.

11 THE COURT: Tell me who Scott Clemens is.

12 MR. EGLET: No, Scott Clemens, I don't know who Scott
13 Clemens is. Jeff Clemens is who replaced her husband at the
14 Hartford in the position -- her husband was at the Hartford
15 Insurance Company, and her and her husband just started a new
16 business within the last -- last six months selling life
17 insurance and financial packages. He was the head of The
18 Hartford, she said, for the state of Nevada. He left that
19 position, and The Hartford replaced him by a gentleman -- with
20 a gentleman by the name of Jeff Clemens. Jeff Clemens was the
21 head of -- of Northwestern Mutual, the same type of company
22 doing the same type of work.

23 THE COURT: Okay. I guess counsel can explore that if
24 you wish.

25 MR. EGLET: Thank you.

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1 THE COURT: Sure.

2 THE MARSHAL: Good to go?

3 THE COURT: I think so.

4 [Within the Presence of the Prospective Jury]

5 THE MARSHAL: Please remain in order; remain seated; the
6 former tenants back in session; the Honorable Jessie Walsh
7 Judge, presiding.

8 THE COURT: Good afternoon, ladies and gentlemen.

9 PROSPECTIVE JURY/COLLECTIVELY: Good afternoon.

10 THE COURT: Verbal response is a great start.

11 Ready to resume, Mr. Eglet?

12 MR. EGLET: Yes, Your Honor. Thank you.

13 Good afternoon.

14 PROSPECTIVE JURY PANEL: Good afternoon.

15 MR. EGLET: When we left off yesterday we were having a
16 discussion about the general lawsuit reform, you know,
17 verdicts being too high, frivolous lawsuits, jackpot justice,
18 that -- that subject of whether lawsuits were driving up
19 insurance rates, or business -- businesses goods, things of
20 that nature. We were also talking about whether there should
21 be caps on damages, and we were also talking about the issue
22 of 4 or 5 million dollar -- dollar verdicts.

23 And so I want to kind of pick up on that subject
24 that we were on with you, and I want to start, actually, Mr.
25 Harrison, with you on this subject. And I want to know what

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1 your feelings are on this, because in your jury questionnaire
2 you stated that -- that -- you were asked the question, "Do
3 you have any beliefs that would prevent you from returning a
4 multimillion dollar verdict if it was justified by the
5 evidence?"

6 And you said, yes, that you would. And you also
7 indicated that you felt that 80 percent of the cases of this
8 nature that are brought are frivolous, and only 10 percent of
9 the defenses that are presented in this case are frivolous.
10 Do you remember that?

11 PROSPECTIVE JUROR NO. 912: Yeah, a little bit about it.

12 MR. EGLET: Can you tell me -- tell us, you know, why it
13 is you feel that way, what -- tell me more about that, why you
14 responded that way in the questionnaire.

15 PROSPECTIVE JUROR NO. 912: Well, I don't know. Because,
16 you know, like the way like TV per se -- or perceives the
17 jury, that's why I went that way, I guess. I don't --

18 MR. EGLET: Tell me more about that. What do you mean by
19 the way TV perceives the jury?

20 PROSPECTIVE JUROR NO. 912: Well, like they're out to
21 like get money. It seems like most, I don't know, Plaintiffs
22 or whatever, they're out to get money. And, you know, I don't
23 really -- I kind of put a -- when I see the Plaintiff, I kind
24 of put them behind the -- the -- put them behind because --

25 MR. EGLET: Behind the Defendant?

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1 PROSPECTIVE JUROR NO. 912: Yeah, because --

2 MR. EGLET: Okay.

3 PROSPECTIVE JUROR NO. 912: -- they have to prove what
4 the --

5 MR. EGLET: So --

6 PROSPECTIVE JUROR NO. 912: -- what they're trying to
7 get.

8 MR. EGLET: All right. So by what you're telling me, I
9 want to just make sure I'm clear, Mr. Harrison, is it a fair
10 statement to say that with the way you feel and your
11 perception of these -- and we appreciate your honesty by the
12 way. We appreciate your honesty on your questionnaire, and we
13 appreciate your being honest with us here because that's the
14 only way we can find this information out.

15 When you say the Plaintiff is behind, let me make
16 sure I understand this, I think what you're telling me is that
17 before the case even starts, before there's any evidence
18 presented, and there's been no evidence in this case, and
19 there won't be any evidence presented until after the opening
20 statements, okay, before any of that happens, because of your
21 perceptions of what you've heard of the media or on the news
22 or an TV shows, that from your standpoint that if this is the
23 start line of the case right here, and this is the Plaintiff
24 and this is the Defendant, that the Defendant's going to be
25 ahead and the Plaintiff's going -- is going to be behind with

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1 you before the case even starts; is that a fair statement?

2 PROSPECTIVE JUROR NO. 912: Well, it depends on the case,
3 also. But --

4 MR. EGLET: Well, this is a personal injury case, right?

5 PROSPECTIVE JUROR NO. 912: Yeah.

6 MR. EGLET: And this is the type of cases you were
7 talking about?

8 PROSPECTIVE JUROR NO. 912: Like -- like what you were
9 saying, like a multimillion dollar case, I would -- I would
10 put them behind.

11 MR. EGLET: Okay. So --

12 PROSPECTIVE JUROR NO. 912: Because I would like to see
13 the evidence before --

14 MR. EGLET: Right.

15 PROSPECTIVE JUROR NO. 912: -- you know.

16 MR. EGLET: So in a multimillion dollar case --

17 PROSPECTIVE JUROR NO. 912: Yeah.

18 MR. EGLET: -- if the Plaintiff is going to be asking for
19 that kind of money, then in your mind the Plaintiff is going
20 to be behind, they're not going to start at the line as the
21 Defendant; is that a fair statement?

22 PROSPECTIVE JUROR NO. 912: Yeah.

23 MR. EGLET: Okay. We appreciate that. And it's
24 understandable that you feel that way. I'm not criticizing
25 you in any way. There's a lot of people who feel that way,

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1 and it's okay.

2 Is it a fair -- is it fair to say -- is it fair to
3 say that if you were sitting in the position of Mr. Simao in
4 this case, that you probably wouldn't want someone sitting on
5 your jury that had the preconceptions that you do about these
6 type of cases; is that a fair statement?

7 PROSPECTIVE JUROR NO. 912: Yeah.

8 MR. EGLET: Okay. Thank you.

9 Okay. Ms. Schmidt, and I talked to you a little bit
10 yesterday.

11 PROSPECTIVE JUROR NO. 844: A little.

12 MR. EGLET: Just a little, right? I'm not really trying
13 to pick on you.

14 PROSPECTIVE JUROR NO. 844: Okay.

15 MR. EGLET: But I do find the things you say are
16 interesting and stimulating. And in your jury questionnaire
17 you actually said that -- there was three questions regarding
18 this. You said that -- you said that, number 1, that, "Do you
19 have any beliefs that would prevent you from returning a
20 multimillion dollar verdict even -- even if it was justified
21 by the evidence?"

22 And you said, "Yes."

23 PROSPECTIVE JUROR NO. 844: Uh-huh.

24 MR. EGLET: You would.

25 You -- also, in response to the next question, you

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1 said, "Do you have any beliefs that would prevent you from
2 returning a multimillion dollar verdict for pain and suffering
3 even if it was justified by the evidence?"

4 And you said yes, and you explained that yesterday.
5 We went through that part of it. You, however, said that --
6 it was in response to question, "Do you have any beliefs that
7 would make it difficult for you to hold the Plaintiff" --
8 strike that. That's not the question I'm looking for. Excuse
9 me.

10 This is the question: "Do you have any beliefs that
11 would make it difficult for you to return a verdict in favor
12 of the Defendant if the Plaintiff's injuries were caused by
13 something other than the Defendant's conduct even though you
14 may feel sympathy for the Plaintiff?"

15 You said you would have no problem with that, right?

16 PROSPECTIVE JUROR NO. 844: Yeah, I think.

17 MR. EGLET: Okay. And then you said, "Do you have any
18 problems that would make it difficult for you to" -- let me
19 get to the right question here. "Do you have any beliefs that
20 would prompt you to" -- I keep reading the wrong question. I
21 apologize.

22 Here it is. "Do you believe there should be limits
23 placed on how much money a jury should be allowed to
24 compensate a person for pain and suffering?"

25 And you put yes, and we talked about that yesterday.

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1 You answered these questions truthfully in your questionnaire,
2 right?

3 PROSPECTIVE JUROR NO. 844: Yes, sir.

4 MR. EGLET: Okay. And that's the way you feel, right?

5 PROSPECTIVE JUROR NO. 844: Yes, sir.

6 MR. EGLET: Okay. And it's a fair statement, you would
7 agree with me, that if you were in the shoes of Mr. Simao or
8 any Plaintiff in a case like his, with your predisposition and
9 the way you feel about these things, that you probably
10 wouldn't want something like -- somebody like yourself sitting
11 on your jury, would you?

12 PROSPECTIVE JUROR NO. 844: No, I wouldn't.

13 MR. EGLET: Okay. And it's a fair statement that because
14 of the way you feel, just like Mr. Harrison told us, that the
15 start line before this case even begins, the Defendants are
16 going to be ahead of the Plaintiff, right?

17 PROSPECTIVE JUROR NO. 844: Yes, sir.

18 MR. EGLET: Thank you.

19 Okay. Now I said, you'll recall, when I got to these
20 three subjects of lawsuit reform, damages' caps, and
21 multimillion dollar verdicts, that I wanted to discuss this
22 issue with all of you, that we're going to take this as
23 [indiscernible] time. And so I know I've discussed it with
24 maybe -- well, maybe less than half of you -- about half of
25 you yesterday. So I want to go ahead and continue that

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1 discussion on this issue.

2 And I'd like to start with you, Mr. Buenting. I
3 haven't talked to you in a while. And I'd like to know, how
4 do you feel about this whole issue of, you know, lawsuit
5 reform, whether verdicts are out of control, things of that
6 nature?

7 PROSPECTIVE JUROR NO. 880: What I was hearing yesterday,
8 there's two things that came to mind when I was driving home:
9 One was context. The incident has to be put into context.
10 The other is common sense. And I just think that a lot of
11 times it takes a motion of common sense looking at the context
12 to make the result.

13 I think with the verdict that you were talking
14 about, multimillion dollars, just like you're doing now, I'm
15 sure that you'll somehow produce some kind of range or some
16 kind of matrix, guidelines for the jury to -- once you prove
17 or the Defendants prove, this is the results. From that
18 result there is a guideline of what could be -- you know, what
19 should be paid out because there's been enough cases to have
20 those kinds of tendencies.

21 And the reason we're here, I think, is somewhere
22 along the line, common sense was broke down, and that's why
23 we're here.

24 MR. EGLET: All right. So do you believe that the jury's
25 in the best position to make that decision based on each

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1 individual case?

2 PROSPECTIVE JUROR NO. 880: Once it gets to this point.
3 I don't know, I thought there was an option of either a judge
4 or a jury at this point.

5 MR. EGLET: Well, we're at the option where it's a jury.
6 You're right. But -- and the parties decided in this case it
7 should be a jury trial. So it's going to be a jury that makes
8 that decision. And, you're right, some cases it's the judge
9 if nobody asks for a jury. In this case, a jury has been
10 requested so it will be the decision of the jury.

11 And in those type of circumstances, I guess, my
12 question is, do you agree that it's the -- the jury's in the
13 best position after hearing the evidence in the case to make
14 that decision?

15 PROSPECTIVE JUROR NO. 880: I think the jury's brought in
16 to bring common sense back into whatever the dispute is.

17 MR. EGLET: Okay. All right. Great. Thank you very,
18 very much.

19 Ms. Nolte -- pardon me. I did talk to you about
20 this yesterday.

21 Ms. Colmines -- well, Ms. Nolte, according to my
22 list, we didn't go into this -- excuse me. We didn't go into
23 this --

24 UNIDENTIFIED PROSPECTIVE JUROR: Guys, give me -- can you
25 just give me a minute?

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1 MR. EGLET: Do you have something to say? If you want to
2 say something, just say something, okay? Did you have
3 something to add to this subject we're talking about?

4 UNIDENTIFIED PROSPECTIVE JUROR: I won't be able to -- I
5 won't be able to answer the right way.

6 MR. EGLET: You would what?

7 UNIDENTIFIED PROSPECTIVE JUROR: I won't be able to use
8 the right words to answer it, anything you're asking.

9 MR. EGLET: You won't be able to get us the right words?

10 UNIDENTIFIED PROSPECTIVE JUROR: Yes.

11 MR. EGLET: Okay. You're -- I think what you're telling
12 us is, you're -- are you having a little bit of a language
13 barrier?

14 UNIDENTIFIED PROSPECTIVE JUROR: Yes.

15 MR. EGLET: Okay. And I understand. I -- so far I've
16 been able -- I think we've been able to understand you a
17 little bit. I know Mr. Rogers had to help us with the Spanish
18 there a little bit on one word. But have you been able to
19 understand all the questions that I've asked? Yes, you have,
20 right?

21 UNIDENTIFIED PROSPECTIVE JUROR: Yes.

22 MR. EGLET: Okay.

23 UNIDENTIFIED PROSPECTIVE JUROR: I mean, I understand
24 what happened, but I don't feel that I can answer the -- you
25 know, get the right words to answer your question.

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1 MR. EGLET: Okay. How long have you been in the United
2 States?

3 UNIDENTIFIED PROSPECTIVE JUROR: A lot of years.

4 MR. EGLET: Okay.

5 UNIDENTIFIED PROSPECTIVE JUROR: I won't be able to go to
6 school.

7 MR. EGLET: But you have been -- you've been here for a
8 lot of years, and even though English is your second language,
9 you've been able to make your way through, and you get by, and
10 communicate with people who don't speak Spanish, right?

11 UNIDENTIFIED PROSPECTIVE JUROR: Yes.

12 MR. EGLET: Just like you and I are communicating right
13 now?

14 UNIDENTIFIED PROSPECTIVE JUROR: Yes.

15 MR. EGLET: Okay. I don't think -- I think that's okay.
16 I think that -- I think that you'll be fine, and I've been
17 able to understand you so far, and I think your fellow jurors
18 will be able to understand you once you get -- got back into
19 the deliberation room. You might have to repeat yourself a
20 couple times, but I think they'll understand how you feel,
21 okay? I'm comfortable with it. Are you okay?

22 UNIDENTIFIED PROSPECTIVE JUROR: If you mention it.

23 MR. EGLET: Okay. Okay.

24 Okay. Ms. Nolte, getting back to you. What is your
25 -- how do you feel about this subject?

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1 PROSPECTIVE JUROR NO. 903: Well, I pretty much feel the
2 same way as the last person that spoke about it. It's just
3 pretty much like common sense like he said, and listening to
4 all the evidence that was brought forward, and see what --
5 what the damages are, what his injuries are, and weigh it out.

6 MR. EGLET: And so you're -- you don't have any
7 preconceptions about, you know, that, like Mr. Harrison did,
8 that 90 percent of personal injury cases are frivolous?

9 PROSPECTIVE JUROR NO. 903: Well, there may be some out
10 there. And I think like we were all saying that yesterday,
11 that the media brings out the frivolous ones. We don't hear
12 of the legitimate ones that much --

13 MR. EGLET: Right.

14 PROSPECTIVE JUROR NO. 903: -- in the news. We hear more
15 of the frivolous ones. So we all have a preconceived notion
16 that a lot of them are -- a lot of people are lawsuit happy --

17 MR. EGLET: Sure.

18 PROSPECTIVE JUROR NO. 903: -- because we hear of those
19 in the news. We don't hear about the ones that are actually,
20 you know, valid.

21 MR. EGLET: Okay.

22 Mr. Doty [sic] --

23 PROSPECTIVE JUROR NO. 905: Say that again.

24 MR. EGLET: Mr. Doty, I'm going to butcher your name as
25 much as I can, I guess, over these days. I apologize.

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1 Mr. Doty, I know we talked a lot yesterday. I
2 wanted to follow up on something with you. Because in your
3 jury questionnaire you stated that you believe that 75 percent
4 of these type of lawsuits were frivolous, and that only five
5 percent of the defenses that were brought in these type of
6 lawsuits were frivolous.

7 And then you also stated -- and we talked about this
8 yesterday, but you also stated in your -- in your jury
9 questionnaire that you think there should be caps on pain and
10 suffering damages.

11 PROSPECTIVE JUROR NO. 905: Right.

12 MR. EGLET: Okay. My question is, why do you think that
13 75 percent of these type of cases are frivolous and only five
14 percent of the defenses brought are frivolous?

15 PROSPECTIVE JUROR NO. 905: Well, I know why I think
16 that, like 75 percent are frivolously, is -- is because of the
17 nature of the media. I also recognize the fact that the media
18 feeds on that stuff. So, you know, I think it would be fair
19 with me, even though I think that way or thought that way,
20 maybe I've changed a little bit since then, you know, since
21 the discussion. But that still is -- I wouldn't deny that
22 that's what I felt when I filled out the questionnaire.

23 But in that light, I still believe that more or
24 frivolous, still. But it wouldn't skew my perception because
25 I still don't know either one of them from Adam. So in my

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1 mind, even though you kind of tend to think that way, it would
2 still be okay. Being a competitor, too, though, I've been a
3 sportsman most of my life, you know, the starting line be the
4 best man win. And that's really -- I mean, I guess maybe it's
5 me putting in -- what's the word I'm looking for -- maybe a
6 unjust -- bad lie -- not a bad lie, but maybe people might
7 think I'm being too jovial about it, in a competition sense.

8 But if you put all things aside, it's exactly what
9 it is. You know, the evidence is to come forth, this, that,
10 and you're trying to win something. And so they're both, here
11 we go, let's go. And whoever has the best evidence, the best
12 case, is going to -- is going to win.

13 And that's what I think the jury has to -- has to be
14 like, is, put everything else aside, even maybe some
15 preconceived notions that you may have had, kind of -- if you
16 can, it would make a perfect juror, I guess, if you can --
17 could kind of tuck everything away and wipe it clean, and
18 then, okay, you know, here we go. I'll be referee, shoot the
19 gone, and start sprinting.

20 MR. EGLET: Well, as I said, you know, on Monday, you
21 know, none of us come here with an empty head --

22 PROSPECTIVE JUROR NO. 905: Right.

23 MR. EGLET: -- and no life experiences. So we all have
24 views and biases and feelings about certain subjects, and
25 nobody expects anybody not too. So it's impossible for

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1 somebody to come here with a clear head and no life
2 experiences that's not going to affect their decision making.

3 But what we have to make sure is that that decision
4 -- that those life experiences or those preconceived notions
5 aren't going to, you know, favor one side over the other.
6 Because everybody here wants to get a fair and impartial jury
7 in this case before the case starts.

8 So it really brings me to this question, this is the
9 question that I want you to really think about and search your
10 soul on, and that is: If you were in Mr. Simao's position or
11 someone like him, would you feel comfortable with somebody
12 like yourself, who has these preconceptions, wrote what you
13 did on your jury questionnaire, would you feel comfortable
14 with something -- somebody like that sitting on your jury?

15 PROSPECTIVE JUROR NO. 905: Yes.

16 MR. EGLET: You would?

17 All right. Mr. Barrett --

18 PROSPECTIVE JUROR NO. 943: Yes.

19 MR. EGLET: -- I know I talked to you a little bit about
20 this yesterday. In your jury questionnaire, you also
21 indicated that you felt there should be caps on pain and
22 suffering damages; do you remember that?

23 PROSPECTIVE JUROR NO. 943: Not really at this point, but
24 I probably did.

25 MR. EGLET: Okay. All right. You probably did do that?

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1 Okay. Can you tell us why you would have done that, why you
2 would have wrote that answer?

3 PROSPECTIVE JUROR NO. 943: No. I think there are valid
4 reasons to award pain and suffering damages to Plaintiffs.
5 But I just feel it should be reasonable within the context;
6 how much can the Defendant afford; is it going to bankrupt
7 them; and also how much should they deserve based on what
8 happened.

9 MR. EGLET: All right. So you think that you should --
10 one of the things you consider -- should consider is how much
11 the Defendant can afford and whether it would bankrupt him?

12 PROSPECTIVE JUROR NO. 943: Conceivable, yes. I think --

13 MR. EGLET: Okay.

14 PROSPECTIVE JUROR NO. 943: -- you know --

15 MR. EGLET: All right. And that's one of the concerns
16 you have about what the amount of damages should be?

17 PROSPECTIVE JUROR NO. 943: Well, yeah, I would say so.

18 MR. EGLET: Okay. All right. And that -- and you're a
19 business owner, and so that's understandable.

20 PROSPECTIVE JUROR NO. 943: I mean, it also depends upon
21 their conduct; was it a pure accident or did they -- were they
22 extremely reckless.

23 MR. EGLET: Sure. Okay. And, again, that's another
24 subject. We're going to talk about this in a little more
25 detail, but I'm glad you're sharing that with us. You also

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1 think it should be based on the severity of their conduct as
2 well?

3 PROSPECTIVE JUROR NO. 943: On fault.

4 MR. EGLET: Okay. All right.

5 Ms. Hubbert, you wrote in your questionnaire that
6 you felt there should be caps on pain and suffering damages as
7 well. Can you tell us why you wrote that?

8 PROSPECTIVE JUROR NO. 1293: As I said yesterday, it
9 depends on the nature. If the person's still able to function
10 and can work, not in the -- maybe in the capacity that they
11 were in at one time, but in a different capacity and still be
12 able to provide for themselves and their family, then there
13 should be a cap --

14 MR. EGLET: All right.

15 PROSPECTIVE JUROR NO. 1293: -- set by the jury.

16 MR. EGLET: And tell us, what is it -- is there -- what
17 is it -- why do you feel that way? What -- what --

18 PROSPECTIVE JUROR NO. 1293: Well, when I was younger, I
19 was -- I was hit by a truck, and I ended up in a cast for like
20 two or three months, and they thought that I had too much
21 damage to my leg to be able to fully function. And my mom
22 didn't sue the company, the moving truck company because of
23 it. But she said, "No, my daughter's going to walk, and she's
24 going to be fully functional." And I learned that from an
25 early age, and that's just something I believe in. Because I

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1 could have easily went the other way, and not have been able
2 to use my left leg at all.

3 MR. EGLET: Okay. Mr. Martinez, this subject we've been
4 talking about, about, you know, frivolous lawsuits, caps on
5 damages, jury's who -- jury's being asked to put millions and
6 millions of dollars in the verdicts, how do you feel about
7 this issue?

8 PROSPECTIVE JUROR NO. 910: Well, I feel that a lot of
9 the times, like -- I mean, like the cases that do make news
10 are frivolous. You know, so because they're trying to get
11 some money out of it, you know, this -- that's what they're
12 trying to get across to us. But like I said, you got to kind
13 of look at both -- both -- you got to kind of look at the
14 case, you know.

15 MR. EGLET: Do you understand that in civil cases -- and
16 we talked about this a little bit yesterday. In civil cases
17 money is the only thing a jury can put in the verdict. You
18 can't put anything else in there. It's -- it's money. It's
19 -- you know, you can't -- you don't send someone to jail. You
20 don't, you know, do anything -- you know, you don't take away
21 something from them other than, you know, money. It's you put
22 money in the verdict form. That's what we're talking about.

23 So in any sort of case in the news, or any sort of
24 civil case, that's what the case is about. It's about money.
25 I mean, let's -- this case is about money. Every civil case

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1 that comes in this jurisdiction or any jurisdiction is about
2 money.

3 Does anybody have a problem with that, that this
4 case is about money?

5 I know you do, right? Ms. Schmidt, raise your hand.
6 It's okay. You got a problem with that, we know.

7 But anybody else? Does anybody have a problem that
8 this case is about money?

9 Mr. Harrison, you have a problem with that as well?

10 PROSPECTIVE JUROR NO. 912: Yeah.

11 MR. EGLET: Okay. And I understand. That's fine. As I
12 said at the beginning, you're not going to offend me. I've
13 heard it all from some of my closest friends. So, you know,
14 it's okay.

15 PROSPECTIVE JUROR NO. 912: So are you -- is this like --
16 are you trying to get the money from the -- from the person,
17 or is this from their insurance, or --

18 MR. EGLET: Okay. Well, that's a subject you're going to
19 get --

20 PROSPECTIVE JUROR NO. 912: -- times two?

21 MR. EGLET: -- instructions from the Court on the law.
22 Okay? And the Judge is going to tell you exactly what it is.

23 PROSPECTIVE JUROR NO. 912: That would -- that would, you
24 know, have to do with it, too.

25 MR. EGLET: sure. And I understand. So and that's --

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1 that's -- I understand why you have that concern. It's --
2 it's legitimate. It's legitimate to have that concern, and
3 we're going to talk about that, and the Judge is going to give
4 you some instructions on that -- on that particular issue.

5 But aside from that, does anybody have any --
6 anybody else have any problems with the fact that this case,
7 you know, is about money? In the very end, you're here,
8 they're here, everybody's here, is about money. That's the
9 only way -- only thing a jury in these type of cases can do is
10 put money in the verdict form.

11 Ms. Smith, do you have a problem with any of that?

12 PROSPECTIVE JUROR NO. 925: Personally, no, because I was
13 thinking about this yesterday also. Whatever the award is,
14 they don't get that full amount. You get some. I'm assuming
15 taxes, like aren't there taxes. They can -- they get their
16 amount for the rest of their lives, and so for me, I'm fine
17 with it. It all depends. I don't -- I'm not a -- I mean, I'm
18 not -- you know, I don't believe in the frivolous, oh, 50
19 million, you know. Of course not. But I would just --

20 MR. EGLET: Would you agree -- would you agree that --
21 you know, you just said 50 million, would you agree that there
22 are cases out there that warrant that kind of verdict?

23 PROSPECTIVE JUROR NO. 925: Absolutely.

24 MR. EGLET: There are cases out there that warrant more
25 than that --

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1 PROSPECTIVE JUROR NO. 925: Yes.

2 MR. EGLET: -- and they occur?

3 Do anybody disagree with that besides Ms. Schmidt
4 and Mr. Harrison? Besides those two, anybody disagree with
5 that? I mean, you know, well, I'm not telling you this is
6 that type of case. But I'm telling you, there are cases out
7 there, right, that -- is there anybody who disagrees with
8 that, that there's no case that could be worth that kind of
9 money, besides Ms. Schmidt and Mr. Harrison?

10 Okay. I'm not picking on you.

11 PROSPECTIVE JUROR NO. 844: Oh, no.

12 MR. EGLET: I'm just having fun. Okay?

13 All right.

14 PROSPECTIVE JUROR NO. 1347: Sir, if I could say
15 something?

16 MR. EGLET: Yes, Mr. -- Mr. Lewis.

17 PROSPECTIVE JUROR NO. 1347: I'm kind of naive about
18 this. This is the first time I came down to do my civic duty.
19 I was expecting to get on a criminal case. This kind of case
20 here was not what I was expecting or would I have signed up
21 for. You know, I'm a -- I'm a working stiff, and I've got my
22 -- like you were talking about yesterday, accountability and
23 responsibilities. And I didn't sign up to come down here to
24 go through this for the next two-and-a-half weeks or however
25 long it's going to take. So I'm a little bit disturbed by

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1 this, because I thought I would be doing a criminal case or --
2 or something.

3 I know a jury has to serve for this, but I would
4 think it should be more voluntarily than be telling me that --
5 telling me that I would have to go through this.

6 MR. EGLET: Yeah. And I understand. I appreciate that.
7 You know, I get called down for jury service every two years,
8 like clockwork, not only here but in federal court. Lawyers
9 aren't exempt from it, and it can be -- it can be a pain.

10 PROSPECTIVE JUROR NO. 1347: Yeah, but you know going in
11 what it -- what you could get in for.

12 MR. EGLET: Well --

13 PROSPECTIVE JUROR NO. 1347: I didn't realize I was going
14 to be part of this.

15 MR. EGLET: -- I do. I do. And unfortunately the way
16 the law is now, that when you're called for jury service, you
17 know, it's basically the luck of the draw, what your number
18 is, whether you end up in a civil case or a criminal case.
19 Because as we -- as we sit here right now, there are lots of
20 criminal trials going on where they're picking juries for, and
21 there are lots of other civil trials going on. So it's just a
22 luck of the draw thing. And unless the legislature were to
23 change that, that -- that jury duty on civil cases is
24 voluntary, which I think is very highly unlikely because
25 you're not going to get a whole lot of volunteers.

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1 So, you know, but I understand what you're saying.
2 I do understand what you're saying, and it is a service, and
3 we appreciate that we are imposing on your time. There's no
4 question about that. I wish I had a better answer for you,
5 but I don't. You know, and that's the system. That's the
6 system in every state, not just Nevada.

7 Okay. Let me ask you this question -- let me ask
8 the group this question, and you can raise your hand. In this
9 case -- not in this case. Excuse me. In any personal injury
10 case at the end of the trial, if you were on the jury, if you
11 thought it would take just \$500 to equal the harms and losses,
12 to balance the harms and losses that had been placed on the
13 injured party, but you knew the injured party wanted more,
14 would any of you have any trouble returning with a verdict for
15 only \$500? Would anybody here have any trouble doing that?
16 Raise your hand.

17 Okay. Let me ask you the other side of that coin.
18 If you were on a jury in a personal injury case and you
19 decided that -- you determine that after all the evidence was
20 in that in order to balance the harms and losses that was
21 caused to the injured party you would need to put in excess of
22 \$2 million in the verdict form. Would anybody here have any
23 trouble doing that, besides Ms. Schmidt and Mr. Harrison?

24 Anybody else? Ms. Hubbert?

25 PROSPECTIVE JUROR NO. 1293: A little bit.

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1 THE COURT: Okay. Tell me about that.

2 PROSPECTIVE JUROR NO. 1293: It just depends, again, like
3 it comes back to how -- if they're not -- I wouldn't have an
4 issue with it if there -- it was proven that the person --
5 there was no way they could work again in any capacity; or if
6 the person who was having to pay the money wouldn't be
7 financially ruined by it either.

8 MR. EGLET: Okay. So that's a concern of yours, too?

9 PROSPECTIVE JUROR NO. 1293: Uh-huh.

10 MR. EGLET: All right. Let's focus on the first one,
11 your first concern. You said if there was substantial -- did
12 you say substantial? I don't remember what it was.

13 PROSPECTIVE JUROR NO. 1293: No.

14 MR. EGLET: Proof?

15 PROSPECTIVE JUROR NO. 1293: I mean, there was -- if
16 there was evidence that -- any type of evidence that the
17 person who was injured could -- there -- in no way could work
18 in any type of capacity or any type of job again.

19 MR. EGLET: Okay. What if the evidence was that that
20 wasn't the case, but still the evidence was, aside from the
21 working issue, in order to balance the harms and losses -- and
22 the person could still work, but in order to balance those
23 harms and losses, that it would take more than two-and-a-half
24 million dollars?

25 PROSPECTIVE JUROR NO. 1293: And that would be

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1 substantial harms --

2 MR. EGLET: Would you feel -- substantial what?

3 PROSPECTIVE JUROR NO. 1293: Harms and losses.

4 MR. EGLET: What do you define as substantial?

5 PROSPECTIVE JUROR NO. 1293: That -- somebody mentioned
6 before, mutilation, mangled, severe mental deficiencies from
7 it, the accident, something that really limited.

8 MR. EGLET: So you -- I think, and I don't want to put
9 words in your mouth, but it sounds like to me that you really
10 do have kind of a cap in your mind of damages that you
11 wouldn't be willing to go above; is that a fair statement?

12 PROSPECTIVE JUROR NO. 1293: Yeah, it would be.

13 MR. EGLET: Okay. And with the way you feel, and the --
14 and the -- about this issue, would you agree that -- that if
15 you were in the case of Mr. Simao or any plaintiff in a case
16 like this, that you probably wouldn't feel very comfortable
17 with somebody like you sitting on their jury?

18 PROSPECTIVE JUROR NO. 1293: No, I wouldn't agree. I
19 think --

20 MR. EGLET: Why is that?

21 PROSPECTIVE JUROR NO. 1293: Because to be fair and
22 impartial, even if you do -- as we come in here, as you said,
23 everyone has preconceived notions. Everyone has life
24 experiences. Because I feel a certain way doesn't mean that I
25 wouldn't be fair. If --

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1 MR. EGLET: But -- but your certain way, ma'am -- I don't
2 mean to interrupt you.

3 PROSPECTIVE JUROR NO. 1293: No.

4 MR. EGLET: But your certain way is, you're saying to us
5 that you have a cap that you would be unwilling to go above
6 really?

7 PROSPECTIVE JUROR NO. 1293: I'd be uncomfortable. It
8 wouldn't mean that I wouldn't do it if I had to.

9 MR. EGLET: Well, okay. What do you mean if you had to?

10 PROSPECTIVE JUROR NO. 1293: If it was the -- if the
11 evidence proved that there was substantial reason that the
12 Plaintiff or whatever Plaintiff deserved it, I would have my
13 reservations. But, again, it comes down to being -- looking
14 at all the evidence fairly, not taking one side or -- over the
15 other, and deciding what would be best. If it came down that
16 it was 2 million, two-and-a-half million, 3 million, if the
17 evidence warranted it, it may not sit comfortably with me, but
18 if it was the right thing to do, then I would make the
19 decision --

20 MR. EGLET: Okay.

21 PROSPECTIVE JUROR NO. 1293: -- if needed.

22 MR. EGLET: Okay. All right.

23 Mr. Martinez, you raised your hand, sir.

24 PROSPECTIVE JUROR NO. 910: Yeah, I mean, I agree with
25 her. I think -- I mean, if it's something real severe, then I

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1 would, you know, think about it. But something that's not up
2 there, I would -- actually, I think that's too much.

3 MR. EGLET: Well, understand the hypothetical I gave you.
4 The hypothetical is that the evidence is that in order to
5 balance the harms and losses, in order to balance the harms
6 and losses that have been caused by the injured person, that's
7 the amount of money it would take. That's the hypothetical.
8 So are you saying to me that, well, okay, if -- if that's the
9 amount it takes, that's the amount it takes; or are you saying
10 you're going to have a problem with that amount of money no
11 matter what?

12 PROSPECTIVE JUROR NO. 910: Well, if like -- if that's
13 the amount it takes, then I guess I would be -- I guess I
14 would be more open to it.

15 MR. EGLET: Okay. All right.

16 Ms. Rosinski, I talked to you yesterday about the
17 whole idea of lawsuit reform. I know we've talked about that.
18 The one question I didn't ask you was caps, whether you think
19 there should be artificial caps placed on the amount of money
20 a jury is allowed to put in a verdict form by the legislature
21 or some outside entity, or do you think a jury is in a best
22 place to determine that?

23 PROSPECTIVE JUROR NO. 918: If that's just a yes and no,
24 then no.

25 MR. EGLET: No what?

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1 PROSPECTIVE JUROR NO. 918: No caps.

2 MR. EGLET: Okay. Is there something else you want to
3 say about it?

4 PROSPECTIVE JUROR NO. 918: But --

5 MR. EGLET: Sure.

6 PROSPECTIVE JUROR NO. 918: There's always a but. Yeah,
7 you have to weigh the evidence.

8 MR. EGLET: Okay. But -- but you would agree that the
9 jury is the one who should be doing that?

10 PROSPECTIVE JUROR NO. 918: Yes.

11 MR. EGLET: All right.

12 PROSPECTIVE JUROR NO. 918: Yes.

13 MR. EGLET: All right.

14 Ms. Frye, I don't think I got to you yesterday on
15 this subject of lawsuit reform, the fact that this case is
16 about money, damages cap, multimillion dollar verdicts, those
17 issues. What are your thoughts on this?

18 PROSPECTIVE JUROR NO. 1050: No, there shouldn't be a
19 cap. And as far as it being multimillion dollar, again, it's
20 the evidence. It's also the age of the person; what's the
21 medical expenses have been taken care of, I would take into
22 consideration, well, how young is this person; how many years
23 left do they have to live, to wake up every, single day in
24 pain when they didn't have to before; yes, they might be able
25 to continue doing everything they did before, but do they do

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1 it comfortably; are they -- you know, how are they living.

2 MR. EGLET: What's the quality of their life?

3 PROSPECTIVE JUROR NO. 1050: Exactly, that's the --

4 MR. EGLET: All right. Thank you.

5 Ms. Prince --

6 PROSPECTIVE JUROR NO. 928: Yes.

7 MR. EGLET: -- what are your thoughts on this subject we
8 have been discussing?

9 PROSPECTIVE JUROR NO. 928: Well, yesterday I said that I
10 didn't believe in the caps or frivolous lawsuits. But each
11 case is individual, just as each person is individual. And
12 until the facts are stated, I'll withhold the judgment.

13 MR. EGLET: All right.

14 Ms. Kunkel, how do you feel about this subject we've
15 been talking about?

16 PROSPECTIVE JUROR 1051: The same as what she said. I
17 think it's case-by-case. You can't make a judgment until you
18 hear the facts and evidence of the case.

19 MR. EGLET: Ms. Bell, how do you feel about this?

20 PROSPECTIVE JUROR 953: That it's a case-by-case, sir.

21 MR. EGLET: Okay. You don't have to call me sir. I
22 can't tell you how uncomfortable that makes -- I called him,
23 sir, but he carries a gun and one of those taser things which
24 really terrify me.

25 PROSPECTIVE JUROR 953: It's my upbringing, sorry.

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1 MR. EGLET: It's okay. You don't have to call me sir.

2 Okay. Ms. Meza, what's your feeling on this issue?

3 PROSPECTIVE JUROR NO. 983: Case-by-case. No cap.

4 MR. EGLET: Okay. All right. How do you feel about --
5 you followed the news about what happened in the case against
6 the product manufacturers, was it Dr. Desai? Okay. How do
7 you feel about that verdict they got back?

8 PROSPECTIVE JUROR NO. 983: I'm against Dr. Desai.

9 MR. EGLET: Okay. You're against Dr. Desai?

10 PROSPECTIVE JUROR NO. 983: Yeah.

11 MR. EGLET: My question is, how do you feel about that
12 verdict I got last year?

13 PROSPECTIVE JUROR NO. 983: Well, you won, right?

14 MR. EGLET: Yeah.

15 PROSPECTIVE JUROR NO. 983: Okay. I mean, I don't follow
16 it all that --

17 MR. EGLET: Okay. Who here knows about the verdict I got
18 last year against the product manufacturers in the endoscopy
19 case? Okay.

20 UNIDENTIFIED PROSPECTIVE JUROR: Just a little.

21 MR. EGLET: What?

22 UNIDENTIFIED PROSPECTIVE JUROR: Just a little bit. I
23 don't really --

24 MR. EGLET: Does anybody know the amount of that verdict?

25 PROSPECTIVE JURORS/COLLECTIVELY: No.

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1 MR. EGLET: It was half a billion dollars.

2 Okay. Ms. Hubbert, I guess -- my question is, and
3 my wife has asked me to ask this because, you know, there's
4 been a lot of media coverage about that case, and -- and all -
5 - a lot of criticism of me and my firm, and how -- is anybody
6 here going to have a problem with that? Are they going to
7 hold that against me or my firm because of that verdict?
8 Because there were some people that were very happy about it,
9 but there was a lot of people who were very upset about it.
10 You know, and so -- is anybody going to have a problem with
11 that? Ms. Hubbert?

12 PROSPECTIVE JUROR NO. 1293: No.

13 MR. EGLET: Nobody?

14 Okay. I know you do, Ms. Schmidt.

15 PROSPECTIVE JUROR 844: It's a different case. It has,
16 as far as I concerned, no bearing on this particular case.

17 MR. EGLET: Okay. I understand.

18 PROSPECTIVE JUROR 844: It's in the past.

19 MR. EGLET: It is in the past, yes.

20 Mr. Bombino --

21 PROSPECTIVE JUROR NO. 992: Yes.

22 MR. EGLET: -- I don't think we talked about this
23 yesterday, did we?

24 PROSPECTIVE JUROR NO. 992: No.

25 MR. EGLET: What are your thoughts on this issue?

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1 PROSPECTIVE JUROR NO. 992: I think pretty much, you
2 know, I'm pretty much inline here, agree with a lot of people
3 here. It's a case-by-case basis. But, you and I talked a
4 little bit about this yesterday. I'm one of those people who
5 needs a lot of convincing.

6 MR. EGLET: Sure.

7 PROSPECTIVE JUROR NO. 992: You and I talked about that.

8 MR. EGLET: You need to be really convinced?

9 PROSPECTIVE JUROR NO. 992: Yes, I do.

10 MR. EGLET: And we're going to talk about that in a few
11 minutes, that part o the trial. But I understand, and I'll
12 cover that separate with you.

13 But otherwise, you think it should be on a case-by-
14 case basis?

15 PROSPECTIVE JUROR NO. 992: Sure.

16 MR. EGLET: Okay.

17 Ms. Krause, how do you feel about this issue?

18 PROSPECTIVE JUROR NO. 1055: I'm kind of -- I don't know.
19 I'm kind of confused with a lot of stuff. So I was thinking
20 like he was, is it -- is it insurance, or is it the actual
21 people, and then I -- then I think about their livelihood, and
22 then I think about the pain and -- I mean, I'm like all over.
23 I guess I'm one of those kind of people. So I'm not quite
24 sure where I stand. I mean, I guess I have to hear all of
25 it --

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1 MR. EGLET: sure.

2 PROSPECTIVE JUROR NO. 1055: -- because I -- you know, I
3 feel for them. I feel for them, and is it --

4 MR. EGLET: Sure.

5 PROSPECTIVE JUROR NO. 1055: -- insurance companies,
6 because I don't want to pay hirer, and, you know -- if -- you
7 know, so.

8 MR. EGLET: Okay. That's fair enough. Fair enough.

9 Ms. Zweifel --

10 PROSPECTIVE JUROR NO. 1002: Yes.

11 MR. EGLET: -- did I say that right?

12 PROSPECTIVE JUROR NO. 1002: Close.

13 MR. EGLET: Close. How do you fell about this subject
14 we've been talking about?

15 PROSPECTIVE JUROR NO. 1002: Well, I agree it's a case-
16 by-case basis. I do think there's frivolous lawsuits being
17 done out there, and they're given way too much money. But you
18 got to look at what's going on in this case specifically, you
19 know, to determine whether or not a big award should be given
20 based on the evidence.

21 MR. EGLET: All right.

22 Now let me -- let me move to different subject now.
23 I think we've been across this subject with every -- let me
24 move to a different subject, and that's this: In most of
25 these cases, and this case is no exception, the Defendant

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1 doesn't hurt the Plaintiff on purpose. The Defendant doesn't
2 go out to intentionally injure someone. Okay? The allegation
3 is that they were negligent, not intentional. They didn't go
4 out and intend to hurt someone, intend to run into someone.
5 They were negligent.

6 There are some people, there's some folks who think
7 it's unfair to make a Defendant compensate for the injuries
8 they caused to a person if they didn't do it on purpose.
9 There's some people who feel that way. There are other folks
10 who thinks, no, the negligence standard is fine.

11 How many people here are closer to the people who
12 think that, well, the Defendant shouldn't have to compensate
13 the Plaintiff if the Defendant didn't hurt the Plaintiff on
14 purpose? How many people are closer to that, and if you'll
15 raise your hand?

16 UNIDENTIFIED PROSPECTIVE JUROR: Are you talking about
17 simple pain and suffering, or the whole shebang?

18 MR. EGLET: No, we're talking about the whole shebang
19 right now. Okay? Now raise your hand if you -- if that's the
20 way you feel. Okay.

21 Mr. Martinez, tell us -- tell us why you feel that
22 way?

23 UNIDENTIFIED PROSPECTIVE JUROR: Because accidents
24 happen.

25 MR. EGLET: Okay. Accidents happen, and even if someone

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1 was negligent they shouldn't have to be --

2 UNIDENTIFIED PROSPECTIVE JUROR: Only if --

3 MR. EGLET: -- have to pay compensation --

4 UNIDENTIFIED PROSPECTIVE JUROR: -- if people don't have
5 money to payback somebody, how you going to pay them?

6 MR. EGLET: Well, I understand, and I understand your
7 viewpoint. And we're going to talk about that in a minute.
8 But that's a different subject. My question is simply, is --
9 is a little bit tighter than that, a little bit more refined,
10 is that do you think that unless they hurt the person on
11 purpose, unless it was intentional conduct on them as opposed
12 to being negligence, that -- that they shouldn't have to pay?

13 UNIDENTIFIED PROSPECTIVE JUROR: Well, I think it --
14 that's why you had insurance -- that's why you pay your
15 insurance to pay for cases like that.

16 MR. EGLET: I'm not following you there.

17 UNIDENTIFIED PROSPECTIVE JUROR: Well, maybe I'm not
18 understanding you there.

19 MR. EGLET: You might not be. And I apologize if my
20 question is confusing. But the question is -- let me try it
21 over. Let -- the question was, are you -- and you raised your
22 hand, you said you're closer to the folks who feel like if you
23 don't hurt the person on purpose you shouldn't have to
24 compensate them for their injuries; is that correct?

25 UNIDENTIFIED PROSPECTIVE JUROR: Yeah.

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1 MR. EGLET: Okay. So if someone is just negligent, they
2 should -- is it your opinion --

3 UNIDENTIFIED PROSPECTIVE JUROR: Well, negligent meaning
4 like, what, you don't want to -- meaning --

5 MR. EGLET: Well, negligent is, you made a mistake.

6 UNIDENTIFIED PROSPECTIVE JUROR: Uh-huh.

7 MR. EGLET: You didn't do it on purpose, you didn't
8 purposely go out to injure someone, you know. A simple
9 example is that, you know, you -- you're driving down your --
10 your car -- the road in your car, and somebody was crossing in
11 a crosswalk, and you see that person crossing in the
12 crosswalk, and you hit your accelerator and you run into them,
13 so you do it on purpose. That's intentional.

14 UNIDENTIFIED PROSPECTIVE JUROR: Uh-huh.

15 MR. EGLET: Okay. Negligence is, you weren't paying
16 close -- you weren't paying attention, and you didn't see the
17 person, and you hit them. That's negligence.

18 UNIDENTIFIED PROSPECTIVE JUROR: Yeah. That's --

19 MR. EGLET: That's a simple example of negligence versus
20 intentional conduct where you're setting out to -- where in
21 that case you probably be charged with a criminal conduct as
22 well.

23 UNIDENTIFIED PROSPECTIVE JUROR: Yeah.

24 MR. EGLET: But, my question is, under those
25 circumstances or circumstances like that, do you think that

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1 the person who's negligent should -- just negligent should
2 have to pay, or do you think they should have to do it on
3 purpose before they have to pay?

4 UNIDENTIFIED PROSPECTIVE JUROR: I think you would have
5 to do it on purpose.

6 MR. EGLET: Okay. So you'd want it -- want them to have
7 to do it on purpose?

8 UNIDENTIFIED PROSPECTIVE JUROR: Yeah.

9 MR. EGLET: Okay. All right. And --

10 UNIDENTIFIED PROSPECTIVE JUROR: I mean, I could go out
11 there and get hit right now, but that'd be an accident. I
12 mean, that's -- I could have had something following it, you
13 know, so I mean -- you know where I'm coming from?

14 MR. EGLET: Well, I know what you're coming from, but
15 you're kind of -- you're kind of adding more stuff to it.
16 I -- let's assume that the pedestrian in my example is not at
17 fault. They're in the crosswalk. They're crossing in a
18 crosswalk. They have a right to be in the crosswalk. They
19 have the right of way, and the driver just didn't see them and
20 hit them. Okay? Under those type of circumstances, would you
21 think the driver should be held responsible for the -- for the
22 damages -- for the injuries of the other person?

23 And it's okay if you don't. I'm not going --

24 UNIDENTIFIED PROSPECTIVE JUROR: Yeah. Well --

25 MR. EGLET: -- to be upset or anything.

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1 UNIDENTIFIED PROSPECTIVE JUROR: -- I'm -- I don't think
2 so.

3 MR. EGLET: Okay. Is it fair to say, Mr. Martinez, that
4 -- because this is a negligence case. Okay? This is not, you
5 know -- is it fair to say that if you were in Mr. Simao's
6 situation --

7 MR. ROGERS: Your Honor, I'm going to object to that. I
8 want to approach.

9 THE COURT: Counsel, approach, please.

10 [Bench Conference Begins]

11 MR. ROGERS: Counsel has just instructed the jury that
12 more or less negligence is presumed.

13 MR. EGLET: No, I didn't instruct it was presumed.

14 MR. ROGERS: And that is the inference that is going on
15 here. All we're talking about is \$2 million, and the
16 Defendant is negligent. This has gotten so far astray now,
17 this has become so deeply conditioning that I'm not sure if
18 this jury will be fit.

19 MR. EGLET: Your Honor, we are absolutely entitled to
20 find out if the jury is [indiscernible] to more damages, you
21 know, negligence types. And that's simply what I'm asking.
22 And this gentleman very honestly agreed, understandably
23 considering his background and what he came through and some
24 of his history and the gangs, said, "No, I think it has to be
25 intentional."

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1 We are entitled to explore this area. This goes
2 right to whether a jury is fit to sit -- a juror, for
3 [indiscernible] is fit to sit on this jury. And so whether
4 they -- whether they're willing to be able to -- the person
5 would have to be shown to have done this on purpose versus
6 negligence.

7 It's perfect -- we're not conditioning anybody.
8 We're simply asking them open-ended questions about this. I
9 mean, if he wants to talk about conditioning, I spent four
10 hours talking about frivolous lawsuits. To make an argument,
11 I could have conditioned to this jury about frivolous -- that
12 these are frivolous lawsuits. So that's just silly. I've been
13 very open, and I always am with jurors, getting his
14 information and letting people say what they have to say.

15 This gentleman volunteered that he would have to
16 have the person had done it on purpose. So I'm allowed to
17 explore that.

18 THE COURT: Well, I haven't heard any -- I haven't heard
19 counsel suggest anything that would make me think that what
20 you say is true, that he's arguing that negligence is
21 presumed. I haven't heard anything in his questions, and I've
22 been listening very carefully.

23 I think part of the problem with this particular
24 prospective juror is, and I don't know that he understood the
25 question initially --

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1 MR. EGLET: And -- and I agree.

2 THE COURT: -- put to him.

3 MR. EGLET: And I -- I don't think -- and that's why I
4 gave him an example.

5 MR. ROGERS: He said he misunderstood. I mean --

6 THE COURT: Yes, I agree.

7 MR. EGLET: He did. And that's why I gave him an example
8 of a lawsuit. You know, and at that point, though, he's still
9 saying, "No, it would have to be intentional." So I mean I
10 think I'm entitled to explore this.

11 THE COURT: You know what I -- what I think we ought to
12 do is probably take a short break, because you've been at it a
13 while.

14 MR. EGLET: Okay. That's fine, Your Honor.

15 THE COURT: So let's take about a ten-minute break, okay?

16 MR. EGLET: Okay.

17 [Bench Conference Ends]

18 THE COURT: Ladies and gentlemen, we're going to take
19 about a ten-minute break. I remind you of your obligation not
20 to discuss this case, not to form or express any opinion, not
21 to do any research on any subject with this case.

22 [Recess]

23 [Outside the Presence of the Jury]

24 THE COURT: Okay. Outside the presence of the jury.

25 MR. EGLET: Yes, Your Honor. At this time the Plaintiffs

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1 would like to make a motion to excuse for cause three jurors.
2 The first juror is Sheila Schmidt seated in seat number two,
3 badge number 844.

4 Second is Alberto Martinez seated in seat number
5 nine, badge number 910.

6 And the third is Stephen Harrison seated in seat
7 number ten, badge number 912.

8 Your Honor, the case law from the United State's
9 Supreme Court as well as the Nevada Supreme Court is clear on
10 this issue. And the following four points are the law across
11 this country from the United State's Supreme Court as well as
12 Nevada.

13 First, any prospective juror whose views might
14 impair their ability to be fair and impartial is disqualified
15 as a matter of law.

16 The prospective juror cannot be rehabilitated.

17 The prospective juror's impairment does not need to
18 be shown with unmistakable clarity.

19 And four, any doubt must be waived by the trial
20 judge in favor of disqualification.

21 The United States Supreme Court in Wainwright v.
22 Witt held that prospective jurors must be excused if their
23 views could substantially impair their ability to perform
24 their function as jurors. And the impairment need not be
25 shown with unmistakable clarity.

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1 The Nevada Supreme Court has provided guidance for
2 district courts and trial counsel in determining whether a
3 juror should be removed for cause. The Court explained:

4 "It is not enough to be able to point to
5 detached language which alone considered would seem
6 to meet the statute requirement.

7 "If on construing the whole declaration
8 together it is apparent that the juror is not able
9 to express an absolute belief that his or her
10 opinion will not influence his or her verdict."

11 This rule was affirmed in Webber by the Nevada
12 Supreme Court where the Court stated, detached language
13 considered alone is not sufficient to establish that a juror
14 can be fair, when the juror's declaration as a whole indicates
15 that she could not state unequivocally that preconception
16 would not influence her verdict.

17 Consequently the views expressed by a prospective
18 juror which evidence the juror's partial beliefs should not be
19 subsequently obviated by a simple yes response to voir dire
20 questions such as, "Can you follow the law or can you be fair
21 and impartial?" Such questions are coercive and gather no
22 reliable information. They intimidate even self assured
23 jurors into giving false answers such as, "Yes. I can follow
24 the law." Or "Yes. I can be fair and impartial."

25 If the juror expresses views during voir dire which

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1 might substantially impair the performance of his or her
2 duties as a juror, the juror should be removed for cause.
3 Even if the juror answers to the generic question, "Can you
4 follow the law?" Such detached language without more should
5 not allow an otherwise partial juror to remain on the panel.

6 The Nevada Supreme Court as well as the U.S. Supreme
7 Court has said any doubt should be weighed in favor of being
8 excused in order to remove even the possibility of bias or
9 prejudice effecting the deliberations.

10 Once a prospective juror has made a clear statement
11 during voir dire reflecting or indicating the presence of a
12 disqualifying prejudice, the prospective juror is disqualified
13 as a matter of law and cannot be rehabilitated by subsequent
14 later retracting or promises to be fair.

15 The Nevada Supreme Court has said the fact of the
16 matter that it occurred, that in fact establishes even more so
17 that the juror is unfit as a jury man -- juror person when
18 they give inconsistent statements.

19 This situation Ms. Schmidt has clearly stated that
20 she -- that our client would not start at the same starting
21 line. That the Defense would be ahead. That we would have to
22 prove more substantial proof. That she wouldn't -- could not
23 award or put in the jury verdict a multi-million verdict
24 regardless of what the evidence was. And that she has a cap
25 of \$200,000 in mind on pain and suffering with the exception

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1 of a few, handful of extraordinary cases she talks about, or
2 she discussed.

3 Mr. Martinez has stated that he could not find
4 against a Defendant unless a Defendant's conduct was
5 intentional.

6 And Mr. Harrison agreed with Ms. Schmidt, and stated
7 that he could not award a million dollar or more verdict even
8 if the evidence established that that's what it took to
9 balance the harms and losses. And also said that our client
10 would be starting well behind the Defendant before any
11 evidence was presented.

12 Both Ms. Schmidt and Mr. Harrison as well stated,
13 very honestly that they would not want someone like themselves
14 with their own pre-dispositions sitting on a jury if they were
15 in a position like the Plaintiff was, Your Honor.

16 These jurors must be excused for cause under Nevada
17 law.

18 THE COURT: Mr. Rogers?

19 MR. ROGERS: Yes. Your Honor, pointed out just a moment
20 ago at the bench that it appeared that Mr. Martinez was more
21 confused than committed to a position. Confused by counsel's
22 questioning. Plaintiff's attorney just pointed out that there
23 are four elements to an excuse for cause. One of which is
24 rehabilitation. And then he recites a litany of reasons why
25 no jury can possibly be rehabilitated. That's nonsense.

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1 Before either of the remaining jurors, Schmidt or Harrison,
2 can be excused for cause, Defense has the right to question
3 them.

4 MR. EGLET: Counsel is incorrect in my statement of the
5 four elements. There are not four elements. These are the
6 four standards for -- of the law. And the four standards are
7 simply any prospective juror whose views might impair their
8 ability to be fair and impartial is disqualified as a matter
9 of law.

10 The law is also that the prospective juror cannot be
11 rehabilitated. You can't have somebody say what these three
12 people said in jury selection and then have someone get up and
13 say, "Yeah, but you can be fair" and go on and try to
14 rehabilitate them, because then they're just giving
15 inconsistent statements. And the Nevada Supreme Court has
16 specifically said that in itself makes them disqualified
17 because now they're giving inconsistent statements.

18 Once they give the statement that shows that they
19 cannot be fair as a matter of -- or their views might impair
20 their ability to be fair and impartial they are disqualified
21 as a matter of law.

22 Third, the prospective juror's impairment does not
23 need to be shown with unmistakable clarity. In other words,
24 we don't have to prove this, you know, beyond any sort of
25 doubt or even preponderance. It just says any doubt should be

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1 weighed by the Court in favor of disqualification to make sure
2 the juror -- the panel -- the actual jury is not affected with
3 somebody with preconceived biases.

4 It cannot be any clearer what these three people
5 have said. And as far as Mr. Martinez's alleged confusion,
6 once we gave him the example he still said, "No. Even under
7 that example, it's got to be intentional. They got to intend
8 to run them over." So he is clear in his mind what his
9 viewpoints are on this. And so he is not fit to sit on this
10 jury as a matter of law.

11 MR. ROGERS: How counsel can discern that clarity is
12 beyond anybody in this courtroom. Each one of those jurors
13 said based on the evidence, I could consider it. I can bring
14 that up in rehabilitation. Each one of them deserves that
15 opportunity to demonstrate to the Court whether they can be
16 fair.

17 Counsel -- defense counsel is clearly entitled to
18 question them.

19 THE COURT: Well I want to address the issue of Mr.
20 Martinez, because I didn't really say at the sidebar that my
21 thought was that Mr. Martinez was more confused than he was
22 committed to a position. What I said was that I thought Mr.
23 Martinez was initially confused or perhaps didn't understand
24 the questions posed by Mr. Eglet. But as there were further
25 questions posed of Mr. Martinez it did seem to me clear what

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1 his position was.

2 The motion is granted with respect to all three
3 prospective jurors.

4 MR. EGLET: Thank you, Your Honor.

5 THE COURT: Should we bring them in and excuse me or what
6 do you prefer? How do you prefer we handle it?

7 MR. EGLET: I would prefer the Bailiff just excuse them
8 out in the call and then we bring the rest of them in to
9 replace them, Your Honor.

10 THE COURT: Is that agreeable to you, Mr. Rogers?

11 MR. ROGERS: What's that, Your Honor?

12 THE COURT: May we have the Bailiff simply excuse them in
13 the hallway or do you want us to call them in the courtroom
14 and excuse them?

15 MR. ROGERS: It doesn't matter how Your Honor excuses
16 them. Whichever way is fine with me. Of course I object to
17 their being excused.

18 THE COURT: Right.

19 MR. ROGERS: But how you do it is your choice.

20 MR. EGLET: The only other issue, Mr. Wall pointed out to
21 me that I forgot to mention to the Court, was Mr. Buenting who
22 is sitting in seat number four, Your Honor. He made a comment
23 about -- and I think recalled his discussion with me about
24 well he doesn't -- why does he have to be here. He's being
25 put out, et cetera, et cetera, and he's a -- he said, "I'm a

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1 working man." And I didn't notice -- Mr. Wall pointed this
2 out to me, but apparently on his jury questionnaire he claims
3 a hardship. He says, yes. Work. But then there's no
4 elaboration it.

5 I don't know if the Court is inclined to question
6 him on that individually. I don't know -- I don't care one
7 way or the other, but --

8 MR. WALL: Let me just add something. I guess the
9 concern when he said "This isn't what I signed up for." And
10 "I'm disturbed to be here." I think Mr. Eglet did the
11 appropriate thing at that point and not really follow up on
12 it, because it's an area that sort of tend to germinate, I
13 guess --

14 MR. EGLET: Poison.

15 MR. WALL: -- within the remaining panel, but noting that
16 he did have some work conflict, I don't know if that's what
17 he's talking about or if he's just sort of against the civil
18 justice system to the point that he doesn't want to
19 participate. And so maybe taking him outside the presence
20 might be appropriate.

21 THE COURT: Mr. Rogers?

22 MR. ROGERS: I'm not clear on the basis. Is it that he's
23 unhappy to be here? I doubt he's alone in that regard. He
24 never said that he's suffering any given hardship, all of the
25 objections that Mr. Eglet cited this morning to brining in Ms.

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1 Frye would apply here exactly.

2 He's expressed nothing that would suggest that --

3 MR. EGLET: We did bring in Ms. Frye.

4 MR. ROGERS: After you objections. But all those
5 objections apply.

6 MR. EGLET: So what? Well but I lost those objections.

7 MR. ROGERS: If you -- do you want to state something
8 different now is the question.

9 MR. EGLET: You can't stand on my objections that I lost
10 on. I mean that doesn't make any sense. You don't get to use
11 the objections that I lost on.

12 MR. ROGERS: Okay. Then change your objections.

13 MR. EGLET: I'm not changing my objections. They stand
14 for that case, but you can't rely on my objections, if you
15 lost on them -- as the Court always loves to say what's good
16 for the goose is good for the gander. We brought Ms. Frye in.
17 I would like to bring Mr. Buenting in.

18 MR. ROGERS: Actually I think that one would apply for my
19 side. I don't see a reason to bring him in. If Your Honor is
20 inclined to obviously you're free to. But there's nothing
21 different here.

22 MR. EGLET: We should have brought him yesterday. We
23 didn't see on his jury questionnaire. He put as a hardship,
24 work.

25 THE COURT: We should probably bring him in and examine

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1 him individually. Before we do that I was handed earlier and
2 I neglected to mention it before we broke, but apparently
3 Linda Quevedo has some sort of disability appointment with a
4 doctor today at 4:30.

5 MR. ROGERS: What's her number?

6 MR. WALL: 1357.

7 MR. ROGERS: So what page is that? I don't have that --
8 oh I see.

9 THE COURT: The doctor's note says this is to certify
10 that the above patient has been under my professional care
11 from 1/27/11 to current. And was unable to work slash attend
12 school from 3/16/11 through 3/21/11 and underneath that
13 Patient has an appointment 3/16/11 at 4:30. Some doctor named
14 Nadir Abdul Siad MD [phonetic].

15 So my question is, I mean she needs to make this
16 doctor's appointment, I would imagine, but it looks like she
17 may not be able to serve as a juror anyway. Do you have any
18 opposition to the Court excusing her?

19 MR. EGLET: I'm sorry, Your Honor. I was looking for my
20 list -- what --

21 MR. WALL: 1357.

22 THE COURT: Linda Quevedo.

23 MR. EGLET: She's down on the list. I have no objection
24 to her dismissal. Linda Arlene Quevedo?

25 THE COURT: Quevedo. She's number four on page four.

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1 MR. EGLET: Got it. And she's 1357?

2 THE COURT: Mr. Rogers?

3 Yes.

4 MR. EGLET: I have no objection.

5 THE COURT: No objection.

6 She can be excused for purposes of medical reasons.

7 She can have her paperwork back.

8 I guess we need to bring in then -- what's the
9 gentleman's name? Buenting?

10 MR. ROGERS: Mr. Buenting. Yes.

11 THE COURT: And we need to bring Buenting in.

12 [Court confers with Bailiff]

13 MR. EGLET: Your Honor, I think you should question this
14 gentleman and we'll follow up.

15 THE COURT: That's fine.

16 [Pause]

17 [Prospective Juror 880 Enters]

18 THE MARSHAL: This is Mr. Buenting number -- badge number
19 880.

20 THE COURT: Thank you, Mr. Buenting we wanted to -- well
21 I wanted to inquire based on the jury questionnaire you had
22 indicated that there may be some work issues, or work
23 hardships. I wanted to explore that issue with you.

24 PROSPECTIVE JUROR NO. 880: Well I didn't -- at the time
25 when I was filling that out I didn't know if my hardship was

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1 going to be worse than anybody else that works here. But
2 where I work at [indiscernible] our fiscal year ends this
3 month. And as a buyer/planner we have annual bids coming in
4 that need to be done by the end of this month. And I also
5 have an annual physical that I'm responsible for that is done
6 by the end of this month.

7 So I have all of those issues going on. And this
8 case extending now is putting a lot of pressure on my
9 teammates that are there. Because without me there they are
10 having of course to pick up the slack for all that.

11 THE COURT: So there are other individuals who can step
12 in and fulfill those tasks?

13 PROSPECTIVE JUROR NO. 880: There are other individuals
14 that are doing the task that I do on top of what they are
15 doing. Because again, with the fiscal year everything of
16 course is leading up to the end of the fiscal year for
17 [indiscernible].

18 THE COURT: I understand. Counsel have any follow up
19 questions?

20 MR. EGLET: Mr. Buenting, just a couple of questions. In
21 the last exchange that you and I had on -- you seemed -- I
22 don't want to put words in your mouth. But you seemed
23 distressed about being here and the circumstances. You talk
24 about this isn't what I signed up for. I thought I'd be here
25 on a criminal case. I didn't know it was going to be a civil

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1 case like this.

2 Can you kind of elaborate for us or is it -- was it
3 your job that was causing you that or were there other
4 concerns that you had that you were feeling that way about it.

5 PROSPECTIVE JUROR NO. 880: While I'm here, my thoughts
6 are at work and things that need to be taken care of there.

7 MR. EGLET: All right. So --

8 PROSPECTIVE JUROR NO. 880: So I don't know if I can have
9 an open mind for all this questioning going on. The other
10 thing is again, I firmly believe that there was a breakdown in
11 the common sense along the way, which is why you're here.

12 MR. EGLET: Uh-huh.

13 PROSPECTIVE JUROR NO. 880: And now you're asking us to
14 take the time to bring that common sense back and do this
15 trial.

16 MR. EGLET: Sure.

17 PROSPECTIVE JUROR NO. 880: So and that's how -- that's
18 firmly how I believe. It's just me not being there as part of
19 the team. I was apologizing to the people that were working
20 there because of all the stress. We've been working 60 hours
21 -- at least ten hours a day plus Saturdays, 60 hours a week.
22 Now without me being there I'm putting that. I feel like I'm
23 putting the burden on them. Of course I'm not. I know I'm
24 not. The company is very supportive and that's part of their
25 policy to support this. It's just I feel like I'm letting my

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1 teammates down by not being there doing what I need to do.

2 MR. EGLET: The fact that you believe that the reason
3 we're here is because there's a break down between the parties
4 on being able to agree. Is that going to effect you in -- do
5 you think that's going to effect you one way or the other?
6 Are you going to be upset with one party versus another party
7 or favor one side versus another or -- I mean I -- we're just
8 trying to make sure that, you know, that that issue is not
9 going to -- and I understanding what you're saying. I'm going
10 to ask a little bit more about that -- about your head being
11 somewhere else, but the fact that you're obviously --

12 PROSPECTIVE JUROR NO. 008: The first part of my answer
13 when you asked me was context. I want to get everything and
14 put it in context.

15 PROSPECTIVE JUROR NO. 880: The job I have I'm always
16 looking at numbers and trying to predict and anticipate. So
17 that's what I'll see. I'll see all the numbers come together
18 and try and justify either your side or the other side isn't
19 making sense. And I believe at the end -- and you did say a
20 little bit that the Judge would give us instructions. There's
21 going to be guidelines there. And you know, whatever is
22 proven then we'll guidelines to be able to make those
23 decisions. And I don't have a problem with that no matter
24 what the outcome.

25 MR. EGLET: Okay. And your statement about the fact that

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1 because you were -- your -- I don't want to put words in your
2 mouth. Did you say your head is somewhere else or that you're
3 head's at work or you're thinking about work? Is that what
4 you're saying? That you're not able to concentrate here?

5 PROSPECTIVE JUROR NO. 880: I am able to concentrate, but
6 I'm not participating like a normally would, you know, in a
7 group environment. Because again, I'm thinking about the
8 things that I need to be doing at work. Because I'm going in
9 to work at 5:00 in the morning now.

10 MR. EGLET: Oh you're still going into work?

11 PROSPECTIVE JUROR NO. 880: I am going into work, because
12 I can get a good part of the day in. Because I'm
13 communicating with people on the west coast. I'm also making
14 communications at some points overseas. And I need to follow
15 up with those and take care of those issues.

16 MR. EGLET: Okay.

17 PROSPECTIVE JUROR NO. 880: And again with the
18 questionnaire you say that, you know, I have a passion. And
19 that's one of the things that, in answer to your question, I
20 have a passion about what I do. I find it's something that I
21 enjoy. And I have a passion about that.

22 MR. EGLET: Right.

23 PROSPECTIVE JUROR NO. 880: So I just hate to see that
24 all of -- you know, next month would not be an issue, but
25 because this is the end of the fiscal year and the inventory

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1 and the making bids, annual bids which last for the entire
2 year these decisions that are made effects the entire year of
3 the business.

4 MR. EGLET: Court's indulgence for one moment.

5 THE COURT: Sure.

6 MR. EGLET: We have no objection to excusing --

7 THE COURT: Mr. Rogers?

8 MR. ROGERS: Your Honor, can we approach?

9 THE COURT: Sure.

10 [Bench Conference Begins]

11 MR. ROGERS: The basis for excusing --

12 MR. EGLET: I can't hear you.

13 MR. ROGERS: I know, but I have to be very quiet, because
14 he's sitting right next to me. Should we excuse him?

15 THE COURT: I'm sorry?

16 MR. ROGERS: Should we excuse him, because I don't want
17 him to overhear me.

18 THE COURT: What's your position?

19 MR. ROGERS: I don't think that a basis has been set. He
20 hasn't established a hardship. He said that he goes into work
21 seven hours, and that there are other people there to cover.
22 And he has a passion and that's frustrating to him. But
23 that's not unlike anybody else here. I don't think a basis of
24 hardship has been established.

25 THE COURT: I don't know that it has either. The only

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1 thing that concerns me is his comment about not being able to
2 concentrate and not being able to focus. Do you want to
3 explore any of these issues with him?

4 MR. ROGERS: Sure.

5 THE COURT: Okay.

6 MR. ROGERS: Mr. Buenting, my name's Steve Rogers.
7 Nobody's heard from me yet. It's good to final meet you. You
8 made some comments to Plaintiff's counsel about difficulty you
9 were having focusing or concentrating. Could you explain what
10 you meant by that? Was it a distraction for work? What was
11 the cause of it?

12 PROSPECTIVE JUROR NO. 880: Well again, because I'm
13 coming from work and I'm coming here, of course I'm listening
14 to the conversations but at the same time I'm -- my mind is on
15 did I miss something at work. Do I -- when I get out of here
16 I make phone calls, am I -- have I followed up enough today to
17 make sure product is coming in so we can complete it.

18 Because our customers aren't going to be as
19 forgiving as the company is with me being here or as
20 understanding. If I miss a shipment our customers aren't
21 going to understand why, and we may lose a sale. And if I
22 say, well that's because I was in jury duty. They're nobody
23 going to take that as an excuse -- at least our customers.

24 So I'm just trying -- and at the same time the same
25 pressures that I have there are two other people there that

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1 are working and doing it. You know, doing that job as well.
2 We're two people already down and I've made it a third person
3 down. And so we have deadlines and we have quotas that we
4 have to meet. And if we don't hit those, like I said, I was
5 apologizing to my teammates this morning because there is
6 objectives that we've got to meet and we're not going to meet
7 them right now, because I'm not there to assist.

8 MR. ROGERS: Okay. With all the questioning that's taken
9 place over the past two and a half days, do you have an
10 understanding of what this case is about?

11 PROSPECTIVE JUROR NO. 880: I understand that it's a
12 neglig- -- I can't pronounce it.

13 MR. ROGERS: Negligence.

14 PROSPECTIVE JUROR NO. 880: This is a case where -- and
15 I'm assuming it's a car accident, that's what we were told.
16 And one side is going to prove that they're hurt because of
17 this car accident and we're going to find out all the reasons
18 why they're hurt.

19 On the other side there's an understanding -- you
20 know, I'm assuming that you're going to say, yeah, this
21 happened but there's all these reasons why this happened. And
22 then it's going to be left up to the jury to decide, okay.
23 This is done and this is what is going to be.

24 MR. ROGERS: That's a very clear read.

25 I don't have any further questions.

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1 THE COURT: May I see counsel at the bench?

2 MR. ROGERS: Certainly.

3 [Bench Conference Begins]

4 THE COURT: So I'm unclear what your position is now.

5 MR. ROGERS: On your concern about the focus or
6 attention, it seems to be of no concern. He has a clear
7 understanding of what's going on here.

8 MR. WALL: Well I think his comments about focus and his
9 going to work and he's worried while he's here. It's just
10 [indiscernible].

11 MR. EGLET: That's right. He said he's not participating
12 like he would normally participate because his head is at work
13 and he's worried about what's going on at work.

14 I mean we want jurors who are going to be here
15 focused on what's going on here. I think both sides do.

16 MR. ROGERS: You guys, this is inappropriate to do right
17 within earshot of him because it sounds like now I'm the bad
18 guy trying to keep him. I'm certain he can hear this. Can we
19 do this outside his presence?

20 THE COURT: I don't think he can --

21 MR. ROGERS: I hope he can't, but I --

22 THE COURT: -- hear because of the white noise.

23 MR. EGLET: I don't think he can hear us.

24 MR. ROGERS: I mean he's awfully close to us.

25 THE COURT: Well do you want to follow up with any

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1 questions?

2 MR. EGLET: I don't think so, Your Honor. I think it's -
3 -

4 THE COURT: No.

5 MR. EGLET: I can. Yeah. I'll do a couple more.

6 THE COURT: All right.

7 [Bench Conference Ends]

8 THE COURT: Mr. Eglet?

9 MR. EGLET: Thank you, Your Honor. Sorry to keep going
10 back and forth, Mr. Buenting. As you can imagine and I think
11 I've talked about this. You know, this is a very important
12 part of the case. It's the most important part of the case,
13 because we don't only want to have jurors who are going to be
14 fair and impartial, but we want to have jurors who are going
15 to be able to focus all their attention on this case. They're
16 not going to be distracted by other stressors in their life,
17 other things that are going on outside the courtroom.

18 And by your comments that's where some of our
19 concern is coming in is that, in understanding because of what
20 you told us about this time of year that you've got these --
21 that your mind while you're here you're not participating like
22 you normally would in this type of situation, group dynamic
23 because you're focused and you're worried about going on in
24 your office. And so, I mean, do you think honestly that that
25 is going to have an effect on you to be fully here and present

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1 because you may be thinking about what's going on in the
2 office and distracted from what's taking place here?

3 PROSPECTIVE JUROR NO. 880: I can't predict the future.
4 Yesterday there was parts that I needed brought in that
5 somebody made a decision to bring them in next day air and it
6 added, you know, extra amounts of money then they decided to
7 go check and see that we had plenty here.

8 So there were -- are mistakes, decisions being made
9 because I was here and I didn't have control of it. And it's
10 my stuff. I mean it's the stuff that I'm --

11 MR. EGLET: Right.

12 PROSPECTIVE JUROR NO. 880: -- responsible for.

13 MR. EGLET: And was that causing you to be distracted and
14 worried about what was going on in the office as opposed
15 [indiscernible] focusing on currently?

16 PROSPECTIVE JUROR NO. 880: Yeah, but and then when I was
17 driving home last night, like I said we were -- you were
18 bringing up about personal responsibility and personal
19 accountability, well you know, just like everybody else -- I
20 mean I'm not trying to sound any better or worse.

21 MR. EGLET: Sure.

22 PROSPECTIVE JUROR NO. 880: But we have our
23 accountability and responsibilities. And I'm thinking about
24 all the things that are going on towards the end of this
25 fiscal year and all the decisions that are being made. And

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1 just like yesterday that was a bad decision -- bad
2 information, bad decision.

3 MR. EGLET: Sure.

4 PROSPECTIVE JUROR NO. 880: What's being decided on in
5 the next couple of weeks is going to effect us for the entire
6 next fiscal year.

7 MR. EGLET: So it's a very important couple of weeks at
8 work?

9 PROSPECTIVE JUROR NO. 880: Yes. And it's the second
10 year that I'm going through it. So I understand it more now
11 than I would have last year.

12 MR. EGLET: And people are looking for you -- to you for
13 guidance on that?

14 PROSPECTIVE JUROR NO. 880: Well yes, as a buyer/planner
15 yeah. I make recommendations and I make those kind of
16 decisions, so --

17 MR. EGLET: All right. We still have no objection, Your
18 Honor.

19 THE COURT: Mr. Rogers?

20 MR. ROGERS: No further questions, Your Honor.

21 THE COURT: Mr. Buenting, I guess -- here's my concern,
22 first of all I appreciate the fact that everything you've
23 related to us about your work commitments and your obligations
24 with respect to the end of the fiscal year and the additional
25 work load that has now fallen to some of your colleagues. But

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1 I guess my question is if you're empanelled as a juror is it -
2 - are you going to be able to concentrate on the testimony of
3 the witnesses and consider the evidence?

4 Or is it such that your frame of mind is going to be
5 at work and you'll be unable to focus on the testimony?

6 PROSPECTIVE JUROR NO. 880: Your Honor, I swore to tell
7 the truth. And right now I'm here because I'm doing my civic
8 duty. And I'm going to do the best I can, even if I'm told to
9 stay. But I can't say from here through the next couple of
10 weeks if I'm -- that there wouldn't be thoughts at work going
11 on in my mind. I mean I won't -- I can't honestly say that
12 I'll be able to push it out every day.

13 THE COURT: Then the Court's inclined to thank and excuse
14 you, sir. Please return to jury services.

15 [Prospective Juror 880 exits courtroom]

16 MR. WALL: Thank you.

17 PROSPECTIVE JUROR NO. 880: Thank you, Your Honor.

18 THE COURT: You're welcome, sir. Good luck with work.

19 [Prospective Juror 880 exits courtroom]

20 THE COURT: So let me ask, Madam Clerk, which would be
21 our next four jurors in order? Is Tom Miller the next one up?

22 THE CLERK: Okay. Are you ready?

23 THE COURT: Yes.

24 THE CLERK: Okay. We've got in seat number two; we've
25 got Tom Miller badge number 1307.

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1 THE COURT: Okay. Seat number four?

2 THE CLERK: Seat number four that will be Filbert Aquino
3 badge number 1332.

4 MR. ROGERS: What happened to --

5 MR. EGLET: What about George Repp?

6 THE COURT: What about George Repp?

7 THE CLERK: Well see, well I did the way we called them
8 the first time.

9 MR. ROGERS: Oh I see.

10 THE CLERK: You know, and then he was the last one.

11 MR. ROGERS: He was the last one --

12 MR. WALL: Oh I see.

13 MR. ROGERS: -- that was excused.

14 MR. WALL: I see.

15 THE CLERK: Right.

16 MR. ROGERS: Okay.

17 MR. WALL: I see.

18 THE COURT: Was Repp excused?

19 MR. WALL: No. She's saying --

20 MR. EGLET: No. She's --

21 MR. WALL: -- that since we excused three before we
22 excused Mr. Buenting --

23 THE CLERK: Filled in --

24 MR. WALL: She was already putting --

25 THE COURT: Oh I see.

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1 MR. WALL: -- filling those seats before --

2 THE CLERK: Right.

3 MR. WALL: -- this one.

4 THE COURT: Okay. So seat number four is Aquino?

5 THE CLERK: Yes, Your Honor.

6 THE COURT: All right. Seat number nine?

7 THE CLERK: Number nine is George Repp, 1315.

8 THE COURT: Number ten?

9 THE CLERK: Number ten is Jose Diaz, badge 1323.

10 THE MARSHAL: I wasn't in here. So who is taking seat
11 number two? Is that Tom Miller?

12 THE COURT: Number two is Miller.

13 THE MARSHAL: Tom Miller?

14 THE CLERK: Yes.

15 THE MARSHAL: And seat number -- who was the next one
16 excused? Martinez or Harrison? Or does it matter?

17 THE COURT: Well Martinez was the next one in order and
18 he was replaced with Repp.

19 THE CLERK: With Repp.

20 THE MARSHAL: Okay.

21 THE COURT: And then Harrison was replaced by Diaz. And
22 in seat number four, Buenting was replaced by Aquino.

23 THE MARSHAL: Okay. We'll see how long those last.

24 THE COURT: So I guess we're ready for our panel. Aren't
25 we?

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1 MR. EGLET: Yes, Your Honor.

2 MR. ROGERS: Yes, Your Honor.

3 [Jury Panel In]

4 THE COURT: Okay. Please be seated. Madame Clerk, if
5 you'd be so kind we need to fill seats. Seat number two,
6 first.

7 THE CLERK: Yes, Your Honor. That will be Tom Miller,
8 badge number 1307.

9 PROSPECTIVE JUROR NO. 307: Your Honor, my back's hurt
10 and I'm on pain medication.

11 THE COURT: I'm sorry?

12 PROSPECTIVE JUROR NO. 307: I'm on pain medication.

13 THE COURT: Okay. Could you please give the bottle to
14 the Bailiff?

15 PROSPECTIVE JUROR NO. 307: What's that?

16 THE COURT: Could you please give the prescription bottle
17 to the Bailiff?

18 THE MARSHAL: Do you want him to step into the box?

19 THE COURT: Not yet. Not just yet. Would counsel
20 approach, please?

21 [Bench Conference Begins]

22 MR. WALL: He's on Oxycodone.

23 MR. EGLET: Yeah. This guy is on high doses of
24 narcotics.

25 MR. ROGERS: What --

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1 THE COURT: So do you --

2 MR. ROGERS: What dosage is it?

3 MR. EGLET: It's Oxycodone ten --

4 MR. ROGERS: Oh ten. Yeah.

5 MR. EGLET: -- milligrams. That's huge.

6 MR. ROGERS: Yeah.

7 THE COURT: I don't know whether he'd be able to

8 concentrate on the evidence.

9 MR. EGLET: Yeah. He's going to be asleep.

10 MR. ROGERS: No. I don't have any objection.

11 THE COURT: Okay. Well give him to the Bailiff if you

12 would.

13 MR. WALL: Well he's also [indiscernible]. Yeah. This

14 guy is --

15 MR. EGLET: You want me to give them back to the Bailiff?

16 THE COURT: Please.

17 [Bench Conference Ends]

18 THE COURT: Mr. Miller, the Court will thank and excuse

19 you, sir. And a replacement for Mr. Miller.

20 THE CLERK: Next will be Melton Daniels, badge number

21 1338.

22 THE COURT: All right. And we need a replacement for

23 seat number four.

24 THE MARSHAL: I think it's George Repp that's the next

25 one. After Tom Miller is George Repp and then Jose Diaz.

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1 MR. EGLET: Well Repp is already put in there.
2 THE COURT: Number four is Aquino.
3 THE CLERK: We're [indiscernible] yet, Your Honor.
4 MR. WALL: We have a --
5 MR. EGLET: But can we approach?
6 THE COURT: Yes. Please.
7 [Bench Conference Begins]
8 MR. EGLET: He still goes into that seat. Can he just
9 finish the next gentleman out.
10 MR. WALL: Yeah. Maybe we should --
11 MR. EGLET: He's the next one. That's --
12 MR. WALL: Call up those three that just replaced into
13 their seats and then Mr. Daniels will be next.
14 MR. EGLET: Yeah.
15 THE COURT: Say it again, please?
16 MR. WALL: That the three that we just -- the four that
17 we just got rid of, we need to go ahead and replace them in
18 the box. And then the next one would be Daniels.
19 THE COURT: Right.
20 MR. EGLET: Then he gets replaced by --
21 THE COURT: Yeah.
22 MR. WALL: Is that -- because already decided --
23 THE COURT: Oh you mean they need --
24 MR. WALL: -- on that.
25 THE COURT: -- to be moved?

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1 MR. EGLET: We already decided on that order. SO we just

2 --

3 MR. WALL: No. We just need to put Mister -- Matt, let
4 me see the --

5 THE MARSHAL: Okay. I see what you're saying. All
6 right.

7 THE COURT: This is how we interviewed them.

8 MR. WALL: Right. But the next four --

9 THE MARSHAL: I see what he's saying.

10 MR. WALL: -- we need to put --

11 MR. ROGERS: You're --

12 MR. WALL: We need to put --

13 THE MARSHAL: He's saying you've got to fill the seat of
14 the next witness, no matter who else is next, but first
15 there's got to be --

16 MR. ROGERS: Right. Right.

17 THE MARSHAL: There's got to be whoever's already
18 assigned a seat next.

19 MR. WALL: Correct. Correct.

20 THE MARSHAL: Okay. I got you. I'm sorry.

21 [Bench Conference Ends]

22 THE COURT: So we need to fill seat number four, please.

23 THE CLERK: Yes.

24 MR. EGLET: No. No. We --

25 THE MARSHAL: No.

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1 MR. EGLET: No. It's nine and ten first.

2 THE COURT: Oh. Okay. All right.

3 MR. EGLET: And then four. That's the way they were
4 excused.

5 THE COURT: That's correct. That's correct. We need to
6 fill seat number nine.

7 THE CLERK: Yes, Your Honor.

8 THE COURT: Please.

9 THE CLERK: That'll be George Repp, badge number 1315.

10 THE COURT: We need to fill seat number ten, please.

11 THE CLERK: Yes, Your Honor. That would be Jose Diaz,
12 badge number 1323.

13 THE COURT: And we need to fill finally, seat number
14 four, please.

15 THE CLERK: That would be Filbert Aquino, badge number
16 1332.

17 THE COURT: Okay. Now, Mr. Eglet, whenever you're ready.

18 MR. EGLET: Thank you, Your Honor. Mr. Daniels, good
19 afternoon, sir. Unfortunately we have to start back with the
20 questions we asked everybody else in the beginning. So I'm
21 going to go through these questions quickly with you.

22 Your date of birth?

23 PROSPECTIVE JUROR NO. 338: 1/9/1960.

24 MR. EGLET: And any names you've been known by?

25 PROSPECTIVE JUROR NO. 338: Just Melton.

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1 MR. EGLET: Okay. How often do you wash your car?

2 PROSPECTIVE JUROR NO. 338: Whenever I have a reason, to
3 a couple times a month.

4 MR. EGLET: Okay. A couple times a month? All right.
5 And you work at Dessert Nissan. Can you tell us what you do
6 at Desert Nissan?

7 PROSPECTIVE JUROR NO. 338: Sales and leasing
8 representative.

9 MR. EGLET: Okay. And can you tell us what makes you
10 good at your job?

11 PROSPECTIVE JUROR NO. 338: Easy to get along with, like
12 dealing with people.

13 MR. EGLET: Okay. You're single. Have you ever been
14 married?

15 PROSPECTIVE JUROR NO. 338: No.

16 MR. EGLET: Okay. No kids?

17 PROSPECTIVE JUROR NO. 338: No.

18 MR. EGLET: Can you tell us what you wanted to be when
19 you were in high school?

20 PROSPECTIVE JUROR NO. 338: Lawyer, police officer.

21 MR. EGLET: Lawyer. And -- or a police officer. You
22 wanted to go into criminal justice system?

23 PROSPECTIVE JUROR NO. 338: Uh-huh.

24 MR. EGLET: All right. And can you tell us why you
25 decided not to pursue that?

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1 PROSPECTIVE JUROR NO. 338: I went to college and I
2 graduated in criminology but I decided to -- life happened.
3 And I just needed to get a job --

4 MR. EGLET: Right.

5 PROSPECTIVE JUROR NO. 338: -- and --

6 MR. EGLET: Okay. Very good. What are your five year
7 goals?

8 PROSPECTIVE JUROR NO. 338: Getting out of my condo and
9 travel more.

10 MR. EGLET: Any clubs or organizations you belong to?

11 PROSPECTIVE JUROR NO. 338: No.

12 MR. EGLET: Okay. What are the two most important values
13 other than honesty and whatever faith you may practice that
14 you hold?

15 PROSPECTIVE JUROR NO. 338: I like truth.

16 MR. EGLET: Truth.

17 PROSPECTIVE JUROR NO. 338: I like to be told the
18 truth --

19 MR. EGLET: Okay. That's honesty.

20 PROSPECTIVE JUROR NO. 338: Okay.

21 MR. EGLET: Do you have something different than that?

22 PROSPECTIVE JUROR NO. 338: Other than that? Sincerity.

23 MR. EGLET: Sincerity and one more?

24 PROSPECTIVE JUROR NO. 338: I guess just people -- I want
25 them to be themselves. I don't like people -- you know, like

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1 people that are up front.

2 MR. EGLET: Genuineness?

3 PROSPECTIVE JUROR NO. 338: Yeah.

4 MR. EGLET: Okay. Very good. Can you tell us what if
5 any situations you think you're regarded as a leader?

6 PROSPECTIVE JUROR NO. 338: Well being in the car
7 business a while I guess I'm the go to kind of guy being there
8 so long, questioning wise.

9 MR. EGLET: Okay. And if someone offers to send money to
10 the charity of your choice what would that be?

11 PROSPECTIVE JUROR NO. 338: That would Saint Jude's
12 Children's hospital.

13 MR. EGLET: And why Saint Jude's?

14 PROSPECTIVE JUROR NO. 338: A friend of mine used to work
15 there. Just how many kids need a break.

16 MR. EGLET: Okay. Very good. And what's the worst
17 tragedy that you've experienced in your life?

18 PROSPECTIVE JUROR NO. 338: I lost a girlfriend in a car
19 accident.

20 MR. EGLET: Okay. You lost, I'm sorry a --

21 PROSPECTIVE JUROR NO. 338: A girlfriend in a car
22 accident.

23 MR. EGLET: A girlfriend in a car accident. How long ago
24 did that happen?

25 PROSPECTIVE JUROR NO. 338: Twenty-six years ago.

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1 MR. EGLET: Okay. And were you involved in the accident?

2 PROSPECTIVE JUROR NO. 338: Uh-huh.

3 MR. EGLET: Were you the driver?

4 PROSPECTIVE JUROR NO. 338: [no audible response].

5 MR. EGLET: Okay. Was it a -- was it a multicar accident
6 or a one car accident?

7 PROSPECTIVE JUROR NO. 338: Single car.

8 MR. EGLET: Single car. Okay. Did a lawsuit result from
9 that?

10 PROSPECTIVE JUROR NO. 338: Huh-uh.

11 MR. EGLET: Okay. Were deemed by anybody to be at fault
12 in that accident?

13 PROSPECTIVE JUROR NO. 338: No.

14 MR. EGLET: Okay. Just one of those freak accidents?

15 PROSPECTIVE JUROR NO. 338: Yeah. That situation --

16 MR. EGLET: Was it a defect in the car or something --

17 PROSPECTIVE JUROR NO. 338: No. It was being young and
18 being out late, me and her, and I fell asleep at the wheel.

19 MR. EGLET: Okay. All right. When you hear someone has
20 been hurt or killed or become seriously ill, do you ever think
21 to yourself that that probably happened to them because
22 something bad they had done earlier in their lives?

23 PROSPECTIVE JUROR NO. 338: Not really.

24 MR. EGLET: Okay. Some folks feel that if someone is
25 injured or killed as a result of negligence of someone else

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1 that what happened to them was fate, destiny, gods will and
2 therefore was going to happen anyway. So they shouldn't bring
3 a lawsuit. Do you agree with that?

4 PROSPECTIVE JUROR NO. 338: No.

5 MR. EGLET: Okay. Who's the public figure you admire
6 most?

7 PROSPECTIVE JUROR NO. 338: Franklin Delano Roosevelt.
8 To go through physical adversity like that. He -- the
9 depression and war, too. It took a lot of strength to do what
10 he did.

11 MR. EGLET: All right. Thank you.

12 Mr. Repp?

13 PROSPECTIVE JUROR NO. 315: Yes.

14 MR. EGLET: How are you, sir?

15 PROSPECTIVE JUROR NO. 315: Good.

16 MR. EGLET: Mr. Repp, are you a former police officer?

17 PROSPECTIVE JUROR NO. 315: Yes. I am.

18 MR. EGLET: You didn't -- that wasn't written down in
19 your questionnaire, but I was able to gleam that from some of
20 the information in your questionnaire. You're now in security
21 with the Wynn Hotel and Casino?

22 PROSPECTIVE JUROR NO. 315: Yes, sir.

23 MR. EGLET: And were you a -- where were you a police
24 officer? Chicago?

25 PROSPECTIVE JUROR NO. 315: No, sir. State of Washington

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1 Pierce County.

2 MR. EGLET: Pierce County. What City is that?

3 PROSPECTIVE JUROR NO. 315: Might be up close to south of
4 Seattle, Puyallup, Mount Rainier area.

5 MR. EGLET: Okay. Is that south of Tacoma?

6 PROSPECTIVE JUROR NO. 315: Yes.

7 MR. EGLET: Okay. And how long did you do that?

8 PROSPECTIVE JUROR NO. 315: Two and a half years.

9 MR. EGLET: All right. And what did you do with the
10 police department? Were you patrol? Were you traffic? Were
11 you a detective? What did you do?

12 PROSPECTIVE JUROR NO. 315: Everything but detective.

13 MR. EGLET: Okay.

14 PROSPECTIVE JUROR NO. 315: Patrol, traffic. You had
15 like 35 square miles to yourself.

16 MR. EGLET: All right. Were you involved in the
17 investigation of traffic accidents?

18 PROSPECTIVE JUROR NO. 315: Yes. I was.

19 MR. EGLET: Over your two and a half years there
20 approximately how many traffic accidents did you investigate?

21 PROSPECTIVE JUROR NO. 315: Probably ten to 15.

22 MR. EGLET: Okay. Did you ever receive any training
23 beyond basic traffic investigation from the Police Academy?
24 Did you receive any sort of traffic accident reconstruction
25 courses from Northwestern or for any in house training?

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1 PROSPECTIVE JUROR NO. 315: Mostly in house training.

2 MR. EGLET: And did you receive some traffic
3 reconstruction --

4 PROSPECTIVE JUROR NO. 315: Reconstruction. Yes.

5 MR. EGLET: What kind of traffic reconstruction did you
6 receive -- training?

7 PROSPECTIVE JUROR NO. 315: Skid marks, coefficient of
8 friction and such.

9 MR. EGLET: Okay. So you were trained in skid marks,
10 coefficient of friction. Were you trained on -- based on
11 coefficient of friction of the surface, the length of the skid
12 marks, the things of that nature -- and I presume you were
13 training in reaction -- reception reaction time and distance
14 traveled --

15 PROSPECTIVE JUROR NO. 315: Yes.

16 MR. EGLET: -- per feet per second depending on how many
17 miles per second that car is going.

18 PROSPECTIVE JUROR NO. 315: Correct. Weather.

19 MR. EGLET: So you were trained in being able to
20 determine speeds at impact and things like that?

21 PROSPECTIVE JUROR NO. 315: Yes.

22 MR. EGLET: Okay. Were you ever -- did you ever testify
23 in court, in your capacity as a police officer in an accident
24 as to how fast a vehicle was going at impact or anything like
25 that?

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1 PROSPECTIVE JUROR NO. 315: Once.

2 MR. EGLET: Just once?

3 PROSPECTIVE JUROR NO. 315: Just once.

4 MR. EGLET: Okay. Was that a civil case or a criminal
5 case?

6 PROSPECTIVE JUROR NO. 315: It was a cause case. We had
7 determined it was a single car.

8 MR. EGLET: It was a single car accident, and you were
9 determining what caused the accident?

10 PROSPECTIVE JUROR NO. 315: The accident.

11 MR. EGLET: Okay. All right. And what brought you to
12 Las Vegas? Did you retire from the police department or --

13 PROSPECTIVE JUROR NO. 315: Oh no. No. No. No. Long
14 story -- long and short of it was the Sheriff and Under
15 Sheriff were arrested for racketeering.

16 MR. EGLET: Oh.

17 PROSPECTIVE JUROR NO. 315: And budget cuts were
18 inevitable. And low seniority from there.

19 MR. EGLET: All right. Did you come straight from
20 Washington to here or did you?

21 PROSPECTIVE JUROR NO. 315: No. By way of Reno.

22 MR. EGLET: Okay. What did you do in Reno?

23 PROSPECTIVE JUROR NO. 315: Same thing. Security.

24 MR. EGLET: Security. Okay. Since you had been a police
25 officer is that what you've done is worked security?

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1 PROSPECTIVE JUROR NO. 315: Security? Yes.

2 MR. EGLET: All right. And how long have you been with
3 the Wynn?

4 PROSPECTIVE JUROR NO. 315: Going on just about three
5 years.

6 MR. EGLET: Okay. And what is your position with the
7 Wynn? Are you a supervisor over there?

8 PROSPECTIVE JUROR NO. 315: I'm just a security officer.
9 I was supervision in other places.

10 MR. EGLET: As a security officer with the Wynn, are you
11 [indiscernible] of injury accidents that happen on the
12 property?

13 PROSPECTIVE JUROR NO. 315: The investigation, not the
14 total --

15 MR. EGLET: Investigation.

16 PROSPECTIVE JUROR NO. 315: First responder.

17 MR. EGLET: Do you responds or do you take statements
18 from witnesses? People who have claimed to have been injured?

19 PROSPECTIVE JUROR NO. 315: Yes. The witnesses and so
20 forth.

21 MR. EGLET: In your three years there or in your period
22 of -- other periods of times as a security officer at other
23 properties, whether here in Las Vegas or Reno, have you ever
24 been called to testify in either a disposition or as a witness
25 in any of these cases?

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1 PROSPECTIVE JUROR NO. 315: Yes.

2 MR. EGLET: Okay. How many cases?

3 PROSPECTIVE JUROR NO. 315: Probably 20.

4 MR. EGLET: Twenty. Have those all been in court or are
5 they always just depositions?

6 PROSPECTIVE JUROR NO. 315: Just depositions.

7 MR. EGLET: Okay. Have you ever testified in court?

8 PROSPECTIVE JUROR NO. 315: Once.

9 MR. EGLET: Okay. How long ago was that?

10 PROSPECTIVE JUROR NO. 315: Maybe 12 years ago.

11 MR. EGLET: Okay. When you were called to testify have
12 you been called on behalf of the Defense, on behalf of the
13 hotel property to testify, or have you been called on behalf
14 of the --

15 PROSPECTIVE JUROR NO. 315: Hotel.

16 MR. EGLET: Did I ask you what makes you good at your
17 job? I don't remember.

18 PROSPECTIVE JUROR NO. 315: No.

19 MR. EGLET: What makes you good at your job?

20 PROSPECTIVE JUROR NO. 315: Age and experience.

21 MR. EGLET: Age and experience. All right. As a police
22 officer and now as a security officer, how long have you been
23 in the law enforcement --

24 PROSPECTIVE JUROR NO. 315: Since I was police officer.

25 MR. EGLET: And how long ago was that? How many years?

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1 PROSPECTIVE JUROR NO. 315: I started as a police officer
2 in '76.

3 MR. EGLET: Okay. So quite some time now. All right.
4 So you've been married for 25 years. Do you have children?

5 PROSPECTIVE JUROR NO. 315: Yes.

6 MR. EGLET: And what made you a good parent?

7 PROSPECTIVE JUROR NO. 315: My wife.

8 MR. EGLET: Your wife? She was the -- sounds like my
9 family. Okay. What are the -- what are your five years
10 goals?

11 PROSPECTIVE JUROR NO. 315: Retirement.

12 MR. EGLET: Retirement. Good goal.

13 PROSPECTIVE JUROR NO. 315: Been a long time.

14 MR. EGLET: Did you want to be a police officer when you
15 were in high school?

16 PROSPECTIVE JUROR NO. 315: Nope.

17 MR. EGLET: What'd you want to be? A pilot?

18 PROSPECTIVE JUROR NO. 315: It didn't matter. I got
19 close.

20 MR. EGLET: And did you?

21 PROSPECTIVE JUROR NO. 315: Military.

22 MR. EGLET: What'd you --

23 PROSPECTIVE JUROR NO. 315: Flight deck.

24 MR. EGLET: Yeah. You served in the Navy air carrier?
25 Okay.

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1 PROSPECTIVE JUROR NO. 315: Four years.

2 MR. EGLET: All right. What years did you serve?

3 PROSPECTIVE JUROR NO. 315: No, early 70, '72 but late
4 '76.

5 MR. EGLET: What aircraft carrier?

6 PROSPECTIVE JUROR NO. 315: [Indiscernible].

7 MR. EGLET: Okay. Where were you stationed?

8 PROSPECTIVE JUROR NO. 315: [Indiscernible] Florida. Now
9 in Texas as a mothball.

10 MR. EGLET: Right. I know -- my dad --

11 PROSPECTIVE JUROR NO. 315: She retired before me.

12 MR. EGLET: My dad was on the Oriskany and the Hancock
13 and the Enterprise. What are the two most [indiscernible]
14 that you yourself when you try to [indiscernible] children?

15 PROSPECTIVE JUROR NO. 315: Other than honesty?

16 MR. EGLET: Other than honesty and whatever faith you may
17 practice?

18 PROSPECTIVE JUROR NO. 315: Stand up for what you believe
19 and work hard.

20 MR. EGLET: Work ethic? All right. And [indiscernible]
21 situations do you think you're regarded as a leader?

22 PROSPECTIVE JUROR NO. 315: Well, through age and
23 experience everybody thinks you've been there, done it. All
24 the youngsters [sic] come to you and ask you questions of what
25 you've been through.

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1 MR. EGLET: Okay. If someone offers to send money to the
2 charity of your choice, what charity is that going to be?

3 PROSPECTIVE JUROR NO. 315: Any cancer. Mostly breast
4 cancer.

5 MR. EGLET: Why breast cancer?

6 PROSPECTIVE JUROR NO. 315: My mother beat it twice.

7 MR. EGLET: Okay. Good. What's the worst tragedy you've
8 ever had to experience?

9 PROSPECTIVE JUROR NO. 315: I had three.

10 MR. EGLET: I'm sorry.

11 PROSPECTIVE JUROR NO. 315: I had three.

12 MR. EGLET: Okay.

13 PROSPECTIVE JUROR NO. 315: One was the passing of my
14 father on my graduation day from high school. Second one was
15 motorcycle accident where a lady hit me and hit and run.

16 MR. EGLET: You were on the motorcycle?

17 PROSPECTIVE JUROR NO. 315: Uh-huh. Broken shoulder.

18 MR. EGLET: Okay.

19 PROSPECTIVE JUROR NO. 315: Still have it. Third was the
20 passing of my mother.

21 MR. EGLET: I'm sorry, the passing of who?

22 PROSPECTIVE JUROR NO. 315: My mother.

23 MR. EGLET: Your mother. How old were you when that
24 happened?

25 PROSPECTIVE JUROR NO. 315: When my mother passed away?

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1 MR. EGLET: Yes.

2 PROSPECTIVE JUROR NO. 315: 54.

3 MR. EGLET: Okay. Let's talk about the motorcycle
4 accident. When did that happen?

5 PROSPECTIVE JUROR NO. 315: About two years ago.

6 MR. EGLET: Two years ago? And was that here in Las
7 Vegas?

8 PROSPECTIVE JUROR NO. 315: Yes, sir.

9 MR. EGLET: Okay. And it was a hit and run?

10 PROSPECTIVE JUROR NO. 315: Uh-huh.

11 MR. EGLET: They never found the lady? All right. Tell
12 us about what your injuries were?

13 PROSPECTIVE JUROR NO. 315: I have a broken clavicle on
14 the left side. I have some scars from road rash so to speak.
15 That's about it for the accident.

16 MR. EGLET: Did you have to have surgery to your
17 shoulder?

18 PROSPECTIVE JUROR NO. 315: No, I couldn't afford it.

19 MR. EGLET: Okay. So they just set it and sent you on
20 your way?

21 PROSPECTIVE JUROR NO. 315: More or less. It's got like
22 an indentation. Doesn't stop me.

23 MR. EGLET: Doesn't stop you?

24 PROSPECTIVE JUROR NO. 315: No. I still ride my
25 motorcycle.

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1 MR. EGLET: You still ride your motorcycle? Okay. What
2 did you -- were you able to make a claim of any kind as a
3 result of that?

4 PROSPECTIVE JUROR NO. 315: Only my insurance paid.

5 MR. EGLET: Okay. And did you recover on that claim?

6 PROSPECTIVE JUROR NO. 315: They paid the medical bills
7 and I had short term disability from my job and that helped so
8 I --

9 MR. EGLET: All right. How do you -- how does that
10 incident make you feel being a victim of a hit and run, how
11 does that make you feel about injury cases like this? Does it
12 cause you to have any -- take any position one way or the
13 other?

14 PROSPECTIVE JUROR NO. 315: You would always like to have
15 somebody held responsible for it. But I got past the injury.
16 I was stronger than blaming somebody for it. But because I
17 made it through the injury, I'm doing fine, I can still do
18 what I do, I don't owe anybody or any regret.

19 MR. EGLET: Okay. Do you have any residual pain or
20 problems in your shoulder?

21 PROSPECTIVE JUROR NO. 315: Arthritis in the winters.
22 That's about it.

23 MR. EGLET: Okay. And is that just slight pain you get
24 through with some Advil or something?

25 PROSPECTIVE JUROR NO. 315: A little bit of Advil and a

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1 whole lot of heat.

2 MR. EGLET: Heat. Heating pads?

3 PROSPECTIVE JUROR NO. 315: Yeah.

4 MR. EGLET: Okay. All right. Oh, I forgot to ask you
5 what your date of birth was?

6 PROSPECTIVE JUROR NO. 315: Oh, geez. 2/28/55.

7 MR. EGLET: And have you been known by any other names?

8 PROSPECTIVE JUROR NO. 315: No.

9 MR. EGLET: And how often do you wash your car?

10 PROSPECTIVE JUROR NO. 315: Every couple months.

11 MR. EGLET: Okay. All right. When you hear someone has
12 been hurt or killed and becomes seriously ill, do you ever
13 think to yourself that well that probably happened to them
14 because of something they did bad or in their mind probably?

15 PROSPECTIVE JUROR NO. 315: Illnesses -- some things can
16 be related to what they did in the past. 60s are a great
17 example -- drugs. That causes a lot of illness later on down
18 the road. Some things are genetic. You can't stop that. All
19 others probably are caused.

20 MR. EGLET: And I guess let me refine the question a
21 little bit. I'm not talking about the fact of whether
22 somebody, you know, made some poor decisions in their health
23 decisions. I'm more on subject more on, you know, maybe
24 character issues, you know, wow this person he must have some
25 character flaw or did something bad in their past and so this

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1 brought them on -- this brought this on to them. Do you ever
2 feel that way?

3 PROSPECTIVE JUROR NO. 315: No, not really.

4 MR. EGLET: Okay. Some people think that if a person has
5 been killed or injured in an accident even if the -- even if
6 it was caused by the negligence of another person, that it was
7 fate, destiny, God's will, so that you know it was going to
8 happen anyway so they shouldn't bring a lawsuit. Do you agree
9 with that?

10 PROSPECTIVE JUROR NO. 315: No, I think everything has
11 more than one cause. More than one person.

12 MR. EGLET: Who's the public figure you admire most?

13 PROSPECTIVE JUROR NO. 315: I really don't have any
14 because you put faith in one, you always have something blow
15 that faith.

16 MR. EGLET: Yeah, that happens. But you don't remember
17 if you -- I know you were here. I didn't let Ms. Dearing off
18 the hook. I made her give me somebody. Tell us a public
19 figure out there at least currently that you admire. It
20 doesn't have to be somebody who's alive. It can be somebody
21 who's dead.

22 PROSPECTIVE JUROR NO. 315: Eisenhower.

23 MR. EGLET: Okay. Dwight Eisenhower, President
24 Eisenhower. Why President Eisenhower?

25 PROSPECTIVE JUROR NO. 315: He had to make some pretty

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1 tough decisions that affected a lot of people and that's
2 standing up and doing the right thing.

3 MR. EGLET: Okay. Thank you, Mr. Repp. Mr. Diaz, how
4 are you, sir? Mr. Diaz, what is your date of birth?

5 PROSPECTIVE JUROR NO. 323: July 23rd, 1964.

6 MR. EGLET: Okay. And have you been known by any other
7 names?

8 PROSPECTIVE JUROR NO. 323: No.

9 MR. EGLET: And how often do you wash your car?

10 PROSPECTIVE JUROR NO. 323: Maybe twice a month.

11 MR. EGLET: Twice a month. All right. You work as a
12 maintenance supervisor at the Pinnacle? What's the Pinnacle?

13 PROSPECTIVE JUROR NO. 323: Pinnacle is the company, a
14 management company for an apartment complex.

15 MR. EGLET: Okay. All right. And can you tell us what
16 makes you good at your job?

17 PROSPECTIVE JUROR NO. 323: I had some training. I try
18 to teach my coworkers.

19 MR. EGLET: Do you have children?

20 PROSPECTIVE JUROR NO. 323: Two.

21 MR. EGLET: What makes you a good parent?

22 PROSPECTIVE JUROR NO. 323: I care about them even when
23 I'm divorced, I still enjoy the weekends with them and like of
24 course I have child support.

25 MR. EGLET: I'm sorry.

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1 PROSPECTIVE JUROR NO. 323: Child support.

2 MR. EGLET: Child support. Okay. All right. What did
3 you want to be when you were in high school?

4 PROSPECTIVE JUROR NO. 323: Pilot.

5 MR. EGLET: A pilot. And what happened with that?

6 PROSPECTIVE JUROR NO. 323: I tried to join the Air Force
7 but I was a minor from my country and my mom never signed.
8 She said no.

9 MR. EGLET: Okay. I know that you were born in Mexico.
10 How long have you been in the United States?

11 PROSPECTIVE JUROR NO. 323: 27 some years.

12 MR. EGLET: 27 years. Okay. And you belong to -- strike
13 that. What are your five year goals?

14 PROSPECTIVE JUROR NO. 323: I'm going to try to get me
15 another house. I lost one through my divorce. I lost one
16 when I was married and now I would like to try to get another
17 one again.

18 MR. EGLET: Okay. You belong to any clubs or
19 organizations?

20 PROSPECTIVE JUROR NO. 323: No.

21 MR. EGLET: Okay. And what are the two most important
22 values that you --

23 PROSPECTIVE JUROR NO. 323: Love and care.

24 MR. EGLET: I'm sorry.

25 PROSPECTIVE JUROR NO. 323: Love and care.

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1 MR. EGLET: Love and care. All right. Are there any
2 situations that you think you're regarded as the leader?

3 PROSPECTIVE JUROR NO. 323: I try to teach my coworkers.

4 MR. EGLET: What is the charity that you would want money
5 to be sent to if somebody offered to send money?

6 PROSPECTIVE JUROR NO. 323: HDAD.

7 MR. EGLET: What is that?

8 PROSPECTIVE JUROR NO. 323: Something with autism.

9 MR. EGLET: I'm sorry.

10 PROSPECTIVE JUROR NO. 323: Autism.

11 MR. EGLET: Autism.

12 PROSPECTIVE JUROR NO. 323: Yeah.

13 MR. EGLET: Why autism?

14 PROSPECTIVE JUROR NO. 323: I got a kid.

15 MR. EGLET: You have a kid with autism? Okay. What's
16 the worst tragedy you've ever had to experience?

17 PROSPECTIVE JUROR NO. 323: When you find a resident dead
18 in the apartment and you know those people, it make you feel
19 really bad.

20 MR. EGLET: When you hear someone has been hurt or killed
21 or becoming seriously ill, do you ever think to yourself that
22 that's probably happened to them because something bad they
23 did at an earlier time?

24 PROSPECTIVE JUROR NO. 323: No.

25 MR. EGLET: No?

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1 PROSPECTIVE JUROR NO. 323: No.

2 MR. EGLET: Some folks think that if someone is hurt or
3 killed as a result of someone else's negligence, that you know
4 that was fate, destiny, God's will and it was going to happen
5 anyway so they shouldn't bring a lawsuit. Do you agree with
6 that?

7 PROSPECTIVE JUROR NO. 323: No, I believe because of the
8 accidents. That's how I feel. It's nothing -- God ain't
9 going to control you. He give you the freedom to --

10 MR. EGLET: Who's the public figure you admire most?

11 PROSPECTIVE JUROR NO. 323: Probably Gandhi.

12 MR. EGLET: Gandhi? And why Gandhi?

13 PROSPECTIVE JUROR NO. 323: Equal and freedom.

14 MR. EGLET: Thank you. Mr. Aquita [phonetic].

15 PROSPECTIVE JUROR NO. 332: Aquino.

16 MR. EGLET: Aquino. Am I saying that right? Akino or
17 Aqwino?

18 PROSPECTIVE JUROR NO. 332: It's Aquino.

19 MR. EGLET: Aquino. Good afternoon, Mr. Aquino. Mr.
20 Aquino, what is your date of birth?

21 PROSPECTIVE JUROR NO. 332: November 5, 1969.

22 MR. EGLET: And have you been known by any other name?

23 PROSPECTIVE JUROR NO. 332: No.

24 MR. EGLET: Okay. And how often do you wash your car?

25 PROSPECTIVE JUROR NO. 332: Every other month.

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1 MR. EGLET: Every other month, okay. And I see that you
2 are a PA, is that correct? Physician's assistant?

3 PROSPECTIVE JUROR NO. 332: No. I'm a surgical
4 assistant.

5 MR. EGLET: Surgical assistant. Okay. At Desert Springs
6 Hospital?

7 PROSPECTIVE JUROR NO. 332: Yes, sir.

8 MR. EGLET: And what type of surgeries do you assist in?

9 PROSPECTIVE JUROR NO. 332: Anything except hearts.

10 MR. EGLET: Okay. Do you assist in spine surgeries?

11 PROSPECTIVE JUROR NO. 332: Yes.

12 MR. EGLET: Okay. You put down on your thing here that
13 you know Dr. McNulty, Patrick McNulty.

14 PROSPECTIVE JUROR NO. 332: I have known him in --

15 MR. EGLET: Okay, have you worked with him in the OR
16 before as an assistant?

17 PROSPECTIVE JUROR NO. 332: No.

18 MR. EGLET: Okay. How is you know Dr. McNulty?

19 PROSPECTIVE JUROR NO. 332: Well, to begin with I'm in
20 charge of orthopedic spine in Desert Springs. So all of the
21 doctors that are actually doing spines and you get to know
22 them just through the circuit.

23 MR. EGLET: Okay. So you got to know Dr. McNulty in that
24 sense even though you haven't been in the operating room with
25 him?

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1 PROSPECTIVE JUROR NO. 332: Well, I'm their go to guy as
2 far as like what they need in the room.

3 MR. EGLET: Okay. So the surgeons come to you and say,
4 you know, when they're going to do a surgery this is what I
5 need in the room?

6 PROSPECTIVE JUROR NO. 332: Yes.

7 MR. EGLET: Okay. So are you actually in the room with
8 them assisting in the surgery --

9 PROSPECTIVE JUROR NO. 332: No.

10 MR. EGLET: -- or are you just making sure the room's got
11 the right equipment and set up properly and managed properly?

12 PROSPECTIVE JUROR NO. 332: That's correct. Yeah.

13 MR. EGLET: Do you know Dr. Jaswinder Grover?

14 PROSPECTIVE JUROR NO. 332: Yes.

15 MR. EGLET: Okay. And he performs surgery at Desert
16 Springs as well, correct?

17 PROSPECTIVE JUROR NO. 332: That's correct. But they
18 actually have their own crew.

19 MR. EGLET: They bring in their own assistants and stuff?

20 PROSPECTIVE JUROR NO. 332: Yes.

21 MR. EGLET: All right. But you still -- they still are
22 in contact with you regarding how the room should be set up?

23 PROSPECTIVE JUROR NO. 332: Correct.

24 MR. EGLET: Okay. Now Dr. Grover, both Dr. Grover and
25 Dr. McNulty are going to testify in this case. They're both

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1 going to be witnesses and so what we have to know is whether
2 because of your knowledge and relationship with them and
3 because of what you do quite frankly because you work in the
4 spine, the orthopedic spine surgery area of Desert Springs,
5 are you going to be more inclined to give more weight to their
6 testimony than you would to someone else because of your
7 relationship with them?

8 PROSPECTIVE JUROR NO. 332: No, because considering the
9 fact that we know each other professionally, on a professional
10 basis and not to mention one, McNulty doesn't actually go to
11 Desert Springs, however, that's what I said, you know them
12 through the circuit. As far as Grover is concerned, Dr.
13 Grover is concerned, they do have their own crew. And the
14 majority of the time I deal with his PA or his surgical tech
15 as opposed to Grover himself.

16 MR. EGLET: Okay. All right. Explain to me a little
17 more about exactly what your job is as with Desert Springs
18 because I'm not sure I'm clear?

19 PROSPECTIVE JUROR NO. 332: I have a couple hats in
20 Desert Springs. I also do assist some of the doctors in
21 orthopedics and bariatrics. When they actually open, I
22 [indiscernible] and they're also there. We assist them with
23 every single thing that they need us.

24 MR. EGLET: Okay. So you are in the operating room and
25 you on occasion and you're closing patients after --

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1 PROSPECTIVE JUROR NO. 332: Right.

2 MR. EGLET: -- the doctor's done the surgery, correct?

3 PROSPECTIVE JUROR NO. 332: Yeah.

4 MR. EGLET: Okay. This case is an orthopedic case, a
5 spine case.

6 PROSPECTIVE JUROR NO. 332: Right.

7 MR. EGLET: And the fact that you have specialized
8 training and additional knowledge in that area and your
9 experience, is that going to -- God, I don't even know what --
10 how I'm trying to ask this question. Is that going to cause
11 you to be skeptical one way or another about the medical
12 treatment of the doctors?

13 PROSPECTIVE JUROR NO. 332: No.

14 MR. EGLET: Okay. In this case, there's going to be some
15 doctors who are from out of state that testify as well. And
16 the doctors from out of state and the doctors in state may not
17 agree on everything. Because of your position here in this
18 community working in spine surgery in this community, are you
19 going to put more weight or tend to favor the doctors who are
20 in the community where you practice versus somebody from out
21 of state?

22 PROSPECTIVE JUROR NO. 332: No, I'm not biased in any
23 form. Beginning with them -- I was only here for five years.
24 I'm originally from Hawaii. And as far as practice is
25 concerned, no, not [indiscernible] as far as [indiscernible].

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1 MR. EGLET: All right. Okay. Thank you. What makes you
2 good at your job?

3 PROSPECTIVE JUROR NO. 332: Experience I guess and then
4 been doing quite [indiscernible] when I was just starting.

5 MR. EGLET: So you worked in trauma and ER for a while?

6 PROSPECTIVE JUROR NO. 332: Trauma surgery more like.

7 MR. EGLET: Trauma surgery. Okay. All right.

8 PROSPECTIVE JUROR NO. 332: Like more just vehicle
9 accidents and all that stuff.

10 MR. EGLET: Okay. So you've handled a lot of cases
11 involving motor vehicle accidents?

12 PROSPECTIVE JUROR NO. 332: Yes.

13 MR. EGLET: In your career. Okay. You've been married
14 for 15 years, you have children?

15 PROSPECTIVE JUROR NO. 332: Yes.

16 MR. EGLET: And what makes you a good parent?

17 PROSPECTIVE JUROR NO. 332: I always try to make time for
18 my kids no matter how busy I get. I always involve myself
19 with their activities and all that.

20 MR. EGLET: Okay. What did you want to be when you were
21 in high school?

22 PROSPECTIVE JUROR NO. 332: I wanted to be a lawyer
23 actually.

24 MR. EGLET: There's a lot of you, isn't there?

25 PROSPECTIVE JUROR NO. 332: Well, mine was influenced

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1 kind of like influenced with my cousins and in fact I have an
2 uncle that was a judge before. But because as soon as I got
3 to studying and stuff, all that books I got to read --

4 MR. EGLET: You notice most of us wear glasses.

5 PROSPECTIVE JUROR NO. 332: Yeah.

6 MR. EGLET: Yeah. You were born in the Philippines. How
7 old were you when you moved to the United States?

8 PROSPECTIVE JUROR NO. 332: I was 21.

9 MR. EGLET: Okay. So you did your schooling in the
10 Philippines?

11 PROSPECTIVE JUROR NO. 332: Both. I was actually going
12 back and forth, Hawaii and Philippines.

13 MR. EGLET: All right. What are your five year goals?

14 PROSPECTIVE JUROR NO. 332: Work less hopefully. Spend
15 more time with my kids.

16 MR. EGLET: And I apologize for this. I didn't see this
17 before. You indicated on your questionnaire that you have a
18 severe hardship because you're a surgical assistant and you
19 have surgical cases scheduled on a daily basis.

20 PROSPECTIVE JUROR NO. 332: Yes.

21 MR. EGLET: Is there going to be somebody who's going to
22 be able to replace you while you're gone or are these
23 surgeries going to have to be put off or what's going to
24 happen?

25 PROSPECTIVE JUROR NO. 332: Some of them were being put

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1 off already. That's because I was here in the afternoon.

2 MR. EGLET: Okay. So I take it then the hospital doesn't
3 have somebody who could just step in and replace you?

4 PROSPECTIVE JUROR NO. 332: Right, because of some of the
5 surgeries I actually kind of get that bond of trust in the OR.

6 MR. EGLET: They don't want to work with another
7 assistant? Okay. What kind of problems, if any, is this
8 going to cause if you have to sit here for the rest of the
9 week and then two more weeks after that in this trial?

10 PROSPECTIVE JUROR NO. 332: You know, some like my
11 surgeon this morning actually pushed up his case later just so
12 that I can be there for him. So yeah, so they had surgery
13 5:00 in the morning just so that I can get here on time.

14 MR. EGLET: Are you going to be able to do that for the
15 next few weeks to move things around and around the days we're
16 having trial or -- what I'm just trying to find out is this
17 going to be a real significant hardship or are you going to be
18 able to work around it for us?

19 PROSPECTIVE JUROR NO. 332: Well, this coming Thursday
20 and Friday, I do have [indiscernible] I got to assist with.

21 MR. EGLET: Tomorrow and this Friday?

22 PROSPECTIVE JUROR NO. 332: Yes.

23 MR. EGLET: Okay. So what's going to happen with those?

24 PROSPECTIVE JUROR NO. 332: They just told me to show up
25 here and then we'll see how it goes tomorrow and Friday is

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1 what they told me.

2 MR. EGLET: All right. If you end up on this jury, are
3 they going to be able to work around this here? You know,
4 we're only here from 1:00 to 5:00 every day. We're not full
5 days. Are they going to be able to work the surgeries around
6 because I know surgeons sometimes start real early in the
7 morning and they have them sometimes real late at night.

8 PROSPECTIVE JUROR NO. 332: Part of my obligation is to
9 also help them with some issue. Because if there's some
10 things that don't usually work the right way.

11 MR. EGLET: Okay.

12 PROSPECTIVE JUROR NO. 332: That's the reason why the
13 comfort level is there. So sometimes -- and depending on the
14 patient's needs, the patient really needs that surgery right
15 there and then, they just have to do it then.

16 MR. EGLET: I guess what I'm asking you to tell us is if
17 you could just tell us in your own words, you know, is this
18 going to be a, you know, a severe or significant hardship or
19 can you work around this? If you can just tell us.

20 PROSPECTIVE JUROR NO. 332: I guess what I'm trying to
21 say is I'm trying to work on it and even the doctors that are
22 working with me are trying to work on it. And so if we're
23 running into a huge difficulty on this coming Thursday and
24 Friday.

25 MR. EGLET: This Thursday and Friday?

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1 PROSPECTIVE JUROR NO. 332: Yeah.

2 MR. EGLET: And so I can't put the words in your mouth.

3 PROSPECTIVE JUROR NO. 332: I really don't --

4 MR. EGLET: You have to tell us.

5 PROSPECTIVE JUROR NO. 332: It might. It might be an
6 issue.

7 MR. EGLET: Okay. Well, today's Wednesday. Tomorrow's
8 Thursday and Friday that you're talking about that it might be
9 an issue. When you going to find out, you know, it's quarter
10 to 4:00. When are we going to find out how big of an issue it
11 is?

12 PROSPECTIVE JUROR NO. 332: As soon as I give them a
13 call. They usually give me an evaluation of the day the day
14 after around 4:00 in the afternoon.

15 MR. EGLET: Today?

16 PROSPECTIVE JUROR NO. 332: Yeah.

17 MR. EGLET: So the day before the surgeries?

18 PROSPECTIVE JUROR NO. 332: Yes.

19 MR. EGLET: So you would find out today sometime after
20 4:00?

21 PROSPECTIVE JUROR NO. 332: Yeah, because some of this
22 medical insurance issue is going to be approved or not after
23 they [indiscernible] and how the patient's lab tests are going
24 to be. They get Cat Scans or they need -- they're okay.

25 MR. EGLET: Okay. So you don't really have an answer for

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1 us right now?

2 PROSPECTIVE JUROR NO. 332: Yeah. Yeah, I don't.

3 MR. EGLET: Okay. If someone offers to send money to the
4 charity of your choice, what charity is that going to be?

5 PROSPECTIVE JUROR NO. 332: Red Cross.

6 MR. EGLET: Why the Red Cross?

7 PROSPECTIVE JUROR NO. 332: Because of the fact that bad
8 situations when there's some bad situations where you can
9 prepare for but there are some that you really cannot. It's
10 sudden and Red Cross is always good at those situations
11 wherein they're out there before and at least they're there to
12 support it.

13 MR. EGLET: Okay. And what's the worst tragedy that
14 you've ever had to experience?

15 PROSPECTIVE JUROR NO. 332: Losing a best friend in high
16 school, a brain hemorrhage.

17 MR. EGLET: When you hear that someone has been hurt,
18 killed or become very ill, do you ever think to yourself that
19 probably happened to them because of something bad they did
20 earlier in their life?

21 PROSPECTIVE JUROR NO. 332: No.

22 MR. EGLET: Okay. Some people feel that when someone is
23 hurt or killed because of the negligence of someone else, that
24 it was fate, God's will, destiny, so that it was going to
25 happen anyway eventually, so they shouldn't bring a lawsuit.

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1 Do you feel that way?

2 PROSPECTIVE JUROR NO. 332: No.

3 MR. EGLET: Who's the public figure you admire most?

4 PROSPECTIVE JUROR NO. 332: Abe Lincoln.

5 MR. EGLET: Why President Lincoln?

6 PROSPECTIVE JUROR NO. 332: Aside from the fact that he's
7 actually honorable and come from humble beginnings, there's
8 just one particular thing that he did back then that I arguing
9 at this point which is inasmuch as he's mad at one person, he
10 writes that down and he puts afterwards and say, hey, how are
11 you. And it's something that I kind of practice. That's
12 [indiscernible] with anybody else.

13 MR. EGLET: Okay. Very good. Thank you. I'm now going
14 to talk to just as we've covered this with everyone else, I'm
15 just going to talk to the four new panel members now. Does
16 everyone remember the hypothetical I give about the juror out
17 in the -- a fellow juror panel member out in the hallway
18 coming up to you and saying hey, my knee really hurts today.
19 And whether any of you would have -- anyone would have any
20 reason to disbelieve them. Any of the four of you have any
21 reason to disbelieve them if a fellow juror did that? Okay.

22 Changing the hypothetical, it's a witness or a party
23 on the stand in a trial and you're in a jury and they're under
24 oath and they've sworn to tell the truth and they say my knee
25 is really hurting. What is your initial reaction going to be?

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1 Is it going to be -- are you going to be more inclined to be
2 on the side that I have no reason to disbelieve them until
3 proven otherwise so I'm going to believe them? Or I'm going
4 to be skeptical of what they're saying until I hear more proof
5 from other sources as to whether their knee is really hurting
6 or not? So, Mr. Daniels, which side of those do you fall on?

7 PROSPECTIVE JUROR NO. 338: I take it at face value. No
8 preconceived notions. I take it for what it is.

9 MR. EGLET: All right. Mr. Aquino, what about you?

10 PROSPECTIVE JUROR NO. 332: I would need to see proof.

11 MR. EGLET: Okay. You'd be less -- you'd be more
12 inclined to not believe him at that point until you got
13 additional proof?

14 PROSPECTIVE JUROR NO. 332: I would be -- I would have my
15 reservations but I would still -- I just need to see the proof
16 first before find out that there is pain and all.

17 MR. EGLET: Okay. Mr. Repp, where do you fall on that
18 scale?

19 PROSPECTIVE JUROR NO. 315: I would be skeptical because
20 of the setting. Not because it was in the hallways.

21 MR. EGLET: And why would you be skeptical?

22 PROSPECTIVE JUROR NO. 315: Because within this room it's
23 all about one particular case. And an individual says his
24 knees are hurting, why would you wait till here, you know,
25 like the juror in the hallway. Why wouldn't you say it in the

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1 hallway? When you say it in here, it's like setting up a
2 reason to move forward with something else. So I would in the
3 courtroom setting, I would be skeptical. Out in public,
4 absolutely not.

5 MR. EGLET: Even though --

6 PROSPECTIVE JUROR NO. 315: Everybody has aches and
7 pains.

8 MR. EGLET: Even though the witness has been put under
9 oath and subject to criminal prosecution for not telling the
10 truth?

11 PROSPECTIVE JUROR NO. 315: Everybody tells the truth,
12 right?

13 MR. EGLET: Mr. Diaz, what do you think about the
14 situation? How do you fall?

15 PROSPECTIVE JUROR NO. 323: Need to see proof.

16 MR. EGLET: What?

17 PROSPECTIVE JUROR NO. 323: I would like to see proof of
18 why.

19 MR. EGLET: So you would tend not to believe the person
20 until you heard other proof?

21 PROSPECTIVE JUROR NO. 323: Yeah.

22 MR. EGLET: Okay. All right. Very good. I talked to
23 the panel yesterday about the fact that there's going to be
24 witnesses on both sides who are going to be compensated for
25 their time to testify as well as whatever work they've done in

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1 preparation for their testimony in this case. We refer to
2 them generally as expert witnesses. Do any of the four of you
3 feel like expert witnesses or people who are being compensated
4 for their time to come in and give testimony, that you're
5 going to be skeptical right out of the bat about those
6 witnesses? Mr. Diaz, you're nodding your head up and down.

7 PROSPECTIVE JUROR NO. 323: Yeah, because I had bad
8 experiences about those things.

9 MR. EGLET: Tell us about that.

10 PROSPECTIVE JUROR NO. 323: Like I had a small accident,
11 a fender bender in California and the first one to approach to
12 me was a lawyer trying to get something and a chiropractor and
13 all of those things. And it's really hard to believe and
14 trust the system sometimes because of those things. I ain't
15 going to say there is not legal cases but sometimes it's
16 really hard because all of those things. Most of the people
17 work for money. I got a friend got involved in a fender
18 bender getting to the freeway a month ago. He was in a small
19 car and when they were joining into the I-15 somebody bumped
20 it or they bumped together, north PD come by, took it on the
21 side. He was in a small car, the other one was a big SUV.
22 They didn't see about the insurances and all of those things
23 at the end of the time after a month he got a letter saying
24 that the insurance is going to pay for the damages but now the
25 people in the other car is suing because some of the reasons.

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1 It's sometimes it's really hard for us to believe the system.
2 Like we say we can see the problem of things and that's when
3 we believe it. But sometimes it's hard to see it.

4 MR. EGLET: Okay. Mr. Repp, how do you feel about that?

5 PROSPECTIVE JUROR NO. 315: Well, it's kind of hard to
6 judge something in that nature because both sides can have
7 experts and neither one of them agree. So how can you put 100
8 percent trust in them getting paid for what they did? Just
9 because they're paid for something doesn't necessarily make
10 them the expert with. Their background and their experience,
11 yes, I would believe that more than I would any money value.

12 MR. EGLET: So their background and experience and what
13 motivations they may have for testifying is going to give you
14 an --

15 PROSPECTIVE JUROR NO. 315: Play the part, absolutely.

16 MR. EGLET: All right. Mr. Daniels, how do you feel
17 about the issue of expert witnesses? People being paid for
18 their time?

19 PROSPECTIVE JUROR NO. 338: You got to have them. I mean
20 you've got to have -- I mean you've got to have experts on
21 both sides of the fence. Because I consider the money factor
22 being anything that's going to influence me. Maybe it was
23 right in their opinion about that.

24 MR. EGLET: You know, sometimes it's not even necessarily
25 somebody who is specifically gone out and hired as an expert.

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1 Sometimes it's when you ask a doctor or another professional
2 would come in and testify, you have to compensate them for
3 their time. So, Mr. Aquino, how do you feel about that?

4 PROSPECTIVE JUROR NO. 332: Well, considering the fact
5 that we're looking at doctors and when they're in the
6 courtroom they're not in their offices, they're not acting
7 with anyone. That's how I don't -- and at one point I know
8 that they also have their overheads that they need to pay for.
9 So they're being compensated for it, I don't really have an
10 issue with that.

11 MR. EGLET: You don't have any issues? Okay. Thank you.
12 Any of the three of you or excuse me, the four of you, all
13 four of you and those of you who believe in personal
14 responsibility, raise your hand please. You believe that
15 people should be personally responsible?

16 UNIDENTIFIED JUROR: You should be responsible for what
17 you do.

18 MR. EGLET: Okay. How many of the four of you also
19 believe that people along with being personally responsible
20 should be held accountable for their actions? Raise your
21 hands if you agree with that. Okay. All right. Now this
22 brings us to a long discussion that I know you guys were
23 listening to that I had with the entire panel that we were
24 just finishing up and that was this idea of lawsuit reform and
25 the fact that we've heard a lot about verdicts being too high,

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1 about lawyers taking advantage, frivolous lawsuits, jackpot
2 justice, verdicts hurting business or driving up insurance.
3 What bothers you, any of you, about any of those issues? How
4 do you feel about this subject. Mr. Repp.

5 PROSPECTIVE JUROR NO. 315: I feel that a lot of Court
6 cases and I know I put in my form 70 percent because of the
7 casino business are frivolous. And it's strictly because of
8 what you see not just what you see on TV but what I see in the
9 casinos. I can cite a bunch of lawsuits that were frivolous
10 with casinos. A person goes into a casino, they're awestruck
11 with how beautiful the building is but they don't see the
12 little reflecting pond and walk in it. And they want ten
13 million dollars from the casino because there's a reflecting
14 pond. That's frivolous. If you're that awestruck, you stop,
15 you look up.

16 It's the same thing with what you were saying about
17 a negligent person crossing the street. They have a right to
18 be there? Of course. But if it's a sidewalk or a crosswalk
19 and there's no stop sign, and that car is right close to that
20 crosswalk at the speed limit, and you dart out in front of a
21 moving vehicle, it's not negligence.

22 MR. EGLET: Sure. Okay. And generally though and I
23 understand you, you know, because we've all been in this town
24 and in this business we've heard about some of these lawsuits
25 like you just mentioned against the casinos. But how do you

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1 look at it generally? I mean do you have any viewpoints that
2 you think affects and I do realize and I see on your
3 questionnaire that you think that 70 percent of these type of
4 lawsuits are frivolous and only ten percent of the defenses
5 that are brought in these type of cases are frivolous.

6 PROSPECTIVE JUROR NO. 315: Uh-huh.

7 MR. EGLET: And why do you feel that way?

8 PROSPECTIVE JUROR NO. 315: Well, traffic accidents are a
9 bunch of moving vehicles, freeways, town cars, freeways 70
10 mile an hour, 70 mile an hour, you got 15, 20 cars all moving
11 in the same direction. Individual in the front hits his
12 brakes or swerves a little bit, ten cars behind you pile up.
13 The last guy in line is the one that fits the bill to it
14 because he gets negligent in not controlling his vehicle to
15 move out of the way. And the guy in the front that caused the
16 accident skates. It's not right.

17 MR. EGLET: Meaning the guy who -- the first car to get
18 hit from behind?

19 PROSPECTIVE JUROR NO. 315: No, no, I'm talking about the
20 guy --

21 MR. EGLET: The first car that hit the car in front of
22 him from behind?

23 PROSPECTIVE JUROR NO. 315: No, I'm saying on the freeway
24 where a guy will change lanes immediately.

25 MR. EGLET: Oh, you're talking about the swoop and squat?

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1 PROSPECTIVE JUROR NO. 315: Yep. And he'll scream across
2 the freeway. 20 cars all pile up.

3 MR. EGLET: Right.

4 PROSPECTIVE JUROR NO. 315: Is it their fault that he did
5 that? No. But lawsuits are brought from that blaming
6 everybody back there. And that's not right. It's not fair.

7 MR. EGLET: So is it fair to say that you kind of have a
8 coming into this case kind of a feeling or a disposition or
9 opinion that most of these type of cases are frivolous?

10 PROSPECTIVE JUROR NO. 315: Without the evidence, I can't
11 say for sure. You have to have all the evidence.

12 MR. EGLET: No, I understand. And I understand that no
13 evidence has been presented. I guess I'm more talking about
14 before the case even begins, because of what you put in your
15 questionnaire, do you think that you have kind of a bias in
16 your own mind against these type of cases because of what your
17 career and what you've done and how you feel that they're --
18 most of these cases are frivolous?

19 PROSPECTIVE JUROR NO. 315: And that's from personal
20 experience and from what I've seen.

21 MR. EGLET: And I understand and I appreciate that.
22 There's nothing wrong with that.

23 PROSPECTIVE JUROR NO. 315: And that's not to say that I
24 sit and watch TV and come up with all these McDonald's cases
25 or whatever. It's like I avoid watching that stuff.

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1 MR. EGLET: Yeah.

2 PROSPECTIVE JUROR NO. 315: It's depressing.

3 MR. EGLET: Right.

4 PROSPECTIVE JUROR NO. 315: But personal experience over
5 30 years, you see a lot.

6 MR. EGLET: Sure.

7 PROSPECTIVE JUROR NO. 315: And when you see a lot, you
8 see how it goes and what we were talking about earlier about
9 frivolous lawsuits that tainted all the good suits.

10 MR. EGLET: Sure.

11 PROSPECTIVE JUROR NO. 315: So yeah, a lot of people go
12 in with preconceived what is your motivation for this? What
13 is the deep pocket theory?

14 MR. EGLET: And I guess my question to you is based on
15 your experience, you would agree that you have kind of a
16 preconceived idea about the nature of these lawsuits and think
17 most of them are frivolous, is that a fair statement?

18 PROSPECTIVE JUROR NO. 315: Sure.

19 MR. EGLET: Okay. And I appreciate you being honest with
20 us about that. So is it a fair statement that before any
21 evidence is presented in this case, just because of the nature
22 of the type of case this is, that the Plaintiff is going to be
23 starting a little bit behind?

24 PROSPECTIVE JUROR NO. 315: A little bit behind.

25 MR. EGLET: Okay. Is going to have more of a burden?

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1 PROSPECTIVE JUROR NO. 315: That's purely by nature.

2 MR. EGLET: And you know what, I appreciate your honesty
3 and we really appreciate that. And so it's fair to say that
4 if you were in the position of a plaintiff in a case like that
5 injured party, you probably wouldn't want somebody --

6 PROSPECTIVE JUROR NO. 315: I'd have reservations, sure.

7 MR. EGLET: You wouldn't want somebody with your
8 disposition on your jury, would you?

9 PROSPECTIVE JUROR NO. 315: I would have that thought,
10 yes.

11 MR. EGLET: Okay. Thank you very much, Mr. Repp.
12 Mr. Daniels, how do you feel about this whole idea about, you
13 know, frivolous lawsuits and all that stuff we've been talking
14 about and what the panel heard here?

15 PROSPECTIVE JUROR NO. 338: I think it's a shame that a
16 lot of people hop on the bandwagon to get rich quick. That
17 affects the credibility of the people that actually need or
18 deserve compensation.

19 MR. EGLET: Okay. You in your questionnaire basically it
20 said 60/60. You felt that 60 percent were frivolous of the
21 cases were frivolous but you also said 60 percent of the
22 defenses were frivolous so you're kind of like right there
23 together, right?

24 PROSPECTIVE JUROR NO. 338: Yeah, it really goes on a
25 case by case.

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1 MR. EGLET: Okay. Is it fair to say that going into this
2 case then you don't have a disposition where you're in favor
3 of one side or the other?

4 PROSPECTIVE JUROR NO. 338: I don't have --

5 MR. EGLET: All right. Mr. Diaz, what about you, sir?
6 Do you agree with what Mr. Repp said? The gentleman to your
7 right?

8 PROSPECTIVE JUROR NO. 323: Seeing the things we see,
9 it's really hard for us to start with something until we see
10 the evidence.

11 MR. EGLET: Okay. And I understand, you know, nobody's
12 seen any evidence in this case. But we're trying to make sure
13 that, you know, everybody is on the same page before this case
14 started and it's like we said that every -- we have a --

15 PROSPECTIVE JUROR NO. 323: Probably for the start, I am,
16 too.

17 MR. EGLET: That's okay.

18 PROSPECTIVE JUROR NO. 323: For the buyer of springs that
19 we had before, we could see those things. Like I was making
20 some of those examples that I have on my personal --

21 MR. EGLET: Right and that's what I'm asking you. Based
22 on your personal experiences that you've told us a couple of
23 examples, before this case starts, before there's any evidence
24 presented, is the Plaintiff going to start behind the
25 Defendant at the starting line? In other words --

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1 PROSPECTIVE JUROR NO. 323: Yeah, because I'm not -- even
2 in the different kind of lawsuits, when they come to the place
3 where I work have been in the jail for 16 years. That kind of
4 thing there. Having seen so many residents suing properties
5 and things for things that they're --

6 MR. EGLET: Right.

7 PROSPECTIVE JUROR NO. 323: And they still get money and
8 it's really hard.

9 MR. EGLET: And that's left a bad kind of taste in your
10 mouth.

11 PROSPECTIVE JUROR NO. 323: Yeah.

12 MR. EGLET: And a feeling with you that you just have a
13 hard time with these type of lawsuits? Is that correct?

14 PROSPECTIVE JUROR NO. 323: Yes, sir.

15 MR. EGLET: Okay. Fair to say that if you were in the
16 position that Mr. Simao was in that you wouldn't want somebody
17 like yourself sitting on your jury?

18 PROSPECTIVE JUROR NO. 323: I'm actually -- even when I
19 have some of that experience, I believe that on account of the
20 way that I am, and the kind of education we have, I'm not
21 impartial. I -- that's right, I go with what I thinks. If
22 that's wrong, I go with the wrong things. Even when I had the
23 experience on some of those cases, the bad taste, but I'm not
24 -- the guy ain't going to be affecting my judgment to see when
25 it's true and it's not.

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1 MR. EGLET: Well, let me ask you this because we're kind
2 of a little bit getting a little bit inconsistencies with what
3 you're saying and it may just be the way I'm asking the
4 question. And I want to make sure. A minute ago, you told me
5 that because of your experiences that you felt that the --

6 PROSPECTIVE JUROR NO. 323: The bad taste --

7 MR. EGLET: Uh-huh. The Plaintiff was going to -- at the
8 start line the Plaintiff was going to start behind the
9 Defendant before the case started. Is that still the way you
10 feel? And so the Plaintiff is going to have some ground to
11 make up with you before -- when the case starts, is that
12 correct?

13 PROSPECTIVE JUROR NO. 323: Yeah.

14 MR. EGLET: Okay. Mr. -- help me, Mr. Aquino.

15 PROSPECTIVE JUROR NO. 332: Aquino.

16 MR. EGLET: I can't say it right, can I? What's your
17 thoughts on this issue? I mean you're in there with the spine
18 surgeons. I mean you have a -- and I'm not talking about
19 medical malpractice cases. That's a whole other issue. You
20 know, believe me, I think I know how you feel about those. So
21 that's a whole other issue we're not dealing with in this
22 case. Okay. But how do you feel about the whole idea of the,
23 you know, the civil justice system and the fact that a lot of
24 people think, you know, these verdicts are out of control? Or
25 there's frivolous lawsuits that lawyers are taking advantage,

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1 it's driving insurance rates up, affecting businesses. How do
2 you feel about all that?

3 PROSPECTIVE JUROR NO. 332: Frivolous lawsuits, we all
4 know that there's some out there. But is it going to be
5 affecting the way I'd be judging everything? I mean it's a
6 case by case basis depending on how the case is presented.
7 And how do things actually appear as far as trying to judge
8 one case as opposed to the rest. I guess what I'm trying to
9 say that I'm not really biased as opposed to how a particular
10 case would actually be running. Although we do have a lot of
11 unheard of fraudulent cases out there, or frivolous rather.
12 Frivolous cases out there that's actually in the media right
13 now and that's also media.

14 MR. EGLET: What cases in the media do think are
15 frivolous?

16 PROSPECTIVE JUROR NO. 332: Well, I mean one coming to
17 mind would be like that McDonald's worker got fired because he
18 was a food taster and he sued for that. And I don't know
19 beyond that basically, you know. And I mean --

20 MR. EGLET: Sure.

21 PROSPECTIVE JUROR NO. 332: Well I mean there are some
22 out there and it's not something that would really affect
23 one's judgment shouldn't really.

24 MR. EGLET: And you put in your questionnaire in response
25 to the questions about the damages questions, you were asked -

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1 - you indicated in your response, do you have any beliefs that
2 would prevent you from returning a multimillion dollar verdict
3 for pain and suffering even if it was justified by the
4 evidence and you said yes, that you would have a problem with
5 that. You also indicated that you believed that there should
6 be caps placed on the amount that a jury is permitted to put
7 in the verdict for pain and suffering. Can you tell us why
8 you answered those questions the way you did in your
9 questionnaire?

10 PROSPECTIVE JUROR NO. 332: In some cases, because of the
11 fact that I'm in this field, I know for a fact that there's no
12 wonder drug out there that would actually just get you --
13 would you make you feel good the next day. As the surgical
14 intervention side, somebody will even take like a year,
15 sometimes two years, just for nerve endings and all that. And
16 at that point, if you already went ahead and go for what do
17 you call damages because of your pain and whatnot, everybody
18 actually says, I mean even up to now I'm only 24 years old and
19 I'm already feeling some pains in me, too. So we deal with
20 it, so what?

21 MR. EGLET: Okay.

22 PROSPECTIVE JUROR NO. 332: But again.

23 MR. EGLET: So let's explore that a little bit more when
24 you say we deal with it, so what. So do you have a feeling
25 that pain and suffering damages are just not something that

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1 should be -- the jury should put in verdicts in these type of
2 cases?

3 PROSPECTIVE JUROR NO. 332: I guess depending on how it
4 happened. And how significant it is as far as like how
5 everything -- how it's really affecting somebody's way of
6 life.

7 MR. EGLET: The pain?

8 PROSPECTIVE JUROR NO. 332: Yeah.

9 MR. EGLET: Okay.

10 PROSPECTIVE JUROR NO. 332: I mean seeing some people
11 that actually used to -- and this is because of the fact that
12 they love what they do and that may take it away from them.
13 That's entirely different, you know.

14 MR. EGLET: So changes the quality of their life?

15 PROSPECTIVE JUROR NO. 332: Yeah.

16 MR. EGLET: Okay. So it sounds like to me that you're
17 not just completely opposed to pain and suffering damages.
18 You just think there are some situations where in your
19 experience, you've seen that the amounts are too much, is that
20 what you're saying?

21 PROSPECTIVE JUROR NO. 332: Yeah.

22 MR. EGLET: Okay. Now you're in the medical field?

23 PROSPECTIVE JUROR NO. 332: Yes.

24 MR. EGLET: And you work in the surgical unit?

25 PROSPECTIVE JUROR NO. 332: Yes.

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1 MR. EGLET: And you deal with the anesthesiologists?

2 PROSPECTIVE JUROR NO. 332: Correct.

3 MR. EGLET: Who use propofol?

4 PROSPECTIVE JUROR NO. 332: Okay.

5 MR. EGLET: Right? Okay, right?

6 PROSPECTIVE JUROR NO. 332: Yes.

7 MR. EGLET: All right. Are you familiar with the
8 endoscopy cases and what happened last year?

9 PROSPECTIVE JUROR NO. 332: Yes, I'm very familiar with
10 it.

11 MR. EGLET: All right. Do you have a strong opinion one
12 way or another against me or my firm for the case we pursued
13 against the drug manufacturers and producers of propofol in
14 that case?

15 PROSPECTIVE JUROR NO. 332: No.

16 MR. EGLET: Okay. Because I know there's some medical
17 people who do. So I just want to make sure you're not --
18 that's not something that's going to -- you're going to hold
19 against us.

20 PROSPECTIVE JUROR NO. 332: No.

21 MR. EGLET: Okay. You other three gentlemen, you may not
22 even know about that, but if you do, is that something that
23 would cause you to have a problem with my firm or me?

24 PROSPECTIVE JUROR NO. 338: Not you or your firm but
25 again, you know, it's a case by case value as to what it was

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1 used for.

2 MR. EGLET: Sure.

3 PROSPECTIVE JUROR NO. 338: Everything is made for a
4 purpose and if it's misused, then yes.

5 MR. EGLET: And that's not this case obviously. But you
6 know there's and what gets, you know, put in the press is,
7 we've already talked about, is never either accurate or
8 complete. So I just wanted to make sure that, you know, you
9 just don't have any real strong feelings that oh, I really
10 don't like these guys or that guy. Okay.

11 I think I talked or I was in the process I should
12 say of talking when we took the break to the panel about the
13 fact that some folks feel that unless the Defendant hurt the
14 Plaintiff, the injured party, hurt the injured party on
15 purpose, did it intentionally as opposed to just being
16 negligent, that they shouldn't have to pay, they shouldn't
17 have to compensate them for their harms and losses. Other
18 folks think it's okay if it's just a negligent standard. And
19 I know we ended the conversation with Mr. Martinez who's no
20 longer with us. Does anyone else have any feelings about that
21 that they feel like, you know, on that spectrum that they feel
22 like the person should have to have done it on purpose? And I
23 want Mr. Bombino, I want to talk to you because one of the
24 things you said earlier in answer to some of these questions
25 when we were talking about damages was well, I want to know,

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1 you know, the nature of the conduct? How severe it was? I
2 mean were they, you know, just -- was this really bad or just,
3 you know, an accident? Do you remember saying that?

4 PROSPECTIVE JUROR NO. 992: No.

5 MR. EGLET: Something to that effect?

6 PROSPECTIVE JUROR NO. 992: I remember saying I'd need a
7 lot of convincing. I remember saying that.

8 MR. EGLET: Okay.

9 PROSPECTIVE JUROR NO. 992: Talked about that yesterday.

10 MR. EGLET: Well, I thought you said -- you also said it
11 is the nature and it may have been Mr. Doty who said that.

12 But you don't remember saying that?

13 PROSPECTIVE JUROR NO. 992: No.

14 MR. EGLET: Mr. Doty, do you remember saying that? You
15 say well, I want to look at the conduct itself and how severe
16 the conduct was? And I think Mr. Barrett, you said that as
17 well? Do you recall that? Mr. Barrett, can you tell us --

18 PROSPECTIVE JUROR NO. 943: Well, I feel if you caused an
19 accident, then yes, you are at fault. Where I would look I
20 think when it comes to the compensation, that's where I would
21 look more at was it intentional or how much at fault were you
22 in the accident.

23 MR. EGLET: Okay. So you're not opposed to holding them
24 responsible on the basis of negligence?

25 PROSPECTIVE JUROR NO. 943: No, if you were negligent and

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1 how --

2 MR. EGLET: You're talking more when we get into the
3 damages amounts.

4 PROSPECTIVE JUROR NO. 943: Yes.

5 MR. EGLET: And we'll talk about that in a minute.
6 Anyone else who feels like Mr. Martinez told us that, you
7 know, if it's just negligence, if it's not intentional, I
8 don't think I could hold the person responsible? Anybody else
9 feel that way?

10 PROSPECTIVE JUROR NO. 049: Colmines.

11 MR. EGLET: Colmines, yes.

12 PROSPECTIVE JUROR NO. 049: I feel the same way.

13 MR. EGLET: Tell us why you feel that way?

14 PROSPECTIVE JUROR NO. 049: Because it's not
15 [indiscernible] with that person.

16 MR. EGLET: Could you speak up a little bit. I don't
17 know if the mic --

18 PROSPECTIVE JUROR NO. 049: I'm sorry, it's my throat.

19 MR. EGLET: That's okay. These microphones sometimes
20 don't pick you up in the back row. I want to make sure it's
21 on the record. So if you could just repeat what you said,
22 okay.

23 PROSPECTIVE JUROR NO. 049: I say I don't believe in it
24 if they did it on purpose that there has to be guilty, you
25 know. If they didn't do it -- if they did it negligence,

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1 shouldn't be struck.

2 MR. EGLET: Okay. So your position is that unless they
3 are --

4 PROSPECTIVE JUROR NO. 049: And Mr. Martinez say I was
5 available.

6 MR. EGLET: I'm sorry.

7 PROSPECTIVE JUROR NO. 049: But then Mr. Martinez said I
8 was available.

9 MR. EGLET: Okay. And I gave Mr. Martinez the
10 hypothetical of a crosswalk and I know Mr. Repp brought up
11 well, a person could have darted out in a car. I want you to
12 assume that none of that happened. I want you to assume the
13 person is legally in the crosswalk, they're crossing the
14 crosswalk, they have the right of way, and the driver is
15 coming along, there's two different scenarios. One scenario
16 is the driver sees the person crossing in the crosswalk and
17 they point the front of their vehicle at them --

18 PROSPECTIVE JUROR NO. 049: That's intentional.

19 MR. EGLET: -- and they intentionally hit them. Okay,
20 that's intentional conduct. The other scenario which is
21 negligence which would be considered negligence is they don't
22 see the person, they're driving along and they are not paying
23 full attention, they're distracted by something inside the
24 car, they're looking somewhere else, they're not looking
25 around where they should be and they simply don't see the

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1 person. They didn't purposely hit them, they didn't
2 intentionally hit them, it was an accident. They were
3 negligent. Okay. Under that scenario, do you think that the
4 driver who hit the person and was negligent, do you think that
5 they should be held responsible?

6 PROSPECTIVE JUROR NO. 049: No.

7 MR. EGLET: No.

8 PROSPECTIVE JUROR NO. 049: Because of negligence. I
9 mean it going to happen, you know.

10 MR. EGLET: And if you were on a jury under a scenario
11 like that, would you be willing to hold that person
12 responsible who was just negligent?

13 PROSPECTIVE JUROR NO. 049: Yes.

14 MR. EGLET: You would?

15 PROSPECTIVE JUROR NO. 049: No, I wouldn't hold for
16 somebody that is negligence. I would only with somebody do it
17 on purpose.

18 MR. EGLET: I'm not understanding you. I want to make
19 sure I'm clear. Would you or would you not if you were on a
20 jury be willing to hold the person who was just negligent
21 responsible for the injuries for the other person?

22 PROSPECTIVE JUROR NO. 049: You mean hold this mean if
23 you go against them?

24 MR. EGLET: You go against them. In other words, would
25 you be willing to make the person pay who accidentally hit the

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1 person in the crosswalk, not on purpose, would you be willing
2 to make them pay or compensate the person who was injured?

3 PROSPECTIVE JUROR NO. 049: No.

4 MR. EGLET: You would not? Okay. Your Honor, may we
5 approach?

6 THE COURT: Yes.

7 [Bench Conference Begins]

8 MR. EGLET: At this time, I would ask that Ms. Colmines,
9 Mr. Repp and Mr. Diaz be excused for cause on the same basis
10 of the motion I made earlier on such presence and the same
11 thing. The exact same thing.

12 MR. ROGERS: Ms. Colmines' only excusable problem is the
13 language barrier. It was clear from her responses that she
14 didn't understand. That's reason enough in my view. And on
15 that basis, I don't oppose her being excused.

16 I do oppose excusing Mr. Repp and Mr. -- who was he?
17 Aquino?

18 MR. EGLET: It's no, not Aquino. No, I'd have to make a
19 motion. It's Repp and Diaz, the two gentlemen sitting next to
20 --

21 MR. ROGERS: Yeah, simply for the same reason as before,
22 that is that the problem that's occurring is this. Mr. Eglet
23 is saying to the jurors and listen on this one, Bob, just
24 because this is going to be a repeating objection. He's
25 saying to the jurors if there's a problem in that you put the

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1 Plaintiff a little bit behind the Defendant when we begin, I
2 want to know about that. Well, it's a misleading question
3 because the Plaintiff is behind the Defendant the moment the
4 case begins. That's the burden of proof. And everything goes
5 from there without educating them about the burden of proof,
6 they're made to feel like they have a prejudice that the law
7 does not recognize as a prejudice. The law says that's the
8 law. You should put the Plaintiff a little bit behind.

9 MR. EGLET: No.

10 THE COURT: Let's take --

11 MR. EGLET: No, that's not the law.

12 THE COURT: Let's take a five minute break for us and
13 about a 15 minute break for them. And then based on your
14 representation, it doesn't sound like you have any objection
15 to Colmines being excused.

16 MR. ROGERS: That's correct.

17 THE COURT: And we'll address the issue of those other
18 two outside the presence of the jury.

19 [Bench Conference Ends]

20 THE COURT: Oh, Marshal Diamond -- Marshal Diamond.

21 THE MARSHAL: Yes.

22 [Bench Conference Begins]

23 THE COURT: May I have a moment please? Counsel and I
24 are going to take a five minute break. The jury is going to
25 take a 15 minute break.

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1 THE MARSHAL: How many jurors?

2 THE COURT: And I want these two --

3 THE MARSHAL: Okay. [Indiscernible].

4 THE COURT: In about five minutes. Okay. So have these
5 two --

6 THE MARSHAL: Do you want me to bring them back now?

7 THE COURT: No, I want a five minute break.

8 THE MARSHAL: That's what I'm saying, you want them
9 brought back in because [indiscernible] and bring them back
10 in.

11 THE COURT: And I'm thinking a five minute break and I
12 want everybody else to get about a 15 minute break.

13 THE MARSHAL: Okay.

14 THE COURT: Thank you.

15 [Bench Conference Ends]

16 THE COURT: Going to take a break, ladies and gentlemen.

17 [Court Admonishes Jury]

18 [Recess]

19 THE MARSHAL: Come to order. Remain seated.

20 THE COURT: Okay. So we're back on record outside the
21 presence of the jury. Mr. Eglet, did you want to make a
22 record on Jurors 9 and 10?

23 MR. EGLET: Yes, Your Honor, I would like to. Your
24 Honor, as we -- as I did at the bench, we are challenging
25 these two jurors for cause. Mr. Repp and Mr. Diaz both stated

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1 under oath that because of their prior experience, with
2 respect to Mr. Repp it was his prior experience as a police
3 officer, as well as a security guard, and handling
4 investigating the claims against hotels, as well as car
5 accident cases, and Mr. Diaz who was with respect to his
6 personal experience and he cited a couple of examples with
7 friends, where they both indicated that they just felt there
8 were a great deal of frivolous lawsuits out there -- a much
9 higher percentage of lawsuits than defenses that are brought.

10 They went on to say that both of them felt that
11 before any evidence was presented in the case, that the
12 Plaintiff would be starting behind the Defendant before the
13 case started. Now Mr. Rogers up at the bench unbelievably to
14 me said to the Court the Plaintiff does start behind the
15 Defendant because they have the burden of proof. That is not
16 the situation in a civil case. The parties start at the same
17 start line. The scale is balanced when the case starts and
18 all the Plaintiff does have to do to meet their burden of
19 proof on each element is simply slightly tip that scale. So
20 for him to say well, that the Plaintiff does start behind the
21 Defendant is a complete misunderstanding of what the law is
22 and what the burden of proof is in these civil cases. It is a
23 preponderance of the evidence, which simply means just more
24 likely than not. Both parties start at the same spot and one
25 party just simply has to tip the scale slightly in their

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1 favor.

2 In other words, start at the start -- the start of
3 the start -- same start line and at the end of the race or the
4 end of the game, be slightly ahead of the other party. That's
5 it. There is no situation where the Plaintiff is behind the
6 Defendant at the start of the case. Both of these gentlemen
7 said clearly that was the situation, and in fact Mr. Repp went
8 so far as to say I wouldn't want myself on a juror -- on a
9 jury if I was in the situation of the Plaintiff.

10 So these gentlemen's situations are no different
11 than the earlier basis and statements by jurors that we made
12 this motion on and they were dismissed for cause. And I will
13 remind the Court again that any doubt must be waived by the
14 trial judge in favor of disqualification. That is Nevada
15 Supreme Court law. And that any prospective juror whose views
16 might impair their ability to be fair and impartial is
17 disqualified as a matter of law, that is Nevada, as well as US
18 Supreme Court law, and that the prospective jurors impairment
19 does not need to be shown with unmistakable clarity. There's
20 not that kind of burden. We have shown this in this situation
21 and they should be dismissed, Your Honor.

22 THE COURT: Mr. Rogers?

23 MR. ROGERS: Yes, there is a cunning craftsmanship to the
24 Plaintiff's construct of this argument. To state that the
25 Plaintiff doesn't begin a little bit behind because at the end

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1 of the case the burden begins, the Plaintiff proposes to the
2 Court that the burden of proof isn't triggered until the end
3 of a lawsuit, the Plaintiff is mistaken. The Plaintiff does
4 begin with the burden.

5 Telling these jurors that they must keep the
6 Plaintiff and Defendant equal at the outset is misrepresenting
7 the law to them. They have been misled. And when you start
8 with that question, the jurors are naturally wondering, well
9 I've seen on TV or I've read in books or I've heard somewhere
10 that there's a burden of proof, that the Plaintiff has to
11 prove this thing to me.

12 Am I supposed to make them equal? Am I supposed to
13 treat this Plaintiff like in Mr. Eglet's hypothetical hallway
14 person? And the answer is no, there is a difference. And
15 that's the cunning of this line of questioning. That's where
16 it begins. You're supposed to keep them equal, Mr. and Mrs.
17 Jury. Oh well, I'm not sure I do. Well, hold up, are you
18 saying that you don't keep them equal? Well, then if they say
19 yes, Mr. Eglet says you're unfit.

20 And as to equating Mr. Diaz and Mr. Repp, there is
21 nothing similar about the two of them. Mr. Repp, the record
22 will show, he did say I might not be a good juror. Mr. Diaz
23 said just the opposite. He said well, I've had some
24 experiences that make me skeptical, but I think I would be a
25 good juror.

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1 Now the Defense has been sitting here quiet for
2 three days while this has been going on, while the Plaintiff
3 has monopolized the voice of the Court. The Plaintiff is the
4 only speaking person in the courtroom. There is a distinct
5 disadvantage being practiced upon the Defense. We haven't
6 even been allowed up to question these jurors on
7 rehabilitation, to advise them yes, you're right. Your
8 instinct is right or what you've heard before is right,
9 there's a burden of proof, let's start there and let's see if
10 you can be fair despite Mister -- is it Red or Repp -- your
11 experience as a security officer at a casino where some people
12 do goofy things.

13 He deserves at least that. And Mr. Diaz simply
14 can't be lumped in with Mr. Repp because he never said that.
15 He said he thought he'd be a fine juror. Yes, skeptical, but
16 skeptical is what is required. That is the burden of proof.
17 So on that basis, the Defense opposes excusing these two
18 jurors and the Defense wants to get up and start questioning
19 the jurors. Three days is too much without a single word
20 spoken from our side. So I'm done with that.

21 MR. EGLET: Mr. Rogers' misconception of the burden of
22 proof in a civil case is absolutely mindboggling to me. First
23 of all, I never have implied to the jury or said anything of
24 the such that they have to stay even all the way through the
25 case and at the very end you decide whether -- you determine

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1 the burden. What I've simply said is at the starting line
2 before any evidence is presented, before you've heard any
3 witnesses in this case, is the Plaintiff going to start behind
4 the Defendant in this case? And both of these gentlemen
5 unequivocally said yes multiple times, they said yes.

6 That is -- he is absolutely wrong on the burden of
7 proof. It's a scale of justice. The scale is absolutely even
8 when the case starts and all that has to occur for the
9 Plaintiff to prevail is to slightly tip that scale, period.
10 So there is no starting behind, as Mr. Rogers is trying to
11 imply. That is not the law, that is not the law in this state
12 or any other jurisdiction on preponderance and the evidence.
13 It's simply more likely than not, which simply means slightly
14 tipping that scale after all the evidence is in.

15 But what they're doing and what they're agreeing to
16 is that well, that scale is not even when the case starts.
17 It's tipped in favor of the Defendants, so that is has to be
18 tipped even more to get past just -- just past that stance.
19 That is what they have said, that is not what the case here,
20 that's -- and that alone, and by itself, enough and more than
21 sufficient to excuse them for cause. It's the same basis that
22 the earlier jurors were excused for cause.

23 Second, what a particular juror says about whether
24 they think they would be a good juror or not is not the
25 standard. Asking a juror well, do you think you would be a

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1 good juror in this case and them saying yes or not, that's not
2 the standard. That's why we have voir dire, that's why we ask
3 these questions, that's why we have these jury questionnaires,
4 to probe these people and probe them without coming directly
5 at them like a bull in a china shop to figure out hey, look
6 are these biases real?

7 What is the law says [sic]? The law says that any
8 prospective juror whose views might impair their ability to be
9 fair and impartial is disqualified as a matter of law. The
10 prospective juror cannot be rehabilitated. For somebody to
11 get up and ask them additional questions and for them to
12 contradict what they said before, under Nevada Supreme Court
13 case law, just says that makes them even more unfit as a
14 juryman. Their impairment does not have to be proven with
15 unmistakable clarity and any doubt must be waived in favor of
16 disqualification. These jurors -- two jurors have clearly met
17 that standard -- all of those standards and should be
18 disqualified here, Your Honor.

19 THE COURT: You know, to suggest that parties don't start
20 out with a level playing field is really mystifying to me, Mr.
21 Rogers, that you would suggest that. I wouldn't have used the
22 particular characterization that Mr. Eglet did about starting
23 a little bit ahead, but a little bit behind. I think of it
24 more as do both sides start out with a level playing field in
25 the minds of the prospective jurors, so I was really surprised

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1 to hear you make those statements. Do you want to respond?

2 MR. ROGERS: Yes, I do. The fact of the matter is, if
3 you're confused by, can't the jurors confused by it? Don't
4 you --

5 THE COURT: I didn't say I was confused by it. I said I
6 was mystified. I was very surprised to hear you make that
7 statement.

8 MR. ROGERS: Okay. Fair enough. If the jurors walk into
9 this courtroom believing that the Plaintiff has the burden of
10 proof, and most everybody has heard that they do, they just
11 don't understand exactly what it means. You'll instruct them
12 on that.

13 When you ask this question, as Plaintiff's counsel
14 has repeatedly, it seems to abrogate the burden of proof.
15 Jurors are reflexively saying well, hold up, I mean -- I mean,
16 he's supposed to prove this thing to me and no, I can't accept
17 his word just because he says it. And it all begins with this
18 question, are you going to more or less take him at his word
19 or treat him equal with the Defendant when the case begins.
20 That kind of a question is misleading because it's confusing,
21 because it doesn't tell the jurors or instruct them on what
22 they already know, but don't quite understand and that's well,
23 how does the burden of proof factor into this? How are we
24 supposed to decide a case? Doesn't a Plaintiff have to prove
25 this to me?

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1 THE COURT: Well, we haven't even addressed the issue of
2 burden of proof with the jury.

3 MR. ROGERS: That's the problem, is that this question is
4 being posed prematurely. Let's get the burden of proof stuff
5 on and then talk about okay, now that you understand the
6 burden of proof can you treat the Plaintiff fairly.

7 THE COURT: Mr. Eglet, do you want to respond to that?

8 MR. EGLET: Yes, I do, Your Honor. These jurors didn't
9 say well, don't you have to prove this, I -- you know, I want
10 some proof. We've had other jurors who have said that, okay,
11 I want some proof, I want -- and we'll get to that issue of
12 what kind of proof they're talking about, but what -- and
13 that's a totally different issue. All these jurors who said I
14 want some proof, have all said everybody's going to start with
15 an even playing field, they're going to start at the same
16 starting line.

17 What these two jurors, just like the previous jurors
18 we dismissed, said clearly is look, based on my life's
19 experiences and based on how I feel about this, the Plaintiff
20 is going to start behind the Defendant. They're not going to
21 start in the same position. They're going to start behind
22 them before this case even starts, before I've heard any
23 evidence, the Defendant's ahead. That's what we're talking
24 about, okay.

25 And so the -- he's absolutely wrong on the burden of

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1 proof, just like the Court's pointed, the parties start at the
2 same position before any evidence is presented. I don't know
3 where that comes from, but what these jurors have said is no,
4 the -- their -- based on their views, the Plaintiff is
5 starting behind. They're behind before this case even starts
6 and nobody else has said that. We haven't -- we've had people
7 say -- lots of people say well, I want proof, I want this to
8 be proved to me, you're going to have to prove this to me. We
9 haven't asked that they be excused for cause for saying you're
10 going to have to prove this to me, but when they come up and
11 say, before the case even starts you're behind, that's a
12 different situation and that's a basis for a cause challenge
13 in this case and these jurors are disqualified as a matter of
14 law, Your Honor.

15 THE COURT: Well, given the specific arguments that I
16 heard with respect to Mr. Repp, and given the fact that Mr.
17 Rogers doesn't really dispute Mr. Repp's state of mind, Mr.
18 Repp ought to be excused as a matter of law.

19 With respect to Mr. Diaz, do you want to examine
20 Mr. Diaz outside of the presence of the other jurors,
21 Mr. Rogers?

22 MR. ROGERS: Yes.

23 THE COURT: Let's bring Mr. Diaz in, let's excuse Mr.
24 Repp. And while we're at it, can we send the rest of our
25 panel home so they don't have to stick around?

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1 MR. WALL: Ms. Colmines?

2 THE COURT: Ms. Colmines apparently is excused pursuant
3 to stipulation by the parties.

4 MR. WALL: All right. I just didn't know.

5 THE MARSHAL: I didn't know that either. Colmines and
6 Repp?

7 THE COURT: Colmines and Repp are excused. The rest --

8 THE MARSHAL: Everyone else comes back and then Mr. Diaz
9 is brought in?

10 THE COURT: The rest of them can come back tomorrow.

11 THE MARSHAL: Yes.

12 [Pause]

13 THE COURT: Okay. Whenever you're ready, Mr. Rogers.

14 MR. ROGERS: Okay. Good.

15 Mr. Diaz, I'm Steve Rogers and I represent Mrs.
16 Rish. There's been some discussion about a comment that you
17 made during jury selection about your ability to treat the
18 Plaintiff fairly in this case because of your experiences.
19 Now, have you ever heard of the term the burden of proof?

20 PROSPECTIVE JUROR NO. 323: No.

21 THE COURT: Okay. Are you aware that when a Plaintiff
22 comes to Court they have to convince you that their claims are
23 true?

24 MR. EGLET: Your Honor, I'm going to object to the
25 standard of -- the statement of convince. That is not the

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1 burden of proof in Nevada. Convince is not the burden of
2 proof. It is inappropriate --

3 THE COURT: Counsel, approach please, off record.

4 [Begin Bench Conference]

5 THE COURT: I thought you were going to follow up on the
6 very issues that Mr. Eglet addressed?

7 MR. ROGERS: I am.

8 MR. EGLET: Why are you getting into the burden of proof?

9 THE COURT: That's what I was -- in other words, that's
10 what I was wondering.

11 MR. ROGERS: The two -- that is the problem.

12 MR. EGLET: No, it's not. It's --

13 MR. ROGERS: It is.

14 MR. EGLET: It's not. You're talking about -- we're
15 talking about apples and oranges. We're talking about whether
16 he starts with the People at the same place when a case
17 starts. You're talking about the burden of proof. As the
18 Court has told you, you're wrong on whether you think that the
19 parties don't stop at the same spot at the burden of proof at
20 the beginning of the case. You're wrong.

21 MR. ROGERS: The second the trial begins, the Plaintiff
22 has the burden.

23 MR. EGLET: The second the trial begins, the parties --

24 THE COURT: Please, you know, keep your voices down.

25 MR. EGLET: -- start at the same level.

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1 MR. ROGERS: Yes, Your Honor.

2 THE COURT: Here's what I think you need to do, based on
3 the record that we've already made, and based on Mr. Eglet's
4 argument and response, I think you need to jump right to the
5 very issues that we spoke of earlier. Now, I don't think
6 those issues include the burden of proof. I think those
7 issues include what Mr. Diaz stated in answering some of the
8 questions posed by counsel, some of the concerns. I think
9 you're entitled to address them.

10 MR. ROGERS: Could I inquire then as to whether there's
11 any confusion because of the burden of proof?

12 MR. EGLET: No, I --

13 THE COURT: I think you need to jump right to the very
14 issues that he proposes are at issue here.

15 MR. ROGERS: Okay.

16 [End Bench Conference]

17 MR. ROGERS: All right. Mr. Diaz, when people come to
18 court and have a lawsuit against one another, what they're
19 relay looking for is someone who comes here with no
20 prejudgment, they haven't made up their mind before they come
21 here. You were asked some questions about the car accident
22 your friend was in and about incidents at your apartment
23 complex. Do you know anything about this car accident, other
24 than what Plaintiff's counsel has told you?

25 PROSPECTIVE JUROR NO. 323: No.

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1 MR. ROGERS: Okay. Have you come with any judgment
2 already in mind about which side is the right, the Plaintiff
3 or the Defendant?

4 PROSPECTIVE JUROR NO. 323: No.

5 MR. ROGERS: You mentioned that while you are a skeptical
6 person, that you think you could be fair in this case. Did I
7 understand you right?

8 PROSPECTIVE JUROR NO. 323: Every time I get a -- I have
9 to get adjustment of my knowledge or something I have received
10 [indiscernible], I try to be fair. I never get
11 predisposition, you know, about nothing. I try to see -- to
12 be fair all the time.

13 MR. ROGERS: Okay. So you just want to wait and hear the
14 evidence and then make the decision?

15 PROSPECTIVE JUROR NO. 323: No, I got [indiscernible].

16 MR. ROGERS: Okay. Let me think here. One question that
17 the Plaintiff's counsel asked you is whether, with these --
18 with this experience you have of seeing some lawsuits that
19 might not be fair or true, could you come to this court and
20 still be fair to this Plaintiff. Would you tell the Court
21 whether you think you can be fair to both sides, even with the
22 experiences you've had.

23 PROSPECTIVE JUROR NO. 323: I can do it.

24 MR. ROGERS: You think so? Okay.

25 PROSPECTIVE JUROR NO. 323: [Indiscernible] about

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1 someone, actually inside -- being seen because I been seeing
2 so many people suing just for the [indiscernible] money, but
3 that doesn't mean that I got a prejudgment on somebody else's.
4 That's something different.

5 MR. ROGERS: Okay. Very good. Thank you. That's all I
6 have, Your Honor.

7 THE COURT: Mr. Eglet?

8 MR. EGLET: Thank you, Your Honor.

9 Mr. Diaz, you did say earlier in your testimony that
10 you think that personal injury suits are frivolous and that
11 people are in it just for the money. Do you remember that?

12 PROSPECTIVE JUROR NO. 323: Yes, sir.

13 MR. EGLET: Okay. You still agree with that statement,
14 right?

15 PROSPECTIVE JUROR NO. 323: Yeah --

16 MR. EGLET: You said it and that's the way you feel,
17 right?

18 PROSPECTIVE JUROR NO. 323: Yes. Uh-huh.

19 MR. EGLET: You also said that it's -- this is a quote
20 from you, "That it's hard for us to believe in the system
21 because of this." Right?

22 PROSPECTIVE JUROR NO. 323: Yeah, because we been seeing
23 so many things happen and it just --

24 MR. EGLET: Okay. And that's the way you feel and you
25 told us that honestly, right?

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1 PROSPECTIVE JUROR NO. 323: Yes.

2 MR. EGLET: And you also told us earlier that because of
3 your experiences and because of the way you feel, that before
4 this case even begins -- before this case even begins, before
5 any evidence is presented, that the Defendant is going to be
6 ahead of the Plaintiff, right?

7 PROSPECTIVE JUROR NO. 323: That's what I was feeling,
8 yes.

9 MR. EGLET: And you still feel that way, correct?

10 PROSPECTIVE JUROR NO. 323: Yeah, because we're saying
11 that -- like you told us before, that the only way we're going
12 to be able to see the reality in some of those things when we
13 see the actual proof and the testimony of the actual
14 [indiscernible].

15 MR. EGLET: Okay. But my point is, is before the case
16 starts your position is the Defendant is ahead of the
17 Plaintiff?

18 PROSPECTIVE JUROR NO. 323: I'm not treating that the
19 Defendant is ahead or not. I've been saying that the thing I
20 feel is, I got to be able to see the proof to be able --

21 MR. EGLET: Okay. Well, wait a minute, though.

22 PROSPECTIVE JUROR NO. 323: Yes.

23 MR. EGLET: I mean, I ask you this now three time --
24 three time -- twice earlier and three time -- and the third
25 time here before. And twice earlier you said to me that yes,

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1 before the case even started the evidence was even presented,
2 the Defendant would be ahead. You said that, right?

3 PROSPECTIVE JUROR NO. 323: Yes.

4 MR. EGLET: And then the first time I asked you just now
5 you also agreed with it, right?

6 PROSPECTIVE JUROR NO. 323: Yes.

7 MR. EGLET: And so if we talk about ahead or behind, if
8 we have a scale, you know, like what a measuring scale is?

9 PROSPECTIVE JUROR NO. 323: Uh-huh.

10 MR. EGLET: Instead of the scale being even, before the
11 case even starts we're talking about the scale is tipped in
12 your mind in favor of the Plaintiff -- the Defendant before
13 the case begins, right?

14 PROSPECTIVE JUROR NO. 323: Yeah, probably because of the
15 situation.

16 MR. EGLET: And you still feel that way --

17 PROSPECTIVE JUROR NO. 323: Probably because of the --

18 MR. EGLET: -- because of your situations, right?

19 PROSPECTIVE JUROR NO. 323: Yes.

20 MR. EGLET: Thank you.

21 THE COURT: Any follow up, Mr. Rogers?

22 MR. ROGERS: Yes, this is where the burden of proof comes
23 in, Your Honor. This is what I'd like to explore.

24 MR. EGLET: No, Your Honor. No, he's getting into a jury
25 instruction now.

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1 MR. ROGERS: No, I'm not, and you're going to get into
2 burden of proof.

3 MR. EGLET: Before the case even started, Your Honor,
4 that was the question.

5 MR. ROGERS: I think the case is made, Your Honor, that
6 part of the confusion is --

7 MR. EGLET: Can we approach?

8 MR. ROGERS: -- whether --

9 THE COURT: Yes, please.

10 [Begin Bench Conference]

11 MR. EGLET: There's nothing I did that talks about the
12 burden of proof. I simply asked him the same question of the
13 starting line and the scales, whether they're even, and he
14 says no, it's going to be tipped in favor of the Defendant
15 before the case even starts. That's not the burden of proof,
16 that's telling us that he's favoring the Defendant before the
17 case even starts and before there's any evidence. This is as
18 clear as can be, Your Honor.

19 MR. ROGERS: That --

20 THE COURT: You know what I'd like to hear, I'd like to
21 hear -- and I'm not quite sure how to pose the question so
22 that it wouldn't be clearly understood, but I'd like to know
23 if he were sitting at either counsel table would he want
24 somebody with his frame of mind on the panel.

25 MR. EGLET: His what?

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1 MR. ROGERS: Sitting at either counsel table.

2 THE COURT: If he were seated at either table, would he
3 want somebody with his frame of mind on the panel.

4 MR. EGLET: Well, I asked him that, but --

5 THE COURT: You asked a similar question like that of
6 some of the others. Did you ask him that specific question?

7 MR. EGLET: I did. I asked him that question and then he
8 went back and said well, yeah I think I'd be fair and
9 impartial, but that's not -- my point is, just like the case
10 law says, the Nevada Supreme Court says it doesn't matter
11 whether the juror himself comes out and says hey, I think I
12 can be fair and impartial, it's how he answers the questions.

13 THE COURT: I understand that.

14 MR. EGLET: And the bias is there and it's clearly there
15 by the starting line and the scales. And any -- if there's
16 even a chance, according to the Supreme Court, that there
17 could be -- that this could affect his ability, then he has to
18 be -- he's disqualified as a matter of law. I mean, it's not
19 like we have to prove this and now he has said this multiple
20 times. I don't much more we use three times with the start
21 line, once with the scales and he's clear. He says yes, based
22 on my experiences, yes, the Defendant is going to start -- the
23 scale is going to be tipped in their favor.

24 I mean, what else -- I don't understand what else we
25 have to prove. I mean, he's said the same thing these other

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1 people have said that have been disqualified. The fact that
2 he can say -- or that he wants to say, well I think I can be
3 fair and impartial, that's no different than the loaded
4 question, which the courts all over the country have said hey,
5 you can't just come back and say after somebody has said --
6 has made some comments that are disqualifying and ask them
7 okay, well in spite of all that do you think you can be fair
8 and impartial in this case? They're going to say yes, because
9 everyone -- body wants to believe they're fair and impartial
10 and that those are loaded questions and they're improper, that
11 the juror is already disqualified. That's the law.

12 THE COURT: I understand that. I understand the cases
13 that you've cited. Mr. Rogers, any response?

14 MR. ROGERS: Yeah, the problem clearly is that he is
15 saying simply that the Plaintiff has to prove it to me, that's
16 all. He's not saying that he favors one side over the other,
17 in fact he says just the opposite. He's simply trying to
18 articulate, in a way that counsel seems to be misconstruing --

19 MR. EGLET: No.

20 MR. ROGERS: -- absolutely that listen, I'm going to be
21 fair when I come here. The Plaintiff is only going to have to
22 prove it to me, that's all he's saying.

23 MR. EGLET: That's not what he said. I mean, that's not
24 what he said and --

25 MR. ROGERS: We're standing in the same room.

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1 MR. EGLET: Yeah, we are standing in the same room and
2 you need a hearing aid, because that's not what he said. If
3 -- if --

4 THE COURT: Would you keep your voice down, please,
5 Mr. Eglet?

6 MR. EGLET: If -- even if you accept -- even if you were
7 to agree that that's what he said when Mr. Rogers examined
8 him, then what he said is inconsistent statements, which under
9 the Nevada law in the Wells case says when the person, when
10 the jurymen, when the panel member states statements which are
11 inconsistent with each other, that right there is grounds for
12 disqualification and it cannot be rehabilitated. The fact
13 that he makes statements that are inconsistent, the fact that
14 he says yeah, the Defendant's going to start ahead, or the
15 scale is going to be tipped in their favor before I start, and
16 then he's -- on the other hand in response to Mr. Rogers'
17 questions he says but I can be fair and impartial in this
18 case. That right there, those inconsistent statements, under
19 Nevada law says he has to be disqualified.

20 THE COURT: Any final thoughts?

21 MR. ROGERS: Yes, you're here, you saw the
22 [indiscernible] in the man. He's simply trying to express,
23 with a bit of a language barrier, but not that bad, I can be
24 fair. I just need proof that it's true and then I can make my
25 decision.

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1 THE COURT: Do you have any more questions of him?

2 MR. ROGERS: Do you want me to ask the question you just
3 posed?

4 THE COURT: You can if you want to.

5 MR. ROGERS: Or would you like to ask it?

6 THE COURT: You can if you want to.

7 MR. ROGERS: Sure.

8 THE COURT: All right.

9 MR. ROGERS: Okay.

10 [End Bench Conference]

11 MR. ROGERS: Mr. Diaz, one final question, actually
12 proposed by the Judge. If you were asked to sit at either of
13 these tables would you consider -- that's not exactly how you
14 put it, Your Honor.

15 THE COURT: I guess the question, Mr. Diaz, and I'm not
16 sure it's a very good question, but I'll try to do the best I
17 can. My question was if you were seated at either of these
18 two tables would you want someone with your frame of mind on
19 the jury?

20 PROSPECTIVE JUROR NO. 323: That's really the question,
21 because the previous position by the [indiscernible] really
22 hard.

23 THE COURT: With the thanks of the Court, sir, you may be
24 excused. Thank you, sir.

25 All right. We're resuming tomorrow at 1:00, right?

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1 MR. EGLET: Thank you, Your Honor.

2 MR. ROGERS: Now, Your Honor, the problem that we're
3 having is that Mr. Eglet seems nowhere near done and we have
4 scheduled openings for Friday. We won't be able to get to
5 that if he continues on at this pace.

6 THE COURT: It's possible. I don't know. I don't have a
7 crystal ball. I don't know how long it's going to take to
8 impanel this jury.

9 MR. ROGERS: Will there be any time limits on Plaintiff's
10 counsel and his jury selection?

11 THE COURT: You mean Defense counsel?

12 MR. ROGERS: No, Plaintiff's counsel. Now we're into --
13 past day three, they're moving into day four. How long will
14 this go on?

15 MR. EGLET: Your Honor, I would object. If you're going
16 to ask for time limits on any of jury selection, it has to be
17 done during the -- prior to jury selection beginning so
18 counsel can prepare. I've prepared this case with the
19 understanding there wouldn't be time limits and I always
20 object to any time limits on jury selection. The only way
21 that the Court and the parties can make sure we have a
22 completely fair and unbiased jury is to allow this exploration
23 of these jurors and the courts across the country have found
24 -- in fact, found putting time limits on jury selection is an
25 unreasonable restraint on being able to get that information.

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1 Now, I think we're moving along now pretty quickly.
2 We're getting into areas and I don't think I'm going to be all
3 that much longer, but I would object to any time constraints.
4 If they wanted time constraints, they should have been
5 addressed prior to start of trial.

6 THE COURT: Well, probably so, but you know, I note that
7 we only have something like seven prospective jurors left in
8 our pool, so I'm really --

9 THE MARSHAL: Six.

10 THE COURT: Six. We're down to six now, so I'm hopeful
11 that we're going to get through the rest of this fairly soon.

12 [Court and Clerk confer]

13 THE COURT: Yeah, can we do that since the Clerk is here
14 -- well, the first one --

15 MR. EGLET: What was the question, Your Honor? Can we
16 what?

17 THE COURT: Can we go ahead and --

18 MR. EGLET: Yes.

19 THE COURT: -- list those jurors?

20 MR. EGLET: Yes.

21 THE COURT: I'm not sure, was Colmines the next in line?

22 THE CLERK: Colmines was next, yes.

23 MR. EGLET: Colmines is the next one.

24 THE COURT: So we need a replacement for number six.

25 MR. EGLET: She -- what seat was she in?

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1 THE CLERK: She was in six.
2 THE COURT: Six.
3 THE CLERK: The next one will be Jerome Lewis?
4 MR. ADAMS: Now, was he an FTA?
5 THE CLERK: No.
6 THE COURT: Yeah, he was an FTA.
7 THE CLERK: He was?
8 THE COURT: He was.
9 THE CLERK: Oh, it's not marked. I'm sorry.
10 THE COURT: That's okay.
11 THE CLERK: Then I'm going to put William Brieese --
12 THE COURT: What happened to Anthony Pilato?
13 MR. EGLET: What happened to Anthony Pilato?
14 THE CLERK: I -- that's -- that was going to be the next
15 one. Do you want me to just do it like that?
16 MR. EGLET: Pilato is next in order.
17 THE CLERK: Pilato is number nine.
18 MR. EGLET: No, no --
19 MR. ROGERS: Number six.
20 THE CLERK: Did you --
21 THE COURT: Number six.
22 THE CLERK: I did it --
23 THE COURT: Number six.
24 THE CLERK: Okay.
25 THE COURT: Pilato is number six. So then we need a

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1 replacement for number nine.

2 [Pause]

3 THE CLERK: Number 10?

4 THE COURT: Number nine. We need a replacement for nine.

5 MR. EGLET: Charlotte Lewis.

6 THE CLERK: Charlotte Lewis, 1354.

7 THE COURT: Replacement for number 10, please. That
8 should be William Briese, shouldn't it?

9 THE CLERK: That should be -- yes.

10 MR. EGLET: What about --

11 THE CLERK: Number 10 --

12 MR. EGLET: Did we already put Quevedo in?

13 MR. ROGERS: Yes.

14 THE COURT: Quevedo was excused for medical purposes.

15 MR. EGLET: Oh.

16 THE CLERK: She was excused just today.

17 MR. EGLET: So who is next then?

18 THE COURT: William Briese.

19 THE CLERK: William Briese.

20 MR. ADAMS: 1388.

21 MR. ROGERS: Hold it, is number 10 Charlotte Lewis or --

22 THE COURT: Number nine.

23 THE CLERK: That's nine.

24 MR. ROGERS: Then what happened to Pilato?

25 THE COURT: Is number six.

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1 THE CLERK: Pilato is six.

2 THE COURT: That's it, right.

3 THE CLERK: And that's it.

4 [Counsel Confer]

5 THE COURT: So we only have four left after this.

6 So we'll see you tomorrow at 1:00.

7 UNIDENTIFIED SPEAKER Thank you, Your Honor.

8 [Proceedings Concluded at 4:57 p.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.

Tami S. Mayes

TAMI S. MAYES, Transcriber

Meribeth Ashley

MERIBETH ASHLEY, Transcriber

Dianna Aldom

DIANNA ALDOM, Transcriber

Stephanie McMeel

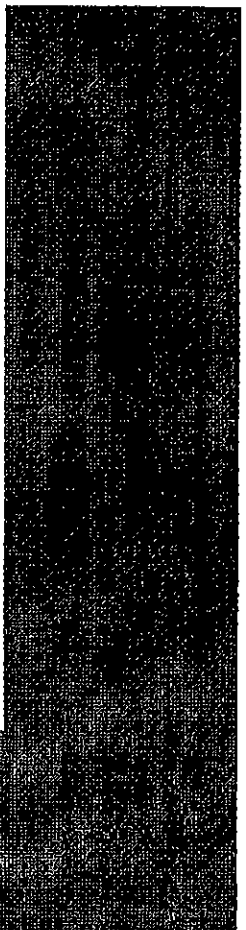
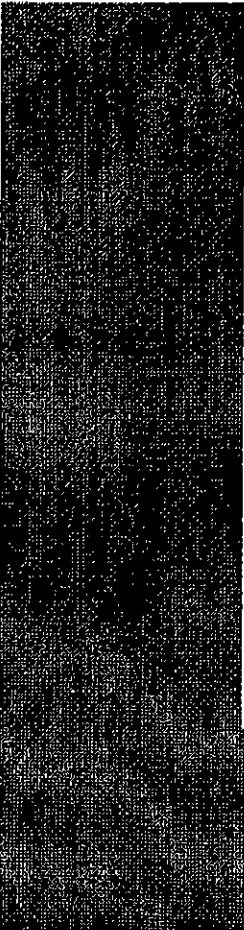
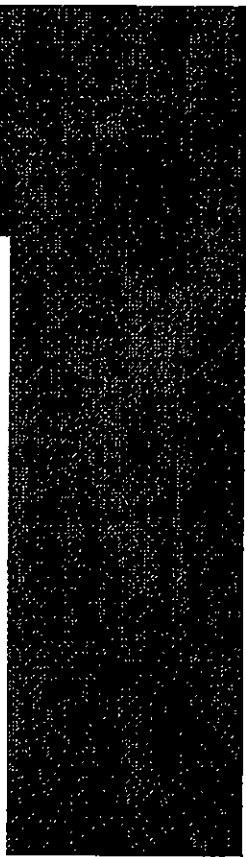
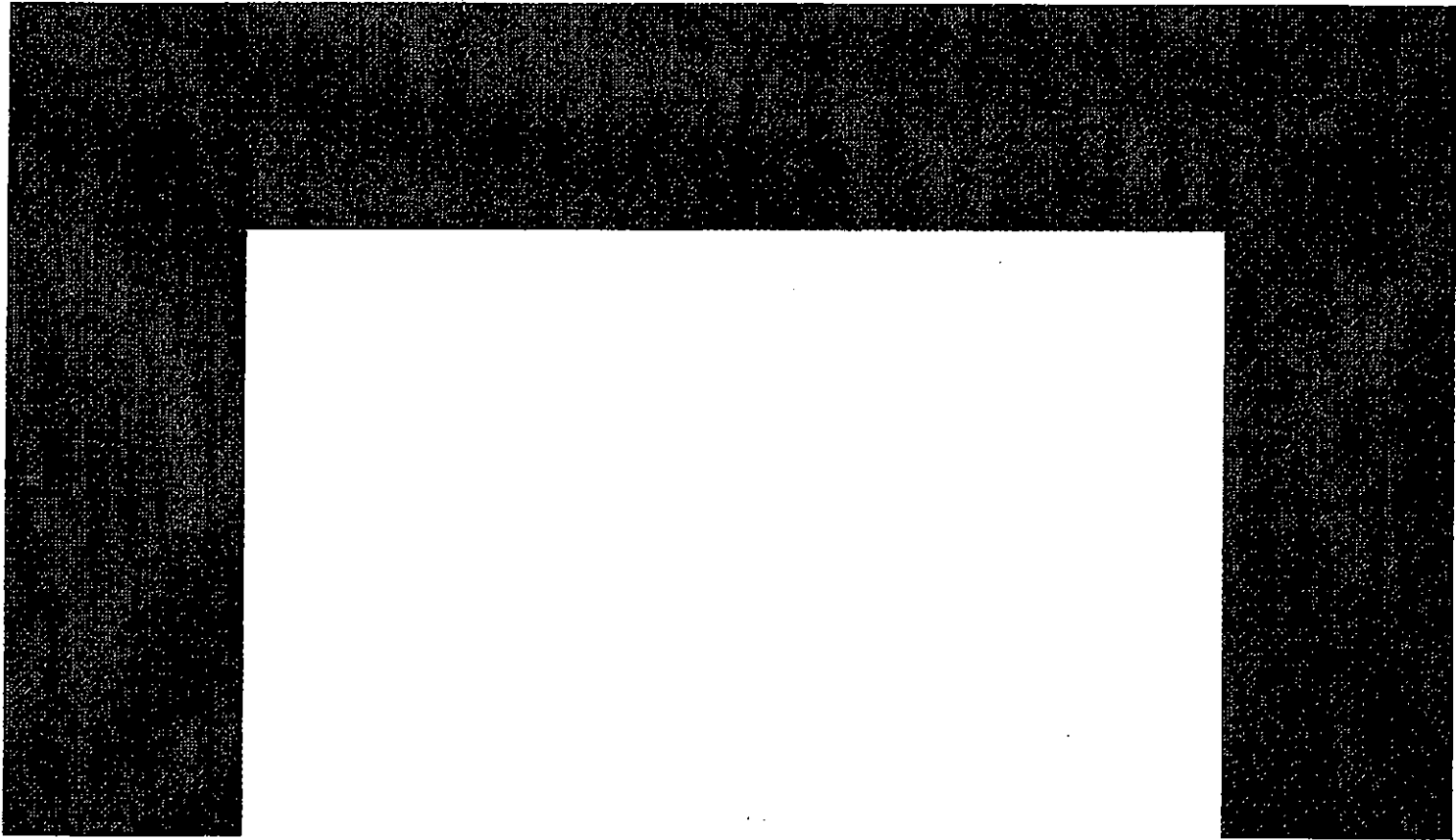
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DISTRICT COURT
CLARK COUNTY, NEVADA

Alan D. Quinn
CLERK OF THE COURT

CHERYL A. SIMAO and)
WILLIAM J. SIMAO,)
)
Plaintiffs,)
)
v.)
)
JAMES RISH, LINDA RISH)
and JENNY RISH,)
)
Defendants.)

CASE NO. A-539455
DEPT. X

BEFORE THE HONORABLE JESSIE WALSH, DISTRICT COURT JUDGE

THURSDAY, MARCH 17, 2011

REPORTER'S TRANSCRIPT
TRIAL TO THE JURY
JURY PANEL VOIR DIRE

APPEARANCES:

For the Plaintiffs: DAVID T. WALL, ESQ.
ROBERT M. ADAMS, ESQ.
ROBERT T. EGLET, ESQ.
Mainor Eglet

For the Defendants James and Linda Rish: BRYAN W. LEWIS, ESQ.
Lewis and Associates, LLC

For the Defendant Jenny Rish: STEVEN M. ROGERS, ESQ.
CHARLES A. MICHALEK, ESQ.
Hutchison & Steffen, LLC

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CLERK OF THE COURT

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1 THURSDAY, MARCH 17, 2011 AT 1:00 P.M.

2 [Prospective Panel In]

3 THE MARSHAL: Please come to order Department X is now in
4 session.

5 THE COURT: Please be seated. Good afternoon.

6 Okay. Good afternoon. All right. First order of
7 business, Madame Clerk, we need to fill these empty seats.

8 THE CLERK: Yes, Your Honor.

9 THE COURT: Seat number two has been filled but --

10 THE CLERK: Yes. That will be Melton Daniels, badge
11 number 1338.

12 MR. EGLET: He's already been --

13 THE COURT: He was seated yesterday.

14 THE CLERK: Oh he was. Okay.

15 THE COURT: So we need seat number six filled in.

16 THE CLERK: Six. Anthony Pilato; badge number 1348.

17 THE MARSHAL: He's going to where? Number six?

18 THE CLERK: Six.

19 THE MARSHAL: He's going to number six. Correct?

20 THE COURT: Yes.

21 Thank you. Seat number nine, please.

22 THE CLERK: Charlotte Lewis; badge number 1354.

23 THE COURT: Thank you. Seat number ten, please.

24 THE CLERK: William Briese; badge number 1388.

25 THE COURT: Didn't think we'd get to you, did you Mr.

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1 Brieese?

2 PROSPECTIVE JUROR NO. 388: Finally.

3 THE COURT: Okay. I think we're ready to proceed.
4 Mr. Eglet, whenever you're ready.

5 MR. EGLET: Thank you, Your Honor. Good afternoon ladies
6 and gentlemen, and happy Saint Patrick's Day. The -- we have
7 three new guests in our box. And so I'm going to have to go
8 back to the beginning with them for a minute. And just sit
9 tight.

10 So these questions are going to be directed at
11 Mr. Pilato, Ms. Lewis, and Mr. Brieese. And Mr. Pilato let me
12 start with you. Can you tell us your date of birth?

13 PROSPECTIVE JUROR NO. 348: 4/27/1982.

14 MR. EGLET: And any other names you've known by?

15 PROSPECTIVE JUROR NO. 348: Just nicknames.

16 MR. EGLET: Okay. And what nicknames?

17 PROSPECTIVE JUROR NO. 348: Tony.

18 MR. EGLET: Tony. All right. And how often do you wash
19 your car?

20 PROSPECTIVE JUROR NO. 348: One or twice a month
21 depending on the weather.

22 MR. EGLET: Okay. I see that you are employed with Wal-
23 Mart as a sales associate. Is that correct?

24 PROSPECTIVE JUROR NO. 348: Yes.

25 THE COURT: And how long have you been with Wal-Mart?

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1 PROSPECTIVE JUROR NO. 348: Far too long, but since 2006.

2 MR. EGLET: Okay. And can you tell us what makes you
3 good at your job?

4 PROSPECTIVE JUROR NO. 348: My intelligence. I know
5 pretty much everything about electronics over there. More
6 than my associates. Not to mention my leadership.

7 MR. EGLET: So you're in the electronics department over
8 there? And you're single and no children.

9 PROSPECTIVE JUROR NO. 348: None.

10 MR. EGLET: Okay. And what did you want to be when you
11 were in high school?

12 PROSPECTIVE JUROR NO. 348: An electronic engineer.

13 MR. EGLET: Okay. Is that what you're doing now? Or
14 you're in sales now. You're looking to become an engineer?

15 PROSPECTIVE JUROR NO. 348: Yes.

16 MR. EGLET: Okay. Is that something you intend to
17 pursue?

18 PROSPECTIVE JUROR NO. 348: Yes.

19 MR. EGLET: What is your five year goal?

20 PROSPECTIVE JUROR NO. 348: Five year goal? Like I said
21 engineering.

22 MR. EGLET: Okay.

23 PROSPECTIVE JUROR NO. 348: Find someone special out
24 there for me, have children.

25 MR. EGLET: All right. Okay. Are you in school part

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1 time now or anything?

2 PROSPECTIVE JUROR NO. 348: Not yet. Hopefully soon.

3 MR. EGLET: Okay. Do you belong to any clubs or
4 organizations?

5 PROSPECTIVE JUROR NO. 348: No.

6 MR. EGLET: All right. The two most important values
7 that -- other than honesty and whatever faith you may practice
8 that are important to you?

9 PROSPECTIVE JUROR NO. 348: Love and honor.

10 MR. EGLET: Love and honor. Okay. Any situations when
11 you think -- that you think you're regarded as leader?

12 PROSPECTIVE JUROR NO. 348: Any situations, yeah. But
13 actually -- my associates actually look up to me in what to do
14 in some areas in electronics. What so I do and I tell them
15 [indiscernible].

16 MR. EGLET: So you're definitely a leader at work.

17 PROSPECTIVE JUROR NO. 348: Yeah. I'm not even a
18 management position or anything like that, but I've been for a
19 while so I know exactly how everything runs.

20 MR. EGLET: Okay. Very good. If someone offers to send
21 money to a charity of your choice what charity?

22 PROSPECTIVE JUROR NO. 348: Any type of cancer areas.
23 Yeah.

24 MR. EGLET: Why cancer?

25 PROSPECTIVE JUROR NO. 348: The reason why is that my

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1 family that died many times with cancer.

2 MR. EGLET: You had a lot of that in your family?

3 PROSPECTIVE JUROR NO. 348: Yes.

4 MR. EGLET: All right. What's the worst tragedy you've
5 ever had to experience?

6 PROSPECTIVE JUROR NO. 348: Well I've never really lived
7 there or have any family that lived over there, but to be
8 honest since I'm American I would say the worst tragedy is
9 9/11.

10 MR. EGLET: 9/11. Okay. And when you hear that someone
11 has been hurt, killed, or become ill do you ever think to
12 yourself well it probably happened to that person because it's
13 something bad they did earlier their life?

14 PROSPECTIVE JUROR NO. 348: I can all be depending, to be
15 honest.

16 MR. EGLET: What do you mean by that?

17 PROSPECTIVE JUROR NO. 348: It could be just bad karma
18 that somebody actually got hurt. Or it could be God's will.
19 It could be either one. I'm not really sure. It all depends
20 on that person's personality I would say.

21 MR. EGLET: Okay. All right. Some people believe that
22 when someone is killed or hurt, even if it's as a result of
23 someone else's fault or negligence that it's destiny, fate,
24 God's will, and so it would have happened anyway. So they
25 shouldn't bring a lawsuit. Do you agree with that?

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1 PROSPECTIVE JUROR NO. 348: Me, personally, I'm the
2 person who believes that to err is human, forgiveness divine.
3 But it depends on what the person's opinion is. If they want
4 to go ahead and pursue that, then that's their -- they have to
5 decide that. Yes.

6 MR. EGLET: All right. You indicated on your jury
7 questionnaire that if you or a loved one were injured as a
8 result of someone else's fault, you would consider filing a
9 lawsuit.

10 PROSPECTIVE JUROR NO. 348: Yes, because my family has
11 been in accidents like that. Yes. I would.

12 MR. EGLET: All right. Who's the public figure you
13 admire most and why.

14 PROSPECTIVE JUROR NO. 348: Jesus Christ.

15 MR. EGLET: Okay. And tell me why Jesus Christ?

16 PROSPECTIVE JUROR NO. 348: Because of torture he's been
17 through he still doesn't hold any anger towards anyone. Sure
18 he did ask God twice forsaking him, but he did ask for his
19 forgiveness and died for our sins. Great leader.

20 MR. EGLET: All right. Thank you.

21 Ms. Lewis?

22 PROSPECTIVE JUROR NO. 354: Yes.

23 MR. EGLET: Good afternoon.

24 PROSPECTIVE JUROR NO. 254: Good afternoon.

25 MR. EGLET: Ms. Lewis, what is your date of birth?

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1 PROSPECTIVE JUROR NO. 354: June 9th, 1968.

2 MR. EGLET: And have you been known by any other names?

3 PROSPECTIVE JUROR NO. 354: Yes, Gasper and Rutpowski.

4 MR. EGLET: And is that G-a-s-p-e-r?

5 PROSPECTIVE JUROR NO. 354: Uh-huh.

6 MR. EGLET: And can you spell the other name for us?

7 PROSPECTIVE JUROR NO. 354: Rutpowski. R-u-t-p-o-w-s-k-i.

8 MR. EGLET: Which is your maiden name?

9 PROSPECTIVE JUROR NO. 354: Rutpowski.

10 MR. EGLET: Rutpowski. And if -- how often do you wash
11 your car.

12 PROSPECTIVE JUROR NO. 354: When I'm lucky once a month.

13 MR. EGLET: Okay. You are a special education
14 instructional facilitator with Clark County School District.
15 Is that correct?

16 PROSPECTIVE JUROR NO. 354: Yes.

17 MR. EGLET: Can you explain what that is, please?

18 PROSPECTIVE JUROR NO. 354: I overlook the special Ed
19 departments for the schools. I make sure everything is run
20 correctly. Instruct teachers on things to make sure we're
21 safety state compliance and so forth. So I kind of overlook
22 the special Ed department.

23 MR. EGLET: Okay. Can you tell us what makes you good at
24 your job?

25 PROSPECTIVE JUROR NO. 354: I take my job very serious.

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1 I'm easy to get along with. I'm always there for my teachers
2 when they need me and I just -- I know my job fairly well.

3 MR. EGLET: And you've been married for 16 years and you
4 have children?

5 PROSPECTIVE JUROR NO. 354: Actually going on 14 years.

6 MR. EGLET: Fourteen years.

7 PROSPECTIVE JUROR NO. 354: Yes.

8 MR. EGLET: And you have children?

9 PROSPECTIVE JUROR NO. 354: Yes. I have two.

10 MR. EGLET: And tell us what makes you a good parent?

11 PROSPECTIVE JUROR NO. 354: Love and stability.

12 MR. EGLET: Okay. What did you want to be when you were
13 in high school?

14 PROSPECTIVE JUROR NO. 354: I wanted to go into business
15 and be a big corporation.

16 MR. EGLET: And what changed your mind?

17 PROSPECTIVE JUROR NO. 354: I got married and had a
18 child. And I started out as a business major and so forth.
19 Then I got married and had a child and realized that's not
20 going to be for me. And teacher was always the second choice.
21 So I went into education.

22 MR. EGLET: Okay. And can you tell us what your five
23 year goals are?

24 PROSPECTIVE JUROR NO. 354: I -- for my son to finish up
25 his school and see him graduate from there. And my daughter,

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1 see her graduate high school. And then get ourselves ready so
2 eventually we can retire and enjoy life.

3 MR. EGLET: What clubs or organizations do you belong
4 to?

5 PROSPECTIVE JUROR NO. 354: The only one I can think of
6 is we're a member of the AOG. Which is the parents support
7 group for Airforce Academy.

8 MR. EGLET: Okay. You have a child at the Airforce
9 Academy?

10 PROSPECTIVE JUROR NO. 354: Yeah. My son's there.

11 MR. EGLET: Okay. That's great. That's great. The two
12 most important values that are important to you and that
13 you've tried to impart on your children?

14 PROSPECTIVE JUROR NO. 354: Responsibility and hard work.

15 MR. EGLET: Responsibility and hard work. Okay. And the
16 situations you're regarded as a leader?

17 PROSPECTIVE JUROR NO. 354: My job definitely involves
18 supervising people, making sure everything is running
19 correctly. And I think that I'm the one they go to for
20 support.

21 MR. EGLET: The charity you would pick if somebody offers
22 to send money?

23 PROSPECTIVE JUROR NO. 354: Opportunity Village.

24 MR. EGLET: Why opportunity Village?

25 PROSPECTIVE JUROR NO. 354: Because working with special

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1 Ed and so forth I know there's not a whole lot out there for
2 -- especially for once they leave school. And they're there
3 supporting and so forth. And they don't always -- well they
4 need that extra help and support and so forth so they can keep
5 providing for people with special needs.

6 MR. EGLET: The worst tragedy you've ever had to
7 experience?

8 PROSPECTIVE JUROR NO. 354: The loss of my father.

9 MR. EGLET: And how old were you?

10 PROSPECTIVE JUROR NO. 354: Thirty-three.

11 MR. EGLET: Thirty-three?

12 PROSPECTIVE JUROR NO. 354: Uh-huh.

13 MR. EGLET: Okay. When someone is injured or killed or
14 becomes sick do you ever think to yourself that that probably
15 happened to them because of something bad they did earlier in
16 their life?

17 PROSPECTIVE JUROR NO. 354: No. Never.

18 MR. EGLET: Some people believe that when someone is
19 injured or killed that it's destiny, fate, God's will, it was
20 going to happen anyway, so even if it was because of someone
21 else's negligence they shouldn't sue. Do you agree with that?

22 PROSPECTIVE JUROR NO. 354: No.

23 MR. EGLET: All right. And who's the public figure
24 living or dead that you admire most?

25 PROSPECTIVE JUROR NO. 354: When you started asking this

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1 question I guess the first person who popped in my head is
2 Ronald Regan as far as a leader and so forth, so Ronald Regan.

3 MR. EGLET: Thank you very much.

4 PROSPECTIVE JUROR NO. 354: Uh-huh.

5 MR. EGLET: Mr. Briese?

6 PROSPECTIVE JUROR NO. 388: Hey.

7 MR. EGLET: How are you after this afternoon?

8 PROSPECTIVE JUROR NO. 388: How you doing?

9 MR. EGLET: Good. I'm -- how you doing. I'm doing
10 fine.

11 PROSPECTIVE JUROR NO. 388: Okay.

12 MR. EGLET: Can you tell us your date of birth, sir?

13 PROSPECTIVE JUROR NO. 388: October 16th, 1962.

14 MR. EGLET: Okay. Any other names you've been known by?

15 PROSPECTIVE JUROR NO. 388: In the airline industry they
16 used to call me Cool Briese.

17 MR. EGLET: Cool Briese. Why'd they call you Cool
18 Briese?

19 PROSPECTIVE JUROR NO. 388: Because it kind of rhymes
20 with my last name, you know.

21 MR. EGLET: All right. All right. How often do you wash
22 your car?

23 PROSPECTIVE JUROR NO. 388: Once a month.

24 MR. EGLET: Once a month. Okay. And you were born in
25 Queens.

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1 PROSPECTIVE JUROR NO. 388: That's right.

2 MR. EGLET: And how long have you been here in Las
3 Vegas?

4 PROSPECTIVE JUROR NO. 388: Going on eight years.

5 MR. EGLET: All right. What brought you here?

6 PROSPECTIVE JUROR NO. 388: The weather.

7 MR. EGLET: The weather. Yeah. All right.

8 PROSPECTIVE JUROR NO. 388: Think of the winters.

9 MR. EGLET: I've spent a few winters in New York. I
10 understand.

11 PROSPECTIVE JUROR NO. 388: Uh-huh. Real cold. An in
12 Detroit I was there 17 years. Worked for the airlines.

13 MR. EGLET: Yeah.

14 PROSPECTIVE JUROR NO. 388: So that was --

15 MR. EGLET: What airline did you work for?

16 PROSPECTIVE JUROR NO. 388: Northwest, which is now
17 Delta.

18 MR. EGLET: Yeah. My father ended up being a pilot for
19 Northwest.

20 PROSPECTIVE JUROR NO. 388: Yeah. I worked at Kennedy
21 Airport and Detroit Metro.

22 MR. EGLET: He retired before it became Delta.

23 PROSPECTIVE JUROR NO. 388: Yeah. Okay.

24 MR. EGLET: All right. Very good. I didn't know they
25 had a base in New York. I thought Northwest was based in

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1 Seattle.

2 PROSPECTIVE JUROR NO. 388: Northwest was based out of
3 Seattle -- not Seattle, Minnesota.

4 MR. EGLET: Minneapolis and Seattle.

5 PROSPECTIVE JUROR NO. 388: Memphis and Detroit.

6 MR. EGLET: Well they had their main base in Seattle,
7 too.

8 PROSPECTIVE JUROR NO. 388: Well there's a story behind
9 it because Republic Airlines, which Northwest took over, their
10 hubs were in locations, Minneapolis and Detroit --

11 MR. EGLET: Right.

12 PROSPECTIVE JUROR NO. 388: -- and Memphis, so when we
13 took them over -- when we took over their operations --

14 MR. EGLET: What did you do for the airlines?

15 PROSPECTIVE JUROR NO. 388: I was ground service.

16 MR. EGLET: Okay.

17 PROSPECTIVE JUROR NO. 388: And customer service, you
18 know. Working with the luggage and working with the customers
19 and finding their luggage. I used to do that on overtime a
20 lot.

21 MR. EGLET: How long did you do that?

22 PROSPECTIVE JUROR NO. 388: Almost 20 years.

23 MR. EGLET: Okay.

24 PROSPECTIVE JUROR NO. 388: I got laid off, believe it or
25 not right after 9/11. And I took a couple years off and then

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1 came out here.

2 MR. EGLET: Okay. And you tell us now you work for AVIS?

3 PROSPECTIVE JUROR NO. 388: Uh-huh.

4 MR. EGLET: What do you do for AVIS?

5 PROSPECTIVE JUROR NO. 388: I'm customer service. I
6 check cars in, I load cars. I basically -- guy comes in he's
7 got a Cadillac, he goes, "Hey, you know, the car was really
8 dirty." I'm like, "Okay. We're going to take care of you."
9 So I give him like a coupon and stuff and we settle all our
10 problems right then and there. You know, we -- I give him the
11 bill and receipt. They get a receipt and they're on their way
12 to the airport.

13 MR. EGLET: All right.

14 PROSPECTIVE JUROR NO. 388: And sometimes we drive them
15 to the airport, if they're running late.

16 MR. EGLET: Yeah. The rental car you're off --

17 PROSPECTIVE JUROR NO. 388: Oh yeah. We're --

18 MR. EGLET: -- [indiscernible] airport now.

19 PROSPECTIVE JUROR NO. 388: We're all over the place.

20 MR. EGLET: Okay. What makes you good at your job?

21 PROSPECTIVE JUROR NO. 388: Good listener. Listening to
22 people, their problems, their concerns about the car, or what
23 the car is doing. You know, kind of like the pilot when I was
24 working for the airlines. The next pilot would say, "Hey, you
25 know, this is what's wrong with the plane. Blah, blah, blah."

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1 You know, a customer's not flying the plane. It's the pilot.
2 So the customer would tell me what's wrong with the car, or
3 what's good about the car. What it needs, or what they need,
4 you know, basically that's, you know, taking care of the
5 customer.

6 MR. EGLET: Okay. And do you have children?

7 PROSPECTIVE JUROR NO. 388: No.

8 MR. EGLET: Okay. What did you want to be when you were
9 in high school?

10 PROSPECTIVE JUROR NO. 388: New York City Fireman. FDNY.

11 MR. EGLET: Okay. And did you pursue that?

12 PROSPECTIVE JUROR NO. 388: Uh-huh.

13 MR. EGLET: And what happened?

14 PROSPECTIVE JUROR NO. 388: I was on the list and -- this
15 was back in probably 1982/83 and nothing against women, they
16 brought a lawsuit against the physical part of the fire
17 department and held up the list for three years. And by that
18 time I was already working at Kennedy Airport for Duty Free
19 and I was working in the city of Manhattan. And this guy
20 says, "Hey, why don't you come and work for us. They make as
21 much as the fire department -- Northwest airlines." So I
22 hopped onboard and I tossed the list with the fire department.
23 And the rest is history. So I was with their airline 20
24 years. And then I hopped on board with AVIS.

25 MR. EGLET: Okay. All right. Very good. What are you

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1 five year goals?

2 PROSPECTIVE JUROR NO. 388: To retire.

3 MR. EGLET: That's a good goal. Any clubs or
4 organizations you belong to?

5 PROSPECTIVE JUROR NO. 388: Just players club, you know.

6 MR. EGLET: What's a players club?

7 PROSPECTIVE JUROR NO. 388: Wildfire. You know, a little
8 players club card.

9 MR. EGLET: Oh the -- right. Yeah. Okay. What are the
10 two most important values other than honesty or whatever faith
11 you may practice to you?

12 PROSPECTIVE JUROR NO. 388: Integrity and empathy. I
13 mean like feeling sorry for, you know, what's going on in the
14 world.

15 MR. EGLET: Sure.

16 PROSPECTIVE JUROR NO. 388: What's going on down the
17 block here? At Centennial Plaza that's a travesty.

18 MR. EGLET: Right.

19 PROSPECTIVE JUROR NO. 388: Those homeless people.

20 MR. EGLET: Right.

21 PROSPECTIVE JUROR NO. 388: Like where I'm from in New
22 York City they would have cleaned that up. They wouldn't
23 leave that go. I mean it's a nice plaza. Put those people to
24 work, or put them in a home. Do something. It's really sad.

25 MR. EGLET: Yeah.

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1 PROSPECTIVE JUROR NO. 388: To look at that every day.

2 MR. EGLET: It is.

3 PROSPECTIVE JUROR NO. 388: It's --

4 MR. EGLET: Well thank you.

5 PROSPECTIVE JUROR NO. 388: Hey, no problem.

6 MR. EGLET: Can you tell us what situations you're
7 regarded as a leader?

8 PROSPECTIVE JUROR NO. 388: Well I take the reins if
9 there's any kind of customer complaints or issues. I usually
10 step in before anybody else does and take care of whatever
11 they need or want or desire. You know, and I get it resolved
12 pretty quickly. Instead of telling them, "Oh yeah go up to a
13 manager and let them take care of it." They've got their own
14 problems.

15 MR. EGLET: Okay.

16 PROSPECTIVE JUROR NO. 388: Uh-huh.

17 MR. EGLET: And if someone offers to send money to the
18 charity of your choice, what's it going to be?

19 PROSPECTIVE JUROR NO. 388: American diabetes and the
20 American Cancer Society.

21 MR. EGLET: Why those two charities?

22 PROSPECTIVE JUROR NO. 388: I lost a brother-in-law to
23 diabetes. I lost a brother-in-law to cancer. Two different
24 brother-in-laws.

25 MR. EGLET: The worst tragedy you've ever had to live

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1 through.

2 PROSPECTIVE JUROR NO. 388: One -- well three of them.
3 One was my grandfather passing away in 77 then a plain
4 crashed, I was involved in. August 16th, 1987 when 155 people
5 perished. I was involved in that disaster. And then just
6 recently four of my relatives passed on. Sister-in-law,
7 brother-in-law, father-in-law, cousin. All died in six months
8 2007.

9 MR. EGLET: The plane tragedy was that an on the job
10 thing? Is that --

11 PROSPECTIVE JUROR NO. 388: Yeah. We were investigated
12 for putting luggage on -- whoever had anything to do with that
13 flight we were subpoenaed to court and everything. It was a
14 long, you know, arduous task, but it was intense, you know.
15 It was sad, too.

16 MR. EGLET: Did you --

17 PROSPECTIVE JUROR NO. 388: Only one person survived that
18 plane crash.

19 MR. EGLET: Yeah. I remember that crash.

20 PROSPECTIVE JUROR NO. 388: Uh-huh.

21 MR. EGLET: Did you have to testify in that --

22 PROSPECTIVE JUROR NO. 388: No. We just gave them like
23 affidavits, you know, and stuff like that. And if they
24 wanted, you know, they would subpoena us, but no.

25 MR. EGLET: Okay. When you hear that someone has been

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1 injured, killed, or become very sick do you ever think to
2 yourself, well that probably happened to that person because
3 of something bad they did earlier in their life?

4 PROSPECTIVE JUROR NO. 388: No. I don't believe so.

5 MR. EGLET: Some people believe that if someone is killed
6 or injured, even if it's the fault or negligence of someone
7 else that it's fate, God's will, destiny, and it would have
8 happened anyway. So they shouldn't bring a lawsuit. Do you
9 agree with that?

10 PROSPECTIVE JUROR NO. 388: No.

11 MR. EGLET: Who's the public figure you admire most?

12 PROSPECTIVE JUROR NO. 388: Well the one guy that kept
13 that city together and I lost that firemen friends from that
14 was Rudy Giuliani. He really kept that City -- unbelievable.
15 I think any other city would have had that tragedy would have
16 been another story. It would have been really panicky. But
17 he kept it together. And he kept our people, you know, he
18 kept on saying to the people, why don't you go out and enjoy
19 your life and you know, don't worry about it. Let us do our
20 job. And kept it together.

21 MR. EGLET: Do you think he should run for President next
22 year?

23 PROSPECTIVE JUROR NO. 388: Sure.

24 MR. EGLET: Okay. Let me -- again, I'm just talking to
25 three new people. Do you remember the hypothetical that I

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1 gave to everybody else on the panel about being in the hallway
2 and a fellow panel member coming up to and telling you that
3 their knee is bothering them or hurting them that day. Would
4 either of the three of you have any reason to disbelieve that
5 person if they came up and said that?

6 PROSPECTIVE JUROR NO. 348: I think as human beings we
7 have capability of telling the truth and lying. So I would
8 remain skeptical at first.

9 MR. EGLET: Okay. And why would you remain skeptical if
10 somebody -- if the fellow person on the jury panel just in
11 conversation said that to you?

12 PROSPECTIVE JUROR NO. 348: Because I don't know the
13 person fully. Once I get to know them and I can see that you
14 know, he's being truthful or not. That's how.

15 MR. EGLET: All right. So your initial reaction is to be
16 skeptical and not believe them.

17 PROSPECTIVE JUROR NO. 348: Uh-huh. Until I can, you
18 know, get to know them a little more to see if there's more
19 truth in his eyes or not.

20 MR. EGLET: Okay. All right. Now let me change the
21 hypothetical. And you remember the second part of the
22 hypothetical, in the second part of the hypothetical it's a
23 witness or a party on the stand. And they're testifying under
24 oath that their knee is hurting. That they have knee pain.
25 Would you initially tend to believe them, subject to evidence

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1 that they weren't telling the truth, or would you tend to not
2 believe them at first before you heard evidence to support
3 that they were telling the truth?

4 Ms. Lewis?

5 PROSPECTIVE JUROR NO. 354: I would believe them until
6 I'm shown that they don't -- they aren't telling the truth.

7 MR. EGLET: Okay. Mr. Briese?

8 PROSPECTIVE JUROR NO. 388: Yeah. I agree with her,
9 basically.

10 MR. EGLET: Mr. Pilato?

11 PROSPECTIVE JUROR NO. 348: You know, I'd have to look at
12 proof and be able to look in their eyes to be able to see the
13 truth.

14 MR. EGLET: Initially would you --

15 PROSPECTIVE JUROR NO. 348: I would be skeptical at
16 first, until I could see evidence. Yes.

17 MR. EGLET: So you would want to see the supporting
18 evidence --

19 PROSPECTIVE JUROR NO. 348: Yeah.

20 MR. EGLET: -- before you --

21 PROSPECTIVE JUROR NO. 348: -- because just being the
22 courtroom and being out there isn't --

23 MR. EGLET: Sure. I understand. Thank you.

24 Okay. Now the -- the three of you remember the
25 discussion I had with the panel and the fact that there's

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1 going to be witnesses on both sides that are going to be paid
2 for their time -- compensated for their time to come here and
3 testify. Compensated for their time, some of them, to review
4 documents and records beforehand, as opposed to a lay witness
5 who, you know -- just a \$28 subpoena to come to testify.

6 Are any of you going to be skeptical or find these
7 witnesses less believable just based on the fact that they're
8 being compensated for their time?

9 Ms. Lewis?

10 PROSPECTIVE JUROR NO. 354: No. Not at all, because
11 they're the experts. I'm sure we're going to be given their
12 credentials and so forth on it. So, I'm okay with that.

13 PROSPECTIVE JUROR NO. 388: Yeah. I believe in what she
14 just said. I mean, they're coming on their time. They're
15 losing out on pay. So somebody's got to get compensated, why
16 not them, you know?

17 MR. EGLET: Mr. Lewis -- or excuse me, I'm sorry, Mr.
18 Pilato?

19 PROSPECTIVE JUROR NO. 348: I agree with them totally,
20 actually.

21 MR. EGLET: Okay. All right. Very good. Do each of you
22 believe in re -- personal responsibility? If you believe in
23 personal responsibility raise your hand.

24 The three of you. Personal responsibility. You
25 believe that person should be held personally responsible for

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1 their actions.

2 PROSPECTIVE JUROR NO. 388: Oh yeah.

3 MR. EGLET: Okay. Do you believe that people should be
4 also, along with being held personally responsible be held
5 accountable for their actions?

6 PROSPECTIVE JUROR NO. 388: Yeah. I believe that.

7 PROSPECTIVE JUROR NO. 348: Yeah. Some can, but --

8

9 MR. EGLET: I'm sorry, go ahead, Mr. Pilato?

10 PROSPECTIVE JUROR NO. 348: But like I said, me -- like
11 some people would say yeah, you would have to be held
12 accountable and you have to be punished for that. Like I
13 said, me personally that's my belief, you know.

14 MR. EGLET: What's your belief?

15 PROSPECTIVE JUROR NO. 348: To err is human, forgiveness
16 divine. I mean it all depends on the situation. Like if I
17 threw something and broke a window or I should say, I have a
18 future son and he broke a window and it was all by accident.
19 Then I wouldn't really mind it, if it's by accident. Now if
20 it was something on purpose, you know, I would go ahead and
21 tell him to hold like a bag of peas while standing in the
22 corner or something. You know, just a little bit of a
23 punishment.

24 MR. EGLET: Right.

25 PROSPECTIVE JUROR NO. 348: Or if he like took a BB gun

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1 and shot up some neighbors window, and you know did it on
2 purpose, yeah. But if it's like by accident, you know --

3 MR. EGLET: Well let me -- let me -- since we're on the
4 subject with you, I'm going to skip ahead a little bit. And
5 talk to you -- do you remember the conversation that we --
6 that I had with the entire panel, and specifically with two or
7 three of the jurors about the difference between an
8 intentional act and a negligent act, or an accident?

9 PROSPECTIVE JUROR NO. 348: Yes.

10 MR. EGLET: You know, and I gave the pedestrian cross-
11 walk example. Would you be able to hold someone -- would you
12 be willing if you were sitting on a jury to hold someone
13 responsible and accountable if they were just negligent, or
14 would you feel that they would have had to done it on purpose,
15 or intentionally in order to be held responsible and
16 accountable?

17 PROSPECTIVE JUROR NO. 348: If I was on a jury and I had
18 to make a decision if, you know, they were guilty or not
19 guilty. I would make that decision. I'm just saying say in
20 my perspective that's how I would perceive it. But other
21 people have choices on what they can actually do.

22 MR. EGLET: Right.

23 PROSPECTIVE JUROR NO. 348: My choice would be, as a
24 juror to actually go and deliberate on what the situation
25 should be.

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1 MR. EGLET: And we don't -- it's not guilty or not
2 guilty. That's a criminal thing. It's just negligent or not
3 negligent --

4 PROSPECTIVE JUROR NO. 348: Yeah. Negligent or not --

5 MR. EGLET: -- in civil -- but you would be able to do
6 that? .

7 PROSPECTIVE JUROR NO. 348: Yes.

8 MR. EGLET: Okay. All right. I had a lengthy discussion
9 with the entire panel about the whole issue of lawsuit reform,
10 sometimes referred to as tort reform, or -- and the issue
11 centers around the fact that, you know, for the last several
12 decades we've been hearing publicized in the media, by certain
13 politicians, the press, about verdicts being too high or out
14 of control, that lawyers are taking advantage and referred to
15 as jackpot justice. Sometimes you hear the phrase frivolous
16 lawsuits put out there. And people claim, well it's driving
17 up business -- it's driving up the cost of the business,
18 driving up insurance rates, driving up all kinds of things.

19 How do you guys feel about that issue? Let me start
20 with you, Mr. Pilato.

21 PROSPECTIVE JUROR NO. 348: Well you know, when it comes
22 to frivolous lawsuits there are some out there. And there are
23 some legit lawsuits, like for example the lady with the
24 McDonald's cup [indiscernible] bring that up, but yeah.
25 That's, to me, it seems like a frivolous lawsuit. After all a

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1 cup -- you're ordering coffee, it's hot. You should know the
2 contents are hot. And yet -- it just doesn't make sense. But
3 yeah. There are some out there. But there are some legit
4 ones.

5 MR. EGLET: Okay. And how do you feel about the impact
6 the so called frivolous lawsuits have had on the legitimate
7 lawsuits?

8 PROSPECTIVE JUROR NO. 348: People -- like a lot of
9 people nowadays probably look at every single lawsuit, because
10 everyone's believing that everyone's out there to get their
11 money some way, some how. So, unfortunately a lot of people
12 are going to be skeptical on any lawsuit. I run skeptical as
13 well because I'd have to the causes and also hear about it to
14 see what I can up with, and my decision for it, actually, if
15 it's frivolous or not.

16 MR. EGLET: In your jury questionnaire you indicated that
17 you felt that there should be caps placed on the amount of
18 money the jury is permitted to put in their verdict form for
19 pain and suffering.

20 PROSPECTIVE JUROR NO. 348: Yes.

21 MR. EGLET: Tell us why you answered that way?

22 PROSPECTIVE JUROR NO. 348: The reason why is because --
23 I mean look -- when you look at that person, some people that
24 can actually be okay at first, but yet they can actually be a
25 little more damage, you know, like my mother, for example.

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1 She got into an accident, and she looks fine at first. But
2 after -- if you don't get to go into like doctor history, now
3 she's got pain in her back. And depending on what kind of
4 injuries that person has sustained there should be a certain
5 type of cap depending on which areas it is.

6 MR. EGLET: Okay.

7 PROSPECTIVE JUROR NO. 348: Depending if -- how long
8 they're going to be with that pain and if there's any
9 medication or any kind of way to be able to fix some of that
10 pain. There should be a certain type of cap depending on
11 those two things.

12 MR. EGLET: And who do you think should determine what
13 that cap should be?

14 PROSPECTIVE JUROR NO. 348: The jurists.

15 MR. EGLET: The jury?

16 PROSPECTIVE JUROR NO. 348: Uh-huh.

17 MR. EGLET: Okay. So when you answered that question
18 that way you weren't saying you felt the legislature or
19 somebody outside the courtroom should place a cap on what a
20 jury is allowed to do? You think a jury should be able to
21 make those decisions?

22 PROSPECTIVE JUROR NO. 348: Yes.

23 MR. EGLET: Okay. You mentioned your mom was injured and
24 had some back problems. Could you tell us a little more about
25 that?

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1 PROSPECTIVE JUROR NO. 348: Well she was actually driving
2 to work at this one celebrity golf place. She had a lot of
3 customers like Mike Tyson would go in there like a few times.
4 All right, but she was actually stuck in the middle of
5 traffic, it fact it was totally jammed. And she got hit by a
6 semi right in the back.

7 MR. EGLET: She got hit by a semi in the rear?

8 PROSPECTIVE JUROR NO. 348: Yeah.

9 MR. EGLET: Okay.

10 PROSPECTIVE JUROR NO. 348: So it was about a four or
11 five car pile up. And the -- what happened was that she
12 actually got an MRI done the day before the accident. Because
13 her limbs were actually hurting her. So the next day her back
14 was actually really great. She didn't feel any pain at first,
15 because after all shock and things like that. So she actually
16 had an MRI done the next day. You can actually see how much
17 damage that was done on her back.

18 So she has to live with that pain, unfortunately for
19 the rest of her left. But she does have doctor proof, but --

20 MR. EGLET: She has what?

21 PROSPECTIVE JUROR NO. 348: Doctor proof, because of the
22 MRI done before and after.

23 MR. EGLET: And did she bring a claim for that?

24 PROSPECTIVE JUROR NO. 348: Yes. She did. She -- they
25 actually settled because the lawyer thought it would be best.

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1 And this -- and they were going to postpone it probably
2 another ten years because of -- because we probably would have
3 won that. And they were just going to try to postpone it as
4 much as they can. So he said just go ahead and settle with
5 this amount, which was a very good, high amount.

6 MR. EGLET: Where did that happen?

7 PROSPECTIVE JUROR NO. 348: That -- I forgot which
8 highway that was, but it was --

9 MR. EGLET: Was that here?

10 PROSPECTIVE JUROR NO. 348: Here in Vegas.

11 MR. EGLET: It was here in Las Vegas.

12 PROSPECTIVE JUROR NO. 348: Uh-huh.

13 MR. EGLET: So I noticed you were born in Alexandria,
14 Louisiana. And your -- your Mom, at least, is here in Las
15 Vegas.

16 PROSPECTIVE JUROR NO. 348: Yes. My mom is here in Las
17 Vegas.

18 MR. EGLET: Is your dad here, too?

19 PROSPECTIVE JUROR NO. 348: Yes.

20 MR. EGLET: Okay. And when did they move out here?

21 PROSPECTIVE JUROR NO. 348: First they went from
22 Louisiana for one year, and then Delaware for one year, and
23 then here when I was two. So I've been here since 26 years.

24 MR. EGLET: Okay. So you grew up here. All right. And
25 did your mom and your dad were they satisfied or pleased with

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1 the outcome of the claim?

2 PROSPECTIVE JUROR NO. 348: Well my mom wanted more
3 money, but you know she was okay with it.

4 MR. EGLET: Okay. And how many years ago did this
5 happen?

6 PROSPECTIVE JUROR NO. 348: Well before we moved into our
7 new house, because we sent the money on that. So about ten
8 years ago, approximately.

9 MR. EGLET: All right. And is she still having pain from
10 that?

11 PROSPECTIVE JUROR NO. 348: She still has bad pain. She
12 can't stand for long, so she can't work anymore.

13 MR. EGLET: Okay. All right. And does she take
14 medication or anything for that?

15 PROSPECTIVE JUROR NO. 348: No. No. She doesn't take
16 any medication.

17 MR. EGLET: Okay. Mister -- or Ms. Lewis, how do you
18 feel about this subject of frivolous lawsuits?

19 PROSPECTIVE JUROR NO. 354: I think there's frivolous
20 lawsuits out there going on all the time. But I also know
21 there's real ones out there. And you just have to weed out
22 the frivolous from the real ones. And I've always been the
23 kind of person who wants to hear the facts before I make a
24 decision and so forth, so that's how I look at it.

25 MR. EGLET: Okay. And you also put on your jury

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1 questionnaire the answer that you feel there should be a cap
2 placed on the amount of money that a jury could put in the
3 verdict for pain and suffering damages. Can you tell us why
4 you put that answer?

5 PROSPECTIVE JUROR NO. 354: I couldn't exactly remember
6 what I put in as you've asked questions. And I think my
7 thought process was when I'm thinking about the frivolous
8 lawsuits sometimes people were getting a large amount of
9 money. And I hear what it was for and I always wonder why.

10 But I've also, I've seen people who have -- you
11 know, I've got a good friend who went through -- you know,
12 when she was younger she was in an accident and all that. And
13 I think they settled through the insurance and so forth, but
14 she had injuries and I watched how it's effected her life how
15 she's gone through life. And she still has problems from it.
16 And I can understand that part of it, too. So like I said I
17 think I was thinking about the frivolous lawsuits that we all
18 think about. It's the first thing that comes to mind when you
19 hear that.

20 MR. EGLET: How do you define as a -- what do you define
21 is a frivolous lawsuit?

22 PROSPECTIVE JUROR NO. 354: Well the Wendy's chili one
23 was the one that came to mind. And you know, just watching,
24 you know, that whole thing and then finding out that someone
25 got a hold of a thumb and then stuck it in the chili and so

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1 forth, that was the first thing that popped to mind. And
2 that's the things -- and of course the McDonald's coffee is
3 always one of the first things you think about. And you hear
4 things where people have walked into like Wal-Mart and
5 intentionally slip on the floor and a lawsuit there and so
6 forth. I mean things like that is what comes to mind.

7 MR. EGLET: Does that ever happen at Wal-Mart, Mr.
8 Pilato?

9 PROSPECTIVE JUROR NO. 348: Slip on the floor? Yeah.
10 That happens.

11 MR. EGLET: All right.

12 Mr. Briese, how do you feel about this subject?

13 PROSPECTIVE JUROR NO. 388: Well my wife, before I met
14 her, her sister was involved in a fatal car accident and we've
15 been together since 2000. I didn't know it at the time, but
16 she told me later on as we were dating her sister was killed
17 by two semi's in Michigan.

18 And I asked her, you know, later one what happened
19 after that. And she told me, "Yeah. We sued." But she's
20 still got to work. I mean they sued for bodily injury the
21 whole thing. And nobody became rich. You can't replace a
22 body, you know. So, you can't put a tab on somebody's head
23 and say, "Well he's worth \$10,000,000. Or he's worth \$100,
24 000,000. It's priceless. Life is priceless. So no matter
25 how much money they would have gotten out of it, it don't

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1 bring back her sister.

2 MR. EGLET: Thank you.

3 PROSPECTIVE JUROR NO. 388: Yeah.

4 MR. EGLET: What problems would any of you be in sitting
5 on a jury in a personal injury case where the jury was asked
6 to put in the verdict form in excess of \$2,000,000 in damages?
7 Mr. Briese would you have any problem with it?

8 PROSPECTIVE JUROR NO. 388: I would see all the evidence
9 and see if it was justified. If the person who was, you know,
10 working and making a good living, his wife's making a good
11 living and both of them were involved in the accident or only
12 one, okay instead of \$2,000,000 maybe \$1,000,000 it just
13 depends on the circumstances. How his living -- how his --
14 you know, when he was working everything was fine, and then
15 all of a sudden now he can't work no more. His life is
16 changed a lot. So now he's basically struggling with expenses
17 and stuff.

18 MR. EGLET: Do you think it should just be tied to
19 whether the person can still make a living or not? Or are
20 there other factors like --

21 PROSPECTIVE JUROR NO. 388: Well there are other factors,
22 you have to measure in. But I've seen a lot of people sue for
23 a lot of reasons, bodily injury, loss of limb, loss of life.
24 You know, I've seen them. I've heard them before. I've seen
25 them like AVIS, loss of life. And yeah, they make millions.

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1 But it doesn't bring the fact that that person isn't going to
2 be there anymore. I mean, their life has changed forever. No
3 matter if you make millions or you don't make millions.
4 You're going to -- what the people are going through every day
5 -- you don't even know what they're going through. They could
6 have a nightmare every night recurring nightmare of the -- you
7 know, and money ain't going to matter. It might make their
8 life a little better.

9 And I've -- I've lived that nightmare. 9/11 losing my
10 friends on the fire department. Reliving that airplane crash.
11 I can imagine having a real tragic car accident. Forget it.
12 I mean, I would go nuts probably. I wouldn't -- you know,
13 it's really traumatic. You know, it's traumatic for the
14 Defendants. Sure enough it's traumatic for the Plaintiffs. So
15 you know it's a real tragedy.

16 But in Michigan when I used to live there, they do
17 have a cap. 250 that's it. We wouldn't even be going through
18 this. Unless for the fact that you lost a limb, then it's a
19 whole 'nother ballgame. You lost a limb, you lost a leg, an
20 eye, sue for bodily injury. But there is a cap.

21 And you know, in some circumstances I think that's
22 good. But other circumstances, if you lose a life? No. It's
23 not good. I think you throw the cap out, override that and go
24 to the next level.

25 MR. EGLET: Ms. Lewis, how would you feel being on a jury

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1 that was asked -- on a personal injury case asked to put
2 excess of \$2,000,000 in the verdict?

3 PROSPECTIVE JUROR NO. 354: I want to see how it's
4 impacted their life. I mean what kind of impact has this
5 given you? Has it effected you with your job? Later on in
6 life, how it's going to impact you then and so forth. That's
7 what I'm going to take into consideration. All those facts,
8 and so forth, that's why I would want to know how did it
9 effect you. Why do you need this?

10 MR. EGLET: Would you have a problem though sitting on a
11 jury, I mean, that was asked to put that kind of money in the
12 verdict form regardless of what the evidence is. Would that
13 cause you some consternation or anything?

14 PROSPECTIVE JUROR NO. 354: No. Like I said, it's how's
15 it impacting you. I'm going to take a look -- I'm going to
16 look at it that way. And if it effected your life that much,
17 sure. If it hasn't, then no.

18 MR. EGLET: All right. Mr. Pilato, how do you feel about
19 it?

20 PROSPECTIVE JUROR NO. 348: Just that, like I said not
21 too long ago. There should be a cap. And within certain time
22 limits [indiscernible] those caps should be different. As for
23 if it's to a million I have to actually look at the evidence.
24 And be able to, like, see where it should go, actually. So I
25 wouldn't say 2,000,000 straight off the bat.

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1 MR. EGLET: No. And nobody's asking you to do that. I'm
2 just simply asking you, and obviously there's no evidence
3 that's been presented. I'm just simply asking you that --

4 PROSPECTIVE JUROR NO. 348: Okay.

5 MR. EGLET: Would you be uncomfortable, do you have a
6 problem being on a jury in a case -- in a personal injury
7 case, any kind of personal injury case where the jury was
8 asked to put in the verdict form in excess of \$2,000,000?

9 PROSPECTIVE JUROR NO. 348: Well like I said, I would
10 have to actually see how it effects their life and everything.

11 MR. EGLET: So you would base it on the evidence?

12 PROSPECTIVE JUROR NO. 348: Yes.

13 MR. EGLET: And if the evidence justified it, you'd be
14 okay with it?

15 PROSPECTIVE JUROR NO. 388: Yeah.

16 MR. EGLET: Is that right?

17 PROSPECTIVE JUROR NO. 388: Uh-huh.

18 MR. EGLET: Okay. All right. Okay. I asked Mr. Pilato
19 -- I kind of skipped forward, I wanted to ask Ms. Lewis and
20 Mr. Briese a question about negligence versus intentional
21 content. Do either of you feel like you wouldn't be able to
22 make a Defendant pay or put money on the verdict form for the
23 Plaintiff unless the Defendant hurt the Plaintiff on purpose -
24 - did it intentionally? Would you require that?

25 PROSPECTIVE JUROR NO. 354: Huh-uh.

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1 PROSPECTIVE JUROR NO. 388: Huh-uh.

2 MR. EGLET: No. Okay. All right. Thank you. We're
3 caught up now. I want to talk to all of you now about a
4 subject called jury nullification. Who here, raise your hand
5 if you've ever heard the term jury nullification before?

6 Okay. Ms. Kistler, what do you think jury
7 nullification is?

8 PROSPECTIVE JUROR NO. 854: I've heard of it. I can't
9 remember for the life of me what it means, but I've heard of
10 it.

11 MR. EGLET: Does anybody else think they know what jury
12 nullification is?

13 PROSPECTIVE JUROR NO. 332: That would be kind of like
14 voiding the whole --

15 MR. EGLET: Mr. Aquino?

16 PROSPECTIVE JUROR NO. 332: Would that be like voiding
17 the whole jury?

18 MR. EGLET: That be what?

19 PROSPECTIVE JUROR NO. 332: Voiding the whole jury?

20 MR. EGLET: No. No. Mister --

21 PROSPECTIVE JUROR NO. 388: That's what I was thinking
22 the same thing.

23 MR. EGLET: Okay. Oh I forgot to ask you -- we were
24 going to ask you yesterday after 4:00 and we let everybody go
25 a little bit earlier, did you check and see whether it was

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1 going to be okay for you to it on this jury with your boss?

2 PROSPECTIVE JUROR NO. 332: We were catching up a while
3 ago.

4 MR. EGLET: You're what?

5 PROSPECTIVE JUROR NO. 332: We were catching up on our
6 cases a while ago. So, so far we were really good. I don't
7 know how long --

8 MR. EGLET: So far you're good, though? Right.

9 PROSPECTIVE JUROR NO. 332: We -- we're not -- because I
10 mean with our -- with the way things are, I mean you can't
11 really quite pretty much determine how a case would actually
12 go and what not. So a while ago it was okay. Whether it's
13 going to be okay next week or --

14 MR. EGLET: So it's a kind of a day to day or week to
15 week thing with you?

16 PROSPECTIVE JUROR NO. 332: Yeah.

17 MR. EGLET: Okay. All right.

18 PROSPECTIVE JUROR NO. 332: Yeah.

19 MR. EGLET: Okay. So let me explain to you -- let me ask
20 you this, does everyone here -- if you feel this way raise
21 your hand. Does everyone here believe in following the rules?
22 If you believe in following the rules raise your hand.

23 Anybody here -- Mr. Doty, I missed it. Did you
24 raise your hand real quick? Do you believe in not
25 following --

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1 PROSPECTIVE JUROR NO. 905: I believe that there have
2 been instances in history when the rules called to be broken.

3 MR. EGLET: Okay.

4 PROSPECTIVE JUROR NO. 905: So I don't think rules,
5 because it's just a rule you just follow it. You -- no.
6 Absolutely not.

7 MR. EGLET: Okay.

8 PROSPECTIVE JUROR NO. 905: I mean most of the rules,
9 meaning the law, and whatnot; most of them need to be
10 followed. I'm just -- to blanket everything and say that
11 rules are rules and that's it, then no. If that's -- if I'm
12 correct in my perception of the question.

13 Rules in general, no. They're -- I believe there's
14 instances when certain rules --

15 MR. EGLET: Well let's talk about laws. Do you believe
16 that the laws -- all laws should be followed? Or do you
17 believe certain --

18 PROSPECTIVE JUROR NO. 905: Currently --

19 MR. EGLET: -- laws should not be followed?

20 PROSPECTIVE JUROR NO. 905: But the same thing though,
21 depending on where you're at -- in 1776, I would say no.
22 Today? Yeah, most of them. Yes.

23 MR. EGLET: Okay. All right. At the end of the case the
24 Judge is going to give you the instructions on the law -- the
25 Rules in the case. And you're the finders of fact. The

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1 Court, the Judge decides what the law is that would -- and the
2 rules, basically -- the law, the rules that you are to utilize
3 in making your decision in applying the facts to the law or
4 the rules.

5 Now, I can virtually guarantee that when those
6 instructions are read to you by the Court, and you're each
7 going to get a copy of them as well, written copy of them,
8 there's going to be at least one or two of those instructions,
9 those laws, that some of you are going to look at and you're
10 going to say, "You got to be kidding me? I cannot believe
11 this is the law." And you may very well just totally disagree
12 with what that law says.

13 The question is, if you just absolutely disagree
14 with what that law says, are you going to follow it? Or are
15 you not going to follow it?

16 Mr. Doty?

17 PROSPECTIVE JUROR NO. 905: I would probably follow it.

18 MR. EGLLET: Probably?

19 PROSPECTIVE JUROR NO. 905: Yeah. I would follow it.

20 Being that -- well I'm still kind of thinking -- milling the
21 question over you just posed. Yeah. I mean it's kind of like
22 the rules of the game -- if you go back to the whole game
23 thing.

24 You know, who -- if we put this as a game and the
25 rules. Yeah. I believe you've got to play by the rules, even

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1 if you might not think it's fair or something.

2 MR. EGLET: Anyone here --

3 PROSPECTIVE JUROR NO. 905: So yeah. You'd have to
4 follow it.

5 MR. EGLET: Anyone here -- and that's good word. That's
6 a good word. Fair. You may not think the rule or law is
7 fair. Anyone here who thinks that if they see these rules or
8 these laws that if they disagree with any of them. They think
9 they're unfair. They don't like them. That they're going to
10 be inclined to not want to follow that rule or law. Anybody
11 feel that way?

12 [No audible response]

13 MR. EGLET: Jury nullification is where a jury doesn't
14 follow the law, or the instructions that's given to them by
15 the Court. Now every once in a while, we see this a lot
16 because we're here a lot. And I don't know if it will happen
17 during your trial, but every once in a while we get these
18 people out on the sidewalk here in front of the courthouse
19 handing out fliers that say, if you're on a jury you don't
20 have to follow the law. You don't have to do what the judge
21 tells you to do.

22 That is not true. Not following the law is against
23 the law as a juror. That's jury nullification, and that's
24 against the law in the State of Nevada. And some people may
25 have seen this on maybe some TV shows, some legal TV shows

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1 where one of the lawyers gets up -- most of the time it occurs
2 in a criminal case on the TV shows, but where he basically
3 encourages the jury to ignore the law and come back with a
4 different decision.

5 You can't do that. You cannot do that. Even if you
6 think that that law is so incredibly wrong that you would do
7 everything in your power to try to change that rule or law, if
8 you were on this jury you have to follow that rule or law.
9 And apply the facts to that rule or law.

10 Anyone here think they're going to have a problem
11 with that? Anyone at all? Even slightly -- even a slight
12 problem with that, raise your hand.

13 Mr. Doty? Any problems?

14 PROSPECTIVE JUROR NO. 905: No.

15 MR. EGLET: Okay.

16 Okay. Mr. Bambino?

17 PROSPECTIVE JUROR NO. 992: Yes.

18 MR. EGLET: When you make an important decision in your
19 life how sure do you have to be before you make that decision?

20 PROSPECTIVE JUROR NO. 992: Very sure. And I think it
21 goes back to what you were saying about we all come here with
22 life experiences. And my life experience, I've basically
23 spent most of my life grading student mathematical proofs.
24 And so they must follow a logical procedure. So when we
25 talked about this the other day about, you know, that I would

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1 need a lot of convincing. That's what I always tell my
2 students. And if there's a flaw in their logic or, you know,
3 a flaw in their calculations I zap them pretty good. Because
4 that's what their college professor's going to do next year.

5 And so that's kind of what I mean. I bring that
6 sort of experience to this and so I -- as I tell them, you
7 have to convince me that you know what's going on. So that's
8 what I mean by that.

9 MR. EGLET: Okay. You've used a couple of times in some
10 of the discussions we've had about some of the other subjects
11 that you have to be convinced, and at one time I asked you,
12 "Well what do you mean by convinced? How convinced?" And you
13 said, "100 percent."

14 PROSPECTIVE JUROR NO. 992: Uh-huh.

15 MR. EGLET: Is that how you feel when you make important
16 decisions? That you have to be 100 percent sure?

17 PROSPECTIVE JUROR NO. 992: Uh-huh.

18 MR. EGLET: Ms. Hubbert, how do you feel about that?

19 PROSPECTIVE JUROR NO. 293: When I make an important
20 decision I have to be really, really sure that -- I mean any
21 decision that's extremely important can have the impact to
22 change your life one way or the other. And even if I make the
23 wrong decision I live with what I decide, because I was sure
24 at the time that I was going to do it.

25 MR. EGLET: All right. And so Mr. Bombino says 100

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1 percent. If you had to put a percentage on it how sure would
2 you have to be on a percentage basis?

3 PROSPECTIVE JUROR NO. 293: Well I'll have to admit; I
4 don't think I've ever really been 100 percent sure in a lot of
5 things. I would have to say over 50 percent between maybe up
6 to 75 percent, sure.

7 MR. EGLET: So you --

8 PROSPECTIVE JUROR NO. 293: Because there's always room
9 for doubt.

10 MR. EGLET: So you're staying 75 percent.

11 PROSPECTIVE JUROR NO. 293: Uh-huh.

12 MR. EGLET: That's kind of what your range is?

13 Ms. Meza, what about you?

14 PROSPECTIVE JUROR NO. 983: Well because I'm married, it
15 usually I'd say at least 90 percent that I would have to
16 debate and see. So sometimes I go into something and I see
17 what he says and -- but most of my life 100 percent.

18 MR. EGLET: So when you make an important decision you
19 want to be 100 percent sure before you have to make a decision
20 or 90 percent at least.

21 PROSPECTIVE JUROR NO. 983: Yeah. At least 90.

22 MR. EGLET: Okay.

23 Mr. Doty, you have said a couple times that during
24 the -- when we talk about other subjects, you said that you,
25 you know, and we may have been talking about the amount of

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1 damages or whatever the subject was. You said that you would
2 want a lot of proof. You warrant a lot of proof. And the
3 more proof to you. In your personal decisions how sure do you
4 have to be in life?

5 PROSPECTIVE JUROR NO. 905: Well that would be beyond a
6 reasonable doubt. Like if I had --

7 MR. EGLET: Beyond a reasonable doubt?

8 PROSPECTIVE JUROR NO. 905: -- any reservations or doubts
9 --

10 MR. EGLET: Right.

11 PROSPECTIVE JUROR NO. 905: Yeah. I would be
12 uncomfortable.

13 MR. EGLET: Okay.

14 PROSPECTIVE JUROR NO. 905: So I don't know if I could
15 put a percent on that per se, but yeah, I wouldn't make any
16 serious decisions if there's an inkling of doubt. I would
17 have to go back and crawl through it. And, you know --

18 MR. EGLET: All right.

19 PROSPECTIVE JUROR NO. 905: -- get to where I'm not
20 doubtful.

21 MR. EGLET: All right.

22 PROSPECTIVE JUROR NO. 905: Because I'm -- I guess I'd
23 want us to make a decision without a doubt.

24 MR. EGLET: Mr. Barrett what about you? When you make an
25 important decision in your life how sure do you think you have

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1 to be?

2 PROSPECTIVE JUROR NO. 943: Well I'm --

3 MR. EGLET: Before you make and act on that decision.

4 PROSPECTIVE JUROR NO. 943: As I said it's very hard for
5 me ever to feel 100 percent sure of things. I think the world
6 isn't black and white. But I would say predominantly sure.
7 Definitely have the pros outweigh the cons in my eyes.

8 MR. EGLET: And can you give us some sort of -- when you
9 say predominantly, is that --

10 PROSPECTIVE JUROR NO. 943: Probably 80 to 90 percent
11 sure.

12 MR. EGLET: 80 to 90 percent sure. Okay.

13 Ms. Hubbert, how would you feel about having to make
14 an important decision where you only have to be just more than
15 50 percent sure?

16 PROSPECTIVE JUROR NO. 293: I do that all the time.

17 MR. EGLET: You do that -- you think you can do that?

18 PROSPECTIVE JUROR NO. 293: Uh-huh.

19 MR. EGLET: Okay. Mr. Bombino, Mr. 100 percent. How do
20 you feel about if you had to make an important decision and
21 you only had to be -- or could only be just more likely than
22 not, just more than 50 percent sure. Would you be able to do
23 that?

24 PROSPECTIVE JUROR NO. 992: Probably not. I -- you know,
25 I'm not sure exactly what percent I would be, but probably

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1 not.

2 MR. EGLET: Well --

3 PROSPECTIVE JUROR NO. 992: Unless I was thoroughly
4 convinced. And then I'd go back to Mr. 100 percent again.

5 MR. EGLET: Right.

6 PROSPECTIVE JUROR NO. 992: I'd have a hard time doing
7 that. I would also say but, you know, this is a gray area
8 that we haven't been convinced of. I guess I would say that
9 and have a hard time making a decision.

10 MR. EGLET: Okay. So just more than 50 percent would be
11 a gray area --

12 PROSPECTIVE JUROR NO. 992: Yeah. It would.

13 MR. EGLET: -- and you would have a hard time making your
14 decision based on that.

15 PROSPECTIVE JUROR NO. 992: Yeah.

16 MR. EGLET: And when I say more than --

17 MR. ROGERS: Excuse me, Your Honor, when this questioning
18 is done may we approach, just to address this issue?

19 THE COURT: How about right now.

20 MR. ROGERS: Sure.

21 [Bench Conference Begins]

22 MR. ROGERS: The defense objects to the Plaintiff
23 inquiring into matters that will be instructed by the Court in
24 Rule 77.

25 THE COURT: Yesterday you addressed this very issue.

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1 MR. ROGERS: I did. Well --

2 THE COURT: And now you don't want to get into the --

3 MR. ROGERS: Well with one single juror.

4 THE COURT: I'm sorry?

5 MR. ROGERS: With a single juror that was in the room.
6 And I did it because, as I said yesterday the Plaintiff's
7 questioning confused the jurors, because there is a burden of
8 proof. But now he's getting into the burden of proof, which
9 is going to be a court instruction. And EVCR 7.7 says counsel
10 aren't allowed to inquire into that.

11 MR. EGLET: We're not going --

12 MR. WALL: Well it talks about anticipating instructions
13 of the Court in 7.70 which is I believe the Court is going to
14 give an instruction with some negligence or I believe the
15 Court's going to give a self defense instruction. When that
16 hasn't been determined. Obviously there's going to be
17 preponderance of the evidence instruction. So I don't think
18 that's really what 7.7 is addressing.

19 MR. EGLET: It's not. And of course, you know, what I'm
20 entitled to do, because it is important is whether these
21 jurors can make a decision based on just over 50 percent right
22 -- more than 50 percent -- just more than 50 percent sure,
23 because that is the fact the standard they're going to make
24 their decision on. So if they can't, we're entitled to find
25 that out. I mean your -- they're not qualified to sit on this

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1 jury. And so it's absolutely appropriate line of questioning.

2 THE COURT: I think this is fair game.

3 MR. EGLET: Thank you.

4 [Bench Conference Ends]

5 MR. EGLET: Okay. Let's see --

6 [Counsel confer]

7 MR. EGLET: Okay. So, all right. Now -- so when I talk
8 about, you know, just more than 50 percent if you can imagine
9 say this -- my two palms of my hands are a scale and right now
10 they're just even. And would you be able to make an important
11 decision if the scale just slightly tipped in one way or the
12 other?

13 PROSPECTIVE JUROR NO. 992: No. And this goes back to
14 something we talked about, I didn't address this, but we you
15 talked about it with the jurors was about the, you know,
16 where's Defense and where the Plaintiff starts --

17 MR. EGLET: Started.

18 PROSPECTIVE JUROR NO. 992: And you were thinking that.
19 And I want to say that I think that, you know, that the
20 Plaintiff is behind the Defense. I actually think you guys
21 start here. But since my thinking is the burden of proof is
22 more on you. So you have to finish way ahead.

23 MR. EGLET: Way ahead?

24 PROSPECTIVE JUROR NO. 992: Way ahead. So this wouldn't
25 be good enough for me.

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1 MR. EGLET: So for you, if at the end of the case the
2 Plaintiff is just slightly tipped the scale in their favor,
3 you wouldn't be able to make your decision based on that?

4 PROSPECTIVE JUROR NO. 992: No.

5 MR. EGLET: Okay. And you're sure about that?

6 PROSPECTIVE JUROR NO. 992: It's -- like I said, it's
7 what I tell my students all the time.

8 MR. EGLET: Right.

9 PROSPECTIVE JUROR NO. 992: You need to convince me.

10 MR. EGLET: Okay. And no one's going to change your mind
11 about that. Right?

12 [No audible response]

13 MR. EGLET: I appreciate your honesty. Thank you.

14 Mr. Doty, you talked about, I think you -- I believe
15 gave us an 80 or 90 percent percentage. My question is, if
16 you had to make an important decision in your life, would you
17 be able to do it if you were just more than 50 percent sure?

18 PROSPECTIVE JUROR NO. 905: Well given the image you
19 used, that does make me think a little differently. Depending
20 on the importance of it, I guess, who it effects. Would --
21 you know, it would have to vary a little bit. But I would be
22 able to, yeah, make decisions.

23 MR. EGLET: Okay. And explain to me what you mean by it
24 depends on the importance of it and who it effects.

25 PROSPECTIVE JUROR NO. 905: Like to kill somebody. It

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1 better be slamming down on the one side.

2 MR. EGLET: Well okay, we're not talking about --

3 PROSPECTIVE JUROR NO. 905: Right, but I mean -- or yeah,
4 so I guess it'd have to be pretty important, which there
5 probably wouldn't be very many like that to need it to the,
6 you know, to the one side. So I could, yeah. With that image
7 that you put forth, I could make a decision.

8 MR. EGLET: All right.

9 PROSPECTIVE JUROR NO. 905: Because I just made -- the
10 thought went through my mind of like, I don't know weighing in
11 for wrestling, you know. All it'll take -- if you're just one
12 little tick under. You're under. You're in. So you're good
13 to go for the weight class. I don't know why that popped into
14 my mind, but if you're one tick over, okay. You've got to
15 wrestle the big boys.

16 So, yeah. I could. If it tips the scale -- well
17 that's because scale made me think of that. So if it tips the
18 scale then you can make a decision on it.

19 MR. EGLET: Okay. Ms. Meza, what about you? Do you
20 think that you could make a really important decision in your
21 life and only be just over 50 percent sure? Or would you be
22 like Mr. Bombino, that's a gray area and you just couldn't
23 make that kind of decision?

24 PROSPECTIVE JUROR NO. 983: If I'm investing my money, it
25 better be 100 percent. And if it's anything else, fine.

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1 MR. EGLET: Well what if it's a really important decision
2 that could effect the lives and welfare of other people?
3 Could you do that? If you were just more than 50 percent
4 sure?

5 PROSPECTIVE JUROR NO. 983: No. I'd have to be more than
6 50 percent.

7 MR. EGLET: So you wouldn't be able to do that?

8 PROSPECTIVE JUROR NO. 983: On someone else's livelihood?
9 And I would have to judge it --

10 MR. EGLET: Uh-huh.

11 PROSPECTIVE JUROR NO. 983: I'd have to be more than 50
12 percent, at least 90.

13 MR. EGLET: At least 90.

14 Ms. Hubbert, what about you? What if this is a
15 decision that is going to effect the life and welfare of other
16 people?

17 PROSPECTIVE JUROR NO. 293: It would be hard, but either
18 way a decision -- that's why we're here. A decision has to be
19 made. So if I did get picked to be on the jury then I would
20 have to make that decision. So I would have to be comfortable
21 with it.

22 MR. EGLET: Mr. Doty, it's a decision now not just
23 effecting you. It's a decision that's going to effect the
24 life and welfare, a very important decision, it's going to
25 effect the life and welfare of other people. Are you going to

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1 be able to make -- would you be able to make that decision if
2 you're only just over 50 percent sure?

3 PROSPECTIVE JUROR NO. 905: Yes.

4 MR. EGLET: You're sure?

5 PROSPECTIVE JUROR NO. 9056: Uh-huh.

6 MR. EGLET: Anybody else think that they would have a
7 problem where making a very important decision that effects
8 the life and welfare of other people, and you only have to be
9 just over 50 percent sure. You don't have to be 100 percent
10 sure, 90 percent sure, beyond a reasonable doubt, 80, 70, 60
11 just over 50 percent sure. Anybody else think that they're
12 going to have a hard time making a decision based just on
13 that?

14 MS. Ellis?

15 PROSPECTIVE JUROR NO. 017: I would.

16 MR. EGLET: Tell us why?

17 PROSPECTIVE JUROR NO. 017: I just I would be guilt -- I
18 would feel guilty if I only had just a little bit sure. I
19 would need -- I do want more like -- I'd have to be 100
20 percent if it's going to effect somebody's livelihood. And
21 the rest of their life -- either way.

22 MR. EGLET: Okay.

23 PROSPECTIVE JUROR NO. 017: So yeah, I need to be 100
24 percent.

25 MR. EGLET: Mr. Pilato?

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1 PROSPECTIVE JUROR NO. 348: Yeah. I would agree with her
2 totally about that. I'd have to be a little bit more than 50
3 percent, probably 70 just to make sure I can look back and be
4 like, not have to regret it. You know, but that's my
5 decision, like I do. You know, some people might have
6 nightmares over that situation, if like -- well I made the
7 wrong decision I would rather not have nightmares over this.

8 MR. EGLET: Okay. All right.

9 [Pause]

10 MR. EGLET: All right. Let me -- the Court's indulgence
11 for a moment, Your Honor?

12 THE COURT: Sure.

13 [Counsel Confers]

14 MR. EGLET: Thank you, Your Honor.

15 THE COURT: Sure.

16 MR. EGLET: You're going to be told the standards that
17 apply in this kind of case for making decisions. In this kind
18 of case you will decide based upon whether you are more likely
19 right than wrong. You simply have to just tip that scale.
20 That's it. Is it more likely true than not true that the
21 accident was the Defendant's fault? Just more likely true
22 than not true. Is it more likely true than not true that this
23 amount of money is the right number to put in the verdict
24 form? That's it. Not 100 percent, not 90 percent, not beyond
25 a reasonable doubt, not 60, 70 --

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1 MR. ROGERS: Your Honor --

2 MR. EGLET: Just more likely than not.

3 MR. ROGERS: May we approach?

4 THE COURT: Counsel approach, please.

5 [Bench Conference Begins]

6 MR. ROGERS: If --

7 THE COURT: Wait. Let's wait for everybody.

8 MR. ROGERS: If Plaintiff will provide the upcoming --

9 THE COURT: Huh?

10 MR. ROGERS: If Plaintiff will provide the Court or the
11 jury the upcoming instruction it should be accurate. It's not
12 harms and damages. It's duty, breach, cause and damages.
13 That's what he has to say to them.

14 MR. EGLET: Duty is the issue of law which has already
15 been decided by the Court. Your client clearly they had a
16 duty. The second issue, breach, each one of these elements is
17 based on what's more likely; it's a preponderance of the
18 evidence, which is more likely true, than not true. As it is
19 a preponderance of the evidence I don't -- you can't argue
20 with that. Although I guess you might, based on what you said
21 yesterday. But, it is -- that is what it is. And I'm simply
22 saying that each one of their decisions that's what they base
23 their decision on.

24 MR. ROGERS: Counsel skipped over cause and damages --

25 MR. EGLET: No. I didn't.

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1 MR. ROGERS: And he replaced them with different words.

2 MR. EGLET: I don't have to use the word damages, okay?

3 MR. ROGERS: If you're going to use the instruction, you
4 have to be accurate.

5 MR. EGLET: I'm not using the instruction. I'm talking
6 about in general terms. I don't have to quote the
7 instructions when I talk to the jury.

8 THE COURT: I think given the answers of some of the
9 jurors, I think this is a fair area of exploration.

10 MR. ROGERS: For both sides, then?

11 THE COURT: Uh-huh.

12 MR. ROGERS: Okay.

13 [Bench Conference Ends]

14 MR. EGLET: All right. So getting back to what I was
15 saying. On decisions that you're going to make you're going
16 to make -- if you're are a juror you're going to make
17 decisions in this case. Okay?

18 Generally you're going to have to make the decision
19 as to who was at fault? Was the Defendant negligent or was
20 the Defendant not negligent in this case? That decision is
21 simply base -- the standard you use is just more likely than
22 not. Not 100 percent, not 90 percent, not beyond a reasonable
23 doubt, just tip that scale.

24 Same thing with the amount of damages, if you get to
25 that point, that you decide to put on the verdict form. You

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1 don't have to be 100 percent sure that that's the right
2 amount, 90 percent, beyond a reasonable doubt, 80, 70, 60,
3 just over 50 percent. That's the standard that you will apply
4 in this case.

5 Mr. Wall, Mrs. Eglet, Mr. Adams, myself, Mr. Rogers,
6 all agree that that's the standard you will use when making
7 your decision. The Court will tell you that. So -- other
8 than the people I've talked to is there anybody else who is
9 going to have a problem making their decisions in this case
10 applying that standard? Anyone else?

11 PROSPECTIVE JUROR NO. 036: Huh-uh. I'm good.

12 MR. EGLET: Okay. You were giving me kind of a face
13 there, Ms. Tatum I just want to make sure.

14 PROSPECTIVE JUROR NO. 036: Oh. I'm thirsty. That's why
15 I'm like that --

16 MR. EGLET: Okay. Yeah. We can take a break now.

17 PROSPECTIVE JUROR NO. 036: Thank you.

18 THE COURT: Let's take about a ten minute break. Ladies
19 and gentlemen, I'm reminding you not to discuss this case.

20 [Recess]

21 [Outside the Presence of the Jury]

22 THE COURT: All right. Well, outside the presence of the
23 jury.

24 Oh, Counsel, I've been advised that Jerome Lewis -- I had
25 down as an FTA from the first day.

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1 UNIDENTIFIED MALE: Second day.

2 THE COURT: The second day. He's on the bottom of page 3
3 of 4, badge number 1347. He apparently has been here at least
4 part of the time, but he didn't answer out loud when we tried
5 to seat him the other day. And -- but now he's apparently --

6 THE MARSHAL: He's the one that -- he's the one that came
7 in --

8 THE COURT: Late.

9 THE MARSHAL: -- late today, about 1:30.

10 MR. EGLET: That was the [indiscernible].

11 THE MARSHAL: Yeah.

12 THE COURT: Jerome Lewis.

13 THE MARSHAL: He's been here. He was here Tuesday
14 afternoon after the break.

15 MR. EGLET: Just put him at the end, the very end.
16 That's what I would do.

17 UNIDENTIFIED MALE: Is that good?

18 MR. EGLET: Mr. Rogers, do you agree we can just put him
19 at the very last? We only have three --

20 MR. EGLET: Four left.

21 THE COURT: Four left.

22 MR. EGLET: Five with --

23 THE MARSHAL: We got five with Mr. Lewis.

24 THE COURT: Shall we put him at the very end?

25 MR. ROGERS: I'll agree.

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1 THE COURT: Okay.

2 MR. WALL: Do we know why he wasn't present the other day?

3 THE MARSHAL: Tuesday morning when I took -- I take -- I
4 take three roll calls, Mr. Wall. Take one downstairs. When I
5 pick the jury up, I physically go down the line and make sure
6 everybody's on. After the first break on day one I take
7 another roll call to make sure everybody has returned. And on
8 the second day, as a they show up I take a third
9 [indiscernible] and that I basically know that everybody knows
10 to come back.

11 He didn't answer on Tuesday afternoon for that third
12 roll call, and that's why I notified everybody that he failed
13 to appear. At some part of the day he managed to get back
14 into the jury pool.

15 MR. WALL: But was he here yesterday?

16 THE MARSHAL: Yes, he was. I remember seeing him there,
17 and I just didn't make the connection that he was --

18 MR. EGLET: He showed up late today, right?

19 THE MARSHAL: And he showed up about 1:30 today, yes.
20 And that's where we're at with Mr. Lewis. So it's up to --

21 MR. ROGERS: There's a breezy, casual way about him.

22 THE COURT: Well, if he's -- if he's going to be late,
23 I'd prefer that he's the last one anyway.

24 MR. ROGERS: Yes.

25 THE COURT: All right. Can we bring our jury panel in.

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1 THE MARSHAL: Yes.

2 THE COURT: I guess so.

3 THE MARSHAL: Okay.

4 [Prospective In]

5 THE COURT: Okay. Please be seated everybody.

6 MR. EGLET: Thank you, Your Honor.

7 Okay. We were talking about the standard by which
8 you'll be making your decisions in this case. And what I want
9 to do is get a show of hands here -- I'll give you two
10 scenarios. Some folks think that the just more likely right
11 and wrong or just barely tipping the scales, just over 50
12 percent standard is not fair. Some people think it's not
13 fair. They think it makes it too easy on our side, too hard
14 on the other side. Other folks are okay with it. They think
15 it's the right standard. By a show of hands, who agrees with
16 the people who think that that standard's not fair and should
17 be a higher standard. Raise your hand. And raise your hand
18 if you're okay with that standard. Thank you.

19 Now, one of the questions on the verdict form, if
20 you get to that point in the verdict form, you'll have to
21 answer the how much money to be put in the verdict. It's a
22 decision that the jury will have to make. When figuring that
23 out, some folks think that you should only consider the amount
24 of harms and losses that the injured party has. Other folks
25 think you should also take into consideration things like,

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1 well, can the Defendant pay that amount of money; will this
2 make prices go up; will this make insurance go up, do we like
3 the Plaintiff or do we like the Defendant; well, money's not
4 really going to make the pain go away. Who thinks that they
5 should consider just the harms and losses and not consider
6 some of these other things. Raise your hand. Okay. Who
7 thinks you should consider these other things? Raise your
8 hand.

9 Mr. Doty, tell me why you think that.

10 PROSPECTIVE JUROR NO. 095: Well, I think that you need
11 to consider pain and suffering. We'd want to discuss, you
12 know, levels of it, but you definitely -- you definitely have
13 to consider it. You know, not really going against -- money
14 can't fix everything, but as Zig Ziglar said, it ranks right
15 up there with air, so it helps out.

16 MR. EGLET: Zig Ziglar?

17 PROSPECTIVE JUROR NO. 095: Yeah.

18 MR. EGLET: Do you read his books?

19 PROSPECTIVE JUROR NO. 095: I've read a few of. He's --

20 MR. EGLET: Been to any of his lectures?

21 PROSPECTIVE JUROR NO. 095: Yeah.

22 MR. EGLET: He's good.

23 PROSPECTIVE JUROR NO. 095: He's good I like him.

24 MR. EGLET: Very, very good.

25 PROSPECTIVE JUROR NO. NO. 095: But -- and so I think

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1 yeah, you have to weigh -- you have to take it into
2 consideration. I mean just think in my own case if -- you
3 know, if I was injured and, you know, was adversely affected
4 and I couldn't do certain things, there is -- I mean there's a
5 value to that. I mean yeah, I agree, money doesn't fix
6 [indiscernible] but it does compensate in a different way, so
7 it does need to be considered.

8 MR. EGLET: Well, the question though is -- is not really
9 that, because you were just talking about are the harms and
10 losses to the injured party. My question really focused on do
11 you think you can consider these other things like, well,
12 gees, can a Defendant afford to pay this; is this going to
13 make insurance rates go up, is this going to cause prices for
14 businesses to go up, you know, do I like the Plaintiff; do I
15 like the Defendant, things like that. Do you think you should
16 consider those things?

17 PROSPECTIVE JUROR NO. 095: The only thing that I
18 personally would wonder if -- like I think it was mentioned
19 before -- if the Defendant or whoever could not legitimate --
20 if you were going to bankrupt them, kick them out of their
21 phone, and they'll out in the streets, I would, yes, consider.
22 That would come into play. That would be about the only thing
23 that would have any kind of play. Everything else, no. You
24 -- I just [indiscernible], you know, so -- I mean obviously I
25 don't know the details of everything, but [indiscernible]

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1 sure. I think that yeah, you would have to -- and I think the
2 majority of Plaintiffs would -- I mean you wouldn't want to
3 send somebody out of their house and they're homeless, I
4 wouldn't think. I mean that's pretty extreme. So yeah,
5 that's about the only thing that I would say I would consider.

6 MR. EGLET: Okay.

7 PROSPECTIVE JUROR NO. 095: If that answers your
8 question.

9 MR. EGLET: Yeah, it does.

10 Mr. Barrett, how do you fall on that spectrum?

11 PROSPECTIVE JUROR NO. 954: Well, if we were instructed
12 to just weigh the harm and the impact I could do that. But
13 otherwise, the other things you brought up, it's not so much
14 whether I like somebody or not. I don't think that would
15 weigh into it. But I do tend to look at the big picture and
16 what's -- otherwise, I think you're just looking at the
17 Plaintiff's side of it, and I think you have to [Inaudible -
18 cough].

19 MR. EGLET: Let me show you something here on that
20 [indiscernible]. Mrs. Rish and Mr. Simao and Mrs. Simao,
21 they're all very nice people. Nobody's is going to dislike
22 [indiscernible]. Nobody. And the lawyers, just like anybody,
23 can see, you know, that's not the way it is. They're all nice
24 people. So -- okay. All right.

25 Mr. Aquino, do you think that the jury should

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1 consider just the harms and losses or do you think they should
2 discover these other things about, you know, how this might
3 affect -- whether it might or [indiscernible] affect the
4 person that has to pay or, you know, these other things we
5 talked about, these other things?

6 PROSPECTIVE JUROR NO. 332: Well, if you're looking -- if
7 you're actually asking about [indiscernible] --

8 MR. EGLET: Yes.

9 PROSPECTIVE JUROR NO. 332: -- like whether I like the
10 Plaintiff or like and dislike, you know.

11 MR. EGLET: Yeah. That's --

12 PROSPECTIVE JUROR NO. 332: Maybe I -- that's what
13 [indiscernible]. It shouldn't be -- it shouldn't be a point
14 in how the decision's going to be. But the harms and losses
15 [indiscernible] be compensated [indiscernible] depending on
16 [indiscernible]. And then of course [indiscernible] the
17 person [indiscernible]. I mean I can [indiscernible] to like
18 have to be -- because [indiscernible] form of -- we have the
19 highest form of [indiscernible] thinking. And we know how to
20 adapt. So [indiscernible] who, what we [indiscernible] we can
21 actually relearn something and actually make it
22 [indiscernible] and then we have. And it all depends on --

23 MR. EGLET: Let's kind of come back to what -- the focus
24 because I think we're getting a little bit far --

25 PROSPECTIVE JUROR NO. 332: Okay.

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1 MR. EGLET: The question really was this. Some folks
2 think when you're -- when the jury is making a decision of how
3 much money they should put in the verdict form, the only they
4 should consider is what are the harms and losses that the
5 injured person has, and how much money will it take to balance
6 out those harms and losses. Other folks think you should
7 consider things like, well, how sorry do I feel for the -- for
8 the injured Plaintiff; what kind of sympathy do I have for
9 him; how sorry do I feel for the Defendant; what kind of
10 sympathy do I have for the Defendant; is this going to make
11 prices go up; is this going to make insurance rates go up; is
12 this going to, you know, cause some harm to other people if
13 it's a big verdict outside of who's in this courtroom. So
14 people think you ought to -- some people think you ought to
15 consider those things as well as just the harms and losses.
16 And what I'm trying to find out is where everybody falls on
17 the spectrum.

18 So what I'm going to do to make this a little bit
19 easier is I'm going to ask again -- just -- and keep your
20 hands up for a minute. All those people who think you should
21 consider some of the other things just -- other than just the
22 harms and losses that the injured party has when you're
23 determining how much money you should put in the verdict,
24 people who think you should consider some of those other
25 things we talked about in addition to that when deciding on

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1 that amount, raise your hands and hold -- and keep them up for
2 a second, okay. Keep your hands up, okay.

3 Do you have your hand up?

4 Okay. Thank you. All right.

5 Mr. Barrett, did that -- did my clarification help
6 you a little bit or are -- do you still have the same answer
7 as you did before, that if --

8 PROSPECTIVE JUROR NO. 943: No, I agreed with a lot of
9 what Mr. Dillon said [indiscernible].

10 MR. EGLET: [Indiscernible]

11 PROSPECTIVE JUROR NO. 943: Unless we're told not to.

12 MR. EGLET: Okay. Mr. Aquino?

13 PROSPECTIVE JUROR NO. 332: Would [indiscernible] also.

14 MR. EGLET: Okay. All right. [Indiscernible] raised
15 your hand.

16 PROSPECTIVE JUROR: I believe that there is no playbook
17 that tells people, well, let's, you know, decide on this, this
18 and this. I believe that, you know, both parties are going to
19 be affected no matter what the decision is going to be. And I
20 think when you look at the whole picture it's like, they get
21 \$2 million or they get \$10 million, is that really going to
22 make their life better or is it going to make their life --
23 quality of life, there is no measure of quality of life. You
24 know, if I go out tomorrow and have a car accident and I
25 decide to sue somebody, is that going to make my life any

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1 better or worse? It's not going to make -- it might make it
2 better financially. I'll be paying off my house and my car
3 and any medical problems. But is it really going to matter?
4 I mean there is no playbook. The Defendant's having a hard
5 time because they're getting sued and they're going to be
6 losing a lot. Plaintiff's going to be gaining. It mean it's
7 like a catch 22. You're damned if you do, you're damned if
8 you don't. Don't matter -- depending on the evidence or
9 what's going on, who's at fault, who's not at fault. I mean
10 it's unfortunate that the Plaintiff had an accident, and maybe
11 the Defendant was at the wrong but maybe he wasn't. Maybe the
12 Plaintiff was wrong. You know, I always like an underdog.
13 I'm a New York Giant fan, a New York Jet fan, you know, Met
14 fan. I like the underdogs. And believe me, you know, if it
15 favors me one way or the other, I like -- I like to see the
16 underdog win a lot. And you know, I'm sorry to say that but
17 -- there's two coins to this story.

18 MR. EGLET: Okay.

19 PROSPECTIVE JUROR: And flip --

20 MR. EGLET: All right. And again, I guess I'm just
21 trying to find out though from you, you believe you should
22 then consider more than just the [indiscernible] --

23 PROSPECTIVE JUROR: More than --

24 MR. EGLET: -- losses and the other things too.

25 PROSPECTIVE JUROR: Yep.

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1 MR. EGLET: Ms. Rosinski, how do you feel?

2 PROSPECTIVE JUROR NO. 918: Yes. I feel --

3 MR. EGLET: And why?

4 PROSPECTIVE JUROR NO. 918: -- that we need to -- well,
5 you have to weigh everything. Is the insurance, like you
6 said, is that going to go up? Does that affect all of our
7 insurances? Because I know -- does it affect the Defendant?
8 Is it going to put them in the poorhouse? Are they out on the
9 street? We -- as human beings, yes, we all think of that.

10 MR. EGLET: Okay. Okay.

11 And Ms. Frye, you raised your hand.

12 PROSPECTIVE JUROR NO. 060: I agree. There's definitely
13 medical damages. But there's quality of life you have to take
14 into consideration for the person was possibly hurt. But
15 also, you've got to take into consideration what the other
16 person can afford [indiscernible] with the damages or the
17 quality of life the person is without having to put them in
18 the poorhouse.

19 MR. EGLET: And Ms. Ellis?

20 PROSPECTIVE JUROR NO. 017: Well, I guess if we all
21 consider everything, doesn't that kind of go back to if we're
22 only going to make it balance it, make it even to where that
23 person was before? And aren't we kind of -- I mean doesn't
24 that kind of go back to is this in excess? Are we going -- I
25 mean is this -- is somebody asking for excess if we're not

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1 looking at the whole picture, we -- am I not -- am I thinking
2 of it the right way? I mean --

3 MR. EGLET: Well, I'm just asking you how --

4 PROSPECTIVE JUROR NO. 017: I mean --

5 MR. EGLET: -- you're thinking.

6 PROSPECTIVE JUROR NO. 017: Yeah. That's kind of
7 where --

8 MR. EGLET: I'm not here to judge what --

9 PROSPECTIVE JUROR NO. 017: And that's kind of where I
10 go --

11 MR. EGLET: -- whether you're thinking about it right or
12 wrong.

13 PROSPECTIVE JUROR NO. 017: Well, no. That's kind of
14 where I go back to the questions you've been asking us before,
15 you know, like frivolous, or is this --

16 MR. EGLET: Right.

17 PROSPECTIVE JUROR NO. 017: -- in excess, or are we only
18 trying to balance out and make it equal or are we taking into
19 consider -- I don't know. I just need to look at it.

20 MR. EGLET: Anyone else I haven't called on who feels
21 that the jury should look at these other issues besides just
22 the harms and losses in determining the amount of money to put
23 in a verdict form?

24 Ms. Manful.

25 PROSPECTIVE JUROR NO. 963: Yeah. Well, you know, I

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1 don't worry about the insurance costs going up, or I don't
2 think about that, you know, or prices going up. But I would
3 probably consider what it would do to the Defendant.

4 MR. EGLET: Okay.

5 PROSPECTIVE JUROR NO. 963: You know, if I would --

6 MR. EGLET: All right.

7 PROSPECTIVE JUROR NO. 963: -- cause them to lose their
8 home and --

9 MR. EGLET: Sure.

10 PROSPECTIVE JUROR NO. 963: -- [indiscernible].

11 MR. EGLET: Anyone else feel that way that I haven't
12 talked to?

13 Everyone here, me, Mr. Wall, Mr. Adams, Mrs. Eglet,
14 Mr. Rogers and Judge Walsh all expect you to -- if you get to
15 that stage to figure out the amount of money you put in the
16 verdict based on the harms and losses that the Plaintiff has
17 and nothing else. And you'll be told that's all you can
18 consider. You cannot consider whether this is going to cause
19 insurance to go up, whether the Defendant can pay or not. You
20 cannot consider any of those things.

21 Now, having said that, is there anyone here who
22 feels they just can't do that? Raise your hand.

23 Ms. Ellis?

24 Who here -- please raise your hand -- here -- who
25 here knows anyone because of a neck injury who has had to have

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1 surgery on their neck? Raise your hand.

2 Ms. Smith, who do you know?

3 PROSPECTIVE JUROR NO. 928: My uncle.

4 MR. EGLET: Your what?

5 PROSPECTIVE JUROR NO. 928: My uncle.

6 MR. EGLET: And how long ago was the surgery?

7 PROSPECTIVE JUROR NO. 928: Ten years and --

8 MR. EGLET: How has it affected him?

9 PROSPECTIVE JUROR NO. 928: He's not able to work. He's
10 [indiscernible]

11 MR. EGLET: Okay. All right.

12 Who else raised their hand?

13 Ms. Kunkel.

14 PROSPECTIVE JUROR NO. 051: I have a coworker at work
15 that had that surgery. She was in a car accident.

16 MR. EGLET: Okay. And how has it affected her from what
17 you see?

18 PROSPECTIVE JUROR NO. 051: Well, she's back to work, but
19 she was out of work for real long.

20 MR. EGLET: Okay. Mr. Pilato.

21 PROSPECTIVE JUROR NO. 348: My mother has
22 [indiscernible]. She had a shattered [indiscernible] disc.

23 MR. EGLET: Right.

24 Did someone else raise their hand?

25 I'm sorry, Ms. Nolte?

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1 PROSPECTIVE JUROR NO. 903: A coworker. He fell at a
2 Wal-Mart store. He slipped on a garden hose. And he was in
3 the hospital for a little while. He'll never work again. And
4 he's had back surgery about three different times. And he did
5 sue and he did get huge settlement.

6 MR. EGLET: a what?

7 PROSPECTIVE JUROR NO. 903: A huge settlement.

8 MR. EGLET: Okay. Anyone else?

9 Now, other than Mr. Aquino, raise your hand if you
10 have any more than ordinary familiarity with what's called
11 MRIs. Raise your hand other than -- I'm sorry. Did you raise
12 your hand, ma'am?

13 PROSPECTIVE JUROR: I did. You asked us if we knew of --

14 MR. EGLET: If you had -- no, no. If you have more than
15 the ordinary person -- ordinary familiarity with MRIs. Other
16 than Mr. Aquino does, because of what he does.

17 Other than Mr. Aquino, raise your hand if any of you
18 have any familiarity with the legal procedure called
19 discography. Raise your hand.

20 THE COURT: Legal proceeding?

21 MR. EGLET: I didn't say legal. Did I say legal?

22 UNIDENTIFIED FEMALE: Medical.

23 MR. EGLET: I meant to say medical proceeding, not legal
24 proceeding. It's not --

25 THE COURT: Boy am I glad to hear that.

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1 MR. EGLET: It's not a -- did you miss that on the bar
2 exam?

3 THE COURT: I think so.

4 MR. EGLET: All right. Let me rephrase. Who here other
5 than Mr. Aquino has any familiarity with the medical procedure
6 called discography or a discogram? And -- all right. Very
7 good.

8 Your Honor, may I approach?

9 THE COURT: Yes.

10 [Bench Conference Begins]

11 MR. EGLET: Your Honor, at this time I would ask that
12 Juror No. 6, Mr. Pilato [indiscernible] be excused for cause.
13 This jury is -- we have a 21, Catherine Meza, No. 983 --
14 excuse me. Mr. Bombino is 22, badge 992, be excused for
15 cause. And [indiscernible].

16 THE COURT: Sure.

17 [Bench Conference Ends]

18 Mr. EGLET: Can -- Court's indulgence, Your Honor.

19 THE COURT: Sure.

20 [Bench Conference Begins]

21 MR. EGLET: My notes are on the [indiscernible] so it's
22 Mr. Pilato, seat number 6. Ms. Meza, that's 21-983, and Mr.
23 Bombino who is 92 -- badge 992 and seat 22.

24 THE COURT: And the reasons?

25 MR. EGLET: [Indiscernible] I would not [indiscernible]

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1 their decision based on a myriad of -- Mr. Bombino said he'd
2 be 100 percent sure, [indiscernible] said about 75 percent
3 [indiscernible] I think he said about 75 to 80 percent, but
4 they also said that even if instructed they have to make their
5 decisions based on just [indiscernible] that they couldn't do
6 it. I'd call it an instruction therefore based on
7 [indiscernible] to sit as jurors in this case.

8 THE COURT: I thought -- I thought this one made a
9 response like that as well.

10 MR. EGLET: She did. And I'm making a motion there.

11 THE COURT: Okay.

12 THE COURT: Mr. Rogers?

13 MR. ROGERS: Yes. The defense objects and requests the
14 right to rehabilitate. That's it.

15 MR. EGLET: Well, the law -- there's no such thing as
16 rehabilitation before [indiscernible]. You can't rehabilitate
17 someone who's going to say something inconsistent, and it's
18 [indiscernible].

19 MR. ROGERS: But there is --

20 MR. WALL: We know this -- that --

21 MR. EGLET: Yeah.

22 MR. WALL: -- no one can change their mind.

23 MR. EGLET: Yeah.

24 MR. ROGERS: There is -- there is a right to unrestricted
25 voir dire --

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1 MR. EGLET: Where is the case?

2 MR. ROGERS: -- [indiscernible] showing that right now.

3 MR. EGLET: No, this isn't unrestricted voir dire.

4 You're talking about rehabilitation, a very specific term. So
5 where is the case that says you're entitled to rehabilitation?
6 There's case law that we cite [indiscernible] the juror cannot
7 be rehabilitated.

8 MR. WALL: They can't.

9 MR. ROGERS: It's [indiscernible]

10 MR. WALL: It doesn't matter. It doesn't matter
11 [indiscernible]. That's the [indiscernible] rehabilitation
12 [indiscernible]. It doesn't shoestring what he said
13 [inaudible - cough]

14 MR. ROGERS: I hear what everyone is saying here, but the
15 -- it gets back to our discussion yesterday. I respect that
16 you disagreed with my position yesterday. But it's the
17 confusion in the questions, because on the one hand, all three
18 of these jurors said "Yes, we can follow the law." I imagine
19 that none of the three have ever been asked to quantify their
20 certainty on anything before. It's a strange question. It's
21 a first time. So they're asked, "Do you" -- "Do you have to
22 be 60 percent or 70 percent or 80 percent?" A mathematician
23 says 100 percent. But when he was asked if he would follow
24 the law, he says, "Yes, I can do that." Now, that doesn't
25 mean that because he's accustomed to being more certain as a

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1 mathematician that he can't follow the law and apply a
2 preponderance standard. It doesn't mean that at all.

3 MR. EGLET: Mr. Rogers --

4 MR. ROGERS: It's the confusion [sic] way that the
5 Plaintiff has conducted this voir dire that has the jurors
6 saying things like -- already Mrs. Frye said, "Okay, so the
7 medical bills are certain." And has Mr. -- one of the people
8 they're trying to excuse right now, who is it, No. 6? --
9 saying, "I don't know if this is a \$2 million case or a \$10
10 million case." This jury is --

11 MR. EGLET: He didn't say that.

12 MR. ROGERS: He absolutely said those exact words.

13 MR. EGLET: Mr. Pilato?

14 MR. ROGERS: I wrote it.

15 MR. EGLET: Mr. Pilato did not say that.

16 MR. ROGERS: Well --

17 MR. EGLET: You're --

18 MR. ROGERS: He did.

19 MR. EGLET: No, he didn't.

20 MR. ROGERS: And when he was talking about Michigan's
21 cap. They're --

22 THE COURT: That was a different juror.

23 MR. ROGERS: -- so confused now.

24 MR. EGLET: That was a different juror. You're wrong.

25 MR. ROGERS: He was talking about a Michigan cap. He's

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1 the guy from --

2 MR. EGLET: You're wrong.

3 MR. ROGERS: -- Michigan.

4 MR. EGLET: You're talking about the wrong guy. He's in
5 the second row, second seat from the left.

6 MR. ROGERS: [Indiscernible]

7 MR. EGLET: That's not Mr. Pilato. Mr. Pilato is in the
8 back row.

9 MR. ROGERS: Okay. I'm talking about --

10 MR. EGLET: That's Briese.

11 MR. ROGERS: I just said number 6, whoever that is.

12 MR. EGLET: Well, number 6 is Pilato and that's not Mr.
13 Pilato.

14 MR. ROGERS: Don't get distracted by this
15 [indiscernible].

16 MR. WALL: We do get distracted --

17 MR. ROGERS: The point is --

18 MR. EGLET: I'm not distracted about anything.

19 MR. ROGERS: The point is the confusion that's being
20 created by this line of questioning, so they come up and they
21 say, "Well, he said those magic words. He's out." And I'm
22 saying no, he's not. He simply doesn't understand what you're
23 doing with it.

24 MR. EGLET: Well, Your Honor, the only one I think is
25 confused here today is -- [indiscernible] is Mr. Rogers, with

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1 all due respect.

2 MR. ROGERS: Oh --

3 MR. EGLET: I took --

4 MR. ROGERS: -- lots of respect there.

5 MR. EGLET: I took these jurors down -- very carefully
6 down how they like to make their decisions, how sure they have
7 to be, how sure they have to be to make an important decision
8 for someone else. All of these people continued to
9 [indiscernible] that line. And then when I got to the
10 question, they did not say [indiscernible]. When I got to the
11 question that says, you know, "You're going to be told that
12 this is the standard you're going to apply in this case. We
13 all agree, and the judge will tell you that. Will you be able
14 to follow that standard?" And they said, "No," clear as day.

15 THE COURT: That's the problem the Court has, because
16 then I think you do have a jury -- possible jury nullification
17 issue. So the motion is granted with respect to Pilato,
18 Bombino and --

19 MR. EGLET: Meza. Meza.

20 THE COURT: And Meza.

21 MR. EGLET: It should be in the order Pilato --

22 THE COURT: Okay, that's right.

23 MR. EGLET: -- then Meza and then Bombino.

24 THE COURT: Pilato, Meza, Bombino.

25 [Bench Conference Ends]

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1 THE COURT: At this point the Court is inclined to thank
2 and excuse Mr. Pilato, Ms. Meza and Mr. Bombino. Thank you.

3 THE MARSHAL: That's the fastest I seen you walk, Mason.

4 THE COURT: So we need a replacement in seat number 6.

5 THE MARSHAL: Oh, yeah, Bombino with a B-o.

6 THE COURT: Yes.

7 THE CLERK: Amanda Parrette, badge number 389.

8 THE COURT: 1389.

9 THE MARSHAL: Which seat is she --

10 THE CLERK: 6.

11 THE COURT: Number 6.

12 THE MARSHAL: Step up there.

13 THE COURT: All right. We need a replacement for seat
14 number 21, please.

15 THE CLERK: 21. Next one is Ebony Jones, 1395.

16 THE COURT: And we need a replacement for seat number 22,
17 please.

18 THE CLERK: That will Cayla Frehner, 1403.

19 THE COURT: Okay. Whenever you're ready, Mr. Eglet.

20 MR. EGLET: Thank you. For the rest of the panel
21 [indiscernible] I'm going to have you go through with these
22 three people so -- and we do that quickly.

23 Ms. Parrette? Did I say that right?

24 PROSPECTIVE JUROR NO. 389: Yes.

25 MR. EGLET: Good afternoon.

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1 PROSPECTIVE JUROR NO. 389: Hi.

2 MR. EGLET: Can you tell us your date of birth?

3 PROSPECTIVE JUROR NO. 398: January 30th, 1978.

4 MR. EGLET: And have you been known by any other names?

5 PROSPECTIVE JUROR NO. 398: Yes. Catherine (phonetic)

6 Ashcroft (phonetic).

7 MR. EGLET: Can you -- can you spell that for us.

8 PROSPECTIVE JUROR NO. 398: A-s-h-c-r-o-full-time.

9 MR. EGLET: Okay.

10 PROSPECTIVE JUROR NO. 398: And I have a Korean name, so

11 I'll spell that for you. It's S-o-n and a Y upward

12 [indiscernible] and an I.

13 MR. EGLET: Okay. And how often do you wash your car?

14 PROSPECTIVE JUROR NO. 398: Once or twice a month.

15 MR. EGLET: And you're the manager for Barney's at the

16 New York department store, right?

17 PROSPECTIVE JUROR NO. 398: Yes.

18 MR. EGLET: And what makes you good at your job?

19 PROSPECTIVE JUROR NO. 398: My work ethic [indiscernible]

20 and [indiscernible].

21 MR. EGLET: Sorry, I couldn't hear you.

22 PROSPECTIVE JUROR NO. 398: Ability to influence people.

23 MR. EGLET: Okay. And what is it about your -- what do

24 you think your ability to influence other people is?

25 PROSPECTIVE JUROR NO. 398: I'm sorry, could you repeat

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1 that.

2 MR. EGLET: Explain --

3 PROSPECTIVE JUROR NO. 398: I didn't hear you.

4 MR. EGLET: -- to us what you mean by your ability to
5 influence people.

6 PROSPECTIVE JUROR NO. 398: Well, it's retail, so there's
7 a lot of things that people do that they should do that they
8 don't do, and you have to be able to persuade them why it
9 would be a good idea to do that.

10 MR. EGLET: Very good. Do you have children?

11 PROSPECTIVE JUROR NO. 398: No.

12 MR. EGLET: Okay. What did you want to be when you were
13 in high school?

14 PROSPECTIVE JUROR NO. 398: A psychologist.

15 MR. EGLET: Psychologist. And why did you not pursue
16 that career?

17 PROSPECTIVE JUROR NO. 398: I went to school for it, and
18 in the mean time I up myself through school. I became the
19 district man -- they offered me a district manager position,
20 so I went to -- I have a bachelor's in it, but it was either
21 -- or -- not or -- go into a master's program, so at that
22 point I financially needed to work.

23 MR. EGLET: Okay. What are your five-year goals?

24 PROSPECTIVE JUROR NO. 398: Hopefully start a family.

25 MR. EGLET: Okay. Good. And what clubs or organizations

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1 do you belong to?

2 PROSPECTIVE JUROR NO. 398: None.

3 MR. EGLET: Okay. And can you tell us -- I -- you kind
4 of explained to it at work, the situation you're regarded as a
5 leader. Is there -- is there places outside of work where
6 you're regarded as a leader?

7 PROSPECTIVE JUROR NO. 398: Yeah, probably among my
8 friends.

9 MR. EGLET: Okay. If someone offers to send money to
10 your favorite charity, what is that?

11 PROSPECTIVE JUROR NO. 398: I would say CASA.

12 MR. EGLET: CASA?

13 PROSPECTIVE JUROR NO. 398: Uh-huh.

14 MR. EGLET: Okay. Have you been involved in CASA?

15 PROSPECTIVE JUROR NO. 398: No. I'm actually checking
16 into -- I missed it because I was on this jury --

17 MR. EGLET: Sure.

18 PROSPECTIVE JUROR NO. 398: -- picked for it -- so, I
19 know they have a class in June so --

20 MR. EGLET: So you're looking to become a CASA advocate?

21 PROSPECTIVE JUROR NO. 398: Yes.

22 MR. EGLET: Okay. Very good, very good. What's the
23 worst tragedy that you've ever experienced?

24 PROSPECTIVE JUROR NO. 398: My father passed away when I
25 was nine.

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