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U N R E D A C T E D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ANA PATRICIA CHAVEZ, CECILIA)
SANTOS, JOSE FRANCISCO)
CALDERON, ERLINDA FRANCO, AND)
DANIEL ALVARADO,)
Plaintiffs,)
VS.)
NICOLAS CARRANZA,)
Defendant.)

NO. 03-2932-MI /P

TRIAL PROCEEDINGS
BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE
OCTOBER 31, 2005
VOLUME I

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1 MONDAY MORNING & AFTERNOON

2 OCTOBER 31, 2005

3 The jury trial in this case began on this date,
4 Monday, October 31, 2005, at 9:30 o'clock a.m., when and
5 where evidence was introduced and proceedings were had as
6 follows:

7

8

9

10 THE COURT: There are two individuals who did
11 not -- who were not shown in connection with the jury, and
12 they are Latonya Payton, P-A-Y-T-O-N, and Alicia Booker,
13 Ms. Booker, B-O-O-K-E-R, Payton, P-A-Y-T-O-N. I need to
14 tell you that they're not here. There is nothing we can
15 do about it in the sense of delaying the proceeding. You
16 should note that they are not here, and I do not
17 anticipate unless we go through the whole panel that we
18 would attempt to have them come in for the case. So if
19 there is no objection -- it is an administrative matter
20 really for the docket administrator, and she has advised
21 us that that is our situation, and we will handle it
22 administratively differently, we will ask people to come
23 for a different panel probably. If there is nothing else,
24 those two people will not be appearing on the panel.
25 Anything from the plaintiff on that?

1 MR. ESQUIVEL: No, no objection.

2 THE COURT: Anything from the defense?

3 MR. FARGARSON: No objection.

4 (Jury panel in at 9:35 a.m.)

5 THE COURT: Ladies and gentlemen, I want to
6 welcome you to the United States district court for the
7 Western District of Tennessee. Today we're going to be
8 selecting a jury for a trial, and before we can do that, I
9 need to swear in the interpreters. This will be a case in
10 which some individuals will be hearing this case in
11 Spanish, and you will also be hearing some testimony which
12 will be translated. Our interpreters in this case are
13 Mr. Urrutia and Mr. Icaza. Because they will be here --
14 I'm looking for them right now. There they are. They're
15 right there. If you will both raise your right hand, I
16 will have you sworn in as interpreters in this case.

17 THE CLERK: Do you solemnly swear that you will
18 give a true interpretation of these proceedings before
19 this court, so help you God?

20 THE INTERPRETER: I do.

21 THE INTERPRETER: I do.

22 THE COURT: Ladies and gentlemen of the jury,
23 everything that we say will be translated into Spanish,
24 and that includes everything I'm saying now and all of
25 your responses and everything the attorneys say. Our

1 interpreters are very highly qualified. I will tell you
2 that they translate literally. In other words, they do
3 not editorialize, they do not modify anything, they
4 tell -- they speak the language in which they're
5 interpreting or to which they're interpreting exactly as
6 it can be interpreted to that language. They don't modify
7 things. They don't express their own opinion in any way,
8 and it is a very sophisticated complicated certification
9 process that they go through in order to be certified
10 interpreters. I'm saying that because I want to you
11 understand it is not like your neighborhood friend who
12 translates something loosely into a friend's language. It
13 is not how it is done at all in court. It is a very
14 precise process. I need you to know that in this case.

15 Now, ladies and gentlemen, I have to have all
16 of you stand and be sworn in before I can ask you any
17 questions, and Mr. Warren will administer the voir dire
18 oath. If you will raise your right hands.

19 THE CLERK: Do you and each of you solemnly
20 swear that the answers to the questions to be propounded
21 to you by the court in this case for which you may be
22 drawn as a juror to be the truth, the whole truth and
23 nothing but the truth, so help you God?

24 THE JURY: I do.

25 THE COURT: You may be seated. What we will do

1 is we will be calling 14 of your names at random, and as
2 your names are called, I will ask you to come forward and
3 take a seat in the jury box. The first person whose name
4 is called will be asked to sit in the first seat on the
5 first row with seat number one, all the way down to the
6 last seat on the first row, and Mr. Ruby is here, and he
7 will make sure that you get to the right location. The
8 last seat on the first row is seat number seven. The
9 eighth person whose name is called will be asked to sit in
10 the first seat on the second row, which is actually our
11 seat number eight, and then all the way down to seat 14
12 which is right next to one of our interpreters. So if you
13 will listen carefully, we will proceed to call the first
14 14 names which will be randomly selected.

15 THE CLERK: Robert Russell, R-U-S-S-E-L-L.
16 Adaline Fields, F-I-E-L-D-S. Mary Farmer, F-A-R-M-E-R.
17 Charles Fowler, F-O-W-L-E-R. Ronald Francis,
18 F-R-A-N-C-I-S. Arni ta Ragsdale, R-A-G-S-D-A-L-E.
19 Kristina Foran, F-O-R-A-N. Edward Miller, Jr.,
20 M-I-L-L-E-R. Mary Reber, R-E-B-E-R. Barbara Fulgham,
21 F-U-L-G-H-A-M. Juani ta Richardson, R-I-C-H-A-R-D-S-O-N.
22 Latoya Hebron, H-U-B-R-O-N. Kenneth Yeager, Jr.,
23 Y-E-A-G-E-R. Natalie Reed, R-E-E-D.

24 THE COURT: First of all, I want to thank you
25 for filling out the questionnaires in this case. It is

♀

VOIR DIRE OF THE JURY

8

1 extremely helpful. Also, avoids some time, although this
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2 process will take a little time in any event, but I do
3 appreciate that from all of you.

4 Secondly, for those of you who are in the back
5 of the room, there is still a very significant, probably
6 high probability that many of you will be called as
7 potential jurors in the case. As we go through the
8 questioning process, that almost inevitably happens, so I
9 want you to pay close attention to all of the questions
10 that are asked so that you can be in a position to
11 promptly respond, that is give your answers to those
12 questions. I will help you out, I will go through the
13 questions to some degree again, but you may be asked also
14 to generally respond to the questions that have been
15 asked, so pay close attention.

16 BY THE COURT:

17 Q. I'm going to start with Mr. Russell, how are you this
18 morning?

19 A. Fine.

20 Q. I need to ask each of you what is the most important
21 characteristic for a person who is going to be on a jury, what
22 do you believe to be the most important characteristic for a
23 person who is going to be on the jury, what do you think that
24 might be?

25 A. I don't know exactly what you're talking about.

♀

VOIR DIRE OF THE JURY

9

1 Q. Well, if you were in the position of anybody out here

2 who is going to have a case tried, what kind of juror would
3 you want, what would be an important thing for that juror?
4 Some of us might have things we didn't want jurors to be like,
5 some would have things that we wanted jurors to be like, but
6 what would be a good characteristic, a favorable
7 characteristic that you would want the juror to have if you
8 had a case that was being presented on your behalf?

9 A. I want him to be true and honest.

10 Q. Somebody who was true and honest?

11 A. Yes, sir.

12 Q. Okay. Now, I'm going to ask that question of
13 everybody, and we're going to build a list of characteristics
14 because there are lots of -- exactly, there are lots of things
15 that we might want. There are also some things that we might
16 not want, and we can also talk about those.

17 I'm going to ask you to hand it to Ms. Fields. And
18 they also have a questionnaire, so they're trying to make sure
19 they have got your questionnaire out in time. I think they're
20 okay. Joe is getting mine out too, but I don't need them as
21 much as they do. I think we're set.

22 Ms. Fields, what is the most important characteristic
23 for somebody who is going to serve on a jury?

24 A. I guess to be attentive and to be objective.

25 Q. Okay. Be attentive and objective.

♀

VOIR DIRE OF THE JURY

10

1 Ms. Farmer, what would you add to our list, what you
2 think -- what do you think would be the most important

- 3 characteristic for a person who is going to be on a jury?
- 4 A. Well, the only thing that comes to my mind is to be
5 attentive and really listen.
- 6 Q. Well, listen, you added something to it, which you want
7 somebody who will listen, that is very important, obviously,
8 very, very important. Listen.
- 9 Mr. Fowler, what would you add to our list? You can
10 use one we have got, but there are lots of good
11 characteristics that we might want people to have?
- 12 A. I would think, Your Honor, don't let your personal
13 prejudice get in the way.
- 14 Q. Perfect. Avoid personal prejudice. I'm going to ask
15 you to explain that a little, I think it makes good sense, I
16 want to ask you to explain it a little bit.
- 17 A. Something might have happened to you in the past,
18 somebody crossed your path in a certain way and this case is
19 revolving around it.
- 20 Q. In other words, don't let your personal experiences
21 influence you inappropriately?
- 22 A. Yes, sir.
- 23 Q. Mr. Francis, what would you add to our list?
- 24 A. To be open-minded.
- 25 Q. Be open-minded, absolutely. Ms. Ragsdale?

♀

VOIR DIRE OF THE JURY

11

- 1 A. Integrity and open-minded.
- 2 Q. Integrity and, of course, open-minded.

3 Now, there's some others, there are many
4 characteristics that we want to add also. That's a great
5 list.
6 Is it Ms. Foran?
7 A. Yes. To be fair.
8 Q. To be fair, okay. Very good. If you will hand that
9 straight to Ms. Reed. Ms. Reed, what would you add to our
10 list? That is a great list, but there are some things we
11 don't have on it.
12 A. The only one that's really standing out to me is being
13 able to be focused, but I think that was touched on by being
14 attentive. You want someone who can be here in the present
15 mentally.
16 Q. Be focused, be present at all times, don't be
17 daydreaming?
18 A. Right.
19 Q. Okay. Mr. Yeager, it gets a little more complicated,
20 but there's some big ones out there. Let me suggest, for
21 example, you had to come in, you had to fill out a
22 questionnaire, you had to wait a little bit, what is an
23 important characteristic for every juror to have all of the
24 time?
25 A. Prompt.

♀

VOIR DIRE OF THE JURY

12

1 Q. Broke?
2 A. Prompt.
3 Q. I like that one, I think that's a good one. I don't

4 think anybody has ever said that. Be prompt, that's a great
5 one. Believe it or not, I have never had anybody say that,
6 and that is actually very important. Well, that's great.
7 Ms. Hebron, I will was getting to something else, what
8 else do we want to add to that list?
9 A. Thoughtful.
10 Q. Thoughtful, absolutely. Somebody who will be
11 thoughtful, and there's another way to say that too. What is
12 another way we might say being thoughtful? I mean what does
13 that mean to you?
14 A. It means to me when I say be thoughtful, thoughtful of
15 the situation and the problem.
16 Q. Pick the microphone up a little bit.
17 A. Thoughtful of the situation and the problem that -- I
18 guess what we're dealing with.
19 Q. In other words, be thorough, is that another way to say
20 that, thorough?
21 A. Yes.
22 Q. I want to make sure we say that. Thorough. It can be
23 said a couple of ways.
24 Ms. Richardson, things -- there is a couple of things,
25 big ones that we haven't said.

♀

VOIR DIRE OF THE JURY

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1 A. I don't think I have it. They have taken mine. Alert,
2 alive and on top of things.
3 Q. Alert, alive and on top of things, those are all good.

- 4 And somebody actually said it earlier when they said you had
5 to come out and fill out a form, you had to spend some time,
6 you had to go upstairs and wait today, and then Mr. Yeager
7 said be prompt, that's important, but there's one that goes
8 with that too, because you have had to wait around some, what
9 does that mean?
- 10 A. Patient.
- 11 Q. That's great.
- 12 A. Patient, how about that? Thank you.
- 13 Q. And patient is very important because, you know, if
14 you're in a rush, this isn't the right job, this isn't the
15 right job. You have to be very patient.
- 16 Is it Ms. Fulgham?
- 17 A. Yes.
- 18 Q. How are you doing?
- 19 A. I'm good. Thank you.
- 20 Q. There are a couple of big ones that we haven't put down
21 on our list. What would you add to our list?
- 22 A. I don't know. Maybe a little courage.
- 23 Q. What do you mean by that?
- 24 A. Courage.
- 25 Q. I mean that can be -- the interpretation is important,

♀

VOIR DIRE OF THE JURY

14

- 1 so what do you mean by that?
- 2 A. I think I mean being able to concentrate and have the
3 courage to stand with what you think and what you believe.
- 4 Q. Okay. Now, does that mean that if somebody else says

5 something you shouldn't listen to them? That's what I'm
6 getting at on that.
7 A. Oh, no, no.
8 Q. You still listen to everybody?
9 A. Yes.
10 Q. But you want to speak up for what you think?
11 A. Yes.
12 Q. Both are fine, as long as you do them together?
13 A. That was my second or third choice. Patience, I had.
14 Q. And I will give you credit for that too, I have got it
15 down.
16 Ms. Reber, we have still got a couple that we want to
17 get out there that -- what is -- if you're trying a case in --
18 let's just -- in Memphis, Tennessee, in west Tennessee, and
19 you speak Spanish, what would you might be concerned about as
20 to the panel, a really important thing that you might be
21 concerned about as to the panel, a big issue?
22 A. I don't know. I don't know what you're getting at. I
23 was just thinking courteous, fair. I guess somebody said
24 fair.
25 Q. Courteous?

♀

VOIR DIRE OF THE JURY

15

1 A. Open-minded.
2 Q. Courteous, fair, open-minded.
3 There's a constitutional principle that is the main
4 thing that a juror has to be under our United States

- 5 Constitution, is probably the only qualification that's
6 required of a jury under the Constitution. And the reason I
7 said if you speak another language, what would you be
8 concerned about if somebody didn't speak your language?
- 9 A. The interpretation.
- 10 Q. I think you might be concerned about -- let's see if
11 Mr. Miller wants to chime in on that.
- 12 A. I'm not sure I can help you. I don't know where you're
13 going.
- 14 Q. Prejudice, prejudice, how many people -- has anybody
15 ever heard anybody say something, well -- what is one of our
16 growing minorities in the Mid-South?
- 17 A. Hispanics.
- 18 Q. Hispanics. Have you ever heard anybody say anything
19 about Hispanics that wasn't exactly appropriate?
- 20 A. I'm sure I have.
- 21 Q. I wasn't trying to pick on you. Let's ask Ms. Reber,
22 give it back to her, she handed it off. Have you ever heard
23 anybody say something about Hispanics that was kind of
24 inappropriate?
- 25 A. Yeah, but I have heard good things too. You know, it

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VOIR DIRE OF THE JURY

16

- 1 goes both ways.
- 2 Q. Right, right. And either one could be a basis for bias
3 or prejudice, right?
- 4 A. Correct.
- 5 Q. I mean you could say, well, you know, gosh, everybody

6 who is Hispanic is wonderful or I don't like anybody who is
7 Hispanic, would either one be right? Maybe the first one is,
8 I don't know.

9 A. No, I guess it just depends on the situation.

10 Q. So we should be free of prejudice, and the jury -- and
11 the Constitution requires that every juror be impartial,
12 that's the constitutional requirement. You look for
13 instructions on how to select a jury, and that's the one where
14 you have got to be impartial.

15 Okay. Well, we have got a long list here. And hand it
16 back to Mr. Russell -- well, anything else, Mr. Miller, you
17 wanted to add to our list?

18 A. No, sir.

19 Q. I didn't really -- let's hand it back to Mr. Miller for
20 one -- I didn't get a new characteristic from you.

21 A. I don't know if it is new, I would just say a
22 willingness to understand both points of view and the
23 assertiveness to speak your mind.

24 Q. Okay. Willingness to understand both points of view
25 and -- all right.

♀

VOIR DIRE OF THE JURY

17

1 Mr. Russell, we went through a long process and you, of
2 course, said people should be honest and they should be true
3 or truthful. We have got attentive, objective, listen, avoid
4 prejudice. Mr. Fowler did add that early on. He said
5 particularly, though, as to your personal experiences

6 influencing people, be open-minded. Ms. Ragsdale, of course,
7 said integrity, open-mindedness. Ms. Foran wanted somebody to
8 be fair, of course. Ms. Reed, focused, not be daydreaming,
9 pay attention, of course. Mr. Yeager, be prompt, which is a
10 good one. Ms. Hebron, thoughtful and thorough, and
11 Ms. Richardson patient. Ms. Fulgham said to be -- she said
12 courage, and then we asked that question about what that
13 meant, to be patient, so forth. And then Ms. Reber,
14 courageous and open-minded, fair, and I think we have got
15 willingness to listen to both sides. The one thing that is a
16 constitutional requirement is impartiality, not be biased or
17 prejudiced for either side.

18 The first question is what are examples of prejudice in
19 society, and we're just going to go around and talk about that
20 very important subject. What is an example of a prejudice
21 that occurs, and there are lots of them, just like we had the
22 characteristics, what would you put on the list as maybe the
23 number one prejudice that you might have to deal with
24 sometimes?

25 A. I guess we should all get along together and --

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VOIR DIRE OF THE JURY

18

1 Q. Famous saying about that.

2 A. -- not be jealous of each other.

3 Q. And what's sometimes a basis for prejudice, not that --
4 hopefully, people don't have it, but we have to talk about it,
5 we have to make sure that we understand the concepts of bias
6 and prejudice, impartiality because if we don't know it,

7 sometimes it can creep up on us. What is a -- we live in the
8 south, but I don't think it matters where you live. There is
9 prejudice everywhere. What is an example of prejudice? It
10 can be anything from experiences you have in the workplace and
11 that sort of thing, but what is an example of things sometimes
12 people are prejudiced about?

13 A. I guess race, maybe.

14 Q. Race is certainly one of them, there's no question
15 about that.

16 Let's ask Ms. Fields because we want to add to our
17 list.

18 A. Character or integrity by the way a person looks.

19 Q. Okay. And you're saying -- we sometimes judge people
20 based on how they look, appearance?

21 A. Yes, appearance.

22 Q. Right.

23 A. Appearance is a better word.

24 Q. And do you think that really happens?

25 A. It does.

‡

VOIR DIRE OF THE JURY

19

1 Q. Okay. What is an example of how that happens?

2 A. Give you an example. Well, I guess sometimes when you
3 can walk into a room or into a situation, and just because
4 you -- because of your appearance, they may not think you're
5 intelligent, they may think you don't know anything, that you
6 can't make any decisions.

- 7 Q. And by appearance, just physical?
- 8 A. Physical appearance.
- 9 Q. Absolutely. Now, let's ask Ms. Farmer, what is another
- 10 prejudice that people have that can be based -- it can be a
- 11 racial prejudice, it can be based on appearance, other
- 12 prejudices that people may have?
- 13 A. Just disliking someone immediately just because they're
- 14 not of your background or your race.
- 15 Q. By background, what is an example of a background
- 16 issue?
- 17 A. Maybe -- I don't know. The same race as you, for
- 18 instance.
- 19 Q. Sure. And they can be -- it can be race, it can also
- 20 be a lot of other things out there.
- 21 Mr. Fowler, what is something people can be prejudice
- 22 about? We have got basically background, appearance, race.
- 23 A. I think a lack of knowledge of a particular race of
- 24 people or nationality. You know, we have to understand there
- 25 is more than one way to do something. Here in the United

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VOIR DIRE OF THE JURY

20

- 1 States, you know, we have a tendency to think this is the only
- 2 way to do it to get the job done.
- 3 Q. In other words, we can -- lack of knowledge is a good
- 4 way to put it. I'm trying to think of another --
- 5 A. We definitely can learn from another race.
- 6 Q. We need to understand that we can learn from everybody.
- 7 A. Right.

8 Q. In other words, don't think we know it all, a good
9 point.
10 Mr. Francis, things people can be prejudice about?
11 There are lots of things, there are lots of things.
12 A. I think sometimes you can be prejudice on your classes
13 like the have and the have nots.
14 Q. Economic class. Now, does it work both ways?
15 A. Oh, definitely.
16 Q. So somebody who is rich or well off cannot like
17 somebody who is poor just because they don't have as much or
18 somebody who is poor can really dislike somebody who has got
19 more because of economic situation.
20 A. Right, jealousy, and, you know, just in general, you
21 see it everyday.
22 Q. Good point.
23 Ms. Ragsdale?
24 A. I think stereotype a person just because they're one
25 race that maybe all the people in one race is all the same,

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VOIR DIRE OF THE JURY

21

1 they have their own personalities.
2 Q. And that's absolutely prejudice, because when you look
3 at somebody and say everybody acts the same way, that's --
4 that couldn't be more wrong, that is as wrong as you can get.
5 But sometimes people do that.
6 A. Yeah.
7 Q. Very bad thing. Let's get some other things on the

8 table too, Ms. Foran, because there are -- what is an example
9 that is pretty obvious? How old are you?
10 A. I'm 27.
11 Q. Okay, you're 27. And who is younger than 27 on this
12 panel that we have got so far? And how old are you?
13 A. 21.
14 Q. Exactly. Okay. Any prejudices that can happen there?
15 A. Are you hinting at age?
16 Q. Well, I'm doing the best I can. But does that happen?
17 A. Oh, yes, I think so.
18 Q. Okay. And does it happen obviously both ways?
19 A. Yes.
20 Q. What is your thought about that? I mean where is it
21 most common?
22 A. Most common?
23 Q. Yes.
24 A. I don't know, is there a really most common? I just
25 would think that it could be pretty much either way.

‡

VOIR DIRE OF THE JURY

22

1 Siblings, definitely, age difference there.
2 Q. Yeah.
3 A. Or --
4 Q. What about the workplace being an issue?
5 A. Oh, gosh, yes, that's a problem for me.
6 Q. That's what I'm talking about, that's what I'm talking
7 about, exactly. And how can that be a problem?
8 A. Well, my situation, at least like most of the people

9 that I work with are older than me, and I took into -- I
10 walked into a position of more responsibility and authority, I
11 guess, and older people seeing a younger person as an
12 authoritative figure wasn't easily taken.

13 Q. Okay. And that -- that can be an age question.

14 Let's hand it back to Ms. Reed. Good point, though,
15 there. Ms. Reed, something we can add to our list, basis of
16 discrimination?

17 A. Political affiliation.

18 Q. Political affiliation. Give me an example there.

19 A. When some people realize you support a certain party or
20 candidate, they tend to lump you or make generalizations about
21 your entire character. If you are liberal, if you support a
22 liberal person, then they think that maybe your entire --
23 that's your whole thought process concerning political things
24 that you -- you know, political issues, basically.

25 Q. Exactly. And they can make a judgment about other

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VOIR DIRE OF THE JURY

23

1 things or things that you might do?

2 A. Right.

3 Q. And what is your experience in that regard, is that a
4 valid way to analyze things?

5 A. You're asking me is it valid?

6 Q. Is it a valid way to analyze things?

7 A. No.

8 Q. I agree with you, I just want to make sure we're on the

9 same page. It is not a valid way because people have
10 different points of view on many, many things.
11 Let's see, Mr. Yeager, there are a couple of things out
12 there we haven't talked about that are pretty big ones.
13 A. Gender.
14 Q. Absolutely. And how does that come up sometimes?
15 A. Equal pay, equal benefits.
16 Q. It can be that way. Equal pay, equal benefits, and as
17 Ms. Foran described, she didn't say it, but she is young,
18 female, some male might not want to listen to her. Is that --
19 I mean is that your experience that sometimes people treat
20 people -- it works the other way too. I suppose they can
21 stereotype men. What is your thought process there?
22 A. I have observed it before.
23 Q. And what sort of setting?
24 A. Probably workplace setting.
25 Q. Okay. How do you feel about it?

♀

VOIR DIRE OF THE JURY

24

1 A. I'm not in favor of it.
2 Q. Okay. And how did it make you feel when you
3 experienced -- saw that going on?
4 A. Well, my thoughts are each individual should be judged
5 on merit regardless of age, race, whatever.
6 Q. Okay. And gender?
7 A. And gender.
8 Q. Ms. Hebron, basis -- now, you're the youngest person on
9 the panel, would it be -- would you think it was inappropriate

10 for somebody who was much more senior to say, well, you just
11 don't know because you haven't been around?

12 A. Would I think it would be inappropriate? Yes, that's a
13 part of racism. I deal with that a lot too because most older
14 people feel as if you hadn't been around that you don't know
15 nothing, but they never know the situation or what you have
16 been told.

17 Q. So it is really not a fair way. Did you have something
18 else -- what else would you add to the list of biases and
19 prejudices? There are quite a few things to put on there.

20 A. Well, I been thinking, I just couldn't come up with
21 nothing.

22 Q. Well, are there any -- are there any situations where
23 someone makes an unfavorable comment about any group of people
24 on other bases? Nobody has come up still with the elephant in
25 the room, that is what I have been waiting for.

‡

VOIR DIRE OF THE JURY

25

1 A. I only thing I can say is it is probably racism --
2 well, I can give an example, I just don't know how to explain
3 it, but like, for instance, in a workplace environment, I feel
4 it is racism because most people feel as if the Hispanics
5 don't know as much because they're not in the United States,
6 but they treat them different than what they will treat an
7 American.

8 Q. Is it less favorable that they treat them on occasion?
9 How do they treat them, better or worse?

- 10 A. Worse.
- 11 Q. Okay. And that's actually based on either a linguistic
12 characterization or national origin, I'm never sure which one
13 to say there. Because someone speaks a different language,
14 often it is language related.
- 15 A. Right.
- 16 Q. How do you try to deal with that, how do you feel you
17 ought to deal with that?
- 18 A. My opinion on that is that I feel that irregardless to
19 what they speak or how they look or where they're from, they
20 still should be treated like everyone else because -- just
21 because they speak a different language, that doesn't mean
22 that they don't know what is going on, and they should be
23 treated fairly.
- 24 Q. Should treat things based -- should be fair and based
25 on merit?

♀

VOIR DIRE OF THE JURY

26

- 1 A. Right.
- 2 Q. Ms. Richardson, that's a good comment. Something you
3 want to add about biases and prejudices? There are quite a
4 few.
- 5 A. I think of religious prejudices.
- 6 Q. Okay. And that's -- would you explain it a little bit?
7 I think everybody probably agrees with you.
- 8 A. Well, you know, some certain people won't get hired or
9 didn't get hired because of their religious beliefs, Jewish,
10 Catholic. Sometimes they have got hired because of the

11 belief, because they were a certain belief or religion, so it
12 goes both ways.
13 Q. It can either favor you or disfavor you?
14 A. Favor you or disfavor you, exactly.
15 Q. What is your experience, how does -- how should that be
16 dealt with?
17 A. Well, you should always be fair whatever you're doing,
18 you know, impartial, according to what the situation is.
19 Q. You should always weigh it based on the merits of the
20 situation?
21 A. Exactly.
22 Q. Good addition there, appreciate it.
23 Ms. Fulgham, what would you add in there, and there are
24 plenty of things to add still, a few things we need to talk
25 about?

♀

VOIR DIRE OF THE JURY

27

1 A. I don't know. Could there be physical disabilities?
2 Q. That's a great one, that's a great point there. And
3 have you ever seen that happen?
4 A. I'm sure that I have. I'm sure that just in ways of
5 being -- impatience, you know, or -- I think that's good,
6 patient with physical disabilities.
7 Q. And once again, how should that person be treated,
8 should they be given a preference? What are we trying to
9 achieve in our society as people with disabilities?
10 A. I guess just equalization.

- 11 Q. The same opportunity as everybody else?
- 12 A. Yes.
- 13 Q. So you don't -- so you get to work?
- 14 A. Exactly.
- 15 Q. If you're disabled in your ability to move around, you
- 16 can get into the building, of course, and do the job.
- 17 Ms. Reber, prejudices, things that people can be
- 18 prejudiced about?
- 19 A. I think about education.
- 20 Q. And will you explain what you mean?
- 21 A. Well, there are people who have a higher education,
- 22 like in the workplace, they get the better job even though
- 23 someone maybe can do the same work, but they didn't have as
- 24 much education so the other person gets it, gets the job.
- 25 Q. Exactly. Now, that's -- let me ask this: Some people,

♀

VOIR DIRE OF THE JURY

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- 1 though -- should a person who can do the job better not get it
- 2 because they have more education?
- 3 A. Could you repeat that?
- 4 Q. Should a person who can do the job better not get that
- 5 job because somebody perceives them as having more education
- 6 and they don't like that?
- 7 A. Well, I think whoever is capable of doing the job
- 8 should get it.
- 9 Q. Right.
- 10 A. Regardless of their education.
- 11 Q. Right, because to some degree, and I couldn't tell for

12 sure, but with Ms. Foran, it is a little bit of -- if you're
13 qualified, it is an important thing. So it can work both
14 ways. People can -- people can be prejudiced based on your
15 educational status one way or the other?

16 A. Yes, sir.

17 Q. And educational status is another thing that we have to
18 not let prejudice us, educational status.

19 All right. Mr. Miller, there are some things really we
20 haven't mentioned. I'm not sure that they are so critical,
21 but there are plenty of things out there, biases and
22 prejudices.

23 A. I was going to say geographic within the same
24 nationality, you know, not -- their having stereotypical views
25 of being from the north, south, whatever.

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VOIR DIRE OF THE JURY

29

1 Q. Exactly. Geographic preferences. There are a couple
2 of things we have left out, but that can include the way
3 someone speaks, so that if you have a particular accent -- do
4 you ever think people try to say unfavorable things or draw
5 unfavorable conclusions about an individual who might be from
6 the south because of an accent?

7 A. Sure, they may think they're slow or something because
8 they talk slower.

9 Q. Right, that's a prejudice too.

10 Okay. Now, let's hand that to Mr. Russell.

11 Mr. Russell, we have talked about a lot of biases and

12 prejudices, they can be based on all sorts of things, do you
13 think that a jury in west Tennessee other than -- which county
14 are you from?

15 A. Tipton County.

16 Q. How many folks do we have outside of Shelby County? We
17 have got two. Mr. Francis is from Tipton County?

18 A. Tipton County.

19 Q. I'm not -- we have got some other folks. Where are you
20 from? Yes, ma'am.

21 A. Dyer County.

22 Q. Dyer County, that's a long way down here too. I
23 appreciate you being here, that's a long drive. We have got
24 somebody else here.

25 A. Tipton.

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VOIR DIRE OF THE JURY

30

1 Q. Anybody from Fayette? We usually have Fayette County.
2 We also have Lauderdale County, we have several counties.

3 Mr. Russell, do you think that a jury from this part of
4 west Tennessee can make a decision without being influenced by
5 biases and prejudices?

6 A. Yes, sir.

7 Q. Now, we all know people have them, how do we avoid
8 that, what do we do to avoid being influenced by bias and
9 prejudice?

10 A. I don't know exactly, sir.

11 Q. Well, let me -- that's a fair answer. Let's see what
12 Ms. Fields has to say. Ms. Fields, one, do you think the jury

- 13 can make a decision free from bias and prejudice?
14 A. Yes, I do, Your Honor.
15 Q. How?
16 A. By being open-minded, as we have talked about, and by
17 being objective and staying focused and being attentive.
18 Q. Okay. All right. Those are good points and,
19 Ms. Farmer, what do you think? Realistically, we live in a
20 society, very complicated society, people bring a lot of
21 baggage with them sometimes to the courtroom. Can a jury
22 realistically make a decision without being influenced by bias
23 and prejudice?
24 A. Yes, by staying specific to the facts.
25 Q. By focusing on the facts. So both of you -- those are

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VOIR DIRE OF THE JURY

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- 1 good points.
2 Mr. Fowler, what do you think? Do you think these
3 folks are dreaming or are they right?
4 A. I don't know if this has been answered or not, but I
5 think if you were lucky enough to get people that have
6 traveled and dealt with different nationalities, you would get
7 that open-mindedness and whatnot that you're looking for.
8 Q. You're a little concerned that personal experience --
9 lack of personal experience can be -- could be a problem?
10 A. Right.
11 Q. Okay. Let's say that somebody on the panel said
12 something that appeared to be using bias and prejudice in

13 making a decision. I mean you could say, well, these people
14 don't speak English, I'm not going to decide for them, period,
15 now, what would you say to that person? We all know that is
16 wrong, but sometimes people have problems. How would you deal
17 with that?

18 A. I think that individual would have to explain that to
19 me a little bit better than that, me personally.

20 Q. You would ask them to think about it?

21 A. Oh, yes, without a doubt.

22 Q. Okay.

23 A. Last time I was here, I learned about preponderance of
24 the law.

25 Q. Preponderance of the evidence, exactly. But you would

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VOIR DIRE OF THE JURY

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1 ask them to -- well, let's ask -- let's ask Mr. Francis, do
2 you think that a jury can realistically be expected -- you
3 know, drawn from this jury pool can realistically be expected
4 to try this case without being influenced by biases and
5 prejudices?

6 A. I think, like you say everybody has baggage, they have
7 their own biases and prejudices, if not from experience, then
8 just living in your life, and most of the time, that is what
9 helps you dispel some of the bad stereotypes when you have
10 been there and done that. So that baggage right there is what
11 is going to help you overcome your prejudices; and I think all
12 of us here can do it.

13 Q. And what would you do if somebody expressed a clearly

14 unconstit utional basis for making a decision? It is an
15 illegal thing, it is illegal to decide this case, it is
16 unconstit utional to decide this case based on national origin
17 or race or gender or religion, that's unconstit utional. So
18 what are you going to say to that person if they made a
19 statement that --

20 A. I would have to call them on it, or her.

21 Q. How do you do it diplomatically enough so that you
22 don't get into a fight?

23 A. Well, you try to explain your side of it so you could
24 try to quash the notion of prejudice or try to keep them
25 open-minded, give them the --

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VOIR DIRE OF THE JURY

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1 Q. Okay. You try -- you were going to redirect the
2 discussion?

3 A. Right.

4 Q. Okay.

5 A. Into a healthier more appropriate conversation.

6 Q. And hopefully, it won't happen, but we always have to
7 be concerned.

8 Let me ask Ms. Ragsdale, you heard a bunch of people
9 talk about this, do you think that the jury -- a jury can make
10 a decision free from bias and prejudice?

11 A. Yes, I can. You have to listen, really listen and stay
12 focused and listen to the facts and don't let personal
13 experience or prejudice influence you, you have got to deal

14 with the facts.

15 Q. Just bring them back to the facts, let's not talk about
16 the -- okay.

17 A. Uh-huh.

18 Q. Ms. Foran, you have dealt a little bit with some of
19 these types of issues. Do you think that a jury can
20 realistically be expected to decide the case free from bias
21 and prejudice?

22 A. I do, and I'm like what most people have said that if
23 you concentrate solely on what has been said and shown in the
24 courtroom, then you should be able to come to a decision
25 without prejudice.

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VOIR DIRE OF THE JURY

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1 Q. Focus on the evidence, okay. Absolutely. I want to
2 really ask Ms. Reed -- I'm going to ask everybody this
3 question, because it is a big deal, and -- it is a big deal.
4 Is it -- do you think a jury -- in your heart of hearts, do
5 you think a jury realistically will make a decision free from
6 bias and prejudice, do you think that is really going to
7 happen?

8 A. When you say is it really going to happen, you mean
9 with this particular --

10 Q. Well, we're not going to get any other jury -- you
11 know, we're all citizens and it has got -- it is going to come
12 from the group of people in this room.

13 A. I think if you get the right jury, you know, and that's
14 why you asked the questions to try to see if the person would

15 have any biases, but like you said, if -- if the people stick
16 to the facts and do what -- you know, what is being discussed
17 within the case, then a juror should be able to.

18 Q. Okay. Magic words for you are stick to the facts?

19 A. Right.

20 Q. Has it been your experience -- I'm going to ask you a
21 little different question, has it been your experience in
22 everyday life in Memphis, Tennessee that people make decisions
23 from bias -- or Tipton County or Lauderdale County or Dyer
24 County, that people every day makes decisions free from bias
25 and prejudice?

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VOIR DIRE OF THE JURY

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1 A. No.

2 Q. And so what is going to make this process different?

3 A. Because I think people are probably biased without
4 thinking about it. They just go into their normal everyday,
5 you know, if someone is forcing you to be objective and to
6 stay focused on what is at hand, the facts, I think people
7 will. I think in our everyday life we don't think like that.
8 We may have biases just because that's the way we grew up, you
9 know -- say, for instance, if you see something on the news,
10 you know, sometimes people say, oh, he did it, you know, they
11 don't even know. And I mean -- but when you're in this type
12 of environment, I think people will be more likely to do what
13 they're asked to do because you're asking the person to be
14 objective and to focus on the facts.

15 THE COURT: I think somebody may need a break,
16 that's what I'm beginning to see. We are going to take a
17 break because I can't let -- I have to have everybody
18 here. I can't take a break for one person and not for
19 everybody. Mr. Yeager, when we come back, we will start
20 with you on the questions. I have got to tell you seven
21 things before we take a break, I have no choice, and the
22 first thing is that you cannot discuss the case among
23 yourselves. You can't discuss anything about what we have
24 been doing, even if you like it or don't like it, you
25 can't do that because once you start talking about it, it

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VOIR DIRE OF THE JURY

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1 starts creating those things we're trying to avoid here,
2 those preconceived notions, those ideas, so you can't talk
3 about it. You can talk about the -- whether you want Bass
4 Pro in the Pyramid or whatever -- whoever is the next
5 candidate, but you cannot talk in any way about this case,
6 don't speculate about what the case is about, don't --
7 avoid the subject.

8 The second thing is that you cannot talk to
9 anybody else. I said among yourselves you can't talk, but
10 you can't call somebody and say -- you can say I'm going
11 to be in jury selection today, we should finish jury
12 selection and I will know if I'm going to be on the jury
13 today, but you can't tell them anything about the case.
14 They will say what's the case about, and you're going to
15 say I can't -- you don't know and I can't tell you.

16 The third thing is that you can't even speak to
17 the lawyers or the parties or the people who are here,
18 there are a whole bunch of people here, that shouldn't
19 influence you at all, but you can't talk to them. You
20 can't go over and talk to them and say what are you doing
21 here today. Don't do that. One, they can't tell you,
22 they have been instructed not to talk to you. You can't
23 even speak to the interpreters because they're obligated
24 to not speak to you. You can't say how do you do this,
25 you know, this is really interesting. It is interesting,

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VOIR DIRE OF THE JURY

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1 but you can't ask them, you can't speak to them. So that
2 tells you -- and if you do speak to one of these folks,
3 they're not going speak to you and they're going to look
4 down and look embarrassed, and it really makes everybody
5 really uncomfortable, so don't speak to them.

6 The fourth thing is if somebody should try to
7 talk to you about the case, you should report that
8 immediately to one of our court security officers. We
9 have got two in the courtroom right now, and a lot -- they
10 are men and women with the blue jackets, badges on, or a
11 member of my staff or me and tell them that somebody tried
12 to talk to you about the case, and they need to tell me.

13 The fifth thing is you're probably getting
14 curious about the case. You cannot try to research it or
15 make any inquiry at all about it. That is important

16 nowadays because with computers, you can find almost
17 anything out if you try to, and I'm just going to tell you
18 don't do that. Avoid things like that.

19 The sixth thing is right now you haven't had a
20 chance to, but if there's anything in the newspaper,
21 television or radio about this case, you cannot read it or
22 listen to it or watch it. So be mindful that if there's
23 any media coverage, you cannot listen to it. If something
24 inadvertently happens and you don't mean to -- and it does
25 happen and you see something happen, hear something, just

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VOIR DIRE OF THE JURY

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1 tell us about it, it is probably not a problem, but we
2 have to know that that occurred.

3 The seventh thing is you have to keep an open
4 mind. As most of you said through this process, you have
5 to keep an open mind for a long time until all the
6 evidence is submitted, until the final arguments of
7 counsel, until the final instructions on the law and until
8 you have gone to the jury room and discussed the evidence
9 among yourselves, which will take place some time from
10 now. We will talk about that time period when you come
11 back. So those are the instructions. So don't talk to
12 anybody about the case. That's the bottom line.

13 Now, because there's so many of you, we're
14 going to take a 20-minute break, because you won't have a
15 chance to go to the restrooms. I will make the
16 restrooms -- to this jury room open to the parties and the

17 lawyers, if that is enough, so we have got a little more
18 restroom space. Mr. Ruby, we will make sure those are
19 open to them.

20 Ladies and gentlemen, when you come back, all
21 of you in the jury box should resume the same seat. All
22 of you should come back, obviously, to the same side of
23 the courtroom, and we will see you in 20 minutes. My
24 watch says that it is 10:33, and Mr. Yeager said to be
25 prompt, so you should be back at 10:53, Mr. Yeager. We

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VOIR DIRE OF THE JURY

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1 will see you at that time. See you in 20 minutes. Thanks
2 very much.

3 THE CLERK: All rise. This honorable court
4 stands in recess.

5 (Recess taken at 10:33 until 10:53 a.m.)

6 THE COURT: I think I need to thank Mr. Yeager,
7 because I have never had a group act so promptly, really,
8 I do appreciate that.

9 Mr. Yeager, we were to you, which was -- you
10 have got the microphone.

11 THE CLERK: They wanted to have a side bar real
12 quick when you get a chance.

13 THE COURT: Oh, I didn't know. Come around to
14 side bar.

15 (The following proceedings had at side-bar
16 bench.)

17 MS. BLUM: Your Honor, one of the jurors,
18 Barbara Fulgham, her daughter is very, very close friends
19 with one of the counsel from Bass Berry who is working as
20 an associate on the case. We just wanted to inform you.

21 THE COURT: Does she know anything about it?
22 This is a daughter?

23 MR. ESQUIVEL: Her daughter and Jennifer Eberly
24 who is an associate in the Memphis office are close
25 friends, have talked about this case, so I just wanted to

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VOIR DIRE OF THE JURY

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1 make the court aware.

2 THE COURT: Sure.

3 (The following proceedings were had in open
4 court.)

5 THE COURT: Ms. Fulgham, if you would come
6 around, please. That's fine.

7 (The following proceedings had at side-bar
8 bench.)

9 BY THE COURT:

10 Q. Do you know any of the attorneys that are involved in
11 the case at all?

12 A. No.

13 Q. Okay. Do you have --

14 A. My daughter is an assistant DA.

15 Q. Oh, where is she?

16 A. For Shelby County.

17 Q. Okay. And I didn't know if you -- well, I mean I take

18 it your daughter lives -- she is married and lives away from
19 home now?
20 A. No, she lives at my house.
21 Q. That's the reason I'm asking, is this -- if this comes
22 up, you understand you will not be able to tell your daughter
23 anything about it. She is a lawyer, you got a problem --
24 A. Right.
25 Q. -- and that would be an issue. I thought she was an

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VOIR DIRE OF THE JURY

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1 attorney. How old has she been an assistant DA?
2 A. She has been there, what, four years, five years.
3 Q. Okay. All right. Now, do you know if she knows any of
4 the attorneys or parties in the case, if your daughter does?
5 A. I think she does.
6 Q. Who do you think she knows?
7 A. I think a friend, her name is Jennifer.
8 Q. Okay. And how does she know her?
9 A. I don't know. I think friends maybe in school or just
10 attorneys, I'm not sure. I don't know her.
11 Q. How do you know that she is aware of Jennifer?
12 A. She mentioned that they were going to do something the
13 other day, but she couldn't, because she was involved in a
14 trial.
15 Q. Okay. I'm sorry, I didn't quite understand that. She
16 mentioned -- tell me who she is, your daughter?
17 A. My daughter, I'm sorry.

- 18 Q. And she mentioned to you what, she needed to tell you
19 about?
- 20 A. Nothing about the case, of course. I don't know that
21 she knows. That she and her friend were going to do something
22 this weekend.
- 23 Q. With who?
- 24 A. With her friend.
- 25 Q. Jennifer?

♀

VOIR DIRE OF THE JURY

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- 1 A. Uh-huh. And that she couldn't because it was some kind
2 of case.
- 3 Q. Some kind of case?
- 4 A. That's all I really know.
- 5 Q. Do you know what Jennifer's role, if any, is in the
6 case?
- 7 A. No.
- 8 Q. Would you know Jennifer if she walked in the courtroom?
- 9 A. No.
- 10 Q. Never met her at all?
- 11 A. No.
- 12 THE COURT: Any other questions?
- 13 BY THE COURT:
- 14 Q. Now, is this going to affect you at all? Are you going
15 to be thinking you ought to help somebody out because they
16 might have some connection with a party in the case?
- 17 A. No.
- 18 Q. Do you know which side she would be on in the case?

- 19 A. I don't think so.
20 Q. Do you know which side Jennifer would be on in the
21 case?
22 A. No.
23 Q. You promise you won't try to find out?
24 A. Yes. My only personal thing is if, you know, I'm a
25 cancer patient.

♀

VOIR DIRE OF THE JURY

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- 1 Q. Yes, ma'am.
2 A. And November 11th is my six month checkup, and my only
3 concern is --
4 Q. We will not be in court on the 11th, it is a federal
5 holiday.
6 A. So that would be my only concern.
7 Q. That's a federal holiday. I appreciate you reminding
8 me.
9 A. Okay. But I don't know anything.
10 Q. You have been feeling okay?
11 A. Yes, I have. Yes, I have.
12 Q. Are you taking a lot of medicine now?
13 A. No, no, three and a half years.
14 Q. You finished everything?
15 A. Yes, I'm doing great. Thank you.
16 Q. Well, I appreciate that.
17 A. Okay.
18 Q. But if for some reason somebody in the family, your

19 daughter, because she is still living at home says something
20 to you about it and you become concerned that it might create
21 an issue, will you -- and hopefully she won't, she probably
22 knows that she shouldn't say anything.

23 A. She should know.

24 Q. Would you immediately, one, tell her that you can't
25 talk about it, but, secondly, you need to tell us -- we know

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VOIR DIRE OF THE JURY

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1 that she won't be doing anything intentionally or
2 inappropriate, I understand that.

3 A. Right.

4 Q. But the lawyers are entitled to know if there is an
5 issue that might come up.

6 A. I understand.

7 THE COURT: Any questions from anybody in that
8 regard?

9 MR. BROOKE: Did you discuss your questionnaire
10 with your daughter?

11 BY THE COURT:

12 Q. Did you discuss the questionnaire with your daughter?

13 A. I only mentioned that it -- one of the questions was
14 had you seen the movie, and I think I put no, and I think I
15 have. I just don't remember it. There was something about
16 the movie, either I put I had seen it or I hadn't seen it; and
17 I think I was wrong in my answer.

18 Q. But you don't have a real recollection of the film?

19 A. No, I just remember James Woods, and that's all I

20 remember. I don't remember what it was about, I'm sorry.

21 THE COURT: Any questions from counsel for
22 either side?

23 MR. ESQUIVEL: No. Thank you.

24 MR. FARGARSON: No.

25 MS. BLUM: Thank you very much, Your Honor.

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VOIR DIRE OF THE JURY

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1 THE COURT: Thanks very much. Thank you.

2 (The following proceedings were had in open
3 court.)

4 BY THE COURT:

5 Q. Mr. Yeager, we had that long discussion or somewhat
6 long discussion with everybody else about whether or not each
7 person thinks that a jury, not just any abstract jury, we're
8 going to have a jury from the individuals in this room, if the
9 jury can decide a case free from any bias or prejudice, that
10 is avoiding any bias or prejudice, is that a realistic
11 assessment that they can or unrealistic assessment, what do
12 you think, what is your response?

13 A. I think it can as long as people are -- remain
14 attentive and honest and stick to the facts.

15 Q. Okay. Now, let me ask Ms. Hebron -- is it Hebron? How
16 do you pronounce your name?

17 A. It's spelled wrong, but it is supposed to be Hebron.

18 Q. It is spelled wrong on my list, you're right, it is
19 spelled wrong. It is H-E?

20 A. H-E-B-R-O-N.
21 Q. And I have got the long letter in here, it is making it
22 hard for me to get the name right.
23 Ms. Hebron, do you think it is realistic -- you're the
24 youngest potential member of the panel. And some -- you know,
25 you may have a different perspective on this, do you think it

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VOIR DIRE OF THE JURY

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1 is realistic for people to say they can decide this case free
2 from bias and prejudice, do you think that is realistic or not
3 realistic?
4 A. I think it is realistic, and as he just said honesty
5 and be attentive on the situation.
6 Q. You know, I asked -- and I should have asked Mr. Yeager
7 this, and I may. Is it your -- has it been your experience in
8 people's day-to-day lives that people let biases and
9 prejudices influence their decisions?
10 A. In some situations, I have seen it happen.
11 Q. And you told us about one of those?
12 A. Right.
13 Q. Let me ask Mr. Yeager that, because I meant to ask him
14 that. What is your experience in people's day-to-day
15 decisions?
16 A. I have seen it.
17 Q. Okay. And how does that make you respond or feel? Not
18 that -- I don't know if you can respond much, but how does it
19 make you feel?
20 A. I wish people would not do that, and my own kids were

21 guilty of doing it, and I would talk and discuss it with them
22 to try to eliminate it in the future.

23 Q. So when you can do something, you try to do something?

24 A. Absolutely.

25 Q. Let's go to Ms. Richardson, Ms. Richardson, it is a

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VOIR DIRE OF THE JURY

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1 serious question really, do you think that the jury can
2 realistically be expected, that is can really make a decision
3 free from bias and prejudice?

4 A. I think they can. If they accept the charge at hand
5 and stick to the facts and the evidence and weed out all the
6 drama and the flamboyancy that may happen in the court, I
7 think they can.

8 Q. Sticking to the facts?

9 A. Sticking to the facts.

10 Q. What if the law is something -- there can be prejudice
11 based on facts. There can also be preconceived notions about
12 the law. Sometimes people think that the law to be X or Y or
13 Z, it turns out to be something a little different. Now, it
14 is the law adopted by the United States Congress, and usually
15 over a substantial period of time, it is not something that
16 just occurs, but do you think that jurors will apply the law
17 or will they be inclined to apply their own concept of what
18 they ought to do?

19 A. Well, they should apply the law because if you're going
20 to continue that train of being impartial, you have got to

21 apply the law and leave out the prejudices.
22 Q. All right. And you think people can do that?
23 A. I think they can.
24 Q. Your experience in life, in people's personal
25 decisions, have you seen situations where people have let bias

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1 and prejudice influence their decisions?
2 A. I have seen that.
3 Q. Okay. How do you try to deal with that?
4 A. Well, you try to be as fair as you can. I have been an
5 administrator, so I have seen it done, you know. You try to
6 stick to what you need to have done and just try to be as fair
7 as fair.
8 Q. And you're a -- are you a teacher or administrator
9 still?
10 A. Well, now, I'm retired as an administrative teacher
11 now. In my current position, I'm in another county in
12 Mississippi.
13 Q. Right, right.
14 A. And there are prejudices there. When I got hired, I
15 said, well, you know, they don't like people from Memphis to
16 come here to this location, so I have to work with that and
17 deal with that, you know, to try to let them know that I'm not
18 that person that you think that I am.
19 Q. So you're actually dealing with that sort of
20 geographic --
21 A. Exactly.

22 Q. -- problem that I was going to say Mr. Miller said, but
23 I may have the wrong one.

24 A. The gentleman on the end.

25 Q. Mr. Miller. And you actually have to deal with that?

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1 A. Exactly.

2 Q. How do you feel when -- how did you feel when people
3 tried to treat you differently because you were from Memphis
4 and you were going somewhere else, how did that make you
5 personally feel?

6 A. Well, the kind of person I am, it doesn't make me -- I
7 mean I'm just a person, I'm going to get to know you and you
8 are going to get to know me, so, you know, I just work with
9 it, deal with it.

10 Q. It worked out?

11 A. It worked out.

12 Q. Let's ask Ms. Fulgham, do you think that a jury can
13 realistically make a decision free from bias and prejudice?

14 A. I think they can. I think they can.

15 Q. How?

16 A. You know, one thing that strikes me when we get in
17 here, the atmosphere, it is very sobering, it is just
18 different than you see on TV, in the movies when you yourself
19 are experiencing it. And I just think the process -- I do
20 think that a jury can be fair and impartial.

21 Q. Has it been your experience in personal life that

22 sometimes there have been -- you have experienced or seen
23 incidences where people have let bias and prejudice affect
24 them?

25 A. I'm sure that I have. I'm sure that I have.

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1 Q. And you have seen that on occasion?

2 A. Yes, I have. Yes, I have.

3 Q. How does that make you feel?

4 A. Oh, sometimes sad, you know, that you can't be a little
5 more open-minded, a little more forgiving, a little more
6 understanding, but I think everybody, for the most part, tries
7 to do the best they can.

8 Q. Ms. Reber, you know, I shouldn't do this, I asked who
9 the youngest one was, but I didn't ask the most senior.
10 Anybody on the panel over 60? My goodness, we have got
11 several. Anybody over 65? We have got at least two. Well,
12 anybody ever treat you differently because of age? I will
13 just ask Ms. Reber because she has got the mic. You feel
14 like -- maybe preferably or maybe more favorably, but is age
15 ever a factor that you have experienced?

16 A. Well, no, not really. I haven't, I don't think, ever
17 been looked down upon or looked up at because of my age. I
18 have seen people driving cars, you know, that maybe do
19 something dumb and they think, well, that old person shouldn't
20 even be driving, but that's true of the young kids just
21 starting out too.

22 Q. That fits both ways?

- 23 A. Uh-huh.
24 Q. Do you think that a jury can realistically make a
25 decision free from bias and prejudice?

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- 1 A. I really think they can if they concentrate on what
2 they're doing and what is being said, the facts.
3 Q. What about the issue of if somebody feels like they
4 don't want to follow a particular law, that's always a risk,
5 somebody will say, well, I want to do it -- what I think is
6 the way I should do it and not follow the law, is that -- does
7 that equate to you as the type of preconceived notion -- how
8 do you deal with that?
9 A. Well, I think if the law says something has to be done
10 this way, then you really don't have a choice, you do have to
11 do it like the law says.
12 Q. Otherwise, we're not playing --
13 A. Why even have the law?
14 Q. Right. Ever had a situation where you felt like bias
15 and prejudice played a role in something that you saw happen
16 or --
17 A. Well, you know, in everyday life, you see things
18 happen. You don't necessarily remember them, you think about
19 at the time and then you just go on with your life. Because
20 it doesn't concern you, you just can't worry about everything.
21 Q. How does it make you feel, though, when it happens, how
22 does it make you feel?

23 A. Well, it's not fair.
24 Q. Okay. Well, let's ask Mr. Miller a couple of
25 questions. Mr. Miller, do you think the jury can

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1 realistically make a decision free from bias and prejudice?
2 A. I think they can if they take the duty seriously and
3 apply the law and pay attention to the facts and judge it on
4 the facts.
5 Q. How do you think that that will happen or can happen,
6 what has to happen in order for it to be free from bias and
7 prejudice?
8 A. I mean you have to -- you have to take all the
9 characteristics that we talked about earlier and make sure,
10 you know, that you're doing those things when you're doing
11 your duty as a juror.
12 Q. And confine your decision to the facts that are placed
13 in evidence and not these prejudices, biases and speculations
14 that sometimes people get confused and might try to use?
15 A. Yes, sir.
16 Q. In your business, you try to make your decision based
17 on what?
18 A. Character is a big part of, you know, my business.
19 Q. Because you're a banker?
20 A. Yes, sir.
21 Q. Okay. And when you get a financial statement, I assume
22 that is important?
23 A. Yes.

24 Q. So it is basically a -- hopefully, it is a fact driven
25 process?

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1 A. Yes, sir.

2 Q. Okay. Are those analytical skills -- everybody will
3 have to use those type of analytical skills in this process,
4 so is that a problem that you will be precluded from using
5 subjective things like assumptions based on any of these
6 characteristics or prejudices? In other words, you said
7 character there, and I'm trying to figure out what you mean
8 because sometimes people --

9 A. Well, you have to look at -- you have to look at the
10 facts in what I do, but you also have -- I mean it also -- you
11 know, I guess the facts are, you know, can you pay me back,
12 the character is really paying me back.

13 Q. Is the person committed to paying you back?

14 A. Yes, sir.

15 Q. Okay. One thing that has to be a concern would be
16 someone assessing it and saying I like so and so or I think
17 he's a person of good character and, therefore, I'm going to
18 decide for him. Generally, in matters in court, vouching for
19 somebody, saying he's a good guy or a good female or however,
20 good teacher, whatever, all the things that we might use is
21 not the way we make the decision because we're not here to
22 decide fundamental things like are you inherently a good
23 person or not a good person, we don't decide that. We have to

24 make a decision based on facts. I'm a little concerned about
25 the idea of how would you assess character in a situation

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1 where you don't know the people.
2 A. It's hard to assess, you have to go on what you have,
3 and I guess that's basically the facts.
4 Q. Because in this case, you're not going to get a chance
5 to go shake hands with them and sit down and drink a cup of
6 coffee with them because you can't do that. So can you in
7 this case confine your decision making process to an analysis
8 of the evidence that is presented to you in this case and then
9 apply the law to that; is that a satisfactory decision model?
10 A. Yes.
11 Q. Okay. Can you do that in this case?
12 A. Yes.
13 Q. Okay. I'm not sure, did I ask have you ever had a
14 situation where you felt like someone around you made a
15 decision where you were treated differently, someone made a
16 decision in which bias and prejudice placed a role?
17 A. Sure.
18 Q. How does that make you feel?
19 A. Not good. I mean it makes you want to either do what
20 you can to change it or make sure you do what you can in the
21 future to avoid that behavior.
22 Q. Okay. All right. Mr. Russell, we're going to go
23 through an exercise here, I need to ask you to do something
24 for me. I want you to look out there at the people on this

25 side -- at the table, there are lots of people. 1, 2, 3, 4,

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1 5, 6, 7, 8, 9, 10, 11 -- at least 11 folks at the table, I
2 might have miscounted. I would like for you to look out there
3 and I would like you to tell me who you think is the lawyer
4 for the party bringing the claim, the lawyer for the party
5 bringing claim. I'm going to ask you to do this -- I'm going
6 to ask you to do that, the lawyer for the party bringing the
7 claim, you got your choice of 11 -- of 11 people, and then
8 take a look around, make sure you look at everybody real
9 carefully.

10 A. I would say number three.

11 Q. Number three. Which one is number three?

12 A. One, two, three.

13 Q. Number three, stand up. Number three. The lawyer for
14 the party bringing the claim, okay. Party bringing claim,
15 lawyer.

16 All right. Let's hand that to Ms. Fields, and I know
17 it is -- I'm going to ask you to pick out -- it could be
18 anybody, we're not saying it is the right -- it could be the
19 same person or it could be somebody else. The lawyer for the
20 party defending the claim, the lawyer for the party defending
21 the claim.

22 A. The gentleman right here from my -- number three on the
23 other side.

24 Q. Another number three, we have got a number three.

25 Now, Ms. Farmer, I'm going to ask you to pick out a

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1 person who is -- I'm going to tell you that -- you didn't know
2 anything -- do you know what kind of case it is, civil,
3 criminal anything about it? So they made it without knowing
4 it. I'm going to tell you that it is a civil case, so there
5 is somebody or there are a group of people who may be
6 plaintiffs in the case, there is somebody, a group of people
7 who may be defendants in the case. I'm going to ask you to
8 pick out a person who is a plaintiff in the case. Look
9 around. A person who is a plaintiff in the case. It could be
10 anybody from starting over here to my far right all the way
11 around to -- past the lady with the little -- lighter hair
12 there. A person who is a plaintiff in the case.

13 A. I would say that gentleman with the blue tie straight
14 ahead from me. White hair.

15 Q. Which one?

16 A. Number two.

17 Q. Number two. Number two. That's the person bringing
18 the case.

19 Now, don't be misled, it is kind of like that show on
20 TV where they used to stand up and bob down, that's designed
21 to sort of give you a little bit -- okay. He's supposed to be
22 a person bringing the case, a plaintiff.

23 Let's pick out somebody, Mr. Fowler, who is a
24 defendant, one of the people who are or may be a defendant in
25 the case. Civil case, defendant, pick out somebody who looks

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1 I like a defendant or might be a defendant.

2 A. I say one of the two gentleman sitting right here.

3 Q. Now, you got to tell me -- describe the shirt.

4 A. The khaki colored shirt.

5 Q. Khaki shirt. Stand up, khaki shirt, defendant. All
6 right. We're going to see how you guys did.

7 All right. Thank you very much. I appreciate it.

8 Now -- well, you picked out the man in the blue tie
9 over there as a person bringing the case. He's probably
10 relieved to know that, but he's actually a defense attorney.
11 Didn't get that one right. That's Mr. Fargarson. Mr.
12 Fargarson, thanks very much.

13 A. You want to know what my other choice was?

14 Q. So we can -- that's one wrong, one wrong, one wrong,
15 okay. That's wrong. One wrong. Okay.

16 Now, as to the defendant, well, let's see, I think you
17 picked out -- well, Mr. Carranza, would you stand up?
18 Mr. Carranza is the defendant in the case. And so you picked
19 out -- that's wrong too, the second one was wrong. You picked
20 out a plaintiff in the case.

21 And would you stand up and tell us your name, please?

22 I will let counsel introduce him.

23 MR. ESQUIVEL: Your Honor, this is Francisco
24 Calderon, one of the plaintiffs.

25 THE COURT: Exactly. Thank you very much.

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1 He's a plaintiff in the case.

2 BY THE COURT:

3 Q. All right. So far we have got two wrong out of two.

4 Now, let's go to the -- they did better on the rest of
5 it. Let's see. How many of the people at the table are
6 attorneys who represent a plaintiff in the case, a party
7 bringing the claim? And they got one of them right. They did
8 get an attorney, but there are actually three attorneys
9 representing them. I will let them stand and introduce
10 themselves.

11 MR. EISENBRANDT: Pat Eisenbrandt, Your Honor.

12 MS. BLUM: Carolyn Blum, Your Honor.

13 MR. ESQUIVEL: David Esquivel.

14 THE COURT: Mr. Esquivel. Thank you very much.

15 BY THE COURT:

16 Q. So we have got one, but there's some other folks out
17 there. And I'm going to have -- Mr. Fargarson, will you
18 introduce the attorneys in this case because they didn't get
19 the lead counsel, did they?

20 MR. FARGARSON: No.

21 I'm Bob Fargarson. This is Bruce Brooke.

22 BY THE COURT:

23 Q. But you did get Mr. Brooke. At the most, we got
24 50 percent.

25 Now, let's talk about what we just did, we went through

1 that exercise. Out of 50 percent success rate, what was
2 wrong -- and I do appreciate all four of you doing that, you
3 were very good sports about it, and I do appreciate that, very
4 important to do this exercise.

5 Well, Mr. Francis, what did we learn from that
6 exercise?

7 A. Preconceived notions are not always right.

8 Q. Right, right, exactly. And we did -- they did the best
9 they could, but they had an invalid piece of data to work
10 with. What were they going on?

11 A. Mostly the plaintiff's -- excuse me, all the
12 gentlemen's attire.

13 Q. I don't know what went on, but I'm going to guess
14 attire was part of it, and that's not a good basis,
15 appearance. We had appearance, people told us about
16 appearance earlier, so preconceived -- those guessing -- well,
17 let's see what Ms. Ragsdale -- Ms. Ragsdale, there are a
18 couple of lessons from this exercise, what is the lesson that
19 you take from this exercise?

20 A. Preconceived notions. I thought this man on the end
21 was a lawyer.

22 Q. Exactly, exactly.

23 A. I didn't think he was a plaintiff.

24 Q. Exactly. And he's a defendant. You thought the
25 defendant was an attorney?

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1 A. Uh-huh.

2 Q. And it turns out he's a defendant. You know,
3 appearance can be confusing, and it is just not a valid
4 mechanism. Anything else, any other reason from that -- there
5 are a couple of lessons, I think. What was wrong with our
6 analytical method? And let's ask Ms. Foran, what is wrong
7 with that analytical method?

8 A. Well, judging based on appearance, that's really the
9 only -- the first thing that I was thinking of. I don't -- if
10 there is something else that you are wanting me to say, I'm
11 not sure.

12 Q. No, exactly, exactly, you're exactly right, it is that
13 judgments based on appearance, just like y'all told me before,
14 are inherently invalid. It just doesn't work. You know,
15 that's the reason I asked Mr. Miller those character questions
16 a minute ago is because we have to be so careful about
17 confusing these superficial things with real information.
18 Good point.

19 I mean what is another way to put that, Ms. Reed, as
20 sort of a phrase sometimes people use, somebody will get this
21 phrase eventually, what do we learn from that exercise just
22 based on appearance, what is wrong with that?

23 A. Can't judge a book by its cover.

24 Q. Don't judge a book by its cover. Great. First time,
25 that's great. Usually I have to ask two or three people, I

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1 appreciate that. Don't judge a book by its cover.

2 Mr. Yeager, tell me what you thought -- was that a
3 useful exercise to go through? Some people don't like it,
4 sometimes people do. We do it every time.

5 A. I thought they were -- it was pure guesswork.

6 Q. And that's -- exactly, it is guesswork, and they knew
7 that, our four panelists knew that. They probably said,
8 Judge, I don't want to do this, but you're the judge, I have
9 got to do it, and I appreciate that. Guesswork, a poor method
10 to use for making any decision. Great point.

11 Okay. Ms. Hebron, was that exercise useful to you? Is
12 that a useful way to think about these things?

13 A. Yeah, because I kind of thought that -- I don't know
14 what I was going to say.

15 Q. Well, let me ask this: Do you find that people do
16 judge you or your friends sometimes based on appearance too?

17 A. Yes.

18 Q. Okay. Now, do you ever feel -- do you think that is
19 ever a valid way to make an important decision?

20 A. It's a very valid way to make an important decision.

21 Q. It is important? Their appearance?

22 A. Their appearance?

23 Q. Right.

24 A. No, it's -- it's not important, their appearance is not
25 important to make a decision on the situation.

- 1 Q. Right. I thought I understood you.
- 2 A. Yes.
- 3 Q. It is an invalid way to make a decision, because it
- 4 just -- it's important -- any important decision based on just
- 5 appearance would be inherently suspect.
- 6 Okay. And you said you have experienced sometimes
- 7 people will do that?
- 8 A. Right.
- 9 Q. Okay. Ms. Richardson?
- 10 A. Yes.
- 11 Q. You're a teacher, does this work okay, I need your
- 12 advice?
- 13 A. This is great. It is a good way to conclude a
- 14 statement that, you know, don't judge a book by its cover, it
- 15 is a good way to conclude it.
- 16 Q. I appreciate that. Since you're a professional, I
- 17 appreciate that. Thanks very much. Thank you.
- 18 Ms. Fulgham, what did you think when I asked
- 19 Mr. Russell to first make that decision, what did you think
- 20 about that, because people usually have a thought about it?
- 21 A. Do you mean when you asked him to identify --
- 22 Q. Because I asked Mr. Russell and he somewhat
- 23 reluctantly, but did go ahead and identify somebody. What did
- 24 you think about that question asked Mr. Russell?
- 25 A. I think I understood what you were going for.

- 1 Q. Okay. So you thought we were going to make -- it was a
2 point we were trying to make?
- 3 A. That's right, just more impartiality.
- 4 Q. What is your observation in everyday life about how
5 important appearance can be in people -- in the decisions
6 people make?
- 7 A. I really don't understand what you want.
- 8 Q. Well, if you went -- have you ever gone to a store in
9 very casual clothes and felt you were treated differently than
10 if you were more dressed up?
- 11 A. Oh, I see. And what do I think of that, do I think
12 that is a fair assessment?
- 13 Q. In everyday life, does appearance matter?
- 14 A. To some extent. It shouldn't take you -- you shouldn't
15 take that person wholly on their appearance.
- 16 Q. Okay.
- 17 A. I think you do to some extent.
- 18 Q. The reason I'm asking that is to say we have to not
19 make decisions based on appearance here in the courtroom, but
20 in your daily experience, just like we asked about prejudice
21 playing a role, does sometimes appearance play a role whether
22 we think about it or not?
- 23 A. I think so.
- 24 Q. Okay.
- 25 A. I think so.

- 1 Q. Is that true in your daily experience in some
2 occasions?
- 3 A. I would think to some extent, I think it is. I think
4 if you're going to church or Sunday school, you dress a little
5 different -- or maybe I'm not answering your question.
- 6 Q. I think --
- 7 A. Have I gone a different way?
- 8 Q. So in everyday life, sometimes people are influenced by
9 it, but we don't want to do that here, I mean that's the
10 ultimate point?
- 11 A. That's right, okay.
- 12 Q. Okay. So I think -- well, I think that Ms. Reber, you
13 understand what I'm getting. There is -- in everyday life, do
14 you think people think it matters?
- 15 A. I think it makes a difference in the opinion you form
16 of a person.
- 17 Q. Let me just be real direct here. We have got -- how
18 many men out there have suits on? Just do a quick count. I
19 mean at the table.
- 20 A. Five.
- 21 Q. How many men do not have suits on?
- 22 A. Two.
- 23 Q. Would you tend to think more of the men who have suits
24 on than the men who don't have suits on, think better of them?
- 25 A. Well, I think the guys in the suits look like more

1 professional people.

2 Q. Okay. And that may be your observation. Now -- and
3 sometimes people think that. Now, in deciding this case, does
4 it have anything to do with how we need to resolve the case?

5 A. No, because that really doesn't have anything to do
6 with the case.

7 Q. Okay. Okay. And I just want to make sure we're all on
8 the same page here. Now, Mr. Miller, in your business, I bet
9 you have to wear a suit every day?

10 A. Yes, Your Honor.

11 Q. You saw the -- do you think it affects -- how are we
12 going to avoid letting that be a subconscious effect in the
13 case, book by its cover, that sort of idea, how are we going
14 to avoid that?

15 A. It all comes back to the facts, that's what you have to
16 decide the case on. I mean everybody naturally makes
17 assumptions about people when you first see them, it's a first
18 impression, but you have to set that aside and just look at
19 the facts.

20 Q. Let me ask you this: If you were in the seat of -- I'm
21 going to pronounce the name wrong, Mr. Alvarado. I would ask
22 Mr. Alvarado if you would stand up just for a moment. If you
23 were in his position and you had heard the questioning that we
24 went through and then you saw his colleague right next to him
25 picked out as a defendant, how would you feel about the jury?

1 Thank you. How would you feel about the jury?

2 A. I might be a little unsure, but I mean you have to
3 understand that when you asked these four people, it was a bit
4 unfair because they had zero facts to go on.

5 Q. Exactly. They were great sports, they were great
6 sports about it. But you would feel -- how would you feel?

7 A. I would feel a little uneasy.

8 Q. What would you want to hear from the members of the
9 jury so that you felt that they would be fair to you?

10 A. I guess I just want to hear the, you know, they could
11 put whatever first impressions they have aside and listen to
12 the facts of the case.

13 Q. Okay. Now, let's go back and let Mr. Miller defend
14 himself or Mr. Russell defend himself. I'm sorry, Mr. Miller.
15 Okay, you picked them out, partly, that's hard, and that's a
16 hard situation, you were both asked to do that and I
17 appreciate you being a good sport about it. How would you
18 feel if you were in either of the male defendants' situation
19 and one of your colleagues had been picked out a defendant
20 and, in fact, you're the plaintiff, how would you feel?

21 A. Oh, I don't know exactly what you are getting at.

22 Q. Well, would you be a little concerned that people might
23 not be fair to you because they picked you out as a defendant
24 when, in fact, you were the first person bringing the claim,
25 the plaintiff? They must have thought -- sometimes they

1 picked you out as a defendant, it is a civil case, so it is
2 really -- it is just between parties of equal standing in the
3 community, it doesn't matter, but it might cause you a little
4 bit of unease?
5 A. I would feel kind of disappointed, yes, sir.
6 Q. That's what I'm saying. So how do we make sure --
7 Mr. Miller suggested some things, how do we make sure that
8 everybody is comfortable that the jury will not be influenced
9 by those factors?
10 A. Well, you couldn't judge it on the appearance, I don't
11 guess, of what they wear.
12 Q. Okay.
13 A. Just being honest, I guess.
14 Q. Exactly, you would want to hear that people were not
15 going to judge based on that.
16 Let's ask Ms. Fields, she has been thinking about this,
17 what do you think -- and I appreciate it. You two got them
18 right, so I suppose you're okay, but how would you feel and,
19 secondly, what should -- what would you want to hear from us?
20 A. I would want to hear facts from you before I would make
21 any kind of a decision about anything.
22 Q. You would want to know if it is a fact based decision?
23 A. Right.
24 Q. Ms. Farmer, I'm sorry, you got put in a tough spot
25 here, I appreciate you -- thank goodness, both you didn't get

1 them right or I hate to get them all right, it would make me
2 feel terrible, so you did the right thing. The exercise work
3 for you?
4 A. Yes.
5 Q. Okay. And it is a serious question, if you were a
6 plaintiff and somebody identified you as a defendant, and that
7 happened in this case, how -- would you be concerned?
8 A. I think so, yeah.
9 Q. Okay. And what does the -- what does the plaintiff and
10 the defendant need to hear from you to make them all
11 comfortable that we're going to make a decision on the right
12 basis?
13 A. Well, that the facts is really what we're going to have
14 to look at.
15 Q. Okay. We're just -- just the facts?
16 A. Uh-huh, nothing else.
17 Q. Okay. Just the facts. Well, Mr. Fowler, I appreciate
18 you going along with this exercise. Did it work okay?
19 A. Oh, of course, it did.
20 Q. And once again, of course, both of you fortunately went
21 the other way which helped me on this. What do you think that
22 you would want to hear if you were in the position of the
23 plaintiffs and you had been picked out as the defendants, what
24 would you want to hear?
25 A. I'm sorry, let's go with the facts.

1 Q. You would say we're going to go with the facts in this
2 case, we're going to go with the facts in the case. Do you
3 think that appearance plays any role in the decision that
4 should be made?
5 A. Oh, absolutely not.
6 Q. Okay. All right. Well, ladies and gentlemen, let me
7 look at one or two more things. I appreciate the discussion,
8 I need to check one thing here. You know, in order for you to
9 answer the next question, and we have gone through the
10 specific -- we have gone through the process that we need to
11 think about, but now you have to have some idea of what the
12 case is about. Now, I'm not going to tell you that this is an
13 exhaustive discussion of what the case is about because it is
14 not. But right now, you don't know anything about the case at
15 all, and in a moment, of course, we will have the lawyers
16 introduce all the parties so that you know who they all are.
17 The style of the case is Ms. Chavez, Santos, Calderon,
18 Francisco -- I'm sorry, Franco, and Alvarado against
19 Mr. Carranza. Now, Mr. Carranza is here on my right and you
20 have seen him. Generally, you need to understand that this is
21 the type of case. The plaintiffs bring this lawsuit for
22 alleged human rights abuses that they assert they suffered in
23 El Salvador in the early 1980s. The plaintiffs claim that the
24 defendant Mr. Carranza, who at that time was, as I understand,
25 a colonel in the Salvadoran military is responsible for

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VOIR DIRE OF THE JURY

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1 torture, extrajudicial killing and crimes against humanity
2 based on the law of command responsibility. Three of the
3 plaintiffs allege that their family members were civilians who
4 were killed by members of the Salvadoran military and by
5 groups working together with the Salvadoran military. Two of
6 the plaintiffs allege that they were tortured while in the
7 custody of the Salvadoran military. The plaintiffs seek
8 compensatory damages from the defendant for the alleged
9 physical and emotional pain that they suffered as well as
10 other damages if you determine it appropriate to punish the
11 defendant and attempt to deter any future abuses.
12 Mr. Carranza in this case denies that any of the acts -- that
13 any of the acts caused harm, any of the acts on his part
14 caused harm, injury or death to any of the plaintiffs or their
15 relatives as contended by them in the case. As a matter of
16 fact, it's asserted that the only party who is a plaintiff who
17 is ever seen by the defendant was Daniel Alvarado and that
18 he's the only one who had any actual contact with them. Now,
19 in this case, you will have to decide questions that relate to
20 the application of some laws which are not perhaps as familiar
21 to you as laws such as the Civil Rights Act, which you would
22 be generally familiar with, or acts that affect people against
23 discrimination in the workplace, protect people from physical
24 harm by others in our society and allow the recovery of
25 damages against them. The fact that you will be applying law

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VOIR DIRE OF THE JURY

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1 that you do not hear about everyday should not affect in any
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2 way how you apply that law. This is a case that is brought
3 pursuant to the Torture Victims Protection Act which was
4 passed by the United States Congress in 1992 and the Alien
5 Tort Claims Act which was passed by the United States Congress
6 in December of 2003. I need to tell you the nature of the
7 claim -- of the claims because I need to know if in this case
8 you can be fair to every one and apply the law in this case
9 fairly and impartially. Now, there are a couple of things
10 there, and we're going to start with Mr. Russell again.
11 Mr. Russell, does the nature of the claim itself, a claim for
12 command responsibility in connection with alleged
13 extrajudicial murder and torture cause you to feel so strongly
14 that you could not be fair to either the plaintiffs in this
15 case or the defendant, Mr. Carranza, in this case?

16 A. No, sir.

17 Q. If, in fact, a plaintiff, one plaintiff, two
18 plaintiffs, three plaintiffs, four plaintiffs or all five
19 prove their case by the greater weight of the evidence, do you
20 understand it would be your responsibility to return a verdict
21 for them against Mr. Carranza?

22 A. Yes, sir.

23 Q. Do you also understand that if the -- a single
24 plaintiff or all the plaintiffs fail to prove their claim or
25 claims, their claims, against Mr. Carranza, failed to prove

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VOIR DIRE OF THE JURY

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1 those claims by the greater weight or preponderance of the

2 evidence, you would have to return a verdict for Mr. Carranza?

3 A. Yes, sir.

4 Q. Does the fact that this case involves El Salvador --
5 now, Mr. Carranza is here in Memphis, in Tennessee now -- but
6 involves El Salvador cause you to treat this case differently
7 than you would treat a case that was from west Tennessee, that
8 originated in west Tennessee?

9 A. I don't know what the rules are in El Salvador, but you
10 would have to go by the facts of the court.

11 Q. And that's a good point. The rules that we apply are
12 the rules in the United States. Those two acts were passed by
13 the United States Congress, and they provide the law that will
14 govern the outcome in this case. You will not be looking at
15 necessarily, maybe to some degree, for controlling information
16 from El Salvador, that is not the law that we will be
17 applying. We will apply the law of the United States, and
18 that's a good point. Can you apply the law in the United
19 States even though these events occurred in El Salvador, can
20 you do that?

21 A. Yes, sir.

22 Q. All right. Ms. Fields?

23 A. Yes, sir.

24 Q. You have heard the name of nature of the claims?

25 A. Yes.

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VOIR DIRE OF THE JURY

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1 Q. They are undoubtedly different than you thought they
2 might be?

3 A. Yes.

4 Q. Does the fact that they're different cause you some
5 concern? And you have heard the nature of the claims, does it
6 cause you to automatically tend to side with one side or the
7 other?

8 A. No.

9 Q. Can you give both sides, all sides a fair trial in this
10 case?

11 A. Yes.

12 Q. Can you then apply the law of the United States as it
13 relates to these types of proceedings?

14 A. Yes, I can, Your Honor.

15 Q. Now, let me ask Ms. Farmer, you have heard the nature
16 of the claims in this case?

17 A. Yes, sir.

18 Q. I'm going to tell you that it is not a defense that I
19 wasn't there, and I didn't torture somebody, that's not a
20 defense, this isn't about -- as far as I know, there is not
21 going to be a single piece of evidence that Mr. Carranza was
22 in a room and that he did something to somebody, as far -- I
23 think that's right, make sure we're -- I don't know all the
24 evidence on it, I want to make sure I am right about that.

25 MR. ESQUIVEL: That is right, Your Honor. The

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VOIR DIRE OF THE JURY

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1 defendant did have personal interaction with one of the
2 plaintiffs, but the plaintiffs are not alleging that

3 Colonel Carranza pulled the trigger or directly
4 participated in the torture of any of the plaintiffs.
5 BY THE COURT:
6 Q. That's what I understood, but I think it's very
7 important that we be clear on this point. That's not -- this
8 is not about that. This is not a case in which the allegation
9 is that Mr. Carranza was in a room and he did something to
10 somebody in a, you know, a field or anywhere else, that he
11 went into that place and did something or shot somebody,
12 that's not the allegation. This is about the theory of
13 command responsibility, which will be explained more, but when
14 I give you the law on this, and I will tell everybody the law
15 at the appropriate time in the case, but I want to make it
16 clear, are you going to somehow say, well, this is about this
17 issue that it is not about, is that going to be a temptation
18 for you?
19 A. No, I don't think so, no.
20 Q. Okay. You have heard the nature of the claims?
21 A. Yes.
22 Q. Do they upset you to the point that that would cause
23 you to perhaps not be able to be fair to both sides?
24 A. No.
25 Q. Okay. You would maintain your objectivity throughout

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VOIR DIRE OF THE JURY

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1 this case to require that the evidence be presented to prove
2 the case by the greater weight or preponderance of the
3 evidence as to each claim brought by the plaintiffs?

- 4 A. Yes, sir.
- 5 Q. If the plaintiffs achieve that, will you be willing to
6 return a verdict for the plaintiff?
- 7 A. Yes, sir.
- 8 Q. If the plaintiffs fail to do that, if they fail to do
9 that, do you understand your obligation would be to return a
10 verdict for Mr. Carranza?
- 11 A. Yes, sir.
- 12 Q. Let me ask Mr. Fowler, is this -- is this a type of
13 case that just reading the nature of the charges would cause
14 you to find it difficult to be fair and impartial?
- 15 A. I would have to fall back on my old military days, and
16 if you're in charge, you're in charge, and you can't duck that
17 particular obligation, so, yes, I would probably have a hard
18 time with that.
- 19 Q. In other words, I'm saying -- I think I'm hearing you
20 say that you don't have any problem with the theory of command
21 responsibility, but would it have to be demonstrated to you?
- 22 A. Absolutely.
- 23 Q. Okay. And you don't have a problem with the fact that
24 this is not a case about somebody being in a room and doing
25 something themselves personally?

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VOIR DIRE OF THE JURY

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- 1 A. No, I understand that I think the thing is
2 preponderance of the law.
- 3 Q. Preponderance of the evidence, right.

4 Now, do you have any experience that is going to cause
5 you to -- now that you know the nature of the charge and you
6 do have some background in the military, are you going to be
7 able to decide this case based solely on the evidence that
8 comes in from the witness stand and not based on a
9 preconceived notion? We don't tell people to get rid of their
10 life experiences because that's not what we want, but we want
11 them to make a decision based on the evidence and the law that
12 applies in the case. Can you make your decision based on the
13 evidence and the law that applies in this case, can you do
14 that?

15 A. I can only tell you I will try. I don't really know at
16 this point, to be honest with you.

17 Q. Okay. If at some point during the proceeding it became
18 clear to you that -- and this applies to all of you, that
19 there is something in your background, in your life
20 experiences that is causing you not to be able to decide the
21 case solely on the evidence and the law, your obligation would
22 be at that time to say, Judge, I need to speak to you at side
23 bar, just come around over here and say, you know, I keep
24 thinking about what happened -- it doesn't apply to you guys,
25 what happened to me while I was in Viet Nam and I can't get it

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VOIR DIRE OF THE JURY

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1 out of my mind, and it is influencing me in deciding this case
2 because I was in southeast Asia for a year, it could happen,
3 or it could be something else where -- some other personal
4 experience. You would have an obligation to come tell us

5 about it, tell all of us about that, and we will have a couple
6 of extra jurors, if we need them, they're really not extra,
7 you all get to deliberate, but we will have enough so we can
8 take that into consideration. Mr. Fowler, if that happened,
9 if you found you were being influenced by something that you
10 could not put out of your mind, it wasn't evidence in this
11 case, would you come tell me about it?

12 A. I would. I would.

13 Q. Okay.

14 A. And I had three tours in Viet Nam.

15 Q. Were you there in the -- I was there in '69-'70?

16 A. Yes, sir, I was.

17 Q. Yeah, yeah. Well, you know, so it is hard to tell now,
18 and if that comes up, you just let me know and we will take
19 care of it.

20 All right. Mr. Francis?

21 A. Yes, sir.

22 Q. Anything about the allegations in this case that is
23 going to cause you to not be able to hear the case fairly and
24 impartially?

25 A. No, sir, I think I would be able to keep the facts

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VOIR DIRE OF THE JURY

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1 straight.

2 Q. Can you apply the law of the United States in this case
3 even though as it was well pointed out by, I think, Ms. Fields
4 that this is -- that this is in El Salvador, a lot of this

5 activity, virtually all of it is in El Salvador?
6 A. That wouldn't stop me from making an unbiased decision.
7 Q. And you would apply the U. S. law as I instruct you?
8 A. Yes, Your Honor.
9 Q. Let's ask Ms. Ragsdale, do the allegations in the case
10 affect your ability to try the case fairly and impartially?
11 A. When I first heard it, what you said when you started
12 describing it, when the lady started crying, it kind of did
13 something to me, but you are supposed to look at the facts and
14 hear only the facts, so I will try my best to do that, but
15 that's all I can say, to be fair and impartial.
16 Q. Okay. We don't ask people to do anything other than
17 make that commitment and understand that if something becomes
18 an obstacle, they have to tell us about. Hopefully, it won't,
19 because somebody is going to be called on to decide the case.
20 The case does involve an offense that occurred in El Salvador
21 and it does involve people who obviously speaks Spanish, much
22 of the testimony is going to be in Spanish translated in -- I
23 will tell you as well as anything can be translated anywhere,
24 but is any of that going to affect your ability to decide the
25 case fairly and impartially?

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VOIR DIRE OF THE JURY

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1 A. No.
2 Q. Ms. Foran, you have heard the allegations, a very brief
3 summary, I have not attempted to -- there are detailed factual
4 allegations as to each plaintiff and the events that occurred.
5 The allegations involve torture, they involve extrajudicial

6 killing, that is killing without the authority of the court,
7 that is where you go out and somebody is killed without the
8 processes that are required, and that you have to be able to
9 give a fair trial to both sides, can you give a fair trial to
10 both sides in this case based on the allegations in the case?

11 A. Yes.

12 Q. Okay. Again, I will ask some people, I will make sure
13 everybody understands, if the plaintiffs fail to prove on any
14 particular charge or all of their charges the allegations
15 necessary to sustain a verdict, do you understand that you
16 would have to return a verdict for Mr. Carranza?

17 A. Yes.

18 Q. Occasionally, Mr. Carranza may be referred to by his
19 military rank on occasion, does the fact that he was in the
20 military going to prejudice you in some way so that you treat
21 him less fairly than someone who was not in the military?

22 A. No.

23 Q. Are you going to treat him more favorably because he
24 was in the military, which is a question that we all have to
25 address, make sure that we're being fair, straight down the

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VOIR DIRE OF THE JURY

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1 line for everybody, is that going to make you treat him better
2 because he was in the military?

3 A. No.

4 Q. Okay. Just because there are serious allegations and
5 serious consequences, bad things happened, people got killed,

6 it is probably undisputed people were tortured, is that in and
7 of itself going to cause you to determine that Mr. Carranza is
8 responsible?

9 A. No.

10 Q. You understand that we will go through the theory of
11 command responsibility, and just as Mr. Fowler observed,
12 there's some rules in that regard and a commander can have
13 responsibility. It is not automatic, it is a situation where
14 certain facts have to be proven. If that's proven, do you
15 understand that you have to return a verdict for the
16 plaintiffs?

17 A. Yes.

18 Q. Let's go to Ms. Reed. Ms. Reed, you have heard the
19 nature of the charges in the case.

20 A. Yes.

21 Q. Can you decide the case without emotion, that is
22 without being swayed because of the very nature of the charges
23 against Mr. Carranza, can you do that?

24 A. Yes.

25 Q. Is the fact that this subject matter, I'm really making

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VOIR DIRE OF THE JURY

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1 sure everybody understands, that this subject matter is going
2 to be rather graphic on occasion, it is going to be
3 disturbing, is that going to cause you to make a rush -- to
4 push you so much emotionally that you would not be able to
5 make that balanced and fair decision that you need to? And I
6 say that is an important question because it is going to be a

7 somewhat emotional case.
8 A. No.
9 Q. If someone in the jury room is talking about how badly
10 they feel about somebody, is that going to sort of sway you
11 even though your assessment has been based on the evidence and
12 not the personal's emotional response to the evidence?
13 A. No.
14 Q. Okay. Mr. Yeager, have you ever had a circumstance
15 where -- I can't recall, you were not in the military, right?
16 A. No, sir.
17 Q. You understand the nature of the charges, I'm sure, is
18 that correct? Now, they are going to be outlined in great
19 detail, and what I'm concerned about is that individuals will
20 feel that the theory that -- they are concerned that a person
21 has to be in the room doing something to somebody before they
22 can have responsibility under the law, do you feel that way or
23 how do you feel? That is not contemplated, as Mr. Fowler
24 observed, under the theory of command responsibility, but is
25 that a problem for you?

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VOIR DIRE OF THE JURY

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1 A. I hope it is not.
2 Q. Okay. I mean -- what do you mean by that?
3 A. I mean I hope -- you were talking about the graphic
4 details, I have had a lot of issues and I have got issues that
5 I hope that will not interfere with my ability to act as a
6 juror.

7 Q. If anybody needs to talk at side bar -- you know, there
8 will be some disturbing evidence in the case. I will tell you
9 this: In every case, there are things that are disturbing,
10 but sometimes physical aspects of this may be a little more
11 disturbing than our typical case, not all -- I have some other
12 cases that are certainly very disturbing. Is that something
13 we need to talk about at side bar at the appropriate time
14 about?

15 A. Yes.

16 Q. I will make a note, we will do that in just a moment.

17 Ms. Hebron, you have heard the nature of the charges in
18 this case, it can push somebody, just hearing the nature of
19 the charges, not even the full description of the events that
20 are alleged by the plaintiffs, it can cause somebody to become
21 convinced in their mind that they must side for -- be on one
22 side or the other, does it -- did it affect you somewhat in
23 that way?

24 A. No, sir.

25 Q. Okay. Can you be fair to both sides and wait until the

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VOIR DIRE OF THE JURY

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1 very end of the case when you have heard all the evidence, the
2 final arguments of counsel, the final instructions on the law
3 to make your decision, can you wait that long?

4 A. Yes, sir.

5 Q. Even though it is the type of case it is?

6 A. Yes, sir.

7 Q. Ms. Richardson, you have heard the nature of the
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- 8 charges, do those charges cause you to immediately feel that
9 you must side with one side or the other?
- 10 A. No, I can be objective.
- 11 Q. Okay. Is the nature -- the type of testimony we're
12 likely to hear, and I haven't told you, because, you know, I
13 don't need to tell you everything, you can imagine we're going
14 to have some rather graphic testimony, disturbing testimony,
15 and the concern is that people will hear that testimony in the
16 third, fourth day of the trial and they will reach a decision,
17 and that's wrong, you cannot do that. You have to wait, it is
18 not fair to do that. Is that something that you are concerned
19 about?
- 20 A. I can wait to hear all the evidence.
- 21 Q. Okay.
- 22 A. Stick to the facts.
- 23 Q. Okay.
- 24 A. Down to the end.
- 25 Q. To the very end, okay.

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VOIR DIRE OF THE JURY

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- 1 Let's hear from Ms. Fulgham, you have heard the nature
2 of the charges now, are you going to be able to remain fair
3 and impartial and decide this case solely on the evidence or
4 is it going to be such a subject matter that it's going to be
5 difficult?
- 6 A. I think that -- I know I will try my best to be
7 objective, impartial as I can be.

8 Q. Now, in this case, I have indicated already that if the
9 plaintiffs do establish by the greater weight of the evidence
10 that these events occurred as they allege, you would be
11 required to return a verdict as to any plaintiff who did that
12 against Mr. Carranza, is that clear?

13 A. Yes, it is.

14 Q. Now, if they fail to prove by the greater weight or
15 preponderance of the evidence on any of these allegations as
16 to that allegation, you would have to return a verdict in
17 favor of Mr. Carranza, is that perfectly clear?

18 A. Yes.

19 Q. Okay. Well, Ms. Reber, is the subject matter of the
20 material of such a nature that it is going to be difficult for
21 you to be fair and impartial in this case?

22 A. No, I could be fair and impartial, but I just need to
23 say one thing. I have a hearing aid, and I understand you and
24 I have understood this attorney, but I couldn't understand him
25 when he stood up and introduced the defendant and himself.

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VOIR DIRE OF THE JURY

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1 Q. Okay. What we're going to do is we will get you an
2 extra ear set. That may not help you, you may prefer the
3 hearing aid, but we will also require every attorney, and we
4 do this, they just didn't have them on right now because they
5 didn't need them right now, they will wear a microphone at all
6 times.

7 A. Okay, because I need to hear what he says.

8 Q. Absolutely. You need to hear what everybody says, and
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9 you did the right thing. If anybody cannot hear, that's the
10 thing to do is say I can't hear, you know, please get to a
11 microphone. Now, everybody is going to be on a microphone
12 that we think is going to speak.

13 A. Okay.

14 Q. So we will -- well, thank you very much.

15 We're going to hear some perhaps sexually explicit, to
16 some degree, perhaps as to one alleged allegation, set of
17 allegations particularly, sexually explicit material, it can
18 be disturbing, I'm not going to tell you the -- a lot of this
19 is going to be disturbing, I want you to know that, I want
20 everybody to know that, I'm just trying to ask one person, let
21 everybody hear the same questions, but we're going to have
22 some disturbing evidence in this case. Is that going to make
23 you or cause you to decide this case precipitously because I
24 have heard this thing, it was a really bad thing and,
25 therefore, this has got me upset. That's -- is that a

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VOIR DIRE OF THE JURY

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1 potential problem?

2 A. No, it's not a problem.

3 Q. I know several of you said, and Ms. Richardson has
4 every time, you have got to wait until the end, it is not fair
5 to anybody to decide this case before you have heard all the
6 evidence, and you cannot decide it with an emotional response,
7 it has to be -- and I'm not picking on you. It could,
8 frankly, be anybody in this group as you hear it. Can you

9 wait until the very end?
10 A. I can wait until the end.
11 Q. Okay. Mr. Miller, you have heard the nature of the
12 allegations. Anything about those allegations that would
13 cause you to be concerned that you couldn't hear this case
14 fairly and impartially and patiently until the end?
15 A. No, sir.
16 Q. Okay. Let me tell you what our schedule is.
17 Mr. Miller, you have heard so much -- if you have got a
18 question, I went through some extra things with different
19 people because it is -- they apply to all of you and we're
20 going to have a question -- we're going to talk with
21 Mr. Yeager in just a moment at the sidebar, so we can do
22 that, but I do want to ask any of you, based on all those
23 other questions I asked, did you say I had a response to that
24 question, you know, that bothered me, now, that I know that
25 this is going to happen, I need to tell the judge, anybody on

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VOIR DIRE OF THE JURY

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1 the first row, now that I have heard something, I really need
2 to tell the judge this is -- I'm getting nervous about doing
3 this as I'm required of the law to do.

4 Anybody else in the second row, question? We're going
5 to talk with Mr. Yeager in a second.

6 Let me tell you our schedule, ladies and gentlemen. We
7 do have --

8 A. I do have a question.

9 Q. You want to know how long it is going to take?

10 A. No. Will there be any explanation as to why an event
11 in El Salvador is going to be tried with U. S. law?
12 Q. Well --
13 A. That was a concern of mine.
14 Q. It is one of those very straightforward questions,
15 great question, which is very simple. Mr. Carranza lives here
16 and, therefore, the claim can be brought here.
17 A. Okay.
18 Q. You know, it is -- where else are you going to bring
19 the claim, where else would you bring it? You bring it where
20 the individual is located, and the second thing is that
21 Congress passed these two laws, and the reason I told you the
22 dates was so you would get some idea, they're fairly recent,
23 they're not that recent, they're somewhat recent. I think I
24 made one more recent than it is, I think I did, I apologize.
25 MR. ESQUIVEL: Actually, one is very old.

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VOIR DIRE OF THE JURY

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1 THE COURT: Well, that is the one that was
2 passed back in the -- but how old is that one?
3 MR. ESQUIVEL: That one was passed in 1789.
4 THE COURT: Right. 1789. When I said 2003,
5 was it amended? I don't know -- I had a note there, but
6 anyway, one was 1789, and very fascinating history which
7 the judge is very interested in, I'm not going to tell you
8 about it, because I don't think that would probably be
9 very useful to you. So, no, these are under the laws of

10 the United States, and there will be some very clear
11 instructions, but the question for you, and you raise a
12 great point is that does that bother you, that is what I
13 asked several people earlier, that we're going to try it
14 here?

15 A. It doesn't bother me as long as I -- I just wanted to
16 make sure that -- I don't know, I just wanted to ask because I
17 don't know anything about the law and whatnot, so -- I just
18 don't think I have ever heard of an event -- well, no, I can't
19 say that.

20 Q. I think this is one of those things where you're more
21 familiar with these claims -- not these claims, being brought
22 in our civil rights laws usually in the United States, we're
23 familiar with that, it happens, I don't want to go through all
24 those things, but it does, so it is certainly not -- it is
25 just that you wouldn't have occasion to have this brought to

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VOIR DIRE OF THE JURY

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1 your attention very often.

2 A. Right.

3 Q. Probably not at all if you weren't a juror in this
4 case, right? Good question, okay.

5 Now, let me tell you about the schedule, because I have
6 got to ask -- this case is not going to be over tomorrow.
7 Y'all can figure that one out. But I am assured that it will
8 actually be what we all might find to be somewhat shorter than
9 we would expect. You know, we try cases over here that
10 sometimes last three or four months or longer, just to make

11 sure, so y'all ought to feel really good, this one is only
12 contemplated to last about three weeks. That's not bad,
13 because on November the 11th, we have a holiday, which will
14 be -- it is a standard federal holiday, I can't get this
15 building opened unless I get an act of Congress to keep it
16 open, and I think they're going to be busy on something else
17 during that period of time. So I'm not going to be able to do
18 that. So we will -- you will know that you will have to -- we
19 will not be able to be here on that date no matter what. We
20 are otherwise in session every day, and we will start in here
21 either at 9:00 or 9:15 or 9:30. I have some other things I
22 take care of everyday, but this will be our high priority. I
23 will have to do a few things early in the morning, as all of
24 you would expect, and sometimes something during the day
25 because other duties require it. But basically you're

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VOIR DIRE OF THE JURY

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1 obviously the priority during this entire period of time. We
2 anticipate that the case will conclude, best projection on
3 trial time, probably conclude during the week of the 14th,
4 perhaps toward the end of that week, and that's our situation
5 and it might -- you may be in jury deliberation the week -- a
6 little bit of the time before Thanksgiving. I cannot tell
7 you, and I'm not going to make a promise, because I had a case
8 last year -- two years ago, two years ago that they told me it
9 was going to be a four-week case and we started on June 1st,
10 and we ended sometime in -- I can't remember, late October, or

11 anyway, it took awhile. That won't happen. The attorneys in
12 this case will not do that, but it is like trying to tell you
13 how long a particular operation is going to last, and it
14 might -- one person will be four hours, another person three,
15 and another person six, we just can't tell it. I will be
16 honest with you about it. If anybody has a -- these cases are
17 all important, every case we have is important, we need you to
18 be on the panel, but if you can't be here, if you know that
19 you have got to go to the hospital for an operation two weeks
20 from now or you have got nonrefundable tickets to be in, you
21 know, Washington, D. C. on next Thursday, it is not going to
22 work for you. But we obviously are sensitive to the fact that
23 we know it is going to be an inconvenience for somebody. So
24 the first question right there is we have got 13, 14 potential
25 jurors, does anybody have a schedule situation that they are

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VOIR DIRE OF THE JURY

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1 so concerned about -- that they're concerned it is just going
2 to make this case impossible for you? I'm going to make a
3 note, and I have got Mr. Fowler. Yes, sir. And -- schedule.
4 Let me see if there is anybody else who would be in that
5 situation. It looks like -- oh, Ms. Farmer. Don't get
6 excited about raising your hand because we need to keep as
7 many people as we can. See, those people out there do not
8 want to you raise your hand. We have got Ms. Reed. Okay.
9 Ms. Fulgham, all right. Really, I know it can be a problem,
10 so I don't want you to -- I want you to tell me if it is a
11 problem. I have got five people that need to talk to about

12 the schedule, and -- five people need to talk -- four about
13 the schedule and one about -- Mr. Yeager, we need to talk with
14 you. What I'm going to do for all the rest of you -- I mean
15 you can sit here, all you can do is sit out there while we
16 talk at side bar, that's not a good idea. What we're going to
17 do is for all of you and all of you who have not raised your
18 hand and said you need to speak to me, I'm taking that to mean
19 that you can work this schedule out, I'm going to let all the
20 rest of you go to lunch. Now, you will have a long lunch
21 because we're here, so it will be until 2:00 o'clock, and if
22 we don't get out of here until real late, we may -- you know,
23 we will adjust our schedule at the very end, but I'm going to
24 ask you to be back here at 2:00 o'clock. I'm going to ask all
25 of you who are going early be back here in your seats at 2:00

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VOIR DIRE OF THE JURY

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1 o'clock and we will try to get our jury this afternoon. When
2 we come back, after we get this little series of questions,
3 then plaintiffs' counsel will begin and defense counsel will
4 have some voir dire, and we will see what -- we will see what
5 we need to do.

6 So seven things keep in mind for those of you who are
7 going on break right now. The first thing is do not discuss
8 the case among yourselves. Now, you didn't know anything
9 before to tell anybody about, but unfortunately now you do and
10 I -- I want to caution all of you to not be tempted to talk
11 about the case among yourselves at all, just don't do it. You

12 have other things to talk about. The second thing is you will
13 need to tell somebody what your schedule is, and we are going
14 to try to complete jury selection today, I cannot promise you
15 that that will be done, but I am going to make every effort
16 to; and if we stay a little late to get the jury selected,
17 that would mean that most of you would not have to come back.
18 So we will probably try to do that. If we know we can't, it
19 turns out we can't, we just won't. The third thing, of
20 course, is that you are not to talk to or speak to anybody who
21 has anything to do with the case. Now, you wouldn't -- now
22 you know all these people on the right-hand side might have
23 something to -- you don't know, some of them don't, some of
24 them do, don't speak to them, don't speak to anybody at the
25 table, don't speak to any of the parties in this case, anybody

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VOIR DIRE OF THE JURY

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1 at all. If you see them get on an elevator, wait for another
2 elevator. The fourth thing is somebody might really try to
3 talk to you about this case, I don't think they will, but if
4 somebody comes up and puts a microphone in front of your
5 face -- I'm not saying they will, I don't think they will, but
6 if they do -- it is unlikely, you can't say anything. So
7 don't do that. And if somebody tries to otherwise try to
8 speak to you -- what I'm saying is being with the media
9 doesn't make it different, you still can't talk to them, and
10 they won't ask you, they know the rules, they're very good
11 about it, so there may not be here anyway, that shouldn't be a
12 problem. Don't speak to anybody about the case, don't let

13 anybody talk with you. The fifth thing is don't do any
14 research. Now you know the names of some of the parties and
15 you will know the names of all of them shortly, and you know
16 the type of case. There is -- I'm going -- there's
17 information that you can find about this case, and the answer
18 is don't look for it and don't let anybody try to look for it
19 for you or try to give it to you. It would be a problem. So
20 don't do any research or make any inquiry, do any
21 investigation. The sixth thing is if there's anything in the
22 newspaper on radio or television about the case, you really
23 need to not observe that. Don't do it. It is not evidence,
24 you can't use it, it might prejudice you, don't do it. If you
25 inadvertently hear something on the radio or television,

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VOIR DIRE OF THE JURY

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1 somehow see something, it is probably not a problem, just tell
2 me about, but you need to tell me about it so the lawyers
3 know. And what is the last thing? Always to keep an open
4 mind. Keep an open mind no matter what through this entire
5 proceeding, an open mind until you go to the jury room, the
6 last of the case to make your decision after the final
7 arguments and final instructions on the law and after then, of
8 course, you go for the first time, a couple of weeks from now,
9 you will be able to discuss the case evidence among yourselves
10 and then make up your mind. You don't make up your mind and
11 then go vote. You wait, discuss, deliberate and then decide.
12 We have gone over that very, very carefully. I will start to

13 abbreviate that somewhat. I want you to be here all at 2:00
14 o'clock except for the five people I'm asking to stay. If you
15 will raise your hand, I ask you to stay in the jury box, and
16 that's five of you. We will let everybody else be excused.
17 We will see you at 2:00 o'clock. Thanks very much.

18 We're going to start just in seat four, Ms. Farmer,
19 come around to side bar, we will take you by seat order. Have
20 counsel come to side bar.

21 (The following proceedings had at side-bar
22 bench.)

23 BY THE COURT:

24 Q. Yes, ma'am. What is our situation?

25 A. Well, I have got my father in the hospital right now,

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1 85 year-old, and I think I would be too preoccupied with what
2 is going on with him to devote my full attention, and I don't
3 think it would be fair for me to be here.

4 Q. I understand. Let me ask you a couple of questions.
5 Where is in the hospital now?

6 A. He's at Germantown Methodist.

7 Q. How long has he been in?

8 A. He went in about three, four days ago.

9 Q. What is his condition?

10 A. Well, they had to redo his pacemaker, but right now we
11 have got a situation where he is having, I guess, it is
12 dementia symptoms, and we're having problems with that, he's
13 very paranoid, and he thinks everybody is after him, people

14 are coming to get him, and it is a bad situation right now.
15 Q. Have you been staying with him some during this period
16 of time?
17 A. Well, right now, his wife, my stepmother, has been
18 staying with him, but she is from Panama and does not speak a
19 lot of English, so she is not a lot of help when it comes to
20 trying to get him help with the doctors and medications and
21 other things.
22 THE COURT: Any questions from anybody?
23 MR. FARGARSON: No.
24 MR. ESQUIVEL: No.
25 THE COURT: Any objection to allowing

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1 Ms. Farmer to be excused?
2 MS. BLUM: No.
3 MR. FARGARSON: No.
4 THE COURT: Thanks for telling us. I hope
5 everybody does okay. We're going to let you be excused.
6 Thank you.
7 MS. BLUM: Thank you much.
8 (The following proceedings were had in open
9 court.)
10 THE COURT: Mr. Fowler.
11 (The following proceedings had at side-bar
12 bench.)
13 BY THE COURT:

- 14 Q. Mr. Fowler.
- 15 A. It's very simple, Your Honor.
- 16 Q. Sure. Oh, you're getting ready to go on a cruise?
- 17 A. Right. And I moved it once already thinking 30 days
- 18 would be enough.
- 19 Q. You could get in real trouble by not going on this
- 20 cruise on schedule.
- 21 A. Yes, sir.
- 22 Q. You're sailing on the 3rd of November. I think I want
- 23 to go. Where are you going?
- 24 A. Well, that is still in the air now because of the
- 25 hurricane.

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VOIR DIRE OF THE JURY

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- 1 Q. Right, right.
- 2 A. We haven't gotten an E-Mail yet, but they are sending
- 3 the cruises out, but they're rescheduling them in different
- 4 areas.
- 5 Q. Actually, that's what I understand. Nonrefundable
- 6 tickets, you know, we hate to lose you, because you really
- 7 have an interesting background. You were there from -- you
- 8 probably must have gone in --
- 9 A. The first time I went over, I went over in '66.
- 10 Q. '66?
- 11 A. And sent me back home long enough to have another
- 12 child, sent me back over there, and then, of course, I was
- 13 over there with you.
- 14 Q. Okay.

15 A. And I was with the pull-out then in the '70s.
16 Q. Yeah, yeah. I was in the Delta most of the time.
17 A. I was in the Marine Corps.
18 Q. You were, okay. I liked you guys. There were people I
19 wasn't fond of. Thanks very much. We have to let him go.
20 MR. FARGARSON: What can you do about that?
21 MS. BLUM: Have a great cruise.
22 THE COURT: Have a great trip. Send us a card.
23 A. So do I report back to room --
24 THE COURT: Joe will take care of it. That
25 should take care of it.

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1 A. Thanks a lot.
2 (The following proceedings were had in open
3 court.)
4 THE COURT: Ms. Fulgham.
5 (The following proceedings had at side-bar
6 bench.)
7 THE COURT: This is going a little faster, we
8 could all use a little longer lunch break probably, and
9 you have got a lot of information to digest. We will
10 probably draw the names earlier so you can pull them
11 during lunch.
12 BY THE COURT:
13 Q. Yes, ma'am.
14 A. My big concern is I work full-time to maintain my

15 health insurance. A three-week, it would pretty much
16 necessitate me working like going back and working nights and
17 weekends.

18 Q. I cannot remember if that would be a problem in terms
19 of -- I understand, though, as a practical matter, it would
20 probably be one of those things where you -- are you a
21 full-time employee?

22 A. Yes.

23 Q. Okay. Is it a commission position?

24 A. No, no.

25 Q. Where -- you are at the Gap?

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VOIR DIRE OF THE JURY

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1 A. At the Gap.

2 Q. Which Gap?

3 A. At the one in Saddle Creek in Germantown and I have to
4 make so many hours a week to maintain my health insurance.

5 Q. I'm trying to -- that may be a violation -- not that it
6 helps any, but if they don't, if they try to penalize you for
7 being on the panel, that is an issue, but I have long ago
8 learned that the practical issue is -- it is a lot more
9 important to -- in other words, sometimes the law is one
10 thing, we have a little problem in terms of that. What do you
11 want to do?

12 A. I didn't get to research it with the human resources,
13 because I didn't know if I was going to be selected.

14 THE COURT: Can we have Mrs. Dote checked on
15 this?

16 BY THE COURT:

17 Q. I mean what do you want us to do, do you want us to
18 find out if there is a way for you to stay on and talk to
19 them, make sure it is okay or do you think this is going to
20 jeopardize your employment, therefore, we should let you --

21 A. I don't believe it would jeopardize my employment. I
22 am concerned, like I said, about my health insurance.

23 Q. Sure.

24 A. And, you know -- and I mean I'm my only means of
25 support.

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VOIR DIRE OF THE JURY

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1 Q. Okay.

2 A. And so, you know --

3 Q. It is important to you?

4 A. I have to.

5 Q. Okay. What do you think we ought to do? Do you think
6 we ought to let you be excused?

7 A. Well, I would like to do it if my circumstances were
8 different, but it's a little bit of a hardship for me. I have
9 got a 12 year-old car to have to come down here in, and so I
10 have to worry about that, and just --

11 Q. You could put that next to my 13 year-old van.

12 A. Well, good. I'm replacing mine part by part.

13 Q. Me too.

14 A. Okay.

15 Q. I hear what you're saying.

16 A. Okay.
17 THE COURT: Questions from counsel, anything?
18 MR. FARGARSON: I hate to have her jeopardize
19 her health insurance with the catastrophic illness --
20 BY THE COURT:
21 Q. Why don't have you a seat in that -- is there a red
22 chair that is open there?
23 A. You know, I don't know if it would, because I haven't
24 researched it.
25 MR. FARGARSON: It doesn't take a whole lot for

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1 companies to figure out.
2 A. See, in my situation, I couldn't replace it and I would
3 have to -- but I don't think that they would withdraw it.
4 Q. They're a national employer, so they probably wouldn't.
5 A. I think that too.
6 Q. Would you have a seat in that green chair -- little red
7 chair and let me speak to counsel for just a second?
8 A. Okay. Thank you.
9 (Juror stepped away from the bench.)
10 THE COURT: If there is no disagreement, I
11 don't mind, if somebody would like for us to ask her to
12 hold on, we can let the staff do a little checking, but
13 what do you want to do?
14 MR. ESQUIVEL: If there is a way to verify that
15 she could her maintain her health insurance, I think we
16 would like her to stay, but if there's any possibility

17 that that doesn't work, we don't have a problem excusing
18 her.

19 THE COURT: What has happened, and it has been
20 my experience is there is the practical world and the real
21 world, and the practical world is it is much more --

22 MS. BLUM: I don't want her to have a lot of
23 anxiety that this is hanging over her.

24 THE COURT: What do you think?

25 MR. FARGARSON: I think insurance is such an

♀

VOIR DIRE OF THE JURY

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1 important thing to people. There are these times in the
2 future of insurance and the maintenance of insurance --

3 THE COURT: No objection from the defense. We
4 have got a divided division on the plaintiffs' side.

5 MS. BLUM: No, I wouldn't say it was division.
6 No, I mean it --

7 THE COURT: We can check, is Mrs. Dote there?
8 We don't have the ability to, you know, really do a lot
9 during --

10 THE CLERK: I'm not sure.

11 THE COURT: Is she at lunch right now?

12 THE CLERK: I'm not sure. I will call her.

13 THE COURT: We will ask Ms. Fulgham to come
14 back.

15 MR. ESQUIVEL: If it can't be absolutely
16 verified, then --

17 MR. BROOKE: Their home office is out of
18 Columbus, Ohio.

19 (The following proceedings were had in open
20 court.)

21 BY THE COURT:

22 Q. Ms. Fulgham, what we're going to do is we're going to
23 check and see about your situation to the degree that we can.
24 If we can't be confident that there would be no problem about
25 your health insurance, then we certainly ought to let you be

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1 excused, we all agree on that.

2 A. Right.

3 Q. Will you come back at 2:00 and let us do a little
4 checking, and we will just call you back as soon as we have
5 got some information probably right at 2:00?

6 A. Okay.

7 Q. Okay.

8 A. That's fair.

9 Q. Is that okay?

10 A. Yes.

11 Q. Well, you have a good lunch.

12 A. Thank you very much.

13 Q. Thank you.

14 (The following proceedings were had in open
15 court.)

16 THE COURT: Mr. Yeager.

17 (The following proceedings had at side-bar

18 bench.)
19 BY THE COURT:
20 Q. Yes, sir.
21 A. I have got multiple things that I need to bring to your
22 attention. One is myself and Mr. Brooke have worked together
23 on several suits, I believe even in front of your courtroom,
24 and I know Judge Donald's too. I'm a manager for an insurance
25 company.

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VOIR DIRE OF THE JURY

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1 Q. Sure. That's true, I mean, right. Although that
2 doesn't bother me, it might bother somebody else.
3 A. Right.
4 Q. How close have y'all work together?
5 MR. BROOKE: He has been the corporate witness
6 on at least one case that I know of in Judge Donald's
7 court seven years ago or so.
8 BY THE COURT:
9 Q. Sure. How did that come out?
10 A. We won.
11 Q. You won, all right.
12 A. All right. And also that I have told many people
13 before that I said the closing argument he gave was the best I
14 had ever heard, and I always compared it, and I just want to
15 be truthful with you.
16 Q. No, that's true. Do y'all still have any ongoing
17 contact at all?

18 MR. BROOKE: He testified in a case that is an
19 old case -- it was a case out of 1987, which is over here.
20 I'm not handling the case, but I'm going to be called as a
21 witness, and he will be a witness, I believe, I have
22 heard.

23 THE JUROR: Right.

24 BY THE COURT:

25 Q. Oh, okay. Usually that's excluding -- that's excluded

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1 information. Let me speak to counsel for just a minute. If
2 you will have a seat in the red chair. There was some other
3 things too?

4 A. Yes, I have MS, multiple sclerosis, and you're talking
5 about three weeks, I can't promise from one week to the next
6 when I'm having flare-ups and --

7 Q. I understand?

8 A. And another thing --

9 Q. What happens when that occurs, you're just not able
10 to --

11 A. Numb, nonfunctioning, a lot of problems, make many
12 trips to the restroom.

13 Q. Okay.

14 A. Another thing is I have had a lot of situations with
15 deaths in my family and all, and Bruce is aware of it.

16 MR. BROOKE: He has lost a son.

17 A. A son, father and brother-in-law all in an eight-month
18 period of time, and that has been only been within the last

19 three years. And when you start describing some of the
20 situations and knowing what I went through with some of my --
21 Q. It might be difficult?
22 A. Yes, sir.
23 Q. Okay.
24 MR. BROOKE: His --
25 THE COURT: Anything from the plaintiffs'?

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VOIR DIRE OF THE JURY

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1 MS. BLUM: What's that?
2 THE COURT: Any motion from the plaintiffs?
3 MR. ESQUIVEL: We would move to strike on the
4 basis of cause for the relationship with counsel.
5 THE COURT: Sure. And the other thing is it
6 sounds like he has had a terrible time.
7 MR. BROOKE: His son died in an auto accident
8 about a year ago, it was just a shock.
9 THE COURT: Just his physical appearance looks
10 like he's extraordinarily stressed. Without objection, we
11 should let him be excused. Okay, we will let you be
12 excused.
13 (The following proceedings were had in open
14 court.)
15 BY THE COURT:
16 Q. Mr. Yeager, thanks so much, and we should let you be
17 excused. This should serve as your jury service, so you're
18 excused, and I do not think you will have to come back this

19 month or, I suppose, November. Thanks very much.

20 A. I can leave now?

21 Q. You can leave. Thanks so much.

22 THE COURT: Ms. Reed.

23 (The following proceedings had at side-bar
24 bench.)

25 BY THE COURT:

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VOIR DIRE OF THE JURY

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1 Q. Yes, ma'am.

2 A. Hi.

3 Q. How are you?

4 A. I'm good.

5 Q. Your situation?

6 A. Well, first of all, I don't have an issue with the -- I
7 don't have any biases or prejudices for anything that is
8 occurring here today in the courtroom. However, I do have a
9 personal and economic issue.

10 Q. Okay.

11 A. I'm on contract with my employer. I'm commission only
12 and I'm at the point of my career where these next two months
13 are going to determine if I'm going to remain employed there
14 because I have certain goals I have to meet.

15 Q. Northwest Mutual?

16 A. Right. And I have to go -- like what I do, it is daily
17 and it takes place between these hours, and normally, I may
18 not have had a problem had I had things in place like residual
19 income coming in, but if I don't work, I don't get anything.

20 Q. Sure. You do not receive any amount if you -- it's a
21 hundred percent commission job?
22 A. Right, right.
23 Q. Okay. I take it that this would -- you might lose --
24 you're concerned not with only the hundred percent commission,
25 but you're also concerned about your ability to stay in this

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VOIR DIRE OF THE JURY

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1 area of employment?
2 A. Right, just because of these next two months are going
3 to, like I said, determine if I'm going to be able to keep my
4 contract. And if I'm not working --
5 THE COURT: Any questions from plaintiffs'
6 counsel?
7 MS. BLUM: No.
8 MR. ESQUIVEL: No.
9 MR. FARGARSON: No.
10 THE COURT: Let me let you have a seat in that
11 little red chair, and I will check.
12 (The juror stepped away from the bench.)
13 THE COURT: One of the things that we consider
14 is whether a person is one hundred percent commission and
15 how long the trial is going to be. Where you're a hundred
16 percent dependent on being -- usually we allow that person
17 to be excused. If there's some other financial interest,
18 we don't. She also is concerned that is a bad time.
19 Position from the plaintiffs' regarding her

20 request to be excused, any objection?
21 MS. BLUM: No objection.
22 MR. ESQUIVEL: No objection.
23 THE COURT: Any objection from the defense?
24 MR. FARGARSON: No objection.
25 THE COURT: Both sides agree that we just let

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VOIR DIRE OF THE JURY

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1 Ms. Reed -- I hate to lose Ms. Reed too, but we will.
2 (The following proceedings were had in open
3 court.)
4 THE COURT: Ms. Reed, thank you so much for
5 telling us that, and we really hate to lose you, but I
6 understand you need to go take care of business. We're
7 going to let -- hundred percent commission is one of those
8 few exceptions, and when a person assesses that as the
9 problem that you have assessed it as, we let you be
10 excused. Thanks so much for being here. Thank you.
11 (The following proceedings had at side-bar
12 bench.)
13 THE COURT: Now, what we ought to do is call --
14 draw four names. Now, hopefully, they're all still out
15 there. That way, you can pull their material and review
16 it, and we will draw them in order for seat 3, 4, 13 and
17 14.
18 MS. BLUM: Okay.
19 THE COURT: And that way, when they come in, we
20 will say, we're going to call the names.

21 THE CLERK: This lady is out on the panel and
22 she would like to speak to you. I think she has had to
23 hire somebody to do some family care. Tracy Montgomery.

24 THE COURT: Let's have her come up real
25 quickly.

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VOIR DIRE OF THE JURY

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1 (The following proceedings had at side-bar
2 bench.)

3 BY THE COURT:

4 Q. Ms. Montgomery?

5 A. Yes. Thanks so for agreeing to see me.

6 Q. Oh, absolutely, absolutely.

7 A. I have got a grownup that I take care of daily. I have
8 got a home healthcare nurse there with her now. I only hired
9 her from 7:00 to 3:00 not realizing that I would be here much
10 longer, and I have to pay for it, the state won't pay for it
11 anymore. And also, I don't think I would be a very good juror
12 for this case, I was raped, molested, and as I was sitting
13 there, I closed my eyes and was seeing some things, brought
14 back to my remembrance on some things that happened to me and
15 my sister. And, honestly, I don't think I could give -- I
16 don't think I could get past that in order to give a very good
17 decision on this particular case.

18 THE COURT: Let me ask any questions from
19 either side?

20 MS. BLUM: No.

21 BY THE COURT:

22 Q. Will you have a seat in that little red chair and let
23 me check and make sure? I think we're going to be able to
24 excuse, but I want to ask them just to make sure.

25 A. Yes, sir.

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VOIR DIRE OF THE JURY

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1 Q. Thank you.

2 A. Thank you.

3 (The juror stepped away from the bench.)

4 THE COURT: I mean any objection? I take it
5 there's a motion from the defense for her to be excused?

6 MR. FARGARSON: Well, something like that
7 happened, and she said she couldn't get by that, that
8 would just bring back old memories and would be too harsh
9 on her, I mean what can you say?

10 THE COURT: I agree. I think we should grant
11 the defense motion to excuse. There's obviously no
12 opposition from the plaintiff.

13 MR. ESQUIVEL: No.

14 THE COURT: We will let Ms. Montgomery be
15 excused.

16 (The following proceedings were had in open
17 court.)

18 BY THE COURT:

19 Q. Ms. Montgomery, thank you so much. I know that is not
20 easy to come tell us about, so we do appreciate you telling us
21 about that, we're going to let you be excused. Thanks very

22 much.
23 A. Thank you.
24 (The following proceedings had at side-bar
25 bench.)

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VOIR DIRE OF THE JURY

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1 THE COURT: Let's go back to our chairs and
2 pull those numbers.
3 MR. FARGARSON: Now, when are we supposed to be
4 back?
5 THE COURT: 2:00. We should be fine.
6 (The following proceedings were had in open
7 court.)
8 THE COURT: We're going to call four names to
9 fill seats three, four, 13 and 14 and, of course, we will
10 advise these individuals of that when they come back in.
11 And if someone turns out not to be here in this group,
12 they should all be here, then at that time we will address
13 that, but these people are going into the seats that we're
14 talking about, so it is three, four, 13 and 14.
15 THE CLERK: Devonna Rooks, R-0-0-K-S. Connice
16 Ross, R-0-S-S. Seigle Hayes, H-A-Y-E-S. Terrance Roby,
17 R-0-B-Y.
18 THE COURT: All right. Is there anything else
19 before we take our lunch break from the plaintiffs?
20 MR. ESQUIVEL: No, Your Honor.
21 THE COURT: Anything else from the defense

22 before we take our lunch break?

23 MR. FARGARSON: No, sir.

24 THE COURT: All right. By the way, one thing
25 about the reference to the burden of proof, it does change

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1 a little bit under certain circumstances, as you know.
2 I'm using a preponderance discussion because it seems to
3 be the least confusing. Any thoughts about that from
4 plaintiffs' counsel? I don't want to mislead anybody, I
5 just don't -- I don't think it is the critical discussion
6 point, but I might change that presentation.

7 MR. ESQUIVEL: Your Honor, we don't have any
8 problem with the way the court has discussed it.

9 THE COURT: Okay. You realize that when we get
10 to the next stage of the case, that last question, I will
11 have to look at the standard to be sure that we're using
12 the right standard on that.

13 Mr. Fargarson, I think that's the way I need to
14 discuss it at this point in time. Of course, it depends
15 on how we apply the punitive damage question and how we
16 present that, but anything else on that?

17 MR. FARGARSON: Well, there was only one thing,
18 and that is there was something about charges one time and
19 then an alternate to allegations, and I think it should be
20 consistently allegations.

21 THE COURT: I will try to say allegations most
22 of the time, I will certainly try to do that. All right.

23 We will see everybody at 2:00 o'clock.

24 THE CLERK: All rise. This honorable court

25 stands in recess until 2:00 o'clock.

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1 (Recess taken at 12:30 p.m. until 2:00 p.m.)

2 THE COURT: We excused four people, and we have
3 pulled the next names so they can pull their
4 questionnaires. And Mr. Warren, would you advise who is
5 in 3, 4, 13 and 14?

6 THE CLERK: Devonna Rooks, seat number three.
7 Connie Ross, R-O-S-S, number four. Seigle Hayes,
8 H-A-Y-E-S, seat number 13. And Terrance Roby, R-O-B-Y,
9 seat number 14.

10 BY THE COURT:

11 Q. Ms. Rooks, how are you?

12 A. I was fine.

13 Q. I am going to go through the same questions, we will go
14 through them a little more quickly because you have heard
15 everybody's answers. Let me ask Ms. Ross, what do you think
16 is the most important characteristic for someone who is going
17 to be on a jury?

18 A. To be honest with yourself about how you feel about the
19 facts that are being presented.

20 Q. To be honest is great. How you feel about the facts,
21 I'm not sure what you mean by that.

22 A. I mean to --

23 Q. If it's an emotional response, we all have to be
24 concerned about it, but if it is to be honest about the
25 analysis -- what -- tell me.

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1 A. I guess to take the facts as they were presented, facts
2 are facts.

3 Q. All right. Let me ask, Ms. Ross, what do you think is
4 the most important characteristic for someone who is going to
5 be on a jury?

6 A. Integrity, to maintain the integrity of the process.

7 Q. Okay. Integrity, that's great. Maintain integrity of
8 the process.

9 We're going to have a little bit of a stretch here, we
10 have got to get back to -- Mr. Hayes, right. What do you
11 think is the most important characteristic for someone who is
12 going to be on the jury?

13 A. I would say be attentive, be real attentive, pay
14 attention to it and be fair.

15 Q. Be attentive and be fair.

16 And, Mr. Roby, what do you think?

17 A. I would say to be honest and trustworthy.

18 Q. Okay. Now, Mr. Roby, I'm going to let you keep the mic
19 for just a second. When we went through the list earlier, of
20 course, there were a lot of comments, and those comments
21 included comments that a person should avoid personal
22 prejudice, a person should be impartial, should be unbiased,
23 and then we had a discussion about what are examples of bias

24 and prejudice, and what would you have put on that list of an
25 example of something -- and there's some things basically we

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1 didn't include the first time around, what would you put on
2 that list of things about which there may be bias or
3 prejudice?

4 A. Let's see, I would say like favoritism, showing certain
5 favor toward another person.

6 Q. Certainly favoritism would be a problem. And what is a
7 situation where someone might favor somebody because of a
8 characteristic? Usually biases and prejudices are based on
9 some characteristic that you can't change, you know, you are
10 either going to be male or female, and some people are based
11 one way or the other about that. You know, you're going to
12 speak English or not speak English, you're going to be
13 somebody who is -- has a particular religious belief or
14 doesn't have a particular religious belief, so all those are
15 potential things for prejudice, what would be one that we
16 would want to be on guard of in this case, be concerned about,
17 on guard about, concerned about, being prejudiced about?

18 A. Can you repeat that question again?

19 Q. What is a bias or prejudice that we would certainly
20 want to be sensitive about in this case? I suppose we want to
21 be sensitive about any bias or prejudice, but what is an
22 example? There are a couple that we can look at and say,
23 well, okay, I would really be concerned about these biases and

24 prejudices?

25 A. I would say the appearance or race, of that nature.

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1 Q. Okay. Appearance is certainly an important one, and
2 certainly I don't know if race is an issue really here, but
3 appearance, perhaps, exactly. Hopefully, none of them are
4 issues.

5 Mr. Hayes, what would you put on that list for us to be
6 sensitive about?

7 A. I would say nationality.

8 Q. Nationality, thank you, thank you, because we have
9 people from another country, and they're not U. S. citizens.
10 Nationality, national origin, sometimes we call it.

11 Ms. Ross, what would you want put on that list?

12 A. Possibly classicism.

13 Q. Exactly, classicism, a concern, it may be an issue, I
14 don't know, it might something that might come up, we wouldn't
15 want to be subject to that sort of bias or prejudice.

16 Ms. Rooks, what do you think we would want to put on
17 that list for sure? What would you want to put on that list?
18 You have a heard a little bit more about it, so you have the
19 advantage --

20 A. They have taken some of mine.

21 Q. Well, those are good ones.

22 A. Right. That -- possibly the difference in culture
23 should not --

24 Q. Cultural difference, absolutely, that's a great. I

25 mean that's a great one, because we might -- we might try to

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1 make -- I don't think you will, but people might be saying,
2 well, I don't understand this, there's a difference in
3 culture, I don't understand it, therefore, I don't like it,
4 that would be a problem. That's a very good point.

5 Absolutely.

6 Well, now, the question we then got to, as you will all
7 recall, was that illustration where we went through that
8 exercise and we got to people pick out, and we do it in every
9 case, it is for lots of reasons, what do you understand would
10 be one of the lessons to take from that illustration, that
11 exercise, and we will start with Ms. Rooks?

12 A. I think one of the main lessons was that you cannot
13 look at appearance, you cannot look at that and make decisions
14 without knowing the facts.

15 Q. Okay. Exactly. Good point. And Ms. Ross, what would
16 you say -- what did you take from that exercise?

17 A. Not to make assumptions or draw conclusions too
18 swiftly.

19 Q. Absolutely, great point.

20 And Mr. Hayes?

21 A. Right. I would say don't make a spur of a moment
22 decision and think you're being fair.

23 Q. That's a very good point, that's a very good point.

24 And Mr. Roby?

25 A. I'll just say just stick with the facts.

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1 Q. And definitely stick with the facts and don't go with
2 something that is a bias or prejudice, something that is not
3 evidence, absolutely.

4 Then, Mr. Roby, we got to that next question which was
5 do you think that the jury can make a decision without being
6 influenced with bias -- by biases, prejudices, preconceived
7 notions, do you think that's possible? And some people were
8 more reluctant than others about that, but everybody sort of
9 reached the same conclusion, what do you think, can people
10 really do it without being influenced by biases and prejudices
11 and, if so, how?

12 A. Yes, I feel that they can if all of them are honest and
13 committed to what they're doing.

14 Q. Okay.

15 A. And stick with the facts.

16 Q. And Mr. Hayes, what do you think as a practical matter,
17 do you think it is a really --

18 A. Practically, I would like to think that it could be
19 done without prejudice, but if some slipped in, I don't know
20 how you would ever know it.

21 Q. And that's a good point, and that is if you saw
22 something coming up in the deliberations that was a reference
23 to an inappropriate illegal consideration, unconstitutional
24 consideration, these things we talked about, how would you try
25 to deal with that, because that's the one case where a juror

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1 probably has some obligation to tactfully come up with a way
2 to deal with it, how would you deal with it?
3 A. I guess you would have to inform the court.
4 Q. I don't want to know. No, I'm kidding a little bit.
5 If it got to be of a constitutional -- the first question for
6 a juror is you attempt to deal with it internally because it
7 may be that somebody has inadvertently said something or said
8 something, which when reminded, they would say, you know, I
9 can't consider that, that is inappropriate. A lot of
10 people -- you know, you don't want to cut down free
11 discussion, but at the same time, would you think you would be
12 able to first bring that up to somebody and what would you say
13 to try to get it back on track?
14 A. I would try to make sure I understood it right, you
15 know.
16 Q. Right, because you might misunderstand?
17 A. Right, you might think that, but be more solid, take
18 the time to discuss it, you know.
19 Q. That sounds like -- let's see what Ms. Ross says about
20 that, because, Ms. Ross, the first question was do you think
21 that a jury can make a decision without being influenced by
22 bias or prejudice, and if so, how, and then we're going to
23 talk about the other question?
24 A. I think ideally that's what we would seek after,
25 although I'm not one hundred percent sure that in some cases

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1 personal experiences will have to play a part, but I think the
2 jurors can each make a concerted effort to be as deliberate in
3 their thinking and as fair as possible.

4 Q. You raised an issue there about personal experience
5 played a part. Do you think personal experiences ever play a
6 part about determining what the facts are in the case?

7 A. Not the facts, but how people perceive those facts.

8 Q. Okay, because I agree with you that the -- you can
9 all -- you could all, for that matter, have been to El
10 Salvador and seen something, I don't think with this group,
11 but -- because we have some information on you, but if you
12 had, you couldn't use that to decide the facts because it's
13 not evidence, it's not evidence in the case, so you could
14 couldn't bring it up and say this is what I saw. You would be
15 a witness in that case, you couldn't be a juror.

16 Now, we don't tell you or ask you to forget your common
17 sense or experiences, but we ask you to separate that and say,
18 well, I had this personal experience and, therefore, I think
19 this is what happened, that's wrong, you can't do that. Is
20 that okay?

21 A. Yes.

22 Q. I think that's what you're telling me.

23 A. Yes.

24 Q. Now, on the -- what are you going to do if somebody
25 brings up an unconstitutional thing, an illegal factor, you

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1 know, whether it is -- whether it is religion or national
2 origin, good points there, or gender or age or anything else,
3 how are you going to address that because I just asked that
4 question of Mr. Hayes?

5 A. Well, I would try to remain objective for my own
6 thinking and perhaps be able to present an argument to them
7 that would bring them back to the main focus.

8 Q. You would just try to get them back to that point.

9 Ms. Rooks, do you think jurors really can decide a case
10 without being influenced by bias and prejudice and, if so,
11 how?

12 A. I think they can, but I think the main thing is you
13 have to stay focused on the facts and keep it within those
14 guidelines.

15 Q. Once again, if somebody brings up an unconstitutional
16 factor, and you -- how are you going to try to address that,
17 you have got a couple of suggestions here, it is really a
18 matter of understanding your thought process, there's no magic
19 way to do this.

20 A. I think I would say yes, but what about this, does this
21 not play this part in that. I think I would just question
22 that.

23 Q. Again, you would be kind of like Ms. Ross, you would
24 try to bring them back into the facts?

25 A. Draw back into the facts.

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1 Q. Now, you'll recall that after we went through this
2 discussion, I then read to all of you a very brief summary of
3 the nature of the allegations. I did not talk about each
4 individual plaintiff and what they alleged, I think the
5 lawyers at the appropriate time will tell you that, but I
6 generally gave you a very general idea of what the allegations
7 are and what the position of the defense is. And this is a
8 command responsibility question, and they will have to prove
9 some very specific things in that regard, but we are going to
10 have a group -- some proof which will include torture,
11 extrajudicial murder, and some pretty graphic things may come
12 up, probably will. In light of the type of case it is, is
13 that going to affect your ability to try this on the evidence
14 that's presented and the law as the court gives it to you or
15 is it going to simply be a difficult case for you to do that,
16 because it is going to probably have some emotional impact on
17 you, and we can't decide it that way, what about that?

18 A. I think I have the demeanor, I think I can handle
19 whatever is presented as long as it is the facts and consider
20 it that and keep the emotions out of it.

21 Q. Okay. Ms. Ross, what about that for you?

22 A. I think I can remain objective.

23 Q. And Mr. Hayes, what about that for you?

24 A. I think it would be a difficult case, but I should be
25 able to do it.

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- 1 Q. Okay. And Mr. Roby, what about you?
- 2 A. Yes, I think I can maintain it, yes, sir.
- 3 Q. All right. Okay. There was one other area -- we have
- 4 talked about some other things too, but all of you need to
- 5 know -- I need to once again check with all of you, the four
- 6 of you, about the timing. We expect the case to be two to
- 7 three weeks, I cannot tell you how long it will take you to
- 8 deliberate, it will take a little time. This is not something
- 9 you rush out and you do something quickly, it is very sober,
- 10 it is a somewhat protracted process. Is the time period -- we
- 11 all think it will be concluded before Thanksgiving, but we
- 12 can't tell that with absolute certainty and once a jury is a
- 13 jury, you're in the case, we will need you all here. Any
- 14 problems with the time, Mr. Roby, is that okay?
- 15 A. No, sir.
- 16 Q. And Mr. Hayes?
- 17 A. The only thing that I would be subject to is I have got
- 18 a real sick sister and if something was to happen to her, if
- 19 she was up in Illinois, I might have to take a trip to there.
- 20 Q. We will have the ability to the deal with that if we
- 21 have to, so I understand those things could happen to
- 22 individuals.
- 23 Ms. Ross, your situation?
- 24 A. I don't have any time constraints at this time.
- 25 Q. Okay. And Ms. Rooks?

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1 A. I do not have any time constraints.

2 THE COURT: All right. Good. Let me see
3 counsel briefly at side bar.

4 (The following proceedings had at side-bar
5 bench.)

6 THE COURT: Okay. I'm about ready to let y'all
7 start. And are y'all all set? And secondly, is there
8 anything else you want to ask me the panel? I mean I
9 think the process helps you get a real feel for who these
10 people are.

11 MR. ESQUIVEL: Very much so.

12 MS. BLUM: Very much so. Thank you very much.

13 THE COURT: Hopefully, it helped everybody. I
14 want to give everybody a fair trial. Anything else I need
15 to ask from the defense? I mean y'all have got questions
16 to ask.

17 MR. FARGARSON: A few, yes. I do want to make
18 an objection to some of the statements the court made in
19 explaining command responsibility, I want to except to
20 some of those things.

21 THE COURT: You can't --

22 MR. FARGARSON: I know.

23 THE COURT: Okay. What do you want me to do?
24 I will fix it if there is something I need to do. You
25 just tell me how to fix it.

1 MR. FARGARSON: Well, I just think that what
2 you were saying about command responsibility almost was
3 directing a verdict against the defendant.

4 THE COURT: Well, I don't think so. I haven't
5 even told them what the elements are and how they have to
6 prove it. I'm just trying to explain to them that you
7 can't -- this isn't a about a case about someone who is in
8 a room and shot somebody, and if they thought that, that
9 would be a terrible problem for everybody, because
10 ultimately there would be great confusion on the part of
11 the jury, I don't want them to be confused about that.

12 MR. BROOKE: The other issue, Your Honor, is,
13 as extracted from Mr. Hayes in Your Honor's discussion
14 about constitutional and discriminatory feelings, it
15 potentially imposes upon the sanctity of the jury as to
16 feeling like they have to report their fellow juror for
17 political correctness.

18 THE COURT: I told them not to do that, I said
19 I didn't want to hear it.

20 MR. BROOKE: I just wanted to make sure.

21 THE COURT: You want me to say that again? I
22 will go over it again, that's a good point.

23 MR. BROOKE: I don't want them to feel a burden
24 that in the jury room they have to --

25 THE COURT: No, I'm going to say that, by and

1 I large, deliberations are between the jurors, I don't want
2 them to be confused. That's a good point. That's good.
3 I will do that.

4 Anything else, and then we're going to turn to
5 counsel? I'm going to let you once again introduce
6 yourself. Why don't you let them stand up. To them,
7 right now, it is still confusing, I haven't attempted to
8 do that at all.

9 MR. ESQUIVEL: I will stand up and introduce
10 the lawyers and the clients before I start.

11 THE COURT: And when you get to your side, you
12 may want to do it again just so they -- although you have
13 got a smaller group, it is not so hard. All right.

14 (The following proceedings were had in open
15 court.)

16 BY THE COURT:

17 Q. When Mr. Hayes answered -- Mr. Hayes, when you answered
18 that question, one of the things that I didn't want to leave
19 the impression was that the jury should tell me if a -- in
20 accordance with the instruction I gave you originally, if
21 someone does attempt to talk with you about the case, that's
22 inappropriate; if you see something in the media about the
23 case, you should tell me, but those are the only types of
24 things I really told you to come see me about. In the
25 deliberative process when you're deliberating, I'm not asking

1 you to tell me about your deliberations or if somebody says
2 something and there's an issue about whether they're
3 considering the right thing, that's not -- that's
4 deliberative, that's your deliberations, that's not something
5 the court becomes involved in. I would say except in the most
6 extreme situation, if somebody offers somebody money, I
7 suppose you better tell me about it, but nothing that I have
8 ever heard like -- has ever occurred, and I wouldn't expect
9 that. If there is a disagreement with your fellow jurors
10 about the facts, that's your business, that's not the court's
11 business, because you will be judges of the facts. But I
12 really -- I point that out only to say that the one thing that
13 the Constitution requires of all of you is that you be
14 impartial, is that you be impartial, and we have talked about
15 that a lot. And that's something that you, the jury, control
16 when -- in your deliberative process because you will be
17 judges of the facts. So I want to make it clear that is not
18 the type of thing that you send me a message about. That's --
19 we can't do that. All right. I did want to clear that up.

20 Anything else -- anything of the four of you -- we did
21 ask you to come up here and I wanted to give you a chance if
22 you anybody needed to. Anybody need to speak with me at side
23 bar about any matter at all? All right, I'm going to turn to
24 counsel for the plaintiff, they're going to reintroduce
25 themselves and introduce all the plaintiffs at this time, and

1 then counsel for the plaintiff will have some additional
2 questions for you. Please give counsel close attention.

3 MR. ESQUIVEL: Thank you, Your Honor. My name
4 is David Esquivel. I'm with the law firm of Bass Berry
5 and Sims. I am one of the lawyers representing the
6 plaintiffs in this case. With me is Patty Blum --

7 THE COURT: You don't have your mic on, I'm
8 sorry, and every attorney has to wear a mic and keep it
9 on, otherwise the people in the back of the room will not
10 be able to hear. I'll just ask everybody to please do that.

11 MR. ESQUIVEL: All right. Thank you, Your
12 Honor. Is that working?

13 THE COURT: That's great.

14 MR. ESQUIVEL: Again, my name is David
15 Esquivel. I'm with the law firm of Bass Berry and Sims.
16 I'm one of the lawyers representing the plaintiffs in this
17 case. One of my co-counsel is Ms. Patty Blum, she is with
18 an organization called the Center for Justice and
19 Accountability, which is --

20 THE COURT: Let's talk about this. Okay. Side
21 bar.

22 (The following proceedings had at side-bar
23 bench.)

24 THE COURT: You can't say that. That is kind
25 of like saying I'm from the Church of Christ, you know, we

1 don't do that. We don't say I'm from the Center of
2 Justice -- you can say that she is from wherever, but as
3 far as I can tell, she is just a nice lawyer; otherwise,
4 you sound like, well, we're inside of justice and they're
5 the other side, they're the bad guys, they immediately
6 responded when you said that. I didn't know you were
7 going to do that. You tell them their names. I'm going
8 to tell them it doesn't matter where you guys are from, it
9 doesn't make you good guys or bad guys. You're all
10 lawyers, so I suppose we can't do anything about that, but
11 I need to tell you don't do that, because that does create
12 prejudice, potential prejudice. I'm going to tell the
13 jury to disregard that. I hope I got that before you guys
14 got to it; is that the way you want me to handle that?

15 MR. FARGARSON: Well, I should ask for a
16 mistrial.

17 THE COURT: Over in state court, they would
18 probably give you one. I'm certainly not going to do
19 that. We don't have a problem. We told the jury about
20 bias and prejudice, but who are you going to say the rest
21 of them are from? We don't get to give bios on lawyers.

22 MR. ESQUIVEL: No, I won't. I really just
23 meant to justify them.

24 THE COURT: I will also tell you that the law
25 firm -- I don't even tell them what law firm you're from,

1 because they're not going to know where you're from. The
2 question is do they know you as a lawyer.

3 I'm sorry, Ms. Blum, it put me in a little bit
4 of a spot. How do you want me to address this?

5 MS. BLUM: No, this is fine. So at this point,
6 we will just have the record reflect that --

7 THE COURT: I just wanted -- I can see that
8 there was an objection.

9 MR. BROOKE: Could Your Honor give a partial
10 cure by saying that she is with a private organization,
11 that might --

12 THE COURT: Of course, that was the risk, they
13 might think it was some governmental agency. That's all I
14 want to do. It is kind of like the weight of the
15 government in the courtroom. Okay. We will -- I will
16 just tell them that.

17 MS. BLUM: So, Your Honor, just to clarify,
18 should --

19 THE COURT: I will just say that -- what do you
20 want me to say?

21 MR. BROOKE: Private organization.

22 MR. ESQUIVEL: Private organization is fine.
23 They're lawyers with a private organization, is that
24 acceptable?

25 THE COURT: Sure, sure. It is when somebody

1 says something that has got justice in it, it sounds
2 serious. It will be fine.

3 (The following proceedings were had in open
4 court.)

5 THE COURT: We're trying to avoid any confusion
6 in the case and, of course, I'm aware of this, but you
7 wouldn't be. All of the attorneys in this case, both for
8 the defense and for the plaintiffs, are private attorneys.
9 That name might have created a little confusion about
10 Ms. Blum. And she is with a private organization. She is
11 not associated with the United States or with the
12 government, and I didn't want to create an incorrect
13 impression, they didn't want to either, and the question
14 was, what do we do. And I said we're going to tell them
15 not to worry about where these attorneys are from, it is
16 just -- they're all from private organizations, private
17 practice. And that way, we won't have to worry about it,
18 won't make any difference. They may want to tell you
19 their law firms. Do any of you know any of these
20 attorneys? Okay. So if they want to give the name of the
21 firm, that's fine, but I think that will take care of
22 that. Counsel, I'm sorry, I think we just needed to
23 take -- now the floor is yours.

24 MR. ESQUIVEL: I thank you, Your Honor, I
25 appreciate you clarifying that.

1 BY MR. ESQUIVEL:
2 Q. Let me go ahead and continue introducing counsel,
3 Ms. Patty Blum, Mr. Mat Eisenbrandt, also one of the attorneys
4 for the plaintiff. The five plaintiffs are seated here, and I
5 ask them to stand up as I introduce them. This is Ana
6 Patricia Chavez. Next to her is Ms. Erlinda Franco. Next to
7 Ms. Franco is Cecilia Santos. The next plaintiff is
8 Mr. Daniel Alvarado. Next to Mr. Alvarado is Mr. Francisco
9 Calderon. Thank you.
10 I would like to follow up with a few of you based on
11 some of your responses to Judge McCalla's questions, and also
12 I know that each of you filled out a questionnaire, and we
13 certainly appreciate the time and the effort that it took to
14 give us that information. Mr. Miller, I would like to start
15 with you and ask up about your military service. I understand
16 from your questionnaire that you did serve active duty in the
17 military, is that right?
18 A. Yes.
19 Q. And did you see combat during your service?
20 A. Yes.
21 Q. Where was that?
22 A. Operation Desert Storm and Desert Shield.
23 Q. And what were your duties or functions when you saw
24 combat?
25 A. I was a third tack battalion, I was in logistics over

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1 there.

- 2 Q. In that position, did you have command authority or did
3 you have troops who functioned under your command?
- 4 A. I was a corporal.
- 5 Q. And while you were in the service, did you have any
6 occasion to be a part of either serving on a panel that was
7 instituting a court's marshal or any other disciplinary
8 activity, did you have any relationship with that at all?
- 9 A. No, I did not.
- 10 Q. And Judge McCalla went through pretty carefully and
11 talked about the need to be free of bias and prejudice, would
12 you be able to separate the facts that you hear in this case
13 from your own individual expertise or experience with the
14 military?
- 15 A. I believe I could.
- 16 Q. Okay. Thank you.
- 17 Mr. Francis, I believe that you also have served in the
18 military, is that correct?
- 19 A. Yes.
- 20 Q. Did you see active combat when you served?
- 21 THE COURT: We have to get the microphone so we
22 can hear.
- 23 A. No, I was never in combat.
- 24 BY MR. ESQUIVEL:
- 25 Q. How long did you serve in the military?

- 1 A. Three years.

- 2 Q. And where were you stationed during that time?
- 3 A. In Germany.
- 4 Q. What were your responsibilities in the military?
- 5 A. Mainly training. We were -- I was a radar operator, we
6 just trained in case anything happened.
- 7 Q. Did you have any soldiers or troops that operated under
8 your command while you served?
- 9 A. Yes, a baton, I was acting sergeant for awhile.
- 10 Q. Did you have any occasion when you were acting sergeant
11 to have to discipline any of soldiers under your command?
- 12 A. No.
- 13 Q. In response to one of the questions on the
14 questionnaire that I think related to El Salvador, you wrote
15 war is hell, and I wondered if you would just explain to me or
16 tell me about what you meant by that comment.
- 17 A. I was just trying to put the -- I thought they were
18 talking about the movie and trying to put it all in context,
19 it was -- that's just what I was trying to relay, that war is
20 a terrible thing even though we have to be there. Nobody
21 wants to be there.
- 22 Q. Right. All right. Thank you very much.
- 23 Ms. Ragsdale, I had a question for you about one of the
24 responses on the questionnaire. I believe that you have
25 family members who currently serve in the military, is that

♀

VOIR DIRE OF THE JURY

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1 right?

2 A. Not right now. They were in the Gulf War.

3 Q. I see.
4 A. Three brothers.
5 Q. Okay. In response to one of the questions, you had
6 said that you might start out leaning in favor of someone who
7 was in the military because of your family's service in the
8 military, and I wanted to ask you based on the questions that
9 Judge McCalla went through earlier in talking about bias and
10 prejudice, whether you thought that because of the service of
11 your family members you would find it difficult to approach
12 this case unbiased or without any preconceived idea about one
13 of the parties whose -- who also served in the military?
14 A. I don't think so. I don't think so.
15 Q. So you would start off the case giving both sides the
16 same --
17 A. Open-minded.
18 Q. -- consideration. Thank you.
19 Some of the plaintiffs and their families were involved
20 in a teacher's union, and I wanted to ask, and it really
21 doesn't matter who starts, but maybe I would start with
22 Ms. Reber. Ms. Reber, is there any reason why you would have
23 difficulty being neutral or unbiased in a case where the
24 plaintiffs and their families were members of unions?
25 A. No, no, I wouldn't have any problem with that.

♀

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1 Q. Is there -- and maybe I will ask the panel in general,
2 is there anyone who would have difficulty or have a problem

3 being unbiased in this case if the -- if the family members of
4 some of the plaintiffs belonged to unions and were active in
5 them?

6 A. No.

7 Q. All right.

8 A. Did you say union, what was your next word?

9 Q. Oh, I meant to just ask --

10 A. I thought I heard you say racquets.

11 Q. No, I'm sorry, I meant to just say unions, but I may
12 have misspoken.

13 THE COURT: You know, if you can't hear all
14 right, do you need some -- do you need anything to help
15 with the hearing?

16 THE JUROR: No, my hearing is good.

17 THE COURT: Just the lawyer can't talk, is that
18 it? I'm kidding him.

19 MR. ESQUIVEL: That's probably more accurate.

20 THE COURT: No problem.

21 THE JUROR: I thought there was another word.

22 MR. BROOKE: I think David used the word
23 active.

24 MR. ESQUIVEL: Active in a union.

25 THE JUROR: I'm sorry.

♀

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1 THE COURT: I'm not picking on you, go ahead.

2 BY MR. ESQUIVEL:

3 Q. Ms. Ross, I understand from your questionnaire that you
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- 4 have traveled to Mexico with humanitarian groups?
- 5 A. I have traveled to Mexico for pleasure, but I have a
6 friend that traveled with a humanitarian group.
- 7 Q. Could you tell me about that, please?
- 8 A. She went this year to Chiapas in connection with
9 schools for Chiapas, and that's basically all I know.
- 10 Q. All right. I notice also, Ms. Foran, am I pronouncing
11 that correctly?
- 12 A. Yes.
- 13 Q. That you have traveled to Central America before?
- 14 A. Yes.
- 15 Q. Would you tell me about that?
- 16 A. I went twice to Panama for medical mission trips with
17 our church. Well, one of the trips was just evangelical, I
18 think, where we did a vacation Bible school for the children
19 at the -- I can't think of the name of the school right now,
20 but basically it is a preaching school in Panama City, and the
21 then the other one was a medical mission trip. And I know I
22 put all of my other family members basically did the same
23 thing. It was all mission trip based.
- 24 Q. Have you ever been to El Salvador?
- 25 A. Not personally, no.

♀

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- 1 Q. Okay. Do you know people who have been there?
- 2 A. My mother and father.
- 3 Q. And what have they told you about that?

- 4 A. Oh, they just said it was a great experience. They
5 went again on a mission trip to help rebuild after the
6 earthquake.
- 7 Q. I see. Thank you.
- 8 A. You're welcome.
- 9 Q. Mr. Roby, let me ask you this question: The things
10 that happened to the plaintiffs and their families in this
11 case took place 20 or 25 years ago, is there any reason why
12 based on that fact alone that the things that happened took
13 place 20 years ago that would make it difficult for you to
14 hear the facts and be impartial as you start listening to the
15 evidence?
- 16 A. No, sir.
- 17 Q. Mr. Hayes, maybe I'll ask you the same question. Is
18 there anything about the fact that the events in the lawsuit
19 took place 20 years ago that would make it difficult for you
20 to approach the case impartially from the beginning?
- 21 A. No, I don't have no problem with that. Statute of
22 limitations.
- 23 Q. Right. All right. Assuming that is not an issue --
- 24 A. Uh-huh.
- 25 Q. -- and that the -- that the jury is asked to decide the

♀

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- 1 questions, could you approach that issue on a balanced sort of
2 impartial basis?
- 3 A. Sure, I could.
- 4 Q. Thank you. Is there anyone on the jury for whom that

5 would be a problem, the issue of time so that you couldn't
6 start out the case without favoring either side, one or the
7 other based just on the issue of time?
8 A. (Nodding heads from side to side).
9 Q. Ms. Ross, I understand from your questionnaire that you
10 are currently involved in a lawsuit, that you are a plaintiff
11 in a lawsuit?
12 A. It has been settled.
13 Q. Oh, it has been settled, okay. And can you tell me
14 who -- do you know who the lawyers were that represented you
15 in that case?
16 A. Deal Cooper and Holton firm, I don't know the specific
17 lawyers.
18 Q. Okay. And do you know who it was that represented any
19 of the other parties in that case, the defendant or any other
20 plaintiffs that may have been in that?
21 A. No, I don't.
22 Q. Were you satisfied with the settlement?
23 A. Yes.
24 Q. Is there anyone on this panel and this group that knows
25 anyone else? Y'all have not met before today? I'm sorry,

♀

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1 last week.

2 MR. ESQUIVEL: Your Honor, could I have just a
3 moment to confer with my co-counsel?

4 THE COURT: Certainly.

5 MR. ESQUIVEL: Thank you.
6 Thank y'all very much for answering the
7 questions. Your Honor, I don't have any other questions
8 for this panel.
9 THE COURT: All right. Mr. Fargarson?
10 MR. FARGARSON: Your Honor, is it all right for
11 me to walk around there?
12 THE COURT: Certainly, as long as we have a
13 microphone on, we're okay.
14 MR. FARGARSON: All right.
15 THE COURT: We do need -- as you will recall,
16 we do need to keep that on.
17 MR. FARGARSON: I do.
18 Is it working?
19 THE COURT: I think so.
20 BY MR. FARGARSON:
21 Q. Ladies and gentlemen of the prospective jury, my name
22 is Bob Fargarson. I was picked out to be something I wasn't
23 earlier, but I think that's all straightened out. Bruce
24 Brooke and I practice law together, and the name of our firm
25 is Fargarson and Brooke, whatever that means, and it probably

♀

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1 means nothing, but anyway, he also is participating in this
2 lawsuit on behalf of the defendant. I think you also met
3 Mr. Carranza who is the defendant in the case. And I don't
4 believe there is anyone else over there to introduce. We want
5 you to know that these questions by the judge, by Mr. Esquivel

6 and myself are not because we don't think you would be a fair
7 and impartial juror, you all look reasonable to me, and I
8 imagine you do intend to be fair and impartial, but, mainly,
9 what the selection process is, is to make sure we get a number
10 of people that will be fair and reasonable in deciding the
11 lawsuit, not give one person who is going to tell everybody
12 else how to decide the case. And so that's the reason the
13 judge is very careful in asking these questions and that we're
14 asking a few questions as well. I want to you understand
15 that. I mean I wouldn't pick you out because the color of
16 your eyes or anything else, the way you're dressed and say you
17 wouldn't be a good juror, I think the judge explained that to
18 you, and you saw how that worked as well.

19 Now, I want to tell you first off that in this lawsuit
20 we are not disputing what happened to these people. Now, it
21 happened a long time ago and Mr. Carranza didn't find out
22 about this lawsuit until a short while back, but there's no
23 real dispute that these people had tragedy in their life. The
24 issue that we're contending in this case is not that they
25 didn't have bad things happen to them, and they were bad

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1 things, but that Mr. Carranza is not liable to them for what
2 happened to them.

3 Now, there will be facts that will be offered in the
4 case, and you will have to make a decision, of course, based
5 on the facts and the law. The judge will tell you, and I

6 think he has alluded to this, that the burden of proof is on
7 the plaintiff. That means they have to carry the burden of
8 proof in a lawsuit such as this, and they have to prove by the
9 greater weight or preponderance of the evidence that what they
10 claimed is not only true, but as I said, we admit they had
11 some incidents, bad things that occurred, but they have to, by
12 the burden of proof and the weight of the evidence satisfy the
13 scales of justice in their favor that Mr. Carranza as a
14 military man in El Salvador at the time they occurred is
15 responsible for them. Do all of you understand that, that
16 that is what this lawsuit is basically going to be about?

17 Now, acknowledging that these things happened to them,
18 I want to put an issue before you, and I believe the judge
19 alluded to this, but didn't -- and I'm not faulting that he
20 didn't say anything, because he did allude to it on the issue
21 of prejudice, on the issue of emotion and the issue of
22 feelings. As a juror, a fair and impartial juror, you have to
23 be like a referee at a baseball game, so to speak, an umpire.
24 And if it is a strike, you call it a strike; and if it is a
25 ball, you call it a ball. You do the best you can to do that,

♀

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1 and that's what fairness actually is, that a juror as well as
2 they can do it, free from prejudice or emotion follows that
3 basic rule of fairness. That's what the American justice
4 system is about, fairness to everyone.

5 MR. ESQUIVEL: Your Honor, I apologize for
6 interrupting, but I object to the lengthy commentary.

7 THE COURT: Well, okay, we will save that --
8 but we have got some background and now we will go to the
9 question phase. I think we're ready to ask a question
10 anyway, right?
11 BY MR. FARGARSON:
12 Q. Yeah, I was just getting ready for it. The question is
13 also sympathy, the issue of sympathy, because as we
14 acknowledge, something happened to these people, and as human
15 beings, I do, and I'm sure you do feel sympathy to people that
16 have been hurt, that have been injured, that have been
17 damaged.
18 Now, here is the point I'm making, can you put aside
19 any natural sympathy that you might otherwise have and try
20 this case without sympathy, without prejudice, without
21 partiality even knowing, as the court said and as I have said,
22 bad things happened to these people, can you do that? Can you
23 divorce from your mind sympathy and try it on the facts fairly
24 and impartially, can you do that? Is there anyone on the jury
25 panel right now that thinks that they would be so strained

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1 emotionally or that the aspects of this case would bother them
2 so much that they couldn't treat Mr. Carranza fairly because
3 of that, because of what happened to these people? Anyone
4 that feels that way because we need to know that right now? I
5 take it by your silence that that would not be a problem for
6 any of you.

7 Now, do most of you have children? Who all has
8 children? If your children -- now, I had five, so -- and
9 children sometimes get into squabbles and get into disputes,
10 and I'm not trying to liken them as to that, but if your
11 children ever got into a squabble with one another, would you
12 talk and listen to one child and see what they had to say or
13 would you and talk and listen to both children? Would you
14 want to hear what all of them had to say? Certainly. Now, in
15 this case, you have got five plaintiffs and three lawyers or
16 maybe more, I think there are a few more sitting in the
17 courtroom, and we have got two sides to this lawsuit. I think
18 the judge mentioned this, but I want to emphasize it, would
19 you wait until you hear all the proof in the case, hear the
20 charge of the court and get together to deliberate before you
21 make up your mind about this case, before you satisfy yourself
22 as to the truth and right of the matter, will you do that,
23 will you listen to all sides? Is there anyone who for some
24 reason would want to get in a rush and decide it early?
25 Anyone? I take it by your silence that based on that question

♀

VOIR DIRE OF THE JURY

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1 I asked, y'all will hear all sides, you will wait until you
2 hear the charge, you will wait until you get together to
3 decide it, you won't make up your mind before that? And I
4 take that to be true. Okay.

5 Some of you mentioned that you had been involved in
6 some type of a lawsuit. I think, Ms. Ross, you had a
7 malpractice case, is that what it was?

- 8 A. At one time, I had a malpractice case and I also was in
9 a class action suit.
- 10 Q. Okay. Now, were you a plaintiff in both of those? In
11 other words, were you the party that was bringing the lawsuit?
- 12 A. Yes.
- 13 Q. Okay. Is there anything about that experience that
14 might cause you to look more favorably at someone bringing the
15 lawsuit than someone being sued?
- 16 A. No.
- 17 Q. Okay. So the fact that you were a plaintiff wouldn't
18 bother you at all in a case such as this and you wouldn't feel
19 favorably to the plaintiff, one way or the other?
- 20 A. No.
- 21 Q. Anyone else ever have a lawsuit as a plaintiff? Yes,
22 ma'am, Ms. Fulgham.
- 23 A. Yes, I did have a lawsuit.
- 24 Q. Was that a civil type lawsuit?
- 25 A. Oh, yes, yes.

♀

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- 1 Q. And --
- 2 A. It was pretty simple, it was with a car leasing
3 company --
- 4 THE COURT: We're having trouble hearing, and
5 Mrs. Parker has to write this down.
- 6 THE JUROR: Oh, I'm sorry.
- 7 THE COURT: That's much better.

8 MR. FARGARSON: You will have to hold it up a
9 little bit so we can hear.
10 THE THE JUROR: Oh, I'm sorry.
11 BY MR. FARGARSON:
12 Q. That's all right.
13 A. It was a simple suit, it was with a car leasing company
14 and, you know --
15 Q. Car wreck?
16 A. No.
17 Q. Oh, I'm sorry.
18 A. A car leasing company.
19 Q. Oh, okay.
20 A. Right.
21 Q. Right, I remember that now, you said a car leasing
22 matter, okay.
23 A. That's right.
24 Q. And did they sue you or did you sue them?
25 A. No, I sued them.

‡

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1 Q. Okay. So you were the plaintiff in that case. Was
2 there anything about that case that would cause you to lean
3 more favorably to people bringing the lawsuit over those that
4 were being sued?
5 A. I wouldn't think so. It was a long time ago.
6 Q. Did it turn out all right?
7 A. Well, it did for them.
8 Q. All right. Thank you.

9 Anyone else?

10 A. I had a car accident lawsuit. I had two of them.

11 Q. Would you hold that up to your mouth so everybody can

12 hear?

13 A. I had a car accident also, I had two of them.

14 Q. Were you -- did you have a lawsuit over it?

15 A. I was the plaintiff.

16 Q. You were what?

17 A. I was the one that was suing the people who hit me.

18 Q. They hit you?

19 A. Uh-huh.

20 Q. Well, did you have a lawsuit, did you file a lawsuit

21 because of that?

22 A. Yes.

23 Q. Were you -- did it go to court?

24 A. Yeah, but I didn't have to show up. My attorney took

25 over everything.

♀

VOIR DIRE OF THE JURY

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1 Q. Okay.

2 A. But it did go to court.

3 Q. Was there anything about that experience that would

4 cause you to lean favorably for one side as opposed to the

5 other?

6 A. No.

7 Q. Okay. Thank you.

8 Anyone else? Have any of you been defendants in a

- 9 lawsuit? I take it then by your silence that you have not.
10 Now, your parents have been to El Salvador?
11 A. Yes, yes.
12 Q. Okay. And have they been there more than once?
13 A. I think my father went twice, but I couldn't tell you
14 when.
15 Q. Okay.
16 A. Really.
17 Q. Recently or --
18 A. No, it has been several years.
19 Q. Okay. And was that a mission trip?
20 A. Yes.
21 Q. Is that what y'all do is y'all go on mission trips?
22 A. Yes.
23 Q. Representing a church or --
24 A. Uh-huh.
25 Q. -- some Christian organization?

♀

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- 1 A. Yes.
2 Q. And you have not been to El Salvador, but you have been
3 to Panama?
4 A. Correct.
5 Q. And your husband is from Panama?
6 A. My husband is from Canada.
7 Q. Canada?
8 A. Yes.
9 Q. I don't know where I got the idea that he was from

10 Panama. Is there many -- have you talked with your mom and
11 your dad or your father about going to El Salvador?
12 A. Yeah, they just told me what they did and their
13 experience there, but it was all related to the mission trip,
14 really.
15 Q. Were they ministers or lay people?
16 A. No, they were just members of the congregation, and
17 they just went and they were the worker bees, I guess.
18 Q. Okay. Was any information given you about El Salvador
19 that would have any effect on you one way or the other in this
20 lawsuit?
21 A. Not at all.
22 Q. Okay. Thank you.
23 Do all of you understand that a suit, any people can
24 file a suit, that doesn't mean liability exists, they have to
25 establish the liability exists; you understand that, that in

♀

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1 our country people can bring lawsuits whether they're entitled
2 to the end result they seek or not; do y'all understand that?

3 MR. FARGARSON: Your Honor, would you excuse me
4 just a moment? Thank you.

5 THE COURT: Certainly.

6 MR. FARGARSON: Thank you, Your Honor.

7 THE COURT: Certainly.

8 Ladies and gentlemen, this concludes the
9 initial set of questions. At this time, both sides will

10 have an opportunity to exercise peremptory challenges.
11 Some individuals were dismissed along the way either at
12 their -- because of their competence situation or because
13 there was some reason that they were not able to sit on
14 the panel and be fair and impartial. Those are called
15 dismissals for cause. An individual can be -- it doesn't
16 mean anything is wrong, it means there was some reason
17 that was offered that was legally sufficient for them to
18 be excused in the case. But we have concluded that
19 portion and -- anything else?

20 MR. FARGARSON: Your Honor, I am sorry, but I
21 forgot one question, I didn't think about it until I sat
22 down.

23 THE COURT: No, that's fine. We will go ahead.

24 MR. FARGARSON: I apologize.

25 THE COURT: Then I will come back and complete

♀

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1 explaining about what you're getting ready to do.

2 MR. FARGARSON: I apologize.

3 THE COURT: That's no problem at all.

4 BY MR. FARGARSON:

5 Q. Excuse me. I know that there's some of you that are
6 teachers on this prospective jury, and as you heard earlier,
7 there were teachers, parents that were teachers on the side of
8 the plaintiffs. Would the fact that you're a teacher and you
9 hear evidence about things happening to teachers, would that
10 tend to affect your decision and make you feel more favorably

11 toward the plaintiff and the defendant simply because you're a
12 teacher and the issue of teachers may be involved with the
13 plaintiffs?

14 A. (Nodding head from side to side).

15 Q. Am I making myself clear, is there anyone who is a
16 teacher that would say yes, I'm a teacher, I would feel more
17 favorably inclined towards them?

18 A. (Nodding heads from side to side).

19 Q. I take it by your silence that that wouldn't be any
20 problem for any of you that are teachers simply because
21 there's a teacher relationship with the plaintiff, is that
22 correct? Anyone feel otherwise, let me know now.

23 Thank you. Excuse me, Your Honor.

24 THE COURT: No problem at all. Well, I have
25 explained to you that individuals who for some reason

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1 should not be on the jury, either because they have a
2 conflict situation or there's some particular experience
3 they have had which would make it difficult to serve as a
4 juror, they're excused for cause. We're now to that group
5 where that has not occurred, and they have an opportunity
6 to excuse a portion of you under the peremptory
7 challenges. Those are referred to sometimes as challenges
8 without cause; however, there are restrictions on the way
9 that you can be excused. You cannot be excused for -- as
10 we would expect, you cannot be excused for an

11 unconstitutional or illegal reason. They cannot excuse
12 you because of your gender, your race, your national
13 origin, all -- most of those things that we talked about,
14 religion and so forth. So that is not a reason for which
15 you can be excused. But after that, they do have some
16 significant discretion, and if there is a legitimate
17 reason, they can excuse you in the case.

18 So they have that option. Each side has the
19 same number of peremptory challenges, and they will both
20 be asked to fill out, even if they don't want to put
21 anything on the sheet, they need to fill one out. They
22 should be in front of you and then hand it to -- it looks
23 like Mr. Ruby is going to pick them up when they're ready,
24 and then I will take a look at them and review those with
25 them at the side bar, and we will announce who can be

‡

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1 excused under peremptory challenges. They will need a
2 couple of minutes, at least a couple of minutes. They may
3 need more than that to confer.

4 (Strike sheets were handed to the court.)

5 THE COURT: All right. Let me see counsel at
6 side bar.

7 (The following proceedings had at side-bar
8 bench.)

9 THE COURT: Okay. The -- there were no
10 overlaps. The defendant exercised two strikes. The
11 plaintiffs, three. On the first row, the only person

12 struck was Ms. Ross, was struck by the defendant. On the
13 second row, Mr. Miller in seat eight -- Ms. Ross is in
14 seat four. Mr. Miller in seat eight was struck by the
15 plaintiff, and Ms. Reber in seat nine was struck by the
16 plaintiff. In seat 10, Ms. Fulgham was struck by the
17 defense, and in seat 13, Hayes was struck by the
18 plaintiff. Are there any objections to the strikes in the
19 case?

20 MR. FARGARSON: Your Honor, I object to them
21 striking that marine.

22 THE COURT: I take it that is in gest, but --

23 MR. FARGARSON: That seems to me to be totally
24 unAmerican.

25 THE COURT: I think -- it is not a serious one,

♀

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1 is it?

2 MR. FARGARSON: That was a joke.

3 THE COURT: I thought it was a joke. It is
4 just so hard in this business to be sure. Okay.

5 MS. BLUM: No objections.

6 MR. FARGARSON: I will stop that.

7 THE COURT: I understand. We're going to
8 excuse these five then, and we will seat -- I'm going to
9 put five on the first row, so that is going to actually
10 reseat you a little bit, and put Ragsdale and Foran in
11 seats eight and nine and reseat -- we only need three more

12 to get the ten, and then we will need two extras because
13 I'm going to give you -- you're going to both exercise one
14 more strike, and that will give us our jury because you
15 will have one left anyway. Actually, you have used yours
16 up on the panel, so y'all have used yours up.

17 MR. BROOKE: Are we seating that -- Mr. Roby
18 will move into the group?

19 THE COURT: They're all in the group, there are
20 no alternates. I'm sorry I may not have spoken very well.
21 I will reseat them so you can see who is on the panel.
22 Let me make sure -- I have got one, two, three, four, five
23 six, seven, eight, nine, we just need one more. We could
24 just seat three more, and then we will have ten.

25 MS. BLUM: Your Honor, I just want to clarify

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1 one thing about their strikes that they didn't exercise
2 now, they can only use that strike against --

3 THE COURT: With the new panel. No back
4 strikes, you're exactly right.

5 MR. BROOKE: Can't go across the board?

6 THE COURT: It is always a choice, you have to
7 decide whether you need to use them, that shouldn't be a
8 problem. We're just going to seat three, it shouldn't
9 take long.

10 (The following proceedings were had in open
11 court.)

12 THE COURT: First of all, I want to thank those
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13 who are about to be excused for being here. Is somebody
14 is going to be offended if they're not retained on the
15 panel? Usually they're not, and, you know, we're glad to
16 have you all.

17 When I excuse you, this should serve as your
18 jury duty, so you can check with Mrs. Dote, but I do not
19 think that you will be called back.

20 On the first row Ms. Ross, you're the only one
21 on the first row, so we're going to let you be excused.
22 Thanks very much. On the second row, Mr. Miller,
23 Ms. Reber and Ms. Fulgham, we're going to let all three of
24 you be excused, and Mr. Hayes. So, Mr. Hayes, thank you
25 very much, all of you.

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1 Now, in order to get you seated so it will work
2 out right, so we will be able to keep track of who is on
3 the panel, we will anticipate that there will be 10 jurors
4 in the panel, so we're going to ask Mr. Francis to move
5 over one seat, and we're going to ask Ms. Ragsdale to move
6 over one seat, those are seats one through five, and those
7 are filled now. We're going to have Ms. Foran move back
8 to the eighth seat, that's actually a regular juror seat
9 in a civil trial, and then we will have Ms. Richardson
10 move over to the seat next to Ms. Foran. I'm keeping you
11 in order. Ms. Hebron, move over to the third seat, seat
12 ten, and Mr. Roby to seat 11. Now, we're going to call

13 three more potential jurors in the case, and the first
14 person whose name is called will be asked to sit in seat
15 number six just to help us keep them in order, and the
16 second person in seat 12, the next one in seat 13, so if
17 you pay close attention, we're going to call three more
18 names.

19 THE CLERK: Linda Reeves, R-E-E-V-E-S. Lawanda
20 Minor, M-I-N-O-R. Pamela Ross, R-O-S-S.

21 BY THE COURT:

22 Q. Ms. Reeves, how are you?

23 A. I'm fine.

24 Q. What do you think is the more important characteristic
25 for someone who is going to serve on a jury?

♀

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1 A. Openness, fairness.

2 Q. And let's pass that back to Ms. Ross and let her tell
3 me, Ms. Ross, what do you think is the more important
4 characteristic?

5 A. Honesty.

6 Q. Okay. And Ms. Minor, what would you put on that list?

7 A. I would have to say optimistic.

8 Q. Wouldn't pessimistic work just as well? I'm sort of
9 saying how does optimistic -- it's not a happy process, it's
10 not an unhappy process necessarily. It is very, very serious,
11 I'm not sure what you mean by optimistic.

12 A. Maybe I should have used the other word.

13 Q. It probably means determined to reach your conclusion,
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14 but I don't know what you're talking about, I'm not sure.
15 A. I'm going to change the whole word totally and just say
16 being fair.
17 Q. Okay, being fair. And you are just trying to use a
18 different concept?
19 A. I was trying to give you another word, but I guess
20 my --
21 Q. There's nothing wrong with the word, it has different
22 meanings, and you look one in the dictionary and it has got
23 twelve meanings?
24 A. Excuse me, the way I meant it was the facts that
25 have -- that are being presented to you, the word I'm looking

♀

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1 for is to not be judgmental as far as being biased or
2 prejudiced because of -- either/or.
3 Q. Exactly.
4 A. Not favoring the plaintiff or the defendant.
5 Q. And not to be judgmental?
6 A. Not to be judgmental.
7 Q. Not to be biased in any way.
8 Now, Ms. Minor, we then went to that list that we made,
9 because one of the characteristics we all agreed on was to not
10 be prejudiced, to be impartial.
11 A. Right.
12 Q. To not have biases. And I asked everybody to name a
13 prejudice or bias that, you know, obviously, we want to avoid

14 and we have got lots of things, what would you have put on
15 that list?

16 A. I would stick to one of the characteristics that you
17 already named and say in this case, it would be culture.

18 Q. Culture, absolutely. You don't want to have a cultural
19 bias. All of us have heard it, we know it is not appropriate.

20 Let me ask, Ms. Ross, what would you put on that list?

21 A. I think I would put discipline.

22 Q. I used to have a computer where I can read all this and
23 I have a little trouble hearing, I'm sorry --

24 A. Discipline, like I work in the school system, so I see
25 a lot of different things that goes on and how each thing is

‡

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1 done different.

2 Q. Okay. And so the bias or prejudice that we would be
3 concerned about would be -- just describe it a little more and
4 I will understand.

5 A. Well, one student can do one thing and get one thing,
6 and another student can do another thing and get lesser.

7 Q. Sure, and that's a situation where we have inequity in
8 the administration of that particular justice system. It
9 may -- it's not a justice system, but disciplinary system.

10 Okay. What would be your concern in that setting about where
11 people were being biased or prejudiced, what would be a bias
12 or prejudice that might apply in that setting or this system
13 where a person would tend to favor one person over another
14 group, because it can certainly happen in a school discipline

- 15 setting just like it could happen anywhere?
- 16 A. Right.
- 17 Q. It can be -- you know, it can be anything, it could
- 18 be -- I suppose gender based, maybe all the female students
- 19 get off much more lightly for doing the same thing as the male
- 20 students, I don't know if that is the case or not.
- 21 A. Sometimes.
- 22 Q. Maybe it is the other way around, I don't know. How
- 23 would it work? You are more likely to have somebody in school
- 24 than I am right now.
- 25 A. I don't really know how to answer you.

♀

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- 1 Q. What is an example of -- because what would be the type
- 2 of prejudice you're concerned about occurring in any system,
- 3 including our system, because we had all those listed based on
- 4 many, many things? Maybe I'm not being clear about this one.
- 5 You know, you remember all those folks who listed all those
- 6 things, and we went through this long list about what -- they
- 7 all picked out things, they started out with racial bias and
- 8 we talked about gender bias and we talked about age bias
- 9 because we had two people that were under 27, I can't remember
- 10 the exact age, but anyway two younger people and all those,
- 11 what would be your choices of those types of biases and
- 12 prejudices for us all to be concerned about, particularly
- 13 perhaps in this case?
- 14 A. I wouldn't have any problem with it.

- 15 Q. What would be an example of a bias or prejudice?
16 A. Just anything, you mean --
17 Q. You can pick any one of them out.
18 A. Well, gender.
19 Q. Gender, right, exactly. And you think that -- and that
20 would -- how would you feel -- have you ever been subjected to
21 any bias like that or prejudice?
22 A. No, I haven't.
23 Q. Okay. Is there any bias or prejudice that you felt you
24 have been a victim of?
25 A. No.

♀

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- 1 Q. Have you ever seen anybody else who has been a victim
2 of bias or prejudice?
3 A. Yes.
4 Q. What was the type of bias or prejudice that they were
5 subjected to?
6 A. It was their gender, you know, about being punished one
7 way, you know, harder.
8 Q. And how did you feel about that when it happened?
9 A. I have to say it was upsetting.
10 Q. Was there anything that you could do about it?
11 A. No.
12 Q. Let's ask Ms. Reeves, well, your choice of what would
13 be on that bias or prejudice list?
14 A. The age, youth versus seniority or more experience.
15 Q. And what setting does that occur in on occasion that

- 16 you're aware of?
- 17 A. It could be in any setting. In my work environment
- 18 with the work force, we have people over 70 and people that
- 19 are 21, and their differences are interesting.
- 20 Q. Okay. Are they treated differently, or they supposed
- 21 to be treated the same?
- 22 A. Oh, they're supposed to be treated the same.
- 23 Q. Does that happen?
- 24 A. Sometimes, no.
- 25 Q. Has that ever happened to you?

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- 1 A. No.
- 2 Q. How do you feel when somebody is treated differently
- 3 because of their age?
- 4 A. Oh, it hurts.
- 5 Q. Has there been a situation where you could do anything
- 6 about it?
- 7 A. Yes, sir.
- 8 Q. And were you able to do something about it?
- 9 A. Yes, sir.
- 10 Q. Probably ought to ask what did you do, generally.
- 11 A. In one of my workgroups, I encouraged them to go to
- 12 diversity training.
- 13 Q. The person who was acting inappropriately -- who was
- 14 making a decision using an unconstitutional factor?
- 15 A. With regard to age.

- 16 Q. Did they do it?
- 17 A. Oh, yeah.
- 18 Q. Okay. Now, after we went through that process, one of
- 19 the things that I asked was to identify individuals when we
- 20 went through an exercise of identifying individuals based on
- 21 whether they were an attorney for the party bringing the
- 22 claim, attorney for the party defending the claim, and then,
- 23 of course, a plaintiff or a defendant, what was -- what lesson
- 24 did you take away from that exercise?
- 25 A. Someone hit it earlier, you can't judge a book by its

♀

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- 1 cover, ever.
- 2 Q. Well, let me ask Ms. Ross, what lesson did you take
- 3 away from that exercise?
- 4 A. You can't judge people by their appearance.
- 5 Q. Do you think people do that?
- 6 A. Yes.
- 7 Q. And in this setting, would that be inappropriate -- how
- 8 do you feel about that?
- 9 A. I don't have a problem with it.
- 10 Q. I'm sorry, I just --
- 11 A. I said I don't have a problem with it, how their
- 12 appearances are.
- 13 Q. You don't have a problem with appearance?
- 14 A. No.
- 15 Q. You would think it would be inappropriate to make a
- 16 decision based on whether somebody was more dressed up or not?

- 17 A. Right.
- 18 Q. Okay. And Ms. Minor, what did you take away from that
19 exercise?
- 20 A. People aren't always who they seem to be.
- 21 Q. Okay. That's a great point, and it is not a very
22 reliable way to identify folks?
- 23 A. Right.
- 24 Q. Absolutely.
- 25 Ms. Minor, do you think that a jury can realistically

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- 1 make a decision without being influenced by unconstitutional
2 or illegal considerations, those biases and prejudices we
3 talked about? Do you think a jury realistically can do that?
4 It is a serious question, sometimes people say I'm not sure
5 about that.
- 6 A. It is. It is very serious. I was thinking about it as
7 you were going through asking everyone. Honestly, not always.
8 I'm not sure in what entity, I guess it would have to be
9 whatever is being presented to you, you almost have to be
10 blindsided at who you're looking at or --
- 11 Q. You're saying that it is hard to escape bias?
- 12 A. It is hard to escape bias.
- 13 Q. It really is.
- 14 A. It really is. I wish it was like you never had to see
15 who the plaintiff or the defendant was, you just hear the
16 facts.

- 17 Q. Exactly, exactly.
- 18 A. So if you stick to the facts, I think it can be done.
- 19 Q. And your method of dealing with that is to stick with
- 20 the facts?
- 21 A. Yes.
- 22 Q. Ms. Ross, what do you think about that, it? Is a real
- 23 question because it is easy to say the answer, but it is not
- 24 so easy to -- what do you think?
- 25 A. I think you have got to stick to the facts.

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- 1 Q. Do you think that you can really avoid being influenced
- 2 by illegal considerations by doing that?
- 3 A. Yes.
- 4 Q. Okay. And Ms. Reeves, what do you think?
- 5 A. I believe we very well can, absolutely. Someone said
- 6 it earlier, and it is the facts.
- 7 Q. Okay. We talked about the length of the trial, it is
- 8 not going to be the longest trial we have had by a long way,
- 9 thank goodness, I don't think it will be, but it is not going
- 10 to be short. Hopefully, we will finish well before -- some
- 11 time before Thanksgiving, perhaps the week preceding
- 12 Thanksgiving, but there's no way to know for sure, is your
- 13 schedule going to allow you to be available?
- 14 A. I'm fine.
- 15 Q. You're okay?
- 16 A. Yes, sir.
- 17 Q. Let's check with Ms. Ross in that regard.

- 18 A. There could be a problem with mine.
19 Q. Is it something we need to talk about at side bar, or
20 can you tell us about it?
21 A. I will talk to you on the side.
22 Q. Sure, we will do that in a second. Let me ask
23 Ms. Minor first and see about her schedule, what is your
24 schedule?
25 A. I knew you said the day of 11th, you won't be --

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- 1 Q. We are off the day of the 11th, it is a federal
2 holiday. Actually, the building will be closed.
3 A. This is my first time ever in a courtroom, so I'm not
4 sure if you resume court on the weekends.
5 Q. Oh, no, no.
6 A. I don't have any issues.
7 Q. That's a good point. Our whole structure shuts down
8 and we don't have the capacity to do that. Good question,
9 frankly. Well, otherwise, you're okay?
10 A. I don't have any issues.
11 THE COURT: Well, Ms. Ross, if you would come
12 around to side bar.
13 (The following proceedings had at side-bar
14 bench.)
15 BY THE COURT:
16 Q. Your situation?
17 A. My situation, okay. My brother-in-law is mongoloid,

18 he's mentally retarded, and I take care of him in the
19 afternoons, so -- and he lives next door to me, so that's a
20 problem.
21 Q. Okay. Is this sometimes referred to as Downs Syndrome?
22 A. Yes.
23 Q. He's a Downs Syndrome person?
24 A. Yes.
25 Q. How old is he?

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1 A. He's 33.
2 Q. Does he live somewhat independently?
3 A. He lives with his -- my father-in-law, which he's 77,
4 and so I go down there and cook and clean and just be there.
5 Q. Okay.
6 A. I live next door.
7 Q. And you're from Dyersburg?
8 A. Uh-huh, Newburn.
9 Q. They don't know how far you have to commute, I do.
10 Tell us how long it takes you to get down here.
11 A. It is two hours.
12 Q. Over. It is a long way, I mean I know it is a long
13 way, it is a very long trip, and it is -- it is two hours each
14 way, so it is a very long way. Are you the only one -- you
15 provide basically his support?
16 A. I do. My husband helps, but he's a farmer, so, you
17 know --
18 Q. That's really tough. Do you think we ought to let you

19 be excused because you have a much better feel for the
20 necessity of you being there than we do, much better idea?
21 A. I think I need to be there.
22 Q. You need to be there?
23 A. For him.
24 Q. Yeah. How does he do most of the time?
25 A. Well, this has been kind of emotional.

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1 Q. Okay.
2 A. Because his mother just passed away.
3 Q. So he's having a hard time, so you really need to be
4 there. We're going to let you swap chairs with Ms. Rimmer who
5 is sitting right there, she is going to let you have her seat
6 for a minute and let me talk to the lawyers. Thank you.
7 (Ms. Ross stepped away from the bench.)
8 MR. FARGARSON: No objection.
9 MS. BLUM: No question about it.
10 THE COURT: Any objection?
11 MR. FARGARSON: How can you oppose that?
12 THE COURT: Unsuccessfully, right.
13 MR. FARGARSON: That's okay.
14 THE COURT: Since everybody agrees.
15 MR. FARGARSON: I'm about to pop, is it time to
16 take a recess?
17 THE COURT: In a few minutes, we will have a
18 break in just a second.

19 No problem in letting her being excused?
20 MR. ESQUIVEL: No problem.
21 (The following proceedings were had in open
22 court.)
23 THE COURT: Ms. Ross, thanks so much for
24 letting us know about that, and have a good trip home.
25 Thank you.

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1 (The following proceedings had at side-bar
2 bench.)
3 MS. BLUM: There was one other matter.
4 THE COURT: We're going to let them take a
5 break, you stay right here, okay.
6 (The following proceedings were had in open
7 court.)
8 THE COURT: I have had a request for a restroom
9 break because I sometimes forget how long you have been
10 sitting there, and we are going to call one name so we
11 know who that person is. Joe, let's call that name and
12 then we're going to take a break. I have to remind you of
13 a couple of things.
14 THE CLERK: Mary Flinn, F-L-I-N-N.
15 THE COURT: Ms. Flinn, I want to make sure, do
16 you have anything you need to talk with us about at side
17 bar?
18 THE JUROR: Yes, I do.
19 THE COURT: Why don't you come up here? Let me
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20 tell everybody else what we're going to do. You need to
21 take a break, and with this many people we have to take a
22 20-minute break. I remind all of you of the seven things.
23 Do not discuss the case among yourselves, don't speak to
24 anybody else about the case, don't let anybody talk to you
25 about the case. If they do, report it to me; and, of

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1 course, the other things, which are don't speak to the
2 lawyers or the parties at all, at all, don't do any
3 research, don't make any inquiry of that nature at all,
4 avoid media reports regarding the case and keep an open
5 mind. Now, with that instruction, I'm going to let you
6 take you a 20-minute break. It will be 10 minutes till
7 when we come back, we will have taken care of some other
8 items also at that time. See you in 20 minutes. Thank
9 you very much. We will see you then.

10 (The following proceedings had at side-bar
11 bench.)

12 BY THE COURT:

13 Q. How are you doing?

14 A. I'm doing well.

15 Q. What have you got going on?

16 A. I believe I know the defendant.

17 Q. You do?

18 A. Did he ever work at the Brooks Museum?

19 MR. FARGARSON: Yes, he did.

20 A. I worked at Brooks when I was in college, I think he
21 was a security guard. I was in the gift shop, I mean I didn't
22 know him well, but I did know him, I was there about three
23 years.

24 BY THE COURT:

25 Q. Let me ask you a couple of questions about that. If we

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1 were in a state court trial in Lauderdale County, everybody in
2 that panel would know the people that were before them and we
3 would still have a trial. So the question is -- it is
4 important to tell whether you have ever seen or met anybody,
5 but it is more important to let us know how well you know them
6 and whether or not that relationship would in any way affect
7 your ability to judge the case, would it make you sympathetic
8 or did you have a bad experience, those things, what about
9 those?

10 A. Well, that was back in the early '90s and I don't
11 believe I have seen him since then and, again, I worked in the
12 gift shop, he was a security guard, we didn't have much
13 contact other than saying hello. I remember him as being
14 quiet and polite, but I wouldn't say I had a lot of
15 conversations with him. I do recall some of the other
16 security guards mentioning some things about his past.

17 Q. Oh, okay.

18 A. About, you know --

19 Q. What did they say?

20 A. Well, I don't recall them talking about El Salvador,

21 but I do remember him saying that he had been a high ranking
22 government official somewhere in Central America and had to
23 flee the country and brought his family here, and I think his
24 daughter worked at Brooks also. That's all I know about it.
25 Q. Would that tend to cause you to be reluctant even if

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VOIR DIRE OF THE JURY

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1 the evidence is shown by the greater weight or preponderance
2 of the evidence that he was responsible or reliable to someone
3 in the case, would that make you reluctant to return that
4 verdict?

5 A. Well, you know, I hope not. I just felt like I needed
6 to let you know, but, yeah.

7 THE COURT: Let me ask this -- any questions
8 before from plaintiffs' counsel?

9 BY MR. ESQUIVEL:

10 Q. How long did y'all work together, you know, in the
11 same --

12 A. I was there about, I want to say three years. I can
13 find out exactly, but I don't remember.

14 Q. And he worked there the entire time?

15 A. I don't know if he was there the entire time, but he
16 could have been. I want to say it was from like '90 to '93
17 probably. There were a number of security guards there. I
18 definitely recognize him when he stood up.

19 Q. And other than the things you have said that you heard
20 from other security guards, were there any other things that

21 you either heard about him or about his family or the
22 circumstances of his coming here?
23 A. Like I say, I think he had a daughter who worked there,
24 I don't remember -- or some other family member worked there
25 as well. The only conversations I ever had with him were

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1 maybe hello, merry Christmas, happy holidays, he would smile
2 and say hello, but I don't recall any -- nothing memorable.

3 THE COURT: Sure. Anything else from defense?

4 MR. FARGARSON: No.

5 BY THE COURT:

6 Q. Okay. Why don't you take a break and we will let you
7 know how we get it resolved when you come back? We will want
8 to discuss it for a minute.

9 A. Okay.

10 Q. Anything else you need to know?

11 A. When I come back --

12 Q. I thought that you were still working in a family
13 business.

14 A. No.

15 Q. Radio?

16 A. Not in it anymore.

17 Q. Okay. Okay. Well, I wanted to check.

18 A. She is.

19 Q. Well, I need to tell them that --

20 A. Well, that is the family business.

21 Q. That's the family business?

22 A. Right.
23 Q. They live right next door to me, she doesn't, but
24 her --
25 A. Stepson.

†

VOIR DIRE OF THE JURY

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1 Q. Your stepson?
2 A. Even though he's my age.
3 THE COURT: I know, that is what is confusing.
4 I should let you know that. Any questions about that?
5 MR. ESQUIVEL: No, Your Honor.
6 THE COURT: I have actually -- I don't usually
7 know potential jurors as long as -- I have known y'all a
8 long time. We will take let you take a break and we will
9 see you shortly.
10 (Ms. Flinn stepped away from the bench.)
11 THE COURT: Any questions or what do you want
12 to do as to Ms. Flinn? Her husband is George Flinn, which
13 these guys know, and you guys don't know, who is on the
14 county commission, Dr. Flinn, and he has a large radiology
15 practice, some radio stations. He owns a number of radio
16 stations, it is Flinn Broadcasting, and for awhile -- I
17 think she says homemaker here, but I think she basically
18 was very instrumental in running a portion of the family
19 radio business.
20 MS. BLUM: That was indicated in her prior --
21 that she had been working for the Flinn Broadcasting

22 Company for the past four years.

23 THE COURT: Thoughts about Ms. Flinn?

24 MS. BLUM: Would you mind, Judge McCalla,
25 giving us a few minutes to talk about it?

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1 THE COURT: Sure. Talk about it for as long as
2 you want.

3 MS. BLUM: I would like to confer with him
4 privately just to see if --

5 THE COURT: I mean this is our chance to have
6 cause strikes.

7 MS. BLUM: Right. We did want to raise one
8 other issue about --

9 THE COURT: Let's hear the other issue. I will
10 take a little break and I will come back a little early.

11 MR. ESQUIVEL: The other issue is the juror,
12 Ms. Minor.

13 THE COURT: Sure, sure.

14 MR. ESQUIVEL: There was a part of her
15 questionnaire where she expressed an inability to judge
16 any case, and I believe it is about religious beliefs, and
17 I wondered if that was something we could pursue with her
18 at side bar.

19 THE COURT: You can, and I'm glad to have you
20 do that. I asked the questions I have asked, that's a
21 perfect one for you to follow up. She did have some
22 reservations, I have got it right here. When she comes

23 back -- let's go ahead and take our break, I think
24 everybody could probably use it.

25 Okay, Joe, what time are we going back, 10

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1 till?

2 THE CLERK: Yes.

3 THE COURT: Okay. Let me see all of you at --
4 three or four minutes in advance so we can decide about
5 what you want to do.

6 MR. FARGARSON: What time?

7 THE COURT: It is -- I have got this expensive
8 Casio watch, it is 3:35, so let me see you in about 12
9 minutes, something like that.

10 MS. BLUM: Okay. We will. Thanks very much.

11 THE COURT: Thank you very much.

12 (Recess taken at 3:35 p.m. until 3:45 p.m.)

13 THE COURT: I didn't mean to have everybody
14 ready. Ms. Minor, if you would come around, please, for
15 just a moment. We will take care of the other matter.

16 (The following proceedings had at side-bar
17 bench.)

18 BY THE COURT:

19 Q. All right. The message was to come to side bar and we
20 will talk early, but apparently the jury all came back early.
21 There was a question that counsel wanted to ask you about in
22 connection with religious concerns, and that is you had

23 indicated that you didn't believe in judging anyone.
24 Sometimes -- this is not a criminal case, of course, but it is
25 important that a person be able to reach a conclusion in the

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1 case. What do you think about that?

2 A. When I wrote the statement, there were a lot of
3 different questions in there pertaining to movies and
4 different aspects, but my religion, I feel like if I was
5 presented with enough facts like we're dealing with a cultural
6 case here, if I was to hear certain evidence of how -- what a
7 person had to do to get this type of punishment or whatever,
8 whatever, maybe I could be objective, but I don't know. I'm
9 kind of uneasy about it.

10 THE COURT: Sure, sure. Questions from
11 counsel, if any?

12 BY MR. ESQUIVEL:

13 Q. Would it be difficult for you to come to that decision
14 based on your beliefs and the things that you heard about in
15 the questionnaire, is that something that you would struggle
16 with if you were a juror?

17 A. Struggle, no.

18 Q. What would it be like?

19 A. Like I told him earlier, as far as when you get a
20 chance to meet you all and, you know, you are getting familiar
21 with the plaintiff and the defendant, then when the
22 defendant -- you know, I did feel kind of emotional --
23 emotional when, you know, your client broke into tears, but I

24 also looked on the other hand, I looked at the other side of
25 the story. I feel I could be objective, but it would be hard,

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1 but if I had to do it, I would.

2 Q. Your religion doesn't prejudice you to decide one way
3 or the other?

4 A. No.

5 THE COURT: Let me talk to counsel for just a
6 moment. I think there should be a spot where you can have
7 a seat, although I'm not sure whether it is right there.
8 Maybe that green chair.

9 (Ms. Minor stepped away from the bench.)

10 MS. BLUM: The other -- that was the other
11 concern that I had, and I don't know whether we want to
12 follow this up publicly or ask it her about it privately.

13 THE COURT: I wouldn't ask her about it
14 publicly.

15 MS. BLUM: So I assume she just sort of --
16 well, I don't know that I feel comfortable leaving it as
17 it is without knowing more of what her explanation might
18 be for her answer.

19 THE COURT: It is certainly a serious issue
20 about that.

21 MS. BLUM: Obviously, very serious.

22 MR. BROOKE: Which one is it?

23 THE COURT: Question 44, the holocaust, and 46.

24 MS. BLUM: And 44. So would you permit to ask
25 her a few more questions from here?

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1 THE COURT: Sure, I think we probably should.

2 MS. BLUM: We didn't want to presume that is
3 something we could do at side bar.

4 THE COURT: Oh, you can ask that at side bar,
5 absolutely. Why don't we let Ms. Minor --

6 (The following proceedings were had in open
7 court.)

8 THE COURT: Ms. Minor, I think they want to ask
9 you a few more questions about some things that were on
10 your questionnaire and I will -- right over here right
11 behind the screen, so it gives people a place to stand
12 where it is comfortable.

13 (The following proceedings had at side-bar
14 bench.)

15 THE COURT: Any other questions?

16 BY MR. ESQUIVEL:

17 Q. There were a couple of questions on the questionnaire,
18 question number --

19 THE COURT: You can look at it if you want to.

20 BY MR. ESQUIVEL:

21 Q. Question 46, if you could explain question 46.

22 A. I can't explain it, because I really didn't understand
23 the question, the holocaust, I didn't -- maybe I should have
24 wrote on there I don't understand what this is or what this

25 is. I'm not very familiar with World War II.

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1 Q. I mean if we explained it more by saying that it was
2 during the Nazi party in Germany and World War II and the
3 concentration camps where Jewish people were and other people
4 were taken and killed, is that -- is that something that
5 you're familiar with or is that something that you're not
6 familiar with?

7 A. No.

8 Q. Okay. Okay. Okay. And if you would also explain what
9 you meant on your response to question 44, that you feel like
10 everyone should stay in their own countries, what did you mean
11 by that?

12 A. I guess when she -- one of the jurors posed a question
13 as to why this case was over in the United States when it --
14 when the event occurred in El Salvador. Well, when Your
15 Honor, you know, when you elaborated on it a little further,
16 he said now that the defendant stays in the United States, and
17 that's why it is here, I mean it is explanatory, so that is
18 what I meant when I --

19 Q. Okay. Now, some of the plaintiffs -- all of the
20 plaintiffs are originally from El Salvador. One of them still
21 lives in El Salvador, another one lives outside the United
22 States, is that something that is going to affect your ability
23 to decide the case?

24 A. No, sir.

25 Q. Okay. So the fact that the plaintiffs are from

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1 different countries or originally live in different countries
2 now is not going to affect your ability to be fair towards
3 them?

4 A. No, sir. No, sir.

5 Q. Okay.

6 A. Like I said, I just simply meant if it occurred in that
7 place, why would -- why is it over here, and he explained
8 that.

9 Q. Okay. So you're okay with that explanation?

10 A. Yes.

11 THE COURT: Anything else from the defense?

12 MR. BROOKE: No, Your Honor.

13 THE COURT: I will let you go back to your
14 seat, I will talk to counsel just a little bit more. You
15 can go back up there. In fact, we will see what we need
16 to do.

17 (Ms. Minor went back to her seat.)

18 THE COURT: Any thoughts? I don't know that --
19 well, I don't know what you want to do.

20 MS. BLUM: It seems to me her explanations
21 were reasonable. It's a little upsetting that she doesn't
22 know what the holocaust is, but that's a whole another
23 issue.

24 THE COURT: I told you that would happen when
25 we had that other conference.

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1 MS. BLUM: So I think she can remain within the
2 pool, and we discussed it, and Ms. Flinn can remain within
3 the pool as well at this point.

4 THE COURT: Okay. Any other thoughts?

5 MR. BROOKE: We do think Ms. Flinn should be
6 excused for cause, Your Honor, on the basis that she was
7 given statements on the job on an issue in this lawsuit,
8 and that is that the man had to leave his homeland, and
9 there's no way we can recover from that, we have to
10 disprove the negative of what she heard on the street
11 several years ago, and I think it shifts the burden a
12 little bit.

13 THE COURT: I think everything she said was
14 probably favorable to him, but why don't we let you ask
15 some questions just like we did with -- we usually let the
16 potential juror have a chance to further articulate what
17 they know and so we're fair to the jurors, so I think we
18 probably ought to let her come back around and then we
19 will see what we need to do.

20 (The following proceedings were had in open
21 court.)

22 THE COURT: Ms. Flinn, if you will come back
23 around for a minute. Ms. Flinn, I'm sorry.

24 (The following proceedings had at side-bar
25 bench.)

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1 BY THE COURT:
2 Q. I think they had a few more questions about what you
3 know or don't know from or about Mr. Carranza.
4 A. Okay.
5 BY MR. BROOKE:
6 Q. Have you ever heard anybody else ever make a statement
7 to you that someone had to flee their country?
8 A. I didn't hear this directly from the defendant.
9 Q. I realize that.
10 A. From -- you know, I do recall hearing that at least
11 once, maybe twice from other people who worked in the museum.
12 Q. My question is have you ever heard a similar statement
13 about anybody else in your life?
14 A. No, just his family, other people in his life, but not
15 anyone else.
16 BY THE COURT:
17 Q. I think the question is being misunderstood. As to any
18 other human being in the world, have you ever heard that --
19 that some other people had to flee their country?
20 A. Sure, but not to me personally. In the news and things
21 like that, not that I know personally.
22 Q. Right, and that's a pretty broad statement, I think.
23 BY MR. BROOKE:
24 Q. Did you ever learn any information as to the reason for
25 leaving his homeland?

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1 A. For him leaving?

2 Q. Yes.

3 A. Again, this was not something I discussed directly with
4 him, but what I heard from other people, whether it is true or
5 not, was that he was in the military, the way it was discussed
6 was he was in the military, he was involved in military
7 things, that when there was an overturn of the country or
8 something happened, he had to leave because his party or --
9 you know, was thought of unfavorably and now he's at Brooks as
10 a security guard, but at one point he had been a general or
11 something like that.

12 BY THE COURT:

13 Q. Well, would that cause you to have any view at all
14 about how this case ought to be resolved?

15 A. I mean I certainly hope not. I mean I am assuming I
16 know a little bit more about it coming in than other people,
17 not necessarily about the specifics of this case, but, you
18 know, all I can tell you about him is that I don't -- I didn't
19 have much of a relationship with him other than, you know,
20 hello. If you had asked me before today what my opinion of
21 him was, it would be just to say he was polite and friendly
22 and seemed to be a good security guard, and then what I just
23 told you of what I heard about him.

24 BY MR. ESQUIVEL:

25 Q. If the judge instructed you or asked you to put that

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1 information aside what you heard from other people about him,
2 would you be able to do that, put it aside and sit and listen
3 to the evidence and judge the evidence from -- judge the case
4 based on that basis?

5 A. I would certainly hope that I could be effective enough
6 to where I would separate that and only focus on what is
7 brought up in this courtroom.

8 BY THE COURT:

9 Q. You would not be able to tell other jurors that you
10 knew him before or that you -- or any of the circumstances or
11 information you had. You couldn't say, well, he's a real good
12 security guard or he was polite and nice.

13 A. I understand.

14 Q. You couldn't say I heard some people say this or that,
15 because it is not evidence in the case, and you're not being
16 called as a witness; is that okay with you?

17 A. Yes, it is okay. I think I may have mentioned to the
18 woman who works up in the court the day that we filled out the
19 forms because I had some question then based on the questions,
20 I just said I think I may know someone involved in this case.

21 Q. Mrs. Dote?

22 A. Yes, but I didn't say anything favorably or
23 unfavorably. I don't think I even said who because I wasn't
24 sure beyond Nicolas, I didn't know the last name. Just based
25 on some of the questions in the case, I thought this might

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1 involve him, but no, I would never --

2 Q. Because it is not evidence?

3 A. Right.

4 Q. You wouldn't be able to talk about it as a basis for
5 making any determination and you couldn't use it yourself as a
6 way to make any determination.

7 A. Yes.

8 Q. Do you think you start out with a favorable impression
9 of him?

10 A. Well, I mean from personal experience, all I can tell
11 you is that he was polite to me in the few instances that I
12 had contact with him. I mean all of you have been polite to
13 me, that doesn't mean that I can't -- I can only, you know,
14 right now base what I know on that. I understand that if I'm
15 chosen as a juror that I would have to go by the evidence I
16 hear in the case.

17 THE COURT: Anything else from anybody else?
18 Anything? Okay. Well, go back to your seat and we will
19 start again in a minute. Thank you.

20 (Ms. Flinn returned to her seat.)

21 MR. BROOKE: Your Honor, when she made the
22 statement I would have to hear more --

23 THE COURT: There's not a basis to excuse her
24 for cause. There's just not. And you get a peremptory
25 challenge, you just have to figure out if you want to use

1 it. So they don't -- they're out of their peremptories,
2 so they have to go for a cause. Anything else?

3 MR. ESQUIVEL: We had discussed earlier, Your
4 Honor, when additional jurors were selected that each side
5 would get an additional peremptory challenge, are we to
6 that stage now?

7 MR. FARGARSON: Not yet.

8 THE COURT: We're going to seat an alternate.
9 I will let you both have an extra challenge because I
10 think I indicated something that might have been
11 confusing. When we choose traditional alternates, we do
12 allow you to have one, we don't have any alternates, but
13 technically we're in the alternate stage, so I think
14 that's fine, and I had indicated as much to you. That's
15 how we will handle that. Anything else?

16 MS. BLUM: No.

17 THE COURT: I think we're all set for the
18 plaintiffs' side.

19 (The following proceedings were had in open
20 court.)

21 BY THE COURT:

22 Q. Well, it just occurred to me I have at least somebody
23 to ask a few questions of, and, Ms. Flinn, I need to ask you
24 what do you think is the most important characteristic that
25 someone should have if they're going to be on a jury.

- 1 A. Well, I believe that they need to be impartial and be
2 analytical rather than focusing on emotions in deciding a
3 case.
- 4 Q. We went through the process and, of course,
5 impartiality was an important part of the discussion and then
6 I asked everybody to list or tell me something that they
7 thought was an important example of a bias or prejudice. What
8 would you have put on that list? Maybe it is something that
9 we haven't talked about, what would you put on that list?
- 10 A. I think you focused on most of them, whether it is
11 discrimination based on race, age, gender, religion, national
12 origin.
- 13 Q. We went through an exercise, and you have listed those.
14 What would you have selected, that's always an -- obviously,
15 people want to --
- 16 A. Probably in light of 9/11, either religion or national
17 origin, because those are big issues right now.
- 18 Q. Exactly. Let me ask this: We went through then an
19 exercise, the way the four jurors were asked to pick out
20 people, what was the -- is that an effective mechanism and, if
21 it is, what does it teach, an effective exercise?
- 22 A. I thought it was an effective exercise because it
23 showed that you need to have the facts before you make
24 assumptions about people, certainly, based on appearance.
- 25 Q. Now, next question, as you know, was do you think this

1 case can be decided by this jury or a jury we're going to end
2 up with without being influenced by any illegal or
3 unconstitutional considerations, these biases and prejudices
4 that we have been talking about, do you think that can be done
5 or do you think it is likely to be done and, if so, how? If
6 not, why not?

7 A. Well, I think it certainly can be done, and that's
8 obviously the goal, as long as people pay attention and they
9 remain impartial, focus on the facts, listen, avoid emotional
10 responses and focus on their analytical skills.

11 Q. We talked a little bit about the time requirements in
12 the case. Well, then I read the allegations, I didn't really
13 come back and ask everybody about them because we talked about
14 them so much, but let me ask you: I read the allegations,
15 just knowing the type of case, does that seem to you to be a
16 difficult case for you to sit on and be a fair and impartial
17 jury just knowing the general type of case?

18 A. No, Your Honor, it does not.

19 Q. Any problems with the timeframe?

20 A. No, Your Honor.

21 THE COURT: All right. I think we have covered
22 everything with everybody, I want to make sure.

23 Well, counsel for the plaintiff.

24 MR. ESQUIVEL: Thank you. Turn on my
25 microphone. Thank you, Your Honor.

1 BY MR. ESQUIVEL:

2 Q. Ms. Reeves, I understand that you were born in Cuba, is
3 that right?

4 A. Yes.

5 Q. Could you tell me about that? Are your parents Cuban?

6 A. No, United States Air Force, and I was born in Havana.

7 Q. And how long did you live there?

8 A. Until I was seven years old.

9 Q. And what were the circumstances under which your family
10 left Cuba?

11 A. Fidel Castro, we fled.

12 Q. Could you tell me about that experience, what that has
13 meant in your life to have fled Cuba because of Fidel Castro?

14 A. I was very young, I don't remember much other than we
15 had to leave and come to the United States. They were U. S.
16 citizens, so I moved with my parents.

17 THE COURT: Joe, we're getting a lot of
18 feedback.

19 Yes, sir, go ahead.

20 BY MR. ESQUIVEL:

21 Q. Have you had any occasion to visit Latin America since
22 you were -- since you left Cuba?

23 A. Yes.

24 Q. Okay. Do you work and travel in Latin America pretty
25 regularly?

1 A. I did. My last job before what I do now, I was the
2 Latin American region was my region at work.
3 Q. Do you have any overall impressions or ideas about
4 Latin America based on your experience?
5 A. Yes.
6 Q. What are they?
7 A. I loved it. It was wonderful. Every country I went to
8 was wonderful.
9 Q. Have you ever been to El Salvador?
10 A. No.
11 Q. From your experience in Latin America, do you know
12 anything in particular about El Salvador?
13 A. Not at all, nothing.
14 Q. For the three jurors who have just joined, I want to
15 confirm a couple of things that we talked about with the other
16 panel. Some of the -- well, all of the allegations in this
17 case, all of things that happened to the plaintiff happened
18 about 20, 25 years ago. Is there any reason why that fact
19 alone, the fact that the events we will be talking about took
20 place 20 years ago would cause any of the three of you to
21 start out with a bias one way or the other either for or
22 against the plaintiffs?
23 A. No, sir.
24 Q. Okay. And also something that Judge McCalla alluded to
25 with the other panel, the plaintiffs in this case are not

1 going to be saying that Colonel Carranza, the defendant, was
2 actually the person who pulled the trigger or who directly
3 committed the violence that the plaintiffs and their families
4 are alleging in this case. What they will talk about, does
5 the -- and the law provides for responsibility for commanders.

6 THE COURT: We need to check that mic. Joe is
7 going to check it for you. I think we're getting a double
8 mic effect.

9 MR. ESQUIVEL: Should I take off the microphone
10 on the lapel?

11 THE COURT: I'm afraid to lose that microphone
12 on the lapel.

13 MR. ESQUIVEL: I will just bend it that way.

14 THE COURT: I appreciate it.

15 MR. ESQUIVEL: Okay. All right.

16 BY MR. ESQUIVEL:

17 Q. Is there anything about that fact that the law in this
18 case that would involve the responsibility of a commander and
19 not necessarily the direct perpetrator that would make you
20 biased or unable to decide the case or unable to start from an
21 even start at the beginning of the case?

22 A. No, sir.

23 Q. I'm sorry, we can't hear.

24 A. No, sir. No, sir. No, sir.

25 Q. Now, Ms. Reeves, you have served on a jury before, and

1 that was -- you had a positive experience serving as a juror?
2 A. Criminal court.
3 Q. Okay. That was a criminal case?
4 A. Yes.
5 Q. Now, the judge has said that this -- he has explained
6 that this is a civil case and so there are different standards
7 of proof for a civil case and a criminal case. Now, this case
8 does involve acts that are also criminal acts. Do any of the
9 three of you, will you have any difficulty applying a civil
10 standard because it is a civil case even though the things
11 that we will be talking about clearly also are crimes?
12 A. I won't have any problem.
13 Q. Ms. Flinn, how about you, is that a problem at all?
14 A. No, sir.
15 Q. Ms. Minor?
16 A. No, sir.
17 MR. ESQUIVEL: Thank you very much.
18 THE COURT: Mr. Fargarson?
19 MR. FARGARSON: Yes, sir.
20 BY MR. FARGARSON:
21 Q. Is this on? Is this on? Okay. I just have a few
22 questions, I believe. Were the three of you able to hear most
23 of the questions that I asked? I mean did I speak loud enough
24 that you can hear?
25 A. Yes, sir.

1 Q. Okay. I just want to reiterate a few of those things.
2 Mr. Esquivel said cases are tried based on a burden of proof.
3 That's a legal standard that the party who does the suing has
4 to come into court and what is known by the greater weight or
5 preponderance of the evidence have to prove their case, do you
6 all understand that?

7 A. Yes, sir.

8 Q. And would that for some reason be any problem for the
9 three of you one way or the other? I wouldn't expect it to,
10 but I need to ask that question.

11 In addition to that, as I said, the fact that these
12 people went through an experience and got hurt, family members
13 got hurt and members of their family got killed, that issue is
14 not being contested one way or the other. The only issue that
15 we have contested is the liability of Mr. Carranza for those
16 occurrences and those events; do all of you understand that?

17 A. Yes, sir.

18 Q. Now, have either of you three been involved in any type
19 of lawsuit before?

20 A. Yes, sir.

21 Q. Okay. Ms. Flinn, what type was it?

22 A. Yes, sir. It was a dispute with former homeowners of
23 the house my husband and I own. It was settled out of court.

24 Q. Was the dispute, did it involve -- did it get to the
25 point where it was a lawsuit?

- 1 A. Yes, I believe so. I was only indirectly involved. My
2 husband and his attorney really handled that.
- 3 Q. Okay. Were you a party?
- 4 A. I was named as a party.
- 5 Q. Okay. So do I understand that you and your husband
6 were defendants, that someone brought an action against you?
- 7 A. Yes, I believe that he placed a countersuit, but I --
8 I'm not really sure about that. Again, it never made it to
9 court.
- 10 Q. Well, that's all right. The point is would there be
11 anything about that that would cause you to lean in favor of
12 one party as opposed to another?
- 13 A. No, sir.
- 14 Q. Okay. And what were you involved in if you don't mind
15 telling me?
- 16 A. No, sir. A car accident against an insurance company,
17 it never made it to court.
- 18 Q. Okay. I mean were you the party who was injured and
19 brought the suit or did someone bring against suit you?
- 20 A. The party that was injured brought the suit.
- 21 Q. Would there be anything about your involvement in that
22 type of lawsuit that would cause you to lean more favorably
23 towards one party or another, and in particular, since you
24 were the plaintiff, would that cause you to lean more towards
25 the plaintiff in this?

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- 1 A. No, sir.

2 Q. You can handle each side fairly?
3 A. Yes, sir.
4 Q. The other issue I mentioned is the issue of sympathy,
5 and, you know, all of us as human beings, I think if they're
6 genuine human beings have sympathy for people that have been
7 involved in any type of tragedy, and I understand that. I
8 mean I feel the same way. In a lawsuit, though, you have to
9 avoid sympathy, prejudice, lack of fairness one way or the
10 other. Do the three of you believe that you could put aside
11 any natural sympathy you would have for the plaintiffs because
12 of what they have been through and decide this on the law and
13 the facts without sympathy, prejudice, emotional feelings one
14 way or the other towards either side?
15 A. I have no problem.
16 Q. Do all three of you say you could do that?
17 A. Yes, sir.
18 Q. I mentioned this before, and that is the plaintiffs,
19 that is the parties bringing the suit, and there are five of
20 them, as you can see, will go first since they have the burden
21 of proof. And it may be a number of days before the defendant
22 has an opportunity to put on any particular proof one way or
23 the other. Will you wait until you have heard both sides of
24 the case, any instructions from the court and then get
25 together in the jury room to deliberate the case before you --

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1 before you decide what verdict or what result you want to

2 reach in the case, will all three of do you that, not
3 prematurely decide a case on part of the proof and part of the
4 other?

5 Okay. Hold on just a moment. Your Honor, would you
6 give me just a moment?

7 THE COURT: Certainly.

8 MR. FARGARSON: Thank you, sir.

9 That's all, Your Honor.

10 THE COURT: That, I think, is everything. So,
11 ladies and gentlemen, we have three jurors that we can
12 consider.

13 Will you both fill out your strikes sheets. If
14 you have any questions about it, you can approach the side
15 bar. Hand in a form to Mr. Ruby when you have it
16 completed.

17 (Strike sheets were passed to the court.)

18 THE COURT: All right. Let me see counsel at
19 side bar.

20 (The following proceedings had at side-bar
21 bench.)

22 THE COURT: Okay. Both sides have exercised a
23 challenge. The defendant struck Ms. Flinn in seat 13, and
24 the plaintiff struck Ms. Reeves in six, which will leave
25 us with Ms. Minor as a definite juror. Of course, all

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1 these jurors will deliberate. There are no alternates, so
2 they will all deliberate.

3 Anything else?

4 MS. BLUM: No.

5 THE COURT: We will excuse the rest of the
6 panel, and that will be it. Anything else --

7 MR. FARGARSON: Well --

8 THE COURT: -- before I let them go?

9 MR. FARGARSON: I understand. Yes, sir. I
10 object to the plaintiffs being allowed to challenge. My
11 understanding was that the court might get 14, and then if
12 the court did, then each side would get challenges and yet
13 the plaintiffs got a challenge --

14 THE COURT: Nobody objected to the procedure I
15 just discussed at side bar, so I didn't know that was a
16 problem.

17 MR. FARGARSON: Well, I'm sorry, I
18 misunderstood it.

19 THE COURT: I said we were in the alternate
20 stage because we obviously only had to have eight and,
21 therefore, I would allow each side to have an additional
22 challenge. If you want -- see, I was giving you two, I
23 was giving you two. In other words, you had your one that
24 you had not used, and then because we had two people that
25 would be, quote alternates, I would let each side have

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1 another challenge, so if you want to exercise a second
2 challenge, you may do so. Of course, there's only one

3 person to do it to, which is as to Ms. Minor, but you may
4 do so, I think that's what I meant. I might not have been
5 clear about that. You see what I'm saying? So you have
6 one reserved which you did not use, we had one spot on the
7 panel of eight that we had not filled and then we had two
8 additional people. Of course, there are no alternates.
9 Really the court could have restricted it to three for a
10 total panel of 12, but I didn't do that, because I think
11 it is important to let you know that.

12 MR. BROOKE: I believe the confusion then was
13 that we held on to one of our challenges to be able to use
14 it for the alternates.

15 THE COURT: And you may use both of them. I
16 tried to make it clear earlier, you had kept one, we
17 didn't have all eight, you had kept one. You obviously
18 had reserved one to use with the remaining people, and
19 then I said it is only fair, though, because we were in
20 the additional juror stage that I would let both of you
21 have an additional challenge, and I will. I mean if you
22 want to strike Ms. Minor, it is up to you. I think you
23 would have that -- as I was trying to explain it, that you
24 have right if you wish to do so.

25 MR. BROOKE: I don't think we do.

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1 MR. FARGARSON: No, we're not going to strike
2 anybody else, I am just objecting to theirs. And I'm not
3 trying to be testy, you understand, I just --

4 THE COURT: That's okay.
5 MR. FARGARSON: I mi sanderstood.
6 THE COURT: I wasn't as clear as I could have
7 been, but I want to make sure that you could use both of
8 them now, and if you want to exclude Ms. Minor, we will
9 then seat several more people, although you won't have any
10 challenges left, but you could have cause challenges, we
11 could have a discussion on cause. Do you want to talk
12 about that?
13 MR. BROOKE: No, that's fine.
14 THE COURT: Do y'all want to talk together
15 about that?
16 MR. FARGARSON: No.
17 MR. BROOKE: We will seat a jury of nine?
18 MR. ESQUIVEL: Ten.
19 THE COURT: Ms. Reeves was struck because you
20 had one additional challenge because we went over the
21 eight, and they struck Ms. Flinn, and so -- and that
22 leaves us with ten. And you had reserved one, because you
23 had kept one. So you have a right to strike Ms. Minor if
24 you want to.
25 MR. BROOKE: We're still going to have a total

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1 of 10?

2 THE COURT: Then we would call another juror.
3 MR. BROOKE: So that we have two alternates at

4 least?
5 THE COURT: There are no alternates.
6 MR. BROOKE: They all deliberate?
7 THE COURT: They all deliberate, because in the
8 federal system on the civil side, they eliminated
9 alternates. It is kind of confusing, but that's exactly
10 what do they did.
11 MS. BLUM: So we have our ten jurors?
12 THE COURT: We have our ten. My question only
13 was to be absolutely sure that you understood so that if
14 you wished to exercise another challenge, you would know I
15 would call somebody else up there.
16 MR. BROOKE: We will save it for the next
17 alternate.
18 THE COURT: We won't have any more alternates,
19 this is it.
20 MR. FARGARSON: I understand. Like I say, I
21 should have maybe clarified the issue rather than not
22 understood it completely.
23 THE COURT: Well, I think -- if everybody
24 understands, then we will excuse two, we will keep one,
25 that gives us ten. We will excuse the rest of the panel

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VOIR DIRE OF THE JURY

203

1 and then we will swear the jury in.
2 MS. BLUM: Excellent.
3 (The following proceedings were had in open
4 court.)

5 THE COURT: All right. Well, again, thank you
6 for those who are going to be excused, thank you for being
7 here and filling out the forms and going through the whole
8 process, and we do appreciate it. We're going to excuse
9 two of you. We're going to excuse Ms. Reeves and
10 Ms. Flinn. Thank you both very much, and that means that
11 Ms. Minor is already in the seat that she needs to be in,
12 that will be your seat during these proceedings, so that
13 gives us our panel in the case.

14 For those of you who have been here, I do
15 appreciate your patience in being here today, it is an
16 important process, and this should serve as your jury
17 duty. I don't think you will be called back, that is up
18 to Mrs. Dote. Again, thanks very much, and we will let
19 you be excused at this time. Because you did fill out the
20 questionnaire, you have participated in the voir dire
21 process, and this should be, as I understand it, your
22 service for this period of time. Thanks very much. And
23 that's a nice Halloween outfit.

24 All right. Thanks very much. For the rest of
25 you, if you will stand and raise your right hand, you will

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VOIR DIRE OF THE JURY

204

1 be sworn in as the jury in the case.

2 THE CLERK: Do you and each of you solemnly
3 swear that you will well and truly try the issues herein
4 joined, and that you will render a view verdict according

5 to the law and evidence, so help you God?
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PRELIMINARY INSTRUCTIONS BY THE COURT

205

1 THE JURY: I do.
2 THE COURT: You may be seated. Ladies and
3 gentlemen of the jury, you are now the jury in this case,
4 and I'm going to take a few minutes to discuss with you
5 briefly some initial instructions in the case. After I
Page 201

6 finish those, you will be going home for the day. When we
7 come back tomorrow, you will be coming into the jury room
8 to my left and to your right, you will be coming in on the
9 corridor side, you will not come in through those double
10 doors again. You will need to always wear your badges and
11 always return to the seat that you're in now. If you have
12 trouble hearing or some issue like that, you need to let
13 us know so we can do something about the sound, make sure
14 that you can hear.

15 I am going to review with you some of the
16 procedures in the case that you can expect and, secondly,
17 I'm going to go over with you again in the same detail
18 that we have so far the rules that will govern your
19 conduct as you sit as members of the juror in this case.

20 Settlement of disputes in a jury trial is a
21 strong and necessary foundation upon which our form of
22 government rests. It is basic to the administration of
23 justice that the determination of both the law and the
24 facts be made fairly, honestly and impartially. You, as
25 jurors, and I, as the judge, have a heavy responsibility

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 to assure that a just result is reached in the
2 determination of the differences between the parties in
3 this case.

4 The first step in this case, which will be
5 tomorrow morning, will be the opening statements of

6 counsel. In the opening statements, the parties through
7 their counsel will tell you what they expect to prove as
8 to their client's case. As you would expect, the
9 plaintiffs who are making the claims in this case for
10 damages will through their counsel make their statement
11 first, and then will be followed by the defense. Of
12 course, the defense does not have to make a statement
13 because the burden of proof rests on the plaintiff, but
14 usually -- and I understand in this case, the defense will
15 probably be making an opening statement.

16 What is said in opening statements is not
17 evidence except as to those facts which are admitted or
18 agreed upon, and there are stipulated facts in this case
19 and I will tell you about them in just a moment.

20 A stipulated fact is a fact on which the
21 parties agree. It is a fact as to which it is not
22 necessary for you to receive any additional evidence in
23 order to accept that fact as established. Obviously,
24 where the parties agree on facts, it is not necessary for
25 them to present evidence, and it saves time in the

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PRELIMINARY INSTRUCTIONS BY THE COURT

207

1 presentation of a case in order -- where there are
2 stipulations. In this case, there are stipulations.

3 After you have heard all the evidence on both
4 sides, the attorneys will then have an opportunity to
5 address you in closing arguments. Again, just like in
6 opening statement, what is said in closing arguments is

7 not evidence. The argument is designed to present to you
8 the contentions of the parties as to what the evidence has
9 been -- as to what the evidence has shown and what
10 inferences can be drawn from the evidence in the case.
11 The plaintiffs have the right to open and close the
12 argument.

13 After the closing arguments, I will instruct
14 you on the law that applies in this case. And you will
15 then retire to consider your verdicts. I should tell you
16 that when you receive the instructions at the end of the
17 case, those instructions will be not only oral
18 instructions, that is I will not only read them to you,
19 but you will also receive a copy of those instructions.
20 You will have a text, a set of instructions from which to
21 work in the jury room.

22 The instructions that I give you at the end of
23 the case must control your deliberations. These
24 instructions, again, are simply preliminary to assist you
25 in following the evidence. They do not control your

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 deliberations. It is the instructions at the end of the
2 case that do. That's the basic procedure of the trial
3 itself.

4 Now, let's talk about what your job is and the
5 job that I will perform during the trial. My role is to
6 decide the rules of law that apply to the case. Your job

7 is to determine what the facts are. You are the sole
8 determiners, the sole judges of the facts in this case. I
9 will endeavor during the trial not to express any opinion
10 concerning the facts in this case. But any opinion that
11 you might perceive that I express -- hopefully, I won't
12 express any, but if you think I expressed one, that would
13 be irrelevant in any event because you are the sole judges
14 of the facts. I'm not a judge of the facts. You must
15 decide what the facts are based solely on the evidence
16 that is presented here in this courtroom during the case.

17 Now, on the other hand, you are bound to follow
18 the law as I give it to you in my instructions at the end
19 of the case whether you agree with that law or not. As
20 I've said, you are to determine what the facts are solely
21 from the evidence that is presented here during the trial.
22 And that evidence will consist of the testimony of the
23 witnesses, the exhibits that are received in the case and
24 the stipulated facts in this case.

25 Questions that are asked by a lawyer are not

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 evidence. The evidence consists of the witnesses' answers
2 to the questions. You must never speculate as to any
3 answer suggested by a question asked of a witness, and you
4 should consider the question only as it is necessary to
5 apply meaning to the answer. As I told you earlier, the
6 statements and arguments of counsel both in opening
7 statements and in closing arguments and any other time

8 during the course of the trial are not evidence.

9 During the course of the trial, the parties
10 will be making objections or may make objections to some
11 of the testimony or other evidence or may make motions
12 based on the law. I will rule on those objections and
13 motions. My rulings on these matters will be based solely
14 on the law, and you should not draw any inference from the
15 rulings that I make during the trial as to any of the
16 facts in the case. My rulings don't have anything to do
17 with the facts in the case, but simply the law.

18 If I rule that a particular piece of evidence
19 is inadmissible, or I sustain an objection to certain
20 evidence, then the matter excluded from evidence is not
21 evidence in this case and must not be considered by you in
22 any way in making your determinations in the case. You
23 must assume that the evidence would -- the evidence that
24 was excluded would have no value to you in your
25 deliberations in the case.

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 The claims in this case have been concisely
2 and, frankly, in a very short way presented in some brief
3 statements that I read to you earlier. I'm going to go
4 over that statement again just to remind you of the basic
5 nature of the case.

6 The plaintiffs bring this lawsuit for human
7 rights abuses that they suffered in El Salvador in the

8 early 1980s. The plaintiffs claim that the defendant,
9 Mr. Carranza, who was a colonel in the Salvadoran military
10 at the time is responsible for torture, extrajudicial
11 killing and crimes against humanity based on the law of
12 command responsibility. Three of the plaintiffs allege
13 that their family members were civilians who were killed
14 by members of the Salvadoran military and by groups
15 working together with the Salvadoran military.

16 Two of the plaintiffs allege they were tortured
17 while in the custody of the Salvadoran military. The
18 plaintiffs seek compensatory damages from the defendant
19 for the physical and emotional pain that they suffered.
20 And you will also have to decide if this is a case in
21 which punitive damages may apply. The defendant in this
22 case denies that he is responsible for the harm, injury or
23 death of any of the plaintiffs or their relatives as
24 contended in this case. Certain facts in this case are
25 not in dispute, and I will tell you about those because

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 you need to know that the parties are not arguing about
2 these facts. You can accept these facts as established if
3 you, the jury, determine that you wish to do so. But the
4 parties -- the parties are not contesting these facts,
5 they agree on these facts.

6 From -- the following facts are stipulated to:
7 From October, 1979 to January, 1981, Nicolas Carranza was
8 the subsecretary of defense and public security in El

9 Salvador and a member of the Salvadoran high command.

10 While serving as subsecretary of defense,
11 Colonel Carranza did not initiate an investigation to
12 determine whether any members of the Salvadoran military
13 were responsible for human rights abuses.

14 While serving as subsecretary of defense,
15 Colonel Carranza did not discipline or punish any members
16 of the Salvadoran military for human rights abuses. And
17 you will have a copy of these too, I might tell you that.
18 So that's not -- we don't expect you to remember a long
19 list of things, and I will tell you also that you will be
20 allowed to take notes, I just want you to know that you
21 will be allowed to have a copy. While serving as
22 subsecretary of defense, Colonel Carranza did not
23 prosecute under military law or refer to civilian courts
24 any members of the Salvadoran military for incidents of
25 torture or extrajudicial killing.

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 From 1997 to 1984, the Salvadoran Constitution
2 and the laws of El Salvador, including international
3 agreements to which El Salvador was a party, prohibited
4 members of the Salvadoran military from committing torture
5 and extrajudicial killing. And, obviously, extrajudicial
6 means outside the legal process, which is usually a
7 criminal process, extrajudicial killing.

8 From May of 1983 to May of 1984, Colonel

9 Carranza served as director of the treasury police of El
10 Salvador. While serving as director of the treasury
11 police, Colonel Carranza had the legal authority and
12 practical ability to exercise control over subordinate
13 members of the treasury police. While serving as director
14 of the treasury police, Colonel Carranza had the authority
15 to discipline any subordinate who was responsible for
16 committing a crime or violating military rules of conduct.

17 While serving as director of the treasury
18 police, Colonel Carranza did not prosecute under military
19 law or refer to civilian courts any members of the
20 treasury police for incidents of torture or extrajudicial
21 killing.

22 The claims of the plaintiff, Ana Patricia
23 Chavez, are the result of an event that occurred on
24 July 26th, 1980. Plaintiff Ana Patricia Chavez has
25 resided in Van Nuys -- I always get it confused.

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PRELIMINARY INSTRUCTIONS BY THE COURT

213

1 MR. ESQUIVEL: I think it is Van Nuys.

2 THE COURT: It is Van Nuys. Van Nuys,
3 California for 24 years prior to her deposition taken on
4 December the 7th, 2004. Ms. Chavez is a permanent
5 resident of the United States.

6 The claims of the plaintiff Jose Calderon are
7 the result of an event that allegedly occurred on
8 September 11, 1980. The plaintiff, Jose Calderon, has
9 resided in San Francisco, California since February of

10 1981, and has been a citizen of the United States since
11 1996.

12 The claims of plaintiff, Erlinda Franco, are
13 the result of an event that allegedly occurred on
14 November 27, 1980. The Plaintiff, Erlinda Franco, is the
15 only plaintiff who resides in El Salvador.

16 The claims of the plaintiff, Daniel Alvarado,
17 are the result of events that allegedly occurred in August
18 of 1983. The plaintiff, Daniel Alvarado, has resided in
19 Sweden since April of 1986.

20 The claims of the plaintiff -- and I'm going to
21 mispronounce Cecilia Santos are the result of events that
22 allegedly occurred in September and October of 1980. The
23 plaintiff, Cecilia Santos, moved to New York from El
24 Salvador in June of 1983 and has been in New York for 20
25 years.

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PRELIMINARY INSTRUCTIONS BY THE COURT

214

1 The defendant, Nicolas Carranza, has been a
2 resident of the United States since 1985. The defendant,
3 Nicolas Carranza, has been a naturalized citizen of the
4 United States since 1991. The defendant, Nicolas
5 Carranza, has not concealed his identity or location since
6 1985 and has lived at the same residence since 1985.

7 Ana Patricia Chavez does not know the names of
8 the individuals who committed the alleged acts claimed by
9 her in this case. Cecilia Santos does not know the names

10 of the individuals who committed the alleged acts
11 complained of by her. Jose Francisco Calderon does not
12 know the names of the individuals who committed the
13 alleged acts claimed by him. Erlinda Franco does not know
14 the names of the individuals allegedly responsible for the
15 alleged acts complained of by her. Those facts are not in
16 dispute in this case, and you can accept those facts as
17 established. I will check with the parties and we will
18 determine when we can submit the written list, but at the
19 very least your stipulations will be in the final set of
20 instructions, and they may be refer to the stipulations
21 and read them to you at various portion of the trial if it
22 is relevant at a particular point in time.

23 In this case, you will ultimately have to
24 decide a number of things, and it may be useful for you to
25 know what has to be demonstrated in a couple of these

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 situations under the law, so I'm going to tell you about
2 those. And then in a moment, I'm going to describe to you
3 in some fairly general terms the law of command
4 responsibility, because, while at the end of the case you
5 will get the definitive instruction on that, and I will
6 tell you that sometimes they change some, not that the law
7 changes, but what is important for you to receive changes
8 as we go through the process, but I'm going to give you
9 some idea about what it means so that as you listen to the
10 evidence, it will make more sense to you.

11 On claims of torture, a plaintiff has the
12 burden of proving the following elements by a
13 preponderance of the evidence. Preponderance is the
14 greater weight of the evidence, so that if you were at a
15 scale and you were balancing that scale, the scale has to
16 tip in favor of the plaintiff on these points in order for
17 the plaintiff to prevail, the plaintiff you're
18 considering, to prevail. It has the greater persuasive
19 effect in your determination in the case. The
20 preponderance of the evidence, the greater weight. Under
21 a claim for torture, a plaintiff would have the burden of
22 proving the following elements:

23 1. That one or more persons intentionally
24 inflicted severe pain and suffering, whether physical or
25 mental on and in this case, of course, we have a number of

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PRELIMINARY INSTRUCTIONS BY THE COURT

216

1 claims, one from Ms. Chavez, one from Ms. Santos, one from
2 Mr. Calderon and one from Mr. Alvarado.

3 The second element is that the victim was in
4 the person's custody or physical control that inflicted
5 that pain.

6 Third, that the person who intentionally
7 inflicted severe pain or suffering on the plaintiff did so
8 while acting under the actual or apparent authority or
9 color of law of the nation or state, as we might refer to
10 it, of El Salvador. It has to be committed in -- under

11 the authority or apparent authority of the state, or
12 nation in this case.

13 Fourth, that the severe pain and suffering was
14 inflicted for such purpose as obtaining from the victim or
15 another person information or a confession punishing the
16 victim for an act the victim or another person has
17 committed or was suspected of having committed,
18 intimidating or coercing the victim or the person, or for
19 any discriminatory purpose.

20 I might tell you so it is not confusing, this
21 term is not confusing, that an act done under color of law
22 is simply a term of art. When a person acts or purports
23 to act in the performance of official duties, action under
24 color of law means action that is clothed with the
25 authority of the government, including actions that abuse,

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PRELIMINARY INSTRUCTIONS BY THE COURT

217

1 misuse or overstep the actor's legal authority. The act
2 under color -- acts under color of law also include those
3 acts that demonstrate a substantial degree of cooperation
4 between a private person and the government and, of
5 course, in the United States, an example of acting under
6 color of law would be if you were a Shelby County
7 sheriff's deputy and I'm going to use a very -- and you
8 beat somebody up while you were the sheriff's deputy,
9 that's acting under color, use your authority, for
10 example, to stop somebody, then you exceeded perhaps your
11 authority and you did something under color of law because

12 you had the authority to from the state to engage in
13 certain activity. That's an example, but it gives you --
14 it helps clear up this concept.

15 Extrajudicial killing -- and at the end we will
16 talk about it more, but the elements for that are that a
17 person or persons deliberately killed a particular person.
18 It is alleged that Ms. Chavez's father, and I have to
19 remember everybody, and mother were killed and that
20 Mr. Calderon's --

21 MR. ESQUIVEL: His father.

22 THE COURT: It is his father was killed, and
23 that Mr. Franco was killed, Mr. Manuel Franco was killed.
24 Well, that's the allegation and, of course, the first
25 element is that a person is deliberately killed, a person

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 or person deliberately killed somebody. The second is
2 that the person or persons killed the victim while acting
3 under the actual or apparent authority, we kind of talked
4 about that, or color of law in El Salvador. So it is as
5 though you had a sergeant who is under your command or a
6 lieutenant or a colonel or whoever it is or a private or a
7 corporal and they're in your command and they engage in
8 that killing of an individual, but they have to kill the
9 victim while acting under the actual or apparent authority
10 or under color of law. And third, that the killing was
11 not previously authorized by a judgment of a regularly

12 constituted court affording all of the judicial guaranties
13 that are recognized as indispensable to civilized people.

14 Well, we have talked about the idea of crimes
15 against humanity. There's -- there are claims in that
16 regard by three of the plaintiffs, and the burden is on
17 them to show the following elements by the greater weight
18 of the evidence, and these elements that a person or
19 persons committed any of the following acts: Murder,
20 extermination, enslavement, deportation, imprisonment,
21 torture, rape, persecution on political, racial or
22 religious grounds, enforced disappearance of persons,
23 apartheid, or other inhumane acts. The second element is
24 that the person or persons committed the act as part of a
25 widespread or systemic attack directed against the

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 civilian population. Third, that the person or persons
2 knew or based on the circumstances should have known that
3 the act was part of a widespread or systematic attack.

4 The term widespread refers to large scale
5 nature of the attack and the number of targeted persons.

6 The term systematic refers to the organized
7 nature of the acts of violence and the unlikelihood that
8 they occurred randomly.

9 I should tell you that the term crimes against
10 humanity is not in this case an assertion of a criminal
11 standard, we're not talking about a criminal proceeding in
12 which you have to prove beyond a reasonable doubt, it

13 still remains preponderance of the evidence. In this
14 sense, it is also a term of art.

15 Well, those are to give you an idea of what
16 we're talking about. And the nice thing is that you will
17 have a detailed set of instructions at the end of the case
18 to follow very, very carefully to determine if the
19 plaintiffs have met their burden.

20 The concept that we need to discuss now is the
21 law of command responsibility, because in this case, the
22 plaintiffs seek to hold Mr. Carranza responsible under the
23 law of command responsibility, and you will recall earlier
24 that we talked about the fact this is not a case about
25 somebody -- an allegation that Mr. Carranza is in a room

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PRELIMINARY INSTRUCTIONS BY THE COURT

220

1 and he tortures somebody or he shoots somebody, that's not
2 the allegation, and it is not the theory of responsibility
3 or alleged liability in this case. The law of command
4 responsibility makes a military commander liable for the
5 acts of his subordinates even if the commander did not
6 order those acts. This is because the law imposes
7 affirmative obligations on military commanders for the
8 acts of their subordinates, but to hold a military
9 commander liable under the law of command responsibility,
10 the plaintiff must prove the following elements by a
11 preponderance of the evidence:

12 First, that a superior subordinate relationship

13 existed between the defendant, Mr. Carranza, the military
14 commander, if it is proven that he was the commander, and
15 the person or persons who committed the human rights
16 abuses involved in this case.

17 Second, it must be proven with proof by the
18 greater weight or preponderance of the evidence that the
19 defendant, that is Mr. Carranza, who served as a military
20 commander, it has to be shown he's a military commander
21 knew or should have known in light of the circumstances at
22 the time that subordinates had committed, were committing
23 or were about to commit human rights abuses.

24 And third, it must be shown by the greater
25 weight or preponderance of the evidence that the

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 defendant, Mr. Carranza, and it is as asserted that he was
2 a military commander, so it has to be established that he
3 was a military commander failed to take all necessary and
4 reasonable measures to prevent the human rights abuses or
5 failed to punish the subordinates after the commission of
6 the human rights abuses.

7 I'm going to tell you a little bit more about
8 this, because it is important that the concept be
9 discussed. The first element of command responsibility is
10 the existence of a superior subordinate relationship
11 between the military commander, and in this case, of
12 course, it has to be the defendant, that is it must be
13 shown to be the defendant and the person or persons who

14 committed the human rights abuses involved in the case.
15 To establish this element, the plaintiffs must prove, each
16 plaintiff as to their claim, by a preponderance of the
17 evidence that Mr. Carranza had effective control over the
18 person or persons who committed the human rights abuses.

19 The effective control requirement is satisfied
20 if the military commander had the legal authority and
21 practical ability to exert control over his subordinates.

22 The military commander cannot escape liability,
23 however, where his own action or inaction caused or
24 significantly contributed to a lack of effective control
25 over his subordinates. Even if a military commander

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 lacked legal authority, he nonetheless possessed effective
2 control if he had the practical ability to exercise
3 control over his subordinates.

4 The second element of command responsibility is
5 the actual or constructive knowledge by the military
6 commander of human rights abuses committed by
7 subordinates. The plaintiff may prove this element by a
8 preponderance of the evidence in at least two ways:

9 First, that the plaintiff -- the first, the
10 plaintiff may prove that the military commander actually
11 knew the subordinates had committed or were committing or
12 about to commit human rights abuses.

13 Second, the plaintiff may prove that in light

14 of the circumstances at the time, the military commander
15 should have known that the subordinates had committed,
16 were committing or were about to commit human rights
17 abuses.

18 With respect to this element, the plaintiff
19 does not have to prove that the military commander knew or
20 should have known about the human rights abuses against
21 the specific victims in the case. Rather, the knowledge
22 element would be satisfied if the defendant proved that
23 the military commander knew or should have known that the
24 subordinates had committed, were committing or were about
25 to commit human rights abuses. The defendant should have

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 known that abuses were being committed if the subordinates
2 were engaged in a pattern, practice or policy of
3 committing human rights abuses. And the third element
4 we're going to talk about a little bit more, because it's
5 important that you listen to the proof, you will be able
6 to listen as to whether these things are there or not.
7 The plaintiff must establish the third element by proving
8 by a preponderance of the evidence that the military
9 commander failed to take all necessary and reasonable
10 measures to prevent human rights abuses or failed to
11 punish the subordinates after the commission of human
12 rights abuses. A commander is under an ongoing obligation
13 to investigate and punish all perpetrators of each and
14 every incident of human rights abuses. Failure to punish

15 may be established by proof that the military commander
16 failed to properly investigate reliable allegations of
17 human rights abuses committed by subordinates or failed to
18 submit these matters to appropriate authorities for
19 investigation and prosecution. Ultimate and final
20 authority, responsibility and accountability rests with
21 the military commander.

22 Well, ladies and gentlemen, at the end of the
23 case, I will give you a detailed instructions on a number
24 of other things. We will talk about mental state and
25 intent element and the things that you have to understand

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 in order to make a final determination in the case, but it
2 is important that I give you some idea. I'm not talking
3 about many things here about damages and how you prove
4 that or other things. At the end of the case, I will give
5 you all of the instructions on the law. You will have
6 them in written form. You will also have the benefit and
7 I will have the benefit, by that time, a great deal more
8 information so that I can be certain that I provided to
9 you all of the legal principles that you need in order to
10 reach a decision based on all the appropriate legal
11 principles after you determine what the facts are in this
12 case.

13 In this case, you will have to make
14 determinations about which evidence you believe and which

15 evidence you do not believe. That determination is not
16 based on the number of witnesses appearing for one side or
17 the other, but rather the weight that you give to the
18 evidence that is presented before you from all the
19 witnesses in the case. You can consider any evidence
20 presented by either side on any point, it is not a
21 situation where you consider only the evidence from one
22 side or party on the claims asserted, but you can consider
23 all the evidence in determining how these matters should
24 be resolved.

25 In determining the issue of credibility, who

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PRELIMINARY INSTRUCTIONS BY THE COURT

225

1 you believe and who you do not believe, you should
2 consider a number of things. You can consider whether
3 based on your observation of the witness as the witness
4 testified, did you find the witness to be a believable
5 witness, your observation, did you believe the witness.
6 You can determine whether or not that witness has given
7 prior statements in the past which are inconsistent with
8 the statement that that witness has given before you in
9 this court. You can consider other factors, such as what
10 is the testimony of other witnesses that you do believe.
11 And you can consider whether the witness has a reason, a
12 bias or prejudice or motive to give you testimony that is
13 slanted in this case. Is the witness a party in the case?
14 Does the witness have an economic interest in the case?
15 Is the witness related to a person who is involved in this

16 case? You can consider all those things in determining
17 whether or not you believe the various witnesses in this
18 case. I will give you a little more exhaustive list at
19 the end of the trial.

20 At the end of the case, you will be asked to go
21 to the jury room, proceed with your deliberations, so let
22 me remind you that until we get to that point in time, you
23 should continue to keep an open mind.

24 Let me tell you about a few things that apply
25 as we go through the trial. All of you probably, and I

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 told you earlier are interested in whether or not you can
2 take notes and how you should use those notes at trial.
3 Of course, you're allowed to take notes, and we will
4 provide you with some note pads and pencils, and we're
5 going to require that you leave those note pads and
6 pencils in the jury room except when you're using them
7 here in court. You can't take them home, and they will
8 not be yours to keep in the case, that is after the case
9 is over. But during the case, you may take notes if you
10 would like.

11 Let me tell you something about note taking, if
12 you decide to take notes, and it is probably a good idea
13 because the case is going to be a little long for you to
14 keep a list of witnesses and maybe a couple of things to
15 help you remember what that witness said or did during the

16 trial. But let me suggest this: Do not let note taking
17 interfere with your listening to the evidence in the case.
18 Do not let note taking distract you from other answers
19 that the witness is giving. So the point there is be
20 careful about taking too many notes. Take some notes to
21 help you remember, but don't attempt to write everything
22 down, that's impossible, and it is not a reliable way to
23 do it anyway, because you're going to miss important
24 testimony. So if you decide to take notes, take some
25 notes, don't take too many. If you decide not to take

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 note, that's fine, you're not required to take notes. If
2 you do not take notes, don't be overly influenced by the
3 fact that somebody else wrote something down, took a note
4 in this case. You know, I don't think anybody on the jury
5 is a certified stenographer, I might be wrong, but --
6 therefore, it is entirely possible for you to write
7 something down and in deciphering it later on get it
8 wrong. So if you take notes, don't show your notes to
9 other people. You can use your notes to refresh your own
10 recollection, and if you didn't take notes, don't be
11 overly influenced by the fact that somebody took notes.
12 All ten of you should rely on your recollection of what
13 the evidence was after you have talked about that among
14 yourselves, because you have got ten people listening, and
15 that's the function of the jury, so you can all help
16 recall what was said.

17 At the end of the case, of course, you will go
18 to the jury room and begin your deliberations, and I'm
19 going to remind you several times, don't make up your mind
20 about anything until you start that process. Then you
21 should discuss the evidence among yourselves and decide
22 these various factual issues with all ten of you talking
23 about it together.

24 Throughout this trial, there are a couple of
25 things to keep in mind:

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 One, we would like to keep you comfortable, but
2 it is unlikely that we will succeed. Our building has
3 about a seven-degree temperature variance. It seems to be
4 too cool or too warm most of the time. It happens
5 simultaneously in various parts of the building, so I'm
6 going to tell you that please be prepared for some
7 fluctuations in the temperature on occasion. If you're a
8 little cool, you may want to bring a sweater. If you're a
9 little warm, well, you know, you have still got to wear a
10 jacket -- or be comfortable, but you may want to dress
11 comfortable, don't make yourself uncomfortable.

12 The second thing is that when you leave, always
13 take a juror badge with you so that when you come back in
14 in the morning you will have one on your outer garment.
15 So if you have got a jacket on the outside, if you have
16 got a jacket on, be sure that you have got a juror badge

17 on. That helps all the parties and the witnesses identify
18 you. They probably are going to remember you, but they
19 might not, and that will help them avoid having any
20 inappropriate contact. It also tells the court security
21 officers that you're a juror, and that's actually a plus,
22 you want them to know you're a juror, so I think that's a
23 good thing.

24 The next thing is that when you come in
25 tomorrow morning, there should be some snack food here, I

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 hope. It is not usually very healthy. I will just tell
2 you that. It is sometimes biscuits and sausage and that
3 sort of thing. What are they bringing in now? Hopefully,
4 not donuts, but anyway, it probably won't be -- but it
5 will be a good snack. If you want a snack, it will be
6 good. There will also be coffee that is available for you
7 to make, they keep bottled water and sodas and that sort
8 of thing in the jury room. When you leave today, it is
9 going to be very soon and you want to say, well, what is
10 going to happen if I get there -- don't plan all this
11 being breakfast, please, but it will be a snack, and that
12 gives you -- also, you will have a small refrigerator, so
13 if you want to bring something that is healthier to put in
14 that refrigerator, you're welcome to do so. We will take
15 every morning a break in the morning of about a 15-minute
16 break for a restroom break, so we will -- Joe, we are
17 starting what time tomorrow?

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18 THE CLERK: We have a 9:00 o'clock sentencing.
19 THE COURT: Let's try to start here at 9:15
20 tomorrow, and I will start in here on something else a
21 little earlier, and we will try to get that out of the
22 way. So you need to come in at 8:30 tomorrow so we know
23 where you are. So if somebody has got a problem, you need
24 to call Mr. Warren. Make sure as you leave today you get
25 his phone number, and you probably already have Mrs.

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 Dote's number, so if there is any problem, and I sure hope
2 there is not one, that you can give us an immediate call
3 so we know what our situation is. We will ask to you come
4 in here at 8:30, we will start in here hopefully at 9:15.
5 Some days we will start at 9:00 o'clock, depends on our
6 schedule. We will take that break the middle of the
7 morning. I think tomorrow we have a little bit of an off
8 schedule, I may have to take my lunch at 11:00 and come
9 back here at 12:30. It is more like -- and so I will
10 be -- it will be an odd day, we will have a long
11 afternoon, a fairly short morning. We will be here until
12 5:15 or so in the evening usually in the -- 5:15, 5:30,
13 sometimes a just a little later. We will take a break in
14 the afternoon or two breaks if you need to. If you need
15 me to take a break at some time, raise your hand, tell our
16 court security officers. We will take restroom breaks
17 whenever we need to. Your lunch period will normally be

18 about 12:00 or 12:30 until 1:30 or 2:00. Some days we
19 take a shorter break, some days a longer break, usually
20 about an hour and a half because with this number of
21 people to move around, if you try to make it too short, it
22 doesn't work very well. Our food situation has improved,
23 there is actually food you can eat on the 7th floor now.
24 For awhile, there was nobody there, and I wouldn't comment
25 about the period before that. But you also may want to

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 get out and stretch your legs, and we understand that. I
2 think that takes care of the schedule.

3 There's seven things I have got to remind you
4 of. The first thing is you cannot discuss the case among
5 yourselves at all, and that's a very serious requirement.
6 Don't discuss the case among yourselves. The case means
7 talking about the lawyers, talking about the parties.
8 Even talking about how they dress or what they did that
9 day, that is talking about the case. You really cannot
10 talk about the parties, the lawyers, anything to do with
11 the case at all.

12 The second thing is that you can't talk with
13 anybody else. So when you go home, if you're -- if you
14 have a spouse or significant other or, you know, you
15 always give your mom a call and tell her what you did that
16 day, you cannot tell them anything about the case. They
17 may actually ask you -- eventually they may say are you on
18 that, you know, case, and I think the best thing to say is

19 I just can't talk about the case at all, I can't talk
20 about it. I can talk about it when it is over. Once you
21 start telling them, there's no way to get out of it, so I
22 can't talk about it at all. You can tell them I'm a juror
23 in a civil case in federal district court, that's okay,
24 that's not a problem, and it is expected to be over in two
25 to three weeks. I think that's fair, because you have to

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 probably tell an employer, give them an idea about that.
2 And, you know, if they have got a question and they feel
3 like they have got to ask somebody, they can call
4 Mr. Warren, Mrs. Dote or a member of my staff, they just
5 can't ask you about it.

6 The fourth thing is that you're not to even
7 speak to the lawyers or the parties at all or any of
8 witnesses or people that you know that are associated with
9 the case. That tends to be difficult for people from our
10 part of the country. Southerners talk to everybody, and
11 it is a nice thing, except it doesn't work well in this
12 environment, so they will understand, and if you
13 inadvertently speak to one of the folks you see here, you
14 simply have to understand that they're just going to look
15 down and look embarrassed and they're not trying to be
16 offensive, that's what they are told to do. They cannot
17 speak to you, and if they inadvertently speak to you, they
18 will probably come tell me about it, say, Judge, I saw Ms

19 So and So or Mr. So and So, and I said hello, and I
20 apologize, I shouldn't have done that, because it appears
21 that they're trying to influence you if they speak to you.
22 They know that's wrong, and that's actually a crime. So
23 they're not going to speak to you. And they're going to
24 avoid speaking -- speaking to you is not a crime, but
25 trying to influence you is definitely one, and they will

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 avoid doing that.
2 The fifth thing, and now it is more concrete as
3 to why this is so important, you're not to do any research
4 or make any investigation at all. Don't go -- you know, I
5 have given this instruction many, many times, and I always
6 tell jurors don't go look it up in the Encyclopedia
7 Britannica and read up on El Salvador. It is really
8 important that you not do it because you may expose
9 yourself to a recitation of some historic events that
10 would then be inappropriate for you to have received
11 additional information on, for example. So I'm going to
12 ask you to not look anything up. Do not go to your
13 computer and Google anything or anybody in the case, don't
14 do that. It is tempting, but do not do that. And don't
15 let anybody present any information to you like that.
16 That would be an inappropriate investigation. If
17 something happens inadvertently, you are judges of the
18 facts, you're going to be respected, but you need to come
19 tell me about it. That would be a situation where you do

20 need to tell me.

21 The sixth thing is I can never predict if
22 there's going to be interest in the newspaper or
23 electronic media in the case, I don't know that, and I'm
24 not anxious that there be it or not be it, I don't have an
25 opinion in that regard, but I have to tell you that you

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 really need to be on guard about that. If there is
2 something, a story somewhere, anywhere, if you see the
3 headline -- I'm taking a little longer to explain this,
4 because if you see the heading, don't read the story to
5 see if it is about the case. That may sound odd, but
6 that's -- you know, if you see it, don't check and see if
7 it is about the case, just don't read it at all. If
8 something comes on the radio or television about it or
9 what appears to be what might be about this case, you
10 should avoid that. It is also not a good time to watch
11 something that is about this period, as you know, from
12 your questionnaire. It is not a good time to go check out
13 certain movies at Blockbuster or to check anything like
14 that. You should not look for any media information on
15 the case.

16 The seventh thing is that you are to keep an
17 open mind, keep an open mind until we get to that day in
18 which you begin your deliberations and still keep an open
19 mind until you actually discuss the evidence among

20 yourselves and then make up your mind. That's how the
21 process works. So if you have one of those events during
22 the day in which you say, you know, I can't believe this
23 or I believe it and, you know, you want to make up your
24 mind on a point, you cannot do that. Keep an open mind
25 until the very end of the case.

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 Ladies and gentlemen, I always take longer at
2 this stage of the case because a vaccination is worth a
3 lot more than getting the disease, and it is very, very
4 important that I sort of give you a good outline of it all
5 as best I can with your understanding that this is just to
6 avoid problems, it is to help you listen to the case, it
7 is not for any other purpose. At the end of the case, I
8 will -- I'm going to say this again, I will give you
9 detailed instructions on the law, and those instructions
10 will govern your deliberations, not our preliminary
11 instructions. Those instructions will govern your
12 deliberations.

13 Ladies and gentlemen, we appreciate all of you
14 being available to serve on this case. Is there anything
15 else from counsel for the plaintiff before we allow the
16 jury to be excused for the day?

17 MR. ESQUIVEL: Nothing else, Your Honor.

18 THE COURT: Anything else from counsel for the
19 defendant before we let the jury be excused for the day?

20 MR. FARGARSON: No, Your Honor.

21 THE COURT: Ladies and gentlemen, we will you
22 will come in here -- you will come in at 8:30, there will
23 other people in here on another case tomorrow for a short
24 period of time, and then we will see you in here,
25 hopefully, at 9:15. If we are running ten minutes late,

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 it will be because they did not conclude the earlier. We
2 will see you tomorrow, you're going to be excused through
3 the jury room. Take a look around, make sure that you're
4 familiar with the facility. I will stay here just for a
5 moment.

6 (Jury out at 5:20 p.m.)

7 THE COURT: Just a few things. Y'all can be
8 seated. When the jury comes in tomorrow, what we normally
9 do is the lawyers and the parties -- and y'all can be
10 seated -- that the lawyers and the parties usually stands.
11 Now, the reason is we try to -- it is very important for
12 the jury to feel respected, and that's just a sign of
13 respect. They are judges of the facts, and that's a
14 tradition that not everybody follows in every court, but
15 we try to do that.

16 The second thing is that I did bring up the
17 issue on burden of proof, not very subtly, but kind of
18 subtly. I have not seen anything in any of the materials
19 that suggests that any party is suggesting the burden on
20 any point is anything other than preponderance of the

21 evidence. I understand that. That doesn't mean I
22 necessarily agree with it, but I understand that I have
23 received nothing in that regard. Where the parties agree
24 on a point of law and invite the court to use a particular
25 instruction without objection, generally what I do unless

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 I'm just absolutely positive that you're wrong, I will fix
2 it anyway, and I will do that also on some things anyway,
3 just because I don't want error in the record. But I've
4 brought that up now twice, and I think I have a position
5 of the parties. I will do a little more research in that
6 regard.

7 Now, they're going to work on the electricity
8 this evening. We had a problem. They did not do what --
9 well, you know, GSA just didn't get it finished, and
10 sometimes that happens. So they will be coming very
11 shortly. They're probably here waiting right now. I'm
12 going to let everybody know they're going to come in with
13 some equipment. We're going to have to let you secure
14 your materials here. If you want to leave anything in
15 here, that is up to you, but they will be move things
16 around over here, and I don't want anybody to leave
17 something here expecting it to be in the same place that
18 it is right now, so I think that is fair notice to you, to
19 let everybody move things today clearly out of the way of
20 the screen and where they will be doing some electrical
21 work in the center of the room. I want you to know that,

22 and I don't want you to be surprised. The staff -- the
23 personnel will be moving things. If they don't complete
24 that work today, they will complete it tomorrow, I hope.
25 And that is our situation in that regard.

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 Are there any questions regarding the exhibits
2 that will be used in opening statements? Do we have
3 anything?

4 MR. ESQUIVEL: I disclosed a list of exhibits
5 that I intend to use, Your Honor, and the defendant has
6 agreed that one of the exhibits is acceptable, so I will
7 intend to refer to that and ask the court if the
8 electrical problem is not fixed, will the monitors --

9 THE COURT: Oh, The monitors will all be in,
10 and there will be a monitor pulled in here, and if I can
11 get another monitor, Mr. Warren will get another monitor
12 so the gallery can see what is on the monitors. So our
13 normal practice is to put two monitors over here, one
14 facing the gallery or anybody else who is observing and
15 one facing the panel on that end, and so they will be here
16 anyway, there will be monitors there, so you will be able
17 to use the material. You will be using your computer
18 hookup to display these materials?

19 MR. ESQUIVEL: Yes, we will, Your Honor.

20 THE COURT: Do you want to announce on the
21 record what there're going to be? Is it very much?

22 MR. ESQUIVEL: I'm sorry, the exhibits?

23 THE COURT: Yes.

24 MR. ESQUIVEL: I plan to use one of the
25 articles from the Code of Military Justice in El Salvador.

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 THE COURT: And that's not a disputed point,
2 the parties will allow its display to the jury without
3 objection, okay, that has been agreed upon by both sides.

4 MR. ESQUIVEL: In addition, I will also be
5 using Power Point slides, and those will be in the nature
6 of demonstratives.

7 THE COURT: Demonstratives are fine. I take it
8 they have been shown to the other side.

9 MR. BROOKE: I have not seen them, Your Honor.

10 THE COURT: Normally demonstratives are shown
11 to the other side because sometimes what -- you know, I
12 agree, you could walk to a board and sketch it, but the
13 better course of action in order to avoid interruption is
14 just to show them. Now, I will say that we're going to be
15 deferential to both sides on the demonstratives as long as
16 it is clear that a demonstrative is not an attempt to show
17 something else.

18 MR. ESQUIVEL: I will finalize those slides
19 tonight, and I will show them to counsel for the defense
20 first thing in the morning.

21 THE COURT: That's fine, they will probably
22 feel more comfortable seeing them in advance.

23 Mr. Fargarson, are you make the opening
24 statement? I think that Mr. Esquivel is doing the opening
25 statement, is that correct?

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 MR. ESQUIVEL: Yes, I am, Your Honor.

2 THE COURT: Do you feel like you know
3 everything to do in the courtroom? You're not going to
4 cross any boundary that you don't want to cross?

5 MR. ESQUIVEL: I don't intend to cross any
6 boundary that I don't want to cross, but --

7 THE COURT: What we will do is at the very end,
8 the two closers will probably just come up at the very end
9 and talk a just a minute to make sure we have covered
10 those things, so you're both comfortable.

11 MR. ESQUIVEL: That will be fine.

12 THE COURT: Mr. Fargarson, are you going to use
13 demonstratives tomorrow or anything that you will be
14 showing?

15 MR. FARGARSON: I may use one exhibit, but I
16 will show it to David if I do.

17 THE COURT: All right, that's fine. Is there
18 anything else we need to take up before we meet briefly --
19 while we let everybody be excused and meet briefly with
20 counsel?

21 MR. ESQUIVEL: Your Honor, we have one matter,
22 which is our witness that we intend to call tomorrow after

23 the statements is Ambassador White.

24 THE COURT: Sure.

25 MR. ESQUIVEL: His wife is not in good health,

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 and so he is only able to be here tomorrow. I believe
2 that given the length of our statements and our schedule
3 that there won't be a problem finishing his testimony
4 tomorrow, and we certainly will allow enough time for
5 cross examination, but I just wanted to make the court
6 aware that if at all possible, we would need to complete
7 his testimony before the end of the day tomorrow.

8 THE COURT: I mean we should --

9 MR. FARGARSON: That's fine with me if I get to
10 ask all I want to.

11 THE COURT: I understand. I understand. Let's
12 have the trial counsel come up to side bar for just a
13 moment, and everybody else, thank you very much, you don't
14 have to leave, but you're at ease.

15 (The following proceedings had at side-bar
16 bench.)

17 THE COURT: We have got a sentencing at 9:00
18 o'clock, and I don't know if it is supposed to be short or
19 long. I mean I didn't realize this, that is why I was
20 asking, you're right, I have even seen him once and, one,
21 he's fairly new in our CJA section and he is -- of course,
22 that's the private attorneys who take cases for defense.
23 We could be through in three minutes. I mean he could

24 come in and he could say I can't go forward, and we
25 don't -- and I would let him because he's brand-new,

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 fairly new. It is not a hard issue, but he's new at it,
2 or we could be here if he's brand-new and we start it, he
3 could make us late, he could keep us for 30 minutes
4 because he has not done many of these. I'm going to ask
5 you to come on in, if it is all right with both of you, at
6 least by 5 till the hour, I mean just --

7 MS. BLUM: Absolutely.

8 THE COURT: If you know you're here at 8:55,
9 you know, you can swap your documents and we may be
10 starting -- I'm going to give you warning we might be
11 starting at five after or 10 after, I would probably make
12 sure it wasn't earlier than 10 after, so you can get
13 comfortably set up.

14 A couple of things about opens, and that is
15 just don't get too close to the panel. They don't like it
16 and, you know, after all these years, Mr. Brooke knows
17 what I'm talking about -- lawyers who get on top of the
18 panel. I don't imagine you would remotely consider doing
19 that.

20 MR. ESQUIVEL: No.

21 THE COURT: Give them a little --

22 MR. ESQUIVEL: I plan to stay next to the
23 lectern there and not approach the panel.

24 THE COURT: You can walk in front and, you
25 know, that sort of thing, that's not a problem, because

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 that's what Mr. Fargarson was asking about, and that's
2 okay. But I have had Jacques Smith did a close here, and
3 he's a very entertaining attorney, and they loved it, but
4 he was almost in the jury box. And I didn't -- at one
5 point, I said maybe you might want to back up a little
6 bit, because they don't like being spit on. I mean he was
7 sort of -- and he backed up a little bit because they were
8 uncomfortable. He's a very effective lawyer with the
9 jury, but he did need to back up just a little bit. I
10 don't think you do that either, you stay --

11 MR. FARGARSON: I don't -- I have some false
12 teeth, and I don't want my teeth to fall out in the lap of
13 a juror.

14 THE COURT: I'm learning more than I wanted to
15 know.

16 MR. FARGARSON: That's not very good. Spitting
17 on them or letting your teeth fall out are not good.

18 THE COURT: Neither one of them works very well
19 with the panel.

20 Okay. I do think the questionnaires turned out
21 to be pretty effective.

22 MS. BLUM: I do too. I thought they were very
23 effective.

24 THE COURT: So I thought -- some were
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25 distressingly interesting. Anything else that y'all -- I

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 really wanted to give you both a chance --

2 MS. BLUM: Could I clarify on tomorrow's
3 schedule because --

4 THE COURT: I'm supposed to be somewhere at
5 11:00 which allows me to get back here at, you know,
6 easily 12:30, we can resume at 12:30, no problem. We get
7 this weird early lunch, isn't that right, Joe? And
8 sometimes that changes. So I warn people --

9 MS. BLUM: Will we expect to go straight
10 through in the morning allowing David to give his opening
11 and Bob to give his opening?

12 THE COURT: Yeah. How long is your opening

13 MR. ESQUIVEL: Forty minutes.

14 THE COURT: Forty minutes, that's okay. That's
15 what we agreed, well within.

16 How long is your open?

17 MR. FARGARSON: It probably won't be as long as
18 his. I would say in the vicinity of maybe 25 or 30
19 minutes.

20 THE COURT: These are all --

21 MR. FARGARSON: He has got five people to talk
22 about.

23 MS. BLUM: We should be prepared to start
24 Ambassador White just as soon as the opens are complete?

25 carranza01.txt
THE COURT: Yeah, and I just wanted Ambassador

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PRELIMINARY INSTRUCTIONS BY THE COURT

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1 White to know, you know, that we're going to have this odd
2 lunch tomorrow. It may work to your advantage, maybe we
3 will get through with the opens if we started at 9:10. I
4 mean it is possible that -- yeah, we will get to him. We
5 will get to him in the morning, but it will only be for a
6 short period of time and then we will take that break.

7 MS. BLUM: Okay, good. Thank you very much.

8 THE COURT: Thank y'all very much.

9 MR. ESQUIVEL: Thank you.

10 MS. BLUM: See you tomorrow.

11 (Court adjourned at at 5:30 p.m.)

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