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6227

Juror No. A1 - Voir Dire

1

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13

PROCEEDINGS

14

(Reconvened at 1:45 p.m.)

15

THE COURT: Be seated, please.

16

I have now excused the persons who were the --  
excused

17

by peremptory challenges and explained to them about  
peremptory

18

challenges. And I have explained to the remaining  
persons what

19

our process will be here, so we're ready to proceed  
with A1.

20

(Juror No. A1 was recalled.)

21

VOIR DIRE EXAMINATION

22

BY THE COURT:

23

Q. Good afternoon. If you'll be seated in the chair  
where you

24

were several weeks ago, I have just a couple of  
questions to

25

ask of you. Consider that you are still under the oath  
that

6228

Juror Nos. A1 and A2 - Voir Dire

1

you took with us several weeks ago when you came in and

2

answered questions. And I just want to ask you a  
couple of

3

things now.

4

Since you were here with us before, have you  
read,

way 5 seen, heard, or experienced anything that might in any

6 affect your ability to serve as a juror in this case?

7 A. No.

give 8 Q. So may we now rely on your assurance that you will

this case 9 fair and impartial consideration to the evidence in

evidence? 10 and make your decision according to the law and the

11 A. Very much so. Yes.

12 THE COURT: All right. You may step out.

13 And we'll proceed with A2.

14 (Juror No. A2 was recalled.)

15 VOIR DIRE EXAMINATION

16 BY THE COURT:

are still 17 Q. Good afternoon. We ask you to consider that you

and were 18 under the oath that you took when you came in before

19 in that chair several weeks ago and answered all those

20 questions we had for you then.

that is 21 I have just two questions for you now; and

seen, heard, 22 since you were here with us before, have you read,

your 23 or experienced anything that might in any way affect

24 ability to serve as a juror in this case?

25 A. No.

6229

Juror Nos. A2 and A3 – Voir Dire

1 Q. And may we now rely on your assurance that you will  
give  
2 fair and impartial consideration to the evidence in  
this case  
3 and to make your decision according to the law and the  
4 evidence?

5 A. Yes.

6 THE COURT: Thank you. You may step out.

7 A3.

8 (Juror No. A3 was recalled.)

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q. Good afternoon.

12 A. How are you doing?

13 Q. Well, I'm just fine. How are you?

14 A. Doing good. Doing good.

15 Q. Now, we ask you to consider that you are still  
under the  
16 oath that you took with us several weeks ago when you  
were here  
17 answering many questions.

18 And what I want to ask you now is that since  
you were

19 here with us before, have you read, seen, heard, or  
experienced  
20 anything that might affect in any way your ability to  
serve as  
21 a juror in this case?  
22 A. You mean as far as newspapers and news?  
23 Q. No, anything at all.  
24 A. Well, my wife is no longer going to be employed as  
of  
25 tomorrow. That's kind of a big thing.

6230

Juror No. A3 – Voir Dire

1 Q. It is indeed. And we discussed when you were here  
before  
2 the financial situation and what may be involved with  
one of  
3 you being out.  
4 A. Yeah.  
5 Q. And this was an unexpected termination of her  
employment, I  
6 take it.  
7 A. Correct. Correct.  
8 Q. And is she looking for a job now?  
9 A. She's going to start Monday.  
10 Q. Start looking?  
11 A. Yeah, for a job Monday.  
12 Q. And, of course, you don't know what the prospects

are?

13 A. I'm not real up to date on today's job market.

14 Q. Job market.

15 A. Yeah.

16 Q. So have you talked with her about that?

17 A. Oh, yeah. She's, you know -- she's pretty worried  
that,

18 you know -- what would happen if I was picked as far  
as, you

19 know, our family and, you know, stuff like that. I  
mean, it

20 would be pretty stressful, to put it mildly.

21 Q. Okay.

22 A. I mean, I -- \$40 a day, if I'm not correct --

23 Q. It is for the first 30 and then \$50 a day.

24 A. Yeah, which is not even minimum wage, but --

25 Q. That statute doesn't apply to the jury. The same  
people

6231

Juror No. A3 and A4 - Voir Dire

1 who made the statute also made the jury fees, the  
Congress.

2 Well, has there -- we're not discarding or  
3 disregarding what you've just told us. Has there been  
anything

4 else that happened that in any way would affect your  
ability to

5 serve?

6 A. No, as far as, I mean, me seeing and hearing stuff.

7 Q. Okay. Separately now from the issue of financial  
hardship,

8 will we be able to rely on your assurance that you can  
give

9 fair and impartial consideration to the evidence in the  
case

10 and make your decision according to the law and the  
evidence?

11 A. Yeah. I mean, it would be kind of tough.

12 Q. Because you're worrying about the --

13 A. Exactly.

14 Q. -- finances. Well, I wanted to set that aside for  
the

15 moment for purposes of asking that question. Now,  
we're not

16 disregarding it. So what I'm going to ask you to do is  
join

17 with the others, and we'll get back to you.

18 A. Okay.

19 THE COURT: Thank you.

20 A4.

21 (Juror No. A4 was recalled.)

22 VOIR DIRE EXAMINATION

23 BY THE COURT:

24 Q. Good afternoon.

25 A. Good afternoon.

## Juror No. A4 - Voir Dire

1 Q. We want you to consider yourself still to be under  
the oath  
2 that you took when you were here before several weeks  
ago and  
3 were then under oath and answered all those questions  
that we  
4 put to you.

5 And what I simply want to ask you now is that  
since  
6 you were here with us before, have you read, seen,  
heard, or  
7 experienced anything that might in any way affect your  
ability  
8 to serve as a juror in this case?

9 A. No, but there was one thing that I forgot to put  
down.

10 Q. Go ahead.

11 A. I really feel dumb for not putting it down, too. I  
am  
12 24-hour conservator for my mother, and just this week  
I've been  
13 called three times. And she's in a nursing home.

14 Q. Yes.

15 A. And if she has to go to the hospital or if there is  
any  
16 problems -- I was there this morning for an hour and a  
half.

17 Q. And what do you have to do? Like this morning,

what did

18 you have to do?

19 A. Well, she's decided that the nursing home is her  
house and

20 every closet is hers and every bed is hers and every  
toothbrush

21 is hers; and if somebody gets in her way, she's going  
to knock

22 them down.

23 Q. I see.

24 A. So the only one she really listens to is me. She  
won't

25 even talk to her sister, so I had to go down there and  
calm her

6233

Juror No. A4 - Voir Dire

1 down. They're going to move her into a different area  
where

2 the people are less mobile.

3 Q. Okay.

4 A. So hopefully that's going to solve that problem,  
but -- I

5 had her on 24-hour live-in for a year, and I was called  
six or

6 seven times a day then. When I got her in the nursing  
home, I

7 thought that that was it. I guess that's the only  
reason why I

8 forgot her, is I thought I had her solved.

9 Q. I understand.

10 A. I apologize for neglecting to put that down.

11 Q. This is why we ask people to come back in, to  
double-check

12 on what has happened.

13 How many times -- take from the time -- well,  
when did

14 she go into the nursing home?

15 A. She went in the first of May.

16 Q. Okay.

17 A. And then she broke her wrist the end of May over  
the

18 holiday. Nobody was in town, so they had to send her  
by

19 ambulance to Lutheran Hospital, which was five minutes  
away and

20 was a thousand dollars both ways because they have no  
21 facilities to take them to the hospital if anything  
were to

22 happen.

23 Q. Uh-huh.

24 A. Then right after I was here -- that's what brought  
it to

25 mind -- she was fighting them taking a bath, and she  
bruised

6234

Juror No. A4 - Voir Dire

hospital 1 her right leg so bad that we had to take her into the  
2 to find out whether she had blood clots.  
3 Q. Uh-huh.  
84. 4 A. And this time here it's because of fighting. She's  
5 Geez.  
and we 6 Q. No -- you know, this is a serious matter for you,  
last, 7 appreciate that; so has there been, since you were here  
8 what, two times that you had to go out?  
one -- 9 A. I've been called four times, and I've had to go out  
10 twice.  
11 Q. All right.  
I did 12 A. Once to take her to the -- to St. Anthony's -- and  
after work. 13 that after work and was able to get the appointment  
would 14 Q. Now, if you were here with us, you know, first we  
to call 15 have an arrangement, a number for those folks out there  
16 and a way to get in touch with you.  
leave a 17 A. Anyplace -- anytime I go anyplace, I always have to  
18 number.  
arrange 19 Q. We can arrange that. And if need be, we can also  
20 transportation for you to get there in a hurry. And,

you know,

21 time -- whatever it takes to resolve the problem and  
then get

22 back here. And I think the only -- so that seems to me  
to be

23 something we could accommodate your need for and her  
need. We

24 would also, though, want to know whether her care and  
all that

25 would be on your mind such that it would distract from  
your

6235

Juror No. A4 - Voir Dire

1 ability to focus on the evidence here.

2 A. I don't think her -- all those jobs that I work. I  
really

3 worry about falling asleep. That's the one thing, you  
know,

4 because I know -- reading with kids every now and then,  
I'm

5 nodding off even at school because usually this is the  
worst

6 time for my sewing, because of Christmas coming on.  
And I do

7 the football jackets. I sew all the emblems and stuff  
on the

8 football jackets, and I've done -- since Wednesday I've  
done 65

9 coats, and I've not been to bed before 11:30 now.

10 Q. Well, you'd have to change your schedule.

11 A. I know. I'd have to change my schedule. That's --  
12 Q. We don't expect you to be here all day and be  
sewing all  
13 night.  
14 A. All night. But, see, I don't get paid for that  
unless I do  
15 them, you know --  
16 Q. Are you right in the middle of a contract for that?  
17 A. No. You know, I'm contracted labor, and they --  
18 Q. So you work by the piece?  
19 A. Right.  
20 Q. But if you didn't put out that particular piece or  
those  
21 pieces, you don't get paid for it, but you don't get  
sued for  
22 the failure to perform the contract?  
23 A. No, uh-uh. They would just have to try and find  
somebody  
24 to take my place.  
25 Q. Yeah.

6236

Juror No. A4 - Voir Dire

1 A. And usually from August to December, I do about  
1500 coats.  
2 Q. Well, if you serve on this jury, you won't be able  
to do  
3 that.

4 A. That's true.

5 Q. And then we discussed these jobs and your financial  
6 situation when you were here with us before.

7 A. Uh-huh.

8 Q. And I believe you told us before that you could  
manage.

9 A. I was hoping that, you know -- that I would be able  
to --

10 to be able to get as much sewing in, but these kids  
have got so

11 much stuff. Sometimes they have more chenille -- price  
of

12 chenille on a jacket than the coats. The coats are  
\$150, and

13 they can have \$210 worth of chenille put on a coat; and  
it's

14 taking -- where it used to take 30 minutes to do a  
coat, it's

15 sometimes taking an hour and a half to do a coat. It  
is

16 just -- it's just taking me so much longer to do  
things.

17 That's why I'm not going to be able to do as many as I  
had

18 hoped I could do.

19 Q. What were you planning to do before with respect to  
this?

20 A. I was trying to keep up as much as I can. I can  
usually

21 get 12 a day done because I get home at 2:30, start  
sewing at

22 2:30.

23 Q. That won't be your schedule.

24 A. I know that won't be my schedule, no.

25 Q. Right. And, you know, we want to know exactly what  
the

6237

Juror Nos. A4 and A12 - Voir Dire

1 situation is; but I think we've been relying on your  
telling us

2 that you can serve on the jury.

3 A. Uh-huh. It's going to be very hard, yeah.  
Financially,

4 it's going to be very hard.

5 Q. All right. Well, apart from that, can you assure  
us that

6 you'd be able to give us fair and impartial  
consideration to

7 the evidence in the case and to make your decision  
according to

8 the law and the evidence?

9 A. Yes, I could.

10 THE COURT: Okay. We'll ask you to step out  
now and

11 join the others.

12 JUROR: Out this door here?

13 THE COURT: Yes.

14 A12.

15 (Juror No. A12 was recalled.)

16 VOIR DIRE EXAMINATION

17 BY THE COURT:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. And we ask you to consider that you're still under  
the oath  
And I  
is since  
heard,  
your  
21 that you took when you were here before sometime back.  
22 just have a couple of questions for you now, and that  
23 you were here with us before, have you now read, seen,  
24 or experienced anything that might in any way affect  
25 ability to serve as a juror in this case?

6238

Juror Nos. A12 and B2 - Voir Dire

1 A. No, I haven't.

2 Q. And may we now rely on your assurance that you will  
give  
this case  
3 fair and impartial consideration to the evidence in  
4 and to make your decision according to the law and the  
5 evidence?

6 A. Yes.

7 THE COURT: All right. Thank you. We'll ask  
you to

8 step out now while we ask questions of a few more  
people.

9 Thank you.

10 JUROR: Okay. Good afternoon.

11 THE COURT: B2.

12 (Juror No. B2 was recalled.)

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q. Hello again.

16 A. Hi.

17 Q. We ask that you consider yourself to be still under  
the

18 oath that you took with us several weeks ago when you  
were

19 here, took the oath, and answered many questions.

20 A. Okay. Yes, sir.

21 Q. And now I just have two questions to ask of you.

22 A. Okay.

23 Q. And first, we want to know since you were here with  
us

24 before, have you read, seen, heard, or experienced  
anything

25 that might in any way affect your ability to serve as a  
juror

6239

Juror Nos. B2 and B3 – Voir Dire

1 in this case?

2 A. No, sir.

3 Q. And may we now rely on your assurance that you will  
give  
this case  
4 fair and impartial consideration to the evidence in  
5 and to make your decision according to the law and the  
6 evidence?

7 A. Yes, sir.

8 THE COURT: Thank you. You may step out now.

9 JUROR: Thank you.

10 THE COURT: We'll be talking to you in a few  
minutes.

11 B3.

12 (Juror No. B3 was recalled.)

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q. Good afternoon. And we ask that you consider  
yourself now  
16 once again to be under the oath that you took when you  
were  
17 here before several weeks ago and answered all those  
questions  
18 we had for you then.

19 Only have two for you now.

20 A. Okay.

21 Q. The first of which is: Since you were here with us  
before,  
22 have you read, seen, heard, or experienced anything

that might

23 in any way affect your ability to serve as a juror in  
this

24 case?

25 A. No. I only --

6240

Juror No. B3 - Voir Dire

1 Q. And may we now rely on your assurance that you will  
give

2 fair and impartial consideration to the evidence in  
this case

3 and to make your decision based on the law and the  
evidence?

4 A. Yes, I have. The only -- the only thing that has  
changed a

5 little is my financial situation.

6 Q. Tell us about that.

7 A. Well, I -- my wife and I sat down and were figuring  
it out

8 last night; and I'm afraid if I lose my overtime, I  
don't know

9 if I'm going to be able to make my house payments and  
stuff

10 is -- you know, we kind of figured it out before and  
thought

11 there would be enough. But then we got to figuring  
it's about

12 a 3- or \$400-a-month drop. That's the only thing I was  
worried

13 about, so . . .

14 Q. And you were what -- when you were here before, you  
hadn't

15 put pencil to paper?

16 A. We kind of figured it would be okay; but then when  
we got

17 to thinking about the overtime I would lose was the  
only -- you

18 know, we just hadn't really got into that. We just  
didn't

19 really think about that because I've always worked  
overtime and

20 it had always been there and we didn't -- because it  
had always

21 been there no matter what and so -- but I didn't even  
think

22 about it, to tell you the truth.

23 Q. What is the arrangement with your employer?

24 A. As far as --

25 Q. As far as jury service.

6241

Juror No. B3 - Voir Dire

1 A. As far as I know, he was going to go ahead and pay  
my

2 regular -- my -- on top -- you know, he would make up  
the

3 difference.

4 Q. You don't lose your regular -- lose any regular  
time?

5 A. No, uh-uh.

6 Q. You would lose overtime?

7 A. Yeah.

8 Q. For whatever -- how much overtime did you -- in  
hours did

9 you work?

10 A. I average anywhere from 400 to 700 a year.

11 Q. In hours or --

12 A. Yeah. In hours.

13 Q. Well, you know, is this a time of year when you  
have

14 particularly more overtime than other times?

15 A. No, not really.

16 Q. It's pretty much --

17 A. Pretty much steady, always about the same. The  
only

18 difference this time of the year is we work like the  
Bronco

19 games, that kind of stuff.

20 Q. Do you have an arrangement where you could work  
like Friday

21 afternoons or something like that?

22 A. I can talk to him about that.

23 Q. You see, this is -- you do have Friday afternoons  
off.

24 A. Yes.

25 Q. And of course, the weekends are off.

Juror Nos. B3 and B6 – Voir Dire

1 A. Yes.

2 Q. Now, that isn't -- we're not suggesting you work  
every

3 minute that you're not here, either. You need rest and

4 relaxation, too. But those things are possibilities  
for you.

5 A. Yes. Well, I could talk to them about that. That  
wouldn't

6 be a problem.

7 Q. Okay. Well, we'd appreciate it if you'd do that  
and work

8 it out.

9 A. Okay.

10 Q. Because, you know, we have to rely on what you've  
told us.

11 A. Yes.

12 THE COURT: Okay. You can step out.

13 B6.

14 (Juror No. B6 was recalled.)

15 VOIR DIRE EXAMINATION

16 BY THE COURT:

17 Q. Good afternoon.

18 A. Hi.

19 Q. Now, you were here several weeks ago, and we want  
you to

then. 20 consider that you're still under the oath that you took

21 A. Okay.

you gave 22 Q. And, of course, we relied here on the answers that

couple 23 us then and on your questionnaires. And I just have a

since we've 24 of additional questions now since it's been a while

with us 25 seen you. And the question is: Since you were here

6243

Juror Nos. B6 and B11 – Voir Dire

anything 1 before, have you read, seen, heard, or experienced

juror 2 that might in any way affect your ability to serve as a

3 in this case?

4 A. Not at all.

give 5 Q. And may we now rely on your assurance that you will

this case 6 fair and impartial consideration to the evidence in

evidence? 7 and make your decision according to the law and the

8 A. Yes, sir.

out, and 9 THE COURT: Thank you. We'll ask you to step

10 we'll be seeing you again in a few minutes.

11 JUROR: Okay.

12 THE COURT: B11.

13 (Juror No. B11 was recalled.)

14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. You were with us several weeks ago in this same  
chair and

19 answered a number of questions for us, and I want you  
to

20 consider that you're still under the oath that you took  
on that

21 day. And, of course, we have relied on the question --  
on the

22 answers that you have given to us and in the  
questionnaire as

23 well. And I just have a couple of additional questions  
for you

24 now.

25 And first, since it has been several weeks  
since you

6244

Juror Nos. B11 and C11 - Voir Dire

1 were with us before, have you read, seen, heard, or  
experienced

2 anything that might in any way affect your ability to  
serve as

3 a juror in this case?

4 A. No.

5 Q. And may we rely now on your assurance that you will  
give

6 fair and impartial consideration to the evidence in  
this case

7 and to make your decision according to the law and the  
8 evidence?

9 A. Yes.

10 THE COURT: Thank you. You may step out, and  
we'll

11 talk with you again in a few minutes.

12 C11.

13 (Juror No. C11 was recalled.)

14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. You were here a couple of weeks ago, took an oath  
and

19 answered a lot of questions; and we'd like you to  
consider now

20 that you're still under that oath. And we, of course,  
have

21 been relying on what you told us in your answers and in  
the

22 questionnaire. And I just have a couple of additional  
23 questions now, since it has been some time since you

were here

24 before.

25 I just want to ask you since you were here,  
have you

6245

Juror Nos. C11 and D6 - Voir Dire

1 read, seen, heard, or experienced anything that might  
in any

2 way affect your ability to serve as a juror in this  
case?

3 A. No, sir.

4 Q. So may we now rely on your assurance that you will  
give an

5 impartial consideration to all of the evidence in the  
case and

6 to make your decision according to the law and the  
evidence?

7 A. Yes, sir.

8 THE COURT: All right. We thank you. You may  
step

9 down.

10 D6.

11 (Juror No. D6 was recalled.)

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. Hello again.

15 You're seated where you were a couple of weeks  
ago.

16 At that time, you took an oath and answered a lot of

questions

17 for us, and we appreciate that. Consider that you're  
still

18 under that same oath.

19 A. Yes, your Honor.

20 Q. And we, of course, have relied on what you told us  
before.

21 Now I just have a couple of additional questions for  
you.

22 One is that since you have -- since you were  
with us a

23 couple of weeks ago, have you read, seen, heard, or  
experienced

24 anything that might in any way affect your ability to  
serve as

25 a juror in this case?

6246

Juror Nos. D6 and D11 - Voir Dire

1 A. No, your Honor.

2 Q. And may we now rely on your assurance that you will  
give

3 fair and impartial consideration to all of the evidence  
in the

4 case and to make your decision according to the law and  
the

5 evidence?

6 A. Yes.

7 THE COURT: Thank you. You may step out now,  
and

8 we'll talk to you again in a few minutes.

9 D11.

10 (Juror No. D11 was recalled.)

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. Good afternoon again.

14 A. Good afternoon.

15 Q. You were here a while back and were seated there,  
took an

16 oath to answer questions -- you did. We appreciate  
that. We

17 rely on the answers that you've given to us, of course,  
under

18 oath; and we want you to consider that you're still  
under that

19 oath.

20 And all I want to do is ask you two questions;  
and

21 that is since you were here with us before, have you  
seen,

22 read, heard, or experienced anything that might in any  
way

23 affect your ability to serve as a juror in this case?

24 A. No, sir.

25 Q. And may we now rely on your assurance that you will  
give

Juror Nos. D11 and D12 – Voir Dire

1 fair and impartial consideration to all of the evidence  
in the  
2 case and to make your decision according to the law and  
the  
3 evidence?

4 A. Yes, sir.

5 THE COURT: Thank you. You may step out now,  
and  
6 we'll have you back in a little bit.

7 D12.

8 (Juror No. D12 was recalled.)

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q. Hello again.

12 A. Hello.

13 Q. You were here seated where you are now a couple  
weeks ago,  
14 took an oath, answered a lot of questions. And we've  
relied on  
15 what you've told us, and now I just have a couple more  
16 questions. And consider that you're still under the  
oath that  
17 you took then.

18 And just tell us since it has been a while  
since you  
19 were here with us, have you read, seen, heard, or  
experienced  
20 anything that might in any way affect your ability to  
serve as

21 a juror in this case?

22 A. No, I haven't.

23 Q. And may we now rely on your assurance that you will  
give  
in the  
24 fair and impartial consideration to all of the evidence  
25 case and to make your decision based on the law and the

6248

Juror Nos. D12 and E3 - Voir Dire

1 evidence?

2 A. Yeah. Yes.

3 THE COURT: All right. You may step out now,  
and  
4 we'll have you back in a few minutes.

5 D12 (sic).

6 (Juror No. E3 was recalled.)

7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. You recall being here a while back, seated where  
you are  
12 and answering a number of questions under oath. And we  
want  
13 you to consider that you're still under oath and to  
recognize

14 that we've relied on the things that you've told us.

15 And I just have two more questions.

16 A. Okay.

17 Q. One is since it has been several days since you  
were here

18 with us, have you read, seen, heard, or experienced  
anything

19 that might in any way affect your ability to serve as a  
juror

20 in this case?

21 A. No, sir.

22 Q. And may we now rely on your assurance that you will  
give

23 fair and impartial consideration to all of the evidence  
in this

24 case and to make your decision according to the law and  
the

25 evidence?

6249

Juror Nos. E3 and E4 - Voir Dire

1 A. Yes, I will, sir.

2 THE COURT: All right. You may step out now.  
We'll

3 be talking with you in a few minutes.

4 Is it E4 I'm on?

5 MR. ORENSTEIN: Yes.

6 THE COURT: Yes.

7 (Juror No. E4 was recalled.)

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. Good afternoon, sir.

11 A. Hi.

12 Q. Please be seated there again. And you don't have  
to take  
under  
and  
you told  
13 the oath again. We ask you to assume that you're still  
14 the oath that you took a while back when you were here  
15 answered a lot of questions. And we've relied on what  
16 us then. I just have two questions for you now.

17 First, since it's been a few days since you  
were here  
18 with us, have you read, seen, heard, or experienced  
anything  
19 that might in any way affect your ability to serve as a  
juror  
20 in this case?

21 A. No, I haven't.

22 Q. And may we now rely on your assurance that you will  
give  
23 fair and impartial consideration to the evidence in  
this case  
24 and to make your decision according to the law and the  
25 evidence?

Juror Nos. E4 and E10 - Voir Dire

1 A. Yes.

We'll

2 THE COURT: Thank you. You may step out now.

3 have you back in a few minutes.

4 E10.

5 (Juror No. E10 was recalled.)

6 VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q. Good afternoon.

9 A. Good afternoon.

a lot

10 Q. You were here a while back, took the oath, answered

relying on the

11 of questions for us. We appreciate that. We're

you're

12 answers that you gave us. I want you to assume that

questions

13 still under that same oath and just answer two more

14 for us.

were

15 One is since it's been several days since you

16 here before, have you read, seen, heard, or experienced

serve as

17 anything that might in any way affect your ability to

18 a juror in this case?

19 A. No.

20 Q. And may we now rely on your assurance that you will

give

21 fair and impartial consideration to all of the evidence  
and to

22 make your decision according to the law and the  
evidence?

23 A. Yes.

24 THE COURT: Thank you. You may step out now.  
We'll

25 have you back in a few minutes.

6251

Juror No. E11 – Voir Dire

1 JUROR: Thank you.

2 THE COURT: E11.

3 (Juror No. E11 was recalled.)

4 VOIR DIRE EXAMINATION

5 BY THE COURT:

6 Q. Good afternoon. Please be seated there where you  
were a

7 few days ago when you took an oath and answered a lot  
of

8 questions, and we ask that you consider yourself still  
to be

9 under that oath.

10 I have just a couple questions in addition to  
those

11 That you've already answered and upon which we've  
relied.

12 And it is that first since you were here with

us, have

13 you read, seen, heard, or experienced anything that  
might in

14 any way affect your ability to serve as a juror in this  
case?

15 A. No, I have not.

16 Q. And may we now rely on your assurance that you will  
give

17 fair and impartial consideration to all of the evidence  
in the

18 case and to make your decision according to the law and  
the

19 evidence?

20 A. Yes, you may.

21 THE COURT: Thank you. You may step out now.  
We'll

22 have you back in a few minutes.

23 And F4.

24 (Juror No. F4 was recalled.)

25 VOIR DIRE EXAMINATION

6252

Juror No. F4 - Voir Dire

1 BY THE COURT:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. You were here just a while ago and answered many  
questions

5 under the oath that you took. And we ask you to  
consider that

6 you're still under that oath.

7 A. Very well.

8 Q. And since there has been a few days since you were  
here

9 before, I just want to ask you two questions: One,  
since you

10 were here, have you read, seen, heard, or experienced  
anything

11 that might affect your ability to serve as a juror in  
this

12 case?

13 A. No, sir, I have not.

14 Q. And may we now rely on your assurance that you will  
give

15 fair and impartial consideration to all of the evidence  
in the

16 case and to make your decision according to the law and  
the

17 evidence?

18 A. Yes, sir.

19 THE COURT: All right. Thank you. You may  
step out.

20 We'll have you back in a few minutes.

21 Counsel, approach the bench.

22 (At the bench:)

23 (Bench Conference 55B1 is not herein transcribed by  
court

24 order. It is transcribed as a separate sealed  
transcript.)

6257

Juror No. F5 – Voir Dire

1 (In open court:)

2 (Juror No. F5 was recalled.)

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. Good afternoon.

6 A. Hi.

7 Q. You were here just not too long ago and sat where  
you are  
8 sitting now and answered a lot of questions for us, and  
we  
9 appreciate that. And now please consider that you're  
still  
10 under the oath that you were under then. And we, of  
course,  
11 rely on what you've told us then, but I just have a  
couple of  
12 additional questions, one being since it has been a  
while since  
13 you were here, have you since then read, seen, heard,  
or  
14 experienced anything that might in any way affect your  
ability  
15 to serve as a juror in this case?  
16 A. No.

17 Q. And may we now rely on your assurance that you will  
give  
18 fair and impartial consideration to all of the evidence  
in the  
19 case and make your decision according to the law and  
the  
20 evidence?

21 A. Yes.

22 THE COURT: Thank you. You may step out  
again.

23 (Juror No. F6 was recalled.)

24 VOIR DIRE EXAMINATION

25 BY THE COURT:

6258

Juror Nos. F6 and F7 - Voir Dire

1 Q. Good afternoon.

2 A. Hi, there.

3 Q. Do you recall being here not so long ago?

4 A. Not so long ago at all.

5 Q. And you answered a lot of questions under oath, and  
we  
6 appreciate that. And we just consider that you're  
still under  
7 the oath.

8 And all I'll do is ask you since you were last  
here,  
9 have you read, seen, heard or experienced anything that  
might

this 10 in any way affect your ability to serve as a juror in

11 case?

12 A. No.

13 Q. And may we now rely on your assurance that you will  
give

14 fair and impartial consideration to all of the evidence  
in the

15 case and to make your decision according to the law and  
the

16 evidence?

17 A. I will.

18 THE COURT: Thank you. You may step out.

19 (Juror No. F7 was recalled.)

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q. Hello again.

23 A. Hello.

24 Q. We asked you to come back in now, as I said we  
might.

25 Consider that you're still under the oath that you took  
with us

6259

Juror No. F7 – Voir Dire

1 a while back, and you answered all of those questions  
for us.

2 And we relied on what you've told us.

3                   And I just want to ask you now additionally,  
since you  
4                   were here with us, have you read, seen, heard, or  
experienced  
5                   anything that might in any way affect your ability to  
serve as  
6                   a juror in this case?

7                   A. No, sir, I haven't.

8                   Q. And so may we now rely on your assurance that you  
will give  
9                   fair and impartial consideration to the evidence in  
this case  
10                  and to make your decision according to the law and the  
11                  evidence?

12                 A. Yes, I will.

13                 THE COURT: Thank you very much. You may step  
out.

14                 Now, let's see. That was F5, F6, and F7. All  
right.

15                 So I'm granting -- I will announce to those  
here that

16                 I'm excusing for hardship the juror whose wife lost her  
job and

17                 whose situation has therefore changed considerably  
since he was

18                 here before. So he's now being excused for hardship.

19                 And we have talked with three additional  
people here.

20                 I'm going to grant each side an additional peremptory  
challenge

21                 to be exercised only with respect to the last three.

22 Mr. Mackey?

23 FURTHER PEREMPTORY CHALLENGES AND RULINGS

24 MR. MACKEY: Your Honor, we would excuse F5.

25 THE COURT: F5.

6260

1 MR. TIGAR: Batson, your Honor. Roman  
Catholic.

2 THE COURT: All right. A religious -- do you  
have F5

3 here?

4 MR. MANSPEAKER: Yes, sir.

5 THE COURT: Someone want to explain your  
challenge on

6 a ground other than religious bias?

7 MR. MACKEY: Fortunately, it seems like it was  
only

8 yesterday that we spoke to this juror, so my memory is  
fresh;

9 and I distinctly recall that this is a juror who had  
very

10 anti-death-penalty views. And it would be on that  
basis and

11 that basis only that we would move to strike F5.

12 THE COURT: Mr. Tigar?

13 MR. TIGAR: If your Honor please, recollection  
is also

14 fresh on our side.

15 With respect to this juror, the Government  
filed a  
16 memorandum; and in that memorandum, if recollection  
serves,  
17 there were a dozen references to various aspects of the  
juror's  
18 Catholic faith; that is to say, although there was an  
19 allegation that she could not be open to the full range  
of  
20 punishment, the entire memorandum was devoted to a  
discussion  
21 of her religious beliefs.

22 And so, your Honor, we respectfully submit  
that the  
23 penalty-impairment argument is transparent with respect  
to this  
24 particular juror because no memorandum even approaching  
it in  
25 its focus on religious faith was ever filed with  
respect to any

6261

1 other prospective juror.

2 THE COURT: This is a woman who said that she  
could  
3 disagree with the teachings of the Church, so that she  
was not  
4 adhering strictly to the teachings of the Church. She  
also

5 said that she could follow the law ultimately, which is  
why she  
6 passed for cause. And she expressed some other  
disagreements;  
7 but I -- you know, one of the things about it with  
respect to  
8 religion -- and I don't want to be misunderstood by the  
public  
9 here as criticizing any religion nor any faith, but  
there is  
10 something of a problem when the leadership of a church  
takes a  
11 position that the law is wrong and essentially publicly  
12 disagrees with the law as it is.

13 Now, they're free to do that. That's what the  
First  
14 Amendment is all about, but it does create an  
impediment to  
15 follow the law as required of a juror.

16 Now, that did not disqualify her, and I'm not  
17 disqualifying her on that ground. I'm simply saying  
that I am  
18 recognizing that the Government can legitimately and  
without  
19 being -- transgressing the equal protection aspect of  
the Fifth  
20 Amendment excuse her.

21 So the Batson challenge is denied.

22 MR. TIGAR: Defense challenges F6, Foxtrot 6.

23 THE COURT: Okay. F6. So that leaves F7 as  
our 18th.

24 Now, by my count, we have 18 people.

25 MR. MACKEY: Yes, your Honor.

6262

1 THE COURT: What I'm going to do is speak for  
a moment  
2 to those who were excused, take a brief recess here.  
Maybe  
3 about 10 minutes. Then we will be bringing our 18 in.  
It will  
4 be open seating. They will sit anywhere they want to.  
We're  
5 not going to assign seats to them, and I would give  
them the  
6 preliminary instructions.

7 MR. TIGAR: Your Honor, may we request a  
favor, and  
8 that is that the podium be moved?

9 THE COURT: I just mentioned it.

10 MR. TIGAR: I'm sorry, your Honor.

11 THE COURT: We're going to get it out of the  
way.

12 MR. TIGAR: I was making a note, and I did not  
hear.

13 THE COURT: No, I didn't mention it to you. I  
14 mentioned it to my strong left hand here.

15 MR. TIGAR: Thank you, your Honor. I thought  
it was

16 another sign of age. I just lost focus there.

17 THE COURT: All right. Let's take ten  
minutes.

18 (Recess at 2:31 p.m.)

19 \* \* \* \* \*

20

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22

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25

6263

1 INDEX

Page 2 Item

3 Jurors

4 Juror No. A1

5 Voir Dire Examination by The Court  
6227

6 Juror No. A2

7 Voir Dire Examination by The Court  
6228

8 Juror No. A3

9 Voir Dire Examination by The Court  
6229

10 Juror No. A4  
11 Voir Dire Examination by The Court  
6231  
12 Juror No. A12  
13 Voir Dire Examination by The Court  
6237  
14 Juror No. B2  
15 Voir Dire Examination by The Court  
6238  
16 Juror No. B3  
17 Voir Dire Examination by The Court  
6239  
18 Juror No. B6  
19 Voir Dire Examination by The Court  
6242  
20 Juror No. B11  
21 Voir Dire Examination by The Court  
6243  
22 Juror No. C11  
23 Voir Dire Examination by The Court  
6244  
24 Juror No. D6  
25 Voir Dire Examination by The Court  
6245  
  
6264  
  
1 Juror No. D11

6246 2 Voir Dire Examination by The Court  
3 Juror No. D12  
6247 4 Voir Dire Examination by The Court  
5 Juror No. E3  
6248 6 Voir Dire Examination by The Court  
7 Juror No. E4  
6249 8 Voir Dire Examination by The Court  
9 Juror No. E10  
6250 10 Voir Dire Examination by The Court  
11 Juror No. E11  
6251 12 Voir Dire Examination by The Court  
13 Juror No. F4  
6252 14 Voir Dire Examination by The Court  
15 Juror No. F5  
6257 16 Voir Dire Examination by The Court  
17 Juror No. F6  
6257 18 Voir Dire Examination by The Court  
19 Juror No. F7  
6258 20 Voir Dire Examination by The Court  
6259 21 Further Peremptory Challenges and Rulings

22  
23  
24  
25

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6265

1 REPORTER'S CERTIFICATE

2 I certify that the foregoing is a correct  
transcript from

3 the record of proceedings in the above-entitled matter.  
Dated

4 at Denver, Colorado, this 30th day of October, 1997.

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Paul Zuckerman

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