

1 **IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO**

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3	- - - - -	x
4	UNITED STATES OF AMERICA,	:
5		:
6	Plaintiff,	:
7		:
8	vs.	:
9		:
10	EDGAR J. STEELE,	:
11		:
12	Defendant.	:
13	- - - - -	x

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13 **REPORTER'S TRANSCRIPT OF PROCEEDINGS**

14

before B. Lynn Winmill, Chief District Judge

15

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Volume 1

17

April 26, 2011

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Pages 1 to 272

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<p style="text-align: right;">10</p> <p>1 PROCEEDINGS</p> <p>2 Tuesday, April 26, 2011</p> <p>3 (Jury absent.)</p> <p>4 THE COURT: Counsel, we're convening before</p> <p>5 we bring the jury because a couple of issues</p> <p>6 arose, nothing of any real consequence, but I</p> <p>7 thought counsel should be aware of a couple of</p> <p>8 matters.</p> <p>9 First, we have had three jurors who I</p> <p>10 think were perhaps on your initial list that we</p> <p>11 have excused. I think I can -- Ms. Chadbourne was</p> <p>12 excused. She had a note from her doctor. A</p> <p>13 Ms. Newbry was excused because she had doctor's</p> <p>14 appointments that were significant and could not</p> <p>15 be put off later this week. Juror Hume, H-u-m-e,</p> <p>16 was excused because her husband is having cancer</p> <p>17 surgery on Wednesday.</p> <p>18 And our thought was that all three of</p> <p>19 those jurors simply should not be expected to be</p> <p>20 here.</p> <p>21 Juror --</p> <p>22 MR. HAWS: Which was the last one,</p> <p>23 Your Honor?</p> <p>24 THE COURT: Hume, H-u-m-e.</p> <p>25 MR. HAWS: H-u-m-e.</p>	<p style="text-align: right;">11</p> <p>1 THE COURT: I don't think -- they're not on</p> <p>2 the list.</p> <p>3 The additional thing we have done,</p> <p>4 which I'm not sure we have done before, is given</p> <p>5 you the same list I have, which is a list of the</p> <p>6 jurors in the order in which the computer</p> <p>7 generated the order.</p> <p>8 MR. HAWS: Okay.</p> <p>9 THE COURT: So that's a random --</p> <p>10 computer-generated random list, and that's the</p> <p>11 number which will be assigned to them. So Juror</p> <p>12 No. 1 will have a card which says "Juror No. 1."</p> <p>13 MR. HAWS: I just hadn't heard the name,</p> <p>14 Your Honor.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. HAWS: Thank you.</p> <p>17 THE COURT: The other issue was Juror No. 50</p> <p>18 on that list was excused, and let me explain why</p> <p>19 that occurred.</p> <p>20 She appeared late this morning and</p> <p>21 apparently, she indicated that all of her</p> <p>22 identification -- her driver's license, her</p> <p>23 wallet, everything was stolen on a business trip</p> <p>24 in Arizona last week, so she had absolutely no</p> <p>25 identification at all.</p>
<p style="text-align: right;">12</p> <p>1 She was dropped off here, and so she</p> <p>2 didn't have -- couldn't go get a vehicle</p> <p>3 registration showing her name. And her business</p> <p>4 cards -- apparently she has been recently married,</p> <p>5 and so her business cards show a different name</p> <p>6 than the jury summons. She had absolutely no way</p> <p>7 of verifying she was who the person on the jury</p> <p>8 list was.</p> <p>9 So we just excused her and told her</p> <p>10 we'll summon her for another jury after she has</p> <p>11 her identification. That's Juror No. 50 on your</p> <p>12 list. So that person -- we won't -- Juror No. 50</p> <p>13 will not exist. We won't change the numbering,</p> <p>14 because that will just be too confusing. All</p> <p>15 right?</p> <p>16 Two other issues. I asked counsel</p> <p>17 before we started jury selection, or attempted to</p> <p>18 start jury selection in Coeur d'Alene, whether you</p> <p>19 agree that it was appropriate to ask questions</p> <p>20 about racial supremacy.</p> <p>21 And counsel at that time all agreed</p> <p>22 that it was appropriate, given the nature of the</p> <p>23 case and the way the evidence, they thought, would</p> <p>24 come in. I assume that is still the case, but I</p> <p>25 wanted to confirm that.</p>	<p style="text-align: right;">13</p> <p>1 From the government?</p> <p>2 MS. WHELAN: Yes, Your Honor, that's still</p> <p>3 the case.</p> <p>4 THE COURT: Mr. McAllister?</p> <p>5 MR. McALLISTER: Yes, Your Honor.</p> <p>6 THE COURT: All right.</p> <p>7 Finally, we received a request from a</p> <p>8 very reputable reporter that she be allowed to --</p> <p>9 and we're going to allow, as long as they're not</p> <p>10 disruptive, to use laptops, take notes and whatnot</p> <p>11 in the back of the courtroom, but they will have</p> <p>12 to sit in the very back. And if it becomes</p> <p>13 disruptive at all, then they will be not allowed</p> <p>14 to do that.</p> <p>15 We have also had a request from a very</p> <p>16 reputable reporter with the Spokane newspaper</p> <p>17 about whether she would be permitted to live blog,</p> <p>18 since we have Wi-Fi access and she has her laptop,</p> <p>19 sort of a natural combination of the two.</p> <p>20 I'm not opposed to it, but I want</p> <p>21 counsel to be aware of it. And I'll hear you</p> <p>22 after jury selection as to your views on that. If</p> <p>23 you're opposed to it, I'll consider that, and may</p> <p>24 well not allow it. I'm also checking to see if</p> <p>25 that violates in any way the Ninth Circuit or</p>

<p style="text-align: center;">14</p> <p>1 Judicial Conference of the United States policies. 2 There obviously would be some ground 3 rules. Again, it cannot be disruptive, and it 4 cannot be an attempt to prepare, essentially, 5 quotes or indicate in any way that they're 6 providing a verbatim statement as to what actually 7 was said. They can just simply editorialize, if 8 they wish to. But I wouldn't allow -- that would 9 be the only limitation I can think of. Counsel 10 may think of others. 11 And you may just be opposed to it. And 12 if you are, you can so indicate, and we'll take it 13 up after the jury is selected. 14 All right. Counsel, anything else 15 before we bring the jury up? 16 It will take a minute to get the jury 17 lined up, so I'm going to take a short recess 18 while we get them lined up. 19 Ms. Whelan? 20 MS. WHELAN: Your Honor, Juror No. 60 on 21 your list, a concern arose, and I wanted to bring 22 it up outside the presence of any other jurors. 23 This juror is married to an individual who is an 24 attorney in Idaho. 25 THE COURT: Bob Pangburn, I assume.</p>	<p style="text-align: center;">15</p> <p>1 MS. WHELAN: And I sit on the Idaho 2 Professional Responsibility Board, and conducted a 3 hearing just within the last month regarding this 4 individual, and am one of the deciding officers as 5 to whether discipline should be taken. 6 I think that if she provides that 7 information, there could be a sway there. I'm 8 concerned about keeping her on the jury. 9 THE COURT: Mr. McAllister, do you want to 10 be heard? 11 MR. McALLISTER: No objection to excusing 12 her, Your Honor. 13 THE COURT: All right. Then we'll strike 14 Juror No. 60. 15 MS. WHELAN: Thank you, Your Honor. That's 16 all I had. 17 THE COURT: All right. 18 Mr. McAllister, do you have anything? 19 MR. McALLISTER: No, Your Honor. 20 THE COURT: All right. Then Juror No. 60 21 and Juror No. 50 will be struck. And with that 22 exception, we'll bring the jurors up and start. 23 All right, Counsel, we'll be in recess 24 just until the jury can be brought up. They will 25 be brought in through here and then be seated.</p>
<p style="text-align: center;">16</p> <p>1 All right. We'll be in recess. 2 (Recess.) 3 (Prospective jurors present.) 4 THE CLERK: The court will now hear jury 5 selection in Criminal case 10-148-N-BLW, United 6 States of America versus Edgar J. Steele. 7 THE COURT: Good morning, ladies and 8 gentlemen. I want to welcome you to the 9 United States District Court for the District of 10 Idaho. 11 Let me begin by indicating I didn't get 12 in a bar fight over the weekend. It was simply a 13 close encounter with a dermatologist, nothing of 14 any consequence. So don't let that be a 15 distraction for you. 16 I recognize that your being called for 17 jury duty has created, undoubtedly, some 18 inconvenience for you. But I'm also confident 19 that if you are fortunate enough to be selected to 20 serve on this jury, you will find the experience 21 to be extremely rewarding. 22 National studies have been done which 23 indicate that the vast majority of jurors actually 24 selected to serve on a jury find the experience to 25 be extremely rewarding. And this is confirmed by</p>	<p style="text-align: center;">17</p> <p>1 my own posttrial discussion with jurors over the 2 20, now almost 24 years on the bench. In each 3 instance, as I talk to jurors after their 4 experience, they just absolutely uniformly report 5 that it was one of the more rewarding experiences 6 of their life. 7 The significance of jury duty cannot be 8 overstated. Our third President, Thomas 9 Jefferson, is quoted as saying that, "Service on a 10 jury is the single most important duty of a 11 citizen of this country." 12 Now I would echo President Jefferson's 13 thoughts. During the course of this trial you 14 will be asked to perform one of the very highest 15 duties of citizenship; that is, to sit in judgment 16 on facts which will determine the guilt or 17 innocence of persons charged with a crime. 18 Now, unfortunately, not all of you will 19 be able to serve on the jury in this case. 20 Indeed, the first thing that we will do this 21 morning is to select a panel from among you ladies 22 and gentlemen. 23 We will be selecting a jury of 14 24 individuals. That's 12 jurors, plus 2 alternates. 25 And I'll tell you right now that you won't know if</p>

<p style="text-align: right;">18</p> <p>1 you're an alternate or not. That will be 2 predetermined today. But then at the end of the 3 trial, if it's not necessary for us to excuse one 4 of the other jurors, then you may be excused. But 5 nevertheless, we will have a panel of 14 jurors, 6 but only 12 will actually deliberate. 7 To help you better understand the 8 process and enable you to answer my questions more 9 accurately, I'm going to introduce you to the 10 court personnel, the parties and the attorneys, 11 and will tell you in brief what this lawsuit is 12 about. 13 First, I am the judge in charge of the 14 courtroom and this trial. 15 The deputy clerk, Ms. Jamie Gearhart, 16 in front of me and to my right, marks the trial 17 exhibits and administers oaths to the jurors and 18 witnesses. 19 Mr. Jeff Severson, seated to my left, 20 and Ms. Julie Tetrick, seated directly in front of 21 me, are law clerks, attorneys who are assigned to 22 this court, and will assist me in developing my 23 instructions to you, will research legal issues 24 which may arise during the course of the trial, 25 and will also act as bailiffs for the jury.</p>	<p style="text-align: right;">19</p> <p>1 The court reporter, in front of me and 2 to my left, Ms. Tammy Hohenleitner, will keep a 3 verbatim account of all matters of record during 4 the trial. 5 This is a criminal case brought by the 6 United States Government. The government charges 7 the defendant, Edgar J. Steele, with four counts. 8 The first count alleges that Mr. Steele 9 attempted to hire another individual to travel in 10 interstate commerce with the intent of murdering 11 his wife and mother-in-law. 12 Two related counts allege that 13 Mr. Steele first aided and abetted in the use of 14 explosive material to commit the alleged murder 15 for hire; and, second, aided and abetted in the 16 possession of a destructive device in relation to 17 the alleged murder for hire. 18 The fourth count charges the defendant 19 with tampering with a victim by attempting to 20 intimidate or persuade his wife to engage in 21 misleading conduct and not communicate with law 22 enforcement officers regarding the alleged murder 23 for hire. 24 Now, the defendant has pleaded not 25 guilty to the charges and is presumed innocent</p>
<p style="text-align: right;">20</p> <p>1 unless and until proved guilty beyond a reasonable 2 doubt. 3 The defendant has the right to remain 4 silent and never has to prove innocence or present 5 any evidence. 6 The government is represented by 7 Assistant United States Attorneys Traci Whelan and 8 Marc Haws. 9 Ms. Whelan and Mr. Haws, could you 10 stand and perhaps introduce yourself and those who 11 will be assisting you with the trial. 12 MS. WHELAN: Good morning. My name is Traci 13 Whelan, and sitting at the table with us is 14 Special Agent Mike Sotka with the FBI. 15 MR. HAWS: My name is Marc Haws. I'm an 16 assistant United States attorney. 17 THE COURT: Thank you, Ms. Whelan and Mr. 18 Haws. 19 Mr. Steele is represented by his 20 attorneys, Mr. Robert McAllister and Mr. Gary 21 Amendola. 22 Mr. McAllister or Mr. Amendola, would 23 you stand and introduce yourself and your client 24 to the jury. 25 MR. McALLISTER: Thank you, Your Honor. My</p>	<p style="text-align: right;">21</p> <p>1 name is Robert McAllister, and this is Gary 2 Amendola, and we represent Ed Steele. 3 THE COURT: Thank you, Mr. McAllister. 4 Ladies and gentlemen, a trial starts 5 with the selection of a fair and impartial jury. 6 To that end, the court will ask each of you 7 questions to discover whether you have any 8 information concerning the case or any opinions or 9 attitudes which might cause you to favor or 10 disfavor some part of the evidence on one side or 11 the other. 12 Now, the questions may probe deeply 13 into your attitudes, your beliefs, and your 14 personal experiences, but they are not intended to 15 embarrass you. 16 If you do not hear or understand a 17 question, you should say so and I will take 18 whatever time is necessary to ensure that you hear 19 the question and that you understand it. On the 20 other hand, if you do understand the question, you 21 must answer it freely. 22 I need to stress here that in making 23 that statement, I worry sometimes that jurors 24 think that there is only a correct answer to my 25 question. The only correct answer is an answer</p>

1 which is completely honest, completely candid, and
2 completely forthcoming. Do not hold something
3 back.

4 If you need to take up something with
5 the court, we can discuss it with you at a
6 sidebar, or perhaps take either you out of the
7 courtroom into chambers to discuss it with you, or
8 perhaps even send the jury out.

9 But what is critical is that all jurors
10 be completely honest, candid, and forthcoming with
11 the court in response to the questions that I'll
12 be asking.

13 All right. At this time, ladies and
14 gentlemen, I'm going to have you sworn for jury
15 selection. What that will involve is having each
16 you stand in place, raise your hand, and then
17 Ms. Gearhart will place you all under oath for
18 jury selection.

19 If all jurors would please stand and
20 raise your right hand.

21 (Prospective jurors sworn.)

22 THE COURT: Please be seated.

23 JURY VOIR DIRE / JURY SELECTION

24 THE COURT: Ladies and gentlemen, let me
25 explain the process that we're going to be engaged

1 And as I have indicated, it's also
2 possible that you will be questioned individually.
3 If that occurs, it is possible that we will
4 determine which jurors need to be questioned
5 individually, and then send the rest of the jurors
6 back to the jury assembly room, where you can be
7 more comfortable and perhaps have some
8 refreshments while we're discussing this with the
9 jurors.

10 If you are in the jury assembly room,
11 you will have to stay there. There is food,
12 coffee and bathrooms. Smokers will be taken out
13 in groups, as necessary, and we'll give you some
14 further directions on that.

15 First of all, I will further indicate
16 that my first group of questions will be to the
17 entire panel. That includes those through row 9.
18 After I have been through that first series of
19 questions, we may reconfigure the jury seating a
20 little bit, and then I'll continue with my
21 questions just of the first, I think it's 32
22 jurors, which will be those who are in the jury
23 box and the two rows in front of the jury box; and
24 then, if need be, expand the questions to include
25 those in the back after you have been called

1 in here today.

2 First of all, let me indicate, you will
3 be identified by number rather than name, and
4 that's why you have been given a sheet of paper
5 with a number on it. You will keep that number
6 throughout the jury selection process.

7 So if a question is asked of you and it
8 applies to you, you will first respond by raising
9 your hand, and then you will need to show your
10 number.

11 We have a seating chart which shows the
12 numbers, but I think, just to make it easier for
13 us, if you would hold that number up, it will make
14 this go a little more quickly, and we'll be able
15 to identify you by number and then have you
16 respond more specifically to the question that has
17 been asked.

18 We'll also go, perhaps, row by row.
19 Row 1 will be the very short row here at the front
20 of the jury box. Row 2 will be the seats directly
21 in front of jury box. Row 3 and 4 will be within
22 the jury box. Row 5 will be the first row in the
23 public area, and then 6, 7, 8, and it looks like
24 maybe 9, there might be one or two jurors on the
25 very back. Yes.

1 forward.

2 So with that, let's go ahead and begin.
3 I may give you further instructions as we go
4 forward.

5 My first question will deal with your
6 ability to serve on this jury in terms of personal
7 hardship. The trial in this case is expected to
8 take up to two weeks. There is some thought it
9 might be done by the middle of next week, but it
10 may not be done until the end of next week.

11 Before I ask whether you feel this
12 would be a special problem for you, let me explain
13 that we cannot excuse jurors unless jury service
14 would pose an extreme hardship for you.

15 The reason for that is fairly simple:
16 We want jurors which represent a broad
17 cross-section of the community. To accomplish
18 that, we go to great lengths to create a list of
19 jurors from voter registration lists, motor
20 vehicle or driver's license lists.

21 But that whole process is defeated if
22 we excuse every juror who finds that it would be
23 inconvenient for them to serve on a jury. It is
24 probably inconvenient for 90 percent of you to be
25 on the jury. And if we excused every juror for

<p style="text-align: center;">26</p> <p>1 whom it is simply inconvenient, we would soon be 2 left with juries composed of people who are 3 unemployed or retired, and that obviously would 4 not represent the community as a whole. 5 Now, let me give you some examples of 6 what would or would not constitute an extreme 7 hardship. Simply losing income is not an extreme 8 hardship. Fortunately many, but not all, 9 employers will compensate you while you are 10 serving on a jury. You will have to tender 11 your -- I think it's \$40 per day you receive as a 12 juror back to your employer, but they will 13 continue to compensate you. Some do not. 14 Unfortunately, even if they do not, we 15 cannot excuse you for that reason alone, unless 16 the loss of that income and the difference between 17 that and the \$40 we pay you would be such that it 18 would actually make it hard for you to stay out of 19 bankruptcy, put food on the table, things of that 20 sort. 21 If you are a key employee in a business 22 that will have to shut down in your absence, that 23 would be an extreme hardship. 24 If you are a student approaching 25 finals, which I think, in fact, you might well be,</p>	<p style="text-align: center;">27</p> <p>1 and losing -- or not being able to attend classes 2 for the next two weeks might mean that you would 3 lose credit for the entire semester, that would be 4 an extreme hardship. 5 That's just by way of example, and 6 we'll certainly take up any specific concerns you 7 have as we go around and see if any of you feel 8 that serving on this jury for the next two weeks 9 would suppose an extreme hardship. 10 Are there any jurors who feel that it 11 would? 12 Okay. Let's start on the front row. I 13 think that's juror -- is that 30? 14 Yes. We've got a microphone, which 15 we'll have to pass around. 16 JUROR NO. 30: Your Honor, I am a student 17 and I'm approaching finals. 18 THE COURT: And you're what? 19 JUROR NO. 30: Approaching finals. 20 THE COURT: Okay. And missing classes for 21 the next two weeks would make it difficult for you 22 to complete the semester? 23 JUROR NO. 30: Correct. I'm taking math, 24 and it's hard for me. 25 THE COURT: I'm sorry. You have to speak</p>
<p style="text-align: center;">28</p> <p>1 up. 2 JUROR NO. 30: Correct. I'm taking math 3 right now, and it would definitely -- to miss 4 school, I would -- 5 THE COURT: Are you taking just one course, 6 or is it a full load? 7 JUROR NO. 30: I'm taking two courses. 8 THE COURT: Okay. When are they taught? 9 JUROR NO. 30: They're -- 10 THE COURT: What time of the day? 11 JUROR NO. 30: They're taught morning and 12 afternoon -- 13 THE COURT: Okay. 14 JUROR NO. 30: -- on Mondays and Wednesdays. 15 THE COURT: Let me come back to you. 16 And your feeling is that if you're not 17 able to attend class for the next -- today and 18 Wednesday, and next Monday and next Wednesday, 19 that that would make it hard for you to actually 20 complete the class? 21 JUROR NO. 30: Yeah. I do have a test next 22 week, and then finals are in a couple weeks. 23 THE COURT: Okay. Let me come back to you, 24 if I can. I think I may excuse you, but I want to 25 see what else we have here in terms of talking to</p>	<p style="text-align: center;">29</p> <p>1 the other jurors. 2 Okay. Thank you, Juror No. 30. 3 I think row number 2, there was -- yes. 4 Is that Juror 21? 5 JUROR NO. 21: Twenty-one, yes. 6 My husband and I are farmers, and this 7 is a very busy time of year. We also feed cattle, 8 and we have not been able to turn them out due to 9 weather. 10 THE COURT: Okay. Your husband can't do it 11 without you? There is no other way you can find 12 someone else to help out? 13 JUROR NO. 21: I do my share and, yes, I 14 feed every day. 15 THE COURT: Is there some way you can get 16 someone else to do it while you're on jury duty? 17 JUROR NO. 21: Very questionable as to 18 whether we could. 19 THE COURT: Okay. Have you made any effort 20 to do that? 21 JUROR NO. 21: No. 22 THE COURT: All right. Juror No. 21, let me 23 come back to you, as well. I want to see kind of 24 the lay of the land with the other jurors. All 25 right. Let me come back to you, perhaps, Juror</p>

<p style="text-align: center;">30</p> <p>1 No. 21.</p> <p>2 All right. Was there anyone -- row</p> <p>3 No. 4?</p> <p>4 JUROR NO. 6: I'm Juror No. 6. I'm a nurse,</p> <p>5 and I have mandatory training, May 2nd from 9:00</p> <p>6 a.m. to 1:00 p.m. I have not checked with my</p> <p>7 employer to see if that can be arranged at another</p> <p>8 time, but if my certificate expires then I would</p> <p>9 not be able to work, if I don't do the training.</p> <p>10 THE COURT: Okay. All right. Likewise.</p> <p>11 Anyone else in row 4?</p> <p>12 Let me go back to row 5. There are</p> <p>13 apparently a couple in row 5.</p> <p>14 Juror No. 35.</p> <p>15 JUROR NO. 35: I'm the sole income of my</p> <p>16 family of three, and my employer doesn't pay for</p> <p>17 jury duty.</p> <p>18 THE COURT: You have checked and your</p> <p>19 employer does not?</p> <p>20 JUROR NO. 35: They do not paid for it. And</p> <p>21 I do not have the accrued vacation time to cover</p> <p>22 that.</p> <p>23 THE COURT: Okay. Let me hear -- there was</p> <p>24 someone else on -- that's Juror No. 39.</p> <p>25 JUROR NO. 39: Same thing going on. I have</p>	<p style="text-align: center;">31</p> <p>1 a family, a total of six. My wife is pregnant,</p> <p>2 and I am the sole proprietor. I can't afford to</p> <p>3 be here and lose that money.</p> <p>4 THE COURT: So you work for yourself?</p> <p>5 JUROR NO. 39: We're barely hanging on to</p> <p>6 our vehicles as it is.</p> <p>7 THE COURT: Okay. All right.</p> <p>8 Anyone else? It looks like row -- a</p> <p>9 couple on row 6, I think.</p> <p>10 Juror No. 46.</p> <p>11 JUROR NO. 46: I'm self-employed. Next week</p> <p>12 I start a seminar for a week from 8:00 a.m. to</p> <p>13 5:00 p.m. every day. And it's an eight-year</p> <p>14 rotation of a company that's coming out from New</p> <p>15 York City, so I can't change that rotation.</p> <p>16 THE COURT: It's a seminar you're attending?</p> <p>17 JUROR NO. 46: Yes.</p> <p>18 THE COURT: And, I'm sorry, what do you do</p> <p>19 for a living?</p> <p>20 JUROR NO. 46: I'm a janitor. But it's</p> <p>21 dealing with my religious beliefs. It's a group</p> <p>22 that's coming out for that, and it's for training</p> <p>23 for something that I do on the side as a</p> <p>24 volunteer.</p> <p>25 THE COURT: Okay. But, so it is not</p>
<p style="text-align: center;">32</p> <p>1 work-related?</p> <p>2 JUROR NO. 46: Not work-related, no.</p> <p>3 THE COURT: Juror No. 46, I apologize, but</p> <p>4 where it's an optional thing that doesn't affect</p> <p>5 your employment, I'm not sure I could excuse you</p> <p>6 for that reason. I understand you want to be</p> <p>7 there, but at this point, at least -- I may</p> <p>8 reconsider, but at this point I'm not sure I could</p> <p>9 excuse you for that reason.</p> <p>10 Juror No. -- is that 43?</p> <p>11 JUROR NO. 43: Yes, sir. Your Honor, I</p> <p>12 close on a home this Friday, the 29th. My current</p> <p>13 home that I live in is currently being rented out.</p> <p>14 So if I'm in this trial, I will face not having a</p> <p>15 place to live.</p> <p>16 In addition my interest rate lock</p> <p>17 period expires next week, and in addition my short</p> <p>18 sale acceptance offer expires as well. So if I</p> <p>19 don't close this Friday, I'll experience</p> <p>20 significant hardship.</p> <p>21 THE COURT: What time is the closing?</p> <p>22 JUROR NO. 43: I don't know. I have a</p> <p>23 letter from my lender that I got faxed over to me</p> <p>24 yesterday, if you would like to --</p> <p>25 THE COURT: Let me explain. We start at</p>	<p style="text-align: center;">33</p> <p>1 8:30 and go straight through until 2:30, and then</p> <p>2 we're done for the day. Is there any reason why</p> <p>3 you couldn't schedule that in the afternoon?</p> <p>4 JUROR NO. 43: We would be out by 2:30 --</p> <p>5 THE COURT: Yes.</p> <p>6 JUROR NO. 43: -- with the case?</p> <p>7 I could check with my lender to</p> <p>8 schedule it accordingly. It hasn't been</p> <p>9 specifically set as a time, just a date. But</p> <p>10 given the 2:30 time period, I could try to work</p> <p>11 that out with the title company.</p> <p>12 THE COURT: All right. Good.</p> <p>13 JUROR NO. 43: Is that something that I</p> <p>14 should check on?</p> <p>15 THE COURT: You can plan on being done by</p> <p>16 2:30 on Friday. And I think, yes, perhaps on a</p> <p>17 break you could even contact the broker or whoever</p> <p>18 the closing agent is, and see if that can be</p> <p>19 arranged.</p> <p>20 JUROR NO. 43: Okay.</p> <p>21 THE COURT: All right?</p> <p>22 JUROR NO. 43: I will do that. Thank you.</p> <p>23 THE COURT: All right. Thank you.</p> <p>24 Anyone else?</p> <p>25 Okay. I don't -- is there anyone else</p>

<p style="text-align: right;">34</p> <p>1 that I have missed, that I have not come to?</p> <p>2 Juror No. 21, what was the concern</p> <p>3 again?</p> <p>4 Oh, it was the feeding of the cattle,</p> <p>5 right.</p> <p>6 And Juror No. 6, you have got mandatory</p> <p>7 training that you may lose your certification if</p> <p>8 you can't attend it. All right.</p> <p>9 Counsel, do you want to approach for a</p> <p>10 moment? I'm going to visit with you at sidebar</p> <p>11 about this before I make a determination.</p> <p>12 Ladies and gentlemen, I'm going to turn</p> <p>13 on a device that will make it hard for you to</p> <p>14 listen while we're visiting about this at sidebar.</p> <p>15 I apologize for the nuisance of this; it's not</p> <p>16 pleasant, but it's better than having to send you</p> <p>17 all out.</p> <p>18 (Sidebar commences as follows:)</p> <p>19 THE COURT: Ms. Hohenleitner, can you hear</p> <p>20 us?</p> <p>21 THE COURT REPORTER: Yes.</p> <p>22 THE COURT: Okay. Counsel, I'm inclined --</p> <p>23 first of all, it's difficult not having</p> <p>24 Mr. Steele -- or it's difficult to have Mr. Steele</p> <p>25 come up to the sidebar.</p>	<p style="text-align: right;">35</p> <p>1 What I normally do is we discuss at</p> <p>2 sidebar, and then I give counsel a chance to go</p> <p>3 back and confer with your client. And if there is</p> <p>4 any issue you want to raise, we can come back up</p> <p>5 to a sidebar after that consultation. The</p> <p>6 alternative is we have to send the jury out. It's</p> <p>7 just too difficult.</p> <p>8 Is that agreeable?</p> <p>9 MR. McALLISTER: It is, Your Honor.</p> <p>10 THE COURT: All right.</p> <p>11 Now, Counsel, let me deal with this in</p> <p>12 kind of reverse order. I'm inclined -- Juror</p> <p>13 No. -- I'm not used to two charts, so I'm having a</p> <p>14 hard time.</p> <p>15 Juror No. 30, the young woman who is in</p> <p>16 school, that's kind of a close call for me. If</p> <p>17 she was a full-time student, I would think it was</p> <p>18 an absolute.</p> <p>19 Probably, I would be inclined to excuse</p> <p>20 her.</p> <p>21 I would be inclined not to excuse at</p> <p>22 this time Ms. Tindall, Juror No. 21. Having to</p> <p>23 feed her cattle, I understand that, but she has</p> <p>24 not indicated she has not been able to find</p> <p>25 someone else.</p>
<p style="text-align: right;">36</p> <p>1 And I may indicate to her that if we</p> <p>2 get down to the end of the day and we have enough</p> <p>3 jurors, I may excuse her just for more a matter of</p> <p>4 convenience.</p> <p>5 I would excuse Juror No. 6, because she</p> <p>6 has certification training that she would miss</p> <p>7 that would cost her --</p> <p>8 MR. HAWS: Your Honor, it wasn't clear to</p> <p>9 me --</p> <p>10 THE COURT: You need to come closer to the</p> <p>11 mic.</p> <p>12 MR. HAWS: It wasn't clear to me whether she</p> <p>13 had checked with her employer --</p> <p>14 THE COURT: Well, we could possibly --</p> <p>15 MR. HAWS: -- about a different time or</p> <p>16 something like that. I think I would rather see</p> <p>17 her at least make a call.</p> <p>18 THE COURT: All right. We could probably do</p> <p>19 that.</p> <p>20 Then, I'm going to excuse Juror No. 39</p> <p>21 and 35, who both have employment situations where</p> <p>22 they would lose income. And I think if they are</p> <p>23 that close to the edge financially, I think we</p> <p>24 ought to excuse them.</p> <p>25 I think that's the only ones. So I</p>	<p style="text-align: right;">37</p> <p>1 propose to excuse Juror No. 39, Juror No. 35,</p> <p>2 Juror No. 30, and then kind of defer on Jurors --</p> <p>3 MR. HAWS: Six.</p> <p>4 THE COURT: -- 21 and 6.</p> <p>5 MR. HAWS: 30 and 6, I think we --</p> <p>6 THE COURT: 21 and 6.</p> <p>7 MR. HAWS: 21 and 6.</p> <p>8 THE COURT: -- to give them a chance to</p> <p>9 check on what they can arrange, and then we'll</p> <p>10 make a decision later. If we have the extra</p> <p>11 jurors, I would rather send them home and let</p> <p>12 someone else serve.</p> <p>13 Any objection to that?</p> <p>14 MR. HAWS: No.</p> <p>15 MR. McALLISTER: No, Your Honor.</p> <p>16 MS. WHELAN: No, Your Honor.</p> <p>17 And I think with Juror 21 --</p> <p>18 THE COURT: You need to come forward.</p> <p>19 MS. WHELAN: With Juror 21, I think if you</p> <p>20 explain the schedule, that you will be done, that</p> <p>21 might help her with her class.</p> <p>22 MR. HAWS: She is the one that lives in</p> <p>23 Bruneau. That's what, 45 minutes away?</p> <p>24 THE COURT: Okay.</p> <p>25 (Sidebar concluded.)</p>

1 THE COURT: I've got to try to turn down the
2 volume on that. That's a very -- we turned it up
3 a little bit, thinking with a larger group here it
4 might be necessary. But we'll have to check on
5 that.

6 Ladies and gentlemen, let me explain
7 what I'm going to do.

8 Juror No. 35 and Juror No. 39, we are
9 going to excuse you, given your financial
10 situation. I think that would not be fair to ask
11 you to serve under these circumstances. So you
12 will be allowed to leave, if you wish.

13 Juror No. -- you can leave at this
14 time, if you wish.

15 (Jurors Nos. 35 and 39 excused.)

16 THE COURT: Juror No. 30, you're in school,
17 and I think we'll excuse you, as well, so that you
18 won't lose that credit with school.

19 (Juror No. 30 excused.)

20 THE COURT: Juror No. 6 and Juror No. 21,
21 first of all, Juror No. 21, with the 8:30 to 2:30
22 schedule, is that going to enable you to at least
23 be home in the afternoon to help out and do those
24 sort of things? Will that make a difference?

25 JUROR NO. 21: I live in Bruneau, which is

1 yet, in terms of your availability?

2 Let me indicate my appreciation for
3 your willingness to serve. I talk to judges from
4 all over the country, and it's not unusual for
5 them to have half the jury panel show up and want
6 to be excused because of a hardship.

7 Now, we try to avoid that in part by
8 giving you an opportunity to defer service if you
9 have holidays, vacation planned or training
10 planned. We try to give you that opportunity.

11 But even with that, I'm always
12 impressed by the fact that, generally, jurors
13 don't ask to be excused unless it truly is a
14 hardship, something that they can't avoid. And
15 it's very much appreciated, and I think it speaks
16 well of our citizens in this state and this
17 district.

18 Let me indicate, as well, that I've
19 already noted we will start each day at 8:30.
20 Now, there will be some exceptions. For example,
21 tomorrow we'll start at 8:30, but unfortunately I
22 have a conference call that I have to be in, but
23 to keep the trial moving we'll take an hour break.

24 I think we'll have a meal brought in
25 for the jury, and try to hold that to not more

1 an hour-and-a-half to two-hour drive.

2 THE COURT: I didn't realize it was that far
3 away.

4 JUROR NO. 21: Seventy-seven miles.

5 THE COURT: Well, let me see. I will
6 reconsider your situation a little bit later. I
7 just need to see where we are with the other
8 jurors.

9 Likewise, Juror No. 6, we're going to
10 have a short break here, and I might have you
11 actually check with your employer to see if there
12 is some possibility that that training can be
13 rescheduled, and exactly what the details are on
14 that, and then we'll make a determination at that
15 point.

16 If, indeed, it cannot be rescheduled
17 and if, indeed, it is essential to your
18 certification, then I will excuse you. But I want
19 to at least make sure that you've excluded the
20 possibility of rescheduling that to a later time.
21 All right?

22 (Juror indicating.)

23 THE COURT: And I think that has addressed
24 the other concerns here.

25 Anyone else that I have not addressed

1 than an hour, perhaps as little as 45 minutes, and
2 then perhaps recess around 3:00 or 3:30 that day.

3 I think for the rest of the trial we'll
4 start at 8:30 each day, go straight through with a
5 couple of breaks, in which you'll have somewhat
6 more hearty snacks to fortify you, and then we'll
7 be done at 2:30 each day, so that it's kind of a
8 truncated trial day. But I think it works much
9 better for the jurors, the attorneys and the court
10 to be able to work that schedule.

11 Is there anyone who feels that that
12 schedule simply will not work for you for some
13 reason?

14 Okay. I see -- other than as we have
15 already discussed.

16 We also try to accommodate those who
17 may have some limitation or physical problem. For
18 example, if you have a back problem or otherwise
19 cannot sit for extended periods of time, you will
20 be allowed to sit in the back of the jury box and
21 actually allowed to stand from time to time during
22 the trial, if need be. If you are hard of
23 hearing, we have devices that will assist those
24 who are hard of hearing to hear the proceedings.

25 Is there anyone who feels you have a

<p style="text-align: center;">42</p> <p>1 disability or limitation that we could not 2 reasonably accommodate? 3 Okay. I see no response. 4 I'm now going to ask you some questions 5 about pretrial publicity in this case. I'm going 6 to start off with some general questions where all 7 I want you to do is raise your hand. We'll note 8 your response and may then follow up, again either 9 at a sidebar or possibly after some further 10 questions, sending you to an adjoining room and 11 then bringing you back one at a time for 12 individualized questioning. 13 First, simply by show of hands, I want 14 to know how many of you have heard or read 15 something about this case from reports in the 16 newspaper, on the radio, or television? 17 All right. Let me just note, and 18 I'll get the -- we'll start on the front row. And 19 again, I'm talking only about from newspaper, 20 radio, or television. 21 We'll start on row 1. It looks like 22 Juror No. 28 -- again, would you show me -- make 23 sure I've got -- 28. 24 On row 2, it looks like Juror No. 23, 25 Juror No. 22 and Juror No. 21 and Juror No. 20.</p>	<p style="text-align: center;">43</p> <p>1 On the third row, Juror No. 10 and 2 Juror 15. 3 Back row, Juror 4, 5, and 6. 4 On row 5, Juror No. 40, Juror No. 36, 5 and Juror No. 33. 6 On the seventh row, it looks like 7 Juror 45 and Juror 47. 8 The seventh row, Juror 55 and 56. 9 Eighth row, Juror No. 67. 10 And on the final row, Juror No. 65. 11 Okay. Juror No. 67, could you raise 12 your -- are you on the -- you are on the back row? 13 All right. 14 As we all know, media reports are not 15 necessarily accurate. You know, I'm not 16 suggesting that there is an intent, that the 17 journalists intend not to be accurate, but, for a 18 variety of reasons, they may contain 19 misinformation or may leave out important, 20 relevant information. 21 And there are a lot of reasons why that 22 may occur: a limited access to the information, 23 you know; I suppose there could be bias on the 24 part of the journalist, or for any number of 25 reasons. And as a result, sometimes they report</p>
<p style="text-align: center;">44</p> <p>1 facts that just aren't true; innocently, I'm sure, 2 but that just happens. 3 Is there anyone who disagrees with 4 these statements? That is, anyone who believes 5 that everything they hear from the media is true, 6 simply because it came from the media, among those 7 who have read something about this case? Anyone 8 who has that feeling? 9 Okay. I see no response. 10 Now, just having heard or read 11 something about a case from a news media account 12 of a case does not disqualify a juror from serving 13 on the trial in that case. 14 However, a jury must make its decision 15 solely from the evidence presented during the 16 trial and not from any information which they 17 learned from any other source. 18 Therefore, a juror who has heard or 19 read something about the case may only serve if 20 they are confident that they can put aside what 21 they have learned from what they have read or 22 heard from the media and not allow it to affect 23 their verdict in any way. 24 And I mean just that. It cannot affect 25 their verdict in any way. You have to essentially</p>	<p style="text-align: center;">45</p> <p>1 ignore it completely and not allow anything that 2 you've heard or read about the case affect you in 3 any way. 4 Now, of the jurors who have heard or 5 read about this case from a newspaper, radio, or 6 television account, is there anyone who has any 7 reservation about your ability to put out of your 8 mind any information you learned about this case 9 from the media and decide the case only upon the 10 facts presented during the trial? 11 Let me start with row 1. And 12 unfortunately, I should have noted down your 13 number, but I did not. 14 So those of you who have read or heard 15 something about this case from the media, is there 16 anyone on row 1 that you -- perhaps you could 17 raise your -- and I think I'll go to you 18 individually. If you'll raise your numbers again, 19 I'll come to you individually and ask if you have 20 any reservation about your ability to put aside 21 anything you've heard or read about the case and 22 decide this case solely from the evidence 23 presented here in the courtroom and in the context 24 of my instructions as to the law. 25 Juror, was it No. 28? I think you --</p>

<p style="text-align: right;">46</p> <p>1 do you have any reservation about that?</p> <p>2 JUROR NO. 28: No, Your Honor.</p> <p>3 THE COURT: All right. Anyone else?</p> <p>4 Who else was on row -- Juror No. 32.</p> <p>5 Do you have any reservation about that?</p> <p>6 JUROR NO. 32: No, Your Honor.</p> <p>7 THE COURT: Do we have a microphone?</p> <p>8 Perhaps we could pass that.</p> <p>9 Anyone else on the front row?</p> <p>10 Okay. In row 2, those -- if you would</p> <p>11 raise your hand.</p> <p>12 Juror No. 23, do you have any</p> <p>13 reservation about your ability to put aside what</p> <p>14 you've heard or read about the case and decide</p> <p>15 this case solely from the evidence presented here</p> <p>16 in the courtroom?</p> <p>17 JUROR NO. 23: No, Your Honor.</p> <p>18 THE COURT: All right.</p> <p>19 Juror No. 22, do you have any</p> <p>20 reservation?</p> <p>21 JUROR NO. 22: No, Your Honor.</p> <p>22 THE COURT: Juror 21?</p> <p>23 JUROR NO. 21: No, sir.</p> <p>24 THE COURT: All right.</p> <p>25 Juror No. 20?</p>	<p style="text-align: right;">47</p> <p>1 JUROR NO. 20: No, Your Honor.</p> <p>2 THE COURT: Okay.</p> <p>3 Anyone else on row 2?</p> <p>4 Let's go to row 3. Juror No. -- is it</p> <p>5 10?</p> <p>6 JUROR NO. 10: No, I do not.</p> <p>7 THE COURT: All right.</p> <p>8 Juror -- anyone else in the third row?</p> <p>9 That's Juror No. 15. Do you have any</p> <p>10 reservation about your ability to put aside</p> <p>11 anything you've heard or read about this case from</p> <p>12 the media and decide this case solely from the</p> <p>13 evidence presented here in the courtroom?</p> <p>14 JUROR NO. 15: No, Your Honor.</p> <p>15 THE COURT: All right.</p> <p>16 Anyone else -- anyone on row 4? Juror</p> <p>17 No. 6.</p> <p>18 JUROR NO. 6: No, Your Honor.</p> <p>19 THE COURT: All right.</p> <p>20 Juror No. 5?</p> <p>21 JUROR NO. 5: No, Your Honor.</p> <p>22 THE COURT: Juror No. 4?</p> <p>23 JUROR NO. 4: No, Your Honor.</p> <p>24 THE COURT: Anyone else in the back row who</p> <p>25 have heard or read anything about this case?</p>
<p style="text-align: right;">48</p> <p>1 All right. Let's pass the microphone</p> <p>2 to row 5.</p> <p>3 Juror No. 33, do you have any</p> <p>4 reservation in this regard?</p> <p>5 JUROR NO. 33: No, Your Honor.</p> <p>6 THE COURT: Anyone else on row 5?</p> <p>7 Juror No. 35 -- 36.</p> <p>8 JUROR NO. 36: No, Your Honor.</p> <p>9 THE COURT: All right.</p> <p>10 Anyone else in row 5? Juror No. 40.</p> <p>11 JUROR NO. 40: No, Your Honor.</p> <p>12 THE COURT: Okay.</p> <p>13 Let's go to row 6.</p> <p>14 JUROR NO. 47: No, Your Honor.</p> <p>15 THE COURT: All right. That's Juror No. 47.</p> <p>16 Anyone else in row 6?</p> <p>17 JUROR NO. 45: No, Your Honor.</p> <p>18 THE COURT: That's Juror No. 45.</p> <p>19 Anyone else?</p> <p>20 All right. Let's go to row 7. Anyone</p> <p>21 who have heard or read anything about this case?</p> <p>22 Juror No. 55, do you have any</p> <p>23 reservation in this regard?</p> <p>24 JUROR NO. 55: No, Your Honor.</p> <p>25 THE COURT: Juror No. 56?</p>	<p style="text-align: right;">49</p> <p>1 JUROR NO. 56: No, Your Honor.</p> <p>2 THE COURT: Okay. Anyone else in the 7th</p> <p>3 row -- anyone on the 8th row?</p> <p>4 It's Juror No. 67. That's actually</p> <p>5 row 9, I guess.</p> <p>6 JUROR NO. 67: No.</p> <p>7 THE COURT: No?</p> <p>8 JUROR NO. 67: That would be no.</p> <p>9 THE COURT: Anyone else?</p> <p>10 I think Juror No. 65, you raised your</p> <p>11 hand.</p> <p>12 JUROR NO. 65: No, Your Honor.</p> <p>13 THE COURT: All right.</p> <p>14 Is there anyone who raised your hand in</p> <p>15 response to my earlier question, that you've heard</p> <p>16 or read something about the case, and have not</p> <p>17 responded to my last question about your ability</p> <p>18 to put aside what you heard or read about the</p> <p>19 case?</p> <p>20 Okay. I see no other response.</p> <p>21 Let me ask a further question. Is</p> <p>22 there any member of the panel who has heard or</p> <p>23 read anything about this case from any source</p> <p>24 other than the media?</p> <p>25 Now, this would include other people.</p>

<p style="text-align: center;">50</p> <p>1 It could include other writings. It could include 2 the Internet, including chat rooms, blogs or other 3 websites, text messaging, Twitter, Facebook, or 4 any other source of information other than 5 established media. 6 And "established media," I'm talking 7 about newspapers and the broadcast media including 8 radio and television. 9 Anybody who has heard, read, or 10 acquired any information about this case from any 11 other source, such as those that I have described: 12 personal discussions, something that was written 13 to you, Internet information, blogs, chat rooms, 14 Twitter? 15 Okay. Juror No. 52. 16 I'm going to note -- and I may come 17 back to you. I'm not going to ask you to explain 18 what the source of information is, but I think 19 we'll come back to you. Give me just a moment to 20 make a notation here. 21 Anyone else? That's Juror No. 21. 22 Okay. Again, we'll come back to you, as well. 23 Anyone else? 24 Okay. I see no other response. 25 What will occur is we will come back to</p>	<p style="text-align: center;">51</p> <p>1 you individually. My guess is it will be with the 2 other jurors having been sent to the jury assembly 3 room, and then we'll have you summoned back 4 individually, and along with perhaps some other 5 jurors who may respond to the balance of my 6 questions. 7 Is there anyone on the panel who has 8 been contacted prior to appearing here in the 9 courtroom today about this case? 10 I also am excluding, obviously, court 11 personnel and the fact that you received a jury 12 summons. But is there anybody who has been 13 contacted by anyone under any circumstances, 14 because they knew or had learned that you were 15 going to be a juror in this case, or a potential 16 juror? 17 Anyone? 18 Okay. I see no response. 19 The next question would be whether any 20 of you know Mr. Steele in any way. The question 21 I'm going to ask is whether any of you, prior to 22 entering the courtroom today, and other than what 23 you may have read about in the media accounts that 24 you have already discussed, is there anyone who 25 knew Mr. Steele or knew of him, by reputation or</p>
<p style="text-align: center;">52</p> <p>1 otherwise, other than what you may have already 2 disclosed in terms of having read something in the 3 newspaper? 4 Okay. Anyone prior to today that had 5 ever even heard Mr. Steele's name, apart from 6 perhaps what you may have read in the newspaper 7 and that you have already disclosed? Anyone? 8 Okay. I see no response. 9 From that, I will assume that none of 10 the jurors are related to Mr. Steele by blood or 11 marriage, none of you have employed Mr. Steele. 12 And I will indicate he is an attorney. So I 13 assume none of you have employed Mr. Steele as an 14 attorney, or employed him in any other capacity, 15 nor has he employed you. None of you are familiar 16 with his legal practice, and none of you have a 17 business relationship with him, including an 18 employment relationship. 19 Is there anyone for whom those 20 statements would not be true? 21 Okay. Again, I see no response. 22 Let me also indicate -- I think I'm 23 going to expand that question just a bit. There 24 was some media coverage which I think actually 25 discussed Mr. Steele as an attorney, or at least</p>	<p style="text-align: center;">53</p> <p>1 made some comment about the work -- legal work he 2 did in the media accounts. 3 Is there anyone who has read any of 4 those media accounts that would have some -- that 5 feels that you have acquired information about 6 that that might affect you in any way as a juror 7 that you could not put aside and be fair and 8 impartial? 9 Anyone who has any reservation about 10 that? 11 Okay. Again, I see no response. 12 Okay. Counsel, I may ask you to 13 approach for a moment before I excuse the jurors 14 and we visit just with the two jurors that we have 15 individualized responses to. If you would 16 approach. 17 (Sidebar commences as follows:) 18 THE COURT: Counsel, the other issue -- and 19 I was trying to think of ways to tease 20 out -- there were other concerns. There was 21 a -- there was media coverage about the court's 22 ruling last week on the <u>Daubert</u> issue. 23 I think I probably covered enough the 24 fact that they're willing to put that aside and 25 not allow it to affect the jury, without going</p>

1 specifically into a concern about the court's
2 ruling, but I'm willing to hear you if you think I
3 need to discuss that further.

4 Where there is only two jurors, it
5 maybe easier -- we're actually set up in my
6 chambers where we could bring those two jurors
7 into chambers with the court reporter and inquire
8 there, rather than send the jury down to the jury
9 assembly room.

10 And then, finally, I wanted to hear
11 from you as to whether there were any other
12 questions of this nature that you think I should
13 cover. So far we have not had too many people
14 that seem to have any concerns, but I want to give
15 you a chance to speak up.

16 MR. McALLISTER: No questions. We
17 don't -- we don't believe the court should ask any
18 questions about its ruling last week --

19 THE COURT: Okay.

20 MR. McALLISTER: -- and we have no objection
21 to, in chambers, examining the jurors, the two
22 jurors who raised other issues about some source
23 of information.

24 THE COURT: Well, one of them can be
25 resolved quickly if we allow her to go feed her

1 put her on the spot, maybe we'll go ahead and
2 bring her back.

3 I'm inclined, I think -- we're going to
4 take another break -- we'll take a break probably
5 in about 20 minutes or half an hour. I think the
6 jury can wait long enough. I think we'll just
7 have them stay where they are and we'll bring
8 those jurors into chambers and discuss that with
9 them there. All right?

10 MS. WHELAN: Thank you.

11 THE COURT: Okay.

12 (Sidebar concluded.)

13 THE COURT: Ladies and gentlemen, I'm trying
14 to follow the path of least resistance here. I
15 think rather than move all of you down to the
16 fifth floor jury assembly room, I think it would
17 be easier if we just have you come back into
18 chambers, those two of you who have raised their
19 hand, and we'll visit with you in chambers.

20 While we are on this break, you are
21 just going to remain in place. If any of you have
22 an absolute need to go to the restroom, perhaps
23 either Ms. Tetrick or Mr. Severson -- I think we
24 actually had -- yes, Ms. Blackman, and I think
25 Ms. Huang was actually here, as well, who can

1 cattle and not have to --

2 MR. McALLISTER: And we have --

3 THE COURT: -- wrestle with --

4 MR. McALLISTER: -- no objection to that.

5 THE COURT: Well, if -- Ms. Whelan, we might
6 be able to resolve that question right there. Now
7 we're down to one juror.

8 MS. WHELAN: We agree with Mr. McAllister as
9 far as no questions, chambers is okay, and no
10 Daubert 702 hearing.

11 And as far as the cows --

12 THE COURT: I'm just absolutely convinced,
13 based on what I've seen so far, we're going to
14 have tons of jurors. We're going to have jurors
15 coming out of our ears here. So I'm inclined not
16 to force a juror to stay here when it's difficult
17 for them.

18 Of course, I don't know what their
19 backgrounds are. You may have researched their
20 backgrounds and you may have a strong feeling why
21 someone should be on the jury or not. But
22 anyway --

23 MS. WHELAN: Yeah, we don't care. She can
24 go feed her cows.

25 THE COURT: Well, you know, as long as we've

1 actually help you out, so that there are restrooms
2 back in the secure hallway where we can escort you
3 to.

4 But -- Counsel, I had another thought.
5 And I apologize for this, but another thought came
6 to me, that may change your thoughts on the matter
7 of whether we take the jury out or not. So why
8 don't you approach again.

9 (Sidebar commences as follows:)

10 THE COURT: The problem is, I'm not sure,
11 getting Mr. Steele back into chambers, the marshal
12 might have some concern. So now I'm thinking no,
13 that's not a good idea. So we may just need to
14 send the jury out. That way, Mr. Steele can be
15 present and we wouldn't have to change anything
16 else.

17 MR. HAWS: That's fine, Your Honor.

18 MR. WHELAN: That's probably more
19 comfortable.

20 THE COURT: Mr. McAllister, Mr. Amendola?

21 MR. McALLISTER: That's fine, Judge. I
22 don't want him sitting in here with all the jurors
23 while we're --

24 THE COURT: That's the concern I had. Then
25 how do we get him out of here? So I think it's

1 just better if we send the jury out. So, all
2 right.

3 (Sidebar concluded.)

4 THE COURT: Ladies and gentlemen, I don't
5 want you to think I'm horribly indecisive. I'm
6 usually not. But I'm going to change my mind. I
7 think we are going to have you taken out, back
8 down to the jury assembly room. And we'll have
9 Juror No. 52 and Juror No. 21 will be summoned
10 back, and we'll question you further here in the
11 courtroom, but with the other jurors taken back to
12 the jury assembly room.

13 My apologies, but there are some
14 practical reasons why I think that's necessary.

15 So what I'll do is I'll declare a short
16 recess. I'll admonish you not to discuss the case
17 among yourselves or with anyone else. Now, by
18 that, I mean exactly that. You are not to discuss
19 this case. If you've read something about the
20 case, you absolutely should not share that with
21 anyone else. You shouldn't even talk about the
22 questions I have asked, things you've observed
23 here in the courtroom.

24 You can talk about the weather, perhaps
25 your hopes that the weather will change and get

1 THE COURT: I'll note for the record that
2 Juror No. 21, I believe, has been brought back
3 into the courtroom. The other jurors are not
4 present.

5 Juror No. 21, you indicated that you
6 had learned something about this case from a
7 source other than a news media. And by news
8 media, I'm talking about newspaper, television,
9 radio.

10 What is it -- first of all, what would
11 be the source of that information?

12 JUROR NO. 21: It would be my sister.

13 THE COURT: What was your sister's source of
14 information, to your knowledge?

15 JUROR NO. 21: I'm sure it was probably
16 newspaper, radio, television. She lives in the
17 area.

18 THE COURT: She lives where?

19 JUROR NO. 21: She lives in north Idaho.

20 THE COURT: Okay. What did -- with as much
21 detail as you can remember, can you tell us
22 exactly what she told you?

23 And don't pull any punches. I want to
24 know, you know, blow by blow, exactly what she
25 said.

1 nice, talk about sports, fly fishing. Anything
2 you want is fair game, except anything that has
3 even the remotest connection to these proceedings.
4 That is off limits and you cannot discuss that.

5 I think what we'll do is, Jurors No. 21
6 and 52, we'll probably drop you off, sort of. You
7 won't go down to the fifth floor assembly room.
8 We'll leave you here in the actual jury room, and
9 then bring you from there back into the courtroom,
10 so you won't have to traverse that long distance,
11 going up and down the stairs or using the
12 elevator.

13 If any of you need to smoke, I'll leave
14 that to Mr. Severson and Ms. Tetrick and their
15 discretion on how to handle that.

16 All right. And then you might remember
17 where you're seated. You might even leave your
18 numbers there on your seat, just to make sure you
19 don't forget where you're seated. It's pretty
20 much numerical, although we have now excused a few
21 jurors here and there.

22 All right. We'll be in recess until
23 further call.

24 (Jury panel absent.)

25 (Juror No. 21 present.)

1 JUROR NO. 21: Well, she described -- I
2 heard about this, actually, probably, I'm going to
3 guess now maybe two years ago.

4 THE COURT: Okay. Some time ago.

5 JUROR NO. 21: Sometime ago. I couldn't say
6 for sure, but some time ago. We talked frequently
7 on the telephone. And she just -- and I heard
8 this reported in our local media here.

9 THE COURT: Okay. What local media?

10 Would that have been The Statesman
11 or --

12 JUROR NO. 21: Probably The Statesman.

13 THE COURT: Do you take The Statesman?

14 JUROR NO. 21: I don't right now, but I did.

15 THE COURT: Okay.

16 JUROR NO. 21: You know, of interest, I
17 guess, talking about things going on in the area,
18 and she did. She had told me -- you want me to
19 just say --

20 THE COURT: Yes. I want to know word for
21 word what was said.

22 JUROR NO. 21: You know, I guess probably at
23 the time she did not mention the person's name,
24 but she said it was a lawyer from their area, and
25 that he had been accused of, you know, attempting

<p style="text-align: center;">62</p> <p>1 to kill his wife and his mother-in-law by -- with 2 a bomb underneath a car, and that they had -- it 3 had been discovered when he -- when she went to 4 the local garage -- or I don't know exactly where, 5 but they put the car on the hoist and they 6 discovered it then.</p> <p>7 THE COURT: Okay. Do you recall any other 8 details? And don't hold anything back, but don't 9 make anything up. I mean, I want to know what you 10 recall about what she told you, in as much detail 11 as you can remember.</p> <p>12 JUROR NO. 21: I think probably that was the 13 detail, other than we were just visiting as 14 sisters saying, you know, why would someone do 15 that? How could they do that? Or -- I think 16 that's pretty general, really.</p> <p>17 THE COURT: Okay. Do you have any 18 reservation about your ability to put that out of 19 your mind and decide this case solely from the 20 evidence presented here in the courtroom?</p> <p>21 JUROR NO. 21: I would hope I would be able 22 to put it out of my mind, yes. I'm not -- I would 23 not answer a hundred percent certain that --</p> <p>24 THE COURT: Okay. You responded earlier, I 25 think you indicated you had read something about</p>	<p style="text-align: center;">63</p> <p>1 the case as well or heard something in local 2 media.</p> <p>3 JUROR NO. 21: That was The Statesman. 4 THE COURT: That was the same thing. 5 JUROR NO. 21: The Statesman online and KTVB 6 online.</p> <p>7 THE COURT: Okay. Now -- well, perhaps I'm 8 going to leave it at that, given what we discussed 9 at sidebar, as well. I'm assuming you still wish 10 to be excused because of the need to help in the 11 planting and the feeding of your cattle?</p> <p>12 JUROR NO. 21: I really do wish to be 13 excused for that -- for that reason, yes.</p> <p>14 THE COURT: Okay.</p> <p>15 Counsel, do you wish to inquire further 16 of Juror No. 21?</p> <p>17 MS. WHELAN: No, Your Honor. Thank you. 18 MR. McALLISTER: No, Your Honor.</p> <p>19 THE COURT: All right. Then we'll go ahead 20 and have you excused. I think we're going to 21 excuse you, not necessarily because of what you 22 heard, but because of your request for a hardship, 23 and given the fact that we've got a lot of jurors 24 here, I think it would be a shame to compel you to 25 possibly be here, not necessarily against your</p>
<p style="text-align: center;">64</p> <p>1 will, but in a circumstance that would make it 2 very difficult for you, when there may be a lot of 3 other jurors for whom service on the jury would 4 not pose the same kind of problems.</p> <p>5 JUROR NO. 21: I do appreciate that very 6 much.</p> <p>7 THE COURT: Okay. And in fact, I think 8 rather than have you go back, if you've got your 9 personal belongings, you can probably just go 10 ahead and leave your number on the seat here, and 11 you can go through the door there and just take 12 the elevator, and you will be excused.</p> <p>13 JUROR NO. 21: Thank you --</p> <p>14 THE COURT: You don't have any personal 15 belongings anywhere else?</p> <p>16 JUROR NO. 21: No.</p> <p>17 THE COURT: All right. Thank you very much.</p> <p>18 JUROR NO. 21: Thank you, Your Honor. 19 (Juror 21 not present.)</p> <p>20 THE COURT: We'll bring in Juror No. 52. 21 Counsel, while Juror No. 52 is being 22 brought, just so it's clear, we will bring -- 23 Juror No. 33 will now take the place of Juror 24 No. 21. 25 Do you understand that?</p>	<p style="text-align: center;">65</p> <p>1 MR. McALLISTER: Yes.</p> <p>2 THE COURT: Okay. I think we discussed that 3 at --</p> <p>4 MS. WHELAN: She is going to actually move 5 into her spot?</p> <p>6 THE COURT: Yes. They won't snake up. That 7 way -- the problem is that -- it's how to deal 8 with the alternate pool.</p> <p>9 Does counsel object to that? Do you 10 want to be heard?</p> <p>11 Perhaps we can on a break. 12 (Juror No. 52 present.)</p> <p>13 THE COURT: Again, I apologize for the 14 impersonal way we talk, but I'm going to refer to 15 you as Juror No. 52.</p> <p>16 You've indicated that you heard 17 something about this case from a source other than 18 media. Could you first tell us, what was the 19 source of the information?</p> <p>20 JUROR NO. 52: Email.</p> <p>21 THE COURT: Okay. Someone emailed you?</p> <p>22 JUROR NO. 52: Well, I'll just tell you what 23 happened. I do volunteer work for the Epilepsy 24 Foundation. And we have a golf tournament coming 25 up, and we were supposed to have a luncheon -- or</p>

1 were having a luncheon today.

2 So I emailed the chairman of that
3 committee, who is a good friend of mine, and said,
4 "I have been summoned for Federal District Court
5 jury duty and won't be able to make the luncheon."

6 He emailed back. He said, "I heard" --
7 or I don't know what his, word he used, but
8 that -- "the Steele case, they're selecting jurors
9 for that," and, "Tell them you don't like
10 lawyers." You know, a friend of mine, humor,
11 whatever.

12 But I did not know --

13 THE COURT: Did you tell him that that
14 doesn't work?

15 JUROR NO. 52: Well, the thing is -- I'm
16 just being totally honest with you -- I did not
17 know anything about the Steele case. But when he
18 emailed that to me, I said, "Okay." Then I walk
19 in here, and it's the Steele case.

20 THE COURT: Right.

21 JUROR NO. 52: So --

22 THE COURT: Did --

23 JUROR NO. 52: -- I just thought that needed
24 to be brought up.

25 THE COURT: Sure. And that's exactly what

1 JUROR NO. 52: I guess of being able to
2 erase that -- that thought from my --

3 THE COURT: Okay. At this point, all you've
4 been told, apparently, is what the charges were.

5 JUROR NO. 52: Yeah. I guess that's the
6 thought -- that's the only thought I have, is what
7 the charge is.

8 THE COURT: Okay. And I have described the
9 charges for you here in my first --

10 JUROR NO. 52: You have already said that,
11 so, yeah.

12 THE COURT: Counsel, we get a gremlin in
13 this courtroom from time to time. Unfortunately,
14 if anyone has any cell phones, I may ask you to
15 make sure they are off, not in the buzz -- or the
16 vibrate mode, but actually off. We have done some
17 testing and actually found that some cell phone
18 carriers actually have a signal that interferes
19 with the courtroom audio system.

20 Well, we're going to take a recess here
21 shortly, any way.

22 All right. So given the fact that all
23 you know or what you learned was essentially no
24 more than what I've told you, are you confident
25 you could be fair and impartial in this case?

1 you should have done.

2 Did he -- other than passing on a bad
3 joke, did he give you any other information about
4 the case?

5 JUROR NO. 52: Well, he merely said -- and,
6 you know, I didn't print it. It's gone. But I
7 think he said, "He is being accused of hiring
8 someone to kill his wife."

9 THE COURT: Okay.

10 JUROR NO. 52: I think that's what --

11 THE COURT: Anything else?

12 JUROR NO. 52: Pardon?

13 THE COURT: Is that it?

14 JUROR NO. 52: Yes.

15 THE COURT: Okay. Are you confident you
16 could put that out of your mind, not allow to
17 affect your deliberations as a juror if you were
18 selected in this case?

19 JUROR NO. 52: I don't know -- confident.

20 THE COURT: Well, do you have any
21 reservations?

22 JUROR NO. 52: I do. I have some
23 reservations.

24 THE COURT: Okay. What are the
25 reservations?

1 JUROR NO. 52: Yep.

2 THE COURT: Excuse me?

3 JUROR NO. 52: Yes, sir.

4 THE COURT: All right.

5 Counsel, do you have any questions for
6 Juror No. 52?

7 MS. WHELAN: No, Your Honor. Thank you.

8 MR. McALLISTER: No, Your Honor.

9 THE COURT: All right. Then we'll go ahead
10 and excuse you, and I think Mr. Severson will
11 escort you back down to the fifth floor jury
12 assembly room. And in about ten minutes or so
13 we'll summon all the jurors.

14 This will essentially be our morning
15 break, Counsel, so we'll give you the chance to
16 use the restrooms, as well, and probably reconvene
17 at around 11:00.

18 LAW CLERK: You just meant excuse him from
19 here.

20 THE COURT: Oh, yes. No. You are just
21 excused to go back. No.

22 And when you come back, just take the
23 seat that you were in before. All right?

24 Let's go ahead and have you out, and
25 then I want to talk with counsel very briefly

<p style="text-align: center;">70</p> <p>1 about that issue about replacing jurors, make sure 2 that we're on the same page. 3 (Juror 52 not present.) 4 THE COURT: Counsel, I thought we had 5 understood this, that rather than have everything 6 snake up, which would require everyone to move 7 seats, which would become very cumbersome, it 8 would be far simpler to take -- any juror in the 9 first 32 who is excused for any reason will be 10 replaced by the jurors in the back, starting with 11 Juror No. 33, then 34, and they will take the seat 12 of the excused juror. 13 That's both logistically easier and it 14 keeps the alternate pool intact, so that you know 15 that Jurors 29 through 32 will be the alternate 16 pool, and you will be striking, each of you, one 17 of those with the remaining two serving as our 18 alternates. 19 Any objection? Ms. Whelan. 20 MS. WHELAN: Judge, I don't have an 21 objection. But the reason I made a face and I got 22 confused was, you also excused Juror 30, but we 23 didn't fill her spot. 24 THE COURT: I don't think -- oh, we did. 25 MS. WHELAN: And so I --</p>	<p style="text-align: center;">71</p> <p>1 THE COURT: I'm sorry. I'm sorry. We will 2 now -- we will now, in fact, replace Juror No. 30 3 with Juror - in fact, it will be the opposite 4 order. 5 MS. WHELAN: So, can -- 6 THE COURT: Juror 33 will replace Juror 30. 7 In other words, I'm going to go with 33, 34, 35, 8 in the order that I excused them. 9 The first juror excused was Juror No. 10 30, so Juror No. 33 will take seat No. 30, and 11 Juror No. 34 will take seat No. 21. And then if 12 we excuse Ms. -- or Juror No. 6, then she will be 13 replaced by Juror No. 35. Or, no, actually 35 has 14 already been excused. It will be Juror No. 36. 15 MS. WHELAN: Okay. Thank you. 16 THE COURT: Is that clear? 17 MS. WHELAN: Yes, sir. 18 THE COURT: Clear as mud. 19 All right. Let's take a short recess, 20 and then we'll reconfigure when the jury is 21 brought back in. 22 (Recess.) 23 (Jury present.) 24 THE COURT: For the record, I'll note that 25 all jurors are present.</p>
<p style="text-align: center;">72</p> <p>1 Ladies and gentlemen, just so you know, 2 we'll probably go until about 12:30 and then take 3 a break. As I think has been explained to you, we 4 actually will have some food for you so you can 5 stay in the building and won't have to leave 6 during the lunch break. We'll keep it fairly 7 short, maybe 45 minutes to an hour or less, for a 8 lunch break. 9 Now, in the meantime, let me cover just 10 a couple of items. 11 Juror No. 6, were you able to call and 12 contact your employer and determine whether or not 13 the seminar scheduled for next week is mandatory? 14 JUROR NO. 6: It is mandatory, but I was 15 able to reschedule it for later in the month. 16 THE COURT: Okay. Very good. And so that 17 was the only reason why you were concerned about 18 your ability to serve; is that correct? 19 JUROR NO. 6: That's correct. 20 THE COURT: All right. 21 We have excused now, two jurors, Juror 22 No. 21 has now left, and we had previously excused 23 Juror No. 30 on the front row, or row 1. Let 24 me -- we're going to now do a little musical 25 chairs.</p>	<p style="text-align: center;">73</p> <p>1 I'm going to ask Juror No. 33, if you 2 would take the seat vacated on the front row here. 3 And Juror No. 34, if you'll take the 4 seat in row 2, vacated by Juror 21. I assume you 5 still have your number. 6 All right. Ladies and gentlemen, I'm 7 going to change the ground rules to a certain 8 extent. The questions I'm now going to ask of the 9 panel, I'm going to ask only of rows 1 through 4. 10 Those of you in rows 5 through 9, you won't be 11 expected to respond at this point. 12 It may be we'll excuse jurors and have 13 you called forward to replace them. But at this 14 point, the following questions will only apply to 15 jurors seated in the first four rows here, which 16 will be the jury box plus the two rows of seats in 17 front of the jury box. 18 And we'll start first by having each 19 juror stand in place and answer each of the 20 questions that is on a form, I think that you each 21 have. 22 Now, with regard to those questions, 23 let me give you a little guidance. There is a 24 question there about prior jury service. We only 25 need to know about any case in which you were</p>

1 selected for a jury which actually deliberated to
2 a verdict. If you were simply called down for
3 jury service, that is not of concern and we don't
4 need to know about it. Only if you actually were
5 selected and the jury actually reached a verdict.

6 But if you did sit on a jury in a case,
7 we need to know the details of the case. First,
8 was it a civil case or a criminal case?

9 A civil case would be a dispute between
10 individuals or perhaps corporations, in which one
11 side or the other was seeking a recovery of
12 damages because of some perceived injury. If it
13 is a civil case, just tell us generally what the
14 dispute was and whether the jury awarded damages
15 or not.

16 If it is a criminal case -- that would
17 be a case in which criminal charges are brought by
18 either a federal or state government entity
19 against an individual -- we need to know the
20 nature of the charge and what the verdict was,
21 guilty or not guilty.

22 There is also questions about your
23 children. We only need to know the ages; and
24 then, if they're over 18, what their occupation
25 is, in just a most general way.

1 we'll just proceed in that fashion.

2 Go ahead.

3 JUROR NO. 1: I work for Idaho Sand and
4 Gravel and I'm a grade checker. I'm not married.
5 I don't have any children. I have never been on
6 another jury or any kind of jury. My education is
7 high school, and I have never studied law.

8 THE COURT: All right. Thank you.

9 And then indicate first your juror,
10 even though --

11 JUROR NO. 1: No. 1.

12 THE COURT: -- you're Juror 1. Okay.

13 JUROR NO. 2: I'm Juror No. 2. I am a
14 paraeducator in the middle school setting. My
15 husband is basically a travel agent. We have
16 three children, nine, six, and one. I have never
17 been on a jury. I have 70 credits at the
18 university level, and I have never studied law.

19 THE COURT: Okay. Thank you.

20 JUROR NO. 3: I am Juror No. 3. I am a
21 newly acquainted insurance agent. My husband is a
22 farmer. We don't have any children. I have never
23 been a part of a jury. And I have a high school
24 diploma and I am currently attending college, and
25 I have never studied law.

1 And I think we'll probably have you
2 start, also, by indicating your jury number for
3 the record, to make sure that that's clear.

4 Once we have completed that process for
5 the first four rows here, I will then ask
6 questions of you similar to the ones I have
7 already asked, but they will, of course, take on a
8 different subject matter, and you will again
9 respond by raising your hand. I'll refer to you
10 by number, and then have you indicate how that
11 question applied to you.

12 After that, the attorneys will have as
13 much as a half an hour per side to ask follow-up
14 questions of you. And then after the attorneys
15 have asked those questions, the attorneys will
16 exercise what's called peremptory challenges, and
17 we'll end up with 14 of you left to actually try
18 the case.

19 So that's how we're going to proceed.

20 Let's start with Juror No. 1. Do we
21 have the microphone?

22 We'll go down the fourth row to the
23 end, to Juror No. 8, and then pass the microphone
24 up to Juror No. 15, come back this way to Juror
25 No. 9, and then pass forward to Juror No. 16, and

1 THE COURT: Okay. Thank you.

2 JUROR NO. 4: Juror No. 4. I'm a
3 bookkeeper. My husband works in a paint store. I
4 have two children, 31 and 34. I have never been a
5 member of the jury. Some college, and I have
6 never studied law.

7 THE COURT: Okay. Thank you.

8 JUROR NO. 5: I'm Juror No. 5. I'm a
9 software engineering manager at Hewlett-Packard.
10 I manage engineers and engineering managers.
11 Let's see. My fiancée, she also works at HP.
12 She's an administrative assistant. I'm also
13 divorced for about 11 years, and she works for the
14 Boise School District.

15 I have four children. My youngest is
16 19. He is a student. My youngest daughter is 21,
17 and she works at Sea World in San Diego. My
18 oldest son is a day care provider, and my oldest
19 daughter is a nurse.

20 I haven't been a member of a jury. I
21 have an electrical engineering degree from
22 University of Idaho, bachelor's, and haven't
23 studied law.

24 THE COURT: Okay. Thank you.

25 JUROR NO. 6: I'm Juror No. 6. I'm a

<p style="text-align: right;">78</p> <p>1 registered nurse. I sometimes supervise others in</p> <p>2 the position of charge nurse for my unit. I have</p> <p>3 been divorced for many years. I have an adult</p> <p>4 daughter who is 34. She is currently unemployed.</p> <p>5 I have never been on any jury. I have a</p> <p>6 bachelor's degree, and I have never studied law.</p> <p>7 THE COURT: Okay. Thank you.</p> <p>8 JUROR NO. 7: I'm Juror No. 7. I'm a</p> <p>9 registered cosmetologist. My husband is a store</p> <p>10 director for Albertson's. We have two daughters.</p> <p>11 Their ages are 18 and 20. They're both students</p> <p>12 at college, and they both -- one of them works for</p> <p>13 Gap at the mall and one of them works for Chili's,</p> <p>14 a restaurant.</p> <p>15 I have been on two different juries.</p> <p>16 I'm not sure if they -- I think they were just</p> <p>17 district -- I don't know --</p> <p>18 THE COURT: Where was the court held?</p> <p>19 JUROR NO. 7: Just here in Boise.</p> <p>20 THE COURT: Here in Boise.</p> <p>21 JUROR NO. 7: The state house, I think.</p> <p>22 THE COURT: I'm sorry?</p> <p>23 JUROR NO. 7: Just over here. I'm not sure</p> <p>24 where it was.</p> <p>25 THE COURT: Was it --</p>	<p style="text-align: right;">79</p> <p>1 JUROR NO. 7: It was in 199- --</p> <p>2 THE COURT: It would be a state court</p> <p>3 proceeding?</p> <p>4 JUROR NO. 7: Yes. I think so.</p> <p>5 THE COURT: Okay.</p> <p>6 JUROR NO. 7: Two different ones. One was</p> <p>7 in '92, and I'm not sure the date, the year of the</p> <p>8 other one.</p> <p>9 THE COURT: Was it in the old courthouse?</p> <p>10 JUROR NO. 7: Yes. Yes.</p> <p>11 THE COURT: Okay. Not the new one?</p> <p>12 JUROR NO. 7: Right.</p> <p>13 THE COURT: All right. Were they both</p> <p>14 civil, one civil, one criminal? Do you recall?</p> <p>15 JUROR NO. 7: One was a lawsuit.</p> <p>16 THE COURT: In which one party was trying to</p> <p>17 recover damages?</p> <p>18 JUROR NO. 7: It was a car wreck, happened</p> <p>19 with a Simplot truck, and the family was suing</p> <p>20 Simplot.</p> <p>21 THE COURT: And what was the verdict?</p> <p>22 JUROR NO. 7: It was -- we didn't -- we</p> <p>23 didn't --</p> <p>24 THE COURT: Were damages awarded?</p> <p>25 JUROR NO. 7: No.</p>
<p style="text-align: right;">80</p> <p>1 THE COURT: All right.</p> <p>2 JUROR NO. 7: A person died and the family</p> <p>3 just -- they wanted money from Simplot, and we</p> <p>4 didn't let it happen.</p> <p>5 THE COURT: Okay.</p> <p>6 JUROR NO. 7: So, the other --</p> <p>7 THE COURT: And then the second one was?</p> <p>8 JUROR NO. 7: It was a person that was</p> <p>9 caught doing lewd conduct. And he had been on</p> <p>10 trial several times for the same thing. And so</p> <p>11 we -- we had to decide whether he needed to be put</p> <p>12 away for a while. It was -- he had so many</p> <p>13 offenses, so, and we did -- he was guilty.</p> <p>14 THE COURT: Okay.</p> <p>15 JUROR NO. 7: My education is cosmetology</p> <p>16 school, and I have never studied law.</p> <p>17 THE COURT: All right. Thank you.</p> <p>18 JUROR NO. 8: Juror No. 8. I'm actually</p> <p>19 retired and I do part-time, drive a semi. I'm</p> <p>20 divorced. And my spouse used to work at -- as a</p> <p>21 cashier at Long John Silver's. I have one</p> <p>22 daughter that's 25. She is kind of a house mom, I</p> <p>23 guess. Never been a member of a jury or a juror.</p> <p>24 And I have an associate's degree in applied</p> <p>25 science, and I have never studied law.</p>	<p style="text-align: right;">81</p> <p>1 THE COURT: All right. Thank you very much.</p> <p>2 JUROR NO. 15: I'm Juror No. 15. I work for</p> <p>3 a home health agency, to do primary care for my</p> <p>4 mom. I'm also a stay-at-home mom, outside of</p> <p>5 that. My husband currently works as a computer</p> <p>6 programmer person.</p> <p>7 We have been married a long time, and</p> <p>8 we have five children, 37-year-old, a 35-year-old,</p> <p>9 two 12-year-olds and a 10-year-old, and plus we do</p> <p>10 foster care for other children in our home. I</p> <p>11 have never been on a jury --</p> <p>12 THE COURT: The 37- and 35-year-old, how are</p> <p>13 they employed?</p> <p>14 JUROR NO. 15: I'm sorry, sir. My daughter</p> <p>15 is a stay-at-home mom, and my son is in the auto</p> <p>16 painting business. He does like all of this fancy</p> <p>17 artwork on sports cars and stuff.</p> <p>18 My education, I have some college and</p> <p>19 no, I have never studied law.</p> <p>20 THE COURT: All right. Thank you.</p> <p>21 JUROR NO. 14: I'm Juror No. 14. I am an</p> <p>22 office manager at my husband's place of</p> <p>23 employment -- not place of employment -- his</p> <p>24 business. He is in IT. I have two children, 17</p> <p>25 and 13. I have been a member of a jury. I</p>

<p style="text-align: right;">82</p> <p>1 believe it was in the municipal -- it was a civil 2 suit.</p> <p>3 THE COURT: Was it here in -- 4 JUROR NO. 14: Yes.</p> <p>5 THE COURT: -- Idaho? 6 JUROR NO. 14: Yeah. And damages were 7 awarded.</p> <p>8 I have a bachelor's in art, and I have 9 never studied law.</p> <p>10 THE COURT: Okay. Thank you very much. 11 JUROR NO. 13: I'm Juror No. 13, and I am an 12 event coordinator, facility manager, and I also 13 oversee an office. And I do supervise others. My 14 spouse is currently working for the City of Nampa. 15 And we have one child, who is 21, who works for 16 the City of Boise and also for a fitness club. 17 And I have not been a member of a jury. And my 18 education is high school and additional education 19 for the field that I'm in currently, and I have 20 not studied law.</p> <p>21 THE COURT: All right. Thank you. 22 JUROR NO. 12: I'm Juror No. 12. I've 23 always been a homemaker. I'm a widow. I have 24 never been on a jury. I have a high school 25 education, and I have never studied law.</p>	<p style="text-align: right;">83</p> <p>1 THE COURT: Thank you. 2 JUROR NO. 11: I'm Juror No. 11. My 3 former -- I'm retired. I have a part-time job as 4 a buckaroo for the ranchers in -- our neighboring 5 ranchers in Owyhee County. My former major 6 occupation from which I retired was planning and 7 zoning administrator for Owyhee County for 8 approximately ten years. I did supervise two 9 other people in that job. And after that I had 10 two part-time jobs. I transcribed court 11 proceedings, district court, municipal court, 12 grand jury.</p> <p>13 THE COURT: That would be all for state 14 court; correct? 15 JUROR NO. 11: I transcribed -- I worked for 16 a transcribing company who works out of Nampa, and 17 I was given different court cases. 18 THE COURT: So you wouldn't necessarily know 19 which court they come from? 20 JUROR NO. 11: One was a state -- a U.S. 21 District Court in Nevada. One was a hearing, I 22 believe it was in your court. I don't remember 23 what the case was. I also did civic -- or pardon 24 me. I'm kind of nervous. 25 THE COURT: That's fine.</p>
<p style="text-align: right;">84</p> <p>1 JUROR NO. 11: Cases before grand juries in 2 Canyon County and Ada County.</p> <p>3 THE COURT: Okay. The case that was before 4 me, do you recall whether it was a civil or a 5 criminal, or do you recall anything about it? 6 JUROR NO. 11: It was a hearing. I don't 7 remember what it was about. It was relatively 8 short.</p> <p>9 THE COURT: Okay. 10 (Pause.) 11 JUROR NO. 11: I gained no prejudice against 12 you, Your Honor. 13 (Laughter.) 14 THE COURT: I was trying to figure out how 15 to ask the question without being rude. 16 (Laughter.) 17 THE COURT: All right. Well, let's just 18 move on. Go ahead and finish your responses. 19 JUROR NO. 11: My spouse is retired, also. 20 His former business was he was a specialist in 21 brakes, antique brakes and older brake systems. 22 He is retired now, but he also -- we buckaroo 23 together for ranchers, our neighboring ranchers. 24 I have one child. He is 35 years old. 25 He works for a company who does transitional</p>	<p style="text-align: right;">85</p> <p>1 services for people who have been -- or young 2 people who have been released from juvenile 3 detention or people who have been in foster care 4 but are now eligible to be on their own. He 5 tutors, and they provide services like life 6 skills, finding jobs, that sort of thing.</p> <p>7 I have been a member of a jury once. 8 It was in Owyhee County. It was a district court. 9 It was a criminal case, child abuse case. The 10 defendant was not guilty.</p> <p>11 I have a BA in education in English 12 from the San Jose State University. In 13 conjunction with my planning and zoning job, I had 14 lots of legal seminars and property cases and 15 related -- oh, rights-of-way cases, property 16 cases, in general.</p> <p>17 THE COURT: Condemnation, zoning, land use 18 planning, all of that? 19 JUROR NO. 11: Yes. 20 THE COURT: All right. Thank you. 21 JUROR NO. 10: Juror No. 10. I was -- I'm 22 currently retired. I was a manager in 23 construction for most of my career, and did 24 supervise others most of that time. My wife was 25 mainly a homemaker and raised our children. She</p>

<p style="text-align: center;">86</p> <p>1 did have a degree in education and taught school 2 for a few years.</p> <p>3 We have two children. The oldest is 4 44. He is a physics professor. The daughter is 5 42 and she is a business manager for a video 6 production company. I have never been a member of 7 a jury. Yeah, that's correct. My education, I 8 have a degree in civil engineering, and I have 9 never studied law.</p> <p>10 THE COURT: Okay. Thank you very much.</p> <p>11 JUROR NO. 9: Juror No. 9. I own 12 businesses, one being Western Idaho Cabinets, 13 Framed Legacy, and M&M Real Estate. Yes, I do 14 supervise others. My wife is a -- was a 15 schoolteacher, is a homemaker now.</p> <p>16 I have seven children: age 22, she 17 is -- her and her husband have an organic farm in 18 Eagle; 21 and 18, they're full-time students; and 19 then -- this is a test -- 15, 9, 8, and 4.</p> <p>20 I have not been a member of a jury. I 21 have a four-year degree in information systems. 22 And the only thing I have studied is business law 23 in college.</p> <p>24 THE COURT: Okay. Thank you.</p> <p>25 We'll go to Juror No. 16, I believe.</p>	<p style="text-align: center;">87</p> <p>1 Is that correct?</p> <p>2 JUROR NO. 16: Yes. I'm Juror 16. I'm a 3 project applications lead in an IT department of a 4 hospital. I am divorced. My ex-husband is an 5 electrician. I have two children, 10 and 5. I 6 have never been a member of a jury. I have a 7 bachelor's degree in psychology and a master's 8 degree in organizational leadership, and I have 9 never studied law.</p> <p>10 THE COURT: Okay. Thank you.</p> <p>11 JUROR NO. 17: Juror No. 17. I am 12 disability-retired from the Post Office. My 13 husband is an IT manager. I have three children: 14 ages 31, she is a homemaker; 29 and 27, they are 15 truck drivers. I've never been a member of the 16 jury. And I have some college, and I have never 17 studied law.</p> <p>18 THE COURT: Okay. Thank you.</p> <p>19 JUROR NO. 18: Juror No. 18. I'm a planning 20 and zoning receptionist for Payette County. I 21 have four children: a 24-year-old that works for 22 Internet Truckstop; 22-year-old that's a butcher 23 for Kiezer Oregon; and a child [sic] that is 12 24 and 11, students.</p> <p>25 Never been a member of a grand jury,</p>
<p style="text-align: center;">88</p> <p>1 municipal, federal court. I'm nervous.</p> <p>2 THE COURT: That's fine.</p> <p>3 JUROR NO. 18: I have never been a juror 4 before a case, criminal or civil.</p> <p>5 I have a high school diploma, and never 6 studied law.</p> <p>7 THE COURT: All right. Thank you very much.</p> <p>8 JUROR NO. 19: I am Juror No. 19. I work 9 for Apple Computers doing technical support, and I 10 do some supervision, as well. I am divorced, who, 11 he has been unemployed for quite some time. I 12 have one child who is 14. Never been on a jury 13 that's reached a verdict. There was a mistrial 14 that I was on. Education is some college, and I 15 have never studied law.</p> <p>16 THE COURT: The mistrial, was that -- did 17 that happen during the trial or after the jury 18 started --</p> <p>19 JUROR NO. 19: It was --</p> <p>20 THE COURT: -- deliberation?</p> <p>21 JUROR NO. 19: -- during the trial. The 22 first witness came and there was some slander or 23 something like that, that --</p> <p>24 THE COURT: And the judge declared a 25 mistrial?</p>	<p style="text-align: center;">89</p> <p>1 JUROR NO. 19: Yeah.</p> <p>2 THE COURT: All right. Thank you.</p> <p>3 JUROR NO. 20: I'm Jury -- Juror No. 20. 4 And my occupation, I am a writer. I write history 5 books on ski areas. And I do not supervise 6 others. My spouse's occupation is, he is a 7 partner in a private law firm.</p> <p>8 I have three children. My 29-year-old 9 daughter is an attorney in Alaska, working for a 10 private law firm. My 25-year-old daughter is in 11 business in Chicago. And my 21-year-old daughter 12 is graduating from college and will be a teacher 13 starting this summer.</p> <p>14 I have been a member of a jury. It was 15 over 30 years ago, and it was at the Ada County 16 Courthouse, and it was a criminal case in which a 17 young man was found guilty due to drug possession, 18 and I think maybe drug dealing.</p> <p>19 I have a bachelor's degree, a 20 journalism degree from the University of Denver, 21 and some postgraduate work; also attended art 22 school. And I have never studied law, other than 23 a class on journalism and the law.</p> <p>24 THE COURT: Your husband is with a private 25 law firm. Which law firm?</p>

<p style="text-align: center;">90</p> <p>1 JUROR NO. 20: Hawley Troxell. He is not a 2 trial attorney.</p> <p>3 THE COURT: Okay. And that was going to be 4 my follow-up question. I know your husband. And 5 I was just going to establish, he doesn't do any 6 criminal work, no trial work; correct?</p> <p>7 JUROR NO. 20: Well, he basically retired 8 as -- well, he no longer does trial work, although 9 I do know he is doing a deposition tomorrow to 10 fill in for somebody. But that's the extent. He 11 does not do trial work anymore.</p> <p>12 THE COURT: But regardless, your sense of 13 his work does not involve cases like this; 14 correct?</p> <p>15 JUROR NO. 20: Correct.</p> <p>16 THE COURT: All right. Okay. Thank you.</p> <p>17 JUROR NO. 34: Jury [sic] No. 34. My 18 occupation is I am a maintenance carpenter for 19 Boise Independent School District. Occasionally I 20 supervise others. My wife is a purchasing agent 21 for Ada County. I have one daughter, who 22 is -- works for herself as a horse trainer.</p> <p>23 I have been on a jury in Ada County in 24 about, I think it was '92, '93. It was a civil 25 case, and there was a judgment awarded.</p>	<p style="text-align: center;">91</p> <p>1 THE COURT: What was the claim, just 2 generally? Do you recall? Was it a car accident?</p> <p>3 JUROR NO. 34: It was a car accident, sir.</p> <p>4 THE COURT: Okay. And damages were awarded?</p> <p>5 JUROR NO. 34: Yes, sir.</p> <p>6 My education is high school, and I have 7 never studied law.</p> <p>8 THE COURT: All right. Thank you.</p> <p>9 JUROR NO. 22: I'm Juror No. 22. I'm a 10 business owner and retired home builder, and I do 11 supervise people. My wife works in our businesses 12 and does our accounting for us.</p> <p>13 I have two daughters; the oldest, 40, 14 she works for First Data Corporation, is an 15 international debit management company. And my 16 youngest daughter is 34 and she works for Simplot 17 Company.</p> <p>18 I have been a member of a jury before. 19 It was a district court. It was a drug case, and 20 the gentleman was guilty.</p> <p>21 I have a bachelor's degree, and I have 22 never studied law.</p> <p>23 THE COURT: All right. Thank you very much.</p> <p>24 JUROR NO. 23: Juror No. 23. I'm an 25 educator at Kuna High School. My wife is a</p>
<p style="text-align: center;">92</p> <p>1 homemaker. We have three children, six, four, and 2 two. I have not been on a jury. I have a 3 bachelor's, master's, and I'm in a doctoral 4 program right now. And I have not studied law.</p> <p>5 THE COURT: What's your doctorate program 6 in?</p> <p>7 JUROR NO. 23: Education, also.</p> <p>8 THE COURT: All right. Thank you.</p> <p>9 JUROR NO. 24: I'm Juror -- Juror No. 24. I 10 am a licensed psychologist in private practice. 11 My practice is limited at this point to forensic 12 matters, mostly competency and commitment. My 13 wife is retired. She was formerly the director 14 for the State Council for the Deaf and Hard of 15 Hearing.</p> <p>16 We have three children, 49, 50, and 52. 17 The boy here is a medic out at the state prison, 18 and the daughters are both office managers.</p> <p>19 I have not been on a jury. My 20 education is, I have bachelor's degrees in 21 psychology and in business management. I have a 22 master's degree in human resource management, and 23 a Ph.D. in psychology. I have had three law 24 courses over the period of time.</p> <p>25 THE COURT: Let me -- I'm going to follow up</p>	<p style="text-align: center;">93</p> <p>1 with you with just a couple questions. You said a 2 lot of your work is in forensics; is that correct?</p> <p>3 Forensic psychology?</p> <p>4 JUROR NO. 24: All of my practice at this 5 point is, yes.</p> <p>6 THE COURT: So you --</p> <p>7 JUROR NO. 24: I'm a designated examiner for 8 the state.</p> <p>9 THE COURT: Okay.</p> <p>10 JUROR NO. 24: And I do competency and 11 commitment hearings.</p> <p>12 THE COURT: Okay. And it's primarily or 13 almost exclusively for the State of Idaho or their 14 courts?</p> <p>15 JUROR NO. 24: For the municipal courts, 16 primarily District 3 and District 4. I have 17 contracts with most of the counties in the 18 surrounding area. I have done that for 11 years, 19 and have done about 1,200 DEs, and I'm in court 20 probably 75 times a year over the last 10 years.</p> <p>21 THE COURT: I don't know -- I truly don't 22 know, but if there were testimony that 23 were -- that was to, in fact, perhaps one side or 24 the other were to call a witness who testified 25 concerning psychology, one of the</p>

1 concerns -- would you have some difficulty, kind
2 of deciding the case based upon the testimony
3 presented, realizing that you have some background
4 in the area, you may have your own opinions on it?

5 The concern -- actually, one of the
6 judges here in this court was called as a juror in
7 state court, for like an 8- or 10-week trial, a
8 criminal matter. And why the judge was called, I
9 don't know. I mean, the attorneys decided that
10 that judge would be a good juror, and so that
11 judge served.

12 But in talking to him later, the
13 challenge that he had was to sit back and not
14 allow his legal training to filter into the
15 courtroom, so that he was offering views about
16 what the law should be or legal analysis of
17 witnesses, things of that sort.

18 You would have the same challenge, to
19 some extent, if, indeed, there is an issue
20 injected into the case that might raise issues
21 concerning psychology or psychiatry.

22 Do you have some discomfort sitting on
23 a jury where that might become an issue in the
24 case?

25 JUROR NO. 24: I don't have any discomfort.

1 fair and impartial, then I need you to state it as
2 such.

3 Are you confident you can be fair and
4 impartial?

5 JUROR NO. 24: I am confident. I am
6 confident that I could be fair and impartial.

7 THE COURT: Okay. Counsel may follow up
8 with you on this. You know, it raises an
9 interesting issue to have a forensic psychologist
10 sitting on a jury. Now, whether that -- I'll let
11 them do what they want to do with it, but it does
12 raise an issue generally. So we'll leave it at
13 that. All right. Thank you.

14 Go ahead.

15 JUROR NO. 25: I'm Juror No. 25. I am a
16 corporate travel agent. I have been divorced for
17 20 years. I don't know what he does. I don't
18 have any children. I have never been on a jury.
19 High school education and travel school, and I
20 have never studied law.

21 THE COURT: All right. Thank you.

22 JUROR NO. 32: I'm Juror No. 32. I'm an
23 engraver and sign maker. My husband is a
24 electrical coordinator. I have two children. A
25 son, 33; he builds Wii games. I have a daughter,

1 And while I haven't been in that situation, I
2 believe that I could be fair and impartial. I --
3 and I believe I would leave it at that. I think
4 that I can be fair and impartial. However, you
5 are correct that with the experiences I've had, I
6 do have some knowledge in those areas.

7 THE COURT: Do you think you could decide
8 the case based upon the evidence presented, and
9 not essentially become a witness, one side or the
10 other, because your views and your experience
11 might be different from what the witness testifies
12 to?

13 JUROR NO. 24: I think I could.

14 THE COURT: Okay. Let me -- you
15 unfortunately become my object lesson for the day,
16 when you say "I think I can."

17 We often in public will make statements
18 like that. You know, "Well, I think I'm going to
19 head to Bruneau today." Well, you're not really
20 unsure. You're going to Bruneau, but you just say
21 it that way. And sometimes we do that.

22 So I have to ask jurors that if you
23 really have doubt about what you're saying, that
24 you can use words like, "I think, but I'm not
25 sure." But if you're quite confident you can be

1 32; she has an insurance office and is going to
2 law school in Nevada. I was on a jury last year
3 for a DUI. We found her not guilty because they
4 didn't have the evidence. I have a high school
5 diploma and I have never studied law.

6 THE COURT: Before you sit down, let me just
7 ask, first of all, an electric coordinator, can
8 you kind of elaborate what that is?

9 JUROR NO. 32: Oh, that's -- boy, you know
10 more than I do on that one. He is a electrical
11 coordinator at Micron. That's all I can tell you.

12 THE COURT: Okay. I have this image of
13 somebody trying to coordinate streams of
14 electricity, which would be a difficult task.

15 JUROR NO. 32: That's basically what he
16 does.

17 THE COURT: All right. Then it's apropos.

18 You also commented -- you have -- was
19 it a son or daughter who is in law school?

20 JUROR NO. 32: I have a daughter, and I
21 believe she is in law school, yes.

22 THE COURT: In Nevada, I assume that's at
23 UNLV, or do you know?

24 JUROR NO. 32: I believe so.

25 THE COURT: Do you know if she -- but she

<p style="text-align: center;">98</p> <p>1 has not practiced law or done any internships or 2 clinicals?</p> <p>3 JUROR NO. 32: I truly cannot tell you. I 4 don't know.</p> <p>5 THE COURT: That's probably all I need to 6 know, then. If you don't know, then I don't need 7 to ask further.</p> <p>8 JUROR NO. 32: I don't know.</p> <p>9 THE COURT: All right. Thank you.</p> <p>10 JUROR NO. 32: Thank you.</p> <p>11 JUROR NO. 31: I'm Juror No. 31. I am a 12 dietary aide and head chef. And I have three 13 children. I have not been on a jury before. My 14 high school education is -- well, high school. 15 And I have never studied law.</p> <p>16 THE COURT: The ages of your children?</p> <p>17 JUROR NO. 31: Fifteen, seven, and six.</p> <p>18 JUROR NO. 33: I'm Juror No. 33. I'm an 19 electronic technician. I am divorced. My ex-wife 20 is a child care provider. I have three children: 21 a 27-year-old daughter that is a veterinary 22 technician, a 25-year-old daughter that is in 23 college, and a 25-year-old son -- no -- yes, 24 25-year-old son that is a graduate student. I 25 have never been on a jury. My education, I have</p>	<p style="text-align: center;">99</p> <p>1 an associate's degree in laboratory technology. I 2 got my electronics training in the Navy. And I 3 have never studied law.</p> <p>4 THE COURT: All right. Thank you.</p> <p>5 JUROR NO. 29: I'm Juror 29. I'm a sales 6 rep for International Food Company. I do not 7 currently supervise others, but I have in the 8 past. My ex-husband was a fuel attendant for a 9 truck stop. I have one child. She is 25 and she 10 is a hand solderer for an electrical company.</p> <p>11 I have never been on a jury. I have a 12 high school education, and I have never studied 13 law.</p> <p>14 THE COURT: Okay. Thank you.</p> <p>15 JUROR NO. 28: Juror No. 28. I'm a retired 16 special agent for the U.S. Department of 17 Transportation. My wife -- and I have supervised 18 people in the past. My wife is retired from 19 Hewlett-Packard as a payroll clerk.</p> <p>20 I have a stepdaughter who is 46. She 21 is an occupational therapist. We have a son who 22 is 43, who works for the Department of Defense 23 down in Fort Lewis, Washington. We have a 24 daughter who is 41. She is a student and a 25 server. And we have a son who is 30, who is a bar</p>
<p style="text-align: center;">100</p> <p>1 manager.</p> <p>2 I have never been a member of a jury.</p> <p>3 I have a bachelor's in business degree with 4 post-education work. And I have studied business 5 law, requirements for the bachelor's in business, 6 and also some administrative law.</p> <p>7 THE COURT: Before you sit down, you 8 indicated you were a special agent for the 9 Department of Transportation before you retired?</p> <p>10 JUROR NO. 28: Yes, sir.</p> <p>11 THE COURT: Now, "special agent" suggests to 12 me that you were, in essence, in law enforcement; 13 is that --</p> <p>14 JUROR NO. 28: My badge number is US0763, 15 Your Honor.</p> <p>16 THE COURT: I'm assuming that clinches the 17 deal, then, that you were, in fact, in law 18 enforcement.</p> <p>19 Just so we're clear, could you describe 20 just generally what kind of law activities you 21 were engaged in?</p> <p>22 JUROR NO. 28: It was for the Federal Motor 23 Carrier Safety Administration, in enforcement of 24 49 CFR, transportation -- transportation 25 regulations for mostly truck drivers.</p>	<p style="text-align: center;">101</p> <p>1 THE COURT: Okay. So inspections of, like 2 their logs, their books, their equipment?</p> <p>3 JUROR NO. 28: Yes.</p> <p>4 THE COURT: All of the above?</p> <p>5 JUROR NO. 28: Corporate audits, all of the 6 above. So everything that had to do with the 7 trucking industry, all the way from the front 8 office to where the rubber hits the road.</p> <p>9 THE COURT: Okay. The issue that comes to 10 my mind would be that you're, obviously, being in 11 law enforcement, if there were to be testimony, 12 say, from someone from the FBI or any other 13 federal investigative agency, that you may have a 14 sense that because they're in law enforcement and 15 you're in law enforcement, that that may tend to 16 cause you to give a certain amount of weight to 17 their testimony that you might not to someone 18 else's.</p> <p>19 Is there any concern in that regard?</p> <p>20 JUROR NO. 28: I don't -- I don't believe 21 so, Your Honor. No.</p> <p>22 THE COURT: Are you confident that you could 23 be fair and impartial?</p> <p>24 JUROR NO. 28: I'm confident I can be fair 25 and impartial, Your Honor.</p>

<p style="text-align: center;">102</p> <p>1 THE COURT: And decide this case solely on 2 the evidence presented here in the courtroom, and 3 not allow any of your personal experiences or 4 background to affect that decision? 5 JUROR NO. 28: Yes, Your Honor. I'm 6 confident. 7 THE COURT: All right. Thank you. 8 JUROR NO. 27: I'm Juror 27. I am an 9 educator. I teach junior high students. I 10 supervise many. I am divorced. My former husband 11 works at Hewlett-Packard in the mechanical and 12 electrical work. 13 I have a domestic partner for the past 14 10, 12 years, and he is an audio engineer at the 15 Morrison Center on Boise State campus. I have two 16 daughters, 24 and 21. The 24-year-old works in 17 the title industry. The 21-year-old is in food 18 service. 19 I have never been a member of a jury. 20 My education is a BFA in art education and 21 postgraduate studies. 22 THE COURT: Okay. Thank you. 23 JUROR NO. 26: I'm Juror No. 26. I am a 24 meat department manager. I do supervise other 25 people. My spouse works for the Rehab Authority.</p>	<p style="text-align: center;">103</p> <p>1 I have two children, 13 and 15. I have never been 2 a part of a jury. I have a high school education 3 and I have not studied law. 4 THE COURT: All right. Thank you very much. 5 All right. Ladies and gentlemen, I am 6 now going to ask you a series of questions, and as 7 I indicated earlier, you will respond by raising 8 your hand, and then I will come to you 9 individually. 10 We'll need to keep that microphone 11 handy so that we can pass that to the juror. The 12 acoustics are fairly good in this courtroom, but 13 to assist the court reporter I think it's very 14 helpful if we have you on the microphone. 15 It may seem like days ago, but it's 16 just a few hours ago, I introduced you to the 17 attorneys and the parties. So my first question 18 has to do with any connection you may have with 19 the attorneys. 20 Is there anyone on the panel who knows 21 or has had any business dealings with any of the 22 attorneys in this case? And that would include 23 Ms. Whelan and Mr. Haws for the United States, and 24 Mr. McAllister and Mr. Amendola for the defense. 25 Is there anyone on the panel -- I am</p>
<p style="text-align: center;">104</p> <p>1 only now talking about the, I think, 32 jurors in 2 rows 1 through 4, anyone who know of them, knew 3 their name in any respect? 4 Okay. Again, I see no response. 5 Is there anyone on the panel who has 6 had notable dealings, that is, dealings beyond 7 just knowing the existence of the office, with the 8 U.S. Attorney's Office? 9 Now, that's the office in which 10 Ms. Whelan and Mr. Haws work. It includes three 11 attorneys in Coeur d'Alene, three attorneys in 12 Pocatello, and 20-some-odd attorneys here in 13 Boise. Ms. Wendy Olson is the sitting 14 United States attorney who oversees that office. 15 Anyone who has had extensive dealings 16 or notable dealings of any kind with the U.S. 17 Attorney's Office, here in the District of Idaho 18 or elsewhere? 19 Okay. I see no response. 20 The -- the court has already described 21 for you the allegations of -- in this matter, that 22 they involve Mr. Steele's wife and mother-in-law. 23 Mr. Steele's wife's name is Cyndi Steele. His 24 mother-in-law's name -- and I hope I have this 25 right -- Jacquanette -- that's spelled</p>	<p style="text-align: center;">105</p> <p>1 J-a-q-u-e-n-e-t-t-e [sic], last name Kunzman, 2 K-u-n-z-m-a-n. 3 Anyone who, prior to entering the 4 courtroom today, feels you may have known 5 Ms. Steele or Ms. Kunzman, either by reputation 6 or, really, in any way? Anyone? 7 Okay. Again, I see no response. 8 I'm going to list all of the witnesses 9 who may testify. I've asked counsel to give me a 10 list of everyone they think might possibly 11 testify. It may include some who ultimately will 12 not testify. 13 I will ask you, as I read this list, to 14 listen carefully. Make a mental note of any of 15 these names that sound familiar to you. And then 16 I'll come back and you can raise your hand, and 17 we'll first of all determine whether it's the same 18 person, and second, how you know them, and then 19 finally, I'll ask a follow-up question about that. 20 They include Special Agent Mike 21 Sotka -- I hope I'm pronouncing that correctly -- 22 S-o-t-k-a; Larry Fairfax; Mark Strangio; Frank 23 Heckendorn; Jess Spike; Eric Clemensen; Brad Cox; 24 Cyndi Steele; Kevin Mitchell; Rex Steele; Josh 25 Young; Mike Kittilstved --</p>

<p style="text-align: center;">106</p> <p>1 MR. HAWS: Kittilstved.</p> <p>2 THE COURT: Kittilstved. All right.</p> <p>3 Mark Fox; Christopher Todd Smith;</p> <p>4 Brennan Phillips; Brent Smith; Tatyana Loginova;</p> <p>5 Deborah Baker; Garland Lewis; Ken Marr, spelled</p> <p>6 M-a-r-r; Dave Snyder; Atilla Mathe, spelled</p> <p>7 M-a-t-h-e; Alan Dryer; Elaine Ladd; Robert Engle,</p> <p>8 E-n-g-l-e; Don Robinson; John Jermain, spelled</p> <p>9 J-e-r-m-a-i-n; Dr. George Papcun; Shelley L.</p> <p>10 Chambers-Fox; Robert Burnett, III; Dennis Cooke;</p> <p>11 Robert Farr; Bob Stoll, spelled S-t-o-l-l; Deborah</p> <p>12 Sharon; Tammy Krutz or Krutz, K-r-u-t-z; Jeff</p> <p>13 Miller; Billie Cochran; Al Banks; Wesley Hoyt; Tim</p> <p>14 Schwering; Edgar Steele; Kelsie Steele; and Daryl</p> <p>15 Hollingsworth.</p> <p>16 Is there anyone on the panel who feels</p> <p>17 that you may know of any of those individuals who</p> <p>18 I have listed as possible witnesses in this case?</p> <p>19 Okay. Let's start on the front row</p> <p>20 with Juror No. 28.</p> <p>21 JUROR NO. 28: Are these individuals special</p> <p>22 agents with the FBI?</p> <p>23 THE COURT: Some of them were. I probably</p> <p>24 should have indicated which, but I chose not to.</p> <p>25 JUROR NO. 28: If Stites [phonetics] and</p>	<p style="text-align: center;">107</p> <p>1 Stoll work for the State of Idaho ISP, I know</p> <p>2 those individuals. And I have worked --</p> <p>3 THE COURT: Stoll is a Dr. Bob Stoll.</p> <p>4 MR. HAWS: Spikes works for ISP, Your Honor.</p> <p>5 THE COURT: Oh, I'm sorry. I misheard you.</p> <p>6 You said Spike?</p> <p>7 JUROR NO. 28: Stites. Stites.</p> <p>8 MR. HAWS: Oh. Are we talking about -- I</p> <p>9 didn't hear you.</p> <p>10 JUROR NO. 28: He works for the ISP out of</p> <p>11 Coeur d'Alene District.</p> <p>12 MR. HAWS: Say the name again.</p> <p>13 JUROR NO. 28: Stites, I believe.</p> <p>14 THE COURT: I need to find the name. Give</p> <p>15 me a moment here.</p> <p>16 JUROR NO. 28: Stolls.</p> <p>17 THE COURT: There was a Dr. Bob Stoll, and</p> <p>18 then there was a Trooper Jess Spike. But I don't</p> <p>19 know that I see --</p> <p>20 JUROR NO. 28: No, I don't know them,</p> <p>21 Your Honor.</p> <p>22 THE COURT: Okay. All right. Very good.</p> <p>23 Anyone else in row 1?</p> <p>24 Okay. Row 2, anyone?</p> <p>25 Row 3? All right, Juror No. --</p>
<p style="text-align: center;">108</p> <p>1 JUROR NO. 11: Eleven.</p> <p>2 THE COURT: -- 11. Let's pass the</p> <p>3 microphone back, if you would.</p> <p>4 JUROR NO. 11: Don Robinson is a very common</p> <p>5 name, if I knew the area which he lived in, or</p> <p>6 what his occupation was --</p> <p>7 THE COURT: Would you tell me, the Robinson</p> <p>8 that you know, where -- is it Don? I think it's</p> <p>9 Don Robinson.</p> <p>10 JUROR NO. 11: Don Robinson. But he lives</p> <p>11 in the Homedale area.</p> <p>12 THE COURT: Counsel?</p> <p>13 MS. WHELAN: No, Your Honor.</p> <p>14 THE COURT: Apparently it's not the same</p> <p>15 individual. Okay.</p> <p>16 And that's what we need to do, because</p> <p>17 they are very common names.</p> <p>18 Anyone else in row 3?</p> <p>19 Okay. Row 4? It looks like we have a</p> <p>20 couple. Juror No. 6.</p> <p>21 JUROR NO. 6: One of the names was a</p> <p>22 Christopher Todd Smith, and I grew up with a Chris</p> <p>23 Smith who was in Caldwell, and I believe is in law</p> <p>24 enforcement. I don't know the middle name.</p> <p>25 THE COURT: There is a Christopher Todd</p>	<p style="text-align: center;">109</p> <p>1 Smith, who I think is an agent with the FBI.</p> <p>2 MS. WHELAN: He is, but he grew up in</p> <p>3 Tennessee.</p> <p>4 THE COURT: Okay.</p> <p>5 JUROR NO. 6: That would not be the same</p> <p>6 person.</p> <p>7 THE COURT: All right. Very good.</p> <p>8 Juror No. 7, I think you raised your</p> <p>9 hand.</p> <p>10 JUROR NO. 7: Rex Steele. I believe he is a</p> <p>11 cousin to one of my really good friends, Georgia</p> <p>12 Steele. I know -- I don't know him personally. I</p> <p>13 just recognize the name.</p> <p>14 THE COURT: Well, assuming that it is the</p> <p>15 same individual, may we assume that you would not</p> <p>16 know that person in such a way that it might cause</p> <p>17 you to give that person's testimony more or less</p> <p>18 weight than you would another witness?</p> <p>19 JUROR NO. 7: No.</p> <p>20 THE COURT: And you're confident that that</p> <p>21 wouldn't affect your --</p> <p>22 JUROR NO. 7: Yes, Your Honor.</p> <p>23 THE COURT: -- in any way? Thank you.</p> <p>24 Anyone else? Okay. I see no other</p> <p>25 response.</p>

<p style="text-align: center;">110</p> <p>1 For those who have not yet been called, 2 it just struck me that I forgot to mention to you 3 that if one of these jurors is excused, you may be 4 called to replace them. In that case, it would be 5 very helpful if you would listen very carefully to 6 the questions I have asked of the panel, so I 7 don't have to repeat all the questions. 8 And I will then just ask you if you 9 heard all the questions and whether any of those 10 apply to you and, if so, how. And then in that 11 way we can avoid repeating each question if we end 12 up excusing some of these jurors. So please 13 listen carefully, even though you're not expected 14 to answer at this time. 15 You've already indicated, I think, 16 whether you've served on a jury, but let me ask: 17 Is there anyone who now, on reflection, recalls 18 that you served on a jury but forgot to tell us 19 about it? Anyone? 20 All right. I see no other response. 21 I am now going to ask you some 22 questions that now get to be a bit personal. I 23 want you to understand that I don't intend to pry, 24 but it is important that we know the answers to 25 these questions.</p>	<p style="text-align: center;">111</p> <p>1 If you find or believe that they are 2 just too personal and you want to discuss it at a 3 sidebar conference, we may do that, bring you over 4 to the sidebar microphone and turn on the -- that 5 horrible sound and ask you some further questions 6 at a sidebar. But if you can answer it without 7 doing so, what is critical is that you be 8 completely open with the court. 9 My first question in that regard has to 10 do with whether you or a close family member have 11 ever been arrested for any felony or a serious 12 misdemeanor. And by a serious misdemeanor, I 13 usually use as a benchmark a DUI or anything that, 14 in which there is a real likelihood that the 15 person might go to jail. Okay? 16 Now, note that I said -- the question 17 is whether you or a close family member have ever 18 been arrested for any felony or serious 19 misdemeanor. 20 Two points. One is, not just 21 convicted, but arrested, even if the charges were 22 later dropped, dismissed, or you or a family 23 member was acquitted. 24 Second, I only want to know about close 25 family members. By that, I generally limit it to</p>
<p style="text-align: center;">112</p> <p>1 your parents, your spouse, your siblings and 2 perhaps -- and your children. You don't need to 3 go to grandchildren, grandparents, nephews, 4 nieces, uncles, aunts, unless it's somebody that 5 you were extremely close to, someone who was 6 almost like a father or a mother or someone like a 7 sister or a brother to you. 8 And I suppose if you have a close 9 family member -- I mean a close friend who is like 10 a brother or a sister to you, you can include 11 that. But it has to -- we're only interested in 12 those people that you're very close to. 13 So with that, anyone? 14 Okay. Let's start -- let's start on 15 the back row with Juror No. 4. 16 JUROR NO. 4: My husband had a DUI 30 years 17 ago. He was arrested for it. 18 THE COURT: I'm sorry? 19 JUROR NO. 4: He was arrested for it. 20 THE COURT: Okay. Now, I'm going to use 21 you, Juror No. 4, as kind of, again, my object 22 lesson. And I'm not going to repeat this long 23 description of why I'm asking the question for 24 each of the other jurors, but I'm hoping they're 25 listening so they will know why I'm asking.</p>	<p style="text-align: center;">113</p> <p>1 The concern is that a juror who has had 2 a family member charged with a crime may have come 3 out of that experience with a feeling that the 4 criminal justice system didn't work, there was 5 some problem with the way it was handled, and that 6 you may just have strong feelings against or about 7 the participants in the process, such that it 8 would affect the way you might consider the 9 evidence in this case. 10 One example would be if you felt that 11 the case resulted in a miscarriage of justice, a 12 juror might perceive that this is their 13 opportunity to kind of right the scales of justice 14 and to undo whatever it was that was improper in 15 the case in which your family member was involved. 16 That clearly would be improper, because 17 this case has to be decided solely upon the 18 evidence presented here in this courtroom and 19 based upon the instructions I will give the jury 20 as to the law, and not allowing such outside 21 experiences to affect you in any way in your 22 consideration of the evidence or your verdict. 23 Now, with that explanation, are you 24 satisfied that the case was handled properly? 25 JUROR NO. 4: Yes.</p>

<p style="text-align: center;">114</p> <p>1 THE COURT: Is there anything about that</p> <p>2 experience that you think might affect your</p> <p>3 impartiality as a juror in this case?</p> <p>4 JUROR NO. 4: No.</p> <p>5 THE COURT: All right. Thank you very much.</p> <p>6 Let's pass it down, I think Juror</p> <p>7 No. 6.</p> <p>8 JUROR NO. 6: I had a brother who was</p> <p>9 arrested for drug possession. His case was</p> <p>10 dispatched through a drug court. And I am</p> <p>11 satisfied that that would not affect my faith in</p> <p>12 the justice system.</p> <p>13 THE COURT: And are you satisfied you could</p> <p>14 be fair and impartial in this case?</p> <p>15 JUROR NO. 6: Yes.</p> <p>16 THE COURT: All right. Very good. Thank</p> <p>17 you.</p> <p>18 Anyone else on the fourth row? Juror</p> <p>19 No. 8.</p> <p>20 JUROR NO. 8: Yes. I've had a DUI, been</p> <p>21 arrested for two misdemeanors. The misdemeanors</p> <p>22 were dropped, and the DUI, I just pled guilty and</p> <p>23 got it over with.</p> <p>24 THE COURT: Okay. And was the case handled</p> <p>25 properly, from your point of view?</p>	<p style="text-align: center;">115</p> <p>1 JUROR NO. 8: Yes.</p> <p>2 THE COURT: Are you satisfied that that</p> <p>3 experience would not affect your consideration of</p> <p>4 the evidence in this case in any way?</p> <p>5 JUROR NO. 8: Yes.</p> <p>6 THE COURT: All right. Thank you very much.</p> <p>7 On the third row? Juror No., is it 15?</p> <p>8 JUROR NO. 15: My son was arrested on his</p> <p>9 21st birthday and spent time in jail, got out on</p> <p>10 his own --</p> <p>11 THE COURT: You didn't say what the charge</p> <p>12 was, but I think I can guess.</p> <p>13 (Laughter.)</p> <p>14 JUROR NO. 15: Yeah, on his 21st birthday.</p> <p>15 But because we had told our children, "You ever</p> <p>16 get in trouble, expect to get out of it," he</p> <p>17 didn't even call me. He got out -- served his</p> <p>18 time, and got out. And I felt that it was</p> <p>19 justified.</p> <p>20 My sister was arrested on a burglary</p> <p>21 charge in Georgia, I don't know how many years</p> <p>22 ago, and served time in a Georgia prison. And I</p> <p>23 feel, honestly and truly, Your Honor, that it was</p> <p>24 probably the best thing that ever happened to her,</p> <p>25 because it allowed her to get clean and sober and</p>
<p style="text-align: center;">116</p> <p>1 to be a productive citizen in today's society.</p> <p>2 THE COURT: And are you confident you could</p> <p>3 be fair and impartial as a juror in this case?</p> <p>4 JUROR NO. 15: I'm confident that I can,</p> <p>5 because the law is the law, and --</p> <p>6 THE COURT: Okay.</p> <p>7 JUROR NO. 15: Okay.</p> <p>8 THE COURT: Thank you.</p> <p>9 Anyone else in row 3?</p> <p>10 JUROR NO. 11: My son --</p> <p>11 THE COURT: This is Juror No. 18?</p> <p>12 JUROR NO. 11: No. 11.</p> <p>13 THE COURT: Eleven. I'm sorry. Eleven.</p> <p>14 JUROR NO. 11: My son was living in</p> <p>15 California with his father when he was, I think it</p> <p>16 was, he was 20 years old. He was arrested on a</p> <p>17 felony. I was never completely clear on what the</p> <p>18 charges was. We were estranged at the time. I</p> <p>19 have never had the full story. I do -- I have</p> <p>20 seen the documents where it was reduced to a</p> <p>21 misdemeanor.</p> <p>22 I'm sure he had it coming. He spent</p> <p>23 time in jail. And I think that's why he is into</p> <p>24 youth rehabilitation services now. And I don't</p> <p>25 think his experience would prejudice me.</p>	<p style="text-align: center;">117</p> <p>1 THE COURT: Okay. And you could be fair and</p> <p>2 impartial?</p> <p>3 JUROR NO. 11: Yes.</p> <p>4 THE COURT: All right. Thank you very much.</p> <p>5 That's Juror No. 10?</p> <p>6 JUROR NO. 10: Yes, No. 10. Maybe 30 years</p> <p>7 ago, I had a DUI arrest in the State of Missouri.</p> <p>8 I went before the judge without counsel, because</p> <p>9 there was no doubt that I was guilty as charged.</p> <p>10 It was just handled very fairly and I put it</p> <p>11 behind me.</p> <p>12 THE COURT: Okay. And are you confident you</p> <p>13 could be fair and impartial as a juror in this</p> <p>14 case?</p> <p>15 JUROR NO. 10: Yes. Certainly.</p> <p>16 THE COURT: All right. Thank you very much.</p> <p>17 Let's go to row 2. Juror No. --</p> <p>18 JUROR NO. 17: 17.</p> <p>19 THE COURT: -- 17.</p> <p>20 JUROR NO. 17: My son was, domestic battery</p> <p>21 and DUI.</p> <p>22 THE COURT: Okay.</p> <p>23 JUROR NO. 17: And I'm sure I can be fair</p> <p>24 and impartial.</p> <p>25 THE COURT: Were both cases handled</p>

<p style="text-align: center;">118</p> <p>1 properly?</p> <p>2 JUROR NO. 17: Yeah.</p> <p>3 THE COURT: It was your son that was charged</p> <p>4 with domestic battery?</p> <p>5 JUROR NO. 17: He was.</p> <p>6 THE COURT: Okay. And with the DUI;</p> <p>7 correct?</p> <p>8 JUROR NO. 17: Yes.</p> <p>9 THE COURT: You're confident that neither of</p> <p>10 those situations would in any way affect your</p> <p>11 consideration of the evidence in this case?</p> <p>12 JUROR NO. 17: No.</p> <p>13 THE COURT: I should have stated that</p> <p>14 differently.</p> <p>15 Are you confident that you could be</p> <p>16 fair and impartial?</p> <p>17 JUROR NO. 17: I am confident.</p> <p>18 THE COURT: All right. Thank you.</p> <p>19 Juror No. 18.</p> <p>20 JUROR NO. 18: May I discuss that with you</p> <p>21 in private?</p> <p>22 THE COURT: Yes.</p> <p>23 Counsel, do you want to approach?</p> <p>24 Along with the juror.</p> <p>25 (Sidebar with Juror No. 18 commences as</p>	<p style="text-align: center;">119</p> <p>1 follows:)</p> <p>2 THE COURT: Come up here and wait just until</p> <p>3 everyone is up. Counsel, just gather so you can</p> <p>4 see.</p> <p>5 Juror 18, could you explain your</p> <p>6 response?</p> <p>7 JUROR NO. 18: My husband is in ICE custody</p> <p>8 on federal charges.</p> <p>9 THE COURT: Okay. So has he been charged</p> <p>10 with illegal reentry into this country?</p> <p>11 JUROR NO. 18: Yes.</p> <p>12 THE COURT: And that's currently pending?</p> <p>13 You need to answer audibly.</p> <p>14 JUROR NO. 18: Yes. I'm sorry.</p> <p>15 THE COURT: How long has he been in custody?</p> <p>16 JUROR NO. 18: Current.</p> <p>17 THE COURT: Okay. Is that here in the</p> <p>18 District of Idaho?</p> <p>19 JUROR NO. 18: It is. He is in Mountain</p> <p>20 Home.</p> <p>21 THE COURT: Is he actually -- has he</p> <p>22 actually been charged or is he just subject to</p> <p>23 deportation?</p> <p>24 JUROR NO. 18: Subject to deportation.</p> <p>25 THE COURT: Okay. So you don't know that he</p>
<p style="text-align: center;">120</p> <p>1 has been charged with anything, like illegal</p> <p>2 reentry or any separate --</p> <p>3 JUROR NO. 18: I believe he has, yes. The</p> <p>4 public defender defended him. His court is June</p> <p>5 7th.</p> <p>6 THE COURT: Do you know the name of his</p> <p>7 attorney?</p> <p>8 JUROR NO. 18: Dick --</p> <p>9 THE COURT: Rubin?</p> <p>10 JUROR NO. 18: Yes.</p> <p>11 THE COURT: Okay. Well, you know, it puts</p> <p>12 you in a -- I mean, it's a proceeding here in the</p> <p>13 District of Idaho, but it's not related in any way</p> <p>14 to these charges.</p> <p>15 On the other hand, is this going to be</p> <p>16 weighing on your mind in such a way that you think</p> <p>17 you would have a hard time concentrating on the</p> <p>18 case?</p> <p>19 JUROR NO. 18: I would.</p> <p>20 MR. McALLISTER: You need to speak up. I'm</p> <p>21 sorry.</p> <p>22 JUROR NO. 18: Yes, I would.</p> <p>23 THE COURT: Okay.</p> <p>24 Counsel, do you want to inquire</p> <p>25 further?</p>	<p style="text-align: center;">121</p> <p>1 MS. WHELAN: Judge, I would just ask, it</p> <p>2 sounds like if he has Mr. Rubin, our office may be</p> <p>3 involved. And if that would cause a conflict for</p> <p>4 her, since we're part of the United States</p> <p>5 Attorney's Office --</p> <p>6 THE COURT: Are you concerned about that?</p> <p>7 Do you know who the attorney is, who is</p> <p>8 prosecuting?</p> <p>9 JUROR NO. 18: I don't.</p> <p>10 THE COURT: Mr. McAllister, do you wish to</p> <p>11 ask any questions of the witness?</p> <p>12 MR. McALLISTER: I do not.</p> <p>13 THE COURT: All right.</p> <p>14 Why don't you step back. We may bring</p> <p>15 you back, but at this point why don't you go ahead</p> <p>16 and step back to your seat. I want to talk to</p> <p>17 counsel for a moment.</p> <p>18 (Sidebar, absent Juror No. 18,</p> <p>19 continues as follows.)</p> <p>20 THE COURT: Counsel, I'm willing to hear</p> <p>21 your argument, but I think that Ms. Whelan's last</p> <p>22 comment is the one that's most telling, the fact</p> <p>23 that her husband is being prosecuted by their</p> <p>24 office currently, I think, does create a conflict,</p> <p>25 and perhaps we shouldn't ask for her to serve,</p>

<p style="text-align: right;">122</p> <p>1 particularly when we have got so many jurors in 2 the back.</p> <p>3 But I'll hear any arguments you may 4 have to the contrary.</p> <p>5 MR. McALLISTER: Judge, I'll just, for the 6 record, say that I hope that based upon the 7 statements of the court to all the jurors, she 8 could be fair and impartial. So I would like to 9 keep her at this point in time.</p> <p>10 THE COURT: Well, I think I'm going to 11 excuse her. I think it's just too much, where 12 she is going to -- I would note, although it won't 13 show for the record, that when she first spoke she 14 was emotional, and that she had -- her voice 15 cracked a bit when she first came up. So it's 16 something that's heavy in her mind.</p> <p>17 And if she didn't know before, I think 18 it's clear to her that he is being prosecuted by 19 the same individual -- or the same office that is 20 prosecuting this case. And that should -- I'm not 21 saying that Ms. Whelan shouldn't have pointed that 22 out. I think that she might well have assumed 23 that, anyway, and it was better just to lay it out 24 there as she did.</p> <p>25 So I'm going to go ahead, and the</p>	<p style="text-align: right;">123</p> <p>1 objection is noted and overruled. Okay. 2 (Sidebar concluded.)</p> <p>3 THE COURT: Juror No. 18, I think, I think 4 we are going to excuse you. I appreciate the 5 discussion we had at sidebar, but I think it is 6 something that would be hard to ask you to serve 7 as a juror in this case. So I think we will 8 excuse you. Thank you very much.</p> <p>9 And we will ask -- Ms. Gearhart, I 10 think it's Juror 36?</p> <p>11 Juror 36, if you would come forward and 12 take the seat vacated in the second row. Would 13 you first start by standing and answering the 14 questions on the sheet on that -- hopefully it's 15 left there for you.</p> <p>16 JUROR NO. 36: Yes, sir. I'm a retired 17 union electrician. I worked for contractors, 18 supervising work as a foreman. Yes, I did 19 supervise people. My wife, she is retired. She 20 worked as an office manager at a maintenance 21 service in Alaska.</p> <p>22 I have two sons. One just got out of 23 the Air Force. He is 31. He is going to Treasure 24 Valley Community College right now. And my 25 other -- oldest son, 36, he works for Advanced</p>
<p style="text-align: right;">124</p> <p>1 Sign and Design here in Boise, doing signage. 2 No, I have never been a part of any 3 jury. And education, just high school and a 4 five-year electrical apprenticeship, and no, I 5 have never studied law.</p> <p>6 THE COURT: Okay. And Juror 36, were you in 7 the courtroom throughout the proceedings today?</p> <p>8 JUROR NO. 36: Yes, sir.</p> <p>9 THE COURT: Did you hear all of my 10 questions?</p> <p>11 JUROR NO. 36: Yes, sir.</p> <p>12 THE COURT: Are there any of those questions 13 to which you would have responded by raising your 14 hand?</p> <p>15 JUROR NO. 36: No, sir.</p> <p>16 THE COURT: Before entering the courtroom, 17 you didn't know Mr. Steele or know of him in any 18 way?</p> <p>19 JUROR NO. 36: No, sir.</p> <p>20 THE COURT: No interaction with the 21 attorneys that I have identified?</p> <p>22 JUROR NO. 36: Not at all.</p> <p>23 THE COURT: Didn't recognize any of the 24 names of the witnesses that I read off?</p> <p>25 JUROR NO. 36: No, sir.</p>	<p style="text-align: right;">125</p> <p>1 THE COURT: Not had a family member, or 2 yourself, charged with a felony or serious 3 misdemeanor?</p> <p>4 JUROR NO. 36: No, Your Honor.</p> <p>5 THE COURT: Okay. That covers most of the 6 questions. Any others that you can think of that 7 might have affected you in any way?</p> <p>8 JUROR NO. 36: No, not at all.</p> <p>9 THE COURT: All right. Thank you very much.</p> <p>10 JUROR NO. 36: Thank you.</p> <p>11 THE COURT: I think we were on Juror No. 34. 12 Could you hand the microphone down?</p> <p>13 JUROR NO. 34: Juror No. 34. In the early 14 '80s I was arrested for a DUI. Justice was 15 served. I know that I can have an impartial 16 process through this today.</p> <p>17 THE COURT: You're confident you could be an 18 impartial juror in this case?</p> <p>19 JUROR NO. 34: Yes, sir.</p> <p>20 THE COURT: All right. Very good. Thank 21 you.</p> <p>22 Anyone else in row 2? Juror 25.</p> <p>23 JUROR NO. 25: In 2003, I was arrested for a 24 DUI.</p> <p>25 THE COURT: Same question you've heard me</p>

<p style="text-align: center;">126</p> <p>1 put to all the other jurors: Are you confident</p> <p>2 you could be fair and impartial as a juror in this</p> <p>3 case, despite that experience?</p> <p>4 JUROR NO. 25: Absolutely.</p> <p>5 THE COURT: All right. Thank you very much.</p> <p>6 Anyone else in row 2?</p> <p>7 Okay. Row 1? I think there was one or</p> <p>8 two hands. Juror No. 28.</p> <p>9 JUROR NO. 28: Juror No. 28, Your Honor.</p> <p>10 Juror No. 28. My deceased youngest brother was</p> <p>11 arrested and convicted of child abuse, and spent</p> <p>12 time in Idaho state correctional system.</p> <p>13 THE COURT: That was your younger brother?</p> <p>14 JUROR NO. 28: Youngest brother, yes, Your</p> <p>15 Honor.</p> <p>16 THE COURT: All right. Was the case handled</p> <p>17 properly, from your point of view?</p> <p>18 JUROR NO. 28: Yes, Your Honor, it was. I</p> <p>19 have no prejudice due to this.</p> <p>20 THE COURT: Okay. And you're confident you</p> <p>21 could be fair and impartial?</p> <p>22 JUROR NO. 28: Yes, Your Honor.</p> <p>23 THE COURT: All right. Thank you very much.</p> <p>24 Anyone else on the panel as a whole</p> <p>25 that I may have overlooked?</p>	<p style="text-align: center;">127</p> <p>1 Okay. I see no other response.</p> <p>2 Counsel, we'll go for about another 10</p> <p>3 or 15 minutes and then takes perhaps a 45 minute</p> <p>4 recess, time enough to hopefully get something to</p> <p>5 eat.</p> <p>6 Let me ask kind of the -- I don't know</p> <p>7 if it's the reverse or mirror image of that</p> <p>8 question, and that is whether you or a close</p> <p>9 family member -- again defined the way I defined</p> <p>10 it earlier -- have ever been the victim of a</p> <p>11 crime.</p> <p>12 And if it's a minor property crime,</p> <p>13 like somebody, you know, breaking into your</p> <p>14 car -- well, that could be a more serious matter,</p> <p>15 but a minor theft -- I'm really looking more at</p> <p>16 crimes beyond that.</p> <p>17 Anyone who has, either you, yourself or</p> <p>18 a close family have ever been the victim of a</p> <p>19 crime? Anyone?</p> <p>20 Oh, I'm sorry. We're going to restrict</p> <p>21 ourselves just to the jurors here.</p> <p>22 Let's start, well, Juror No. 15. Pass</p> <p>23 the microphone back.</p> <p>24 JUROR NO. 15: When we were moving away from</p> <p>25 California, our home was victimized [sic] and it</p>
<p style="text-align: center;">128</p> <p>1 was -- a lot of our stuff was taken.</p> <p>2 My sister, that I mentioned that ended</p> <p>3 up going to prison, was the victim of spousal</p> <p>4 abuse for a number of years.</p> <p>5 And then, also, my mother was attacked,</p> <p>6 when we were in Southern California, by gang</p> <p>7 members.</p> <p>8 THE COURT: Okay. You have listed a number</p> <p>9 of different crimes that you've been the victim</p> <p>10 of, or your family members have been. Are there</p> <p>11 any of those that you think would affect your</p> <p>12 impartiality in this case?</p> <p>13 JUROR NO. 15: Your Honor, no, I don't</p> <p>14 believe that any of those would affect my ability</p> <p>15 to look at the facts that would be presented in</p> <p>16 this case today --</p> <p>17 THE COURT: Okay.</p> <p>18 JUROR NO. 15: -- and make a decision based</p> <p>19 on those facts.</p> <p>20 THE COURT: Okay. Now you hesitated for a</p> <p>21 moment. I want to --</p> <p>22 JUROR NO. 15: I did hesitate.</p> <p>23 THE COURT: -- make sure that was an</p> <p>24 indication of uncertainty or just an indication</p> <p>25 that you were thinking about each of the different</p>	<p style="text-align: center;">129</p> <p>1 crimes.</p> <p>2 JUROR NO. 15: Basically, Your Honor, I</p> <p>3 wanted to make sure that when I gave you the</p> <p>4 answer, that it was a truthful answer, and what I</p> <p>5 was doing was just doing a double check on my</p> <p>6 feelings, would any of those crimes affect my</p> <p>7 ability to render a decision based on the facts.</p> <p>8 And the answer came up, no.</p> <p>9 THE COURT: Okay.</p> <p>10 JUROR NO. 15: None of it would.</p> <p>11 THE COURT: Now with regard to the domestic</p> <p>12 violence, that was an ongoing situation?</p> <p>13 JUROR NO. 15: Yes, sir.</p> <p>14 THE COURT: Was it ultimately resolved by</p> <p>15 divorce or --</p> <p>16 JUROR NO. 15: Yes, sir.</p> <p>17 THE COURT: -- something of that sort?</p> <p>18 JUROR NO. 15: Yes, sir.</p> <p>19 THE COURT: Nothing about that in particular</p> <p>20 would affect your impartiality in this case?</p> <p>21 JUROR NO. 15: No, sir.</p> <p>22 THE COURT: All right. Thank you.</p> <p>23 I think Juror No. 8, you raised your</p> <p>24 hand.</p> <p>25 JUROR NO. 8: Yes. I had my house broke</p>

<p style="text-align: center;">130</p> <p>1 into and a bunch of guns stolen. They wasn't 2 mine. They was my roommate's. I don't know. We 3 never found him. That just -- they just 4 disappeared, so -- 5 THE COURT: Okay. Are you -- anything about 6 that experience that might affect your 7 impartiality in this case? 8 JUROR NO. 8: No. 9 THE COURT: You're confident you could be a 10 fair and impartial juror? 11 JUROR NO. 8: Yes. 12 THE COURT: All right. 13 Anyone else? Juror 20- -- oh, Juror 6. 14 Then we'll come to Juror 25. 15 JUROR NO. 6: May I come up? 16 THE COURT: You may. 17 Counsel approach. 18 (Sidebar with Juror No. 6 commences as 19 follows:) 20 THE COURT: Let's wait until the attorneys 21 are here. 22 JUROR NO. 6: Okay. There -- 23 THE COURT: Just wait till they're here. 24 They need to hear your answer. 25 JUROR NO. 6: Okay.</p>	<p style="text-align: center;">131</p> <p>1 THE COURT: Okay. Now, you need to speak, 2 because the court reporter is still taking down 3 your response, using this microphone. 4 JUROR NO. 6: Okay. There were no arrests 5 or legal actions, but I did grow up in a family 6 where there was domestic abuse, my father to my 7 mother and siblings, and sexual abuse to my 8 sisters and I. And I am not sure, because of 9 that, that I could be impartial. 10 THE COURT: Okay. Your concern then is 11 that -- the fact that it was a domestic abuse 12 situation involving you as a victim and your -- 13 JUROR NO. 6: My mother, yes. 14 THE COURT: All right. You know, all we can 15 do is ask a juror to look deep into yourself and 16 ask yourself, "Can I be fair and impartial?" 17 And sometimes -- and I'll put this 18 question to the panel as a whole, is to ask each 19 juror to put themselves in the shoes of Mr. Steele 20 or the FBI agent, both of whom have a real 21 involvement or concern about the outcome of this 22 case. And if you were in either of their 23 positions, would you have some concern about 24 having a juror with your current state of mind on 25 the jury?</p>
<p style="text-align: center;">132</p> <p>1 You know your own abilities to 2 compartmentalize your experiences and put aside 3 experiences and be fair and impartial. 4 If you were seated in their position, 5 would you be concerned, having a juror like you? 6 Not by appearance, but by the reality of how 7 you -- 8 JUROR NO. 6: I am not sure that I could be 9 impartial with the evidence. You know, I have 10 some emotional baggage here -- 11 THE COURT: Okay. 12 JUROR NO. 6: -- that could get in the way. 13 THE COURT: All right. Counsel, do you want 14 to inquire further? 15 MS. WHELAN: There's a couple of things, 16 Judge. 17 THE COURT: Can you hear, Mr. McAllister? 18 MS. WHELAN: Sorry. 19 Juror No. 6, certainly you've had 20 things that have happened in your life. But you 21 don't know what the facts are of this case; is 22 that correct? 23 JUROR NO. 6: That is correct. 24 MS. WHELAN: At this point, just that the 25 defendant has been charged with something, right?</p>	<p style="text-align: center;">133</p> <p>1 JUROR NO. 6: Right. 2 MS. WHELAN: All of us come to court with 3 baggage, of things that have happened to us. And 4 so, I guess, you know, the concern I have is that 5 something happened to you, but it might not have 6 anything to do with the facts of this case -- 7 THE COURT: Well, let me correct. It won't 8 have anything to do with it, obviously. 9 MS. WHELAN: Yes. Yes. But the facts in 10 this case may not even touch on those issues. So 11 are you saying that because of the experience that 12 you had growing up, that that would disqualify you 13 from sitting as a juror in any type of criminal 14 case? 15 JUROR NO. 6: No, it would not be for any 16 kind of criminal case. 17 MS. WHELAN: Okay. And I guess what -- and 18 I'm not trying to challenge you, but the point I'm 19 trying to get to is if we don't know what the 20 facts of this case are yet, why it would cause you 21 concerns about you can be fair and impartial in 22 this particular case? 23 I'm just trying to -- 24 THE COURT: Well, let me, let me follow up 25 and see.</p>

<p style="text-align: center;">134</p> <p>1 JUROR NO. 6: I believe I could weigh the 2 facts.</p> <p>3 THE COURT: Okay. Let me take over, just, 4 and ask a follow-up question here. And then, 5 Mr. McAllister, you can jump in, if you wish to.</p> <p>6 Every juror -- you know, every juror in 7 this room comes into the courtroom with background 8 and experiences. And if they allowed those 9 experiences to become part of the deliberation 10 process, it could well mean that they were not 11 acting impartially, because they just could 12 not -- I use the term "compartmentalize," they 13 couldn't put aside their own experiences.</p> <p>14 Now, in making that statement, I don't 15 mean to suggest there is anything wrong with a 16 juror who can't compartmentalize, who can't put 17 that aside, because the experience may be just so 18 emotional, so close to the surface, that it just 19 simply can't be controlled in that fashion.</p> <p>20 The problem is that Mr. McAllister and 21 Ms. Whelan, none of us here, or the court, we 22 can't answer that question for you. All I can 23 tell you is that we will instruct you -- or I will 24 instruct you that you must not allow those 25 personal experiences to affect your deliberations,</p>	<p style="text-align: center;">135</p> <p>1 but you have to decide this case solely from the 2 evidence and you have to consider it in the 3 context of my instructions as to the law.</p> <p>4 And while you may have personal 5 experiences which affect your outlook on life, you 6 can't allow specific experiences to somehow affect 7 your consideration of the evidence and in that way 8 impact the verdict that you might reach.</p> <p>9 JUROR NO. 6: Okay.</p> <p>10 THE COURT: So with that instruction, I'm 11 just going to ask you flat out -- and I have to 12 ask it this way: Are you confident that you could 13 put your own personal experiences aside and decide 14 this case solely from the evidence presented here 15 in the courtroom, or do you have reservations 16 about that?</p> <p>17 JUROR NO. 6: I have some reservations.</p> <p>18 THE COURT: Okay.</p> <p>19 Counsel, do you wish to inquire 20 further? Mr. McAllister?</p> <p>21 MR. McALLISTER: No, Your Honor.</p> <p>22 THE COURT: All right. Why don't you step 23 back, and then I'll discuss this with counsel.</p> <p>24 (Sidebar, absent Juror No. 6, continues 25 as follows:)</p>
<p style="text-align: center;">136</p> <p>1 THE COURT: Counsel, I -- you know, I have a 2 feeling she could be a good juror, but I think 3 where she has got the reservations, I don't think 4 I have a whole lot of choice but to excuse her.</p> <p>5 Do you want to be heard otherwise? Or 6 you may -- if you want to, we can bring her back 7 and try to rehabilitate her. But --</p> <p>8 MS. WHELAN: No. It's just -- it's just 9 such a vague concern. But I understand what she 10 said.</p> <p>11 THE COURT: Well, the problem is, we don't 12 know. And one of the reasons I don't get 13 involved -- I don't get back and read the case, I 14 don't -- well, I guess I look at the indictment, 15 but I don't try to learn a lot about your case, 16 because I think I have to make decisions in the 17 same way that I expect jurors to, which is kind of 18 pure, that's not affected by what the facts are, 19 except when the facts are, in fact, relevant to 20 that decision.</p> <p>21 So we don't know. I don't know exactly 22 what the evidence is going to be. And if evidence 23 comes in that might, in fact, track with her 24 experience, then all of a sudden we've got a juror 25 who is a time bomb ready to go off. And I can't</p>	<p style="text-align: center;">137</p> <p>1 anticipate that. I don't know that you can 2 anticipate it.</p> <p>3 And so if a juror has reservations, I 4 think we have to err on the side of excusing her.</p> <p>5 So, do you want to be heard further, or --</p> <p>6 MS. WHELAN: No.</p> <p>7 THE COURT: All right. So I'll excuse her. 8 All right.</p> <p>9 (Sidebar concluded.)</p> <p>10 THE COURT: We're going to turn down the 11 volume on that just a little bit. We turned it up 12 because of the number of jurors here, but I think 13 maybe we have overdone it. I get a headache just 14 listening to that coming in one ear.</p> <p>15 I think, Juror No. 6, we're going to 16 excuse you. I think, given what we discussed at 17 sidebar, it would just be unfair to ask you to sit 18 on the jury at this time.</p> <p>19 So thank you very much for being here, 20 but we will excuse you.</p> <p>21 (Juror No. 6 excused.)</p> <p>22 THE COURT: And I think, Juror No. 37, if 23 you'll take the seat vacated by Juror No. 6.</p> <p>24 And obviously, I think you know the 25 drill at this point. You will start off by</p>

<p style="text-align: center;">138</p> <p>1 answering the questions on that form.</p> <p>2 JUROR NO. 37: I'm Juror No. 37.</p> <p>3 THE COURT: Is that on? Is that microphone</p> <p>4 working? You might tap on it. I didn't think so.</p> <p>5 Let's try it just speaking very loud,</p> <p>6 if you would, and in the meantime we'll check.</p> <p>7 Maybe we need a new battery.</p> <p>8 Oh, there. Okay, who has been playing</p> <p>9 around with the microphone up there?</p> <p>10 JUROR NO. 37: Okay. I'm Juror No. 37.</p> <p>11 Most of my life I have been a homemaker. Part of</p> <p>12 the time I have substituted teaching at college</p> <p>13 and at high school. I'm working in a nursery. My</p> <p>14 husband has died. And his occupation all of his</p> <p>15 life was a mechanical engineer at Hewlett-Packard,</p> <p>16 both in California and in Boise.</p> <p>17 We have four children. Our oldest</p> <p>18 daughter is 50, and she is a bookkeeper. Our</p> <p>19 oldest son is 48, and he works in a bank in</p> <p>20 Illinois. Our third child is 41, and she teaches</p> <p>21 college. And our fourth child is 39, and she is a</p> <p>22 homemaker and a part-time Realtor.</p> <p>23 I haven't been a member of the jury</p> <p>24 before. I have a college education, bachelor of</p> <p>25 science degree in horticulture, and I haven't</p>	<p style="text-align: center;">139</p> <p>1 studied law before.</p> <p>2 THE COURT: Okay. Juror No. 37, you've been</p> <p>3 in the courtroom throughout the proceedings this</p> <p>4 morning; is that correct?</p> <p>5 JUROR NO. 37: Yes.</p> <p>6 THE COURT: And you've heard all of my</p> <p>7 questions?</p> <p>8 JUROR NO. 37: Yes.</p> <p>9 THE COURT: Are there any of those questions</p> <p>10 that would have applied to you, such that you</p> <p>11 would have raised your hand if you had been on the</p> <p>12 panel at that time?</p> <p>13 JUROR NO. 37: No. There are none.</p> <p>14 THE COURT: Okay. You did not know</p> <p>15 Mr. Steele or know of him prior to entering the</p> <p>16 courtroom?</p> <p>17 JUROR NO. 37: No.</p> <p>18 THE COURT: You did not know any of the</p> <p>19 attorneys involved in this case?</p> <p>20 JUROR NO. 37: No.</p> <p>21 THE COURT: You did not recognize any of the</p> <p>22 witnesses whose names I read?</p> <p>23 JUROR NO. 37: No.</p> <p>24 THE COURT: Don't have a close family</p> <p>25 member, or you yourself, who have been charged or</p>
<p style="text-align: center;">140</p> <p>1 a victim of any serious crimes?</p> <p>2 JUROR NO. 37: No.</p> <p>3 THE COURT: Do you know of any reason why</p> <p>4 you couldn't be fair and impartial as a juror in</p> <p>5 this case?</p> <p>6 JUROR NO. 37: No. I know of no reason.</p> <p>7 THE COURT: I'm sorry?</p> <p>8 JUROR NO. 37: I know of no reason I</p> <p>9 couldn't be fair, Your Honor.</p> <p>10 THE COURT: All right. Very good. Thank</p> <p>11 you very much. I appreciate your precision.</p> <p>12 Sometimes I ask a question where the answer may be</p> <p>13 ambiguous, and I appreciate your clarifying that.</p> <p>14 All right. I think there were still</p> <p>15 one or two more hands of individuals who had been</p> <p>16 victims. Juror No. 25. There we go.</p> <p>17 And after this question is completed</p> <p>18 with all the jurors, we'll take a 45-minute</p> <p>19 recess.</p> <p>20 Juror No. 25.</p> <p>21 JUROR NO. 25: Fifteen years ago my</p> <p>22 ex-boyfriend now, was arrested for domestic abuse</p> <p>23 on me.</p> <p>24 THE COURT: Okay. I -- so you were not the</p> <p>25 person -- you were not --</p>	<p style="text-align: center;">141</p> <p>1 JUROR NO. 25: I was the victim.</p> <p>2 THE COURT: I'm sorry?</p> <p>3 JUROR NO. 25: I was the victim --</p> <p>4 THE COURT: You were?</p> <p>5 JUROR NO. 25: -- so-called.</p> <p>6 THE COURT: Okay. That's what I was trying</p> <p>7 to sort out.</p> <p>8 I can see the question now on the</p> <p>9 transcript, as it's prepared. I apologize. I</p> <p>10 should have listened more carefully.</p> <p>11 How did that end up, in terms of, were</p> <p>12 criminal charges brought?</p> <p>13 JUROR NO. 25: Yes. Well, we went to court,</p> <p>14 and I didn't press it, press charges. So he was</p> <p>15 on probation and fined.</p> <p>16 THE COURT: Okay. Now you referred to this</p> <p>17 individual as your ex-boyfriend.</p> <p>18 JUROR NO. 25: Yes.</p> <p>19 THE COURT: Did the relationship end then,</p> <p>20 or did it go on for some time after that?</p> <p>21 JUROR NO. 25: It went on for some time. It</p> <p>22 ended about four years ago.</p> <p>23 THE COURT: Okay. Now, I guess the only</p> <p>24 thing I can ask you is: Are you confident that</p> <p>25 you would not allow that experience to affect your</p>

<p style="text-align: center;">142</p> <p>1 consideration of the evidence in this case in any 2 way?</p> <p>3 JUROR NO. 25: Absolutely.</p> <p>4 THE COURT: Okay. And the case ultimately 5 was resolved in a way that you thought was 6 appropriate; is that correct?</p> <p>7 Well, be honest. You're hesitating. I 8 need to know --</p> <p>9 JUROR NO. 25: Well, at the time I wish I 10 had gone further and made him own up to it.</p> <p>11 THE COURT: Okay.</p> <p>12 JUROR NO. 25: But it was a good experience, 13 now. So I may -- knowing what I know now, I may 14 have decided something different back then.</p> <p>15 THE COURT: Okay.</p> <p>16 JUROR NO. 25: Because I was too scared then 17 to do anything.</p> <p>18 THE COURT: When you -- was this an ongoing 19 problem, or was it just a one-time event?</p> <p>20 JUROR NO. 25: Ongoing.</p> <p>21 THE COURT: And did it last throughout your 22 relationship?</p> <p>23 JUROR NO. 25: Yes.</p> <p>24 THE COURT: But this was the only time when 25 you actually pressed charges, or at least</p>	<p style="text-align: center;">143</p> <p>1 considered calling law enforcement?</p> <p>2 JUROR NO. 25: Yes.</p> <p>3 THE COURT: Now, I have no reason to think 4 that anything about your experience will -- that 5 you will hear any testimony that might kind of 6 resonate with you and remind you of your own 7 experience, but there is that possibility. I just 8 don't know.</p> <p>9 In fact, perhaps surprisingly, but in 10 fact something I just mentioned at sidebar, I 11 typically don't try to find out a great deal about 12 the underlying facts or even what the evidence 13 will be at the trial. But I have to speculate 14 there is at least some chance that you might hear 15 some testimony that might, as I said, resonate 16 with you because of your experience.</p> <p>17 If that is the case, are you confident 18 that you can compartmentalize and put that aside 19 and not allow your own personal experience to 20 affect how you consider the evidence?</p> <p>21 JUROR NO. 25: Yes.</p> <p>22 THE COURT: All right. And you have no 23 reservation --</p> <p>24 JUROR NO. 25: Counseling --</p> <p>25 THE COURT: What? Excuse me?</p>
<p style="text-align: center;">144</p> <p>1 JUROR NO. 25: Counseling has brought me 2 there, so, yes.</p> <p>3 THE COURT: Okay. And you understand that 4 every situation is unique and every case has to be 5 decided on its own facts?</p> <p>6 JUROR NO. 25: Absolutely.</p> <p>7 THE COURT: All right. Thank you. That's 8 all I need to know.</p> <p>9 Anyone else? All right. Juror No., is 10 it 5?</p> <p>11 JUROR NO. 5: Yes.</p> <p>12 THE COURT: Could we pass the microphone 13 back?</p> <p>14 JUROR NO. 5: Could I come up?</p> <p>15 THE COURT: You may. 16 Counsel approach. 17 (Sidebar with Juror No. 5 commences as 18 follows:) 19 THE COURT: Okay. Wait until counsel is up. 20 Juror No. 5, can you tell us how you 21 wanted to respond to that question.</p> <p>22 JUROR NO. 5: Yes. I wanted the privacy 23 because it was my sister was domestically abused 24 while she was married. She didn't ever file 25 charges, but she did finally get counseling and</p>	<p style="text-align: center;">145</p> <p>1 get a divorce.</p> <p>2 THE COURT: Okay. Juror No. 5, you have 3 heard particularly my discussion with the last 4 juror about the need to compartmentalize whatever 5 that situation may be and to decide this case 6 solely from the evidence presented in the 7 courtroom.</p> <p>8 JUROR NO. 5: Yes.</p> <p>9 THE COURT: Do you have any reservation 10 about your ability to do so?</p> <p>11 JUROR NO. 5: No, I don't. I -- the only 12 thing I wanted to communicate is I don't -- I have 13 no tolerance for domestic abuse.</p> <p>14 THE COURT: Okay. Well, of course, that's 15 for the court to decide. You know, what the jury 16 will have to do is to decide in this case 17 whether -- in fact, let me be clear. The jury's 18 province, if you will, the jury's role here, is 19 fairly clear-cut. It's to decide whether or not 20 the government has presented evidence such that 21 you're convinced beyond a reasonable doubt that 22 each element of the charged offense has been 23 proven. Okay? And, again beyond a reasonable 24 doubt.</p> <p>25 JUROR NO. 5: Okay.</p>

<p style="text-align: right;">146</p> <p>1 THE COURT: You don't pass on the wisdom of 2 the law. You don't pass on what punishment might 3 be imposed. You don't pass on whether domestic 4 violence is a good thing or a bad thing. And as I 5 pointed out in my discussion with the earlier 6 juror, I don't know for sure what the evidence 7 will be. I only know, because of the nature of 8 the charges, that there is at least some issue in 9 this case that might in some way relate to what 10 you've discussed. And therefore, I think we need 11 to ask the question.</p> <p>12 So, given that limited role of the jury 13 and understanding that even though you may have 14 these feelings, it's really not relevant to the 15 jury's determination in this case. Are you 16 confident you can put it aside and decide this 17 case solely based upon the evidence presented here 18 in the courtroom?</p> <p>19 JUROR NO. 5: Yes.</p> <p>20 THE COURT: All right.</p> <p>21 Counsel, do you wish to inquire 22 further?</p> <p>23 MS. WHELAN: No, Your Honor.</p> <p>24 THE COURT: Mr. McAllister?</p> <p>25 MR. McALLISTER: No, Your Honor.</p>	<p style="text-align: right;">147</p> <p>1 THE COURT: Okay. All right. Why don't you 2 step back.</p> <p>3 (Sidebar, absent Juror No. 5, continues 4 as follows:)</p> <p>5 THE COURT: If counsel -- I don't know if 6 you want to make a motion at this time or not. I 7 generally don't make counsel exercise challenges 8 for cause in front of the jury, because it creates 9 a real problem. We don't have a choice but to get 10 rid of them if you challenge them, even if I 11 refuse to. But if you want to, you can make a 12 challenge.</p> <p>13 MR. McALLISTER: I don't have a challenge as 14 to Juror No. 5, but I do have a challenge for 15 cause that I would like to make at some point.</p> <p>16 THE COURT: Okay. As to which juror?</p> <p>17 MR. McALLISTER: I would have to get --</p> <p>18 THE COURT: Okay. Well, let's wait, because 19 we're going to take a break.</p> <p>20 MR. McALLISTER: All right.</p> <p>21 THE COURT: What we may do is we will come 22 up to a sidebar, and you make challenges for cause 23 at the sidebar at that time. Okay?</p> <p>24 MS. WHELAN: Judge, just one thing. The 25 juror in the last -- the very last juror in the</p>
<p style="text-align: right;">148</p> <p>1 back keeps sleeping and snoring, and the other 2 jurors are noticing it.</p> <p>3 MR. AMENDOLA: In the panel?</p> <p>4 MS. WHELAN: Yeah, the last juror on the 5 right -- I guess it's -- yeah.</p> <p>6 Just so the court is aware.</p> <p>7 THE COURT: Okay. What do I -- let me think 8 that one through.</p> <p>9 I think -- you know, he may have a 10 sleep problem, he just can't help himself. And if 11 that's the case, we need to have him off the jury 12 because he's got a physical limitation that will 13 make it impossible for him to serve on a jury.</p> <p>14 I think I may, unless counsel is in 15 agreement just to excuse him, I think I'm going to 16 have to visit with him at some point and find out 17 if he's got a problem, and tell him I've noticed 18 he has nodded off several times during jury 19 selection, and if that's a problem for him.</p> <p>20 MR. McALLISTER: We don't have an objection 21 to you excusing him.</p> <p>22 MR. HAWS: We don't have any objection.</p> <p>23 THE COURT: All right. Maybe on the next 24 break, we'll excuse him.</p> <p>25 MR. HAWS: It's pretty conspicuous.</p>	<p style="text-align: right;">149</p> <p>1 THE COURT: Very good. All right.</p> <p>2 MS. WHELAN: Thanks.</p> <p>3 (Sidebar concluded.)</p> <p>4 THE COURT: Ladies and gentlemen, is there 5 anyone else now who would have raised their hand, 6 or did raise their hand and I didn't get to you, 7 in response to my last question about whether you 8 or a close family member have been the victim of a 9 crime?</p> <p>10 Juror No., is it 29?</p> <p>11 JUROR NO. 29: Can I approach, Your Honor?</p> <p>12 THE COURT: Yes, you may.</p> <p>13 Counsel approach.</p> <p>14 (Sidebar with Juror No. 29 commences as 15 follows:)</p> <p>16 THE COURT: Wait for counsel to get here, so 17 they can hear you.</p> <p>18 All right. Juror 29?</p> <p>19 JUROR NO. 29: My daughter was molested by 20 my husband's grandfather when she was 21 approximately seven years old.</p> <p>22 THE COURT: Okay. I assume this caused a 23 certain amount of upset, if you will, in your 24 family?</p> <p>25 JUROR NO. 29: Yes.</p>

<p style="text-align: center;">150</p> <p>1 THE COURT: Okay. Now, obviously, that</p> <p>2 situation has nothing to do with the allegations</p> <p>3 here.</p> <p>4 JUROR NO. 29: Yes.</p> <p>5 THE COURT: Are you satisfied that you could</p> <p>6 put that matter out of your mind and decide this</p> <p>7 case solely upon the evidence presented here in</p> <p>8 the courtroom?</p> <p>9 JUROR NO. 29: Yes.</p> <p>10 THE COURT: Any reservation at all about</p> <p>11 that?</p> <p>12 JUROR NO. 29: No.</p> <p>13 THE COURT: Counsel, do you wish to be</p> <p>14 heard?</p> <p>15 MR. McALLISTER: No.</p> <p>16 MS. WHELAN: No.</p> <p>17 THE COURT: All right. Thank you.</p> <p>18 (Sidebar concluded.)</p> <p>19 THE COURT: Counsel -- I'm sorry. Ladies</p> <p>20 and gentlemen, anyone else who raised their hand</p> <p>21 and I didn't come to you, or that you feel that</p> <p>22 you need to raise your hand in response to that</p> <p>23 last question?</p> <p>24 Okay. I see no other response.</p> <p>25 Ladies and gentlemen, I think what</p>	<p style="text-align: center;">151</p> <p>1 we'll do is take a -- you know, I think, in</p> <p>2 fairness to counsel, let's perhaps make this a</p> <p>3 break until 1:30. That will give you 55 minutes.</p> <p>4 They need to find time to eat, although</p> <p>5 we're bringing in, I think, a light lunch for the</p> <p>6 jury down in the jury assembly room. That will</p> <p>7 apply to everyone, even those who have not yet</p> <p>8 been called.</p> <p>9 I can't predict -- I would guess by</p> <p>10 mid-afternoon, we will have selected the jury, and</p> <p>11 then move on to opening statements and maybe even</p> <p>12 a witness or two. So you may be here until 5:00</p> <p>13 today.</p> <p>14 But starting tomorrow, it will be 8:30</p> <p>15 to 2:30, or on one occasion we'll have to stay</p> <p>16 until perhaps 3:30, to make up for some time we'll</p> <p>17 lose during the middle of the day.</p> <p>18 As we take this recess, you're subject</p> <p>19 to the same admonition that I have given to the</p> <p>20 jury already, which is that you are not to discuss</p> <p>21 the case among yourselves or with anyone else.</p> <p>22 You are not to form or express any opinions about</p> <p>23 the case.</p> <p>24 You are not to discuss the questions</p> <p>25 that have been asked of the jury. You are not to</p>
<p style="text-align: center;">152</p> <p>1 discuss anything you may have read about the case.</p> <p>2 You can talk about anything you want except</p> <p>3 anything which is remotely -- directly or remotely</p> <p>4 related to this case. You simply cannot talk</p> <p>5 about anything related to this proceeding.</p> <p>6 Since we have brought up a meal, unless</p> <p>7 you -- I think maybe a smoke break, we'll arrange</p> <p>8 for that for those of you who smoke. But with</p> <p>9 that exception, we're going to ask that you stay</p> <p>10 in the building, either on this floor or on the</p> <p>11 fifth floor, as Mr. Severson or Ms. Tetrick may</p> <p>12 direct you.</p> <p>13 All right. Counsel, I may ask you to</p> <p>14 be here a few minutes, just a couple minutes</p> <p>15 early, because what we discussed at sidebar, we</p> <p>16 may want to go ahead and visit as to how we're</p> <p>17 going to handle challenges for cause. There may</p> <p>18 be one we can address now.</p> <p>19 And then the question about the other</p> <p>20 juror, I may tell you how I'm going to handle</p> <p>21 that, as well. All right?</p> <p>22 MR. HAWS: So what time would that be, then,</p> <p>23 Your Honor?</p> <p>24 THE COURT: Well, why don't we just have you</p> <p>25 back, if you can here right at 1:30. But I would</p>	<p style="text-align: center;">153</p> <p>1 like to have the -- hopefully have the jury</p> <p>2 brought up just within five minutes or so.</p> <p>3 Because it should take just a few minutes to</p> <p>4 discuss that other matter.</p> <p>5 All right. We'll be in recess until</p> <p>6 1:30 this afternoon.</p> <p>7 (Recess.)</p> <p>8 (Jury panel not present.)</p> <p>9 THE COURT: Counsel, a couple of items I</p> <p>10 thought we might take up before we bring the jury</p> <p>11 back.</p> <p>12 One is Juror No. 8. I think everyone</p> <p>13 is in agreement to excuse Juror No. 8 for the</p> <p>14 reasons we discussed at sidebar. I think the way</p> <p>15 to handle that is just kind of intercept him</p> <p>16 before he comes back up, and advise him that we</p> <p>17 have excused him, so he doesn't have to leave the</p> <p>18 courtroom.</p> <p>19 Is that agreeable?</p> <p>20 MR. McALLISTER: Yes, Your Honor.</p> <p>21 MS. WHELAN: Yes, Your Honor.</p> <p>22 THE COURT: All right.</p> <p>23 There is also a question, Juror No. 53</p> <p>24 has indicated that he -- although I'm sure he is a</p> <p>25 citizen, is from Bosnia, and his command of the</p>

<p style="text-align: right;">154</p> <p>1 English language is not great. And he said he is 2 struggling understanding what's going on. 3 I was somewhat inclined just to accept 4 his representation to that effect, but obviously 5 if counsel wants to question that, we can bring 6 him in and you can ask him questions. But I was 7 inclined just to excuse him, as well. 8 MR. McALLISTER: No objection. 9 MR. HAWS: No objection, Your Honor. 10 THE COURT: Then we will excuse Jurors 8 and 11 53. 12 Then with regard to challenges for 13 cause, I have not heard anything up to this point 14 that would support a challenge for cause, unless 15 there is an agreement of counsel as to a 16 particular juror. 17 Counsel, that doesn't preclude counsel 18 from making that note. But to do that, I think we 19 would need to have further inquiry of the juror, 20 and that, we probably would do that perhaps in 21 chambers, to -- well, it just depends on how many 22 there are, I guess. 23 If you want, we can discuss that now or 24 just wait until we're through with the court's 25 questioning and go into it. But I think it might</p>	<p style="text-align: right;">155</p> <p>1 be prudent just to go ahead and hit it head on 2 now. 3 Mr. McAllister? 4 MR. McALLISTER: Juror 24, the psychologist, 5 William Cooper, and Cliff Diffendaffer, who is a 6 retired special agent with the Department of 7 Transportation, Juror No. 28, and I'm going to 8 make a challenge for cause as to each of them 9 based primarily on their life's experience. 10 It's pretty clear to me that both of 11 them were, in their professions and their work, 12 were strongly aligned with the government, and 13 therefore I challenge them both. 14 THE COURT: Well, I don't know that a 15 psychologist is aligned hopefully with anyone. 16 They're hopefully independent examiners, but 17 obviously you can inquire. 18 I think -- well, I wondered if it was 19 either Juror 24 or Juror 28, and apparently I was 20 right on both counts, because they were the two 21 that I thought you might object to. 22 I think the way to handle that, though, 23 unless the government agrees as to both of them, 24 is that we will need to allow you to examine those 25 jurors outside the presence of the jury, or I</p>
<p style="text-align: right;">156</p> <p>1 guess we could do it inside the presence -- with 2 the jury present. 3 I'm trying to be careful here on a 4 number of issues, and I may just opt to allow you 5 to examine them, either after a break this 6 afternoon, we'll allow those two jurors to come 7 back and you can examine them, and then we'll make 8 a ruling. 9 MR. McALLISTER: Judge, I really do not 10 think that I need to examine them at this point 11 before I make -- 12 THE COURT: Okay. So you're just going to 13 make the challenge based on what they have said? 14 MR. McALLISTER: Yes, sir. 15 THE COURT: All right. 16 MR. HAWS: I'll respond to that, Your Honor. 17 With regard to Mr. Diffendaffer, it has been his 18 life's work to be in law enforcement, no question 19 about that. But he was very categorical in what 20 he said, that he could be a fair and impartial 21 juror. He could set those things aside. 22 And the thing that concerns me if we 23 start with these types of challenges, Your Honor, 24 is that it becomes a slippery slope. Because 25 there are quite a few of these people who have a</p>	<p style="text-align: right;">157</p> <p>1 lot of electronics expertise. So are we going to 2 start challenging them for cause because they have 3 some kind of specialized electronics expertise? 4 I think this is -- this is dangerous. 5 That's why we ask the question, we always ask the 6 question whether they can put those things aside, 7 listen to the evidence, and be a fair and 8 impartial juror in the case. I think that's what 9 the test comes down to, Your Honor. 10 THE COURT: Here is the problem with 11 Dr. Cooper that I want to highlight. You heard me 12 mention Judge Boyle's service on a state court 13 jury. And I had a chat with him about, you know, 14 what a challenge that would be, to try to sit in a 15 jury room and not allow your legal expertise to 16 come to bear in the jury room. 17 I think the same thing is true with 18 Dr. Cooper. What I'm going to stress with him 19 before we conclude this issue is that he will have 20 to essentially leave his expertise outside the 21 jury room, and he is going to have to base his 22 decision, if he is selected for the jury, on 23 whatever the evidence is. He may not agree with 24 it, but if that's the evidence, it is the 25 evidence.</p>

<p style="text-align: right;">158</p> <p>1 And he may end up -- you know, it's</p> <p>2 even possible that he would be called upon to</p> <p>3 render a verdict that would be predicated on</p> <p>4 medical and psychological opinions that are</p> <p>5 contrary to his own; and whether he would be able</p> <p>6 to do so.</p> <p>7 If he cannot do that, then I think we</p> <p>8 have a challenge for cause, because at that point</p> <p>9 you would essentially have the problem of having</p> <p>10 the jury making its decision based upon the</p> <p>11 opinion of an expert who is not subject to</p> <p>12 cross-examination, and who is the most dangerous</p> <p>13 kind of witness, because it would be a witness in</p> <p>14 the jury room.</p> <p>15 So I'm going to inquire of Dr. Cooper.</p> <p>16 I think it's a valid concern.</p> <p>17 The challenge here, of course, is I</p> <p>18 don't know precisely what the parameters of the</p> <p>19 defense will be in this case. But since it is</p> <p>20 quite possibly an issue, based upon some of the</p> <p>21 pretrial motions that were made, I think it's</p> <p>22 something I have to address, and I do intend to</p> <p>23 address it.</p> <p>24 But I can tell you that if Dr. Cooper</p> <p>25 expresses an inability to compartmentalize his</p>	<p style="text-align: right;">159</p> <p>1 decision-making to that degree, then I probably am</p> <p>2 going to exclude him, because then I think we run</p> <p>3 the danger that I've discussed.</p> <p>4 With regard to Mr. Diffendorfer -- or</p> <p>5 Diffen- -- well, Juror No. 28, that's another</p> <p>6 matter. I've had active police officers sit on</p> <p>7 juries in criminal cases. Now why defense counsel</p> <p>8 left them on, I don't know, but they did. And I</p> <p>9 don't think that automatically disqualifies</p> <p>10 someone from serving.</p> <p>11 So we'll address that, though, and if</p> <p>12 you want to you can make further argument at</p> <p>13 sidebar before I make a final decision.</p> <p>14 All right. Let's bring the jury</p> <p>15 in and -- oh, I'm sorry. Yes, Ms. Whelan.</p> <p>16 MS. WHELAN: Your Honor, just, I'm not sure</p> <p>17 where the court --</p> <p>18 THE COURT: Normally, if you stand up, you</p> <p>19 don't need to raise your hand. But that's all</p> <p>20 right. We're not in grammar school, but that's</p> <p>21 all right.</p> <p>22 MS. WHELAN: I just wanted to make sure you</p> <p>23 saw me.</p> <p>24 I don't know where the court is going</p> <p>25 with its voir dire, but I wanted to draw to the</p>
<p style="text-align: right;">160</p> <p>1 court's attention that Juror No. 12 did make a</p> <p>2 statement on the questionnaire that they could not</p> <p>3 sit in judgment of anybody.</p> <p>4 THE COURT: All right. I will -- thank you.</p> <p>5 I will address that issue. We run into that from</p> <p>6 time to time with jurors who have strong religious</p> <p>7 beliefs.</p> <p>8 And what I normally do is explain to</p> <p>9 them that they are finders of fact, and that they</p> <p>10 are not expected to render judgment in the sense</p> <p>11 of a moral culpability, but only to conclude</p> <p>12 whether the government has proved each element of</p> <p>13 the charged offense beyond a reasonable doubt.</p> <p>14 And it will be for the court ultimately to render</p> <p>15 judgment in the case, based upon the jury's</p> <p>16 verdict. But if they have reservations about</p> <p>17 their ability to do that, then they also come off</p> <p>18 the jury.</p> <p>19 MS. WHELAN: Thank you. I just wanted to</p> <p>20 bring that to your attention.</p> <p>21 THE COURT: All right.</p> <p>22 Okay. Let's bring the jury in.</p> <p>23 THE LAW CLERK: Judge, just to be clear,</p> <p>24 Jurors 8 and 53 are excused?</p> <p>25 THE COURT: Yes.</p>	<p style="text-align: right;">161</p> <p>1 Counsel, I think we're in agreement,</p> <p>2 Jurors 8 and 53 will be excused, and we will</p> <p>3 bring -- I think we're up to Juror 38,</p> <p>4 Ms. Gearhart?</p> <p>5 THE CLERK: Correct, Your Honor.</p> <p>6 THE COURT: Will take the place of Juror</p> <p>7 No. 8.</p> <p>8 Counsel, while we're waiting for the</p> <p>9 jury, I discussed with you the issue of live</p> <p>10 blogging. Do either of you wish to be heard on</p> <p>11 that?</p> <p>12 My research indicates there are no</p> <p>13 Judicial Conference -- that's USA Judicial</p> <p>14 Conference -- or Ninth Circuit policies against</p> <p>15 it. With the understanding that there is to be no</p> <p>16 attempt to try to capture exact statements made by</p> <p>17 witnesses -- in other words, putting anything in</p> <p>18 quotations -- and that it's not done in a</p> <p>19 disruptive fashion, that I would permit it.</p> <p>20 But I am allowing counsel, if you wish</p> <p>21 to object to that, I would -- from the defense, is</p> <p>22 there any objection?</p> <p>23 MR. McALLISTER: There is, Your Honor. I</p> <p>24 object to it.</p> <p>25 THE COURT: Ms. Whelan, do you wish to be</p>

<p style="text-align: right;">162</p> <p>1 heard?</p> <p>2 MS. WHELAN: No.</p> <p>3 THE COURT: All right. Well, I'm going to</p> <p>4 mull it over. I think over the objection of</p> <p>5 defense, it's going to be a little bit -- the</p> <p>6 court is a little bit hard-pressed to permit it.</p> <p>7 So I'll -- we'll perhaps -- all right. Let me</p> <p>8 give it some more thought.</p> <p>9 I think there is some danger, even</p> <p>10 though we instruct the jury not to do any blogging</p> <p>11 or anything like that while they're in session, I</p> <p>12 can't -- it's creating perhaps one more</p> <p>13 possibility of improper contact with the jury</p> <p>14 that's inadvertent, but yet still damaging.</p> <p>15 So I'll make a ruling on that, now that</p> <p>16 the request has been made. But at least until</p> <p>17 further order of the court, it's not permitted,</p> <p>18 and I assume everyone in the courtroom is aware of</p> <p>19 that.</p> <p>20 MS. WHELAN: Your Honor, what the court just</p> <p>21 said, that brings up one thing to mind.</p> <p>22 THE COURT: Yes.</p> <p>23 Could you hold the jurors just for one</p> <p>24 moment?</p> <p>25 Ms. Whelan?</p>	<p style="text-align: right;">163</p> <p>1 MS. WHELAN: Does it just prohibit the news</p> <p>2 media from blogging, or anybody who is in here?</p> <p>3 THE COURT: It would be anyone from</p> <p>4 blogging.</p> <p>5 MS. WHELAN: Okay. Because after the last</p> <p>6 hearing there were blogs and updates about what</p> <p>7 was going on in court. I just don't know how the</p> <p>8 court draws the line.</p> <p>9 THE COURT: Well, I can't preclude someone</p> <p>10 from stepping out into the hallway. All I can</p> <p>11 prohibit is what goes on in the courtroom, live</p> <p>12 blogging while the court is in session.</p> <p>13 If someone wants to -- I mean, the</p> <p>14 First Amendment clearly would protect their right</p> <p>15 to -- and I assume, Mr. McAllister, you understand</p> <p>16 the parameters of the court's ruling, that I can't</p> <p>17 preclude anyone from doing blogging in the</p> <p>18 hallways or in the parking lots or in their</p> <p>19 offices. All I can do would be to prevent it</p> <p>20 from occurring live here in the courtroom as the</p> <p>21 testimony is being received.</p> <p>22 And for that matter, they can actually</p> <p>23 probably prepare the blogs on a word-processing</p> <p>24 format, and then copy or save -- or copy and then</p> <p>25 paste into the blog, and it would have the same</p>
<p style="text-align: right;">164</p> <p>1 effect. It would just be delayed by a few hours.</p> <p>2 So the only question is live blogging.</p> <p>3 Okay?</p> <p>4 MS. WHELAN: Thank you.</p> <p>5 THE COURT: By anyone.</p> <p>6 MS. WHELAN: Thank you.</p> <p>7 THE COURT: All right. Ms. Gearhart, do you</p> <p>8 want to tell Ms. Tetrick we're ready.</p> <p>9 (Jury panel present.)</p> <p>10 THE COURT: I'll note for the record that it</p> <p>11 appears that all jurors are present.</p> <p>12 We have excused two jurors. One is</p> <p>13 Juror 8, and we need to replace him, so I'm going</p> <p>14 to ask Juror No. 38 if you would take the seat</p> <p>15 vacated on the back row.</p> <p>16 And while you're there -- and actually</p> <p>17 you have already sat down, but if you would stand</p> <p>18 now and answer the questions on the questionnaire.</p> <p>19 Let's get the microphone to you, too, as well.</p> <p>20 JUROR NO. 38: I'm No. 38. I'm a custodian.</p> <p>21 My wife works in food service. I have a daughter,</p> <p>22 25, who is a student, and a son, 16.</p> <p>23 I have been a member of a jury. It was</p> <p>24 a criminal trial, armed robbery, down in southern</p> <p>25 California.</p>	<p style="text-align: right;">165</p> <p>1 THE COURT: What was the verdict? Do you</p> <p>2 recall?</p> <p>3 JUROR NO. 38: Hung jury.</p> <p>4 THE COURT: Okay.</p> <p>5 JUROR NO. 38: Had some college, and I have</p> <p>6 never studied law.</p> <p>7 THE COURT: Okay. And Juror No. 38, you</p> <p>8 have been in the courtroom throughout the</p> <p>9 proceedings today?</p> <p>10 JUROR NO. 38: Yes.</p> <p>11 THE COURT: Did you hear all of the</p> <p>12 questions that I put to the panel?</p> <p>13 JUROR NO. 38: Yes, I did.</p> <p>14 THE COURT: Are there any of those questions</p> <p>15 that you would have responded to by raising your</p> <p>16 hand?</p> <p>17 JUROR NO. 38: No.</p> <p>18 THE COURT: I'm just going to summarize a</p> <p>19 couple. I don't mean to cover all of them. But I</p> <p>20 assume that prior to entering the courtroom, you</p> <p>21 did not know Mr. Steele or know of him?</p> <p>22 JUROR NO. 38: I did not.</p> <p>23 THE COURT: You did not know any of the</p> <p>24 witnesses that I identified?</p> <p>25 JUROR NO. 38: Do not.</p>

<p style="text-align: center;">166</p> <p>1 THE COURT: Did not know or have any 2 relationship with any of the attorneys? 3 JUROR NO. 38: No. 4 THE COURT: You have not had -- either you, 5 yourself, or a close family member either arrested 6 or the victim of any serious crime? 7 JUROR NO. 38: I was arrested when I was 19, 8 traffic violation. 9 THE COURT: Okay. But it was just traffic? 10 JUROR NO. 38: Mm-hmm. 11 THE COURT: You would have not needed to 12 raise your hand for that. All right. Thank you. 13 Juror No. 15, I think you indicated 14 perhaps to Mr. Severson that there was one other 15 issue you wanted to take up with the court. 16 JUROR NO. 15: Right. I had forgotten that 17 my relationship before I met my husband in 1974 18 was an abusive relationship. And I thought about 19 that on the way down, and I just didn't know -- I 20 don't think that would affect anything. It was a 21 -- it was a long-term relationship, but I left 22 shortly after the abuse started. So I just didn't 23 want to not bring that up. 24 THE COURT: You have used that word, "I 25 don't think it would affect." Are you confident</p>	<p style="text-align: center;">167</p> <p>1 it would not affect your consideration? 2 JUROR NO. 15: It will not affect my 3 consideration. I don't think it will affect the 4 court's consideration, is where the "I don't 5 think" -- but I wanted to make sure that you have 6 that information. 7 THE COURT: I'll be the judge of that, but 8 thank you. 9 JUROR NO. 15: Yeah. It will not affect my 10 consideration. 11 THE COURT: Pun intended. 12 All right. Thank you very much. Just 13 hold on to the microphone. 14 Is there anyone else who, on 15 reflection, now who recalls or has had time to 16 reflect and think that perhaps some of the 17 questions I asked earlier applies to you, and 18 something has come to mind that you didn't reveal 19 previously? 20 Okay. I see no other response. 21 On your questionnaire, you had the 22 opportunity to note whether or not you had any 23 close family members or friends in law 24 enforcement. I'm not going to ask you to respond 25 to that question again. But what I will ask you</p>
<p style="text-align: center;">168</p> <p>1 is whether anyone has a relationship with law 2 enforcement officers, either as family members or 3 otherwise, which you feel might make it difficult 4 for you to be fair and impartial as a juror in 5 this proceeding? Anyone? 6 In other words, you're very close to 7 someone in law enforcement and you might just tend 8 to side with law enforcement because of that 9 relationship? 10 Okay. I see no response. 11 Juror No. 24, I think I'm going to take 12 up an issue with you about -- now, you are a 13 forensic psychologist, right? 14 JUROR NO. 24: Yes, sir. 15 THE COURT: Let me explain -- I didn't do a 16 very good job of explaining my concern earlier. I 17 gave you the example of a judge here in the 18 federal court who was summoned and served for a 19 very long -- in a very long trial in state court, 20 and the challenges that would raise. 21 And it would be the same challenge for 22 a lawyer. If a lawyer were picked to be on a jury 23 and the jury was back deliberating, and that juror 24 just flat thought that judge had the law wrong, it 25 would still be improper for him or her to then</p>	<p style="text-align: center;">169</p> <p>1 start counseling the jury as to what the law 2 really is. 3 That would be improper because you 4 essentially have another judge in the jury room, 5 instructing the jury contrary to what the judge 6 has provided. 7 The same thing would be true with an 8 expert witness. Let's say that you have -- there 9 is an issue in a case involving astronomy and the 10 composition of the moon. And a witness gets up 11 and testifies the moon is made of green cheese. 12 And you also happen to have Karl Sagan or someone 13 else who -- I guess he has passed away, but 14 someone who is just the world's expert in that 15 field. It would likewise be improper for that 16 juror to take their expertise into the jury room 17 and then start instructing the jury or telling the 18 jury what the true state of the science is in a 19 particular field. 20 The decisions have to be made based 21 upon the evidence presented in the courtroom, 22 where the attorneys have had a chance to question 23 and cross-examine those witnesses, and through 24 that process the jury can make its decision. But 25 we can't have experts in the jury room, who would</p>

<p style="text-align: center;">170</p> <p>1 then bring their expertise to bear upon a 2 particular issue. 3 Now, with that explanation, do you have 4 any reservation about your ability to put aside 5 your own professional expertise and decide this 6 case solely from the evidence as presented here in 7 the courtroom? 8 JUROR NO. 24: No, Your Honor, I don't. 9 THE COURT: You have no reservation about 10 that? 11 JUROR NO. 24: I don't have any reservation. 12 I understand what you're saying, that you would 13 not want me to use my expert witness knowledge to 14 influence the group if it was opposed to what the 15 judge had said or what was decided by the 16 attorneys. And I understand that role and I would 17 not take that role. 18 THE COURT: Okay. And you understand that 19 it might even -- you know, if all the evidence is 20 lined up -- and I'm just using this as a 21 hypothetical, obviously -- but if the evidence as 22 presented in the courtroom suggests proposition X 23 in the field of forensic psychology, and you 24 happen not to subscribe to that view and think 25 it's wrong, you might be called upon then to</p>	<p style="text-align: center;">171</p> <p>1 render a verdict that's contrary to your own views 2 of your field of expertise. Are you comfortable 3 doing that? 4 JUROR NO. 24: I can -- I could do that and 5 I would do that. Whether I would be comfortable 6 doing it or not -- 7 THE COURT: Okay. 8 JUROR NO. 24: -- is another story. 9 THE COURT: All right. And actually, I'm 10 glad you corrected me. Again, I have been hard on 11 the jury about being very precise in your use of 12 terms. It's not a question of whether you are 13 comfortable; it's a question of whether you would 14 do it whether you would be comfortable or not. 15 And you are telling me you would be 16 able to do that. 17 JUROR NO. 24: I understand the concept and 18 I would be able to do that. 19 THE COURT: All right. Thank you very much. 20 All right. 21 The other question -- my next question, 22 I usually preface this with a little walk down 23 memory lane for myself. 24 I was raised in a -- not a real large 25 family, but I had two older brothers, very close</p>
<p style="text-align: center;">172</p> <p>1 in age, but could not have been different -- more 2 different. One brother was probably the world's 3 greatest straight arrow. I mean, everything was 4 clear-cut, never did anything wrong in their life, 5 probably never had a speeding ticket, probably 6 never did anything wrong, ever. The other brother 7 had a little trouble doing anything right, it 8 seemed, or he was always having little brushes 9 with the law, and whatnot. 10 And likewise, they had very different 11 attitudes about law enforcement. My oldest 12 brother, I'm sure, idolized and worshipped the 13 very ground that anyone in law enforcement walked 14 on. My next brother pretty much thought just the 15 opposite, and was pretty well convinced that they 16 were about as wrong and evil a group of people as 17 ever walked the face of the Earth. 18 In the real world we have people of 19 both points of view, and I suppose there is 20 nothing wrong with having either point of view, as 21 long as you don't have such strong points of view 22 that you would either tend to discount what a law 23 enforcement officer may testify to simply because 24 they are in law enforcement and not actually gauge 25 their credibility based upon what they testify to</p>	<p style="text-align: center;">173</p> <p>1 or if you would tend to just simply discount it 2 completely for the same reason. 3 What I'm trying to find out: Is there 4 anybody on the panel who has such strong feelings 5 about law enforcement that you may be unable to 6 fairly gauge their testimony, assess their 7 credibility based on what they say here in the 8 courtroom, without being unduly influenced by the 9 fact that they work in law enforcement? 10 Okay. I see no response. 11 Is there anyone on the panel who has 12 had significant dealings with the United States -- 13 U.S. Attorney's Office or other state or federal 14 law enforcement agencies, other than as you've 15 already disclosed, where you've had significant 16 dealings with the U.S. Attorney's Office or with 17 other state or federal law enforcement agencies 18 through your work, perhaps as a teacher you have a 19 lot of contact with a resource officer, things of 20 that sort. 21 Juror No. 2. Where is the mic? 22 JUROR NO. 2: I'm Juror No. 2, and I work 23 with EBD children, and we work very closely with 24 the SRO. 25 THE COURT: Would that in any way affect</p>

<p style="text-align: center;">174</p> <p>1 your consideration of the evidence here or how you 2 would consider the testimony of a law enforcement 3 officer? 4 JUROR NO. 2: No, it would not. 5 THE COURT: All right. Thank you. 6 Anyone else? 7 Okay. I see no other response. 8 Is there anyone on the panel who feels 9 that it is wrong for the government to use a 10 cooperating witness to obtain information in a 11 criminal case? 12 And by a "cooperating witness," what 13 I'm really referring to is someone who perhaps has 14 been involved in some criminal behavior 15 themselves, perhaps involved in the same crime 16 that is being considered by the jury, and is given 17 perhaps even some benefit, by way of a plea 18 bargain or otherwise, for their testimony. 19 Now, I will tell you that I will 20 instruct you, if you're selected for the jury, 21 that the jury can and should consider such 22 testimony with a higher degree of skepticism than 23 you would other witnesses, and carefully measure 24 it, because a witness of that sort has been, in 25 fact, provided some consideration for their</p>	<p style="text-align: center;">175</p> <p>1 testimony. 2 But is there anyone who would simply 3 discount it completely and just, right out of the 4 chute would not be willing to even consider such 5 testimony? 6 Okay. I guess, likewise, anyone who 7 would have difficulty following my instruction and 8 more carefully scrutinizing such testimony of 9 someone who has actually received some benefit by 10 way of plea bargain or otherwise for their 11 testimony? 12 All right. I see no response. 13 Is there anyone on the panel who has 14 specialized training in the law, other than what 15 we have discussed in forensic science, other than 16 what we have discussed with Juror No. 24, with 17 audio recordings, or with explosives? Anyone who 18 has any expertise in those fields? 19 Okay. I see no response. 20 Other than as we have discussed, is 21 there anyone on the panel who feels that you, 22 yourself, or again a very close family member have 23 been the victim of a violent act of any kind? 24 All right. I see no additional 25 response.</p>
<p style="text-align: center;">176</p> <p>1 Is there anyone on the panel who has 2 had an unpleasant experience with the 3 United States Government or any government agency? 4 And I usually use, again, as kind of a 5 benchmark, a nonroutine tax audit. Hopefully a 6 routine audit would have been somewhat uneventful. 7 A nonroutine audit may have been more painful, and 8 that would be an unpleasant experience. But I 9 wouldn't limit it to that. 10 If you've had any dispute with the 11 government over Social Security benefits, 12 rights-of-way on federal lands, disputes over your 13 right to graze cattle, any dispute with the 14 United States Government. Anyone? 15 That's Juror No. 9. 16 JUROR NO. 9: I'm Juror No. 9. I had a -- 17 what started out to be a routine audit for my 18 business, a sales tax audit. It drug on for two 19 years. They said I owed \$800,000 in sales tax. 20 We battled this, and it turned into what I felt 21 like what was not right, but, "I'm going to pry 22 money out of you, as much as I can." 23 We negotiated it down to about 24 \$175,000. At that point it was a situation of, 25 "If you want to pursue it further, we're into</p>	<p style="text-align: center;">177</p> <p>1 court." 2 At that time, we felt we were right. 3 Our attorney felt that we were extremely strong, 4 but it was too much of a risk for us to continue 5 to pursue that. An \$800,000 loss would have 6 completely put us out of business. We could 7 absorb the \$175,000, but it was painful and it 8 caused us a lot of problems, financially. 9 After the whole thing was settled, the 10 commissioner of the State Tax Commission, who 11 happened to be a previous client of ours -- but we 12 didn't even know he was the commissioner, because 13 we had requested meetings with him, with the head 14 commissioner, and they wouldn't grant us those. 15 He said, when he come up to do some 16 warranty work here about a year after the case was 17 closed, he said, you know, "What's the status of 18 that case? I've been watching for it on my desk." 19 He said, "I know how you guys operate." He said, 20 "That was wrong." 21 And so, I felt like, at least for the 22 State Tax Commission, I have a serious bias, that 23 there is some corruption in that division. I 24 don't have that bias government-wide, but with the 25 state Sales Tax Commission, yeah, I have a</p>

<p style="text-align: right;">178</p> <p>1 problem.</p> <p>2 THE COURT: You correctly noted it's the</p> <p>3 State Tax Commission, not the federal tax</p> <p>4 commission; and you have not had any similar</p> <p>5 problems with, say, the Internal Revenue Service</p> <p>6 or other similar agencies, correct?</p> <p>7 JUROR NO. 9: Correct, Your Honor.</p> <p>8 THE COURT: Now, given that, are you</p> <p>9 comfortable that that experience would not affect</p> <p>10 your consideration of the evidence here, where the</p> <p>11 United States, rather than the State of Idaho, is</p> <p>12 the party?</p> <p>13 JUROR NO. 9: Yes, Your Honor.</p> <p>14 THE COURT: Okay. Now that doesn't mean</p> <p>15 that you've got a life experience that might cause</p> <p>16 you to be more careful in dealing with the</p> <p>17 government, generally, governments, generally, but</p> <p>18 in this case you could be fair and impartial?</p> <p>19 JUROR NO. 9: Yes, Your Honor.</p> <p>20 THE COURT: All right. Thank you.</p> <p>21 Anyone else?</p> <p>22 All right. Juror No. 11.</p> <p>23 JUROR NO. 11: Eleven. I just want to say</p> <p>24 that I have a great resentment against the Bureau</p> <p>25 of Land Management of several years ago, and the</p>	<p style="text-align: right;">179</p> <p>1 way they treated people and my friends, and the</p> <p>2 way they did their science. And I don't think</p> <p>3 that would have anything to do with this case</p> <p>4 here, and I don't have a resentment against the</p> <p>5 government in general.</p> <p>6 THE COURT: Now, I appreciate that. Now,</p> <p>7 you live in Owyhee County, as I recall?</p> <p>8 JUROR NO. 11: Yes.</p> <p>9 THE COURT: Okay. And I think you mentioned</p> <p>10 that you had transcribed transcripts of hearings</p> <p>11 that I had had, and I've had decisions involving</p> <p>12 ranchers and grazing and whatnot in Owyhee County.</p> <p>13 And, frankly, whether you -- I can't remember your</p> <p>14 comment earlier, you didn't hold anything against</p> <p>15 me, and I -- and that's probably not even</p> <p>16 relevant. But even if you perhaps disagreed with,</p> <p>17 say, some decisions I had made, that wouldn't</p> <p>18 affect you as a juror in this case; is that</p> <p>19 correct?</p> <p>20 JUROR NO. 11: That's correct.</p> <p>21 THE COURT: Okay. And likewise, even though</p> <p>22 the BLM may have acted improperly, from your point</p> <p>23 of view, they're not a party, they're not an</p> <p>24 agency involved in this case, and you're</p> <p>25 comfortable that you could be fair and impartial</p>
<p style="text-align: right;">180</p> <p>1 despite that?</p> <p>2 JUROR NO. 11: Yes, sir.</p> <p>3 THE COURT: All right. Thank you. And</p> <p>4 you'll notice I didn't ask you for your opinion on</p> <p>5 my decisions, but --</p> <p>6 (Laughter.)</p> <p>7 JUROR NO. 11: Thank you again.</p> <p>8 (Laughter.)</p> <p>9 THE COURT: I think we're developing a</p> <p>10 mutual respect here.</p> <p>11 All right. Anything else? Anyone else</p> <p>12 on the panel?</p> <p>13 All right. Now, this next question is</p> <p>14 another question that probes deeply into your</p> <p>15 background, life experience, and if at any time</p> <p>16 you want to discuss this at sidebar, you can. But</p> <p>17 I'm just going to state the question. I want you</p> <p>18 to listen carefully, and if it applies to you,</p> <p>19 raise your hand.</p> <p>20 Again, by show of hands, have any of</p> <p>21 you, or any close family member, ever held beliefs</p> <p>22 in line with any group which supports or espouses</p> <p>23 racial or ethnic superiority, or with any group</p> <p>24 which opposes such views?</p> <p>25 Let me give you examples. A group</p>	<p style="text-align: right;">181</p> <p>1 which supports or espouses racial or ethnic</p> <p>2 superiority might include the Ku Klux Klan, Aryan</p> <p>3 Nations, the National Socialist Movement, or the</p> <p>4 National Alliance. And that's just by way of</p> <p>5 example.</p> <p>6 It's basically whether you have</p> <p>7 affiliated with or have beliefs in line with any</p> <p>8 group that supports or espouses racial or ethnic</p> <p>9 superiority. Anyone?</p> <p>10 All right. I see no response.</p> <p>11 Likewise -- and, in fact, I should have</p> <p>12 made this clear. I was asking -- let me reask the</p> <p>13 question, because I may not have made the point</p> <p>14 clear.</p> <p>15 I was asking not only those who support</p> <p>16 or espouse racial or ethnic superiority, but also</p> <p>17 any group which opposes such views. And groups</p> <p>18 which would oppose such views might include the</p> <p>19 Southern Poverty Law Center, the Anti- Defamation</p> <p>20 League, the NAACP, B'nai B'rith.</p> <p>21 So I'm really asking if you either have</p> <p>22 become involved in any groups on either side of</p> <p>23 that issue, either supporting or opposing views of</p> <p>24 racial or ethnic superiority. Anyone?</p> <p>25 Okay. That's Juror No. --</p>

<p style="text-align: center;">182</p> <p>1 JUROR NO. 20: Twenty.</p> <p>2 THE COURT: -- 20. Thank you.</p> <p>3 JUROR NO. 20: My daughter was the youth</p> <p>4 representative for the Ada County Human Rights</p> <p>5 Commission, and as her mother I attended some</p> <p>6 different lectures. And they opposed</p> <p>7 discrimination on any -- any grounds, I guess.</p> <p>8 THE COURT: As a follow-up to that, Juror</p> <p>9 No. 20, if a person, either as a witness or</p> <p>10 otherwise involved in the case, were to espouse</p> <p>11 views of that sort, are you comfortable that you</p> <p>12 could give that person the same rights and</p> <p>13 entitlement to fair consideration as you would</p> <p>14 anyone else --</p> <p>15 JUROR NO. 20: Yes.</p> <p>16 THE COURT: -- despite those views?</p> <p>17 JUROR NO. 20: Yes, Your Honor. I agree</p> <p>18 with the statement you just said.</p> <p>19 THE COURT: All right. Thank you.</p> <p>20 Is there anyone else on the panel?</p> <p>21 Okay. Is there anyone who -- again,</p> <p>22 following up on what Juror 20 and I -- our little</p> <p>23 exchange there -- anyone who disagrees with that</p> <p>24 statement, that a person who may espouse views on</p> <p>25 either side of that question, anyone who disputes</p>	<p style="text-align: center;">183</p> <p>1 that they're entitled to the same fair</p> <p>2 consideration as would any other person, no matter</p> <p>3 what their personal beliefs may be on that issue?</p> <p>4 Okay. I don't see anyone disagreeing.</p> <p>5 If you do disagree, would you raise your hand so</p> <p>6 we can follow up.</p> <p>7 All right. I see no other response.</p> <p>8 Is there anyone who, on a regular</p> <p>9 basis, listens to or receives information from</p> <p>10 radio, television, podcasts, Internet sources or</p> <p>11 blogs, which espouses or opposes such beliefs of</p> <p>12 racial or ethnic superiority? Anyone?</p> <p>13 Okay. Again, I see no response.</p> <p>14 I'm going to ask now -- and I should</p> <p>15 caution counsel that I'm wrapping up here, and so</p> <p>16 your opportunity for voir dire of the jury is fast</p> <p>17 approaching, so you may want to be prepared.</p> <p>18 And these questions I'm asking now, I</p> <p>19 worry that jurors think that they're rhetorical in</p> <p>20 nature. In other words, they're just being asked</p> <p>21 to make a statement more than to ask a question.</p> <p>22 And that's really not true. I want you to listen</p> <p>23 very carefully to what I'm now going to say and</p> <p>24 ask yourself whether or not you have any</p> <p>25 reservation about these issues.</p>
<p style="text-align: center;">184</p> <p>1 Okay. First: As I have noted, the</p> <p>2 defendant has been charged with this offense by</p> <p>3 the United States and he has entered a plea of not</p> <p>4 guilty. Now, in our judicial system everyone is</p> <p>5 presumed innocent until the contrary is proven.</p> <p>6 Is there anyone who believes that</p> <p>7 because, and only because, the defendant has been</p> <p>8 charged with this offense, he is guilty? Anyone?</p> <p>9 Okay. I see no response.</p> <p>10 This is sometimes referred to as a</p> <p>11 presumption of innocence, and that is the idea</p> <p>12 that an individual is presumed innocent until the</p> <p>13 contrary is proven.</p> <p>14 I think the best way to explain this is</p> <p>15 an example that was used in a trial that I</p> <p>16 presided over many years ago, in which an attorney</p> <p>17 asks the jury during jury selection that if they</p> <p>18 were told to retire to the jury room right then</p> <p>19 during jury selection, obviously at the very</p> <p>20 beginning of the trial, without hearing any</p> <p>21 evidence and told to return a verdict, what would</p> <p>22 their verdict be.</p> <p>23 And one of the jurors rather timidly</p> <p>24 raised their hand and said, "Well, we couldn't</p> <p>25 possibly do that because we haven't heard any</p>	<p style="text-align: center;">185</p> <p>1 evidence."</p> <p>2 And the attorney correctly pointed out,</p> <p>3 "That is the wrong answer. The correct answer is</p> <p>4 that the verdict that you must return is not</p> <p>5 guilty." And that's because of the presumption of</p> <p>6 innocence. If you heard no evidence and nothing</p> <p>7 has been presented, then, because of the</p> <p>8 presumption of innocence, the only verdict that</p> <p>9 can be returned is one of not guilty.</p> <p>10 Now, with that explanation, anyone who</p> <p>11 has any trouble with the idea of the presumption</p> <p>12 of innocence as applied in our courts?</p> <p>13 Okay. Again, I see no response.</p> <p>14 In our system of justice, a very high</p> <p>15 burden of proof is placed upon the government,</p> <p>16 such that they must prove a defendant's guilt</p> <p>17 beyond a reasonable doubt before that defendant</p> <p>18 can be convicted. In fact, it even goes more than</p> <p>19 that. It actually requires that the government</p> <p>20 prove each element of the charged offense beyond a</p> <p>21 reasonable doubt, and if any one of those elements</p> <p>22 is not proven beyond a reasonable doubt, the</p> <p>23 verdict must be not guilty.</p> <p>24 Is there anyone who would have any</p> <p>25 difficulty holding the government to this high</p>

<p style="text-align: right;">186</p> <p>1 burden of proof?</p> <p>2 I see no response.</p> <p>3 Anyone who feels the burden should not</p> <p>4 be that high?</p> <p>5 Okay. Again, I see no response.</p> <p>6 Under our system of justice, the burden</p> <p>7 of proof rests solely upon the government, so that</p> <p>8 the defendant need not testify and his attorney</p> <p>9 need not introduce any evidence whatsoever.</p> <p>10 Is there any member of the panel who</p> <p>11 has some reservation about this principle of our</p> <p>12 legal system, such that the burden is always upon</p> <p>13 the government and the defendant has no burden of</p> <p>14 proving anything, but could simply sit back, say</p> <p>15 at the close of the government's case, and say,</p> <p>16 "We're not putting on any evidence; we rest</p> <p>17 without calling any witnesses because we think the</p> <p>18 government has not proven each element beyond a</p> <p>19 reasonable doubt"? Anyone who is troubled by</p> <p>20 that?</p> <p>21 Okay. I see no response.</p> <p>22 Is there any juror who feels that a</p> <p>23 defendant in a criminal case should have to prove</p> <p>24 his or her innocence?</p> <p>25 Again, I see no response.</p>	<p style="text-align: right;">187</p> <p>1 Is there anyone who feels the defendant</p> <p>2 would not be on trial unless he had done something</p> <p>3 wrong?</p> <p>4 Okay. I see no response.</p> <p>5 I have described for you at the outset</p> <p>6 the nature of the charges, told you something</p> <p>7 about the background of the case, but I have to</p> <p>8 ask you to look deep inside your -- yourself and</p> <p>9 ask yourself whether there is anything about the</p> <p>10 nature of these charges that would make it</p> <p>11 difficult for you to be fair and impartial as a</p> <p>12 judge of the facts. Anyone?</p> <p>13 All right. I will ask another question</p> <p>14 that I think was asked by an attorney many years</p> <p>15 ago in one of my first trials, and I have repeated</p> <p>16 it ever since. In some respects, it's one of the</p> <p>17 best questions we can ask of a juror.</p> <p>18 I'm going to ask you to, for a moment,</p> <p>19 imagine yourself sitting either in the chair</p> <p>20 occupied by the special agent with the FBI, who</p> <p>21 has been involved in investigating this case, and</p> <p>22 also Mr. Steele, who has been charged with this</p> <p>23 offense -- obviously, both of those individuals</p> <p>24 have a tremendous interest in the outcome of this</p> <p>25 case -- and then ask yourself whether, if you were</p>
<p style="text-align: right;">188</p> <p>1 sitting in either chair, would you have any</p> <p>2 discomfort, any concern at all, about having a</p> <p>3 juror like you on this jury, with your background</p> <p>4 and experiences and your outlook on life; anything</p> <p>5 about that that you think would give them serious</p> <p>6 concern, concern that maybe you've got your thumb</p> <p>7 on the scale of justice?</p> <p>8 Juror No. 12. And I think I know what</p> <p>9 you're going to get to, because it may have been</p> <p>10 on your questionnaire. But go ahead.</p> <p>11 JUROR NO. 12: Yeah. I'm going to ask to be</p> <p>12 excused because of my religious beliefs.</p> <p>13 THE COURT: Okay. Juror 12, let me</p> <p>14 explain -- and I'm just going to explain it to you</p> <p>15 and then I'm going to leave it up to you, whether</p> <p>16 you still want to make that request.</p> <p>17 There are a number of religious sects</p> <p>18 or groups who believe that people should not sit</p> <p>19 in judgment on others. I think that's your</p> <p>20 concern. Is that correct?</p> <p>21 JUROR NO. 12: Mm-hmm.</p> <p>22 THE COURT: What a jury is expected to do is</p> <p>23 to be the judge of the facts, in the sense that</p> <p>24 they will hear the evidence and then be instructed</p> <p>25 by the court as to what the law is, and included</p>	<p style="text-align: right;">189</p> <p>1 will be elements as I have described for each</p> <p>2 offense, and then determine whether the government</p> <p>3 has proven beyond a reasonable doubt each of the</p> <p>4 elements charged and, in that sense, determine</p> <p>5 whether the defendant is guilty or not guilty,</p> <p>6 based not on any moral sense, but simply on</p> <p>7 whether the government has proved each element</p> <p>8 beyond a reasonable doubt.</p> <p>9 In that sense, it becomes the court's</p> <p>10 responsibility to be the entity, if you will, that</p> <p>11 actually has to sit in judgment, and then enter a</p> <p>12 verdict based upon the jury's findings, and then</p> <p>13 ultimately possibly consider punishment as well.</p> <p>14 And I explain that to jurors who have</p> <p>15 this concern so that their mind is put at ease</p> <p>16 that, although they would serve as a juror and</p> <p>17 make a factual determination that may lead to the</p> <p>18 passing of judgment, possibly. But if you have</p> <p>19 reservations, even with that explanation, about</p> <p>20 your ability to serve as a juror because of your</p> <p>21 religious beliefs, then I will certainly respect</p> <p>22 that.</p> <p>23 But with that explanation, do you still</p> <p>24 have discomfort serving on the jury?</p> <p>25 JUROR NO. 12: Yes, I do.</p>

<p style="text-align: center;">190</p> <p>1 THE COURT: Counsel, do you want to discuss 2 that at sidebar? 3 Well, perhaps it would be better if we 4 do just approach, and then we can discuss it 5 briefly. 6 (Sidebar commences as follows:) 7 THE COURT: Counsel, I just think the First 8 Amendment kicks in here, and if she has a 9 heartfelt belief that sitting in judgment of 10 another human being is something she cannot do, 11 then I would be inclined to excuse her. But I 12 want to give you a chance to object, without 13 having to do so in front of the jury. 14 MS. WHELAN: No objection. 15 MR. McALLISTER: No objection. 16 THE COURT: All right. Thank you. 17 (Sidebar concluded.) 18 THE COURT: Juror No. 12, I think we will 19 excuse you. I think under the circumstances, it 20 would be -- I'm not going to ask you to violate 21 your own religious tenets, if that's your belief. 22 I think there are some religious groups 23 who -- their beliefs might not be conflicted in 24 that way, once it's explained to them, but others 25 might.</p>	<p style="text-align: center;">191</p> <p>1 And so I'm going to leave it up to you. 2 I won't question your -- the sincerity of your 3 religious beliefs, but simply excuse you. Thank 4 you very much for your service. 5 JUROR NO. 12: Thank you. 6 (Juror 12 excused.) 7 THE COURT: I will now call Juror No. 40, I 8 believe. 9 Juror No. 40, if you would start us off 10 by answering those questions on the form. 11 JUROR NO. 40: My occupation is light duty 12 at J.R. Simplot's. I have no idea where my 13 ex-husband works. I am divorced. I have four 14 children. Two of them are 29. One of them is a 15 stay-at-home mom, and the other one works as a 16 cashier. And I have a 21-year-old that goes to 17 college, and a 17-year-old at home. 18 And I have never been a member of a 19 jury. And my education is, I have a high school 20 diploma. I have never studied law, but I would 21 like to approach the bench on other issues, 22 questions. 23 THE COURT: All right. You raised your hand 24 earlier, and I knew you wanted to get my 25 attention, I think. Perhaps we ought to just take</p>
<p style="text-align: center;">192</p> <p>1 that up first. So why don't you approach at a 2 sidebar conference. 3 Counsel, if you'll approach. 4 (Sidebar with Juror No. 40 commences as 5 follows:) 6 THE COURT: Counsel, if you'll get close 7 enough so you can hear the juror's response. 8 JUROR NO. 40: I was a victim of domestic 9 violence, when my ex-boyfriend's daughter stabbed 10 me. And I don't feel like if I'm able to be fair 11 in this -- 12 THE COURT: Okay. So it's your 13 ex-boyfriend's daughter that stabbed you? 14 JUROR NO. 40: Mm-hmm. 15 THE COURT: Now, this was part of an 16 altercation -- 17 JUROR NO. 40: Yeah. 18 THE COURT: -- going on within the family 19 setting? 20 JUROR NO. 40: The mother sent her, because 21 she was underage. So -- 22 THE COURT: Okay. 23 JUROR NO. 40: -- she was able to get away 24 with, you know, just probation. 25 THE COURT: All right. And you're concerned</p>	<p style="text-align: center;">193</p> <p>1 that you feel you could not be fair and impartial? 2 JUROR NO. 40: (Indicating.) 3 THE COURT: You need to answer audibly. 4 You are concerned? 5 JUROR NO. 40: Well, yeah. 6 THE COURT: You feel you could not be fair 7 and impartial; is that correct? 8 JUROR NO. 40: I will not be fair. I will 9 not be fair, no. I don't feel -- 10 THE COURT: Are there any of the other 11 questions that you would have responded to by 12 raising your hand? Do you know Mr. Steele? 13 I'm just trying to -- 14 JUROR NO. 40: No, I don't know him. No. 15 THE COURT: And you've not -- 16 JUROR NO. 40: I read about it, but -- 17 THE COURT: Nothing -- we discussed that 18 earlier. 19 JUROR NO. 40: Kind of -- yeah. 20 THE COURT: Did you -- 21 JUROR NO. 40: Kind of hit home. 22 THE COURT: Okay. Just reading about it hit 23 home? 24 JUROR NO. 40: Mm-hmm. 25 THE COURT: Counsel, did you want to</p>

<p style="text-align: right;">194</p> <p>1 examine?</p> <p>2 MR. McALLISTER: No, Your Honor.</p> <p>3 MS. WHELAN: No, Your Honor.</p> <p>4 THE COURT: All right. Juror No. 40, if</p> <p>5 you'll retake your seat. I'll discuss this with</p> <p>6 counsel for just a moment.</p> <p>7 (Sidebar, absent Juror No. 40,</p> <p>8 continues as follows:)</p> <p>9 THE COURT: I would note the juror raised</p> <p>10 her hand, even though she wasn't in the pool, and</p> <p>11 was trying to get my attention earlier. I think</p> <p>12 this is something that was weighing on her in the</p> <p>13 beginning.</p> <p>14 I'm inclined to excuse her, but I'm</p> <p>15 willing to hear any objections.</p> <p>16 MS. WHELAN: No objection.</p> <p>17 MR. McALLISTER: No objection.</p> <p>18 THE COURT: All right. Thank you.</p> <p>19 (Sidebar concluded.)</p> <p>20 THE COURT: Juror No. 40, we will excuse</p> <p>21 you. Thank you very much for your attendance here</p> <p>22 today. You will be excused.</p> <p>23 (Juror No. 40 excused.)</p> <p>24 THE COURT: We'll now call Juror No. 41.</p> <p>25 Juror 41, if you'll start again by</p>	<p style="text-align: right;">195</p> <p>1 answering each of the questions on that</p> <p>2 questionnaire.</p> <p>3 JUROR NO. 41: I am retired from the Jerome</p> <p>4 (phonetic) School Food Service, where I was a</p> <p>5 supervisor for 35 to 40 women per year. My</p> <p>6 husband is retired from the real estate business.</p> <p>7 We have two -- I have two stepchildren.</p> <p>8 They are 34 and 35. The daughter is in school</p> <p>9 now. And the son, who is 35, works for Idaho</p> <p>10 Power. Never been a member of the jury. And my</p> <p>11 education is five years of college, and I have</p> <p>12 never studied law.</p> <p>13 THE COURT: Okay. Thank you.</p> <p>14 Juror 41, you have been in the</p> <p>15 courtroom throughout the proceedings this morning</p> <p>16 and this afternoon?</p> <p>17 JUROR NO. 41: Yes, sir.</p> <p>18 THE COURT: And you heard all of my</p> <p>19 questions?</p> <p>20 JUROR NO. 41: I have.</p> <p>21 THE COURT: Are there any of the questions</p> <p>22 to which you would have responded by raising your</p> <p>23 hand?</p> <p>24 JUROR NO. 41: Yes.</p> <p>25 THE COURT: Okay. Which ones would those</p>
<p style="text-align: right;">196</p> <p>1 be.</p> <p>2 JUROR NO. 41: The question about family who</p> <p>3 have been convicted of --</p> <p>4 THE COURT: Could you tell us how you would</p> <p>5 have responded.</p> <p>6 JUROR NO. 41: My daughter was convicted of</p> <p>7 a felony, and served 90 days in jail.</p> <p>8 THE COURT: What was that felony?</p> <p>9 JUROR NO. 41: I don't know.</p> <p>10 THE COURT: Okay. I assume -- well, I guess</p> <p>11 I shouldn't assume anything. Were you satisfied</p> <p>12 that the case was handled properly?</p> <p>13 JUROR NO. 41: I was.</p> <p>14 THE COURT: Okay. I'm assuming you didn't</p> <p>15 follow it too closely, or you would know more</p> <p>16 about the charge --</p> <p>17 JUROR NO. 41: No.</p> <p>18 THE COURT: -- is that correct?</p> <p>19 JUROR NO. 41: There were many.</p> <p>20 THE COURT: And you don't harbor any</p> <p>21 feelings as a result of that experience that might</p> <p>22 affect your impartiality as a juror in this case;</p> <p>23 is that correct?</p> <p>24 JUROR NO. 41: No, sir.</p> <p>25 THE COURT: Excuse me?</p>	<p style="text-align: right;">197</p> <p>1 JUROR NO. 41: No, I do not harbor any.</p> <p>2 THE COURT: Okay. And I didn't ask the</p> <p>3 question well, but I think you got the right</p> <p>4 response, or at least -- let me try it one more</p> <p>5 time to be absolutely clear. Nothing about that</p> <p>6 experience would affect you in this proceeding?</p> <p>7 JUROR NO. 41: It would not.</p> <p>8 THE COURT: Okay. And any other questions</p> <p>9 that you would have responded to by raising your</p> <p>10 hand?</p> <p>11 JUROR NO. 41: No.</p> <p>12 THE COURT: You did not know Mr. Steele or</p> <p>13 the attorneys --</p> <p>14 JUROR NO. 41: No, sir.</p> <p>15 THE COURT: -- prior to entering the</p> <p>16 courtroom?</p> <p>17 JUROR NO. 41: No, sir.</p> <p>18 THE COURT: Didn't know any of the</p> <p>19 witnesses?</p> <p>20 JUROR NO. 41: No, sir.</p> <p>21 THE COURT: No issues with the United States</p> <p>22 Government?</p> <p>23 JUROR NO. 41: No.</p> <p>24 THE COURT: No one -- not related to anyone</p> <p>25 who has been the victim of a serious crime?</p>

<p style="text-align: right;">198</p> <p>1 JUROR NO. 41: No, sir.</p> <p>2 THE COURT: Don't belong to any of the</p> <p>3 groups that I discussed earlier --</p> <p>4 JUROR NO. 41: No.</p> <p>5 THE COURT: -- that advocate racial or</p> <p>6 superior ethnic superiority, or oppose that view?</p> <p>7 JUROR NO. 41: No.</p> <p>8 THE COURT: Okay. Well, let me just ask</p> <p>9 generally: Are you satisfied you could be fair</p> <p>10 and impartial as a juror in this proceeding?</p> <p>11 JUROR NO. 41: I could.</p> <p>12 THE COURT: All right. Thank you very much.</p> <p>13 I think my last question was that</p> <p>14 difficult one asking you to, I guess, be two</p> <p>15 places at once -- actually, three places at once,</p> <p>16 sitting at Mr. Steele's chair or the chair of the</p> <p>17 FBI agent, and also where you're now sitting, and</p> <p>18 asking whether someone in their position would be</p> <p>19 comfortable having a juror with your outlook on</p> <p>20 life, your perspective, your opinions, serving as</p> <p>21 a juror in this case. Anyone who has any</p> <p>22 reservation about that?</p> <p>23 Okay. I see no response.</p> <p>24 Is there anyone on the panel who feels</p> <p>25 that if you were selected to sit on this case,</p>	<p style="text-align: right;">199</p> <p>1 that you would have any difficulty at all, for any</p> <p>2 reason whatsoever, in rendering a fair verdict</p> <p>3 based solely upon the evidence presented at the</p> <p>4 trial and in the context of the law as I will give</p> <p>5 it to you in my instructions?</p> <p>6 Anyone who has any reservations about</p> <p>7 their ability to do so?</p> <p>8 Again, I see no response.</p> <p>9 I just have two more questions. The</p> <p>10 first is to ask yourself -- well, I try to be</p> <p>11 fairly comprehensive in my questioning, but I'm</p> <p>12 always concerned that I didn't phrase each</p> <p>13 question just the way I should have, or perhaps</p> <p>14 there were questions I should have asked that,</p> <p>15 perhaps with your background, should have been</p> <p>16 obvious.</p> <p>17 And so, I ask each of the jurors to</p> <p>18 just simply take a hard look at yourself, and also</p> <p>19 the questions that I've asked, and the general</p> <p>20 concerns that I've expressed about a juror's</p> <p>21 ability to be fair and impartial, and ask yourself</p> <p>22 whether there is any reason why you could not sit</p> <p>23 on this jury and render a fair verdict in this</p> <p>24 proceeding. Anyone who has any reservation about</p> <p>25 their ability to do so?</p>
<p style="text-align: right;">200</p> <p>1 Okay. And then, finally, now, the very</p> <p>2 first trial that I conducted some years ago as a</p> <p>3 state court judge, actually, we happened to have a</p> <p>4 husband and wife on the same panel. It's never</p> <p>5 happened since in, you know, 20-plus years. But</p> <p>6 it raised in my mind the concern that we not only</p> <p>7 want fair and impartial jurors, but we also need</p> <p>8 independent jurors.</p> <p>9 Is there anyone on the panel who has a</p> <p>10 relationship with anyone else on the panel, that</p> <p>11 you think we should know about it? Either you're</p> <p>12 a close friend, you work together with one person</p> <p>13 supervising the other, or maybe they're in a</p> <p>14 position of authority over you, or you over them.</p> <p>15 Anyone?</p> <p>16 Okay. I see no response.</p> <p>17 Counsel, at this time, I'll give you an</p> <p>18 opportunity to examine the panel, mindful not to</p> <p>19 repeat my questions. And I think, obviously,</p> <p>20 you're aware of what are and are not proper</p> <p>21 questions for voir dire.</p> <p>22 Ms. Whelan or Mr. Haws.</p> <p>23 MS. WHELAN: Thank you, Your Honor.</p> <p>24 Good afternoon. Anybody this morning</p> <p>25 nervous when you were heading into the courtroom</p>	<p style="text-align: right;">201</p> <p>1 or as you were getting called up?</p> <p>2 If you were nervous, raise your hand,</p> <p>3 will you?</p> <p>4 Lawyers get nervous, too. Some of the</p> <p>5 things may be, "What type of case? What kind of</p> <p>6 questions are they going to ask me?"</p> <p>7 Some of the things that make lawyers</p> <p>8 nervous are what I want to talk to you about</p> <p>9 during this brief time I have to talk to you. And</p> <p>10 one of those is jurors' expectations.</p> <p>11 Now there is a lot of TV right now that</p> <p>12 has to do with the criminal justice system and</p> <p>13 courtroom dramas. And, I mean, you can plainly</p> <p>14 tell, I mean, I am no Julianna Margulies from "The</p> <p>15 Good Wife" or Demi Moore from "A Few Good Men."</p> <p>16 And with all due respect to my co-counsel, who are</p> <p>17 no Sam Waterston or Fred Thompson.</p> <p>18 And that's because they're actors, and</p> <p>19 this is real life. But sometimes jurors expect</p> <p>20 what goes on here to be like what they see on TV,</p> <p>21 and that's something that makes us nervous.</p> <p>22 And so, just by a show of hands, who</p> <p>23 regularly watches things like "CSI" or one of the</p> <p>24 umpteen million "Law & Order" things that they</p> <p>25 have on? Anyone?</p>

<p style="text-align: right;">202</p> <p>1 Nobody? Okay.</p> <p>2 Has anyone seen the TV show "CSI"?</p> <p>3 Okay. That gets a response. And "in</p> <p>4 CSI," they do all sorts of things. I've seen it a</p> <p>5 couple times. They get fingerprints off dollar</p> <p>6 bills, or they solve everything within 49 minutes.</p> <p>7 Is that right?</p> <p>8 Does anyone here on the panel -- and</p> <p>9 it's okay if you do; we're here to figure out</p> <p>10 what's what -- think that that even remotely</p> <p>11 resembles real life?</p> <p>12 JUROR NO. 13: I do. I think some of it</p> <p>13 does.</p> <p>14 MS. WHELAN: Okay. And you are 13? Do you</p> <p>15 want to maybe expound on that a little bit? What</p> <p>16 do you think resembles real life?</p> <p>17 JUROR NO. 13: I think that in the crime</p> <p>18 lab -- and I'm not a regular watcher of that, but</p> <p>19 just from what I understand with law, that I think</p> <p>20 some of the tests that they do in the crime lab</p> <p>21 would be similar to what we really do.</p> <p>22 MS. WHELAN: Okay. Would you -- I just want</p> <p>23 to follow this up a little bit with you, if that's</p> <p>24 okay.</p> <p>25 JUROR NO. 13: Yeah.</p>	<p style="text-align: right;">203</p> <p>1 THE COURT: Would you agree that some of it</p> <p>2 might be a little bit enhanced for TV?</p> <p>3 JUROR NO. 13: Yes.</p> <p>4 MS. WHELAN: And it's based upon -- it can</p> <p>5 be based in fiction, too; correct?</p> <p>6 JUROR NO. 13: Yes. I'm just talking about</p> <p>7 their methods, or the way that they would process</p> <p>8 their paperwork.</p> <p>9 MS. WHELAN: Okay.</p> <p>10 Has anyone ever seen, I think it was a</p> <p>11 Tom Cruise movie, called "Minority Report"? It</p> <p>12 was out a long time ago.</p> <p>13 Okay. We have got a couple hands. We</p> <p>14 have one in the back row. Mr. -- No. 1. Sorry.</p> <p>15 I almost used your name.</p> <p>16 Do you remember that movie?</p> <p>17 JUROR NO. 1: Yes.</p> <p>18 MS. WHELAN: And in that, he was moving a</p> <p>19 bunch of things around on a screen; is that</p> <p>20 correct?</p> <p>21 JUROR NO. 1: Yeah.</p> <p>22 MS. WHELAN: Again, is that fiction for the</p> <p>23 movies and not necessarily real life?</p> <p>24 JUROR NO. 1: Yes.</p> <p>25 MS. WHELAN: Does everybody understand a</p>
<p style="text-align: right;">204</p> <p>1 little bit about what I'm saying here, in that</p> <p>2 what we deal with in the courtroom is real life,</p> <p>3 not made-for-TV movies?</p> <p>4 And I can tell you in almost 20 years</p> <p>5 of experience, I have never had a Perry Mason</p> <p>6 moment. Nobody from the gallery ever said, "I did</p> <p>7 it." And we want to make sure, in jury</p> <p>8 expectations, that sometimes court can be boring.</p> <p>9 But it's putting out the facts.</p> <p>10 So is there anyone, as you sit there</p> <p>11 today, that have certain expectations about what</p> <p>12 lawyers should do or what you should be seeing,</p> <p>13 that you worry if we don't meet, you're going to</p> <p>14 hold it against us?</p> <p>15 No hands?</p> <p>16 We all agree that we're going to deal</p> <p>17 with real life; correct?</p> <p>18 Another thing that makes some lawyers</p> <p>19 nervous, and the judge has touched on it -- I</p> <p>20 don't intend to repeat what he said, but just</p> <p>21 delve into it -- is confusion over what everyone's</p> <p>22 roles are.</p> <p>23 Now, the judge gives you the</p> <p>24 instructions, and he has told you that he provides</p> <p>25 the instructions.</p>	<p style="text-align: right;">205</p> <p>1 Does anyone have a concern about that,</p> <p>2 and think that the jury should decide what the law</p> <p>3 is?</p> <p>4 Another concern is what we call hidden</p> <p>5 biases. And the judge has asked you questions</p> <p>6 about if you know anybody or if you have certain</p> <p>7 leanings one way or another, but there can be</p> <p>8 hidden bias that we just didn't even know we had.</p> <p>9 For instance, does everyone agree that</p> <p>10 what we're looking at is what the facts of the</p> <p>11 case are, that that's the juror's job, to decide</p> <p>12 the facts?</p> <p>13 And, for instance, one time I had a</p> <p>14 lawyer -- or I had a trial and there were a bunch</p> <p>15 of people set up on one side of the courtroom,</p> <p>16 kind of like a wedding, you know. And afterwards,</p> <p>17 a juror said, "I didn't think it was fair there</p> <p>18 were so many people sitting on one side."</p> <p>19 Now, can we agree that we're not</p> <p>20 looking out here? What we're concerned with is</p> <p>21 what happens here.</p> <p>22 And Juror No. 9, I appreciated what you</p> <p>23 talked about with the Tax Commission. And just</p> <p>24 following up on that, although you may feel there</p> <p>25 is corruption in some organization, it's not with</p>

<p style="text-align: center;">206</p> <p>1 the United States; is that correct?</p> <p>2 JUROR NO. 9: I guess -- what do you mean by</p> <p>3 that question, "it's not with the United States"?</p> <p>4 I'm not clear for sure what you're asking there.</p> <p>5 MS. WHELAN: As I understood, you had a</p> <p>6 problem with the State Tax Commission, not the</p> <p>7 United States tax commission -- or IRS.</p> <p>8 JUROR NO. 9: That is correct.</p> <p>9 MS. WHELAN: So as you sit there today, do</p> <p>10 you have any bias against the United States</p> <p>11 Government?</p> <p>12 JUROR NO. 9: No.</p> <p>13 MS. WHELAN: Okay. Now I come from up</p> <p>14 north, from Coeur d'Alene, and some of the hidden</p> <p>15 bias that we deal with there are ones where</p> <p>16 people, because of things that have happened</p> <p>17 there, have a bias against the federal government</p> <p>18 in general, and didn't realize it. I mean, it's</p> <p>19 not something you think about it.</p> <p>20 So, again, asking that you sit there,</p> <p>21 and as you sit there today, can you think of any</p> <p>22 bias where you've had a bad experience, be it with</p> <p>23 ATF or FBI or Border Patrol, where you would hold</p> <p>24 that against the United States?</p> <p>25 Okay. No hands.</p>	<p style="text-align: center;">207</p> <p>1 Now, we have no husbands and wives on</p> <p>2 the jury. But I missed, I couldn't see all the</p> <p>3 hands. Does anyone know anybody else on the jury,</p> <p>4 or think you might know them?</p> <p>5 Yes, sir. You are Mr. -- 22. 22, who</p> <p>6 do you know, sir?</p> <p>7 JUROR NO. 22: I know Cliff Diffendaffer.</p> <p>8 MS. WHELAN: That would be 28?</p> <p>9 JUROR NO. 22: Yes.</p> <p>10 MS. WHELAN: And Mr. 28, do you know Mr. 22?</p> <p>11 JUROR NO. 28: Yes, I do.</p> <p>12 MS. WHELAN: Anything about that</p> <p>13 relationship between the two of you that would</p> <p>14 make it hard for both of you to serve on the jury?</p> <p>15 JUROR NO. 22: Not that I'm aware of.</p> <p>16 MS. WHELAN: So -- if you'll stay standing</p> <p>17 just one moment.</p> <p>18 So, 28, if 22 said, "I think this is</p> <p>19 it," would you hold to your own opinions, or would</p> <p>20 you feel swayed by 22?</p> <p>21 JUROR NO. 28: I would hold to my own</p> <p>22 opinions.</p> <p>23 MS. WHELAN: Same thing for you?</p> <p>24 JUROR NO. 22: Yes, ma'am.</p> <p>25 MS. WHELAN: Okay. Thank you very much.</p>
<p style="text-align: center;">208</p> <p>1 Somebody else raised their hand, I</p> <p>2 thought. Just the two of you?</p> <p>3 Okay. So just taking a chance and</p> <p>4 looking around, nobody knows anybody else?</p> <p>5 Juror No. 2, you said something</p> <p>6 earlier, and I didn't understand what it was. You</p> <p>7 work with EBE children?</p> <p>8 JUROR NO. 2: EBD, emotionally behaviorally</p> <p>9 disturbed children.</p> <p>10 MS. WHELAN: Thank you. I appreciate that.</p> <p>11 I didn't know what it was.</p> <p>12 Juror 24, I want to ask you a couple of</p> <p>13 follow-up questions. You don't have to stand up</p> <p>14 for me, sir, but you can do it however you want.</p> <p>15 Would you --</p> <p>16 THE COURT: Just a moment. Let's pass the</p> <p>17 microphone.</p> <p>18 MS. WHELAN: Would you agree with the</p> <p>19 general proposition that we want a jury made up of</p> <p>20 people from all sorts of backgrounds?</p> <p>21 JUROR NO. 24: I would. Yes, I would.</p> <p>22 MS. WHELAN: And so your background might be</p> <p>23 different from, say, 38's or 7's background; is</p> <p>24 that right?</p> <p>25 JUROR NO. 24: Yes, it is.</p>	<p style="text-align: center;">209</p> <p>1 MS. WHELAN: And again, based upon what you</p> <p>2 do for a living, will that lead you to a certain</p> <p>3 conclusion?</p> <p>4 JUROR NO. 24: No, it would not.</p> <p>5 MS. WHELAN: And then if you could pass the</p> <p>6 mic up to Mr. 28, I would appreciate it.</p> <p>7 Juror 28, you worked for a long time in</p> <p>8 law enforcement.</p> <p>9 JUROR NO. 28: Fourteen years.</p> <p>10 MS. WHELAN: Did you enjoy your job, sir?</p> <p>11 JUROR NO. 28: Yes, I did.</p> <p>12 MS. WHELAN: And you knew your badge number.</p> <p>13 JUROR NO. 28: Yes, ma'am.</p> <p>14 MS. WHELAN: Now, just because you used to</p> <p>15 work in law enforcement, do you think that should</p> <p>16 preclude you from ever sitting on any criminal</p> <p>17 case?</p> <p>18 JUROR NO. 28: No, I don't think so.</p> <p>19 MS. WHELAN: Okay. Do you agree with that</p> <p>20 statement, that we need people of diverse</p> <p>21 backgrounds on a jury?</p> <p>22 JUROR NO. 28: Yes, ma'am.</p> <p>23 MS. WHELAN: Is there anything about your</p> <p>24 experience in law enforcement that would cause</p> <p>25 you, if you were the defendant in this case, not</p>

<p style="text-align: center;">210</p> <p>1 to want to have a juror like you sitting here?</p> <p>2 JUROR NO. 28: No.</p> <p>3 MS. WHELAN: And you're confident or -- let</p> <p>4 me rephrase that as a question.</p> <p>5 Are you confident that you can take the</p> <p>6 law that the judge gives you and apply it to the</p> <p>7 facts?</p> <p>8 JUROR NO. 28: Yes, ma'am.</p> <p>9 MS. WHELAN: Thank you very much.</p> <p>10 The judge asked a question earlier and</p> <p>11 he asked if anybody had anything to do with</p> <p>12 explosives or audiotapes. It made me think of the</p> <p>13 "Mission Impossible" episodes, where the</p> <p>14 audiotapes would explode.</p> <p>15 (Laughter.)</p> <p>16 MS. WHELAN: So I wanted to break that</p> <p>17 question down a little bit and ask it separately.</p> <p>18 Does anyone on this panel -- have you</p> <p>19 had any experience, you directly or a very close</p> <p>20 friend, with explosives?</p> <p>21 Yes, ma'am, Juror 25.</p> <p>22 If you could pass the mic to her. Oh,</p> <p>23 I'm sorry. You're 15. Sorry about that.</p> <p>24 JUROR NO. 15: That's okay. Call me any</p> <p>25 number you want.</p>	<p style="text-align: center;">211</p> <p>1 I did have experience working with a</p> <p>2 demolition expert on a construction site in</p> <p>3 California, back in -- a lot of years ago.</p> <p>4 MS. WHELAN: Were you doing the demolition?</p> <p>5 JUROR NO. 15: I was actually helping to put</p> <p>6 the caps on, to put the fuses on, and to help</p> <p>7 place them in the drill holes, yes.</p> <p>8 MS. WHELAN: I'm sorry, to help place them</p> <p>9 in the --</p> <p>10 JUROR NO. 15: The drill holes.</p> <p>11 MS. WHELAN: So you have maybe a little bit</p> <p>12 more experience than the average person.</p> <p>13 JUROR NO. 15: I have enough to know I don't</p> <p>14 want to play with it.</p> <p>15 MS. WHELAN: If there were testimony in this</p> <p>16 case about explosives, could you listen to that</p> <p>17 impartially and take that testimony?</p> <p>18 JUROR NO. 15: Yes, I could. Because</p> <p>19 basically what I did with -- what I was doing with</p> <p>20 it was following directions.</p> <p>21 MS. WHELAN: Okay.</p> <p>22 JUROR NO. 15: You know, it's not like I</p> <p>23 went out and looked to see how I could do this</p> <p>24 stuff on my own. You tell me what to do; I'll</p> <p>25 shut up and do it.</p>
<p style="text-align: center;">212</p> <p>1 MS. WHELAN: Anything about that experience</p> <p>2 that would cause you to question more strongly,</p> <p>3 maybe, somebody who works in that area or has</p> <p>4 experience in that area?</p> <p>5 JUROR NO. 15: No.</p> <p>6 MS. WHELAN: Did anyone else have</p> <p>7 association -- Mr. 28. Sorry. I don't know why I</p> <p>8 called you "Mr. 28."</p> <p>9 Twenty-eight?</p> <p>10 JUROR NO. 28: Diffendaffer, ma'am.</p> <p>11 MS. WHELAN: I know, but we're not supposed</p> <p>12 to use your name.</p> <p>13 Right behind you, sir, the microphone.</p> <p>14 JUROR NO. 28: Part of my responsibility in</p> <p>15 working with the Federal Motor Carrier Safety</p> <p>16 Administration was that I would perform compliance</p> <p>17 reviews of what's called hazardous material</p> <p>18 haulers, which deals with explosives and their</p> <p>19 compliance with the HMR under 49 CFR. And</p> <p>20 basically it's the classification of the material</p> <p>21 and safe transportation of that material in</p> <p>22 interstate commerce.</p> <p>23 MS. WHELAN: So you were doing</p> <p>24 inspections --</p> <p>25 JUROR NO. 28: Yes, ma'am.</p>	<p style="text-align: center;">213</p> <p>1 MS. WHELAN: -- of hazardous material.</p> <p>2 JUROR NO. 28: Compliance review of the</p> <p>3 carriers' compliance with the hazardous material</p> <p>4 regulations under 49 CFR.</p> <p>5 MS. WHELAN: Do you know how to create</p> <p>6 explosive devices, based -- I'm sorry -- based</p> <p>7 upon your experience?</p> <p>8 JUROR NO. 28: No, ma'am.</p> <p>9 MS. WHELAN: Would anything about your</p> <p>10 experience in working that particular emphasis</p> <p>11 cause you to have -- be unable to listen</p> <p>12 impartially --</p> <p>13 JUROR NO. 28: No.</p> <p>14 MS. WHELAN: And let me finish because</p> <p>15 I -- no, I stopped. It wasn't you.</p> <p>16 -- impartially to testimony about</p> <p>17 explosives?</p> <p>18 JUROR NO. 28: No.</p> <p>19 MS. WHELAN: Okay.</p> <p>20 Anybody else, as to the explosives part</p> <p>21 of that question?</p> <p>22 Yes, 10, please.</p> <p>23 JUROR NO. 10: Well, in my work experience</p> <p>24 in heavy construction, we did a lot of -- I was</p> <p>25 involved in a lot of underground work. Any of</p>

<p style="text-align: center;">214</p> <p>1 that that involved hard rock, we used explosives 2 quite extensively. 3 My actual involvement in that was 4 somewhat limited. Being in management, I usually 5 deferred to people that I thought knew a lot more 6 about it than I did. 7 MS. WHELAN: Sir, the same question I had 8 for the other two is: Would anything about that 9 experience cause you to feel that you couldn't 10 impartially listen to evidence about possible 11 explosives? 12 JUROR NO. 10: No, I don't believe so. 13 MS. WHELAN: Okay. And the judge talked to 14 us a little bit about using words like "believe" 15 and "feel," and I know it's difficult, but are you 16 confident that you could listen the -- 17 JUROR NO. 10: Oh, yes. I think so. I 18 believe that anyone that is testifying as to the 19 use of explosives probably has much more 20 experience with respect to explosives and 21 knowledge of explosives than I personally have. 22 MS. WHELAN: Okay. Thank you, sir. 23 Anybody else have experience with 24 explosives? Okay. 25 I'm going to move to the next part of</p>	<p style="text-align: center;">215</p> <p>1 the question, then, which has to do with, I think 2 it was "audio engineering" is how the court put 3 it. 4 Does anybody have any experience with 5 audio engineering? I know we have some software 6 engineers and some people who work IT. Has that 7 ever entered into -- audio engineering -- into 8 part of your work? 9 Five, you raised your hand. 10 Could you, sir, pass the microphone to 11 No. 5. 12 JUROR NO. 5: So, it's been a long time, but 13 about 25 years ago I worked for a government 14 agency and was trained in the National Security 15 Agency to decipher electronic information that was 16 emitted, and to check facilities to make sure they 17 were secure. 18 MS. WHELAN: Sir, I don't know what -- I'm 19 getting older, apparently, because I can't hear as 20 well. Is this something that you can 21 discuss -- all I heard, really, was "National 22 Security." Is it something you can discuss as you 23 sit there, or do we need to do it at the sidebar? 24 JUROR NO. 5: I can discuss it, just in very 25 general terms.</p>
<p style="text-align: center;">216</p> <p>1 MS. WHELAN: Okay. And I'm going to put the 2 mic a little closer. 3 JUROR NO. 5: Okay. 4 MS. WHELAN: So, what did you do? 5 JUROR NO. 5: So what I did is I was trained 6 by the National Security Agency to decipher 7 electronic emissions from secure processing 8 facilities. And so I'm trained in how to do that. 9 And I used to go out and test facilities for the 10 government. 11 MS. WHELAN: And when you did that, did you 12 have to authenticate the messages, or just 13 interpret them? 14 JUROR NO. 5: Essentially, had to see if I 15 could independently ascertain information from 16 unintentional emissions. 17 MS. WHELAN: Okay. Background noises, 18 things like that? 19 JUROR NO. 5: Uh-huh. 20 MS. WHELAN: And, sir, you said that was 21 about 20 years ago, 25? 22 JUROR NO. 5: Yeah, 25, about. 23 MS. WHELAN: Is there anything about that 24 experience that would cause you any problems maybe 25 listening to recordings or hearing testimony about</p>	<p style="text-align: center;">217</p> <p>1 recordings? 2 JUROR NO. 5: No. 3 MS. WHELAN: Do you feel confident about 4 that? 5 JUROR NO. 5: I do feel confident about 6 that. 7 MS. WHELAN: Anybody else on the panel in 8 any of the four rows have anything to do with 9 electronics, audio engineering? 10 Oh, I'm sorry. I'm going to get the 11 mic back, so they can hear you. 12 You would be Juror 27, correct? 13 JUROR NO. 27: I am 27. 14 I do not personally have any 15 association -- well, I have association with an 16 individual who does that kind of work, as an 17 entertainment vehicle. So as an audio 18 engineer -- I mean, I live with an audio engineer, 19 a person who does that for a living. 20 MS. WHELAN: And when you say 21 "entertainment," what are we talking about? Like 22 DJ mixing or -- 23 JUROR NO. 27: Performing sound 24 reinforcement in the Morrison Center at the 25 university.</p>

1 MS. WHELAN: Okay. And I believe -- I
2 thought that you said you had been with that
3 person maybe 10 years?
4 JUROR NO. 27: Mm-hmm. Yes.
5 MS. WHELAN: Do you regularly talk about his
6 work?
7 JUROR NO. 27: No.
8 MS. WHELAN: Or the technical aspects of his
9 work?
10 JUROR NO. 27: No.
11 MS. WHELAN: Okay. Thank you very much.
12 I'm sorry I didn't see your hand earlier.
13 Anybody else, as to the engineering?
14 Okay. I would like to follow up on one
15 thing here, if you'll give me just a second. I
16 know what it was.
17 Juror No. 1, when you introduced
18 yourself and you said what you did, I got that you
19 worked at a gravel -- sand and gravel place, but
20 what is it that you do?
21 JUROR NO. 1: I'm a grade checker slash
22 heavy equipment operator.
23 MS. WHELAN: What does that mean?
24 JUROR NO. 1: Like checking the grade of the
25 ground, to make sure it's the right level for them

1 Winmill, has given us parameters of how much time
2 we can spend talking with you. And, you know, as
3 some people say, I talk for a living, and I would
4 really love to have the opportunity to meet with
5 you one on one in, say, a coffee shop or a
6 restaurant or someplace where we could really talk
7 about this case. But, unfortunately, the rules
8 don't allow that. And I am really dependent upon
9 each of you to tell me whatever it is that you
10 think I should know in making a decision about you
11 and whether you can be a fair and impartial juror.
12 And it really isn't a selection of the
13 jury. Under our rules, each side can basically
14 choose who they don't want on the jury. And
15 obviously, the rules don't allow us to really pick
16 a jury. It's more like playing the odds.
17 And I'll tell you one thing: I've been
18 doing this a long time, and it's not a science.
19 Oftentimes we go by what people tell us, their
20 honest feelings, about their background.
21 We treat you as courteously as we can,
22 but we call you by number. And that's really just
23 a way that's efficient, that sort of gets us to
24 the point. And I apologize for that, but that's
25 the way the system works.

1 to pave asphalt over it.
2 MS. WHELAN: Thank you.
3 Judge, may I have just one moment?
4 THE COURT: Yes.
5 MS. WHELAN: Thank you.
6 (Pause.)
7 Thank you, Your Honor. We would pass
8 the panel for cause.
9 THE COURT: Mr. McAllister.
10 MR. McALLISTER: Thank you, Your Honor.
11 THE COURT: Counsel, just a moment. The
12 discussions we had -- the challenges for cause
13 we'll take up at a sidebar after the conclusion of
14 your voir dire.
15 Mr. McAllister, go ahead.
16 MR. McALLISTER: Thank you, Your Honor.
17 Ladies and gentlemen, my name is Robert
18 McAllister. I am here with Gary Amendola. And we
19 are lawyers and we represent the defendant in this
20 case, Ed Steele, and it just so happens that he
21 happens to be a lawyer, as well.
22 I want to tell you a couple of things
23 about the process, and then I want to follow up
24 with a few questions.
25 The good news is that the court, Judge

1 When I ask questions, generally, I
2 don't, quote, pick on somebody -- but I will today
3 for a few folks -- I ask for a show of hands or a
4 response, or some kind of indication from the
5 jurors about certain questions.
6 Now, I'm not trying to embarrass
7 anyone. I'm really just trying to find out who we
8 think would be good jurors for this case. And to
9 that extent, Ms. Whelan and I are on the same
10 track, if you will.
11 When the case starts, you might find us
12 taking very different opinions, but right now
13 we're really looking for somebody who can set
14 aside feelings, set aside assumptions, set aside
15 prejudices, and be that fair and impartial juror.
16 Now, how do we get there?
17 Well, I ask jurors right from the
18 beginning: Based upon your experience, what
19 you've heard today and what you've experienced
20 today, how many folks really want to be on the
21 jury? Okay.
22 How many folks really don't want to be
23 on the jury? Okay.
24 And how many folks just haven't made up
25 their mind about it? Okay.

<p style="text-align: center;">222</p> <p>1 I'm going to start with Juror 24, and I</p> <p>2 don't know whether I should call you Dr. Juror 24</p> <p>3 or Mr. Would you prefer either?</p> <p>4 JUROR NO. 24: I prefer either. Doctor, and</p> <p>5 I get called mister all the time.</p> <p>6 MR. McALLISTER: Doctor, you're a</p> <p>7 psychologist, correct?</p> <p>8 JUROR NO. 24: That is correct, Mr.</p> <p>9 McAllister.</p> <p>10 MR. McALLISTER: And I said I wouldn't pick</p> <p>11 on people, but you seem to be the juror with the</p> <p>12 most formal education and training of the group.</p> <p>13 And I apologize if somebody else has more, but at</p> <p>14 least from the responses I heard. And so,</p> <p>15 therefore, you get my vote for the person I want</p> <p>16 to ask some specific questions.</p> <p>17 In this case, as Judge Winmill said,</p> <p>18 the defendant, my client, doesn't have to say</p> <p>19 anything, doesn't have to do anything, doesn't</p> <p>20 have to present any evidence. Do you think that's</p> <p>21 fair?</p> <p>22 JUROR NO. 24: Under our system, I</p> <p>23 definitely think it's fair. Otherwise, what</p> <p>24 chance would any of the rest of us have if</p> <p>25 something happened to us?</p>	<p style="text-align: center;">223</p> <p>1 MR. McALLISTER: All right. Have you ever</p> <p>2 been accused of something that you know you didn't</p> <p>3 do?</p> <p>4 JUROR NO. 24: No, I haven't.</p> <p>5 MR. McALLISTER: All right.</p> <p>6 JUROR NO. 24: I stole a candy bar once, and</p> <p>7 they did accuse me of that and I confessed, so --</p> <p>8 (Laughter.)</p> <p>9 MR. McALLISTER: All right. Honesty is</p> <p>10 always the best policy.</p> <p>11 When you talk to patients or clients,</p> <p>12 don't you always ask them for their story, their</p> <p>13 side of it, their opinion? Don't you always do</p> <p>14 that?</p> <p>15 JUROR NO. 24: I do.</p> <p>16 MR. McALLISTER: Well, why is it that a</p> <p>17 defendant, the accused, doesn't have to say or do</p> <p>18 anything under our system of law?</p> <p>19 JUROR NO. 24: Because we have to try to</p> <p>20 maintain that presumption of innocence. And it's</p> <p>21 a different story when I'm trying to work with</p> <p>22 somebody in a counseling process, for example,</p> <p>23 than somebody that may be accused of something,</p> <p>24 and we have no idea whether they did it or not.</p> <p>25 So we're not asking the same kind of</p>
<p style="text-align: center;">224</p> <p>1 thing when we're trying to look at that. Somebody</p> <p>2 telling their story helps me a great deal to be</p> <p>3 able to help them.</p> <p>4 In a court of law, an individual</p> <p>5 doesn't -- especially if he is a defendant, didn't</p> <p>6 volunteer to be there, and so he should not have</p> <p>7 to, or she should not have to, try to explain</p> <p>8 their innocence, because our court system, based</p> <p>9 on justice, as we try to base it, would not work</p> <p>10 if we didn't have the presumption of innocence.</p> <p>11 MR. McALLISTER: Now you used the word</p> <p>12 "innocence" twice. And is that a difference, in</p> <p>13 your mind, than being found not guilty?</p> <p>14 JUROR NO. 24: I think we use the terms</p> <p>15 interchangeably.</p> <p>16 MR. McALLISTER: Okay. Judge Winmill</p> <p>17 explained this, that the government has the burden</p> <p>18 of proving a defendant guilty, and they have to do</p> <p>19 it by proving every element of each of the</p> <p>20 charges. And I take it you agree with that?</p> <p>21 JUROR NO. 24: I do agree with that.</p> <p>22 MR. McALLISTER: What would you do if you</p> <p>23 got into -- you got on the jury and you were back</p> <p>24 in the jury room and you had listened to what the</p> <p>25 judge had given to you in terms of the legal</p>	<p style="text-align: center;">225</p> <p>1 instructions, heard the witnesses, and you said to</p> <p>2 yourself, "I kind of feel like the defendant's</p> <p>3 guilty, but the government didn't prove it"?</p> <p>4 What would you do at that point?</p> <p>5 JUROR NO. 24: Having been in that situation</p> <p>6 once or twice, I know for myself that -- that I</p> <p>7 would go with the reality that -- that the facts</p> <p>8 had not been proved. And if they haven't been</p> <p>9 proved, then a person can't go with their</p> <p>10 own -- their feeling that, "Yeah, we ought to do</p> <p>11 it anyhow," or whatever. A person has to -- in a</p> <p>12 court of law, the facts have to be demonstrated</p> <p>13 and proved to, I think, a good satisfaction that</p> <p>14 is -- has been demonstrated, or else we can't</p> <p>15 accept them as facts.</p> <p>16 MR. McALLISTER: Okay. What I'm trying to</p> <p>17 get at is, there is a difference between being</p> <p>18 innocent and being found not guilty. Would you</p> <p>19 agree with that?</p> <p>20 JUROR NO. 24: I think that was kind of the</p> <p>21 same question you asked before, but --</p> <p>22 MR. McALLISTER: I agree it is, in a</p> <p>23 different form.</p> <p>24 JUROR NO. 24: Reflecting on that, I can buy</p> <p>25 into that theorem that -- that you've just</p>

<p style="text-align: right;">226</p> <p>1 espoused, because I guess we could be in a 2 situation where the accused was the only one that 3 really knew whether they had done something or 4 not, but if the -- and if the facts didn't 5 demonstrate completely that that person had done 6 that situation, then we can't accept that as a 7 fact.</p> <p>8 MR. McALLISTER: And what about if he didn't 9 testify, or he or she didn't say anything?</p> <p>10 JUROR NO. 24: Well, that's always their 11 privilege. And it comes down to a real difficult 12 situation, because in our federal -- in our court 13 process, we go through the process of determining 14 guilt or innocence, or guilt or not guilty. And 15 in our process today, a person has that right but 16 almost never will exercise that right, and that's 17 what's going on here in this -- this trial that 18 we're going to go into.</p> <p>19 Because Mr. Steele, I'm sure, would 20 like to be able to say, "I don't have to prove 21 anything." But in the system that -- where we 22 are, since he has been accused, he doesn't have 23 the luxury, really, of saying, "I'm not going to 24 do anything about it. I'm not going to try to put 25 my case forward."</p>	<p style="text-align: right;">227</p> <p>1 And so we may be far afield from what 2 your answer was, but a person has the right to not 3 have to demonstrate their innocence; but in the 4 real world, it becomes necessary.</p> <p>5 MR. McALLISTER: Okay. If Mr. Steele 6 doesn't have to present any evidence, doesn't have 7 to testify, why am I here and why is Mr. Amendola 8 here?</p> <p>9 JUROR NO. 24: As I said before, it is 10 to -- it accrues to his benefit for you to be here 11 to help him demonstrate that, in fact, he is not 12 guilty or, in fact, that he is innocent, whichever 13 you would like to say.</p> <p>14 MR. McALLISTER: The reason I think I'm 15 here, quite frankly, is to represent my client, 16 but it's also to uphold a system of justice where 17 the government has to prove it. Do you agree with 18 that?</p> <p>19 JUROR NO. 24: I do agree with that, 20 definitely.</p> <p>21 MR. McALLISTER: And you heard Judge Winmill 22 say they have to prove it beyond a reasonable 23 doubt. Did you agree with that?</p> <p>24 JUROR NO. 24: I do agree with that.</p> <p>25 MR. McALLISTER: What is beyond a reasonable</p>
<p style="text-align: right;">228</p> <p>1 doubt, in your mind?</p> <p>2 THE COURT: Counsel, let me -- I'm going to 3 allow the juror to answer, but with the 4 understanding that the court will define 5 "reasonable doubt" for the jury. And although the 6 witness [sic] can be asked his perception, it's 7 only his perception, and the court's instruction 8 as to what is or is not reasonable doubt must 9 control.</p> <p>10 So I'll allow the juror to respond, but 11 with that caveat, it's just his lay opinion as to 12 what that term might mean. But obviously, the 13 court will provide the definitive definition of 14 that later in the trial.</p> <p>15 JUROR NO. 24: Whatever he said.</p> <p>16 (Laughter.)</p> <p>17 THE COURT: I'm not sure I even said 18 anything, but --</p> <p>19 (Laughter.)</p> <p>20 MR. McALLISTER: Well, obviously, the judge 21 is right, and those of you who are selected as 22 jurors will get what we call "an instruction" from 23 the judge about what that is.</p> <p>24 There has been, as indicated, publicity 25 about this case. And most of the jurors, or all</p>	<p style="text-align: right;">229</p> <p>1 of the jurors, who raised their hands and 2 indicated they heard or saw, read some publicity, 3 said they still thought they could be fair 4 because, as we all know, everything you read in 5 the papers ain't true, or see on TV.</p> <p>6 But the question is, for all the 7 jurors, didn't you have a feeling that because 8 this is in the papers and because we call my 9 client "the defendant," that he must have done 10 something wrong to get here?</p> <p>11 How many people have that feeling? 12 (Juror indicating.)</p> <p>13 MR. McALLISTER: Okay. Thank you, sir. And 14 if you don't mind, how do you cope with that 15 feeling?</p> <p>16 JUROR NO. 24: Are you still addressing me 17 or --</p> <p>18 MR. McALLISTER: I'm sorry, Doctor. I'm 19 going to take you off the hot seat.</p> <p>20 JUROR NO. 22: I guess you cope with it, 21 with the fact that you have to be reasonable and 22 listen to what's been said, what testimony comes 23 forward, and make your decision from there.</p> <p>24 MR. McALLISTER: Okay. We sometimes use a 25 comparison with jurors. We say, "We want you to</p>

<p style="text-align: center;">230</p> <p>1 be neutral. We want you to be fair and impartial. 2 We want you to act like a computer that hasn't got 3 any information until the trial starts." 4 Do you think you could really do that? 5 JUROR NO. 22: Yes, I think I could. 6 MR. McALLISTER: Okay. Well, what about all 7 your experiences in life; don't they come in with 8 you to a courtroom? 9 JUROR NO. 22: Yes. 10 MR. McALLISTER: Okay. You will hear 11 throughout in the case, or at the end of the case 12 you will hear, commonly, people say, "When you're 13 a juror, you don't leave your common sense at the 14 door." Okay. Would you agree with that? 15 JUROR NO. 22: Yes. 16 MR. McALLISTER: Okay. But what we're 17 asking you to do is to leave prejudices, feelings, 18 biases at the door. Do you understand that? 19 JUROR NO. 22: Yes, I do. 20 MR. McALLISTER: Okay. One of the ways that 21 we ask jurors to acknowledge that is by the 22 question I just asked, that you honestly answered; 23 that because he is called -- because there has 24 been publicity, because he is called the 25 defendant, you had a feeling that he must have</p>	<p style="text-align: center;">231</p> <p>1 done something wrong; correct? 2 JUROR NO. 22: I didn't say wrong. He must 3 have done something. 4 MR. McALLISTER: All right. I 5 said -- you're correct. He must have done 6 something, or he wouldn't be here. Right? 7 JUROR NO. 22: Yes. 8 MR. McALLISTER: Okay. Now, how do you put 9 that, in your mind, with the fact that the judge 10 said he is presumed innocent? How do you deal 11 with it? 12 JUROR NO. 22: I don't know that you have to 13 deal with that, per se. I think you have to 14 listen to everything that's being said and make 15 your decisions as you go through. 16 MR. McALLISTER: Okay. That is exactly what 17 we ask jurors to do, but we also ask that you 18 acknowledge your feelings, but put your decision 19 in the context of what the judge said, based upon 20 the facts, based upon the evidence. 21 Now, back to this question about a 22 juror's common sense. How do you know, sir, when 23 somebody is lying to you? 24 JUROR NO. 22: I don't think you do. 25 MR. McALLISTER: Okay. Well, what about if</p>
<p style="text-align: center;">232</p> <p>1 there is inconsistencies in their, quote, story? 2 JUROR NO. 22: They're inconsistent. 3 MR. McALLISTER: What about if they're being 4 paid or they have a financial reason to do 5 something? 6 JUROR NO. 22: I think you just have to 7 listen to it. 8 MR. McALLISTER: Okay. But, although there 9 is no scientific way to judge whether somebody is 10 not telling the truth, don't you agree that you 11 should use your own common sense in evaluating 12 that witness' testimony? 13 JUROR NO. 22: Yes. 14 MR. McALLISTER: Okay. And in this case, as 15 Judge Winmill told you, there is what's called a 16 cooperating witness. And that person sometimes is 17 called other things. And if the evidence shows 18 that such a person has been engaged in wrongdoing, 19 and at this point in a trial they're trying to 20 explain it away, would you hold that person to a 21 higher degree of scrutiny, as Judge Winmill said? 22 JUROR NO. 22: I believe that's what the 23 judge said he was going to do. 24 MR. McALLISTER: Okay. And you don't have 25 any issue with that, or any problem with doing</p>	<p style="text-align: center;">233</p> <p>1 that? 2 JUROR NO. 22: No. 3 MR. McALLISTER: Let me, if I can, go to 4 Juror 32. The question came up earlier about your 5 juror service, and I believe you said -- and I 6 certainly don't want to misquote you, but you said 7 words to the effect that you had served as a 8 juror, and the jury as a whole came to the 9 conclusion that the defendant was not guilty. Is 10 that correct? 11 JUROR NO. 32: Correct. 12 MR. McALLISTER: And then, I think you said 13 they did not have the evidence; correct? 14 JUROR NO. 32: Correct. 15 MR. McALLISTER: How is it you knew that 16 they didn't have the evidence? 17 JUROR NO. 32: They presented it during the 18 trial. 19 MR. McALLISTER: Okay. And did they present 20 it through witnesses? 21 JUROR NO. 32: Yes. 22 MR. McALLISTER: Okay. Now, again, when you 23 served as a juror at that point, did you have 24 feelings about the case or feelings about the 25 defendant?</p>

<p style="text-align: right;">234</p> <p>1 JUROR NO. 32: Yes.</p> <p>2 MR. McALLISTER: And were you able to put</p> <p>3 them aside?</p> <p>4 JUROR NO. 32: Yes.</p> <p>5 MR. McALLISTER: Do you know how you did</p> <p>6 that?</p> <p>7 JUROR NO. 32: Just went with the evidence</p> <p>8 that they had and what they didn't have, and had</p> <p>9 to go with what wasn't there.</p> <p>10 MR. McALLISTER: Okay. I know we</p> <p>11 have -- you've heard it over and over that the</p> <p>12 evidence has to be beyond a reasonable doubt and</p> <p>13 that the defendant is presumed innocent throughout</p> <p>14 the trial unless all of you agreed that, in fact,</p> <p>15 the evidence is there. You don't have any</p> <p>16 disagreement with that system of justice?</p> <p>17 JUROR NO. 32: No.</p> <p>18 MR. McALLISTER: Okay. What do you think</p> <p>19 about lawyers, really?</p> <p>20 JUROR NO. 32: To tell you the truth, I've</p> <p>21 never thought about them.</p> <p>22 (Laughter.)</p> <p>23 MR. McALLISTER: All right. Anybody want to</p> <p>24 talk about lawyers? Do we have a volunteer?</p> <p>25 Juror No. 10.</p>	<p style="text-align: right;">235</p> <p>1 JUROR NO. 10: Well, my experience with</p> <p>2 attorneys was, I guess, more through work-related.</p> <p>3 And since it was heavy construction, and that</p> <p>4 often gets to be adversarial before the contract</p> <p>5 is finally resolved, I don't think I ever had a</p> <p>6 project that I didn't interface with attorneys on</p> <p>7 a regular basis.</p> <p>8 Having said that, then, it was -- I</p> <p>9 learned that no statement about attorneys, whether</p> <p>10 good or bad, can be taken on face value.</p> <p>11 MR. McALLISTER: Okay.</p> <p>12 JUROR NO. 10: I met with some that I</p> <p>13 personally thought were scum balls.</p> <p>14 MR. McALLISTER: Understood. I may have the</p> <p>15 same opinion.</p> <p>16 JUROR NO. 10: They're from -- they're</p> <p>17 people, like the rest of us. And there is very</p> <p>18 good attorneys. There is attorneys I question</p> <p>19 their integrity. But generally, I have no bias,</p> <p>20 and I would hope nobody did, about attorneys per</p> <p>21 se, even though there is a lot of jokes, et</p> <p>22 cetera.</p> <p>23 MR. McALLISTER: Do you know how an attorney</p> <p>24 gets to the truth in a trial?</p> <p>25 What does he or she do?</p>
<p style="text-align: right;">236</p> <p>1 JUROR NO. 10: Well, an attorney presents</p> <p>2 evidence through witnesses. An attorney</p> <p>3 cross-examines witnesses from the other side.</p> <p>4 I guess my experience has been the</p> <p>5 truth is arrived at by the two parties both</p> <p>6 presenting the evidence, both questioning that</p> <p>7 evidence to the greatest extent that they can,</p> <p>8 until it's been examined as thoroughly as it can</p> <p>9 be.</p> <p>10 MR. McALLISTER: Okay. But in a criminal</p> <p>11 case, no defendant ever has to present evidence.</p> <p>12 You understand that's our law, correct?</p> <p>13 JUROR NO. 10: I do.</p> <p>14 MR. McALLISTER: Okay. So it's the job -- I</p> <p>15 think -- I think of it this way: It's my job to</p> <p>16 ask questions. And it's your job, I believe, to</p> <p>17 evaluate the answers and to determine whether the</p> <p>18 truth is there. Do you agree with that?</p> <p>19 JUROR NO. 10: I do.</p> <p>20 MR. McALLISTER: Okay. Again, I ask this</p> <p>21 question: In your common sense, in your life</p> <p>22 experiences, how do you determine whether somebody</p> <p>23 is telling you the truth?</p> <p>24 JUROR NO. 10: Are you asking me again?</p> <p>25 MR. McALLISTER: Yes, sir. Unless somebody</p>	<p style="text-align: right;">237</p> <p>1 wants to volunteer.</p> <p>2 JUROR NO. 10: I think that's a hard one. I</p> <p>3 think so many of us think we just might know by</p> <p>4 the look in somebody's eye, by their mannerisms.</p> <p>5 And I think those kinds of things are probably,</p> <p>6 being human, they're important to some extent, but</p> <p>7 I also know that we can be really fooled.</p> <p>8 So you do have to bring your life</p> <p>9 experiences into play with it, and your own sense</p> <p>10 of common sense, sometimes, when things are</p> <p>11 presented, and look at the evidence on a whole.</p> <p>12 MR. McALLISTER: If a witness is</p> <p>13 inconsistent in their story, what they say, does</p> <p>14 that mean to you that that's one thing you should</p> <p>15 consider about whether or not they're telling the</p> <p>16 truth?</p> <p>17 JUROR NO. 10: I think that has to bring</p> <p>18 some closer scrutiny into play, and one would want</p> <p>19 to -- if those inconsistencies are there, it sure</p> <p>20 begs for some explanation for the reason for an</p> <p>21 inconsistency, if, in fact, there is one.</p> <p>22 MR. McALLISTER: Okay. How about if</p> <p>23 somebody was paid money by the government? Is</p> <p>24 that a factor that would go into your evaluation</p> <p>25 using your common sense whether somebody is</p>

<p style="text-align: right;">238</p> <p>1 telling the truth?</p> <p>2 JUROR NO. 10: I think, again, that has to</p> <p>3 be considered. I've had experience with expert</p> <p>4 witnesses on both sides of the fence, I think,</p> <p>5 although not in a criminal case, but expert</p> <p>6 witnesses, in my experience, generally do present</p> <p>7 the evidence in a fashion that supports the case</p> <p>8 for the people for whom they're involved. And</p> <p>9 it's --</p> <p>10 MR. McALLISTER: In other words, an expert</p> <p>11 witness, because they're on the government's side,</p> <p>12 may present an opinion or facts favorable to the</p> <p>13 government?</p> <p>14 JUROR NO. 10: Yes.</p> <p>15 MR. McALLISTER: And the same for the</p> <p>16 defense; correct?</p> <p>17 JUROR NO. 10: That is correct.</p> <p>18 MR. McALLISTER: How about somebody who</p> <p>19 raised their hand when they said they didn't want</p> <p>20 to be a juror; does anybody want the mic?</p> <p>21 JUROR NO. 11: I'll take it.</p> <p>22 MR. McALLISTER: All right. Thank you.</p> <p>23 THE COURT: Counsel, I might just say you've</p> <p>24 got about five minutes.</p> <p>25 MR. McALLISTER: Thank you, Judge.</p>	<p style="text-align: right;">239</p> <p>1 JUROR NO. 11: I raised my hand because I</p> <p>2 don't want to be here, but I feel like it's my</p> <p>3 civic duty to do so, and I would serve to the</p> <p>4 utmost of my ability in that role. Given that, I</p> <p>5 hope I will be excused.</p> <p>6 (Laughter.)</p> <p>7 MR. McALLISTER: I appreciate your honesty.</p> <p>8 Why is it you don't want to be a juror?</p> <p>9 JUROR NO. 11: I have too much fun at home.</p> <p>10 MR. McALLISTER: Okay. Do you --</p> <p>11 JUROR NO. 11: And it's --</p> <p>12 MR. McALLISTER: -- have some --</p> <p>13 JUROR NO. 11: -- it's a grave</p> <p>14 responsibility.</p> <p>15 MR. McALLISTER: Okay.</p> <p>16 JUROR NO. 11: That's the biggest part of</p> <p>17 it. It's a grave responsibility.</p> <p>18 MR. McALLISTER: All right. Do you realize</p> <p>19 that it is a grave responsibility, but all 12 of</p> <p>20 the jurors have to agree?</p> <p>21 JUROR NO. 11: Sure.</p> <p>22 MR. McALLISTER: All right. Do you have any</p> <p>23 problems or issue with that?</p> <p>24 JUROR NO. 11: No. I have served before and</p> <p>25 we had some contentions, but I felt that we did a</p>
<p style="text-align: right;">240</p> <p>1 good job in looking at all the evidence.</p> <p>2 MR. McALLISTER: All right. And as I recall</p> <p>3 from my notes, you actually served on a jury that</p> <p>4 returned a verdict of not guilty. Correct?</p> <p>5 JUROR NO. 11: Correct.</p> <p>6 MR. McALLISTER: Why did you vote for a not</p> <p>7 guilty verdict?</p> <p>8 JUROR NO. 11: The evidence wasn't there.</p> <p>9 MR. McALLISTER: Okay. When you say the</p> <p>10 evidence wasn't there, did you still feel that the</p> <p>11 defendant may have done something?</p> <p>12 JUROR NO. 11: Actually, no.</p> <p>13 MR. McALLISTER: Okay. When you say "the</p> <p>14 evidence wasn't there," what is it that was</p> <p>15 missing or wasn't there?</p> <p>16 JUROR NO. 11: It's been about 20 years ago.</p> <p>17 The evidence that was brought by the plaintiff, it</p> <p>18 was just so iffy in that the witnesses they</p> <p>19 called, none of them had the same intensity</p> <p>20 or -- I don't mean "intensity." I mean the</p> <p>21 evidence just wasn't there that this person had</p> <p>22 been injured by this other person.</p> <p>23 MR. McALLISTER: Okay. In this case, if</p> <p>24 after -- if you're on the jury and the evidence is</p> <p>25 presented and in your mind it's a tie, the scales</p>	<p style="text-align: right;">241</p> <p>1 of justice are even, 50/50, what verdict would you</p> <p>2 return?</p> <p>3 JUROR NO. 11: I would hope that we would</p> <p>4 really all evaluate the evidence to the point</p> <p>5 where we could either agree or just bring in</p> <p>6 whatever verdict we could agree on that the</p> <p>7 evidence showed.</p> <p>8 MR. McALLISTER: Okay. But if the evidence</p> <p>9 and the opinion, the collective opinion of the</p> <p>10 jurors was split, it was like 50/50, what verdict</p> <p>11 do you think you should properly return?</p> <p>12 JUROR NO. 11: I would have to follow what I</p> <p>13 felt were the facts, no matter what anybody else</p> <p>14 tried to convince me of. I mean, I could be</p> <p>15 convinced, but I have to have some good proof and</p> <p>16 good thoughts on it and see the evidence and ask</p> <p>17 it to be brought in, if we had to examine a lot.</p> <p>18 And I couldn't just decide to vote one way or the</p> <p>19 other just to get out of there.</p> <p>20 MR. McALLISTER: Okay. But, again, if it</p> <p>21 was 50/50, do you think in a criminal case you</p> <p>22 should vote not guilty, because the court has</p> <p>23 informed you that the evidence must be beyond a</p> <p>24 reasonable doubt?</p> <p>25 JUROR NO. 11: I would have to listen again</p>

1 to the court's definition of "reasonable doubt"
2 before I could answer that.

3 MR. McALLISTER: All right. Anyone else
4 have anything that they want to share that perhaps
5 no one has asked about thus far?

6 Thank you, ladies and gentlemen.

7 THE COURT: Thank you, Mr. McAllister.

8 Counsel, let's approach for a moment.

9 I think we're going to take a recess, but I wanted
10 to visit with counsel about the best way to
11 proceed from this point. We'll take a recess
12 shortly, but I want to visit with counsel first.

13 (Sidebar commences as follows:)

14 THE COURT: Counsel, unless you want to be
15 heard further, I think that Juror No. 24 and 28,
16 that there are just not enough grounds to excuse
17 them. I understand your objection, and your
18 challenge for cause is noted, but they have given
19 the right answers.

20 I guess that's what peremptory
21 challenges are for is about. They give the right
22 answer, but you still have a lurking suspicion
23 that there is a good reason not to have them on
24 the jury.

25 So, were there any other challenges for

1 MR. McALLISTER: Yes.

2 THE COURT: And so I'll give those same
3 preproof.

4 How much time do you need for an
5 opening?

6 MR. HAWS: Forty-five minutes, or more.

7 THE COURT: I'm not going to leave -- you
8 know, we're going to do both or none, so let's see
9 where we are. If there is enough time, we may go
10 into openings. If there is not enough time to
11 complete an hour and a half -- I'm assuming that
12 you're going to each use roughly the same amount
13 of time.

14 MR. McALLISTER: I don't think I'll be 45
15 minutes. I think I'll be a half hour.

16 THE COURT: All right. So I'll plan on I
17 need an hour and 15 minutes. If we don't get the
18 jury picked and instructed with an hour and 15
19 minutes to go, we'll recess and reconvene tomorrow
20 morning.

21 MS. WHELAN: We would prefer not to start a
22 witness, if the court --

23 THE COURT: No, we won't. I don't see any
24 way that we'll start a witness until tomorrow.
25 Okay?

1 cause that you wanted to make?

2 MR. McALLISTER: No, Your Honor.

3 THE COURT: Okay. So, with that exception,
4 then.

5 Counsel, I wanted to give you the
6 opportunity, you can -- well, perhaps the best
7 thing is just to take the break. You've got the
8 juror questions. You can start thinking of how
9 you want to order your challenges. Then we'll
10 bring the jury back.

11 I usually have the jury present during
12 challenges, so you can actually physically look at
13 them, and not just rely on your memory. Some
14 judges send the jury out and then make the
15 attorneys rely on their memory, but I think I
16 would rather do it that way. Is that agreeable?

17 MR. HAWS: Yes.

18 MR. McALLISTER: Yes.

19 MS. WHELAN: Yes.

20 THE COURT: All right. Let's do that.
21 We'll take about a 15-minute break. But start
22 thinking about it, so we can go through the
23 challenges quite quickly. I'll be ready with the
24 preproof instructions, which I think you reviewed
25 from the last trial.

1 MS. WHELAN: Thank you, Judge.

2 THE COURT: All right.

3 (Sidebar concluded.)

4 THE COURT: Counsel, so we're clear, based
5 upon our discussions at the sidebar and with the
6 exceptions I noted at sidebar, both sides pass the
7 panel for cause; is that correct?

8 MR. McALLISTER: Yes, Your Honor.

9 MS. WHELAN: Yes, Your Honor.

10 THE COURT: All right.

11 Ladies and gentlemen, I think what
12 we'll do is take a 15-minute recess. When we come
13 back, the attorneys -- it will be odd. You will
14 come back and then sit, with nothing going on in
15 the courtroom for 15 minutes or so, while the
16 attorneys exercise peremptory challenges. And
17 then when they're done, we'll excuse all but 14 of
18 you.

19 For those of you who have been here,
20 unfortunately, I'm going to ask you to stick
21 around for -- it may turn out to be about another
22 half an hour. It looks quite likely that you will
23 not be called, but nevertheless I'm going to
24 require that you stick around, go down, have the
25 break with the rest of the jurors.

<p style="text-align: right;">246</p> <p>1 Nevertheless, all of you are subject to</p> <p>2 the same admonition not to discuss the case among</p> <p>3 yourselves, and that includes any aspect of the</p> <p>4 case. And you are not to form or express any</p> <p>5 opinions about the case until it is submitted to</p> <p>6 you.</p> <p>7 As I said, we'll return in about 15</p> <p>8 minutes and then at that time exercise peremptory</p> <p>9 challenges, and then we'll be down to 14 jurors</p> <p>10 and then excuse everyone else.</p> <p>11 All right. We'll be in recess.</p> <p>12 (Recess.)</p> <p>13 (Jury present.)</p> <p>14 THE COURT: I'll note for the record that</p> <p>15 all jurors are present.</p> <p>16 Counsel, this is your opportunity to</p> <p>17 exercise peremptory challenges.</p> <p>18 Mr. Severson, if you'll work with --</p> <p>19 and Ms. Tetrick, if you'll work with counsel in</p> <p>20 their exercise of challenges.</p> <p>21 (Pause.)</p> <p>22 THE COURT: Counsel, I wonder if it might be</p> <p>23 worthwhile to have each of the jurors here in the</p> <p>24 panel raise their number, to make sure we have got</p> <p>25 the numbering sequence, to make sure your charts</p>	<p style="text-align: right;">247</p> <p>1 are accurate. Do you have any concern about that</p> <p>2 at all?</p> <p>3 MR. McALLISTER: No.</p> <p>4 THE COURT: All right.</p> <p>5 Well, Mr. Haws, do you have any concern</p> <p>6 about that?</p> <p>7 MR. HAWS: Your Honor, I think it's a good</p> <p>8 idea.</p> <p>9 MR. McALLISTER: I certainly don't object.</p> <p>10 THE COURT: All right. Let's just</p> <p>11 have -- make sure -- in fact, hold them -- on the</p> <p>12 back row first, we'll just go with 1, 2, 3, 4, 5,</p> <p>13 37, 7, 38.</p> <p>14 Then on the third row, it's 9, 10, 11,</p> <p>15 41, 13, 14, and 15.</p> <p>16 The second row is 16, 17, 36, 19, 20,</p> <p>17 34, 22, 23, 24, and 25.</p> <p>18 Then on the front row it's 26, 27, 28,</p> <p>19 29, 33, 31 and 32.</p> <p>20 That may have been for my benefit more</p> <p>21 than anyone else's. I just want to make sure we</p> <p>22 had it right.</p> <p>23 (Peremptory challenges exercised.)</p> <p>24 THE COURT: Counsel, before I excuse the</p> <p>25 challenged jurors, are there any Batson issues</p>
<p style="text-align: right;">248</p> <p>1 that were raised?</p> <p>2 MR. McALLISTER: None were raised,</p> <p>3 Your Honor.</p> <p>4 MR. HAWS: No, Your Honor.</p> <p>5 THE COURT: Ladies and gentlemen, I'm going</p> <p>6 to excuse those of you who have been challenged.</p> <p>7 Again, usually I spend some time explaining to the</p> <p>8 jury that peremptory challenges are simply</p> <p>9 challenges that attorneys can exercise without</p> <p>10 providing any explanation.</p> <p>11 There are also challenges for cause,</p> <p>12 when the attorneys -- we discussed some challenges</p> <p>13 and the court has resolved those, and a</p> <p>14 determination has been made that all of you could</p> <p>15 be fair and impartial jurors.</p> <p>16 However, even among the jurors who may</p> <p>17 be fair and impartial, the attorneys are given the</p> <p>18 opportunity to simply decide that they would</p> <p>19 prefer one juror over another to sit on their</p> <p>20 case.</p> <p>21 Please don't take any offense as to the</p> <p>22 fact that you were challenged. It's just simply</p> <p>23 the way the system works. So you should not be</p> <p>24 offended in any way.</p> <p>25 So let me start, I guess, on the front</p>	<p style="text-align: right;">249</p> <p>1 row. We'll ask the following jurors to go ahead</p> <p>2 and take a seat -- ah, that could be a challenge</p> <p>3 actually.</p> <p>4 I think between that row and the front</p> <p>5 row on the back -- yes, inside the well, the</p> <p>6 benches that are empty in the back, I think we</p> <p>7 maybe able to get everyone on that. As I call</p> <p>8 your name, please take a seat on either side of</p> <p>9 the swinging door there.</p> <p>10 Juror No. 32, you will be excused. It</p> <p>11 looks like Juror No. 33, you're excused. Juror</p> <p>12 No. 28, you're excused. Juror 27, and Juror 26,</p> <p>13 you will be excused.</p> <p>14 On the second row, Juror 24, Juror 23,</p> <p>15 and Juror 22, you will be excused. Juror 34, you</p> <p>16 will be excused. Juror 25, you will be excused.</p> <p>17 And Juror 17, you will be excused.</p> <p>18 Third row, Juror 15, you will be</p> <p>19 excused. Juror No. 9, 10, and 11, the three on</p> <p>20 this end, will be excused. Juror 8, you will be</p> <p>21 excused. Juror 5, you will be excused. And,</p> <p>22 Juror 1, you will be excused.</p> <p>23 Counsel, I -- I'm sorry. I said 8. I</p> <p>24 meant 35. You're in seat No. 8. Juror No. 35. I</p> <p>25 didn't read that correctly.</p>

<p style="text-align: center;">250</p> <p>1 UNIDENTIFIED JUROR: Thirty-seven? Are you 2 talking about 37? 3 THE COURT: No. Thirty-eight. 4 Thirty-eight. 5 MR. McALLISTER: That's what we have. 6 THE COURT: Yes. Juror 38, you are excused. 7 My apologies. It's my vanity. Trying not to use 8 reading glasses got the better of me there. 9 Counsel, now, do you agree that the 10 jury has been properly selected and constituted in 11 accordance with your challenges? 12 Wait, wait. We do have a problem here. 13 Juror No. 20. 14 JUROR NO. 20: Yes, I am. 15 THE COURT: Are you Juror No. 20? I'm 16 sorry. I think I announced that you were 17 challenged as well. 18 JUROR NO. 20: Okay. Sorry. 19 THE COURT: Now, perhaps we have it right. 20 Now, Counsel, I'll ask again, do we 21 have the jurors properly excused? 22 MS. WHELAN: Yes, Your Honor. 23 MR. McALLISTER: Yes, Your Honor. 24 THE COURT: All right. I'm going to 25 reconstitute the panel, so to speak. Let's have</p>	<p style="text-align: center;">251</p> <p>1 Juror No. 31, would you take -- all right. 2 It's -- Juror No. 30, would you take a seat in the 3 back row, and be seat No. 4 on the back row. 4 And Juror No. 29, would you take the 5 last seat on the back row. 6 And Juror No. 16, would you 7 take -- just a moment. I'll have you take the 8 last seat on the front row. 9 Juror No. 18, I'll have you take the 10 third seat on the front row. 11 JUROR NO. 19: You mean 19? 12 THE COURT: I'm sorry. Yes, Juror No. 18 -- 13 oh, 36, I'm sorry. The problem is the numbers 14 have changed. 15 It's Juror No. 36, would you take seat 16 No. 3 on the front row. 17 And Juror No. 19, take seat No. 2 on 18 the front row. 19 And Juror No. 25, take seat No. 1 on 20 the front row. 21 All right. With that, we'll have the 22 panel sworn to try the case. If you'll please 23 stand, Ms. Gearhart will administer an oath to you 24 to try the case. 25 (Jury sworn/impaneled.)</p>
<p style="text-align: center;">252</p> <p>1 THE COURT: Please be seated. 2 Ladies and gentlemen, those of you who 3 have not been summoned, I want to thank you for 4 your presence here. We will excuse you at this 5 time. 6 I'm going to read some preliminary 7 instructions to the jury, which will take maybe 15 8 or 20 minutes, and then we'll be in recess until 9 tomorrow morning. So I'll go ahead and allow you 10 to stay, if you wish, or you can be excused at 11 this time. Thank you again for your service to 12 the District of Idaho. 13 (Nonselected jurors excused.) 14 THE COURT: Ladies and gentlemen, let me go 15 ahead -- what we're going to do for the balance of 16 the day is I have some preliminary instructions 17 which will take 15 minutes or so to read to you. 18 I would begin with opening statements 19 today, but I don't like to break it up in the 20 middle of an opening statement, and I don't think 21 we can complete both opening statements this 22 afternoon. And for that reason, we'll just start 23 tomorrow morning at 8:30, we'll start with opening 24 statements and then proceed directly into the 25 evidence.</p>	<p style="text-align: center;">253</p> <p>1 Just to remind you, we'll start at 2 8:30. Tomorrow is a little different because I 3 have a conference call which I have to take, which 4 meets at 11:00. 5 Ms. Gearhart, is that correct? 6 In any event, we'll have to be in 7 recess for about 30 or 40 minutes around 11:00. 8 So for that reason we'll add whatever time is tied 9 up with that on the end of the day, so we probably 10 won't be done until around 3:00, 3:15. 11 The balance of the week and into the 12 second week of the trial we'll be in session from 13 8:30 to 2:30 each day, with a 15- or 20-minute 14 break -- well, two 15- or 20-minute breaks during 15 the course of the trial day. 16 PRELIMINARY JURY INSTRUCTIONS 17 THE COURT: Ladies and gentlemen, let me 18 give you the following instructions. 19 You now are the jury in this case and I 20 want to take a few minutes to tell you something 21 about your duties as jurors. 22 Why don't we pass out note pads to the 23 jurors, in case they want to take notes about 24 anything I may say during these preliminary 25 instructions.</p>

<p style="text-align: right;">254</p> <p>1 (Note pads distributed.)</p> <p>2 THE COURT: Ladies and gentlemen, these</p> <p>3 are my preliminary instructions. At the end of</p> <p>4 the trial I will give you more detailed written</p> <p>5 instructions, and those will control your</p> <p>6 deliberations.</p> <p>7 Do you have pens that aren't working?</p> <p>8 Here is -- all right.</p> <p>9 Because things occur during the course</p> <p>10 of the trial, it may become necessary to modify</p> <p>11 the court's instructions to you. If that occurs,</p> <p>12 there may be some difference between what I tell</p> <p>13 you now and what I tell you at the end of the</p> <p>14 trial.</p> <p>15 If what I tell you at the end of the</p> <p>16 trial varies from what I tell you now, you should</p> <p>17 follow the court's instructions -- the court's</p> <p>18 final instructions and disregard anything I say</p> <p>19 now that is inconsistent with what I say at the</p> <p>20 conclusion of the trial.</p> <p>21 When you deliberate, it will be your</p> <p>22 duty to weigh and evaluate all the evidence</p> <p>23 received in the case and, in that process, to</p> <p>24 decide the facts. To the facts, as you find them,</p> <p>25 you will apply the law as I give it to you,</p>	<p style="text-align: right;">255</p> <p>1 whether you agree with the law or not.</p> <p>2 You must decide the case solely on the</p> <p>3 evidence and the law before you, and must not be</p> <p>4 influenced by personal likes or dislikes,</p> <p>5 opinions, prejudice, or sympathy.</p> <p>6 Please do not take anything that I may</p> <p>7 say or do during the trial as indicating what I</p> <p>8 think of the evidence or what your verdict should</p> <p>9 be. That is entirely up to you.</p> <p>10 As I explained to you earlier, this is</p> <p>11 a criminal case brought by the United States</p> <p>12 Government.</p> <p>13 The government charges the defendant</p> <p>14 Edgar J. Steele with four counts. The first</p> <p>15 alleges that Mr. Steele attempted to hire another</p> <p>16 individual to travel in interstate commerce with</p> <p>17 the intent of murdering Mr. Steele's wife and</p> <p>18 mother-in-law.</p> <p>19 Two related counts allege that</p> <p>20 Mr. Steele, first, aided and abetted in the use of</p> <p>21 explosive material to commit the alleged murder</p> <p>22 for hire; and, second, aided and abetted in the</p> <p>23 possession of a destructive device in relation to</p> <p>24 the alleged murder for hire.</p> <p>25 The fourth charges the defendant with</p>
<p style="text-align: right;">256</p> <p>1 tampering with a victim by attempting to</p> <p>2 intimidate or persuade his wife to engage in</p> <p>3 misleading conduct and not communicate with law</p> <p>4 enforcement officers regarding the alleged murder</p> <p>5 for hire.</p> <p>6 The charges against the defendant are</p> <p>7 contained in the indictment. The indictment</p> <p>8 simply describes the charge -- the charges the</p> <p>9 government brings against the defendant. The</p> <p>10 indictment is not evidence and does not prove</p> <p>11 anything.</p> <p>12 The defendant has pleaded not guilty to</p> <p>13 the charges, and he is presumed innocent unless</p> <p>14 and until the government proves the defendant</p> <p>15 guilty beyond a reasonable doubt. In addition,</p> <p>16 the defendant has the right to remain silent and</p> <p>17 never has to prove innocence or present any</p> <p>18 evidence.</p> <p>19 In order to help you follow the</p> <p>20 evidence, I will now give you a brief summary of</p> <p>21 the elements of the crimes which the government</p> <p>22 must prove to make its case.</p> <p>23 In order for a defendant to be found</p> <p>24 guilty of use of interstate commerce facilities in</p> <p>25 the commission of murder for hire, in violation of</p>	<p style="text-align: right;">257</p> <p>1 18 U.S. Code Section 1958, the United States must</p> <p>2 prove the following as to the defendant beyond a</p> <p>3 reasonable doubt:</p> <p>4 First, that the defendant attempted to</p> <p>5 cause, or caused, another to travel in interstate</p> <p>6 commerce from Idaho to Oregon; second, the travel</p> <p>7 was done with the intent that a murder be</p> <p>8 committed; and, third, the murder was intended to</p> <p>9 be committed as consideration for receipt of or a</p> <p>10 promise to pay anything of pecuniary value.</p> <p>11 In order for a defendant to be found</p> <p>12 guilty of use of explosive material to commit a</p> <p>13 federal felony in violation of 18 U.S. Code</p> <p>14 Section 844(h), the United States must prove the</p> <p>15 following as to the defendant beyond a reasonable</p> <p>16 doubt: first, that the defendant attempted to</p> <p>17 commit the felony crime of use of interstate</p> <p>18 commerce facilities in the commission of murder</p> <p>19 for hire, as described in Count 1; and, second,</p> <p>20 the defendant aided and abetted the knowing use of</p> <p>21 an explosive device to commit the crime.</p> <p>22 In order for a defendant to be found</p> <p>23 guilty of possession of a destructive device in</p> <p>24 relation to a crime of violence, in violation of</p> <p>25 18 U.S. Code Section 924(c)(1)(D)(ii), the</p>

1 United States must prove the following as to the
2 defendant beyond a reasonable doubt: first, that
3 the defendant attempted to commit the felony crime
4 of use of interstate commerce facilities in the
5 commission of murder for hire as described in
6 Count 1; and, second, the defendant knowingly
7 possessed, or aided and abetted another to
8 possess, a destructive device in furtherance of
9 the crime.

10 In order for a defendant to be found
11 guilty of tampering with a victim, in violation of
12 18 U.S. Code Section 1512(b)(3), the United States
13 must prove the following as to the defendant
14 beyond a reasonable doubt: first, the defendant
15 knowingly attempted to intimidate or persuade
16 Cyndi Steele to engage in misleading conduct
17 regarding the identity of a voice on a tape
18 recording; and, second, the defendant acted with
19 intent to prevent Cyndi Steele from communicating
20 with law enforcement authorities regarding the
21 alleged murder for hire.

22 The law does not compel a defendant in
23 a criminal case to testify. The decision whether
24 to testify is left to the defendant, acting with
25 the advice and assistance of the defendant's

1 one of the parties or by one of the witnesses.

2 Now, during the trial, some evidence
3 may be admitted for a limited purpose only. When
4 that occurs, I will instruct you as to the limited
5 purpose for which the evidence may be considered,
6 and you are to follow my instructions and consider
7 it only for that purpose, and for no other.

8 Evidence may be direct or it may be
9 circumstantial. Let me describe the difference,
10 because you may have heard this term, even in
11 newspapers or television shows.

12 Direct evidence is direct proof of a
13 fact, such as testimony by a witness about what
14 that witness personally saw or heard or did.

15 Circumstantial evidence is indirect
16 evidence; that is, it is proof of one or more
17 facts from which one can find another fact.

18 Let me give you an example. If you
19 were to look out at the sky when you woke up in
20 the morning and saw drops of liquid precipitation
21 falling from the sky, you could later testify that
22 you had observed it to be raining. That would be
23 direct evidence, because you had actually
24 physically observed rain fall from the sky.

25 On the other hand, if, when you woke up

1 lawyer.

2 No presumption of guilt may be raised
3 and no inference of any kind may be drawn from the
4 fact that the defendant does not testify, nor
5 should this fact be discussed by you or enter into
6 your deliberations in any way.

7 On the other hand, if the defendant
8 does testify, you should consider the testimony of
9 the defendant just as you would the testimony of
10 any other witness.

11 The evidence you are to consider in
12 deciding what the facts are consists of: first,
13 the sworn testimony of any witness; second, the
14 exhibits which are received into evidence; and,
15 third, any facts to which the parties agree.

16 The following things are not evidence
17 and you must not consider them as evidence in
18 deciding the facts of this case: first,
19 statements and arguments of the attorneys are not
20 evidence; second, questions and objections of the
21 attorneys are not evidence; third, testimony that
22 I instruct you to disregard is not evidence; and,
23 finally, anything that you may have seen or heard
24 when the court is not in session is not evidence,
25 even if what you saw or heard was done or said by

1 in the morning, there were no drops of
2 precipitation falling from the sky, but you noted
3 the streets were wet, the grass was wet, that they
4 had been dry the night before, perhaps the sky had
5 been cloudy the preceding evening -- perhaps even
6 the weather forecast had been for rain during the
7 evening hours -- in that circumstance, you could
8 testify as a matter of circumstantial evidence
9 that it had rained the preceding evening, not
10 because you had observed it, but because you had
11 observed other facts from which one can infer that
12 it had rained.

13 Now, that's the distinction between
14 direct and circumstantial evidence. However, what
15 is important is that you are to consider both
16 direct and circumstantial evidence. In fact, the
17 law permits you to consider both, and either can
18 be used to prove any fact. The law makes no
19 distinction between the weight to be given to
20 either direct or circumstantial evidence. It is
21 for you to decide how much weight to give to any
22 evidence.

23 There are rules of evidence that
24 control what can be received into evidence. When
25 a lawyer asks a question or offers an exhibit into

<p style="text-align: center;">262</p> <p>1 evidence, and the lawyer on the other side thinks 2 that it is not permitted by the rules of evidence, 3 the lawyer may object. 4 If I overrule the objection, the 5 question may be answered or the exhibit received. 6 But if I sustain the objection, the question 7 cannot be answered and the exhibit cannot be 8 received. 9 Whenever I sustain an objection to a 10 question, you must ignore the question and must 11 not guess or speculate as to what the answer would 12 have been. Likewise, if I sustain an objection to 13 an exhibit, you must ignore the exhibit and must 14 not speculate as to what the exhibit might have 15 shown. 16 Sometimes I may order that evidence be 17 stricken from the record and that you disregard or 18 ignore it. That means that when you are deciding 19 the case, you must not consider the evidence that 20 I told you to disregard. 21 In deciding the facts in this case, you 22 may have to decide which testimony to believe and 23 which testimony not to believe. You may believe 24 everything that a witness says, or part of it, or 25 none of it.</p>	<p style="text-align: center;">263</p> <p>1 But in considering the testimony of any 2 witness, you may take into account the 3 following -- and I like to state these as 4 questions that you might ask yourself as a witness 5 is testifying. 6 First: What opportunity and ability 7 did this witness have to actually see or hear or 8 know the things that he or she has testified to? 9 Second: How good was the witness' 10 memory about the events in question? 11 Third: What was the witness' manner, 12 what we sometimes refer to as their demeanor, 13 while testifying? 14 Fourth: Does the witness have some 15 interest in the outcome of the case? 16 Fifth: Does the witness have some bias 17 or prejudice for or against either of the parties? 18 Sixth: Did the other evidence -- Did 19 the other evidence contradict what this witness 20 has testified to? 21 Seventh: How reasonable is this 22 witness' testimony in light of all the evidence? 23 And finally: Are there other factors, 24 even your common sense, which suggest to you that 25 this witness either is or is not believable?</p>
<p style="text-align: center;">264</p> <p>1 Now, the weight of the evidence as to a 2 specific fact does not necessarily depend on the 3 number of witnesses who testify concerning that 4 fact. 5 I am now going to say a few words about 6 your conduct as jurors. 7 First, you must keep an open mind 8 throughout the trial and you must not decide what 9 the verdict should be until you and your fellow 10 jurors have completed your deliberations at the 11 end of the case. 12 Second, because you must decide the 13 case based only on the evidence received in the 14 evidence [sic] and on my instructions as to the 15 law that applies, you must not be exposed to any 16 other information about the case or to the issues 17 it involves during the course of your jury duty. 18 Now, this is an extremely important 19 instruction concerning juror conduct. I'm going 20 to give you some very specific directions as to 21 things you must avoid during the course of the 22 trial, all of which are intended to ensure that 23 you do not form or express any opinion about the 24 case until it is submitted to you, and that you 25 are not exposed to any information or evidence</p>	<p style="text-align: center;">265</p> <p>1 other than that which is presented in the course 2 of the trial. 3 Therefore, until the end of the trial 4 you should follow the court's following admonition 5 and order: 6 Do not communicate with anyone in any 7 way, and do not let anyone else communicate with 8 you in any way, about the merits of the case or 9 anything to do with it. 10 Now, this includes just what I said, 11 "anyone." It certainly includes discussing the 12 case in person, in writing, by phone, or by any 13 electronic means, which would include email, text 14 messaging, Internet chat rooms, blogs, websites, 15 or other features of the Internet. It certainly 16 applies to communicating with your fellow jurors 17 until I give you the case for deliberation. And 18 it applies to communicating with everyone else, 19 including your family members, your employer, the 20 media or press, and the people involved in the 21 trial, although you may notify your family and 22 your employer that you have been seated as a juror 23 in this case. 24 But if you are asked or approached in 25 any way about your jury service or anything about</p>

1 this case, you must respond that you have been
2 ordered not to discuss the matter, and to report
3 that contact to me immediately.

4 Because you will receive all the
5 evidence and legal instruction you properly may
6 consider to return a verdict, do not read, watch,
7 or listen to any news or media accounts or
8 commentary about the case, or anything to do with
9 it.

10 Do not do any research, such as
11 consulting dictionaries, searching the Internet,
12 or using other reference materials, and do not
13 make any investigation or in any other way try to
14 learn about this case on your own.

15 Now, the law requires these
16 restrictions to ensure that the parties have a
17 fair trial, based upon the same evidence that each
18 party has had the opportunity to address. A juror
19 who violates these restrictions jeopardizes the
20 fairness of these proceedings, and a mistrial
21 could result that would require the entire trial
22 process to start over.

23 If any juror is exposed to any outside
24 information, you must notify the court
25 immediately. And of course, that notification

1 please keep them to yourself until you and your
2 fellow jurors go to the jury room to begin your
3 deliberations. Do not let notetaking distract you
4 so that you do not hear other question -- other
5 questions and answers, and preclude you from being
6 attentive.

7 When you leave the courtroom for
8 recesses, your notes should be left in the jury
9 room. No one will read your notes.

10 Whether or not you take notes, you
11 should rely on your own memory of the evidence.
12 Notes are only to assist your memory. You should
13 not be overly influenced by your notes or those of
14 your fellow jurors.

15 The next phase of the trial will begin
16 starting tomorrow morning. First, each side may
17 make an opening statement. An opening statement
18 is not evidence, nor is it argument. It is simply
19 an outline that the attorneys may offer to help
20 you understand what that party expects the
21 evidence will show. And as I noted, it's not
22 evidence and it is not argument.

23 And if counsel becomes argumentative, I
24 may sustain objections if the opening statements
25 become argument, rather than simply an outline of

1 should come through the bailiff, either
2 Mr. Severson or Ms. Tetrick, by way of a signed
3 note, as to any contact that may have occurred or
4 if any time you're concerned that you may have
5 inadvertently violated the court's admonition.

6 Now, I can't stress this enough. I try
7 to cover every possible source of outside contact
8 that might occur, but you clearly understand, I
9 think, that you must not have any contact with
10 anyone outside the court concerning this matter,
11 and even your contact with the court staff should
12 be limited just to procedural matters.

13 And if you have any questions of any
14 substance at all, put them in form of a
15 handwritten note, give it to Mr. Severson or
16 Ms. Tetrick, and then they will deliver to me and
17 I will respond to the question appropriately.

18 Now, at the end of the trial you will
19 have to make your decision based on what you
20 recall of the evidence. You will not have a
21 written transcript of the trial. I therefore urge
22 you to pay close attention to the testimony as it
23 is given.

24 If you wish, you may take notes to help
25 you remember the evidence. If you do take notes,

1 what the evidence will be.

2 A party is not required to make an
3 opening statement.

4 The government will then present
5 evidence through its witnesses, and counsel for
6 the defendant may cross-examine those witnesses.
7 Then if the defendant chooses to offer evidence,
8 counsel for the government may cross-examine any
9 witnesses called by the defense.

10 After the evidence has been presented,
11 I will instruct you on the law that applies to the
12 case, and the attorneys will make their closing
13 arguments. After that, you will go to the jury
14 room to deliberate on your verdict.

15 All right. At this time, ladies and
16 gentlemen, we'll be in recess until 8:30 tomorrow
17 morning. I'm not going to repeat my admonition
18 concerning juror conduct.

19 However, on each recess I will remind
20 you of that extended admonition concerning juror
21 conduct by simply again reminding you that you
22 must not discuss the case among yourselves or with
23 anyone else, nor should you form or express any
24 opinions about the case until it is submitted to
25 you.

1 When I give you that admonition on the
 2 occasion of each recess, I'm really referring back
 3 to that extended admonition about juror conduct
 4 that I just read to you. And I cannot stress
 5 enough the need for the jury to follow that
 6 religiously.

7 There are always -- well, not always,
 8 certainly not in our district, but in other
 9 districts, we hear reports of jurors who think
 10 that it's okay to engage in chat room discussions
 11 about the trial that they're currently sitting on,
 12 or to exchange emails, or to go on Facebook and
 13 describe what it is they have been doing during
 14 the day.

15 That's entirely improper. And if that
 16 were to occur, it could well result in a mistrial.
 17 And I cannot stress enough your need to leave
 18 everything about this trial here in the courtroom.
 19 Don't take it outside the courtroom, and do not
 20 consult any outside materials, whether it's on the
 21 Internet or written materials, that might in any
 22 way relate to this case.

23 I might also note that the court has
 24 its own website, and there are materials about all
 25 of our cases that can be accessed on that website.

1 I'll just leave it at that.

2 All right. Counsel, is there anything
 3 else at this time?

4 MR. HAWS: Nothing, Your Honor.

5 MR. McALLISTER: No, Your Honor.

6 THE COURT: All right.

7 We'll be in recess then until 8:30
 8 tomorrow morning.

9 (Court recessed at 4:28 p.m.)
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1 Through the duration of this trial, you must not
 2 visit the court's website, either, because there
 3 is material there relating to this and other cases
 4 that you must not be exposed to or, as I've
 5 indicated, we may have a serious problem with the
 6 trial.

7 Yes. I think, also, because there has
 8 been some media coverage of this, I think that
 9 I've covered it, but I'm going to be very
 10 specific. I think you should avoid reading any
 11 newspapers during the course of the trial. I
 12 suppose if it's a national news source, you can
 13 review that. But I think any local newspapers, at
 14 least here in Boise, should be avoided, since
 15 there may be coverage of the trial on an ongoing
 16 basis.

17 And obviously, accessing any newspaper
 18 on the Internet or any newspaper that may have, in
 19 fact, provided some coverage of the trial must be
 20 avoided at all costs.

21 If you happen to have inadvertently
 22 noted a headline or something, please bring it to
 23 our attention. But I think the better direction
 24 is simply to avoid reading newspapers for the next
 25 ten days, at least local newspapers, and I think

1 R E P O R T E R ' S C E R T I F I C A T E

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I, T a m a r a I. H o h e n l e i t n e r, O f f i c i a l
C o u r t R e p o r t e r, S t a t e o f I d a h o, d o e s h e r e b y
c e r t i f y :

T h a t I a m t h e r e p o r t e r w h o t r a n s c r i b e d
t h e p r o c e e d i n g s h a d i n t h e a b o v e - e n t i t l e d a c t i o n
i n m a c h i n e s h o r t h a n d a n d t h e r e a f t e r t h e s a m e w a s
r e d u c e d i n t o t y p e w r i t i n g u n d e r m y d i r e c t
s u p e r v i s i o n ; a n d

T h a t t h e f o r e g o i n g t r a n s c r i p t c o n t a i n s a
f u l l, t r u e, a n d a c c u r a t e r e c o r d o f t h e p r o c e e d i n g s
h a d i n t h e a b o v e a n d f o r e g o i n g c a u s e .

I N W I T N E S S W H E R E O F, I h a v e h e r e u n t o s e t
m y h a n d J u n e 2 4, 2 0 1 1 .

- s -

T a m a r a I. H o h e n l e i t n e r
O f f i c i a l C o u r t R e p o r t e r
C S R N o . 6 1 9

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