

UNITED STATES SUPREME COURT

PETITIONER'S APPENDIX

CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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United States Court of Appeals
For the Eighth Circuit

No. 18-2929

United States of America

Plaintiff - Appellee

v.

Sherman Johnson, Jr.

Defendant - Appellant

No. 18-3156

United States of America

Plaintiff - Appellee

v.

Sarkis Labachyan

Defendant - Appellant

Appeals from United States District Court
for the District of Nebraska - Omaha

Submitted: November 12, 2019
Filed: April 2, 2020

Before GRUENDER, KELLY, and ERICKSON, Circuit Judges.

ERICKSON, Circuit Judge.

Sarkis Labachyan and Sherman Johnson, Jr. were each charged with possession with intent to distribute cocaine, 21 U.S.C. § 841(a), and conspiracy to possess with intent to distribute cocaine, 21 U.S.C. § 846. Labachyan and Johnson were convicted on all charges following a jury trial. On appeal, Labachyan asserts the district court erred when it failed to suppress certain statements. Johnson asserts that his Batson challenge should have been sustained. Both argue the evidence was insufficient to support their convictions. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

I. Background

On June 21, 2016, Douglas County Deputy Sheriff Eric Olson stopped a van traveling near Omaha, Nebraska, for following too closely to another vehicle. The van's driver was defendant Sarkis Labachyan. Defendant Sherman Johnson, Jr. was in the front passenger seat. After Labachyan handed Deputy Olson the rental agreement for the van and his driver's license, Deputy Olson escorted Labachyan back to the patrol car, where Deputy Olson conducted a record check.

Deputy Olson asked Labachyan where the men were heading. Labachyan told Deputy Olson that he and Johnson were traveling straight through from California to East Moline, Illinois, to visit Johnson's Aunt Dorothy, who had just been discharged

from the hospital. Deputy Olson then returned to the van to speak to Johnson, whose name was on the van's rental agreement. Johnson gave a different version of the men's itinerary, stating the two planned to stop in Lincoln, Nebraska, en route to Illinois, and that they were to visit his Aunt Jeannette there.

Growing suspicious, Deputy Olson returned to his patrol car to complete his record check. During the record check, Deputy Olson discovered that Labachyan and Johnson had two months prior been stopped in a vehicle in Nebraska. During that stop, an officer had searched the vehicle and found a blowup mattress, a small amount of marijuana, and \$19,000 cash sorted into three envelopes with names written on them. With no other indicia of criminal activity, the two were allowed to leave.

After learning of this incident Deputy Olson asked for and received consent from Johnson to search the van. When Johnson consented, Labachyan asked to speak with him. Deputy Olson denied the request, and along with another officer, searched the van. The officers discovered a blowup mattress, bank receipts, soiled gloves, and adult diapers. In the spare tire attached to the underside of the van, the officers found 6,000 grams of cocaine.

The district court denied Labachyan's and Johnson's respective motions to suppress the cocaine and the statements made to Deputy Olson during the traffic stop. During jury selection the government used three of its six peremptory challenges to strike all three venirepersons who were members of a minority group. The defendants raised a challenge pursuant to Batson v. Kentucky, 476 U.S. 79 (1986), which was overruled by the court.

The jury ultimately found Labachyan and Johnson guilty of all charges, and the district court denied their motions for acquittal based on insufficiency of the evidence. This appeal followed.

II. Discussion

We take the issues raised by defendants in the order that they were presented to the district court: First, Labachyan’s argument that his suppression motion should have been granted. Second, Johnson’s argument that his Batson challenge should have been sustained. Finally, both defendants’ argument that the evidence was insufficient.

A. Suppression

When appeal is taken from the denial of a suppression motion, we review factual findings for clear error and legal conclusions *de novo*. United States v. Conant, 799 F.3d 1195, 1199 (8th Cir. 2015). We must affirm the denial “unless the decision is unsupported by substantial evidence, is based on an erroneous view of the applicable law, or in light of the entire record, we are left with a firm and definite conviction that a mistake has been made.” United States v. Farnell, 701 F.3d 256, 260–61 (8th Cir. 2012) (quotation marks omitted).

Labachyan argues that statements he gave while seated in the patrol car during Deputy Olson’s record check should be suppressed because they were elicited without a Miranda warning. “[P]olice need not provide Miranda warnings before roadside questioning pursuant to a routine traffic stop because such questioning does not constitute ‘custodial interrogation.’” United States v. Howard, 532 F.3d 755, 761 (8th Cir. 2008); *see also* United States v. Coleman, 700 F.3d 329, 336 (8th Cir. 2012) (“Although a motorist is technically seized during a traffic stop, Miranda warnings are not required where the motorist is not subjected to the functional equivalent of a ‘formal arrest.’” (quotation marks omitted)). A motorist, or anyone else, is in custody for Miranda purposes when “his freedom of action ha[s] been curtailed to a degree associated with formal arrest, and that belief [is] reasonable from an objective

viewpoint.” United States v. Griffin, 922 F.2d 1343, 1347 (8th Cir. 1990) (quotation marks omitted).

Deputy Olson’s questioning of Labachyan did not resemble a formal arrest. Labachyan was never “informed that his detention would not be temporary,” and he was asked only a “modest number of questions.” United States v. Morse, 569 F.3d 882, 884 (8th Cir. 2009) (quotation marks omitted). Even if a reasonable person in Labachyan’s position would not have felt free to leave, this does not amount to custody. United States v. Pelayo-Ruelas, 345 F.3d 589, 592 (8th Cir. 2003) (rejecting the “broad contention that a person is in custody for Miranda purposes whenever a reasonable person would not feel free to leave”). Neither does it matter that the motivation behind Deputy Olson’s questions was to discover evidence of criminality. Berkemer v. McCarty, 468 U.S. 420, 441 (1984) (“A policeman’s unarticulated plan has no bearing on the question whether a suspect was ‘in custody’ at a particular time”).

A Miranda warning was not required during Deputy Olson’s questioning because Labachyan was not in custody at the time. The district court did not err in denying his motion to suppress.

B. Batson

Batson v. Kentucky, 476 U.S. 79, 95–96 (1986), established that “even a single instance of race discrimination against a prospective juror is impermissible.” Flowers v. Mississippi, 139 S. Ct. 2228, 2242 (2019). We review a district court’s discharge of its duty to enforce Batson for clear error. Id. at 2244. Because “[a] finding of intentional discrimination is a finding of fact, and ‘[s]ince the trial judge’s findings . . . largely will turn on evaluation of credibility, a reviewing court ordinarily should give those findings great deference.’” United States v. Roebke, 333 F.3d 911, 912 (2003) (quoting Batson, 476 U.S. at 98 n.21).

When a defendant challenges the government's peremptory strike pursuant to Batson, he must first make out a *prima facie* case that the strike was based on race. Foster v. Chatman, 136 S. Ct. 1737, 1747 (2016). If successful, the government then may offer a race-neutral reason for its strike. Id. The defendant can then argue that this reason is mere pretext for discrimination, before the district court answers the "ultimate inquiry," namely, "whether the [government] was motivated in substantial part by discriminatory intent." Flowers, 139 S. Ct. at 2244 (quotation marks omitted). The question of motivation "involves an evaluation of the prosecutor's credibility, and the best evidence [of discriminatory intent] often will be the demeanor of the attorney who exercises the challenge." Snyder v. Louisiana, 552 U.S. 472, 477 (2008) (citation and quotation marks omitted). This evidence is, of course, not available to us on a paper record, which explains why these determinations of credibility and demeanor lie "peculiarly within a trial judge's province," and will only be second-guessed in "exceptional circumstances." Id. (quotation marks omitted).

The prosecutor here used three of its six peremptory challenges to strike the only three minority venirepersons. Striking all minorities from the venire is evidence that might suggest the prosecutor was motivated by discriminatory intent. See Flowers, 139 S. Ct. at 2246 ("[T]he State's decision to strike five of the six black prospective jurors is further evidence suggesting that the State was motivated in substantial part by discriminatory intent."). In this case the district court was concerned by the use of the peremptory challenges and once a Batson challenge was raised immediately shifted the inquiry to the government's race-neutral reasons for the strikes.

The first discussion related to prospective juror 24, who raised her hand when the district court asked if anyone had any life experiences that would cause them to be partial to one side during the trial. The juror explained that her partiality was based on her disagreement with a federal sentence her brother had received. Later she told the prosecutor that she had had a negative experience with law enforcement

when she was arrested for disturbing the peace. She also acknowledged her disagreement with the country's drug laws. The government cited this information in response to Johnson's Batson challenge of prospective juror 24, and we find no error in the district court's acceptance of these race-neutral reasons. See United States v. Booker, 576 F.3d 506, 511 (8th Cir. 2009) ("A juror's expression of past dissatisfaction with law enforcement officers, which could indicate potential bias against the prosecution, is a legitimate race neutral reason for striking prospective jurors.").

The second challenged strike related to prospective juror 1, who the government struck because of his inability to meaningfully respond to a voir dire question about the definition of reasonable doubt. Immediately prior to this question the prosecutor had offered his explanation of the reasonable-doubt standard. The prosecutor indicated he exercised a challenge as to this juror because he was worried that the juror's indefinite response to the question reflected a likely inability to understand the relevant law and ascertain the facts. While it would be unreasonable to expect a lay juror to answer a prosecutor's questions about reasonable doubt with precision, this juror's virtual non-response could cause a reasonable concern that he was unprepared to pay attention to the trial. See United States v. Plumman, 409 F.3d 919, 928 (8th Cir. 2005) (affirming denial of Batson challenge where a reason given for strike was that prospective juror "was unresponsive to the prosecutor's questions"). We cannot say the district court clearly erred in its determination that the prosecutor's purported reason here was not pretext for discrimination.

The third challenged peremptory strike involved prospective juror 7. The prosecutor offered the following reasons for this strike: (1) the juror rented a place where she had only been living for a month; (2) she was a single mother to a toddler; and (3) she had noted in her jury questionnaire that her "dad was killed when [she] was 2," but did not provide more information about this incident during voir dire even though the court asked if anyone had "ever been involved in any court in a criminal

matter that concerned you, any member of your family or close friend, either as a defendant, a witness, or a victim?” The prosecutor was concerned that juror 7 might be hiding a resentment of law enforcement or the criminal justice system.

These reasons are ones we have said constitute race-neutral grounds for a peremptory strike. For example, “[a]n individual’s status as a renter may indicate he or she does not have substantial ties to the community,” which “[w]e have found . . . to be a valid reason to exercise a peremptory strike.” United States v. Adams, 604 F.3d 596, 601 (8th Cir. 2010). We have also affirmed the denial of a Batson challenge where the reason behind the allegedly unlawful strike was that the prospective juror had not been forthcoming about her family’s history with law enforcement. United States v. Morrison, 594 F.3d 626, 633 (8th Cir. 2010); see also Cook v. LaMarque, 593 F.3d 810, 823 (9th Cir. 2010) (upholding denial of Batson challenge where prospective juror’s “lack of candor with the court” provided part of the race-neutral reason to strike); United States v. Williams, 214 F. App’x 935, 936–37 (11th Cir. 2007) (same). Our assessment of these reasons is guided by the Supreme Court’s admonition that “[a]lthough the prosecutor must present a comprehensible reason, the [law] does not demand an explanation that is persuasive, or even plausible; so long as the reason is not inherently discriminatory, it suffices.” Rice v. Collins, 546 U.S. 333, 338 (2006) (quotation marks omitted).

Johnson correctly points out that the prosecutor initially misstated juror 7’s level of education by telling the district court that she might just have a GED, although she had actually completed college. The prosecutor also mistakenly indicated that she had not fully completed her jury questionnaire. It is clear, however, that the prosecutor was initially speaking off the cuff without the benefit of his notes. After Johnson’s counsel corrected these errors, the district court found that the prosecutor’s principal reason for the strike (the mystery surrounding her father’s death) was sincere and not “motivated in substantial part by discriminatory intent.”

Flowers, 139 S. Ct. at 2244 (quotation marks omitted). The record before us does not demonstrate any clear error on the part of the district court.

C. Sufficiency

We review evidentiary sufficiency *de novo*, “viewing evidence in the light most favorable to the government, resolving conflicts in the government’s favor, and accepting all reasonable inferences that support the verdict.” United States v. Mathews, 761 F.3d 891, 893 (8th Cir. 2014) (quotation marks omitted). “The verdict will be upheld if there is any interpretation of the evidence that could lead a reasonable jury to convict.” United States v. Seals, 915 F.3d 1203, 1205 (8th Cir. 2019) (quotation marks omitted).

Both defendants argue the evidence was insufficient to find beyond a reasonable doubt that they knew about the cocaine in the van’s spare tire. There was evidence, however, that Labachyan was nervous during Deputy Olson’s questioning, and that Labachyan expressed reservations about Deputy Olson searching the van, each an indication of a guilty conscience. See United States v. Castillo, 713 F.3d 407, 411 (8th Cir. 2013); United States v. Cortez, 935 F.2d 135, 143 (8th Cir. 1991).

Johnson, on the other hand, was calm throughout the traffic stop and authorized Deputy Olson’s search. Two pieces of evidence nevertheless support a reasonable belief that Johnson knew about the cocaine. One is the presence of adult diapers in the van. The jury could have believed Deputy Olson’s testimony that adult diapers are used “in the process of transporting narcotics” by those “trying to get from Point A to Point B as fast as possible.” The jury could have reasonably inferred that the diapers’ conspicuous presence in the van tipped Johnson off that the purpose of this trip was to haul drugs.

Other evidence tending to show Johnson's knowledge is his trip with Labachyan two months prior, when the two were stopped traveling through Nebraska in a rented van with \$19,000 cash concealed in named envelopes. Johnson denied the existence of this money before its discovery, and afterward claimed (rather implausibly) that it was his life savings. See United States v. Butler, 238 F.3d 1001, 1004 (8th Cir. 2001) ("[T]he jury could have inferred guilty knowledge from defendant's unlikely story." (quotation marks omitted)). A reasonable inference from this evidence is that Johnson and Labachyan had been moving drugs on that drive too and that drug runs were a routine for Labachyan and Johnson, belying either's ignorance of the presence of cocaine in this case. Cf. United States v. Willis, 89 F.3d 1371, 1377 (8th Cir. 1996) ("Scratch marks on the caps to the holes in the wheel wells in the cargo area of the [car], along with the screwdriver, support an inference by the jury that [the defendant] had transported drugs in the past and knew about the presence of the crack in the present case.").

The evidence was sufficient for a reasonable jury to find both Labachyan and Johnson guilty beyond a reasonable doubt.

III. Conclusion

We affirm the district court's judgment in both cases.

KELLY, Circuit Judge, concurring.

I concur in the court's opinion but write separately as to the peremptory strike used against Juror 7. In my view, the government's use of a peremptory challenge to strike Juror 7 presents a close call. At voir dire, the government pointed out that Juror 7 rented her home, had only been at her address for one month,¹ and was a

¹Like all eligible venire members, Juror 7 had lived in Nebraska for at least one

single² mother. While we have said that the “absence of community attachment” is a race-neutral reason for striking a potential juror, see United States v. Maxwell, 473 F.3d 868, 872 (8th Cir. 2007), the government did not articulate a concern that Juror 7 lacked community attachment. Instead, the government said that jury service would be a “big burden” for Juror 7. But the district court had asked all of the jurors: *Do any of you have any other reason which you think constitutes undue hardship or extreme inconvenience sufficient to justify my excusing you from jury service this week?* Juror 7 did not respond to the court’s question with any such hardship or inconvenience. Indeed, no one did. All the jurors were under oath, and we must presume they honored that oath during questioning.

I also question whether it is reasonable to infer that a person who is working a full-time job and raising a child would suffer an unusual burden. Those circumstances do not appear to be out of the ordinary. The district court made it clear that it intended to end court by 4:30 p.m. each day “because of a variety of factors, day care needs and things like that.” The government did not clarify what it meant by “big burden,” but if it was childcare, that concern had already been addressed by the court. It is unclear, on this record, how the characteristics identified by the government reflected Juror 7’s eligibility and willingness to serve on a jury.

In any event, the government stated that, “more importantly,” the strike was warranted because it was concerned that Juror 7 had not offered additional information about an answer she gave to one of the questions on the supplemental questionnaire: *Have you or a close family member ever been a victim of a crime? If so, please describe the circumstances.* Juror 7 wrote: *yes. My dad was killed when*

year.

²The questionnaire does not ask directly for marital status, asking instead “*What is your spouse’s occupation, if any?*” Juror 7 wrote, “n/a” and the government assumed this meant she was single.

i was 2. The government's concern was that Juror 7 did not raise her hand in response to a similar question the court asked during the early part of voir dire: *Have any of you ever been involved in any court in a criminal matter that concerned you, any member of your family or close friend, either as a defendant, a witness, or a victim?* But Juror 7 was two years old when her father was killed. And the court's question asked whether the *potential juror* was *involved* in any such criminal matter. It is entirely reasonable—and expected—that a truthful answer to that question for someone with Juror 7's experience would be “no.”

Moreover, even if this is a race-neutral reason for striking Juror 7, the government did not move to strike another juror who was in an analogous situation. In response to the same written question on the supplemental questionnaire, Juror 17 said: *Yes, sexual assault, charges never pressed, statute of limitations has expired.* Juror 17, like Juror 7, did not respond when the court asked whether anyone had “ever been involved in any court in a criminal matter.” To justify its striking Juror 7, the government expressed concern that Juror 7 didn’t “mention it at all,” despite the opportunities to talk about “being a victim of a crime and how you feel about the criminal justice system.” The government complained that Juror 7 “just sat back there, didn’t answer one question, didn’t raise her hand once.” This description, however, applies equally to Juror 17. In other words, as to this “more important[]” factor, Juror 17 responded (or didn’t respond) in an identical fashion to Juror 7. Yet Juror 17, who was not a racial minority, was seated on the jury, whereas Juror 7, whom the parties identified as African-American, was struck by the government’s use of a peremptory challenge.³ See Davidson v. Harris, 30 F.3d 963, 965 (8th Cir. 1994) (“A party can establish an otherwise neutral explanation is pretextual by showing that

³One of the venire members did not answer any of the questions on the supplemental questionnaire, including the question at issue here: *Have you or a close family member ever been a victim of a crime? If yes, please describe the case.* This person was seated on the jury.

the characteristics of a stricken black panel member are shared by white panel members who were not stricken.”)

“Discrimination in jury selection, whether based on race or gender, causes harm to litigants, the community, and the individual jurors who are wrongfully excluded from participation in the judicial process.” J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127, 140 (1994). Jury selection can be difficult, particularly when potential jurors are reluctant to speak openly or are hesitant to offer information until questions are directed specifically at them. Yet voir dire gives counsel the opportunity to do just that: ask questions. And the process would be better served when both parties remain conscientious about asking questions of jurors when they have questions they want answered. See, e.g., United States v. Hampton, 887 F.3d 339, 343 (8th Cir. 2018) (“Active engagement with potential jurors—by district courts, the government, and defense counsel—better informs the use of peremptory challenges by all parties”); United States v. Grant, 563 F.3d 385, 391–92 (8th Cir. 2009) (district court did not clearly err in concluding that counsel’s explanations for striking three female jurors were pretextual, in part because each juror was not asked any questions during voir dire). “Competence to serve as a juror ultimately depends on an assessment of individual qualifications and ability impartially to consider evidence presented at a trial.” Batson v. Kentucky, 476 U.S. 79, 87 (1986). The best way to determine that impartiality is to engage in a conversation with the potential jurors themselves.

In this case, the district court expressly found that the government “met its burden” in stating “a legitimate nondiscriminatory reason for making [the] strike.” The defendant argued the government’s reasons were inadequate but, critically, did not argue they were pretextual. We defer to the district court’s findings on this question, reviewing only for clear error, and understanding that the district court is in the best position to make what can be a difficult call. See United States v. Arnold, 835 F.3d 833, 841 (8th Cir. 2016); United States v. Ellison, 616 F.3d 829, 832 (8th Cir. 2010) (because the district court’s factual findings on a Batson issue “turn largely

on credibility evaluations, they are due great deference, and our review is for clear error" (cleaned up)). Given that deference, and despite my misgivings about the extent of the record on the issue, I cannot say the district court clearly erred in its findings. See United States v. Carr, 67 F.3d 171, 175–76 (8th Cir. 1995) (where the non-moving party made no attempt to show pretext, the district court did not err in concluding the strike was race-neutral).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THE UNITED STATES OF AMERICA,) Case No. 8:16CR241
Plaintiff,)
v.)
SHERMAN JOHNSON, JR., and)
SARKIS LABACHYAN,) Omaha, Nebraska
Defendant.) May 8, 2018

VOIR DIRE PROCEEDINGS
BEFORE THE HONORABLE ROBERT F. ROSSITER, JR.
UNITED STATES DISTRICT JUDGE, AND A JURY

A-P-P-E-A-R-A-N-C-E-S

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25 Proceedings recorded by mechanical stenography, transcript produced with computer.

(At 9:34 a.m. on May 8, 2018; with counsel and the defendants present; WITH the prospective jurors:)

3 THE COURT: Please be seated.

4 All right. We're here on the case of United States of
5 America versus Sherman Johnson, Jr., and Sarkis Labachyan,
6 Case No. 16CR241.

7 Would the attorneys please enter their appearances.

8 MR. CONBOY: Thank you. Your Honor, Martin Conboy
9 on behalf of the United States. With me at counsel table is
10 Chris Ferretti, also with the United States Attorney's Office,
11 and Deputy Eric Olson of the Douglas County Attorney's [sic]
12 Office.

13 THE COURT: Thank you.

14 MR. EVANS: Good morning, Your Honor. Michael Evans
15 on behalf of Sherman Johnson, and Sherman Johnson here is
16 present in court here.

17 THE COURT: All right. Thank you.

18 MR. DAVIS: Good morning, Your Honor. James Martin
19 Davis present on behalf of the defendant Sarkis Labachyan,
20 who's present in court. And also at counsel table, my legal
21 assistant, Cheyann Parr.

22 THE COURT: All right. Thank you.

23 Are the parties ready for trial, Mr. Conboy?

24 MR. CONBOY: Yes, Your Honor.

25 THE COURT: Mr. Evans?

1 MR. EVANS: Yes, Your Honor.

2 THE COURT: And Mr. Davis?

3 MR. DAVIS: We are, Your Honor.

4 THE COURT: All right. We'll proceed to jury
5 selection.

6 Good morning, ladies and gentlemen.

7 I am Judge Robert Rossiter, United States District Court
8 here in the District of Nebraska. I welcome you to service as
9 potential jurors in our court.

10 I'm going to tell you a little bit about what you can
11 expect, but before I do that I'm going to have you take out
12 your cell phones and any other communication devices that you
13 might have and turn them off. Do not turn them to vibration or
14 silent; I would like you to power them down. And during jury
15 selection, you must leave them off.

16 Thank you. I know how much of a part of all of our lives
17 those devices are but it's necessary that I have your full
18 attention and the attorneys have your full attention here this
19 morning.

20 I've learned that many people approach jury service with
21 some anxiety. It is something new. But if you have an
22 understanding of what's going on, I think that most people feel
23 that jury service is a gratifying experience. And I found that
24 to be the case when I've talked to jurors after -- after we've
25 completed their jury service.

1 You have been called to serve as potential jurors in
2 federal cases that are being tried in the eastern portion of
3 our state.

4 Even though your acceptance of are our invitation to serve
5 as a potential juror may not have been voluntary, I want to
6 thank you on behalf of the court system and emphasize that jury
7 duty is not merely an obligation, but is a privilege, to serve
8 our federal -- our fellow citizens.

9 Again, when you see the system work, I hope you will
10 recognize the importance of your participation.

11 I'm going to take a few minutes here before we get into
12 specific questioning to acquaint you with our court and the
13 kinds of cases that are tried here.

14 The District of Nebraska, in the federal system, is
15 composed of all 93 counties and runs border to border in our
16 state.

17 We have two courthouses here in Nebraska, active
18 courthouses: Omaha and Lincoln. Sometimes we do sit in North
19 Platte.

20 Including me, we have three active judges in the district
21 and two judges who have taken senior status but continue to
22 serve us in some capacity. We also have four magistrate
23 judges. In all, we have six judges that primarily serve here
24 in Omaha and three that serve primarily in Lincoln.

25 I want to first tell you that this courtroom and this

1 courthouse is not my courthouse. It's not a courthouse that
2 belongs to the lawyers or, for that matter, the litigants in
3 this case. This building belongs to the public and it's
4 important that each of us realize that it's the public's
5 business that is being conducted here.

6 Other than voting, at least in my mind, this is probably
7 the most important duty that each of us owes to our system of
8 government. I believe if we realize how unique our system is
9 and how dependent it is on good people like you to serve, only
10 then can we truly understand and appreciate it.

11 Jury trials have been eliminated, or never existed, in
12 many countries of the world. Approximately 95 percent of all
13 of the jury trials that happen in the world are here in the
14 United States. Trial by jury existed in the American colonies
15 long before they became -- we became the United States. And
16 our Constitution guarantees the right to a jury trial in
17 criminal cases.

18 The right to a jury trial was considered so fundamental a
19 right that our founders wanted to make sure that it could never
20 be denied based on -- based only on dissatisfaction with a
21 particular verdict.

22 Under our system, no one of us can ever be convicted and
23 punished for any serious crime by a president, a governor, a
24 sheriff, a judge, or any other governmental official.

25 There are only two ways a person can be convicted of a

1 serious crime in this country: One, they voluntarily plead
2 guilty; or, two, a jury of citizens finds that person guilty
3 because they are convinced, beyond a reasonable doubt, that he
4 or she actually committed a crime.

5 These precious and fundamental rights can only be
6 maintained by having good and conscientious citizens like
7 yourselves who, despite personal inconveniences and hardship,
8 give your time as jurors when called upon to do so.

9 I will now take a few minutes to introduce my staff and
10 familiarize you with the courtroom.

11 This is the witness stand. You'll hear the witnesses
12 testify from this witness stand.

13 You're in the -- the folks in those two rows are in the
14 jury box.

15 You heard the attorneys introduce themselves. At this
16 point you will know where they sit. You will be addressed --
17 there's a podium right here in front. You'll be addressed in a
18 few minutes by the attorneys as part of this -- the jury
19 selection process and -- and opening statements.

20 The attorneys will question from that podium that's in the
21 back.

22 You have in front of you -- you have in front of you those
23 monitors and when exhibits are received and counsel get
24 permission to publish those exhibits, that's where you'll see
25 them is on those -- is on those screens.

1 In front of me is Marian Frahm. You'll get to -- get to
2 know her. She is my courtroom deputy. Courtroom deputy
3 administers oaths, handles the exhibits, and helps me -- helps
4 me run the -- the courtroom.

5 Jeff Mindrup in the middle is my -- is my law clerk, my
6 career law clerk, who will be in here for the duration -- for
7 the duration of this trial.

8 Excuse me.

9 Sue DeVetter is my court reporter sitting here to my left.
10 She takes down everything that is said in the courtroom. From
11 time to time she may ask me, she may ask counsel, she may ask
12 witnesses to slow down. She may be one of the most important
13 people in this courtroom because she makes a word-for-word
14 record of what is said in the courtroom.

15 So that's -- and the gallery, once -- once the jury is --
16 once the jury is picked, the gallery is open to the public to
17 listen to this trial.

18 Any questions about the courtroom?

19 All right. My job in this trial is to decide legal
20 questions, generally. And a juror's job is to decide fact
21 questions. You are the real judges of innocence or guilt in
22 this case.

23 I will decide things on -- like what evidence is
24 admissible, and I will also instruct you at the beginning and
25 at the end of the trial as to the law that you must apply in

1 deciding the case. That law comes primarily from statutes
2 passed by Congress or it comes from case law, laws that have
3 been determined by judges in the past.

4 You will probably agree with most, if not all, of the
5 rules that I provide. You might not like all the rules. It
6 does not matter. It's my job to tell you what those rules are
7 and it's your job to apply those rules fairly and squarely to
8 the facts of this case.

9 You will decide what the facts are. That is, you will
10 decide from the evidence that is received during the trial what
11 actually happened.

12 An important part of your job is to decide what testimony
13 to believe and what testimony not to believe.

14 At the end of this trial, you decide whether the
15 government has proved by its evidence, beyond a reasonable
16 doubt, that the defendants are guilty.

17 In deciding what actually happened, jurors are very -- at
18 a very -- at a very basic level, searching for the truth.

19 As you can see, a very important part of this trial is
20 selecting a jury. That's why you're here.

21 At this point, the lawyers from -- for each of the parties
22 and I will participate in a process to select the jury in this
23 case. We will ask you questions which relate to you becoming
24 jurors. This part of the trial is called a voir dire
25 examination.

1 "Voir dire" literally means "to speak the truth." In this
2 context, "voir dire" simply means that you will truthfully
3 answer questions that are asked of you as prospective jurors in
4 this case.

5 The purpose of the voir dire examination is: First, to
6 gain knowledge about your attitudes concerning issues to be
7 decided and questions to be answered in this case.

8 Second, to enable the Court to determine whether any
9 prospective jurors should be excused.

10 And, third, to enable the Court -- to enable counsel for
11 the parties to exercise their individual judgment with respect
12 to what are called peremptory challenges, that is, challenges
13 for which no reason need to be given by counsel.

14 Do not feel bad if you are not picked to serve and do not
15 feel bad if you are picked to serve on the jury. Selecting a
16 jury can be a very subjective process.

17 My first questions relate to your basic qualifications to
18 serve as jurors. Your answers to all of the questions today
19 must be given under oath. And this is the first of a few oaths
20 that you will need to take here, but I would ask that you all
21 stand and raise your right hand, including those that are in
22 the back of the courtroom.

23 (The prospective jurors were sworn.)

24 COURTROOM DEPUTY: You may be seated.

25 THE COURT: Ladies and gentlemen, at the outset, I

1 hope you understand that these questions are not intended to
2 embarrass you or to pry into your personal affairs. For any of
3 these questions which I'm about to ask, if your answer is
4 "yes," please raise your hand so that additional questions may
5 be asked. If your answer to a question is "no," you need not
6 raise your hand. We will assume that, by your silence and not
7 raising your hand, your answer to a particular question is
8 "no."

9 If in response to any question you would feel more
10 comfortable responding to me and to counsel at the bench here,
11 please let me know.

12 The first group of questions have to do with your
13 qualifications to serve. And many, if not all of these
14 questions, have been asked to you in a questionnaire but I need
15 to follow up and ask you these questions under oath.

16 Are any of you not citizens of the United States?

17 Have any of you not attained the age of 18?

18 Have any of you not resided for the past year within the
19 state of Nebraska?

20 Are any of you unable to read, write, speak, or understand
21 the English language?

22 Nobody has answered -- or raised their hands to those
23 first four questions.

24 Do any of you have any mental or physical issue that would
25 make it impossible for you to render satisfactory jury service?

1 No one's answered.

2 Do any of you have a charge pending against you for the
3 commission of, or have you been convicted in any state or
4 federal court of, a felony, that is, a crime punishable by
5 imprisonment for more than one year and have not had your civil
6 rights restored?

7 All right. No one has answered.

8 Are any of you a member in the active service in the armed
9 forces of the United States?

10 I see no hands.

11 Are any of you full-time or a professional member of any
12 fire or police departments in this or any other state?

13 All right. No one has answered.

14 Are any of you a public officer in the executive,
15 legislative or judicial branches of any state, county, city, or
16 federal government who is actively engaged in the performance
17 of those official duties?

18 All right. No hands.

19 These questions go to whether or not you might be excused
20 from jury service.

21 Do any of you presently expect to be called as a witness
22 at this session of the court in any pending case here?

23 All right. No one has answered.

24 Will any member of your family, to your knowledge, be
25 called as such a witness?

1 All right. No hands.

2 Are any of you over the age of 70?

3 No hands.

4 Are you -- are any of you a volunteer firefighter or an
5 EMT?

6 All right. No one has indicated.

7 Do any of you have any other reason which you think
8 constitutes undue hardship or extreme inconvenience sufficient
9 to justify my excusing you from jury service this week?

10 All right. No one has raised their hand.

11 Just so you know, in answering these questions, I'm told
12 by counsel that this case, probably two to three days before --
13 at most before you would get it for your deliberations, so
14 against that backdrop, I ask these hardship questions.

15 All right. Those of you who remain are qualified to
16 serve.

17 Now, the lawyers and I will ask some more specific
18 questions to determine whether you will be asked to serve as a
19 juror in this case. Again, be assured that our questions are
20 not intended to harass or embarrass you.

21 Those prospective jurors who have not been seated in the
22 jury box or in the chairs for prospective jurors in the front
23 benches or in the front of the box or in the front benches,
24 listen closely to the questions, those in the back of the
25 courtroom, because you may be called to be seated in the jury

1 box if other prospective jurors are excused.

2 Each of the questions and follow-up questions I ask is
3 equally applicable to each of you and I ask that you pay
4 particularly close attention because rather than repeating each
5 question, I will sometimes ask a broad follow-up question. For
6 example, I may ask whether your answers are substantially the
7 same as the responses you've heard from other jurors to a
8 particular question.

9 In order for my court reporter to hear your responses, a
10 member of my staff will be walking around with a microphone for
11 your use. Please wait until you have the microphone before
12 responding so we can effectively hear your answer.

13 All right. The government is being represented by Martin
14 Conboy and Chris Ferretti, who have introduced themselves. Do
15 any of you know or are you acquainted with Mr. Conboy or with
16 Mr. Ferretti or any other lawyer in the United States
17 Attorney's Office?

18 All right. No one has indicated.

19 Do any of you know or are you acquainted with any family
20 members of anyone associated with the United States Attorney's
21 Office?

22 All right. No one has raised their hand.

23 Do any of you have any pending business or have -- have
24 you had business with the United States Attorney's Office?

25 All right. No one has answered.

1 Mr. Evans has previously introduced himself, but
2 Mr. Evans, would you introduce the persons seated with you --
3 person seated with you at counsel table once again.

4 MR. EVANS: Yes. Today seated at -- next to me at
5 counsel table is Sherman Johnson, Jr.

6 THE COURT: All right. Mr. Johnson, would you stand,
7 please, so the jury can see you.

8 Thank you. You may be seated.

9 Do any of you know or are you acquainted -- excuse me --
10 acquainted with the defendant Sherman Johnson, Jr.?

11 All right. No one has indicated.

12 Do any of you know or are you acquainted with members of
13 Mr. Johnson's family or any of his friends that you know of?

14 All right. No one has answered.

15 Again, Michael Evans of the Evans Law Office is
16 representing Mr. Johnson. Do any of you know or are you
17 acquainted with Mr. Evans or any other lawyer or employee of
18 the Michael Evans Law Office?

19 All right. No one has indicated.

20 Do any of you know or are you acquainted with any family
21 members of anyone associated with the Michael Evans Law Office?

22 All right. Nobody has raised their hand.

23 Do any of you have any business or have you had any
24 business with the Michael Evans Law Office?

25 No one has indicated.

1 Mr. Davis, will you please introduce the person seated
2 with you at counsel table.

3 MR. DAVIS: I will, Your Honor. At my left is
4 Cheyann Parr. She's my office manager and legal assistant.
5 And to her left is Sarkis Labachyan, who is my client and a
6 defendant in this case.

7 THE COURT: All right. Thank you.

8 Do any of you know or are you acquainted with the
9 defendant Sarkis Labachyan?

10 All right. No one has indicated.

11 Do any of you know or are you acquainted with members of
12 Mr. Labachyan's family or his friends that you know of?

13 All right. No one has indicated.

14 Mr. Labachyan is represented by Mr. Davis of the Davis Law
15 Office. Do any of you know or are you acquainted with any
16 employee of the Davis Law Office?

17 All right. No one has indicated.

18 Do any of you know or are you acquainted with family
19 members or anyone associated with that law office?

20 All right. No hands.

21 Do any of you have any pending business or have you had
22 business with Mr. Davis or the Davis Law Office?

23 All right. No hands. Thank you.

24 This one's always interesting: Do any of you know or are
25 any of you related to any other prospective juror in this

1 panel?

2 All right. No one has indicated.

3 I'm going to ask Mr. Conboy to read a list of witnesses
4 who he may call during this trial.

5 Go ahead.

6 MR. CONBOY: Oh, thank you.

7 THE COURT: Sorry.

8 MR. CONBOY: For purposes of this trial, there are a
9 number of witnesses. Keep in mind we may not be calling all of
10 them. These are all just potential witnesses.

11 Anita Wong of the Douglas County forensic office.

12 Alexander Michalak, also a forensic chemist with the
13 Douglas County Sheriff's Office.

14 Deputy Eric Olson of the Douglas County Sheriff's Office.

15 Deputy David Wintle of the Douglas County Sheriff's
16 Office.

17 Deputy Mark Dishaw with the Douglas County Sheriff's
18 Office.

19 Heather Rohwer, crime scene investigator with the Douglas
20 County Attorney's Office -- excuse me, Douglas County Sheriff's
21 Office.

22 Deputy Patricia Stokes with the Douglas County Sheriff's
23 Office.

24 Sandee Polsley with the Douglas County Sheriff's Office.

25 Deputy Jason Mayo with the Lancaster County Sheriff's

1 Office.

2 Deputy Henkle with the Lancaster County Sheriff's Office.

3 Trooper Rob Pelster with the Nebraska State Patrol.

4 And that is it.

5 THE COURT: All right. Thank you.

6 Do you know or are you acquainted with any of the persons
7 just identified as possible witnesses in this case or with
8 their family or close friends?

9 All right. No one has indicated to that.

10 The defendants have no obligation to present any evidence,
11 including witnesses, but if either counsel know at this time
12 that they're likely to present testimony of certain witnesses,
13 I would like you to name them for the jury for the sole purpose
14 of voir dire.

15 Mr. Evans.

16 MR. EVANS: The following are four potential
17 witnesses that may be called by Mr. Johnson.

18 First individual is Dennis Spurling. He's from Houston,
19 Texas.

20 The second witness would be Melinda Williams. She's from
21 Los Angeles -- or Ontario, California.

22 Third witness would be Jonathan Banks. Mr. Banks is from
23 Lincoln, Nebraska.

24 And the fourth person is Jeanette Banks and she's from
25 Moline, Illinois.

1 THE COURT: All right. Thank you, Mr. Evans.

2 MR. EVANS: Thank you, Your Honor.

3 THE COURT: Ladies and gentlemen, do you know or are
4 you acquainted with any of the persons just identified as
5 potential witnesses in this case or with their family members
6 or close friends?

7 All right. No one has indicated.

8 And, Mr. Davis, if you know at this time that you're
9 likely to present the testimony of certain witnesses, could you
10 name those.

11 MR. DAVIS: Sure. Well, good morning, ladies and
12 gentlemen of the prospective jury.

13 The only witnesses I potentially will call is the
14 defendant. I expect he will be testifying on his own behalf.

15 And then, Your Honor, I would be recalling perhaps some
16 of the witnesses that the prosecutor has already named.

17 THE COURT: All right. Thank you, Mr. Davis.

18 And we've already asked you if you have any knowledge of
19 Mr. Labachyan so I won't ask the further questions here.

20 All right. Ladies and gentlemen, this is a criminal case.
21 You've heard me give the title before, but it's entitled United
22 States of America versus Sherman Johnson, Jr. and Sarkis
23 Labachyan.

24 The government has charged the defendants with possession
25 with intent to distribute five kilograms or more of a mixture

1 or substance containing a detectable amount of cocaine, in
2 Count I; and conspiracy to distribute and possess with intent
3 to distribute five kilograms or more of a mixture or substance
4 containing a detectable amount of cocaine, and that is
5 Count II.

6 These charges are set forth in what is called an
7 indictment. The indictment is simply the document that
8 formally charges the defendants with the crime for which they
9 are on trial. The defendants have pleaded not guilty to all
10 counts and are presumed to be innocent unless and until the
11 government proves to you that they are guilty beyond a
12 reasonable doubt.

13 I have briefly described the facts of this case and the
14 charges. Have any of you seen, read, or heard anything from
15 any source whatsoever about this case?

16 Okay. Ms. Wetfield (phonetic)?

17 PROSPECTIVE JUROR WIETFELD: Yes.

18 THE COURT: Wheat- -- is it --

19 PROSPECTIVE JUROR WIETFELD: Wheatfield (phonetic).

20 THE COURT: Wietfeld. Tell us what you know.

21 PROSPECTIVE JUROR WIETFELD: Basically, I read it
22 online, so I just heard of the incident and some of the details
23 behind it.

24 THE COURT: And how long ago did you read that
25 online?

1 PROSPECTIVE JUROR WIETFELD: A couple weeks ago.

2 THE COURT: All right. Is there anything about
3 having seen that article online that would affect your ability
4 to listen here to all of the evidence before you made a
5 decision in this case?

6 PROSPECTIVE JUROR WIETFELD: No.

7 THE COURT: Could you be fair?

8 PROSPECTIVE JUROR WIETFELD: Absolutely.

9 THE COURT: All right. Thank you.

10 Is there anyone else that has any knowledge or has heard
11 anything about these facts?

12 All right. No one else has indicated.

13 Do you -- does anybody of their own knowledge know
14 anything about the facts of this case?

15 All right. No hands.

16 Have you -- have any of you formed or expressed an opinion
17 on the merits of this case or how it should be decided?

18 All right. No hands.

19 Do you feel you could put aside any knowledge you have
20 made -- may have obtained from outside the court and decide
21 this case solely on the evidence that you hear on the witness
22 stand? Does anybody feel they cannot do that?

23 All right. No hands.

24 At this time is there anything about this case that causes
25 any of you to favor one side or the other?

1 All right. No hands are raised.

2 Do any of you have any life experiences or any kind of
3 special training which would cause you to favor one side or the
4 other?

5 All right. Ms. Shine.

6 Go ahead.

7 PROSPECTIVE JUROR SHINE: My brother's been in
8 federal for, like, three different times.

9 THE COURT: Your brother's been in federal custody or
10 federal court three different times?

11 PROSPECTIVE JUROR SHINE: Yeah. I think this
12 courthouse.

13 THE COURT: Okay. And obviously, you've been
14 involved in that situation or at least watched it from this
15 courthouse. Is there anything about that circumstance that
16 would keep you from being open-minded about this particular
17 case?

18 PROSPECTIVE JUROR SHINE: It might be difficult,
19 yeah.

20 THE COURT: Okay. And why would it?

21 PROSPECTIVE JUROR SHINE: Because I didn't agree with
22 my brother's sentencing and the things that went on.

23 THE COURT: Okay. But you understand that this --
24 this case is a -- this case would be a different case? And you
25 would be required, if you were chosen as a juror, to sit and

1 listen to the evidence regarding each of these gentlemen.

2 PROSPECTIVE JUROR SHINE: Yes.

3 THE COURT: Do you understand that?

4 PROSPECTIVE JUROR SHINE: Yes.

5 THE COURT: And I would give you instructions at the
6 end of that.

7 PROSPECTIVE JUROR SHINE: Yes.

8 THE COURT: Do you think you could listen to that
9 evidence and put aside -- I realize you've got some -- some
10 memories and some feelings with regard to a family member, but
11 could you put those aside and be fair to these defendants and
12 to the government?

13 PROSPECTIVE JUROR SHINE: Yes.

14 THE COURT: All right. Thank you.

15 All right. I don't see any other hands on that question.

16 Have any of you ever been involved in any court in a
17 criminal matter that concerned you, any member of your family
18 or close friend, either as a defendant, a witness, or a victim?

19 All right. And Ms. Shine, we've talked to you.

20 PROSPECTIVE JUROR SHINE: (Nodded affirmatively.)

21 THE COURT: Anyone else?

22 All right. No one has indicated.

23 Have you or any member of your family or any close friend
24 ever been employed by a law enforcement agency?

25 All right. Ms. Mitchell.

1 PROSPECTIVE JUROR MITCHELL: My husband's nephew, he
2 works for the Omaha Police Department.

3 THE COURT: Okay. And what does he do for Omaha
4 Police Department?

5 PROSPECTIVE JUROR MITCHELL: I want to say he's just
6 a -- he drives a cruiser.

7 THE COURT: Okay. And is there anything about that
8 sit- -- how long has he been with -- with Omaha Police
9 Department?

10 PROSPECTIVE JUROR MITCHELL: About a year and a half.

11 THE COURT: All right. Do you talk to him about
12 cases?

13 PROSPECTIVE JUROR MITCHELL: No.

14 THE COURT: Is there anything about his employment or
15 that situation that would keep you from being fair to everyone
16 here?

17 PROSPECTIVE JUROR MITCHELL: No.

18 THE COURT: All right. You don't have any
19 preconceived notions about guilt, innocence, or any of that?

20 PROSPECTIVE JUROR MITCHELL: Nope.

21 THE COURT: All right. I appreciate it. Thank you.
22 Anyone else?

23 All right. Ms. Kizer.

24 PROSPECTIVE JUROR KIZER: I just have one friend
25 who's a cop, John Sokolik. He's been on the force for a long

1 time.

2 THE COURT: All right. Have you ever talked to him
3 about cases?

4 PROSPECTIVE JUROR KIZER: Not recently. I mean, I've
5 heard some of them though that he has been in the distant past.

6 THE COURT: Okay. What kind of cases has he talked
7 to you about?

8 PROSPECTIVE JUROR KIZER: Von Maur.

9 THE COURT: The shooting at Von Maur?

10 PROSPECTIVE JUROR KIZER: Yeah.

11 THE COURT: All right. Is there anything about that
12 that would keep you from listening to the evidence --

13 PROSPECTIVE JUROR KIZER: No.

14 THE COURT: -- here with an open mind?

15 PROSPECTIVE JUROR KIZER: No.

16 THE COURT: You'd be able to be fair to all the
17 parties here?

18 PROSPECTIVE JUROR KIZER: Yes.

19 THE COURT: All right. Thank you.

20 Mr. -- is it Slotter (phonetic)?

21 PROSPECTIVE JUROR NATH: Nath. Steve Nath.

22 THE COURT: Oh, I'm sorry. I'm on the wrong row.

23 PROSPECTIVE JUROR NATH: That's all right.

24 THE COURT: Mr. Nath. Sorry.

25 PROSPECTIVE JUROR NATH: My cousin is the Sarpy

1 County sheriff.

2 THE COURT: All right. Do you see him a lot?

3 PROSPECTIVE JUROR NATH: No.

4 THE COURT: All right. Do you ever talk to him about
5 cases?

6 PROSPECTIVE JUROR NATH: No.

7 THE COURT: There'll be testimony from law
8 enforcement, as you've heard here today. Would you be able to
9 put aside that relationship and look only at the evidence and
10 the instructions that you receive here?

11 PROSPECTIVE JUROR NATH: Yes.

12 THE COURT: Do you think you would be able to be
13 fair?

14 PROSPECTIVE JUROR NATH: Yes.

15 THE COURT: All right. Thank you.

16 Anyone else? Anyone else? All right. We have one in the
17 front here.

18 Mr. Slotter? Sloter?

19 PROSPECTIVE JUROR SLOTER: Sloter.

20 THE COURT: Sloter. Sorry.

21 PROSPECTIVE JUROR SLOTER: My brother-in-law is a
22 retired Omaha police officer.

23 THE COURT: All right. How long's he been retired?

24 PROSPECTIVE JUROR SLOTER: About ten years.

25 THE COURT: All right. Is there anything about that

1 situation that would keep you from being fair and open-minded
2 here today?

3 PROSPECTIVE JUROR SLOTER: No.

4 THE COURT: All right. Thank you.

5 Anyone else?

6 All right. Have you or any member of your family or any
7 close friend had any experience involving the use or possession
8 of illegal drugs or narcotics?

9 Okay. Mr. Sloter.

10 PROSPECTIVE JUROR SLOTER: My son's currently in
11 rehab.

12 THE COURT: All right. Inpatient?

13 PROSPECTIVE JUROR SLOTER: Yes.

14 THE COURT: All right. And this case obviously
15 involves to some extent drugs and we're going to be talking
16 about drugs in this case. And is he in rehab for drugs --

17 PROSPECTIVE JUROR SLOTER: Yes.

18 THE COURT: -- alcohol --

19 PROSPECTIVE JUROR SLOTER: Both, alcohol and drugs.

20 THE COURT: All right. Having lived through that
21 situation and having to live through it now, would you be able
22 to be open-minded here and listen to the testimony before you
23 made any decisions as to guilt or innocence?

24 PROSPECTIVE JUROR SLOTER: I believe so, yes.

25 THE COURT: All right. Thank you. Thank you for

1 sharing that.

2 All right. Ms. Boldt.

3 PROSPECTIVE JUROR BOLDT: My sister --

4 THE COURT: Is it Boldt?

5 PROSPECTIVE JUROR BOLDT: Yes.

6 THE COURT: Yes.

7 PROSPECTIVE JUROR BOLDT: My sister for marijuana.

8 She did a diversion. But that was five years ago, I think,
9 about --

10 THE COURT: Is there any --

11 PROSPECTIVE JUROR BOLDT: Go ahead.

12 THE COURT: All right. Is there anything about that
13 situation that would keep you from having an open mind here and
14 decide innocence or guilt?

15 PROSPECTIVE JUROR BOLDT: No.

16 THE COURT: All right. Thank you.

17 PROSPECTIVE JUROR BOLDT: Um-hum.

18 THE COURT: Ms. Shine.

19 PROSPECTIVE JUROR SHINE: My brother was sentenced
20 for the same...

21 THE COURT: All right.

22 PROSPECTIVE JUROR SHINE: Yeah.

23 THE COURT: And it's what we had talked about before?

24 PROSPECTIVE JUROR SHINE: Yes.

25 THE COURT: All right. Thank you.

1 And Ms. Leggitt.

2 PROSPECTIVE JUROR LEGGITT: Myself.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR LEGGITT: It was -- I've been clean
5 13 years, so -- and I have no problem.

6 THE COURT: All right. You'd be able to sit and
7 listen to the evidence here and put that experience aside and
8 decide this case based upon the evidence --

9 PROSPECTIVE JUROR LEGGITT: Yes, sir.

10 THE COURT: -- and the instructions?

11 PROSPECTIVE JUROR LEGGITT: Yes, sir.

12 THE COURT: All right. Thank you.

13 Anyone else?

14 All right. No other hands.

15 Is there anything which has occurred to any of you, other
16 than what we've talked about, in your life or experiences that
17 might have a bearing on your judgment in this case?

18 All right. No one has indicated.

19 If you were the government or the defendant -- and this --
20 this is really the bottom-line question here that -- that you
21 need to resolve in your own mind: If you were the government
22 or the defendant in this case, would you be unwilling to have
23 this case decided by a juror in the same frame of mind that
24 you're in now?

25 Would you be -- in other words, would you be

1 comfortable -- would all of you be comfortable with -- let me
2 put it this way so you can answer: Would any of you not be
3 comfortable with sitting as a juror in your own case under
4 those circumstances?

5 All right. Thank you.

6 The lawyers have informed me that this case, as I told
7 you, is expected to take two to three days before it's
8 submitted to you for a verdict. And I've asked you this before
9 but I'll ask you again now that you've had a chance to hear
10 what the case is about and whatnot: Would that length of time
11 for a trial create any undue hardship for any of you?

12 All right. No one has indicated.

13 I will tell you that, generally speaking, so that you know
14 for purposes of -- of planning and answering these questions,
15 that my trial day -- it's a little different today because
16 we're picking the jury, but my trial day will usually run from
17 nine to noon and then a lunch break and then from one to 4:30.

18 I make every effort to be done at 4:30 because of a
19 variety of factors, day care needs and things like that. I
20 don't think we need to go any longer than that with you as
21 jurors.

22 But knowing that, would those times create any kind of
23 undue hardship for any of you?

24 All right. No one has indicated.

25 Do any of you have any other reason whatsoever, such as a

1 physical condition, a health problem, or family issues which
2 could interfere with your serving as an attentive juror in this
3 case?

4 All right. No hands.

5 Have any of you served on a jury before today, either in a
6 civil or criminal case, or served on a grand jury?

7 All right. I won't ask the folks at the back of the
8 courtroom yet. If you're -- if you're seated up here I will
9 ask you those questions, and I appreciate it.

10 Anyone else? All right.

11 This case is to be decided solely on the law contained in
12 the instructions which will be given to you and on the facts
13 established by the evidence in this case. Do any of you feel
14 that you cannot decide this case based upon the law and the
15 facts established by the evidence?

16 All right. No hands.

17 As I said before, you must accept the law as -- as I state
18 in the instructions and disregard any idea or notion that you
19 may have about what the law should be or what it ought to be.

20 Do you feel you cannot -- do any of you feel you cannot
21 accept the law which will be stated in the instructions given
22 to you and apply those -- that law to the facts?

23 All right. No hands.

24 Having heard the questions that I've asked you, is there
25 any other reason why you believe that you could not sit on this

1 juror -- jury and render a fair verdict based on the evidence
2 in light of the Court's instructions on the law?

3 All right. No hands.

4 Thank you.

5 At this point, ladies and gentlemen, the lawyers for the
6 parties have the opportunity to ask you questions like I have.

7 I remind counsel that they should not cover areas already
8 included in my voir dire unless further explanation is required
9 from some prospective juror.

10 Mr. Conboy, you may proceed.

11 MR. CONBOY: Thank you, Your Honor.

12 May it please the Court.

13 Ladies and gentlemen of the jury:

14 The judge is very precise, very particular when he speaks.
15 He's not timed. We are. So because of that, I will speak
16 faster and hopefully get some questions in before the little
17 timer starts flashing yellow on me and I have to sit back down.

18 As the Court noted, and I've said a couple of times, my
19 name's Martin Conboy. I am a U.S. attorney. I was with
20 Douglas County and worked with the State for a number of years.
21 My wife's a nurse. And nobody here -- just to make sure, knows
22 who I am. Because it will become a problem later if somebody
23 jumps up and says, well, yeah, I've known you for a long time
24 and that didn't come out.

25 Same thing with Christopher Ferretti in our office, nobody

1 knows him?

2 Or Eric Olson, the deputy?

3 Okay. Voir dire, it's an old term. It derives from
4 French, Latin. It means "to speak the truth." And as the
5 Court noted, the whole purpose of voir dire is to find an
6 impartial jury. We ask questions to get that done. It's not
7 meant to pry. It's not to hurt feelings. It's not meant to
8 embarrass you. But it's to get the truth out. If you harbor
9 some ill will towards the government or defendant, then you're
10 not being impartial. And that's why we have to ask these
11 questions, because we want people -- people that -- just to be
12 fair. We want to give the bur- -- you know, the benefit of the
13 doubt, to start a trial, to the defendant, that can understand
14 the nature of evidence, is able to reach a verdict without any
15 conscientious reason not to.

16 So as the Court noted, there are some charges. I won't
17 repeat the charges or go through the elements again. But the
18 elements are important. We'll talk about those a little bit as
19 I have to prove each element in order for you to feel
20 comfortable in reaching a verdict of guilty. If I don't prove
21 those elements, then you shouldn't be able to find a guilty
22 verdict. Again, we'll go over that in a little bit.

23 And I'm just making sure as I look at my notes to make
24 sure there's nothing on here that the judge has already gone
25 over.

1 This is one -- this is of the more boring parts of a
2 trial, but at the same time, it's the only time I actually get
3 to address you and talk to you and you answer questions. As
4 trial goes on, there might be a lot of times you're like, gosh,
5 I really want to ask them what that means. You can't do that
6 during a trial.

7 In fact, one thing, to be very clear, I am not allowed to
8 talk to any of you outside this courtroom. If I get on an
9 elevator with you and you say, you know, "It's nice outside,"
10 I'm going to go --

11 (Mr. Conboy mumbled in a muffled manner.)

12 It's not because I'm trying to be mean. It's because if
13 anybody sees us talking, you know, that would be a very bad
14 thing.

15 Same thing goes with anybody associated with the trial or
16 any of the attorneys. If we're near you, you know, we might
17 just wait for the next elevator. And -- please don't take
18 offense to it. It's just to maintain the image that we're
19 trying to be impartial, we're not trying to curry favor with
20 somebody or, you know -- you know, even if it's a total
21 legitimate thing, you know, like, "Gosh, these elevators are
22 really slow," you know, we're just going to ignore you, okay?
23 Please don't be upset.

24 Now, this is -- this is the one that gets all the hands to
25 go up: Has anybody ever had any personal contact with law

1 enforcement?

2 Okay. That means I know you're being truthful because
3 everybody gets pulled over, just to start. I mean, that's
4 usually one of those things growing up, we've all had contact,
5 at least through one -- you know, one opportunity or another.
6 Whether or not we were speeding. Whether or not we grew up
7 with somebody we knew as law enforcement or, you know, if
8 there's a resource officer at school or we just see and talk to
9 an officer at the mall. We run into 'em every day.

10 What I want to make sure, what, you know, I want to find
11 out is, if there's anybody that really has -- harbors any, you
12 know, animosity or hard feelings or had a real bad experience
13 with law enforcement.

14 You know, there's -- so pretty much just because everybody
15 raised their hand, is there anybody here that's had a positive
16 experience with -- with law enforcement?

17 Okay. And some of you didn't raise your hand but, you
18 know what, you can raise your hand for both of these because,
19 guess what, who here has had a negative experience with law
20 enforcement?

21 Okay. Ms. Shine, your hand went up the fastest over
22 there. Do you mind if I ask you some questions?

23 PROSPECTIVE JUROR SHINE: That's okay.

24 MR. CONBOY: Okay. You know, you mentioned to the
25 Court that -- said you could be impartial about what happened

1 to your brother and that your brother was prosecuted in the
2 federal courthouse, right?

3 PROSPECTIVE JUROR SHINE: (Nodded affirmatively.)

4 MR. CONBOY: And now you've kind of mentioned that
5 you might have some ill will towards law enforcement.

6 If you don't mind me talking about that, you -- you
7 indicated it was a drug charge?

8 PROSPECTIVE JUROR SHINE: Yes.

9 MR. CONBOY: Okay. Well, there's only about seven or
10 eight attorneys in the United States Attorney's Office that
11 handle drug charges. I don't know who your brother is, but
12 just out of -- I'm not the one that was prosecuting the case or
13 ever showed up for any of his hearings, am I?

14 PROSPECTIVE JUROR SHINE: No.

15 MR. CONBOY: Was it Judge Rossiter or was it one of
16 the other district court judges?

17 PROSPECTIVE JUROR SHINE: I really don't remember the
18 judge's name. I know he was African-American.

19 MR. CONBOY: I'm sorry, what?

20 PROSPECTIVE JUROR SHINE: He was African-American.

21 MR. CONBOY: Okay. And -- oh, the prosecutor was
22 African-American?

23 PROSPECTIVE JUROR SHINE: No. Seemed like the judge
24 was. He was -- he looked mix, in my mind. Might not even have
25 been African-American, might have been something else.

1 MR. CONBOY: Okay. My role as a prosecutor is to
2 advocate on behalf of the United States against individuals
3 being charged with narcotics offenses.

4 Did you ever appear at any of the hearings, the
5 sentencings --

6 PROSPECTIVE JUROR SHINE: Yes.

7 MR. CONBOY: And did the prosecutor speak in court?

8 PROSPECTIVE JUROR SHINE: Yes.

9 MR. CONBOY: Now, was there any talk, debate,
10 argument, going back and forth about what a sentence should be?

11 PROSPECTIVE JUROR SHINE: They had already arranged
12 all that.

13 MR. CONBOY: Okay. And so at that point it was just
14 to appear before the judge to be sentenced?

15 PROSPECTIVE JUROR SHINE: Yes.

16 MR. CONBOY: At that point you thought that the
17 sentence was -- I think you said it was -- you didn't agree
18 with it?

19 PROSPECTIVE JUROR SHINE: Correct.

20 MR. CONBOY: Okay. What was it about your experience
21 with law enforcement that you don't -- you have some ill will
22 about?

23 PROSPECTIVE JUROR SHINE: The first time my brother
24 was arrested, I got arrested for -- well, I got -- sitting
25 outside, for disturbing the peace, because they came into the

1 house and they, like -- it was -- it just wasn't a good
2 situation and, I mean, they were doing their job but it just
3 wasn't a good situation for me.

4 MR. CONBOY: Okay. Was that the only incident?

5 PROSPECTIVE JUROR SHINE: No.

6 MR. CONBOY: Okay.

7 PROSPECTIVE JUROR SHINE: It's -- seems like it's
8 always the same incident when I run across police, where I'd be
9 at school and certain police officers would drive by or I'd
10 have situations like that where they'd ask me questions about
11 my brother, "What's your brother doing today?" or, you know,
12 just different stuff that I didn't think was professional.

13 MR. CONBOY: Okay. Obviously, you've heard my
14 witness list. There's a lot of law enforcement officers on
15 here. When they testify, are you going to be able to give them
16 kind of an open mind to listen to what they're testifying to --

17 PROSPECTIVE JUROR SHINE: Yes.

18 MR. CONBOY: -- or do you think you're -- okay.

19 Or do you think you're going to have a natural tendency to
20 have doubt about what they're saying as being true or not?

21 PROSPECTIVE JUROR SHINE: I question everybody, not
22 just the police, so I can listen.

23 MR. CONBOY: That's a fair answer. Okay. Thank you.

24 Is there anybody else -- I believe, Mr. Sloter --

25 PROSPECTIVE JUROR SLOTER: Yes.

1 MR. CONBOY: -- you indicated you had a bad
2 experience with law enforcement. Third row.

3 PROSPECTIVE JUROR SLOTER: No, just indifferent. Not
4 good, not bad, just --

5 MR. CONBOY: Okay. Fair enough.

6 PROSPECTIVE JUROR SLOTER: All right.

7 MR. CONBOY: All right. Is -- how about anybody
8 else? Anybody else had any bad experience with law
9 enforcement?

10 PROSPECTIVE JUROR MORRIS: Which time?

11 MR. CONBOY: Okay. You -- okay, you're volunteering
12 fast. All right. Mr. Morris.

13 PROSPECTIVE JUROR MORRIS: I got pulled over for
14 speeding one time and didn't think about it, reached in my
15 glove box, and had a gun pulled on me by a police officer.

16 I've been harassed for just being in the wrong place at
17 the wrong time, like, several times.

18 I do apologize, this room's a little stuffy.

19 MR. CONBOY: That's all right.

20 PROSPECTIVE JUROR MORRIS: I don't know, I guess they
21 just -- I've seen them do things that are just terrible.

22 Seen people get beat up at bars and then the cops arrest
23 the person who got beat up for no reason, like just bullies
24 pretty much.

25 MR. CONBOY: Okay. Well, please don't tell me you

1 reached in your glove box at night?

2 PROSPECTIVE JUROR MORRIS: No. I -- I don't make
3 that mistake again. That was my fault, kind of.

4 MR. CONBOY: And do you understand that sometimes
5 they take actions to protect themselves?

6 PROSPECTIVE JUROR MORRIS: Yeah, it's just a little
7 intimidating when someone puts a Glock in your face.

8 MR. CONBOY: Okay. Again, same -- the question I
9 asked previously. You've heard the list of witnesses. It's --
10 it's predominantly law enforcement. Are you going to be able
11 to listen to any law enforcement officer's going to testify and
12 be fair and impartial?

13 PROSPECTIVE JUROR MORRIS: I don't -- I don't think
14 so.

15 MR. CONBOY: You don't think so?

16 PROSPECTIVE JUROR MORRIS: No. I actually -- I
17 probably should have spoke up at the last question that the
18 judge asked at the very end, which is do I actually believe in
19 the statute. And I -- I'm just kind of shy so this is really
20 hard for me to speak right now --

21 MR. CONBOY: All right.

22 PROSPECTIVE JUROR MORRIS: -- so I apologize.

23 MR. CONBOY: You're doing fine. You're --

24 PROSPECTIVE JUROR MORRIS: This is someplace that --

25 MR. CONBOY: You don't agree with the statute, you're

1 talking about the drug offense laws?

2 PROSPECTIVE JUROR MORRIS: Yeah, I just -- I just
3 don't know if I can sit here and watch you guys prosecute these
4 guys.

5 MR. CONBOY: All right. You don't think you could be
6 fair and impartial to law enforcement one way or the other?

7 PROSPECTIVE JUROR MORRIS: I just don't believe in
8 the laws. I think they're just superfluous.

9 MR. CONBOY: All right, Judge, I think I would -- I
10 would ask re- -- remove Mr. Morris for cause.

11 PROSPECTIVE JUROR MORRIS: Do you want me to sit over
12 here?

13 MR. CONBOY: Well, no, just...

14 THE COURT: Do you wish to be heard at sidebar or...

15 MR. DAVIS: No, I'd ask the Court to inquire a little
16 further.

17 THE COURT: All right. Let's stop the clock.

18 The question that I -- that I asked before, Mr. Morris --
19 I understand what you've -- what you've said here and your
20 feelings, but the bottom-line question is -- all of us come in
21 with preconceived notions about -- about things. And our
22 question to you is, can you make every effort to put those
23 aside and do you think you could put those aside and listen --
24 you know, I kind of describe it as a box. In this box, what is
25 the evidence here and what are the -- what are the laws?

1 You may not -- as I talked about, you may not agree with
2 the laws, but would you be able to, for purposes of this case,
3 listen to what I say the law is and apply those laws to -- to
4 the facts that you hear?

5 PROSPECTIVE JUROR MORRIS: I -- I do apologize and I
6 do apologize for thinking about the question that you had asked
7 at the end and I just -- my political beliefs are -- just kind
8 of get in the way of it.

9 THE COURT: All right. I think based upon that,
10 counsel, I'm -- I'm going to -- to grant the motion and,
11 Mr. Morris, you may step down.

12 Ms. Frahm, call the next juror.

13 COURTROOM DEPUTY: Yes, Judge.

14 THE COURT: Mr. Morris, you will need to call in
15 Friday, Friday after three o'clock. Mr. Morris.

16 PROSPECTIVE JUROR MORRIS: Yeah. Do you want me to
17 sit right here?

18 COURTROOM DEPUTY: Yes.

19 Cameron Christiansen. Cameron.

20 You want to just take that seat.

21 THE COURT: Welcome, Mr. Christiansen.

22 PROSPECTIVE JUROR CHRISTIANSEN: Thank you.

23 THE COURT: All right. Have you heard all the
24 questions that I asked in my portion of the voir dire?

25 PROSPECTIVE JUROR CHRISTIANSEN: Yes.

1 THE COURT: Are there any of those questions that you
2 would have raised your hand on?

3 PROSPECTIVE JUROR CHRISTIANSEN: Negative.

4 THE COURT: All right. You may proceed then,
5 Mr. Conboy.

6 MR. CONBOY: Thank you.

7 THE COURT: Start the clock again.

8 MR. CONBOY: Before I begin, I found a bolt on the
9 floor, so if you're missing a nut later, just let me know.

10 THE COURT: Well, if your table falls down, we'll
11 know why that is.

12 MR. CONBOY: Get that far, we're in a lot of trouble.

13 Okay. Well, we were talking about negative experiences
14 with law enforcement. And I -- you know, I don't fault
15 somebody for having an opinion, but it needs to be known, so,
16 again, you know, this isn't a time to judge. It's just time to
17 find out who can be impartial.

18 And I believe there was other -- a couple other people
19 that did indicate they had some negative law enforcement
20 experiences.

21 And I think -- Miss Sherry, you did, right?

22 PROSPECTIVE JUROR SHERRY: Um-hum.

23 MR. CONBOY: Okay. Could you please tell me what
24 your -- when she gives you the microphone, what your negative
25 experience was.

1 PROSPECTIVE JUROR SHERRY: It was about ten years
2 ago. I got pulled over for -- I don't even know what the
3 ticket was for, but someone had ridden me off the road and so I
4 tried to get back on the road but the police officer only saw
5 me going around the car that had forced me off the road and so
6 he gave me the ticket instead of the person who had forced me
7 off the road, so I was upset, but it was a long time ago and...

8 MR. CONBOY: Well, did that experience, is it
9 something that you've kind of since then --

10 PROSPECTIVE JUROR SHERRY: Oh, yeah. He -- he was
11 explaining to me that's how road rage starts.

12 MR. CONBOY: And that's not something you agree with?

13 PROSPECTIVE JUROR SHERRY: Oh, yeah, I agree. I
14 agree.

15 MR. CONBOY: Okay.

16 PROSPECTIVE JUROR SHERRY: But I thought he was
17 starting the road rage, not me.

18 MR. CONBOY: Oh, okay, I misunderstood you. Okay, I
19 think you said that's how your road rage starts.

20 PROSPECTIVE JUROR SHERRY: Yes.

21 MR. CONBOY: Okay, I understand.

22 PROSPECTIVE JUROR SHERRY: Yes.

23 MR. CONBOY: All right. Is there anything from that
24 experience now, you know, as you said, years ago from to
25 today -- to today, that has caused you to have a --

1 PROSPECTIVE JUROR SHERRY: No.

2 MR. CONBOY: -- an ill image of law enforcement?

3 PROSPECTIVE JUROR SHERRY: No.

4 MR. CONBOY: Okay. As a -- to follow up on that, did
5 you ever have -- did you end up paying the ticket or was it
6 something you talked to the prosecutor or --

7 PROSPECTIVE JUROR SHERRY: Right, and it was
8 dismissed.

9 MR. CONBOY: Okay. So ultimately in the end
10 you've -- you got to see kind of how the law system works.
11 Law enforcement makes, you know, an investigation, they might
12 issue a ticket, but it's either the judge, the prosecutor,
13 the -- if it doesn't go to a judge, or something that has the
14 decision that could --

15 PROSPECTIVE JUROR SHERRY: Right.

16 MR. CONBOY: Okay. All right. Thank you,
17 Ms. Sherry.

18 Does anybody else have any other negative experiences with
19 law enforcement?

20 THE COURT: You've got one back here.

21 MR. CONBOY: Okay. I think that's Mr. Bremer in the
22 back?

23 PROSPECTIVE JUROR BREMER: Yeah.

24 MR. CONBOY: And please, sir, could you please tell
25 me what your nega- -- negative experience was.

1 PROSPECTIVE JUROR BREMER: I just come home from the
2 service, from overseas, and I was living in an apartment and --
3 somebody had broken into my car and stolen my CD player, this
4 is like 2004, and -- and that was okay, I had to call and do
5 the report and everything.

6 But then within, oh, probably two weeks, I left my
7 apartment complex and I -- they had -- apparently they had gone
8 through the apartment complex, wrote down all the license
9 plates that hadn't registered, because at the time when I came
10 home I was from Missouri and I just moved up here, and
11 apparently they drove through and wrote down all the license
12 plates. Thirty days later they literally set up, like, a
13 blockade right outside the exit of the apartment and ushered
14 all of the license plates to -- and they gave us all
15 registration tickets.

16 And it was just kind of bad because they went through --
17 went through and wrote down all of our license plates, but then
18 the same period of time that they'd done that, my car was broke
19 into. I was like, really, you've got time to stroll through
20 and write down my license plate but -- you know, nothing -- and
21 I never heard back on my stereo -- stereo either so -- I don't
22 know, just a bad taste, I guess.

23 MR. CONBOY: Okay. Let me ask you a couple of
24 questions. I'm assuming that the registration ticket, was that
25 for, like, the wheel tax? I remember that was a big to-do a

1 while ago. Were you --

2 PROSPECTIVE JUROR BREMER: No, I -- it was -- so I
3 went overseas, came home, and I was from Missouri and all that.
4 I moved up here and got a job; my girlfriend was up here. And
5 I was -- I was 21. I had -- in honesty, I had never moved
6 anywhere before so I didn't know I had to register my car for
7 plates for Nebraska, so I was still rolling around with
8 Missouri tags and I'd probably been up here for four -- four or
9 five months --

10 MR. CONBOY: I understand.

11 PROSPECTIVE JUROR BREMER: -- so like --

12 MR. CONBOY: Okay.

13 PROSPECTIVE JUROR BREMER: -- it was because I was
14 permanently living at that address and I'd been longer than
15 30 days or whatever, so...

16 MR. CONBOY: Is this something you contacted law
17 enfor- -- the city prosecutor's office or is this something you
18 just went and paid the ticket?

19 PROSPECTIVE JUROR BREMER: I just went and paid a
20 ticket at the window. And I was like -- well, I was like three
21 days late on getting the tags so I had to pay the fine and then
22 get the license. Because I think you have, like, seven days to
23 do it and then it's -- they take care of it or whatever.

24 MR. CONBOY: Okay.

25 PROSPECTIVE JUROR BREMER: So...

1 MR. CONBOY: And then --

2 PROSPECTIVE JUROR BREMER: Just frustrating.

3 MR. CONBOY: Yeah, so it was just a basically
4 frustrating thing to happen a couple of years ago.

5 PROSPECTIVE JUROR BREMER: Yeah.

6 MR. CONBOY: Is this something that happened -- well,
7 it -- does it continue to bother you, kind of give you ill will
8 towards law enforcement?

9 PROSPECTIVE JUROR BREMER: No. No, it was my own
10 ignorance to not know how to register my car --

11 MR. CONBOY: All right.

12 PROSPECTIVE JUROR BREMER: -- so no.

13 MR. CONBOY: All right. Well, thank you for your
14 time and your honesty, Mr. Bremer.

15 Anybody else?

16 Okay. Moving on to a different subject. Has anyone
17 been -- well, I think Mr. Bremer just talked about how he was a
18 victim of a crime.

19 And Ms. Sherry mentioned -- we kind of talked -- in the
20 prosecutor's office.

21 Has anybody else ever dealt with the county attorney's
22 office, city prosecutor's office, or U.S. Attorney's Office?

23 Miss Gottsch?

24 PROSPECTIVE JUROR GOTTSCH: Yes.

25 MR. CONBOY: Okay.

1 PROSPECTIVE JUROR GOTTSCH: Our house was robbed,
2 like, two years ago and I think the person that did it has to
3 pay us restitution and I think it's through here.

4 MR. CONBOY: Robbery, so you were home?

5 PROSPECTIVE JUROR GOTTSCH: Um-hum.

6 MR. CONBOY: And nobody was hurt, I hope?

7 PROSPECTIVE JUROR GOTTSCH: No --

8 MR. CONBOY: Oh, good.

9 PROSPECTIVE JUROR GOTTSCH: -- we were sleeping.

10 MR. CONBOY: All right. Sorry. I was taken aback
11 there. Usually when people talk about it, it's usually
12 burglary because they're not home. When you said robbery, I
13 was like, oh, gosh, that's not a good situation.

14 PROSPECTIVE JUROR GOTTSCH: No, we were home.

15 MR. CONBOY: Right, okay. And -- but the person was
16 arrested then?

17 PROSPECTIVE JUROR GOTTSCH: Yes, I think there were
18 three of them --

19 MR. CONBOY: And you worked with --

20 PROSPECTIVE JUROR GOTTSCH: -- that were arrested.

21 MR. CONBOY: -- the courts and the prosecuting
22 offices to get a restitution order?

23 PROSPECTIVE JUROR GOTTSCH: Yes.

24 MR. CONBOY: Okay. So how was your experience in
25 general? Not being robbed.

1 PROSPECTIVE JUROR GOTTSCH: I was going to say, that
2 part was horrible. But --

3 MR. CONBOY: Yeah.

4 PROSPECTIVE JUROR GOTTSCH: -- the rest has been
5 fine. I -- I wasn't really involved.

6 MR. CONBOY: Okay. All right. Is there anything in
7 that circumstance that would have you to have an opinion one
8 way or the other of working with one of the prosecuting
9 agencies?

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

12 MR. CONBOY: Okay. Thank you. I appreciate it.

13 PROSPECTIVE JUROR GOTTSCH: Um-hum.

14 MR. CONBOY: Anybody else?

15 Okay. Talk about burden of proof and -- and reasonable
16 doubt. Does everybody here understand that there's a
17 presumption of innocence for the defendant? That right now, if
18 you're a juror and I asked you to vote are either one of them
19 innocent or guilty, everyone here should vote innocent. I
20 haven't offered any evidence. Everybody understand that?

21 It's my burden. It's my job. I have to present the
22 evidence. Once you -- you can make your own determination of
23 whether to give any credibility to that evidence or to believe
24 a witness and from there, you know, as you would address the
25 elements of each crime, only then, if I meet that burden beyond

1 a reasonable doubt, can you find them guilty.

2 Does everybody understand that?

3 Okay. So everybody agrees right now he's innocent, both
4 of them are innocent?

5 Okay. You know, evidence. It could be -- you know, it
6 could be a couple different things. There could be direct
7 evidence. There could be circumstantial evidence.

8 Direct evidence is personal knowledge. It could be an
9 eyewitness account, somebody that saw something, testifying to
10 their own personal experience.

11 Circumstantial evidence is a -- a fact that can be
12 inferred from a series -- from another fact or a series of
13 other facts.

14 For instance, cir- -- a good example, like circumstantial
15 evidence, would be you went to bed and it's dry outside, you
16 wake up in the morning, there's snow. You didn't see it snow
17 but it's safe to assume that the fact is it must have snowed
18 last night.

19 Fair enough and everybody understands kind of what
20 circumstantial evidence is?

21 Okay. Now -- okay, this is one of the hardest things for
22 modern law is TV. Everybody has a favorite, CHI [sic] or
23 Perry Mason or, you know, Medicine -- what is it, Quincy.
24 These shows go back and they've always been a staple.

25 Does everybody agree that there's -- there's these TV

1 shows out there, law enforcement, law arresting, investigating,
2 prosecuting cases?

3 All right. One of the more modern ones I love is CH --
4 what is it, there's *CSI*. There's like *CSI-Las Vegas*,
5 Los Angeles, Miami. They just -- it's such a good show, they
6 just keep making up cities and putting, you know, these young
7 investigators there that solve every crime.

8 Everybody's heard of that, right?

9 The problem is, how many people believe that's realistic?

10 You don't think that's realistic that -- well, this is a
11 typical episode, I mean, there's two people, you know, a man
12 and a woman, they're out to eat, they get a call there's been a
13 murder so they show up at the crime scene, they're eating their
14 sandwiches and they're walking through and some guy says, well,
15 that nail's out of place, so they take a picture on their cell
16 phone, they send that, you know, picture back to some lab where
17 this incredibly young person who looks like they're out of high
18 school, you know, kind of quirky attitudes, you know, okay,
19 I'll look at it, and then by -- you know, half an hour later
20 by the time the show ends they get a phone call and says, oh,
21 yeah, I looked at that picture with the nail, the guy's
22 six-foot-five, has blond hair, blue eyes, just ate Subway,
23 and is wearing a -- khaki shorts. And always there's some
24 guy standing right there nearby and they say, whoa, gosh, he's
25 right there, let's pull up the satellite image on my cell

1 phone. Yep, he never left, he's been here the whole time.

2 Not realistic, right? There's not -- you know, cell
3 phones, they're not able to scan them, you know, and pick up --
4 you know, scan DNA or fingerprints. You know, they don't have
5 access to, you know, like I said, real-time satellite image
6 data.

7 People understand that that just is not realistic?

8 In fact, you think about law enforcement doing
9 investigation and it is -- it is the old-school, you know,
10 boots-on-the-ground, you know, walking the crime scene, talking
11 to people, you know, doing traffic stops, things of that
12 nature.

13 Is that fair to say? Okay.

14 You know, because like I said, that's one of the biggest
15 problems in law enforcement and -- and the court systems today
16 is TV. It's just -- people have a -- they see it on TV and
17 they think it's true. And I talk to juries after trials all
18 the time and they always say, gosh, it's so much different than
19 we see on TV and it's like, well, yeah, believe me. There's
20 things called budgets.

21 You know, and some of the things too, you know, does --
22 does anybody here need proof beyond a reasonable doubt? How
23 many people here know what beyond a reasonable doubt means?

24 Okay. Well, let's break it down. You know, reasonable.

25 Reasonable is just -- you know, it's -- it's an inherent thing.

1 It's what you find to be reasonable.

2 Now, we talk about, like, beyond a reasonable doubt, I
3 mean, if somebody says, "That's snow outside," I mean, we don't
4 know it's snow, there could have been aliens that came down and
5 put that snow in your yard. And you're going to say, yeah,
6 that's just not reasonable. I mean, it's doubtful, but that's
7 not reasonable.

8 And that's kind of what reasonable doubt is. It's
9 inherently -- we're humans. We doubt stuff. Right?

10 Everybody agree that we -- we doubt stuff? I mean, you
11 know, even our own children, if you have children, you know,
12 they -- they love to tell you fibs and you doubt them but, you
13 know -- you've got to understand what the -- what the threshold
14 is is "reasonable."

15 Maybe I could give you a good example. Maybe we could
16 play some -- some more here about beyond -- finding -- making a
17 finding beyond a reasonable doubt.

18 Maybe talk about circumstantial evidence.

19 And maybe even intent. Let me -- before that, let's talk
20 about intent. Anybody know what intent -- intent is?

21 Intent is, what, kind of the *mens* -- *mens rea*, kind of
22 what's going on inside our head when we do stuff. I mean,
23 there's some people that intentionally do stuff. There's some
24 people that do stuff that have no idea why they did it.

25 Now, do we know what somebody's thinking? I mean, I'm

1 holding my pen but how many people here think I know I'm
2 intentionally holding my pen? Can make argument one way or the
3 other, it's like habit or something, but we don't -- we just
4 don't know what people are thinking.

5 Now, the same thing with criminal cases. You know, unless
6 somebody tells you, unless they want to come up and give you a
7 confession, most of the time we don't know what's going on in
8 somebody's head.

9 So how do you determine intent? You've got to look at all
10 the facts. You ever heard the phrase, you know, actions speak
11 louder than words? We can look at what somebody does, or even
12 if they don't talk specifically about what they were thinking
13 when they were doing, they might make other comments that you
14 might say, okay, yeah, they knew what they were doing.

15 Is that easy to follow?

16 All right. So here's an example. Let's talk about beyond
17 a reasonable doubt, circumstantial evidence, and let's talk
18 about intent. All right. So we talked about kids. Kids love
19 cookies, all right? Okay. And everybody has -- for those that
20 have kids, they might can relate to this. You have the cookie
21 jar sitting on the table and you tell your kids, "Don't eat the
22 cookies." You go out in the yard, you're doing some yard work,
23 you're doing some gardening, you come back inside and all six
24 cookies are gone and there's your two kids with cookie crumbs
25 all over their faces. And you're looking at them and you're,

1 like, "Did you eat the cookies and I told you not to?" "No."

2 All right. Now, they're your children, you're going to
3 have to punish them. Do you believe -- can you tell yourself
4 first of all that there's sec- -- there's circumstantial
5 evidence that they ate the cookies?

6 Somebody -- can somebody at least say "yes"? You're all
7 shaking your head. Okay. All right.

8 And what is that circumstantial evidence? Anyone?

9 SEVERAL POTENTIAL JURORS: Crumbs.

10 MR. CONBOY: Okay, well, we answered in unison.
11 Okay, they're crumbs.

12 She always tells me I have to make sure that the person
13 identifies themselves but -- okay, we'll -- the crumbs.

14 All right. So -- now, are you able to say beyond a
15 reasonable doubt -- well, let's talk about intent. Children
16 didn't say they ate the cookies, right? But you have to look
17 at the facts, you have to look at the -- the circumstances,
18 what was said. You know, what's the alternative? They didn't
19 intend to do it; that they fell down and -- and bonked the
20 cabinet and the cookie jar came open and six cookies flew up
21 in the air and landed in their mouth? They might not have
22 intend- -- intended to, under those circumstances, but really
23 can you look at it and say, "Oh, gosh, they knew they were
24 eating those cookies"?

25 All right. So now you've got to punish your children. Do

1 you feel comfortable punishing your children, at least sending
2 them to the corner, making them make new cookies --

3 (The court reporter requested that Mr. Conboy speak
4 slower.)

5 MR. CONBOY: Do you feel comfortable punishing your
6 children beyond a reasonable doubt under the circumstances?

7 I see a lot of heads shaking "yes." All right.

8 So that's a couple of different examples kind of all
9 rolled up in one there.

10 And I'm running out of time so I'm just going to kind of
11 skip through some stuff here.

12 One of the things that this involves, this case involves,
13 it's a traffic stop on I-80. Now, when you're driving down the
14 interstate between Lincoln, Nebraska, Omaha, Nebraska, or just
15 in Omaha itself or further out by, you know, North Bend or
16 something of that nature, you ever seen it where there's a car
17 pulled over and they've got the trunk open and a couple of
18 officers are standing around searching it?

19 All right. And have you ever -- do you have an opinion
20 one way or the other that you think that it's -- law
21 enforcement shouldn't be able to search someone's car?

22 Yes. Miss Boldt.

23 I'm sorry. Miss Boldt, why don't you wait for the
24 microphone.

25 PROSPECTIVE JUROR BOLDT: Sorry.

1 MR. CONBOY: No, no problem.

2 PROSPECTIVE JUROR BOLDT: Just from what I've been
3 taught growing up, don't they have to have a reason to search
4 your car? Like some sort of evidence, like if -- I can't think
5 of an example right now, but they have to have a reason to
6 search your car -- right? -- is from my understanding.

7 MR. CONBOY: Right. And we'll talk about that was
8 the case --

9 PROSPECTIVE JUROR BOLDT: Right. You were -- I just
10 thought that's what you were asking. Sorry.

11 MR. CONBOY: Nope. You're right. You're absolutely
12 right. Whoever told you -- your father was correct.

13 PROSPECTIVE JUROR BOLDT: Okay, yes.

14 MR. CONBOY: They just can't pull over your car and
15 search your car and --

16 PROSPECTIVE JUROR BOLDT: Right, okay.

17 MR. CONBOY: Okay. And under those circumstances,
18 are you okay with that?

19 You can just hold onto it.

20 PROSPECTIVE JUROR BOLDT: Hold onto it? Okay.

21 MR. CONBOY: And under those circumstances, if the
22 officers had a reasonable -- or a legal reason to search it or
23 they were given consent to search it, that's okay with you?

24 PROSPECTIVE JUROR BOLDT: Yeah.

25 MR. CONBOY: Okay. This is -- this is another

1 interesting question because this day and age, you know,
2 there's the "not my president" or people threatening to move to
3 Canada.

4 Does anybody here not like the United States?

5 And I ask that is because I represent the United States.
6 And I've had trials where people won't find people guilty
7 because they say they don't like the United States.

8 There are -- you've ever heard the term posse comitatus,
9 sovereign citizen, you know, tax protestors. They live in
10 the Republic of Nebraska, not the State of Nebraska.

11 Unfortunately, there's people like this but -- and if you are,
12 I'm not judging you, but I need to know because this is a very
13 serious matter. We've asked you to be here, we've asked your
14 fellow jurors to be here, and the last thing we need is
15 somebody to come in at the very end and not say anything and
16 say I am not going to convict this guy because I do not like
17 the United States.

18 Is -- is -- can anybody relate to that? Is there
19 something that, you know, you want to share with me and tell
20 me?

21 Okay. Good. Fantastic. All right. Just a couple more
22 questions then.

23 Along the same lines, you're going to be passing judgment
24 on somebody. You're going to be asked to -- you're going to
25 be asked to take the evidence, weigh it, consider it, and find

1 somebody guilty or not guilty. Now, there's a number of
2 different reasons, spiritually, religiously, you know, just
3 some conscientious reason that you can't sit in judgment of
4 other people. Does anybody here have some obligation -- moral
5 obligation that they feel they have to follow that they can't
6 sit in judgment of another person?

7 No one? Okay.

8 One individual, Mr. Morris, and -- you know, very helpful
9 speaking out. This is a drug case. And I know, like
10 Miss Boldt -- Boldt, you said your sister had a -- treatment
11 with marijuana stuff.

12 Does anybody else here have an opinion one way or the
13 other about drugs? Let's put it this way. That's kind of a
14 broad question. Does anybody here have any -- does anybody
15 here disagree with the drug laws in the United States?

16 Miss Shine? Okay.

17 What is it about the drug laws that you don't agree with?

18 PROSPECTIVE JUROR SHINE: Just the difference
19 between, like, what type of drugs they are and the consequences
20 you get for the type of drug that it is.

21 MR. CONBOY: Okay. What kind of drug was it that
22 your brother was involved with?

23 PROSPECTIVE JUROR SHINE: Crack.

24 MR. CONBOY: Okay. And so --

25 PROSPECTIVE JUROR SHINE: So it's different because

1 of the powder versus -- the being crack. Just all that is
2 different.

3 MR. CONBOY: Right. And there are different
4 penalties, different sentencing structures for different drugs.
5 I understand that. And so you have a problem with that?

6 PROSPECTIVE JUROR SHINE: Yeah, and I -- but I also
7 believe that weed should be legal, so -- I mean, that's just
8 me.

9 MR. CONBOY: You think it should be legal?

10 PROSPECTIVE JUROR SHINE: Weed.

11 MR. CONBOY: Oh, weed?

12 PROSPECTIVE JUROR SHINE: Marijuana.

13 MR. CONBOY: Okay. Well, for your information, this
14 case involves cocaine. Is there anything about cocaine that
15 either lead -- tends you to believe that it's -- that the laws
16 involving cocaine are wrong?

17 PROSPECTIVE JUROR SHINE: Not that they're wrong. I
18 just think it's strange that the -- the difference in -- in
19 what you get punished for for the type of cocaine or the type
20 of drug that you have.

21 MR. CONBOY: Okay. With that opinion, are you still
22 able to be fair and impartial?

23 PROSPECTIVE JUROR SHINE: Yeah.

24 MR. CONBOY: Okay. And I'm getting beeped at, Judge.
25 May I wrap up?

1 THE COURT: You may.

2 MR. CONBOY: Thank you.

3 You know, there's a whole bunch of other things I like to
4 talk to people about, whether or not they have any military
5 experience and things of that nature, but as I -- as I noted
6 earlier, we do get kind of pressed for time here so I'm going
7 to skip right to the very last question and just ask you
8 directly: Is there any reason, looking at yourself, that you
9 would not want to be -- that you would not want you to be
10 sitting on this jury?

11 If -- if you were standing at trial and you looked over,
12 would you want you to be the one -- or would you feel
13 comfortable knowing yourself to be one of the ones passing
14 judgment on you?

15 That's a lot of "yous" but I think I -- you understand
16 what I'm saying.

17 All right. Thank you very much, ladies and gentlemen.
18 Appreciate it.

19 Your Honor, I pass the --

20 THE COURT: Pass the jury for cause other than
21 Mr. Morris?

22 MR. CONBOY: I do pass the jury for cause,
23 Your Honor.

24 THE COURT: All right.

25 All right, Mr. Evans. Or --

1 MR. EVANS: Your Honor --

2 THE COURT: -- who will inquire first?

3 MR. EVANS: -- may I have five minutes to use the

4 restroom?

5 THE COURT: You may.

6 MR. EVANS: You're a kind man. Thank you.

7 THE COURT: You may. And ladies and gentlemen, if

8 any of you -- let's -- let's take a break here.

9 If any of you need to use the restroom, you can go back to

10 the jury room here. And we'll take a break here for about --

11 about ten minutes.

12 So -- if you don't need to use the facilities, you're

13 welcome to stand up and stretch. Please don't talk about the

14 case among yourselves during this break.

15 We're in recess.

16 (Recess taken at 10:53 a.m.)

17 (At 11:05 a.m. on May 8, 2018; with counsel and the

18 defendants present; WITH the prospective jurors:)

19 THE COURT: All right. Please be seated.

20 Mr. Evans, you may proceed.

21 MR. EVANS: Thank you, Your Honor.

22 Well, very good morning to everyone.

23 I bet you didn't know when you woke up this morning that

24 today was going to be your lucky day.

25 Now, I know you didn't win the lottery today. I know that

1 that's a great thing, to win the lottery. But when you heard a
2 two- to three-day estimate, you should have said, "Hallelujah."
3 I mean, normally we're talking about weeks, at least from my
4 experience doing this almost 30 years now, so two- to three-day
5 trial is relatively quick. But what's important and what I'd
6 like to point out and talk about is that moving quickly doesn't
7 mean I don't want you to focus on the individual things.
8 That's really important. I almost want all of you to think
9 about it like you have a remote control, to stop and look at
10 each piece of evidence that is coming in because it's all
11 really important for the government, Mr. Davis, Mr. Johnson,
12 for ourselves.

13 His Honor's going to instruct you that your role not only
14 as jurors is to decide the facts but is in essence to suspend
15 judgment until the case is presented to you and you can begin
16 deliberation. And for some people, for some people, that's
17 very difficult because they're the type of people I make a
18 decision, I make it quickly, and I...

19 So let me ask juror number -- juror number 8,
20 Mr. Hendrickson. Would you say that you're a person that
21 can sit here and listen to all the evidence and --

22 PROSPECTIVE JUROR HENDRICKSON: Yes.

23 MR. EVANS: -- and wait? I mean, because you're
24 going to have to wait. You're going to have to suspend
25 judgment.

1 PROSPECTIVE JUROR HENDRICKSON: Yes, sir.

2 MR. EVANS: Mr. Conboy gets to go first because it's
3 his burden, all right? I have no issue with it, no one has an
4 issue, and this judge will instruct that that's what he's
5 supposed to do. But you get to hear his version first,
6 primarily, before you hear Mr. Johnson's. Could I count on you
7 to wait?

8 PROSPECTIVE JUROR HENDRICKSON: Yes, sir.

9 MR. EVANS: Does anyone feel differently than
10 Mr. Hendrickson as to this?

11 All right. Okay. There's no hands.

12 Thank you.

13 I'm not picking on anybody. I'm just randomly choosing,
14 so, please, I don't want anyone to take it personally.

15 Mr. Christiansen, how are you this morning?

16 PROSPECTIVE JUROR CHRISTIANSEN: Very well.

17 MR. EVANS: Again, I'm not picking on you, but I
18 noted in -- in your juror questionnaire that you noted that
19 your employer and occupation were the same. Werner
20 Enterprises?

21 PROSPECTIVE JUROR CHRISTIANSEN: Yes. It's a
22 trucking company.

23 MR. EVANS: I'm sorry?

24 PROSPECTIVE JUROR CHRISTIANSEN: It's a trucking
25 company.

1 MR. EVANS: Okay. And is that your company? Is
2 that why you --

3 PROSPECTIVE JUROR CHRISTIANSEN: Oh, I wish.

4 MR. EVANS: That's the only reason I'm asking.

5 So you work there in what capacity, just --

6 PROSPECTIVE JUROR CHRISTIANSEN: Oh. It's in the
7 marketing department as a load planner.

8 MR. EVANS: Okay. Now, Miss Leggitt?

9 PROSPECTIVE JUROR LEGGITT: Yes.

10 MR. EVANS: And a good morning to you.

11 PROSPECTIVE JUROR LEGGITT: You too.

12 MR. EVANS: Again, I'm not picking on you.

13 PROSPECTIVE JUROR LEGGITT: Okay.

14 MR. EVANS: But I have a question. All right? I'm
15 going to make an analogy, and I hope you can bear with me just
16 for a second.

17 PROSPECTIVE JUROR LEGGITT: Sure.

18 MR. EVANS: My mother, rest her soul, a beautiful
19 Italian woman. And you know what was important throughout her
20 family was that at night that there was a glass of wine or wine
21 on the table that was available for people to have a drink if
22 they wanted to because that was part of the dinner. Right?

23 PROSPECTIVE JUROR LEGGITT: Right.

24 MR. EVANS: I have friends who have at one point in
25 their lives, or at this point in their lives, have given up

1 alcohol, all right? So when they come over to my house, I
2 continue a family tradition: there's a bottle of wine on the
3 table for people to partake, if they want to, it's party time.
4 But those who don't drink, I always ask, "Are you offended that
5 I'm doing this?" because of their life experiences, all right?

6 PROSPECTIVE JUROR LEGGITT: Okay.

7 MR. EVANS: Over the next couple of days, if you're a
8 juror, you're going to be asked -- and you're going to see
9 evidence about narcotics. Don't -- we're not here to fool
10 anybody, narcotics were recovered in this case.

11 From what you've gone through in your life, is that going
12 to cause problems in terms of sitting in judgment on this case?

13 PROSPECTIVE JUROR LEGGITT: Not at all.

14 MR. EVANS: Can you tell me why?

15 PROSPECTIVE JUROR LEGGITT: Because, like I said, I'm
16 13 years clean. And I don't even think about it. I go to a
17 bar every Sunday and play darts and I drink a pitcher of water,
18 so -- so it's not even on my mind anymore, at all.

19 MR. EVANS: Good for you. Okay.

20 Does anyone else feel differently than Miss Leggitt? It
21 might not just be your experience. It may be family members.

22 You're -- you're going to hear evidence about cocaine that
23 was seized in this case. You may -- I don't know, Mr. Conboy
24 may actually show you a picture. He may actually bring it in
25 here to show it to you. For some people that is very

1 offensive.

2 Does anyone have a problem, knowing what the charges are
3 here, knowing that you're going to actually see this, that you
4 can't be fair? Any hands?

5 Thank you. No hands.

6 Mr. Conboy, and I appreciate his -- in his voir dire
7 indicated to you that right now, if you sat here and you had to
8 make a decision, you would vote innocent, right?

9 I'm going to take exception to that term, all right?
10 Because at the age of 56, I don't feel like I'm no longer -- I
11 feel like I am no longer innocent, but not guilty. And there's
12 a difference. We're not here to decide whether anybody here's
13 on trial, Mr. Johnson especially, is innocent. He's not
14 guilty.

15 Does anyone have a difference -- and His Honor, he's going
16 to -- he's going to instruct you what it means.

17 Does anyone have -- does everyone know the difference?
18 Anyone take -- that you need to find Mr. Johnson innocent as
19 opposed to not guilty? Does anyone think that?

20 All right. There are no hands.

21 I also want to talk about the burden of proof in this
22 case. Does everyone understand that the burden of proof in
23 this case, as the law -- first of all, again, His Honor will
24 explain it to you, in his instructions, and you're going to
25 need to follow it, we all have to follow it, that's the law.

1 Does everyone understand that there's a difference between
2 civil and criminal cases and the burden of proof? Does
3 everyone understand that or is -- all right.

4 So I -- yes, sir. And that would be --

5 PROSPECTIVE JUROR SLOTER: Mr. Sloter.

6 MR. EVANS: -- Mr. Slotter (phonetic)?

7 PROSPECTIVE JUROR SLOTER: Sloter.

8 MR. EVANS: Yes, sir.

9 PROSPECTIVE JUROR SLOTER: No, would you explain it
10 to me?

11 MR. EVANS: Yes. In a civil case, which this is not,
12 all right, the burden of proof is basically preponderance of
13 the evidence, in about 90-some percent of civil cases, all
14 right?

15 Preponderance of the evidence is there's more evidence
16 than not that one side is either -- you know, shown, right?

17 That's -- that's not Mr. Conboy's version -- his burden,
18 as -- as a representative of the United States government. His
19 is beyond a reasonable doubt. It's a higher standard of proof,
20 the degree, and which it is different, and again, His Honor
21 will explain to you.

22 Do you see the difference?

23 PROSPECTIVE JUROR SLOTER: Yes.

24 MR. EVANS: All right. Do you have -- do you have a
25 problem saying I don't think that that's correct or...

1 PROSPECTIVE JUROR SLOTER: No.

2 MR. EVANS: Okay. Does anyone else -- does anyone
3 disagree with Mr. Sloter?

4 No hands.

5 Did I get your name right?

6 PROSPECTIVE JUROR SLOTER: Yes.

7 MR. EVANS: Okay, great. That's important to me.

8 All right. The burden of proof. And let's -- let's --
9 it's a very basic principle of criminal law. You've heard it
10 so much. Either read about it, heard about it, seen movies
11 about it, television series about it. The law's proof beyond a
12 reasonable doubt. That the government must prove their case
13 against Mr. Johnson beyond a reasonable doubt. And if they do
14 not, the verdict is -- let's see who's going to be lucky.
15 Mr. Stodola. What is the burden? I mean, what -- if the
16 government doesn't prove their case beyond a reasonable doubt,
17 what's the verdict?

18 PROSPECTIVE JUROR STODOLA: Not guilty.

19 MR. EVANS: Okay. Does anyone disagree with that?

20 All right. Thank you. Thank you, Mr....

21 Now, reasonable doubt. That means that you decide this
22 case based on reason. Fair?

23 Now, psychologists believe that people make decisions,
24 they use three faculties or basises [sic] for making decisions.

25 One is intelligence or using their intellect or their

1 brain.

2 One is emotion. Some people would associate with the
3 heart.

4 The third is instinct, make a decision on instinct.

5 The law requires you to make the decision on intellect,
6 brain, all right?

7 Now, let's stop. This isn't a right or wrong question
8 that I'm going to ask another lucky individual. It's about
9 finding the right person for -- to sit as a juror in this case.
10 And so the law is you make a decision, using intellect, brain.
11 That doesn't mean your emotion doesn't play into it. That
12 doesn't mean your instinct -- but that's your primary decision
13 factor.

14 Some people, they're emotionally based. They're going to
15 make a decision on emotion, which is against the law in this
16 case.

17 Is there -- let me ask someone here. Miss Cook. How are
18 you today?

19 PROSPECTIVE JUROR COOK: I'm good.

20 MR. EVANS: Did you think I was going to call on you?

21 PROSPECTIVE JUROR COOK: Of course.

22 MR. EVANS: What's the primary faculty that you would
23 make decisions with?

24 PROSPECTIVE JUROR COOK: Weigh the evidence.

25 MR. EVANS: Do you do it emotionally, intellect or

1 instinct? And I'm not talking --

2 PROSPECTIVE JUROR COOK: Maybe a combination.

3 MR. EVANS: I'm sorry. Go ahead.

4 PROSPECTIVE JUROR COOK: Maybe a combination of all
5 those things.

6 MR. EVANS: Okay. In your daily life, are you
7 primarily a decision-maker from the mind, the head, emotion, or
8 instinct?

9 PROSPECTIVE JUROR COOK: From the head.

10 MR. EVANS: From?

11 PROSPECTIVE JUROR COOK: The head, the brain.

12 MR. EVANS: The head, okay.

13 Does anyone else believe that they -- they make decisions
14 primarily with emotion?

15 All right. I see no hands.

16 Thank you.

17 The evidence -- the case involves basically evidence of
18 narcotics that are found in a vehicle. You've heard Mr. Conboy
19 allude to this, all right?

20 So let me go to Mr. Funke. How are you doing today?

21 PROSPECTIVE JUROR FUNKE: Fantastic, sir.

22 MR. EVANS: Great. So when you hear that there might
23 be evidence, or there will be evidence, of narcotics that are
24 found in a vehicle, are you automatically going to find the
25 persons who are in that vehicle guilty?

1 PROSPECTIVE JUROR FUNKE: No.

2 MR. EVANS: Why not?

3 PROSPECTIVE JUROR FUNKE: I don't know the
4 circumstances of who would have put that in the vehicle.

5 MR. EVANS: You need to hear all the evidence.

6 PROSPECTIVE JUROR FUNKE: That's correct.

7 MR. EVANS: His Honor's going to instruct you that
8 it's not just necessarily the -- the presence, but there has to
9 be knowledge. Mr. Conboy talked about intent. Knowledge.
10 Knowledge is part of intent.

11 So in order to prove it, Mr. Johnson has to have knowledge
12 of those narcotics. Can you wait until -- and look at all the
13 evidence and see?

14 PROSPECTIVE JUROR FUNKE: Yes, I can.

15 MR. EVANS: Does anyone disagree with Mr. Funke?
16 They think once the evidence of the narcotics is in the car,
17 case over, I can't decide anymore, it's over for me, I can't --
18 it's just my limitation or their limitation. Anyone else feel
19 that way?

20 No hands.

21 There's also additional law, Mr. Funke, going to find
22 out -- His Honor's going to tell you a lot about the law in
23 this case that you'll have to apply. As to at least one of the
24 counts, there has to be some participation on behalf of
25 Mr. Johnson as it relates to any narcotics in order to find him

1 guilty. It's not just there were narcotics.

2 You okay with that as well?

3 PROSPECTIVE JUROR FUNKE: Yes, I am.

4 MR. EVANS: Okay. Thank you.

5 Why don't we just keep the -- right next-door to
6 Mr. Irlbeck. I don't want you to feel like you didn't get to
7 participate.

8 I've had the privilege of sitting on a jury. I know you
9 might find that interesting or hard to believe, but I have.
10 And I know that you all get paid a lot of money to come here
11 and sit -- sit for jury duty so I want to make sure that you're
12 getting your money's worth.

13 Mr. Irlbeck, do you think that justice has borders in the
14 United States?

15 PROSPECTIVE JUROR IRLBECK: Yes.

16 MR. EVANS: So would you say -- and again, that's
17 probably -- my question was a little bit general. Let me --
18 let me narrow it.

19 Do you believe a person who's from outside of Nebraska
20 deserves the same justice and the same treatment under the law
21 as someone who lives in Nebraska if they're in a Nebraska
22 court?

23 PROSPECTIVE JUROR IRLBECK: Yes.

24 MR. EVANS: You're going to hear evidence in this
25 case that Mr. Johnson's not from the state of Nebraska. All

1 right? Do you have any problem sitting here knowing that and
2 knowing the charges? Can you be fair?

3 PROSPECTIVE JUROR IRLBECK: Yes, I can.

4 MR. EVANS: Does anyone disagree with Mr. Irlbeck as
5 to that -- as to his proposition, they believe they can't be
6 fair because of those circumstances? Does anyone?

7 All right. No hands.

8 Let's -- thank you.

9 We'll keep it right next -- right next to -- Miss --
10 Miss Gosh (phonetic)?

11 PROSPECTIVE JUROR GOTTSCH: Yes.

12 MR. EVANS: Did I get that right?

13 PROSPECTIVE JUROR GOTTSCH: Gotch (phonetic).

14 MR. EVANS: Gottsch.

15 PROSPECTIVE JUROR GOTTSCH: Close. Yeah.

16 MR. EVANS: Mr. Johnson, as you can see, is
17 African-American.

18 PROSPECTIVE JUROR GOTTSCH: I can.

19 MR. EVANS: So do you have any -- His Honor will tell
20 you that he's entitled to the same equal protection under the
21 law as anyone else regardless of his race. Are you okay with
22 that?

23 PROSPECTIVE JUROR GOTTSCH: Yes.

24 MR. EVANS: No problem at all?

25 PROSPECTIVE JUROR GOTTSCH: None.

1 MR. EVANS: I like that, that affirmation, that
2 strong conviction.

3 Does anyone disagree with Miss Gottsch?

4 And again, I see no hands.

5 Let me ask, Mr. Conboy asked a lot of questions about -- I
6 won't characterize the quantity of his questions, but about
7 negative experience with law enforcement.

8 How many of you would you say that -- have had positive
9 experiences with law enforcement such that you think law
10 enforcement should be treated differently as a witness as
11 opposed to anyone else? Any show of hands?

12 Mr. Hendrickson, you got a -- got a look on your face like
13 you're confused by my question, and so, please, I -- I want you
14 to understand, and I'm sure you're not the only one that's
15 confused, and so I --

16 PROSPECTIVE JUROR HENDRICKSON: It's not as much
17 confusion as I guess I just don't understand what you're
18 referring to as far as because they're an officer -- oh, I'm
19 sorry -- because they're an officer they should be held to a
20 higher standard? Is that -- than who's not an officer that's
21 been -- or, you know.

22 MR. EVANS: Sure. Let me -- let me break it down
23 here, okay? And I'm doing a reverse analogy than Mr. Conboy
24 was. Okay? He was asking about negative experiences and
25 because of those negative experiences can you be fair, right?

1 PROSPECTIVE JUROR HENDRICKSON: Correct.

2 MR. EVANS: All right. So I'm saying there's some
3 people, including myself, that have had lots of positive
4 experiences with law enforcement, all right? So -- and -- and
5 to the point of which you say, you know what, because of that
6 experience, because of that personal experience that I had, I'm
7 going to treat law enforcement on a higher level. I'm going to
8 give them more credibility than a -- than just a blank slate,
9 which Mr. Johnson or anybody is entitled to in a court of law.

10 PROSPECTIVE JUROR HENDRICKSON: I don't think that's
11 correct, no. I think everybody's -- everybody's human.

12 MR. EVANS: Okay.

13 PROSPECTIVE JUROR HENDRICKSON: Everybody is entitled
14 to the same --

15 MR. EVANS: Thank you.

16 PROSPECTIVE JUROR HENDRICKSON: -- standards, I
17 guess.

18 MR. EVANS: Does anyone believe different than
19 Mr. Hendrickson?

20 Okay. And no hands.

21 So what I'm asking, to -- to get over any confusion, and I
22 apologize if there was, has someone, any of you, had the
23 positive experience with law enforcement such that you would
24 treat them differently in what we would call in a biased way or
25 in a more positive light? Does anyone?

1 All right. We have no hands.

2 If I may have one moment, Your Honor?

3 THE COURT: You may.

4 MR. EVANS: Miss Wit- -- Wheatfield (phonetic)?

5 PROSPECTIVE JUROR WIETFELD: Whitfield (phonetic).

6 MR. EVANS: Wietfeld. I'm sorry. Soft "i."

7 You indicated that you had read about this case online
8 prior, like a week ago or couple weeks ago?

9 PROSPECTIVE JUROR WIETFELD: Yeah. Yes.

10 MR. EVANS: Okay. I want you to take yourself back
11 to that moment, when you were reading it, okay?

12 PROSPECTIVE JUROR WIETFELD: Um-hum.

13 MR. EVANS: It's going back in time, a little time
14 travel here. I want you to tell me the impression that you had
15 in your mind after reading that article. Just a positive,
16 negative, neutral.

17 PROSPECTIVE JUROR WIETFELD: I found it neutral. I
18 found it interesting. Again, you're only seeing details of it,
19 you're not seeing the whole nine yards, so it's hard to form an
20 opinion on it; so I guess I can't say I had an opinion one way
21 or the other, but it looked like an interesting case.

22 MR. EVANS: Looked like interesting.

23 PROSPECTIVE JUROR WIETFELD: Um-hum.

24 MR. EVANS: That puts a lot of pressure on the
25 lawyers, you know, to perform here and -- but that's okay. We

1 can live up to that. I think so.

2 You've been -- you've been asked, do -- do you feel like
3 you can come in here and -- let's say -- I'm not saying this is
4 going to happen because I don't know what you read, I -- I
5 don't know what the article was, so let's just -- let's assume
6 for a moment that someone gets on the stand and testifies
7 completely different than what you read in the article. Which
8 one you going to believe?

9 PROSPECTIVE JUROR WIETFELD: Who was on the stand
10 here. They're under oath.

11 MR. EVANS: Okay. And -- because they're under oath?

12 PROSPECTIVE JUROR WIETFELD: Um-hum.

13 MR. EVANS: Okay. That's important.

14 Thank you.

15 PROSPECTIVE JUROR WIETFELD: Um-hum.

16 MR. EVANS: Your Honor, I know you're going to find
17 this hard to believe, but I'm going to not use all my time.

18 THE COURT: Pass for cause?

19 MR. EVANS: Pass for cause, Your Honor. Thank you.

20 THE COURT: Thank you, Mr. Evans.

21 Mr. Davis.

22 MR. DAVIS: Thank you, Your Honor.

23 May it please the Court, counsel.

24 Well, good morning ladies and gentlemen of the prospective
25 jury.

1 Lots of words, huh? Lots of questions.

2 Well, it's important -- I wish that counsel -- I wish the
3 lawyers could simply ask one question, "How many of you ladies
4 and gentlemen of the jury will give these two defendants a fair
5 trial?" and we'd take the first 13 who raised their hand. But
6 that's not how it works.

7 You're going to take an oath to -- those who were
8 selected, to fair and truly try this case. And that word
9 "fair" is important. Remember Snow White: Who's the fairer --
10 what, fairer -- how's that go?

11 THE COURT: Fairest of them all.

12 MR. DAVIS: Who's the -- mirror, mirror, on the wall,
13 who's the fairest of them all?

14 Well, that's really what this is all about, is to
15 determine whether or not you can give these gentlemen a fair
16 and impartial trial. Because they are defendants in a criminal
17 case. They are charged by the government with violating
18 serious -- serious criminal offenses. And -- and the buffer
19 between the police and the citizens are the jury. You know,
20 the judges -- as Judge Rossiter told you, the police don't
21 decide guilt, judges don't decide guilt, prosecutors don't
22 decide guilt. We, the people, decide guilt, or innocence.
23 That's your job.

24 You've heard a lot about the presumption of innocence.
25 All right. That's a presumption. That means somebody is

1 presumed to be innocent until proven guilty. And that -- that
2 presumption has to be erased. And as you will learn later from
3 instructions from the judge, that presumption of innocence will
4 follow all of you ladies and gentlemen who are selected into
5 the jury room where you deliberate and during that deliberation
6 you have to determine whether or not the prosecutor has erased
7 that presumption of innocence.

8 And -- and it's like Mr. Evans was saying, it's --
9 somebody's innocent until proven guilty, but it's not going to
10 say innocent on that verdict form, it's going to say guilty or
11 not guilty.

12 So what you ladies and gentlemen are about to do is really
13 important.

14 Now, you've heard a little talk about the civil cases.
15 Was -- was there somebody here who has served on a civil jury?
16 I don't think so. But I think that -- Mr. Slotter (phonetic),
17 you asked the questions about civil cases. Remember that?

18 PROSPECTIVE JUROR SLOTER: (Nodded affirmatively.)

19 MR. DAVIS: Well, there're really three standards at
20 law and three different kinds of cases and that means there are
21 three different burdens of proof.

22 In a civil case, that's -- as been explained to you,
23 that's a suit for money damages. That's where you have a
24 plaintiff and you have a defendant. Liberty's not at stake
25 there. It's not involve crimes. What -- what happens in those

1 civil cases is the plaintiff sues the defendants for money
2 damages, to make money, to compensate them for their injuries.

3 The burden of proof in that case then is preponderance of
4 the evidence, 51 percent. And in those civil cases, that --
5 the defendant is not found guilty. The jury finds either for
6 the plaintiff or they find for the defendant and set a monetary
7 amount if they find for the plaintiff. And the burden there,
8 since we're just talking about money, is 51 percent.

9 How many of you people have been involved in any jury --
10 or juvenile kind -- juvenile court cases? Anybody?

11 All right. In any -- in -- in juvenile court -- or in
12 civil cases involving fraud or -- or libel or slander or in
13 juvenile cases where the State's going to take your kids away,
14 the burden of proof there is clear and convincing evidence;
15 that's 75 percent. And so the judges in those cases will give
16 an instruction saying not preponderance of the evidence but
17 clear and convincing.

18 But when it comes to criminal cases, when we're talking
19 about somebody's liberty and we're talking about important
20 freedoms, the law in America is that somebody is innocent until
21 they're proven guilty beyond a reasonable doubt. Okay? You've
22 heard a little bit of that from the two counsel and from the
23 judge, But...

24 Is it Mr. Simiano?

25 PROSPECTIVE JUROR SIMIANO: Yes.

1 MR. DAVIS: What does the concept of reasonable doubt
2 mean to you, sir?

3 PROSPECTIVE JUROR SIMIANO: What was that?

4 MR. DAVIS: Do -- can you tell me what you understand
5 the concept of reasonable doubt to be?

6 Well, let me help you here. Do you understand there's two
7 words there, reasonable and doubt. Do you understand that?

8 PROSPECTIVE JUROR SIMIANO: Little bit.

9 MR. DAVIS: Okay. How about you, Miss Cook? We
10 haven't heard from you much. Do -- do you understand -- do you
11 think you understand what the term reasonable doubt means?

12 PROSPECTIVE JUROR COOK: Yes.

13 MR. DAVIS: Okay. We haven't heard from you much.

14 I've been doing this longer than Mr. Evans and let me give
15 you a clue. I've found that those people who speak least are
16 the most likely to get picked, so...

17 PROSPECTIVE JUROR COOK: I better start talking.

18 MR. DAVIS: Well, would you agree with me that -- the
19 concept of reasonable doubt, it's two words. Now, the judge is
20 going to give you an instruction later on, but basically, would
21 you agree with me that in order to prove a defendant guilty,
22 they have to prove them guilty beyond a reasonable doubt?

23 PROSPECTIVE JUROR COOK: Yes.

24 MR. DAVIS: And reasonable doubt's two words. Would
25 you agree with me?

1 PROSPECTIVE JUROR COOK: Yes.

2 MR. DAVIS: And basically, wouldn't you agree that
3 that means if you have a doubt and you have a reason for it,
4 then you have a reasonable doubt? Would you agree with me?

5 PROSPECTIVE JUROR COOK: Yes.

6 MR. DAVIS: Does anybody disagree with that?

7 Now, as -- as Mr. Conboy said, he doesn't have to prove
8 beyond all doubt. But that's not the standard. Nobody's going
9 to ask you to do that. It's just -- the question is, when the
10 case is over, when it's all over and done with, you have to ask
11 yourself: Do I have a doubt? And do I have a reason for it?

12 Does anybody disagree with that? That's not too
13 complicated, is it? Okay.

14 The -- now, the -- the judge asked you about any --
15 there's nobody that's been in law enforcement presently or in
16 the past; is that right?

17 Okay. Law enforcement's more than just the sheriffs or
18 the police or marshals or whatever. There's federal law
19 enforcement. There's -- how many of you have heard of the
20 FBI? The DEA? The -- the criminal division of the IRS?
21 U.S. military? How about -- I was in the U.S. -- I was a
22 special agent in the U.S. Secret Service. That's a federal
23 agency.

24 Now, have any of you been associated with law enforcement,
25 those agencies, in the past?

1 Yes, sir. Mr. Burbeck [sic]?

2 PROSPECTIVE JUROR BREMER: No.

3 MR. DAVIS: No.

4 PROSPECTIVE JUROR BREMER: Bremer.

5 MR. DAVIS: I got to look --

6 PROSPECTIVE JUROR BREMER: Yeah, I apologize if the
7 armed services counts as law enforcement, I guess I never
8 really thought about it that much. But, yeah, I was in the
9 Army Reserve --

10 MR. DAVIS: Okay.

11 PROSPECTIVE JUROR BREMER: -- for eight years.

12 MR. DAVIS: And -- and what was your MOS; do you
13 remember?

14 PROSPECTIVE JUROR BREMER: Well, it was a 71-Lima,
15 Fox-5, and now it's like a 49, I don't know, something.

16 MR. DAVIS: Okay.

17 PROSPECTIVE JUROR BREMER: They change it.

18 MR. DAVIS: But you were involved with law
19 enforcement?

20 PROSPECTIVE JUROR BREMER: Well, I wasn't -- it's a
21 postal specialist, is what it is.

22 MR. DAVIS: Okay. Now, anything about that
23 experience will give you a -- an edge in terms of believing a
24 law enforcement officer as opposed to any other witness in a
25 case?

1 PROSPECTIVE JUROR BREMER: Is there or has there
2 been? No.

3 MR. DAVIS: Okay. Do you understand that you treat
4 all witnesses the same?

5 PROSPECTIVE JUROR BREMER: Yes.

6 MR. DAVIS: They all take the same oath. But, I
7 mean, it would be -- we talk about fairness. It would be
8 unfair if a police officer gets up there and -- and then you
9 believe everything he says and a civilian gets up there and
10 testifies and -- and you hold them to a whole different
11 standard of credibility. Would you agree with that?

12 PROSPECTIVE JUROR BREMER: That you should not?

13 MR. DAVIS: Yeah, you should not.

14 PROSPECTIVE JUROR BREMER: Yeah. Correct, yes.

15 MR. DAVIS: You know, you're there to listen to the
16 witnesses and, you know, hear what they say, judge them by
17 their -- the things that they say, judge them by their
18 demeanor, determine whether their -- their testimony coincides
19 with other witnesses. Do you all understand that?

20 That's your job. Because, as the judge told you, he's the
21 judge of the law but you are the judge of the facts and you are
22 the judge of -- of the verdict in this case.

23 This case depends on what you do. Do -- do you understand
24 the seriousness of what you're doing? Okay.

25 Now, Angie Keezer (phonetic), is that -- I'm -- am I --

1 PROSPECTIVE JUROR KIZER: Kizer.

2 MR. DAVIS: Kizer? Now, are you related to any of
3 the lawyer Kizers?

4 PROSPECTIVE JUROR KIZER: My father is Dick Kizer.

5 MR. DAVIS: Okay.

6 PROSPECTIVE JUROR KIZER: He's not practicing
7 anymore, but...

8 MR. DAVIS: I think your -- the judge and I both know
9 him.

10 PROSPECTIVE JUROR KIZER: Okay.

11 MR. DAVIS: In fact, your grandfather's got the
12 insurance company, doesn't he?

13 PROSPECTIVE JUROR KIZER: Yeah, so that's where my
14 dad is now. Yeah.

15 MR. DAVIS: Oh, okay. Well, the -- you come from a
16 family with a background in the law. I think your grandpa,
17 besides owning the insurance company, is a lawyer too, isn't
18 he?

19 PROSPECTIVE JUROR KIZER: No --

20 MR. DAVIS: Isn't he?

21 PROSPECTIVE JUROR KIZER: -- so just my father was --

22 MR. DAVIS: Dick is --

23 PROSPECTIVE JUROR KIZER: Dick Kizer is the only
24 lawyer of the group.

25 I have an uncle, Tom Jenkins, who's also --

1 MR. DAVIS: Yeah.

2 PROSPECTIVE JUROR KIZER: -- a lawyer.

3 MR. DAVIS: Well, I knew there was a background.

4 PROSPECTIVE JUROR KIZER: Yes.

5 MR. DAVIS: I thought that might --

6 PROSPECTIVE JUROR KIZER: So, yeah, I have two big
7 families, yes.

8 MR. DAVIS: Okay. Well, you put up with those --
9 that lawyer at home. Can you put up with the lawyers here, do
10 you think?

11 PROSPECTIVE JUROR KIZER: Yes.

12 MR. DAVIS: I hope so.

13 So -- now, has there been anything -- your dad though is
14 mostly in the insurance business, although he was --

15 PROSPECTIVE JUROR KIZER: He's been in the insurance
16 business, practicing for -- I mean, he's been at the company
17 for now -- since --

18 MR. DAVIS: All right.

19 PROSPECTIVE JUROR KIZER: -- I was in high -- grade
20 school, end of grade school, so he hasn't been practicing law
21 for a long time.

22 MR. DAVIS: Okay. Well, have you ever talked to him
23 about civil or criminal cases at all?

24 PROSPECTIVE JUROR KIZER: Yeah.

25 MR. DAVIS: Okay.

1 PROSPECTIVE JUROR KIZER: Yes.

2 MR. DAVIS: And the -- now, with respect to what your
3 dad told you --

4 PROSPECTIVE JUROR KIZER: Um-hum.

5 MR. DAVIS: -- if there's anything that he told you
6 about the law that's different than from what Judge Rossiter
7 gives you, no disrespect for your dad, but can you promise --

8 PROSPECTIVE JUROR KIZER: Oh --

9 MR. DAVIS: -- us you're going to follow those
10 instructions from Judge Rossiter?

11 PROSPECTIVE JUROR KIZER: I -- I do not agree with my
12 dad on everything. I will follow the law that's given.

13 MR. DAVIS: Okay. You remember you -- you're going
14 to raise your right hand.

15 PROSPECTIVE JUROR KIZER: Yes, yes.

16 MR. DAVIS: Okay. All right. Have any of you been
17 applicants for federal law enforcement agencies or any state or
18 local ap- -- law enforcement agencies?

19 Yes, sir. Yeah, Mr. Slotter (phonetic)?

20 PROSPECTIVE JUROR SLOTER: Yes. I applied -- years
21 ago I applied for a federal probation officer position.

22 MR. DAVIS: But right now you work for Nebraska
23 Medicine; is that right?

24 PROSPECTIVE JUROR SLOTER: Yes.

25 MR. DAVIS: Okay. And that was a federal probation

1 officer?

2 PROSPECTIVE JUROR SLOTER: Yes.

3 MR. DAVIS: Here in Omaha?

4 PROSPECTIVE JUROR SLOTER: Yes.

5 MR. DAVIS: Oh, okay. But you decided to do
6 something else, I take it?

7 PROSPECTIVE JUROR SLOTER: I wasn't offered the
8 position.

9 MR. DAVIS: Okay. Well, many are called but few are
10 chosen, you know. It's kind of like it is for jury duty, you
11 know, many are called, few are chosen.

12 But anything about the fact that you were not offered that
13 job that might prejudice you against the -- the federal
14 government here represented by Mr. Conboy --

15 PROSPECTIVE JUROR SLOTER: No.

16 MR. DAVIS: -- and the role there?

17 PROSPECTIVE JUROR SLOTER: No.

18 MR. DAVIS: Okay. Mr. -- Cheryl Wheatfield
19 (phonetic)?

20 PROSPECTIVE JUROR WIETFELD: Yes.

21 MR. DAVIS: Now, you indicated you saw something
22 about this case online?

23 PROSPECTIVE JUROR WIETFELD: Correct.

24 MR. DAVIS: And read about it?

25 PROSPECTIVE JUROR WIETFELD: Yes.

1 MR. DAVIS: Well, that's an interesting proposition.
2
3 There's something I think the judge will tell you about in
4 the preliminary instructions and he's going to talk about it a
5 lot, but we need to talk about it right now. And not just with
6 Miss Wheatwheel (phonetic). I want to talk to you -- all of
7 you, collectively. And I want you to listen because what I'm
8 about to say is really important in these modern days, and that
9 is, the judge told you he's going to turn off your phones and
0 whatever; they're probably going to collect them. But when
1 this case starts, ladies and gentlemen, you've got to promise
2 us that you're not going to Google me or the prosecutor or this
3 case or you're going to get on Facebook or you're going to get
4 on Yahoo because it's -- there's so much out there in
5 cyberspace that's so totally accurate [sic] and -- and my
6 client, Mr. Evans' client, and -- and the government are all
7 entitled to a fair trial based solely on what the evidence is
going to be in this case.

18 And we're running into this problem all the time too. I
19 mean, people go home and Google something or look at it, and
20 the facts are going to be totally erroneous, and -- and
21 that's -- can -- I ask you all to be disciplined enough to --
22 to tune out cyberspace for the next three or four days.

23 I mean, if -- if -- there's some people are absolutely
24 addicted to this stuff. But is there anybody who can't fulfill
25 that promise? And please tell us now.

1 You're going to have to abstain from any kind of use of --
2 of email or text or -- or whatever that might relate directly
3 or indirectly to this case because if you do, and it -- great,
4 but if you can't, we're just not going to get a fair trial.

5 How many can do that? Raise your hand.

6 All right. Is there anybody that can't? Raise your hand.

7 Okay. I thank you for your honesty there.

8 Now, do any -- one of the things we like to -- to know
9 about is whether any of you know each other.

10 Now, Stephanie Christensen, look to your left and meet
11 Cameron Christiansen. And Mr. Cameron Christiansen, look to
12 your right and see Stephanie Christensen.

13 The names -- exact -- spelled exactly the same way [sic].
14 Do you two know each other?

15 PROSPECTIVE JUROR CHRISTENSEN: No.

16 PROSPECTIVE JUROR CHRISTIANSEN: No.

17 MR. DAVIS: Never met.

18 Are there any of you jurors here that know any of the
19 other jurors?

20 Okay. I know we had somebody from Bellevue. When we're
21 trying a case in Sarpy County, that's a big deal because down
22 there, there's a lot of military and then you might have a
23 sergeant sitting on the jury, then you have a colonel and then
24 you always worry about not only if they know each other but
25 whether there's a command influence.

1 Now, Mr. Nath, you have a cousin and his name is Davis,
2 isn't it?

3 PROSPECTIVE JUROR NATH: It is.

4 MR. DAVIS: His name is Jeff Davis?

5 PROSPECTIVE JUROR NATH: Yeah.

6 MR. DAVIS: Well, he is a good friend of mine. And
7 even though we're not related, they keep kid- -- kidding me to
8 be his cousin, so...

9 Now -- but he's -- he's been a law enforcement officer for
10 a long time. Does he talk to you about his cases?

11 PROSPECTIVE JUROR NATH: No.

12 MR. DAVIS: Oh, he's got a great history and he's got
13 a lot of good stories, you know, but...

14 PROSPECTIVE JUROR NATH: Is this working?

15 JUDICIAL ASSISTANT: It might be done.

16 COURTROOM DEPUTY: Is it dead, Jane?

17 MR. DAVIS: Time out, Judge?

18 THE COURT: We just need to grab another one.

19 The wonders of modern technology.

20 PROSPECTIVE JUROR NATH: Usually people don't have
21 the trouble hearing my voice, so...

22 THE COURT: There you go.

23 JUDICIAL ASSISTANT: This one's not working.

24 Thank you.

25 Sorry.

1 MR. DAVIS: Okay. Are we ready to go here?

2 PROSPECTIVE JUROR NATH: Ready.

3 MR. DAVIS: Mr. Nath, is there anything about your
4 relationship to him and hearing his stories that -- that might
5 put you in a situation where you would be more inclined to vote
6 in this case towards law enforcement as opposed to keeping an
7 open mind?

8 PROSPECTIVE JUROR NATH: I believe I can keep an open
9 mind.

10 MR. DAVIS: Okay. Well, you're going to have to take
11 an oath, okay --

12 PROSPECTIVE JUROR NATH: Yeah.

13 MR. DAVIS: -- so --

14 PROSPECTIVE JUROR NATH: Yeah. I can keep an open
15 mind.

16 MR. DAVIS: Okay. Well, that's -- that's what we
17 want, you know, the...

18 You know, Ms. Kizer, what do you teach?

19 PROSPECTIVE JUROR KIZER: I teach special ed at
20 Westside High School.

21 MR. DAVIS: Okay.

22 PROSPECTIVE JUROR KIZER: I work with kids that are
23 in the general curriculum.

24 MR. DAVIS: Could you all hear?

25 Did you hear, Susie?

1 (The reporter nodded affirmatively.)

2 MR. DAVIS: When I ask you a question and you give an
3 answer, to benefit Susie, let's wait until you get the
4 microphone before you give an answer.

5 But, you know, this -- the judge talked a little bit about
6 the privilege of being on a jury. But, you know, there's --
7 there's duties that we have in this country as well. There's
8 duties of good citizenship. And I usually say those are --
9 you've got a duty to vote. You've got a duty to pay taxes.
10 And you have a duty to serve on a jury.

11 Do any of you disagree with that?

12 Everybody has to vote. I mean, that's important. We've
13 got an election coming up now.

14 You've got to pay taxes because if you don't you're in
15 dire straits and you'll have the government after you.

16 But, three, you've got a duty to serve on a jury.

17 But what's important -- and you heard one of the other
18 jurors who was excused say that he didn't want to be on this
19 jury. And was that because of -- he -- he disliked everybody?
20 No.

21 I want you to understand that -- that in America, we --
22 you might have these three duties: to vote, to pay taxes, and
23 to serve on a jury. But the difference about your duty to
24 serve on a jury is that sometimes, depending on the case,
25 depending on your circumstances, depending on -- on where you

1 are in relationship to the participants, that sometime you
2 might have a duty not to sit on a jury.

3 And, ladies and gentlemen, that's what we want to help you
4 decide. You know, Marty and I, we -- we aren't dentists. We
5 can't pull teeth. We're not brain surgeons. We can't look
6 into your brain. And we're not heart surgeons. We can't cut
7 you open and see what lies in that heart.

8 We have to rely -- and that's the American system, we have
9 to rely on you to tell us that you can be fair and impartial.
10 Because we -- we only get so much time to ask you questions,
11 but even if we had hours, we would still rely on you to tell us
12 whether or not you think you can be fair and impartial and you
13 can take an oath to do just that.

14 Do you all understand that?

15 Do you under- -- do you understand how serious that is?

16 Do you understand how proud you can be if you're a member
17 of this jury? Because what you do is important.

18 Are there any of you think that what you do -- or you're
19 going to do as a jury is not important? It's probably one of
20 the most important duties that we have in the whole American
21 system of government.

22 Now, how many have heard on -- the war on crime? The war
23 on drugs. There's always war -- wars going on somewhere. You
24 know, about war on child abuse. All of these wars.

25 Well, and most of those wars really should be fought. But

1 that's outside the courtroom because, even though some of you
2 may believe in the war on drugs and war on crime, you could be
3 warrior -- a warrior outside the courtroom; but when you're in
4 the courtroom, you become a referee. Do you understand that?

5 So if you have feelings about the war on drugs or the war
6 on crime, or organized crime or whatever it might be, you've
7 got to put that aside because you now are a referee. You're
8 going to have to call the shots. And that means, you know,
9 forgetting about whatever passion you have to -- to rid the --
10 the country of crime. Do you understand that?

11 Okay. Now, here's some of the concerns I have here,
12 at least one of them anyway, and that is that -- that my
13 client is -- Sarkis Labachyan is -- he's an American citizen.
14 You know, he's gainfully employed. But he's going to
15 probably testify in this case. But he's a defendant in a
16 femeral (phonetic) -- federal criminal case. And the concern I
17 have is that, you know, that if he gets up and testifies, that
18 you may disbelieve him, not because of what he says but because
19 he's a defendant in this case.

20 Because he's going to get up there -- here -- here's the
21 dichotomy. You know, the judge is going to give you an
22 instruction that says the defendant doesn't have to take the
23 stand. A defendant doesn't have to testify. That's a Fifth
24 Amendment right. And that if he -- if he doesn't testify, you
25 cannot use that evidence against him. Do you understand that?

1 You can't say, well, wait a minute, he must be guilty
2 because he's not getting up and testifying. That's again
3 another one of the -- the oaths you're going to have to take,
4 is following the law.

5 And so I'm concerned if he doesn't testify, you're going
6 to say, well, wait a minute, if he's not guilty, why doesn't he
7 get up here and tell he's not guilty, so he must be guilty.

8 Do you understand you can't do that?

9 But by the same token, if he gets up there and testifies
10 and -- and -- and all of a sudden you see him up there
11 testifying, you're going to -- and he denies the crime, you're
12 going to say, well, what else is he going to say? He's going
13 to lie his head off, you know, because he's charged with a
14 criminal offense.

15 And so the concern I have is he's damned if he does, if
16 he damns [sic] if he doesn't. Do you understand the concerns?

17 So can I -- can I have your assurance that you're going to
18 treat his testimony like you would any other -- and the judge
19 is going to give you an instruction, but we got to get this up
20 in advance because -- for example, you know, if -- if we found
21 out Mr. -- Bren- -- Brenda Cook, if we found out later on, on
22 your questionnaire, it says that you were employed by the Davis
23 family --

24 PROSPECTIVE JUROR COOK: No, my husband --

25 MR. DAVIS: -- which it says right here --

1 PROSPECTIVE JUROR COOK: My husband is.

2 MR. DAVIS: -- and it turns out that was my family,
3 it would be too late, once you're sworn, to tell Mr. Conboy,
4 well, wait a minute, I work for Davis and his family.

5 You see what I'm saying? Okay.

6 So that's just an example. We need to cover all those
7 things right away.

8 And so is there anything that we said so far that caused
9 any of you any second thoughts, any concern that you might have
10 a duty not to sit on a jury?

11 Okay. Now, are there any of you -- it's just only going
12 to do it three days. Any concerns about kids at home or at
13 work or deadlines or any vacation plans that going to prevent
14 you from devoting your full attention to this case? Now's the
15 time to say it.

16 Okay. Any -- any sicknesses in the family? Any -- any
17 operations planned? Now's the opportunity. Okay.

18 Okay. During the course of the next couple of days you're
19 going to see us out in the hall and -- and as -- as Marty
20 indicated to you, we're not going to be able to talk to you.
21 We're -- look, none of us are snobs, okay? And we may nod or
22 say hi or whatever, but -- but if one party or the other sees
23 any of us talking to the jurors or see you talking to the
24 defendants or even to the witnesses, even if it's just to pass
25 the time of day, people can get the wrong impression. So I

1 don't want you to hold that against any of us here. We're --
2 we're cordial. You know, you can see we're all pretty friendly
3 and open. And -- and we're not being snobbish. We're just
4 being careful.

5 Afterwards, when the case is over, you'll have plenty of
6 time to talk to the judge and if you want to talk to us, you
7 can do that at any time.

8 But this is the only chance that we're going to have to
9 talk to you and it's the only time, from now until the end of
10 the trial, you're going to have to talk to us.

11 So is there anything that -- that the judge has said or
12 anything that Marty or Mr. Evans have raised with you that --
13 that can cause -- any questions in your mind? And I think this
14 is the time, if -- for now, in the next minute or so, if any of
15 you can tell us that there's any concerns that you might have
16 that might indicate to you that maybe, just maybe, you have a
17 duty not to sit on this jury.

18 Well, Judge, I see no hands, so I'm going to pass this
19 panel for cause.

20 THE COURT: All right. Thank you, Mr. Davis.

21 All right. Ladies and gentlemen, somebody talked about
22 boring earlier. We're there now.

23 What will happen at this point is that the parties will go
24 through and exercise what are called their peremptory
25 challenges and then we'll get down to the -- the jury that is

1 seated.

2 This takes a few minutes and you'll -- you'll see
3 Ms. Frahm going back and forth to the parties as -- as they
4 make their -- their selections.

5 During that time, I need you to be in the courtroom and
6 we're on the record but I have -- I have no problem with
7 anybody standing and stretching at any point during that time
8 and if you need to use the -- if you need to use the -- the
9 restroom, Ms. Fischer will show you -- again, open that door
10 for you if you need, so I'm going to allow counsel to go
11 through that process again but I just wanted you to be -- be
12 aware of it and it'll take a few minutes.

13 All right. You may proceed.

14 Marian.

15 (The Court and courtroom deputy conferred.)

16 (Counsel made their peremptory challenges.)

17 MR. DAVIS: Your Honor, may we approach?

18 THE COURT: Yes, just a moment.

19 (The Court and courtroom deputy conferred.)

20 THE COURT: Okay. Let's go to sidebar.

21 (At sidebar)

22 THE COURT: All right, Mr. Davis.

23 MR. DAVIS: Mr. Evans first.

24 MR. EVANS: We're going to make a *Batson* --

25 THE COURT: You can do it a little louder because

1 we've got the white noise on.

2 MR. EVANS: I'm sorry. We'll make a *Batson* argument.

3 THE COURT: All right.

4 MR. EVANS: The government has six peremptories that
5 they used. Three of them are minorities, the only minorities
6 in the jury pool: Juror number 1, Latino, male; juror
7 number 7, African-American female; and juror number -- I think
8 she was twenty- --

9 MR. DAVIS: Shine.

10 MR. EVANS: -- number 24, African-American female.

11 THE COURT: Let me grab my sheet.

12 All right. So Mr. Simiano?

13 MR. EVANS: (Nodded affirmatively.)

14 THE COURT: And who else?

15 MR. EVANS: Number 7. That would be Miss Williams.

16 THE COURT: Okay.

17 MR. EVANS: And finally, number 24 was Miss Shine.

18 THE COURT: All right. Let's start with Miss Shine
19 first.

20 MR. CONBOY: Well, I think clearly, Judge, there's
21 some concerns in regards to her brother's involvement in the
22 criminal justice system. You know, she initially indicated
23 that she was going to have concerns about being, you know,
24 impartial and it's because of the situation of her brother.
25 She doesn't agree with the sentencing laws involving drugs.

1 Been here enough times. She had issues with law enforcement, a
2 search warrant at her house, citing her originally.

3 I think that's -- there's a number of race- or
4 gender-neutral reasons to -- to have her off the jury.

5 THE COURT: All right. Any problem with Miss Shine?

6 MR. EVANS: I'd submit on that. It's more a
7 cumulative factor to Miss Shine. I think individually there's
8 some reasons for her. I can see that.

9 THE COURT: And I'm going to overrule your -- your
10 *Batson* motion with respect to Miss Shine. I think there's
11 plenty of information. I really had to -- I think everybody
12 had to pull out of her that she was going to be fair. And
13 given her background, I think it's -- I don't think there's any
14 *Batson* issue there.

15 Let's talk about Mr. Simiano.

16 MR. CONBOY: First, I'm not even sure looking at him
17 whether or not he's a minority, but even if he is, Judge, this
18 is the individual who couldn't tell us what beyond a reasonable
19 doubt meant. I asked him directly and he said I have no idea
20 what it means, even after we explained to him a couple of times
21 what beyond a reasonable doubt meant.

22 Besides that, he just -- appears very young. And even
23 asked how long he's lived in his house, his response was I
24 don't know, it's my mom's house.

25 I mean, it's -- I don't -- I just have some questions

1 about his ability to -- to grasp the facts and to draw
2 conclusions based on the law.

3 THE COURT: All right.

4 MR. EVANS: I -- I just point out that the -- the
5 California Supreme Court couldn't figure out what reasonable
6 doubt was and that was the cause for the U.S. Supreme Court to
7 reverse the jury instruction on reasonable doubt in the state
8 of California. I think it's a difficult concept, you know, for
9 any of us.

10 MR. DAVIS: The issue's whether he's going to follow
11 the jury instructions, not whether he understands it during the
12 voir dire.

13 THE COURT: Yeah, I think I'm going to -- well, I
14 don't think, I'm going to overrule the objection on
15 Mr. Simiano. He only answered -- tried to answer the one
16 question and he struggled with that.

17 I'm not sure, other than looking at the surname, that I
18 know what -- if he's in some protected category. I can't say
19 that by looking at him.

20 But I think there are -- I think there are reasons
21 supporting, the main reason being he was not able to be
22 responsive.

23 And I understand, you know, he was asked to -- he was
24 asked to define a legal term, but given his hesitation, given
25 his inability to even respond to that, I think it's a valid

1 basis in this case, so the motion is overruled as to
2 Mr. Simiano.

3 All right. Ms. Williams. And I always -- you know, I'll
4 say this up front. I always think, and I thought when I was in
5 practice, that these were difficult ones when somebody was not
6 asked any questions whatsoever of the panel and she was
7 probably one of the few that didn't -- didn't respond at all,
8 but I will -- I will let you argue.

9 MR. CONBOY: And, Judge, actually I had flagged her
10 before I even knew who she was. My concern was, you know,
11 the -- the first things I noticed when I looked at her jury
12 questionnaire were education. I think it was -- you know,
13 might have been a GED. She rents. She's single, just had --

14 THE COURT: Let me grab my jury form here.

15 MR. CONBOY: Sure. And I better find mine as well.

16 (Plaintiff's co-counsel conferred.)

17 (Mr. Evans walked to the counsel table.)

18 THE COURT: Do you have that with you?

19 MR. CONBOY: I do.

20 THE COURT: Questionnaire? Oh, sorry.

21 (Mr. Evans returned to the sidebar.)

22 MR. DAVIS: Even though, Judge -- I want the record
23 to show, even though my client's not a minority, I'm going to
24 join in that motion, but I'll let Mr. Evans argue it.

25 THE COURT: All right.

1 MR. CONBOY: So she -- my biggest concerns was she's
2 only been living in her place for a month. She rents. She
3 just had a child, you know, a single mother. I mean, we're
4 talking about a big burden there.

5 More importantly, which -- you know, one of the things
6 I kept talking about was contact with law enforcement,
7 experience, just, you know, whatever, if people were the victim
8 of a crime. You know, the only other thing -- she's provided
9 no information on her questionnaire except for the short time
10 she's lived, the fact that she has an 18-month-old, no marriage
11 indication, but the only information is her dad was killed.
12 And doesn't mention that at all. We're talking about this. I
13 mean, there's been a lot of opportunities about talking about,
14 you know, being the victim of a crime and how you feel about
15 the criminal justice system; nothing. She just sat back there,
16 didn't answer one question, didn't raise her hand once.

17 I mean, I can't flush out anything but that is a pretty
18 concerning thing. I don't know if she thinks justice was
19 served. I don't know if there was no justice. I don't know if
20 the perpetrator was caught. I don't know how she feels. I
21 don't know --

22 THE COURT: All right.

23 MR. CONBOY: Just too much information. And she
24 offered nothing. And that's a pretty significant thing when
25 she only answered three questions.

1 THE COURT: All right. Mr. Evans.

2 MR. EVANS: I'd point out that she does have a
3 college education. She's completed college, according to her
4 questionnaire. She has a young child but there's no
5 indication -- she's answered all the questions on the jury
6 questionnaire.

7 I don't think there's an obligation of her to answer any
8 questions. I would say the overall majority of the people
9 that's on that panel didn't have answers or have any questions
10 or responses to any of the answers of all the counsel, so I
11 don't think that's an issue here. I think that she is just --
12 she is as clean a slate as there is there. And in light of the
13 fact that she is clearly a peer of my client --

14 MR. DAVIS: Just for the record, I'd mark that and
15 offer that in support of your argument.

16 MR. EVANS: Sure. I'll offer that as defense
17 whatever, Exhibit --

18 THE COURT: Oh, the juror questionnaire?

19 MR. EVANS: The juror questionnaire.

20 THE COURT: We'll have it separately marked.

21 MR. CONBOY: In response to what he said, Judge, you
22 know, again, there's -- while she filled it out and kind of
23 bare bones thing, I struck another one of the jurors because on
24 his questionnaire he put down I was the victim of a sexual
25 assault but when we talked about all this stuff, again, he

1 didn't say -- he didn't proffer any information or talk about
2 his experience with law enforcement or what was going on. I
3 struck him.

4 And it's kind of the same thing here. I run a big risk of
5 getting somebody on this jury that has a grudge, has some
6 reason, and if she's not even going to tell us -- talk about
7 her father being murdered, then I -- that's a big risk.

8 THE COURT: All right. All right. I think -- I
9 think Ms. Williams is a closer question but I do think that the
10 government has met its -- met its burden in this case in
11 stating why there was a legitimate nondiscriminatory reason for
12 making that strike, so I'm going to overrule all three *Batson*
13 challenges in this case.

14 And I will receive, as --

15 (The law clerk conferred with the Court.)

16 LAW CLERK: That would be 110.

17 THE COURT: Oh. It will be Defendant's Exhibit 110.

18 MR. EVANS: 110? Okay.

19 THE COURT: Any objection?

20 MR. CONBOY: No.

21 THE COURT: All right. That will be received.

22 MR. EVANS: Thank you.

23 MR. DAVIS: Thank you.

24 THE COURT: If you could hand that to Marian as you
25 go by there. All right. Thank you.

Voir Dire - SEALED

1 MR. EVANS: Thank you, Your Honor.

2 (In open court)

7 All right. Ms. Frahm, my courtroom deputy, will now read
8 the names of the jurors who are excused from serving on this
9 jury. The ones that she will read are the ones excused.

10 I want you to please remain seated until all names are
11 called. Once all names are called, those who are excused need
12 to please wait in the back of the courtroom until we've --
13 we've found that the jury has been properly seated and then I
14 will give you further instructions.

15 COURTROOM DEPUTY: Thank you, Judge.

16 Okay. Ricardo Siman (phonetic), Brenda Cook, Jeffrey
17 Funke, Steven Irlbeck, Kathi Gottsch, Nashawn Williams, Nicole
18 Armsbury, Steven Nath, Stephanie Christensen, Angie Kizer,
19 Cheryl Poldona (phonetic), Barry Stoler --

20 PROSPECTIVE JUROR SLOTER: Sloter.

24 THE COURT: All right. Those persons whose names are
25 called, if you'd now gather your things and stand at the back

Voir Dire - SEALED

1 of the courtroom for a few minutes.

2 (The courtroom deputy seated the jury.)

3 THE COURT: All right. The persons who have not been
4 seated as jurors in this case are excused, with the thanks of
5 this Court. I know it's been a long morning.

6 You do need to -- I do thank you for assisting in the
7 selection of the jury for this case. You do need to call in on
8 Friday after 3 p.m. at the number that was given to you for
9 further information regarding any further jury duty.

10 Again, thank you so much for your -- for your time and
11 taking time out of your busy lives. I appreciate it. Thank
12 you.

13 (The prospective jurors left the courtroom.)

14 THE COURT: All right. For those of you who have
15 been selected to serve on the jury, you'll now take an oath, if
16 you'd stand and raise your right hand.

17 (The jury was sworn.)

18 COURTROOM DEPUTY: You may be seated.

19 THE COURT: Let the record show that a jury has been
20 selected in this case.

21 Ladies and gentlemen, at the appropriate time and after
22 you've received instructions informing you of the law, this
23 case will be submitted to you. In the meantime, don't discuss
24 this case with anyone, including other jurors, members of your
25 family, people involved in the trial or anyone else. Do not

1 allow anyone to discuss the case with you or within your
2 hearing. When I say do not discuss the case with anyone, I
3 also mean do not email, send text messages, use Twitter, blog,
4 or engage in any other form of written, oral, or electronic
5 communication about this case.

6 And I'll give you that same admonition at -- at all the
7 breaks here and the evening breaks.

8 We've been at it a while so we'll take a lunch break
9 until -- if you'll be back here at 2 p.m. At that time I'll
10 give you some preliminary instructions and counsel will make
11 their opening remarks to you and then we will proceed with --
12 proceed with evidence in this case.

13 You are dismissed for lunch. Thank you.

14 (Jury out at 12:42 p.m.)

15 THE COURT: All right. Please be seated.

16 A couple of housekeeping matters. Do we want witnesses
17 sequestered?

18 MR. DAVIS: Yes, Your Honor.

19 MR. EVANS: Yes, Your Honor.

20 THE COURT: All right. That's so ordered. And then
21 any objection to the preliminary instructions?

22 MR. CONBOY: No, Your Honor.

23 THE COURT: From the government?

24 MR. CONBOY: No -- no, Your Honor.

25 THE COURT: Mr. Evans?

1 MR. EVANS: No, Your Honor.

2 THE COURT: Mr. Davis?

3 MR. DAVIS: No, Your Honor.

4 THE COURT: All right. We'll come back at two, I'll
5 give that preliminary instruction, then we'll proceed to
6 opening statements at that point.

7 Anything else before the break?

8 MR. CONBOY: Return at two o'clock?

9 THE COURT: Two o'clock.

10 MR. EVANS: Nothing further, Judge. Thank you.

11 THE COURT: We're in recess.

12 (Recess at 12:44 p.m.)

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19 C E R T I F I C A T I O N

20 I, Susan M. DeVetter, RDR, CRR, certify that the foregoing
21 is a correct transcript from the record of proceedings in the
22 above-entitled matter.

23

24

25

/s/ Susan M. DeVetter
Official Court Reporter

June 4, 2018

Date

1 I N D E X

2				RULED
3	EXHIBIT:		OFFERED	ON
4	110. Juror Supplemental Questionnaire Report	107	107	
5				
6				

7				RULED
8	MOTION:		MADE	ON
9	Defendant Johnson's <i>Batson</i> motion	100	102,	103,
10	Defendant Labachyan joins <i>Batson</i> motion	104	107	
11				
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